

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

3

4 In the Matter of the Tariffs Filed)
5 By Sprint Missouri, Inc., d/b/a)
6 Sprint to Reduce the Basic Rates)
7 By the Change in the CPI-TS as)
8 Required by Section 392.245(4))
9 Updating Its Maximum Allowable)Case No. TR-2002-251
10 Prices for Non-basic Services and)
11 Adjusting Certain Rates as Allowed)
12 By Section 392.245(11) and Reducing)
13 Certain Switched Access Rates and)
14 Rebalancing to Local Rates, as)
15 Allowed by Section 392.245(9).)

10

11 PREHEARING CONFERENCE

12

13 TRANSCRIPT OF PROCEEDINGS

14 VOLUME I

15 Kevin Thompson, Presiding

16 DEPUTY CHIEF REGULATORY LAW JUDGE

17

18 Monday, February 23, 2004
19 10:00 a.m.

20 Missouri Public Service Commission
21 200 Madison Street
22 Jefferson city, MO

21

22 REPORTED BY: Monnie S. VanZant, CCR, CSR, RPR
23 Associated Court Reporters
24 714 W. High Street
25 Jefferson City, MO 65102
 (573) 636-7551

25

For Staff of the Missouri Public Service Commission:

For Sprint Missouri, Inc.:

For Office of Public Counsel:

Mr. Michael Dandino
P.O. Box 7800
200 Madison Street
Jefferson City, MO 65102
(573) 751-5559

Phonetic spelling: (ph.)
Exactly as Stated: (sic)

JUDGE THOMPSON: Good morning. My

We will take oral entries of appearance

MS. CREIGHTON HENDRICKS: Lisa

JUDGE THOMPSON: Then I think we

must certainly turn to the Office of the

1 Public Counsel.

2 MR. DANDINO: Michael Dandino,
3 Office of Public Counsel, Post Office Box 230,
4 Jefferson City, Missouri, 65102, representing
5 the Office of Public Counsel and the public.

6 JUDGE THOMPSON: Thank you,
7 Mr. Dandino. Mr. Haas?

8 MR. HAAS: William K. Haas,
9 appearing on behalf of the staff of the Public
10 Service Commission. My address is Post Office
11 Box 360, Jefferson City, Missouri 65102.

12 JUDGE THOMPSON: Thank you very
13 much. The purpose of this prehearing
14 conference is to hear from parties as to how
15 we should proceed from this point on. As I
16 recall, the Supreme Court told us that we
17 couldn't go on because we didn't have any
18 facts, but we don't have to have a hearing
19 which is I thought where you got facts. So
20 we'll see how we proceed from here.

21 Why don't we hear from the company. You
22 filed Proposed Findings of Fact and
23 Conclusions of Law almost as soon as the case
24 was remanded. So can I assume that it's
25 Sprint's position that all the necessary facts

1 are already in the record?

2 MS. CREIGHTON HENDRICKS: Yes, your
3 Honor. The necessary facts are all in the
4 record. They are verified both by Sprint and
5 our director of cost as well as by a
6 regulatory auditor and a regulatory economist.
7 And I do believe that the law as we put in our
8 -- Sprint's proposal for proceeding does give
9 the Commission the option of looking at the
10 current record and reformulating the facts and
11 submitting that for -- to support the earlier
12 order. And Sprint would strongly suggest
13 that.

14 JUDGE THOMPSON: Okay. So you see
15 no need for a hearing?

16 MS. CREIGHTON HENDRICKS: No. As a
17 matter of fact, I think the Court was more
18 than clear on fact that there would not need
19 to be a hearing in this case and that the
20 Commission did not abuse its discretion by
21 denying a hearing.

22 JUDGE THOMPSON: All right. And
23 let's hear from the Office of Public Counsel.
24 You have filed a motion to open an
25 investigation into Sprint's costs of local --

1 of basic local service and intra-state access,
2 correct?

3 MR. DANDINO: Yes, your Honor.
4 Also, on Friday of the -- some suggestions for
5 the proceeding -- proceedings pursuant to
6 remand.

7 JUDGE THOMPSON: Could you hit the
8 highlights of those seeing as I haven't read
9 it yet?

10 MR. DANDINO: First, it
11 reincorporates the other motion. It suggests
12 that, basically, you -- you should split the
13 tariff case -- the investigation case from
14 tariff case because as a prerequisite of
15 approving the tariffs, we believe that
16 investigation of written report has to be
17 rendered. And it's really a different
18 proceeding, a different type of proceeding.

19 JUDGE THOMPSON: Let me make sure I
20 understand you.

21 MR. DANDINO: Okay.

22 JUDGE THOMPSON: Split this case
23 into two cases?

24 MR. DANDINO: Well, this is a --
25 yeah. This is a -- a tariff of --

1 JUDGE THOMPSON: This is a tariff
2 case.

3 MR. DANDINO: A file and suspend
4 case.

5 JUDGE THOMPSON: Right.

6 MR. DANDINO: And, of course, in a
7 file and suspend case, you have no right to a
8 hearing.

9 JUDGE THOMPSON: Okay.

10 MR. DANDINO: Okay. But I think
11 they left open the question about the
12 investigation under 245 under 392.245.

13 JUDGE THOMPSON: Is this the
14 investigation that I recall Public Counsel's
15 position when this was before the Commission
16 originally was that the Commission had not
17 done this investigation that statute required
18 and that, consequently, the Commission really
19 was without authority to approve the tariff;
20 isn't that correct?

21 MR. DANDINO: That's right. That's
22 right.

23 JUDGE THOMPSON: Okay. And as I
24 recall, the Court did not address that
25 expressly. Am I wrong?

1 MR. DANDINO: That's right. They
2 did not address that.

3 JUDGE THOMPSON: Okay. And so --

4 MS. CREIGHTON HENDRICKS: Your
5 Honor, may I speak on that?

6 JUDGE THOMPSON: You may.

7 MS. CREIGHTON HENDRICKS: We did not
8 address that expressly. The statute that they
9 interpreted which required the investigation
10 is what they analyzed to see this the hearing
11 was necessary for this case.

12 JUDGE THOMPSON: Okay.

13 MS. CREIGHTON HENDRICKS: In looking
14 at the language of 392.245, that clearly
15 indicated an investigation was to occur. They
16 interpret that not to require a hearing.

17 JUDGE THOMPSON: Very well. Okay.
18 And I appreciate your gloss. I -- I'm trying
19 simply to understand his suggestion at this
20 stage. So split the tariff and the
21 investigation into two separate cases? Is
22 that your suggestion?

23 MR. DANDINO: Right. Because I
24 think -- I think in the investigation case
25 that if you have to -- in order to get the

1 facts, the proper facts, I think in the
2 record, I think that's where we differ with --
3 with Sprint on this, is that you're going to
4 have to gather some more facts, where it's by
5 -- most likely by hearing, and there are some
6 -- maybe some other interested in parties such
7 as IACs which wouldn't necessarily be involved
8 in a tariff case. But I see this as a
9 two-part -- a two-part process and always did.
10 In fact, it should have done an investigation,
11 issued a report and then based on that report
12 as -- as -- as the -- as the evidence that the
13 parties are either correct or appropriate or
14 not.

15 JUDGE THOMPSON: What do we do with
16 their tariff in meantime?

17 MR. DANDINO: Well, it really is
18 held in abeyance. The Court has reversed it,
19 the order approving it. Now, I mean, to the
20 extent that there's -- there's certain
21 elements of it that aren't contested, any part
22 of it that does involve the re-balancing,
23 maybe those parts could be -- the Commission
24 could take those up. But if it only involves
25 the re-balancing, to the extent it only

1 involves the re-balancing, then I think it has
2 to wait until the investigation.

3 JUDGE THOMPSON: Okay. And I bet
4 I'm right that Sprint is very much opposed to
5 that suggestion.

6 MS. CREIGHTON HENDRICKS: Yes, your
7 Honor. And I'm sorry I didn't take advantage
8 of the opportunity before. I can walk you
9 through our proceeding paragraph by paragraph.

10 JUDGE THOMPSON: I'd like to you do
11 that, but not right now.

12 MS. CREIGHTON HENDRICKS: I will
13 mention that the current rate being charged to
14 customers are not pursuant to the order, the
15 Commission approving it. There's been two
16 subsequent orders that have impacted the
17 rates.

18 JUDGE THOMPSON: Well, then, isn't
19 it settled law in Missouri that when there
20 have been superseding tariffs that basically
21 the case is moot?

22 MR. DANDINO: Well --

23 JUDGE THOMPSON: I mean, I know
24 there's at least two decisions that say we're
25 not going to entertain a controversy about a

1 tariff that has been superseded by another
2 tariff.

3 MR. DANDINO: The problem is that
4 justification for those other two tariffs is
5 this re-balancing the cost study, of Sprint's
6 cost study. So it's all -- they're all tied
7 together.

8 JUDGE THOMPSON: Are they approved
9 by order of the Commission?

10 MR. DANDINO: Yes.

11 JUDGE THOMPSON: So, I mean, they're
12 now safe from collateral attack. Were they
13 appealed?

14 MR. DANDINO: Oh, yes. They're all
15 on appeal.

16 JUDGE THOMPSON: So there are live
17 appeals on all those? Fine. So those balls
18 are still in play to use a sports analogy?

19 MR. DANDINO: Yes.

20 JUDGE THOMPSON: Very good. Let's
21 here from Mr. Haas. And I'm not done with you
22 two.

23 MR. HAAS: The staff agrees wit
24 Sprint that a hearing is not required here.
25 And, generally, we agree with Sprint's

1 Proposed Findings of Fact and that they
2 address the the issues raised by the Court.
3 On a second matter, as to whether there needs
4 to be a -- a hearing in an investigation case,
5 reading from page 11 of the slip opinion of
6 the Court's decision, As stated above, there
7 is no statutory requirement in Section
8 392.245.9 RSMO that the Commission conduct a
9 hearing with regard to a proposed rate
10 re-balancing.

11 JUDGE THOMPSON: What about Public
12 Counsel's suggestion for an investigation?
13 What's staff's response to that, if any?

14 MR. HAAS: The investigation has
15 been conducted. It was conducted as a part of
16 the tariff case. But it has been conducted.

17 JUDGE THOMPSON: As a part of this
18 case?

19 MR. HAAS: Yes.

20 JUDGE THOMPSON: Okay. So it's in
21 the record?

22 MR. HAAS: Yes.

23 JUDGE THOMPSON: And you are
24 referring to -- looking at the docket sheet,
25 the staff recommendation?

1 MR. HAAS: There was a -- cost study
2 was filed by Sprint with verification from its
3 staff member.

4 JUDGE THOMPSON: Okay.

5 MR. HAAS: And then the --

6 JUDGE THOMPSON: Filed on December
7 the 5th, 2001.

8 MR. HAAS: And the staff filed a
9 recommendaion which was verified by two staff
10 members saying that the study met the test.

11 JUDGE THOMPSON: Okay. So in other
12 words, staff adopted Sprint's cost study as
13 the investigation? You concurred in it and
14 adopted it as your investigation?

15 MR. HAAS: Yes, sir.

16 JUDGE THOMPSON: Okay. Fine.

17 MS. CREIGHTON HENDRICKS: Your
18 Honor, the record will reflect that there was
19 several meetings that occurred between staff
20 and Sprint even prior to the filing where
21 Sprint went over in detail the cost study and
22 summarized the cost study for staff. And
23 there were meetings after that and throughout
24 the time period.

25 JUDGE THOMPSON: Very well.

1 MR. DANDINO: Well, your Honor --

2 JUDGE THOMPSON: Yes, sir.

3 MR. DANDINO: Just to -- our
4 position is that the -- the statute calls for
5 Commission investigation, first of all.
6 And --

7 JUDGE THOMPSON: So you don't think
8 the Commission can adopt the cost study done
9 by Sprint?

10 MR. DANDINO: Well, I think they can
11 if there was some type of a -- of a basis for
12 this and some type of a proceeding. What we
13 have here is -- is they have introduced their
14 -- the verified aspects of it, the verified
15 cost study. And Public Counsel has objected
16 to that as evidence based on a number of
17 grounds, some of them evidentiary and whether
18 they were -- they were properly verified. But
19 most but key to it is --

20 JUDGE THOMPSON: This would be your
21 -- your reply to Sprint's and Staff's filings
22 filed on December 6, 2001?

23 MR. DANDINO: Yes. It does talk
24 about that.

25 JUDGE THOMPSON: Okay.

1 MR. DANDINO: And -- and -- and then
2 also, the -- the allocation issue, whether
3 the --

4 JUDGE THOMPSON: Local loop?

5 MR. DANDINO: Local loop was
6 properly allocated or the not, which is a
7 point that the Court had indicated some --
8 some -- some concern about. Further, in -- in
9 the staff's recommendations, it -- it -- it
10 doesn't address and I don't think there's
11 anything in the record that addresses whether
12 the study was appropriately done, whether it
13 considered all the -- the -- the -- addressing
14 the allocation issue. I think there's a
15 number of factual situations -- factual points
16 that we would litigate, you know, involving
17 the -- the allocation issue.

18 JUDGE THOMPSON: So --

19 MR. DANDINO: And the study just
20 doesn't prove itself.

21 JUDGE THOMPSON: Okay.

22 MS. CREIGHTON HENDRICKS: Your
23 Honor, this is -- the cost study was required
24 to be done pursuant to long run economical
25 cost methodology. The statute required that.

1 Further, the statute defines long run
2 economical cost for two services being
3 addressed here.

4 JUDGE THOMPSON: Does the statute
5 say how it allocates the local loop?

6 MS. CREIGHTON HENDRICKS: We believe
7 based on the definition of basic local service
8 and the definition of exchange access, and the
9 long run economical costs that the statute
10 does answer the question about allocating the
11 local loop for the purpose of this study.

12 JUDGE THOMPSON: Okay.

13 MS. CREIGHTON HENDRICKS: And this
14 is placed in our proposed -- our Sprint
15 proposal for proceedings as well as our
16 findings that we have submitted for the
17 Commission.

18 JUDGE THOMPSON: Okay.

19 MS. CREIGHTON HENDRICKS: Further,
20 the -- first let me -- I'd like to address the
21 point being raised by OPC because I think
22 we're going back to OPC's argument that you
23 can't have an investigation without a hearing.
24 And the Court has ruled you can. This statute
25 does not require a hearing. And the -- the

1 cost studies --

2 JUDGE THOMPSON: Kind of raises
3 interesting implications for all rate cases,
4 doesn't it? But we won't get into that.

5 MS. CREIGHTON HENDRICKS: The cost
6 studies verified -- they're typical at least
7 in the format that the Commission has seen
8 repeatedly. There were two staff personnel
9 who -- who's job is to regularly review these
10 types of cost studies who reviewed them in --
11 in addition to them being verified by staff.
12 They -- I mean, by Sprint they have been
13 reviewed and verified as true to the best of
14 the staff personnel's knowledge who have
15 reviewed them. So there's strong indications
16 in the record that the cost study is true,
17 correct and accurate.

18 JUDGE THOMPSON: Okay.

19 MR. DANDINO: Well, if I may, we're
20 disagreeing on that point.

21 JUDGE THOMPSON: Clearly, we are.

22 MR. DANDINO: Yes. And then on --
23 and, you know, we're not sitting here saying,
24 yes, you're entitled to a hearing. It's just
25 exactly the -- the problem that I raised back

1 in the Court of Appeals last week discussing
2 another case. But discussing this case was
3 that the Court said, yes, we have -- we have
4 no constitutional due process to a hearing on
5 a -- on the tariff. And then the question
6 came as how do we -- how do we get these facts
7 in evidence -- in the record where the
8 Commission has made some findings they're
9 required to make under 386.5 -- I think it's
10 531. And -- and -- and essentially, maybe,
11 one of the judges, Judge Smith, I think he
12 says, Well, that isn't your problem. That's
13 the Commission's problem about how they're
14 going to -- to structure a -- a process in
15 order to get competent substantial evidence
16 even though they're not required to have a
17 hearing.

18 JUDGE THOMPSON: But they didn't say
19 we're forbidden from having a hearing, did
20 they?

21 MR. DANDINO: Well --

22 MS. CREIGHTON HENDRICKS: And, your
23 Honor, may I say in response to the
24 question --

25 JUDGE THOMPSON: You may.

1 MS. CREIGHTON HENDRICKS: -- that
2 Office of Public Counsel mentioned at the
3 hearing, it was last Thursday also. The
4 Office of Public Counsel responded that the
5 Commission may by affidavit take evidence into
6 the record and that would satisfy any need to
7 have substantial evidence upon which they
8 could --

9 JUDGE THOMPSON: You had a
10 proceeding on this case last week?

11 MR. DANDINO: No.

12 MS. CREIGHTON HENDRICKS: No. This
13 was on another tariff case. If you review our
14 proposal for proceeding, one thing we
15 highlight, there are various other tariff
16 cases where OPC is making a similar argument
17 about findings and a hearing that are on
18 appeal, and that was one of them. It was
19 in-state access in connection with Sprint's
20 long distance services and an additional
21 charge we had placed on our tariff.

22 JUDGE THOMPSON: Okay.

23 MR. DANDINO: Of course, the thing
24 is, too, with the affidavit and I said
25 question and answer session under oath, even

1 with the affidavit, there's also the
2 requirement -- there's always a -- a -- the
3 opposing party can object to the affidavit.

4 JUDGE THOMPSON: Clearly.

5 MR. DANDINO: Present counter
6 affidavits.

7 JUDGE THOMPSON: Yes.

8 MR. DANDINO: And, you know, so,
9 we're -- yes, that was a fact to get it to
10 process to get it in there -- in there. But
11 I'm not saying that the -- in every case
12 that's going to be the complete answer. Even
13 if you file affidavits, we may have to -- if
14 we end up having disputed facts, the
15 affidavits may not be -- might not be
16 sufficient on a -- on a specific factual
17 element. But some -- that was what I offered.

18 JUDGE THOMPSON: There's the
19 additional problem of -- as you know, all
20 three of you are well experienced in
21 Commission proceedings. And it's typically
22 the case when you have something like a cost
23 study at issue that expert witnesses take the
24 stand and explain to the Commission what the
25 cost study means. I suspect that's the way

1 it's typically done.

2 MS. CREIGHTON HENDRICKS: Of course,
3 there are cases where that is done, yes, your
4 Honor.

5 JUDGE THOMPSON: I guess what I'm
6 saying is that it's hard for me to picture us
7 sitting in agenda winnowing through a cost
8 study and successfully deciphering what all
9 those figures mean. Is that what Sprint
10 anticipates?

11 MS. CREIGHTON HENDRICKS: No. I
12 anticipate the Commission has to be in this
13 case to allow their staff to investigate who's
14 regular job responsibilities include reviewing
15 the cost studies and to draw and an opinion
16 based on the work that they had done as well
17 as work that was verified by Sprint. They
18 accepted that as their investigation and
19 accepted the results. And one thing, if you
20 look at the results, the results afford a
21 large margin of error. As I indicated in our
22 findings, we can allocate a hundred percent of
23 the loop to our access and still have the
24 access costs that comply with the statutory
25 mathmatical requirements that must be met.

1 And as far as the local service, you still can
2 allocate a substantial -- in some cases 50
3 percent away and still comply with the
4 mathematical test that has met. So there is a
5 large room for error in these cost studies.
6 Based on that and the fact that they have
7 experienced people analyzing them and looking
8 at them and finding no problems with them, I
9 think the Commission would be very comfortable
10 that what we they are relying on meets the
11 statutory requirement.

12 JUDGE THOMPSON: Okay.

13 MR. DANDINO: The -- the status of
14 record, at least the recommendation of the
15 staff does not address when -- if I recall
16 right, does not specifically address all those
17 -- all the questions, doesn't address the
18 allegation. You know, it basically looked at
19 the mathematics of it and the calculations or
20 it.

21 JUDGE THOMPSON: Well, just for
22 hypothetical purposes, what proceedings do --
23 does Public Counsel want if we split the cases
24 in two, we put the tariff into abeyance while
25 an investigation case goes forward? Now,

1 there's been a cost study filed. There's been
2 a staff memorandum filed accepting that cost
3 study as staff's own investigation. So what
4 does public counsel foresee as the proceedings
5 to be had on that? Would you want an
6 opportunity to cross-examine the Sprint
7 witnesses, the Sprint experts that prepared
8 it, the staff expert that reviewed it?

9 MR. DANDINO: Certainly. Certainly.
10 How they work, they they reach their --
11 whatever conclusion if they even had a
12 conclusion. Also, in terms of where we would
13 present, there's a big difference on what is
14 going to constitute the local loop, it seems
15 like, how they allocate the local loop. Well,
16 if you're looking at --

17 JUDGE THOMPSON: We had -- we had an
18 entire case on that, as I recall.

19 MR. DANDINO: That's correct.

20 JUDGE THOMPSON: The TR-2000-165
21 case where we were looking for what is the
22 cost of access services? Do you recall that
23 one? And what I saw in the results of that
24 case were, I would say, marked philosophical
25 or methodological differences between

1 companies or the types of companies as to
2 where local loop costs are placed. But I
3 don't recall seeing in that case any kind of
4 answer. It's always got to be here. It's
5 always got to be there. I mean, certain
6 companies want to put it in one place. Other
7 companies want to put it in another place.
8 And that's perhaps because of the particular
9 place they occupy in the industry. Right?
10 And how they make their money and what effect
11 the local loop has on that.

12 MS. CREIGHTON HENDRICKS: Well, and,
13 your Honor, in that case there, there was --
14 that was not governed by a cost methodology.
15 So people are making some of their cost
16 allocation based on -- imbedded cost
17 methodology versus LREC. I think there was
18 consensus in LREC. At some level there was
19 consensus in the LREC model. You do allocate
20 between the jurisdictional portion of a loop
21 to basic service. And I do think the
22 Commission has looked at tel rate cost studies
23 in connection with unit cases where they're
24 allocated the jurisdictional loop to basic
25 service. This case is governed by statutory

1 definition that makes it pretty clear that
2 certain costs are not to be captured when you
3 do unit cost studies.
4 So I -- I think that we don't have -- I think
5 it's possible the Commission can look at the
6 record and look at the cost study.

7 JUDGE THOMPSON: So, in other words,
8 your position is simply that given that the
9 methodology, cost methodology is specified by
10 statute, under that methodology the local loop
11 has to be fully allocated to basic local.

12 MS. CREIGHTON HENDRICKS: Correct.
13 That's our position. I do think quite clearly
14 the Commission can look at that.

15 JUDGE THOMPSON: I recall you filed
16 a LREC cost study in the 65 case as well, and
17 that was the position Sprint took.

18 MS. CREIGHTON HENDRICKS: Correct.
19 Correct.

20 JUDGE THOMPSON: And, in fact, it's
21 required by LREC approach, is it not?

22 MS. CREIGHTON HENDRICKS: Correct.

23 JUDGE THOMPSON: And so what's the
24 response of public counsel to that? If the
25 statute requires that costing methodology and

1 that costing methodology requires that the
2 local loop be assigned to basic, then there
3 doesn't seem to be a lot of wiggle room.

4 MR. DANDINO: I don't -- I don't
5 believe the statute requires that it be
6 assigned to basic.

7 JUDGE THOMPSON: Okay. And you're
8 prepared to put on the testimony of an expert
9 economist to that effect?

10 MR. DANDINO: Certainly.

11 JUDGE THOMPSON: All right.

12 MR. DANDINO: And also to the look
13 to the facts. Yeah. That's essentially it.
14 If you're looking at incremental costs, well,
15 you're considering -- you can't have toll
16 service without having the local loop.
17 If you're -- you know, what's maybe the local
18 service as incremental to the toll service
19 would be a very small part of it. You know,
20 so -- I'll leave that to the exper.

21 JUDGE THOMPSON: Okay.

22 MS. CREIGHTON HENDRICKS: Okay.
23 Well, your Honor, I think at some point we
24 need to step back and see what has actually
25 happened here. The Commission approved the

1 tariff filings based on verified submissions
2 by staff and Sprint. They did that without a
3 hearing. The Court upheld the Commission's
4 decision without a hearing. And all they are
5 asking -- the only fault they found was not
6 being informed of the basis of the
7 Commission's decision. And this something
8 that occurred two and a half years ago. We
9 have various tariffs that are dependent on
10 that that have revised those rates. We have
11 long distance providers who have reduced their
12 rates in reliance on the reduction in access
13 that they got as a result of this rate
14 re-balancing. This is a -- a complicated
15 interdependent situation we find ourselves in.
16 And I think that given the record that we have
17 that the Commission can respond to the Court
18 and provide the facts, and they probably
19 should do that as soon as they can because we
20 do have these other cases that depend on it.

21 JUDGE THOMPSON: I understand that.
22 The problem perhaps from my perspective is
23 that the Commission has changed in the
24 interim. And so I don't know that there's
25 going to be a majority who will elect to take

1 that course.

2 MS. CREIGHTON HENDRICKS: Well, I
3 think that given where we are, we should
4 promote that as an option, particularly since
5 we have it as an option and we do have a
6 verified cost study. It is required to be
7 LREC. The Commission has repeatedly looked at
8 tel rate cost studies.

9 JUDGE THOMPSON: I can assure you
10 that will be placed before them as an option.

11 MS. CREIGHTON HENDRICKS: I strongly
12 urge that. And what we're getting back to is
13 the argument of requiring to have a hearing
14 before we go forward. And I think the
15 Commission once decided that.

16 JUDGE THOMPSON: Well, it's nice to
17 know we don't have to have a hearing. Okay?
18 How useful that is, I'm not sure. But
19 nonetheless, it's nice to know that. But if
20 we have to find any additional facts, then I
21 don't know how we with do that outside of the
22 traditional hearing process. And any sort of
23 ad hoc process would only be planting mines
24 that are going to explode further down the
25 road. So you see what I'm saying? If we have

1 to find other facts somewhere. Now, you're
2 saying all the facts we need are in the
3 record. And if that's so, then I agree with
4 you. A hearing's not necessary if the
5 Commission elects to simply winnow through the
6 existing record to find sufficient facts to
7 satisfy the Court. If the Commission
8 determines it needs additional facts that are
9 not in the record or maybe explanation that's
10 not in the record, then I don't know how we
11 can get it outside of the traditional hearing
12 process.

13 MR. DANDINO: Well, your Honor, I
14 think you can. And -- and what I'm getting at
15 is it could be outside the traditional, you
16 know, hearing process. And that's what I was
17 trying to bring up to the court on last week
18 is that if due process -- you don't
19 necessarily have to have a required -- require
20 a due process hearing. So you may have
21 something a little bit less than -- than that,
22 whatever that would be.

23 JUDGE THOMPSON: See, that's the
24 problem is that you start saying, well, what
25 is that exactly?

1 MR. DANDINO: Sure. Yeah.

2 JUDGE THOMPSON: And we know the
3 traditional hearing process provides all the
4 process that's due. So that's the safest
5 avenue to go.

6 MR. DANDINO: That's right.

7 JUDGE THOMPSON: Because you never
8 get in trouble for providing too much process
9 that I'm aware of.

10 MR. DANDINO: That's right.

11 JUDGE THOMPSON: That's my thought,
12 you understand. I'm simply throwing that out.
13 I don't know what the Commission's going to be
14 prepared to do. I will certainly place these
15 options in front of them in an agenda session,
16 which you guys are urged to attend, not only
17 able to attend, but urged to attend because
18 who knows? This group may ask you questions
19 right there.

20 MS. CREIGHTON HENDRICKS: Great.
21 And I guess what I'm trying to get straight is
22 the due process question that any due process
23 concern has been satisfied here.

24 JUDGE THOMPSON: Okay.

25 MS. CREIGHTON HENDRICKS: Now, if we

1 want to throw upon the traditional due
2 process, I guess we -- you could evaluate
3 that. We don't advocate that. But I want to
4 make sure it's not a --

5 JUDGE THOMPSON: I'm talking in
6 terms of anything we need that's outside the
7 record. You see? I realize there's a large
8 cost study in the record. I remember seeing
9 it. It looked like a Christmas present. I
10 know there's a staff memorandum
11 recommendation. I know there's opposing
12 pleadings that were filed. All those things
13 are in the record, and that's great. What I
14 don't know is that the three Commissioners and
15 I can winnow through all those pages and come
16 up with the facts that we need without the
17 assistance, perhaps, of an expert. Which --
18 which typically we get in a hearing with them
19 sitting in the chair saying, Yeah, if you look
20 at this cost study, you'll see X, Y and Z. Do
21 you understand?

22 MS. CREIGHTON HENDRICKS: I do
23 suggest to you in the record we have summaries
24 of the cost studies, so they are explained.

25 JUDGE THOMJPSON: Okay.

1 MS. CREIGHTON HENDRICKS: That type
2 of information is already in the record.

3 JUDGE THOMPSON: Well if that's
4 adequate, then we won't need a hearing,
5 assuming that's how the Commissioners want to
6 go. But, again, it's a new Commission. It's
7 not the same Commission that acted on this
8 case originally. And that's, of course, the
9 problem with administrative law. It's a
10 different makeup. And they may elect to do
11 something different. But I'm certain we have
12 profited from having the options outlined for
13 me this morning. Does anyone have anything
14 else make?

15 MR. DANDINO: Yes, your Honor.

16 JUDGE THOMPSON: Mr. Dandino?

17 MR. DANDINO: Going back to what --
18 the implications of what this means -- and I
19 think it's only -- you know, that we're
20 looking at in terms also a suggestion I had
21 made in here and I'm bringing it up. I
22 haven't filed a motion yet on it, but I just
23 floated it out as a -- you know, just to put
24 all parties on -- on notice so that the effect
25 -- and Sprint may -- staff may disagree with

1 me. The effect of the court's order is that
2 there is no lawful tariff for this -- for this
3 entry of October 28.

4 JUDGE THOMPSON: I don't know.
5 You're kind of getting into Stu Conrad
6 territory, the metaphysical effects of
7 appeals.

8 MR. DANDINO: And I don't know what
9 that, you know, effect is, and that's one
10 reason why I didn't wander, you know, dash
11 ahead and just -- and stir the pot, you know,
12 too much right now in saying that there's no
13 basis for it. I mean, you know, the
14 question --

15 JUDGE THOMPSON: When something is
16 returned -- in fact, I do have to disagree
17 with you as a matter of law. When a
18 Commission order is returned because it has
19 inadequate Findings of Fact and Conclusions of
20 Law, then essentially the Court is saying that
21 judicial review is not possible. So the
22 Commission's original order continues in
23 effect until the Commission has produced an
24 order that is sufficient to support judicial
25 review.

1 MR. DANDINO: Well, your Honor, I
2 think, we -- I respectfully disagree with
3 that.

4 JUDGE THOMPSON: That's okay.
5 People disagree with me all time.

6 MR. DANDINO: That's why they build
7 courthouses.

8 MS. CREIGHTON HENDRICKS: Your
9 Honor, for the record, Sprint agrees with you.
10 This highlights the fact that kind of the
11 situation we're in and getting a resolution to
12 the situation as soon as we can. Obviously,
13 I've made my position clear what we believe
14 resolution can be. But given this type of
15 discussion -- and that's not just in this
16 case. I assume that it would go for all other
17 cases. The quicker we could get resolution, I
18 think the better it would be for all of --
19 particularly for Sprint, as we hear this
20 conversation.

21 JUDGE THOMPSON: We'll try to do tis
22 lickety-split.

23 MS. CREIGHTON HENDRICKS: Thank you.

24 JUDGE THOMPSON: I don't know what
25 else I can say. I'm going to write

1 lickety-split right here at the top. We're
2 going to move forward with all possible
3 dispatch. The Commission is extremely busy.
4 The docket is very crowded. The populations
5 of judges is reduced. The population of the
6 Commission is reduced as far as that goes.
7 They're sitting over there right now in the
8 Aquila rate case that's going to occupy them
9 all the rest of this week. And then we have
10 various absences. In March, we're hardly
11 having any agendas because they're out. And
12 so when I say we're going to do it with all
13 possible dispatch, there are going to be
14 inevitable delays.

15 MS. CREIGHTON HENDRICKS: Well, your
16 Honor, I appreciate that. I just indicated,
17 when you start getting into those kind of
18 discussions, it's hard for a company sitting
19 out here at the mercy --

20 JUDGE THOMPSON: It's got to be a
21 nightmare. I recognize that. But I don't
22 think, personally -- and, you know, that's the
23 great thing about the law. That's the great
24 thing about the law. There -- these questions
25 don't exist until someone puts them to a Court

1 of competent jurisdiction. Then the question
2 exists. So right now, we can make any kind of
3 questions we want. But who cares, right?
4 Until somebody goes into court and says, I
5 ain't paying my Sprint bill because there's no
6 tariff, the question just doesn't exist. Now,
7 I can see why the company would be vexed, if
8 that's the right word, to be in this position.
9 But the question doesn't really exist yet.
10 Right? It's a potential question. But it's
11 not a real question. So -- and if it is
12 raised, it won't be here. Right? Or -- or
13 maybe it will be. But it hasn't been. The
14 point is is that my personal belief is that
15 there is a tariff out there. I know you
16 disagree. But that's what lawyers do. They
17 disagree with each other. So the Commission
18 will take this matter up and we'll consider
19 the options available to it. And we'll let
20 you know what the decision is. I don't know
21 what else I can say.

22 MR. DANDINO: Do you have any idea
23 of when they -- it would be brought up to the
24 Commission?

25 JUDGE THOMPSON: The very next

1 agenda. Not the one tomorrow, but the one on
2 Thursday. I will bring this to the
3 Commission's attention on Thursday. After
4 all, we have a very able briefing by parties
5 even if I haven't ably read it yet. And I
6 apologize for that. But I have a young judge
7 that I supervise who is even now presiding
8 over his first rate case. I'm going to devote
9 some time to preparing him for that scalding
10 experience. So we will present this to the
11 Commission on Thursday. But I can't promise
12 -- I cannot promise, I'm sorry to say, that
13 they'll make a decision on Thursday. They may
14 decide that they want more information.
15 You're a frequent attendee of agendas, and you
16 know that that's a frequent result these days.
17 They may decide they want to hear from you
18 guys, come down and themselves listen to you
19 say the same things you've just said this
20 morning. I don't know. I'm hoping we'll get
21 a decision on Thursday. All right? None of
22 that last part was on the record, was it?
23 Well, there you are. There you are. I think
24 -- anybody have anything else? Nothing more?
25 Okay. Now we're off the record. We are

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