

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

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

PRE-HEARING

NOVEMBER 24, 2003

Jefferson City, Missouri

Volume 2

In the Matter of an Investigation into)
the Provisioning of Expanded Local) Case No.
Calling Plans in the Rural Areas of) TO-2003-0297
Missouri.)

BEFORE: _____
VICKY RUTH,
SENIOR REGULATORY LAW JUDGE.

REPORTED BY:
TRACY L. THORPE, CSR, CCR
ASSOCIATED COURT REPORTERS

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

A P P E A R A N C E S

MICHAEL F. DANDINO, Senior Public Counsel
P.O. Box 2230
Jefferson City, Missouri 65102
573-751-5559
FOR: Office of Public Counsel and the Public

MARC D. POSTON, Senior Counsel
BRUCE H. BATES, Associate General Counsel
P.O. Box 360
Jefferson City, Missouri 65102
573-751-7434
FOR: Staff of the Missouri Public Service Commission

1 JUDGE RUTH: Okay. Good morning. We are
2 here for a prehearing conference in three cases, Case Nos.
3 TO-2001-391, TO-2003-297 and TO-2003-0298. Each of these
4 cases involves the MCA. The cases are not being
5 consolidated. They are just being held as a joint
6 prehearing conference.

7 My name is Vicky Ruth and I'm the regulatory
8 law judge assigned to these cases. It is a few minutes
9 after ten o'clock on November 24th.

10 Let's begin by taking entries of appearance
11 and I'm just going to circle the room. We'll start over
12 here on the left. Staff.

13 MR. POSTON: Mark Poston and Bruce Bates
14 appearing for the Staff of the Missouri Public Service
15 Commission.

16 JUDGE RUTH: Let's go ahead and move towards
17 the back. Anyone else?

18 MR. JOHNSON: Craig Johnson, Andereck, Evans,
19 Milne, Peace and Johnson for MoKan and Choctaw, two members
20 of the MITG.

21 MS. HENRICKSON: Pamela Hendrickson, Goller,
22 Gardner and Feather for Sprint Communications, LP and Sprint
23 Missouri.

24 JUDGE RUTH: Your first name again?

25 MS. HENRICKSON: Pamela.

1 MR. CURTIS: Leland B. Curtis of the law firm
2 of Curtis, Oetting, 130 South Bemiston, Suite 200,
3 St. Louis, Missouri appearing on behalf of XO Missouri, MCI
4 WorldCom Communications, Intermedia Communications, MCI
5 Metro Access Transmission Services, MCI WorldCom Network
6 Services and NuVox Communications.

7 JUDGE RUTH: Thank you.

8 MR. ENGLAND: Thank you, your Honor. Let the
9 record reflect the appearance of W.R. England appearing on
10 behalf of Cass County Telephone Company, Lathrop Telephone
11 Company and Orchard Farm Telephone Company in Case No.
12 TO-2001-391. Thank you.

13 JUDGE RUTH: Thank you.

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

17 MR. DORITY: Morning, Judge. Larry DORITY,
18 Fischer and DORITY, PC. Our address is 101 Madison, Suite
19 400, Jefferson City, Missouri 65101 appearing in Case No.
20 TO-2001-391 on behalf of CenturyTel of Missouri, LLC,
21 Spectra Communications Group, LLC, doing business as
22 CenturyTel, and ALLTEL, Missouri, Inc. Thank you.

23 JUDGE RUTH: Thank you.

24 Mr. Dandino?

25 MR. DANDINO: Michael Dandino, Office of the

1 Public Counsel, Post Office Box 2230, Jefferson City,
2 Missouri 65102 representing the Office of Public Counsel and
3 the public.

4 MR. COMLEY: Mark W. Comley, Newman, Comley
5 and Ruth, 601 Monroe Street, Jefferson City, Missouri
6 appearing on behalf of AT&T Communications of the
7 Southwest, Inc. in Case No. TO-2001-391.

8 MS. YOUNG: Mary Ann Young with the law firm
9 William D. Steinmeier, PC, PO Box 104595, Jefferson City,
10 Missouri appearing on behalf McLeod USA Telecommunications
11 Services, Inc. And we're a party only to TO-2001-391.

12 JUDGE RUTH: Did I miss anyone?

13 The purpose of today's prehearing conference
14 is for the parties to further explain for the Commission's
15 benefit how the three cases overlap, intertwine, if any
16 other cases are also covering similar issues and to also
17 clarify certain questions that the Commission has.

18 Now, most of those questions will pertain to
19 TO-2001-391. And I apologize to the parties then that
20 aren't involved in that. After we address the questions as
21 to the overlap, etc., if it looks like the rest of the
22 questions are going to take a while and the other parties
23 want to leave, please tell me before you do leave so that I
24 can make sure I don't have any other questions, but it may
25 be appropriate to take a short break at that time and allow

1 the parties that are in 297 and 298 to leave.

2 And I note I did get a filing last week from

3 Mr. Dandino questioning -- there were several points in

4 there. In fact, several of the Commission's questions were

5 answered by some statements that you made in there,

6 Mr. Dandino, but at this time the Commission thought it had

7 a few questions. Some of the questions are from particular

8 Commissioners that had asked me and rather than me speculate

9 as to the what the answer was, I'm bringing them back to the

10 parties. And then I also had some matters I wanted to

11 clarify.

12 MR. DANDINO: That's fine.

13 JUDGE RUTH: Okay. So, Mr. Dandino, I'm going

14 to start the first question for you.

15 MR. DANDINO: Sure.

16 JUDGE RUTH: The other parties will have an

17 opportunity to input, but I want you to please try and

18 explain how Case No. TO-2003-297 and 298 overlap and

19 interact with TO-2001-391. And I also want you to address

20 whether or not it would be appropriate for the Commission to

21 formally stay 2003-297 and 298 if the Commission issues an

22 order as to whether or not the MCA 2 should be adopted. If

23 the Commission issues that order in the next 30 days, would

24 it be appropriate at that time to stay 297 and 298 pending

25 the outcome of this case?

1 MR. DANDINO: Let me first talk about Case
2 298. Since that is a more specific case dealing with the
3 adequacy of service in Franklin County and it's a number of
4 exchanges in there and they're all SBC exchanges, I see this
5 case as -- even though it relates somewhat to MCA or rural
6 area calling, but I think it's more -- I think it can stand
7 by itself.

8 JUDGE RUTH: You don't think it will be
9 affected by any determination the Commission makes in 391?

10 MR. DANDINO: Well, in 391? Unless the
11 Commission, you know, extends the MCA out as far as -- as
12 far as that area. I mean, you know, that's -- that's one of
13 the possibilities.

14 JUDGE RUTH: So you would --

15 MR. DANDINO: The problem is, as I see 291 --
16 298 -- and let me just call that the SBC case, okay, and as
17 more of a specific contested case and not necessarily needs
18 the input of the entire industry. Where the other cases,
19 297 and 391, have more of a broader impact on the whole
20 industry and more require their participation in it.

21 JUDGE RUTH: So it's your feeling that 298 can
22 stand alone, should proceed immediately regardless of the
23 outcome of what the Commission does in 391?

24 MR. DANDINO: That's correct.

25 JUDGE RUTH: But then 297 then, could you

1 clarify how 391 -- the pending decisions in 391 impact what
2 should happen in 297?

3 MR. DANDINO: Well, in the pleadings and in
4 the on-the-record statement that we had last time in 391,
5 our office, and I believe Mr. Johnson on behalf of MoKan and
6 some of the other clients, mentioned that if you were going
7 to do something with MCA, then you need to address the
8 problems of the inadequacies or the discrepancies I think is
9 the word that he used in the calling scopes in some of the
10 rural exchanges. And I think if you're going to address
11 expanded calling, which is really what MCA is, then you need
12 to address it, you know, on a statewide basis.

13 JUDGE RUTH: So would that be support for
14 holding 298 and addressing the expanded calling in the rural
15 areas in 391 if that's the direction that the Commission
16 goes?

17 MR. DANDINO: Well, if the Commission decides
18 they're not going to expand MCA in 391, they're just going
19 to stop there, then there still is a need, in my opinion,
20 for 297, because it addresses rural calling areas -- rural
21 calling scopes. If they decide to proceed with 391, they --
22 I think they still have to consider the rural area calling
23 because -- go ahead.

24 JUDGE RUTH: Say that again.

25 MR. DANDINO: No matter what they decide on

1 391, I think 297 shouldn't be stayed. You need to address
2 those issues.

3 JUDGE RUTH: But wouldn't it be -- if the
4 Commission moves forward in 391 with some form of expanded
5 calling scope, in order to be consistent should 297 be
6 pulled into 391 and have them addressed at the same time?

7 MR. DANDINO: The problem is you're going to
8 have some different players, I think.

9 JUDGE RUTH: Then if they're not done at the
10 same time, wouldn't it make more sense to stay 297 pending
11 the outcome of 391, if the Commission decides to move
12 forward on 391 with some form of expanded -- or MCA 2?

13 MR. DANDINO: Well, I don't believe it should
14 be stayed. Because I think -- even if it just goes on at
15 the same time. Because the problems that are going to come
16 up in 391, where you're going to draw the line for an MCA,
17 let's say, then you've got the rural calling area problem
18 just on the outside of it.

19 So you're going to have to address those --
20 the rural calling area problems as well as the MCA problems
21 when you're talking about whether to expand the MCA. Okay?
22 You can talk about some other MCA problems which would not
23 affect the rural calling area such as rates or, you know,
24 the rates within the -- within the present MCA or the -- the
25 rates for the service.

1 JUDGE RUTH: Okay. All right. Before I move
2 onto the next question, I want to give any parties an
3 opportunity to answer this question or respond to what
4 Mr. Dandino said. And if you think your comments are quite
5 lengthy, you might want to summarize and then ask for an
6 opportunity to file written comments. And we'll move on
7 down the line. Mr. Comley?

8 MR. COMLEY: I have nothing.

9 MS. YOUNG: No, thank you.

10 JUDGE RUTH: Staff?

11 MR. POSTON: I'd just like to add that I
12 believe that Case TO-2001-391 can be -- those issues can be
13 resolved since that case -- I do not believe the issues
14 contemplated expanding the boundaries of the MCA. I think
15 it was more an expansion within the current MCA areas.

16 JUDGE RUTH: True. But some parties brought
17 up they felt the need for an expanded --

18 MR. POSTON: Okay. I think in the issues that
19 were presented to the Commission, I think those can be
20 resolved without crossing into any of the other two cases.

21 JUDGE RUTH: Say that again.

22 MR. POSTON: I believe that the MCA case, the
23 TO-2001-391, can be resolved first

24 JUDGE RUTH: Can be. But my question is more
25 should it? Should 297, 298, either one, be stayed pending

1 the resolution, or should -- resolution of TO-2001-391? Or
2 should they proceed on their own course not tied to 391?

3 MR. POSTON: I believe they can proceed on
4 their own, not tied to 391.

5 JUDGE RUTH: Okay. Towards the back of the
6 room, any comments? You're next.

7 MR. JOHNSON: Judge Ruth, Craig Johnson. Most
8 of my clients and their customers are in the rural areas. I
9 do have a couple of clients with some of their customers in
10 the MCA areas.

11 The reason we had in prior pleadings in 391
12 pointed out the disparity in calling plans has to do with
13 this history. And expanded calling has been a very
14 contentious and difficult issue for decades.

15 The last time the Commission addressed this on
16 both the rural and metropolitan basis was the '92 docket.
17 And they came out with an order in 1992 that created three
18 calling plans that were designed at that time to
19 comprehensively resolve these expanded calling issues in
20 both the urban and rural areas.

21 They created a COS service for rural areas,
22 they created an MCA service for rural areas -- I'm sorry,
23 for urban areas and an OCA service for rural areas. Then
24 with the 1996 Act and some of its implementation, the rural
25 customers lost COS service, the -- most of the rural

1 customers, except those that might still be served by a
2 former PTC, lost their MCA service, but MCA was retained
3 intact after the 1996 Act.

4 And so the anomaly that we pointed out a
5 couple years ago or perhaps a year ago was that it seems
6 sort of incongruent and unfair to customers in the rural
7 areas to be improving or expanding the MCA service when the
8 rural expanded calling scopes have gone away and there's
9 been nothing done to resurrect or improve them since then.

10 So can these two dockets, 391, the MCA docket,
11 and 297, the rural expanded calling scopes docket, can they
12 go forward together? Can they go forward separately? Can
13 they be merged? I think the answer to all those questions
14 is yes.

15 The only point that I would like to bring out
16 is we still think it would be unfair for the rural docket to
17 be stayed while the MCA docket goes forward. The statute
18 still requires some parity of calling plans and prices and
19 we think that parity has been tremendously disturbed for the
20 last seven years and nothing's been done about it. So we
21 think it would be unfair for just the Metropolitan Calling
22 Area plan to go forward for reconsideration without looking
23 at 297, the rural docket, as well.

24 I'm not saying it would be easy. It would be
25 even more difficult in this day and age than it was back

1 when we had more or less a monopoly on interLATA toll
2 service, but we do think it's unfair to keep going forward
3 with an MCA plan and to continue to ignore the rural calling
4 needs.

5 JUDGE RUTH: Thank you.

6 Comments?

7 MS. HENRICKSON: Sprint believes that there's
8 no overlap between the two cases and they each need to
9 proceed on their own.

10 MR. DORITY: MCI Group, XO and NuVox take no
11 position on this.

12 JUDGE RUTH: Okay.

13 MR. ENGLAND: Judge Ruth, this is Trip
14 England. We have no opinion at this time one way or the
15 other.

16 MR. BUB: Judge Ruth, this is Leo Bub.
17 Probably take a little bit different tact than Mr. Dandino.
18 I think the Commission may want to consider holding the 297
19 and the 298 cases in abeyance, I don't know a complete stay,
20 but at least in abeyance until they decide what they want to
21 do in the 391 case.

22 Certainly I think in 297 and 298, the
23 Commission's action in 391 would probably have a greater
24 impact on 298 case, but it will depend on what the
25 Commission does in this case. So it's really hard to say

1 what the impact is at this point and for that reason they
2 may want to hold it in abeyance until they decide what to do
3 in the 391 case.

4 JUDGE RUTH: Okay.

5 MR. BUB: Thank you.

6 JUDGE RUTH: Mr. Dority?

7 MR. DORITY: Judge, Larry Dority on behalf of
8 CenturyTel and ALLTEL and we would have no additional
9 comments.

10 JUDGE RUTH: This question is really just for
11 the parties in 297 and 298. Can you offer the Commission
12 any comments as to what your party believes is the
13 Commission's authority to make the changes that OPC has
14 requested in 297 and 298 and what procedure would be
15 necessary and what the time line for such procedure would
16 be? Anyone offer to begin? Let's start with someone who's
17 just in the 297 and 298 cases.

18 MR. DANDINO: That's only us and staff.

19 JUDGE RUTH: That's right. We don't have any
20 Intervenors.

21 Then Staff, can you address my question? And
22 I want you to also at the same time answer, you know, the
23 question how real is the risk that all during the MCA,
24 whether in 391 or the other cases, could eventually lead to
25 the collapse of the MCA, which was a comment that was

1 mentioned at some previous proceedings as being a risk. The
2 question is really how real a risk is it and whether or not
3 Staff believes there are things that could be done to
4 minimize that risk.

5 MR. POSTON: I believe the first part of your
6 question asked on whether the Commission has the authority
7 under 298 and 297?

8 JUDGE RUTH: Right. That brings me up to
9 another question. In Staff's last pleading, the Statement
10 of Positions, Staff states the Commission has authority in
11 391, but doesn't really give the citations. It just was a
12 simple one-sentence statement as to authority.

13 MR. POSTON: I can't identify the pleading. I
14 believe in one of our pleadings we did cite to a few
15 statutes and a case, but off the top of my head I can't
16 remember those. I can file follow-up comments following
17 this hearing that we could identify those for the
18 Commission.

19 JUDGE RUTH: Well, I wanted -- I mean, I'll do
20 that now. Some of the pleadings go into a lot of detail,
21 SBC I think is one of them, as to the Commission's authority
22 actually in that position statement. Others did not.

23 And the purpose of that position statement was
24 to, yes, give a summary of the parties' position, but also
25 highlight either the record where the Commission can go back

1 and read more about the details of the position or at least
2 give an overview.

3 In places where there's just a one-sentence
4 statement that, yes, the Commission has the authority or,
5 no, the Commission doesn't have the authority to do
6 something, it's not very helpful to the Commission. And one
7 of the things in the -- you know, they'll have me do is try
8 and go back and find those. And you're risking what if I
9 miss one, you've not laid it out for the Commissioners very
10 well.

11 And I would strongly urge whatever parties
12 that only filed very cursory statements in your Statements
13 of Position to file a supplemental going back and either
14 citing to previous pleadings or during the on-the-record
15 testimony, the oral arguments that were made by the counsel,
16 citing the Commissioners to those sections.

17 I'm not actually going to require it, but I
18 have had at least three of the Commissioners come to me and
19 talk to me that this is not what they expected for position
20 statements. So with that in mind, you may not be able to
21 offer anything else here.

22 MR. POSTON: Yeah. I apologize for those
23 position statements. I guess we tried to not add any
24 argument into those, which we thought was the way those were
25 supposed to go and use briefs for --

1 JUDGE RUTH: You're right. It's not supposed
2 to be arguments, but the Commission finds it helpful at
3 least if you can refer them back to specific places in the
4 record, whether it's the -- there was a prehearing
5 conference that was rather lengthy and also an on-the-record
6 presentation and there have been various briefs.

7 So you don't have to go into all the details,
8 but if you can pinpoint more. And even give an overview,
9 just saying, yes, the Commission has the authority is not as
10 helpful as, yes, the Commission has the authority under
11 sections blah, blah, blah even if you don't get into the
12 arguments.

13 Does anyone else have a comment on those
14 issues that I've raised? So I've added to the question, in
15 other words. And one of the things I added is how real is
16 the risk that altering the MCA, whether it's in 391 or the
17 newer cases could lead to its collapse?

18 MR. DANDINO: Your Honor, Mike Dandino with
19 the Office of Public Counsel. I wanted to talk in terms of
20 what the real risk is. And I think it's very difficult to
21 weigh that on -- you have to tell me what the Commission's
22 decision is before I can really evaluate the real risk.

23 JUDGE RUTH: If the Commission would decide to
24 expand MCA, whether it is the MCA 2 or an actual geographic
25 expansion --

1 MR. DANDINO: I don't necessarily see that as
2 a risk to -- to expanding. I think more of the risk has --
3 in fact, I think on a case that the Commission most recently
4 decided is more of a risk to the MCA where basically they're
5 saying the price cap companies are not limited by the -- you
6 know, by any cap on the MCA. You know, that has more -- I
7 think more of an effect.

8 JUDGE RUTH: Clarify. You're saying they're
9 saying that.

10 MR. DANDINO: The Commission. The Commission
11 issued a ruling in the Sprint MCA case within the last two
12 weeks, I guess. I don't recall the number of the case, but
13 in that they authorized Sprint to increase MCA prices by a
14 percent same as any other non-basic service. And I think
15 that -- that's an example of a case which is outside these
16 three that has just as serious impact on the future and
17 viability of the MCA.

18 JUDGE RUTH: How does it affect the viability?

19 MR. DANDINO: Well, if -- one of the
20 foundations of the MCA was that the -- that the prices were
21 capped to promote the public interest and they were
22 considered just and reasonable. And that was decided just
23 as recently as three years ago.

24 And now the Commission has gone into another
25 direction, just lifting that. And so does that mean that

1 there is no longer any cap for any company in the MCA? And
2 if that's the case, then there is no such thing as an MCA.

3 JUDGE RUTH: I just can't resist but
4 commenting that I'm not sure all the Commissioners agree
5 with your interpretation that the Commission had previously
6 capped --

7 MR. DANDINO: Sure.

8 JUDGE RUTH: -- the MCA.

9 MR. DANDINO: That's issues of the case,
10 certainly.

11 JUDGE RUTH: Right. So you don't see the
12 viability of the MCA being affected in any way by 391?

13 MR. DANDINO: Well, like I said, it depends on
14 which decision they come out. I could see -- you know, very
15 well they could make a decision in 391 which would affect
16 the viability of it. You know, I can't say exactly what
17 those are -- what those are, but I think the Commission no
18 matter what -- just the expansion of it itself I don't think
19 will affect the viability of it.

20 JUDGE RUTH: The geographic expansion?

21 MR. DANDINO: Right. Geographic expansion.

22 JUDGE RUTH: Any other parties want to weigh
23 in on that question? I'm not going to make you, but it's
24 your opportunity. Mr. Bub?

25 MR. BUB: Your Honor, this is Leo Bub for SBC.

1 In response to your question, I'd like to direct the
2 Commission's attention -- as you indicated, we filed some
3 other pleadings. We filed one in the 2001-391 case. It's
4 called Southwestern Bell Telephone's Position Statement in
5 Response to Missouri Public Service Commission's Order
6 Directing Filing. And I believe we filed that --

7 JUDGE RUTH: In May.

8 MR. BUB: -- on May 19th. And in another
9 case, TO-2003-0298, and that was the adequacy of the local
10 calling scope case, we filed written comments following the
11 May 16th prehearing conference and we filed those on
12 May 27th.

13 JUDGE RUTH: That was TO-2003-098 or 298? I
14 didn't catch -- you were referring to 298?

15 MR. BUB: 2003-0298.

16 JUDGE RUTH: Okay. Thanks. I have your
17 comments here and I actually have a couple of questions that
18 we'll get to later, specifically as to the pleading that you
19 filed in 391. Did you have anything you wanted to add to
20 this?

21 MR. BUB: No. You were just asking if we
22 could direct the Commission's attention to things that we
23 filed, so those are the two things we filed I believe in
24 response to your question.

25 JUDGE RUTH: Right. You filed something.

1 Some of the other parties did not include the authority for
2 their position in their position statements.

3 MR. BUB: Okay. And, finally, with respect to
4 your question about the risks, I don't think I'm prepared to
5 address that today, but if you'd like, we could file
6 something to address that if that's what the Commission
7 wants.

8 JUDGE RUTH: It was a question that was asked
9 by one Commissioner to me.

10 MR. BUB: Okay.

11 JUDGE RUTH: I was not able to give much of an
12 answer. I'm not going to require any party to address that.
13 I thought I would ask parties if they have any comments
14 here.

15 It's tied in with the question as to what is
16 the Commission's authority to expand, whether it's
17 geographical or otherwise, the MCA. I'm really on an
18 additional information gathering session here before I go
19 back to the Commissioners as a whole as opposed to
20 individually.

21 So if the parties want to synthesize -- based
22 on some of the concerns that they hear today, if they want
23 to synthesize their statements or add, you're welcome to.
24 I'm not going to require anyone to make any pleading. Like
25 I said, I urge some of the parties that did not cite back to

1 references in their position statements to do so, but I'm
2 not going to require you to do so. Am I getting a
3 questioning look from you, Mr. England?

4 MR. ENGLAND: I'm always perplexed, your
5 Honor. One, because I can't remember what I've said in this
6 case, which is always a dangerous position to start from.

7 But I do recall that in the recent access
8 docket, and I can't give you the cite to that, but it's
9 separate from the three we're here today on, the Commission
10 specifically asked the parties to address the issue of the
11 Commission's jurisdiction to alter or establish expanded
12 calling plans.

13 And I thought we addressed that -- the parties
14 did -- in some depth in our post-hearing briefs. What I
15 can't recall is whether that was a recitation of what we had
16 previously submitted to you in the 391 case or not. If I
17 understand what you're saying, is you're giving us an
18 opportunity to go back and kind of beef up or expand upon --

19 JUDGE RUTH: Exactly.

20 MR. ENGLAND: -- position statements
21 previously filed?

22 JUDGE RUTH: What you have to remember is
23 you're dealing with what was started as an investigation or
24 task force case, recommendations filed quite some time ago,
25 there was disagreement among the parties and among the

1 Commissioners perhaps as to what the scope of that case
2 should be and how far it should go. So there's a question
3 as did it finish its job or did it not finish its job? You
4 know, that was quite some time ago.

5 Since then, there have been some price cap
6 cases, the access case, other cases that have come down. I
7 am being asked how do they all intertwine, what's the
8 impact, what the parties said in August of 2000 and May of
9 2003, is anything different, has anything changed. I'm sure
10 I'm skipping a few things, but that's partially where the --
11 you know, I'm coming from right now.

12 So, yes, you'll be given another opportunity,
13 but the fact that you filed -- that parties filed pleadings
14 on this issue in the access case, it's true it's there, but
15 sometimes if you don't spell it out exactly how it affects
16 this case, it makes it much more difficult for the
17 Commission to wade through it.

18 Doesn't mean they won't get there, but I'm
19 supposed to try and make the Commissioners' job a little bit
20 easier by wading through it and I'm having difficulty wading
21 through it.

22 And particularly with the access case, and I'm
23 not sure if that was Kevin Thompson's or whose, I don't know
24 how all of that affects what's going on in this case. I
25 have some suspicion, but I do know that some of the

1 Commissioners are still coming back to me with these same
2 questions even though some of them were addressed in the
3 access case, for instance.

4 MR. ENGLAND: I guess without being
5 presumptuous, I'm not sure that's the right word, but if the
6 Commission could give us a list of questions they want us to
7 answer, that might be helpful. And if they would want
8 something more than a position statement, more like a brief
9 to the extent we can provide legal argument, that also would
10 be helpful.

11 Because I think as someone previously
12 mentioned, position statements have traditionally been sort
13 of different from briefs. And I think what I'm hearing is
14 the Commission wants more legal analysis and/or factual
15 analysis then maybe they've received through the position
16 statements in this case.

17 JUDGE RUTH: That's true. I also want to
18 clarify, I am not trying to -- I was not trying to say
19 earlier that position statements should be briefs. But
20 sometimes -- there should be a happy medium though, if you
21 will, between a yes or no answer and going into the legal
22 argument. And I realize it's probably quite hard to find
23 that happy medium.

24 I wish, and I believe the majority of the
25 Commissioners wish, that perhaps there had been more in some

1 of the answers. And I don't -- you know, I'm looking at
2 you, but I don't remember what yours was. And Staff was not
3 the only one. I didn't mean to pick on them.

4 But references to this record would be helpful
5 or references to the access case, in particular, other
6 references would be helpful. But, again, it's an
7 opportunity for the parties, it's not a requirement. And
8 since it's not a requirement, it will in no way be held
9 against the parties if you choose not to. You just won't
10 have another bite at the apple to explain for the
11 Commissioners.

12 MR. ENGLAND: Then if I'm understanding our
13 task, it's to kind of go back and look at what the issue
14 statements have been in this case and specifically to see if
15 we feel like we've adequately addressed that in light of
16 your concerns expressed today --

17 JUDGE RUTH: Right.

18 MR. ENGLAND: -- as well as the issue of how
19 real is the risk that altering the MCA will lead to its
20 collapse?

21 JUDGE RUTH: Yes.

22 Does anyone else have comments on these issues
23 so far? Because if not, I want to -- actually, do you?
24 Sorry, Mr. Johnson

25 MR. JOHNSON: Very brief, at this point, your

1 Honor. The last time I recall the Commission addressing the
2 authority to implement expanded calling was in the December
3 1991 order in TO-92-306.

4 And as I recall, each one of those -- that
5 order was divided into the different services that were
6 being created, some of which were toll, some of which were
7 local, some of which were different compensation. But I
8 think if you go back to that order, the Commission cited a
9 statute that gave it, in its view at the time, what the
10 source of its jurisdiction was. That might be a useful
11 starting point.

12 JUDGE RUTH: Could you repeat the cite?

13 MR. JOHNSON: TO-93-306, and I think the order
14 was dated sometime in late December of 1991.

15 JUDGE RUTH: And the access case that was
16 referred to earlier, do you happen to know that cite?

17 MR. DORITY: Your Honor, it's TR-2001-65.

18 JUDGE RUTH: TR-2001-65.

19 Then I have a couple of questions and as I get
20 to them, we may find that they've already been answered, but
21 I'd made some notations for Southwestern Bell, Staff,
22 perhaps one or two for you Mr. Johnson, one question for
23 you, Mr. DORITY. The other parties, you know, it may be in
24 your interest to stay, listen to the questions because
25 you'll have an opportunity to respond. But you are not

1 required to if you want to leave.

2 What it is, is I've made some notes on
3 position statements or other pleadings, and I'm just going
4 to ask for a clarification on a couple of issues. And I'm
5 going to start with Mr. Bub. Did I hear a sigh of relief?
6 It wasn't from Mr. Bub, was it?

7 MR. BUB: I'll do the best I can, your Honor.

8 JUDGE RUTH: Right. And if you are not able
9 to answer these questions on pleadings that are many months
10 old, I understand and you can follow up if you wish or the
11 Commission can muddle through based on what we have.

12 MR. BUB: It may be necessary to do that.

13 JUDGE RUTH: Pardon?

14 MR. BUB: It may necessary for us to follow
15 up.

16 JUDGE RUTH: Well, perhaps not. We've touched
17 upon this, however, some of these questions were
18 specifically brought to me by a Commissioner or two and I am
19 going to ask them. And if it requires you to repeat
20 yourself, I apologize, but if we got to it in a roundabout
21 way, that may not be adequate when I go back.

22 Okay. In the position statement filed by your
23 client, you indicate that the current record is not adequate
24 in 391 for the Commission to take action. In fact --

25 MR. BUB: What page are you?

1 JUDGE RUTH: Pardon?

2 MR. BUB: What page are you reading from, your
3 Honor, if I could ask?

4 JUDGE RUTH: I'm looking at several. On
5 page 1 you say, Based on the record that currently exists
6 before the Commission, it's not necessary or appropriate for
7 the Commission to take any action. But throughout your
8 pleading you mention that the re-- you know, in other places
9 you mention that the record is not adequate. And I am just
10 asking you to clarify what an adequate record would be.

11 Does your concern -- is it based solely on the
12 fact that there was not -- there was an on-the-record
13 presentation, if you will, but there was not pre-filed
14 testimony. And in SBC's opinion then, would this case need
15 to be spun off into a separate case or could that pre-filed
16 testimony just be brought in from here?

17 If the Commission would decide that it wants
18 to go forward, are you stating -- are you implying then that
19 it would be necessary to have pre-filed testimony on what
20 Staff recommended in the last report as to, you know, the
21 MCA 2? You're saying we would have to have pre-filed
22 testimony and hearing on that evidence before the Commission
23 could go forward?

24 MR. BUB: I believe the concern, your Honor --
25 and it has been several months since I had a chance to look

1 at that, but I believe the primary concern was the lack of
2 contested case procedures where we would have an opportunity
3 to file pre-filed testimony, direct, rebuttal, surrebuttal,
4 have an opportunity to the comment on other parties'
5 testimony, have the opportunity to cross-examine witnesses
6 and to address the Commission directly on the evidence
7 that's been presented.

8 If there's more than that, I will follow up
9 with a written response. Just off the top of my head, I
10 believe one of the primary problems was there wasn't that
11 opportunity for the full hearing.

12 JUDGE RUTH: Do you believe that the
13 Commission needs the pricing information before it can make
14 any type of decision as to whether or not it should go
15 forward?

16 MR. BUB: I think that would be the case, your
17 Honor. I'll have to follow up with that, but I believe in
18 order for the Commission to make an appropriate decision, it
19 would have to have all the relevant information about the
20 various positions, various types of plans.

21 And in order to assess the impact on all of
22 the parties, not only the consumer, but also the provider
23 that would be involved and impacted, I believe it probably
24 would be necessary to have that information before it, but
25 if that's --

1 JUDGE RUTH: In the form of further
2 discussions between the parties as the task force or just
3 wrapped into the evidentiary proceeding?

4 MR. BUB: Probably part of --

5 JUDGE RUTH: Because at this point the
6 Commission's being asked to decide whether or not it should
7 go forward without really having any information as to
8 price.

9 I understand a downside of telling the parties
10 to go back and do more task force work, because then if you
11 do the task force work on the pricing and bring it back to
12 the Commission and then the Commission says, you know, we
13 don't want to go forward, it's a lot of time wasted.

14 The flip side of that is, can they really make
15 an informed decision without knowing that piece of the
16 puzzle? And related to that is, you know, there's lots of
17 references throughout the pleadings as to based on the
18 record before it, does the Commission -- does the MCA need
19 to be changed.

20 Any party that wants to further address in
21 addition to their pleadings whether or not the Commission
22 should refrain from making the decision until after it's had
23 local public hearings, you can address that.

24 In other words, there's been a question should
25 the Commission go out and hold a lot of local public

1 hearings to gauge the need before it decides whether or not
2 to rule on the issues in the position statement as to, you
3 know, whether or not there's a need for an expanded or an
4 MCA 2.

5 MS. YOUNG: May I be excused?

6 JUDGE RUTH: Yes.

7 MR. BUB: Your Honor, if I may, are you asking
8 us to address that question of whether the Commission should
9 hold local public hearings to gauge the need or was it --

10 JUDGE RUTH: Yes.

11 MR. BUB: -- before it makes a decision?
12 Okay.

13 JUDGE RUTH: I don't know if this will help
14 you or not, but throughout several of the pleadings some
15 parties say -- one of the questions in the issue statement
16 was if the Commission has the authority to modify the MCA
17 plan, should the Commission order implementation of the
18 MCA 2.

19 And several parties say, No, the MCA 2 does
20 not have adequate support in the record or the evidence
21 doesn't support approval at this time.

22 The question is, is that -- is part of the
23 reason there's not adequate support the fact that the
24 Commission hasn't held those local public hearings? And I
25 said part of. Not the only reason. In other words, I'm not

1 implying that would be the only thing the Commission would
2 need to do. I'm asking if that would be a piece of it in
3 order to establish the record. Do you have any comments?
4 You want to take a bite at that, Mr. Bub?

5 MR. BUB: Oh, I didn't realize you were asking
6 me as opposed to the whole group. I'm sorry.

7 JUDGE RUTH: Well, I'm asking everyone. I
8 started with you, but --

9 MR. BUB: I think on the public -- local
10 public hearing question, there's a concern I think that the
11 industry has had that if you do have a local public hearing
12 too early in the process, that there's a concern about are
13 we raising the public's hope? Because I think if you ask,
14 you know, do you want expanded calling and pay less, the
15 answer's probably always going to be yes, so --

16 JUDGE RUTH: Well, look at it this way. If
17 part of the criticism is that, no, there's not adequate
18 support in the record, but yet some parties are saying, but
19 you can't go out and try to get that support because it
20 could raise peoples' hopes and then we won't do it, those
21 two don't mesh. And I don't know if there's anything you
22 can offer in regards to that.

23 MR. BUB: Well, I think certainly a lot of
24 time has passed between now and, you know, the last time
25 we've filed pleadings or had the on-the-record presentation

1 and there are things that have been brought to market by
2 various companies. Because I think it's in every company's
3 interest to bring new, innovative plans to attract and
4 retain customers. So companies are going to do, you know,
5 what they can to become -- to be competitive and remain
6 competitive.

7 And over the last, you know, year or more,
8 there's been plans that I think should be examined to see
9 what's out there now. And that would help, I think, gauge a
10 need because I don't think there's a current record of what
11 the plans are out there because I know that various
12 companies --

13 JUDGE RUTH: You say there is a current record
14 or not?

15 MR. BUB: There's not. Maybe the best way to
16 state is the record may -- on that particular issue isn't up
17 to date. And I think if information was brought about the
18 current plans that are being offered, the various
19 all-distance plans, various friends and family plans, I
20 think that would provide more information to the Commission
21 about the available plans to consumers.

22 JUDGE RUTH: Would that information be brought
23 to the Commission by the task force having further meetings
24 or by a party offering information about those plans? You
25 just mentioned that there could be additional information

1 out there. I'm just asking your opinion how to get that --
2 if it's decided to get that information, how to get it in
3 the record?

4 MR. BUB: Certainly that could be brought to
5 the Commission through a collective task force effort.

6 JUDGE RUTH: It's my understanding, however,
7 that there have not been any additional task force meetings,
8 whether to discuss pricing or anything else in quite some
9 time; is that correct? And there are no plans to have any
10 scheduled task force meetings in the future so it would have
11 to be the Commission ordering that. Is that your
12 understanding?

13 MR. BUB: I'm not aware of any, your Honor.

14 JUDGE RUTH: This is also one of the questions
15 from a Commissioner. On page 7 of your May 19 filing, you
16 say that it would be unlawful for the Commission to modify
17 or alter the existing MCA plan under existing case law. The
18 question is just simply, has anything happened since May
19 that would affect your answer here? In other words, any new
20 case law?

21 MR. BUB: I would have to check, your Honor.
22 I don't have off --

23 JUDGE RUTH: One reason I bring that up is
24 since May there have been quite a few price cap cases and
25 this section of your brief -- or I'm sorry, of your position

1 statement deals with some price cap issues. So there is a
2 question among a couple of Commissioners asking for
3 clarification as to whether or not SBC's position then would
4 be affected by any of those recent Commission orders. And
5 there have been some appeals too that are in various stages.
6 They may not affect this case, that's just the question.

7 MR. BUB: We'll focus on that, your Honor, and
8 take a look.

9 JUDGE RUTH: I think that's the only -- those
10 are the only things I had for you, Mr. Bub. Thank you.

11 MR. BUB: Thank you, your Honor. We'll get
12 back to you.

13 JUDGE RUTH: Mr. England, in the brief that
14 your colleague filed, there's also several references to,
15 Based on the instant record, there's not enough evidence or
16 information to allow the Commission to alter or expand the
17 MCA plan at this time.

18 MR. ENGLAND: Correct.

19 JUDGE RUTH: Could you just clarify then what
20 information or -- yeah, your word was information. What
21 would need to be done to get that information? What is it
22 that the Commission's lacking so that would --

23 MR. ENGLAND: It's been some time since we
24 wrote that, but my recollection is that, at the very least,
25 I would think you would need evidence of inadequacy of the

1 present service, which is not in the record. There have
2 been assertions, but no evidence to that effect.

3 JUDGE RUTH: And see --

4 MR. ENGLAND: In addition, we've discussed
5 what the cost -- I'm looking now at just the MCA 2 plan the
6 Staff has proposed.

7 In addition, we've looked at some costs
8 associated with that on a company-by-company basis, but
9 there's been no proposal -- no concrete or agreed-to
10 proposal for revenue neutrality or the way in which to
11 design rates to achieve revenue neutrality, and then
12 further, what an appropriate rate design would be in a
13 situation where now everyone has essentially the same
14 calling scope. Again, under the MCA 2 plan.

15 So while we accumulated a lot of data and do
16 have a lot of information regarding the MCA 2 plan that we
17 don't have regarding expanding the geographic limits of the
18 MCA 2 plan as some communities have requested, I think the
19 record is still deficient for the Commission to simply order
20 the MCA 2 plan.

21 JUDGE RUTH: Do you think the Commission
22 should spin off a separate docket and have a contested case
23 separate docket as to -- and it would be focused on whether
24 or not to adopt the MCA 2? Since it would be a contested
25 case, the parties could offer pre-filed testimony, there

1 would be a hearing on the record.

2 And before you answer that, let me -- I'm not
3 sure how I can explain this, but part of the concern seems
4 to be that the Commission is being told there's not enough
5 evidence on the record to do this, there's not evidence to
6 do that and there's no pricing information.

7 And so, on the other hand, the parties have
8 expressed -- they brought in the report, if I'm remembering
9 correctly, they didn't go any further. You didn't get into
10 pricing because you wanted to hear back from the Commission
11 before you spent a lot of time and effort on that issue
12 because you might spend it and then be told, you know, we
13 don't want to do that.

14 But yet the parties are asking the
15 Commissioners to make a decision about which you all
16 yourselves say there's not enough evidence on the record for
17 them to make a decision.

18 MR. ENGLAND: Well, I think as a threshold
19 matter, there was some concern whether or not the Commission
20 even wanted us to pursue the MCA 2. We thought that there
21 was some significant issues that could be articulated either
22 through position statements or reports of the task force
23 that the Commission needed to be aware of before they
24 ordered further study if that's what they wanted on MCA 2.

25 So I think there is a threshold issue the

1 Commission needs to come to grips with. And that is, do
2 they even want to tinker with the MCA plan, particularly in
3 light of the Telecommunications Act, the recent legislation
4 in Missouri that says -- that establishes a preference for
5 competition to exist in lieu of regulation, in light of
6 current calling plans that are being offered by
7 interexchange carriers, wireless carriers.

8 The landscape has changed considerably since
9 '92 when these plans were established. Is it really -- does
10 the Commission want to do that in today's environment? And
11 if they do, give us a little guidance on what they think
12 they want and -- but I think we need additional information,
13 particularly on a rate design perspective if MCA 2 is
14 something that the Commission thinks they want.

15 JUDGE RUTH: Okay. If the Commission thinks
16 they want to pursue the idea, should the case be spun off
17 into a separate docket immediately or should it remain in
18 the separate contested case docket or should the case stay
19 in the status of the TO-2001-391 with the guidance of the
20 Commission is interested in doing an MCA2, please look at
21 pricing and other issues and come back to us? Which is the
22 more appropriate way to go?

23 MR. ENGLAND: I don't know why you can't stay
24 in the current docket. It was established --

25 JUDGE RUTH: If we stay in the current docket

1 though, you all will get to the end of it and it will still
2 lack the so-called evidence or information for the
3 Commission to make a decision; is that true?

4 MR. ENGLAND: Not if the Commission orders
5 hearings. This gets to a fundamental disagreement I think I
6 have with the Commission on what's a contested case docket
7 and what's an investigatory docket. I don't think by giving
8 it a TO or a TI or whatever you want to do, it can --

9 JUDGE RUTH: I don't disagree with you. I
10 will say that the Commission refer prefers to start a case
11 as contested or noncontested and keep it that way. It's a
12 policy question. You're right. It's not a legal one. And
13 so technically it could stay MCA -- or it could stay 391
14 with a clear word from the Commission that it has now moved
15 into a contested case type procedure.

16 MR. ENGLAND: We've had a lot of cases that
17 start out with investigations with a lot of workshops,
18 industry task force, what have you and when they reach an
19 impasse, they come to the Commission. And it's been -- then
20 it proceeds from there on forward as a contested case docket
21 with the filing of testimony and the holdings of hearings.

22 JUDGE RUTH: I agree.

23 MR. ENGLAND: I can go either way. I just
24 hate to see -- I don't hate to see, but it just doesn't seem
25 necessary to create a new case number when you've got one

1 that you can utilize, in my opinion.

2 JUDGE RUTH: The way it was brought to me is
3 there seems to be a preference to keeping a contested case
4 contested or noncontested noncontested, if you will, not
5 changing their status. And this came up in 297 and 298
6 also.

7 But that a new case could be created and all
8 the evidence -- or all of the pleadings, etc., taken notice
9 of in the new case. It wouldn't necessarily slow it down.
10 It would just be bookkeeping, if you will, phase one was the
11 investigation and then phase two moved over to a new case,
12 contested case.

13 MR. ENGLAND: And I guess I don't have a
14 strong preference one way or the other on how you want to do
15 that. I think you can stay where you are, but if your
16 current policies would prefer to convert it to a contested
17 case that is clearly contested or acknowledged as contested
18 from the outset, that's acceptable as well.

19 JUDGE RUTH: Do you have any thoughts on the
20 Commission's quandary though in that, you know, it appears
21 that if the Commission says, yes, we want to pursue this,
22 moves into a contested case procedure, then the parties work
23 on the pricing, etc.

24 MR. ENGLAND: Well, that wouldn't prevent --
25 even though it's a new docket clearly with the idea in mind

1 that it's a contested case would not, in my opinion,
2 preclude the Commission from telling the parties to get
3 together at the outset, perhaps hold more task force
4 industry meetings to narrow the issues, what have you,
5 before we begin the filing of testimony and the holding of
6 hearings.

7 JUDGE RUTH: Do you think that that would have
8 a chance of being fruitful? I thought part of the reason
9 the parties stopped is it seemed they reached an impasse, if
10 you will.

11 MR. ENGLAND: Correct. But one of the issues
12 we didn't explore, because I think we wanted further
13 guidance from the Commission, was the rate design -- if the
14 Commission wants to pursue MCA2, then to see what the
15 parties would propose in the way of rate designs. And I
16 think various parties had different opinions on how to
17 approach that.

18 JUDGE RUTH: Mr. Dority, I just had pretty
19 much the same questions for you. It regards ALLTEL's answer
20 that there's not competent and substantial evidence in the
21 record to support implementation of the MCA2 at this time.
22 Do you have any comment as to what the necessary records
23 would entail and how to go about getting that?

24 MR. DORITY: I suppose I would echo a lot of
25 what Mr. England just said in terms of information that I

1 believe a number of industry participants had suggested
2 would be required before the Commission could or should make
3 a determination as to the MCA2 proposal, both as to rate
4 design, impacts upon the various companies.

5 But I'd be happy to provide you something in
6 writing, Judge, if you want that. But I think Mr. England
7 covered a good number of the issues that not only his
8 respective clients but I believe a number of companies have
9 suggested to the Commission would be required.

10 JUDGE RUTH: Let me approach it this way. At
11 this point there is not the evidence, if you will. Does
12 your client believe that the Commission should move into
13 that phase or should the Commission accept the report and
14 decide this should be the end of it?

15 MR. DORITY: I believe our clients would
16 suggest that the issue is now squarely before the Commission
17 and that the parties really do need further guidance from
18 the Commission before they would embark upon further task
19 force meetings or hearing phase at this time.

20 JUDGE RUTH: Would your client though -- I
21 believe -- is it ALLTEL? Yeah. Would it prefer that the
22 Commission leave the MCA2 -- I'm sorry, leave the MCA as it
23 is?

24 MR. DORITY: I believe that is ALLTEL's
25 position. If I could borrow a phrase from Mr. England, I

1 believe it was unraveling the sweater, the analogy that many
2 parties drew upon during the course of the on-the-record
3 presentation. And I think that is pretty much -- would
4 still be their position.

5 JUDGE RUTH: So the concern is unraveling the
6 sweater as opposed to -- the concern is that it might end up
7 causing harm to the MCA. It's not that you're opposed to
8 what some of the ideas might be, but that you would rather
9 have what you have then have the whole thing fall apart?
10 You'd rather have the MCA then risk losing -- the MCA as it
11 is, even if it's not perfect, then risk losing the MCA
12 entirely?

13 MR. DORITY: I believe it's ALLTEL's position,
14 your Honor, that the MCA, as it currently exists, is
15 working, is providing a service for the customers that are
16 utilizing it. And on that basis, they support the
17 continuation of the current MCA in its current form.

18 JUDGE RUTH: Okay. So they do not see the
19 need to make any changes even if there were no risk that
20 that would cause harm to the MCA as it is?

21 MR. DORITY: I'm sorry, Judge. Could you
22 repeat that? I'm having difficulty following.

23 JUDGE RUTH: I think you answered my question
24 before, but I want to clarify. Your client wants to leave
25 the MCA as it is. And I was trying to get at was the reason

1 for that is because you are quite happy with the MCA as it
2 is and don't think any changes need to be made, or is it
3 because you'd rather have the MCA that you have now then
4 risk having the Commission expand it, perhaps be found not
5 to have authority to do so and have the MCA unravel, as you
6 will?

7 MR. DORITY: Judge, it may well be both.

8 JUDGE RUTH: Because, you know, from a policy
9 point of view, those are two very different reasons. And
10 sometimes from the record it wasn't clear which way the
11 parties were coming down on that question. The result was
12 the same, the answer was no to certain position statements,
13 but as to why it was no was a little less clear. And you're
14 saying the answer's probably a little of both?

15 MR. DORITY: I think so, Judge. But like
16 other parties have indicated this morning, it's been a while
17 since we've addressed that issue.

18 JUDGE RUTH: I agree.

19 Mr. Johnson, some of these same things have
20 been flagged for your client. If you want to offer any
21 input at this time, expanding on the questions that we've
22 been discussing, you have an opportunity to do so.

23 MR. JOHNSON: I'd just simply say that
24 Choctaw, MoKan's customers seem to be fairly well satisfied
25 with the MCA service that they receive today. We do have a

1 concern that if you start trying to modify it, that you
2 might actually damage the service that they have today.

3 Third, with respect to whether you need a
4 contested case, I would just point out that all the expanded
5 calling plans that I mentioned that the Commission created
6 11 or 12 years ago did have their genesis in a contested
7 case, because when you try to give customers what they want,
8 you were impacting carrier revenues, you were impacting
9 intercompany compensation. And in this day and age you're
10 impacting different carriers' competitive situations and
11 their own evaluations as to whether a specific proposal
12 would hurt or help them.

13 And so we can get together and prepare reports
14 and give you data as to what would happen with respect to
15 pricing and company revenues and intercompany compensation
16 things, but I don't think you're ever going to get all of
17 the parties that have a stake in this to agree to even
18 submit one particular proposal to the Commission to
19 evaluate.

20 And, therefore, if the Commission does want to
21 go forward and look at modification of the existing MCA
22 plan, the only way it's ever going to come to a -- give you
23 the record that you need to base a decision upon is through
24 a contested case.

25 JUDGE RUTH: True. And, you know, as it's

1 been pointed out, I don't believe there's any law that would
2 prevent this case from changing into a contested case. It's
3 just that there are now five Commissioners that are
4 different from what the Commission was in 1991 and they seem
5 to think that it's cleaner. Personally, I don't care
6 because I would get it either way, I'm afraid.

7 MR. JOHNSON: Of interest, your Honor, as I
8 recall, the '92 docket was a contested case and created the
9 three services. And then they did an investigation into the
10 continued viability of COS, which was the TR docket or
11 investigatory docket. Ended up having hearings on that and
12 ending COS in an investigation docket. So through the
13 different Commissioners, when you look at the consistency of
14 the Commission, it hasn't always been consistent.

15 JUDGE RUTH: Good point.

16 MR. JOHNSON: Whichever way they want to go if
17 they want to keep contested dockets separate and never end
18 up with a contested case in an investigatory docket, that's
19 fine, they just need to create a new one.

20 JUDGE RUTH: If the Commission decides to go
21 to contested case status, at what point are local public
22 hearings justified? In the beginning or waiting until after
23 pre-filed -- first round at least of pre-filed testimony?

24 MR. JOHNSON: I would leave that to Public
25 Counsel and the Commission as to when they would want to do

1 them. In my opinion, it makes no difference with respect to
2 the evidentiary record upon which they base their decision.

3 JUDGE RUTH: Again, you are not required to
4 file any kind of supplement, Mr. Johnson, but if you choose
5 to file a supplement, you might want to expand upon -- it's
6 on page 3, question No. 2, then it goes down to sub A,
7 sub 2, that the Commission has the authority to modify the
8 MCA plan and it is necessary and appropriate to do so,
9 should the Commission should order implementation of MCA2.

10 And you state that, No, MCA2 should not be
11 implemented without its effects being synthesized with rural
12 calling scopes, service pricing and the new USF docket in
13 order to ensure parity, etc.

14 If anything has happened since May until now
15 that would supplement the record to date regarding this
16 issue, you might want to file something, but you're not
17 required to.

18 MR. JOHNSON: I'm not aware of anything that
19 has changed our position in that regard.

20 JUDGE RUTH: Okay. Mr. Bub, I want to go back
21 to you for just a moment. And you may have already
22 mentioned this, but in your position statements, I believe
23 around pages 5 and 6, you say, The Commission does not have
24 the authority to modify the existing MCA plan as to the
25 local exchange boundaries, I believe.

1 Can you clarify if there are any circumstances
2 under which you believe the Commission could order that the
3 plan be altered or modified?

4 MR. BUB: At this time I can't, your Honor,
5 but we'll take a look at that question.

6 JUDGE RUTH: Okay. I don't have anything
7 further. If anyone needs to add something, I'm just going
8 to look out and you need to raise your hand.

9 MR. ENGLAND: I'm sorry. I didn't hear your
10 last comment.

11 JUDGE RUTH: If you have anything to add -- I
12 wasn't going to go down the row. I was going to ask you to
13 raise your hand and you'll have the opportunity to speak.

14 Okay. Then I don't know if any of the parties
15 plan to file some follow up. Again, I suggested some places
16 where it might be helpful, but I'm not requiring it.
17 However, if it's coming, I'd like to have an idea of when it
18 might be coming.

19 If you are a party and you think you might be
20 filing something, would you tell me when you would not want
21 this taken to the Commission before or give me an idea when
22 you would be filing something? In other words, I'm not
23 going to hold you to you saying that you might file
24 something. If you're thinking of filing something, do you
25 want 10 days, two weeks, a month?

1 MR. ENGLAND: Your Honor, at the risk of
2 postponing this beyond reasonable bounds, but nonetheless
3 accommodating my particular schedule with particularly
4 hearings before this Commission in mid- to late-December and
5 I think the first week or so of January, would it be
6 possible to postpone this to, say, mid-January?

7 I mean, if people want to do it sooner, we'll
8 accommodate it, but if there's no real hurry, particularly
9 with the intervention of the holidays and my own hearing
10 schedule before you all, I'd appreciate about a 45-day time
11 frame.

12 MR. DANDINO: Your Honor, I don't have any
13 problem with that. I'm kind of in the same boat on some of
14 those same time frames.

15 JUDGE RUTH: Any other thoughts? I will tell
16 Chairman Gaw that it is expected that the parties, if
17 they're going to file things, would file it in approximately
18 45 days.

19 If he believes that this needs to be addressed
20 sooner, I will do an order directing filing just setting out
21 a deadline by which anyone would have to file if you want.
22 I don't know what his thoughts will be on that 45 days.
23 I'll leave it with -- that that is what I'll suggest to him,
24 but I don't know what he'll do.

25 And I believe he'll actually make that

1 decision. Because as the new chairman, he will control when
2 it comes up really on the docket or on the Commission's
3 agenda.

4 Even if the Commission discusses it before
5 then, that doesn't mean the parties can't file something
6 afterwards. I just don't know when they discuss it -- what
7 they would do is it would be a discussion item, it wouldn't
8 be a vote. And they could always change their mind then
9 based on whatever the parties file, but at this time I can't
10 guarantee that they won't discuss it in agenda before then.
11 I'll suggest that.

12 Okay. Seeing nothing further, we'll go off
13 the record.

14 WHEREUPON, the pre-hearing conference was
15 adjourned.

16
17
18
19
20
21
22
23
24
25