

OFFICIAL REPORTER'S MINUTES

CASE NO. PUC-2007-00108

COMMONWEALTH OF VIRGINIA STATE CORPORATION COMMISSION

PETITION OF

SPRINT NEXTEL

CASE NO. PUC-2007-00108

For reductions in the
intrastate carrier access
rates of Central Telephone
Company of Virginia and
United Telephone-Southeast, Inc.

TESTIMONY OF CHRISTIAN DIPPON

- Hearing Examiner -

DATE TAKEN

September 30, 2008

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

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SPRINT NEXTEL

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VOLUME II

The complete transcript of the testimony
and other incidents in the above-captioned matter when
heard on September 30, 2008, having been continued
from September 29, 2008, before the Honorable
Alexander F. Skirpan, Jr., Hearing Examiner for the
State Corporation Commission, Richmond, Virginia.

Reported and transcribed by:

Heidi L. Jeffreys, RDR, CRR

1 Dippon.

2 And, again, while Mr. Dippon is moving to
3 the witness stand, there are some questions that I am
4 asking Mr. Dippon to testify about that probably would
5 have been better addressed by Dr. Staihr, but since
6 he's not here we're asking Mr. Dippon. So we're
7 asking maybe for perhaps a little leeway.

8 THE HEARING EXAMINER: As long as -- and
9 you've done this so far -- it's tied to something
10 that's been subsequent to his testimony, that's fine.

11 MR. PAGE: Thank you. We will.

12 CHRISTIAN DIPPON, called as a witness by
13 Embarq, having been first duly sworn, was examined and
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. PAGE:

17 Q. Mr. Dippon, yesterday there was a lot of
18 talk about increasing the price of bundles in rural
19 Virginia.

20 Would you -- could you tell us -- we
21 didn't discuss that as a theoretical option for
22 Embarq. Could you discuss that as a theoretical
23 option, please?

24 A. Well, I presented a number of theoretical
25 options that Embarq could look at in responding to the

1 proposed revenue -- access revenue decrease. I did
2 not include bundles.

3 First of all -- there's two reasons for
4 it. First of all, bundles are, as I said yesterday,
5 offered typically on either a nationwide or a
6 statewide basis. From an economic point of view, if
7 you were to break that up and say, "We're going to
8 offer bundles in one part of the state at this price
9 and a bundle in another part of the state" and,
10 specifically, in a number of wire centers, what that
11 will lead to is, A, an increase in transaction costs,
12 because you're going to have to keep marketing
13 separate, you have to keep certain customer service
14 functions separate, because customer service
15 representatives will need to know the different
16 prices, but, also, I'm not quite sure it flies well
17 with consumers if you pay one price for the bundle on
18 one side of the street and an entirely different price
19 on the other side of the street.

20 But the other thing you have to see is if
21 you were to increase prices of bundles in rural areas
22 what will happen is, much as I explained yesterday in
23 response to a question I received, is when you
24 increase the price of stand-alone would people then
25 switch at one point to bundles, and I think I said

1 that's correct. The other way is true as well.

2 If you were to increase the price of a
3 bundle, people will either defect entirely or they
4 will just switch to a stand-alone again, and then
5 we'll be back to the same point as I raised yesterday;
6 then the only realistic option is, well, you're going
7 to increase the price of stand-alone services.

8 Q. What about increasing the price of
9 competitive services, Mr. Dippon?

10 A. That is slightly different. And,
11 again -- and I've addressed that yesterday to a
12 certain extent.

13 What would happen there is you would
14 force Embarq to subsidize the regulated services in
15 the rural area with revenue from nonregulated. And
16 essentially, in order for Embarq to do that, they
17 would need to earn super-competitive returns.

18 In addition to that, it will really tie
19 their hands in responding to changes in competitive
20 forces as we move forward.

21 Q. Mr. Appleby testified yesterday that any
22 reduction in cost is a competitive benefit from an
23 accounting perspective. Is that also true from an
24 economic perspective?

25 A. No. And economists and accountants

1 frequently fight, so I'm going to stay away from that,
2 but the -- in the last 24 hours I've heard a lot about
3 accounting facts, I've heard the word "truism," I've
4 heard the term "lifetime studies." I don't think none
5 of them are appropriate here.

6 What needs to be done is economic
7 studies. Market forces need to be examined, and the
8 cost and benefit of the proposed motion -- or the
9 proposed rate reduction need to be considered.

10 And, yeah, maybe from a strictly
11 accounting perspective if you charge me a penny less,
12 well, I'm a little bit better off, but you have to see
13 what the flip side of that is. It's a cost/benefit
14 analysis, and there are serious costs associated with
15 reducing intrastate switched access rates.

16 Q. This morning, Mr. Dippon, the Hearing
17 Examiner asked Ms. Cummings about the difference
18 between cost and price, and she answered that question
19 as -- from a public policy standpoint.

20 Can you answer that question from an
21 economics standpoint?

22 THE HEARING EXAMINER: It was "price
23 floor."

24 MR. PAGE: I'm sorry, "price floor." I
25 apologize.

1 BY MR. PAGE:

2 Q. Cost versus price floor.

3 A. Yes, it was the difference between cost
4 and price floor, and I think Ms. Cummings got it quite
5 correct.

6 A price floor is simply a price below
7 which a carrier, for instance, is not allowed to
8 price. Now, price floor is often set at cost. The
9 belief behind it is that in a competitive market
10 prices tend toward cost. Now, if you were to set the
11 price floor below cost, then you would enable a
12 carrier to engage in competitive price squeezes; that
13 is, pricing below cost so that a competitor drops out
14 of the market.

15 Q. And you were in the courtroom, of course,
16 when the Hearing Examiner asked Ms. Cummings the
17 difference between LRIC and TSLRIC.

18 A. Right. LRIC is incremental cost without
19 a specific increment of demand in mind.

20 So you say what's the LRIC -- for
21 instance, what does it cost me? What's the LRIC for a
22 change in price? A change in price will lead to a
23 change in demand. So you say, okay, how much is that
24 change in demand? Say we lose a hundred customers.
25 Well, then you can calculate what the cost of losing a

1 hundred customers is.

2 But the increment itself depends on the
3 activity. It's just that -- the LRIC is just simply
4 the incremental costs without a specific increment of
5 demand, and as you do your activity you define the
6 increment that you're interested in.

7 The TSLRIC is a very particular kind of
8 incremental cost. Here we simply look at what is the
9 incremental cost for that service, and, specifically,
10 what happens if the demand for that particular service
11 drops to zero.

12 Q. Mr. Dippon, Mr. Appleby and Mr. Nurse
13 testified yesterday that reducing Embarg's intrastate
14 switched access rates would benefit consumers and the
15 competitive process.

16 Are this and similar statements as to the
17 alleged benefits of access charge reductions
18 economically valid?

19 A. No, they're not.

20 I'd like to mention a few confidential
21 numbers, so if you'll allow me to do that...

22 THE HEARING EXAMINER: Okay. First off,
23 have you finished with all the non-confidential?

24 MR. PAGE: Yes, we have.

25 THE HEARING EXAMINER: Okay.

1 MR. PAGE: We purposely put this at the
2 end.

3 THE HEARING EXAMINER: Okay. That's what
4 I was hoping.

5 (Pages 345 through 346 of the transcript
6 are confidential and are filed under seal.)
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1 THE HEARING EXAMINER: You mentioned cost
2 as if it's monolithic, I guess -- or I took it as
3 that. Are there different ways to do costs or
4 different types of costs or different ways of
5 measuring it?

6 THE WITNESS: Well, there are different
7 types of costs and absolutely different ways to
8 measure it. Frequently in this instance there will be
9 one form of LRIC used; TSLRIC, maybe.

10 THE HEARING EXAMINER: Okay. That's all
11 I had.

12 MR. GILLESPIE: I have one -- oh --

13 MR. NELSON: No, you can go first.

14 CROSS-EXAMINATION

15 BY MR. GILLESPIE:

16 Q. Good morning, Mr. Dippon.

17 You mentioned or described the difference
18 between total service long-run incremental costs and
19 long-run incremental costs. Do you know whether the
20 Commission's order in Case PUC-1987-00012 required a
21 long-run incremental cost study or a total service
22 long-run incremental cost study?

23 A. No, I don't.

24 MR. PAGE: Actually, let me object a
25 little bit to the form of the question.

1 Did the Commission's order require a
2 certain study to be made -- I don't think that is the
3 test. Well, we can all interpret the order the way we
4 think is correct, but I would object to the
5 characterization that the order required that.

6 MR. GILLESPIE: I think I'm entitled to
7 ask questions in any form I want to ask questions.

8 THE HEARING EXAMINER: Considering the
9 witness has already answered it -- and we will
10 definitely read the order, and it will say what it
11 says, and we can deal with that on briefs.

12 BY MR. GILLESPIE:

13 Q. I'll just ask you --

14 THE HEARING EXAMINER: I overrule the
15 objection.

16 BY MR. GILLESPIE:

17 Q. Do you have a definition?

18 A. No, I don't. The definition I've given
19 you is sort of a generic definition of LRIC and
20 TSLRIC.

21 MR. GILLESPIE: That's all I have, Your
22 Honor.

23 MR. NELSON: Your Honor, I do have one
24 question, briefly.

25 THE HEARING EXAMINER: Okay.

1 BY MR. NELSON:

2 Q. Mr. Dippon, you've just said that you
3 were not aware of any announcements by Sprint about
4 new product developments.

5 Are you aware of the press coverage
6 yesterday of the first 4G market release for Sprint
7 Nextel?

8 A. In what particular areas?

9 Q. In Baltimore.

10 A. No. Yesterday I was in the courtroom,
11 so, unfortunately, I was not.

12 But you mentioned it's Baltimore. My
13 references here were to Virginia. I'm not quite sure,
14 but yesterday I think you even mentioned that Sprint
15 didn't even have spectrum in those areas. I'm
16 questioning from my point of view is that because
17 Sprint chose not to purchase any spectrum or spectrum
18 was simply not available.

19 MR. NELSON: That's all, Your Honor.

20 Thank you.

21 THE HEARING EXAMINER: Any redirect?

22 MR. PAGE: No further questions.

23 THE HEARING EXAMINER: Thank you very
24 much. You may be excused.

25 MR. PAGE: Your Honor, that is our case,

1 except we do have that motion that we mentioned in our
2 opening statement. And perhaps Ms. Benedek can
3 address that at this point.

4 THE HEARING EXAMINER: What was -- okay.

5 MS. BENEDEK: Your Honor, yes, during my
6 opening statement I had referenced an intention by
7 Embarq to seek that the record in this proceeding
8 remain open to address any additional evidence or any
9 additional pleadings relative to an FCC proceeding.

10 During the course of this case and the
11 record development yesterday, mostly, there were at
12 least two exhibits brought in, part of a coalition --
13 I think it was Exhibits 30 and 31 -- sponsored by a
14 coalition of entities, including two of the parties
15 that are here today, espousing that there should be a
16 unified rate for all traffic, which would include
17 intrastate switched access that is at the heart of the
18 case here. There have been other proposals. AT&T has
19 another proposal at the FCC; Embarq does.

20 The point is this: The FCC has,
21 according to a mandamus requirement, until
22 November 5th to respond to a court, and given the pace
23 of this case and the timing created by the FCC's
24 highly anticipated response to the mandamus action, we
25 believe and we submit and move at this point that the

1 record in this proceeding remain open to allow for any
2 factual evidence, potentially, and/or any legal
3 arguments or any other appropriate pleadings that may
4 be required to address -- to address completely the
5 action taken there as it may pertain to this record.

6 I have also, if anyone is interested -- I
7 have no intention of making it an exhibit, but I have
8 a brief that was filed by Verizon on the same day we
9 filed rebuttal testimony talking about preemption of
10 the State Commissions' -- plural -- authority over
11 intrastate access rates, and Verizon, like AT&T and
12 Sprint, are espousing this unified rate, and it is
13 very much about a preemption issue on the legal
14 grounds.

15 Whether that gets swept into what happens
16 here in November is anyone's guess, but we should and,
17 we submit, we need the opportunity to rectify and
18 reconcile what likely will be happening at the FCC.

19 So, with that, Your Honor -- and I can
20 certainly give copies of that brief to you or if
21 anyone else is interested. We would at this point
22 request that the record remain open for additional
23 evidence, additional argument, or additional pleadings
24 in response.

25 MR. KEFFER: You looked like you were

1 about to rule, but I'll --

2 THE HEARING EXAMINER: No, I was not. I
3 was going to ask if anybody had any response.

4 MR. KEFFER: I do. AT&T would object to
5 Embarq's proposal.

6 First, Embarq's counsel has
7 mischaracterized what the FCC has been directed to do
8 by the Federal District Court for the District of
9 Columbia.

10 The one issue that the FCC is obligated
11 to deal with by November 5th is the issue of the
12 compensation rates that apply for Internet service
13 provider bound dial-up Internet traffic. And that is
14 an issue that has been back and forth between the FCC
15 and the courts for the better part of a decade. The
16 Court finally said, "Enough is enough." You know,
17 "FCC, you have until November 5th to provide an
18 appropriate legal justification for the compensation
19 rate that you have established; otherwise, we're going
20 to dismiss your order."

21 Now, in the course of that proceeding the
22 FCC's counsel told the Court that the Chairman of the
23 FCC intended to put forward a proposal for
24 comprehensive intercarrier compensation reform. And
25 as a result of Counsel's statement there's been a

1 flurry of activity in the industry putting proposals
2 to the FCC Staff and having ex parte meetings and
3 engaging in lots of discussion, but there's absolutely
4 no guarantee that the FCC is going to do anything
5 regarding access charges or intercarrier compensation
6 generally on November 5th or anytime shortly
7 thereafter.

8 Don't get me wrong. AT&T would be
9 delighted if the FCC would deal with this issue, but
10 it's been sitting in front of the agency for years and
11 years and years, and to date nothing has happened.
12 Lots of people are hopeful that something happens by
13 November 5th, but I certainly am not betting my own
14 money on a FCC outcome.

15 I would -- having said all of that, I
16 would propose that you rule that the parties can do
17 whatever -- or what is typical when circumstances
18 change; if the FCC acts, parties -- or a party -- can
19 file a motion with you to reopen the record based on
20 changed circumstances. I think that's the more normal
21 and typical course of events, and that's the one that
22 you should follow here.

23 THE HEARING EXAMINER: Any other
24 responses?

25 MR. NELSON: Yeah. Sprint Nextel agrees

1 with Mr. Keffer. There's no purpose for leaving the
2 record open.

3 The purpose of this hearing is to prepare
4 and complete the evidentiary record, and it's now
5 complete, and it shouldn't be held open. And, as
6 Mr. Keffer says, it can always be reopened.

7 Furthermore, any order out of the FCC
8 will be a public document the Commission can take
9 judicial notice of.

10 MS. MACKO: Your Honor, I would join AT&T
11 and Sprint Nextel's opposition to the motion.

12 MR. GILLESPIE: Your Honor, the Staff
13 also opposes the motion.

14 Mr. Keffer has given you the details
15 about the ISP-bound traffic that must be addressed by
16 November 5th, but we've been waiting seven years for
17 the FCC to do this comprehensive reform of
18 intercarrier compensation, and I don't think that we
19 need to delay what we're doing with intrastate in
20 order to anticipate that they're finally going to
21 address the interstate and perhaps even carry over to
22 intrastate.

23 Furthermore, even if the FCC does do
24 something like preempt the states on intrastate access
25 charges, I think the appellate courts will ultimately

1 rule as to whether or not they have the authority --
2 whether Congress has told them that they're supposed
3 to set intrastate access rates.

4 So, I think as Mr. Keffer and others have
5 suggested, this docket should proceed. If per chance
6 the FCC comes out with some earth-shattering directive
7 that changes the circumstances, the parties can advise
8 the Examiner and ask for appropriate relief at that
9 time.

10 THE HEARING EXAMINER: Your reply?

11 MS. BENEDEK: Just one final response to
12 the comments made and the objections noted.

13 Other commissions have not started.
14 Washington most recently is waiting. Pennsylvania has
15 issued an order. They are trying to capture and
16 reflect the realities there. So this motion is
17 consistent with what has been done elsewhere.

18 And, secondly, it's administratively
19 conscious of resources of this Commission.

20 So we renew the motion and we
21 respectfully disagree with the objections noted.

22 THE HEARING EXAMINER: I'm going to deny
23 the motion, and -- but to the extent something
24 changes, then we'll deal with it. But, otherwise, I
25 have my Commission order, and I'm going to give them

1 an answer.

2 The -- I would assume we would need
3 briefs in this proceeding, and that's where we are.
4 And I was thinking 15 business days after the
5 transcripts are submitted. Anybody want a different
6 date or a different length of time?

7 What I will do is once the transcripts
8 are available I will issue a ruling, just to give
9 everyone the specific date that the briefs will be
10 due, which I would do my best to calculate to be 15
11 days -- 15 business days -- from the transcripts.

12 MR. PAGE: Your Honor, that's fine. Can
13 we ask -- can we ask for the opportunity for us to
14 provide a reply brief?

15 You know, given the way this case has
16 evolved -- actually, we knew this at the pre-hearing
17 conference, but it was really confirmed at the
18 hearing; that this truly is a case where Embarq's
19 prices are -- that it charges for intrastate switched
20 access are -- and its resultant revenues are at risk
21 here, at question.

22 I think it would be appropriate that we
23 be given, you know, ten business days or so to file
24 reply briefs to those that are filed in this case,
25 given those circumstances.

1 THE HEARING EXAMINER: Why would this be
2 any different than any other case? I mean, anytime
3 someone's rates are in play -- I mean, I'm -- you'll
4 get a second shot, anyway, from my report -- I mean,
5 in the comments to my report to respond to it.

6 But, I mean, I don't see the need -- or
7 how this case differs in any great way that would
8 require two rounds of briefs, so I'll just say we'll
9 have one round of briefs, and then I'll do my report,
10 and then you'll file comments and exceptions to my
11 report. So you still have two chances on that.

12 Anything further to come before the
13 Commission?

14 If not, we'll stand adjourned.

15 (The hearing concluded at 10:43 a.m.)
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