

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
  
TRANSCRIPT OF PROCEEDINGS  
  
Prehearing Conference  
  
February 8, 1999  
Jefferson City, Missouri  
Volume 1

In the Matter of the Application of )  
Southwestern Bell Telephone Company )  
to Provide Notice of Intent to File ) Case No. TO-99-227  
an Application for Authorization to )  
Provide In-Region InterLATA )  
Services Originating in Missouri )  
Pursuant to Section 271 of the )  
Telecommunications Act of 1996. )

NANCY M. DIPPELL, Presiding,  
SENIOR REGULATORY LAW JUDGE.

REPORTED BY:  
  
KELLENE K. FEDDERSEN, CSR, RPR  
ASSOCIATED COURT REPORTERS, INC.

1 APPEARANCES:

2 PAUL G. LANE, General Attorney-Missouri  
KATHERINE C. SWALLER, Attorney at Law  
3 One Bell Center, Room 3520  
St. Louis, Missouri 63101  
4

5 FOR: Southwestern Bell Telephone Company.

W.R. ENGLAND, III, Attorney at Law  
6 Sondra B. Morgan, Attorney at Law  
Brydon, Swearngen & England, P.C.  
7 P.O. Box 456  
312 East Capitol Avenue  
8 Jefferson City, Missouri 65102-0456

9 FOR: Alltel Missouri, Inc.  
BPS Telephone Company.  
10 Cass County Telephone Company.  
Citizens Telephone Company of  
11 Higginsville, Missouri, Inc.  
Craw-Kan Telephone Cooperative, Inc.  
12 Ellington Telephone Company.  
Farber Telephone Company.  
13 Fidelity Telephone Company.  
Goodman Telephone Company, Inc.  
14 Granby Telephone Company.  
Grand River Mutual Telephone  
15 Corporation.  
Green Hills Telephone Corp.  
16 Holway Telephone Company.  
Iamo Telephone Company.  
17 Kingdom Telephone Company.  
KLM Telephone Company.  
18 Lathrop Telephone Company.  
Le-Ru Telephone Company.  
19 Mark Twain Rural Telephone Company.  
McDonald County Telephone Company.  
20 Miller Telephone Company.  
New Florence Telephone Company.  
21 New London Telephone Company.  
Orchard Farm Telephone Company.  
22 Oregon Farmers Mutual Telephone Co.  
Ozark Telephone Company.  
23 Rock Port Telephone Company.  
Seneca Telephone Company.  
24 Steelville Telephone Exchange, Inc.  
Stoutland Telephone Company.  
25

1 MATTHEW D. TURNER, Attorney at Law  
Andereck, Evans, Milne, Peace & Baumhoer  
2 P.O. Box 1438  
305 East McCarty Street  
3 Jefferson City, Missouri 65102  
4 FOR: Mid-Missouri Group.  
5 JAMES M. FISCHER, Attorney at Law  
101 West McCarty, Suite 215  
6 Jefferson City, Missouri 65101  
7 FOR: Associated Industries of Missouri.  
8 PAUL DeFORD, Attorney at Law  
Lathrop & Gage  
9 2345 Grand Boulevard  
Kansas City, Missouri 64108  
10 FOR: AT&T Communications of the S.W., Inc.  
11 ACI Corp.  
12 MICHELLE SLOANE BOURIANOFF, Attorney at Law  
919 Congress, Suite 900  
13 Austin, Texas 78701  
14 FOR: AT&T Communications of the S.W., Inc.  
15 KENNETH A. SCHIFMAN, Attorney at Law  
8140 Ward Parkway, 5E  
16 Kansas City, Missouri 64114  
17 FOR: Sprint Communications Company L.P.  
18 MARK P. JOHNSON, Attorney at Law  
Sonnenschein, Nath & Rosenthal  
19 4520 Main Street, Suite 1100  
Kansas City, Missouri 64111  
20 FOR: Birch Telecom of Missouri, Inc.  
21 RONALD MOLTENI, Assistant Attorney General  
22 MARK E. LONG, Assistant Attorney General  
P.O. Box 899  
23 Supreme Court Building  
Jefferson City, Missouri 65102  
24 FOR: State of Missouri.  
25

1 MARK W. COMLEY, Attorney at Law  
2 Newman, Comley & Ruth  
3 601 Monroe, Suite 301  
4 P.O. Box 537  
5 Jefferson City, Missouri 65102  
6  
7 FOR: Show Me Competition.  
8 Next Link Missouri, Inc.  
9  
10 CHARLES BRENT STEWART, Attorney at Law  
11 Stewart & Keevil  
12 1001 Cherry Street, Suite 302  
13 Columbia, Missouri 65201  
14  
15 FOR: Intermedia Communications, Inc.  
16 City Utilities of Springfield, Missouri.  
17  
18 SCOTT SAPPERSTEIN, Attorney at Law  
19 3625 Queen Palm Drive  
20 Tampa, Florida 33619  
21  
22 FOR: Intermedia Communications.  
23  
24 RICHARD BROWNLEE, Attorney at Law  
25 PATRICIA PERKINS, Attorney at Law  
Hendren and Andrae  
221 Bolivar Street  
Jefferson City, Missouri 65101  
FOR: Digetel Teleport, Inc. DTI  
e. spirre Communications, Inc.  
MCTA.  
MARY ANN (GARR) YOUNG, Attorney at Law  
William D. Steinmeier, P.C.  
P.O. Box 104595  
Jefferson City, Missouri 65110-4595  
FOR: McLeod USA Telecom.  
EDWARD J. CADIEUX, Attorney at Law  
One Brooks Center Parkway  
Chesterfield, Missouri 63017  
FOR: MCI Telecommunications Corporation.  
MCI Metro ATS, Inc.  
WorldCom Technologies, Inc.  
Brooks Fiber Communications of

1 Missouri, Inc.  
2 LELAND B. CURTIS, Attorney at Law  
CARL J. LUMLEY, Attorney at Law  
3 Curtis, Oetting, Heinz, Garrett & Soule, P.C.  
130 South Bemiston, Suite 200  
4 St. Louis, Missouri 63105

5 FOR: MCI Telecommunications Corporation.

6 MICHAEL DANDINO, Senior Public Counsel  
P.O. Box 7800  
7 Jefferson City, Missouri 65102-7800

8 FOR: Office of the Public Counsel  
and the Public.

9 DAN K. JOYCE, General Counsel  
10 PENNY G. BAKER, Deputy General Counsel  
DAVID STUEVEN, Assistant General Counsel  
11 BRUCE H. BATES, Assistant General Counsel  
P.O. Box 360  
12 Jefferson City, Missouri 65102

13 FOR: Staff of the Missouri Public  
Service Commission.

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

2 JUDGE DIPPELL: On the record.

3 This is Case No. TO-99-227 in the matter of  
4 the application of Southwestern Bell Telephone Company  
5 to provide notice of intent to file an application for  
6 authorization to provide in-region interLATA services  
7 originating in Missouri pursuant to Section 271 of the  
8 Telecommunications Act of 1996.

9 We're here at a prehearing conference  
10 intending to discuss any pending motions, settlement  
11 possibilities and hopefully determine or at least get  
12 some ideas presented on the structure of the hearing  
13 itself.

14 I'd like to go ahead at this time and take  
15 oral entries of appearance, and instead of going  
16 through a checklist, I'm just going to begin at my  
17 left and if you'd just go around the table and do your  
18 entry of appearance.

19 MR. LANE: Paul Lane and Kathy Swaller  
20 appearing on behalf of Southwestern Bell Telephone  
21 Company. Our address is One Bell Center, Room 3520,  
22 St. Louis, Missouri 63101.

23 MR. FISCHER: James M. Fischer, 101 West  
24 McCarty Street, Suite 215, Jefferson City, Missouri  
25 65102, appearing on behalf of Associated Industries of

1 Missouri.

2 MS. BAKER: Penny G. Baker, Dan K. Joyce,  
3 Bruce H. Bates, David J. Stueven on behalf of the  
4 Staff of the Missouri Public Service Commission.

5 MR. JOHNSON: Mark Johnson of the law firm  
6 of Sonnenschein, Nath & Rosenthal, 4520 Main Street,  
7 Suite 1100, Kansas City, Missouri 64111, appearing on  
8 behalf of Birch Telecom of Missouri, Incorporated.

9 MR. CADIEUX: Ed Cadieux, One Brooks Center  
10 Parkway, Chesterfield, Missouri 63017, appearing on  
11 behalf of MCI Telecommunications Corporation, MCI  
12 Metro ATS, Inc., WorldCom Technologies, Inc. and  
13 Brooks Fiber Communications of Missouri, Inc.

14 Also in the case but not appearing, Carl J.  
15 Lumley and Leland B. Curtis, 130 South Bemiston,  
16 St. Louis, Missouri 63105.

17 MR. BROWNLEE: Richard Brownlee and Pat  
18 Perkins, law firm of Hendren and Andrae, 221 Bolivar  
19 Street, Jefferson City, Missouri, appearing on behalf  
20 of Digetel Teleport, Inc., DTI, e. spirre  
21 Communications, Inc., and Missouri Cable Television  
22 Association.

23 MR. MOLTENI: Ron Molteni and Mark Long of  
24 the Office of the Attorney General, P.O. Box 899,  
25 Jefferson City, Missouri 65102, on behalf of the State

1 of Missouri.

2 MR. DANDINO: Michael Dandino, Office of the  
3 Public Counsel, Post Office Box 7800, Jefferson City,  
4 Missouri 65102, representing the Office of the Public  
5 Counsel and the public.

6 MR. COMLEY: Mark Comley, 601 Monroe,  
7 Suite 301, Post Office Box 537, Jefferson City,  
8 Missouri, appearing on behalf of Next Link Missouri,  
9 also Show Me Competition, Inc.

10 MR. SCHIFMAN: Kenneth Schifman, 8140 Ward  
11 Parkway, Kansas City, Missouri 64114, appearing on  
12 behalf of Sprint Communications Company LP.

13 MR. DeFORD: Paul S. DeFord of the law firm  
14 of Lathrop & Gage, 2345 Grand Boulevard, Kansas City,  
15 Missouri 64108, appearing on behalf of AT&T  
16 Communications of the Southwest, Incorporated.  
17 Also appearing today is Michelle Bourianoff. She's  
18 in-house counsel from Austin, Texas.

19 I'd also enter my appearance for ACI Corp.  
20 ACI will be separately represented in this matter.

21 MR. STEWART: Charles Brent Stewart, the law  
22 firm of Stewart & Keevil LLC, 1001 Cherry Street,  
23 Suite 302, Columbia, Missouri 65201, appearing on  
24 behalf of Intermedia Communications, Inc., and City  
25 Utilities of Springfield, Missouri.



1           Also appearing with me is Scott Sapperstein,  
2       senior policy counsel for Intermedia Communications,  
3       3625 Queen Palm Drive, Tampa, Florida 33619.

4           MS. YOUNG: Mary Ann Young, William D.  
5       Steinmeier P.C., P.O. Box 104595, Jefferson City,  
6       Missouri 65110, appearing on behalf of McLeod USA  
7       Telecommunications Services, Inc. and  
8       Telecommunication Resellers Association.

9           MS. MORGAN: Sondra Morgan of the law firm  
10      Brydon, Swearingen & England, Post Office Box 456,  
11      Jefferson City, Missouri 65102, appearing on behalf of  
12      Small Telephone Company Group, a list of which has  
13      been provided to the court reporter.

14          MR. TURNER: Matt Turner from the law firm  
15      of Andereck, Evans, Milne, Peace & Baumhoer, 305 East  
16      McCarty, P.O. Box 1438, Jefferson City, Missouri  
17      65102, appearing on behalf of the Mid-Missouri Group.

18          JUDGE DIPPELL: Okay. Is there anyone else  
19      present that needed to make an entry of appearance?

20          Okay. Currently I have as motions that are  
21      pending before the Commission Applications to  
22      Intervene and to Participate, and those are of the  
23      Missouri Cable Telecommunications Association, Show Me  
24      Competition, the Telecommunications Resellers  
25      Association's Motion to Participate Without

1 Intervention, and the motion of Missouri Alliance of  
2 Area Agencies on Aging, Missouri Association for the  
3 Deaf, Missouri Council of the Blind, National Silver  
4 Haired Congress, National Council of Silver Haired  
5 Congress Legislators, Paraquad and St. Louis Gateway  
6 Senior Net also has a Motion to Participate Without  
7 Intervention.

8 I believe the Commission has those motions  
9 pending before them on tomorrow's agenda and will make  
10 a ruling at that time. Those companies and  
11 associations will be allowed to participate in this  
12 prehearing conference pending the outcome of those  
13 motions.

14 I believe also there hasn't -- well, any  
15 motion -- or any objections to those motions should  
16 have already been filed, except perhaps the latest. I  
17 take that back. The time for filing objections to  
18 those motions has passed.

19 I also have that AT&T had filed a letter  
20 indicating that they might be filing something with  
21 the Commission regarding the Supreme Court's recent  
22 ruling. Mr. DeFord, do you expect a motion from AT&T  
23 on that matter?

24 MR. DeFORD: Yes. I thought in fairness to  
25 the other parties that we'd discuss that off the

1 record before we took the step of filing a motion.

2 JUDGE DIPPELL: Okay. I also have a pending  
3 motion from MCI to accept their late-filed rebuttal  
4 testimony, and I believe that the date for objections  
5 to that motion has also passed, and the Commission  
6 will probably take up that motion tomorrow as well.

7 There'll probably be one Order from the  
8 Commission dealing with all those pending matters. So  
9 I'm not going to rule on those at this time.

10 The last thing that I have that is still  
11 pending is Southwestern Bell had a motion to file  
12 their questionnaire on the various LECs in Missouri,  
13 and I'm wondering, does Southwestern Bell still want  
14 to pursue that motion? The Commission hasn't ruled on  
15 it at this time.

16 MR. LANE: We still do think it would be  
17 appropriate, your Honor.

18 JUDGE DIPPELL: And I'd like to go ahead and  
19 ask also Southwestern Bell if the -- and I realize  
20 Mr. DeFord indicated that perhaps the parties would  
21 rather talk about this off the record, but I'm  
22 wondering if Southwestern Bell has considered the  
23 impact of the recent Supreme Court ruling and whether  
24 they expect to file anything different in this case  
25 because of that?

1 MR. LANE: Yes and no.

2 JUDGE DIPPELL: Okay. In that case, I'd  
3 like to ask you all how you would like -- how you  
4 envision the hearing in this matter proceeding?

5 Some of you may have been involved in  
6 similar cases like this in other states, and I'd be  
7 interested in knowing how the hearing itself was  
8 structured in those cases and what you think would be  
9 the appropriate way for the Commission to actually  
10 structure this.

11 AT&T had suggested in some of its initial  
12 pleadings that panels of witnesses be used, and I'd be  
13 interested in hearing how that would work, and if  
14 someone can speak to that.

15 MS. BOURIANOFF: Your Honor, Michelle  
16 Bourianoff on behalf of AT&T Communications of the  
17 Southwest.

18 AT&T has been involved in 271 hearings in  
19 four of the other Southwestern Bell territory states,  
20 Oklahoma, Kansas, Arkansas and Texas; and in three of  
21 those states, Arkansas, Kansas and Texas, a panel  
22 format was used.

23 We would suggest that a panel format be used  
24 also in Missouri, that the case be structured so there  
25 be panels of witnesses called on each issue. We would

1 suggest that the issues track the different checklist  
2 items, the 272 senate safeguard issues, Track A, Track  
3 B and public interest, that those be the different  
4 issues considered, and that a panel witness for  
5 Southwestern Bell be called and then a panel of  
6 witnesses for the different intervenors be called.

7 I also understand that Staff and Public  
8 Counsel have filed testimony in Missouri, and on each  
9 of the panels, depending on the substance of the  
10 testimony filed by Staff or Public Counsel, they would  
11 decide whether it would be appropriate for their  
12 witness to sit with the Southwestern Bell panel or  
13 with the AT&T panel.

14 Southwestern Bell and then intervenors would  
15 each be allotted one group of time to cross-examine  
16 the other panel witnesses. So intervenors would have  
17 a set of time that they would divide amongst  
18 themselves to cross-examine Southwestern Bell  
19 witnesses. Southwestern Bell would also have a block  
20 of time to cross-examine the whole panel of intervenor  
21 witnesses.

22 We found that that worked more efficiently  
23 and more smoothly and allowed for a better  
24 presentation of witnesses in the states that it was  
25 used than traditional contested case proceedings where

1 one witness was called up and cross-examined and sat  
2 down, that that was, in fact, a more efficient use of  
3 time.

4 JUDGE DIPPELL: What were the other states  
5 that had used this approach?

6 MS. BOURIANOFF: Arkansas, Kansas and Texas  
7 all used the panel format.

8 JUDGE DIPPELL: Does Southwestern Bell have  
9 any comments as to that type of proceeding or --

10 MR. LANE: This is rare, but we probably  
11 have more agreement than disagreement. I think we're  
12 amenable to proceeding by panels, and the issues, I  
13 think, probably ought to track the checklist of  
14 Track A, Track B, public interest and probably  
15 Section 272. I'm not sure.

16 MR. BROWNLEE: Paul, it's really difficult  
17 to hear when you're sitting down. Maybe if we're  
18 going to talk, if we could at least stand up, because  
19 it's at least kind of -- all the testimony, all your  
20 talk's going that way.

21 MR. LANE: All right. I'll do better. I'll  
22 come stand by you.

23 I was saying that there's probably more  
24 agreement than disagreement with AT&T on this issue,  
25 that we're not opposed to doing it by panels, and that

1 the issues that were outlined probably make sense.

2 We would say that the 14 points of the  
3 checklist, public interest, Track A, qualification and  
4 probably Section 272, plus we would have a separate  
5 one, I think, on operational support systems, and that  
6 those would probably be the panels that we would  
7 recommend.

8 I think where I'd have disagreement is I  
9 don't think that it would be appropriate to have  
10 separate panels. The way we would like to see it  
11 structured is that each of the witnesses would take  
12 the stand and be cross-examined by representatives of  
13 the other side.

14 Again, it would have to be divided up in  
15 some fashion, you know, maybe 25 minutes of  
16 cross-examination or something like that per person  
17 for those. If a particular witness supports 271, then  
18 opponents would have, let's say, 25 minutes to  
19 cross-examine. And if the witness was an opponent of  
20 271 relief, then the proponents would have 25 minutes  
21 to cross-examine.

22 And then you would do -- all of the  
23 witnesses that would comprise a particular panel, they  
24 would testify just once. They might appear on more  
25 than one panel, but they'd only be cross-examined

1       once.

2                   And then there would be -- in my view it  
3       would be better to have a joint panel with  
4       representatives of both the proponents and opponents  
5       of 271 relief to respond to any questions that the  
6       Commission might have.

7                   JUDGE DIPPELL:  Ms. Baker, does the Staff  
8       have any suggestions on this type of proceeding?

9                   MS. BAKER:  Staff has discussed this, and  
10      from our perspective we see some benefit in doing the  
11      panels.  However, Staff is concerned that the panels  
12      might be so large that they might be unruly, from the  
13      standpoint of if the Commission asks a question of  
14      every member on the panel, it may take a long time to  
15      get through it.  If you just look at the mere number  
16      of witnesses, I think there are 56 at this point.

17                   So from that standpoint when I -- I've  
18      looked at this several different ways, and I think  
19      that it might be possible to do some limited  
20      cross-examination from the normal contested cases  
21      method and have that done during the mornings perhaps  
22      and have panels in the afternoons following a  
23      similar -- whatever issues are heard in the morning,  
24      do those panels in the afternoon.

25                   I think that that might give the Commission



1 and the parties an opportunity to participate and to  
2 make sure that their issues are heard, but it will  
3 also give those witnesses that may or may not be on a  
4 panel an opportunity to be crossed.

5 And the reason I say that is I think that  
6 similar to, for example, oral argument or argument in  
7 Western District or appellate courts where you have to  
8 split time among parties who are similarly situated, I  
9 think that on the panels we can have joint panels but  
10 have a specific number of Southwestern Bell witnesses  
11 and then from those who are opposed to Southwestern  
12 Bell's position have those parties get together and  
13 select three, four, some manageable number of  
14 participants to that panel. I think that that would  
15 make it much easier to ask questions.

16 And those wouldn't have to be the same panel  
17 members for each panel, but the parties can determine  
18 among themselves which witnesses can best answer those  
19 questions.

20 I think if you read the testimony, the  
21 proponents -- or many of the opponents' testimony  
22 reads very similarly, and I think that on a lot of the  
23 issues their issues are the same issue, they have the  
24 same kind of testimony, and I think that that might  
25 make it flow a little bit more smoothly.

1           MR. JOHNSON: Madam Hearing Examiner, I'm  
2 Mark Johnson. I was involved last summer in the  
3 proceeding in Kansas, and I can tell you from personal  
4 experience the panel format works extremely well, that  
5 it wasn't a problem with having all of the opponents,  
6 if you want to characterize them as being opponents,  
7 on a single panel because if you have it broken down  
8 by checklist item, you know, if you review the  
9 testimony, most of the witnesses addressed one, two,  
10 three, at most four checklist items.

11           So in Kansas we ended up with panels from  
12 the intervenors/opponents of generally no more than  
13 four witnesses, and the same was true of Southwestern  
14 Bell. You know, you look at the Bell testimony and  
15 they obviously have a couple of dozen witnesses, but  
16 most of them are limited to one or two of the  
17 checklist items, maybe three or four.

18           But this panel format has been used in  
19 several states, and many of the witnesses are the same  
20 as in Kansas, my experience in Kansas and Texas. The  
21 same may be true for Arkansas. I don't know about  
22 that. But the -- that format has been used  
23 successfully in those states.

24           A couple of other points. First is that,  
25 although cross-examination was limited in duration, in

1 Kansas there was a lot of controversy over  
2 Southwestern Bell having as much time as the  
3 opponents. You have in this proceeding, I don't know,  
4 as many as ten opponents. I don't know the exact  
5 number. Maybe more. Southwestern Bell being at this  
6 point, as I understand it, the sole proponent.

7 And what that meant in Kansas was that the  
8 opponents were limited to, on many issues, five  
9 minutes of cross-examination each, and that was --  
10 that made things very difficult.

11 And finally, one point, last point I'd like  
12 to make is that scheduling for witnesses is very  
13 important. In Kansas we had a strict schedule of  
14 271 -- I mean, checklist item 2 was going to be  
15 covered on Tuesday morning, checklist item 3 on  
16 Tuesday afternoon.

17 So those witnesses who were coming in from  
18 out of town could know when they were going to have to  
19 be there, and they wouldn't have to stay for three or  
20 four or five days.

21 MR. STEWART: May I ask a question? This is  
22 Brent Stewart. I haven't participated in the panel  
23 discussions, and this is really a neutral question one  
24 way or the other. But how do you mechanically or  
25 procedurally handle the introduction of prefiled

1 testimony into evidence under this scenario? Because  
2 in the testimony --

3 MR. JOHNSON: Right at the start.

4 MR. STEWART: -- you're dealing with  
5 different issues in one piece of testimony. You just  
6 admit the -- move for admission of the one piece or --

7 MR. CADIEUX: Ed Cadieux for MCI WorldCom.  
8 I've participated both in Kansas with the panel format  
9 and in Oklahoma without the panel format, and,  
10 generally speaking, I thought the panel format worked  
11 pretty well.

12 And subject to check with others, for  
13 example, who might have been in the Kansas process,  
14 I'm trying to recall exactly how it went. It seemed  
15 like, for example, if the issue was operational  
16 support systems, all at the same time Southwestern  
17 Bell and proponents on that all got up and sat down at  
18 one table. The opponents on that issue were seated at  
19 another table.

20 And then, though, it proceeded in a lot of  
21 respects a lot like normal cross-examination in that  
22 to the extent anyone was up there that had prefiled  
23 testimony on the issue, those exhibits were marked and  
24 presented for the record.

25 I forget if there was any opening, like,

1     general kind of live direct or not.  It might have  
2     been just identifying the exhibits and then turning  
3     over, for example, the Southwestern -- again, I also  
4     forget which order it went, but the Southwestern Bell  
5     panel was basically turned over for cross-examination  
6     by the opponents, and there was a block of time.

7             And although there were some -- in some  
8     instances it was a little difficult, the opponents  
9     did, I think, generally kind of among themselves come  
10    to agreement in most blocks of cross-examination as to  
11    who would use -- who would use the time.

12            So you had cross-examination of the  
13    Southwestern Bell panel.  I think you then turned and  
14    had -- presented the opponents' panel.  Their  
15    testimony was marked and entered.  They were subject  
16    to cross-examination.

17            And when I say subject to cross-examination,  
18    the cross-examiner could direct a question to a  
19    particular person if they chose or alternatively could  
20    throw it up to whoever seemed most appropriate to  
21    answer.  So the cross-examiner could control who they  
22    were going to get an answer from.

23            You had that cross-examination, and then I  
24    think the Commission then had the ability to ask  
25    questions of both panels while still up there

1 simultaneously, you know, whatever questions they  
2 might have. I forget if there was any follow-up  
3 questioning after the Commission questions. This is  
4 all subject to check.

5 MR. LANE: And I guess, Brent, in response  
6 to that, what we propose, each of the witnesses would  
7 get up one time and be cross-examined by the  
8 proponents or the opponents, depending on who the  
9 witness is, and you'd have normal cross-examination of  
10 one witness at that point.

11 And then if that witness appeared on panels  
12 twice later on, then he or she would simply appear on  
13 that panel and not be subject to additional cross.  
14 But the first time that they're up there, they'd be  
15 cross-examined like a normal case.

16 MR. JOHNSON: Cross-examined on all points?

17 MR. LANE: Yeah.

18 MR. JOHNSON: Then why have panels?

19 MR. LANE: The panels would be for the  
20 purpose of the Commission asking questions.

21 MR. STEWART: And at the conclusion then of  
22 the panel, the attorney would move for the admission  
23 of that person's prefiled testimony that first time?

24 MR. LANE: Not the panel, but when that --  
25 of the cross-examination.

1 MR. STEWART: Of the witness?

2 MR. LANE: Right.

3 MR. STEWART: After the cross and after --

4 MR. LANE: If the first witness was Bill  
5 Bailey, we'd call him up, we'd go through the regular  
6 qualifications, then turn him over for cross and move  
7 for the admission of his testimony at that time.

8 MR. STEWART: At the conclusion of all the  
9 cross?

10 MR. LANE: Right.

11 MR. SAPPERSTEIN: This sounds kind of  
12 confusing. I mean, I was -- I'm in a unique position.  
13 I worked for a Commission in Texas when we did it and  
14 initiated it, and this type of system sounds like it  
15 would be more confusing because you'd have one  
16 opportunity to do cross-examination, and you may not  
17 see that witness for maybe another day or two days.

18 Most of the testimony I've seen has been  
19 filed per a checklist item, and I think the  
20 convenience for Staff and the Commissioners is that  
21 you have -- if you have a panel format, one, you  
22 conserve on time because you may not have  
23 cross-examination questions for a particular witness,  
24 and that seemed to -- the more we used it, the more  
25 that seemed to be an efficient use of time.

1           Southwestern Bell may only have questions  
2       for one of AT&T's witnesses or intervenors' witness  
3       for MCI. And from a time standpoint, that did save  
4       time.

5           The panel method also provided good  
6       opportunities for Staff and the Commissioners to  
7       direct specific questions to specific witnesses. I  
8       mean, it's not going to be a waste of time. If there  
9       is common testimony -- if there is common testimony,  
10      you may only need to get clarification from one  
11      witness. The Commissioners can choose who they want  
12      to hear from.

13           MS. BOURIANOFF: Your Honor?

14           JUDGE DIPPELL: Yes?

15           MS. BOURIANOFF: Michelle Bourianoff.  
16      Regarding a simple procedural question regarding  
17      introducing prefiled testimony, both in Texas and in  
18      Kansas, not to contradict you, Ed, but I believe what  
19      was done is we actually had a prehearing conference  
20      with only the parties and the ALJ half an hour or an  
21      hour prior to the first day of the hearing convening,  
22      and all of the prefiled testimony was admitted into  
23      the record.

24           And so it was marked and admitted, and that  
25      got it out of the way. That also sped up the hearing.



1       So as each witness got up and down, the prefiled  
2       testimony didn't have to be admitted and entered into  
3       the record.

4               We would suggest that a procedure like that  
5       might also be effective when you're talking about 50  
6       witnesses or so, just to speed up that very mechanical  
7       process.

8               Second, with regard to the procedure being  
9       suggested by, I think, both Southwestern Bell and I  
10      think there's some overlap with what Staff was  
11      suggesting regarding having individual witnesses come  
12      up, be cross-examined, sit down and then a panel, I'm  
13      not -- I would think that that would be maybe the  
14      worst of all possible worlds because it would be  
15      duplicative.

16              You'd have the time-consuming nature of a  
17      typical contested case where each witness gets called  
18      and cross-examined. Then you also add onto it the  
19      additional time participating in a panel structure.

20              And so I am concerned that that kind of  
21      bifurcated proceeding where you have both contested  
22      case proceeding where one witness gets up and sits  
23      down and is cross-examined and then is also on a panel  
24      might actually make this hearing take more than the  
25      two weeks allotted to it, that that would be a very

1 time consuming proceeding,

2 I think you've heard from Mr. Johnson,  
3 Mr. Cadieux and Mr. Sapperstein that the panels worked  
4 fairly well. I can attest that in all the states  
5 except Texas where we had more than 20 parties there  
6 weren't more than four or five witnesses on a panel,  
7 that it was an effective manner of doing  
8 cross-examination.

9 One of the other things that is advantageous  
10 about it is, for example, on 272 Southwestern Bell's  
11 filed testimony of three 272 witnesses, Ms. Larkin,  
12 Mr. Lutte and Kathy Ramer. And there's some overlap  
13 in their testimony, and if you have them all on a  
14 panel, you can ask one question and get them to answer  
15 it once. You can get the appropriate person to answer  
16 the question.

17 You don't have to ask the same question  
18 three different times to three different witnesses in  
19 a typical contested case proceeding. So that's the  
20 kind of efficiency that we saw using the panel format.  
21 That is why we suggest the panel format.

22 MR. JOHNSON: Yeah. Another advantage to  
23 the panel in Kansas is that we didn't have the problem  
24 with the proponents, if you -- the witness is on the  
25 stand. There's a possibility you ask some of those

1 questions, you should have asked the guy before me.

2 If you have four people there, then I direct  
3 this question to the panel. I don't know which of you  
4 is the right person to answer, but at least you get  
5 the right person from Southwestern Bell who can give  
6 you the answer that you're looking for.

7 MR. CADIEUX: But at the same time, if the  
8 questioner wanted to control the question to a  
9 particular witness, they have a right to do that. So  
10 it wasn't like -- it wasn't a free-for-all in that if  
11 a cross-examiner asked a question and wanted to get it  
12 from a particular witness that's on a panel, that two  
13 or three other witnesses chimed in and basically  
14 interrupted the questioner. He could control it.

15 So from that standpoint, the cross-examiner  
16 did not lose any ability to do cross-examination in  
17 the way that it intended. So that's why it seemed to  
18 work best, because there were some situations  
19 obviously where an attorney wanted to question a  
20 particular witness about a particular subject and  
21 could do so.

22 On the other hand, there were situations  
23 like Ms. Bourianoff was talking about where there was  
24 overlap, and you were able to get -- and the  
25 questioner was willing to throw the question out to

1       whoever was best positioned to answer it, and so -- so  
2       you've got that all done, and then you had the  
3       Commissioners' questions.

4               So that, you know, at the end of that  
5       session you basically had in the record, in a very  
6       concise portion of the record everything regarding  
7       operational support systems or white pages or  
8       directory assistance.

9               So it was a matter of constructing the  
10      panels among the parties at the prehearing conference  
11      which set it up.

12              MR. STEWART: Brent Stewart again. I guess  
13      then another procedural question. Not that this would  
14      happen with this happy group, but if, for example, an  
15      attorney wanted to make a motion to strike a portion  
16      of the prefiled testimony for whatever reason or had  
17      some objection to the prefiled testimony, that would  
18      be handled at the prehearing with the ALJ up front  
19      before the panels ever were constituted in the Hearing  
20      Memo. And that would be the place that you make that  
21      type of motion in the event you had an objection; is  
22      that correct?

23              MR. SCHIFMAN: Your Honor, Ken Schifman from  
24      Sprint. I didn't personally participate in the  
25      hearings in the other states, but Sprint does endorse

1       also the panel format.

2               I believe that it's the most efficient way  
3       to get through various checklist items and the other  
4       issues in the matter. And I just echo the words the  
5       other intervenors have set forth regarding the  
6       efficiencies of the panel format.

7               MR. LANE: I think one of the benefits maybe  
8       of what the Staff has proposed is that probably the  
9       most critical part of the case, all of the lawyers in  
10      the room notwithstanding, are what the Commission's  
11      questions are to the various witnesses.

12              And if we have it set up as I understood  
13      Penny, that the afternoon would be devoted to  
14      Commission questions to the panel, then that would  
15      free them up to either attend or not attend the  
16      cross-examination of the individual witnesses in the  
17      morning if that's -- if that's how the Commission  
18      chooses or you choose to proceed.

19              I think from our perspective it's important  
20      to have the right to cross-examine the witnesses at  
21      least for a limited period of time on an individual  
22      one-on-one basis as opposed to a group kind of  
23      proposal that I've heard the others express.

24              And I think it's real important to maintain  
25      that piece of -- in terms of getting out all of the

1 information to the Commission that each side wants to,  
2 that that's a preferable method than having a panel up  
3 there, a group that answers questions how they see  
4 fit.

5 JUDGE DIPPELL: Excuse me just a moment.  
6 Mr. Dandino, you had a comment?

7 MR. DANDINO: Yes, your Honor. I don't  
8 necessarily object to the panel concept or using the  
9 panels. That does sound very efficient.

10 I would say that I am concerned that any  
11 party should have the right to -- if a person, whether  
12 they're on the panel or not on the panel, if they have  
13 cross-examination questions of that witness, that  
14 they -- I think they have the absolute right to  
15 cross-examine those witnesses. And to that extent I  
16 think the panel structure of that ought to be flexible  
17 enough to allow that.

18 Certainly also when you're dividing up the  
19 panels and you're saying Southwestern Bell or  
20 proponents or opponents of the issues, I think that  
21 Staff and the Office of the Public -- I'm willing to  
22 speak for the Office of the Public Counsel -- should  
23 have a representative on every panel, and  
24 independently of the opponents or proponents Staff and  
25 Public Counsel should have the right to cross-examine,

1 to examine.

2 I think we represent the interests  
3 completely different than just the regular proponents  
4 and opponents, and we have a special statutory  
5 position.

6 Certainly also I believe that any question  
7 by the Commission that the counsel for all parties  
8 should have the opportunity to follow up with the  
9 Commission cross-examination questions. As we're all  
10 very aware, those are probably the most important  
11 questions because that's what the Commission's  
12 interested in, and many times that brings up issues  
13 that are completely different than was anticipated.

14 I think by putting time limitations, I don't  
15 think we can necessarily put a time limitation that  
16 would apply to each and every topic. I think it  
17 depends on the topic. For OSS, we may need two days  
18 of hearing and three or four hours of  
19 cross-examination, while on access I might want two  
20 minutes.

21 I think also the -- before the panels are  
22 constituted, I think there has to be some indication  
23 from the parties of whether they intend to  
24 cross-examine that party or, as Mr. Stewart talked  
25 about, whether they had objection to their testimony.

1           But I think also when you have the panels,  
2   let's say the intervenors say that these are the  
3   people we'd like on the panel. I think it also should  
4   be fair game for the Commissioners to ask -- if they  
5   have a question of somebody not sitting on the panel,  
6   they ought to have the right to ask that question.

7           We would encourage them to stay with the  
8   panel members, but if we're going to make a full  
9   record of this, I think the Commission and each party  
10   to this case should have a full opportunity to make a  
11   record.

12           I think that if the parties can't agree to  
13   divvy up their time and present one lawyer or one  
14   representative to represent that issue, I don't know  
15   whether you can force them to do that. But, you know,  
16   as a practical matter, I think the parties sitting  
17   around this table will work together to do that.

18           That's all I have.

19           JUDGE DIPPELL: Ms. Baker, you had --

20           MS. BAKER: I have a question, just maybe a  
21   clarification question. But when -- I'm not sure that  
22   I heard you say this, but was there a time limit on  
23   cross-examination from each of the parties?

24           MR. CADIEUX: It was a block on the --  
25   again, because on the opponents' side, because there's



1 multiple parties, it was a block of time. And as I  
2 recall on most, if not all, of the issues panels, you  
3 know, the opponents were able to get together and say,  
4 okay, now who's done the preparation work? Who needs  
5 the time?

6 And we were generally -- although that was  
7 very constrained. I think Kansas was a three or four  
8 day hearing, but we were able to work it out, I think,  
9 cooperatively amongst the parties.

10 MS. BOURIANOFF: Let me add one  
11 clarification to that on the comment by Mr. Dandino.  
12 Although there were limits on the block of time  
13 allowed for cross-examination to Southwestern Bell or  
14 to opponents, in states where Staff or there was  
15 equivalent to Public Counsel had a role or a statutory  
16 role in the case, they were not subject to those same  
17 blocks of time.

18 In Texas, for example, Staff had a separate  
19 opportunity after Bell cross-examined and after the  
20 opponents cross-examined to ask questions of the panel  
21 as a whole, and that time was unlimited. And in  
22 Kansas Staff also performed the same role.

23 So we would not object. AT&T would not  
24 object to Staff and Public Counsel having a separate  
25 opportunity to cross-examine that's not included in

1       that block of time.

2                   MS. BAKER:  Perhaps -- and I don't know  
3       where the other parties stand on this, but it may be a  
4       good idea for us to discuss it amongst ourselves and  
5       see if we can come up with an agreed-upon approach and  
6       then get back to you later today, if that would be  
7       acceptable to you, as opposed to making you come up  
8       with your own plan.

9                   JUDGE DIPPELL:  Right.

10                  MS. BAKER:  If we can come up with an  
11       agreed-upon plan we could let you know that, and then  
12       I'm not sure whether you could relay that to the  
13       Commission to see if it was something that they could  
14       approve or whether or not we would want to convene the  
15       Commission and present that to them during the two  
16       days that we have allotted for prehearing so that we  
17       can get a decision so that we could go forward and  
18       prepare based on that decision.

19                  JUDGE DIPPELL:  Well, I think that that's a  
20       good suggestion if the parties could reach some  
21       agreement on what they think is the best way or, if  
22       not, if you can't come to a final agreement on one  
23       way, maybe if there are two ways, if those could be  
24       presented to the Commission so that they can make a  
25       decision as to how they want to proceed, that will

1 make all of your lives easier on preparing.

2 I will say that I know that any witness that  
3 filed testimony, certainly the Commission may want to  
4 ask questions of that witness, and I will expect that  
5 any witness -- any testimony that is filed and is  
6 intended to be entered into evidence, that witness  
7 will be available for questions from the Commission.

8 If it comes to a panel situation and those  
9 witnesses are predetermined what panel that will be,  
10 then, you know, the Commission may excuse a witness or  
11 something. But again, I'm certain that the Commission  
12 will want to have the right to ask questions of any  
13 witness that testimony's been filed on.

14 Mr. Dandino?

15 MR. DANDINO: Your Honor, so far we've just  
16 been breaching the idea that we're just going forward  
17 with the hearing on this matter, and I would want to  
18 at least raise the subject of whether there's interest  
19 or possibility of the parties here proceeding on a  
20 collaborative basis rather than have this hearing.

21 I think from our view, I'm sure some people  
22 will disagree at this table, that it doesn't seem that  
23 everything has been fulfilled in this, and could we  
24 work -- use our time and efforts better to devise  
25 something where the Commission can say -- present to

1 the Commission that if Southwestern fulfills these  
2 requirements, these matters in this way, then we'll  
3 meet the checklist, all requirements.

4 I understand that that process is under way  
5 in Texas, and it just seems like it may be a better  
6 way to proceed, a more positive way to proceed.

7 I think the Commission is not necessarily  
8 bound to -- if forced to hearing, that the Commission  
9 could just say yeah or nay and does not necessarily  
10 have to give any indication of which items aren't  
11 fulfilled and which items are fulfilled and what they  
12 need to do to meet those requirements.

13 It simply could just put us all back into an  
14 adversarial role where we draw the line and say it's  
15 up to Southwestern Bell to prove all their points, and  
16 it's up to us to just attack.

17 I think that collaborative effort may have  
18 some positive results. It would certainly be  
19 beneficial for our clients if we would proceed in that  
20 manner.

21 JUDGE DIPPELL: Well, I certainly would  
22 encourage all the parties to reach some sort of  
23 agreement as to whether the checklist items have been  
24 met or not. If you can get Southwestern Bell to agree  
25 with you that they have not, then that would certainly

1 make this proceeding a lot simpler.

2 MR. LANE: Let me think about it.

3 (Laughter.)

4 MR. SAPPERSTEIN: Judge, let me -- Scott  
5 Sapperstein. I'm a major proponent of collaborative,  
6 having participated in Texas and also recently in  
7 New York. Collaborative works fantastic if you have  
8 some type of road map, but the Commission has a --  
9 well, the Commission has a duty under FTA and the FCC  
10 rules to prepare some type of record to send to the  
11 FCC when Southwestern Bell applies for relief at the  
12 FCC.

13 Starting with collaborative and then going  
14 through and then trying to get a record built after  
15 the fact has turned out to be a quasi-disaster in  
16 New York.

17 I think what's effective about doing a  
18 hearing first is you have that road map and you have a  
19 record. So you're not going back after the fact and  
20 trying to produce a record that comes out of a  
21 collaborative.

22 I think starting with some type of hearing  
23 panel at least identifies clearly the issues that can  
24 be discussed in a collaborative, but it makes it  
25 easier on the Commission because you have that

1 underlying record that's going to be sent up to the  
2 FCC.

3 I can't speak for Southwestern Bell, but I  
4 think that did work at least in Texas as far as a road  
5 map and giving the Commission something to come out  
6 with an initial recommendation. I mean, at the end of  
7 the day, this hearing is a Commission hearing with  
8 input from the intervenors and Southwestern Bell's  
9 opportunity to present why they think they should get  
10 a yes and a nod from the Missouri Commission.

11 But I think it allows the Commission to come  
12 out with an initial road map or an initial  
13 recommendation with some specific points, you know,  
14 this is what's left to be met here, and gives the  
15 intervenors an opportunity then during a true  
16 collaborative to kind of work with Southwestern Bell.

17 It's been a long road in Texas, but I think  
18 at the end of the day everybody there thinks  
19 significant progress has been made and Southwestern  
20 Bell has made significant progress there in meeting  
21 the checklist.

22 And I think at the end of the day if they  
23 get a nod from the Commission and a nod from the FCC,  
24 that's what we all want. That means there is  
25 irreversible competition in Missouri.

1 JUDGE DIPPELL: Let me ask this procedural  
2 question of the proceeding in Texas. Mr. Dandino,  
3 maybe you know the answer to this. It was my  
4 understanding that Texas held a similar evidentiary  
5 hearing before they began their collaborative process.  
6 Is that not correct?

7 MR. DANDINO: You probably better ask that  
8 to AT&T or to one of the other parties that were  
9 there.

10 MS. BOURIANOFF: Your Honor, Michelle  
11 Bourianoff for AT&T.

12 The Texas Commission last April held an  
13 evidentiary hearing that resulted in an Order the  
14 beginning of June that laid out 129 recommendations  
15 that Southwestern Bell would have to comply with  
16 before they met 271 requirements.

17 And over a process of four months last fall  
18 and continuing some early this winter, the Commission  
19 kicked off a collaborative process to go through and  
20 talk in a collaborative manner about each of the  
21 recommendations and whether Southwestern Bell had done  
22 what it needed to do to be found to have met those  
23 recommendations.

24 So yes, there was a hearing first. It laid  
25 out a road map that Mr. Sapperstein referred to, and

1       that road map was what was used and is being used to  
2       conduct the collaborative process.

3               MR. LANE:  If I can make a couple of  
4       comments on it, I think it's critical that we have a  
5       hearing first.  I'm not in favor of a collaborative  
6       process either before or after.  It's the type of  
7       thing that both sides have to want to ultimately reach  
8       an agreement to have a true collaborative process, and  
9       I don't think we have that here.

10              To the extent that one can benefit from a  
11       collaborative process, we've achieved the benefits of  
12       whatever's happened in Texas here in Missouri, and so  
13       we're not going to be proposing that we do it again  
14       even after a hearing is completed.

15              But certainly it's not going to replace the  
16       need for the Commission to hear based on the evidence  
17       that it's going to be presented, and we would not be  
18       in favor or agreeable to waiving the procedural  
19       schedule and proceeding to some collaborative process.

20              JUDGE DIPPELL:  Well, I think then that what  
21       I would like to ask you-all to do is to discuss your  
22       proposal for a hearing, exactly how that would  
23       proceed, if under a panel situation or under the  
24       regular contested proceeding or some variation of  
25       those two things.



1           If you could reach some agreement on that,  
2       that would be wonderful. You could present that to me  
3       this afternoon perhaps and I can discuss with the  
4       Commissioners to see if they would like for someone to  
5       come into the agenda tomorrow and present that for  
6       their immediate discussion or how they would like to  
7       proceed on that. I know we do need to get that  
8       decided relatively quickly.

9           On another just logistical note, and I  
10      alluded to this earlier, should I be reserving a large  
11      room for a hearing? Everyone seems to agree.

12           I mean, is this -- is this what I can expect  
13      of the size of counsel that will be participating? We  
14      have about 30 people present today in the room plus,  
15      of course, all of the witnesses that will be  
16      necessary.

17           MR. LANE: I guess that depends in part on  
18      what process is ultimately agreed to and whether you  
19      have a room that would be a better fit than what we've  
20      got.

21           MS. SWALLER: If we keep a tight schedule as  
22      was suggested, we only need people on certain days,  
23      and that might help.

24           MR. JOHNSON: With the panels in Kansas, you  
25      didn't see lawyers appear one day and not the next. I

1 mean, the lawyers were there throughout. And there  
2 were a substantial number of people, you know,  
3 witnesses or other interested people who attended as  
4 well.

5 JUDGE DIPPELL: With regard to the service  
6 list, there had been some problems. Our records staff  
7 had some problems getting the correct service list. I  
8 think we finally got everybody on the official service  
9 list except for the State of Missouri, but they did  
10 get notice of the proceedings and are here today to  
11 participate.

12 I am intending on finally deciding who is  
13 and is not in this case, and those parties that were  
14 made parties without the need for intervention that  
15 did not appear today, I'm taking that as a sign.

16 And under our rule if you don't participate,  
17 then you may be dismissed as a party, and that may be  
18 what happens. I may go ahead and dismiss those  
19 parties that are not showing any intention to  
20 participate.

21 MR. JOHNSON: Madam Hearing Examiner, I may  
22 have a problem tomorrow. If I'm unable to appear  
23 tomorrow, is that going to result in my clients being  
24 dismissed?

25 JUDGE DIPPELL: No.

1 MR. JOHNSON: Just want to make sure.

2 JUDGE DIPPELL: I don't believe. I suppose  
3 if someone made that motion, but I --

4 MR. JOHNSON: I plan to be here tomorrow,  
5 but --

6 JUDGE DIPPELL: You entered your appearance  
7 today. I'm assuming that everybody who entered their  
8 appearance today is intending to participate fully or  
9 made some other arrangement.

10 MR. BROWNLEE: One other thing that might be  
11 helpful, you mentioned this testimony problem, the  
12 service list. Probably Bell got everybody's  
13 testimony, but I'm not sure I did. I just have that  
14 concern. It might be helpful -- I'm sure Paul's  
15 already got a big list of who filed testimony,  
16 including direct and rebuttal and surrebuttal.

17 Maybe we could ask them or someone else,  
18 maybe Staff, to share that where we could get a list  
19 put together just so we can today say, my gosh, I  
20 didn't get what Paul filed or what Mark filed. I'm  
21 sorry.

22 JUDGE DIPPELL: That's a good suggestion.  
23 I'd be happy to make copies of the official docket so  
24 that --

25 MR. BROWNLEE: That's another source.

1 JUDGE DIPPELL: -- for everyone here, and  
2 then you can each see everything that has been filed  
3 in the case.

4 MS. BAKER: Or I can. I have it right here.

5 JUDGE DIPPELL: I would appreciate that,  
6 Ms. Baker, if you would make copies for everyone.

7 Any other matters that need to be taken up  
8 on the record this morning?

9 Again, I would encourage you to settle any  
10 of those issues that you can. If you can agree that a  
11 checklist item has been met and, therefore, we don't  
12 need to discuss it, that's great. If you can agree  
13 that a checklist item hasn't been met, then, you know,  
14 please do so.

15 Anything else before I adjourn the  
16 on-the-record portion?

17 (No response.)

18 Okay. That will conclude the on-the-record  
19 portion of this prehearing conference. Thank you.

20 WHEREUPON, the recorded portion of the  
21 prehearing conference was concluded.

22

23

24

25