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STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

September 27, 2002
Jefferson City, Missouri
Volume 3

Mid-Missouri Telephone Company,)	
)	
Petitioner,)	
)	
vs.)	Case No.
)	TC-2002-190
Southwestern Bell Telephone)	
Company,)	
)	
Respondent.)	

KEVIN A. THOMPSON, Presiding,
DEPUTY CHIEF REGULATORY JUDGE.

REPORTED BY:

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FOR: Staff of the Missouri Public Service
Commission.

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

2 JUDGE THOMPSON: Good morning. My name is
3 Kevin Thompson. I'm the Regulatory Law Judge
4 assigned to preside over this matter, which is
5 Mid-Missouri Telephone Company, Petitioner, versus
6 Southwestern Bell Telephone Company, Respondent,
7 Case Number TC-2002-190.

8 We'll go ahead and take oral entries of
9 appearance at this time. Why don't we begin with
10 Complainant.

11 MR. JOHNSON: Craig Johnson, Andereck,
12 Evans, Milne, Peace and Johnson, 700 East Capitol,
13 Post Office Box 1438, Jefferson City, Missouri
14 65102, for Mid-Missouri Telephone Company.

15 JUDGE THOMPSON: Thank you, sir.
16 Respondent?

17 MR. BUB: Thank you, your Honor. Leo Bub,
18 for Southwestern Bell Telephone Company. Our
19 address is One SBC Center, St. Louis, Missouri
20 63101.

21 JUDGE THOMPSON: Thank you.
22 Staff?

23 MR. KRUEGER: Keith R. Krueger, for the
24 Staff of the Missouri Public Service Commission.
25 My address is P.O. Box 360, Jefferson City,

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1 Missouri 65102.

2 JUDGE THOMPSON: Thank you. No one is
3 present from the Office of the Public Counsel. Do
4 you know if anyone is planning to attend?

5 MR. KRUEGER: I do not.

6 JUDGE THOMPSON: Very well. The reason
7 we're here is to get this case back on the road
8 towards resolution. And I apologize for not being
9 as well prepared as I would otherwise be. The
10 problem with the line to file electronic filing and
11 document handling system is that when it's not
12 functioning, well, then neither are you.

13 I recall that we had a discovery dispute
14 in the spring. The procedural schedule was
15 suspended. A Staff investigation was ordered.
16 There was controversy about allowing Bell's
17 in-house experts access to the data collected at
18 your switch that allegedly supports the claims, and
19 I believe that that access was granted.

20 So at this time what I'm going to do is
21 ask for status reports, and I know that Staff has
22 been filing a monthly status report, but basically
23 remind me of where we are, and then we'll see what
24 we need to do to get this case moving towards
25 resolution once again.

1 Mr. Krueger, why don't you sum up Staff's
2 results from the investigation.

3 MR. KRUEGER: Well, the Staff is hoping
4 that we will be able to get an analysis of the same
5 data by both Mid-Missouri and by Southwestern
6 Bell. There's been some question about whether we
7 should use old data, which is what is included in
8 the testimony that has been filed, or whether there
9 has to be a new test taken. And there's also some
10 question about whether the existing data is
11 sufficiently detailed.

12 So I think the two main concerns at the
13 present time, as far as the ability to analyze, it
14 is whether the data is recent enough and whether
15 it's detailed enough. It would be Staff's desire
16 to have the opportunity to hear from Southwestern
17 Bell what their response is to the data that has
18 been provided before the Staff concludes its
19 investigation or the other possibility is to
20 conduct a new test. What has been suggested is the
21 possibility of two hours of testing; one hour in
22 the morning of some day and one hour in the
23 afternoon of some day.

24 And if that was done, there would be
25 current data and hopefully it could have sufficient

1 detail that it could be fully analyzed. But I'm
2 not sure what Mid-Missouri's position on that is,
3 whether they are agreeable to a new test or whether
4 they want to require the use of the data that has
5 already been filed.

6 JUDGE THOMPSON: So if I understand your
7 presentation, Staff's investigation is still
8 ongoing?

9 MR. KRUEGER: Yes.

10 JUDGE THOMPSON: Very well.

11 Mr. Bub?

12 MR. BUB: Thank you, your Honor. To
13 follow up on what Mr. Krueger was saying, the data
14 that was attached to Mid-Missouri's testimony --
15 and we've had the discovery dispute that you
16 alluded to that's been resolved. We now have been
17 able to give that material to our internal experts
18 that look at things like how our switches work, how
19 trunks are set up, records, how that flows between
20 companies.

21 And what we found is that that data is a
22 very high-level summary. And from our perspective
23 this is a complaint case, with the complainant
24 having the burden of proof to show that we've
25 violated the Commission's order. And looking at

1 that data, if it doesn't tell us anything -- and I
2 don't think it would tell the Commission anything.
3 All it says is in one particular month they
4 terminated calls,
5 not -- they don't identify call by call. It's just
6 a very high-level summary.

7 There were -- this is hypothetical -- four
8 calls that we terminated during that month that had
9 an originating NPA NXX that appeared to be from
10 Washington, D.C. from a cellular provider. It
11 doesn't say, you know, what day the call was made.
12 It doesn't say what time the call was made. It
13 doesn't say how long the call was. It doesn't
14 actually say who -- you know, which subscriber from
15 that wireless carrier made the calls, and doesn't
16 give the full telephone number. Just the first six
17 digits and how many of those calls, so they could
18 be four calls from four different subscribers or
19 four from the one. We just don't know.

20 Nothing in there that would allow us to,
21 you know, look at that and say whether that was a
22 call from a wireless carrier. And, perhaps, had a
23 customer lived in New York, but maybe he was
24 driving down Highway 70 and was roaming, and that
25 would explain why that Washington, D.C. cellular

1 number would have appeared on Mid-Missouri's
2 switch; a roaming call intraMTA would have been
3 proper under the Commissions's order.

4 The data Mid-Missouri gave us doesn't show
5 where the caller was, when the call was
6 originated. So from our perspective, it doesn't
7 show anything either way. And there's no proof
8 that the order is being violated. From our
9 perspective we do want to comply with the
10 Commission's order and, you know, all along we've
11 offered to do a recent capture of data so that we
12 could look in the very recent time, you know, maybe
13 a one- or two-hour sample. That's it.

14 Staff has suggested see what's coming
15 through on our end so that we could maybe have more
16 information. We wouldn't have all the information,
17 but we would have more about, you know, what that
18 particular call was like, because we would have an
19 individual call record, as would Mid-Missouri. We
20 could compare data. And if it turned out that some
21 cellular carriers were sending us traffic that they
22 shouldn't be, and if we were told to block by the
23 Commission, you know, we'll block it. But we
24 haven't been giving anything up so far that would
25 tell us that we are not doing what we're supposed

1 to be doing.

2 And if we're not -- you know, it's not our
3 intent to violate it, but we just don't know. We
4 don't believe we are, but if we're shown of letting
5 something through inappropriately, then, you know,
6 with proper notice to the effective carrier, we're
7 willing to do that. But we just haven't been shown
8 that there's a violation. And we're willing to
9 work with Mid-Missouri to look at the specific
10 recent data samples so we could see what's actually
11 going through and adjust things, if that's what's
12 required.

13 JUDGE THOMPSON: Thank you. We're not
14 here this morning, obviously, to determine the case
15 on the merits.

16 MR. BUB: Right. But I think that
17 background is necessary for you to understand why
18 this test is necessary.

19 JUDGE THOMPSON: I appreciate that. The
20 Commission granted the access Bell wanted with
21 in-house subject matter experts, correct?

22 MR. BUB: Yes, sir.

23 JUDGE THOMPSON: And they have had access
24 now to the information that Mid-Missouri is using
25 or has advanced thus far to support its action; is

1 that correct?

2 MR. BUB: Yes, your Honor.

3 JUDGE THOMPSON: So is Bell ready to go
4 forward at this time?

5 MR. BUB: Well --

6 MR. THOMPSON: By that I mean to make a
7 new procedural schedule and put this case back on
8 course towards resolution?

9 MR. BUB: We probably would want to build
10 into that procedural schedule some time to do the
11 tests that Staff's counsel alluded to, because we
12 have had some discussions with -- actually had
13 several discussions outside of the prehearing
14 conferences. We've had informal discussions led by
15 Staff between the parties. And I think we're at
16 the point where we're willing to capture some
17 future period.

18 You know, maybe next week we would capture
19 four hours worth of traffic on both sides so we can
20 compare it. And there would be some time necessary
21 for us to -- you know, once we get that data to
22 look at it and to decide what we think is
23 appropriate. So I think if we are going to have a
24 schedule, we need to build in time for that.

25 JUDGE THOMPSON: That's why we have the

1 parties make the schedule. You can put whatever
2 you want in the schedule. That's a matter of
3 agreement. It only becomes an issue for me and the
4 Commission if there is no agreement, right?

5 Mr. Johnson?

6 MR. JOHNSON: Well, briefly, your Honor,
7 this is the second proceeding. We were trying to
8 enforce a prior Commission order. The only point I
9 would like to make is that while we're sitting here
10 arguing about schedules and stuff, it's
11 Mid-Missouri that's losing money. It's losing
12 traffic that's not getting paid for, which is what
13 the original order was directed to prevent.

14 Since March 28th when the schedule we had
15 was suspended and Staff was directed to do an
16 investigation, and I think Southwestern Bell got
17 its non-disclosures and designated in-house people
18 to review the data, which was filed on July 19th,
19 we have offered to give them all the call detail
20 that they want. They want to do a capture test.
21 If they want any data for our switch captures from
22 any one- or two-hour period in the future, all they
23 have to do is ask us that. We will give it to
24 them. To the extent they are wanting us to jointly
25 do something, exchange records and go through some

1 sort of reconciliation process, we're really not
2 interested in that.

3 We want the case to have a procedural
4 schedule so we can go forward. It's my belief that
5 these cases won't get resolved unless there is a
6 procedural schedule pending.

7 JUDGE THOMPSON: I appreciate that. And I
8 can tell you that the reason we're here today is to
9 make a new procedural schedule. So at the end of
10 the recorded portion of the prehearing conference,
11 when I leave, I hope the parties are going to
12 discuss their dates. I hope you brought your
13 calendars, because certainly I'm going to want you
14 to file a new procedural schedule soon. I don't
15 think the order specified a date, or did it? I
16 can't look it up on my mechanical file here.

17 MR. JOHNSON: No, it did not specify a
18 date.

19 JUDGE THOMPSON: Did not. Okay. It's my
20 normal practice to require the proposed procedural
21 schedule a week after the prehearing conference.
22 Is that acceptable to the parties?

23 MR. JOHNSON: Yes.

24 MR. KRUEGER: Yes.

25 MR. BUB: (Nods head.)

1 JUDGE THOMPSON: That would be great. So
2 by next Friday, on or before next Friday.

3 Mid-Missouri has brought this complaint,
4 and Mid-Missouri, obviously, has a right to have
5 its complaint heard, to have its contested case
6 determined, and that's all there is to it. As far
7 as needing more call detail, you have data requests
8 and other discovery devices available to you, and
9 you can seek what you need through those means.

10 Mr. Johnson said he supplied to you or is
11 willing to supply to you whatever you want. So
12 perhaps you won't even need to use the discovery.
13 As far as the test period goes, Mr. Johnson said
14 they were willing to do that. Perhaps there's a
15 degree of participation that Staff desires or Bell
16 desires that Mid-Missouri is not interested in.
17 Again, you can discuss that. If you can't work it
18 out, you can ask the Commission. Whatever is
19 necessary to try the case. We will certainly look
20 at and the Commission may or may not order it,
21 depending on how novel or unusual or intrusive or
22 whatever it happens to be. But the time has
23 certainly come to put the case back on track
24 towards resolution as a contested case.

25 The other point is that certainly I hope

1 that settlement discussions are ongoing. If they
2 are not, then I would expect you to initiate them.
3 It sounds to me that what Mid-Missouri is talking
4 about at base is money. Mr. Johnson just said that
5 while we're here arguing about scheduling, it's
6 Mid-Missouri that's losing money. So if what we're
7 talking about is money, then certainly settlement
8 discussions can start, and you can see how much
9 money is involved. So we will encourage the
10 parties to engage in settlement discussions.

11 But in the meantime, I want you to put
12 together a procedural schedule. Let's get this
13 case headed towards hearing and resolution.

14 Do the parties have anything to bring to
15 my attention?

16 Sir?

17 MR. JOHNSON: My pending a motion for
18 leave to amend the complaint, which was simply our
19 amendment to add a different or alternative request
20 of relief. And I think it was filed on the 10th of
21 this month and no one has opposed it. So to the
22 extent that will be of assistance in keeping the
23 matter going forward, I would appreciate that leave
24 be granted for that.

25 JUDGE THOMPSON: Thank you for raising

1 that.

2 Do you have any objection?

3 MR. BUB: No.

4 JUDGE THOMPSON: Does Staff have any

5 objection?

6 MR. KRUEGER: No objection.

7 JUDGE THOMPSON: Your motion for leave to

8 amend the complaint is granted.

9 Anything else?

10 MR. BUB: We will be given time to amend

11 our answer? I guess we just file an amended

12 answer?

13 JUDGE THOMPSON: The amended complaint

14 will be deemed filed as of today. Normally you get

15 30 days to file an answer. Do you need 30 days?

16 MR. BUB: We could probably do it in

17 10 business days.

18 JUDGE THOMPSON: All right. Why don't we

19 have Bell, then, file its amended to its answer no

20 later than 10 business days from today. In fact,

21 you can just build all that into the procedural

22 schedule and that will be great.

23 Anything else? Okay.

24 Thank you-all very much for coming down

25 here this morning. I've given you your homework

1 assignments. We will go ahead and adjourn the
2 recorded portion of the prehearing conference at
3 this time.

4 WHEREUPON, the on-the-record portion of
5 the prehearing conference was concluded.

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