

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION

3 PREHEARING CONFERENCE

4 August 12, 2003  
5 Jefferson City, Missouri  
6 Volume 3

7 BPS Telephone Company, Cass )  
8 County Telephone Company, )  
Citizens Telephone Company of)  
9 Higginsville, Missouri, )  
Craw-Kan Telephone )  
10 Cooperative, Inc., Fidelity )  
Communication Services I, )  
11 Inc., Fidelity Telephone )  
Company, Grand River Mutual )  
12 Telephone Corporation, Green )  
Hills Telephone Corporation, )  
13 Holway Telephone Company, )  
IAMO Telephone Company, )  
14 Kingdom Telephone Company, )  
K.L.M. Telephone Co., )  
15 Lathrop Telephone Company, )  
and Mark Twain Rural )  
16 Telephone Company, )  
)  
17 Complainants, )  
)  
18 vs. ) Case No.: TC-2002-1077  
)  
19 Voicestream Wireless )  
Corporation, Western )  
20 Wireless Corp., and )  
Southwestern Bell Telephone )  
21 Company, )  
)  
22 Respondents. )

23  
24 KEVIN A. THOMPSON, Presiding,  
25 DEPUTY CHIEF REGULATORY LAW JUDGE.

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REPORTED BY:

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8 Craw-Kan Telephone Cooperative, Inc.  
Fidelity Communication Services I, Inc.  
9 Fidelity Telephone Company.  
Grand River Mutual Telephone  
10 Corporation.  
Green Hills Telephone Corporation.  
11 Holway Telephone Company.  
Iamo Telephone Company.  
12 Kingdom Telephone Company.  
K.L.M. Telephone Company.  
13 Lathrop Telephone Company.  
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1 P R O C E E D I N G S

2 JUDGE THOMPSON: We'll go on the record now.

3 Good afternoon. We're here for a prehearing conference

4 In the Matter of BPS Telephone Company and others

5 versus Voicestream Wireless Corporation and others,

6 Case No. TC-2002-1077.

7 My name is Kevin Thompson. I'm the Regulatory

8 Law Judge assigned to preside over this matter.

9 And we'll begin by taking oral entries of  
10 appearance. Why don't we start with the Complainant.

11 MR. ENGLAND: That'd be great, Your Honor.

12 Thank you.

13 Let the record reflect the appearance of  
14 W. R. England and Brian McCartney on behalf of the  
15 Complainants, with the law firm of Brydon, Swearengen &  
16 England, P.C., Post Office Box 456, Jefferson City,  
17 Missouri 65102.

18 JUDGE THOMPSON: Thank you.

19 How about the Wireless -- Respondent.

20 MR. WALKER: Trina LeRiche of the law firm of  
21 Sonnenschein, Nath and Rosenthal, 4520 Main Street,  
22 Suite 1100, Kansas City, Missouri 64111, on behalf of  
23 Western Wireless Corporation and T-Mobile USA, Inc.

24 JUDGE THOMPSON: Thank you.

25 Mr. Lane?

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1           MR. LANE: Thank you, Your Honor. Paul Lane  
2 on behalf of Southwestern Bell Telephone, L.P., doing  
3 business as SBC Missouri. My address is One SBC  
4 Center, Room 3520, St. Louis, Missouri 63101.

5           I'd like to thank Your Honor for rescheduling  
6 the prehearing conference to one o'clock instead of  
7 two.

8           JUDGE THOMPSON: Happy to do so.  
9 Staff?

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

14          JUDGE THOMPSON: And did anyone happen to --  
15 to contact Mr. Dandino?

16          MR. ENGLAND: No, Your Honor.

17          MR. BATES: No.

18          MR. LANE: I know he was contacted, Your  
19 Honor, by Mr. Bub.

20          JUDGE THOMPSON: I was gonna say I didn't,  
21 so -- so he may not know it's at one o'clock.

22          MR. LANE: Mr. Bub did contact him, Your  
23 Honor.

24          JUDGE THOMPSON: Okay.

25          MR. LANE: And -- and -- but I --

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1                   MR. ENGLAND: And confirmed it with an email,  
2   so --

3                   JUDGE THOMPSON: Okay. Well, we -- he really  
4   doesn't have a dog in this fight, so I think we can go  
5   forward. If he wants to yell at me later, then he  
6   knows where to find me.

7                   We are -- we are brought to the point of  
8   having this prehearing conference because discussions  
9   among the parties on how to supplement the record have  
10  evidently broken down; is that what I understand?

11                  MR. ENGLAND: It appears that way, yes, sir.

12                  JUDGE THOMPSON: There was a non-unanimous  
13  stipulation filed, and then Southwestern Bell filed an  
14  objection believing that, I think, the factor that had  
15  been developed was perhaps too high.

16                  And so my first question, then -- because this  
17  case was originally submitted on stipulated facts and  
18  on the briefs. And so I guess what I want to know is,  
19  are we gonna have a hearing on everything, or are we  
20  just gonna have a hearing on the issue of  
21  interLATA -- or intra-MTA versus intra-MTA traffic  
22  volumes? And who would like to discuss that question?

23                  Mr. England?

24                  MR. ENGLAND: Thank you, Your Honor. I -- I  
25  guess my -- my recollection was that -- you're right.

1 The -- the case was submitted on stipulated facts, I  
2 believe, or certainly a stipulation as to allowing the  
3 testimony to go in -- prepared testimony to go in  
4 without any cross-examination.

5 The case was fully briefed. And I believe it  
6 was the Commission's desire to re-open the record for  
7 what I believe was the narrow issue of determining the  
8 jurisdiction of the traffic --

9 JUDGE THOMPSON: That is correct.

10 MR. ENGLAND: -- inter-MTA versus intra-MTA.

11 After the prehearing conference, I believe,  
12 back in May or June on the --

13 JUDGE THOMPSON: I think June it was.

14 MR. ENGLAND: -- reopening of the record we  
15 attempted do come to an agreement on those factors,  
16 because I think, as everyone indicated on the record,  
17 there was no traffic information for the past traffic  
18 that would tell you the jurisdiction of that traffic.

19 And I believe T-Mobile represented that -- or  
20 at least Mr. Johnson, who was here on behalf of  
21 T-Mobile, represented that to perform a traffic study  
22 on a go-forward basis would be not only timely, but  
23 perhaps expensive for T-Mobile.

24 So we -- we embarked on an effort to try to  
25 reach an agreement with respect with inter-MTA factors.

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1 And we were able to do that with T-Mobile. Western  
2 Wireless has really never waded in on that. If you'll  
3 look at the stipulation, it's between the Complainants  
4 and T-Mobile, formerly Voicestream.

5 JUDGE THOMPSON: Okay.

6 MR. ENGLAND: I'm not sure where Western  
7 Wireless is. I, quite honestly, have been dealing with  
8 their representative directly and I can't seem to get  
9 an answer out of them. But they did not file an  
10 objection either --

11 JUDGE THOMPSON: Okay.

12 MR. ENGLAND: -- to the factors. So I -- I  
13 want to point that out for purposes of the record.  
14 Southwestern Bell did object and -- and did formally do  
15 so in an objection.

16 If the record's gonna be re-opened, if we're  
17 gonna have a hearing -- it's kind of long way of  
18 getting to answer your question -- I would submit and  
19 believe that it would only be for the purposes of  
20 determining inter-MTA traffic -- or amounts of  
21 inter-MTA traffic, whether that's by factors or  
22 whatever factual evidence may be out -- out there that  
23 we haven't heretofore been able to bring forward.

24 JUDGE THOMPSON: Okay.

25 Mr. Lane?

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1           MR. LANE: Your Honor, I haven't given that a  
2 great deal of thought, so I'll just give a preliminary  
3 view. I would think that that is likely the case --  
4 that the stipulations reached before ought to hold  
5 here.

6           But if we're examining the inter-/intra-MTA  
7 factors, then to the extent there's any spillover --  
8 any -- any issue that's legitimately raised with regard  
9 to that -- any evidence on that I think should come  
10 through. And we wouldn't be trying to limit it to a  
11 specific issue.

12           We -- we could go into the broader  
13 implications as it relates to the inter- and intra-MTA  
14 traffic.

15           JUDGE THOMPSON: Okay. I'm sorry. I'm afraid  
16 I got --

17           MS. LeRICHE: Ms. LeRiche.

18           JUDGE THOMPSON: LeRiche. Thank you.

19           MS. LeRICHE: Your Honor, I agree to the  
20 extent that Mr. Lane and Mr. England actually are  
21 agreeing I think on this point. I agree on behalf of  
22 Western Wireless and T-Mobile as well -- that only the  
23 inter-MTA and intra-MTAs -- factors will be at evidence  
24 at the hearing.

25           JUDGE THOMPSON: Okay.

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1                   Mr. Bates?

2                   MR. BATES: Your Honor, I would agree with  
3 other counsel. Staff, as you know, is not a signatory  
4 to the non-unanimous stipulation and agreement, but  
5 that's primarily because we weren't asked.

6                   We did not object to it. In fact, would have  
7 signed it if had been asked. So we agree that it  
8 should be limited -- any hearing should be limited to  
9 that one question.

10                  JUDGE THOMPSON: Okay. The reason I ask that,  
11 of course, is because with a view to the Fischer  
12 decision, I don't think the Commission probably can  
13 limit the issues at the hearing unless the parties  
14 agree.

15                  In other words, if -- if a party wants to  
16 litigate all issues, then I think we litigate all  
17 issues if -- if I'm making sense. You recall the  
18 Fischer decision having to do with non-unanimous  
19 stipulations and agreements. Once somebody objected,  
20 then every issue was open for hearing.

21                  So if we find ourselves in a position of  
22 having to go into the hearing room at this late date in  
23 this case, I don't know that the Commission can say in  
24 advance, well, we're only gonna do jurisdictional  
25 volumes of this particular type of traffic. Everything

1 else we've already done.

2 Now, if the parties want to say, well, we're  
3 content with what we've done on the other things,  
4 that's fine. I think we can do that.

5 Am I making sense? I -- I don't think we can  
6 shove it down your throats is, I guess, what I'm trying  
7 to say.

8 MR. ENGLAND: Well, with all due respect, Your  
9 Honor, the non-unanimous stipulation and agreement only  
10 addresses the issue that the case was re-opened for.

11 JUDGE THOMPSON: Right.

12 MR. ENGLAND: And that was the inter-MTA  
13 factors. I don't think -- I don't think that and  
14 objection to the -- to that stipulation allows any  
15 party -- and I'm not suggesting that Southwestern Bell  
16 wants to re-litigate the whole thing -- but allows you  
17 to go back and -- and address the issues -- the other  
18 issues in the case that were either addressed in  
19 pre-filed testimony or argued in the -- in the briefs.

20 JUDGE THOMPSON: Okay.

21 MR. ENGLAND: And I don't think the Fischer  
22 case requires that.

23 JUDGE THOMPSON: I'm certainly content with  
24 that answer. I just thought I'd mention that point.

25 MR. LANE: I think you're probably right, Your

1 Honor, that it's -- it's something that -- the whole  
2 would be back at issue again, but the odds are, I  
3 think -- and I -- and I haven't discussed this  
4 with -- with my client at this point.

5 But I would anticipate that we would probably  
6 be willing to do the same thing we did before with  
7 regard to everything except the inter/intra-MTA factor.  
8 And we would introduce whatever rebuttal.

9 At least in my view I think the Complainants  
10 -- I -- I assume would agree that they have the burden  
11 of going forward in the case, so that would be their  
12 burden to file whatever they want in the form of  
13 testimony, and we would file something in rebuttal to  
14 that. I'm assuming that's your view as well.

15 Under those circumstance my guess is that we  
16 would be willing to proceed, and -- and we would be  
17 addressing primarily and inter- and intra-MTA factor.  
18 And we would agree that everything else would come in  
19 as it did before, but I -- I need to discuss that with  
20 my client to make sure of that.

21 JUDGE THOMPSON: Okay. Well, you know, after  
22 I leave it's -- it's your turn to -- to huddle and work  
23 out a procedural schedule. And are you gonna be able  
24 to do that without having discussed those matters with  
25 your client?

1 MR. LANE: Sure.

2 JUDGE THOMPSON: Okay.

3 MR. ENGLAND: I have some -- some additional  
4 matters that are related that need to be addressed or  
5 at least considered, Your Honor. Let me -- let me back  
6 up again.

7 JUDGE THOMPSON: Sure.

8 MR. ENGLAND: And without --

9 JUDGE THOMPSON: Do you need a blackboard?

10 MR. ENGLAND: No -- no, thank you.

11 Without being too defensive here, we did not  
12 ask for the record to be re-opened.

13 JUDGE THOMPSON: I understand.

14 MR. ENGLAND: We -- and I think I mentioned  
15 this at the last prehearing -- were willing to consider  
16 this traffic for purposes of our complaint to be all  
17 intra-MTA and simply apply our wireless tariff rate,  
18 which is actually less than each company's intra-state  
19 access rate for that -- that minute, with the lone  
20 exception being Fidelity Telephone Company that bills  
21 the traffic at a 95 percent intra-MTA and 5 percent  
22 inter-MTA ratio, if you will.

23 So I mean we were content to the extent we  
24 were shorting ourselves, if you will, by not trying to  
25 identify inter-MTA traffic to forego that additional

1 revenue.

2 JUDGE THOMPSON: And that makes sense from the  
3 point of view of your clients because, you know, some  
4 money is better than none.

5 MR. ENGLAND: Correct.

6 And -- and also because of the time issue, if  
7 you will. Let me -- let me get into that a little bit.  
8 This matter has now been pending before the Commission  
9 for well over a year.

10 JUDGE THOMPSON: That's true.

11 MR. ENGLAND: The amount of traffic at issue  
12 as of roughly I believe the first of May of this year  
13 based on our wireless tariff rate alone is over  
14 \$500,000 collectively for the Complainants. So  
15 it's -- it's becoming substantial money.

16 It has not been paid, and I'm not quite sure  
17 when it will be paid. But if we are successful in  
18 obtaining at least a Commission Order that says we're  
19 entitled to be paid pursuant to our wireless tariff, or  
20 if you feel the necessity to apply the excess tariff to  
21 the inter-MTA -- if -- if that applies as well,  
22 the -- we at least feel like we have an opportunity --  
23 or not an opportunity -- we have something in hand that  
24 allows us to get paid hopefully from the -- from the  
25 Respondents.

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1           Whether they do so or not is their choice. In  
2   which case, as you know, I'll have to go to Circuit  
3   Court to seek payment, based on your Order saying I'm  
4   entitled to get it paid.

5           But I'm also at that point able to at least  
6   invoke the blocking provisions of my tariff, and at the  
7   very least stop the bleeding while I pursue my  
8   collection efforts in Circuit Court.

9           But as long as this matter pends before the  
10   Public Service Commission, I -- I'm -- I'm foreclosed  
11   from doing anything. And quite frankly, it's been an  
12   extremely frustrating period of time, because while we  
13   have engaged in negotiations with T-Mobile, we have not  
14   resolved anything during that period of time.

15           And I'm not sure we ever will until I get an  
16   Order from this Commission telling me we did the right  
17   thing.

18           JUDGE THOMPSON: Well, I -- in -- in the words  
19   of a former president, Mr. England, I feel your pain.  
20   I -- I very much sympathize with the position that the  
21   Complainants find themselves in. And as you know,  
22   there are other cases where other similarly situated  
23   complainants represented by other counsel are in a  
24   similar position.

25           And, you know, the -- the Complainant is in a



1 position where they can say, well, we may be entitled  
2 to this much money for these minutes and somewhat less  
3 money for other minutes, and we'll just accept the  
4 smaller amount on all the minutes. And that way it  
5 doesn't care what kind of minutes they are.

6 And from the point of view of the Complainant  
7 that's easy, and it is a concession you can make.  
8 Because, as I said earlier, some money is better than  
9 no money, and it moves you forward in your case.

10 But that concession from the point of view of  
11 Complainants may not be so for other people involved in  
12 the case. Because the issue of what kind of traffic it  
13 is may have an importance -- an outcome determinative  
14 affect in terms of who pays for those minutes. So it  
15 may be very important to know what kind of minutes they  
16 are.

17 Consequently, although Complainants are  
18 willing to make that concession and accept less than  
19 perhaps they might otherwise be entitled to, it -- it's  
20 not a concession that is able to move the case forward,  
21 I'm not -- I -- I don't believe, in the particular  
22 stance that the case is in.

23 The Commission, as you know, is required to  
24 apply the appropriate tariff -- the correct tariff. I  
25 mean, that's the effect of the filed tariff doctrine.

1 We can't pick and choose among the tariffs. We have to  
2 apply the right tariff to the minutes.

3 And the way the tariffs are written, something  
4 we had nothing to do with, makes that distinction also  
5 very important. Certain types of minutes fall under  
6 one tariff, and certain fall under another.

7 So we have to know what kind of minutes they  
8 are, so that we know what tariff to apply. And that's  
9 an obligation that the Commission has. And that is why  
10 the Commission has taken the unusual step of re-opening  
11 the record in this case, and also in those similarly  
12 situated cases that I mentioned.

13 It is not to add to the frustration of  
14 counsel, which I understand has got to be great, but  
15 simply because the Commission found itself in a  
16 position where the record simply did not include facts  
17 that were essential in determining the outcome of the  
18 case.

19 It would be different, I guess, if the record  
20 did not show that there were minutes. I mean, we're  
21 not in that position. There's not been a failure of  
22 proof with respect to, have there been minutes  
23 delivered? There have been minutes delivered.

24 If there was a failure of proof, it would be  
25 easy just to say, you lose, and let you go on your way

1 to Circuit Court then to try to persuade them that we  
2 were wrong on that decision.

3 There are minutes. And to apply the  
4 appropriate tariff to the minutes, we have to know what  
5 kind of minutes they were. That's because of the way  
6 the tariffs are written, so --

7 MR. ENGLAND: I -- but I -- excuse me.

8 JUDGE THOMPSON: Sir?

9 MR. ENGLAND: I -- I do have a -- I -- believe  
10 it or not, I actually have a recommendation perhaps for  
11 addressing your concern.

12 JUDGE THOMPSON: I am happy to hear it.

13 MR. ENGLAND: And perhaps addressing part if  
14 not all of my frustration.

15 JUDGE THOMPSON: Very good.

16 MR. ENGLAND: And -- and that is to the extent  
17 that we have been able -- some of the Complainants have  
18 been able to agree with T-Mobile --

19 JUDGE THOMPSON: Uh-huh.

20 MR. ENGLAND: -- to an inter-MTA factor of  
21 zero.

22 JUDGE THOMPSON: Okay.

23 MR. ENGLAND: And I guess my question for  
24 purposes of the record and to counsel for Southwestern  
25 Bell is, do they have any objection to that

1 stipulation -- inter-MTA factor for those companies,  
2 and perhaps where the inter-MTA factors, in my opinion  
3 de minimus or insignificant, I believe there was a  
4 5 and 6 percent.

5 My understanding is that Southwestern Bell is  
6 concerned with the inter-MTA factors of 52 and 53  
7 percent, which are admittedly very significant  
8 inter-MTA factors agreed tofore (sic) through the  
9 companies.

10 If -- if we can at least close the record on  
11 those companies with a zero inter-MTA factor, or those  
12 companies where it's only 5 or 6 percent, perhaps we  
13 can get an Order for those companies. And then we can  
14 litigate for the others regarding the nature of the  
15 traffic.

16 JUDGE THOMPSON: Maybe we can.

17 Mr. Lane?

18 MR. LANE: Well, Your -- Your Honor, if  
19 Mr. England wants to agree that whatever percentage  
20 is -- inter-MTA is not the responsibility of  
21 Southwestern Bell under any circumstance, then we don't  
22 have any objection to the stipulation that they wanted  
23 to enter into.

24 But that's not the position we find ourselves  
25 in, even though we believe the tariffs are extremely

1 clear that anything that is clearly access applied to  
2 it, is on a meet-point-bill basis and that each party  
3 bills the originating carrier their percentage or their  
4 appropriate amount under the tariff, as has always been  
5 done, then we wouldn't be in this position at all.

6 It's only because there's some apparent  
7 misunderstanding about the provisions of the access  
8 service tariff that the stipulation wasn't filed in the  
9 first place.

10 At -- at the same time I've got to say that,  
11 you know, we're now getting into matters that were the  
12 subject of a lot of discussions in the settlement  
13 stage, and that really aren't appropriate for  
14 discussion here. And I --

15 JUDGE THOMPSON: I can leave.

16 MR. ENGLAND: I -- I disagree, Your Honor.  
17 And I'm glad that Mr. Lane has approached the subject,  
18 because it gets to -- I don't believe it's  
19 confidential. And I believe it's approaching, if  
20 anything, very closely to abuse of process.

21 To the extent that you have re-opened the  
22 record to take the jurisdictional nature of the  
23 traffic, that's one thing. You also announced at the  
24 prehearing conference that it was your tentative  
25 opinion that Southwestern Bell would be responsible for

1 paying inter-MTA traffic. And that, I believe, is what  
2 has generated their interest in the amount of inter-MTA  
3 traffic. I understand that.

4 We have decided -- or excuse me -- we have  
5 throughout the entire case tried to hold Southwestern  
6 Bell liable. That's why we sued them and the wireless  
7 carriers.

8 So we think they may be liable under secondary  
9 liability provisions of their tariff or this  
10 Commission's decision approving that tariff for all of  
11 the traffic.

12 But be that as it may, why are we holding up  
13 those companies who have agreed to say there is no  
14 inter-MTA traffic, and have agreed to such with -- with  
15 with T-Mobile?

16 There is no liability, then, from Southwestern  
17 Bell's perspective. And I think to hold them up while  
18 we litigate for those companies that do believe they  
19 have inter-MTA traffic is, frankly, an abuse of  
20 process.

21 MR. LANE: I -- I really take offense to that,  
22 Judge. I mean, this is -- this is a case where they  
23 went out and put together a stipulation of their own,  
24 right? They asked us to sign on to it. We said, we  
25 don't agree with it.

1           We've never been asked, and there was never a  
2 stipulation as a partial one for these group of -- of  
3 companies and a different one for that group of  
4 companies. There was one stipulation.

5           We didn't agree with their proposal. We asked  
6 for information how they developed it. They said, it's  
7 none of your business how we developed it. We'll give  
8 you some stuff later orally if we feel like it, but now  
9 at this state. And so we objected to it.

10           And so here we are now. I mean, this whole  
11 thing was the subject of a lot of settlement  
12 discussions which, as Your Honor knows, is supposed to  
13 be private, confidential and not subject to disclosure.  
14 And I think the whole discussion here is improper.

15           But the fact is that the stipulation that was  
16 presented to us contained things that we didn't agree  
17 with, and we chose not to do it. And it's not an abuse  
18 of process for us to disagree with a non-unanimous  
19 stipulation that adversely affected our interests.

20           MR. ENGLAND: Well, first --

21           JUDGE THOMPSON: Let me -- let me -- let me  
22 call a halt here, all right? I appreciate that  
23 Complainants are very frustrated. The case has been  
24 pending too long.

25           I appreciate that Southwestern Bell has acted

1 entirely properly in refusing to join into a  
2 stipulation that they couldn't join into.

3           Perhaps if -- if it were broken into multiple  
4 stipulations, I don't know. You guys can discuss those  
5 things and perhaps reach some sort of agreement on  
6 those matters, okay?

7           But -- and certainly I'm willing to say as  
8 well that perhaps the presiding officer has a big mouth  
9 in terms of suggesting who may or who may not be liable  
10 for whatever minutes. Because that's not my decision  
11 as you-all know very, very well, okay? That's the  
12 decision of the Commission.

13           Now, all of those things said, our concern now  
14 is to move this case forward to closure as promptly as  
15 we can. If there are companies and factors developed  
16 for companies or for minutes or whatever that can be  
17 resolved without the need of further litigation, then  
18 perhaps we can resolve those things and have an Order  
19 that deals with part of the case.

20           That's for you guys to discuss. And then let  
21 me know what kind of agreement or disagreement you  
22 reach on that.

23           The more we can narrow the issues that  
24 actually are gonna have to be litigated, I think the  
25 more quickly we can reach the point where that's done



1 and the entire case is disposed of, all right?

2 I don't think there's been anything improper  
3 at this point, and I don't want anything improper to  
4 occur. The -- the subject -- the -- the substance of  
5 settlement discussions, of course, I don't want to hear  
6 about.

7 With that said, is there anything else anybody  
8 wants to bring up at this time?

9 MR. ENGLAND: I would like to at least --

10 JUDGE THOMPSON: Yes.

11 MR. ENGLAND: -- clarify for the record  
12 two things. I -- I still don't believe their  
13 settlement discussions were trying to reach an  
14 agreement regarding the nature of the traffic.

15 JUDGE THOMPSON: Okay.

16 MR. ENGLAND: It's nothing to do with  
17 liability, how much or anything of that nature.  
18 Secondly, Mr. Lane is incorrect. I have explained to  
19 Mr. Bub -- I've given him an oral briefing on how these  
20 factors were developed, and in a written email they are  
21 explained there.

22 And I've offered to share some of the traffic  
23 information that we have. So it's not been secretively  
24 held from the. Just for purposes of the record, I  
25 wanted that -- that clear.

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1 JUDGE THOMPSON: I appreciate that.

2 MR. ENGLAND: And then finally, Mr. Lane made  
3 it very clear in his statement to you just a little --  
4 a minute ago that on these zero intra-MTA traff--  
5 factor companies he still wants us to exonerate him  
6 from any liability.

7 I think that that is not an issue for purposes  
8 of re-opening the record. My understanding, as we get  
9 back to the original question you asked, the re-opening  
10 of the record was simply to determine the jurisdiction  
11 of the traffic.

12 The issue of liability has been discussed in  
13 the testimony and has been briefed. And -- and as you  
14 pointed out, it's something now for the Commission to  
15 decide.

16 JUDGE THOMPSON: It's certainly something for  
17 the Commission.

18 If -- if the parties want to re-address any of  
19 that, they certainly can. Like I said, I don't think I  
20 can sit here and tell you what the issues are gonna be,  
21 okay?

22 The issue of -- of liability is the ultimate  
23 issue in this case. And to the extent any party wants  
24 to re-discuss that, discuss it again, bring up new  
25 things, feel free.

1               This is a thorny issue. And the more advice  
2 we have from learned counsel, I think the better we  
3 will be able to deal with it.

4               At this point I think I will leave you to work  
5 out a procedural schedule. I'll be in the building.  
6 If -- if I have to come down and -- and interrupt  
7 fisticuffs, I can do that. Hopefully that won't be  
8 necessary, cuz you guys all are bigger than I am.

9               Mr. Bates, do you have anything you want to  
10 throw in?

11              MR. BATES: No, thank you, Your Honor.

12              JUDGE THOMPSON: Ms. LeRiche?

13              MR. LeRICHE: No, thank you.

14              JUDGE THOMPSON: Okay. Have we done  
15 everything we need to do?

16              (No response.)

17              JUDGE THOMPSON: Anything you can do to narrow  
18 the issues, I think is helpful, okay? And I think the  
19 schedule is due to be filed approximately a week from  
20 today. That's my usual practice, so -- thanks. It's  
21 been nice seeing you all. We can go off the record  
22 now.

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

25