

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS
5 Initial Arbitration Meeting
6 February 28, 2005
7 Jefferson City, Missouri
8 Volume 1
9
9 Petition by KMC Telecom V, Inc.,)
KMC Telecom III, LLC, and KMC Data,))
10 LLC for Arbitration of an)
Interconnection Agreement with)
11 CenturyTel, Inc., CenturyTel of) Case No. TK-2005-0276
Missouri, LLC, and Spectra)
12 Communications, LLC, Pursuant to)
Section 252(b) of the)
13 Communications Act of 1934, as)
Amended, and Missouri Law)
14
Petition by CD Telecommunications,)
15 LLC for Arbitration of an)
Interconnection Agreement with)
16 CenturyTel, Inc., CenturyTel of) Case No. XO-2005-0277
Missouri, LLC, and Spectra)
17 Communications, LLC, Pursuant to)
Section 252(b) of the)
18 Communications Act of 1934, as)
Amended, and Missouri Law)
19
20 MORRIS L. WOODRUFF, Presiding,
SENIOR REGULATORY LAW JUDGE.
21
22 REPORTED BY:
23 KELLENE K. FEDDERSEN, CSR, RPR, CCR
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25

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

2 JUDGE WOODRUFF: We're here for initial
3 arbitration meetings in two -- at this moment at least two
4 arbitrations. The first is TK-2005-0276, which is a
5 petition by KMC vs. CenturyTel. The other case is
6 XO-2005-0277, which is a petition by CD Telecom --
7 Telecommunications against CenturyTel.

8 We'll begin today by taking entries of
9 appearance beginning with KMC.

10 MR. COMLEY: Good morning, Judge Woodruff.
11 Let the record reflect the entry of appearance of Mark W.
12 Comley on behalf of KMC Telecom V, Inc., KMC Telecom III,
13 LLC, and KMC Data, LLC. I'm an attorney with Newman,
14 Comley & Ruth, and our business address is 601 Monroe
15 Street, Suite 301, Post Office Box 537, Jefferson City,
16 Missouri.

17 JUDGE WOODRUFF: And you are appearing in
18 TK-2005-0276?

19 MR. COMLEY: Yes, your Honor.

20 JUDGE WOODRUFF: And CenturyTel in that
21 case?

22 MR. DORITY: Thank you, your Honor.
23 Appearing on behalf of CenturyTel of Missouri, LLC and
24 Spectra Communications Group, LLC, doing business as
25 CenturyTel, Larry W. DORITY and James M. Fischer, law firm

1 of Fischer & Dority, PC. Our address is 101 Madison,
2 Suite 400, Jefferson City, Missouri 65101. And, your
3 Honor, we would be entering appearances in the other
4 docket as well.

5 JUDGE WOODRUFF: All right. And,
6 Mr. Klein, I believe you were going to be entering your
7 appearance also in this case?

8 MR. KLEIN: Yes, thank you, Judge. I'm
9 appearing for the same parties identified by Mr. Comley.
10 My name is Andrew Klein, the law firm DLA Piper Rudnick
11 Gray Cary US, LLP, at 1200 19th Street Northwest,
12 Suite 700, Washington, D.C. 20036.

13 JUDGE WOODRUFF: Thank you. And,
14 Mr. Simshaw, are you entering your appearance?

15 MR. SIMSHAW: Yes, your Honor. Calvin
16 Simshaw on behalf of the CenturyTel entities identified by
17 Mr. Dority.

18 JUDGE WOODRUFF: All right. Thank you.
19 Let's move over to the other case then, which is
20 XO-2005-0277 for CD Telecom.

21 MR. STEINMEIER: Thank you, your Honor.
22 Please let the record reflect the appearance of William D.
23 Steinmeier and Mary Ann Garr Young, William D. Steinmeier,
24 PC, Post Office Box 104595, Jefferson City, Missouri
25 65110, on behalf of CD Telecommunications, LLC.

1 JUDGE WOODRUFF: Thank you. And,
2 Mr. Klein, you're entering your appearance for CD Telecom
3 also?

4 MR. KLEIN: Yes, thank you, your Honor. Do
5 you want me to repeat that again?

6 JUDGE WOODRUFF: Mr. Klein, could you
7 repeat yourself?

8 MR. KLEIN: Yes, I am appearing for the
9 same parties identified by Mr. Steinmeier, same firm and
10 address information for myself.

11 JUDGE WOODRUFF: Thank you. And for
12 CenturyTel, same entries of appearance?

13 MR. DORITY: That's correct, Judge.

14 JUDGE WOODRUFF: And, Mr. Simshaw, again
15 for CenturyTel?

16 MR. SIMSHAW: Yes, your Honor.

17 JUDGE WOODRUFF: All right. First matter
18 to be brought up is the petition -- or the motion that was
19 filed last week by KMC and CD Telecom to consolidate these
20 two arbitration cases. Let me ask CenturyTel, do you have
21 any objection to that consolidation?

22 MR. DORITY: Yes, we do, Judge.

23 JUDGE WOODRUFF: Okay.

24 MR. DORITY: And if I may, perhaps I could
25 just take a brief moment and give you an overview of some

1 of our concerns.

2 JUDGE WOODRUFF: That would be fine.

3 MR. DORITY: To say that the procedural
4 complexities now existing are unique in these matters
5 would be an understatement. Right now we have four cases
6 that are docketed. Three different arbitrators have been
7 appointed. Three initial arbitration meetings have been
8 scheduled originally on three separate dates. And for --
9 as you just mentioned, for two of these dockets a Motion
10 for Consolidation and Joint Proceedings has been filed,
11 which our clients do oppose, and I'll discuss that in more
12 detail.

13 Applicants state that, and I quote,
14 although the parties have exchanged oral and written
15 communications, the parties have not held extensive
16 negotiations.

17 JUDGE WOODRUFF: I'll check and make sure
18 everybody's still on the phone. Mr. Klein, are you still
19 there?

20 MR. KLEIN: Yes, Judge.

21 JUDGE WOODRUFF: Mr. Simshaw?

22 MR. SIMSHAW: Yes.

23 JUDGE WOODRUFF: There was a noise on the
24 phone, so we were just checking.

25 MS. SMITH: This is Susan Smith.

1 JUDGE WOODRUFF: Oh, all right, Ms. Smith.
2 Welcome to the proceedings here. We have taken entries of
3 appearance. Do you wish to enter your appearance on
4 behalf of CenturyTel?

5 MS. SMITH: Yes. My name is Susan Smith,
6 and I'm director of external affairs.

7 JUDGE WOODRUFF: All right. Mr. Dority was
8 explaining why CenturyTel opposes consolidation of these
9 cases, so I'll let him continue.

10 MR. DORITY: Okay. Thank you, Judge. As I
11 indicated, in paragraph 14 of their petitions, the
12 applicants have stated that although the parties have
13 exchanged oral and written communications, the parties
14 have not held extensive negotiations. Well, we can
15 certainly agree with that. In fact, there have been none.

16 CenturyTel provided the applicants a
17 template agreement for their consideration and review back
18 in December of 2004. I think it was December 20th, to be
19 exact. We had also requested the execution of a
20 non-disclosure agreement so that we could provide
21 confidential pricing information to the entities, but we
22 never heard any response, not one. So the bottom line
23 from our perspective is that there have been no good-faith
24 negotiations by either of the applicants in these
25 proceedings.

1 As a result, the applicants have included
2 109 pages of issues attached to their petitions that were
3 not the topic of negotiations between the parties. They
4 have provided proposed interconnection agreements that
5 were not discussed by the parties. The only
6 interconnection agreement that was put on the table for
7 discussion was that provided by the CenturyTel entities,
8 and again, we never heard a word back from the petitioners
9 regarding that template agreement.

10 The sole purpose of arbitration proceedings
11 is to resolve all issues regarding the terms of an
12 interconnection agreement on which the parties negotiated
13 but were unable to reach agreement. Neither the federal
14 nor state telecommunications statutes envision or
15 authorize an arbitration process by which a party can
16 inject issues for arbitration when there has not been a
17 good-faith effort to negotiate the issue privately.

18 The entire good faith negotiating process
19 envisioned by the Act is jeopardized if the parties can
20 unilaterally refuse to respond to proposals or discuss
21 issues only to later submit them for arbitration.

22 Applicants cite 47 USC 252(b) for the
23 proposition that, quote, a carrier that has requested
24 negotiations of an interconnection agreement has the right
25 to petition the relevant state commission for arbitration

1 of any open issue whenever negotiations between them fail
2 to yield an agreement, end quote.

3 Again, in this instance there were no
4 negotiations. Accordingly, these petitions for
5 arbitration may well be dismissed, and we will be raising
6 these points in our responsive pleading. The party
7 petitioning for arbitration may not use the compulsory
8 arbitration position to obtain arbitration of issues that
9 were not the subject of negotiations, and clearly open
10 issues are limited to those that were the subject of
11 voluntary negotiations.

12 And regarding the motion for consolidation,
13 we do indeed oppose the motion. Federal law and this
14 Commission's rules refer to the two parties to the
15 process. These applicants have no cross ownership.
16 They have different networks serving different customers.
17 And since we haven't had any negotiations, we can't be
18 sure that the disputes are the same at this point.

19 Now, we do have a better knowledge of CD
20 Telecom's operations because of pending court litigation
21 that the parties are involved in. But to the extent that
22 these proceedings move forward, we anticipate that
23 testimony would be filed that would be specific to each of
24 the applicants and, quite frankly, the only common thread
25 at this point appears to be their outside counsel,

1 Mr. Klein.

2 So to that extent, your Honor, we would
3 oppose the Motion for Consolidation and Joint Proceedings.

4 JUDGE WOODRUFF: Okay. Response first from
5 KMC?

6 MR. COMLEY: I think I'll defer to
7 Mr. Klein on that. I think he probably is more aware of
8 the negotiations that have taken place to date.

9 JUDGE WOODRUFF: Mr. Klein?

10 MR. KLEIN: Yes, thank you. First of all,
11 most of what Mr. Dority said does not go to the motion to
12 consolidate, but rather goes to what might be contained in
13 CenturyTel's response to the petitions for arbitration, so
14 we look forward to seeing that response and obviously
15 would address any issues at that time. I think for now
16 suffice it to say that CenturyTel just simply does not
17 negotiate.

18 CenturyTel said there has not been
19 good-faith negotiations but over the last several years
20 there have been numerous discussions on these very same
21 issues between these very same parties in an attempt to
22 resolve these issues. And these are primarily policy
23 issues. CenturyTel has one view of what the law is and
24 will not negotiate from that standpoint.

25 The parties, KMC and CD Tel for that

1 matter, just simply want to interconnect with CenturyTel,
2 interconnect the networks, exchange traffic and compete on
3 a fair basis.

4 And to this point it's just not been
5 possible to do that, and in negotiations with CenturyTel
6 have indicated that the negotiations are just -- cannot be
7 had. They just simply will not negotiate, even settle
8 points of law. So unfortunately it does become a
9 situation where a petition for arbitration is the only
10 solution, and we would ask the Commission to look
11 seriously at these issues, apply the law as it exists and
12 resolve these issues. That is the only way that the
13 parties are going to resolve this.

14 In terms of the motion to consolidate, we
15 think it's entirely proper. The FCC has already
16 consolidated similar arbitrations in a proceeding a couple
17 of years ago involving Verizon in a preemption of the
18 Virginia Commission. I'll give you the docket number. It
19 was then the CC Docket Nos. 00-218, 00-240 and 00-251
20 involving preemption of the Virginia Commission for
21 arbitration of interconnection agreement involving Verizon
22 Virginia, Cox Communications, MCI and AT&T.

23 And by Order dated January 19, 2001, the
24 FCC consolidated each of those three arbitrations, finding
25 that it had the authority and the state commissions have

1 the authority to consolidate arbitration proceedings under
2 Section 252(g) of the Communications Act of 1934, as
3 amended by the 1996 Telecom Act. 252(g) does provide
4 consolidation of state proceedings that a commission may
5 to the extent practical consolidate proceedings under
6 Sections 214(e), 251(f), 253 and in this section in order
7 to reduce administrative burdens of telecommunications
8 carriers or the parties to the proceedings and the state
9 commission carrying out its responsibilities under this
10 Act.

11 As Mr. Dority indicated, the pleadings --
12 well, they indicated the outside counsel in terms of the
13 DC counsel is the same, and that would be me, but the
14 pleadings that were filed are nearly identical. The
15 issues that are raised are the same. The proposed
16 agreement that has been proposed to CenturyTel is the
17 same, and the issues list is the same.

18 So certainly it makes good sense to
19 consolidate the two proceedings. To do otherwise would be
20 very inefficient and would make -- make for very
21 inefficient resolution of these issues.

22 JUDGE WOODRUFF: All right. Thank you.
23 Anything further for CD Telecom?

24 MR. STEINMEIER: Yes, your Honor, if I
25 might. The -- I would just observe that as Mr. Klein just

1 mentioned, the same ILECs are involved, the same issues
2 list, the same proposed interconnection agreements. KMC
3 and CD Telecom are on the same time schedule and as well
4 as using the same outside counsel, so there's a great deal
5 more commonality than there's been conceded by CenturyTel.

6 JUDGE WOODRUFF: Is everyone still there?

7 TELEPHONE PARTIES: Yes.

8 JUDGE WOODRUFF: All right. I hear you.

9 MR. STEINMEIER: To consolidate these
10 matters, your Honor, would create efficiencies of time and
11 cost for CD Telecommunications, for KMC and, frankly, for
12 CenturyTel and Spectra as well as for the Commission. Not
13 to consolidate these cases on the other hand would create
14 a huge duplication of time and effort and greatly increase
15 the cost of arbitration for all the entities involved,
16 including the Commission.

17 I would observe that CenturyTel is a much
18 larger company than CD Telecom or KMC, and my personal
19 experience in the last year is that CenturyTel seems to do
20 everything possible to make it hard for small CLECs to
21 succeed.

22 This Commission has an obligation under
23 both federal and state law to promote and facilitate
24 competition for telecommunications services in Missouri.
25 And my concern is that if the Commission does not permit

1 joint proceedings in cases such as these, it will be
2 protecting CenturyTel against meaningful competition in
3 direct contravention of its legal responsibilities.

4 And I would urge the Commission to take a
5 careful look at CenturyTel and Spectra's history with
6 interconnection agreements since taking over the former
7 GTE properties in this state. Both companies indicated
8 they would honor existing interconnection agreements at
9 that time, provide service on the same terms and
10 conditions as GTE was and would negotiate new
11 interconnection agreements in good faith.

12 But CenturyTel and Spectra almost
13 immediately violated those pledges and PSC orders by
14 demanding new interconnection agreements of unsuspecting
15 new CLECs that are far less favorable than those terms and
16 conditions GTE had been providing service under and by
17 refusing to negotiate new interconnection agreements in
18 good faith.

19 I would encourage the Commission to look
20 for what new CenturyTel interconnection agreements have
21 been approved by the Commission in the last two years and
22 to please let me know if you find any, other than perhaps
23 one with a wireless carrier.

24 CenturyTel and Spectra seem to have adopted
25 a policy of just saying no to CLECs and requiring the

1 CLECs to undertake considering legal and regulatory
2 expense to require CenturyTel to do anything. And if
3 CenturyTel can increase a CLEC's regulatory expenses
4 enough, they seem to hope they can put the CLEC out of
5 business or at least render its competitive efforts
6 fruitless.

7 In my view, the Commission must not permit
8 CenturyTel and Spectra to thwart pro-competitive policies
9 of the Congress and the Missouri General Assembly, but
10 should allow consolidation of interconnection agreement
11 arbitrations so that small CLECs may have a meaningful
12 opportunity to afford such arbitration.

13 The cases in question clearly involve
14 related issues of both law and fact, and in our view
15 should be consolidated for joint proceedings under
16 4 CSR 240-2.110 sub 3 of the Commission's rules. Thank
17 you, your Honor.

18 JUDGE WOODRUFF: Thank you. I have a
19 question for CD -- or KMC and for CD Telecom. As far as
20 your -- assuming this case were to be consolidated, would
21 the two companies file separate testimony and separate
22 witnesses or would it be joint filings? Anybody that
23 wants to answer can.

24 MR. COMLEY: My understanding is that we
25 were going to coordinate our efforts in locating a single

1 witness that can identify and explain all these issues.

2 Mr. Klein may have confirmation of that.

3 JUDGE WOODRUFF: Mr. Klein?

4 MR. KLEIN: Yes, it is envisioned that we
5 would file testimony and would have witnesses or comments
6 of the two companies, with the only possible exception of
7 witnesses that may be necessary to appear to discuss
8 particular operational concerns of one company versus the
9 other. But on all questions of law and policy, there
10 would be consolidated witnesses.

11 And I'm not entirely certain we wouldn't
12 have 100 percent common witnesses. I'm just suggesting
13 that there may be need to be an exception if there are
14 very particular issues of network structure and matters of
15 that nature that might require a separate witness. But I
16 think the great likelihood is there would be 100 percent
17 overlap of the witnesses and there would be common witness
18 submissions.

19 JUDGE WOODRUFF: Mr. Dority, your concern
20 on the -- was that your concern about the common witnesses
21 as well?

22 MR. DORITY: Well, we have that. And first
23 I guess I need to for the record take issue with many of
24 Mr. Steinmeier's comments. I think the orders of the
25 Commission in those two acquisition cases and those

1 stipulations and agreements speak for themselves and the
2 Commission will find that out. This Commission has always
3 taken the position that they treat arbitrations as
4 specific to negotiating parties. They refuse to permit
5 outside interventions for that very reason. And we just
6 see no reason here to consolidate these matters.

7 I think the technicalities, as Mr. Klein
8 indicated, the operational issues are going to be unique
9 to each of these.

10 MR. KLEIN: Excuse me, Judge?

11 JUDGE WOODRUFF: Yes? I'm sorry,
12 Mr. Dority. Sir?

13 MR. KLEIN: I cannot hear Mr. Dority at
14 all. Is he still addressing --

15 JUDGE WOODRUFF: Yes. Mr. Dority, if you'd
16 speak up a little bit.

17 MR. DORITY: I'm sorry. Excuse me, Eddie,
18 I'll try to speak up.

19 MR. KLEIN: Thank you.

20 MR. DORITY: We would still object. We
21 think that there -- as you indicated, that there are going
22 to be some distinct operational issues to these
23 particular --

24 MR. SIMSHAW: Your Honor, this is Cal
25 Simshaw. I'm having the same experience. The only one I

1 can't hear is Mr. Dority.

2 MR. DORITY: Well, I've been suffering from
3 a cold and I'll try to --

4 MR. SIMSHAW: Maybe if you come up to the
5 microphone.

6 JUDGE WOODRUFF: You can come up closer,
7 that's fine.

8 MR. DORITY: Okay. Thank you.

9 We would still object to the consolidation.
10 As Mr. Klein indicated, there are distinct operational
11 issues regarding these two particular companies, or I
12 guess actually four particular companies that are involved
13 in these two dockets, the three KMC entities and then the
14 CD Telecom. Quite frankly, we have some distinct issues
15 regarding CD Telecom and their operations as a CLEC or are
16 they simply the alter ego of an ISP provider? And those
17 of types of issues that we will be raising particularly as
18 to CD Telecom. I don't know that that would be
19 necessarily involved in the KMC arbitration.

20 So for that, and again just the historical
21 precedence of this Commission and its approach to
22 arbitrations and keeping them separate and distinct to the
23 two negotiating parties, Judge, we would continue to
24 oppose. And I guess I would ask Mr. Simshaw if he has
25 anything else that he'd like to add at this point. I'd

1 welcome him.

2 MR. SIMSHAW: Well, your Honor, I guess
3 maybe to comment on some of the comments regarding
4 CenturyTel's willingness to negotiate. Just as Mr. Dority
5 pointed out, the sequences of events in both of these
6 matters was that upon receiving bona fide requests, that
7 CenturyTel did submit a proposed agreement in both
8 instances and did not receive from either party comment on
9 any particular aspects of that agreement as to what was
10 acceptable, what was not, and did not receive a
11 counterproposal in the form of an agreement from either CD
12 Telecom or KMC. It was not until this petition was filed
13 that for the first time CenturyTel saw what type of
14 contractual provisions it was that these parties were
15 seeking.

16 Therefore, as Mr. Dority pointed out
17 earlier, it's very difficult given that sequence to
18 determine whether or not the issues and the underlying
19 facts will at all be similar as between these two
20 companies.

21 JUDGE WOODRUFF: All right. Well, thank
22 you all for your arguments. I'm not going to make a
23 ruling on this at this moment. I'm going to ask the
24 parties to file written arguments tomorrow on the question
25 of consolidation. And I'll make a decision promptly after

1 I receive those written arguments. Just submit it through
2 the normal process.

3 So for the moment at least we're
4 unconsolidated in this case, and we'll proceed on that
5 basis at least for today for the purposes of this hearing,
6 of this initial meeting.

7 I did want to mention the advisory staff.
8 As the Commission's rule provides, I'm allowed to choose
9 an advisory staff, and the telecommunications department
10 here at the Commission has recommended several names to
11 me: Natelle Dietrich, Adam McKinney, Mike Scheperle and
12 Mick Johnson. And I anticipate naming them as my advisory
13 staff. Does anyone have any objection to anyone in
14 particular on that list?

15 MR. DORITY: We do not, Judge.

16 JUDGE WOODRUFF: Thank you. We've also got
17 a couple of attorneys from the General Counsel's Office
18 here, Bill Haas and Marc Poston. From speaking with
19 Mr. Haas before the -- before we went on the record, I
20 believe they were -- they're monitoring this case for the
21 General Counsel, or which case do you have, Mr. Haas?

22 MR. HAAS: Yes, Mr. Woodruff, I have the
23 KMC case, and I'm here if you are looking for an advisor
24 on your team. Mr. Poston would be here if you're looking
25 for an advisor on the CD case.

1 JUDGE WOODRUFF: Okay. Depending upon what
2 we do with the -- I believe you said before that if it's
3 consolidated you have a preference as to which of you were
4 to be named?

5 MR. HAAS: Mr. Poston.

6 JUDGE WOODRUFF: Mr. Haas spoke up quickly
7 on that one. All right. I'll consider that. I may very
8 well name one or both of those attorneys to the advisory
9 staff as well, just to give me advice. And as I see it,
10 the role of the advisory staff is simply to give me advice
11 in the case, particularly on the question of public
12 interest. They will not be filing testimony. They may be
13 advising me during any hearings that take place, answering
14 questions that I may have as issues arise, so that they'll
15 give me some technical advice.

16 All right. The main reason I wanted to
17 bring you in today was to discuss the procedural schedule.
18 As you're all aware, the timelines for this case are quite
19 short. It's my understanding that the final deadline is
20 June 10th for the final Commission decision. The previous
21 experience I have in this case was an arbitration case
22 with Southwestern Bell that settled just before the
23 hearing, so I'm going to be relying on my experiences in
24 that case, and that was just a few weeks ago.

25 What I'm looking at as far as a hearing, if

1 we need to have a hearing, we'll be looking at the week of
2 April 18th. If we're consolidated, we'd have a
3 consolidated hearing. If we're not consolidated, we'd
4 have to have separate hearings, but they both need to be
5 during that week just to be able to meet the time frames.
6 And in that other case we scheduled an oral argument, oral
7 presentation, whatever you want to call it before the
8 Commissioners as opposed to myself as the arbitrator, and
9 I'd be looking at probably June 1st for that. That's a
10 Wednesday.

11 MR. DORITY: I'm sorry?

12 JUDGE WOODRUFF: June 1st. So beyond that,
13 we have a little bit of flexibility. The Commission's
14 rules require that I prepare a draft report and then allow
15 the parties a chance to file comments on that draft report
16 and then a final report a few weeks after that. And I was
17 looking at approximately May 27th for comments on that or
18 comments on that final report. I would have to be filing
19 my final report on May 20th.

20 May 13th comments on the draft report. The
21 draft report then would be due on May 6th and I was
22 looking at post-hearing Briefs on April 29th. And again
23 from my experience in that earlier case, I'd ask the
24 parties to file Pretrial Briefs a few days before the
25 hearing so I had some idea of what was going to be coming

1 at me at the hearing. Any comments on those parameters?

2 MR. STEINMEIER: Whew! That's w-h-e-w,
3 exclamation point, exclamation point, but understood. I
4 had roughed out a schedule, your Honor, sort of based on
5 the experience in Level 3/SBC. You just moved it all up
6 about 7 to 10 days. We were already mildly breathless,
7 but we understand the constraints.

8 JUDGE WOODRUFF: I have some flexibility,
9 but that's pretty much what we're looking at.

10 MR. DORITY: When I was looking at the
11 SBC/Level 3 schedule, Judge, it appeared that there was
12 approximately 40 days between the filing of testimony by
13 Level 3 and the first filing of testimony by SBC.

14 JUDGE WOODRUFF: Yes, but that was because
15 Level 3 filed their testimony at the same time they filed
16 the petition.

17 MR. DORITY: They did, and these applicants
18 chose not to do that.

19 JUDGE WOODRUFF: That's correct.

20 MR. DORITY: I guess I would be interested
21 as to what sort of a timeline you were anticipating in
22 terms of the filing of testimony.

23 JUDGE WOODRUFF: At this point I'm just
24 going to leave that up to the parties to give me a
25 recommendation to try to work that out between you as to

1 how many rounds of testimony you want to file, how many
2 you can squeeze in. One question I had was in -- and this
3 may be different in the Level 3 arbitration I've had
4 before. In that case there was similar arbitrations going
5 on between those two parties in, I believe, 13 other
6 states or 12 other states. Are there other arbitrations
7 going on in other states?

8 MR. DORITY: No.

9 JUDGE WOODRUFF: So everybody's going to
10 have be inventing the wheel in this case.

11 MR. DORITY: Well, not only inventing the
12 wheel, Judge, but I think there's going to be a critical
13 issue regarding which of the agreements are we going to be
14 working off of. I think it would be the CenturyTel
15 entity's position that the only agreement that was put in
16 play by virtue of any purported negotiations, for which we
17 would submit there were none, was the template that
18 CenturyTel provided to both of the applicants. And yet
19 they have chosen to file and submit a 109-page issue list
20 concerning an agreement that had never been provided to us
21 prior to that time.

22 So if you overlay the issues pertaining to
23 their proposal with the issues that we would perhaps
24 identify relative to the agreement that we had put in
25 front of them, I'm not sure how we're going to reconcile

1 those two diverse issues.

2 JUDGE WOODRUFF: I believe your answer's
3 due on March 14th.

4 MR. STEINMEIER: Your Honor, we would
5 submit it's March 11.

6 JUDGE WOODRUFF: Okay.

7 MR. DORITY: Pardon me?

8 MR. STEINMEIER: I believe it's March 11th.

9 MR. DORITY: Well, I think the date is
10 March 13th, which happens to be a Sunday, and I guess by
11 the Commission's rules, since this is a statutory deadline
12 of 25 days, I don't have the luxury of moving it over to
13 the following Monday, so in essence it would be shortened
14 to Friday, March 11th.

15 MR. STEINMEIER: That's our understanding
16 is because the federal statute is framed in terms of
17 within 25 days. I think -- I think otherwise you would
18 bounce over to the 14th.

19 JUDGE WOODRUFF: Well, we reached agreement
20 on one thing anyway.

21 MR. DORITY: That's right.

22 MR. STEINMEIER: Which makes the revised
23 statement of unresolved issues due on the 18th, seven days
24 later under the Commission's rules. And in the more
25 typical case, being responsible for some of the filings in

1 the earliest cases filed by the Commission's new
2 arbitration rules, I'll happily confess of record to being
3 paranoid about the application of those rules and not
4 wanting to be the test case that shows that something
5 entirely different should have been done and that my
6 client suffers a serious negative consequence because I
7 guessed wrong, which is why Level 3 filed its direct
8 testimony voluntarily with its petition for arbitration in
9 that case in December, a fact which Southwestern Bell
10 proceeded to use against us in a number of arguments in a
11 most fascinating way, and which is an almost impossible
12 process to put together anyway.

13 So it's clear that the Commission's rule
14 does not require that and contemplates that the initial
15 arbitration conference will establish a schedule, and the
16 typical Commission arbitration proceeding in the history
17 of such events is for contemporaneous direct to be filed
18 and for contemporaneous rebuttal to be filed.

19 So that's what we would contemplate and
20 suggest be done here, that within a couple of weeks of the
21 revised -- well, we had sketched out March 30 and April 15
22 for direct testimony and rebuttal testimony. That's not
23 going to -- that's going to have to advance.

24 MR. COMLEY: When's the date for hearing?

25 JUDGE WOODRUFF: I was looking at the week

1 of April 18th.

2 MR. DORITY: Judge Woodruff, correct me if
3 I'm wrong, and Mr. Steinmeier may well know this since he
4 was involved directly in the SBC/Level 3 arbitration
5 proceeding, but it appeared that --

6 MR. STEINMEIER: This judge was, too.

7 MR. DORITY: Yes. And, Judge, you were as
8 well. It appeared that the schedule that was decided upon
9 did not comport with the Commission's rules in terms of
10 particular timelines within which you have to make certain
11 decisions and so forth. So I guess I would just ask the
12 question, would we be at least provided the latitude to
13 delve into some possibilities that would perhaps alter the
14 Commission's rule pertaining to arbitration procedures and
15 try to come back to you with --

16 JUDGE WOODRUFF: I am certainly open to
17 suggestions.

18 MR. DORITY: Okay.

19 JUDGE WOODRUFF: And the Commission's rules
20 sets out some very strange timelines, as you're very well
21 aware, I'm sure. It also provides a provision that says
22 the arbitrator can vary from those for good cause shown at
23 his or her discretion. So certainly in the early
24 arbitration there was some variance from that, and I'm
25 open for variances in this case as well.

1 MR. DORITY: Thank you, Judge.

2 JUDGE WOODRUFF: The one area that the
3 rule says I cannot vary from, at least on my own, is the
4 June 10th deadline, which is, of course, mandated by the
5 federal law. I know there was some discussion in the
6 earlier arbitration, particularly from Mr. Steinmeier,
7 suggesting that it might be advisable to -- that the
8 parties might be able to waive that June 10th deadline.

9 In the past the Commission has not been
10 willing to do that, but they might be willing to do it if
11 presented to them again. And I don't know what the
12 parties' view on that is, but that's certainly something
13 you can discuss also.

14 All right. I think I've reached a point
15 where I don't need to participate in your discussions
16 anymore. Is there anything else that anybody wants to
17 bring up while I'm still here?

18 MR. DORITY: I guess, Judge, just for
19 clarity's sake, and if we're to file written comments
20 tomorrow on the pending motion for consolidation, I would
21 be curious as to if CD Telecom can share with us at this
22 point what the status of Case No. CO-2005-0280 and 0281
23 would be at this moment.

24 MR. KLEIN: Larry, I cannot hear anything.

25 MR. DORITY: Sorry. I was asking about the

1 pending Case No. CO-2005-0280 and 0281 that were also
2 filed by CD Telecom. I believe Judge Jones is the
3 arbitrator that has scheduled an initial arbitration
4 meeting for March 8th, and I was just curious if any
5 decision has been made at this point regarding those two
6 dockets.

7 MR. STEINMEIER: Your Honor, if I might,
8 first of all, those cases exist because of the same
9 paranoia that I've already stated and confessed of record
10 here. We have more petitions pending than necessary, and
11 it would be my hope that the two cases involved in this
12 joint initial arbitration meeting would be consolidated
13 and would be the vehicles that proceed forward. As soon
14 as that's established, we would be pleased to withdraw the
15 other two petitions.

16 JUDGE WOODRUFF: What was the reason for
17 filing the other petitions?

18 MR. STEINMEIER: Oh, your Honor, detailing
19 paranoia is a legally dangerous.

20 JUDGE WOODRUFF: All right. You don't need
21 to go into any great detail about it. I was aware those
22 cases have been filed because Judge Jones' office is next
23 to mine and we've commiserated a bit, but I have not
24 compared them in great detail.

25 MR. STEINMEIER: They're virtually

1 identical except one is specifically CenturyTel and one is
2 specifically as to Spectra, and neither of them has an X
3 as the first letter of the case number, although I'm led
4 to understand that that can be readily remedied and not
5 something that I should have been as concerned about on
6 the 16th as I might have been.

7 JUDGE WOODRUFF: Yes. The case -- as you
8 know, the case numbers in this one are different; one's TK
9 and the other's XO. And those numbers wind up being
10 assigned automatically through the electronic filing
11 system. As far as I know, it makes no difference to me
12 anyway.

13 All right. Well, I'll leave that to your
14 discussions as well, and what I would ask you to do is to
15 file a proposed procedural schedule, again working around
16 those guidelines that I've given you, file that on -- I've
17 got the oral arguments on consolidation coming in
18 tomorrow. I'd like the proposed procedural schedule by
19 Wednesday.

20 And I might add that I anticipate we'll
21 wind up in this room, in the small hearing room for the
22 purposes of the hearing. The room next door is already
23 booked. But since the Commissioners do not need to take
24 part in this proceeding at this stage, we can do it in
25 here.

1 MR. STEINMEIER: The entire week of
2 April 18th is available?

3 JUDGE WOODRUFF: The entire week is
4 available.

5 MR. STEINMEIER: If we can agree, I think
6 we've tried in the past to avoid Mondays if we could, and
7 any set of days during that week you're open to --

8 JUDGE WOODRUFF: I am open to, yes. And
9 like I say, we can do it in this small hearing room. If
10 for some reason we had a conflict in this room, we could
11 probably just do it in the conference room, because all we
12 need is the court reporter and someplace for everybody to
13 sit.

14 MR. FISCHER: Would you list for me once
15 again those dates as you had it in chronological order?
16 As I understand, March 11th CenturyTel's answers due.

17 JUDGE WOODRUFF: Yes.

18 MR. FISCHER: March 18th, unresolved issues
19 due.

20 JUDGE WOODRUFF: Yes.

21 MR. FISCHER: And then the next
22 chronological date that I have is April 29th, I believe.
23 Is there something in between there?

24 JUDGE WOODRUFF: April 18th would be the
25 hearing. I have April 29th for Post-hearing Briefs, May 6

1 for the draft report, the initial draft report, May 13th
2 for comments on the draft report. These are all Fridays,
3 by the way. May 20th for the arbitrator's final report.
4 May 27th for comment on the final report, June 1 for oral
5 argument before the Commission, if the Commission wants
6 it, and June 1st -- or excuse me -- June 10 would be the
7 final deadline.

8 MR. FISCHER: Thank you.

9 JUDGE WOODRUFF: Anything else?

10 MR. STEINMEIER: But before that there
11 would be testimony --

12 JUDGE WOODRUFF: Yes.

13 MR. STEINMEIER: -- order of witnesses and
14 final DPL, and Pretrial Briefs in between March 18 and the
15 hearing.

16 JUDGE WOODRUFF: Okay. Anything else
17 anyone has to add while we're on the record?

18 (No response.)

19 JUDGE WOODRUFF: All right. Then with
20 that, we are -- the on-the-record portion of the
21 proceeding is adjourned, and I'll leave the telephone on
22 with the connection here. Whenever you're done, just hang
23 it up.

24 WHEREUPON, the initial arbitration meeting
25 was concluded.