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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

PREHEARING CONFERENCE

May 16, 2003  
Jefferson City, Missouri  
Volume 1

In the Matter of an )  
Investigation into the )  
Adequacy of the Local )  
Calling Scopes of SBC Local )  
Exchanges of Washington, )  
Union, and St. Clair, And ) Case No.: TO-2003-0298  
Beaufort and Around )  
Franklin County. )

VICKY RUTH, Presiding,  
SENIOR REGULATORY LAW JUDGE.

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

2 JUDGE RUTH: Okay. Good morning. We are here  
3 for a prehearing conference in Case No. TO-2003-0298,  
4 In the Matter of an Investigation into the Adequacy of  
5 the Local Calling Scopes of SBC Local Exchanges of  
6 Washington, Union, St. Clair, Beaufort and around  
7 Franklin County.

8 My name is Vicky Ruth, and I will be  
9 conducting the prehearing conference in this case.  
10 Although it was originally -- this case was assigned to  
11 Chief Judge Roberts, it is being transferred to me.

12 Today's date is May 16th, 2003, and it's  
13 10:25 a.m.

14 Let's begin by taking entries of appearance,  
15 please. And, Mr. Dandino, would you begin?

16 MR. DANDINO: Michael Dandino, Office of the  
17 Public Counsel, Post Office Box 7800, Jefferson City,  
18 Missouri 65102, representing the Office of the Public  
19 Counsel and the Public.

20 JUDGE RUTH: Staff?

21 MR. BATES: Good morning, Your Honor.  
22 Bruce H. Bates representing the Staff of the Missouri  
23 Pubic Service Commission. My address is Post Office  
24 Box 360, Jefferson City, Missouri 65102.

25 JUDGE RUTH: Thank you.

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1           Is someone representing SBC?

2           MR. CONROY: Thank you, Judge.

3           Tony Conroy on behalf of SBC, Missouri, One  
4   SBC Center, Suite 3518, St. Louis, Missouri 63101.  
5   Although I don't believe we're actually a party to the  
6   case, I'm here to represent SBC's interest.

7           JUDGE RUTH: Thank you.

8           I believe when Judge Roberts sent out his  
9   order setting prehearing conference, he indicated he  
10   would appreciate your presence.

11          Are there other parties that want to make a  
12   note on the record that they were present?

13          (No response.)

14          JUDGE RUTH: No. Thank you.

15          On February 25th, 2003 Public Counsel filed a  
16   motion requesting that the Commission establish an  
17   investigation into the adequacy of the local calling  
18   scopes in certain SBC exchanges.

19          The Commission later issued an order  
20   scheduling this prehearing conference. And then  
21   yesterday, Public Counsel filed a motion requesting  
22   that the Commission schedule a local public hearing.

23          The Commission will take that request under  
24   advisement, but will not be ruling on it today. If any  
25   party wants -- if any interested entity wants to

1    respond to that request for a local public hearing, you  
2    may do so in the next few days.

3               Now, the purpose of this prehearing conference  
4    is to identify and narrow the issues, and also address  
5    whether there is any legislation pending that might  
6    affect this case. The legislative session is about  
7    over, so I assume you'd know that.

8               And then also for the parties to offer  
9    suggestions, if they have them, on the procedure the  
10   scope should -- or the procedure this case should take.

11              Public Counsel, would you please begin?

12              MR. DANDINO: Yes, Your Honor. Thank you.

13              We had filed this re-- request to establish an  
14   investigation since we had -- had over 130 complaints  
15   that centered around just a few exchanges in  
16   Frank-- from Franklin County about the loss of -- of  
17   SBC's Local Plus Service.

18              They -- it -- it really arose when they -- the  
19   customers received notice that, I guess, as of  
20   February 1st Local Plus -- the Local Plus Program was  
21   being terminated.

22              And the response from consumers was -- they  
23   were upset they didn't have a chance to hear about  
24   this, that they didn't think their -- their -- what was  
25   offered and replaced was of the same value. And, you

1 know, of course, they wanted the Commission to  
2 reconsider that.

3 Of course, you know, that -- you know, that  
4 was -- was not possible -- that the Commission had  
5 already ruled on it and -- and permitted this. And  
6 Southwestern Bell, of course, with that approval  
7 made -- you know, made plans and -- and terminated the  
8 service.

9 What we wanted to do -- we thought, well,  
10 perhaps there are some other -- you know, some other  
11 local -- Expanded Local Calling Program or  
12 some -- something, and we wanted to give the  
13 opportunity for the citizens to have the chance to  
14 voice their concern directly to the Commission and  
15 to -- and -- and talk about whether or not they feel  
16 the -- the service is adequate or not. That's always  
17 a -- that's always one element into whether the -- the  
18 service is adequate of a local calling plan.

19 Now, once again, as I said with -- in the  
20 other case Southwestern Bell, as well as other  
21 companies, have introduced some new products, which  
22 bundle some of the services that have expanded calling.  
23 I don't know to what extent those services are -- are  
24 offered in this -- in this exchange.

25 But, you know, that's something for the

1 Commission to investigate. That was one reason why  
2 we -- as I said before, we didn't bring it as a  
3 complaint because, you know, we -- we felt we didn't  
4 have enough facts into -- into knowing whether or not  
5 that it was adequate -- the serv-- the local calling  
6 scope was adequate, and we wanted to make sure that  
7 the -- everyone had a fair opportunity, both the  
8 company and the -- and the citizens to -- you know, to,  
9 you know, make a record on this.

10 JUDGE RUTH: So, Mr. Dandino, it was not  
11 Public Counsel's intention that this be a contested  
12 case; is that --

13 MR. DANDINO: Well --

14 JUDGE RUTH: Well, the reason --

15 MR. DANDINO: Well, I --

16 JUDGE RUTH: -- I ask --

17 MR. DANDINO: Yeah.

18 JUDGE RUTH: -- is I understand you didn't  
19 bring it as a complaint case.

20 MR. DANDINO: Well, I --

21 JUDGE RUTH: TO's are kind of a hybrid.  
22 Sometimes they -- they generally are contested cases,  
23 but sometimes they're more of an investigation. But if  
24 it's not a contested case, then the Commission would  
25 not issue an order then taking action.

1           The Commission might decide something's  
2   necessary and then spin off a new case. For instance,  
3   if -- if Public Counsel wants an alternative expanded  
4   local calling scope -- if it's not a contested case, it  
5   wouldn't be issued in this case.

6           The Commission might, you know, open this as  
7   an investigation, look into it, decide, yeah, it's a  
8   good idea, but then it would have to spin it off as a  
9   new case or else change the entire focus of this -- the  
10  case midway through to actually have the relief you're  
11  requesting.

12           MR. DANDINO: Well, I -- I -- here's how I  
13  envision it, even though it's -- it's denominated as an  
14  investigation. I think because it involves the -- you  
15  know, the rights of the specific company, SBC, and  
16  their obligations in a specific exchange, I -- you  
17  know, and we're talking about specific customers, I  
18  think, you know, that it is -- it -- it rises to the  
19  level of a contested case certainly.

20           JUDGE RUTH: See --

21           MR. DANDINO: And I -- I intended it to be  
22  a -- a contested case, even though it's called an  
23  investigation, because I think there -- it is --  
24  it's -- it doesn't lend itself to a generic  
25  investigation, because it -- it involves a specific



1 company, specific problem and a specific area.

2 And -- and I think that it's gonna affect  
3 the -- the rights of the company and the customers in  
4 those exchanges.

5 JUDGE RUTH: Okay. So you do intend -- it was  
6 your intention for it to be a contested case?

7 MR. DANDINO: Yes.

8 JUDGE RUTH: Not the traditional just  
9 investigation type? Okay.

10 MR. DANDINO: Right. And I don't think how  
11 you call a case necessarily defines what it is.

12 JUDGE RUTH: True. I just wanted to make sure  
13 I understood your expectations.

14 MR. DANDINO: Sure.

15 JUDGE RUTH: Did you have anything further?

16 MR. DANDINO: That's all I have.

17 JUDGE RUTH: Okay.

18 Mr. Bates?

19 MR. BATES: Your Honor, to echo Mr. Poston in  
20 the earlier prehearing, I -- Staff believes at this  
21 point that it really has no position in the underlying  
22 issues in this case. And Staff believes it may be  
23 premature to call this a contested case without some  
24 guidance from the Commission, which the Staff would  
25 request in this.

1           Also Staff believes specifically as to the  
2   request for a public hearing -- that that may also be  
3   premature at this time at least until some of the  
4   issues are more fully fleshed out.

5           JUDGE RUTH:  Are you going to file a written  
6   response regarding that request for public hearing?

7           MR. BATES:  We don't know, Your Honor.

8           JUDGE RUTH:  Okay.

9           MR. BATES:  We just received it yesterday.

10          MR. DANDINO:  Your Honor, may I address  
11   something on that public hearing?

12          JUDGE RUTH:  Yes.

13          MR. DANDINO:  The -- two reasons I filed that.  
14   One is -- is that in the COS case we were advised that  
15   since we didn't file any formal motion for request for  
16   a public hearing, that we didn't ask for a public  
17   hearing.  And that's one reason I filed this as  
18   early -- this early in the case.

19          Second of all, if the Commission wanted  
20   to -- you know, we wanted to be helpful to the  
21   Commission that if they intended to have public  
22   hearings that we'd suggest some -- some dates and some  
23   site -- a site for it, if they wanted to consider it.

24          You know, we're not necessarily trying to push  
25   it.  If the Commission wants to go forward with this at

1 an early time, we wanted to give the dates and some  
2 possible -- and possible locations.

3 But I just wanted to make sure that we were  
4 clearly on the record that we've requested a public  
5 hearing in this.

6 JUDGE RUTH: Okay. And since you brought that  
7 up, I will mention that the Commission does appreciate  
8 it when parties offer sites for the local public  
9 hearing. That's very helpful.

10 And I'll make a note that although you  
11 recommended specific dates, you're not necessarily  
12 opposed to the Commission deciding that a public  
13 hearing might be appropriate, but that it's premature  
14 at this point.

15 MR. DANDINO: That's -- that's correct.

16 JUDGE RUTH: Okay. SBC, did you have  
17 something you wanted to add?

18 MR. CONROY: Just briefly, Your -- Your Honor.

19 We agree, I think, with both parties to this  
20 case that it would be premature to open a case,  
21 particularly a contested case at this point.

22 We don't think the competitive marketplace has  
23 really had an opportunity to -- there hasn't been  
24 opportunity to see whether the competitors in place  
25 will satisfy Mr. Dandino's concerns. And he -- and he

1 I think acknowledged that.

2 Also agree that it would be premature to have  
3 public hearings for a couple reasons. One, I think  
4 there are outstanding issues with respect to -- and  
5 they've been, you know, raised in other cases -- or  
6 outstanding issues with respect to the Commission's  
7 authority to change calling scopes and those -- those  
8 have never been resolved.

9 We would think that it would be better to get  
10 those resolved up front than to spend a lot of time  
11 circling those issues without getting those resolved  
12 first.

13 It's also -- it seems to us premature to have  
14 a public hearing on something that doesn't -- that  
15 there's no claim. There's -- there's nothing for the  
16 Public to say, yeah, that -- I like that feature, I  
17 don't like that feature or that plan.

18 If you ask -- if you have a public hearing and  
19 you say, would everybody like to have, you know, free  
20 local calling, it's predictable what the Public input  
21 is going to be, I think.

22 And it would be better, I think, to have some  
23 sort of a plan so that they know, you know, what it's  
24 gonna cost to get -- if they want some local expanded  
25 calling.

1           So we think that it's premature to -- to  
2   schedule public hearings at -- at this time. We'd be  
3   happy to file brief written comments, too, and probably  
4   will next week I would say on -- on that issue.

5           So I -- I guess that's really just our -- our  
6   brief comments at what we think is a very -- first of  
7   all, not even -- don't even need a case at this point.  
8   Let's let competition work, but even at the early --  
9   early stage or whatever kind of case this turns out to  
10  be.

11           JUDGE RUTH: Okay. Let me follow up on a  
12  couple of things. I think you started off by making a  
13  comment that you agree with both parties that it's  
14  premature to open a contested case; is that what you  
15  said?

16           MR. CONROY: Yes. Premature to open --  
17  frankly to have any case, but particularly -- I think  
18  the way I said it -- I meant to say that particularly a  
19  contested case at this time.

20           JUDGE RUTH: And the reason that confused me  
21  is I thought that Mr. Dandino decided that, in his  
22  opinion, this should be a contested case; is  
23  that -- okay.

24           So Mr. Dandino is nodding his head, yes, you  
25  think it should be a contested case?

1 MR. DANDINO: Yes.

2 MR. CONROY: I understood him -- him to say  
3 that if there is going to be a case involving a  
4 specific company's rights and duties, that it needs to  
5 be a contested case. I would agree with that. But I  
6 don't know that any case is appropriate right now.

7 And I thought he at least questioned whether  
8 it's premature to have that kind of contested case  
9 already in this case.

10 JUDGE RUTH: I -- I was confused myself as to  
11 Public Counsel's position on that. But I thought that  
12 they had clarified it -- that Public Counsel believes  
13 that a contested case is appropriate as to the specific  
14 ex-- exchange or areas.

15 Mr. Dandino, can --

16 MR. DANDINO: Yes. The only thing that  
17 probably led to confusion was I -- I did mention that  
18 since we filed this, Southwestern Bell has come up with  
19 a different -- a different plan.

20 Now, I wasn't proposing that we just, you  
21 know, put this in the hands to see if that works. I  
22 just added that as -- as a factor to be considered in  
23 this plan that -- or not plan, but in this -- in this  
24 investigation in this case as -- as part of the case.

25 JUDGE RUTH: Since something significantly has

1 changed since Public Counsel filed this case, why  
2 wouldn't it be appropriate to step back and evaluate  
3 whether Public Counsel thinks it's necessary?

4 Because I'm still a little confused. I'm  
5 getting the impression -- I'm getting mixed thoughts  
6 over here as to whether or not Public Counsel thinks  
7 this is necessary.

8 MR. DANDINO: Well, we haven't been able -- we  
9 haven't really investigated whether -- whether those  
10 products apply to this -- these exchanges. And  
11 that -- that would make a difference.

12 JUDGE RUTH: Okay. And why have you not done  
13 that?

14 MR. DANDINO: Just haven't had the opportunity  
15 to do that and their recent rollout, I guess.

16 JUDGE RUTH: When did they come out?

17 MR. DANDINO: In the last few months -- month  
18 or so.

19 JUDGE RUTH: Mr. Conroy, I wanted to follow up  
20 with something else that you had mentioned. You may  
21 stay seated if you wish. It's up to you.

22 MR. CONROY: It's easier for me to talk if I  
23 stand usually.

24 JUDGE RUTH: Okay. You made another comment  
25 about some out-- outstanding issues in another

1 Commission case that was unresolved regarding the  
2 Commission's authority as to some of these things.

3 MR. CONROY: Yes.

4 JUDGE RUTH: Were you referring to  
5 TO-2001-391, the --

6 MR. CONROY: I wasn't referring --

7 JUDGE RUTH: Was it the MCA --

8 MR. CONROY: Well, I wasn't specifically --

9 JUDGE RUTH: -- and there was -- there was  
10 some issues brought up there as to not just expanding  
11 the metropolitan calling areas, but Public Counsel had  
12 mentioned that there needed to be some things in rural  
13 areas, too.

14 And I just wasn't sure if you were referring  
15 to that case or what case.

16 MR. CONROY: I wasn't specifically referring  
17 to that case, but I'm sure the same issues have come up  
18 in that case. I wasn't involved in that case, so I --  
19 I -- I can't really speak from personal experience.

20 But I was referring to -- I believe it was the  
21 last Universal Service hearing case where the issue of  
22 the Commission's authority with respect to mandating  
23 changes to calling scopes clearly did come up during  
24 the hearing at least.

25 And I think it probably was among the list of



1 issues that the Commission asked us to brief in that  
2 case after the case was heard -- sort of additional  
3 issues that were added at the end.

4 That issue comes up in a lot of different  
5 cases -- or not a lot, but -- but it has come up in  
6 several cases on that legal issue, which I think, you  
7 know, doesn't really involve fact-finding issue. It  
8 involves Missouri law issues.

9 Even if the -- even if there was a need to  
10 have a case at this point -- and just responding a  
11 little bit to what Mr. Dandino just said and Your --  
12 Your Honor's questions. It doesn't seem to me -- I  
13 mean, if you're gonna -- if you're gonna try to let  
14 competition work and -- and respond to customer demand,  
15 you ought to let it try to work.

16 And -- and so that's -- you know, that's why  
17 we think it's -- you shouldn't have any case. But  
18 if -- if you're gonna proceed with any case here,  
19 particularly one that's, you know, impacting my  
20 company -- our company's -- SBC Missouri's rights and  
21 duties, that -- that legal issue is -- is gonna come up  
22 in all these different cases, it should be resolved  
23 first.

24 JUDGE RUTH: That's what I'm still trying to  
25 follow up on. The -- the unresolved legal issues --

1           MR. CONROY: Uh-huh.

2           JUDGE RUTH: -- what case -- I mean, can you

3 at least tell me what the last Universal Service case

4 number was that you're referring to --

5           MR. CONROY: I --

6           JUDGE RUTH: -- or who the judge was maybe?

7           MR. CONROY: Yeah, it might at 329 is the case

8 number. The hearing was last fall, I believe. It's

9 judge -- somebody help me out here. I can't remember.

10          MR. DORITY: It was Judge Mills.

11          MR. CONROY: It was Judge Mills, and I -- I --

12 I think it still is.

13          JUDGE RUTH: So that case has not been

14 resolved or it -- it was resolved -- it was resolved

15 without answering some of these legal questions?

16          MR. CONROY: Yes. I mean, it was an issue

17 that -- that the judge asked the parties to address in

18 their briefs, I think more to get the part-- the

19 diverse parties' viewpoints on -- on the issue. But

20 it's not -- I do not anticipate that it's gonna be

21 resolved in that case.

22          JUDGE RUTH: Okay. Do you know of any other

23 case where it has been specifically addressed by the

24 Commission?

25          MR. CONROY: I'm not aware of any other case

1 that is specifically being addressed from a legal issue  
2 by the Commission, no.

3 JUDGE RUTH: Okay. Mr. Dandino or Mr. Bates,  
4 anyone help me? Some of these issues as to the  
5 Commission's authority, were they not part of the  
6 TO-2001-391, and they have not yet been addressed in  
7 that case either?

8 (No response.)

9 JUDGE RUTH: Not sure.

10 MR. BATES: I'm sorry, Your Honor. I'm not  
11 sure.

12 JUDGE RUTH: Okay. I'll look into that one.

13 Okay. I don't have any other questions. I'll  
14 give the participants one last opportunity for  
15 comments, if you wish.

16 (No response.)

17 JUDGE RUTH: All right. Again, this is  
18 something that will have to be taken to the  
19 Commissioners for their input. If you have any written  
20 comments that you want to offer, you may do so.

21 I realize that you're not -- except for Public  
22 Counsel or the Staff, there really aren't any other  
23 parties, but you're still welcome to offer those, if  
24 you wish.

25 It is my perception that there is disagreement

1 as to whether this should be a contested case or not,  
2 and how it should proceed. The disagreement ranges  
3 from "case is premature, should be closed," to "it  
4 should be a contested case affecting SBC's rights"  
5 definitely.

6 So if anyone wants to add to that, please just  
7 file your written comments following the hearing.

8 Seeing no further questions or comments, that  
9 will conclude the on-the-record portion. If the  
10 parties wish, you may remain in the room and discuss  
11 these issues among yourselves.

12 Last one out of the room, please tell Joanne  
13 at the front desk so she can lock up. And I'll be in  
14 my office if any of you have questions for me.

15 Thank you.

16 MR. DANDINO: Thank you, Your Honor.

17 WHEREUPON, the on-the-record portion of the  
18 prehearing conference was concluded.

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