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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UT 155

In the Matter of)	
)	
UNITED TELEPHONE COMPANY OF)	ORDER
THE NORTHWEST,)	
)	
Revised Tariff Sheets for)	
Telecommunications Service.)	
Advice No. OR02-16.)	

DISPOSITION: SERVICES TO REMAIN PRICE LISTED;
CONDITIONS ATTACHED

Background. On July 31, 2002, United Telephone Company of the Northwest dba Sprint (Sprint or Company) filed Advice No. OR02-16 with the Public Utility Commission of Oregon (Commission). The rate increases were effective August 1, 2002. It significantly increased rates for price-listed Message Toll Service (MTS) and its price-listed feature packages.¹ Although the Commission staff (Staff) noted that OR02-16 was properly filed pursuant to the filing requirements for price list revisions, as required by OAR 860-032-0035(11), “the rate increases implemented with the filing are so substantial as to cause staff to question whether Sprint’s MTS is ‘subject to competition,’ the conclusion reached by the Commission in Order No. 98-239.”² By Order No. 02-659, entered September 19, 2002, we opened an investigation into the Message Toll Service rates of Sprint, the continuation of the Company’s authority to price list its Message Toll Services, and the Company’s current earnings level.

By the Administrative Law Judge (ALJ) Ruling of October 1, 2002, the proceeding was bifurcated and a procedural schedule set so that the investigation of the Company’s authority to price list its MTS services and continue to offer them at current rates was to be considered first and the Company’s current earnings level was to be considered at a later date.

¹The packages are variously identified as Advantage, Call Manager, Sprint Essentials, In Touch With Call Forward and Sprint Elite. The Commission granted price listing status for these services by Order No. 99-662 in Docket UD 12, dated October 26, 1999.

² Public Meeting Staff Report dated August 27, 2002, p. 1. This report is affixed as Appendix A hereto and is made an integral part of this Order.

The parties sought to simplify the first phase of this proceeding by foregoing a hearing. By the ALJ's Ruling of January 8, 2003, the parties' request to cancel the hearing was granted and the waiver of rights thereto by all parties was accepted. Pursuant to the ALJ's request at the January 17, 2003 Prehearing Conference, the parties discussed a proposed stipulation and briefing schedule. By electronic mail of January 29, 2003, counsel for Sprint advised the Commission as follows:

The parties to this proceeding do not object to the following stipulation between Sprint and Staff. Sprint and Staff agree on Issue B, set forth in the Issues List that the Commission adopted in this docket. Staff and Sprint agree that the Commission should not amend or revoke Sprint's price listing authority. Thus, under subissues B(1) and (2), Sprint and Staff agree that there have been no fundamental changes to the Oregon toll market since Sprint granted price listing authority for its toll service, Sprint's MTS service is currently subject to competition, and the public interest does not require that Sprint's authority to price list MTS should be changed.

The only issue remaining for the parties to brief was Issue B, which asked whether the Commission should order Sprint to change its toll rates while allowing the company to retain price listing authority.³ The ALJ, by Ruling of January 30, 2003, accepted the parties' proposals and Sprint and the Commission Staff filed Briefs on February 14, 2003 and Reply Briefs on February 28, 2003. No intervenor briefs were filed.

The variety and magnitude of the MTS price changes and the means by which Sprint's customers were advised of the changes in MTS pricing are not in dispute. The notification appeared on the customer's bill sequentially following the billing information and over- and under-scored section captioned 'Customer News' and was printed in the same size, font and formatting as the rest of the bill. Following the over- and under-scored phrase 'Customer News' was the following:

³ Petitions to Intervene were filed by Verizon and WorldCom, Inc. (WCOM) and were granted without objection at the prehearing conference on September 30, 2002. Qwest subsequently sought intervention which was conditionally granted by Ruling of October 18, 2003. On September 30, 2002, Oregon Telecommunications Association (OTA) and Electric Lightwave, Inc. (ELI) were named as Interested Persons to be included on the service list. The intervening parties, while not objecting to the stipulation between Sprint and Staff, were not themselves signatories to the stipulation. Thus, the Ruling did not relate to the adoption of the conclusions in the stipulation, but only to the scope of the Sprint and Staff briefs and the filing dates for submission of briefs by all parties.

“Rate change notice

Effective August 1, 2002, you may notice an increase to the local toll calling rates, select operator services and certain feature packages. If you have any questions, please feel free to call the customer service number located at the top of this page.”

The foregoing statement constituted the Company’s entire communication to the customer with respect to the rate changes.

Positions of the Parties—Opening Briefs. Sprint asserts that its new MTS rates should remain in effect for several reasons. First, Sprint contends that the Commission is limited in its authority to set maximum rates for price listed toll service only on noncompetitive routes. However, the stipulation provides that, as noted above, Sprint’s MTS service is subject to competition. With respect to actions other than setting maximum prices, Sprint argues that the Commission may “attach reasonable conditions” only to services *exempt* from regulation, but not to those services for which the Commission has granted a utility *price listing authority*.⁴

Next, Sprint argues that, even if the Commission accepts Staff’s broad interpretation of its authority, the current MTS rates are just, reasonable, nondiscriminatory and in the public interest. Sprint’s MTS rates are comparable to those of its competitors and, for customers who are low-usage callers, the Sprint plan “would save money...compared to AT&T and WorldCom’s offers.”⁵ Sprint further contends that its customers are fully aware of the rate change because the notice was neither set in smaller type nor placed in bill stuffers which are frequently discarded without having been read. Furthermore, with respect to customers who are aware of the change and who are aware of the alternatives to MTS, none of them have complained.⁶

Sprint further denies that it has engaged in any discriminatory behavior violating any law or rule and contends that Staff failed to provide any tangible evidence that there is a particular class of vulnerable customers being targeted by Sprint and that Staff’s allegations are without support and contrary to the facts.⁷

Finally, Sprint reiterates the arguments made in its testimony that the public interest requires that competitive toll services be governed by market forces and not government regulation.⁸

⁴ Sprint Opening Brief, p. 2, lines 13-23, citing ORS 759.030(2) and (8), (emphasis supplied).

⁵ *Id.*, p. 5, lines 5-11.

⁶ *Id.*, p. 6, lines 9-13.

⁷ *Id.*, pp. 6-8.

⁸ *Id.*, p. 9, citing Exhibit Sprint/8, Staihr/16-19.

Staff seeks to have the Commission order Sprint to roll back its MTS rates to the July 31, 2002 levels because the rates, terms and conditions are unjust, unreasonable, discriminatory and without justification. Staff claims that there is no cost justification provided for the increases, that the increases will increase Sprint's overall revenues and that "in addition, the other two primary toll carriers in Oregon (Verizon and Qwest) have reduced their standard MTS rates since 1997."⁹

Staff contends that the Sprint customers were purposely segmented into groups of those customers who are willing and able to take advantage of alternative providers and those who are not. Staff contends that Sprint is seeking to either shift its customer base to non-regulated affiliates or extract the highest possible revenues from customers who are unwilling or unable to seek alternatives to Sprint MTS.¹⁰

Positions of the Parties—Reply Briefs. Sprint comments that Staff cites no applicable authority to support its claim the Commission may order a rollback for price listed services on competitive routes or that Sprint's toll routes are now non-competitive. Furthermore, Sprint argues, even if it has such authority and could apply the standards set forth in OAR 860-032-0035, Sprint has shown that its prices are comparable and that MTS serves a real need in the market place. Sprint argues that its customers are fully aware of the rate change, the alternatives available and their ability to change service to those alternative providers.¹¹ Sprint also contends that the increases, while significant in terms of percentage (23 percent) are economically small (3.3 cents per minute). Furthermore, previous off-peak discounting practices to encourage utilization of idle network capacity no longer apply because internet usage has driven up network utilization during those periods.¹²

In its Reply, Staff asserts that the Commission has been delegated the policy choice of determining whether rates are just and reasonable, the only issue is the difference of opinion between Staff and Sprint as to how the Commission should exercise its policy discretion. Sprint's rates were increased without justification and took unfair advantage of customers by targeting segments including those who are not willing or able to seek out alternative providers.¹³

Discussion. In our review of the record in this proceeding, we find no extrinsic evidence to support the contention that Sprint purposefully segmented or targeted particular customers when it increased the rates for certain of its price-listed services on August 1, 2002. Thus, we cannot find that those services, which are admittedly subject to competition, are unjust, unreasonable or discriminatory. We further note that no customer has filed any complaint or made any inquiry of the Commission with respect to the change in prices for these Sprint services during the ensuing eight

⁹ Staff Opening Brief, p. 2, citing Staff/8, Turner 10-11.

¹⁰ *Id.*

¹¹ Sprint Reply Brief, p.2.

¹² *Id.*, p. 3.

¹³ Staff Reply Brief, pp. 2-3.

months. In light of these facts, a reversion to pre-August, 2002 pricing for these services is unwarranted.

Our decision not to impose a price ceiling on Sprint's price listed services does not mean that we find Sprint's actions with respect to the price changes to be without shortcomings. Far from it. A key aspect of market competition is access, by both buyer and seller, to accurate, sufficient and timely information with respect to products, prices and services. We find that the Sprint Rate change notice (Notice) provided none of these.

First, we question the Notice's accuracy. Indeed, the Notice might appear to some observers to be disingenuous. It does not state that "*rates will be increasing,*" but rather that "*you may notice an increase...*" (emphasis supplied). Such a statement is considerably milder than reality, for it suggests that either an increase is only one of several possible outcomes or that the customer would have to make a particular perusal of the bill to discern if an increase had, in fact, occurred.

Secondly, the information supplied was not sufficient, for it fails to give any particulars with respect to the rate changes. A customer would not be able to discern whether or how a potential increase would apply to a particular service that the customer might wish to utilize or if such charges would increase, for example, a mil a minute or a dollar a minute.

Finally, the information supplied was not timely, because the customer would not be able to discern the amount due until after the liability to the Company for the provision of services had been incurred.

Given such infirmities, it is difficult to find that, at the time the Notice was given, customers had been placed in a position where they could intelligently act upon the available information with respect to making a choice among Sprint and alternative providers of MTS services. A competitive marketplace requires that customers have sufficient information available to them to make rational economic choices.

In order to ensure that Sprint's customers are fully apprised of the charges associated with Sprint's price listed services, we shall require, as a condition for the continued offering of those price listed services, that each customer's monthly telephone bill contain an appropriate Notice, printed as close to the total on the payment summary portion of the bill as practicable. Such Notice shall be in type no smaller than the largest type on the page, other than a heading or corporate logo, and shall provide the name of each price listed service and its current rate.

We further require that, whenever Sprint makes future changes to these price listed services, prior to filing its notification of the changes, Sprint shall provide an advance copy of the bill format to, and consult with, the Commission's Consumer Services Division. Sprint shall have ninety (90) days from the entry of this Order in which to come into compliance by changing its billing format.

ORDER

The authority granted to United Telephone Company of the Northwest dba Sprint to price list services found by the Commission to be subject to competition is retained subject to conditions. As a condition to the continuation of such service price listing, Sprint shall revise its customers' monthly bills to include a Notice consistent with this Order.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

Joan H. Smith
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: September 3, 2002**

REGULAR	X	CONSENT	EFFECTIVE	Not Applicable
	_____		_____	_____
			DATE	
DATE:			August 27, 2002	
TO:			John Savage through Phil Nyegaard and Lance Ball	
FROM:			David Sloan	
SUBJECT:			<u>SPRINT/UNITED TELEPHONE CO OF THE NORTHWEST</u> : (Advice No. OR02-16) Staff request to open an investigation concerning: (1) the Message Toll Service (MTS) rates of Sprint/United Telephone Company of the Northwest (Sprint or Company); (2) whether Sprint's MTS should remain price listed; and (3) whether the current earnings of the Company are reasonable.	

STAFF RECOMMENDATION:

Staff recommends that the Commission open an investigative docket.

DISCUSSION:

On July 31, 2002, Sprint filed Advice No. OR02-16 significantly increasing rates for its price-listed MTS¹⁴ and its price-listed feature packages¹⁵. The rate increases were effective August 1, 2002. The increases in rates, on average, are approximately 23 percent. An analysis of the rate increases is attached as Exhibit 1. Customers were noticed via bill message prior to the rate changes. A copy of the Customer Notice is attached as Exhibit 2.

While the filing, OR02-16, was properly filed pursuant to the filing requirements for price list revisions, as required by Oregon Administrative Rule (OAR) 860-032-0035 (11), the rate increases implemented with the filing are so substantial as to cause staff to

¹⁴ The Company's petition to price list its intraLATA message toll services was granted by the Commission in Docket UD 5. See Order No. 98-239, in docket UD 5, dated June 12, 1998.

¹⁵ The Company's petition to price list its Advantage, Call Manager, Sprint Essentials, In Touch With Call Forward, and Sprint Elite packaged services was granted by the Commission in Docket UD 12. See Order No. 99-662, in docket UD 12, dated October 26, 1999.

question whether Sprint's MTS is "subject to competition," the conclusion reached by the Commission in Order No. 98-239.

Oregon Revised Statute (ORS) 756.568, Rescission, suspension and amendment of orders, states in relative part: "The Public Utility Commission may at any time, upon notice to the public utility or telecommunications utility and after opportunity to be heard as provided in ORS 756.500 to 756.610, rescind, suspend or amend any order made by the commission."

Oregon Administrative Rules (OAR) 860-032-0035, Petition to Price List Telecommunications Utility Services, states in relative part: "(10) After notice and investigation, the Commission may amend or revoke an order price listing a service. The Commission may take such an action upon a finding that the circumstances under which the service was price listed no longer exist, or that the public interest requires that the telecommunications utility's authority to price list a service be changed." Paragraph 12 of OAR 860-032-0035 continues: "(12) The Commission may at any time order a telecommunications utility to appear before the Commission and establish that any or all of its price listed service rates or terms and conditions are just and reasonable, nondiscriminatory, and in the public interest. After hearing, the Commission may order the telecommunications utility to change the terms and condition or rates of its price listed services. The telecommunications utility may not thereafter change any terms and conditions or rates of price listed services contrary to the terms of the Commission order without approval by the Commission."

The ability of the Company to initiate such significant rate increases in a "competitive atmosphere" for toll services causes staff to question if the circumstances under which the services were originally price listed continue to exist and whether the public interest might now require that the Company's authority to price list these services be changed.

Additionally, the significance of the rate increases, and the related increase in the Company's annual revenues, raises a question concerning the appropriateness of the current level of the Company's earnings, which have not been reviewed recently.¹⁶ Staff has formally requested information from the Company concerning its support for these significant rate increases and the effect of the rate increases on the Company's earnings.¹⁷ At the time of preparation of this memo, staff has not received all of the data requested, but is in the process of reviewing Company responses received to date.

ORS 756.515, Investigations and hearings on commission's own motion; hearings for aggrieved persons, states in relative part: "(1) Whenever the Public Utility Commission believes that any rate may be unreasonable ... or that an investigation of any matter relating to any public utility or telecommunications utility or other person should be made ... the Commission may on motion summarily investigate any such matter, with or without notice."

¹⁶ The most recent review of the Company's earnings level was in Docket UT 120. See Order No. 94-1557, in docket UT 120, dated October 14, 1994.

¹⁷ Staff Data Request No. 1, dated August 9, 2002 and staff Data Request No. 2, dated August 13, 2002.

Increases in price-listed feature package rates made effective August 1, 2002 by the Company's Advice No. OR02-16 are filed pursuant to related statutes and rules. Staff is not recommending further investigation of these rates, except to the extent that the increases contribute to the Company's earnings level.

PROPOSED COMMISSION MOTION:

Open a docket to investigate the Message Toll Service rates of Sprint, the continuation of the Company's authority to price list its Message Toll Services, and the Company's current earnings level.