

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

A P P E A R A N C E S

PAUL G. LANE, General Counsel-Missouri
ANTHONY K. CONROY, Senior Counsel
One Bell Center, Room 3510
St. Louis, Missouri 63101
314-235-4094
FOR: Southwestern Bell Telephone Company
d/b/a SBC Missouri

CARL J. LUMLEY, Attorney at Law
Curtis, Oetting, Heinz, Garrett & Soule
130 S. Bemiston, Suite 200
Clayton, Missouri 63105
314-725-8788
FOR: NuVox Communications of Missouri, Inc.

MARK W. COMLEY, Attorney at Law
Newman, Comley & Ruth
601 Monroe, Suite 301
Jefferson City, Missouri 65102
573-634-2266
FOR: Birch Telecom of Missouri, Inc.; AT&T Communications
of the Southwest, Inc.; TCG Kansas City, Inc.; and
TCG St. Louis, Inc.

- and -

KATHERINE MUDGE, Attorney at Law
816 Congress Avenue, Suite 1270
Austin, Texas 78701
512-322-9068

BRUCE H. BATES, Associate General Counsel
P.O. Box 360
Jefferson City, Missouri 65102
573-751-6651
FOR: Staff of the Missouri Public Service Commission

1 JUDGE RUTH: Good morning. We are here for a
2 prehearing conference in consolidated Cases XC-2003-0421,
3 LC-2003-0570 and TC-2003-0547.

4 My name is Vicky Ruth. I will be conducting
5 today's prehearing conference for Judge Kennard Jones, who
6 is not able to be here.

7 Today's date is September 11th, 2003, it is a
8 few minutes after ten o'clock.

9 I'd like to do entries of appearance first and
10 we'll just go down the row. Staff?

11 MR. BATES: Good morning, your Honor. My name
12 is Bruce H. Bates. I'm appearing on behalf of the Staff of
13 the Missouri Public Service Commission. My address is Post
14 Office Box 360, Jefferson City, Missouri 65102.

15 JUDGE RUTH: Thank you.

16 MR. LUMLEY: Good morning. Carl Lumley of the
17 Curtis, Oetting law firm representing the complainant in
18 XC-2003-421, Nuvox Communications of Missouri, Inc.; the
19 complainant in LC-2003-570, XO Missouri, Inc. My address is
20 130 South Bemiston, Suite 200, Clayton, Missouri 63105.

21 JUDGE RUTH: Thank you.

22 MR. CONROY: Morning, Judge. Tony Conroy
23 representing SBC Missouri in all of these cases. My address
24 is One SBC Center, Room 3518, St. Louis, Missouri 63101.

25 JUDGE RUTH: Thank you.

1 Mr. Comley?

2 MR. COMLEY: Let the record reflect the entry
3 of appearance of Mark W. Comley, Newman, Comley and Ruth,
4 601 Monroe Street, Jefferson City, Missouri 65101 on behalf
5 of the complainants in Case No. TC-2003-547. Those
6 complainants are Birch Telecom of Missouri, Inc.; AT&T
7 Communications of the Southwest, Inc.; TCG Kansas City,
8 Inc.; and TCG St. Louis, Inc.

9 And, Judge, I would like to take this
10 opportunity to introduce the lady to my left. This is
11 Katherine K. Mudge. You'll notice in your records that
12 there is a motion for her to appear. She is an attorney
13 from the state of Texas and she complies fully with the
14 local rule. And we would renew the motion that she be
15 allowed to appear.

16 JUDGE RUTH: Okay. Did you anticipate needing
17 that motion ruled on today?

18 MR. COMLEY: Well, not necessarily, but at
19 least I wanted to renew the motion. She is here today and I
20 think she would be the lead in connection with the
21 prehearing activities today.

22 JUDGE RUTH: Okay. She certainly can appear
23 at the prehearing conference. I will let Judge Jones issue
24 a formal order since it's his case. But for the prehearing
25 conference activities, there won't be any problem.

1 MR. COMLEY: All right. Thank you.

2 MS. MUDGE: Your Honor, then my name is
3 Katherine Mudge and I'm with the law firm of Smith, Major
4 and Mudge, representing AT&T Communications of the
5 Southwest, TCG entities, as well as Birch Telecom. My
6 address is 816 Congress Avenue, Suite 1270, Austin, Texas
7 78701. Thank you.

8 JUDGE RUTH: Did I get everybody?

9 Okay. Judge Jones issued an order in August
10 setting this prehearing conference. And, as you know, his
11 expectations are that the parties be prepared to discuss
12 discovery, the number of witnesses that you expect to call,
13 the nature and number of the exhibits and work on your
14 procedural schedule, of course.

15 And it's my understanding that he has ordered
16 that that procedural schedule be filed by September 18th.
17 And are there still some answers that are due September
18 18th? Okay. So, Staff, can you tell me if once those
19 answers are filed, did you anticipate filing a response to
20 the answers? It's a question, not -- you're frowning at me.

21 MR. BATES: I'm sorry. Response in what way?

22 JUDGE RUTH: I'm just asking if you
23 anticipate -- you will then have seen the complaint.

24 MR. BATES: Right.

25 JUDGE RUTH: In response does Staff

1 anticipates making a motion or filing a recommendation or a
2 response at that time or not?

3 MR. BATES: Your Honor, Staff often does those
4 in these cases and certainly would do so at the direction of
5 the Commission. We would expect, however, that that would
6 take some time, perhaps as much as 90 days in order to do
7 that.

8 JUDGE RUTH: So at this time Staff doesn't
9 have any plans to file anything on a certain date. You
10 would wait for an order from the Commission and you would
11 request that you be given at least 90 days?

12 MR. BATES: That would be our preference.
13 Thank you.

14 JUDGE RUTH: How would that fit into a
15 proposed procedural schedule?

16 MR. BATES: Well, I suspect that the parties
17 and the Commission might prefer to wait until they have seen
18 that recommendation before proceeding further with the case.
19 But I can't speak for anyone else.

20 JUDGE RUTH: It's my understanding that the
21 Commission might want to see a recommendation sooner than
22 30 days, but what I'll do is -- obviously Judge Jones will
23 get the transcript from this case and then he can make a
24 ruling or issue an order as to when he would want one filed.
25 And he can address how that would affect any procedural

1 schedule at that time. But I wanted to get your input for
2 him.

3 MR. BATES: And certainly the Staff would
4 comply with whatever time order the Commission directed us
5 to.

6 JUDGE RUTH: Let me ask you then, Staff.
7 Without having seen the answers that are not due yet and
8 having time to investigate, how do you expect today's
9 meeting to go as far as working on a procedural schedule?

10 MR. BATES: I think that's very difficult.
11 You stated a few minutes ago that the Commission might want
12 to see an answer sooner than 90 -- a recommendation sooner
13 than 90 days. Do you have any idea what time frame we may
14 be talking about?

15 JUDGE RUTH: I'm sorry, Mr. Bates.
16 Unfortunately, I found out about this case a few minutes
17 ago. And based on my discussion with Judge Jones while he
18 was briefly out of the agenda room, I understood that was an
19 issue.

20 He wanted some input from the parties,
21 particularly Staff, if you were planning on filing responses
22 or recommendation and when. And I'm trying to get some of
23 that additional information for him because I think that's
24 something he's obviously looking at too.

25 MR. BATES: One suggestion I might make on

1 behalf of Staff -- and I speak here only for Staff -- is
2 that the Commission might want to delay the filing of a
3 procedural schedule until such time as it has ordered Staff
4 to make a recommendation in this case and set a date for
5 that.

6 JUDGE RUTH: I understand what you're saying.
7 I think it's unlikely though that Judge Jones will do that
8 on his own motion without being specifically requested to do
9 so. How long does Staff usually take for an investigation
10 in a complaint case like this? Is it normally as long as
11 90 days?

12 MR. BATES: I believe it varies, but Staff has
13 discussed these particular cases now consolidated into one
14 case and 90 days was a time frame that we thought would give
15 us ample time to do a good investigation.

16 JUDGE RUTH: What's the minimum time that
17 would allow you to have an ample or --

18 MR. BATES: Could I have a minute?

19 JUDGE RUTH: Yes.

20 MR. BATES: Your Honor, the reason that Staff
21 thought the 90 days would be appropriate was because it was
22 a time period allowed by the Commission in a similar case in
23 the past. Staff believes in order to do a thorough
24 investigation though it would need at least 45 to 60 days.

25 JUDGE RUTH: And that, of course, would be

1 after the 18th before you're counting 45 to 60 days after
2 the 18th?

3 MR. BATES: Yes.

4 JUDGE RUTH: Okay. I will remind Judge Jones
5 about the pending motion for the out-of-state counsel and
6 point out that there is some concern about filing the
7 procedural schedule on the 18th with not having had the
8 Staff rec filed, the investigation completed. However, I
9 cannot tell you exactly how he will address that matter.

10 So until you either file a motion -- a formal
11 motion or until he issues something, the 18th still stands
12 for the deadline for the proposed procedural schedule.

13 MR. BATES: And --

14 JUDGE RUTH: I'm sorry.

15 MR. BATES: Your Honor, I agree that a formal
16 motion would be appropriate. And I'm sure that's something
17 that we'll be talking about this morning.

18 JUDGE RUTH: All right. Did you have
19 something, Mr. Lumley?

20 MR. LUMLEY: Just a comment on the Staff
21 recommendation. Just for a matter of perspective, we're
22 really talking about a multi-state dispute between these
23 companies.

24 And I think the -- I understand the rule that
25 you're implicitly referring to that talks about Staff

1 investigating complaints. I think the intent of that rule
2 really was to benefit consumers that come to the Commission
3 with not a lot of resources.

4 And it seems -- I mean, a recommendation in
5 this case I know -- you know, regardless of how that comes
6 out, my clients intend to prosecute this complaint. And it
7 seems to me that we would all be better served to just allow
8 Staff to work its investigation into whatever testimony that
9 it files because ultimately the Commission's not going to be
10 able to rely on that recommendation except as a piece of
11 evidence.

12 So I understand where, you know, the thought
13 process is leading, but just sort of a countervailing
14 perspective that it's not necessarily beneficial to try to
15 force them into something early.

16 JUDGE RUTH: And I believe that's what -- I
17 think Judge Lewis has been involved in some of this and
18 Kennard Jones. And I think part of that question was
19 supposed to be as to what the expectations of Staff were.
20 Were you already planning on filing one, it sounds like?
21 You were going to wait until one was ordered?

22 It looks like Judge Jones has come into the
23 room.

24 MR. BATES: That's been the procedure the
25 Commission seems to have adopted in the past.

1 JUDGE RUTH: Okay. Well, you know, like I
2 said, until an order comes out from Judge Jones otherwise, I
3 would plan on filing your proposed procedural schedule for
4 the 18th.

5 And if we can go off the record for five
6 minutes, I'll see if there's anything you want to ask.

7 (Off the record.)

8 JUDGE RUTH: I don't think there are any other
9 questions from the Bench unless any of the parties have a
10 pending matter they need addressed.

11 MR. BATES: Your Honor, just -- this may be an
12 obvious question, but I know on the three consolidated cases
13 that we've had two judges assigned to those. Do I
14 understand Judge Jones will now be taking over on the
15 consolidated case?

16 JUDGE JONES: Yes.

17 JUDGE RUTH: And my involvement ends in, you
18 know, just a few minutes.

19 MR. BATES: And I guess Judge Mills is --

20 JUDGE RUTH: Yes. Judge Mills is already off
21 from our point of view. It's Judge Jones's case. I was
22 just filling in on the prehearing conference for a few
23 moments.

24 And any other pending matters? Okay.

25 Then that will conclude the on-the-record

1 portion of the prehearing conference.

2 (Off the record.)

3 JUDGE RUTH: It turns out that there may be
4 one more pending matter.

5 MS. MUDGE: Your Honor, I appreciate that. I
6 just wanted to make a quick comment. As Mr. Lumley alluded
7 to, this is -- actually, these type of complaints have been
8 filed in four states. In Texas we expect a decision on
9 Monday, but we also have them pending in Kansas and
10 Oklahoma.

11 And it is our hope -- my clients' hope that we
12 will be able to actually coordinate the three states and
13 that -- in fact, we sent out an e-mail to all three of the
14 SBC counsel yesterday with sort of a staggered proposed
15 procedural schedule and have not had a chance to discuss
16 that with him. And we hope to do that in a timely fashion
17 to ensure that we meet your order.

18 But I did want to at least let you in on that,
19 and that's what we're trying to do because we recognize that
20 we're going to have some similar witnesses and we think SBC
21 will as well. We're going to be trying to do a staggered
22 approach with respect to the three procedural schedules.
23 Thank you.

24 JUDGE RUTH: Okay. Anything from the other
25 parties as to that?

1 Then with that, we will go off the record.
2 (PREHEARING CONFERENCE ADJOURNED.)
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25