

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

NORTHEAST MISSOURI RURAL TELEPHONE COMPANY  
AND MODERN TELECOMMUNICATIONS COMPANY vs.  
SOUTHWESTERN BELL TELEPHONE COMPANY, et al

Case No. TC-2002-57

ORIGINAL

Prehearing Conference - Volume 11

July 13, 2004

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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS  
Prehearing Conference  
July 13, 2004  
Jefferson City, Missouri  
Volume 11

Northeast Missouri Rural )  
Telephone Company and Modern )  
Telecommunications Company, )  
 )  
Petitioners, )  
 )  
v. ) Case No. TC-2002-57  
 )  
Southwestern Bell Telephone )  
Company, et al., )  
 )  
Respondent. )

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

REPORTED BY:  
KELLENE K. FEDDERSEN, CSR, RPR, CCR  
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APPEARANCES:

CRAIG JOHNSON, Attorney at Law  
BRYAN LADE, Attorney at Law  
Andereck, Evans, Milne, Peace & Johnson  
700 East Capitol  
P.O. Box 1438  
Jefferson City, MO 65102  
(573)634-3422

FOR: Alma Telephone Company.  
Mid-Missouri Telephone Company.  
MoKan Dial, Inc.  
Choctaw Telephone Company.  
Chariton Valley Telephone Corp.  
Northeast Missouri Rural Telephone.

LEO J. BUB, Senior Counsel  
SBC Missouri  
One SBC Center, Room 3518  
St. Louis, MO 63101  
(314)235-2508

FOR: Southwestern Bell Telephone, LP  
d/b/a SBC Missouri.

MARK JOHNSON, Attorney at Law  
Sonnenschein, Nath & Rosenthal  
4520 Main Street, Suite 1100  
Kansas City, MO 64111  
(816)460-2400

FOR: T-Mobile.  
Western Wireless.  
Aerial Communications.

LARRY W. DORITY, Attorney at Law  
Fischer & DORITY, P.C.  
101 Madison, Suite 400  
Jefferson City, MO 65101  
(573)636-6758

FOR: Cingular Southwestern Bell Wireless,  
LLC, d/b/a Cingular Wireless.

1 PAUL H. GARDNER, Attorney at Law  
2 Goller, Gardner & Feather  
3 131 East High Street  
4 Jefferson City, MO 65101  
5 (573)635-6181

6 and

7 BRET A. DUBLINSKE, Attorney at Law  
8 Dickinson, Mackaman, Tyler & Hagen, PC  
9 1600 Hub Tower  
10 699 Walnut Street  
11 Des Moines, IA 50309  
12 (515)244-2600

13 FOR: U.S. Cellular.

14 DAVID A. MEYER, Associate General Counsel  
15 P.O. Box 360  
16 200 Madison Street  
17 Jefferson City, MO 65102  
18 (573)751-3234

19 FOR: Staff of the Missouri Public  
20 Service Commission.  
21  
22  
23  
24  
25

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

2 JUDGE THOMPSON: Good morning. We are here  
3 in Case TC-2002-57, which is Northeast Missouri Rural  
4 Telephone Company and Modern Telecommunications Company,  
5 Petitioners vs. Southwestern Bell Telephone Company and  
6 others.

7 My name is Kevin Thompson. I'm the  
8 Regulatory Law Judge assigned to preside over this matter.  
9 And we will go ahead and take oral entries of appearance.  
10 Don't bother to give me your address. Just simply  
11 identify yourself and who you represent. And for those of  
12 you participating by telephone, in order to permit the  
13 reporter to understand who's talking, if you would say who  
14 you are before you say anything and she'll be able to  
15 distinguish between several different voices.

16 So why don't we start with Complainant?

17 MR. CRAIG JOHNSON: Thank you, your Honor.  
18 Craig Johnson and Bryan Lade, here for the Petitioners,  
19 Complainants.

20 JUDGE THOMPSON: Very well. Staff?

21 MR. MEYER: David Meyer on behalf of the  
22 Staff of the Public Service Commission.

23 JUDGE THOMPSON: And then we'll work  
24 through the respondents that are physically present,  
25 starting with Mr. Gardner, and then we'll go to the

1 telephone.

2 MR. GARDNER: Paul H. Gardner appearing on  
3 behalf of U.S. Cellular.

4 MR. DORITY: Good morning, Judge. Larry  
5 Dority with Fischer & Dority, P.C., appearing on behalf of  
6 Cingular Southwestern Bell Wireless, LLC, doing business  
7 as Cingular Wireless.

8 JUDGE THOMPSON: Thank you. Southwestern  
9 Bell?

10 MR. BUB: Thank you, your Honor. This is  
11 Leo Bub. Leo Bub appearing for SBC Missouri.

12 JUDGE THOMPSON: And Mr. Johnson?

13 MR. MARK JOHNSON: Thanks, Judge Thompson.  
14 This is Mark Johnson with Sonnenschein, Nath & Rosenthal,  
15 appearing on behalf of respondents Voicestream Wireless,  
16 Aerial Communications and Western Wireless.

17 JUDGE THOMPSON: And Mr. Dublinske?

18 MR. DUBLINSKE: Thank you, your Honor.  
19 Bret Dublinske, Dickinson, Mackaman, Tyler & Hagen, on  
20 behalf of respondent U.S. Cellular.

21 JUDGE THOMPSON: Very well. I think that's  
22 everyone who's here present.

23 The first thing I'd like to do today is  
24 just clarify who's still in the case and who's not still  
25 in the case. And I made a little chart to assist me in

1 understanding who's in the case and who's not in the case.  
2 The 57 case was brought by Northeast and Modern, and I  
3 believe Modern has since merged into Northeast, and was  
4 brought against Aerial Communications, Ameritech Mobile,  
5 Cingular, Southwestern Bell, Sprint Spectrum, U.S.  
6 Cellular, Verizon and CMT Partners, Voicestream Wireless,  
7 Western Wireless. Ameritech and Verizon and Sprint  
8 Spectrum have since been dismissed from that case, and the  
9 status of Cingular is not clear. The procedural schedule  
10 was stalled or whatever the word is, held in abeyance, but  
11 there's never been a motion to dismiss.

12                   So, Mr. Dority, what's the status of  
13 Cingular in this case?

14                   MR. DORITY: Your Honor, the settlement and  
15 release agreement has now been effectuated that was  
16 entered into between the Complainants and Cingular. The  
17 traffic termination agreements have been filed and  
18 approved, and it's my understanding that Complainants will  
19 be filing their motions for leave to dismiss probably this  
20 week against Cingular in all pending matters.

21                   JUDGE THOMPSON: Very well. Mr. Johnson,  
22 do you concur?

23                   MR. CRAIG JOHNSON: That's correct. As  
24 soon as we confirm that the good funds have been paid,  
25 then we will dismiss.

1 JUDGE THOMPSON: Okay. And that applies to  
2 all the pending cases?

3 MR. CRAIG JOHNSON: Against Cingular, yes,  
4 sir.

5 JUDGE THOMPSON: Very well. Now, the 113  
6 case was brought by Alma Telephone Company against Aerial,  
7 American Portable, Ameritech, Cingular, Illinois Cellular,  
8 Southwestern Bell Telephone, Sprint PCS, U.S. Cellular,  
9 Verizon, Voicestream and Western. Verizon, Sprint,  
10 Ameritech have been dismissed. We now hear that Cingular  
11 will be dismissed. No answer was ever filed by American  
12 Portable or by Illinois Cellular. And I think we said  
13 long, long ago that a default would be given to Alma with  
14 respect to those two respondents.

15 In the 114 case, this was brought by  
16 Mid-Missouri Telephone Company against Ameritech,  
17 Cingular, Southwestern Bell, Sprint PCS and Verizon.  
18 Ameritech, Sprint PCS and Verizon have been dismissed.  
19 Cingular is going to be dismissed.

20 Now, that leaves only Southwestern Bell in  
21 that case as I understand it. So since your theory  
22 against them is purely secondary liability, I think that  
23 Mid-Missouri is going to have to dismiss against  
24 Southwestern Bell. I mean, if the underlying primary  
25 obligees, obligors, debtors have satisfied their debt, I



1 don't see what remains for you to proceed against  
2 Southwestern Bell on, but you may disagree with me on that  
3 as a matter of law. Just consider that an observation, I  
4 suppose.

5                   The 167 case was brought by Chariton Valley  
6 against Aerial, Alltel Wireless, Ameritech, Cingular,  
7 Cybertel Missouri, Nextel of Texas, Northern Illinois  
8 Cellular, Southwestern Bell, Sprint PCS, United States  
9 Cellular, Verizon, Voicestream and Western. Now,  
10 Ameritech, Nextel, Sprint and Verizon have been dismissed.  
11 Cybertel will be dismissed. Not Cybertel. Cingular will  
12 be dismissed. Cybertel never answered. Neither did  
13 Northern Illinois Cellular.

14                   MR. DORITY: Your Honor, if I may, Alltel  
15 Wireless was dismissed as a party respondent at the very  
16 beginning of the proceeding in that case.

17                   JUDGE THOMPSON: Okay. Very good. Thank  
18 you for reminding me of that.

19                   MR. DUBLINSKE: Your Honor, this is Bret  
20 Dublinske. I believe -- and having come in this case  
21 late, I would be open to anyone correcting me on this --  
22 to the extent Northern Illinois Cellular did not answer, I  
23 believe that those properties have been merged into U.S.  
24 Cellular.

25                   JUDGE THOMPSON: Oh, okay. And so they're

1 still an active respondent, and so you're a successor  
2 respondent, is that the right language?

3 MR. DUBLINSKE: I believe that's -- subject  
4 to checking with my client, your Honor, I believe that to  
5 be the case, unless Mr. Johnson, Craig Johnson knows or  
6 can concur in that.

7 JUDGE THOMPSON: Okay. Well, yes, sir,  
8 Mr. Johnson?

9 MR. CRAIG JOHNSON: This is Craig Johnson.  
10 It is my understanding that U.S. Cellular did acquire  
11 Northern Illinois Cellular. Beyond that, they've never  
12 agreed to be responsible for Northern Illinois Cellular  
13 traffic. So I'm not exactly sure whether they're going to  
14 take that successor responsibility or whether they're just  
15 going to leave Northern Illinois Cellular in default.

16 JUDGE THOMPSON: Well, Mr. Dublinske, is it  
17 your position on behalf of United States Cellular, I guess  
18 now U.S. Cellular, that you are responsible for that  
19 traffic?

20 MR. DUBLINSKE: Your Honor, without digging  
21 in and working with the client on the dates, I will tell  
22 you that if the option is that Northern Illinois has  
23 defaulted, I will certainly take that position.

24 JUDGE THOMPSON: Okay. Well, it's either  
25 they've defaulted or you guys are responsible. Those

1 would appear to be the two positions that I can see from  
2 here. If you come up with a third, tell me about it in a  
3 pleading.

4 MR. DUBLINSKE: I sure will.

5 JUDGE THOMPSON: Thank you. Okay. What  
6 are we on? The 181 case. This one was brought by Choctaw  
7 against Alltel Wireless, AT&T Wireless, Cingular, Nextel,  
8 Southwestern Bell, Sprint PCS and U.S. Cellular. Nextel  
9 has been dismissed. AT&T was dismissed, Alltel dismissed,  
10 and Cingular is being dismissed, leaving Southwestern Bell  
11 and United States Cellular.

12 Notice there has been no dismissal of  
13 Sprint PCS in the 181 case. There were dismissals of  
14 Sprint in 57, 113, 114, 167 and, of course, 214 long ago  
15 by Kingdom, but no dismissal in 181 by Choctaw. So if  
16 that's an oversight, I urge you to please check with your  
17 clients, and if that's an oversight, get a dismissal  
18 filed.

19 Okay. In 182, that was brought by Mo-Kan  
20 Dial against Ameritech, Cingular, Nextel, Southwestern  
21 Bell, Sprint of Missouri, U.S. Cellular, Verizon and  
22 Voicestream. Verizon has been dismissed. Nextel was  
23 dismissed. Ameritech dismissed. Cingular is being  
24 dismissed. In this case there was no dismissal of Sprint  
25 Missouri, Inc. Again, if that's an oversight, please get

1 that filed.

2 And then finally the 214 case was brought  
3 by Kingdom Telephone Company, and they dismissed all the  
4 respondents and Kingdom left the case quite some time ago.  
5 Okay? You can see that it's worthwhile taking the time to  
6 go through this simply because there's some where we have  
7 questions that we're going to have to resolve. Imagine  
8 what fun writing this case is going to be.

9 Now, let's talk -- sir?

10 MR. CRAIG JOHNSON: I appreciate the judge  
11 bringing us up to speed. With respect to the question  
12 about the former PTC being left in the case after the  
13 wireless respondents have been dismissed, I agree with you  
14 that we would not continue to pursue them on a secondary  
15 liability theory.

16 The question I have is, when we tried this  
17 case the first time it was for traffic between 1998 and  
18 generally the end of 2001. If that's all the traffic  
19 that's going to be considered at issue in this case, we  
20 would have to refile for subsequent traffic, if -- then I  
21 would agree with you it would be appropriate to dismiss  
22 Southwestern Bell or Sprint Missouri, Inc., although I'm  
23 not sure that's appropriate at this stage.

24 JUDGE THOMPSON: I understand.

25 MR. CRAIG JOHNSON: But it would be

1 appropriate to dismiss them now. But there were some  
2 allegations in the original complaint about the traffic  
3 problem being ongoing and continuing in nature, and I  
4 guess I would actually leave it up to your preference or  
5 your direction, Judge Thompson, as to whether you would  
6 prefer to just consider this case to include the traffic  
7 that was submitted at the hearing in the summer of 2002.

8 JUDGE THOMPSON: Well, that's a very good  
9 question. We would hope the case is going to solve the  
10 issue of not only who's responsible for the traffic that  
11 was delivered but also prospectively, because the  
12 Commission doesn't want to take up this case or one like  
13 it again in the future if it can possibly avoid it.

14 Nonetheless, where a complainant has  
15 alleged purely a secondary liability theory and has  
16 solved, has resolved its complaints with the primary  
17 debtors, then I don't see how they can maintain their  
18 complaint against the secondary debtor. You know, the  
19 primary debtors have resolved the matter and they're only  
20 responsible, if at all, if the primary debtors don't pay.

21 So -- but you can address that in a  
22 pleading. Okay? I simply raise it here, you know, to  
23 make sure that everybody's aware that I see this as an  
24 issue, and when the final decision comes out, something's  
25 going to have to be done with it. Okay? And any guidance

1 you can give me would be helpful.

2 MR. BUB: Your Honor, this is Leo Bub.

3 JUDGE THOMPSON: Yes, Leo.

4 MR. BUB: One thing I'd point out as a  
5 practical matter, as part of the parties' settlement, for  
6 example, in the Mid-Missouri case with Cingular, I think  
7 Mr. Johnson explained that they have reached traffic  
8 termination agreements with the originating wireless  
9 carriers. I think as a practical matter, they've probably  
10 taken care of it on a go-forward basis with those  
11 agreements.

12 JUDGE THOMPSON: Okay. Very good.

13 Mr. Johnson?

14 MR. CRAIG JOHNSON: I agree with what  
15 Mr. Bub said, your Honor, with respect to the companies  
16 that we have a traffic termination agreement for, but with  
17 respect to the claims that I think everyone agrees are  
18 still here, some of those we have agreed factors but not  
19 an agreed resolution of the entire claim, and for some of  
20 these cases we don't have agreed factors.

21 JUDGE THOMPSON: Okay. Well, I simply --  
22 I'm speaking -- my remarks were limited purely to the  
23 claims brought by Mid-Missouri Telephone Company  
24 originally as Case TC-2002-114, and it appears to me that  
25 all of the wireless carriers have been -- have resolved

1 their differences with Mid-Missouri and then the secondary  
2 debtor, Southwestern Bell, and again that's the only  
3 theory I'm aware of with respect to Southwestern Bell and  
4 Mid-Missouri.

5 So I think we've been down that road enough  
6 this morning. Okay. Let's talk now about factors.  
7 Alltel's out of the case, right?

8 MR. DORITY: Correct.

9 JUDGE THOMPSON: Okay. And AT&T is out of  
10 the case, and now Cingular is out of the case, and I'm  
11 told that Sprint P -- Sprint PCS may still be in the case  
12 with Choctaw as we just reviewed. That's the 181.

13 MR. CRAIG JOHNSON: The reason I'm  
14 frowning, your Honor, is I don't remember any traffic  
15 reports of Sprint PSC traffic going to Choctaw. So I need  
16 to go back and check my file. Apparently we did sue them,  
17 but I don't remember any traffic ever being exchanged  
18 between the two or terminated to Choctaw. So I'm going to  
19 have to go back and check that.

20 JUDGE THOMPSON: If you would, yes. But  
21 there were factors for Sprint with respect to Alma and  
22 Mid-Mo, but Sprint's been dismissed out of those cases.  
23 So in Choctaw where perhaps Sprint is still a player,  
24 there never was a factor. So there's a point where a  
25 factor is needed.

1                   Now, U.S. Cellular, there was a  
2 Nonunanimous Stipulation filed May 4th, 2004 with factors  
3 for traffic between Northeast and Modern and U.S. Cellular  
4 and Chariton Valley and U.S. Cellular. Southwestern Bell  
5 filed an objection on May 12th, which is one day late. If  
6 you check our rule, our rule leaves seven days, not ten  
7 days as I've heard parties say on several occasions, but  
8 only seven days for filing that objection.

9                   So the Nonunanimous Stipulation with  
10 respect to the traffic factors for U.S. Cellular with  
11 Northeast and U.S. Cellular and Chariton Valley at this  
12 point will be held to be established by stipulation.

13                   MR. BUB: Your Honor, may I interrupt you  
14 for a second?

15                   JUDGE THOMPSON: I thought you would have  
16 something to say.

17                   MR. BUB: Under the Commission's rules, the  
18 administrative law judge is given the leeway to amend  
19 dates, and at the date where we had the hearing where we  
20 discussed the procedure for filing the stipulation and the  
21 objections, we were given ten days, and that's on the  
22 record.

23                   It may help, I think in my objection I may  
24 have cited some things. If you give me a minute, I can  
25 maybe pull out some cites for you.



1 JUDGE THOMPSON: You do that. I'm going to  
2 take a look at the record which Mr. Johnson thoughtfully  
3 attached to one of his pleadings that I have here.

4 Be sure to identify yourself, you guys, on  
5 the phone there so the reporter knows who you are.

6 MR. BUB: I will, your Honor. This is Leo.  
7 I'm sorry.

8 Your Honor, this is Leo Bub. I stand  
9 corrected. It wasn't in our objection itself. It was in  
10 our reply to motion to show cause, we put some cites, some  
11 quotes in. We filed that.

12 JUDGE THOMPSON: Well, I'm looking at the  
13 transcript. You point me to the page and the line where I  
14 told you you had ten days.

15 MR. BUB: Look around page 1342 to 1343.

16 JUDGE THOMPSON: Well, I see, for example,  
17 Mr. Johnson speaking. This is starting at line 10 on page  
18 1342. He says, okay, we will do that, talking about  
19 reducing the proposed factors to writing and filing them  
20 as a pleading. Okay, we will do that, and then the plan  
21 is when we file it, Bell will have their ten days to  
22 object to it, and if in the meantime we can come up with a  
23 stipulation or language to a unanimous stipulation that  
24 satisfies everybody, we will do that. Judge Thompson:  
25 Great.

1 I don't think that saying great in response  
2 to what Mr. Johnson said is a ruling waiving that rule.  
3 Okay?

4 MR. BUB: Okay. How about later we say,  
5 Mr. Johnson says, but in order to get the 10 days, I think  
6 the intent is to file a piece of paper that has the agreed  
7 factors. Then the rest of us will be working on something  
8 to see if we can resolve any possible basis for  
9 Southwestern Bell's objection. If that doesn't happen,  
10 they'll have to file their objection 10 days after the  
11 stipulation is filed. Okay. Okay. That sounds good. So  
12 that takes -- am I correct there's nothing left for  
13 hearing today? That's correct.

14 From that, I left the hearing room, your  
15 Honor, very honestly thinking that we had ten days.

16 JUDGE THOMPSON: Well, I'll tell you what.  
17 Why don't you file a motion, because Rule 115 speaks about  
18 where you don't object in time, it talks about making a  
19 showing of good cause. Okay.

20 Actually, I'm referring to Rule 050(3)(b).  
21 This is talking about when an act is required or allowed  
22 to be done by order or rule of the Commission at or within  
23 a specified time, the Commission at its discretion may,  
24 after the expiration of specified period, permit the act  
25 to be done where the failure to act was the result of

1 excusable neglect. Okay. And I'm not --

2 MR. BUB: I guess, your Honor, it was the  
3 subsection before that that you have the discretion to  
4 enlarge the period. So I thought that discussion had in  
5 effect been enlarging that period. If you want me to file  
6 a motion under B, I will do that.

7 JUDGE THOMPSON: I want you to file a  
8 motion because I wasn't aware I was extending it, and  
9 consequently I think that you need to lay before the  
10 Commission the fact that what was said confused you, led  
11 you to believe an extension had been granted, and  
12 consequently that being one day late is excusable in view  
13 of that. Okay? And then we'll put it to the  
14 Commissioners.

15 MR. BUB: I will do that, your Honor.

16 JUDGE THOMPSON: Okay. Mr. Johnson?

17 MR. BUB: Sorry for the confusion.

18 JUDGE THOMPSON: That's quite all right. I  
19 feel like I should apologize, too.

20 Mr. Johnson?

21 MR. CRAIG JOHNSON: I feel like I should  
22 apologize, too, and I'm afraid I'm being accused of sharp  
23 practice here. As I recall what happened was we announced  
24 the factors and then we went into sort of a caucus for a  
25 half an hour or so.

1 JUDGE THOMPSON: Right.

2 MR. CRAIG JOHNSON: It's my recollection,  
3 just mine, that during that caucus we talked about ten  
4 days, and from my personal standpoint, I did not remember  
5 that the rule only allowed seven, but when we did come  
6 back on the record, I did mention the ten days because  
7 that's what we discussed while we were off the record.

8 JUDGE THOMPSON: Well, tell you what, why  
9 don't we pursue this way: Since complainants are the ones  
10 who benefit from the factors being established, so let me  
11 ask you, then, on behalf of your clients, do you object to  
12 Mr. Bub submitting that a day out of time pursuant to the  
13 rule? If you have no objection, then we'll deem it to  
14 have been timely.

15 MR. CRAIG JOHNSON: Setting aside what I  
16 said on the transcript and my mistake about the ten days,  
17 the basis for my refusal to accept their objection is that  
18 they don't have, according to their data responses, any  
19 evidence to suggest the negotiated factor was wrong.

20 JUDGE THOMPSON: But I don't know that the  
21 rule requires them to have any evidence. It only requires  
22 them to make a timely objection and then the matter is set  
23 aside for hearing. So again, if on behalf of your client  
24 you have no objection, then we will deem Southwestern  
25 Bell's objection to be timely.

1 MR. CRAIG JOHNSON: I have no objection to  
2 the timeliness of their request.

3 JUDGE THOMPSON: Of their objection?

4 MR. CRAIG JOHNSON: Yes.

5 JUDGE THOMPSON: Okay. Very well, Leo.

6 Forget everything that we said. We will deem that  
7 objection to be timely, and so those factors will remain  
8 to be established. So that's --

9 MR. BUB: Thank you, your Honor. Thank  
10 you, Craig. This is Leo.

11 JUDGE THOMPSON: And, you know, I  
12 appreciate that no one is engaging in sharp practice here.  
13 It's been a long time getting this case to this point, and  
14 I know everybody wants it to be done, the lawyers, the  
15 clients and, yes, also me. And we will get there.

16 So this leaves these factors to be  
17 established by hearing as far as I understand: The  
18 factors for traffic involving U.S. Cellular, the factors  
19 for traffic involving Voicestream, for Western and for  
20 Aerial. Is that correct? And I know Aerial belongs to  
21 either Western or Voicestream; is that correct.

22 MR. MARK JOHNSON: Well, it belongs to  
23 Voicestream. I'm sorry. This is Mark Johnson.

24 JUDGE THOMPSON: Yes, sir.

25 MR. MARK JOHNSON: I realized a moment ago

1 that I misspoke when I mentioned Voicestream. It changed  
2 its name to T Mobile USA.

3 JUDGE THOMPSON: Right. I'm aware of that.

4 MR. MARK JOHNSON: Okay. Thank you. Yes,  
5 Aerial belongs to T Mobile.

6 JUDGE THOMPSON: So we're really talking --  
7 with respect to your clients, we're only talking about two  
8 factors, a factor for T Mobile and a factor for Western;  
9 is that right?

10 MR. MARK JOHNSON: Right.

11 JUDGE THOMPSON: But with respect to each  
12 of the several complainants who have brought claims  
13 against those carriers?

14 MR. MARK JOHNSON: Right.

15 JUDGE THOMPSON: Okay. And we've been  
16 through the list of who they were. Okay.

17 MR. DUBLINSKE: Your Honor, this is Bret  
18 Dublinske. If I could just ask a clarification. I  
19 apologize.

20 JUDGE THOMPSON: That's okay. We're  
21 clarifying matters this morning. That's what we're doing.

22 MR. DUBLINSKE: I appreciate it, and I may  
23 be the only one that's not clear on this, but in light of  
24 what Mr. Craig Johnson was talking about a minute ago, I  
25 suspect I may not be, and that is when you say these

1 factors now in light of the non-- or the objection to the  
2 stipulation need to be set at hearing, I guess my question  
3 on the threshold matter is, is the hearing a hearing on  
4 the legitimacy of the objections?

5 JUDGE THOMPSON: No. No.

6 MR. DUBLINSKE: We go straight to a hearing  
7 to set the factors? Essentially the objections have now  
8 served their purpose?

9 JUDGE THOMPSON: Exactly. Yeah. The  
10 hearing then is for the complainant to establish those  
11 factors as part of its prima facie case.

12 MR. MARK JOHNSON: And Judge Thompson,  
13 that's regardless of any agreement that the wireless  
14 carriers and the -- and Mr. Craig Johnson's clients might  
15 have reached? It's because of SBC's objection?

16 JUDGE THOMPSON: That's exactly right.

17 MR. MARK JOHNSON: Okay. I just want to  
18 make -- okay. I'm fine. Thank you.

19 JUDGE THOMPSON: So let's move to the third  
20 phase, which is where we pull out the calendar. There's  
21 only one day in July, and that is Tuesday, the 27th, which  
22 is probably too soon for you guys, and it's an agenda day,  
23 so the Commissioners would be really, really upset with me  
24 if I set it then anyway.

25 In August, we have the 2nd, the 3rd, the

1 5th, the 6th, the 9th, the 10th, the 12th, 13th, the 16th,  
2 the 18th, the 19th, the 20th. We're only looking at one  
3 day, right? Is that correct?

4 MR. CRAIG JOHNSON: I would -- this is  
5 Craig Johnson. I think we could do it in one day, but I  
6 do believe there will be six witnesses.

7 JUDGE THOMPSON: Okay. Well, then let's  
8 schedule two just in case. The Commissioners don't like  
9 to have hearings while agenda's going on, but since agenda  
10 consumes most of two days a week, we wouldn't be able to  
11 really have any hearings otherwise. So if we could start  
12 on the non-agenda day and perhaps use an agenda day for a  
13 catchup day, for the second day, I think that would  
14 probably be the best we could do. How's early to middle  
15 August look?

16 MR. DUBLINSKE: Your Honor, the 9th to the  
17 13th does not look good. The following week, the middle  
18 week of August I think will work for me.

19 MR. MARK JOHNSON: And Judge Thompson, this  
20 is Mark Johnson. That week is fine with me as well.

21 JUDGE THOMPSON: Okay. We're definitely  
22 moving in the right direction here.

23 MR. BUB: Judge Thompson, this is Leo Bub.

24 JUDGE THOMPSON: Yes, sir.

25 MR. BUB: Are we talking about a hearing



1 that will be live or one with prefiled testimony?

2 JUDGE THOMPSON: Well, the testimony's  
3 already been filed. This is actually the hearing that we  
4 were going to hold in April and then we didn't hold it  
5 because it looked like the factors had been agreed, but  
6 the possible agreement had exploded and so now we're going  
7 to have to go back and do that hearing.

8 MR. BUB: The only thing I'd point out is  
9 that my understanding is that the factors that are in the  
10 testimony are different than the ones that are in the  
11 stipulation.

12 MR. CRAIG JOHNSON: Stipulations are gone.

13 JUDGE THOMPSON: Yeah, the stipulations are  
14 basically gone. They're simply -- what's the wording of  
15 the rule? They're simply the position of that party.

16 MR. BUB: Okay. So everybody's back to the  
17 positions? Okay.

18 JUDGE THOMPSON: Right.

19 MR. DUBLINSKE: Just to clarify, your  
20 Honor, this is Bret Dublinske, and I have already notified  
21 Craig. I assumed that that is, in fact, the case, and  
22 obviously stipulations were in part for the purpose of  
23 avoiding the hearing and if we're back to the hearing,  
24 we're all free to take our pre-stipulation positions.

25 JUDGE THOMPSON: Absolutely. Absolutely.

1 Yeah. We all understand that to reach agreement you're  
2 willing to go to figures that don't represent figures you  
3 might defend in litigation. Right?

4 So Complainants, is that week good for you,  
5 week of the 16th of August?

6 MR. CRAIG JOHNSON: I have problems on the  
7 18th and 19th, but other than that, that week is fine,  
8 your Honor.

9 JUDGE THOMPSON: And how about Southwestern  
10 Bell?

11 MR. BUB: Your Honor, I believe that will  
12 be okay. I need to check with my witness, and I can do  
13 that while we're on the call if you'd give me a minute.

14 JUDGE THOMPSON: Yeah, why don't you go  
15 ahead and do that? At this point I'm leaning towards the  
16 16th and 17th. That gives us a non-agenda first day, an  
17 agenda day for the finish day.

18 MR. BUB: I'm going to put you on hold and  
19 I'll check this right now.

20 JUDGE THOMPSON: Absolutely. Who else do  
21 we need to hear from? Is that everybody?

22 MR. DUBLINSKE: Your Honor, this is Bret  
23 Dublinske. I'm checking with my witness right now as  
24 well.

25 JUDGE THOMPSON: Okay. Mr. Johnson, he

1 said that that week was good for him. All right.

2 MR. BUB: Your Honor, this is Leo Bub. As  
3 luck would have it, that's the only week that Allen Kern,  
4 our witness, is not going to be in town. He's scheduled  
5 to be in Colorado that week. The week before is okay and  
6 any time after that's okay. It looks like on the  
7 Commission's calendar the week of the 23rd there's a  
8 hearing.

9 JUDGE THOMPSON: The 23rd is not going to  
10 work for the Commission. The room is involved.

11 MR. BUB: What about that following week,  
12 Wednesday, Thursday or Friday?

13 MR. DUBLINSKE: Talking about the 1st, 2nd  
14 and 3rd?

15 MR. BUB: Yes.

16 JUDGE THOMPSON: Of September?

17 MR. BUB: Yes.

18 JUDGE THOMPSON: No. I show hearings.

19 MR. BUB: Oh, Ameren.

20 JUDGE THOMPSON: Yeah. There's an Ameren  
21 hearing on the Thursday and an MGE hearing on the 1st.  
22 Well, what about the week of -- I hate to push this back  
23 further, but we may have to to find calendars that are  
24 open. What about September 8th and 9th?

25 MR. BUB: We're okay with that.

1 JUDGE THOMPSON: Okay.

2 MR. MARK JOHNSON: This is Mark Johnson.  
3 That's fine.

4 MR. DUBLINSKE: Bret Dublinske. That's  
5 fine. I'll need to check with my witness, but it's fine  
6 on my calendar.

7 JUDGE THOMPSON: We can always subpoena the  
8 witness, you know.

9 Complainants?

10 MR. CRAIG JOHNSON: That's fine, your  
11 Honor.

12 JUDGE THOMPSON: Okay. I think that's  
13 everybody that needs to be there, right?

14 Okay. Well, I will go ahead and issue a  
15 notice then setting this hearing for September 8th and  
16 9th. Now, after that, the parties will be permitted, of  
17 course, briefing, and I think the question is whether you  
18 want to rebrief the first part of the case or whether you  
19 just want to limit your briefing to this issue of the  
20 factors, and what do I hear from the parties on that?  
21 Mr. Johnson?

22 MR. CRAIG JOHNSON: I'm going back a  
23 hearing, but at that time the Commission's rules required  
24 us to submit proposed findings and conclusions.

25 JUDGE THOMPSON: Right.

1 MR. CRAIG JOHNSON: Since I have submitted  
2 some Proposed Findings of Fact and Conclusions of Law but  
3 now we've resolved a lot of the claims that need to be  
4 addressed, at the very least I would like to be able to  
5 submit a modified set of findings and conclusions.

6 JUDGE THOMPSON: I'm very much in favor of  
7 that because, of course, proposed findings and conclusions  
8 are to help the Commission, which means me, and I need all  
9 the help I can get. So I'm inclined to grant that, unless  
10 someone has a very strenuous objection. Sir, Mr. Gardner?

11 MR. GARDNER: I don't have an objection,  
12 but I think we'd like the option to rebrief because  
13 there's been some decisions that have come down in the  
14 last two years that I think the Commission needs to be  
15 made aware of. Probably in a brief as opposed to proposed  
16 findings would be the best vehicle. I mean, I support  
17 proposed findings, but --

18 JUDGE THOMPSON: But you want to rebrief as  
19 well. I agree with that, too. I think the Briefs have  
20 already been filed, time has marched on, and we want to  
21 get this resolved correctly. So do I hear any objections  
22 to rebriefing?

23 MR. BUB: Your Honor, this is Leo Bub. I  
24 think that's the way to go as well. By briefing the whole  
25 thing and putting it in a neat package for the

1 Commissioners would probably be most beneficial to the new  
2 Commissioners as well.

3 JUDGE THOMPSON: Absolutely. I agree. So  
4 when we get to the briefing schedule after the hearing in  
5 September, then, it will be understood that you will --  
6 the briefing will be over the entire case. Now, that's  
7 not to say -- you're not required to rebrief if you don't  
8 want to. If you're content with what you filed the first  
9 time, you can stand on that, but just tell everyone that.  
10 File something to inform us, so inform us. Okay.

11 MR. BUB: Your Honor, this is Leo Bub. I  
12 have one question.

13 JUDGE THOMPSON: Yes, sir?

14 MR. BUB: Do you also want Proposed  
15 Findings of Fact and Conclusions of Law with the Brief?

16 JUDGE THOMPSON: Yes, that would be great.  
17 You can do them with the reply brief. We'll set the  
18 schedule at the end of the hearing.

19 MR. MARK JOHNSON: Judge Thompson, this is  
20 Mark Johnson.

21 JUDGE THOMPSON: Yes, sir.

22 MR. MARK JOHNSON: What time would you  
23 propose to start the hearing on the 8th?

24 JUDGE THOMPSON: Well, we have a lot of  
25 people coming from out of town. Perhaps ten o'clock would

1 be a better choice than the more traditional nine o'clock.

2 MR. MARK JOHNSON: That's certainly fine  
3 with me.

4 JUDGE THOMPSON: Okay.

5 MR. BUB: That would be helpful, your  
6 Honor.

7 JUDGE THOMPSON: Very well. We'll start at  
8 ten o'clock.

9 Anything else?

10 MR. CRAIG JOHNSON: Do you want to  
11 establish a date today for the briefing or wait to do that  
12 at the hearing?

13 JUDGE THOMPSON: I would prefer to wait  
14 because you'll have a better idea of what your calendars  
15 are like then, you know. Something else may rear its ugly  
16 head.

17 Okay. Hearing nothing else, we'll go ahead  
18 and adjourn. I want to thank everyone for a very  
19 productive prehearing conference, and I will see you in  
20 September. We are adjourned.

21 WHEREUPON, the recorded portion of the  
22 prehearing conference was concluded.

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