

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Arbitration Meeting

January 7, 2005  
Jefferson City, Missouri  
Volume 1

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11

12 In the Matter of Level 3 )  
Communications, LLC's Petition for )  
13 Arbitration Pursuant to Section )  
252(b) of the Communications Act )  
14 of 1934, as Amended by the ) Case No. TO-2005-0166  
Telecommunications Act of 1996, )  
15 and the Applicable State Laws for )  
Rates, Terms and Conditions of )  
16 Interconnection with Southwestern )  
Bell Telephone Company, L.P., )  
17 d/b/a SBC Missouri )

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MORRIS L. WOODRUFF, Presiding,  
SENIOR REGULATORY LAW JUDGE.

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22 REPORTED BY:

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MIDWEST LITIGATION SERVICES

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

2 JUDGE WOODRUFF: We're here for an initial  
3 arbitration meeting in Case No. TO-2005-0166, which  
4 concerns an arbitration petition between Level 3  
5 Communications and SBC of Missouri. And we're going to  
6 start by taking entries of appearance, beginning for  
7 Level 3.

8 MR. STEINMEIER: Thank you, your Honor.  
9 Let the record reflect the appearance of William D.  
10 Steinmeier, William D. Steinmeier, PC, P.O. Box 104595,  
11 Jefferson City, Missouri 65110-4595, and Erik Cecil,  
12 regulatory counsel for Level 3 Communications, LLC,  
13 1025 El Dorado Boulevard, Broomfield, Colorado, 80021 on  
14 behalf of Level 3 Communications, LLC.

15 JUDGE WOODRUFF: Thank you. And I might  
16 add that Mr. Cecil is going to be calling in on the  
17 telephone, is my understanding.

18 MR. STEINMEIER: That is my understanding  
19 as well, your Honor.

20 JUDGE WOODRUFF: We'll add him in when he  
21 calls. For SBC?

22 MR. GRYZMALA: Good morning, your Honor.  
23 My name is Bob Gryzmala, G-r-y-z-m-a-l-a, attorney for  
24 Southwestern Bell Telephone, doing business as SBC  
25 Missouri in this case. I am officed at One SBC Center,

1 Room 3516, St. Louis, Missouri 63101.

2 JUDGE WOODRUFF: Thank you.

3 MS. MacDONALD: And I'm Mimi MacDonald,  
4 also appearing on behalf of SBC.

5 JUDGE WOODRUFF: Thank you. And those are  
6 the parties for this case. I scheduled this arbitration,  
7 initial arbitration meeting just to get started on it. I  
8 know that under the federal guidelines SBC's response to  
9 the petition is due today. Has that been filed yet?

10 MR. GRYZMALA: No, your Honor, it has not,  
11 but it will be filed.

12 JUDGE WOODRUFF: Okay. A couple things I  
13 want to bring up, then. First of all, this is a new  
14 process that the Commission has recently incorporated, new  
15 rules that came into effect last summer, and this is the  
16 first arbitration petition that's going to be following  
17 those procedures. I have been appointed as arbitrator by  
18 the Commission to prepare an initial arbitration report,  
19 which will then be approved or disapproved by the  
20 Commission subsequently. And obviously we'll need to be  
21 doing a procedural schedule to determine exactly how we  
22 want to proceed in this case.

23 The regulation also provides that I'm  
24 entitled to -- authorized to appoint an arbitration  
25 advisory staff to help assist me in the arbitration, and

1     since this is a new process, exactly how that arbitration  
2     staff is going to assist me is still a little bit up in  
3     the air. But I have spoken with the Staff and received  
4     several names as recommended arbitration staff, and they  
5     are with us here today in the back of the room.

6                     I'll go ahead and list their names.  
7     They're all members of the Staff. Bill Voight, Natelle  
8     Dietrich, Art Kuss, K-u-s-s, Mike Scheperle, Mick Johnson  
9     and Nathan Williams, who is with the General Counsel's  
10    Office. And I have not officially appointed them yet. I  
11    want to run them past you first to see if there's any  
12    objection to any of those names from either party.

13                    Mr. Steinmeier?

14                    MR. STEINMEIER: Your Honor, Level 3 has  
15    complete confidence in the competence and professionalism  
16    of these individuals. The rule provides that the advisory  
17    staff -- as I understand the rule or interpret the rule,  
18    it provides that the advisory staff is to give technical  
19    advice to the arbitrator and not perform an advocacy role  
20    in the arbitration, and Level 3 is confident that these  
21    individuals will diligently strive to be independent and  
22    objective in the performance of those responsibilities.  
23    So we have no objection to your appointment of this  
24    advisory staff.

25                    JUDGE WOODRUFF: Mr. Gryzmala?

1                   MR. GRYZMALA: Your Honor, we likewise have  
2 reviewed the rule relating to the advisory staff, and have  
3 no objection whatsoever. We are together with  
4 Mr. Steinmeier in indicating that we have complete  
5 confidence that all will be well, and we'll proceed.

6                   JUDGE WOODRUFF: Okay. As Mr. Steinmeier  
7 indicated, the advisory staff is not going to be taken --  
8 is not going to be taking an advocacy position in the  
9 case. They won't be filing any testimony. They are  
10 subject to the same ex parte limitations as I am.  
11 Therefore, they won't be able to discuss the case with the  
12 parties except in the formal setting such as this. So  
13 basically there shouldn't be any contact with them that  
14 wouldn't be made to me.

15                   I anticipate their advice and counsel in  
16 discussing the testimony that will be filed by the parties  
17 with me before the hearing, assuming there is a need for a  
18 hearing, which we'll discuss later. They may help me  
19 prepare questions for witnesses and indicate to me  
20 possible issues that I may want to address. And I'll let  
21 the parties tell me if there's anything else you think I  
22 should be using these people for, or if there's anything  
23 that in your previous experience with these sort of  
24 arbitrations, if there's any possible problems that I  
25 should avoid.

1                   Mr. Steinmeier?

2                   MR. STEINMEIER: Not offhand, your Honor.

3                   JUDGE WOODRUFF: All right. For SBC?

4                   MR. GRYZMALA: Nothing occurs except that I  
5 would trust that the advice and analysis provided would be  
6 shared with Level 3 and SBC Missouri. I trust that would  
7 be the case, though.

8                   MS. MacDONALD: I have just one question.  
9 In prior arbitrations when we didn't have the rule, the  
10 Staff participated in the DPL and they had their own  
11 position statement in the DPL. Under the new rules, is  
12 Staff going to have a position statement or participate in  
13 the participation of the DPL or not?

14                  JUDGE WOODRUFF: I anticipate that they  
15 would not, since they're not a party. And I want to try  
16 to be as open about this as possible because this is a new  
17 process. I certainly don't want to try to hide anything  
18 from anybody. And we'll see how it works, and if -- if  
19 there's anything you want to bring to my attention as  
20 arbitrator, please do so.

21                  All right. Then we need to move on to talk  
22 about possible procedural schedules. I will tell you that  
23 I have blocked off the week of February 14th through the  
24 18th for a hearing. I don't know if we'll actually need  
25 that much time. One advantage is that I will be presiding

1 at the hearing; there won't be any Commissioners there.

2 That means as a practical matter things will go faster,  
3 because the Commissioners won't be asking questions.

4 So you'll need to tell me how much time you  
5 think we might need. And since I haven't seen SBC's  
6 response yet, I don't know how many -- I don't know if any  
7 other issues will be rising or will it go away, and you  
8 may want some time to discuss that today.

9 MR. STEINMEIER: I don't know the answer to  
10 that question. I did just mention to Mr. Gryzmala before  
11 we went on the record that Level 3 would like to advance  
12 that schedule -- forward and backward always get confused  
13 in my mind in discussions of calendars, so we'd like to  
14 move the hearing a week earlier, but we think it can be  
15 done in less than a week.

16 There have been some procedures employed  
17 between Level 3 and SBC and several other -- in several  
18 other states now where testimony has gone in and  
19 cross-examination has not been exactly the routine  
20 procedure and it has saved a great deal of time, and we  
21 think we can probably work out some formulation here that  
22 would save several of those hearing dates.

23 We're concerned about making sure that  
24 there's enough time for adequate briefing and adequate  
25 consideration by the arbitrator. I have personally served



1 as an arbitrator on complex telecommunication matters,  
2 and -- but not this many issues, necessarily this complex,  
3 and this schedule is hellacious. So we're concerned that  
4 we get things to hearing as early as absolutely possible.

5 We've also cleared February 7 and 8 with  
6 our witnesses and know they can make that. We have some  
7 conflicts in the week of the 14th. But this may be a  
8 matter that we want to go off the record and visit about,  
9 and I think if your Honor's open to this possibility,  
10 during that break I could also call Mr. Cecil and make  
11 sure that he hasn't tried to call in or isn't waiting for  
12 my call to call him.

13 JUDGE WOODRUFF: I certainly don't have any  
14 problem with moving it up a bit. I'm not sure what the  
15 Commission's calendar looks like on the 7th and 8th, but  
16 we could probably do it in this room even if there's a  
17 hearing going on next door. So that's certainly a  
18 possibility.

19 What we'll do then is we'll go off the  
20 record. We'll come back at 10:30, if you think that's  
21 enough time, or did you want more time than that?

22 MS. MacDONALD: Well, your Honor, we'll try  
23 to make some phone calls, but since we never heard about  
24 the proposal to move it up, I'm not so sure we'll be able  
25 to contact our witnesses to make sure they're available

1     that week.

2                   MR. GRYZMALA:  And I would add, your Honor,  
3     I mean, preliminarily, subject to our discussions with  
4     Mr. Steinmeier, I think we share agreement on the basic  
5     concept that no hearing need go a full five days.  I think  
6     his and our experience generally is that approximately two  
7     days.  We'll talk about that.

8                   The other thing, and Ms. MacDonald makes a  
9     most accurate point, we have not anticipated an escalation  
10    of the hearing date, and quite candidly, several of the  
11    witnesses whom we would expect will be providing testimony  
12    here are involved in multiple proceedings in other states,  
13    some involving Level 3, others involving other parties,  
14    and others in other jurisdictions.  We'll take that up as  
15    well, if your Honor would permit, informally among  
16    Mr. Steinmeier and me and Ms. MacDonald.

17                  Finally, some discussion would be  
18    fruitful -- or this discussion would be even more fruitful  
19    were we to assume that in the event that Level 3 or SBC  
20    for that matter were to decide down the road to waive  
21    cross on a witness, whether it would be agreeable to your  
22    Honor and to all counsel that those party -- that those  
23    witnesses need not be physically present at the hearing,  
24    because that, too, would present a crunch otherwise.

25                  JUDGE WOODRUFF:  Sure.  Of course, I'd need

1 to be able to see the testimony. I'd need to see the  
2 testimony first to decide whether or not I have questions.

3 MR. STEINMEIER: Your Honor, I would just  
4 add that I did try, but it was too late last evening to  
5 communicate with --

6 MS. MacDONALD: I certainly didn't mean  
7 that as a slight.

8 MR. STEINMEIER: -- by voicemail and  
9 e-mail, but they were too late in the evening and, of  
10 course, these folks were on the road very early this  
11 morning to get down here, and unfortunately, we didn't get  
12 those messages.

13 JUDGE WOODRUFF: Well, I of course want the  
14 parties to be able to present good testimony and have a  
15 hearing that everyone has a chance to present their case,  
16 but certainly an extra week for me to process the -- to  
17 write my decision and so forth is certainly fine with me.

18 All right. Well, we'll go ahead and take a  
19 break. We'll come back at -- let's just go ahead and say  
20 10:45. We'll go back on the record at 10:45 and we'll  
21 discuss where we're at then.

22 We're off the record.

23 (A BREAK WAS TAKEN.)

24 JUDGE WOODRUFF: We're back on the record  
25 after our break. When we took a break, I gave you a

1 chance to talk about scheduling and when we might need to  
2 do a hearing. Was there any resolution reached on that?

3 MR. STEINMEIER: Well, no, your Honor, but  
4 not -- not without effort, and it doesn't mean none can  
5 be. This is a little schedule that I had roughed out just  
6 this morning, and I apologize I didn't know how many fans  
7 this event would draw. Because I thought it might be  
8 helpful to everybody to have sort of a calendar in front  
9 of them. I think that's one of the problems that's  
10 inherent in the Commission rule is that nobody went  
11 through this process exactly and tried to figure out,  
12 okay, if we allow this much time for this and that much  
13 time for that, how does that work in actual practice?

14 Unfortunately, the new rule doesn't. The  
15 Commission's interpretation of its jurisdiction seems to  
16 indicate -- which so far as I know is unique in the  
17 nation -- seems to indicate that nobody can agree to  
18 extend the final nine-month deadline for a decision in  
19 this matter. At least it's clear from Commission orders  
20 that the arbitration window is not allowed to be extended  
21 in Missouri, although it is in every other state that I  
22 know of, if it's agreed to by both parties. So if April  
23 6th is carved in stone, we have practical problems.

24 JUDGE WOODRUFF: Let me interrupt you here.  
25 I get the impression from what you're saying that you

1 would like to have April 6th not be carved in stone.

2 MR. STEINMEIER: I suspect that everybody's  
3 life involved in this process would be easier were  
4 April 6th not carved in stone.

5 JUDGE WOODRUFF: Is that SBC's view as  
6 well?

7 MR. GRYZMALA: No, it is not, your Honor.  
8 I think the Commission has made it abundantly clear that  
9 not only strict adherence to the timelines in the Act is  
10 required in this state, in Missouri, and it's reminded us  
11 of that in its order scheduling the initial arbitration  
12 meeting. On the cover page the Commission makes it clear  
13 that the parties would be expected to move forward in the  
14 time allowed by statute, and that there is some  
15 flexibility on your Honor to move dates around to get the  
16 work done, so long as the arbitration complies with the  
17 deadlines of the Act.

18 So that is not our position, your Honor.

19 JUDGE WOODRUFF: Okay. You may proceed,  
20 Mr. Steinmeier.

21 MR. STEINMEIER: Well, the practical  
22 problem with what esteemed counsel just offered is that  
23 although I've suggested a January 14 date for filing  
24 testimony by SBC, for example, it's my understanding that  
25 they don't believe they could file testimony until

1 January 28th. Now, in our original motion for expedited  
2 treatment, we suggested they file testimony today with  
3 their response. The 28th would be a full three weeks  
4 after that, and allow very little time for Level 3 to have  
5 the opportunity to review that testimony before hearing,  
6 whether we were able to schedule a hearing on the 7th and  
7 8th of February or the current schedule the week of the  
8 14th.

9 But back to the very specific question you  
10 started with, SBC has indicated that its witnesses would  
11 not be available on February 7th and 8th due to legitimate  
12 scheduling conflicts, their participation and necessity of  
13 appearing in other arbitrations in other jurisdictions  
14 involving different companies.

15 Level 3 is going back and trying to see if  
16 there are any two days within the week of the 14th that we  
17 could possibly present witnesses, but I don't have the  
18 answer to that question, and I'm not certain just how  
19 quickly we can answer that question.

20 JUDGE WOODRUFF: I might note that I  
21 checked the calendar for the -- well, really those entire  
22 two weeks are -- this room at least is available. So we  
23 have a great deal of flexibility on the Commission, on my  
24 side as to when we might want to schedule this.

25 Go ahead, Mr. Gryzmala.

1                   MR. GRYZMALA: Your Honor, I think there  
2 are -- there is some agreement on some things between  
3 myself and opposing counsel that you might want to be  
4 aware of so that we can work within those parameters. I  
5 think first it's fair to say that we both agree that fewer  
6 than five days is needed. When we receive --

7                   MR. STEINMEIER: What's that?

8                   MR. GRYZMALA: I'm sorry?

9                   MR. STEINMEIER: I just didn't hear you.

10                  MR. GRYZMALA: Okay. We both agree, I  
11 believe, that fewer than five days of full hearing time is  
12 needed. When we received the Commission's order dated  
13 December 28, knowing our witness conflicts in other  
14 states, we put people on notice ASAP, and so we have  
15 carved out that week. We are fully prepared to move  
16 forward that week.

17                  We are equally prepared to work within that  
18 week to arrive at any two-day interval, whether back to  
19 back, Monday/Wednesday, mornings only, whatever we can do  
20 presumably to make this happen within the week of February  
21 14th.

22                  The optimum situation from our perspective,  
23 your Honor, would be that if we were to arrive at  
24 February 15 and 16, which is a Tuesday and Wednesday, that  
25 allows folks to use Monday, ours as well as Level 3's, to

1 use Monday as their travel day so that they can be with  
2 their families over the weekend. Some of these folks  
3 involved in this case are going to be involved in  
4 unrelated arbitrations in another state the week prior.  
5 So presumably they would like to have the weekend with  
6 their family. They could travel on Monday and then be  
7 prepared to go into hearing on a Tuesday and a Wednesday.

8 That would be our proposal, your Honor.

9 And I would, if you'll bear with me for just a moment,  
10 like you to take a look at Mr. Steinmeier's draft piece  
11 that he just circulated, and let me just refer to that  
12 very briefly, because you are entitled, all of us are  
13 entitled to know what could unfold.

14 Our response is due today. We will make  
15 that filing. A revised statement of unresolved issues is  
16 due on January 14. We intend to making filing and to work  
17 with Level 3 to make sure that it's a filing that's  
18 accurate and complete and easily manageable. We also  
19 think from my personal perspective that this next week, to  
20 the extent it affords us an opportunity to resolve some  
21 issues, ought to be used productively. So we want to use  
22 that week.

23 With regard to the SBC testimony, instead  
24 of January 14th, Mr. Steinmeier's correct when I conveyed  
25 to him in the hall that we certainly require, if I may



1 say, January 28. It is true that the testimony was filed  
2 along with the petition. We know that. But nonetheless,  
3 as we pointed out in our pleadings, we had folks who had  
4 vacation time that was banked as it were to the end of the  
5 year and they took that time. And they should not be  
6 subject to proceedings being hijacked simply because  
7 testimony is filed with the petition.

8                   Nonetheless, January 28 -- and we've done  
9 that with an eye towards making sure that everything can  
10 be done comfortably. On February 1, we would propose in  
11 the spirit of continuing negotiations to file any changes  
12 to the DPL that would result -- that would reflect  
13 settlement, if any, after the January 14 filing.  
14 In other words, if there's any further narrowing of the  
15 issues after January 14, we would like to have that filing  
16 made on February 1. February 9th would present the list  
17 of witnesses, order of witnesses, order of cross.

18                   MR. STEINMEIER: I'm sorry. When?

19                   MR. GRYZMALA: February 9th. That's a date  
20 that could easily be worked with. The next operative date  
21 we have is February 15/16 for a hearing. March 2nd,  
22 simultaneous briefs. That gives about as much time, I  
23 believe, as Mr. Steinmeier's proposal, if not just a bit  
24 more for the parties to present briefs. That would be  
25 March 2nd, excuse me, and then tentatively schedule

1 simultaneous replies for March 9, with your Honor's  
2 suggested ruling approximately two weeks later on  
3 March 23rd and a ruling when the Commission has indicated  
4 would be ultimately the 270-day deadline, April 6th.

5                   There may be some wrinkles in this, your  
6 Honor, but these are the broad parameters that assume a  
7 couple of things; ample time to prepare testimony, time to  
8 devote to some settlement discussions so we can try and  
9 narrow these DPL issues, because as Mr. Steinmeier noted,  
10 these proceedings are going on in multiple other states,  
11 and then enough time for briefing and ruling and what have  
12 you.

13                   JUDGE WOODRUFF: Well, the problem I see  
14 with that is that you've indicated my initial arbitrator's  
15 report would be due on March 23rd. The rule requires  
16 allowing 10 days for comments to be filed to that. So we  
17 would be looking at April 2nd already, I believe, at that  
18 point, or April 1st. That doesn't give the Commission any  
19 time to review it. So we'll need to squeeze that in  
20 sooner.

21                   MR. GRYZMALA: It may be that that would  
22 result in acceleration of the briefing requirement then,  
23 because we certainly want to give you sufficient time.

24                   JUDGE WOODRUFF: Yeah. And it's going to  
25 take me some time to write it, but it's also time to

1 review it, and the Commission needs to have some time to  
2 review it and get it on their agenda in case they have  
3 problems with it, too. Certainly does present a time  
4 crunch.

5 MR. STEINMEIER: And this crunch, your  
6 Honor, is exactly why Level 3 took it upon itself to file  
7 testimony with the petition, although it's not clear from  
8 the rule whether that's required. But as a practical  
9 matter, it appeared to us to be required for there to be  
10 any possibility of completing this proceeding in the time  
11 allotted.

12 We agree that we need adequate time for  
13 briefing and for review and for your drafting process,  
14 which is why I'm more than a little frustrated by the idea  
15 that SBC can't file testimony until the 28th of January.  
16 So we're using up time for filing testimony.

17 They filed testimony in 12 other states on  
18 many of the same issues involving many of the same -- I'm  
19 sorry, your Honor. Could we recess for a moment?

20 JUDGE WOODRUFF: Certainly. Go off the  
21 record.

22 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

23 JUDGE WOODRUFF: Mr. Steinmeier?

24 MR. STEINMEIER: I apologize for the  
25 cellphone going off, but it was an inquiry that directly

1 pertained to this matter, and that was Level 3 informing  
2 me that we would be able to get witnesses here to try this  
3 matter on February 16 and 17, but not on the 15th.

4 JUDGE WOODRUFF: Sounds like we've got some  
5 dates for the hearing, then. Is that acceptable to SBC?

6 MR. GRYZMALA: I think so, your Honor.  
7 Wednesday, February 16, and Thursday, February 17?

8 JUDGE WOODRUFF: Yes. One other question I  
9 had and since this -- the rule indicates that this is  
10 going to be a final-offer-type arbitration, at what point  
11 do the parties want to submit what will be their final  
12 offers?

13 Mr. Steinmeier, I'll ask you first.

14 MR. STEINMEIER: I don't have a clear  
15 answer to that, your Honor. And I realize now that I  
16 didn't address it on my proposed schedule here. It's  
17 a -- it's a provision in the rule that's mildly confusing  
18 to me, since the process of negotiation is clearly under  
19 the rule supposed to continue even after what are  
20 designated as final offers, so I'm not exactly sure what  
21 that means, I guess, and it's something new.

22 JUDGE WOODRUFF: As I understand the  
23 procedure that I'm supposed to follow, I have to choose  
24 one or the other, unless both are contrary to public  
25 interest. So at some point the parties need to say, this

1 is my final offer to give me an idea of what to choose. I  
2 assume that would be sometime after the hearing, possibly  
3 even after the Briefs or maybe as part of the Briefs or at  
4 the same time as the Briefs. So --

5 MR. GRYZMALA: Your Honor, I don't have an  
6 answer. I mean, I will say that it occurs to me that the  
7 timelines we've established for purposes of filing a final  
8 DPL reflect the parties' disputed language. We had -- I  
9 had suggested that February 1 appears compatible with the  
10 final offer rule because it would be issued by issue, not  
11 entire package. The rule indicates as well that the time  
12 limits for submission of final offers should precede the  
13 date of evidentiary hearing, so that a February 1  
14 submission of a revised DPL and an accompanying appendices  
15 would be compatible with that, and I quite frankly would  
16 expect, if not hope, that the parties would continue  
17 negotiations as we do in any other case.

18 JUDGE WOODRUFF: Certainly. All right.

19 MR. GRYZMALA: But my point is that subject  
20 to some discussion with Mr. Steinmeier, February 1 looks  
21 to be a plausible date for the filing of a final offer.

22 JUDGE WOODRUFF: Okay.

23 MR. GRYZMALA: By both parties.

24 MR. STEINMEIER: Your Honor, is this  
25 something that you could reserve ruling on for a couple of

1 days?

2 JUDGE WOODRUFF: Oh, I don't intend to make  
3 any rulings today. What I'll do is give you a chance to  
4 discuss this more amongst yourselves, ask you to file  
5 something on next Tuesday. Hopefully by that time you'll  
6 be able to reach an agreement as to exactly what you want  
7 to see in an Order.

8 Just keep in mind, of course, as I  
9 indicated, I do need to have time for the Commission to  
10 review my decision, so we can be up against the very end  
11 of April, and --

12 MR. STEINMEIER: Part of my concern about  
13 moving the process along and the -- I guess I was starting  
14 to say before my phone call arrived, we did not choose to  
15 file testimony up front in order to cost anybody at SBC  
16 their holidays, but just trying to make sense of the new  
17 rule and how it could work as a practical matter.

18 Under the rule that's promulgated, the  
19 Commission would have 50 days of its own consideration of  
20 your final arbitrator's report; you would have 60, they  
21 would have 50. So any time that the Commission has the  
22 report less than 50 might be considered a sacrifice on the  
23 Commission's part, and I'm sensitive to how they might  
24 react to --

25 JUDGE WOODRUFF: I understand, and that was

1 discussed with the Commission at the time I was appointed,  
2 and they were aware that they would not be able to get  
3 that entire 50 days, and they didn't have a problem with  
4 that.

5 MR. STEINMEIER: Right, but how much less  
6 may be another issue.

7 MS. MacDONALD: But just in discussing the  
8 rules, I mean, that's not going to change because the  
9 hearing dates are the ones that are set. That doesn't  
10 really have any bearing on when we file testimony.

11 JUDGE WOODRUFF: That's true.

12 MS. MacDONALD: It's when the hearing dates  
13 are, it seems those dates have already been established.

14 MR. GRYZMALA: That's fairly stated. Not  
15 to belabor the obvious, your Honor, but I think the job  
16 for us as counsel is to provide you a schedule that suits  
17 everyone between the dates of the hearing, which would be  
18 February 16 and 17, and the date of a final decision,  
19 April 6th. If your Honor has any particular preference  
20 or, you know, or things that counsel should consider  
21 before we start to sculpt that schedule and submit it to  
22 you on Tuesday, we'd certainly be willing to work with  
23 that.

24 JUDGE WOODRUFF: I think I've given you  
25 some idea, and hopefully you can give me some agreement.

1 Obviously if you can't reach an agreement on Tuesday, file  
2 competing schedules and I'll make a decision.

3 MR. GRYZMALA: So your direction then would  
4 be to file a joint proposed schedule?

5 JUDGE WOODRUFF: Yes. Anything else that  
6 needs to be brought up while we're still on the record?

7 (No response.)

8 JUDGE WOODRUFF: All right, then, if you'll  
9 file that proposed procedural schedule on Tuesday. Thank  
10 you all very much. We're off the record.

11 WHEREUPON, the recorded portion of the  
12 hearing was concluded

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