

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION

3 PREHEARING CONFERENCE

4 September 11, 2003  
5 Jefferson City, Missouri  
6 Volume I

7 In the Matter of the Application of )  
EZ Talk Communications, LLC, for ) Case No.  
8 Approval of a Resale Agreement with ) TK-2004-0058  
Southwestern Bell Telephone, L.P. d/b/a)  
9 SBC Missouri, Under the )  
Telecommunications Act of 1996. )

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13 KENNARD L. JONES, Presiding  
14 REGULATORY LAW JUDGE  
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KENNARD L. JONES, Presiding  
REGULATORY LAW JUDGE

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1 P R O C E E D I N G S  
2 (Written Entries of Appearance filed.)  
3

4 JUDGE JONES: This is Case No.  
5 TK-2004-0058 in the matter of the application of EZ  
6 Talk Communications, LLC, for approval of a resale  
7 agreement with Southwestern Bell Telephone, L.P,  
8 doing business as SWB Missouri under the  
9 Communications Act of 1996.

10 We are here on a prehearing conference.  
11 My name is Kennard Jones. I'm the Administrative Law  
12 Judge presiding over this matter, and now I request  
13 that all parties that are present introduce  
14 themselves, starting to my left, Mr. Meyer.

15 MR. MEYER: My name is David Meyer  
16 representing the Staff of the Missouri Public Service  
17 Commission, and our address is PO Box 360, Jefferson  
18 City, Missouri, 65102.

19 MR. COMLEY: Judge, my name is Mark W.  
20 Comley, and today will be my first entry of  
21 appearance on behalf of the Applicant in this case,  
22 EZ Talk Communications, LLC. My address is 601  
23 Monroe Street, Suite 301, Post Office Box 537,  
24 Jefferson City, Missouri.

25 MS. MORGAN: Sondra B. Morgan with law

1       firm Brydon, Swearengen & England, Post Office Box  
2       456, Jefferson City, Missouri, 65102, previously  
3       representing EZ Talk Communications, LLC. I am going  
4       to request withdrawal, since Mr. Comley has entered  
5       his appearance.

6                   MR. CONROY: Tony Conroy, representing  
7       SBC Missouri, One SBC Center, Room 3518, St. Louis,  
8       Missouri, 63101.

9                   MS. CHASE: Lisa Chase and Craig  
10       Johnson with the Andereck, Evans, Milne, Peace &  
11       Johnson, and we're representing the MITG. We're at  
12       701 -- no, 700 East Capitol, Jefferson City, 65102.

13                  JUDGE JONES: Okay. Before we get  
14       started, I'll point out that Ms. Morgan has requested  
15       leave to withdrawal in light of the fact that Mark  
16       Comley is here to represent EZ Talk. She will be  
17       allowed to withdrawal.

18                  This prehearing conference is primarily  
19       held to bring the parties together to see if a  
20       settlement can be reached. If there are conflict  
21       issues that aren't apparent from the pleadings,  
22       perhaps those issues will be made more clear during  
23       our time together. Mr. Meyer, staff has filed a  
24       recommendation in the matter recommending the  
25       Commission approve the agreement.

1                   MR. MEYER: That is correct, your  
2 Honor.

3                   JUDGE JONES: Okay. As I'm sure some  
4 of know, there have been a number of cases recently  
5 having to do with this issue. It appears to me,  
6 though, that this one may be a bit different than  
7 those other cases. Is there someone here who can  
8 speak on that, Ms. Chase or Mr. Johnson?

9                   MR. JOHNSON: Your Honor, I'm not sure  
10 exactly what you have in mind. If you accept the  
11 title of this agreement, that it's purely a resell  
12 agreement, then yes, indeed, many of the issues may  
13 not be present here, but as I understand, not having  
14 reviewed the agreement personally in depth, that  
15 there are provisions for facility-based traffic being  
16 handled pursuant to this interconnection, as well as  
17 pure reseller traffic. So to the extent that that's  
18 true, these issues today will be the same as the one  
19 in the previous docket that I believe you're familiar  
20 with.

21                  JUDGE JONES: Mr. Conroy.

22                  MR. CONROY: Yes, it's my understanding  
23 that the transit traffic provisions contained in this  
24 interconnection agreement are identical or  
25 substantially identical, nearly identical, to the

1 same provisions that have been contained in dozens of  
2 Commission-approved interconnection agreements, and I  
3 think they are in this case. I think they are part  
4 of the interconnection agreement in this case.

5 JUDGE JONES: Okay. Does anyone have  
6 anything else that we need to talk about before I  
7 leave you all to discuss these matters?

8 MR. JOHNSON: If I might, have you  
9 granted Ms. Morgan's withdrawal?

10 JUDGE JONES: Yes.

11 MR. JOHNSON: I would like to sort of  
12 announce, or maybe make some verbal motions today.  
13 That I'm pleased to follow-up in a written motion, if  
14 the Judge prefers it, but it will be in the nature or  
15 alternative, a Motion for an Order for the Applicant,  
16 EZ Talk, to show cause why this case shouldn't be  
17 dismissed.

18 At the time they filed the application  
19 for approval of this interconnection agreement, their  
20 application asserted that they were in compliance  
21 with the Commission's rules in terms that they were  
22 current on their assessments and filed all the  
23 Commission rules required. As I understand from  
24 staff's recommendation, which was filed a couple  
25 weeks ago, I believe, they have affirmly represented

1 to the Commission that that's not the case, that for  
2 2001 through 2002, they haven't filed annual reports,  
3 and more importantly, they haven't paid their  
4 assessments rendering to them of the freight for the  
5 Commission's workload, and I especially, in view of  
6 the very limited amount of time we have left to  
7 complete this proceeding, by the 90-day deadline the  
8 Commission has to act, I would move that the  
9 Commission dismiss this case, or have the Applicant  
10 show cause why it shouldn't be dismissed on the  
11 grounds that I don't think the Commission should be  
12 required to act on behalf of an applicant who is not  
13 in compliance with the annual reporting compliance,  
14 and more importantly, not paid their assessments in  
15 compliance in a timely fashion with the Commission.

16 If this motion were sustained, and we  
17 dismiss the proceeding and they solve these problems,  
18 we could come back, take this thing up, perhaps have  
19 more of an opportunity to come up with a procedural  
20 schedule that will meet the 90-day deadline, but as I  
21 understand it now, we barely have 35 days in which to  
22 have the Commission render an Order, so that's the  
23 nature of the motions that I would present verbally.

24 I think it's unreasonable for the  
25 Commission to be required to expend its resources,

1       its staff's resources, and the private parties to  
2       spend monies for attorneys and witnesses and what  
3       have you who's not in compliance with these very  
4       basic Commission rules.

5                       I don't think the Federal  
6       Telecommunications Act requires the State to grant or  
7       act on an application by somebody who's not qualified  
8       to file it, so if you would like me to, we will  
9       follow this up with a written motion or motions, but  
10      I just that I should be putting that matter in the  
11      Judge's ear.

12                     JUDGE JONES:   Okay.   Thank you, Mr.  
13      Johnson.

14                     Mr. Meyer, it's been staff's  
15      recommendation that we go forward with this, but in  
16      order approving the agreement, order EZ Talk to pay  
17      its assessments and file its annual reports.

18                     MR. MEYER:   That is, indeed, staff's  
19      recommendation.

20                     JUDGE JONES:   Well, I can say this, Mr.  
21      Johnson, I'm certain we won't dismiss the matter  
22      simply because we have a short amount of time in  
23      which to do our work.   That won't be a sufficient  
24      reason to dismiss.   From what I gather, from the  
25      Federal Act, now that this application has been

1       filed, we either have to approve it or reject it.

2                   The reasons for rejection include  
3       public interest matters and discriminatory matters,  
4       and whether or not EZ Talk not having filed its  
5       annual reports or paid its assessments falls under  
6       one of those categories, I don't know. It's not that  
7       clear. I certainly can't rule on that motion from  
8       the bench today.

9                   If all of you or any of you would like  
10      to file comments in that regard, you're more than  
11      welcome to do so, and as I recall, you have filed a  
12      motion, haven't you?

13                  MR. JOHNSON: Your Honor, I believe we  
14      filed a response to staff's recommendation in which  
15      we opposed the grant -- we opposed that  
16      recommendation, but I don't think we filed a formal  
17      motion to dismiss this application or to ask that the  
18      Applicant be required to show cause as to why it  
19      shouldn't be dismissed. I don't think we filed a  
20      motion specifically stating that. We were granted  
21      intervention to the agreement itself.

22                  JUDGE JONES: Okay. Well, if you want  
23      me to take that matter to the Commission, then I'll  
24      probably need a motion. I'm sure SBC would like to  
25      respond to that. Is that true or EZ Talk?

1                   MR. CONROY: We may, but I think it  
2                   would be more EZ Talk's issue.

3                   JUDGE JONES: Now, you all do realize  
4                   that the time it takes now for us to file these  
5                   motions and responses and then put the matter before  
6                   the Commission for consideration will eat into the  
7                   time that we are now concerned about, so it's a  
8                   quandary we've put ourselves in, I suppose.

9                   Well, as I said, I do have to ask,  
10                  Ms. Morgan, I realize you have been dismissed as  
11                  counsel, and I don't think it would be fair for me to  
12                  ask Mr. Comley this question. In the application as  
13                  filed, the statement is made that assessment fees  
14                  have been paid and annual reports have been filed.

15                  MS. MORGAN: I'm aware of that.

16                  JUDGE JONES: Is there some  
17                  miscommunication between you and the client or how  
18                  did that happen?

19                  MS. MORGAN: I'm not sure what all I  
20                  can say here. The client reviewed the application as  
21                  filed and verified the application.

22                  JUDGE JONES: I see. So you had no  
23                  reason to believe otherwise?

24                  MS. MORGAN: Right.

25                  JUDGE JONES: All right. Well, is

1       there anything else from anyone?

2                       MR. JOHNSON:  What does your personal

3       calendar show the expiration date for the 90 days

4       being?

5                       JUDGE JONES:  I believe it's October

6       20th or 28th.  October 20th.  Does someone have

7       something different?

8                       MS. CHASE:  We had October 16th, your

9       Honor.  I thought it --

10                      MR. MEYER:  We came up with the 16th

11       also, although we weren't sure.

12                      JUDGE JONES:  Then it would be the 16th

13       then, and you all are welcome to come upstairs and

14       see what our calendar looks like.  It's getting to be

15       a bit of a mess right now, but if we have to get this

16       done, we'll have to get it done.

17                      MR. MEYER:  Your Honor, I presume that

18       the expectation will be that staff will file a

19       proposed schedule in this case.  Did you have a time

20       frame for that to be provided to you by, like, within

21       the next couple of days?

22                      JUDGE JONES:  Next couple of days, next

23       week.  If there is open time on the calendar, I can

24       find out about it a week before the hearing.  I --

25       just as long as -- as long as we have time to

1 complete a hearing and present something to the  
2 Commission whereby the Commission can act by October  
3 16th, then I'll be fine with that. Mr. Johnson.

4 MR. JOHNSON: Judge Jones, can you help  
5 us? From the time this case is submitted, how much  
6 time does internal process require before an order  
7 can be entered? Assume we have a hearing, does it  
8 take ten days to get an order out? I know they only  
9 meet on agenda twice a week.

10 JUDGE JONES: You're asking me by what  
11 time does the hearing need to be finished?

12 MR. JOHNSON: More or less, yes, your  
13 Honor.

14 JUDGE JONES: Well, the only thing I'm  
15 thinking about is how long it would take me to write  
16 an Order, and that's not as much a concern because,  
17 you know, I'll just work late and write an Order, if  
18 I need to do that. I think it might be best to look  
19 at the calendar and see how soon things can be done,  
20 and if things are done as soon as they can be done,  
21 then everything else has to be done thereafter.

22 MR. JOHNSON: Thank you, your Honor.

23 JUDGE JONES: Okay. Does anyone have  
24 anything else?

25 MR. MEYER: I guess I'll raise the

1 question. I don't know that there's an answer that  
2 we can probably expect as far as pre-filed testimony  
3 addressing issues, is there a current policy  
4 regarding one round of direct testimony, for example,  
5 and then doing the remainder on the stand?

6 JUDGE JONES: I don't know what the  
7 policy, the current policy is, but under our  
8 circumstances, it seems reasonable that we should  
9 only have direct filed and do all cross and  
10 everything on the stand, because I don't think we'll  
11 have time to get testimonies going back and forth,  
12 unless it leads to a settlement. I don't know how  
13 that would happen, but.

14 MR. CONROY: Are you suggesting, Judge,  
15 that there would be no opportunity for rebuttal  
16 testimony? Because as I understand how this would  
17 play out in a shortened time frame, that the burden I  
18 think to file direct testimony would be on Mr.  
19 Johnson's client -- clients, and I think both EZ Talk  
20 and probably SBC Missouri would want a chance, at  
21 least, to respond to that, even a short time frame,  
22 perhaps, a, you know, seven days to file some sort of  
23 response testimony to that.

24 JUDGE JONES: Okay.

25 MR. CONROY: I do think it's possible

1       to have at least pre-filed direct and still have a  
2       hearing --

3                   JUDGE JONES:  Do all of you agree?

4                   MR. CONROY:  -- and still get all this  
5       done.

6                   MR. COMLEY:  I was pondering for a  
7       waiver of the written testimony rules, but I think  
8       the burden would be on Mr. Johnson's clients, and  
9       yes, if we're going to use written testimony, we'd  
10      need an opportunity to rebut the issues that they  
11      present in that written testimony.  Otherwise, you  
12      won't know what the directions are going to be in the  
13      hearing, and we need to have an opportunity to get  
14      that in front of them.

15                  JUDGE JONES:  So you're saying direct  
16      and rebuttal or neither?

17                  MR. COMLEY:  That was an idea I was  
18      pondering, and I wanted to talk to the folks here to  
19      see what they thought.  We're willing to discuss it  
20      either way, your Honor, as long as we have an  
21      adequate amount of time to get some direct testimony  
22      prepared and filed, that's our main concern because  
23      of limited time frames we're working with.

24                  JUDGE JONES:  Okay.  Well, since that  
25      concern has been raised by Mr. Conroy and Mr. Comley

1       then, it does seem fair to me that rebuttal testimony  
2       should be filed also, so keeping that into  
3       consideration, I don't know how soon you can get  
4       direct testimony in, if necessary. Today is the  
5       11th. We have one, two, three, approximately four  
6       weeks before all this has to be done. It's not very  
7       much time.

8                       MR. JOHNSON: Is your Honor thinking  
9       about our clients only filing direct testimony or is  
10      your Honor thinking about all parties filing  
11      simultaneous direct and simultaneous rebuttal?

12                     JUDGE JONES: I was just thinking about  
13      you all filing direct.

14                     MR. JOHNSON: Okay.

15                     JUDGE JONES: And then rebuttal  
16      testimony being filed by SBC and EZ Talk. Is that  
17      preferable? Does someone else have a better idea for  
18      how to handle this? I mean, the quickest way would  
19      be for there to be no testimony filed and we just  
20      start the hearing and go right into it.

21                     MR. COMLEY: I think if that would be  
22      the case, I would expect the parties to agree to  
23      aggressive discovery, including depositions.

24                     JUDGE JONES: Mr. Johnson, you seem to  
25      have some thoughts.

1                   MR. JOHNSON: No, I'm not used to  
2                   taking depositions in these cases.

3                   MR. COMLEY: No, no, it would be brand  
4                   new for all of us.

5                   JUDGE JONES: Would it be longer to  
6                   file testimony or conduct depositions? Depositions  
7                   seems to me to cost more than it would to file  
8                   testimony.

9                   MR. CONROY: Looking at this from the  
10                  Commissioner's standpoint, if all we do is disclose  
11                  witnesses and depose them and have a free for all at  
12                  the hearing, this could go on and on and on, as a  
13                  party that has relatively, at least, at stake here, I  
14                  guess SBC Missouri I think an expedited pre-filed  
15                  direct, expedited pre-filed is about the only way you  
16                  can realistically expect the Commission to have  
17                  enough time to take any action before October 16th,  
18                  and if they take no action by October 16th, they  
19                  don't have anything else to do. It's automatically  
20                  deemed approved under federal law, and it would add  
21                  some structure, I think, to the proceeding.

22                  JUDGE JONES: Okay. Then that's what  
23                  we'll do then.

24                  MR. COMLEY: Unless, of course, the  
25                  intervention of Mr. Johnson's clients in lieu of the

1 staff recommendation.

2 JUDGE JONES: No, I don't think we'll  
3 be doing that. Not from the bench here. If you want  
4 to file a motion for reconsideration, well, that  
5 wouldn't come until after the hearing, so I don't  
6 think that would be appropriate.

7 MR. JOHNSON: Will the bench entertain  
8 a motion to slap their counsel?

9 MR. COMLEY: Reciprocity.

10 JUDGE JONES: Okay. Well, since time  
11 is limited, I'll leave you all with the time that we  
12 have to get started on whatever. Perhaps we're going  
13 to have to go all the way to hearing, but I don't  
14 know. Maybe we will. I'll be upstairs if you all  
15 need me to look at the calendar with you or anything.

16 MR. JOHNSON: What's your number,  
17 Judge.

18 JUDGE JONES: 1-8518.

19 MR. JOHNSON: Thank you.

20 JUDGE JONES: Does anyone have anything  
21 else? Well, with that then, we'll go off-the-record.

22 WHEREUPON, the on-the-record portion of  
23 the prehearing conference was concluded.

24

25