

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Prehearing Conference
December 3, 2001
Jefferson City, Missouri
Volume 1

In the Matter of the Petition of)
MCImetro Access Transmission)
Services LLC, Brooks Fiber)
Communications of Missouri, Inc.,) Case No. TO-2002-222
and MCI WorldCom Communications,)
Inc., for Arbitration of an)
Interconnection Agreement With)
Southwestern Bell Telephone Company)
Under the Telecommunications Act of)
1996.)

VICKY RUTH, Presiding,
SENIOR REGULATORY LAW JUDGE.

REPORTED BY:
KELLENE K. FEDDERSEN, CSR, RPR
ASSOCIATED COURT REPORTERS

ASSOCIATED COURT REPORTERS
JEFFERSON CITY - COLUMBIA - ROLLA
(888)636-7551

1 APPEARANCES:

2 PAUL G. LANE, General Counsel-Missouri
One Bell Center, Room 3520
3 St. Louis, Missouri 63101
(314)235-4300

4
FOR: Southwestern Bell Telephone Company.

5
CARL J. LUMLEY, Attorney at Law
6 Curtis, Oetting, Heinz, Garrett & Soule
130 South Bemiston, Suite 200
7 Clayton, Missouri 63105
(314)725-8788

8
FOR: MCI WorldCom Communications, Inc.
9 Brooks Fiber Communications of
Missouri, Inc.
10 MCImetro Access Transmission Services.

11 WILLIAM K. HAAS, Deputy Counsel
P.O. Box 360
12 Jefferson City, Missouri 65102
(573)751-3234

13
FOR: Staff of the Missouri Public
14 Service Commission.

15

16

17

18

19

20

21

22

23

24

25

ASSOCIATED COURT REPORTERS
JEFFERSON CITY - COLUMBIA - ROLLA
(888)636-7551

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

2 JUDGE RUTH: Let's go ahead and go on the
3 record, please.

4 We are here for a prehearing conference in
5 Case TO-2002-222, in the Matter of the Petition of MCImetro
6 Access Transmission Services, LLC, Brooks Fiber
7 Communications of Missouri, Inc. and MCI WorldCom
8 Communications, Inc. for Arbitration of an Interconnection
9 Agreement with Southwestern Bell Telephone Company Under the
10 Telecommunications Act of 1996.

11 My name is Vicky Ruth, and I'm the Regulatory
12 Law Judge assigned to this case. Today's date is
13 December 3rd, 2001.

14 We will begin by taking entries of appearance.
15 MCI.

16 MR. LUMLEY: Good morning, your Honor. Carl
17 Lumley of the Curtis Oetting law firm representing the
18 petitioners in this case.

19 JUDGE RUTH: Tank you. Southwestern Bell.

20 MR. LANE: Paul Lane on behalf of Southwestern
21 Bell Telephone Company. My address is One Bell Center,
22 Room 3520, St. Louis, Missouri 63101.

23 JUDGE RUTH: And Staff.

24 MR. HAAS: William K. Haas appearing on behalf
25 of the Staff of the Public Service Commission. My address

ASSOCIATED COURT REPORTERS
JEFFERSON CITY - COLUMBIA - ROLLA
(888)636-7551

1 is Post Office Box 360, Jefferson City Missouri 65102.

2 JUDGE RUTH: Thank you. This prehearing
3 conference has been scheduled to give the parties an
4 opportunity to further discuss, define and possibly resolve
5 the issues presented in this case.

6 In addition, I have a few matters that we need
7 to address now. The first one is I'd like to note that
8 Southwestern Bell filed its response to the Petition for
9 Arbitration on November 30th, 2001. Southwestern Bell
10 requests that the Commission dismiss MCI's Petition for
11 Arbitration.

12 In order to proceed in a timely fashion, I
13 would like the responses from Staff and MCI to this Motion
14 to Dismiss no later than Friday, December 7th, but I'm
15 asking the parties if that's reasonable. That gives you a
16 week from the time the motion was filed. If that's not
17 reasonable and you can give me what you feel is a good
18 reason for waiting 'til the following Monday, I'll consider
19 that.

20 MCI and Staff, will it be a problem to file by
21 four o'clock on Friday?

22 MR. HAAS: Your Honor, I had not yet seen
23 this, but I don't think that will be a problem.

24 JUDGE RUTH: And I realize that you are
25 involved in another proceeding. If you tell me it's not

ASSOCIATED COURT REPORTERS
JEFFERSON CITY - COLUMBIA - ROLLA
(888)636-7551

1 reasonable to file a response by Friday, I'll leave the date
2 at Monday.

3 MR. LUMLEY: Your Honor, I've not seen it
4 either and just a few minutes ago just had a very general
5 description of it. I guess I understand your needs and the
6 way I'd like to approach is I'm willing to work with Friday
7 for now, but if after reading it I think I need more time,
8 if I could let you know then.

9 JUDGE RUTH: What I'm going to do, then, is,
10 I'll leave the date for Monday and ask that you try to file
11 it sooner because I need it as soon as possible to address
12 it next week, preferably in Tuesday's agenda. The
13 Commissioners don't like it if I get the stuff on Monday and
14 give them a memo Tuesday, the day they have to decide. So
15 the date stays at Monday, but I'm asking you to try to file
16 your responses Friday.

17 MR. LUMLEY: Understood.

18 JUDGE RUTH: Okay. As a result of this
19 filing, I'm going to extend the deadline that I had
20 previously ordered for the proposed procedural schedule to
21 be filed. I had set that for Monday, and in light of the
22 motion I'm going to extend it to the 14th, which is Friday.
23 That will allow the Commission to rule on the motion before
24 the parties are required to file a procedural schedule.

25 However, I strongly suggest that you go ahead

ASSOCIATED COURT REPORTERS
JEFFERSON CITY - COLUMBIA - ROLLA
(888)636-7551

1 and pick some dates, all your dates, when you'll file your
2 exhibits and hearing dates, especially since the hearing
3 calendar's very full. Before I came down, the only full
4 week I saw as being available is January 14th through the
5 18th.

6 By full week I mean one that would allow the
7 Commission to have the decision out by the required
8 March 1st deadline. If the parties do not require a full
9 week, you may be able to find some other dates, but the
10 sooner you let me know what those dates are, the sooner I
11 can tentatively reserve them on the calendars.

12 In fact, if you come up this week with some
13 alternative dates, you may elect one representative to call
14 me, suggest those tentative dates and I will put it on the
15 calendar, but that's only if you can all agree on an
16 alternative deadline. I'm sorry. Was that not clear?

17 MR. LANE: I think so. Is the week of
18 January 14th-18th, is it now tentatively reserved?

19 JUDGE RUTH: I went ahead and blocked it off
20 on the calendar because it was the only full week, and it's
21 in yellow on the calendar, which means it will not show up
22 on the electronic calendar. It's only on the paper one or
23 the board upstairs, and I did that simply because it was the
24 only full week.

25 If that week doesn't work for the parties,

ASSOCIATED COURT REPORTERS
JEFFERSON CITY - COLUMBIA - ROLLA
(888)636-7551

1 you're free to suggest alternatives, but you need to
2 understand there aren't any full weeks, which would either
3 require a shorter hearing period or we will have to be
4 suggesting to the Commission that they double up.

5 And if that's what you end up doing, I would
6 strongly suggest that you give reasons to the Commissioners
7 why they need to hold two major hearings at once. I'm not
8 saying they wouldn't go along with that. You would just
9 want to provide some justification such as the impending
10 deadline under the federal rules.

11 And if you-all decide the 14th, January 14th
12 through the 18th is definitely not going to be the week you
13 suggest, I'd also appreciate you letting me know so I can
14 erase that on the board and allow it to open up for someone
15 else.

16 MR. LANE: I think we will need a full week,
17 assuming the motion isn't granted.

18 JUDGE RUTH: And I assume you're all aware of
19 where that calendar is located behind Dana Pridgen's desk
20 outside of Dale Roberts' office. You can talk to Mr. Haas
21 after the hearing about looking at some alternative dates.
22 There were a few other periods where you could get two or
23 three days that would be free and then the rest of the week
24 would be during some other hearing, which you can propose to
25 the Commission. However, they've been reluctant in the past

1 to have two hearings going on at once.

2 Second, I note that in the Petition for
3 Arbitration MCI suggests that the Commission allow a
4 two-phase proceeding where interim rates would be set in
5 Phase 1 followed up by the more permanent rates in Phase 2.

6 The Commissioners have determined that they
7 are not willing to have a two-phase hearing in this case,
8 and so when you're setting your procedural schedule it will
9 need to be the one week and all the issues will have to be
10 resolved then by the March 1st deadline.

11 And last, MCI, you will need to file a revised
12 pleading or supplemental pleading which more fully lays out
13 the suggested contract language that your party wants. That
14 will be the exact paragraph numbers that you want, include
15 prices, and then also where it differs from Southwestern
16 Bell, please clarify that. And if Southwestern Bell is
17 giving you a price that they want, please state that.

18 I do note that in the response Southwestern
19 Bell filed they have a very helpful matrix, and so they've
20 done some of your work for you. However, I need something
21 like that filed from MCI. I'm requesting the revision be
22 filed no later than December 20th. If you feel you need
23 additional time, you'll need to file a motion requesting
24 that.

25 Mr. Haas, did you have something?

ASSOCIATED COURT REPORTERS
JEFFERSON CITY - COLUMBIA - ROLLA
(888)636-7551

1 MR. HAAS: Yes, your Honor. What is the
2 Staff's role in this case? Will we be made a party?

3 JUDGE RUTH: The commission will be issuing
4 procedural rules similar to what were issued in Kevin
5 Thompson's case, which I think was 2001-455. Therefore,
6 Staff will need to -- you'll take a fairly active role in
7 that you'll either advocate for one position or the other
8 or, if you feel it's appropriate, suggest an alternative
9 position.

10 Thus, it won't be straight baseball
11 arbitration where the Commission is forced to decide between
12 the positions A or B. If Staff feels position C is the most
13 appropriate, Staff should suggest so. Does that somewhat
14 answer your question?

15 And then like I said, the Commission should be
16 issuing pretty soon an attachment that has guidelines. I
17 thought that might have gone out Friday, but if it didn't,
18 I'll check on its status.

19 MR. HAAS: Yes, that answered my question.

20 JUDGE RUTH: Do the parties have any
21 additional matters that need to be discussed at this time?
22 Mr. Lumley?

23 MR. LUMLEY: Your Honor, first of all, I think
24 it would be helpful if you went ahead and issued a
25 Protective Order as soon as possible just given the nature

1 of the issues. I'm certain one or more of us is going to
2 run across that in discovery.

3 JUDGE RUTH: I'll see that that's done as soon
4 as possible.

5 MR. LUMLEY: Secondly, just to alert you, I
6 know it's my client's intention to discuss with Southwestern
7 Bell representatives the possibility of jointly requesting
8 the Commission to allow more time beyond the March 1st date,
9 and I would hope that that proposal would be presented with
10 the schedule.

11 And my plan would be, if there's agreement
12 between the two of us to make such a request, that we would
13 propose two different schedules, one if you denied it, one
14 if you granted it, but just to give you a heads up.

15 JUDGE RUTH: You're suggesting that
16 Southwestern Bell might agree to this proposal?

17 MR. LUMLEY: No. I'm suggesting my people are
18 going to ask them to. I'm making no suggestions whatsoever
19 as to what their response would be.

20 JUDGE RUTH: You are free to file a procedural
21 schedule in an alternative also, yes.

22 MR. LUMLEY: And also, I'm sure we'll get into
23 more detail in this in the pleadings, but just for
24 background information purposes, the parties are trying a
25 very similar case in Texas which has already been set for

1 hearing on the week of January 28th, and many of the
2 witnesses, at least from my side, will be the same, and I'm
3 led to believe by my people that the same will be true for
4 Southwestern Bell. So we'll have some witness issues if the
5 hearings are too close together.

6 JUDGE RUTH: When was that petition initiated
7 or filed with Texas?

8 MR. LUMLEY: I'm not certain. I believe the
9 negotiation dates were all the same. So I think it just got
10 filed, I'm going to say a couple weeks, but I'm not certain.
11 That's my impression.

12 Would the appropriate time to address reducing
13 discovery response times be in the procedural schedule?

14 JUDGE RUTH: You can do it there. You can
15 also file a separate motion if you prefer, and I know
16 sometimes the parties all agree to that, and that makes it
17 more a matter of course. I don't know if you're suggesting
18 the parties will agree or not. Either way, you can file a
19 motion or put it in your procedural schedule.

20 MR. LUMLEY: We haven't discussed it, so I
21 don't know if we can agree or not.

22 And then finally, with regard to your
23 reference to the 455 procedures, since I may not have any
24 other opportunity I'll just express my concern now about the
25 ten-minute limitation on cross-examination. Maybe ask --

ASSOCIATED COURT REPORTERS
JEFFERSON CITY - COLUMBIA - ROLLA
(888)636-7551

1 JUDGE RUTH: Do you want to discuss that more
2 fully?

3 MR. LUMLEY: If there was a way the Commission
4 could allow us to address that in the procedural filing as
5 opposed to ruling on that in advance.

6 JUDGE RUTH: I anticipate that those rules
7 will be -- they've been approved by the Commissioners as
8 they are. If you want to suggest an alternative, the rules
9 could be changed, but I don't think I can change them right
10 now.

11 MR. LUMLEY: All right.

12 JUDGE RUTH: So if you have strong feelings on
13 that, I would suggest that you file some suggestions,
14 something in your pleading that gives reasons why that's not
15 appropriate.

16 MR. LUMLEY: Okay. Thank you.

17 JUDGE RUTH: Anything further from any of the
18 parties?

19 Okay. Seeing no other responses, that will
20 conclude the on-the-record portion of this prehearing
21 conference. You're free to discuss procedural schedule now
22 or at a later time at your convenience.

23 We are off the record.

24 WHEREUPON, the recorded portion of the
25 prehearing conference was concluded.

ASSOCIATED COURT REPORTERS
JEFFERSON CITY - COLUMBIA - ROLLA
(888)636-7551