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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

IN RE: The Commercial Mobile)
Radio Services (CMRS))
Interconnection Agreement) Case No. TK-2004-0180
Between SBC Missouri and Sprint)
Spectrum L.P. Under Sections 251)
and 252 of the Telecommunications)
Act of 1996.)

PREHEARING CONFERENCE
Volume 1
Monday, December 1, 2003
Governor Office Building
200 Madison Street
Jefferson City, Missouri 65101

NANCY DIPPELL, Presiding,
SENIOR REGULATORY LAW JUDGE

REPORTED BY:

Patricia A. Stewart
RMR, RPR, CCR, CSR
ASSOCIATED COURT REPORTERS
714 West High Street
Jefferson City, Missouri 65101

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APPEARANCES:

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FOR: Staff of the Missouri Public Service
Commission.

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P R O C E E D I N G S

RLJ DIPPELL: This is Case No. TK-2004-0180 in the matter of the Commercial Mobile Radio Services interconnection agreement between SBC Missouri and Sprint Spectrum L.P. under Section 251 and 252 of the Telecommunication Act of 1996.

My name is Nancy Dippell, and I'm the judge assigned to this matter. And we have come here today for a prehearing conference on December 1st, 2003.

And I would begin by asking the attorneys to make entries of appearance. They've made written entries.

So if you just want to state your name and who you're representing, that will be sufficient.

Mr. Meyer, would you like to begin.

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

MS. HENDRICKS: Lisa Creighton Hendricks on behalf of Sprint Spectrum LP, d/b/a Sprint.

MR. BUB: Leo Bub for SBC Missouri.

MR. JOHNSON: Craig Johnson for the Missouri Independent Telephone Group, six companies listed in our entry of appearance.

RLJ DIPPELL: And I don't have anyone from Public Counsel present right at the moment.

1 So we'll go ahead and get started.

2 I asked you all to come today because there was
3 a request for intervention and hearing. We came here to
4 take up any procedural matters and discuss settlement and
5 hopefully get some clarification on any issues.

6 By my calculation the date by which the
7 Commission must make a decision is January 12, 2004.

8 So I'd like to just begin by asking what
9 factual issues, Mr. Johnson, do you see being presented
10 at a hearing?

11 MR. JOHNSON: It's hard to organize them off
12 the cuff, Your Honor, but I think the way this agreement
13 defines local traffic is being traffic between SBC and
14 Sprint PCS within the same LATA, creates a problem for
15 all of my clients, because we view that the MTA boundary
16 is the local versus toll distinction for traffic that
17 terminates to my clients, not simply the LATA.

18 Some of my clients have interconnection
19 agreements themselves with Sprint, Choctaw and MoKan. We
20 think there are some inconsistencies in the way this
21 document -- this agreement says traffic will be reported
22 to them as compared to what their agreement says.

23 And then there are two other companies within
24 my group, being Alma and Mid-Missouri Telephone, who have
25 wireless termination tariffs that require Sprint PCS to

1 give them call detail, or in lieu thereof, quarterly
2 traffic studies.

3 And this agreement, in our view, for transit
4 traffic coming to us does not require them to provide the
5 call detail that our tariff would require of them.

6 I have a bunch of other questions, but I don't
7 know sufficiently about how they plan to do business
8 between the two, to know if those are real issues or not.

9 So I think those that I mentioned are the ones
10 that I'm specifically confident now would be issues,
11 factual issues.

12 RLJ DIPPELL: Okay.

13 All right. You made some allegations of
14 discrimination.

15 Do the ones that you've just listed, does that
16 cover your allegations of discrimination?

17 MR. JOHNSON: Those would be, in my view,
18 discrimination grounds, as well as public interest
19 grounds.

20 There is a basic difference between the
21 parties. I view discrimination as being my client is not
22 getting an opportunity to have the same sorts of
23 protection that SBC is. So our discrimination would be
24 comparing us to SBC.

25 These parties view of the discrimination is

1 comparing all of the nonparty agreements to one another.
2 Obviously, since no one else is -- no other nonparty has
3 any control over this particular agreement, then they
4 would be in the same position with respect to the issues
5 that I've identified.

6 RLJ DIPPELL: And are these issues different
7 from issues that MITG has raised in other interconnection
8 agreement cases?

9 MR. JOHNSON: Generally the issues are the
10 same. The only twists may be that two of the companies
11 here specifically have an agreement with Sprint PCS and
12 two of the companies specifically have a tariff.

13 And so my group of six companies gets put into
14 some subset, if you will, with respect to the issues.

15 RLJ DIPPELL: Okay.

16 MR. JOHNSON: Other than that, generally, I
17 would say the issues are basically the same, but we have
18 problems with transit traffic that doesn't come to us
19 with the same ability to record and have the same sorts
20 of records created that protect us consistent with our
21 tariffs or our own agreements.

22 In general, I think those are the types of
23 objections we've made to either CLEC or wireless
24 interconnection agreements with SBC in the past.

25 RLJ DIPPELL: All right.

1 And, Ms. Hendricks, I believe Sprint made some
2 arguments against having a hearing.

3 MS. HENDRICKS: First of all, I think there are
4 several arguments against having a hearing, one of which
5 is the party, the intervenor here, is not entitled to a
6 hearing. They're not entitled because the statutory
7 provision that governs the Commission decision does not
8 afford one.

9 And, furthermore, the intervenor will be
10 entitled a hearing if it was to be appealed at the
11 Federal level and the hearing would occur anew and it
12 wouldn't be a matter of evaluating what the Commission
13 did at this level.

14 It would once again be the Federal court
15 looking at whether or not there was discrimination,
16 regardless of what the decision was by this Commission.

17 For those two reasons, the legal reasons not to
18 have a hearing.

19 Also, I struggled to find the factual issues,
20 and maybe because I need a little more definition here.

21 I do not know how the interconnection agreement
22 with Sprint PCS is inconsistent with an interconnection
23 agreement we have with the two clients that Mr. Johnson
24 has identified, MoKan and Choctaw, I believe.

25 I think if you even look at the agreement, they

1 anticipate the type of traffic that would be transited
2 under our agreement with SBC.

3 I do struggle because I don't see how the
4 interconnection agreement affects the tariff and any
5 right they may have under the tariff.

6 And so I don't really see true issues here.
7 Maybe it's because it needs some more definition.

8 And then I am curious how the definition of
9 local traffic, what -- what is the impact that they
10 believe to be discriminatory under it?

11 And so for the first reason, I think there is a
12 legal basis not to have it, and, second of all, I'm not
13 so sure that we have true factual issues here.

14 And I think we just need to delve another level
15 to see if we truly have them.

16 RLJ DIPPELL: And, Mr. Bub, did you have
17 anything else to add?

18 MR. BUB: Just one thing, Your Honor.

19 I'm not familiar with the agreements that
20 Sprint has with Choctaw and MoKan, but I would expect, as
21 Ms. Creighton Hendricks represented, they would be
22 consistent with the agreement that Sprint and SBC
23 Missouri have entered into here.

24 But even if they weren't, even if there was an
25 inconsistency, I would say, so what. This is an

1 agreement between Sprint and SBC Missouri. And if we
2 want to agree on specific records or in a specific area
3 that we would consider to be a local between us, that
4 would also affect the two parties to the agreement. It
5 wouldn't have any impact and it has no intended impact on
6 other parties.

7 If Mr. Johnson's clients have agreed to a
8 specific type of record that they would exchange with
9 Sprint, that wouldn't be impacted or affected by our
10 agreement to exchange certain types of records with
11 Sprint.

12 So their agreement stands on its own, our
13 agreement stands on its own, and it wasn't intended to
14 impact the third party as far as records and what we
15 define between SBC and Sprint as being local. So we
16 don't see any need for a hearing either.

17 MS. HENDRICKS: And, Your Honor, on that point,
18 as Mr. Bub describes it, that is truly a legal issue.
19 That's not a factual issue.

20 That's why I say, I think if we delve one layer
21 beneath, we may find that it's truly legal issues that
22 are in dispute versus the factual issues.

23 RLJ DIPPELL: Mr. Meyer, did you have anything
24 else you want to add?

25 MR. MEYER: I do not, other than to note that

1 the Staff has filed a positive recommendation on this
2 interexchange agreement and interconnection agreement and
3 is prepared to address any additional questions the
4 Commission may have.

5 RLJ DIPPELL: All right.

6 Mr. Johnson, if there is a hearing held on this
7 matter, do you anticipate calling witnesses, and if so,
8 how many witnesses would you --

9 MR. JOHNSON: I hadn't specifically thought
10 ahead with respect to this specific case. In the past
11 we've done similar ones.

12 Yes, we have always -- although we've had
13 different deviances in the procedural schedule because of
14 the time constraints, we have either always filed an
15 initial round of testimony or had simultaneous initial
16 record of direct testimony, or perhaps in one or two
17 we've had simultaneous direct.

18 And one of the problems I have is that we have
19 to know -- to glean from these interconnection
20 agreements, and all of the terms in it, sometimes we --
21 it becomes incumbent upon us to understand what --
22 factually how they're going to get the traffic and
23 factually how the records are going to be exchanged and
24 what they're going to look at. And all we have to go on
25 is what the agreement says, and that's been somewhat of a

1 problem in preventing surprise live testimony at hearing
2 or surrebuttal.

3 But just to answer the essential question, is,
4 yes, we would expect, if there is a factual issue, to
5 have to present a witness to set it up.

6 RLJ DIPPELL: Okay.

7 Well, I would expect the Commission to decide
8 about whether there is an actual hearing necessary in
9 this soon.

10 But I already ordered you all to file proposed
11 procedural schedules tomorrow, and I would -- in
12 considering that, I would, you know, pick a date for
13 either oral arguments or a hearing if that becomes
14 necessary.

15 I have brought a calendar. It just so happens
16 that the only date on it is December 24th or
17 December 29th. Lovely dates.

18 But you all can look at that and see if there
19 is something else and determine whether you would think
20 that, like I say, either oral arguments or a hearing, if
21 those become necessary, unless, of course, if you all get
22 your questions answered of each other and reach some kind
23 of agreement today or before that.

24 If it becomes necessary --

25 MS. HENDRICKS: Your Honor, prior to this

1 meeting I think that we all became aware that those two
2 were the two dates that were available.

3 What flexibility, if any, do we have, to the
4 extent that Mr. Johnson wants to have a hearing, that we
5 could schedule something over something else and the
6 Commissioners could read the transcript?

7 Because neither one of those days, either for
8 witnesses or for us --

9 RLJ DIPPELL: Right.

10 I don't know the answer.

11 I also had just saw that the calendar was
12 pretty booked up. I would say that there are a couple of
13 rulemaking hearings, but those are very early in the
14 month, that it could probably be scheduled over.

15 I'm not sure about scheduling it over the
16 ratemaking hearing, how the Commissioners would feel
17 about that, but I would certainly ask them about that if
18 that's what the parties suggested.

19 So what you might do is pick a date that you
20 would prefer and let me know that that's the date you
21 prefer, but you're aware that there is some conflict on
22 the Commission's calendar but you would prefer to go
23 ahead and go forward. And the transcripts are going to
24 have to be expedited anyway.

25 But, obviously, if the Commissioners are in a

1 hearing all day, they're going to have not much
2 opportunity to read the transcript.

3 But go ahead and look, pick a date that maybe
4 you would prefer to do it, and then if that has to be
5 scheduled over something, we can approach the Commission.

6 MS. HENDRICKS: Is December 24th a full day?

7 RLJ DIPPELL: Yes --

8 MS. HENDRICKS: Okay.

9 RLJ DIPPELL: -- it is a full business day.

10 And on the calendar, the 22nd and 23rd is part
11 of the rate hearing.

12 I know I discussed with Judge Thompson who is
13 handling that, and he believes he needs the time. So
14 he's not expecting that -- I would say, you know, those
15 dates would probably be more likely to be available than
16 the dates earlier the week before.

17 But perhaps the parties in that case will have
18 the urge to settle right before Christmas.

19 Are there any other questions or issues that
20 you would like to bring to my attention?

21 MR. JOHNSON: You're not going to want to
22 entertain hearing arguments on the legal, including that
23 as a separate part of the procedural schedule?

24 RLJ DIPPELL: Yes, I suspect that the
25 commissioners would want to hear those arguments, and

1 you've laid them out pretty much in your pleadings
2 already. So I didn't have any additional questions about
3 that. So I won't hear those today, unless you just have
4 prepared something and you just want to share it with me.

5 MR. JOHNSON: No.

6 RLJ DIPPELL: Okay.

7 Then, I guess, that concludes the on-the-record
8 portion and we can go off the record.

9 Thank you.

10 WHEREUPON, the on-the-record portion of the
11 prehearing conference was concluded.

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