

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Initial Arbitration Meeting

June 29, 2005  
Jefferson City, Missouri  
Volume 1

In the Matter of the Petition of )  
Alma Telephone Company for )  
Arbitration of Unresolved Issues ) Case No.  
Pertaining to a Section 251(b)(5)) IO-2005-0468  
Agreement With T-Mobile USA, Inc.)

RONALD D. PRIDGINS, Presiding,  
Regulatory Law Judge

REPORTED BY:  
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1 PROCEEDINGS

2 JUDGE PRIDGIN: We're on the record. Good  
3 afternoon. This is the initial arbitration meeting, Case No.  
4 TO-2005-0 -- excuse me, IO-2005-0468, in the matter of the  
5 Petition of Alma Telephone Company for Arbitration of  
6 Unresolved Issues Pertaining to a Section 251(b)(5) Agreement  
7 with T-Mobile USA, Incorporated. I'll note that I've  
8 consolidated this case with three other cases, and I believe  
9 those are Case Nos. IO-2005-0469 through 0471, all involving  
10 T-Mobile USA.

11 At this time, I would like to get entries of  
12 appearance from counsel, beginning with the Petitioner,  
13 please.

14 MR. JOHNSON: Thank you, your Honor, Craig  
15 Johnson, Andereck, Evans, Milne, Peace & Johnson, 700 East  
16 Capital, Jefferson City, Missouri, 65102. For the  
17 consolidated Petition of the Alma, Chariton Valley,  
18 Mid-Missouri, and Northeast Telephone Companies.

19 JUDGE PRIDGIN: All right. Mr. Johnson,  
20 thank you. And for simplicity sake, I'll just refer to you  
21 as Alma, unless we have a problem with that.

22 MR. JOHNSON: You can call me Alice.

23 JUDGE PRIDGIN: For T-Mobile, please.

24 MR. JOHNSON: May it please the Commission,  
25 Mark Johnson of the law firm Sonnenschein, Nath & Rosenthal,

1 4520 Main Street, Suite 1100, Kansas City, Missouri, 64111,  
2 appearing on behalf of the Respondent, T-Mobile USA, in each  
3 of the four cases.

4 JUDGE PRIDGIN: Mr. Johnson, thank you. And  
5 to try to keep the record as clean as I can, since you're  
6 both named Mr. Johnson, I'll try to say Mr. Johnson from Alma  
7 or of Alma, or Mr. Johnson of T-Mobile, and make you sound  
8 more regal anyway. But that way hopefully the record is  
9 clear which Mr. Johnson is speaking. I'll try to keep it as  
10 formal as I can.

11 What I'd like to do is kind of announce my  
12 vision of how I think the procedural schedule will run. And  
13 Mr. Johnson from Alma, we've had an arbitration not too long  
14 ago, and I think this is how I proceeded, and so you'll  
15 probably be familiar with my idea.

16 Mr. Johnson from T-Mobile, as you're probably  
17 aware, the rule on arbitration has a really condensed time  
18 frame, and I've made a pretty rough sketch of what I think I  
19 will order as a procedural schedule.

20 And what I'd like to do is just kind of  
21 announce, again, my vision of the schedule, give you time to  
22 comment, if you, up front, see some sort of dates that you  
23 think are just unworkable or I'm just misreading the rule or  
24 something, and I will take your comments, and then I'll issue  
25 an Order probably tomorrow or Friday and give you some extra

1 time.

2 In other words, make the effective date,  
3 perhaps, ten days, so you can take that Order back to your  
4 office, you two can talk, look at the rules, because I don't  
5 want to put you on-the-spot and say, you know, you've got  
6 five minutes to object, because I may miss something, you may  
7 miss something with what you think the law is or your  
8 calendar, et cetera, so does that make sense? Just kind of  
9 give you a sketch, take your preliminary comments, issue an  
10 Order, and then give you time to object or comment or  
11 whatever.

12 MR. JOHNSON: That would be fine.

13 JUDGE PRIDGIN: Okay. How I see things  
14 progressing, and Mr. Johnson from T-Mobile, I think your  
15 response is due at or about July 5th; is that correct?

16 MR. JOHNSON: That's correct, July 5th, 4:00  
17 p.m. is my understanding.

18 JUDGE PRIDGIN: Okay.

19 MR. JOHNSON: And we will, I'm sure, be filing  
20 electronically.

21 JUDGE PRIDGIN: That's fine.

22 MR. JOHNSON: And I know that the rule  
23 requires service on opposing counsel the same day, and I will  
24 serve him electronically as well.

25 JUDGE PRIDGIN: Okay.

1 MR. JOHNSON: So we'll take care of all that.

2 JUDGE PRIDGIN: That sounds great. Again, as  
3 a brief outline, I would see a revised statement of  
4 unresolved issues and prehearing legal memoranda then due  
5 July 15th.

6 MR. JOHNSON: Did you share our schedule? We  
7 talked about this already. That's the date I sort of threw  
8 out.

9 JUDGE PRIDGIN: Okay. Well, we have not  
10 talked.

11 MR. JOHNSON: Okay.

12 JUDGE PRIDGIN: I saw you laughing there.

13 MR. JOHNSON: Sorry.

14 JUDGE PRIDGIN: No, that's okay. Direct  
15 testimony from Petitioners July 18th, mandatory markup  
16 somewhere around July 20th, and I kind of hesitated because I  
17 may be on the bench with some other fun at the time, but  
18 somewhere in that neighborhood. Rebuttal testimony July  
19 25th, and if I'm going too quickly, please let me know.

20 MR. JOHNSON: Is that Respondent?

21 JUDGE PRIDGIN: Yes, sir.

22 MR. JOHNSON: So you're looking for rather  
23 than simultaneous direct and rebuttal, have direct, rebuttal,  
24 surrebuttal.

25 JUDGE PRIDGIN: Just direct and rebuttal.

1 Let's see. I think that leaves me to a list of issues,  
2 position statements and final offers around August 5th. The  
3 week of August 15th, I've set aside for an evidentiary  
4 hearing. Posthearing briefs August 25th, my draft report  
5 September 9th, comments on that report due September 16th, my  
6 final report September 23rd, comments from the parties would  
7 be due September 27th, oral argument before the Commission  
8 September 30th, and perhaps going onto that first week of  
9 October, I believe September 30th is a Friday. And the  
10 deadline for the Commission's final decision is October 12th,  
11 if I'm not mistaken.

12 Again, that's not an Order, that's just my  
13 skeleton. That's where I'm leaning towards going, and I'll  
14 be glad -- if anybody has any initial reaction, I'll be glad  
15 to entertain that.

16 MR. JOHNSON: Well.

17 JUDGE PRIDGIN: Mr. Johnson from T-Mobile.

18 MR. JOHNSON: Thank you.

19 JUDGE PRIDGIN: Yes, sir.

20 MR. JOHNSON: A couple of points. Craig  
21 Johnson and I conferred a couple of days ago about a possible  
22 schedule, and one point that we discussed was the need for --  
23 for that matter, the purpose of the mandatory markup meeting.

24 JUDGE PRIDGIN: Uh-huh.

25 MR. JOHNSON: I know the arbitration rule is

1 new, and in fact, the oral argument that we're having today  
2 on the M2A arbitration is the first time --

3 JUDGE PRIDGIN: Right.

4 MR. JOHNSON: -- that a case has ever really  
5 gone that far.

6 JUDGE PRIDGIN: Right.

7 MR. JOHNSON: So I'm not quite sure what a  
8 mandatory markup meeting is in the first place.

9 JUDGE PRIDGIN: Welcome to the club. I'm not  
10 either. I know the rule provides for it, and so I've set  
11 time. I assume that is just some sort of negotiating  
12 conference where the parties get together and go through the  
13 math, go through your numbers.

14 But I mean, as far as exactly -- I don't see  
15 any other reference to it other than in our rule, and if it's  
16 something that the parties want to use as simply time for  
17 settlement, or if you simply don't see any need for it, we  
18 certainly don't have to have it.

19 MR. JOHNSON: Just speaking on behalf of  
20 T-Mobile, given obviously the compressed period of time we've  
21 got to deal with here, I'm not really sure I see the purpose  
22 for it. And if there isn't a purpose for something in this,  
23 then we probably shouldn't do it because we'll be monopolized  
24 by many other things.

25 JUDGE PRIDGIN: Certainly.



1 MR. JOHNSON: That's just my thought.

2 JUDGE PRIDGIN: Okay. I don't know if  
3 Mr. Johnson from Alma, if you have any thoughts on that.

4 MR. JOHNSON: Mr. Mark Johnson and I -- Mark  
5 Johnson from T-Mobile -- did speak. I think some of the  
6 major issues in the case will be more of a -- I consider to  
7 be a legal nature.

8 JUDGE PRIDGIN: Okay.

9 MR. JOHNSON: Although we may not be able to  
10 reduce all of the facts to stipulated facts, we might be able  
11 to go some distance in that regard. I concur that I'm not  
12 sure we need a markup conference because I view that as being  
13 something primarily oriented to negotiating the terms of the  
14 agreement or the document. Whereas because our disputes are  
15 primarily legal, depending on the outcome of those disputes,  
16 I think it would be relatively easy to make the agreement  
17 conform.

18 JUDGE PRIDGIN: Okay. We can certainly  
19 dispense with that. I put that in there because the rule  
20 says it's mandatory. If the parties don't want it, I see no  
21 need for it, and I'll be glad to omit that from the schedule.

22 MR. JOHNSON: So we're all operating on the  
23 same page, and I think Mr. Mark Johnson may not agree, but I  
24 think two significant legal issues are going to be one our  
25 request to arbitrate and resolve traffic and compensation

1 that precedes the date --

2 JUDGE PRIDGIN: The past.

3 MR. JOHNSON: -- of the agreement or the date  
4 of -- whatever the effective date of the agreement is going  
5 to be. I see another legal issue that will primarily be --  
6 that I believe Mr. Mark Johnson will take the burden on, will  
7 be whether or not this agreement should or can include  
8 traffic from T-Mobile to my groups of customers that  
9 traverses an interchange carriers network as opposed to SBC's  
10 network.

11 JUDGE PRIDGIN: Okay.

12 MR. JOHNSON: And I know it may take some more  
13 development of those issues to get it to a point where you're  
14 comfortable discussing it, and we're free to do that here  
15 today, and take as long as you want, but I was -- if there is  
16 a way for Mr. Johnson and I to agree to some facts, and I'm  
17 not sure he can do it today, if we could reduce those to some  
18 stipulations, and then it will make my witness list much  
19 easier, and it will make, in my view, the rounds of testimony  
20 much easier.

21 Maybe, I was thinking I might take the first  
22 round on my issues, and he might take the first round on his  
23 and do it simultaneously, and then have simultaneous  
24 rebuttal. I'm not confident we can carve up all the issues  
25 that -- to fit into those two canvases nicely, but it would

1 save us a lot of trouble, and I've got one witness that's  
2 going to be my burden to produce on the cost support issue  
3 for the rates at issue who's got availability problems during  
4 the week that you gave us.

5 JUDGE PRIDGIN: Okay.

6 MR. JOHNSON: And there may be other ways to  
7 address that, take and preserve his testimony or something,  
8 but my concerns about trying do something like that is it  
9 doesn't give the advisory people an opportunity to ask him  
10 questions unless they're included in the scheduling of that,  
11 and then I'm not sure what the -- I guess that's not a  
12 concern to the Commission that they ever see the witnesses,  
13 though, is it?

14 JUDGE PRIDGIN: Not necessarily. And I think  
15 the week of August 8th is pretty much blocked off. I mean,  
16 it's just a matter of -- the Commission won't be in on this,  
17 but it's just a matter of logistics getting the hearing room.  
18 But that might be something that we could, you know, find a  
19 day. I don't know how exhaustive that evidence would be, but  
20 hopefully one day or less than one day we could take care of  
21 that witness. I don't know.

22 MR. JOHNSON: If it's a hearing room  
23 availability issue, I wouldn't be opposed to conducting that  
24 day of hearing in Mr. Johnson's office. It doesn't bother  
25 me.

1 JUDGE PRIDGIN: Okay.

2 MR. JOHNSON: That somebody may not be able to  
3 see it over the web.

4 MR. JOHNSON: He's the one guy I know I'm  
5 going have to use for the cost issue. He may be somebody  
6 with some work with Mr. Mark Johnson that I could get to  
7 respond to the other issues, rather than have four people to  
8 come down here to say these are my traffic volumes, these are  
9 my rates, because ...

10 MR. JOHNSON: I'm not worried about that. If  
11 you have -- if you want to put that in through one witness,  
12 then I don't think that should present an issue.

13 JUDGE PRIDGIN: Okay.

14 MR. JOHNSON: But it does strike me that we  
15 are going to have a dispute that you might have to resolve  
16 ahead of time, almost in limine fashion, concerning  
17 evidence -- concerning the relevance of traffic volume, the  
18 historic issues. Our position is that those are subject to  
19 the pending arbitration -- pardon me, the pending complaint  
20 case, Case No. 57 -- EC-2002-57.

21 MR. JOHNSON: That's correct, yes.

22 MR. JOHNSON: But on a -- our sense overall is  
23 that the purpose of the interconnection agreement is to deal  
24 with issues on a going-forward basis, and so we believe that  
25 overall the relevant issues are going to be appropriate

1 allocation from a jurisdictional point of view of traffic  
2 intrastate versus interstate, interMTA versus intraMTA, how  
3 that traffic is going to be tracked on a going-forward basis,  
4 and then issues relating to the mutuality of the  
5 compensation.

6 JUDGE PRIDGIN: What I thought I heard from  
7 Mr. Johnson from Alma is that the parties are considering  
8 doing one round each of direct and one round each of  
9 rebuttal.

10 MR. JOHNSON: We loosely discussed that  
11 concept.

12 MR. JOHNSON: Yeah, that seems -- at least  
13 seems to me, to be a better way to approach it.

14 JUDGE PRIDGIN: Okay.

15 MR. JOHNSON: Because I think Craig is correct  
16 that we will have to demonstrate to you and to the Commission  
17 the validity of the mutual compensation issue, whether we  
18 have the burden of proof, I'm not, you know, I'm not going to  
19 be -- I'm not prepared to admit at the moment, but I think we  
20 will have a burden to produce evidence so the Commission will  
21 have something to base its decision on.

22 JUDGE PRIDGIN: Okay.

23 MR. JOHNSON: And I think having, you know,  
24 each having a round of direct and rebuttal makes more sense  
25 than just, you know, one -- one direct, one rebuttal.

1 JUDGE PRIDGIN: That's perfectly fine with me.

2 MR. JOHNSON: Okay.

3 JUDGE PRIDGIN: I'll just contemplate putting  
4 that in my order, and I've already made notes.

5 MR. JOHNSON: Make simultaneous direct and  
6 rebuttal.

7 JUDGE PRIDGIN: Yes. With this kind of time  
8 frame, I don't see much choice.

9 MR. JOHNSON: In the direct, Mark, it may be  
10 that we want to get these issues identified a little earlier  
11 than three days before the testimony is due.

12 MR. JOHNSON: Yeah, I agree. And in that  
13 regard, let me see, you refer to the Revised Statement of  
14 Unresolved Issues, et cetera, et cetera. What I was going to  
15 suggest there is that we simply put that into the form of a  
16 DPL, a disputed points list, and --

17 JUDGE PRIDGIN: Okay.

18 MR. JOHNSON: -- so that way we're working off  
19 the same document, that will include not just -- well, it  
20 will include proposed language, a summary rationale for why  
21 we think our language should be adopted.

22 And then as we get up to the hearing, we can  
23 insert there -- we can insert into the document references to  
24 testimony, references to the record. So once, you know, we  
25 get to the hearing, we can all have it in one document, and

1 because it has the language that we're proposing, it will  
2 have our best and final offers as well, so I think it all  
3 being one place.

4 I think the one issue that you might want to  
5 think about is do you want some memoranda from us, some, you  
6 know, some sort of prehearing briefs from us so, you know,  
7 you'll understand where we're coming from on some of the  
8 legal issues.

9 JUDGE PRIDGIN: I would think so, yes.

10 MR. JOHNSON: Okay.

11 JUDGE PRIDGIN: And brief being the key word  
12 because you don't have much time, I don't have much time, but  
13 yes.

14 MR. JOHNSON: Yeah.

15 JUDGE PRIDGIN: That would be nice.

16 MR. JOHNSON: Would you like that as -- I  
17 think you had proposed in the Chariton Valley case to have  
18 that as the same time as the Statement of Issues.

19 JUDGE PRIDGIN: Yeah, I think I lumped all  
20 that together.

21 MR. JOHNSON: Did you mention that? Maybe I  
22 just missed it, I'm sorry. And that would be July 15?

23 JUDGE PRIDGIN: Right, and I think Mr. Johnson  
24 from Alma is concerned that the three days in between that  
25 and the direct might really not be enough time.

1                   MR. JOHNSON: Okay. Well, I -- I think he's  
2 probably right.

3                   JUDGE PRIDGIN: I don't know -- I suppose I  
4 have a little leeway there, if we wanted to move back the  
5 direct testimony and the rebuttal a few days.

6                   MR. JOHNSON: See, right now, you're proposing  
7 the 18th and the 25th.

8                   JUDGE PRIDGIN: Right, and I believe those are  
9 Mondays, if I'm not mistaken.

10                  MR. JOHNSON: Yeah.

11                  JUDGE PRIDGIN: If we ...

12                  MR. JOHNSON: 21st and the 28th.

13                  JUDGE PRIDGIN: If we move those back just a  
14 few days.

15                  MR. JOHNSON: Does that sound like moving them  
16 from Monday to Monday to Thursday to Thursday.

17                  MR. JOHNSON: That's doable. I guess we  
18 already know the issues, don't we, just not how they're  
19 organized, maybe. We could be working on the testimony  
20 before the issue list is finalized.

21                  MR. JOHNSON: Yeah.

22                  MR. JOHNSON: I suppose that's fine.

23                  JUDGE PRIDGIN: Okay.

24                  MR. JOHNSON: My concern was if we don't know  
25 what the issues are until the 18th, and then we have to file



1 testimony the 21st, that would not work.

2 MR. JOHNSON: Yeah.

3 MR. JOHNSON: The 15th.

4 MR. JOHNSON: So I guess what I -- what I  
5 would suggest is that on the 15th, we file what would be sort  
6 of a proposed Disputed Points List, and that we use that for  
7 the.

8 MR. JOHNSON: The rule requires us to do it.  
9 It's mandatory.

10 MR. JOHNSON: Yeah, and then after testimony  
11 is filed, then we update and finalize that Disputed Points  
12 List, and that's what would be filed on the 5th of August.

13 JUDGE PRIDGIN: Right, right.

14 MR. JOHNSON: Okay.

15 MR. JOHNSON: Then that's fine with me.

16 MR. JOHNSON: Mark.

17 MR. JOHNSON: Sounds like we need to talk  
18 about the hearing date.

19 MR. JOHNSON: Yeah, that's -- Mark and I had  
20 also discussed the possibility of setting up some of the  
21 these legal issues as -- I think he may have mentioned a  
22 limine motion or a threshold motion, thinking that if you  
23 ruled on them and you had the option of granting it, denying  
24 it, or taking it with the case, and then an arbitration, I  
25 suspect, we may be -- a natural inclination would be to take

1 it with the case, but that was something we had discussed,  
2 but we're not really specifically putting into the schedule.

3 MR. JOHNSON: Well, what about this? Let's  
4 say by -- if I feel that I want to file some sort of Motion  
5 in Limine, that I do that by the 10th of July. I don't even  
6 know what day of the week that is.

7 JUDGE PRIDGIN: I believe that's a Sunday.

8 MR. JOHNSON: Well, I won't file it on Sunday.  
9 The 11th of July.

10 JUDGE PRIDGIN: Okay. I mean, you're looking  
11 at a calendar, I assume that that's correct. 11th's a  
12 Monday. Okay. And we may --

13 MR. JOHNSON: We'll call that a dispositive  
14 motion or what are we calling that, a Limine Motion I just  
15 put Motion in Limine for the moment, something like that.

16 JUDGE PRIDGIN: Okay.

17 MR. JOHNSON: Motion to Sever.

18 MR. JOHNSON: Okay.

19 MR. JOHNSON: Motion to Dismiss, I don't know.

20 JUDGE PRIDGIN: Right. The Commission's other  
21 rules would give Mr. Johnson from Alma ten days to respond to  
22 that rule unless, you know, I don't see any -- I don't see  
23 any need to condense that. Everything else is really  
24 condensed, and testimony is due at that time -- you're going  
25 to be busy with other pleadings in this case anyway. More

1    than likely, I will take it with the case. I may see  
2    something and I may talk to staff and say oh, gosh we need a  
3    hearing on this, but like Mr. Johnson from Alma said, I  
4    expect I will just take it with the case.

5                   MR. JOHNSON: And I suspect -- I don't want to  
6    put words in your mouth, I suspect you wouldn't want to  
7    decide that without having argument.

8                   JUDGE PRIDGIN: Very, very unlikely.

9                   MR. JOHNSON: Asking us questions about it.

10                  JUDGE PRIDGIN: Very unlikely, yeah.

11                  JUDGE PRIDGIN: If I saw something in there I  
12    thought that was a show stopper, I'm sure I would set a  
13    hearing, if nothing else, to ask questions and let you make a  
14    record, if we're going to take it off the tracks right then  
15    and there. Mr. Johnson from Alma.

16                  MR. JOHNSON: With respect to a hearing date,  
17    I'll just tell everybody that one of the issues that will  
18    definitely be contested are our cost support for rate  
19    proposal, and the witness that I have for that is Bob  
20    Schoonmacher. And with some work with Mark Johnson, I might  
21    be able to make him a sole witness for my four companies.

22                  JUDGE PRIDGIN: Okay.

23                  MR. JOHNSON: Because the issues are mainly  
24    legal, even though there may be some factual testimony that  
25    explain how things work which may correspond with different

1 versions of what the law is.

2 JUDGE PRIDGIN: Right.

3 MR. JOHNSON: It would help me make that part  
4 of the hearing presentation much shorter if I can reduce the  
5 issues that way.

6 JUDGE PRIDGIN: Right.

7 MR. JOHNSON: And I don't know how many  
8 witnesses Mr. Mark Johnson will anticipate bringing to the  
9 hearing, but I'm looking towards whether we're going to need  
10 a one-day hearing or two-day hearing I guess is where I'm  
11 going, and.

12 MR. JOHNSON: Yeah, tentatively, I know of at  
13 least two.

14 MR. JOHNSON: You probably have a cost guy and  
15 a policy guy.

16 MR. JOHNSON: That's what I'm thinking right  
17 now. And we may have a third, I don't know.

18 MR. JOHNSON: Okay.

19 MR. JOHNSON: And if it is, that may be Dan,  
20 Dan Minser.

21 JUDGE PRIDGIN: And certainly after the  
22 parties and something that Mr. Johnson from T-Mobile, he may  
23 not necessarily stipulate to what, you know, your witness'  
24 testimony, but he might stipulate that if they were here,  
25 this is what they would testify to, and that it would be

1   admissable, but he doesn't admit that any of it is true.  
2   That kind of thing. Just because I can see looking at the  
3   Petitions that the numbers are different, but it looks like  
4   the concepts are pretty much the same. Am I missing  
5   something?

6                   MR. JOHNSON: Well, the complicating issue,  
7   believe it or not, from our point of view, is geography.

8                   JUDGE PRIDGIN: Okay.

9                   MR. JOHNSON: These companies all have  
10   different service areas and some cross the MTA lines and some  
11   don't.

12                  MR. JOHNSON: The factor testimony might --

13                  JUDGE PRIDGIN: Okay. I understand.

14                  MR. JOHNSON: But how they connect with Bell  
15   and T-Mobile and how they've negotiated the issues that we've  
16   presented in our Petition, I think it's safe to say that  
17   they're fairly uniform, the mobile companies.

18                  MR. JOHNSON: Uh-huh.

19                  JUDGE PRIDGIN: Okay.

20                  MR. JOHNSON: But I do agree that if we have  
21   to submit studies for the interMTA traffic proportions or  
22   volumes, that would have to be a company-specific thing.

23                  JUDGE PRIDGIN: All right.

24                  MR. JOHNSON: But with respect to, let's say,  
25   whether the Petitioners have made timely requests to

1 negotiate and whether we actually commenced negotiations and  
2 things like that, we can stipulate to that.

3 JUDGE PRIDGIN: Okay.

4 MR. JOHNSON: We're not going to raise an  
5 issue about whether Craig made a bonafide request to  
6 negotiate.

7 JUDGE PRIDGIN: Okay. Anything else from  
8 counsel?

9 MR. JOHNSON: Well, what about the hearing  
10 dates? What dates is Bob not available?

11 MR. JOHNSON: What dates do the Commission's  
12 calendar have available.

13 JUDGE PRIDGIN: I think that entire week of  
14 the 15th.

15 MR. JOHNSON: Mr. Schoonmacher has four days  
16 of that week tied up in hearings in Illinois and an ETC case  
17 here in Missouri.

18 JUDGE PRIDGIN: What day is he referring?

19 MR. JOHNSON: Which one?

20 MR. JOHNSON: You know, I'm not involved in  
21 those cases, and I think it's Mid-Missouri Cellular, but I'm  
22 not sure which one is set for that week.

23 JUDGE PRIDGIN: Do you know what day he's  
24 free? And if you don't know now, that's not a problem.

25 MR. JOHNSON: I mentioned it to him, because I

1 think it's a Friday that week.

2 MR. JOHNSON: No, that sounds right, Craig. I  
3 think you said the 15th through the 18th.

4 MR. JOHNSON: I've got my notes here, and I  
5 can just tell you what his schedule is like.

6 JUDGE PRIDGIN: Well, I've already blocked  
7 out -- I grabbed the week of the 15th, so I can always set  
8 this for all week. That doesn't mean that we're going to go  
9 all week.

10 MR. JOHNSON: It will just be two days.

11 JUDGE PRIDGIN: Although I've grabbed two days  
12 for hearings and gone all week anyway sometimes.

13 MR. JOHNSON: That's true.

14 JUDGE PRIDGIN: So I'd rather grab too many  
15 days.

16 MR. JOHNSON: 8th to 10th is Midas, and 15th  
17 and 16th is Illinois TTC hearing, and 17th and 18th, his firm  
18 is putting on a seminar in Oregon that he's supposed to be  
19 at.

20 MR. JOHNSON: Okay. So that would leave the  
21 19th, but I have a late board meeting the day before, and  
22 he'd have to fly back on the 18th, and I was hoping to make  
23 the day or days scheduled in the preceding or succeeding  
24 week.

25 JUDGE PRIDGIN: I'll check.

1                   MR. JOHNSON: What about the 11th and 12th?  
2    You said he's here -- what days is he here for Mid-Missouri?

3                   MR. JOHNSON: 8th through the tenth.

4                   MR. JOHNSON: He said the 11th and 12th are  
5    the two days perfect for him.

6                   JUDGE PRIDGIN: I recall I've got a problem  
7    there, but I'll check.

8                   MR. JOHNSON: Okay. It works for me, and I  
9    may have another witness, but again, maybe we can work around  
10   that.

11                  JUDGE PRIDGIN: Okay.

12                  MR. JOHNSON: But I would agree, if the  
13   schedule becomes a problem, I don't mind in my office or  
14   here, producing a witness for a -- call it a deposition.

15                  JUDGE PRIDGIN: A depo.

16                  MR. JOHNSON: Perpetuate testimony, and  
17   everybody can come and answer questions until his heart is  
18   content. Or if his client wants to come and be there, we  
19   could even do his the same time and have something like that  
20   substitute for a hearing. I'm not sure if that is doable or  
21   not, but I'm willing to consider it if the scheduling becomes  
22   too problematic.

23                  JUDGE PRIDGIN: Legally, I don't see a problem  
24   with it. It's not unlike if the parties agree that a witness  
25   isn't going to be available for trial, can use the deposition



1 and obviously the parties don't dispute it. I don't see a  
2 problem.

3 MR. JOHNSON: Craig, are you participating in  
4 that Mid-Missouri hearing?

5 MR. JOHNSON: No, I'm not. I got out of that  
6 one.

7 MR. JOHNSON: I don't get to do wireless ETC  
8 stuff. I've got one CLEC.

9 MR. JOHNSON: So Bob's going to be testifying  
10 for Trip? Does he have to be there for the entire hearing,  
11 8th through the 10th?

12 MR. JOHNSON: Don't ask me, ask Trip or Bob.

13 JUDGE PRIDGIN: Anything else from counsel? I  
14 think I'll have one other matter.

15 MR. JOHNSON: Yeah. Let's see. As I read the  
16 rule, we can engage in discovery right now.

17 JUDGE PRIDGIN: I don't see any reason why  
18 not.

19 MR. JOHNSON: And in terms of response times,  
20 five working days.

21 JUDGE PRIDGIN: I believe that's what the rule  
22 says. I think I've got a copy of it here.

23 MR. JOHNSON: Is that just for objections and  
24 ten days for the answer or was it five for both?

25 JUDGE PRIDGIN: Mr. Haas, if you know off the

1 top of your head, feel free to speak up.

2 MR. JOHNSON: Nobody knows.

3 MR. JOHNSON: I have a handy dandy -- as I  
4 recall, that's not in the rules.

5 MR. JOHNSON: Response time isn't in the rule.

6 MR. JOHNSON: The genesis of that was the  
7 first procedural schedule order in the Bell case where they  
8 put that in there though, five days to object and the ten  
9 days to answer. I think I maybe incorporated that into some  
10 drafts of the schedule in the UC Cellular thing that I may  
11 have shared with Mark.

12 MR. JOHNSON: And of course ten working days  
13 turns into three weeks pretty quickly this time of the year.

14 JUDGE PRIDGIN: See, I'm seeing, for good  
15 cause, the arbitrator can for good cause, the arbitrator may  
16 compel responses to data requests in such cases the response  
17 normally will be required in five working days or less, and I  
18 read that right from Subsection 6 of Chapter 36. Now, that's  
19 the only deadline that I see on discovery. I could be  
20 missing something.

21 MR. JOHNSON: I think you're right. But see,  
22 otherwise, the normal response time is 20 days.

23 MR. JOHNSON: 10 to object and 20 to answer, I  
24 think is the standard.

25 JUDGE PRIDGIN: I believe you're right. And

1 clearly if both parties know if you do that, you're not going  
2 to have time to get ready for hearing.

3 MR. JOHNSON: Yeah, 20.

4 JUDGE PRIDGIN: It looks like the rule  
5 purposefully just didn't put a day because who knows when the  
6 hearing is going to be set.

7 MR. JOHNSON: I don't know how much time Mark  
8 Johnson has, but maybe we need to get together and tell each  
9 other what we want, and just get it without going through too  
10 many formalities.

11 MR. JOHNSON: I have a phone call with my  
12 client tomorrow.

13 MR. JOHNSON: Okay.

14 MR. JOHNSON: So maybe tomorrow afternoon I  
15 can give you a call.

16 MR. JOHNSON: You're going to want interMTA  
17 traffic from us, you're going to want cost information from  
18 us.

19 MR. JOHNSON: Right, okay.

20 MR. JOHNSON: I'm not sure what I'm going to  
21 want from you. I'll figure out something.

22 MR. JOHNSON: So how quickly will -- we  
23 probably need to agree about how quickly we'll respond. With  
24 direct due the 21st, which is three weeks from Friday or so.

25 MR. JOHNSON: Uh-huh.

1                   MR. JOHNSON:  Actually, three weeks from  
2  tomorrow.

3                   JUDGE PRIDGIN:  I believe you're right.

4                   MR. JOHNSON:  If I called you and we talk  
5  tomorrow, and I say I want this and you give me a sense of  
6  what you want, then we need to have the responses for at  
7  least a week, if not more, if not longer ahead of the ...

8                   MR. JOHNSON:  You're talking about real  
9  responses or the objections and the responses?

10                  MR. JOHNSON:  The real stuff.  The real stuff.

11                  JUDGE PRIDGIN:  Not the lawyer stuff.

12                  MR. JOHNSON:  Not the lawyer stuff, yeah, the  
13  real stuff.

14                  MR. JOHNSON:  I don't remember sitting here,  
15  Mark, about how many factors are disputed or agreed to.

16                  MR. JOHNSON:  I don't know.

17                  MR. JOHNSON:  I think the factors that may be  
18  disputed may go back to the preceding case where we did file  
19  some, quote, traffic studies, and that will probably be what  
20  we plan to rely upon, unless you convince us that it's no  
21  good anymore.  But it takes a long time --

22                  MR. JOHNSON:  Oh, I know it does.

23                  MR. JOHNSON:  -- for my clients to do one of  
24  those things.

25                  MR. JOHNSON:  Well.

1 MR. JOHNSON: And I'm trying --

2 MR. JOHNSON: Let me just throw this out.

3 We'll talk tomorrow and probably end up exchanging e-mails  
4 with a list of things that we want to get.

5 MR. JOHNSON: Okay.

6 MR. JOHNSON: And if we could agree to respond  
7 by July 11th, which is Monday -- which is -- which is a week  
8 from Monday, with what information we can, and if we have  
9 objections to producing the information, then file those  
10 objections by Thursday the 7th.

11 MR. JOHNSON: Okay.

12 MR. JOHNSON: How does that sound?

13 MR. JOHNSON: If it's in your order.

14 MR. JOHNSON: Yeah.

15 MR. JOHNSON: I mean, I hate to take too much  
16 from memory.

17 JUDGE PRIDGIN: I can put that in an order if  
18 you want that any -- any objections to discovery requests by  
19 July 7th.

20 MR. JOHNSON: Well, why don't we use a number  
21 of days instead. Let's say objections to discovery requests  
22 within five working days of receipt of the request, and then  
23 responses would be due within seven working days of receipt  
24 of the request.

25 JUDGE PRIDGIN: Within seven working days of

1 receipt of the ...

2 MR. JOHNSON: Request, the.

3 JUDGE PRIDGIN: Okay. I'm with you.

4 MR. JOHNSON: From the data request or the

5 discovery.

6 JUDGE PRIDGIN: So once you get a data

7 request, you either respond within seven working days or you

8 object within five working days. Is that what you're saying

9 or did I misunderstand?

10 MR. JOHNSON: Any objection you have to file

11 within five working days. Obviously to the extent you don't

12 object, then produce --

13 MR. JOHNSON: The data within seven.

14 MR. JOHNSON: -- the data within seven working

15 days.

16 JUDGE PRIDGIN: Okay.

17 MR. JOHNSON: And Craig, can we agree that

18 we'll each consider an e-mail or a letter to each other as

19 being a data request?

20 MR. JOHNSON: Sure.

21 MR. JOHNSON: Or does.

22 MR. JOHNSON: I'm assuming all the way through

23 this that we're serving simultaneous filing.

24 MR. JOHNSON: Yeah.

25 MR. JOHNSON: So we don't have to argue about

1 service and what have you.

2 MR. JOHNSON: Yeah, okay.

3 MR. JOHNSON: Although we do do hand filing, I  
4 haven't got my gal to do the EFIS filings yet. I will make  
5 sure we will electronically send to you what we're filing.

6 MR. JOHNSON: Okay. That's fine.

7 JUDGE PRIDGIN: Anything else from counsel?

8 MR. JOHNSON: Well, see, with the final order  
9 due on October the 12th, then we'll have to file the  
10 agreement from the -- when does the 270 days actually expire?

11 JUDGE PRIDGIN: I believe that's October 12th.

12 MR. JOHNSON: Okay.

13 JUDGE PRIDGIN: I believe. And then I believe  
14 you're required to file an agreement in conformance with the  
15 Order by the 19th. I think that's right. And then the  
16 Commission then has 30 days from --

17 MR. JOHNSON: Yeah.

18 JUDGE PRIDGIN: -- from then to vote up or  
19 down on it.

20 MR. JOHNSON: And I'm assuming that you're  
21 going to want -- it would be four separate agreements. It  
22 would be one agreement for each of the petition and  
23 companies.

24 JUDGE PRIDGIN: I would think so.

25 MR. JOHNSON: Even though we consolidated the

1 cases --

2 JUDGE PRIDGIN: Right.

3 MR. JOHNSON: -- for hearing and arbitration,  
4 I still think we need to prepare four separate agreements.

5 MR. JOHNSON: Okay.

6 JUDGE PRIDGIN: Okay.

7 MR. JOHNSON: Did we finalize all the  
8 discussion of the possible hearing dates?

9 JUDGE PRIDGIN: I think I will check to see if  
10 I can find any -- if nothing else, you know, maybe part of a  
11 day of the 11th or 12th. I'll try to get one, you know, some  
12 way to accommodate your one witness, because I understand  
13 he's just not available the week of the 15th. So I'm hoping,  
14 and I'm thinking, there's some way we can -- even if we have  
15 to kind of break -- do it -- if we have to come in on the  
16 11th for that one witness and then turn around and come in on  
17 the 15th for --

18 MR. JOHNSON: That would be fine. Just  
19 because he's not available doesn't mean I am not on the 15th.

20 JUDGE PRIDGIN: Right.

21 MR. JOHNSON: Okay.

22 JUDGE PRIDGIN: And again, any Order I issue,  
23 I'll stretch out the effective date so you can get it and  
24 say, hey, that's not what we decided, or that's not going to  
25 work. I'll give you time to object or talk at your office or



1    whatever.  Because I don't want to ram this down your throat.  
2    I just want to work within the parameters of the rule and let  
3    you kind of drive this thing.

4                    If there's nothing else from counsel, there's  
5    just one other matter.  I understand that we've got a member  
6    of the advisory staff that's no longer working here, and I've  
7    talked with the Executive Director and I hope to appoint an  
8    additional member in the next few days.  He's aware of it,  
9    and hopefully he'll give me some guidance.  And so I would  
10   think that we would have a new member of that advisory staff  
11   probably next week.  That would be my guess.  
12   You have access to this room the rest of the day.  I'm easy  
13   to find.  I'm up on the 9th floor.

14                   MR. JOHNSON:  Advisory staff is considered  
15   part of the arbitration, so we don't communicate with them  
16   directly.  Or I'm trying to go back to what we decided the  
17   last time we did this.

18                   JUDGE PRIDGIN:  I'll double check my ex parte.  
19   I think, Mr. Haas, correct me if I'm wrong, I think you're  
20   certainly free to talk with the advisory staff.

21                   MR. JOHNSON:  I mean, outside the presence of  
22   my opponent?

23                   JUDGE PRIDGIN:  Your correct, no, not outside.

24                   MR. JOHNSON:  Okay.

25                   JUDGE PRIDGIN:  But I think now that you're

1 all here, you're free to talk.

2 MR. JOHNSON: I'm sorry. But sometimes I'm  
3 used to dealing with Staff when they're a party one-on-one,  
4 and I just wanted to make sure that everyone understands that  
5 that was not going along with this arbitration proceeding.

6 JUDGE PRIDGIN: And I'm reviewing my rule to  
7 make sure I'm not missing something. Yes, arbitrators may  
8 not have ex parte contacts with any of the parties, so  
9 obviously you're not to talk to them one-on-one, but when  
10 you're all together, you're free to discuss issues.

11 MR. JOHNSON: Okay.

12 MR. JOHNSON: Thank you.

13 JUDGE PRIDGIN: Anything else? Okay. If  
14 there's nothing else from the parties, I will get an Order  
15 out probably tomorrow, setting a procedural schedule, give  
16 you time to object, and we will go from there. If there's  
17 nothing else, that will conclude the initial arbitration  
18 meeting in Case No. IO-2005-0468. Thank you very much.  
19 We're off-the-record.

20 WHEREUPON, the recorded portion of the initial  
21 arbitration meeting was concluded.

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