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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Order Creating Case and
Establishing Initial Filing Deadlines

November 18, 2003
Jefferson City, Missouri
Volume 1

In the Matter of a Commission)
Inquiry into the Possibility of)
Impairment without Unbundled) Case No.
Local Circuit Switching When) TO-2004-0207
Serving the Mass Market)

LEWIS MILLS, Presiding,
Deputy Chief Regulatory Law Judge

REPORTED BY:
Jennifer L. Leibach
ASSOCIATED COURT REPORTERS

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 Communications, McLeodUSA Telecom
22 Services Inc., Ameritel Missouri,
 Inc., and Allegiance Telecom of
 Missouri, Inc.

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1 PROCEEDINGS

2 JUDGE MILLS: We're on the record this
3 morning for a prehearing conference in Case No.
4 TO-2004-0207, which is styled in the matter of a
5 Commission inquiry into the possibility of impairment
6 without unbundled local circuit switching when
7 serving the mass market. We'll begin by taking
8 entries of appearance starting on my left.

9 MR. LUMLEY: Good morning, Carl Lumley
10 of the Curtis Oetting Law Firm, 130 South Bemiston,
11 Suite 200, Clayton, Missouri, 63105. I'll just give
12 the short versions of the names, the full names of my
13 clients are in the record -- or in the files already.

14 Appearing on behalf of MCI Metro,
15 Brooks, Intermedia, MCI Worldcom, Covad, NuVox, XO,
16 Big River, and Socket, and I would note, I'm sure
17 you're aware, we have two petitions for entry of
18 out-of-state counsel pending; one for Steve Morris
19 for the MCI companies, one for William J. Cobb for
20 Covad, and also note for the record that Carol Keith
21 has entered her appearance on behalf of NuVox.

22 MR. WILLIAMS: Nathan Williams, PO Box
23 360, Jefferson City, Missouri, 65102, appearing on
24 behalf of the Staff of the Commission.

25 MR. LANE: Paul Lane, representing

1 Southwestern Bell Telephone, L.P., doing business as
2 SBC Missouri. My address is One SBC Center, Room
3 3520, St. Louis, Missouri, 63101.

4 MS. HENDRICKS: Lisa Creighton
5 Hendricks appearing on behalf of Sprint
6 Communications Company, L.P. and Sprint Missouri,
7 Inc. My address is 6450 Sprint Parkway, Overland
8 Park, Kansas, 66251.

9 MR. DORITY: Larry DORITY with the firm
10 Fischer & DORITY, P.C. representing CenturyTel of
11 Missouri, LLC, and Spectra Communications Group, LLC,
12 doing business as CenturyTel. Our address is 101
13 Madison, Suite, 400, Jefferson City, Missouri, 65101.

14 MR. DANDINO: Michael Dandino, Office
15 of the Public Counsel, Post Office Box 2230,
16 Jefferson City, Missouri, 65102, representing Office
17 of the Public Counsel and the public.

18 MR. STEWART: Good morning. Charles
19 Brent Stewart of the law firm Stewart & Keevil, LLC,
20 4603 John Garry Drive, G-A-R-R-Y, Suite 11, Columbia,
21 Missouri, 65203, entering an appearance of Sage
22 Telecom, Inc., and tomorrow, Fed Ex willing, I'll
23 also be entering a request for visiting attorney for
24 Catheryn Mudge, and her information will be in that
25 meeting.

1 MR. ROSS: Good morning. Jason Ross
2 with the law firm of Greensfelder, Hemker & Gale,
3 P.C., 10 South Broadway, 2000 Equitable Building, St.
4 Louis, Missouri, 63102, appearing on behalf of the
5 Fidelity CLECs, which are Fidelity Communication
6 Services I, II, and III, Inc., and Fidelity
7 Cablevision, Inc.

8 MR. COMLEY: Good morning, let the
9 record reflect the entry of appearance of Mark W.
10 Comley, Newman, Comley & Ruth, 601 Monroe Street,
11 Jefferson City, Missouri. On behalf of AT&T
12 Communications of the Southwest, Inc., TCG St. Louis,
13 Inc., TCG Kansas City, Inc., Birch Telecom of
14 Missouri, Inc., and Z-Tel Communications, Inc., and
15 the record will also reflect that Petitions to appear
16 before the Commission have been filed by two
17 attorneys, Mr. Bill Magness, who I'd like to
18 introduce to the Court this morning.

19 Mr. Magness is with Casey & Gentz, 919
20 Congress Avenue, Austin, Texas, and his entry of
21 appearance would reflect the one I have just recited
22 for the court.

23 Also, Patrick R. Cowlshaw, Jackson
24 Walker, LLP, 901 Main Street, Suite 6000, Dallas,
25 Texas. He will be entering his appearance on behalf

1 of AT&T Communications of the Southwest, Inc., TCG
2 St. Louis, Inc. and TCG, Kansas City, Inc. Thank
3 you.

4 JUDGE MILLS: Thank you.

5 MS. YOUNG: Mary Ann Young with the law
6 firm of William D. Steinmeier, P.C. appearing this
7 morning on behalf of Xspedius Management Company
8 Switched Services doing business as Xspedius
9 Communications and Xspedius Management Company of
10 Kansas City, LLC, doing business as Xspedius
11 Communications, McLeodUSA Telecom Services, Inc.,
12 Ameritel Missouri, Inc., and Allegiance Telecom of
13 Missouri, Inc. In addition, David Woodsmall is
14 co-counsel representing only Xspedius. Thank you.

15 JUDGE MILLS: Thank you. Anyone else?
16 Okay. We'll go ahead for the purposes of the record,
17 address the Petitions for Leave to Appear, and we'll
18 grant those petitions on behalf of Steven Morris,
19 William Cobb, Patrick Cowlshaw, and Bill Magness.

20 Other relatively easy procedural
21 matters we'll run through quickly. We received --
22 the Commission has received for filing letters on
23 behalf of Intelligent Services, Inc., now Acquisition
24 Corporation, US TelePacific Corp. d/b/a TelePacific
25 Communications and AllTel Communications, Inc., all

1 requesting that they be allowed to withdraw from this
2 case, and all of those requests will be granted and
3 those parties will be allowed to withdraw from the
4 case.

5 Two other pending procedural matters,
6 we have Sprint's Motion to Challenge Highly
7 Confidential Designations. We also have a Motion
8 from Sprint to Change the Scope of the Procedural --
9 I mean, of the Protective Order in this case.
10 I'm not going to take that up today. I'll allow any
11 party that wants to respond to that to respond by the
12 end of the day tomorrow, and then I will have an
13 Order before the Commission's agenda on Thursday for
14 possible Commission action on that motion, so any
15 party that wants to respond to Sprint's Motion to
16 Change the Protective Order in this case may do so by
17 the end of the day tomorrow.

18 In terms of the Motion to Challenge the
19 Highly Confidential Designations, it's the -- the
20 portion of the motion that I think we can address
21 easily today is that portion that alleges that the
22 information sought to be protected is already
23 publicly available, and I'd like a response from SBC
24 and CenturyTel, and Mr. Lane, since you're in the
25 front row, I'll ask you first.

1 MR. LANE: I always sit in the wrong
2 spot. Judge, we designated the information as highly
3 confidential not because it was our information, but
4 because it was -- that belonged to CLEX, and if they
5 don't have a problem with it, we certainly don't have
6 a problem with it at all.

7 JUDGE MILLS: Do you have any
8 information as to whether or not it is a publicly
9 available?

10 MR. LANE: I just got the motion real
11 late last night, and I didn't have time to check, it
12 may well be.

13 JUDGE MILLS: Okay. CenturyTel.

14 MR. DORITY: Your Honor, I would concur
15 on Mr. Lane's remarks. It was really the information
16 of the underlying CLEX that we were trying to
17 protect, and if they have no issue with it being
18 released, then nor would CenturyTel, and regarding
19 the availability of the information elsewhere, I
20 checked with our client, and I was told this morning
21 that, I guess, if you know where to look and you know
22 how to look, you might be able to find that
23 information available, but other than that, I really
24 have no other response for you.

25 JUDGE MILLS: Okay. Is anybody

1 representing any of the CLEXs wish to address this?

2 MR. COWLISHAW: Your Honor, Pat

3 Cowlishaw with AT&T. To the extent that the

4 designation -- the exhibit that was attached to the

5 filing with respect to transport and to loops can be

6 read as identifying AT&T with particular transport

7 routes or particular locations, that would only be by

8 inference in the way the thing was written, but we do

9 regard that as very confidential proprietary

10 information, the particular routes that are network

11 service.

12 JUDGE MILLS: Okay. Well, I will tell

13 you what then, I will -- since it doesn't seem to be

14 quite as clear cut as I had hoped, I will direct all

15 the parties to respond to that Sprint motion by the

16 end of the day tomorrow as well, and I will try to

17 have Commission resolution on Thursday.

18 The other pending procedural matter

19 that I want to take up today is a Motion for

20 Extension of Time to respond to SBC's filing made by

21 Allegiance, Telecom of Missouri, Inc.

22 Allegiance alleges that it only

23 received SBC's filing yesterday, November 17th, and

24 requests that it have through November 26 to file its

25 response. I think things are moving a little more

1 quickly than that, but I'm going to allow until
2 November 21st, which is Friday, for Allegiance to
3 respond.

4 I think having ducked the two Sprint
5 questions on the Protective Order and Challenges of
6 Confidential Material for today, I think we've
7 covered all of the pending procedural matters. Does
8 anyone else have anything else that they'd like to
9 bring up at this time?

10 MS. HENDRICKS: I have one point, just
11 some clarification about the list in this case, are
12 we to serve all parties or entities made parties or
13 is it just to serve those who have entered their
14 appearance?

15 JUDGE MILLS: I think you need to serve
16 all entities that have been made parties, other than
17 the few that have requested and granted leave to
18 withdraw.

19 MS. HENDRICKS: Thank you.

20 JUDGE MILLS: Yes, Mr. Lumley.

21 MS. LUMLEY: Is it possible to include
22 in the procedural schedule a question that the
23 Commission move to the procedure that we've moved in
24 a couple other cases where the filing letter is sent
25 to the list as a whole and then those parties that

1 want the information can ask for it? It's a major --

2 JUDGE MILLS: Yeah, I understand. I
3 think, you know, with everything being available at
4 the Commission electronically through EFAS, I'm sure
5 that we can come up with a procedure that will save
6 you all a lot of mailing costs. You're going to be
7 talking about a lot of stuff today, I hope, in trying
8 to resolve some things. If you all can come up with
9 a proposal that seems to be workable on how we can
10 make sure that everyone gets access to all the
11 documents and saves you all mailing costs and mailing
12 hassle, I'd be more than available to address that,
13 so if you all can discuss something and come up with
14 a proposal, get it to me, and I'll see what I can do.

15 MR. LANE: Also, I wanted to bring --
16 there was another letter from Basic Phone filed
17 yesterday.

18 JUDGE MILLS: Basic Phone didn't ask to
19 withdraw. I assume that that's perhaps why they
20 filed this letter, but there wasn't any request
21 attached, so I read the letter, found myself somewhat
22 perplexed, and I could make some inferences, but I'm
23 not going to. They didn't ask for any relief and I'm
24 not going to give them any.

25 Anything else?

1 MR. WILLIAMS: Judge, I just bring up
2 while I was out yesterday, Hugh Brown with Shook
3 Hardy was trying to reach me regarding this
4 prehearing. He's apparently working for Everett
5 Connections, I don't know if he learned the time and
6 the location for this prehearing conference or not.

7 JUDGE MILLS: Okay.

8 MR. WILLIAMS: Just for your
9 information.

10 JUDGE MILLS: Okay. Anything further?
11 Okay. If it gets to be too loud in here with the
12 construction work going on next door, I believe that
13 Room 470, just one floor up, may be available.
14 Somebody from the Staff can check with Annette
15 Keener, I talked with her earlier today, and at least
16 half an hour ago it was available.

17 It's currently set up for some
18 proceeding tomorrow. It's set up with a big oval
19 table that seats 27, may actually even be a better
20 arrangement for you all to continue today, so if you
21 want to take advantage of that, talk to Annette, see
22 if that's still available, see if you want to do
23 that. Otherwise, you can stay out here and tough it
24 out.

25 If there's nothing further, we'll go

1 off-the-record.

2 WHEREUPON, the recorded portion of the
3 prehearing conference was concluded.

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