

1 BEFORE THE PUBLIC SERVICE COMMISSION
2 OF THE STATE OF MISSOURI

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4

TRANSCRIPT OF PROCEEDINGS

5

Initial Arbitration Meeting

6

October 17, 2005

Jefferson City, Missouri

7

Volume 1

8

In the Matter of the Petition for)

Arbitration of Unresolved Issues)

9

In a Section 251(b)(5) Agreement) Case No.

With T-Mobile USA, Inc.) TO-2006-0147

10

11 In the Matter of the Petition for)

Arbitration of Unresolved Issues)

12

In a Section 251(b)(5) Agreement) Case No.

With Sprint PCS) TO-2006-0148

13

14 In the Matter of the Petition for)

Arbitration of Unresolved Issues)

15

In a Section 251(b)(5) Agreement) Case No.

With NEXTEL Wireless) TO-2006-0149

16

17 In the Matter of the Petition for)

Arbitration of Unresolved Issues)

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In a Section 251(b)(5) Agreement) Case No.

With U.S. Cellular) TO-2006-0150

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1 In the Matter of the Petition for)
Arbitration of Unresolved Issues)
2 In a Section 251(b)(5) Agreement) Case No.
With Cingular Wireless) TO-2006-0151

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KENNARD L. JONES, presiding,

REGULATORY LAW JUDGE

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REPORTED BY:

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Jennifer L. Leibach, RPR, CCR

MIDWEST LITIGATION SERVICES

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A P P E A R A N C E S

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River Mutual Telephone, Green Hills
Telephone Company, Holway Telephone
Company, Iamo Telephone Company, Kingdom
Telephone Company, KLM Telephone Company,
Lathrop Telephone Company, Le-Ru
Telephone Company, Mark Twain Rural
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1 PROCEEDINGS

2 JUDGE JONES: We can go ahead and go on the
3 record with Case Nos. TO-2006-0147, TO-2006-0148,
4 TO-2006-0149, TO-2006-0150, TO-2006-0151. Because those
5 cases have such long captions, I won't read those into the
6 record. They're in the record for anyone that's reading this
7 transcript. At this time, we'll take entries of appearance,
8 beginning at my left.

9 MS. MANDA: Thank you, Melissa Manda.

10 MR. ENGLAND: And W.R. England, appearing on
11 behalf of the Petitioners in all the named cases. Our
12 mailing address is Post Office Box 456, Jefferson City,
13 Missouri, 65102, and I'd also like to enter the appearance of
14 Brian McCartney, who's not here, but will likely be involved
15 as we go forward in these cases.

16 MR. GARDNER: Paul H. Gardner, Goller,
17 Gardner, and Feather, 131 East High Street, Jefferson City,
18 Missouri, appearing on behalf of US Cellular.

19 MR. DEFORD: Paul Deford with the Law Firm of
20 Lathrop and Gage, 2345 Grand Boulevard, appearing on behalf
21 of Sprint Nextel.

22 MR. WALTERS: Paul Walters, Junior, 15 East
23 First Street, Edmond, Oklahoma, appearing on behalf of
24 Cingular Wireless.

25 MR. JOHNSON: Mark Johnson and Roger Steiner

1 of Sonnenschein, Nath and Rosenthal, 4520 Main Street,
2 Suite 100, Kansas City, Missouri, 64111, appearing on behalf
3 of respondent T-Mobile USA, Incorporated.

4 JUDGE JONES: Oh, so Mr. DeFord, you have
5 Sprint and Nextel even though they're two separate cases?

6 MR. DEFORD: Actually, it's one corporate
7 entity now, so I would --

8 JUDGE JONES: Oh, they've merged now?

9 MR. DEFORD: -- probably move to consolidate.

10 JUDGE JONES: Are you sure about that?

11 MR. DEFORD: No.

12 JUDGE JONES: All right. The first thing I
13 guess we should talk about is consolidation. Does anyone
14 have a problem with that?

15 MR. ENGLAND: I don't know that I've got a
16 problem, I think we need to talk about it. I don't have a
17 problem with Sprint Nextel. The reason we filed -- we were
18 in negotiations with them and discussing it with them. We
19 had different petitioners for each of those two entities, and
20 when we started the process, they were two separate entities,
21 but we've negotiated an agreement that would apply to both.
22 The issues to the extent remain the same for arbitration, as
23 I understand, and to the extent they have witnesses, I assume
24 they will be the same.

25 MR. DEFORD: They will be the same. We have

1 two.

2 MR. ENGLAND: So my thought would be at the
3 very least we can consolidate with Sprint Nextel. With
4 respect to the others, I think a lot of the issues will be
5 the same, but not necessarily all of them, and I don't know
6 if they're planning to use joint witnesses or their own
7 witnesses. And if they are using their own witnesses, it
8 would seem to me maybe con -- and if particularly to the
9 extent that not all the issues are the same, consolidation
10 may not be appropriate. Having said that, I don't have a
11 problem with taking these cases seriatim, if you will, just
12 going on the record on day one and running them until we get
13 them all done on day four or five.

14 JUDGE JONES: Well, the cases are going to be
15 on the same timeline because of the short amount of time that
16 we have in order to do it. Whatever we do on one, we're
17 going to do on the other, so I think we should explore
18 consolidating all of these. And you say your concerns are
19 witnesses, and issues, right?

20 MR. ENGLAND: Correct.

21 JUDGE JONES: You-all are going to have your
22 own witnesses?

23 MR. WALTERS: Yes.

24 MR. DEFORD: We'll have to. We certainly
25 don't object to consolidation of all of them. As a practical

1 matter, we're going to want to be there for all of the direct
2 and cross of all of the other witnesses. We're going to want
3 to see what's going on.

4 MR. ENGLAND: I don't have a problem with you
5 being there. As I understand it, the arbitrations are
6 public -- or the hearings, to the extent they don't involve
7 confidential information. What I don't necessarily want to
8 do is -- is be susceptible to multiple cross-examinations by
9 different wireless carriers when they have their own
10 witnesses.

11 JUDGE JONES: You mean having to conduct those
12 cross?

13 MR. ENGLAND: Well, for example, if I put on
14 my witness, I would expect that he would be cross-examined by
15 Paul in the Sprint Nextel context, by Mark, or whoever, in
16 the context of T-Mobile.

17 JUDGE JONES: Okay.

18 MR. ENGLAND: But to the extent they put on
19 their witnesses and want to ask cross of their other wireless
20 witnesses, as I understand it, arbitration technically was to
21 be between the two parties, the petitioner and respondent.

22 JUDGE JONES: Okay.

23 MR. ENGLAND: And so that's my concern is
24 getting too many bites at the apple, if you will.

25 MR. DEFORD: We'd waive friendly cross.

1 MR. JOHNSON: In the SBC arbitrations, which
2 were consolidated, the friendly cross was strictly
3 prohibited. I think that may even have been dealt with in
4 the procedural order. And we'd waive friendly cross as well.
5 We can make sure we do that early on and get that commitment
6 early on.

7 MR. ENGLAND: That might go a long way to
8 addressing my concerns.

9 JUDGE JONES: Do you feel the same way?

10 MR. GARDNER: Yeah, I concur.

11 MR. JOHNSON: Trip, I assume from the point
12 that your cost witnesses -- Bob's going to be your cost
13 witness for all of the cases?

14 MR. ENGLAND: Correct.

15 MS. MANDA: Excuse me for asking, but can you
16 tell me what friendly cross is?

17 MR. WALTERS: Friendly cross would be me
18 asking --

19 MR. JOHNSON: Trip is the past master at it.
20 Sorry.

21 MR. ENGLAND: First of all, that presupposes
22 you get some friends.

23 MR. JOHNSON: Good point.

24 JUDGE JONES: I don't want to dampen the
25 lightheartedness, but don't forget she's transcribing. So no

1 friendly cross then, right?

2 MR. JOHNSON: In essence, that's where two
3 parties, who are taking the same position on an issue, ask
4 cross-examination of the other party's witnesses. Throwing
5 them softballs, for lack of a better way to explain it.

6 MR. DEFORD: That's exactly the way.

7 MS. MANDA: So one cross per witness?

8 MR. WALTERS: We're not saying that.

9 MS. MANDLE: Just no softball questions.

10 MR. DEFORD: I wouldn't ask the witnesses for
11 Cingular or T-Mobile questions on cross that probably should
12 have been their direct.

13 MR. WALTERS: The only point I would make, I
14 think this is highly, highly unlikely, but if there should be
15 a point on which the wireless carriers have disagreements,
16 obviously we want to reserve our right to cross-examine on
17 that point. I think that's highly unlikely.

18 JUDGE JONES: Well, we should be able to
19 determine whether or not you disagree long before a hearing.

20 MR. WALTERS: Right.

21 MR. ENGLAND: Well, that gets to my point that
22 I'm not sure that a wireless carrier that's a respondent in
23 one proceeding, whether they agree or disagree with a
24 wireless carrier in another proceeding, has the opportunity
25 to participate in that proceeding, at least under your rules.

1 It was limited to the petitioner and the respondent.

2 JUDGE JONES: And so it sounds like what
3 you're saying is if they disagree, it's tough.

4 MR. ENGLAND: Exactly, and they can deal with
5 it in their own testimony and briefs, and what have you.

6 JUDGE JONES: Okay. Now, after looking at the
7 cases, it looks like all of the issues are the same.

8 MR. ENGLAND: Not quite. I can think of --
9 off the top of my head, I can think of one issue that's
10 different.

11 JUDGE JONES: Does that have to do with
12 T-Mobile?

13 MR. ENGLAND: Yes.

14 JUDGE JONES: Okay.

15 MR. ENGLAND: In the T-Mobile case, there is
16 the payment of what we've characterized as post-wireless
17 tariff traffic, or the nonpayment, if you will. All of the
18 other carriers, to my knowledge, are currently on payments
19 for traffic that were delivered during the period of time our
20 wireless tariffs were in effect.

21 JUDGE JONES: So they're the only ones that
22 haven't paid?

23 MR. ENGLAND: Correct.

24 JUDGE JONES: What's up with that?

25 MR. JOHNSON: Well, we disagree with some of

1 the legal positions that have been taken. This is a
2 longstanding dispute, and it's our belief that that dispute
3 has been raised in the pending complaint cases, and should be
4 resolved there. We anticipate that we're going to file a
5 motion that asks you to find that that issue need not be
6 resolved in this case -- in the arbitration case in which
7 we're talking about an arbitration agreement that will -- a
8 prospective agreement, not a retroactive agreement.

9 MR. ENGLAND: And just to fill out the record,
10 our position is that until they pay that, they shouldn't get
11 the benefit of an agreement on a go-forward basis, and we
12 would ask for authority to have that traffic rerouted through
13 an IXC, or interexchange carrier. Essentially, what they've
14 done is thumb their nose to the Commission.

15 The Commission approved the tariffs. They
16 were affirmed on appeal. T-Mobile went to the FCC, sought
17 declaratory ruling on that, were denied. The FCC said those
18 tariffs, at least up until April 29th, were lawful. T-Mobile
19 defended a complaint case here at the Commission. This
20 Commission found against them in the complaint case. Then
21 T-Mobile went to federal court and attempted to prohibit us
22 from enforcing the Commission's decision; they've lost there.

23 As far as I'm concerned, you know, it's a
24 directed front to this Commission, and if they're not going
25 to pay it, they shouldn't get the benefit -- we think either

1 they pay it, or they don't get the benefit of an
2 interconnection agreement. And they can find another way to
3 get the traffic to us, which they did for a period of time.

4 JUDGE JONES: Are you-all thumbing your nose
5 at the Commission?

6 MR. JOHNSON: We don't view it that way.

7 JUDGE JONES: How do you view it? I don't
8 want you to have to argue your complaint case here, but ...

9 MR. JOHNSON: Well --

10 JUDGE JONES: Anything short of that would be
11 helpful.

12 MR. JOHNSON: Missouri law, on this issue, is
13 an outlier. All the other states disagree with Missouri on
14 the wireless termination tariff issue, and to this point,
15 there has not been a Missouri court that has told T-Mobile to
16 pay an amount certain to the -- to Trip's clients.

17 JUDGE JONES: Okay. So that's the only
18 difference in issues?

19 MR. WALTERS: It may be a little -- yeah, it
20 may be a little premature to say that, and the only reason we
21 say that is I've only spoken to my client, I haven't talked
22 to other counsel. But in the case of Cingular, my
23 understanding is there has basically been no negotiation.

24 There was an initial draft exchanged, and my
25 client's represented to me, now, I don't have any direct

1 knowledge of this, I'm simply repeating what my client said
2 is that the first red-line came back after the Petition was
3 filed. So it's difficult to say the issues are the same
4 because we have no issues at this point. We kind of think
5 the whole proceeding is a little premature.

6 JUDGE JONES: I'm confused. Have you-all --
7 so you're saying you-all have not negotiated with any of
8 Mr. England's clients?

9 MR. WALTERS: I am not saying that. What I'm
10 saying is initial contact was made. An agreement was made to
11 start with the baseline document, which I understand was sent
12 to the independents, and that's where it stood when the
13 Petition was filed. My client has no list of issues, there's
14 been no discussion about specific issues. There are no open
15 issues to be arbitrated at this point because there hasn't
16 been any discussion of any issues yet.

17 JUDGE JONES: So there aren't any issues with
18 regard to you?

19 MR. WALTERS: That's our feeling. I'm not
20 speaking for any other company.

21 JUDGE JONES: Mr. England?

22 MR. ENGLAND: Yeah, if I can clarify. It's
23 true that the Cingular negotiations have lagged behind a
24 number of other negotiations, these as well as some others
25 that are going on. We sent, as part of our letter starting

1 the process, a -- a proposed agreement, which was what we
2 call a template agreement, which was the agreement in all
3 material respects, the same as has been approved by this
4 Commission for a number of our clients and Verizon Wireless
5 and Sprint PCS.

6 Cingular never gave us a -- never replied with
7 a red-line copy. What we offered later in the process was an
8 updated agreement, if you will, that was based on recent
9 agreements Cingular had entered into with some of the MITG
10 companies, Craig Johnson's clients. And Cingular said that
11 would be a good starting point, and so what I neglected to do
12 was to get them a revised -- before we've had to file the
13 Petition for Arbitration, a revised copy of our agreement
14 showing the MITG revisions, if you will.

15 That has now been done, as I understand, and
16 we've had at least one more conversation, and we're in the
17 process of narrowing those issues. So I think by the time
18 their Response is due, or Answer is due, we will be able to
19 identify the issues, and I think they will be very similar to
20 those in the T-Mobile, Sprint Nextel.

21 JUDGE JONES: So it's possible, though, that
22 you may not have any issues in that case?

23 MR. ENGLAND: That may be possible, too.

24 JUDGE JONES: And do you agree with his
25 assessment?

1 MR. WALTERS: The way he described it is the
2 way my client described it to me. I have no personal
3 knowledge. I wasn't involved in the negotiations, but that's
4 what they said. But right now, we don't know that we have
5 any issues at all.

6 MR. ENGLAND: And frankly, in that regard, we
7 actually have, in concept, an agreement with US Cellular, and
8 it's just a matter of finalizing that. And then as you can
9 imagine, printing out -- creating 25, or how many of them
10 there are for our side, different agreements and getting them
11 off and getting them signed. So I anticipate that the US
12 Cellular arbitrations will go away.

13 MR. GARDNER: Yeah, that's my understanding,
14 too.

15 JUDGE JONES: I guess -- well, in light of the
16 fact that we have five of them, that doesn't even matter to
17 me. Now, so this issue with T-Mobile, that was dealt with in
18 a prior arbitration case that we just had with them and the
19 MITG companies?

20 MR. ENGLAND: There was a similar issue. It's
21 what I call pre-tariff traffic.

22 JUDGE JONES: Right.

23 MR. ENGLAND: That would be traffic for our
24 group that was terminated prior to the implementation of our
25 wireless tariffs for a three-year period of time, roughly

1 February of '98 to February of '01, when we did not have
2 wireless tariffs in place. All we had were access tariffs.

3 This Commission directed the wireless carriers
4 not to send that traffic to us from February '98 forward
5 without an agreement to do so. All of these wireless
6 carriers did, and for a three-year period of time terminated
7 traffic to us for which we received no compensation, and
8 we're looking to arbitrate and try to -- at least we've tried
9 to negotiate that and have been successful in doing that with
10 some companies; we have not with others. And we're looking
11 for a decision from the Commission as to whether we're
12 entitled to compensation for that period of time as well.

13 JUDGE JONES: So you're trying -- you're
14 trying to find a remedy in this arbitration case for a
15 complaint case?

16 MR. ENGLAND: Correct.

17 JUDGE JONES: Okay. Do you think that's
18 appropriate?

19 MR. ENGLAND: The Commission apparently didn't
20 in the Alma case, but I want them to tell me that again.

21 JUDGE JONES: Okay. What were you going to
22 say?

23 MR. JOHNSON: Well, Mr. England has stated it
24 properly. The Commission, in the Alma arbitration in which I
25 represented T-Mobile, found that the payment for past

1 traffic, if you will, is not an appropriate issue for the
2 arbitration.

3 JUDGE JONES: Okay. Well, because these cases
4 are on the same time track, I don't see any reason not to
5 consolidate them and just handle them differently within that
6 consolidation. I mean, in other words, it would seem to be
7 more of an -- well, near an impossibility to do them all as
8 separate cases. From a practical standpoint, I don't know
9 how we can do that.

10 MR. ENGLAND: And let me be clear. I don't
11 have any problem with following the same timeline and
12 deadlines for filing of Answers, for filings of testimony,
13 for filing of briefs. As soon as I said for purposes of the
14 hearing, I don't mind running them altogether, setting aside,
15 as I said, four or five days to conclude.

16 JUDGE JONES: I don't know that we have that
17 kind of time. That's the problem. I'll get to the time line
18 in just a minute, but the issues are the same. I mean,
19 there's a non-issue here, and an issue over here that's
20 different from the other issues. So I don't see how -- I
21 guess the only disadvantage I can really see is that your
22 witness sounds like they're going to be cross-examined five
23 times. Is that --

24 MR. ENGLAND: Possibly.

25 JUDGE JONES: Can you-all work something out

1 in that regard? Because I think that's unreasonable. Just
2 the fact that somebody will be sitting on the stand that long
3 and we're going to have to listen to the same questions over
4 and over.

5 MR. JOHNSON: Let me just sort of take the
6 counterpoint to that. Mr. England filed five different
7 cases, and it would seem inappropriate for five companies in
8 five separate cases, even if consolidated, to -- for four of
9 them to be asked to waive their right to cross-examination.
10 I think that each company has the right to present its case,
11 which includes cross-examining the witness or witnesses put
12 forward by -- by its opponent.

13 And another issue that I think we're going to
14 have to grapple with is what about the fact witnesses, if you
15 will, the witnesses on the traffic allocation issues for each
16 of the companies. I think there are 20 plus.

17 MR. ENGLAND: We're going to have one witness
18 on that. We're in the process of doing some studies, and Bob
19 Schoonmaker will probably be our witness as well.

20 MR. JOHNSON: So Bob will probably be your
21 only witness?

22 MR. ENGLAND: Yep. And let me make this sound
23 not quite as daunt. First of all, I don't disagree that
24 they're entitled, I think, to cross-examine my witness, and
25 if there are three or five or ten of them, that's their

1 right. Now, presumably, if Paul here is -- Mark asks a lot
2 of the same questions of Schoonmaker that he'd ask, he could
3 start shortening up his cross-examination.

4 MR. DEFORD: And actually, that was the point
5 I was going to make is if we have to do these separately,
6 albeit back to back to back, I'm going to have to -- to make
7 my record, ask the exact same questions that Mark would have
8 to ask in order to make his record. If we do them on a
9 consolidated basis, I'm more than happy not to ask the
10 questions Mark asks, or that Paul, or Paul or -- there are
11 too many Pauls in this case, I guess.

12 JUDGE JONES: I understand.

13 MR. DEFORD: It would be shortened.

14 JUDGE JONES: Do all of yawl feel the say way
15 about that?

16 MR. JOHNSON: Yes.

17 JUDGE JONES: I should say, if I hear someone
18 asking the same questions, I'll just cut you off and tell you
19 to move on.

20 MR. ENGLAND: And it looks like, frankly,
21 although there are five arbitrations, there are really four
22 with the consolidation of Sprint NexTel. I think we're going
23 to settle US Cellular out, so now we're just down to three,
24 max. And we may, before it's all over, have an agreement
25 with Cingular as well.

1 JUDGE JONES: Okay. Well, let's move onto
2 who's probably most important. Well, let me ask first: The
3 issues that are being dealt with in this case generally have
4 been dealt with already in front of the Commission, I should
5 ask. Is that true?

6 MR. ENGLAND: Pre-tariff traffic, yes; one
7 plus, the IXC-carried traffic, yes; the rate, 3.5 cents, yes;
8 interMTA -- well, let me back up. There's a -- there's an
9 ancillary issue on the one plus -- the IXC-carried traffic
10 issue that has to do with land to mobile, mobile to land.
11 And I always get that backwards. It should be mobile to
12 land.

13 JUDGE JONES: Is that the reciprocal
14 compensation issue?

15 MR. ENGLAND: It's part of the reciprocal
16 compensation. I think in the Alma arbitration, which Mark
17 was a part of, it was called net billing, or something of
18 that nature.

19 MR. JOHNSON: Yes.

20 MR. ENGLAND: That's sort of an ancillary
21 issue. And that -- that may or may not be the same. And
22 then the interMTA factors, the concept's the same, the
23 factors are going to be a little different.

24 MR. JOHNSON: Right.

25 JUDGE JONES: Well --

1 MR. ENGLAND: And the more we're talking here,
2 and particularly with the agreement, not to engage in
3 friendly cross-examination, and understanding your
4 constraints, I'm not sure that I have a problem with doing a
5 consolidated record for the hearing. Frankly, it might be
6 more beneficial than to have to put Bob Schoonmaker up three
7 separate times to take cross-examination from three different
8 attorneys, rather than just leave him up there and let them
9 go seriatim, one after the other.

10 JUDGE JONES: Okay. It looks like January 24
11 is the operational law day. That's the date by which the
12 Commission has to do something. December 5th is the date
13 that I have to file my final report with the Commission.
14 Working backwards from that, according to the regulations,
15 November 20th, if there's final comments, would be that date
16 for filing of comments. November 10th, then, would be the
17 draft report, and then October 31st would be a hearing date,
18 which is two weeks from now.

19 MR. ENGLAND: And only two days after the
20 Answer. Let me ask you, and frankly, since I haven't been
21 involved in it, I don't have any -- any personal knowledge to
22 suggest otherwise, but with your deadline of January 24th,
23 and your -- your perceived deadline of a final report on the
24 5th, is there any possibility to push that back, say, to the
25 end of the year? What work needs to be done between the

1 Commission's deadline of January 24th and your deadline of a
2 final report?

3 JUDGE JONES: I understand what you're saying.

4 MR. JOHNSON: Yeah, it's Section 21 of the
5 Rule; it has that.

6 MR. ENGLAND: It's 220 days.

7 MR. JOHNSON: And of course, because I'd
8 suggest that that could be waived or -- for good cause, and I
9 think good cause probably exists here.

10 JUDGE JONES: Which date are you talking
11 about?

12 MR. JOHNSON: This is the -- the December 5th
13 date, which is -- that's the date for the final report, and
14 that's required by the content of --

15 JUDGE JONES: 19?

16 MR. JOHNSON: -- 36.040.21. It says that the
17 final report has to be filed within 220 days after request
18 for negotiation.

19 JUDGE JONES: And that's the 220th day?

20 MR. JOHNSON: That's the 220th day.

21 JUDGE JONES: So I can't move that back
22 anymore?

23 MR. ENGLAND: If I'm reading Mark correctly, I
24 think we think you can. We think you have the latitude under
25 the rules in their entirety, and the rules regarding

1 establishing a procedural schedule with the agreement of the
2 parties to move that back. Now, admittedly, the Commission
3 has to have a little time to review your final report. The
4 Commission has roughly 270 days. The rule imposes on you a
5 deadline of 220, that gives the Commission, roughly, what, 50
6 days?

7 JUDGE JONES: And you're saying they shouldn't
8 need that much time in this case?

9 MR. ENGLAND: I'm suggesting that they might
10 not need that much time.

11 MR. JOHNSON: In the Alma case, let me just
12 take a look at what we did, just to give you a sense of --
13 October 12th was the date in which the Commission's decision
14 had to be finalized.

15 MR. ENGLAND: That was the 270th day?

16 MR. JOHNSON: That was the 270th day. And the
17 final report was filed September 23, so that was only 18
18 days, give or take one or two, before the final decision was
19 due. I think we just -- because we knew that meeting this
20 rather aggressive schedule was unrealistic, the parties just
21 agreed to, and with Judge Pridgin's --

22 JUDGE JONES: I think I remember seeing that
23 in his report, but I'm not clear on the authority that I have
24 to do that. That's my problem.

25 MR. JOHNSON: Well, under 2.015, just general

1 waiver of rules, it says a rule in this chapter may be waived
2 by the Commission for good cause.

3 JUDGE JONES: Okay. And that's?

4 MR. JOHNSON: 240-2.015. And in addition, in
5 240-2.050(3), computation of time, it says, when an act is
6 required or allowed to be done by order or rule of the
7 Commission at or within a specified time, the Commission, at
8 its discretion, may order the period enlarged before the
9 expiration of the period originally prescribed. So it would
10 appear that you have the power.

11 JUDGE JONES: Well, under two, I believe you
12 said, that rule I can waive -- I can waive rules in that
13 chapter for good cause.

14 MR. ENGLAND: Here it is, excuse me. It's
15 subsection 15 of the arbitration rules. Let me find the --
16 it's the 240-36.040, authority of arbitrator. In addition to
17 the authority granted elsewhere in this rule, arbitrator
18 shall have the same authority in conducting the arbitration
19 as a presiding officer as defined in 4 CSR 240-120. And
20 rather than read the rest of it, I think it gives you some --

21 JUDGE JONES: What was that cite again?

22 MR. ENGLAND: It's subsection 15. It's on
23 Page 6, right there in the middle. Gives you flexibility to
24 set out procedures that may vary from those set out in the
25 rules.

1 JUDGE JONES: Okay. And that doesn't say for
2 good cause, it's just -- all right. You know why I was
3 pointing out the Chapter 2 issue.

4 MR. JOHNSON: Oh, I understand.

5 JUDGE JONES: Okay. All right. Well, taking
6 that into consideration, then, do you want to move everything
7 back, let's see, two weeks maybe, something like that?

8 MR. ENGLAND: Well, if the Commission's
9 deadline is January 24th, and as Mark indicated in the Alma
10 arbitration, there was how many days between?

11 JUDGE JONES: I think he said 18.

12 MR. JOHNSON: Yeah, let me --

13 MR. ENGLAND: If your report were due, for
14 example, on Monday or Tuesday, the 2nd or 3rd of January,
15 that would give the Commission three full weeks to fish or
16 cut bait.

17 MR. JOHNSON: And that would give us an
18 opportunity, in the meantime, to file comments on the report.
19 Yeah, in the Alma case, the final -- arbitrator's final
20 report was filed on September 23, the parties filed comments
21 on September 27th, we had argument before the Commission on
22 September 30, and the Commission's final report was due
23 September -- October 12, although in fact, they issued it on
24 the 6th, as I remember.

25 JUDGE JONES: That's just 13 days.

1 MR. JOHNSON: They issued it earlier than they
2 needed to.

3 JUDGE JONES: And Mr. England, you were
4 suggesting what day for the final report?

5 MR. ENGLAND: I don't know if it's a holiday
6 or not, Judge, Monday the 2nd or Tuesday the 3rd of January.

7 JUDGE JONES: Oh, of January. In --

8 MR. JOHNSON: And just to flush things out a
9 little bit more, in the Alma case, the arbitrator's
10 preliminary report was issued on September the 9th, comments
11 were filed by the parties a week later, and then the final
12 report came out on the 23rd. So that would mean that if your
13 final report was issued, let's say, on January 3, just to
14 pick a date, then if you move back two weeks --

15 MR. ENGLAND: December 20th.

16 MR. JOHNSON: -- December 20th for the
17 preliminary report, and then a week later, parties file
18 comments on the preliminary report. So it will give you time
19 to review the post -- under the rule, post-hearing briefs are
20 due within seven days after the end of the hearing. And I
21 would suspect you would want at least ten days or so to
22 review briefs and the record and -- before issuing your
23 preliminary report. I don't know.

24 JUDGE JONES: No, I don't need that much time.
25 I would hope I wouldn't need ten days to -- to read your

1 briefs and digest them. That's more of a reflection on how
2 voluminous they might be.

3 MR. ENGLAND: I have a hunch that a lot of --
4 as I said, the concepts are probably going to be the same.
5 There might be some unique fact situations here and there,
6 but the bulk of it would probably be generic. Once you make
7 your decision to one issue, it will apply across all issues.
8 And the same with our brief. I mean, once we argue the
9 concept, it will be the same.

10 JUDGE JONES: So December 20th you're saying
11 preliminary draft, and then -- so hearing date -- or actually
12 -- yeah, hearing date would be -- well, I was already to go
13 in two weeks.

14 MR. WALTERS: Can I breathe now?

15 JUDGE JONES: So the Answer's are going to be
16 October the 29th, so that's a date we do know.

17 MR. STEINER: That's a Saturday.

18 JUDGE JONES: Is that a Saturday?

19 MR. STEINER: Because by statute, we have 25
20 days.

21 JUDGE JONES: Is it by 25 days or at least 25
22 days?

23 MR. ENGLAND: The Act says 25 days. Your rule
24 says 25 days, but you issued an order, and I think you set a
25 date certain.

1 JUDGE JONES: Did I set it for the 29th?

2 MR. ENGLAND: I think you did.

3 MR. JOHNSON: The 31st.

4 JUDGE JONES: Okay. Great.

5 MR. ENGLAND: Yep, sorry.

6 JUDGE JONES: All right. So I don't have the
7 Commission's hearing calendar down here, but we can fix some
8 dates. Are you-all going to want to file prehearing briefs?
9 Do you think that will be necessary?

10 MR. ENGLAND: We can. At the very least, I
11 think you're going to want a list of issues, probably a
12 Statement of Position with respect to those issues, whether
13 it go to a prehearing brief.

14 MR. JOHNSON: And one thing we could do is
15 make it a joint list of issues, and then position statement
16 in a document that's similar to the document that we used in
17 the SBC arbitration. Essentially, it was a matrix that had a
18 statement of the issue, the section of the agreement in which
19 the issue or language can be found, the -- each party's
20 proposed language, and then the statement from each party,
21 shorthand, as to a rationale for its position, and then below
22 that, a reference as to the testimony -- the pre-filed
23 testimony where the party -- where the relevant testimony
24 will be found.

25 JUDGE JONES: That sounds good. And you-all

1 didn't have any problems agreeing on how you frame the
2 issues?

3 MR. ENGLAND: We haven't tried yet.

4 MR. JOHNSON: We haven't tried.

5 JUDGE JONES: Okay.

6 MR. JOHNSON: I think we can probably frame
7 the issues.

8 MR. WALTERS: With a little work, we can
9 usually get there.

10 JUDGE JONES: Okay.

11 MR. JOHNSON: In the SBC arbitrations, we had
12 that document. There was a separate document for each
13 arbitration, so I will think that maybe in this case, we
14 could have a separate document for T-Mobile, one for Sprint
15 Nextel, and the other for Cingular in these cases, and for US
16 Cellular.

17 MR. WALTERS: For the common issues, we can at
18 least conceivably have common issues on one document, if the
19 parties could agree as to the issue. And assuming that our
20 positions are roughly the same, and then we may have to
21 segregate any outcome issues.

22 JUDGE JONES: Okay. So list of issues,
23 Statement of Positions, and some type of matrix format can
24 serve as a prehearing agreement.

25 MR. JOHNSON: When would we want that? At

1 least a week before the hearing?

2 MR. ENGLAND: Yeah.

3 JUDGE JONES: Yeah.

4 MR. ENGLAND: After the filing of testimony,
5 so we can reference it.

6 MR. JOHNSON: Yeah, good point.

7 JUDGE JONES: So the Answer is due
8 October 31st. How much time do you think you-all need to
9 file testimony?

10 MR. WALTERS: Because we don't know what our
11 issues are, we can't really respond.

12 JUDGE JONES: Well, that's true. Are you
13 going to have problems filing an Answer?

14 MR. WALTERS: No, no. We would like the
15 opportunity to at least consider raising the issue whether
16 this arbitration is premature right now, something built into
17 the schedule, kind of like a preliminary motion.

18 MR. JOHNSON: I was going to suggest that. I
19 guess we're working our way backwards. You might have a date
20 for filing Motions in Limine, or something like that.

21 JUDGE JONES: I think that any motions should
22 not be considered in this timeline. You just file those
23 motions when you want to file them.

24 MR. WALTERS: Whenever?

25 MR. ENGLAND: And we're going to engage in

1 discovery, and already have some objections that I need to
2 discuss with Mark at some point. So we may be bringing those
3 to your attention as well, if we can't resolve.

4 MR. JOHNSON: And I'll be sending you some
5 DR's, probably, like, today, so ...

6 JUDGE JONES: You mean with regard to Motions
7 in Limine?

8 MR. ENGLAND: No, this would be with regard to
9 the substantive issues in the case.

10 JUDGE JONES: Oh, okay.

11 MR. ENGLAND: Just garden variety discovery.

12 MR. JOHNSON: Motion to Compel.

13 MR. ENGLAND: Right.

14 JUDGE JONES: Are you-all not playing
15 friendly?

16 MR. JOHNSON: It depends on your point of
17 view, I suppose.

18 JUDGE JONES: Well, you know, discovery means
19 give them what you got, doesn't it?

20 MR. JOHNSON: Yeah, well, Trip and I could
21 talk about it.

22 MR. ENGLAND: I hate to characterize it at
23 this point, because I may take some of the same positions.
24 So I consider myself to be a friendly person, but I --
25 occasionally, I may become unfriendly.

1 JUDGE JONES: Well, like I said, any things
2 that aren't specific to the arbitration itself, for instance,
3 the motion you're considering, any discovery disputes you-all
4 have --

5 MR. ENGLAND: One of the things we've
6 discussed, specifically with Cingular, to give ourselves more
7 time, was to extend -- voluntarily extend the deadline. This
8 Commission, unfortunately, has taken a very minority view in
9 that regard, that the parties can not voluntarily and
10 cooperatively extend any of these deadlines. Now, if the
11 Commission has taken a different view or has come up with a
12 different position on that, that could give us some more time
13 in the Cingular case and push it back on a slower track.

14 JUDGE JONES: Why would you do that?

15 MR. ENGLAND: Just to give ourselves
16 additional time to -- to try to negotiate an agreement, and
17 if not, give us more time to better frame the issues.

18 JUDGE JONES: Now, don't take this as any
19 pre-ruling on any motions, but it sounds like you tend to
20 agree with what he's saying, that the Petition was filed
21 prematurely.

22 MR. ENGLAND: It wasn't filed prematurely,
23 given the Act's hard and fast deadlines, and given this
24 Commission's reluctance to accept party's agreements to
25 extend it.

1 JUDGE JONES: Okay.

2 MR. ENGLAND: So I'm just saying they were
3 later in the process, if you will, the negotiation process,
4 and are behind the curve a little bit. And one of the
5 things, you know, we'd be willing to do, if this Commission
6 would accept it, is to withdraw our April 29th letter and
7 issue a new one, say, dated June 29th, that says we want to
8 negotiate, and that would put everything back 60 days. But
9 I'd want some assurance from this Commission that they would
10 accept that kind.

11 MR. DEFORD: Can you not over file? I mean,
12 can you not just send a new letter, and once we've agreed
13 upon a reasonable schedule, accept that schedule? I don't
14 know that my client would have --

15 MR. ENGLAND: I would, if the Commission would
16 accept it. You see what my problem is?

17 MR. DEFORD: Right, right, but I don't think
18 the Commission would have a whole lot of choice if you were
19 to send a bonafide request for negotiation, yadda, yadda,
20 yadda, and with the agreement of the parties that there would
21 be an accelerated schedule rather than an extended schedule.

22 MR. ENGLAND: Well, the reason we were
23 talking, Cingular was a possibility, like US Cellular, that
24 we might actually reach agreement.

25 MR. DEFORD: Right, right.

1 MR. ENGLAND: If it's just simply to extend
2 the arbitration hearings and give us a little bit more time,
3 I mean, I'm not crazy about it, but I'm prepared to move
4 forward as quickly as possible to get it done within the time
5 frame that we have to get it done. The other issue, of
6 course, that comes about, is that from April 29th on, our
7 tariffs were no longer effective, at least by operation of
8 the FCC.

9 To the extent that we would extend that
10 process 60 days, we would still want an agreement with the
11 wireless carrier that interim compensation began on April
12 29th, and that anything that's finally negotiated or
13 arbitrated would relate back to April 29th.

14 MR. JOHNSON: Yeah, I think in the Alma case
15 we agreed that the agreements dated back to the BFR date.

16 MR. ENGLAND: Right, but what I'm saying is if
17 I withdraw my April 29th BFR and issue a new one on
18 June 29th, without a commitment on the part of the wireless
19 carrier to true-up, if you will, back to April 29th, I
20 lose -- technically I may lose interim compensation for two
21 months.

22 JUDGE JONES: And BFR is a bonafide request of
23 negotiation?

24 MR. ENGLAND: Bonafide request of negotiation,
25 right.

1 JUDGE JONES: Can you just withdraw the
2 Petition? Would that just start it too far over?

3 MR. ENGLAND: Well, if I do that, then I'm
4 without --

5 MR. JOHNSON: You're outside the window.

6 MR. ENGLAND: -- the assurance that my new
7 BFR, and my procedure that I'm describing to you, is
8 acceptable, then I've got to start -- technically, I've got
9 to start the process all over again.

10 JUDGE JONES: I see.

11 MR. ENGLAND: I would have to issue a BFR the
12 very next day, and it pushes it out another 270 days. And
13 what about the compensation from April 29th until this point
14 in time?

15 JUDGE JONES: I see.

16 MR. ENGLAND: I mean, I think there are ways
17 to address this, but I need some assurance from the
18 Commission that it will be acceptable to them.

19 JUDGE JONES: That they will extend the
20 arbitration deadlines with regard to Cingular?

21 MR. ENGLAND: Well, I'm not really extending
22 it. I'm restarting the process, and -- and I think,
23 technically, the Commission should accept. I mean,
24 theoretically, the Commission should accept it, but given
25 their past reluctance to do so in the context of an

1 arbitration that I had with AllTel Wireless, or an attempted
2 arbitration, I'm nervous.

3 JUDGE JONES: I'm just not understanding what
4 effect it will have to refile a BFR. I'm not real clear on
5 that.

6 MR. WALTERS: There are at least two options.
7 One would be if Mr. England's clients were to send me,
8 tomorrow, a bonafide request for negotiation, that starts the
9 whole procedure at day one tomorrow, and that starts the
10 270-day clock, the 135-day clock, the 160-day clock. What's
11 often done in other jurisdictions is rather than sending me a
12 BFR to start the clock tomorrow, the parties agree that the
13 BFR was sent on June the 1st. I'm just pulling that date out
14 of thin air. That way, you don't lose four or five months in
15 the middle, and it's not really in my client's interest to
16 start a 270-day clock over either.

17 We don't want to do that either, but because
18 of the narrow window that we've got, we don't have any issues
19 right now and so we're -- both of us on both sides are kind
20 of caught in a box here. I mean, we would -- I'm confident,
21 I have to talk to my client, but I'm confident we would agree
22 to some sort of true-up mechanism, if we could get another 60
23 days. That would give you and us the opportunity to frame
24 the issues properly and see if we can reach an agreement.

25 And having said that, I would want to point

1 out that I don't want to be 60 days behind other arbitrations
 2 deciding exactly the same issues, because then, basically,
 3 I've lost my ability to represent my client, if that happens.
 4 If the issues turn out to be identical, you're going to have
 5 two hearings, plus you'll have decided all the issues before
 6 I even get to the hearing room. So I mean, those are the
 7 difficulties we've got.

8 JUDGE JONES: So the effect of refileing of a
 9 BFR would be to extend the date by which -- extends the
 10 operational law date --

11 MR. ENGLAND: Correct.

12 JUDGE JONES: -- without having to refile the
 13 Petition?

14 MR. ENGLAND: Well, I could -- I could pull
 15 down the Petition and refile it on the 135th day, or
 16 somewhere between there and the 160th day.

17 JUDGE JONES: I see what you're saying. Okay.

18 MR. ENGLAND: But -- and essentially, that's
 19 what we attempted to do a couple of years ago. We, for lack
 20 of a -- for ease of understanding, we issued a BFR to -- to
 21 AllTel Wireless on January -- on January 1st, and it got
 22 close to the 160th day when we had to fish or cut bait about
 23 filing a Petition for arbitration, we generally thought.
 24 AllTel suggested that we extend the negotiation another 60
 25 days, which we did. Both of us.

1 We were not able to reach an agreement, so
2 when we filed our Petition for arbitration, technically, it
3 was the, sort of -- what would that be, 160 plus 60, 220th
4 day out, and the Commission dismissed it and said no, you
5 know, those dates are hard and fast, and you can't, by
6 agreement of the parties, extend that.

7 JUDGE JONES: Okay.

8 MR. ENGLAND: What we're talking about here is
9 a little different. And that's basically, I pull down my BFR
10 dated April 29th, send a new one that says June 29th, they'd
11 accept it, have a signed acceptance.

12 JUDGE JONES: So you-all are agreeing to a
13 back-dated BFR?

14 MR. WALTERS: Basically. But again, I would
15 want to consider that only in the context of that applying
16 across the board. Because if it only applied in my case --

17 JUDGE JONES: Oh, okay.

18 MR. WALTERS: -- and the issues become the
19 same, then I'm 60 days behind everybody else, and the issues
20 all get decided and my client doesn't even get a chance to
21 participate.

22 MR. DEFORD: I think we're most interested in
23 having a reasonable procedural schedule, so we would accept
24 that across the board.

25 JUDGE JONES: So doing that changes the whole

1 procedural schedule.

2 MR. WALTERS: It could.

3 JUDGE JONES: How do you-all feel about that?

4 MR. JOHNSON: Well, I've got to talk to my
5 client about it. I just don't know. I don't know what their
6 reaction would be.

7 JUDGE JONES: Well, let's assume for purposes
8 of discussion today that that's not going to happen. Now,
9 that doesn't mean it wouldn't, but otherwise we won't be able
10 to go any further if we don't assume that. And then after we
11 get some sort of schedule inked in, then maybe you could file
12 a motion in that regard, and then everyone can have an
13 opportunity to respond. That will give T-Mobile time to talk
14 to their client. Well, ten days from the day you file your
15 client. Well, maybe less. I may shorten the time to just a
16 week, that's three days, and then I can rule on that motion
17 and take it to the Commission and see what they say. How
18 does that sound?

19 MR. ENGLAND: I was up -- I was with you until
20 you were talking about -- what type of motion do I need to
21 file?

22 JUDGE JONES: Something that says, can we do
23 this, what you're wanting to do. I don't -- it's not really
24 a motion, because you're not moving the Commission to do
25 anything.

1 MR. ENGLAND: It's sort of declaratory.

2 MR. JOHNSON: It's almost a Motion for Leave
3 to Dismiss.

4 MR. ENGLAND: Well, and that's what I'd do,
5 because if we push everything back 60 days, I'm actually
6 premature with my Petitions.

7 MR. JOHNSON: Yeah.

8 MR. WALTERS: Well, I would certainly
9 recommend if you need a motion, that we file a joint motion.
10 I wouldn't have any problem making a joint.

11 JUDGE JONES: I guess the problem would be
12 what type of motion would it be.

13 MR. WALTERS: See, personally, I don't think
14 you need a motion. I realize Missouri's different from all
15 the other states, but I mean, the question is what is the
16 date that triggers all of the other dates when the BFR was
17 sent. And as you said, what is typically done is an
18 agreement to just move -- the BFR date becomes a rolling date
19 as the negotiations go on.

20 MR. JOHNSON: I would be concerned that the
21 Commission may look upon this as a sham. They may say, you
22 sent the letter on the 29th of April, and that's what you
23 said in your Petition, and now you're saying you sent it on
24 the 29th of June. I mean, I'm just saying the majority of
25 the Commission might say that.

1 MR. ENGLAND: You're right, and that's why I'm
2 -- we're not trying to create a sham.

3 MR. JOHNSON: Oh, I know.

4 MR. ENGLAND: It's just if the party who
5 received the BFR are willing to accept, as Kennard said, a
6 back-dated BFR, then my -- what skin is it off anybody's
7 nose?

8 JUDGE JONES: And in that regard, I don't know
9 how the Commission will view it, but it being a sham would
10 mean that they're trying to get over in the Commission, and
11 the Commission doesn't really have an interest.

12 MR. WALTERS: It's really more of a legal
13 fiction, which is routinely done in certain cases. It's not
14 like anyone is trying to --

15 MR. ENGLAND: I mean, we're discussing it
16 openly on the record here, so it's not like we're pulling the
17 wool over anybody's eyes.

18 MR. WALTERS: And it is routinely done in
19 other jurisdictions. I can state that on the record. I've
20 done it frequently all over the place.

21 JUDGE JONES: Maybe it would be a motion.
22 Maybe it would be some type of an agreement that the
23 Commission would have to approve. How did you find out that
24 the Commission wasn't willing to do that before? By what
25 mechanism?

1 MR. ENGLAND: Again, we didn't -- we didn't
2 reissue the BFR in the AllTel case. We reached an agreement
3 that for purposes of our negotiation, instead of January 1,
4 that our negotiations began on, say, March 1, 60 days down
5 the road. When we filed our Petition for Arbitration, AllTel
6 responded and said, oh, by the way, you know, we note that
7 the Commission had done this in a prior arbitration involving
8 SBC, that the Commission wouldn't accept that. And sure
9 enough, the Commission didn't accept it. And I felt a
10 little -- kind of betrayed is the right word, but AllTel, I
11 think, kind of pulled a fast one on you.

12 MR. GARDNER: I represented TCG when that
13 happened. I mean, this is a legitimate concern you're
14 expressing based on that experience. It was early in the --
15 you know, in the arbitration's -- I mean, it was like '98,
16 '99, and there's at least one Commissioner that's still on
17 the Commission who was there then. I don't know whether the
18 change in personnel matters.

19 MR. ENGLAND: For right or wrong, the
20 Commission took the position that it was an inviolate date or
21 deadline.

22 MR. GARDNER: That's how it looked to me.

23 MR. ENGLAND: But again, it's a little bit
24 different. In this case, we're talking about us pulling down
25 the April 29th BFR, and reissuing a new one, albeit

1 back-dated June 29th, 60 days later. And as long as the
2 wireless carriers agree to accept that as their starting
3 date, but agree to true-up back to April 29th, I'm okay with
4 it. I'm just wanting to make sure the Commission's okay with
5 it.

6 JUDGE JONES: And you may or may not be okay
7 with it?

8 MR. JOHNSON: I've got to talk my client. I
9 haven't really thought about it.

10 JUDGE JONES: Why didn't you give him a
11 heads-up before you got here? You could have called and
12 said, by the way, you might want to talk to your client.

13 MR. ENGLAND: Because I figured we're going to
14 arbitration with them. Now, this is something --

15 JUDGE JONES: But this effects the timeline
16 with them, right?

17 MR. ENGLAND: Pardon?

18 JUDGE JONES: It would just effect the
19 timeline?

20 MR. ENGLAND: Oh, absolutely, but we're
21 prepared to go to arbitration with T-Mobile; T-Mobile ought
22 to be prepared to go to arbitration with us. They just went
23 through it with Alma, so ...

24 JUDGE JONES: It sounds like you guys aren't
25 talking.

1 MR. JOHNSON: You know, it's funny, they are.
2 I haven't been involved in the discussions, but he's been
3 speaking with my contact at the company.

4 JUDGE JONES: Okay.

5 MR. JOHNSON: I understand there are
6 discussions, but it doesn't seem to be coming any closer.

7 MR. ENGLAND: Well, I mean, our -- our
8 experiences with T-Mobile have been long and litigious. That
9 doesn't mean we can't get along and work out procedural
10 schedules and what have you, but we have a very deep-seeded
11 difference of opinion on certain issues. And at least as far
12 as T-Mobile is concerned, I had every intention that we were
13 going to hearing, arbitration, if you will, with T-Mobile.

14 Cingular, because of the circumstances, kind
15 of got -- trailed the pack, and I'm -- and they were of the
16 opinion that we might be able to work this out. And I'm
17 willing to give them the additional time to do so, but Paul
18 also raises a good point. What's done in the T-Mobile
19 arbitration is going to cast a pretty strong shadow in
20 anybody else's arbitration that comes along after that.

21 MR. WALTERS: I'd have to speak with my
22 client, but I don't think my client would want to delay 60
23 days if T-Mobile, Commissioner England's [sic] clients, were
24 getting ready to go to hearing.

25 JUDGE JONES: I tend to agree.

1 MR. ENGLAND: I have to visit with my clients,
2 but I would be willing to do that with everybody.

3 MR. JOHNSON: But everybody has to be willing
4 to do it with you.

5 MR. ENGLAND: Right.

6 JUDGE JONES: So now we're back to the
7 mechanism that this is put before the Commission.

8 MR. ENGLAND: Yes, I mean, I could layout the
9 facts of withdrawing the April 29th BFR, reissuing it on June
10 29th, the fact that the wireless carriers have accepted it,
11 and ask that the Commission withdraw the Petition, or allow
12 me, then, leave to withdraw my Petition for Arbitration with
13 the understanding that if the additional 60 days doesn't
14 produce a negotiated result, we're going to refile the
15 Petition.

16 MR. JOHNSON: And do you feel that, you know,
17 not that I would do this, but you want to be -- so you're --
18 you have assurance that nobody's going to sandbag you, that
19 you'd want to be able to either present it as a joint motion,
20 or you'd want a representative motion that all of the
21 wireless carriers are in agreement?

22 MR. ENGLAND: Correct. What I would propose
23 is, I'd have a letter of agreement that went to each of you
24 and say dated June 29th, essentially, that says, you know, we
25 wish to begin negotiations with you towards an

1 interconnection agreement, and an oh, by the way, we want
2 recip comp back to April 29th. This is a very short form of
3 saying it, but if you agree, please sign and return to me.
4 And then I would attach those to my motion.

5 MR. JOHNSON: That's what I would have to
6 have, too.

7 MR. WALTERS: That's reasonable.

8 JUDGE JONES: So then it sounds like -- since
9 you keep saying agreement, so I'm thinking there has to be an
10 agreement, then, that the Commission has to approve?

11 MR. ENGLAND: Well, I think as part of my
12 motion, what I'm requesting is leave of the Commission to
13 withdraw my Petition with the understanding that I may refile
14 it 60 days from the date that I filed it, and probably more
15 like 30 from the date I filed my motion, because the clock
16 will have run.

17 MR. JOHNSON: But in the meantime, you run the
18 risk of the Commission denying it, even if it's agreed.

19 MR. ENGLAND: Correct, but that's why we're
20 here today is we'll have an alternative schedule that we'll
21 go forward with if the Commission doesn't buy that. And
22 we're counting on your persuasive ability.

23 JUDGE JONES: I understand. I don't know what
24 effect I'll have on the Commission these days, to be honest
25 with you. I appeal to their reason, and if they disagree,

1 I'm not going to argue. And that's individually and -- well,
2 particularly as a group.

3 MR. ENGLAND: I would not have a problem with
4 you broaching this informally with them at the next public
5 agenda meeting as long as the other parties didn't, just to
6 kind of test the water.

7 JUDGE JONES: As a part of a case discussion
8 then?

9 MR. ENGLAND: Yes, I mean, the nice thing
10 about it, assuming T-Mobile agrees, we do it with everybody.
11 There's a possibility we might resolve issues through
12 negotiation, but at least it takes us 60 days beyond
13 Thanksgiving/Christmas holidays, which really screws up the
14 whole thing.

15 MR. WALTERS: As a practical matter, if we get
16 on the timeline we're talking about, there will be very
17 little, if any, settlement. There won't be time. There
18 won't be time for Cingular to really have much of the
19 discussion, because everybody's going to be getting ready for
20 the hearing. This type of procedure will at least give the
21 parties the opportunity to resolve some or all of the issues,
22 but if we're on a real treadmill, there won't be time to
23 talk.

24 JUDGE JONES: Okay. And let me understand why
25 this problem happened again, because I'm sure that's what

1 they will want to know. You sent the letters, I mean, you
2 said you did in April, right?

3 MR. ENGLAND: Yeah, and I was -- that was
4 dictated, if you will, by the FCC saying that wireless
5 tariffs would no longer be appropriate after April 29th.

6 JUDGE JONES: Okay.

7 MR. ENGLAND: So in order to maintain, if you
8 will, constant compensation for this traffic, we had to issue
9 a BFR that was effective on April 29th, and at the same time,
10 under the FCC rules, request interim compensation, which is
11 permitted. And that interim compensation kind of bridges the
12 gap until you either negotiate an agreement, or one is
13 arbitrated by the state Commission. And whatever the results
14 are of that negotiation or arbitration then relate back to
15 April 29th.

16 So to keep a continuous period going here,
17 that's -- that's why my letter was dated April 29th. It was
18 a -- as I said, it was dictated by the FCC's action. And
19 you're another -- I'm not so sure that's not the same in
20 other states, that other people didn't use that date as a
21 jump point.

22 MR. WALTERS: I think some did. Since that
23 decision, there's been an awful flurry of activity in other
24 jurisdictions.

25 JUDGE JONES: So you sent your letter, and you

1 sent your standard agreement?

2 MR. ENGLAND: Correct.

3 JUDGE JONES: And you-all got that, and you
4 didn't send a red-line copy back, or you didn't look at it,
5 or it got lost in the mail?

6 MR. WALTERS: My understanding, again, all I'm
7 doing is repeating what I was told, I was not involved in it,
8 is that Cingular got the agreement, Cingular got back and
9 talked to the independent companies, and they agreed to use,
10 as the starting document, a current agreement that Cingular
11 has with another company.

12 MR. ENGLAND: A more current agreement.

13 MR. WALTERS: That's not unusual at all. In
14 other words, to decide which document to use. I can't speak
15 for Mr. England. I can speak for Cingular. Cingular has two
16 negotiators that negotiate in 48 different states, and they
17 just take these things seriatim. They do them one at a time,
18 and they just have them go to the next one. And what I saw
19 did not indicate that either party on either side was not
20 moving in a reasonable manner.

21 I think both parties were just moving along,
22 trying to negotiate, and I think what happened is Missouri
23 has this unusual rule, or at least they've indicated in the
24 past, that you cannot routinely extend the BFR date, which I
25 will tell you is, to my knowledge, is done in every other

1 jurisdiction in the country.

2 JUDGE JONES: Oh, so it sounds like you-all
3 might extend the BFR date.

4 MR. WALTERS: My negotiator was. I talked to
5 him, and he didn't realize -- when he got your letter, he
6 called me up and said, what's going on. And I said, well, I
7 bet this is because this is Missouri. And I'm familiar with
8 your case, I'm licensed to practice in Missouri, and I'm
9 familiar with the SBC case, too. And that puts all the
10 parties between a rock and a hard place, frankly, because, I
11 mean, these companies are negotiating these things all over
12 the country, just one after the other, and trying to get them
13 lined up.

14 JUDGE JONES: Is extending -- I realize you
15 say Missouri is one of the only states that doesn't do that,
16 but regardless of that, is this consistent with federal law?

17 MR. WALTERS: I think it is.

18 MR. ENGLAND: I think federal law --

19 MR. JOHNSON: I think federal law is silent in
20 this.

21 MR. ENGLAND: But I think the intent was to
22 encourage voluntary negotiations. And in the absence of
23 that, to, you know, give people a hard and fast deadline by
24 when they'd get an answer through -- through arbitration.

25 MR. JOHNSON: That's why you have -- you have

1 135 days from the time you send the letter until the time you
2 can first file your arbitration. So you've got basically
3 four months in which you're supposed to be negotiating.

4 JUDGE JONES: And you-all didn't -- because
5 your negotiator was thinking he could have some more time,
6 whatever, case work or family problems, just thought maybe
7 we'll get more time and did not actively negotiate?

8 MR. WALTERS: Well, I don't think it's fair to
9 say neither party didn't actively negotiate. He didn't
10 realize this particular negotiation was on a highly
11 compressed time scale. He was treating this like every other
12 negotiation he's got. I mean, the example I would give you
13 is parties, routinely in agreements, will agree to shorten or
14 lengthen the statute of limitations.

15 Most of these agreements have six-month
16 limitations on when you can submit a bill in dispute,
17 sometimes it's a year. In almost every state, that's a
18 shorter period than the statute of limitations allows, but
19 you can also do the opposite. I've sometimes done it the
20 other way. As long as the parties agree, no harm, no foul.
21 It's the same principle as far as I'm concerned.

22 I don't want the record to show I agree that
23 my negotiator was not diligent in proceeding in negotiation.

24 MR. ENGLAND: And I will go one step further
25 and say they have not been. It was just we had negotiations

1 going on with five or six different companies at that time,
2 and some of them were more active, or whatever you want to
3 call it, more pressing, more urgent for whatever reason, so I
4 don't think there was any bad faith on either party's part.

5 JUDGE JONES: So we're still thinking about a
6 hearing date. The answer -- I'm changing the issue now
7 because it's obvious that this is going to have to be
8 something that not only the Commission decides, but we're
9 going to have to know what T-Mobile's position on it is,
10 because I agree, I don't think that the rest of the cases
11 should follow T-Mobile. I don't want to bifurcate these time
12 lines, and then I'll get all confused. So October 31st is
13 when the Answer is going to be due.

14 MR. JOHNSON: I've been kind of scribbling
15 some dates, can I just suggest some?

16 JUDGE JONES: Sure.

17 MR. JOHNSON: The Answer is due the 31st, and
18 about -- actually, sort of moving backwards, it looks like
19 hearings the week of the 28th of November, that's the week
20 after Thanksgiving.

21 MR. ENGLAND: Yeah, unfortunately, Paul and I
22 are involved in another hearing that's set for the first two
23 days of that week.

24 MR. JOHNSON: Which one is that?

25 MR. WALTERS: Mid-Missouri Cellular, ETC.

1 MR. JOHNSON: I thought an Order was issued
2 postponing that.

3 MR. ENGLAND: That was another case.

4 MR. DEFORD: That was Northwest Missouri.

5 MR. JOHNSON: Oh, sorry. Okay.

6 JUDGE JONES: Why don't we try it this way
7 then. I'm going to -- let's take a quick break. I'm going
8 to run upstairs, see if I can print out a copy of the
9 Commission's calendar, and then we won't consider dates that
10 are already taken, at least.

11 MR. JOHNSON: Well, I know in the Alma case,
12 none of the Commissioners came. I guess they could have, but
13 none of the Commissioners came to the hearing.

14 JUDGE JONES: I don't want to assume that they
15 wouldn't. Okay. So we'll take a five-minute break, so I'll
16 be right back down.

17 (A BREAK WAS HELD.)

18 JUDGE JONES: Let's go back on the record.

19 MR. ENGLAND: Is it necessary for us to be on
20 the record as we discuss all this stuff?

21 JUDGE JONES: Why wouldn't you want to be?

22 MR. ENGLAND: Well, I think a lot of it --
23 there's a lot of give and take going on back and forth.
24 Until we reach an agreement on a procedural schedule, I'm
25 just worried that the court reporter is taking down more than

1 she has to, I guess.

2 JUDGE JONES: Well, yeah, because I don't take
3 good notes.

4 MR. ENGLAND: Okay. All right. I tried.

5 JUDGE JONES: So we can skip over to November
6 since October is not going to happen. Now, those dates that
7 you see are in 305. Those dates should be considered open,
8 because that's something that's going to be happening in
9 here. Or if you see something that says Jones, those dates
10 are closed, because whether it's here or over there, because
11 that's something I have to be at.

12 Let's see, and also in November, I believe it
13 looks like the 21st through the 23rd, it says NARUC. That
14 means none of the Commissioners will be in the office.

15 MR. ENGLAND: I think that's the 14th through
16 the 17th.

17 JUDGE JONES: Oh, is that the 14?

18 MR. STEINER: Our sheet says 14th, 15th, 16th,
19 so it's kind of ambiguous.

20 JUDGE JONES: Yeah, you can't really tell.
21 And there are hearings on the -- well, let's think about
22 this. Is November 21 through 23 possible dates for a
23 hearing?

24 MR. ENGLAND: They are for me.

25 MR. JOHNSON: I think, yes, for me, that's

1 fine.

2 JUDGE JONES: What was the date you suggested?

3 MR. JOHNSON: Well, I had suggested the week
4 of the 28th, but Trip and Paul have a hearing on the 28th.

5 MR. ENGLAND: 28th and 29th. But I don't
6 expect it to go more than those two days, do you?

7 MR. DEFORD: I don't.

8 JUDGE JONES: My preliminary report is due
9 December 20th. Let's start there.

10 MR. JOHNSON: What I had just sort of
11 penciling in is if your report is due the 20th, and you want
12 the briefs -- you want about ten days?

13 JUDGE JONES: If briefs are filed on the 12th,
14 I can get a report done.

15 MR. JOHNSON: And if we tried it the 21st
16 through the 23rd?

17 JUDGE JONES: Will you need three days is
18 another question.

19 MR. ENGLAND: Well, I'm trying to limit my
20 witnesses to one.

21 MR. JOHNSON: Yeah, if you just have
22 Schoonmaker, I think two days will be plenty.

23 MR. ENGLAND: Well, I don't know how many --
24 the potential -- two there -- you had two, didn't you, in
25 your Alma?

1 MR. JOHNSON: Witnesses? Yeah.

2 MR. WALTERS: Probably two.

3 JUDGE JONES: So two, four, six, seven
4 witnesses?

5 MR. GARDNER: One at the most.

6 JUDGE JONES: Eight witnesses at the most?

7 MR. ENGLAND: I think two days is way too
8 short. Three is probably pushing it. I would be willing to
9 try that with the -- you know, if you wanted to try Monday
10 Tuesday, and Wednesday of the --

11 JUDGE JONES: How many days was the last
12 arbitration? You weren't involved.

13 MR. JOHNSON: It was one day.

14 JUDGE JONES: How is it possible that that was
15 one day and this could be three?

16 MR. ENGLAND: Three times the participants.

17 JUDGE JONES: Yeah, but you-all are going to
18 be saying the same things over and over again, aren't you?

19 MR. JOHNSON: I would -- I would suspect
20 Trip's cross will be more extensive that Craig's was.

21 MR. ENGLAND: Here is my problem, if each one
22 of these folks has a cost witness --

23 JUDGE JONES: Okay.

24 MR. ENGLAND: -- and to the certain extent
25 they don't say the same thing, then I may have separate

1 cross-examination for the Cingular witness versus the Sprint
2 witness versus the T-Mobile witness.

3 JUDGE JONES: All right. We'll block three
4 days, and if we need more, I can reserve a fourth day at a
5 different time.

6 MR. ENGLAND: I was going to suggest, if you
7 wanted to try to get it done the 21st, 22nd, 23rd, and then
8 maybe keep a day or two later in the following week, because
9 Paul and I are -- Paul Deford and I are tied up Monday and
10 Tuesday, but I think we'll be out by Tuesday.

11 MR. DEFORD: Yeah, we'll be done Tuesday, I'm
12 sure.

13 MR. JOHNSON: December 3, just so you guys can
14 catch your breath?

15 MR. ENGLAND: No, it will be more like the 1st
16 and 2nd.

17 MR. JOHNSON: Oh, I'm sorry.

18 JUDGE JONES: Of December?

19 MR. JOHNSON: Yeah, yeah, I'm sorry.

20 JUDGE JONES: You know, if you do that --
21 okay. That will leave plenty of time for briefs. So 21, 22,
22 23 of November, hearing dates.

23 MR. JOHNSON: And then again, just kind of
24 sketching it out so we have time to get everything ready,
25 direct on the 3rd of November and rebuttal on the 14th? But

1 is that --

2 JUDGE JONES: That's too much time between
3 direct and rebuttal.

4 MR. ENGLAND: And it may be too soon for
5 direct.

6 MR. WALTERS: That's like four days after our
7 Answers, three days.

8 MR. ENGLAND: How about --

9 MR. DEFORD: You know what, I hate to -- I
10 hate to do this, hang on.

11 MR. JOHNSON: My direct is going to be done
12 before we file our Answer. We know what the issues are, at
13 least my client does.

14 MR. WALTERS: But my client doesn't.

15 MR. ENGLAND: How about the 10th and the 17th
16 for direct and rebuttal?

17 MR. DEFORD: I hate to do this, but one of my
18 two witnesses is out of the country the last two weeks of
19 November.

20 JUDGE JONES: Oh, so that changes the hearing
21 dates. Okay.

22 MR. ENGLAND: Well, could we -- could we
23 schedule you guys for the 1st and the 2nd of December?

24 MR. DEFORD: That would be acceptable to me.

25 MR. ENGLAND: And that way we'll just deal

1 with T-Mobile and Cingular.

2 JUDGE JONES: Well, instead of pushing theirs
3 back, why don't we just do it earlier?

4 MR. ENGLAND: Well, we can't, as I understand,
5 because the earlier week is NARUC.

6 JUDGE JONES: You know, I want to -- maybe we
7 need to get clear on that, because it's not -- what makes you
8 so sure that NARUC is 21 through 23?

9 MR. ENGLAND: It says NARUC starts on the
10 13th.

11 MR. JOHNSON: It looks like it starts on
12 Sunday the 13th. That looks like it starts the 13th and goes
13 to the 14th.

14 MR. ENGLAND: Yeah, it appears to fill out the
15 days of the 14th, 15th, 16th.

16 MR. DEFORD: Could we do the hearing on this
17 December 1, 2, and 5?

18 MR. ENGLAND: Oh, you mean push everything
19 back?

20 MR. DEFORD: Yeah.

21 MR. ENGLAND: Yes, we could. What I am
22 thinking about -- the reason I'm taking so long to respond is
23 if we feel reasonably confident we'll be done with
24 Mid-Missouri on Tuesday --

25 JUDGE JONES: Mid-Missouri?

1 MR. ENGLAND: -- on the 28th and 29th of
2 November.

3 JUDGE JONES: Oh, okay.

4 MR. ENGLAND: There's a hearing involving
5 Mid-Missouri Cellular that Paul Deford and I are involved in.
6 I'm even thinking about starting it on the 30th and try to
7 finish it by Friday, with maybe a carry-over day on Monday,
8 if necessary.

9 MR. DEFORD: Yeah, I can do that.

10 JUDGE JONES: That sounds actually better. So
11 you're saying the Wednesday, November 30th, and Thursday the
12 1st, and Friday the 2nd?

13 MR. ENGLAND: Right.

14 JUDGE JONES: And then you have two weekends
15 for briefs, which is plenty of time.

16 MR. JOHNSON: That gives us more time for
17 testimony. That makes it a lot more comfortable. Trip, you
18 suggest direct and rebuttal on the 10th and 17th?

19 MR. ENGLAND: That was my plan, if we were
20 starting the hearing on the 21st. If you want to try to
21 give, particularly Paul and Cingular, a little more time, we
22 could do like maybe the 14th and 21st.

23 MR. JOHNSON: That's what I was thinking.

24 MR. WALTERS: I like that.

25 MR. JOHNSON: Direct on the 14th and rebuttal

1 on the 21st?

2 JUDGE JONES: Is that agreeable to everyone?

3 MR. JOHNSON: Yes.

4 MR. WALTERS: Uh-huh.

5 MR. JOHNSON: And then Statement of Issues?

6 JUDGE JONES: Well, that's going to have to
7 come pretty quick on the heels of rebuttal. Well, it may be
8 difficult for you-all to do that without having --

9 MR. ENGLAND: I think by direct, we'll know
10 what the issues are. I hope by the Answer, I'll know what
11 the issues are.

12 MR. WALTERS: You better.

13 MR. ENGLAND: What about the 18th for some
14 sort of Statement of Issues? And I like the idea of keeping
15 it short and sweet, with maybe a matrix that just shows you
16 what the issues are, and a short sweet statement. You're
17 going to get inundated with the testimony, you're going to
18 get inundated with cross-examination, and we're going to load
19 you up with briefs. If you want us to brief it one more time
20 before we get started, we'll do it, but ...

21 JUDGE JONES: Well --

22 MR. JOHNSON: I mean, and the Statement of
23 Issues will probably even evolve a bit after filing of
24 rebuttal. I know in Alma, we resolved a couple of issues
25 after rebuttal.

1 MR. ENGLAND: You can always file some sort of
2 an amendment to the Statement of Issues.

3 MR. JOHNSON: Which is what we did.

4 MR. WALTERS: Are we talking about making it a
5 joint statement?

6 MR. ENGLAND: Yes.

7 MR. WALTERS: That's fine with me. I would
8 prefer that.

9 JUDGE JONES: Okay. So this is a Statement of
10 Issues and Findings of Fact, right?

11 MR. WALTERS: It would really be Statement of
12 Issues, and then the party's positions, wouldn't it?

13 JUDGE JONES: Are you-all going to have
14 Proposed Findings?

15 MR. WALTERS: Do you want Proposed Findings?

16 JUDGE JONES: Yeah.

17 MR. ENGLAND: Can we do that at the tail-end?
18 Because sometimes that's shaped by the cross-examination.

19 MR. JOHNSON: What about with our briefs?

20 JUDGE JONES: Okay. That would be fine.

21 MR. JOHNSON: Okay. So you want Findings of
22 Fact and Conclusions of Law?

23 JUDGE JONES: Well, your briefs are going to
24 be your arguments on the law, and the Commission will make
25 the conclusions from your arguments, so ...

1 MR. JOHNSON: So you just want Proposed
2 Findings of Fact?

3 JUDGE JONES: Right. Well, not Proposed
4 Findings of Fact from each party. I want Statements of Fact
5 that you-all agree to. When I say Findings of Fact, that's
6 what I mean.

7 MR. WALTERS: Like a joint stipulation?

8 JUDGE JONES: Right.

9 MR. WALTERS: Well, that will have to be
10 post-hearing.

11 MR. ENGLAND: When I suggested -- I thought
12 you were talking about Proposed Finding of Fact that we
13 typically submit at the conclusion with the brief. I didn't
14 realize you were looking for a stipulation of basically
15 uncontested facts.

16 JUDGE JONES: It seems like -- well --

17 MR. ENGLAND: What makes this a little bit
18 different, in my understanding, is that we're going to --
19 we're going to give you a draft of an interconnection
20 agreement that's going to have probably 90 percent of the
21 narrative or the language in there will be agreed to among
22 the parties, and then there will be competing language on the
23 remaining issues.

24 And I think your decision is to just say,
25 well, I rule in favor of Cingular on this issue, so we know

1 to adopt Cingular's language, or I rule in favor of the small
2 telephone companies, and we know to adopt our language.

3 JUDGE JONES: So maybe a Findings of Fact
4 isn't good.

5 MR. ENGLAND: I'm not sure it's appropriate in
6 this.

7 JUDGE JONES: Well, Statement of Issues, it
8 seems like there was something else that you-all talked
9 about.

10 MR. WALTERS: We were going to give you a
11 synopsis on our position of the issues. It will say here's
12 the issue, here's the contract language, here's the position
13 of the parties. And then you can -- you can look at the
14 little synopsis and see what our position is. In five
15 minutes, you can get a feel for what the whole case is about.

16 MR. DEFORD: Yeah, I think Mark characterized
17 it as a matrix.

18 MR. JOHNSON: Uh-huh.

19 JUDGE JONES: That looks like that's all we
20 need. Direct, Statement of Issues, and positions of
21 rebuttal, hearing and briefs.

22 MR. JOHNSON: Do we want reply briefs?

23 MR. ENGLAND: Well, not if you're going to
24 file comments on the proposed. I think that would be your
25 opportunity to bring up something that maybe you thought was

1 overlooked.

2 MR. JOHNSON: That's fine.

3 JUDGE JONES: And let's see. Comments, on
4 what, ten days after -- seven days after the preliminary
5 report?

6 MR. JOHNSON: Yeah.

7 MR. ENGLAND: 27th?

8 JUDGE JONES: Right.

9 JUDGE JONES: Strange Christmas this year.

10 MR. WALTERS: 27th is a Sunday. I'm sorry,
11 I'm in the wrong month. I'm sorry, scratch that.

12 MR. JOHNSON: Well, I don't know if this makes
13 a difference, Christmas falls on the 25th -- I mean, on
14 Sunday. Sorry. The 25th is a Sunday.

15 MR. ENGLAND: The master of the obvious.

16 MR. JOHNSON: So the 26th is going to be the
17 official holiday, I guess, if that makes a difference.

18 JUDGE JONES: To?

19 MR. JOHNSON: I don't know, it doesn't make a
20 difference to me, but ...

21 JUDGE JONES: You-all will be filing the
22 comments. I won't, you know, be here on the -- I don't know
23 where I'll be.

24 MR. JOHNSON: Christmas falls on the 25th, do
25 you believe I said that?

1 MR. STEINER: You got it on record, too.

2 MR. WALTERS: Could we move it back to the
3 28th rather than the 27?

4 JUDGE JONES: How does everyone else feel
5 about that?

6 MR. WALTERS: Filing our comments on the 28th,
7 rather than the 27th?

8 MR. JOHNSON: That's fine.

9 JUDGE JONES: That will give me, what, one,
10 two, three, four, five, six days to --

11 MR. ENGLAND: Do you want to bump your report,
12 then, to the 4th, so you don't have to deal with the day
13 after a holiday, to give you an extra day after the holiday.

14 JUDGE JONES: Okay.

15 MR. JOHNSON: Just kind of goes without
16 saying, I assume everybody agrees to electronically serve
17 everything? Okay.

18 MR. DEFORD: And hopefully this schedule is
19 fiction.

20 JUDGE JONES: Oh, right.

21 MR. ENGLAND: Yeah, I wanted to talk about
22 that, but unless you tell me otherwise, we'll pursue that
23 option that we talked about to try to extend it 60 days.

24 JUDGE JONES: We'll certainly pursue that.

25 MR. GARDNER: Did we put down dates for when

1 the briefs are due?

2 MR. ENGLAND: Yeah, they're the 12th,
3 December 12th.

4 MR. JOHNSON: 12th of January, because the
5 Commission will want -- we have to set a date for argument
6 before the Commission.

7 JUDGE JONES: Oh, yeah.

8 MR. GARDNER: Mark said something about reply
9 briefs.

10 MR. ENGLAND: Well, we've got comments after
11 the preliminary report. I think you can kind of catch up
12 there if you've missed something.

13 MR. GARDNER: All right.

14 JUDGE JONES: I see what you're saying with
15 the calendar so full.

16 MR. ENGLAND: The Aquila hearing gets going on
17 the 9th, which pretty well, I would think, ties up the
18 Commission for the next two weeks or more, looks like three
19 on this schedule, maybe four. Do we want to do maybe
20 argument on the 6th, January the 6th?

21 JUDGE JONES: On that Friday?

22 MR. ENGLAND: Yes.

23 MR. JOHNSON: When does -- so the Aquila
24 hearing starts on the 9th? That seems to be about the only
25 day that's possible, isn't it, because their deadline is

1 the -- the 25th of January?

2 MR. ENGLAND: 24th.

3 JUDGE JONES: So oral argument comes after the
4 filing of the final report?

5 MR. ENGLAND: That's the way it was in Alma.
6 The theory being that the Commission, if they haven't been
7 engaged up to that point in time, maybe they can at least
8 come in and listen to the oral argument.

9 MR. JOHNSON: The same thing in the SBC
10 arbitrations, too. And that took a day and a half.

11 MR. ENGLAND: Oh, really?

12 MR. JOHNSON: But in the Alma case, it was an
13 hour, hour and a half, something like that. Of course, none
14 of the Commissioners came to that one, but in the SBC case,
15 they were all there.

16 JUDGE JONES: Okay. I'm not sure I'm clear
17 what's going on now.

18 All right. I'll issue an Order in that
19 regard, setting out the procedure schedule. I don't
20 anticipate modifying any dates, not a lot of room to do that
21 anyway.

22 MR. WALTERS: Could you briefly just run
23 through the dates one time to make sure we're all on the same
24 page?

25 JUDGE JONES: The Answers, as we know it, are

1 October 29; direct testimony is due November 14; Statement of
2 Issues and positions is due November 18; rebuttal testimony
3 is due November 21; the hearing is November 30 through
4 December 2nd; post-hearing briefs are due December 12. My
5 preliminary report will be due on December 20th; comments are
6 due December 27th.

7 MR. JOHNSON: Or 28th?

8 JUDGE JONES: Did you move that to the 28th?

9 MR. ENGLAND: Yeah, I think we agreed to move
10 that back one day, and the same with your final report.

11 JUDGE JONES: Final report will be due
12 January 4; oral argument January 6th.

13 MR. ENGLAND: Right.

14 JUDGE JONES: And Commission will issue its
15 decision by the 24th of January.

16 MR. ENGLAND: One -- you mentioned Answers the
17 29th. I think that's really October 31st.

18 JUDGE JONES: What was that?

19 MR. ENGLAND: The Answers, that's the first
20 and the sort of the going forward.

21 JUDGE JONES: What did I say, October 29th?

22 MR. ENGLAND: Yeah.

23 JUDGE JONES: Oh, I meant October 31st. I'm
24 sorry.

25 MR. ENGLAND: And did we want to tentatively

1 hold December 5th as an additional hearing date in case we
2 need it?

3 JUDGE JONES: Okay.

4 MR. JOHNSON: And then any additional motions,
5 Motions to Compel, Motions to Dismiss, whatever, we just file
6 whenever?

7 JUDGE JONES: Yeah.

8 MR. JOHNSON: Okay.

9 JUDGE JONES: I will try to put this on for
10 discussion with the Commission Thursday. I believe they have
11 an agenda this Thursday, so can company -- they don't? No
12 agenda Thursday.

13 MR. POSTON: No, I have written down that they
14 don't have it.

15 JUDGE JONES: I'll check to be sure, but what
16 about the following Tuesday?

17 MR. POSTON: I think they do have that one.

18 JUDGE JONES: Okay. Well, if not Thursday,
19 then Tuesday. And that will, then, change the schedule.
20 Now, if the Commission is willing to do this, and T-Mobile is
21 also willing to do it, then we'll have to get together and do
22 another procedural schedule. I don't know how difficult it
23 is for you-all to come together all at the same time, but
24 maybe we can do it by some type of e-mail, maybe e-mail --
25 group e-mails.

1 MR. ENGLAND: Or a conference call.

2 JUDGE JONES: Okay.

3 MR. ENGLAND: I don't know that we need the
4 court reporter the second time around, so ...

5 JUDGE JONES: Okay. Is there anything else?

6 MR. ENGLAND: I don't think so.

7 JUDGE JONES: Well, with that, then, we'll go
8 off the record.

9 WHEREUPON, the recorded initial arbitration
10 hearing was concluded.

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