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6 TRANSCRIPT OF PROCEEDINGS
7 Post-Hearing Conference
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12 In the Matter of the Determination)
13 of Prices, Terms and Conditions of) Case No. TO-2001-440
Line Splitting and Line Sharing.)

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17 VICKY RUTH, Presiding,
18 SENIOR REGULATORY LAW JUDGE.

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1 P R O C E E D I N G S

2 JUDGE RUTH: Okay. Good morning.

3 We are here for a post-hearing conference
4 in Case No. TO-2001-440, in the matter of the
5 determination of prices, terms and conditions of line
6 splitting and line sharing. My name is Vicky Ruth, and
7 I'm the Regulatory Law Judge assigned to this case.
8 Today's date is January 26, 2005, and it is a few minutes
9 after 10 o'clock.

10 I'd like to begin by taking entries of
11 appearance. And Staff, we'll start with you.

12 MR. POSTON: Marc Poston appearing for the
13 Staff of the Missouri Public Service Commission.

14 JUDGE RUTH: Mr. Lumley?

15 MR. LUMLEY: Carl Lumley of the law firm of
16 Curtis, Oetting, Heinz, Garrett & O'Keefe on behalf of
17 Covad Communications.

18 MR. GRYZMALA: Good morning, your Honor.
19 Bob Gryzmala on behalf of Southwestern Bell Telephone
20 Company, LP, d/b/a SBC Missouri.

21 JUDGE RUTH: Okay. It's my understanding
22 we only have the three parties today. If anyone comes in
23 while we're on the record and I don't appear to notice
24 them, please interrupt me and we'll put that on the
25 record.

1 Okay. As you know, the Commission issued
2 an Order a few weeks ago scheduling this conference. As
3 the Order indicates, the Commission's hoping that the
4 parties will be prepared to discuss the status of the
5 Triennial Review Order and its impacts on this case, the
6 likelihood that the parties will settle all or part of the
7 issues, and whether additional hearings are necessary in
8 order to conclude this case. And if additional
9 proceedings are necessary, suggestions as to a proposed
10 schedule and the type of proceeding would be welcome.

11 As you know, the makeup of the Commission
12 has changed considerably since this case was initiated.
13 In fact, I believe only perhaps one Commissioner was
14 present for actual proceedings. Some of the other
15 Commissioners have started reviewing the record. However,
16 they are feeling a bit overwhelmed, and it may even be
17 necessary -- whether you feel that additional evidence is
18 needed, there may need to be some type of on-the-record
19 presentation. That's something for you to keep in mind,
20 but we do have four Commissioners who are only looking at
21 this as an overwhelming amount of paper, if you will.

22 With that in mind, I'm going to start
23 actually over here with you for Southwestern Bell. Can
24 you answer the first question for me or give me your
25 opinion as to the status of the Triennial Review Order,

1 how it impacts this case and how Southwestern Bell would
2 recommend that the Commission proceed from here?

3 MR. GRYZMALA: Thank you, your Honor. We
4 would start out by indicating generally that the pleadings
5 we have filed responsive to the Commission's -- that is
6 the FCC's TRO order were filed on September 10, as well as
7 additional pleadings filed on November 3, November 24 and
8 December 15, spurred by comments by Covad and other
9 developments. So we have four sets of pleadings on file
10 relative to the impact of the TRO. But --

11 JUDGE RUTH: Do you feel anything needs to
12 be added to those pleadings at this time?

13 MR. GRYZMALA: No, except to sum up to the
14 extent that the FCC made clear in its TRO that line
15 sharing was not required to be provided by ILECs -- or by
16 ILECs subject to grandfathering and transitioning, which
17 we fully agree. There has been no arresting or
18 modification of that development.

19 I would point out that to the extent we
20 did not already state this in our pleadings, and I thought
21 we -- well, we certainly could not have. On March 2nd,
22 2004, the United States Court of Appeals for the District
23 of Columbia upheld the FCC's line sharing and hybrid loop
24 FTTH rules, quote, on the grounds that the decision not to
25 unbundle these elements was reasonable even in the face of

1 some CLEC impairment in light of the evidence that
2 unbundling would skew investment incentives in undesirable
3 ways and that intermodal competition from cable ensures
4 the persistence of substantial competition in broadband.

5 That is what we've come to call USTA-II.
6 The citation, your Honor, is 359 F3D 544, 585, is the
7 specific page number from the United States Court of
8 Appeals DC Circuit decision. So with that application,
9 that would have -- that would have postdated our last
10 pleading on file of December 15.

11 As your Honor also may be aware, the FCC is
12 due to issue a so-called TRO Remand Order imminently. I
13 don't know when that is expected by the industry. From my
14 perspective, from our perspective, there is no indication
15 that there will be any change or modification or reversing
16 course on its line sharing rulings in the TRO order that
17 were upheld by the Court of Appeals. In other words, no
18 new news on that front.

19 JUDGE RUTH: Can I ask you a question
20 about, your company filed -- I believe you filed some
21 Proposed Findings of Facts and Conclusions of Law. That
22 was back in 2002.

23 MR. GRYZMALA: Yes, your Honor.

24 JUDGE RUTH: Yes. It was February 2002.
25 Have you had a chance to look at those to see what might

1 need to be updated? Because one thing the Commission's
2 looking at is evidence that was from 2001, 2002, big
3 break, impact perhaps of the Triennial Review Order and
4 how that would change what the Commission had been looking
5 at before. So I guess I'm asking, have you looked at
6 those?

7 Actually, the February 2002 was your
8 Supplemental Proposed Findings of Fact and Conclusions of
9 Law. Have you looked at those to see if they would need
10 any additional changes? And if you have not, would you
11 please just take a look at it after the hearing and then
12 file something if you think they need to be updated? I'm
13 not asking you to update them all at this time. Just tell
14 me whether or not you think they would need to be updated
15 or not.

16 MR. GRYZMALA: I think to the extent, your
17 Honor, that updating would have been required, that
18 updating was done, if I understand your question. We made
19 a recommendation on September 10 in a pleading to adopt a
20 proposed post-triennial review line sharing appendix when
21 available. At the time it was not available. And my
22 records show that on November 3 we filed our proposed
23 post-TRO line sharing appendix and requested that the
24 Commission adopt it as the line sharing terms and
25 conditions to replace the interim line sharing terms and

1 conditions that were offered via the M2A.

2 And beyond that, there has been no further
3 suggestion of red line entries beyond that date. That was
4 on November 3 of 2003 that was submitted.

5 JUDGE RUTH: And you don't feel at this
6 time that any additional red lining or changes need to be
7 made after the -- to the 2003 document?

8 MR. GRYZMALA: No. We had also referred in
9 our pleadings to the need to complete the second phase, of
10 course, which is the other half, if you will, the pricing
11 phase, and our comments are on file in that regard. But
12 there may be, quite candidly, your Honor, some need to
13 revisit the manner in which the Commission may proceed.

14 I will observe to you that there does not
15 appear to be much need at all to establish final terms and
16 conditions for the HFPL, including the line sharing
17 appendices. The bulk of the HFPL orders were issued under
18 non-M2A agreement.

19 I think one good example is Mr. Lumley's
20 client Covad, which operated under an agreement other than
21 the M2A. There's virtually no HFPL volume under the M2A.
22 I've seen numbers that have ranged -- and I believe our
23 regulatory client have reported numbers to the Staff about
24 existing HFPL circuits in place. My recollection is
25 between 200 to 250 in place in the State of Missouri, your

1 Honor.

2 Furthermore, under the FCC's decision, new
3 orders for the HFPL are no longer available under the M2A
4 or any ICA, and the M2A will expire on March 6, 2005. So
5 with the cumulative effect of those factors, I think it
6 does give rise to some discussion as to how the Commission
7 might be best advised to proceed henceforth.

8 JUDGE RUTH: Do you have suggestions for
9 that at this point?

10 MR. GRYZMALA: Well, at the outset I would
11 say that one thing we would be clear on is that there's
12 always been the contention and our firm position, your
13 Honor, that given that the HFPL was an interim rate, the
14 permanent rate should be 50 percent of the two-wire xDSL
15 copper loop monthly recurring rate.

16 Having said that and putting that aside,
17 given the fact that these orders are effectively mostly
18 under non-M2A, virtually no HFPL volumes under the M2A,
19 the expiration of the M2A, the no new orders under the
20 TRO, there would not be any reason to hold the docket open
21 any longer.

22 So that to the extent that there are issues
23 that might be associated with a CLEC's grandfathered end
24 users, an M2A CLEC's grandfathered end users, those could
25 be addressed in the context of negotiations between the

1 parties. That would have no impact on Covad, who operates
2 under an agreement other than the M2A, and under -- under
3 which -- under the TRO, of course, any Covad orders placed
4 with us for line sharing after I believe it's December 4th
5 of 2004 are not under an ICA in any case.

6 Because there --- as you may recall, year
7 one of the FCC's transition period I believe closed around
8 October 2 of 2004, and there were an additional 60 days
9 beyond that through which the first year was carried.
10 That is, we continue to take orders after that time. Let
11 me be more specific on that so I get it right.

12 The last date the FCC was required to allow
13 CLECs to order new HFPLs under ICA was October 2, 2004.
14 SBC voluntarily agreed to extend this time frame for 60
15 days, thus we continue to accept orders through December
16 2004. All of which is to say, that date has passed, your
17 Honor, which goes back to my point about the further
18 efficacy of keeping the docket open.

19 Now, if the Commission should decide not to
20 close the case, then of course our pricing position
21 becomes paramount.

22 JUDGE RUTH: I'm confused, though, as to --
23 your primary recommendation, then, would be that the
24 Commission close the entire case?

25 MR. GRYZMALA: Yes.

1 JUDGE RUTH: Okay.

2 MR. GRYZMALA: And that is based, your
3 Honor, again due to the de minimis volume of existing
4 HFPLs under the M2A and the impending expiration of the
5 M2A and the other factors I've talked about. Virtually no
6 volumes, your Honor.

7 JUDGE RUTH: Is there anything else you
8 want to add at this time?

9 MR. GRYZMALA: I don't believe, not at this
10 time.

11 JUDGE RUTH: All right. Mr. Lumley, do you
12 want me to mention those three questions that were brought
13 up?

14 Okay. Then this is your opportunity to
15 answer the questions, respond to anything that
16 Southwestern Bell has brought up, add anything of your
17 own. And then we'll have Staff do the same, and then I'll
18 allow one final round if anyone has any additional
19 questions or comments.

20 MR. LUMLEY: Well, in general terms, I
21 concur with Mr. Gryzmala's observations that further
22 action in this case would be of limited effect for the
23 combination of reasons that he's already stated. So if
24 there's a proposal to dismiss the case with the consent of
25 the parties, we would not have an objection to that.

1 If there's to be an effort to just wrap it
2 up so that there actually is a substantive resolution, our
3 concerns at this point are extremely limited and I would
4 believe that we'd be able to resolve the case in that
5 fashion as well, by agreement.

6 As you know, the case was split into two
7 parts. We had fairly extensive proceedings about terms
8 and conditions. With the interruptions of court decisions
9 and FCC orders, that part's never been concluded, and the
10 second part regarding rates has never even commenced. And
11 we think we're in a position to resolve the terms and
12 conditions by agreement, given the limited nature of our
13 concerns.

14 In terms of rates, I'm not sure I
15 understand why any action would be necessary given --
16 given the proposed terms. And why I say that is that the
17 introductory language of the post-TRO document that
18 Mr. Gryzmala referred to in Section 1.1 indicates that
19 this proposed text is for purposes of line sharing in
20 accordance with the TRO.

21 And with that introduction, the TRO has
22 already resolved the pricing issue in our view in that it
23 is said in the TRO that for the base of customers that was
24 in place prior to the effective date of the TRO, which was
25 in October of 2003, the existing price would continue.

1 And then for the transition period of one year that
2 Mr. Gryzmala referred to, there's actually an accelerated
3 pricing scale that's based on the established loop rates,
4 and it goes from 25 percent up to 75 percent of those loop
5 rates over time. And so it would seem that the question
6 of what the rates should be for purposes of TRO would be
7 resolved.

8 In theory, I suppose, from SBC's
9 perspective there could be a fight about whether they're
10 entitled to some adjustment of the rates for the prior
11 group, you know, the existing base, the pre-TRO base of
12 customers based on the zero interim rate here, but I want
13 to make clear that Covad does not benefit from that zero
14 rate. We pay a \$5.70 rate under our agreement with them.
15 So I'm not here trying to take benefit of that zero rate
16 because it doesn't apply to us. And based on his comments
17 that there's limited volumes there, I'm not sure that
18 anybody's benefiting from that, but that particular aspect
19 of it really isn't my fight.

20 Our concern here, we have basically the
21 same text for line sharing that was -- that was adopted as
22 the interim provisions here, and our primary concern is
23 that action here would be construed as a change of law
24 that could then by extension be applied to our document.
25 But specifically as I indicated, the document starts out

1 saying that this is line sharing per -- in accordance with
2 the TRO. And as you know from our pleadings, we've
3 indicated an interest in pursuing line sharing as a matter
4 of state law under independent state authority as a matter
5 of 271 requirements.

6 We don't expect the Commission to resolve
7 those kind of issues in this case now. I mean, a year ago
8 and two years ago we were hopeful of doing that, but with
9 the life of the M2A being a matter of months and parties
10 are going to be filing pleadings with the Commission in
11 the next few weeks to get the ball rolling on future
12 agreements, it would not be worth people's resources to
13 try and fight a battle like that in this case.

14 But the concern that we have is, if you
15 look at some of the other sections that deal with the TRO,
16 for example, 3.1, 3.1.1 and 4.8, where SBC has wanted to
17 make clear that its obligations under the TRO are subject
18 to its reservations of rights, which were in Section 11,
19 what we would propose is to likewise protect the CLEC
20 perspective by including in Section 1.1 after the language
21 of "for purposes of line sharing in accordance with the
22 FCC's Triennial Review Order, " the same phrase, "subject
23 to Section 11 below." And then in addition to that, what
24 we would propose to include in Section 11.1 is a sentence
25 that says, CLEC reserves its right to seek line sharing

1 under other authority besides the Triennial Review Order.

2 MR. GRYZMALA: Can I -- please, could you
3 read that again, Carl? I couldn't --

4 MR. LUMLEY: CLEC -- CLEC reserves its
5 right to seek line sharing under other authority besides
6 the Triennial Review Order.

7 Basically what we would seek to accomplish,
8 there are statements in the proposed text that have the
9 effect of saying SBC shall have no line sharing obligation
10 after this date, those kind of blanket statements, and we
11 would not want a Commission order approving this text
12 being construed as a conclusion of law that SBC has no
13 obligation whatsoever. But in the context of a document
14 that says, this is line sharing under the auspices of the
15 TRO, as long as it's clear that both sides are reserving
16 their rights, we think that that's acceptable.

17 One other observation about Section 11.1.
18 There's a list of proceedings, both court and FCC, that
19 are all lumped together then under sort of the defined
20 term collectively as government actions, and that part of
21 the section states that the parties have not yet fully
22 incorporated into the agreement these actions. And I
23 guess that part, it causes me a little bit of concern
24 because we're saying here's -- SBC is saying, here's our
25 Post Triennial Review Order appendix for line sharing, and

1 yet seems to be trying to reserve the argument that the
2 TRO might warrant additional changes to this text. We're
3 not sure we understand that. So we would certainly at
4 least like to see some clarification that this appendix
5 was meant to fully incorporate the TRO as to the subject
6 of line sharing.

7 Our other comments are pretty limited. If
8 you compare Section 3.1.1 and Section 4.8, you'll see that
9 they're duplicate provisions, and we don't really have a
10 problem with that, but the reason I point it out is that
11 in the fifth line from the end of Section 3.1.1, I believe
12 there's a stray reference to end user that makes the text
13 hard to understand, and we would propose to delete that,
14 so that that line would read, review order as to
15 grandfathered end users, as more. There's an extra end
16 user there that we would propose to delete so the text is
17 clear. Again, if you compare it to Section 4.8, you'll
18 see that this is an extra phrase.

19 Also, we want to remind the Commission or
20 just make a statement on the record that, in addition to
21 this text, SBC has proposed a modified line splitting
22 paragraph, and they did that in their initial comment of
23 September 10th. And at the time that was Section 4.5,
24 but when they submitted this post-TRO document, the
25 section numbers all changed, and our observation would be

1 that that particular paragraph would go in between what is
2 now 4.13 and 4.14. So we didn't want that paragraph to
3 get lost, since it's not actually in this document but was
4 in a separate pleading.

5 JUDGE RUTH: Tell me again where it should
6 go.

7 MR. LUMLEY: Between 4.13 and 4.14. And
8 then in Section 7.1, in line 1 there's a statement that
9 SBC will not guarantee performance. And then in line 3
10 where it starts talking about an exception to that, it
11 says, but will assure guarantee performance. And we'd
12 propose that the word "assure" be stricken just to
13 eliminate confusion.

14 And then finally in Section 12.2, there's a
15 discussion of true-ups, and we feel that that should be
16 tied directly to the Commission's prior orders as to what
17 true-ups would be in order, and those were stated in the
18 99-227 docket, I believe, that it was a six-month
19 limitation.

20 So with those pretty targeted comments, you
21 know, we're comfortable resolving the case either way. I
22 think you'll see from the record over time parties have
23 asked to withdraw. Others that I represent, you know,
24 you'll notice that I didn't enter my appearance for them
25 today. They haven't formally withdrawn, but they

1 certainly have lost interest in the proceedings in large
2 part because of the disappearance of UNE-P and their
3 change in plans.

4 And so I believe that Staff and Covad and
5 SBC are the only actively interested parties. I think
6 AT&T last filed something in 2003, and I certainly
7 specifically advised them of this proceeding and they did
8 not indicate interest in participating further. So I
9 would think that we could agree to dismiss the case.

10 You might, I guess, to be safe want a
11 public notice, maybe treat it as a nonunanimous
12 settlement-type approach and give everybody one last
13 chance to object just to kind of clear that hurdle, but I
14 would think that essentially if the three of us agree to a
15 dismissal, you're not going to hear any complaints from
16 anyone else.

17 JUDGE RUTH: If the three parties that are
18 here today agree to that, what -- agree to a dismissal, I
19 would issue a notice saying that at the post-hearing
20 conference this was discussed and give parties 10 days to
21 object and see what happens. But I haven't actually had a
22 formal motion on the record.

23 MR. LUMLEY: Right.

24 JUDGE RUTH: But I'm certainly open to
25 that, but I think that would accommodate other parties'

1 interests if there's notice. If the motion was made,
2 parties -- I might give them more than 10 days. I might
3 give them two or three weeks to respond, and then the
4 Commission could take up the motion in one of their agenda
5 sessions. But that would certainly be one way to handle
6 it.

7 MR. LUMLEY: Like I said, alternatively
8 we're willing to agree to the proposed text with the few
9 changes that I've outlined here today. If we could reach
10 agreement on those or we're also willing to submit that to
11 the Commission for consideration.

12 I don't think that the sets of Findings of
13 Fact and Conclusions of Law that were submitted by all the
14 parties back in 2002 would really be in shape to just be
15 adopted. I've not taken a look at ours because there's
16 been so many changes and because of the -- where we kind
17 of stand today on our approach, which was basically to
18 walk away from most of our agenda, given the passage of
19 time, and just seek to kind of finetune a specific
20 proposal.

21 JUDGE RUTH: I believe that Mr. Gryzmala,
22 he had indicated that his, I think, first choice would be
23 for the Commission to dismiss the case, and then he listed
24 some other -- if the Commission chooses not do that, he
25 had some comments. Can you tell me what your client's

1 first preference is, or are you not able to say at this
2 point?

3 MR. LUMLEY: I don't think -- I don't think
4 we'd prefer one over the other. Our main concern is to
5 not have an outcome that -- that SBC would try to use to
6 negatively affect our contract, and so either approach
7 I've outlined meets our concerns, and I don't know that we
8 favor one or the other.

9 JUDGE RUTH: Staff, do you have comments
10 that you'd like to make at this time?

11 MR. POSTON: I'll be brief. With the
12 changes that were brought on by the Triennial Review Order
13 and with the expiration of the M2A and not hearing any
14 CLECs in here saying that they would like this case to
15 move forward, we would agree that the case should be
16 closed.

17 JUDGE RUTH: Okay. Do I have a formal
18 motion from any party today that the case be closed?
19 None?

20 MR. POSTON: You want an oral motion?

21 JUDGE RUTH: I guess this is my question.
22 I have to go back and tell the Commissioners how the
23 parties suggest we move forward, and what I'm hearing from
24 the parties is, do this way or that way, but I don't
25 actually have a motion to dismiss. So without a motion to

1 dismiss, the Commission's not going to dismiss. They're
2 going to muddle through trying to figure out what they
3 should do.

4 If the parties all jointly agree that it
5 should be dismissed, I don't know if you want to get
6 together, discuss that, file a joint motion, or if that's
7 not what you prefer, then somebody needs to make that
8 clear to me so that I go back and talk to the
9 Commissioners about, well, Southwestern Bell has these
10 comments, Covad has these comments, here's where you need
11 to go. I guess I'm just saying I'm not clear what the
12 parties are recommending as for the course of action to
13 take from here.

14 MR. LUMLEY: I'm comfortable with the case
15 being dismissed. I just kind of felt like it is SBC's M2A
16 model agreement and I didn't want to step on their toes by
17 it.

18 JUDGE RUTH: And I'm not going to make you
19 make this motion now if you want. I mean, if this is
20 something the parties want to discuss and then file a
21 status update or recommendation after the on-the-record
22 portion, that's fine, too. I just don't want to leave
23 here without me understanding what I'm supposed to do
24 next.

25 And so if the parties would like additional

1 time before you commit to anything on the record, that's
2 fine. But I do want to leave here with a date that I will
3 get something from the parties either saying -- maybe
4 clarify or just putting into a brief pleading what it is
5 Southwestern Bell recommends from here, what it is Covad
6 recommends from here, or else the motion to dismiss.

7 If I'm not going to have it on the record
8 here, I want something followed up. Is that clear?

9 MR. GRYZMALA: Your last point was?

10 JUDGE RUTH: At this point I'm not sure
11 what the parties are recommending. I hear a couple of
12 options, but to go back to the Commissioners, I want to be
13 a little bit more clear when I talk to the Commissioners
14 and say the parties recommend that you do A or in the
15 alternative B, but their preference is A. But at this
16 point I'm not hearing that. I'm hearing that A or B, not
17 really a preference given from all the parties.

18 I did hear from Southwestern Bell that, I
19 think, that your first recommendation would be that the
20 Commission dismiss the case, but you haven't actually
21 given an oral motion that the Commission dismiss the case
22 and I haven't heard an assurance that you're planning to
23 file a motion.

24 MR. GRYZMALA: Your Honor, if I can offer,
25 I thought what Mr. Poston said was quite interesting. We

1 would be prepared -- SBC Missouri would be prepared to
2 join with Mr. Lumley and Mr. Poston in an oral motion if
3 they are amenable, to ask that the Commission close the
4 case, given the imminent expiration of the M2A, the
5 de minimis volumes of HFPL under the current M2A, the fact
6 that the bulk of the orders for the HFPL were issued under
7 non-M2A agreements, and that those be the bases on which
8 the Commission grant the motion.

9 Is that clearly stated, Mr. Lumley?

10 MR. LUMLEY: Yeah. We would support that
11 motion.

12 JUDGE RUTH: Okay. Covad would support the
13 motion.

14 MR. POSTON: Staff supports the motion as
15 well.

16 JUDGE RUTH: Okay. The motion is pending.
17 What I'm going to do is wait and get the copy of the
18 transcript so I can make sure that my notes are accurate,
19 issue a notice regarding the pending motion and allow any
20 interested party an opportunity to respond. After the
21 expiration of that response time, I will take it back to
22 the Commissioners.

23 And I will ask our court reporter to be
24 thinking about if she could -- since the hearing has been
25 fairly quick, if she would maybe be able to get the

1 transcript sooner than 10 business days. I may forget all
2 the details.

3 MR. LUMLEY: And going to one comment you
4 made, your Honor, I think 10 days notice would be
5 sufficient. Speaking of someone that represents a wide
6 variety of CLECs, there's extremely limited interest in
7 this proceeding. I think it's really a matter of being an
8 expert in the clauses here or inadvertently stepping on
9 someone's rights, but I would be totally shocked if we
10 hear from anyone.

11 JUDGE RUTH: Okay. Does anyone have any
12 additional comment they want to make?

13 At this point we have the pending motion.
14 I have no further questions, but I want to give you an
15 opportunity to add anything if you want. And we'll go --
16 start back over here with you.

17 MR. GRYZMALA: I would only ask, Judge, if
18 you are clear as to what SBC's position would be if the
19 Commission were not to close the case?

20 JUDGE RUTH: Well, I have notes, and it's
21 in the transcript, but if the Commission decides to rule
22 against the pending motion, I suspect I would do an Order
23 directing some clarification for the second.

24 MR. GRYZMALA: That's fine.

25 JUDGE RUTH: I did take notes and I took

1 notes from Mr. Lumley, but it's quite possible I'll have
2 additional questions. So I doubt if the Commission would
3 make a ruling which way to proceed without some more
4 input.

5 MR. GRYZMALA: Very good. That's all I
6 wanted to make sure. Thank you.

7 JUDGE RUTH: Mr. Lumley?

8 MR. LUMLEY: No, your Honor.

9 JUDGE RUTH: Mr. Poston?

10 MR. POSTON: No, thank you.

11 JUDGE RUTH: Then this proceeding is
12 concluded. We're off the record.

13 WHEREUPON, the post-hearing conference in
14 this case was concluded.

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