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STATE OF MISSOURI

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PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS

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Prehearing Conference

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August 20, 2004

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Jefferson City, Missouri

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Volume 1

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In the Matter of the )

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Determination of Prices, )

And Conditions of )

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Certain Unbundled Network ) Case No. TO-2005-0037

Elements: Consideration )

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Upon Remand from the )

United States District Court )

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MORRIS L. WOODRUFF, Presiding

SENIOR REGULATORY LAW JUDGE

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REPORTED BY:

Jennifer Johnson-Cook, CCR (T)

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MIDWEST LITIGATION SERVICES

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JUDGE WOODRUFF: We'll let's go ahead and get started then. Good morning everyone, and welcome to the prehearing conference in Case TO-2005-0037, which is the determination of prices, terms and conditions of certain unbundled network elements, consideration upon remand from the United States District Court.

As I indicated we're here for a prehearing conference. We'll begin by taking entries of appearance, beginning with SBC.

MR. BUB: Thank you, your Honor. Leo Bub for SBC, Missouri. My address is One SBC Center, St. Louis, Missouri 63101.

JUDGE WOODRUFF: Thank you. For the Staff.

MR. HAAS: William K. Haas, appearing on behalf of the Staff of the Missouri Public Service Commission. My address is Post Office Box 360, Jefferson City, Missouri.

JUDGE WOODRUFF: I don't see anyone from the Public Counsel. There are several other attorneys in the room, I'll just go ahead and ask them who they are here for.

MR. LUMLEY: Morning, Judge. Carl Lumley, of the Curtis and Hines Law Firm. 130 South Bemiston,

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1 Suite 200, Clayton, Missouri 63105. We have a written  
2 entry of appearance on file so I won't read the full  
3 names of the companies. We're here for NewVox, MCI  
4 Metro, MCI World Com, XO Missouri, Alliance Telecom,  
5 AT&T, TCG St. Louis and TCG Kansas City.

6 JUDGE WOODRUFF: Mr. Lumley, is that  
7 basically the joint sponsors from the previous  
8 proceedings.

9 MR. LUMLEY: Most of them, but I don't  
10 believe it's all of them. I think there were others, as  
11 well.

12 JUDGE WOODRUFF: Okay. Mr. Comley.

13 MR. COMLEY: Morning, Judge. Let the record  
14 reflect the entry of appearance of Mark W. Comley, with  
15 Comley and Ruth, 601 Monroe, Jefferson City, Missouri  
16 65101. And appearing along side of Mr. Lumley on behalf  
17 of AT&T Communications Southwest Inc., and the also  
18 First Telecom Missouri Inc., both of which were the  
19 parties to the action below, and I think it was 438 or  
20 440 case.

21 JUDGE WOODRUFF: Yes. Okay.

22 MS. YOUNG: Thank you, Judge. Please  
23 reflect the appearance of Mary Ann Young with William D.  
24 Steinmier PC. Our address is P.O. Box 104595, Jefferson  
25 City, Missouri 65101. Appearing this morning on behalf

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1 of McLeod USA Telecommunications Service, Inc., an  
2 intervenor in the prior case.

3 JUDGE WOODRUFF: All right. And I think  
4 that's all the attorneys in the room. I asked you all  
5 to come to this prehearing conference just to get  
6 suggestions from the party on how to proceed. There  
7 have been some questions as -- of course, it's been  
8 remanded on particular issues with dealing with the  
9 appropriate capital structure that should be impeded to  
10 Southwestern Bell and calculating these rates. Let me  
11 ask -- I'll start out with SBC. What is your  
12 recommendations on how the Commission should proceed?

13 MR. BUB: Thank you, your Honor. What the  
14 Commission needs to do is look at the Court's order from  
15 the Direct Court. And what they did there was they  
16 remanded, and their mandate was to reconsider the  
17 appropriate capital structure and the resulting rates.  
18 So with that mandate, the Commission could, if it  
19 desired, simply go back and issue a new order using the  
20 standard for capital structure that's articulated in the  
21 order.

22 We believe, however, that it might be  
23 helpful for the Commission to have some further briefing  
24 so the parties could explain to the Commission what  
25 their views are on where the capital structure ratio or

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1 where that number should come out.

2 So our recommendations would be for, perhaps  
3 a round of briefs.

4 JUDGE WOODRUFF: Okay. So no need for new  
5 testimony or anything?

6 MR. BUB: No, your Honor.

7 JUDGE WOODRUFF: Do any of the other parties  
8 believe there will be a need for further testimony?

9 MR. HAAS: Yes, your Honor. The Staff would  
10 purpose there be additional rounds of testimony limited  
11 to the appropriate capital structure to be used in this  
12 case, and then that would probably be followed up by  
13 additional hearing and additional briefing.

14 JUDGE WOODRUFF: What's the reason for  
15 additional testimony?

16 MR. HAAS: We start with the SCC regulation  
17 46 CFR Section 51505D1, that states indebted costs shall  
18 not be considered. And from that statement, the  
19 District Court took what is perhaps an unexpected  
20 extrapolation to say that the State Commission could not  
21 use the booked capital structure even as a starting  
22 point.

23 And the Staff testimony used the book  
24 capital structure as its' starting point and with this  
25 unexpected interpretation by the District Court, the

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1 Staff would ask for the opportunity to provide  
2 additional testimony on the capital structure.

3 JUDGE WOODRUFF: Anyone else want to be  
4 heard on the question?

5 MR. LUMLEY: Yes, your Honor. Carl Lumley,  
6 for various intervenors. It's our view that the result  
7 of this remand would be a perspective change in rates,  
8 from whatever date of the determination is made. And  
9 therefore we believe that new testimony is in order.  
10 That it would not be appropriate to make a decision in  
11 2004, based on evidence that was adduced in 2001 and  
12 which, in fact, the record would reflect, in large part,  
13 was based on the data from 1999. So we believe that,  
14 given the passage of time and the changes and the  
15 economy, that new testimony is necessary in order to  
16 come up with a currently applicable number that would be  
17 appropriately applied on a prospective basis.

18 Additional, we submit that because the  
19 determination of weighted average costs of capital is a  
20 integrated mathematical calculation, and again, in  
21 making a prospective decision. It would not make sense  
22 to simply look at 2004 capital structure and then import  
23 into the calculation the old cost off equity and cost of  
24 debt numbers, but rather reconsider the entire issue and  
25 come up with, you know, numbers that actually work

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1 together and from the same set of data and come up with  
2 a new prospective figure. So that's our view on the  
3 situation.

4 JUDGE WOODRUFF: Okay. Well, it sounds like  
5 we have a disagreement among the parties. I'm going to  
6 give you the chance to discuss that amongst yourselves  
7 and maybe reach a resolution, maybe not. What I'm going  
8 to ask you to do is file what we call a purposed  
9 procedural schedule for a week from today, which will be  
10 the 27th.

11 If I agree upon a procedural schedule  
12 involving either new testimony or briefs only, that's  
13 fine, file as jointly. If there's a disagreement  
14 amongst the party as to the proper way to proceed and  
15 you want to file a separate proposal, you can do that,  
16 as well. The Commission will make a final determination  
17 as how we want to proceed.

18 Is there anything else that anyone want's to  
19 bring up while we're on the record?

20 MR. LUMLEY: Just to clarify. It would be  
21 -- and hopefully we can reach an agreement, but assuming  
22 that we don't, it would be appropriate for us also to  
23 file some kind of suggestions or briefing.

24 JUDGE WOODRUFF: Certainly.

25 MR. LUMLEY: Okay.



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1 JUDGE WOODRUFF: I don't expect you to file  
2 hundreds of pages.

3 MR. LUMLEY: No.

4 JUDGE WOODRUFF: But certainly, you will  
5 have your chance to argue your side.

6 MR. LUMLEY: Right.

7 JUDGE WOODRUFF: Anyone else that --  
8 anything else that you want to bring up while we're on  
9 the record? All right. With that then, we are  
10 adjourned for the on-the-record portion and I'll leave  
11 you to your discussion.

12 Thank you all very much.

13 (AT THIS TIME THE HEARING WAS CONCLUDED)

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I, Jennifer Renee Johnson-Cook a Certified Court  
Reporter, C.C.R. No. 1041, the officer before whom the  
foregoing deposition was taken, do hereby certify that  
the witness whose testimony appears in the foregoing  
deposition was duly sworn by me; that the testimony of  
said witness was taken by me to the best of my ability  
and thereafter reduced to typewriting under my  
direction; that I am neither counsel for, related to,  
nor employed by any of the parties to the action in  
which this deposition was taken, and further that I am  
not a relative or employee of any attorney or counsel  
employed by the parties thereto, nor financially or  
otherwise interested in the outcome of the action.

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Jennifer R. Johnson-Cook  
Notary Public within and  
for Cole County, of Missouri  
My commission expires 10-27-2007