

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Tariff)
Filing of Sprint Missouri, Inc.,) Case No.
d/b/a Sprint, to Modify Rates in) IT-2004-0225
Accordance with Sprint's Price)
Cap Regulation Pursuant to) Tariff No.
Section 392.245, RSMo 2000.) JI-2004-0611

In the Matter of the Tariff)
Filing of Sprint Missouri, Inc.,) Case No.
d/b/a Sprint, to Modify Rates in) IT-2004-0226
Accordance with Sprint's Price)
Cap Regulation Pursuant to) Tariff No.
Section 392.245, RSMo 2000.) JI-2004-0612

In the Matter of the Tariff)
Filing of Sprint Missouri, Inc.,) CaseNo.
d/b/a Sprint, to Modify Rates in) IT-2004-0227
Accordance with Sprint's Price)
Cap Regulation Pursuant to) Tariff No.
Section 392.245, RSMo 2000.) JI-2004-0613

In the Matter of the Tariff)
Filing of Sprint Missouri, Inc.,) Case No.
d/b/a Sprint, to Modify Rates in) IT-2004-0228
Accordance with Sprint's Price)
Cap Regulation Pursuant to) Tariff No.
Section 392.245, RSMo 2000.) JI-2004-0614

In the Matter of the Tariff)
Filing of Sprint Missouri, Inc.,) Case No.
d/b/a Sprint, to Modify Rates in) IT-2004-0229
Accordance with Sprint's Price)
Cap Regulation Pursuant to) Tariff No.
Section 392.245, RSMo 2000.) JI-2004-0615

PREHEARING CONFERENCE
Volume 1
Monday, January 5, 2004
Governor Office Building
200 Madison Street
Jefferson City, Missouri 65101

VICKY RUTH, Presiding,
SENIOR REGULATORY LAW JUDGE

ASSOCIATED COURT REPORTERS
TOLL FREE - (888) 636-7551

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

LISA CREIGHTON HENDRICKS, Senior Attorney
SPRINT MISSOURI, INC.
6450 Sprint Parkway
Overland Park, Kansas 66251

FOR: Sprint Missouri, Inc.

DAVID MEYER, Associate General Counsel
PUBLIC SERVICE COMMISSION
P. O. Box 360
Jefferson City, Missouri 65102

FOR: Staff of the Missouri Public Service
Commission.

MICHAEL DANDINO, Senior Public Counsel
OFFICE OF THE PUBLIC COUNSEL
P. O. Box 2230
Jefferson City, Missouri 65102

FOR: Office of the Public Counsel and
the Public.

REPORTED BY:
Patricia A. Stewart, RPR, RMR, CCR, CSR
ASSOCIATED COURT REPORTERS
714 West High Street
Jefferson City, Missouri 65101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

JUDGE RUTH: Good morning. We are here for a joint prehearing conference in five cases. These five cases have not been consolidated. We are just having a joint prehearing conference for efficiency sake.

And those cases are IT-2004-0225, IT-2004-0226, IT-2004-0227, IT-2004-0228, IT-2004-0229, all captioned in the matter of the tariff filing of Sprint Missouri, Inc., d/b/a Sprint, to modify rates in accordance with Sprint's price cap regulation pursuant to Section 392.245, Revised Statutes of Missouri 2000.

My name is Vicky Ruth, and I'm the regulatory law judge assigned to these five cases.

Today's date is January 5th, 2004, and it is a few minutes after 11:00 a.m.

Let's begin by entries of appearance. Sprint, start with you.

MS. HENDRICKS: Lisa Creighton Hendricks, 6450 Sprint Parkway, Overland Park, Kansas 66251, appearing on behalf of Sprint Missouri, Inc.

JUDGE RUTH: Thank you.

And do you mind introducing who is next to you.

MS. HENDRICKS: Also a representative from Sprint, Mr. Stan Brower.

JUDGE RUTH: And Staff.

1 MR. MEYER: Good morning. My name is David
2 Meyer, representing the Staff of the Missouri Public
3 Service Commission.

4 Our address is P. O. Box 360, Jefferson City,
5 Missouri 65102.

6 And I also have staff with us today, Staff
7 personnel, Natalie Dietrich and Walter Cecil.

8 JUDGE RUTH: Okay. Thank you.

9 And Public Counsel.

10 MR. DANDINO: Michael Dandino, Office of the
11 Public Counsel, Post Office Box 2230, Jefferson City,
12 Missouri, 65102, representing the Office of Public
13 Counsel and the public.

14 Your Honor, I do not have a witness, did not
15 intend to. I think I can answer any question that you
16 may put forward, at least take it back to my witness.

17 JUDGE RUTH: The parties were not required to
18 bring any witnesses to the prehearing conference.

19 As I've indicated, this prehearing conference
20 was scheduled at the request of a commissioner during an
21 agenda session. It was actually, I think, discussed
22 prior to agenda, and then mentioned in an agenda session,
23 as an opportunity for some questions to be directed to
24 specific parties.

25 I don't anticipate it will take very long. If

1 it turns out one of the questions cannot be answered by
2 counsel, it may be most appropriate to have a follow-up
3 pleading filed to answer those questions instead of
4 putting a witness on the record.

5 The first question I have is actually for
6 Public Counsel.

7 And, Mr. Dandino, in several of Public
8 Counsel's filings, one of the issues raised was Public
9 Counsel's concern with whether or not the letter
10 accompanying the initial tariff filing was adequate, and
11 Public Counsel also referred to a proposed rule that is
12 in the works.

13 And by a proposed rule, I mean one that is part
14 of ongoing discussions that has not actually been filed
15 by the Commission with the Missouri Secretary of State's
16 Office.

17 MR. DANDINO: That's correct.

18 JUDGE RUTH: Those objections that Public
19 Counsel made, are they unique to this case or is Public
20 Counsel actually arguing that in any tariff filing that
21 is made at this time, the company should comply with that
22 proposed rule?

23 Again, the proposed rule has not yet been filed
24 in any form. It's not part of any case, is my
25 understanding, and it has not been filed at the Secretary

1 of State's Office.

2 MR. DANDINO: That's right.

3 More our intention -- it goes broader than just
4 this case, because I have in other cases, other tariff
5 filings, we've mentioned the same problem in there.

6 And I raise it as to -- in these cases to
7 remind the Commission and to give examples that this is
8 why a more detailed rule is needed and that -- and that
9 even though this may be just -- just a proposed rule --
10 and we understand the companies do not have to comply
11 with a rule that at this time has only been proposed by
12 Public Counsel, and we understand that you're not
13 required to follow that rule.

14 But, you know, we're just trying to point out
15 that the intent of that -- of the existing rule is to --
16 is to give notice and to inform the public and show how
17 it affects it. And we didn't think that the cover letter
18 as originally filed covered that.

19 I did want to bring up that I think now -- the
20 state of the record now, that supplemental information
21 has been filed, I think at least -- see that at least the
22 objections that we had about what's the effect of the
23 tariffs is, are, is at least in the record at this time.

24 JUDGE RUTH: So Public Counsel is not proposing
25 that all companies should comply with the not-yet-filed

1 proposed rule; it's more that Public Counsel believes
2 more information should be filed in the initial notice;
3 and if the Commission's current rule doesn't require
4 that, it's just reiterating Public Counsel's concern that
5 our rule is not adequate?

6 MR. DANDINO: Right.

7 There is a need for very specific requirements,
8 because -- in other words, we're going to get into the
9 dispute that arose in this case every time about the
10 company and perhaps the Staff saying that the information
11 is adequate, while Public Counsel saying there is not
12 enough information with the specific rule.

13 Perhaps we can avoid that issue and give more
14 guidance to the parties on what is required.

15 JUDGE RUTH: Okay.

16 But as you stated, at this point, Public
17 Counsel feels the notice in the record is adequate and
18 that is no longer a concern for this case?

19 MR. DANDINO: For this case, I think that there
20 is sufficient information to find out what the effect of
21 the tariff is, and it's not a problem with our office any
22 more for this record.

23 JUDGE RUTH: Okay.

24 I realize Public Counsel filed a pleading on
25 December 30th, and in it, starting out on page 3, Public

1 Counsel noted what it sees as continuing concerns with
2 the tariffs.

3 I would just ask that you clarify a little bit,
4 especially on page 4, it says -- oh, it's right above the
5 paragraph B.

6 Public Counsel references other cases that are
7 on appeal, IT-2003-0166 through 0170, and makes a
8 reference to the rebalancing issue.

9 It's my understanding that Sprint's filing also
10 of December 30th, I believe, indicates that rebalancing
11 is not an issue in these five cases.

12 Is that correct?

13 MR. DANDINO: That's correct.

14 Your Honor, the reason I put that in there is
15 the rebalancing based upon the cost of service of local
16 service and switched access, what was involved in the
17 court of appeal cases, is not involved in these cases,
18 except to the extent that I think they make a CPI
19 adjustment to the already rebalanced tariff.

20 JUDGE RUTH: But do you object to that CPI
21 adjustment?

22 MR. DANDINO: No. No. That is what I was
23 getting to.

24 JUDGE RUTH: You object to the underlying
25 rebalancing that is in the other cases.

1 MR. DANDINO: To the -- I wanted to make sure I
2 didn't waive anything on that, so I brought it up.

3 I don't object to the adjustment that they're
4 proposing in that rebalanced tariff. We object to the
5 rebalancing.

6 JUDGE RUTH: I just needed to clarify that,
7 because there has been some confusion among the
8 Commission as to whether or not rebalancing is an issue
9 in this case.

10 So your objections, then, to 225, the first
11 part you say CPI adjustments and rebalancing, and on
12 page 3 of your pleading, you really don't have an
13 objection to the rebalancing issue, and you're not
14 arguing that the CPI adjustment was improper; you're just
15 reiterating your argument that is in the other cases as
16 to the rebalancing?

17 MR. DANDINO: That's correct.

18 I'm saying that we don't have a problem with
19 the way they handled the CPI issue for this year, and
20 preserving the issue at least for rebalancing in any
21 other case, but it really isn't a major -- it isn't an
22 issue in this case.

23 JUDGE RUTH: Okay.

24 But a remaining issue for Public Counsel would
25 be the 8 percent increase in certain nonbasic services?

1 MR. DANDINO: Right.

2 JUDGE RUTH: So Public Counsel would argue that
3 Sprint is required to show that the increase is just and
4 reasonable and nondiscriminatory?

5 MR. DANDINO: Generally, that's right.

6 JUDGE RUTH: Okay.

7 And you would propose that that has to be done
8 how?

9 MR. DANDINO: Through a hearing or --

10 JUDGE RUTH: I'm asking you. I'm sorry.

11 You say Public Counsel continues to object to
12 increases in nonbasic services unless there is a showing
13 that such an increase is just and reasonable and
14 nondiscriminatory.

15 So it was not clear to me if you're saying that
16 you don't know if it's just and reasonable, the
17 increases, or that you're objecting because this showing
18 wasn't made.

19 I'm trying to tie down what your objection is
20 to each of the tariffs.

21 MR. DANDINO: Our objection goes to in general
22 the 8 percent -- the 8 percent increase, that there has
23 to be a showing of -- or I don't want to say that there
24 has to be a showing of generally.

25 And this is more of a general objection, a

1 general objection that there should be some type of
2 requirement showing that it's just and reasonable and --
3 and nondiscriminatory.

4 But I do want to say that I am not raising any
5 specific objection. I have no specific objection or I
6 can't point to any objections where I can say that any of
7 these are unjust and unreasonable.

8 Okay?

9 JUDGE RUTH: I'm not sure I'm getting the
10 answer, then, that the Commission is looking for.

11 Do you have an objection to the Commission
12 approving the tariff in 2004-0225?

13 The first part, you know, we've -- I think
14 we've decided that the CPI and rebalancing issues are not
15 a problem for Public Counsel in this case, so I was
16 moving down to the 8 percent increase.

17 MR. DANDINO: Okay.

18 JUDGE RUTH: What exactly is Public Counsel's
19 objection to each of the tariffs?

20 That's what I need to --

21 MR. DANDINO: Each of the tariffs, we object to
22 any of the increases of 8 percent.

23 We just generally feel that they are
24 unreasonable and unnecessary, and unless there can be
25 some type of a showing that that is appropriate, we don't

1 think that the Commission ought to approve it, especially
2 given the idea of what price caps are, the purpose of
3 price caps.

4 JUDGE RUTH: You say unless there is a showing.
5 And what do you mean by that?

6 Do you mean an evidentiary hearing?

7 MR. DANDINO: I don't think they have to show
8 an evidentiary hearing. I think if they were, you know,
9 to file some information of why they are requesting it or
10 an increase.

11 JUDGE RUTH: Okay.

12 So Public Counsel would object to the 8 percent
13 increase.

14 And what else in any of the five cases would
15 Public Counsel object to?

16 MR. DANDINO: Well, it also goes to the setting
17 of maximum allowable rates, but that --

18 JUDGE RUTH: The phantom rate increase issue?

19 MR. DANDINO: Yes.

20 JUDGE RUTH: Okay.

21 MR. DANDINO: That aspect of it.

22 Even though we do understand that those rates
23 aren't being applied under these tariffs.

24 JUDGE RUTH: Okay.

25 I have a question relating to that phantom rate

1 increase issue for Staff. And I'll ask Sprint to respond
2 also.

3 One of Staff's filing -- or, actually, several
4 of them, I know, mention this, but in one of the Staff --
5 let's see.

6 This is the December 22 Staff supplemental
7 response in 0225. Although I believe there is something
8 similar in each of the other cases.

9 But on page 5, towards the top, about five
10 lines down, Staff says, accordingly, under the terms of
11 the Commission's prior decision in TT-2002-0447, the
12 maximum allowable price is not actually charged to
13 customers, have no impact on rates. And it continues on.

14 I have a question for Staff about Staff's
15 interpretation of the Commission's decision in
16 TT-2002-0-- or 447.

17 Is it your understanding that the Commission
18 decided that case based solely on the issue of banking or
19 did -- and, in other words, rejected Sprint's tariffs on
20 the basis that there was banking, or do you believe that
21 the Commission actually made a finding as to whether or
22 not phantom rates -- I use phantom rates as Public
23 Counsel did -- could be established, and, otherwise, did
24 the Commission condone Sprint establishing a maximum
25 allowable price but not changing the rate?

1 When I read the paragraph from Staff that
2 begins on page 4, about a third of the way down and
3 continues over on page 5, I get the sense that Staff is
4 saying that somewhere the Commission has condoned this
5 phantom rate schedule but has just said no banking.

6 And I'm not sure if that's actually what the
7 order -- the TT-2002-447 says.

8 MR. MEYER: I think that is correct. The
9 TT-2002-447 order, I believe, did not permit a banking
10 concept, but did not speak to the idea that -- did not
11 sort of retroactively void the concept of maximum
12 allowable prices separate from prices actually charged.

13 I think there may have been a reference to the
14 idea that if they're not actually charged, they have no
15 impact on the customers in that order.

16 JUDGE RUTH: Has the Commission specifically
17 addressed that phantom banking concept in any other case
18 since -- including 447 or since?

19 MR. MEYER: I don't know that the Commission
20 specifically addressed it, but these concepts have
21 continued to appear before the Commission in tariffs that
22 have gone into effect without suspension or objection by
23 the Commission.

24 JUDGE RUTH: So they weren't addressed in an
25 order but practice has continued?

1 MR. MEYER: That is my understanding, yes.

2 JUDGE RUTH: Okay.

3 Sprint, did you want to --

4 MS. HENDRICKS: I would agree with Mr. Meyer in
5 the 447. The only thing we sought to increase was the
6 actual rate, an amount in this -- some case above the
7 8 percent but under the maximum allowable price.

8 The actual tariff price with the maximum
9 allowable price was not at issue in the 447; it was an
10 increase in a rate which was on a separate tariff sheet
11 that had been filed.

12 So I would concur with Mr. Meyer, and it has
13 been the case in each one of our annual filings that we
14 had this maximum allowable price listed without affecting
15 the rate in each one of the ones that I think we made to
16 date.

17 And that goes to Mr. Meyer's point about them
18 being in tariffs that have gone into effect.

19 And we would agree with the state of the law
20 that those are truly administrative kind of notations
21 within the tariff, that under the current state of the
22 law we cannot charge those maximum allowable prices, and
23 they just appear for information in our tariffs.

24 JUDGE RUTH: And that kind of leads me to the
25 next thing.

1 I know this is mentioned throughout, but it
2 changes as time goes on.

3 I want to make sure that when I take this to
4 the commissioners I have the most recent information as
5 to which cases affect that -- which cases are on appeal
6 affect the issues in this case and what the status is.

7 I think that the TT-2002-447 is mentioned, and
8 then also the 166 through 170 cases. I'm not sure -- and
9 then the rebalancing ones that I've forgotten the
10 numbers.

11 I'm not sure rebalancing -- it sounds like it's
12 not an issue here, but it was mentioned.

13 Staff, can you tell me the status of those
14 appeals?

15 MR. MEYER: Actually, I may defer that to the
16 Sprint representative, because I believe that they are --
17 I'm sorry. Is this one where the Commission is appealing
18 or is this one where there is an appeal in process?

19 I'm not sure who is appealing it because I'm
20 not the attorney handling it.

21 JUDGE RUTH: TT-2002-447, the banking one?

22 MS. HENDRICKS: That has been appealed to the
23 court of appeals.

24 JUDGE RUTH: That has been?

25 MS. HENDRICKS: It has been.

1 MR. MEYER: By Sprint.

2 MS. HENDRICKS: Correct.

3 And we filed our notice of appeal.

4 JUDGE RUTH: At this point, though, there
5 hasn't been oral arguments made or briefs filed?

6 MS. HENDRICKS: There haven't been oral
7 arguments.

8 And I don't see that being a case impacting --
9 none of our rates are exceeding the 8 percent. It was
10 your ability to exceed the 8 percent. And I do believe
11 that the decision comes out, you can do it. Whatever is
12 in your tariff really is irrelevant. Either you have the
13 ability or don't.

14 So I don't really see that case impacting --

15 JUDGE RUTH: The Commission, however, has
16 specifically asked that I find out which cases -- these
17 are cases that are mentioned.

18 MS. HENDRICKS: Correct.

19 JUDGE RUTH: And they want -- for their
20 convenience, you can imagine they might get a little bit
21 confused as to the status of where all of those appeals
22 are and how they affect this case.

23 MS. HENDRICKS: Okay.

24 JUDGE RUTH: So you have somewhat answered that
25 question.

1 You feel that TT-2002-447, the banking case,
2 doesn't affect this case?

3 MS. HENDRICKS: Right.

4 JUDGE RUTH: But as to where it is, it is at
5 the court of appeals, there has been no oral --

6 MS. HENDRICKS: There has been no briefing yet.

7 I don't think the file has -- the notice has
8 been filed very recently, but the actual case file or
9 legal file has not been --

10 MR. MEYER: I was just looking at this within
11 the last hour and a half, updating my own case status,
12 and I cannot remember, but I think that it's still in
13 that very, very early stage.

14 JUDGE RUTH: You're not the Staff attorney?

15 MR. MEYER: I am the attorney on the 447 case
16 for the Commission, actually.

17 JUDGE RUTH: And do you agree with the
18 statement that the banking issue in that case, in the 447
19 case, does not have any effect on this case?

20 MR. MEYER: Not as Staff's attorney, but as the
21 Commission's attorney, in my capacity as -- in what
22 capacity are you asking me, I guess? Let me ask that.

23 MS. HENDRICKS: Can I explain my analysis?

24 JUDGE RUTH: Yes.

25 MS. HENDRICKS: My basis for indicating that

1 that did not have an impact on this case is because we
2 have not sought to increase any rate greater than
3 8 percent, because that's what -- what we had done in
4 that case and that was what was rejected.

5 So if that decision is upheld or overturned, it
6 wouldn't impact the rates being increased in this case.

7 MR. DANDINO: And I agree with Sprint counsel.
8 That's my analysis of it too.

9 MR. MEYER: As Staff's attorney, I also would
10 agree. As the Commission counsel, I'm not really sure --

11 JUDGE RUTH: You don't need to answer that
12 question. I just -- I think you're answering the
13 questions, giving me the information I need.

14 The other set of cases was the 0166 through
15 0170.

16 MS. HENDRICKS: Is that the rate rebalancing?

17 JUDGE RUTH: Yes.

18 And those are mentioned a few times throughout.

19 But it's my understanding that Sprint said that
20 there is no rate rebalancing --

21 MS. HENDRICKS: Right.

22 JUDGE RUTH: -- in these five cases that we're
23 currently looking at.

24 So the status of appeals on 0166 through 0170
25 would have no effect on the current cases. Is that

1 correct?

2 MS. HENDRICKS: No.

3 The only thing, I think, that those cases will
4 impact are the -- kind of the basis for the increases
5 we're seeking.

6 Obviously, if the court of appeal's decision is
7 rejected as far as a transfer to the Supreme Court, then
8 the case is going to be sent back here and the Commission
9 will have to look at the -- the file in that case to see
10 if there was enough for the findings of facts, and then
11 they'll go back through the process.

12 There is no issue relating to rate rebalancing
13 in these cases.

14 Now, I think, as OPC has brought up, the
15 underlying rates on the access and the basic side
16 incorporate the rate rebalancing.

17 So the underlying rates may be impacted
18 ultimately but not the issue of the actual percentage of
19 the rate increase in this case.

20 JUDGE RUTH: Okay.

21 MR. DANDINO: And if you want an update on the
22 status of it, Public Counsel has filed a writ of review
23 in the circuit court last week for these -- for these
24 series of cases.

25 JUDGE RUTH: And that was last week, you said?

1 MR. DANDINO: Yes.

2 JUDGE RUTH: Thank you.

3 Staff, were there any other cases on appeal
4 that I've missed that could have an impact on the issues
5 of these cases, or Sprint, Public Counsel?

6 MR. DANDINO: Your Honor, I think Southwestern
7 Bell's case that's on writ of review before the Cole
8 County Circuit Court.

9 And I don't recall what the number is, but it
10 involves the increase of 8 percent -- of an increase of
11 8 percent on a nonbasic service by a price cap company.

12 It may have some effect -- it may have some
13 effect. That's the same issue there.

14 JUDGE RUTH: Do you happen to know if that is
15 one of Kevin Thompson's cases?

16 MR. MEYER: Your Honor, I believe it is.

17 I think that's the case that is actually
18 referenced in the Commission's order directing findings,
19 IT-2004-0015.

20 And as I understand it, the clock has begun to
21 run on the Commission's period to prepare its legal file
22 but briefing remains some distance out --

23 JUDGE RUTH: Okay.

24 MR. MEYER: -- and argument beyond that and a
25 decision well beyond that.

1 JUDGE RUTH: Okay.

2 Is there any other case that could impact this
3 decision that the parties want to mention for the
4 Commission's benefit?

5 MS. HENDRICKS: No.

6 If we could go back to the last case you just
7 cited, the SBC.

8 We did not increase the two services that were
9 subject to the SBC appeal. So it's the greater issue of
10 the Commission authority on the price cap.

11 I just want to make sure that --

12 MR. DANDINO: Right.

13 MS. HENDRICKS: -- it's clear that those two
14 services that were subject to that case are not being
15 increased.

16 MR. DANDINO: That's correct.

17 MS. HENDRICKS: Now, there is one other case
18 that, once again, may be mentioned, but I don't think
19 will impact is, it is we have an MCA that we increased by
20 8 percent or under, and I think OPC appealed that, but we
21 have not sought to increase MCA rates in these filings.

22 JUDGE RUTH: Could you state that again?

23 MS. HENDRICKS: We increased MCA, our
24 metropolitan calling area plan case, by an amount less
25 than 8 percent.

1 JUDGE RUTH: In these cases?

2 MS. HENDRICKS: Not in these cases. In a
3 previous case.

4 JUDGE RUTH: Could you give me that case
5 number?

6 MS. HENDRICKS: Offhand, I can't seem to --
7 though I'm pretty good with numbers, it -- somehow I
8 think this vacation has not served me well.

9 MR. DANDINO: IT-2003-292.

10 MS. HENDRICKS: 0292.

11 JUDGE RUTH: Okay.

12 And in that one Sprint did increase an MCA?

13 MS. HENDRICKS: Correct, MCA by an amount under
14 8 percent.

15 But we have not increased MCA rates in this
16 case.

17 JUDGE RUTH: And Public Counsel did not appeal?

18 MR. DANDINO: We appealed that to the circuit
19 court last week also.

20 JUDGE RUTH: And that was just last week also?

21 MR. DANDINO: Right. Right. Monday, I
22 believe.

23 MS. HENDRICKS: For the record, I think that
24 it's the general issue, the authority of the Commission,
25 not a specific rate here being increased.

1 MR. DANDINO: Your Honor, if I may.

2 I just wanted to kind of explain on this
3 8 percent, and I'm trying to do this because I want to
4 make sure that -- I don't want to unnecessarily -- you
5 know, I want to protect my clients and their interests,
6 but I don't want to unnecessarily, you know, just grind
7 everything to a halt also.

8 Though people may say I'm doing that anyway.

9 But I want to reiterate what our 8 percent --
10 the position on the 8 percent increases, and our position
11 to that is, as it was in the -- in the Southwestern Bell
12 case, because we made it a point to try to -- to kind of
13 give a general objection.

14 And this is what we're saying in this case, is
15 that we oppose as a matter of principle across the
16 board -- I don't care what company it is -- if they come
17 in with an 8 percent -- or, really, any increase in the
18 nonbasic rates for telecommunication services under the
19 price cap statute, Public Counsel will oppose it and
20 object to it, because we believe that under price cap
21 regulation as it's intended, is that it's to respond to
22 competition and is not a readily -- ready means to
23 increase rates.

24 Now, if I may, but we understand that -- that
25 we're not going to ask for a hearing, an evidentiary

1 hearing, on every increase that a price-cap company is
2 proposing. I think that that's impractical. It's -- and
3 really it's not responsible. And so we're not doing
4 that.

5 We understand -- you know, we want our position
6 protected. And what we're saying is, that if it's fallen
7 within the 8 percent range, we understand that the
8 Commission is going to give the benefit of the doubt to
9 the company that if it falls within that 8 percent --
10 now, I'm not saying a presumption, but I'm saying is more
11 of a benefit of a doubt. They may say that it's more
12 likely that it's reasonable, fair, nondiscriminatory. We
13 don't necessarily disagree with it -- I mean, agree with
14 that, but, you know, we're -- and we wouldn't support an
15 increase.

16 But we're not -- unless we raise specific
17 objection of unreasonableness to a specific rate and
18 request a hearing, an evidentiary hearing, we're not
19 expecting a, you know, hearing on that.

20 JUDGE RUTH: And I'm sorry, but your statement
21 seems very confusing, and it goes back to the same issue
22 as before.

23 One of the last pleadings, December 30th,
24 Public Counsel, top of page 5 says, that for those
25 reasons Public Counsel continues to object to increases

1 in nonbasic services unless there is a showing that an
2 increase is just and reasonable and nondiscriminatory.

3 To me that suggests that Public Counsel is
4 objecting to each of these tariffs because in -- as you
5 continue through Public Counsel's pleading, you
6 incorporate that objection in most or all of the cases,
7 and that appears to me to be an objection to the tariff.

8 MR. DANDINO: Well --

9 JUDGE RUTH: So are you objecting --

10 MR. DANDINO: What I'm trying to get across --
11 maybe I'm -- I'm beating around the bush, and I'll just
12 say it, is that we do have an objection to everything --
13 to all of these increases, and we're saying there ought
14 to be a showing of this.

15 But we want to also just inform the Commission
16 that -- and the parties, you know, we understand, also,
17 the practicalities of life and that it may be
18 unreasonable for this Commission to have an evidentiary
19 hearing on each and every one of these 8 percent
20 increases and require an evidentiary showing on every one
21 of them, even though that may be -- I mean, that may be
22 the ultimate end.

23 We're not -- we're not pressing for that.
24 We're not pressing for an evidentiary hearing for each
25 and every one of those in this case.

1 I mean, that's -- we're taking -- I want to
2 make that point, that I'm not waiving that as a point but
3 I'm -- you know, I understand -- I'm just kind of showing
4 you what the limits of our -- of our concerns are
5 without -- without just, you know, completely having a
6 hearing on each and every one of these cases.

7 JUDGE RUTH: I still don't find it clear, then,
8 what Public Counsel wants.

9 Your initial pleading objects to the notice
10 issue. Through a series of additional pleadings
11 additional notice came in.

12 MR. DANDINO: That's no longer an issue.

13 JUDGE RUTH: So that's no longer an issue.

14 When I read, and when at least one of the
15 commissioners read your pleadings, it appears to us that
16 you are still objecting to the tariff sheets in the five
17 cases, but yet you're saying you don't object -- you're
18 not asking for a hearing.

19 So what are you asking for?

20 Do you object to the tariffs going through into
21 effect?

22 MR. DANDINO: I object to it, but I'm not
23 asking for a hearing.

24 I'm not asking for an evidentiary hearing.

25 JUDGE RUTH: What are you asking for then?

1 MR. DANDINO: Basically asking for the
2 Commission to reject any increase.

3 JUDGE RUTH: And the basis for the Commission
4 to reject is because Sprint didn't make a showing that
5 the increase is just and reasonable and
6 nondiscriminatory?

7 If that's not the basis, just clarify it.

8 MR. DANDINO: Our basis of it is that any
9 increase under the price cap statute is unreasonable
10 unless there is a showing that it is reasonable.

11 JUDGE RUTH: Can you speculate for me what
12 would be an adequate showing if it's not -- if a hearing
13 is not required? Are you saying some verified filings
14 might be adequate --

15 MR. DANDINO: Yes.

16 An explanation of, we think an increase because
17 it's consistent with the market, consistent with
18 competition or consistent with our costs.

19 JUDGE RUTH: All right.

20 I just wanted to make sure I understood, then,
21 what Public Counsel's position is. I think this
22 clarifies it.

23 MR. DANDINO: I'm not trying to say I want, you
24 know, a required filed testimony on each and every --
25 every increase that's proposed.

1 JUDGE RUTH: Okay.

2 MR. DANDINO: I'm trying to propose some -- or
3 suggest that there is a middle ground in here.

4 JUDGE RUTH: That is all of the questions that
5 I have.

6 I want to give Sprint and Staff, if you wish,
7 an opportunity to respond, if you have any comments.

8 MS. HENDRICKS: You know, just reacting to
9 OPC's comments, first of all, I appreciate the frankness
10 of counsel, OPC, and --

11 MR. DANDINO: Confuse you.

12 MS. HENDRICKS: Yeah.

13 I do want to say, I think the Commission
14 understands our interpretation of the price cap statute,
15 and that is, it does allow for an 8 percent increase upon
16 a filing with the Commission.

17 And we also appreciate that some commissioners
18 have interpreted it differently, and to the extent I can
19 ascertain the manner in which it's been interpreted, I
20 think they have laid a presumption of reasonableness as
21 long as the filing is 8 percent or under.

22 And if that's the case, it's hard to see where
23 a party would have to come and justify an increase, if,
24 in fact, there is a presumption that attaches under the
25 Commission's interpretation of the statute.

1 JUDGE RUTH: You say that presumption, that the
2 Commission seems to have a presumption.

3 Are you referring to, like, the 447 case?
4 What --

5 MS. HENDRICKS: The presumption --

6 JUDGE RUTH: Is that true in Kevin Thompson's
7 case, the 0015?

8 MS. HENDRICKS: I know that when Sprint's MCA
9 increase was approved by the Commission, the Commission
10 struggled because there was a split in the commissioners,
11 and to get the majority, I understand -- or my
12 understanding of the order is that the one commissioner,
13 who joined the other two who had a similar interpretation
14 of Sprint, indicated that the 8 percent was a presumptive
15 reasonable increase, and based on that, he went ahead and
16 approved the MCA rates.

17 So that's where I get the understanding of a
18 presumption that attaches with the 8 percent.

19 Now, I don't know if that presumption was
20 carried over in the SBC case, where they looked at the --
21 I think a busy-line verification, or two services there,
22 but it definitely was in the MCA case that was there.

23 And one other thing, like I said, Sprint,
24 again, I qualify my comments insomuch as we -- we -- our
25 belief is that the price cap statute allows the increase

1 of 8 percent, but we did indicate to Staff, and Staff
2 pointed out, that if you look at the increases being
3 sought on the nonbasic overall and you look at increases
4 we could have sought in nonbasic, that you're looking at
5 a 2.23 percent increase in revenues versus an 8 percent
6 increase.

7 So if you look overall, you're not truly
8 looking at an 8 percent. And, indeed, if you expand that
9 revenue base to both our basic and our nonbasic, you're
10 really looking at slightly under a 1 percent increase in
11 revenue.

12 JUDGE RUTH: But what support do you have for
13 aggregating them in looking at them as an average?

14 MS. HENDRICKS: Well --

15 JUDGE RUTH: Because the price cap statute does
16 talk about increases of no more than 8 percent. It
17 doesn't talk about aggregating or averaging.

18 MS. HENDRICKS: No. What I was trying to
19 respond to -- and, once again, it struggles in trying to
20 understand where the commissioners are in applying this
21 price cap statute -- is the application of an index and
22 doing the index on an aggregate basis, to kind of look at
23 a company overall and how it operates.

24 If you look at us overall in applying index,
25 the numbers come much lower. But, once again, I can back

1 away from that statement insomuch as I do believe the
2 price cap actual statute really says 8 percent, and for
3 each nonbasic service it will -- it allows an 8 percent
4 increase.

5 We cite to these other numbers as kind of a way
6 to analyze what we're attempting to do in this filing as
7 far as overall and the company impact.

8 JUDGE RUTH: Have you read IT-2004-0015? That
9 is the -- I think it's the Southwestern Bell case. Kevin
10 Thompson was the presiding officer.

11 MS. HENDRICKS: Correct, I have read that
12 decision.

13 And I know that in that case they were looking
14 at one service -- or, really, two services. That's --
15 SBC and Sprint approach these adjustments differently.

16 JUDGE RUTH: How would you differentiate the
17 Commission finding in that case from how they would apply
18 it here?

19 You're saying the difference is they were
20 looking at one service?

21 MS. HENDRICKS: Correct. They were looking at
22 one service. It was the manner in which they were filed.
23 Here we do this on an overall basis. That's how Sprint
24 approaches this filing.

25 JUDGE RUTH: Okay.

1 Anything further from Sprint?

2 If not, I was going to just offer Staff a
3 chance to also make comments or respond to anything
4 that's been said.

5 MR. MEYER: I can very briefly add that from
6 our perspective, the decision in IT-2004-0015 does
7 certainly have the language which I think we've cited
8 several times in pleadings and filings in this case, that
9 there is a rebuttable presumption that an increase of
10 8 percent or less is just and reasonable.

11 There are criteria discussed in that case in
12 arriving at some sort of a decision on justness and
13 reasonableness, if evidence is put forth, I suppose,
14 rebutting this presumption. That, however, does not
15 appear to be exclusive. It was certainly discussed in
16 some detail.

17 Other criteria were put before the Commission
18 in that case, and the Commission chose not to rely on
19 that in this particular case, but there is clearly from
20 our read of that decision a door left open for other
21 criteria to be considered in other cases.

22 And I think in our filings we've also discussed
23 how we interpreted that case, and they also speak for
24 themselves.

25 JUDGE RUTH: Okay. I don't have anything

1 further, and I believe that should conclude the
2 prehearing conference.

3 I'm going to ask after we go off the record
4 when she might be able to have the transcript filed.

5 I do not anticipate the need for proposed
6 hearing comments, but if the parties feel a need for
7 those, you need to indicate to me that now.

8 I see the parties indicating that no post-
9 prehearing conference comments are necessary, so I will
10 not set a deadline for those, and, instead, we'll
11 conclude the prehearing conference, go off the record.

12 WHEREUPON, the on-the-record portion of the
13 prehearing conference was concluded.

14
15
16
17
18
19
20
21
22
23
24
25

