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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Initial Arbitration Meeting

April 14, 2005
Jefferson City, Missouri
Volume 1

Southwestern Bell Telephone, L.P.,)
d/b/a SBC Missouri's Petition for)
Compulsory Arbitration of)
Unresolved Issues for a Successor) Case No. TO-2005-0336
Interconnection Agreement to the)
Missouri 271 Agreement ("M2A"))

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

REPORTED BY:

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

2 JUDGE THOMPSON: Good morning. We are here
3 in the matter of Southwestern Bell Telephone, LP, doing
4 business as SBC Missouri's petition for compulsory
5 arbitration of unresolved issues for a successor
6 interconnection agreement to the Missouri 271 agreement,
7 the M2A. This has been designated as Commission Case
8 TO-2005-0336.

9 My name is Kevin Thompson, and I have been
10 designated as the arbitrator for the purposes of this
11 proceeding. We're here today for the initial arbitration
12 meeting. And why don't we begin with oral entries of
13 appearance, beginning with SBC?

14 MR. LANE: Good morning, your Honor. Paul
15 Lane and Leo Bub representing Southwestern Bell, LP, doing
16 business as SBC Missouri. Our address is One SBC Center,
17 Room 3520, St. Louis, Missouri 63101.

18 JUDGE THOMPSON: Thank you, Mr. Lane.
19 We'll just start on the left and work our way over and
20 back.

21 MR. JOHNSON: Thank you, Judge Thompson.
22 Mark Johnson of the law firm Sonnenschein, Nath and
23 Rosenthal appearing today on behalf of Navigator
24 Telecommunications, LLC and The Pager Company. I also
25 entered appearance for Ms. Trina LeRiche. Our address is

1 4520 Main Street, Suite 1100, Kansas City, Missouri 64111.

2 JUDGE THOMPSON: Very well. Thank you.

3 Mr. Lumley?

4 MR. LUMLEY: Thank you. Carl Lumley of the

5 Curtis Heinz firm, 130 South Bemiston, Suite 200, Clayton,

6 Missouri 63105, and the full names of our clients are in

7 the record, so I'll just do the short version.

8 JUDGE THOMPSON: Go ahead and finish.

9 MR. LUMLEY: Appearing on behalf of Big

10 River, Birch Telecom, ionex, NuVox, Socket, XO, Xspedius,

11 MCImetro, MCI WorldCom and the Missouri Network Alliance.

12 And we also have on file a petition for entry for Steve

13 Morris on behalf of MCImetro and MCI WorldCom.

14 JUDGE THOMPSON: Very well. And that seems

15 to be -- sir?

16 MR. LEOPOLD: Brett Leopold from -- on

17 behalf of Sprint Communications Company, LP, 6450 Sprint

18 Parkway, Overland Park, Kansas 66251.

19 JUDGE THOMPSON: Thank you, Mr. Leopold.

20 Okay. The purpose of the initial

21 arbitration meeting is spelled out in the arbitration

22 rule. The most important part of it in my view is to

23 determine what sort of schedule this proceeding is going

24 to follow. Since the Commission's arbitration rule has

25 become effective, I don't know that any arbitration has

1 actually followed it to the letter primarily in the area
2 of the timelines, which many of you view as being entirely
3 too short.

4 So I think the most important thing you'll
5 do today is prepare a proposed procedural schedule. You
6 can either just hand it to me today or if you want to file
7 it as a formal pleading, you can do that, whatever the
8 parties would like to do. And it's also an opportunity to
9 discuss any other parameters of the arbitration that the
10 parties feel are necessary or would be useful. So why
11 don't I open it to the parties at this time.

12 MR. LUMLEY: Judge, do you want to make a
13 record as to who's on the phone?

14 JUDGE THOMPSON: That's a very good idea.
15 Who is on the phone?

16 MR. MORRIS: Stephen F. Morris for MCI.

17 JUDGE THOMPSON: Okay. Anyone else?

18 MR. HALM: Yes. K.C. Halm, with Cole,
19 Raywid & Braverman, 1919 Pennsylvania Avenue NW,
20 Suite 200, Washington, D.C. 20006, for Charter Fiberlink
21 Missouri.

22 JUDGE THOMPSON: Anyone else?

23 MS. COX: Carrie Cox and Leslie Genova of
24 Charter Communications, 12405 Powerscourt Drive,
25 St. Louis 63131 for -- both for Charter.

1 JUDGE THOMPSON: Very well. Anyone else?
2 (No response.)
3 JUDGE THOMPSON: Okay. I think that's
4 everybody on the phone.
5 So let's see. The response to the petition
6 is due Monday, April 25th, and I believe the initial
7 markup conference is supposed to occur pretty much
8 immediately thereafter. What sort of amount of hearing
9 time do the parties anticipate this is going to require?
10 MR. LANE: I have a draft procedural
11 schedule that I'm happy to pass out and we can discuss, if
12 that would be convenient.
13 JUDGE THOMPSON: That would be great.
14 MR. LUMLEY: While he's doing that, Judge,
15 could you give us any insight into how you interpret the
16 phrase "markup conference," what you envision occurring at
17 such a meeting?
18 JUDGE THOMPSON: I was hoping you guys
19 would tell me what a markup conference was.
20 MR. JOHNSON: We were hoping you might have
21 been through one.
22 JUDGE THOMPSON: No. No, I haven't. I've
23 been done arbitrations before, but we didn't have any
24 markup conference. They actually kind of look like
25 really, really fast rate cases more than anything else. I

1 mean, they had all the normal contested case rules and all
2 the normal contested case proceedings. We may want to
3 dispense with a lot of the formalities of those in this
4 case. I don't know. I think the main thing we need to do
5 is get some idea of how many hearing days we need and to
6 get those onto the calendar while the calendar is still
7 open.

8 MR. LANE: Judge, from our perspective,
9 what we've proposed in this is -- and I know the parties
10 are just seeing it for the first time -- the critical date
11 is July 19th. That's the date that the M2A terminates,
12 and our goal is to have a new interconnection agreement in
13 place by that date. And from a hearing perspective, we
14 think a week will do it.

15 JUDGE THOMPSON: Okay.

16 MR. LUMLEY: I think somebody may have just
17 dialed in, Judge.

18 JUDGE THOMPSON: Do we have anyone new on
19 the phone there?

20 MR. MAGNESS: This is Bill Magness with
21 CLEC Coalition.

22 JUDGE THOMPSON: Very well. Why don't you
23 go ahead and give us your mailing address, if you would?

24 MR. MAGNESS: Sure will. It's Bill Magness
25 with the law firm of Casey, Gentz & Magness. The mailing

1 address is 98 San Jacinto Boulevard, Suite 1400, Austin,
2 Texas 78701.

3 JUDGE THOMPSON: Great. Thank you.

4 MR. MAGNESS: Thank you.

5 JUDGE THOMPSON: I'll go ahead and read the
6 draft procedural schedule that SBC has handed out. 4/25,
7 Monday, CLECs' responses filed with Missouri Public
8 Service Commission. May 2nd, Monday, the joint DPLs. May
9 9, Monday, simultaneous direct. May 19, Thursday,
10 simultaneous rebuttal and final joint DPL with cites to
11 record. May 23 to May 27, Monday through Friday,
12 evidentiary hearing.

13 June 3rd, Friday, post-hearing briefs.
14 June 17, Friday, final arbitrator's report. June 24,
15 Friday, comments on final arbitrator's report. June 29,
16 Wednesday, oral argument before Commission. July 6,
17 Wednesday, final Commission arbitration decision.
18 July 13, Wednesday, submission of successor ICAs to
19 Commission. And July 19, deadline for final Commission
20 decision approving the successor interconnection
21 agreements.

22 Certainly that schedule looks okay to me.
23 Mr. Lane?

24 MR. LANE: Your Honor, I just want to point
25 out that we have cut out a couple of items that are part

1 of the rule as you indicated earlier. Most of the ones
2 that have been started at least afterwards haven't
3 followed all of the timelines. We have eliminated the
4 prehearing brief and the arbitrator's draft report and
5 then comments on the arbitrator's draft report in order to
6 try to get everything in and a decision by July 19th.

7 If the parties or the arbitrator have a
8 different view of that, obviously then we can try to
9 incorporate those, but we thought they were not necessary
10 to the ultimate decision.

11 JUDGE THOMPSON: I have no difficulty with
12 those proposals. The rule allows us to waive any part of
13 the official rule that we believe will be helpful in
14 getting us to our final goal. Does anyone else have any
15 comments or suggestions?

16 MR. MAGNESS: Your Honor, this is Bill
17 Magness. I think I just missed one date when you were
18 reading them. The date for the filing of the final DPL
19 with testimony references?

20 JUDGE THOMPSON: That would be May 19th.

21 MR. MAGNESS: Simultaneous rebuttal?

22 JUDGE THOMPSON: Yes, simultaneous rebuttal
23 and final joint DPL with cites to record.

24 MR. MAGNESS: Okay. Thank you, your Honor.

25 JUDGE THOMPSON: Yes, sir.

1 MR. LUMLEY: Judge, I guess just a question
2 in terms of how much flexibility you think the Commission
3 will give us. I mean, I think this is certainly a good
4 faith effort to try and fit in everything that has to be
5 done in a tight time frame, but for example, at the end
6 we're giving the Commission six calendar days to approve
7 the agreement. Both the statute and the rule allow them
8 30 days.

9 And one of the reasons I'm concerned about
10 whether they would actually act in those six days is that
11 my clients could be left with no agreement in place should
12 they go past the 19th for action. So I would have a
13 concern about the potential there for the Commission
14 not -- not feeling like they were able to get their
15 decision done in that time and would like some confidence
16 about that.

17 And then similarly, the rule calls for them
18 to have your final report for a period of 50 days before
19 they would have to act, and this is certainly much
20 shorter. I'm not opposed to those time periods being
21 shorter. I'm just looking for some guidance as to whether
22 you're pretty comfortable that if the parties and you
23 support the schedule, the Commission is going to be okay
24 with giving away some of their decision-making time.

25 JUDGE THOMPSON: Well, you know, if the M2A

1 is going to disappear in a puff of smoke on July 19th and
2 everyone is going to be left without interconnections,
3 then I think we're going to have to act by that date.
4 Now, if it's possible that some sort of extension of the
5 M2A can be --

6 MR. MAGNESS: Excuse me. This is Bill
7 Magness. We can't hear you on the phone anymore.

8 JUDGE THOMPSON: I apologize. I'll try to
9 shout.

10 MR. MAGNESS: Sorry about that.

11 JUDGE THOMPSON: Our technologically
12 advanced courtroom here isn't really set up for these
13 things, telephonic appearances. I apologize.

14 What I was saying was -- Mr. Lumley, I
15 don't know if you heard what he said, he raised some
16 concerns about the proposed procedural schedule in that it
17 shortened the period of time the Commission would have to
18 rule to approve the final interconnection agreements, and
19 it also shortened the period of time the Commission would
20 have my final report before it, before it would have to
21 act.

22 And he indicated that he wanted some degree
23 of confidence that the Commission would, in fact, be able
24 to act in those short intervals so that his clients would
25 not be left in jeopardy. Is that a fair summary of what

1 you indicated?

2 MR. LUMLEY: Right. And my clients are
3 Mr. Magness' clients, so they're the same people. And
4 just -- it's been made pretty clear so far that an
5 extension of the 7/19 date really isn't on the table. I'm
6 not angling for an extension. I'm just trying to get --
7 because we have had cases in the past where the Commission
8 has said, you know, it's all well and good that you-all
9 have agreed, but we want more time to make our decision.

10 JUDGE THOMPSON: Right. And, you know, I
11 can't say what they're going to do or not do. So I think
12 you raise some very good points, and maybe Bell is not
13 prepared to respond right now as to what happens if the
14 Commission hasn't acted by July 19th, but it's certainly
15 something that I think everyone needs to be thinking
16 about. And I would assume that the ultimate goal that
17 we're all looking at here is that the subscribers of
18 whatever carrier are not going to experience any
19 interruption of service.

20 So with that as our goal, I think we can
21 work together in good faith to get this thing done as
22 quickly as humanly possible. Perhaps later in the process
23 it will become apparent that the Commission isn't going to
24 get it done by July 19th and we can return to this
25 question then and it will be more than a hypothetical,

1 but --

2 MR. LUMLEY: The other observation I have
3 is that, just as a matter of practicality, you know,
4 parties trying to get things done, we might be well served
5 to push that final joint DPL to the 20th to just have one
6 additional day, because some parties may get down to the
7 wire on the 19th with their rebuttal and page numbers may
8 be changing all the way up to the last minute. Then the
9 rest of us are kind of left hanging and trying to pull
10 that together.

11 Since we would have already had an agreed
12 joint DPL well before that and the hearings aren't
13 starting to the Monday, I don't know that it would really
14 affect anybody and probably help us all out.

15 MR. LANE: I think that's a good
16 suggestion.

17 JUDGE THOMPSON: That's certainly fine with
18 me. The proposal is to extend the simultaneous rebuttal
19 and final joint DPL filing date from May 19th to May 20th.

20 MR. LUMLEY: Actually, I was going to leave
21 the testimony alone, just have one more day for the DPL.

22 JUDGE THOMPSON: Okay. Just the joint DPL.

23 MR. LUMLEY: Just to kind of divide that
24 labor a little more.

25 JUDGE THOMPSON: Thanks for the

1 clarification.

2 MR. HALM: Your Honor?

3 JUDGE THOMPSON: Yes?

4 MR. HALM: This is K.C. Halm with Cole

5 Raywid. This is an extremely aggressive schedule. Even

6 if there are only two parties in this case, it would be

7 challenging for both parties to meet this schedule. Given

8 that there are approximately 40 or 50 CLECs involved, I

9 have to wonder whether this can actually happen within

10 these time frames.

11 JUDGE THOMPSON: I think that's a fair

12 comment. Do you have an alternative proposal?

13 MR. HALM: Well, no, I don't. I haven't

14 seen SBC's proposal, and we can certainly prepare an

15 alternative proposal as soon as we get to look at their

16 proposal. But without an alternative proposal, just to

17 put on the record, this is an extremely aggressive

18 schedule and it will be logistically a serious challenge

19 to make this happen, given the number of parties in this

20 case.

21 JUDGE THOMPSON: I appreciate that comment,

22 and I believe you're correct. Nonetheless, this is the

23 situation that we find ourselves in, and I think we're

24 going to do our best to make it happen. Like I said, if

25 it proves unworkable as we're going through it, then we're

1 going to have to address what can be done to make it more
2 workable. All right?

3 MR. HALM: Okay. Thank you.

4 JUDGE THOMPSON: I don't know what else I
5 can say at this point other than that. One thing that we
6 will do is that we're going to -- I will urge all the
7 parties to limit the size of the testimony that they file,
8 limit the number of pages on documents. I want everything
9 to have an executive summary, I mean testimony, pleadings,
10 everything that on one page or less sets out the important
11 points of the filing.

12 And I will embody all of these in written
13 conditions in the order adopting the procedural schedule,
14 but I'm also going to want everyone to provide to me at
15 least a hard paper copy of everything that you file or
16 exchange with each other, and also an editable electronic
17 copy, Word Perfect or Word format. This will allow me the
18 greatest possible flexibility in working with the items
19 submitted by the parties, and will also save me many hours
20 of printing out things from the EFIS system.

21 MR. MAGNESS: Your Honor, Bill Magness. I
22 wonder if I could one -- it's kind of a technical question
23 on that front, on the DPLs.

24 JUDGE THOMPSON: I have an advisory staff,
25 so if it's real technical we can get an answer from them.

1 MR. MAGNESS: It's only technical in the
2 sense of formatting.

3 JUDGE THOMPSON: Okay.

4 MR. MAGNESS: The DPLs that were submitted
5 in the initial petition were -- you know, there's a DPL
6 for the various CLEC groups. For example, our group's a
7 CLEC coalition, and there's a DPL for AT&T, et cetera. I
8 have been assuming as we go along that those will be
9 maintained as separate DPLs throughout the process. I
10 think it's logistically the simplest way to try to move
11 through this.

12 JUDGE THOMPSON: I think that's probably
13 true.

14 MR. MAGNESS: If the parties have a
15 different view of that, I think it's maybe something we
16 need to talk about to be sure all the dates and deadlines
17 work.

18 The other thing is, I wonder if -- in some
19 places where we've done these DPLs in this 2A successor
20 arbitration, when we submit the final, it includes a
21 column on the far right that is Commission decision or
22 arbitrator's decision, which facilitates the arbitrator
23 being able to work with the DPLs and go through and
24 indicate decisions directly on that document. And that's
25 something we can do if it's useful or not do if it's not.

1 So just something for you to consider.

2 JUDGE THOMPSON: It sounds useful to me.

3 MR. MAGNESS: Okay.

4 JUDGE THOMPSON: Mr. Lumley?

5 MR. LUMLEY: Another clarification. The

6 rules talk about deadline for final offers. Would we

7 consider the rebuttal testimony I guess as -- did you have

8 that in mind where that fit into the schedule?

9 MR. LANE: Yes. I didn't anticipate filing

10 anything separate from that.

11 MR. LUMLEY: All right.

12 MR. MAGNESS: And I can just tell you, as

13 we go through, in fact, we've had a call this week and

14 there are some issues that were on the filed DPL with the

15 petition that even by the time of the responses we may be

16 able to remove from the DPL as being settled. And

17 obviously as that process continues, it's just fewer and

18 fewer issues that have to be decided, so I think

19 everybody's in favor of that.

20 JUDGE THOMPSON: I am emphatically in favor

21 of that. Okay. Can we take the proposed procedural

22 schedule as modified with Mr. Lumley's suggestion, then,

23 as agreed at least for the purposes of going on from this

24 point?

25 MR. HALM: Your Honor, this is K.C. Halm

1 again. Would it be possible for the parties to have, you
2 know, at least the end of the day or maybe 24 hours to
3 look over their proposed procedural schedule and then
4 propose alternatives if necessary?

5 JUDGE THOMPSON: That would be fine. I
6 have no problem with that.

7 MR. HALM: So I'll get in touch with one of
8 the SBC attorneys and ask them to circulate their proposal
9 by e-mail.

10 JUDGE THOMPSON: That would be very good.

11 MR. JOHNSON: Your Honor . . .

12 JUDGE THOMPSON: This is Mr. Johnson
13 speaking.

14 MR. JOHNSON: Thank you. I'm looking at
15 the proposed deadline for filing post-hearing briefs, and
16 that's the Friday of Memorial Day week. So that from the
17 proposed final date of the hearing to the day that briefs
18 are due is four business days, and I just wonder if we can
19 at least push that to the following Monday even.

20 JUDGE THOMPSON: As far as I'm concerned
21 this whole thing is fluid. I hadn't heard a lot of
22 screams of outrage about this, so I thought it was worth
23 asking if people are ready to sign off on it. I'm glad I
24 did, because now I am getting screams of outrage.

25 MR. JOHNSON: Well, I'm not outraged by it

1 at all. I think, for example, that four days for a
2 hearing or five days for a hearing isn't beyond the realm
3 of reason, given the experience we've had in other states
4 up to now.

5 JUDGE THOMPSON: You think it's beyond the
6 realm of reason?

7 MR. JOHNSON: No, it's not.

8 JUDGE THOMPSON: It's not. Okay.

9 MR. JOHNSON: And much of it is going to
10 depend on how the Commission wants to, from a logistical
11 point of view, have the evidence presented. In other
12 states we've had panels. It has worked quite well, rather
13 than individual witnesses examined periodically.

14 JUDGE THOMPSON: Well, and we've done that
15 here as well where we've sworn all the witnesses in as a
16 group and people can fire questions at whoever they want
17 or people can jump in. I see Mr. Lane shaking his head.
18 He doesn't like that idea, and I know it makes it very
19 difficult for the court reporter, who doesn't know who's
20 talking at a given moment and has to keep jumping around
21 as to who said what, often shouted at the same moment.

22 So my thought is this: This is final offer
23 arbitration. And we only, it seems to me, need hearing
24 with respect to technical factual issues where there's a
25 disagreement. Isn't that -- would you agree with that?

1 MR. JOHNSON: I thoroughly agree with that.

2 JUDGE THOMPSON: I mean, if the issue

3 before us is we want \$20 for this and we want -- no, we

4 want \$50 for this, I mean, we don't need to hear any

5 evidence about that, do we, unless somebody wants to say

6 that we can't provide it at 20 bucks, which would be

7 factual. But --

8 MS. COX: Your Honor, this is Carrie Cox

9 from Charter. It would be helpful for us to know who's --

10 I know who you are, but it would be helpful for us to know

11 who's speaking.

12 JUDGE THOMPSON: Okay. Say your name

13 before you talk. Now come on, place nice.

14 MR. JOHNSON: This is Mark Johnson. One of

15 the difficulties we've had in other states is that

16 particularly in the prefiled testimony we end up having

17 reams of legal argument.

18 JUDGE THOMPSON: I don't want reams of

19 anything. I don't want reams of anything. I don't think

20 there's anything that should require more than, I mean,

21 two pages to a point. The shorter the better, because

22 this thing's gigantic.

23 MS. COX: Who are you with?

24 MR. JOHNSON: I'm with Sonnenschein, Nath &

25 Rosenthal.

1 MS. COX: Okay. Thank you.

2 MR. JOHNSON: Sure. And that is Paul

3 Lane's phone.

4 JUDGE THOMPSON: It's interesting that

5 everything that could possibly happen with a telephone is

6 happening during this session today. I'm waiting for this

7 one to catch on fire here.

8 MR. LEOPOLD: I would propose Tuesday,

9 June 9th for the post-hearing brief filing deadline.

10 JUDGE THOMPSON: I'm sorry?

11 MR. LEOPOLD: This is Brett Leopold from

12 Sprint, and I would propose Tuesday, June 8th.

13 JUDGE THOMPSON: Tuesday, June 8 for the

14 post-hearing brief?

15 MR. LUMLEY: Tuesday's June 7th.

16 MR. LEOPOLD: June 7th.

17 JUDGE THOMPSON: June 7th. Okay. Fine

18 with me.

19 MR. LANE: Judge, I mean, that's fine --

20 this is Paul Lane with SBC. That's important to you in

21 particular because of the time between the filing of the

22 post-hearing brief and when your arbitrator's report is

23 due.

24 JUDGE THOMPSON: I understand that.

25 MR. LANE: If you're fine with it, then

1 obviously that's better from the parties' perspective, if
2 you're fine with it. It infringes on your time, is my
3 point.

4 JUDGE THOMPSON: Well, you know, I have a
5 staff, like I said. We'll just stay up all night.

6 MR. MORRIS: This is Steve Morris. Just
7 getting back to the hearing and, you know, witnesses, I
8 know that in Texas there were some -- there's prefiled
9 testimony and some witnesses were not required to come to
10 the hearing. You know, if that might speed things along
11 or help kind of relieve any congestion in Missouri, you
12 might want to consider that as well. In other words, the
13 testimony, the prefiled testimony as submitted is what you
14 got.

15 JUDGE THOMPSON: I understand your
16 suggestion. I think it's a very good one. In other
17 words, what you're essentially saying is the parties
18 should advise each other and the Commission before the
19 hearing as to whether they're going to waive
20 cross-examination, correct, as to any witnesses?

21 MR. MORRIS: Yeah, that's effectively
22 what -- yeah.

23 JUDGE THOMPSON: I think that's a very good
24 suggestion.

25 MR. MORRIS: Bill Magness, who's there, can

1 probably describe that in more detail. He was involved in
2 that.

3 MR. LANE: Your Honor, Paul Lane with SBC.
4 We're certainly in agreement with that. I guess the
5 question is, is the arbit-- if the parties agree to submit
6 something on briefs and not have testimony, for example,
7 or have testimony but waive cross, is the arbitrator going
8 to be amenable to that?

9 JUDGE THOMPSON: Yes. I can tell you I
10 will be amenable to that. If I should have a question for
11 that witness, I can write that question and serve it on
12 everybody and on the witness and give them a few days to
13 respond. So I'll get my questions answered one way or the
14 other. Whatever we can do to reduce the number of
15 witnesses and to reduce the number of pages I think can
16 only help get this done on time with everyone still in
17 good shape.

18 Sir?

19 MR. JOHNSON: Your Honor, this is Mark
20 Johnson again. Do you anticipate attempting to impose any
21 limitations on cross-examination?

22 JUDGE THOMPSON: On time?

23 MR. JOHNSON: Yes.

24 JUDGE THOMPSON: Yes, I do.

25 MR. JOHNSON: What would you envision?

1 JUDGE THOMPSON: I don't have a figure
2 ready at the moment. I know we did this in an arbitration
3 involving AT&T. I think it was you guys and AT&T some
4 years ago. And I was planning to pull that order out and
5 see what it said. I thought -- it's my memory that that
6 was very workable as it turned out. Is that your memory?

7 MR. LANE: Yes, your Honor. Paul Lane,
8 SBC. That is what we did, and we're certainly amenable to
9 that. Obviously there's various ways to do it. If you
10 divide the time that we have for cross between SBC on the
11 one hand and the CLECs on the other, that's a more
12 reasonable approach. We don't want a situation where, you
13 know, we get 1/20 of the time and the CLECs get 19/20 of
14 the time for cross.

15 JUDGE THOMPSON: That's a very good point.
16 I think the parties that are taking the same side with
17 respect to the question will have to pool their resources.

18 MR. LUMLEY: And this is --

19 MR. MAGNESS: Your Honor, this is Bill
20 Magness. On a couple of points, on dividing the cross, I
21 certainly think it's fair that, you know, that as Mr. Lane
22 puts it, SBC doesn't get 1/20 of the time considering the
23 number of parties. I think there are several issues where
24 the CLECs are not necessarily aligned or looking for
25 different things, so we may just need to consider that to

1 some extent depending on the issue.

2 Also, on the waiving cross and excusing
3 witnesses, as Mr. Morris was remembering from the Texas
4 hearing, I think probably right about the time rebuttal
5 was due, the parties got together and amongst themselves
6 indicated which witnesses they were willing to waive and
7 then put that to the arbitration staff. And if there was
8 anyone that the arbitration staff really just felt like
9 they needed to have, for example, if the written questions
10 wouldn't be sufficient or that sort of thing, certainly
11 the witnesses were available, but we were able to
12 eliminate quite a few witnesses.

13 One other thing on the hearing structure.
14 It seems to be useful to try to structure the days of the
15 hearing around related topics. For example, in the --
16 Oklahoma had a hearing very similar to the one that you're
17 facing where they addressed all issues in one fell swoop
18 on the interconnection agreement. And there were some
19 witnesses -- for example, there was a day where the first
20 day was on interconnection. There were witnesses who
21 testified about interconnection and other issues.
22 They were called up on the first day to address
23 interconnection issues.

24 If they had other issues on the other topic
25 days, they were called again to be crossed or asked

1 questions on those particular issues. And actually I
2 think it worked pretty well because you can at least focus
3 on particular attachments to the agreement and particular
4 topics by dividing it up that way. So just as a
5 suggestion as we think forward to structuring the hearing.

6 JUDGE THOMPSON: That sounds good. As far
7 as I'm concerned, perhaps we can have some witnesses be
8 examined over the telephone.

9 MR. MORRIS: Judge, did you say witnesses
10 examined via phone?

11 JUDGE THOMPSON: That's what I said.

12 MR. MORRIS: Okay. This is Steve Morris
13 talking.

14 JUDGE THOMPSON: We used to do that a lot
15 back when I was --

16 MR. MAGNESS: This is Bill Magness. I can
17 just tell you these witnesses are not even as good as we
18 are about saying their names, and if you cross them over
19 the phone, you can't see the faces they're making, so I
20 don't know.

21 JUDGE THOMPSON: Well, that's always a
22 difficulty.

23 MR. MAGNESS: I think we're all amenable to
24 a lot of creativity to get this done.

25 JUDGE THOMPSON: Absolutely. Otherwise

1 we're not going to get it done. Mr. Lumley, do you have
2 something?

3 MR. LUMLEY: Yeah, Judge. Carl Lumley
4 speaking. With regard to dividing up the time for cross,
5 what strikes me is rather than trying to make any
6 judgments today like on a per witness basis or anything
7 like that, maybe if you give us some general guidance on
8 how to divide it up and then maybe let the parties kind of
9 structure the hearing, because there may be some issues
10 where we all know -- I mean, I'd rather have a block of
11 time that I could spread across the hearing, as opposed to
12 I have 15 minutes on a witness that I have no questions
13 for and I've lost that -- and then I have 15 minutes to
14 question a witness where I have 20 minutes of questions.
15 I mean, I think if you allow the parties some degree of
16 flexibility, we should be able to space it out.

17 JUDGE THOMPSON: I'm willing to allow as
18 much flexibility as the parties need and want. My view of
19 the hearing process is that, you know, I'm -- I'm the
20 referee. It's your hearing. It's your clients after all
21 who are concerned with these issues. My job is just to
22 get this process going along and help the Commission reach
23 its final decision. But you guys are the ones whose
24 clients are going to survive or not in the business
25 environment based on what comes out of this.

1 So I assume you know what you need, you
2 know what you want, and you can talk with each other and
3 get those things put together. I will impose such things
4 as I need to make it as workable and as easy for me as I
5 possibly can, but you guys are in charge of presenting
6 your cases and getting what you need procedurally to do
7 that. So I'll leave that to you. Okay?

8 I would anticipate that prior to the
9 hearing we would probably have another prehearing
10 conference, to revert to the old language, where we would
11 hammer out these things so we all know what the rules are
12 going to be when this day opens, okay? And I agree with
13 you that it's pointless to try to sketch them out too much
14 now because we don't know how many issues are going to
15 settle or how many witnesses are going to be involved. We
16 just don't know where we're going to be when that moment
17 comes. So further down the road I think we'll have a
18 better idea. Okay?

19 And I also want to make it clear that my
20 arbitration staff in the back there that they're -- you
21 guys are fully authorized to talk and say things and
22 whatever you want at these meetings. You're just as much
23 a part of it as anybody else. If anybody has a problem
24 with that, shriek out your objection now.

25 MR. LUMLEY: Should we try to get the date

1 for that prehearing on our -- into this proposal now so
2 that we all reserve it?

3 JUDGE THOMPSON: That would be fine. If
4 we're starting the hearing on Monday, the 23rd of May,
5 then I would say the latest date would be the preceding
6 Friday, and maybe you'd want to do it earlier than that.

7 MR. JOHNSON: This is Mark Johnson. I
8 think that would be too late. If we could do perhaps the
9 middle of the week before.

10 JUDGE THOMPSON: Okay. How about a
11 Wednesday, which I think would be the 18th, if my ability
12 to count backwards is functioning. Is that acceptable to
13 everyone?

14 MR. LANE: I'm assuming if we do that on --
15 this is Paul Lane -- on the 18th, that's the day before
16 our rebuttal is due. I would think all of us need to do
17 it by phone rather than appearing here.

18 JUDGE THOMPSON: That's fine. We can do
19 everything by phone.

20 MR. LANE: Can we mail it in?

21 JUDGE THOMPSON: As much as possible.

22 MR. LANE: A question on --

23 JUDGE THOMPSON: And isn't that appropriate
24 for this kind of proceeding?

25 MR. LANE: And a clarification, Judge,

1 about the advisory staff, you're talking about at the
2 prehearing conference --

3 JUDGE THOMPSON: Yes.

4 MR. LANE: -- you're not talking about
5 outside of it, right?

6 JUDGE THOMPSON: No.

7 MR. LUMLEY: Judge, Carl Lumley again.
8 Perhaps to kind of expedite the process of wrapping up the
9 scheduling discussions, since the SBC folks are here,
10 maybe if you could just read over the dates one more time,
11 and then the Charter folks will have it written down in
12 front of them, and maybe set a specific deadline for any
13 filing of a competing proposal, just so we all understand
14 where we are as opposed to waiting for some e-mail
15 distribution later in the day or even tomorrow or
16 something.

17 JUDGE THOMPSON: That's a good suggestion
18 and I had planned to read it all over again.

19 Okay. This is what we have at this point.
20 We're looking at April 25th, Monday, for responses.
21 That's already set by order. Joint DPLs on Monday, May
22 2nd. Simultaneous direct on Monday, May 9. Simultaneous
23 rebuttal on Thursday, May 19. Final joint DPL with cites
24 to the record on Friday, May 20th. Prehearing conference
25 on -- this is out of order, Wednesday, May 18th.

1 The hearing May 23rd through May 27th.
2 Post-hearing briefs on Monday, June 7th. Tuesday -- I'm
3 sorry. Tuesday, June 7th. Final arbitrator's report on
4 Friday, June 17th. Comments on the final arbitrator's
5 report on Friday, June 24th. Oral argument before the
6 Commission on Wednesday, June 29th. Final Commission
7 arbitration decision on July 6th. That's a Wednesday.
8 Submission of successor interconnection
9 agreements to Commission on Wednesday, July 13th. And
10 deadline for final Commission action, Tuesday July 19.
11 And it's my understanding the parties are
12 going to have approximately 24 hours to review these dates
13 and circulate e-mails as to any alternative proposals; is
14 that correct?
15 MR. LUMLEY: Thank you, your Honor. We'd
16 appreciate that.
17 MR. LUMLEY: So noon tomorrow?
18 JUDGE THOMPSON: That would be fine, noon
19 tomorrow.
20 MR. LANE: That's just if there's some
21 contrary proposal; is that right?
22 JUDGE THOMPSON: That's correct. And you
23 can submit a contrary proposal that you've served on all
24 the other parties directly to me by e-mail, and my e-mail
25 is all lower case, kevin.thompson@psc.mo.gov.

1 MR. LUMLEY: Judge, Carl Lumley. One other
2 question. It hadn't occurred to me before, but the period
3 of time between oral argument and final decision overlaps
4 the 4th of July, and I just -- is that the only state
5 holiday would be Monday, July 4th, or would you be closed
6 any other days in that period?

7 JUDGE THOMPSON: As far as I know, that's
8 the only one.

9 MR. JOHNSON: Your Honor, Mark Johnson.
10 Will the hearings be starting at 9 every morning?

11 JUDGE THOMPSON: I think they'll probably
12 be starting at 8 every morning.

13 MR. JOHNSON: We can start at 8. Okay.

14 JUDGE THOMPSON: And maybe running to
15 midnight.

16 MR. LUMLEY: And do we just want to say
17 10 o'clock on the 18th for the --

18 JUDGE THOMPSON: Prehearing conference?
19 That would be fine. And we will set up a number like we
20 did today so that anyone who doesn't want to come up here
21 physically can call in. If no one comes up here
22 physically, I'll just stay in my office and do it from
23 there.

24 MR. LANE: I would anticipate we're all
25 going to call in, your Honor, because we'll be working on

1 the rebuttal testimony that day.

2 JUDGE THOMPSON: Okay. Very good.

3 Anything else that we need to discuss today?

4 Mr. Bub?

5 MR. BUB: Just one thing, your Honor. I

6 just wanted to let you know that we received a couple of

7 memorandum of understanding --

8 JUDGE THOMPSON: Okay.

9 MR. BUB: -- from three of the carriers

10 that we've named as respondents, and shortly you'll be

11 getting a motion to dismiss from us with respect to these

12 three carriers.

13 JUDGE THOMPSON: Very well.

14 MR. BUB: The first one is Wren

15 Telecommunications.

16 JUDGE THOMPSON: Okay.

17 MR. BUB: The second one is Synergy

18 Communications.

19 JUDGE THOMPSON: Okay.

20 MR. BUB: And the third one is CD

21 Telecommunications.

22 JUDGE THOMPSON: Very well.

23 MR. BUB: And then we have another group of

24 carriers that we named as respondents that we hadn't

25 received any response to any of our requests to negotiate.

1 JUDGE THOMPSON: The non-responders.

2 MR. BUB: The non-responders. We have been
3 in discussions with a few of them, and we've already
4 received one written notice that they have no interest in
5 renewing their interconnection, so they do not wish to be
6 a party in this case. When we receive written notice from
7 these three, we'll be including that in a motion to
8 dismiss as well. I just want to give you those carriers
9 now: ALLTEL, Mark Twain and a company called Business
10 Telecom, Inc. And one of the reasons for doing that is
11 their counsels are not appearing today and I just want to
12 let you know that they will be dismissed and that's why
13 they're not here.

14 JUDGE THOMPSON: Okay. Now, as I recall,
15 one of the groups of respondents, in fact, was all those
16 carriers who indicated they had no interest in a successor
17 agreement; isn't that correct?

18 MR. BUB: We didn't have anything in
19 writing from them, your Honor. It was just our
20 understanding.

21 JUDGE THOMPSON: I see. Okay. So as you
22 get that in writing, you'll be moving to dismiss them?

23 MR. BUB: Yes, your Honor.

24 JUDGE THOMPSON: Very well.

25 MR. LUMLEY: Judge, Carl Lumley. Are you

1 comfortable ruling on Mr. Morris' petition for entry or do
2 you want it take that under advisement?

3 JUDGE THOMPSON: I'm glad you brought that
4 up. Is this for admission pro hoc vice?

5 MR. LUMLEY: Correct. And --

6 JUDGE THOMPSON: Has he paid the required
7 fee to the Missouri Supreme Court?

8 MR. LUMLEY: Yes. The receipt is attached
9 to the petition.

10 JUDGE THOMPSON: I assume, Mr. Morris,
11 you're in good standing in those courts to which you are
12 admitted?

13 MR. MORRIS: Yes, sir, I am.

14 JUDGE THOMPSON: Very well. We will admit
15 you pro hoc vice at this time for purposes of this
16 proceeding.

17 MR. LUMLEY: Thank you, your Honor.

18 MR. HALM: Your Honor, a clarification
19 question on the proposed procedural schedule.

20 JUDGE THOMPSON: Yes, sir.

21 MR. HALM: This is K.C. Halm on behalf of
22 Charter. It's normal course where an opposing party
23 doesn't dispute an extension of a certain deadline that
24 normally that can happen. Would you anticipate that
25 happening under this schedule?

1 JUDGE THOMPSON: Oh, I'm confident that
2 will happen under this schedule.

3 MR. HALM: Okay. Just wanted to make
4 clear.

5 JUDGE THOMPSON: Your question did cause a
6 lot of muttering here in the room.

7 MR. LANE: I just didn't understand what
8 was said.

9 MR. HALM: I'm sorry. I just wanted to
10 make sure that we'd have the opportunity to agree with an
11 opposing party on a limited extension of a deadline; i.e.,
12 if we needed an extra day to file testimony or something
13 like that, and SBC did not -- if SBC consented to that, we
14 could do that. And vice versa, if they needed an
15 additional day, we consented to that, that could happen,
16 or would we need to come to you to get your approval for
17 those types of extensions?

18 JUDGE THOMPSON: I'm not really a hard
19 liner when it comes to deadlines, having practiced law on
20 the other side of the bar for long enough to know what
21 that's like. If someone misses a deadline and someone
22 else files a motion demanding that I take some kind of
23 action and is able to support that with a credible
24 allegation of prejudice due to the tardy performance of
25 the other party, then we would have a different sort of

1 situation. But in the absence of that kind of thing, then
2 I don't really see it as a big deal, but that's just me.

3 MR. HALM: Okay.

4 MR. LANE: Your Honor, this is Paul Lane,
5 SBC. I would assume that if, you know, the testimony
6 dates are pretty critical --

7 JUDGE THOMPSON: The testimony dates are
8 critical, and I think that if you're going to be filing
9 your testimony late, you'd better file a motion for leave.

10 MR. HALM: Understood. I'm not
11 anticipating filing anything late.

12 JUDGE THOMPSON: I agree. You need to know
13 what the groundrules are when you're playing an away game.

14 MR. HALM: Okay.

15 JUDGE THOMPSON: Anybody else? I think we
16 need to talk about discovery before we conclude today. I
17 don't know how much discovery you-all are doing, but
18 according to the rule, and I'm looking at paragraph 6,
19 unless otherwise provided, the Commission rules for
20 discovery apply to discovery in the arbitration. The
21 arbitrator may permit further discovery procedures at the
22 initial arbitration meeting.

23 I can tell you right now any motion for
24 mental examination is going to be denied. What I'm
25 thinking of is shortening the time to respond for Data

1 Requests. We've done that in a number of cases. I just
2 don't think 20 days is going to be workable here, given
3 the extremely short timespan available.

4 MR. MAGNESS: Your Honor, this is Bill
5 Magness.

6 JUDGE THOMPSON: Yes, sir.

7 MR. MAGNESS: I just want to suggest one
8 thing again for consideration as much by the parties as
9 any. I haven't had a chance to discuss this with Paul or
10 Leo, but in the Kansas and Oklahoma versions of the
11 interconnection arbitration like this one, the parties
12 agreed that the discovery that had been used in the first
13 one of these cases, and that one was the Texas case, could
14 be utilized in testimony in the cases in those states.

15 Otherwise we agreed that there would not be
16 any other discovery. So everyone was willing to forego
17 depositions and requests for information, et cetera, DRs
18 for those cases, and I think at least our experience and I
19 hope SBC's too has been that that worked pretty well.

20 MR. HALM: Your Honor, this is K.C. Halm
21 for Charter. Charter hasn't been involved in those cases,
22 so we couldn't agree to that approach at this point. I
23 think we'd certainly be willing to consider creative
24 alternatives, but obviously not having access to any of
25 that discovery from the previous cases, we can't agree to

1 waive our right to any new discovery.

2 MR. JOHNSON: And, your Honor, this is Mark
3 Johnson, and I don't believe that either of my clients has
4 been involved in the Texas arbitration either. So I would
5 agree with the position -- agree with that position.

6 JUDGE THOMPSON: Okay. This was, what,
7 foregoing discovery? Summarize for me what the proposal
8 was. I'm sorry.

9 MR. JOHNSON: The proposal it sounds like
10 is to forego discovery and to rely on the discovery that
11 was done in Texas. And I was just saying that since I
12 don't believe that either of my clients was involved in
13 the Texas arbitration, that that could be prejudicial to
14 my clients.

15 JUDGE THOMPSON: Well --

16 MR. MAGNESS: And, your Honor, this is Bill
17 Magness. Just to clarify -- and I -- you know, I
18 understand the problems, but just to clarify, in those --
19 in the Oklahoma and Kansas context where parties agreed
20 that that would be the only discovery, that discovery was
21 made available to all parties subject to the
22 state-specific Protective Order.

23 Just -- I'm not saying that that
24 necessarily resolves the parties' problems, but that was
25 something that was available to everyone so people could

1 all be looking at the same thing. It was, of course,
2 limited to what the parties in the Texas case did ask, but
3 generally we found that these cases aren't facilitated to
4 any great degree by a lot of discovery.

5 JUDGE THOMPSON: Well, I agree with you
6 there, but I'm not going to take any action today to limit
7 the discovery that people could take. What I'm going to
8 do is attempt to facilitate it by shortening the response
9 times. And so I'm going to tell you that from today
10 forward, you're going to have five days to raise an
11 objection to a Data Request and ten days to respond. And
12 if you believe you're going to need more than ten days,
13 then you're going to have to let us know that five days
14 after you get the response as well.

15 MR. JOHNSON: Your Honor, Mark Johnson. Is
16 that five business days or five --

17 JUDGE THOMPSON: Five business days.

18 MR. JOHNSON: Thank you.

19 JUDGE THOMPSON: Okay.

20 MR. BUB: Five business -- or ten business
21 days to respond? This is Leo Bub.

22 JUDGE THOMPSON: Ten business days. Okay.
23 Another thing that has facilitated discovery in other
24 cases would be for the parties to serve their Data
25 Requests on all other parties in addition to the party

1 they're actually expecting the information from. That way
2 you know who -- what other people are getting, and then
3 the responding party would provide copies to everybody of
4 the information.

5 See what I mean? That way hopefully we can
6 cut down on some of the number of discovery requests
7 because you'll be getting things that other people have
8 asked for as well.

9 MR. LEOPOLD: Your Honor, Brett Leopold for
10 Sprint.

11 JUDGE THOMPSON: Yes, sir?

12 MR. LEOPOLD: Should we require -- and
13 perhaps parties do this anyway -- that service and
14 response be done electronically for discovery requests?

15 JUDGE THOMPSON: Well, that's an
16 interesting question. What do the parties think?

17 MR. JOHNSON: Yes.

18 MR. LUMLEY: Yes.

19 JUDGE THOMPSON: Those that are responding
20 are saying yes, so that sounds good to me.

21 Sir?

22 MR. LANE: I think that's fine. Obviously
23 if the discovery request calls for documents, then that's
24 going to be a different answer.

25 JUDGE THOMPSON: Right. Right.

1 MR. LUMLEY: Judge, also, just along the
2 lines of facilitating -- this is Carl Lumley speaking --
3 in the event that we get into some kind of a discovery
4 dispute about objections, are we going to have a little
5 bit of a faster track than the -- right now the rules call
6 for having a telephone conference first before you file a
7 motion, and can we maybe skip that and --

8 JUDGE THOMPSON: We're under the
9 arbitration rules which say we could cause -- I can compel
10 responses and it says nothing about how to get to that
11 moment. So here's how we're going to get to it. You can
12 serve your motion to compel on me or file it with me and
13 serve copies on everybody else, and then we'll get on the
14 phone on a conference call and we'll take care of it right
15 then and there, okay?

16 MR. LUMLEY: Thank you.

17 JUDGE THOMPSON: Sure. I think -- let me
18 just take a look here. Subparagraph 9 covers the initial
19 arbitration meeting and says that this covers such things
20 as procedural scheduling, which we've talked about.
21 Establishing a time for submission of final offers, and we
22 did talk about that. Allowing the filing of testimony.
23 Well, clearly we've talked about that. Setting times when
24 it's to be filed, we've done that. Resolving the scope
25 and timing of discovery. We've talked about the timing,

1 nothing about the scope.

2 This case could rapidly become an

3 incredible burden for the parties if discovery is too wide

4 ranging. I'm certainly not going to do anything to limit

5 the scope of discovery today, but I would urge the parties

6 to ask only for those things that they believe they need,

7 and if you believe that you're being abused with the

8 discovery that's being requested, then I assume you'll

9 file an appropriate motion with me. Okay?

10 The last thing being simplifying issues,

11 and I don't know any way we can actually do that today

12 since we haven't had any responses filed yet. Okay. I

13 think we've covered everything then that it's possible to

14 cover today and indeed most of the things that the rule

15 anticipated.

16 Do any of the parties have anything further

17 at this time?

18 (No response.)

19 JUDGE THOMPSON: Okay. Hearing nothing, I

20 will adjourn the initial arbitration meeting. Thank you

21 very much.

22 WHEREUPON, the initial arbitration meeting

23 was concluded.

24

25