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1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION

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5 TRANSCRIPT OF PROCEEDINGS

6
7 PREHEARING CONFERENCE

8
9 March 16, 2005
10 Jefferson City, Missouri
11 Volume 1
12

13 Big River Telephone Company,)
14 L.L.C., Birch Telecom of)
15 Missouri, Inc., ionex)
16 communications, Inc., Nuvox)
17 Communications of Missouri,) Case No. TC-2005-0294
18 Inc., Socket Telecom, L.L.C.,)
19 XO Communications Services,)
20 Inc., and Xspedius)
21 Communications, L.L.C.,)
22)
23 Complainants,)
24)
25 vs.)
26)
27 Southwestern Bell Telephone,)
28 L.P., d/b/a SBC Missouri,)
29)
30 Respondent.)

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32 LEWIS MILLS, Presiding,
33 DEPUTY CHIEF REGULATORY LAW JUDGE.
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1 P R O C E E D I N G S

2 JUDGE MILLS: We're on the record this morning for
3 a prehearing conference in Case No. TC-2005-0294, which is a
4 complaint case by Big River Telephone Company, L.L.C. and a
5 number of other CLECs against SBC Missouri.

6 I'm gonna begin by taking entries of appearance.
7 I'll start on the phone with you, Mr. Johnson, and I'll go
8 across the front row.

9 MR. JOHNSON: Thank you, Judge Mills.

10 Mark Johnson of the law firm Sonnenschein, Nath and
11 Rosenthal, 4520 Main Street, Suite 1100, Kansas City,
12 Missouri, on behalf of Navigator Telecommunications, L.L.C.

13 JUDGE MILLS: Thank you.

14 And for SBC?

15 MR. LANE: Good morning, Your Honor. Paul Lane and
16 Mimi Macdonald on behalf of Southwestern Bell Telephone, L.P.,
17 doing business as SBC Missouri. Our address is One SBC
18 Center, Room 3520, St. Louis, Missouri 63101.

19 JUDGE MILLS: Mr. Lumley?

20 MR. LUMLEY: Good morning, Judge. Carl Lumley
21 appearing on behalf of all of the Complainants. And my
22 address is 130 South Bemiston, Suite 200, Clayton, Missouri
23 63105.

24 JUDGE MILLS: And Mr. Comley.

25 MR. COMLEY: Thank you, Judge Mills. I'm appearing

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1 on behalf of -- of AT&T Communications of the Southwest, Inc.,
2 TCG Kansas City, Inc. and TCG St. Louis, which are
3 collectively referred to as AT&T.

4 My name is Mark W. Comley. My address is Newman,
5 Comley & Ruth, 601 Monroe Street, Suite 301, Jefferson City,
6 Missouri 65101.

7 JUDGE MILLS: Thank you.

8 Mr. Poston?

9 MR. POSTON: Marc Poston appearing for the Staff of
10 the Missouri Public Service Commission.

11 JUDGE MILLS: Okay. The first thing I -- well, let
12 me first of all ask you all if there's anything you want to
13 take up on the record. There are a -- a number of pending
14 motions that I'd like to address.

15 Other than that, is there anything that the parties
16 want to address on the record?

17 (NO RESPONSE.)

18 JUDGE MILLS: No.

19 Okay. Let's go through them sort of one by one.
20 AT&T and two TCG entities have collectively applied to
21 intervene. Is there any objection to that application to
22 intervene?

23 (NO RESPONSE.)

24 JUDGE MILLS: Hearing none, it will be granted.
25 Navigator Telecommunications, L.L.C. has also

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1 applied to intervene. Is there any objection to that
2 application?

3 (NO RESPONSE.)

4 JUDGE MILLS: Hearing none, it will be granted.

5 I'll issue a notice later today just so there's a
6 paper trail that -- that those applications were granted on
7 the record.

8 There are two more motions pending. One is -- was
9 filed, I believe, just yesterday, a motion for leave to
10 supplement the complaint. And the supplement essentially just
11 gives a brief summary of a number of orders issued by other
12 states on similar issues.

13 It has as attachments petitions from those states.
14 Is there any objection to the motion for leave to supplement
15 the complaint to encompass the petitions from other states?

16 MR. LANE: I -- I would object, Your Honor. That's
17 not a proper subject for an amendment or a supplement to the
18 complaint. It's something that they can put in the record at
19 the appropriate time if there's a hearing, and they can make
20 the arguments to the extent they're permitted to after we get
21 into the case. It's not appropriate to do it right now.

22 JUDGE MILLS: Mr. Lumley, do you have a response?

23 MR. LUMLEY: Judge, I think we're entitled to
24 include in our complaint allegations regarding actions by
25 other state regulatory commissions on similar cases to alert

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1 the Commission to that.

2 If they're items that need to made record evidence,
3 which I don't agree with -- but if the Commission felt that,
4 that would be addressed at the hearing. That doesn't mean we
5 can't make allegations about the contents of those orders
6 and -- and bring them to the Commission's attention in that
7 way.

8 JUDGE MILLS: I'm gonna allow them in. That --
9 it's not -- it isn't record evidence. It's essentially
10 authority in support of the CLEC Coalition's position. I
11 think it will be helpful, particularly when we get to this
12 afternoon to arguing about the merits of that position. It
13 will be helpful for me and for the Commission to see what
14 other states have done.

15 I'm not terribly concerned with the -- with the
16 summaries provided by the CLEC Coalition. But I think having
17 the decisions themselves will be helpful, so I'm going to
18 allow them to supplement the -- the complaint.

19 The last motion, I believe that's pending, is a
20 motion for the stay to include Navigator Telecommunications,
21 L.L.C. Is there any objection to that motion?

22 MR. LANE: Yes, Your Honor, we would object to
23 that. In -- in our view the stay is beyond the authority of
24 the Commission, it's unlawful. And, in addition, we don't
25 think it's substantively proper even if the Commission had the

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1 authority to issue a stay like this, so we do oppose this
2 motion to extend the relief.

3 JUDGE MILLS: Mr. Johnson?

4 MR. JOHNSON: Yes, Your Honor, thank you. That --
5 that objection goes to the merits of the case itself, and also
6 I -- I -- as I would understand it, to the Commission's
7 jurisdiction.

8 The -- the same objection would apply to all of
9 the -- to every CLEC covered by the stay. So I don't view
10 this -- that objection as being applicable only to Navigator.

11 And there's no prejudice occasioned by the --
12 granting the stay -- extending the stay to Navigator largely
13 because it -- it -- it appears the Commission is going to be
14 resolving this issue in the -- in the very near future.

15 JUDGE MILLS: Mr. Lane, do you have something
16 additional?

17 MR. LANE: If that's their position, then they need
18 to wait until after the Commission addresses it before they
19 take up their motion.

20 But at this point it remains an unlawful request
21 for the Commission to extend authority that they don't have.
22 And, in addition, Navigator has introduced absolutely no proof
23 whatsoever of any irreparable harm or anything else that would
24 justify granting the relief.

25 And until that's done, they're not entitled to

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1 simply add themselves into the complaint on that basis.

2 JUDGE MILLS: Okay.

3 MR. LANE: It does create harm to us. And there's
4 been nothing that's been shown in terms of -- of the normal
5 requirements to issue a stay order, and there's been no
6 evidence whatsoever introduced. And it's wholly improper to
7 add them on as getting additional relief coupling on to what
8 the other Complainants have asked for.

9 JUDGE MILLS: Okay. I'm not -- given the -- the
10 brief argument I've heard on that topic today, I'm not
11 prepared to rule on the motion this morning. There will be an
12 order issued tomorrow, I believe, on the con-- continuation or
13 not of the Commission's order requiring the continuation of
14 provisioning.

15 I will address the -- the question of whether
16 Navigator -- if the -- if the stay continues, I'll address the
17 question of whether Navigator should be continued to be
18 included under the stay, as well as the Complainants. If the
19 stay is not to be continued, then the request will obviously
20 be denied.

21 Okay. Is there anything else that needs to -- yes,
22 Mr. Lumley?

23 MR. LUMLEY: Yes, Judge, we have a petition for
24 entry for Mr. Magnus.

25 JUDGE MILLS: Oh, yes, that's correct. Are there

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1 any objections to the petition for entry pro hac vice of
2 Mr. Magnus?

3 (NO RESPONSE.)

4 JUDGE MILLS: I believe it complies with the
5 Commission's rules, and it will be granted as well.

6 MR. LUMLEY: Thank you, Judge.

7 JUDGE MILLS: Anything further of a -- of this
8 matter that needs to be taken up on the record?

9 MR. JOHNSON: Your Honor, Mark Johnson. I -- I
10 would ask to be excused from this afternoon's argument. I
11 have a prior engagement in Topeka, Kansas before the Kansas
12 Commission.

13 JUDGE MILLS: And that -- that will be granted.
14 This procedure -- this proceeding was set on -- on fairly
15 short notice. And it -- I -- I think we're lucky that we only
16 have one person was conflicted out, given the fact that we
17 only gave a few days before we set it.

18 So you're -- you're excused from this afternoon.

19 Anything else we need to take up on the record?

20 (NO RESPONSE.)

21 JUDGE MILLS: Okay. Hearing none, we're off the
22 record.

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