

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

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4 TRANSCRIPT OF PROCEEDINGS

5 PRE-HEARING

6 August 24, 2001

7 Jefferson City, Missouri

8 Volume 1

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10 In the Matter of the Investigation)
11 of the State of Competition in the) Case No.
12 Exchanges of Southwestern Bell) TO-2001-467
 Telephone Company.)

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16 BEFORE: _____

17 NANCY M. DIPPELL
 SENIOR REGULATORY LAW JUDGE.

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1 JUDGE DIPPELL: This is Case No. TO-2001-467
2 in the matter of the investigation of the state of
3 competition in the exchanges of Southwestern Bell Telephone
4 Company.

5 My name's Nancy Dippell. I'm the regulatory
6 law judge assigned to this matter. I'd like to go ahead and
7 begin with entries of appearance, find out who's present.

8 Can we start with Staff?

9 MR. HAAS: William K. Haas, appearing on
10 behalf of the Staff of the Missouri Public Service
11 Commission.

12 JUDGE DIPPELL: Office of Public Counsel?

13 MR. DANDINO: Michael Dandino, Office of the
14 Public Counsel.

15 JUDGE DIPPELL: Southwestern Bell?

16 MR. BUB: Leo Bub for Southwestern Bell
17 Telephone Company.

18 JUDGE DIPPELL: And then the Intervenors?

19 MR. GARDNER: Paul H. Gardner for Sprint
20 Communications Company, L.P.

21 JUDGE DIPPELL: Thank you.

22 Mr. Lumley, would you like to --

23 MR. LUMLEY: Carl Lumley of the Curtis,
24 Oetting law firm representing Brooks Fiber Communications of
25 Missouri, Inc.; MCI Metro Access Transmission Services, LLC;

1 MCI WorldCom Communications, Inc.; NUVOX Communications of
2 Missouri, Inc.; XO Missouri, Inc.; and MPower
3 Communications.

4 MS. CHASE: Lisa Chase of Andereck, Evans,
5 Milne, Peace and Johnson, representing the Missouri
6 Independent Telephone Group.

7 MR. DEFORD: Paul DeFord appearing on behalf
8 of AT&T Communications of the Southwest, Incorporated; TCG
9 Kansas City, Incorporated; and TCG St. Louis, Incorporated.

10 MS. YOUNG: Mary Ann Young, William D.
11 Steinmeier, representing McLeod USA Telecom Services, Inc.

12 JUDGE DIPPELL: And is there anyone else
13 present that would like to make an entry of appearance?

14 Don't see anyone.

15 The reason that we called the prehearing
16 conference today is mainly so that you all can have an
17 opportunity to discuss the issues further and make any
18 settlements, but I also wanted to ask about the status of
19 the discovery requests that were recently ordered.

20 Has Staff been receiving any additional
21 answers to their discovery requests?

22 MR. HAAS: Yes. We have been receiving
23 additional responses, but I don't know what the total count
24 is now.

25 JUDGE DIPPELL: And do you suspect that Staff

1 will request to file supplemental testimony because of that
2 or --

3 MR. HAAS: We may. That's still up in the air
4 depending upon the quality and quantity of the responses
5 that we receive.

6 JUDGE DIPPELL: Are you anticipating any
7 additional discovery motions or motions to compel, that kind
8 of thing?

9 MR. HAAS: We do not have any other
10 outstanding data requests other than those for which we've
11 already filed motions to compel.

12 JUDGE DIPPELL: Okay. Are there any other
13 discovery types of problems that anybody needs to bring to
14 my attention?

15 Mr. Dandino?

16 MR. DANDINO: Your Honor, since Public Counsel
17 has basically been relying on the data requests that --
18 responses that Staff has been garnering, we may have to file
19 supplemental testimony in response to the additional
20 information that comes in. I just wanted to let you know of
21 that. I don't think we have anything outstanding that we
22 would anticipate any problems with right now.

23 JUDGE DIPPELL: And let's see. There were a
24 lot of parties that said that they had -- I know AT&T, I
25 think, said that they had some things in progress in

1 response to Staff's motion. As far as you're aware, those
2 things are -- Mr. DeFord, those things are moving along,
3 answers are being found and --

4 MR. DEFORD: I believe they are, your Honor.

5 As a matter of fact, I've just been handed part of it.

6 JUDGE DIPPELL: Okay. Well, I would expect
7 that if you have any of those kinds of issues, that today is
8 an opportunity to work some of those things out.

9 I'm going to state that I'm not saying that
10 motions to file supplemental testimony would necessarily be
11 granted. I'm just wanting to know if you expect that that
12 might be necessary.

13 So are there any other types of issues like
14 that, motions or about other things that anyone can foresee?

15 MR. DANDINO: One --

16 JUDGE DIPPELL: Mr. Dandino?

17 MR. DANDINO: -- point I had, I was kind of
18 confused on what's kind of the status of the service list
19 now?

20 JUDGE DIPPELL: That was my next topic.

21 MR. DANDINO: I'll just leave that to you
22 then.

23 JUDGE DIPPELL: I wanted to see what the
24 status -- the current status is of the service list. As you
25 all are aware, I issued an order indicating that the records

1 department here had had some complications and that was that
2 the service list -- the things after the first order were
3 only being mailed to attorneys that were representing
4 parties and that was only about half of the parties, because
5 we automatically made all the CLECs parties.

6 There were approximately 45 or so of those
7 CLECs who are unrepresented that were not, as far as I can
8 tell -- had not been receiving orders and such from the
9 Commission. And that brought to my attention that perhaps
10 other parties had maybe been relying on the Commission's
11 service list. And the staff had the -- had the full group
12 in its service list, so all of its motions and so forth --
13 and so that's the reason I issued that order and asked you
14 all to respond that you had, in fact, served your documents
15 on the appropriate parties.

16 MR. DANDINO: I think one of the things that
17 we're -- that since the Commission made all those CLECs a
18 party rather than a notice for intervention, I think we were
19 assuming that unless they were represented by counsel, they
20 really hadn't intervened in the case and that was kind of
21 the confusion we had on that.

22 JUDGE DIPPELL: I understand the confusion and
23 perhaps that wasn't the best procedure to follow. However,
24 since they were parties in the case, I would expect that
25 they would be served.

1 That's the reason I wanted to make sure that
2 the Commission's service list was corrected and that those
3 parties were given an opportunity to say if they had been --
4 they should have known that they were parties and they
5 should have received at least copies of the motions and data
6 requests and so forth that staff served on them.

7 But I wanted to give those parties an
8 opportunity to say, We wanted to participate and we didn't
9 know about these procedural things, it was mainly the
10 procedural order and so forth.

11 But I was concerned about the fact that the
12 testimony -- I would certainly entertain a motion to amend
13 your service, perhaps send a notice of testimony filings to
14 those people asking them to tell you if they are interested
15 in receiving a copy of the testimony. I would entertain
16 that kind of amended service motion certainly, if you would
17 like to.

18 Mr. Lumley?

19 MR. LUMLEY: Just to build on that, just so
20 you understand the practical side, and I certainly
21 understand people should know, you know, and read what they
22 get and I agree with that. But even clients of mine that
23 are actually represented in the case, I have to keep
24 reminding them they're actually in the case, because they
25 didn't make an affirmative decision, you know, that it was a

1 case they wanted to participate in. So I can only imagine
2 what some of the folks out in the other lands -- that this
3 is hitting their desk and they don't understand yet what
4 it's really all about.

5 So I was wondering at some point perhaps after
6 the discovery phase is closed, whether it might be
7 appropriate just to dismiss parties that haven't shown an
8 affirmative interest, because we spend about \$150 in
9 postage, not counting the copying, sending all of our stuff
10 out, which we've complied with the directive obviously.

11 So at least with regards to briefs and things
12 later, you know, it would cut down on the parties' expenses.

13 JUDGE DIPPELL: I'll certainly take that into
14 consideration. I did that in a similar manner with 99-227.
15 It did cause some confusion, some parties got dismissed that
16 didn't want to be dismissed and so forth, but probably in
17 the long run it was less confusing.

18 That's why I wanted to give those people a
19 chance to say, yes, they do want to participate. And it's
20 very possible that before the hearing, an order dismissing
21 the parties that have not to this point shown an interest
22 could very well be issued.

23 MR. LUMLEY: Would it be appropriate for the
24 parties to -- if we agreed, to include something in the
25 issues list filing that suggests maybe a notice go out to

1 the full service list saying, you know, Please understand if
2 you don't appear at the hearing or make some arrangements,
3 that you're going to be dismissed or something like that?

4 JUDGE DIPPELL: I think that's something that
5 I can handle. That's probably not necessary for -- it's not
6 a technical issue, it's a procedural issue. I think our
7 general policy has been if you don't show up to the
8 prehearing conference, you're not very interested in the
9 case and the rule says that you may be dismissed at that
10 point.

11 So, again, I want to give those people --
12 because of the service list problem, I'm going to give those
13 people a chance to say that they weren't here because they
14 didn't know about it, but it's very possible that I'll send
15 out an order saying that exact thing, if you want to
16 participate, this is your last chance, say so or you're
17 going to be dismissed in 10 days.

18 So I would expect to see something like that
19 and we'll kind of clean this up. I don't think there's been
20 any harm up to this point. Like I say, I think everybody
21 should have known they were in the case. What they do with
22 that once they receive that information, there's nothing I
23 can do about that.

24 So are there any other questions about the
25 service list issue?

1 Are there any other procedural matters or
2 substantive matters that need to be brought to my attention
3 or any other questions?

4 Okay. That's all I had on my list for today,
5 so I appreciate you all coming and I hope you have a
6 productive day. I'll be upstairs if you have any questions.
7 Thank you.

8 This is adjourned.

9 (PRE-HEARING ADJOURNED.)

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