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STATE OF MISSOURI  
  
PUBLIC SERVICE COMMISSION  
  
  
  
  
TRANSCRIPT OF PROCEEDINGS  
  
Prehearing Conference  
  
April 3, 2003  
Jefferson City, Missouri  
Volume 1  
  
  
Tri-Lakes Net, Inc.,                    )  
  )  
Complainant,                            )  
  )  
v.   ) Case No. XC-2003-0011  
  )  
MCI WorldCom Communications,         )  
Inc.,                                     )  
  )  
Respondent.                             )  
  
  
  
  
  
BILL HOPKINS, Presiding,  
SENIOR REGULATORY LAW JUDGE.  
  
  
  
  
  
REPORTED BY:  
  
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1 P R O C E E D I N G S

2 JUDGE HOPKINS: Let's go on the record.

3 This is April the 3rd, 2003. It is about  
4 2:20, and the case number is XC-2003-0011, Tri-Lakes Net,  
5 Inc. vs. MCI WorldCom, and this is a complaint case.

6 I'm Bill Hopkins, the Judge in this case, and  
7 I need entries of appearance. Let's start over here with  
8 Staff first.

9 MR. BATES: Thank you, your Honor. My name is  
10 Bruce H. Bates. I represent the Staff of the Missouri  
11 Public Service Commission. My address is Post Office  
12 Box 360, Jefferson City, Missouri 65102.

13 MR. FAIN: May it please the Commission? I'm  
14 Charles J. Fain, attorney, representing the Complainant,  
15 Tri-Lakes Net, Inc. My address is 166 Heritage Estates  
16 Road, Branson, Missouri 65615. I'm very pleased to be here  
17 before this Commission.

18 MR. LUMLEY: Good afternoon. Carl Lumley of  
19 the Curtis Oetting law firm representing MCI WorldCom.  
20 Address is 130 South Bemiston, Suite 200, Clayton, Missouri  
21 63105.

22 JUDGE HOPKINS: Thank you. There are a couple  
23 of preliminary matters. There's, I believe, one unruled  
24 motion. That's MCI WorldCom's Motion to Require Payments  
25 Made on 25 October 2002. That's not going to be ruled on at

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1 this time.

2                   And then Staff's Motion to Dismiss or in the  
3 Alternative Setting of a Prehearing Conference, that's been  
4 ruled on because we're having a prehearing conference.

5                   Some judges in the past may have varied from  
6 this purpose, but the main reason for prehearing conferences  
7 is to determine whether there are any actual issues in  
8 controversy and whether the controversy can be resolved or  
9 settled.

10                   The Prehearing Order which was issued on the  
11 25th of February 2003 states that a prehearing conference  
12 should be scheduled to afford the parties the opportunity to  
13 discuss, define and possibly resolve the issues presented in  
14 this case or at least to agree on a procedural schedule.

15                   Mr. Bates, are you prepared to comply with the  
16 Commission's order?

17                   MR. BATES: Yes, your Honor.

18                   JUDGE HOPKINS: Mr. Fain, are you prepared to  
19 comply with the Commission's order?

20                   MR. FAIN: I'm sorry, your Honor. I didn't  
21 understand.

22                   JUDGE HOPKINS: Did you read the order setting  
23 the prehearing conference?

24                   MR. FAIN: Oh, yes.

25                   JUDGE HOPKINS: Are you prepared to comply

1 with that order --

2 MR. FAIN: Oh, yes, of course.

3 JUDGE HOPKINS: -- to discuss the case here  
4 today, sir?

5 MR. FAIN: Judge, I did have this preliminary  
6 matter to bring to your attention. Joanie Ellis, who did  
7 all of the staff work for Tri-Lakes Net, has -- has prepared  
8 the figures bringing the complaint figures up to date, and  
9 she just furnished that to me today when we met here.

10 I had copies made, and I filed a copy of that  
11 latest exhibit, which is nothing more than to bring it --  
12 bring the complaint up to date. And I filed copies with the  
13 Commission, and I think I've -- did you get a copy? And  
14 I've furnished copies.

15 Now, I don't know if that's going to mess up  
16 this prehearing conference. My thought was that it doesn't  
17 change any of the issues. It simply brings those numbers up  
18 to date. But naturally the -- WorldCom would want to -- a  
19 chance to answer to those new figures, I suppose.

20 Now, does that mean that we cannot go ahead  
21 with this prehearing conference? I hope not. But naturally  
22 they would want to have time to file a response to that, to  
23 those new figures.

24 JUDGE HOPKINS: I'm not exactly sure what you  
25 intend by filing that. Are you saying you're filing an

1 amended complaint?

2 MR. FAIN: It would be -- it is to this  
3 effect. It just simply -- for the many months that have  
4 passed, it brings those figures up to date is what --

5 JUDGE HOPKINS: I'm not familiar with that  
6 concept. What are you talking about in terms of pleadings,  
7 Mr. Fain?

8 MR. FAIN: Well, the original amount that  
9 we -- in the original order was quite a bit less than the  
10 amount that I just filed with the Commission a few minutes  
11 ago. She brought it with her. That brings those figures up  
12 to date. It's just a matter of -- of the amounts. It  
13 doesn't change the issues, but it does change the amounts  
14 that -- that would be involved.

15 JUDGE HOPKINS: So could you just say yes or  
16 no; do you want to file an amended complaint?

17 MR. FAIN: Yes, sir, amended to -- as to the  
18 figures that we filed in the first.

19 JUDGE HOPKINS: If you file an amended  
20 complaint, the Commission will rule on that. All right?

21 MR. FAIN: Yes, sir.

22 JUDGE HOPKINS: Okay. Anything else,  
23 Mr. Fain?

24 MR. FAIN: No, sir.

25 JUDGE HOPKINS: I'm going to ask you some

1 questions later on, but I just wanted to make sure.

2                   Mr. Lumley, are you prepared to follow the  
3 Commission's order with respect to this prehearing  
4 conference?

5                   MR. LUMLEY: Yes, sir.

6                   JUDGE HOPKINS: All right. Mr. Fain, since  
7 you filed this case, could you tell me just briefly why you  
8 filed this complaint, sir?

9                   MR. FAIN: If the Commission please. It is  
10 filed on the basis that the -- the contract that the  
11 Complainant has with the -- with WorldCom is not -- the  
12 amounts that are being charged under those are not proper  
13 and right.

14                   And that is, generally speaking, the basis of  
15 the complaint that we filed seeking -- seeking a reduction  
16 in the amount owed to the -- to WorldCom by the amount of  
17 over \$60,000, which if it is brought up to date would now be  
18 at about 170-some-odd thousand dollars.

19                   JUDGE HOPKINS: Well, let's just stick with  
20 the complaint the way it was filed on the 15th of July of  
21 last year. Okay?

22                   MR. FAIN: Yes, sir.

23                   JUDGE HOPKINS: Have you being -- you can sit  
24 down, Mr. Fain.

25                   Sir, have you, you being Tri-Lakes, have

1 you-all paid anything to WorldCom since July 15th of 2002?

2 MS. ELLIS: Yes, sir.

3 JUDGE HOPKINS: Okay. I don't really want to  
4 take testimony here, Mr. Fain.

5 MR. FAIN: Well, the answer to that, of  
6 course, Joanie is the -- is the final word on that, and they  
7 have been paying right along.

8 JUDGE HOPKINS: All right. Are you paying the  
9 contracted amount or what -- I don't understand something.  
10 What is it that you're paying, what you've been paying since  
11 July 15th of 2002? I don't mean a dollar amount. I mean --

12 MR. FAIN: Oh, I see. It's based upon -- yes.  
13 It's based upon the contract amount which the company  
14 charged Tri-Lakes.

15 JUDGE HOPKINS: Okay. Do you know about how  
16 many witnesses you would have to call at a hearing,  
17 Mr. Fain?

18 MR. FAIN: Judge, I believe that -- probably  
19 two to three.

20 JUDGE HOPKINS: All right, sir.

21 MR. FAIN: Joanie Ellis, who is sitting here,  
22 has done all of the -- all of the calculations, and she will  
23 be the key witness.

24 JUDGE HOPKINS: Is she an officer of Tri-Lakes  
25 Net or --



1                   MR. FAIN: She is an employee of Tri-Lakes  
2 Net.  
3                   JUDGE HOPKINS: Okay. Fine. Have you and  
4 Mr. Lumley talked about anything that you-all could possibly  
5 stipulate to?  
6                   MR. FAIN: I don't believe that we have.  
7                   JUDGE HOPKINS: Well, you're going to have the  
8 opportunity, after I leave the room, you'll have an  
9 opportunity to get this settled and stipulate.  
10                  MR. FAIN: Well, fine, Judge. I'm sure we  
11 can --  
12                  JUDGE HOPKINS: Okay, sir.  
13                  MR. FAIN: -- we can cut the time a lot by  
14 getting together.  
15                  JUDGE HOPKINS: Mr. Lumley, do you know how  
16 many witnesses you would need, sir?  
17                  MR. LUMLEY: Based on what we know of the  
18 complaint right now, and obviously not having seen the  
19 Complainant's testimony, I would say two to three witnesses.  
20 Of course, that could change if there's surprises.  
21                  JUDGE HOPKINS: Do you know of anything  
22 you-all could stipulate to?  
23                  MR. LUMLEY: I think there's the possibility  
24 that the parties could agree on the contracts that were  
25 signed. I don't really know that there's a dispute about

1 the documentation so much as what it means and how it should  
2 be applied. So I would be hopeful that we could stipulate  
3 to that, although we certainly have not discussed it yet.

4 JUDGE HOPKINS: All right. Do you think  
5 there's any chance of settling this case?

6 MR. LUMLEY: I'm not optimistic about it,  
7 Judge, not because we're opposed to it certainly, but we're  
8 in the unusual position of the Complainant feeling that  
9 we're charging them too much, and when we audit it we find  
10 that we've actually charged them too little, although we're  
11 not proposing to go back and change our bills, you know.  
12 We'd be happy to just have the bills paid as they were  
13 issued.

14 So right now we're pretty far apart, but  
15 perhaps as we sort through it, maybe some differences can be  
16 resolved. It is an unusual Commission case in the sense  
17 that we're really just talking about money. We're not  
18 talking about policy issues and what have you. So one would  
19 hope that we could settle it, but right now I think our  
20 views are fairly far apart.

21 And if I could comment, the information I have  
22 reflects that only two payments have been made since the  
23 case was filed. So I would disagree with the description  
24 that they've been paying right along. Although they  
25 certainly have made two payments, but basically the result

1 of that is we're about \$100,000 further apart now than we  
2 were when the case started because the charges that have  
3 accrued are \$100,000 more than what's been paid since then.

4 JUDGE HOPKINS: Have you cut off their service  
5 since then?

6 MR. LUMLEY: No, sir. The Commission ordered  
7 us not to and we've not.

8 JUDGE HOPKINS: Well, that's not exactly what  
9 the Order said. It said you couldn't cut off their service  
10 for anything involved in this lawsuit, in this claim. I'm  
11 talking about for not paying after July of 2002.

12 MR. LUMLEY: I would not be comfortable  
13 advising my client to do that with the Order that's  
14 outstanding. I would want Commission -- we viewed our  
15 motion for payment as a request for that kind of authority,  
16 and we're not going to do anything unilaterally at this  
17 point.

18 JUDGE HOPKINS: All right. Mr. Bates, do you  
19 have anything to add to this?

20 MR. BATES: No, your Honor.

21 JUDGE HOPKINS: I don't know which one of  
22 you-all is right and which one of you is wrong, but as  
23 Mr. Lumley pointed out, this is a matter of dollars and  
24 cents, and I think you-all should be able to read the  
25 contract and say we owe X amount of dollars and agree on it

1 and then see whether or not you paid that. I don't know  
2 what that contract says because I haven't read it.

3 But since it is not a policy problem or  
4 fairness or anything like this, it's a matter of strictly  
5 dollars and cents, that to me should be pretty easy to  
6 solve. Just get out your checkbooks and see who paid what  
7 and how much you were supposed to pay.

8 I do need the procedural schedule by the 10th  
9 of April, and we have a very full calendar upstairs, I can  
10 tell you that, but I am willing to work with you-all. This  
11 needs to get resolved. This is coming up on eight, nine  
12 months since this has been filed, and it needs to be  
13 resolved. So if there's any slow-down here, it won't be  
14 because of me. I'm ready to work with you-all to get this  
15 done.

16 All right, sir? Mr. Lumley?

17 MR. LUMLEY: Yes, sir.

18 JUDGE HOPKINS: Anything else?

19 MR. FAIN: Judge, may I inquire?

20 JUDGE HOPKINS: Yes, sir.

21 MR. FAIN: In view of the fact that Joanie has  
22 brought these calculations up to date a lot more than what  
23 it was when we originally filed it, it doesn't change any of  
24 the issues. It simply changes the amount. Would it be  
25 possible for us to go forward with -- with the hearing with

1 a -- with some kind of a stipulation that this latest  
2 filing, which I made today, is -- doesn't change the issues  
3 but simply brings those figures current from all of these  
4 months since it was originally calculated?

5 JUDGE HOPKINS: In order for you to do that,  
6 Mr. Fain, you would have to file a motion for amended  
7 complaint, and you have not done that. And sir, until you  
8 do that, I don't have anything to rule on.

9 MR. FAIN: I understand. I didn't get these  
10 figures until just a few minutes ago.

11 JUDGE HOPKINS: Yes, sir. If you -- in your  
12 settlement procedures here, if you and Mr. Lumley want to  
13 talk about total dollars or you want to talk about how it  
14 was in July of last year, that's fine with me. I'd like to  
15 see this thing settled so that we don't see you back in here  
16 on this issue, either one of you.

17 So this to me looks like an accounting case,  
18 and I don't know how a contract can be so vague as to make  
19 you-all as far apart as you are. You know, Mr. Lumley says  
20 they didn't charge you enough and you said they charged too  
21 much. Well, I think the truth lies somewhere in between.

22 MR. FAIN: Well, certainly I will make every  
23 effort to discuss this with Mr. Lumley and try to come up  
24 with some answer so that we can go forward with the hearing  
25 and get it over with as soon as possible.

1 JUDGE HOPKINS: All right, sir. That sounds  
2 good to me. I'll be upstairs until 5 p.m. Mr. Bates knows  
3 how to get ahold of me if you have any questions. Other  
4 than that, I think you should get it settled. All right?

5 Anything further?

6 MR. LUMLEY: Do you have information about  
7 potential hearing dates that we can work towards for a  
8 schedule?

9 JUDGE HOPKINS: If you give me a call  
10 upstairs, I'll have to go literally stand and look at the  
11 calendar.

12 MR. BATES: Your Honor, if I may, I can go up  
13 to the ninth floor and check the calendar.

14 JUDGE HOPKINS: All right. Why don't you let  
15 Mr. Bates go up there and look while you-all are discussing  
16 this? All right.

17 Thank you very much. We're off the record.

18 WHEREUPON, the recorded portion of the  
19 prehearing conference was concluded.

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