

In-Camera

CHERYLN D. VOSS,
REGULATORY LAW JUDGE.
CONNIE MURRAY,
STEVE GAW
LINWARD "LIN" APPLING,
COMMISSIONERS.

REPORTED BY:
TRACY L. THORPE TAYLOR, CCR
MIDWEST LITIGATION SERVICES

1 IN-CAMERA PROCEEDINGS

2 JUDGE VOSS: Mr. Haas, you may proceed.

3 CALVIN CRAIB testified as follows:

4 CROSS-EXAMINATION BY MR. HAAS:

5 Q. Mr. Craib, please turn your attention to the
6 MC and Sprint agreement that's been labeled as CC Schedule 1.

7 JUDGE VOSS: Actually, could you wait one
8 second? Do I need to mute the microphone to go in-camera? I
9 think so. So just a second. Okay. Please proceed.

10 BY MR. HAAS:

11 Q. Mr. Craib, you signed that agreement on behalf
12 of MCC Telephony. Correct?

13 A. I believe that's correct, yes.

14 Q. At CC Schedule 1, page 9 under the heading,
15 Federal and State Regulatory Compliance and Support, the
16 agreement states, Provider will be responsible for compliance
17 with all federal, state and local regulatory requirements and
18 service quality standards applicable to providers provision of
19 the services.

20 First, the word "provider" there is referring
21 to Sprint. Correct?

22 A. That's correct.

23 Q. What state regulatory requirements and service
24 quality standards is Sprint responsible for under this
25 sentence?

1 A. Seems pretty clear. All federal, state and
2 local regulatory requirements of service quality standards,
3 qualified by applicable to provide as provision of the
4 services.

5 Q. Can you give me any examples?

6 A. An example would be if we are -- I guess any
7 of these laws require certain things to happen that have to do
8 with the services they provide to us related to the
9 provisioning of the customer, related to E-911 compliance,
10 directory services listings, any of those things, the services
11 they provide, this -- that would be their responsibility.

12 Q. The paragraph then continues, As the retail
13 service provider, Mediacom is responsible for complying with
14 all federal, state and local regulatory requirements
15 applicable to it.

16 For what state regulatory requirements is
17 Mediacom responsible for pursuant to this sentence?

18 A. Well, depending -- you know, I think the
19 sentence makes it clear that whatever is determined are the
20 state requirements for Mediacom were -- they're our
21 responsibility. Sprint is not responsible for our compliance
22 with rules that apply to us.

23 Q. This paragraph then continues, Provider will
24 use its commercially reasonable efforts to provide information
25 requested by Mediacom, which provider is in a better position

1 than Mediacom to obtain, to support Mediacom's compliance with
2 federal, state and local regulatory requirements and service
3 quality standards applicable to the VoIP offering.

4 Has Mediacom or MCC requested any such
5 information from Sprint?

6 A. We have had numerous conversations with
7 various people within Sprint to help with an understanding of
8 these kinds of requirements. I don't know if that answers
9 your exact question or not.

10 Q. At CC Schedule 1, page 17, under the heading,
11 Installation Services, the agreement states, The parties will
12 develop a comprehensive implementation plan. The
13 implementation plan, which will include installation services,
14 a certification process, commissioning and other services.

15 Have the parties developed the implementation
16 plan?

17 A. Actually not in -- not in that format. We
18 have developed a series of what we call M and Ps, methods and
19 processes, for each company to follow that govern the
20 relationship between our companies. And they cover all of
21 these areas.

22 When we wrote this document, it was before we
23 had worked out the details of how exactly we were going to be
24 in this business together. This is suggesting that there will
25 be more detailed plans as we do that and there were.

1 Q. At Schedule 1, page 35, under the heading,
2 Quality Assurance, the agreement states, Mediacom and provider
3 will jointly develop and provider will implement quality
4 assurance and internal control procedures to ensure that the
5 services are performed in accordance with, one, the agreement
6 including the service levels; and two, applicable and legal --
7 applicable legal and regulatory requirements.

8 Have the companies developed those control
9 procedures?

10 A. We have developed control procedures.

11 Q. And do those control procedures ensure that
12 the services are performed in accordance with applicable legal
13 and regulatory requirements?

14 A. They are designed to.

15 Q. Please now turn to CC Schedule 1, page 57.
16 That page references an activation fee. What is the purpose
17 of the activation fee?

18 A. The purpose is to document or set up the
19 process by which Sprint gets paid for the services they
20 provide. And the reason an activation fee was part of that
21 compensation was in recognition of their out-of-pocket
22 expenses related to individual installations as opposed to the
23 ongoing provision of service.

24 Q. And the amount of the activation fee has been
25 redacted in this agreement?

1 A. It appears to be blank.

2 Q. Do you know what that amount is?

3 A. I do.

4 Q. How much is it?

5 JUDGE VOSS: We're in-camera.

6 THE WITNESS: Can I consult with counsel?

7 MR. COMLEY: First of all, object on grounds
8 of relevancy to the question and second, we have -- first,
9 I'll object on grounds of relevancy to the issue before the
10 Commission.

11 JUDGE VOSS: Mr. Haas, would you like to --

12 MR. HAAS: I believe the witness said that
13 the -- this fee pays Sprint, at least in part, for its
14 installation in this process. And the testimony has been that
15 perhaps they could meet the standards if they were at a higher
16 charge. And I would like to -- I think it's relevant to
17 whether they are able to meet the installation standards as to
18 how they came to this amount and what the amount is.

19 MR. COMLEY: Same objection.

20 JUDGE VOSS: Do you think you could get your
21 answer without actually getting the specific dollar amount,
22 which I think is the component that's being objected to?

23 MR. HAAS: I may come back to it, but let me
24 try a different approach.

25 BY MR. HAAS:

1 Q. Was the activation fee a negotiated amount?

2 A. Yes.

3 Q. And what factors went into negotiating the
4 amount of the activation fee?

5 A. It was a tradeoff of the total value of what
6 MCC would pay Sprint and the various ways that will be paid to
7 them. And throughout this agreement, there are various
8 economic transactions between the parties, all of which
9 constitute the entire amount of compensation.

10 You may note there are things that go the
11 other way. Sprint contributes to Mediacom some things. That
12 whole package is the compensation that we agreed to. And the
13 negotiation was about where the various components would be
14 and did the total package make sense to both of us.

15 Q. And were the time intervals that Sprint would
16 be allowed in installing service to MCC's customers part of
17 that negotiation?

18 A. Well, to the extent they're part of a fairly
19 extensive document that took literally months to negotiate,
20 everything was a part of it.

21 MR. HAAS: I will withdraw my earlier
22 question.

23 BY MR. HAAS:

24 Q. Please turn to CC Schedule, page 72. Under
25 the heading, Service Level Principles, in the middle of the

1 first paragraph, there's a sentence that reads, In states
2 where a PUC mandate exists, provider's level of performance
3 shall comply with the PUC regulations. Without limiting the
4 generality of the foregoing, provider will comply with the
5 specific service levels set forth in the agreement. And then
6 under the items that are covered, one -- the first bullet is
7 Service Order Processing.

8 What actions, if any, has MCC taken to enforce
9 the sentence that, Provider's level of performance shall
10 comply with the PUC regulations?

11 A. Well, I think the intent of this portion of
12 the contract was to state that our preference was to be --
13 what's the word here -- you know, in compliance with PUC
14 mandates. I mean, there's no question we would like to do
15 that. The question is, what happens when we can't be?

16 And we and Sprint have recognized that we have
17 this issue and that's why we applied for a waiver and provided
18 all the documentation we've provided that says why we think
19 that's reasonable.

20 Q. Please turn to Schedule page 73. Under the
21 third bullet point, the second sentence reads, Mediacom may
22 audit the service level measurement, monitoring and reporting
23 process up to twice per 12-month period unless otherwise
24 agreed upon by the parties.

25 Has Mediacom audited these processes?

1 A. Well, the processes are extensive and audit is
2 kind of a technical term. We are in ongoing conversations,
3 both we and Sprint, about how to improve all these processes.

4 Q. The agreement then continues in the next
5 paragraph, Periodically, the service levels will be enhanced
6 and improved if requested by Mediacom and/or provider.
7 Semiannually the parties will review the service levels and
8 the performance data collected and reported by provider to
9 determine whether the service levels continue to reflect
10 accepted industry norms applicable to the performance of
11 similar services by top-tier telephony service providers.

12 Have Mediacom and Sprint conducted this
13 semiannual review?

14 A. Not specifically.

15 MR. HAAS: Your Honor, those were all of my
16 questions for the in-camera portion for the cross-examination
17 of this question. I would now request to go back to the
18 public portion.

19 JUDGE VOSS: Just one second. Are there any
20 other questions that should be taken up in-camera?

21 MR. DANDINO: Yes, your Honor.

22 JUDGE VOSS: I'm going to go ahead and do just
23 in-camera questions pertaining to this before we go out of
24 camera.

25 CROSS-EXAMINATION BY MR. DANDINO:

1 Q. I have just a few, Mr. Craib. Counsel was
2 asking you about the activation fee. When that activation fee
3 was determined, was it based upon compliance with Missouri's
4 five-day installation rule?

5 A. No.

6 Q. Was the fee -- was the fee based on
7 installation of more than five days?

8 A. It was not -- it was based on the -- being a
9 single component of a large agreement. And the service levels
10 that were in the agreement were the service levels that were
11 agreed to as well as that fee being agreed to.

12 Q. Okay. But no one had decided that, well,
13 Missouri has five, we better make this adjustment in this
14 activation fee in order to cover that cost?

15 A. No. No one made that determination.

16 Q. Okay. And so that wasn't a consideration at
17 all. Is that what you're telling me and this Commission?

18 A. Yes. There was no specific consideration of
19 the Missouri rule.

20 Q. Could you comply with the Missouri rule by
21 increasing that fee?

22 A. I don't know.

23 Q. Never did a study of this?

24 A. Well, as I stated before, my understanding is
25 that at least as it relates to ported numbers, we cannot

1 comply with that unless a number of things, including
2 performance by LECs, which we have no control over --

3 Q. But you didn't do a study of that?

4 A. I --

5 Q. That's your general impression?

6 A. I don't know how to do a study to find out
7 whether AT&T will or will not release their numbers faster.

8 Q. So there was no study done?

9 A. No. There was no study done.

10 Q. Okay. So you don't know if you speed up the
11 process, it would just take a little more money of increasing
12 that activation fee?

13 A. I don't know whether it would take a little
14 more money, a lot more money or whether all the money in the
15 world wouldn't do it.

16 Q. Okay. So you just don't know?

17 A. I just don't know.

18 MR. DANDINO: That's all I have, your Honor.

19 Thank you.

20 JUDGE VOSS: Yes. Proceed.

21 MR. JOHNSON: May I ask a question about this
22 exhibit while we're in-camera?

23 JUDGE VOSS: Yes, please.

24 CROSS-EXAMINATION BY MR. JOHNSON:

25 Q. Mr. Craib, Craig Johnson. Would you turn to

1 the next page, please, page 74 of CC Schedule 1?

2 A. Okay.

3 Q. And there's a section there that's Service
4 Order Processing Service Levels. And there's a box that has
5 different intervals for new installs whether they're ported or
6 non-porting. Do you see that box?

7 A. I do.

8 Q. What I can't read is at the top of each one of
9 those boxes there's a -- something that apparently was colored
10 and I can't read the words in there. It looks like the first
11 one is activity something. Can you tell me what those are?

12 A. Quite honestly, I -- my copy's --

13 Q. Just as bad as mine?

14 A. -- probably the same as yours.

15 MR. JOHNSON: Okay. That's all I have.

16 MR. COMLEY: Well, for clarification, the
17 topics are, the top, Activity Feature; the second column is
18 FOC Guidelines; the third column is Total Installation
19 Guideline, Order Target; the next column is One-year
20 Installation Goals.

21 JUDGE VOSS: Could you repeat the third
22 column?

23 MR. COMLEY: Installation Guidelines, Order
24 Target.

25 MR. JOHNSON: Thank you, Mr. Comley.

1 BY MR. JOHNSON:

2 Q. Mr. Craib, with that, the only remaining
3 question I have is whether you can tell me what FOC stands
4 for?

5 A. I believe it's firm order commitment.

6 MR. JOHNSON: Thank you. That's all I have,
7 Judge.

8 JUDGE VOSS: Thank you. Commissioner Murray,
9 do you have any questions based on this document?
10 Commissioner Gaw?

11 COMMISSIONER GAW: Not at the moment.

12 JUDGE VOSS: Then we will -- Mr. Comley, do
13 you have any redirect based on the highly confidential exhibit
14 only?

15 MR. COMLEY: Yes, I do. Shall we go ahead and
16 do that right now?

17 JUDGE VOSS: Does it need to be in-camera?

18 MR. COMLEY: Yes, it would.

19 JUDGE VOSS: Is it a significant amount or
20 just a little?

21 MR. COMLEY: Well, it may be a little, it may
22 be a little more than just a little bit.

23 JUDGE VOSS: All right. Then we will go out
24 of camera now and let you address all of your redirect at the
25 same time.

1 MR. COMLEY: That sounds fair.

2 WHEREUPON, the in-camera portion of Calvin
3 Craib's testimony was concluded.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 IN-CAMERA PROCEEDINGS

2 JUDGE VOSS: We're in-camera.

3 CALVIN CRAIB testified as follows:

4 REDIRECT EXAMINATION BY MR. COMLEY:

5 Q. I think there was a portion of your testimony,
6 and I'm not clear exactly what spot, it may be that you can
7 remember this. There was a portion of your testimony where
8 you said that the issue about redaction of CC Schedule 1 had
9 been rectified. Do you recall those questions?

10 A. I do.

11 Q. Let me try to refresh your recollection about
12 a data request that was responded to for the Staff. Do you
13 recollect that a copy of this letter of intent was given to
14 the Staff early on before its -- I think it was before its
15 recommendation was filed?

16 A. Yes.

17 Q. What kind of redactions were part of that --
18 what kind of redactions were included in that data request
19 response?

20 A. I believe we redacted most things related to
21 numbers, things we considered to be, you know, problematic if
22 they were released to competitors.

23 Q. Were the service order of numbers -- the
24 service order intervals also redacted on that copy?

25 A. I believe they were.

1 Q. Do you know whether or not the pages of your
2 agreement with Sprint -- I think specifically pages 74 and
3 following -- were resubmitted to the Staff?

4 A. Yes. I believe that is the resolution that
5 was referred to, is we have now provided that data.

6 Q. Thank you. Do you still have a copy of Craib
7 Schedule 1 in front of you?

8 A. I do.

9 Q. Mr. Haas referred you to page 4 of the
10 agreement and which is your schedule -- page 9 of the
11 Schedule 1, page 9. With respect to the paragraph on federal
12 and state regulatory compliance in support, Mr. Haas led you
13 through the requirements there for both the provider and
14 Mediacom.

15 With respect to the application for waiver we
16 have in front of the Commission now, does MCC consider that
17 consistent with the requirements of this paragraph?

18 A. Absolutely.

19 Q. I think you may have answered this before in
20 terms of quality assurance that's discussed under this
21 agreement. Do MCC and Sprint have regular meetings about the
22 quality assurance under this agreement?

23 A. We do.

24 Q. You were asked questions about an activation
25 fee that was redacted on I think it was page 77. Excuse

1 me --

2 A. It's on page 57.

3 Q. 57. Page 57. What is the purpose of that
4 fee?

5 A. Well, as I said -- and perhaps I did not
6 answer completely or accurately earlier -- not accurately, but
7 the purpose of that fee is part of a compensation we pay to
8 Sprint. And the difference between this fee and the other
9 fees we pay them is this is a one-time fee paid at the time of
10 installation. And it is paid for each installation as opposed
11 to each ongoing customer.

12 It's merely the part of the compensation.
13 And, you know, when we discussed with Sprint the need for this
14 fee, it wasn't for any specific set of circumstances, it was
15 to recognize that their costs occurred in a couple of
16 different ways. Some of them occurred up front and some of
17 them occurred over time. This was in recognition of some of
18 their costs being incurred at the time of installation.

19 Q. Turn with me to page 74 of your schedule. And
20 just to confirm, can you describe what the service order
21 processing service -- can you describe the graph or table
22 that's on that page, what that represents?

23 A. Well, it was an early-on effort to create a
24 process for us to monitor what we're talking about here today,
25 how long it takes to get installations done. And since this

1 was written before we started doing business in this or any
2 other state, it was sort of a blueprint for us to follow.

3 MR. COMLEY: I think that's all I have for --
4 I've noticed I have a couple more questions I'd like to ask
5 outside of the closed chamber here, but I wanted to check with
6 counsel to make sure I've covered the questions about this
7 agreement we need to have in-camera. May I do that just
8 briefly?

9 JUDGE VOSS: Yes. That's fine.

10 MR. COMLEY: I'm finished with the questions
11 about the agreement and we can return to open court.

12 JUDGE VOSS: All right.

13 WHEREUPON, the in-camera portion of Calvin
14 Craib's testimony was concluded.

15

16

17

18

19

20

21

22

23

24

25

1 IN-CAMERA PROCEEDINGS

2 JUDGE VOSS: Please proceed, Mr. Haas.

3 DARIN LISTON testified as follows:

4 CROSS-EXAMINATION BY MR. HAAS:

5 Q. I'll start with my earlier question. How many
6 days does the contract allow Sprint to send the LSR?

7 A. I don't believe that is specifically spelled
8 out in the contract.

9 Q. How many -- or over what time period does the
10 contract allow Sprint to check the MSAG?

11 A. Don't believe that that's specifically spelled
12 out in the contract.

13 Q. Would you please turn to the letter of intent
14 attached to Mr. Craib's Direct Testimony as CC Schedule 1?

15 A. Somebody's going to have to bring that to me.

16 Okay. Again, where did you want me to look?

17 Q. Please turn to CC Schedule 1, page 9. The
18 last bullet on that page states that, The provider, meaning
19 Sprint, will be responsible for compliance with all federal
20 and state and local regulatory requirements and service
21 quality standards applicable to provider's provision of the
22 services.

23 Can you list specific state regulatory
24 requirements and service quality standards applicable to
25 provider's provision of the service for which Sprint is

1 responsible under this paragraph?

2 A. I cannot. Unfortunately, I was not party to
3 negotiations for this contract and I'm not familiar with
4 contractual interpretations of what's in this contract so I'm
5 not sure I can answer that question.

6 Q. All right. Let me ask a different question.

7 A. Okay.

8 Q. Are there state regulatory requirements and
9 service quality standards that Sprint follows in the
10 provisioning of its service to MCC or along with MCC?

11 A. Unfortunately, that's really not my area
12 either as far as understanding and knowing what the Commission
13 or regulatory service levels are. And I -- that's not
14 something that I can answer.

15 Q. Please turn to CC Schedule 1, page 72. Under
16 the bullet point Service Level Principles, in the first
17 paragraph, in the second sentence, the agreement provides, In
18 states where a PUC mandate exists, provider's level of
19 performance shall comply with the PUC regulations.

20 What steps, if any, has Sprint taken to ensure
21 that its level of performance complies with the Missouri PSC
22 regulations?

23 A. Not being familiar enough with the PUC
24 regulations, I don't know the answer to that question.

25 Q. Please turn to CC Schedule 1, page 73. Under

1 the bullet point Adjustments to Service Levels, the agreement
2 reads, Periodically the service levels will be enhanced and
3 improved if requested by Mediacom and, slash, or provider.
4 Semiannually the parties will review the service levels and
5 the performance data collected and reported by provider to
6 determine whether the service levels continue to reflect
7 accepted industry norms applicable to the performance of
8 similar services by top-tier telephony service providers.

9 Has that semiannual review occurred?

10 A. That is not something I would participate in
11 so I do not know.

12 Q. Finally, would you expect that a top-tier
13 telephony service provider would comply with the state
14 commission's quality of service standards?

15 A. I would hope so, but that I'm not sure I'm
16 qualified to answer.

17 MR. HAAS: Your Honor, that concludes my
18 questions both in-camera and for this witness.

19 JUDGE VOSS: Before we go out, does anyone
20 else have any in-camera questions for this witness?

21 MR. DANDINO: No, your Honor.

22 JUDGE VOSS: Do you have any --

23 MR. DANDINO: Your Honor, I do have a
24 question. It seemed like the last few questions -- and I
25 really don't understand what -- the basis of it being

1 in-camera.

2 JUDGE VOSS: I think the question is simply
3 that the whole schedule is stamped confidential and out of an
4 abundance of caution, it's better to be in-camera than to
5 accidentally let something out that shouldn't.

6 MR. DANDINO: Okay.

7 JUDGE VOSS: That was my take. Did you have
8 any redirect based on in-camera?

9 MR. COMLEY: No. No, I don't.

10 JUDGE VOSS: We will go back live.

11 WHEREUPON, the in-camera portion of Darin
12 Liston's testimony was concluded.

13

14

15

16

17

18

19

20

21

22

23

24

25