

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)	Application No. C-3204
of Sprint Communications, L.P.,)	
Overland Park, Kansas, seeking)	
approval of an amendment to its)	
certificate of public)	HEARING OFFICER ORDER
convenience and necessity to)	REGARDING MOTION IN LIMINE
provide local exchange)	AND APPLICATION OF RULES OF
telecommunications service in)	EVIDENCE
all exchanges within the State)	
of Nebraska in which Sprint is)	
not currently certificated.)	Entered: November 1, 2004

BY THE HEARING OFFICER:

Pursuant to the Prehearing Conference Order entered on August 23, 2004, Southeast Nebraska Telephone Company (Southeast) filed its Notice of Exhibit Designation and Request to Take Administrative Notice (Exhibit List) on October 15, 2004. In its Exhibit List, Southeast stated that it intended to offer and requested that the Commission take administrative notice of (a) Exhibits 3 through 13 with the exception of Exhibit 8 offered into evidence during the hearing on September 17, 2004 in *In the Matter of the Application of Time Warner Cable Information Services*, Application No. C-3228¹; the transcript of the September 17, 2004 hearing; and Sprint's Confidential Responses to Intervenor's Data Requests filed on September 21, 2004.

On October 25, 2004, Sprint Communications, L.P. (Sprint) filed Objections to Southeast's Exhibit List and a Motion in Limine. Specifically, Sprint objected to incorporating exhibits offered in C-3228 and the transcript of the September 17, 2004 hearing. However, Sprint did not object to any of those exhibits which have been independently produced in the present docket.

On October 26, 2004, Sprint also filed a Request that Rules of Evidence Govern Hearing pursuant to Neb. Rev. Stat. § 84-

¹ The Exhibits at issue are identified by Sprint as follows: Exhibit 3: Pre-filed testimony of Julie Patterson; Exhibit 4: Time Warner's Application; Exhibit 5: Time Warner's Responses to Data Requests of Commission and Intervenor; Exhibit 6: Time Warner's Supplemental Responses to Data Requests of Commission and Intervenor; Exhibit 7: Time Warner and Sprint Agreement; Exhibit 9: Letter from Gene Hand to Julie Patterson re: VOIP system test; Exhibit 10: South Carolina PSC Order re: Time Warner VOIP Application; Exhibit 11: Maine PSC Order re: Time Warner VOIP Application; Exhibit 12 Sprint CLEC Application before the Nebraska Public Service Commission; and Exhibit 13: Pre-filed testimony of Steve Watkins.

914(1). Southeast requested Oral Argument on Sprint's motions and oral argument was held on October 27, 2004.

Application of Rules of Evidence

Sprint's Request that the Rules of Evidence Govern the Hearing in this matter met all of the requirements of Neb. Rev. Stat. § 84-914(1). The question of the application of the Rules of Evidence was not addressed in the Prehearing Conference Order. Sprint's Request is therefore granted.

Motion in Limine

Based upon the statements of the parties during oral argument it appears that the following exhibits are at issue: (a) Exhibit 3 - Pre-filed testimony of Julie Patterson; (b) Exhibit 4 - Time Warner's Application in C-3228; (c) Exhibit 5 - Time Warner's Responses to Data Requests of the Commission and Interveners in C-3228; (d) Exhibit 6 - Time Warner's Supplemental Responses to Data Requests of Commission and Interveners in C-3228; (e) Letter from Gene Hand to Julie Patterson re: VOIP system test; (f) Exhibit 10 - South Carolina PSC Order re: Time Warner VOIP application; (g) Exhibit 11 - Maine PSC Order re: Time Warner's VOIP application; (h) Exhibit 13 - Pre-filed testimony of Steve Watkins; and (i) the transcript of proceedings from C-3228.

Although Exhibits 10 and 11 are not binding precedent, the Commission frequently looks to the decisions of other jurisdictions. I find nothing objectionable regarding the taking of administrative notice of authority from other State commissions and the Commission will give the decisions the weight they deserve.

Pursuant to Neb. Rev. Stat. § 84-914(5) (Reissue 1999), the Commission "may take official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts within its specialized knowledge and the rules and regulations adopted and promulgated by such agency."

Sprint was not a party to the proceedings in C-3228 and did not participate in the September 17, 2004 hearing on that application. Furthermore, Sprint will have no opportunity to cross-examine those witnesses whose testimony is being offered and contained within the transcript of the proceedings.

Southeast relied upon *In re Application of ATS Mobile Tel.*, 213 Neb. 403 (1983) in support of its position. That case is distinguishable from the present situation as it involved taking

administrative notice of a previous Commission grant of an application and the services provided based upon that grant. The prior application and all underlying facts had already been resolved and nothing remained in dispute. That is not the case with respect to C-3228. No order has been issued and the facts in that case remain in dispute.

Therefore, Sprint's motion in limine is granted with respect to Exhibits 3, 4, 5, 6, 9, and 13. Sprint's motion in limine is also granted with respect to the Transcript of Proceedings held before the Commission on September 17, 2004 in Application No. C-3228. However, the Commission will take administrative notice of the fact that Time Warner has filed an Application for CLEC authority docketed at C-3228.

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer that Sprint's Motion in Limine is sustained with respect to the Transcript in Application No. C-3228 and Exhibits 3, 4, 5, 6, 9, and 13 and said exhibits are excluded from the hearing currently scheduled to take place on November 4, 2004.

IT IS FURTHER ORDERED that the Commission will take administrative notice of Exhibits 10 and 11 and of the fact that Time Warner has filed an Application for CLEC authority docketed at C-3228.

IT IS FINALLY ORDERED that Sprint's Request that Rules of Evidence Govern the Hearing is granted and the Nebraska Rules of Evidence shall govern the hearing.

MADE AND ENTERED at Lincoln, Nebraska, this 1st day of November 2004.

By: _____
Frank E. Landis
Hearing Officer