

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS
5 Prehearing Conference

6 July 13, 2005
7 Jefferson City, Missouri
8 Volume I

9 Application of Chariton)
10 Valley Communication)
11 Corporation, Inc., for)
12 Approval of a Direct)
13 Interconnection Agreement)
14 and for a Related)
15 Indirect Transiting Traffic) Case No. TK-2005-0449
16 Services Agreement with)
17 Southwestern Bell Telephone)
18 Company, L.P. d/b/a SBC)
19 Missouri Pursuant to the)
20 Telecommunications Act of)
21 1996)

22 Application of MissouriRSA)
23 No. 5 Partnership d/b/a)
24 Chariton Valley Wireless,)
25 for Approval of a Direct)
26 Interconnection Agreement)
27 and for a Related Indirect)
28 Transiting Traffic Services) Case No. TK-2005-0447
29 Agreement with)
30 Southwestern Bell Telephone)
31 Company, L.P. d/b/a SBC)
32 Missouri Pursuant to the)
33 Telecommunications Act of)
34 1996)

35 KENNARD L. JONES, Presiding,
36 REGULATORY LAW JUDGE

37 REPORTED BY:

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

2 JUDGE JONES: We can go ahead and go on
3 the record. This is a prehearing conference for two
4 cases that have been consolidated for the purpose of
5 this prehearing conference: Case No. TK-2005-0449
6 and Case No. TK-2005-0447.

7 The first case is the application of
8 Chariton Valley Communication Corporation for
9 approval of an Interconnection Agreement with
10 Southwestern Bell Telephone Company, doing business
11 as SBC, Missouri.

12 The second case, 0447, is the
13 application of Missouri RSA No. 5 Partnership, doing
14 business as Chariton Valley Wireless, for approval of
15 an interconnection agreement with SBC Missouri also.

16 My name is Kennard Jones. I'm the
17 presiding judge over this matter, and at this time
18 I'll take entries of appearances, beginning with
19 Chariton Valley.

20 MR. JOHNSON: Thank you, your Honor.
21 Craig Johnson, 700 East Capitol, Jefferson City,
22 Missouri 65102. I'm here today for the applicants,
23 Missouri RSA 5 Partnership and Chariton Valley
24 Communications. I guess I'm also here today for the
25 proposed amicus intervenors, the Missouri Independent

1 Telephone Company Group.

2 JUDGE JONES: Thank you, Mr. Johnson.
3 Mr. Gryzmala?

4 MR. GRYZMALA: Yes, your Honor. This is
5 Robert Gryzmala for SBC Missouri; that is,
6 Southwestern Bell Telephone, L.P., d/b/a SBC
7 Missouri. I am at 35 -- Room 3516 at One SBC Center,
8 St. Louis, Missouri 63101, entering, of course, for
9 SBC Missouri.

10 JUDGE JONES: Thank you. And for the
11 staff of the Commission?

12 MR. POSTON: Marc Poston appearing for
13 the staff of the Missouri Public Service Commission,
14 P.O. Box 360, Jefferson City, Missouri 65102.

15 JUDGE JONES: Thank you, Mr. Poston.
16 And I'll note for the record that the Office of
17 Public Counsel is not present.

18 Okay. The only issue we have today to
19 discuss is the issue of the Missouri Independent
20 Telephone Group's Application to Intervene. Is that
21 correct as far as you-all understand?

22 MR. JOHNSON: Yes, your Honor.

23 JUDGE JONES: Okay.

24 MR. GRYZMALA: That's correct, your
25 Honor.

1 JUDGE JONES: All right. Well, I'm
2 gonna try to -- I know that their application is
3 fairly long, and I will say, Mr. Johnson, that
4 Mr. Gryzmala's point that a lot of these issues are
5 irrelevant, are irrelevant as far as interconnection --
6 as far as intervention is concerned.

7 They may be relevant to whether or not
8 the interconnection agreement should be approved, but
9 specifically with whether or not MITG should be
10 granted intervention, many of the issues that you
11 brought up don't have anything to do with whether or
12 not you have an interest different than the general
13 public and whether or not an Order approving the
14 final Order -- or final Order would adversely affect
15 you in this case.

16 And Mr. Gryzmala, you argued in your
17 response that the application was out of time. I'll
18 be the first to tell you that if something's out of
19 time, there's no discussing anything else. That's
20 pretty much a closed case.

21 However, the Order and notice that went
22 out specifically said that parties have until a
23 certain date to request a hearing. Our rules state,
24 in absence of a Commission Order otherwise, entities
25 may apply to intervene 30 days after a given notice,

1 and they are within the 30-day time frame. So the
2 out-of-time issue is not an issue.

3 MR. GRYZMALA: The 30 days for filing a
4 Motion to Intervene, your Honor?

5 JUDGE JONES: Exactly. And I believe
6 their request was within 30 days. That's correct,
7 right? You don't know?

8 MR. JOHNSON: I don't know, your Honor.

9 JUDGE JONES: Mr. Gryzmala?

10 MR. GRYZMALA: I'm checking that now.
11 The Order of the Commission giving notice of the
12 case, I was just checking that particular date.

13 JUDGE JONES: That went out on the 7th.

14 MR. GRYZMALA: That would have been
15 June 1 --

16 JUDGE JONES: The 1st day of June.

17 MR. GRYZMALA: -- according to my
18 pleading binder.

19 JUDGE JONES: That's correct. And the
20 application was filed on June 23.

21 MR. GRYZMALA: Okay.

22 JUDGE JONES: So it's within time. I
23 will say it poses an interesting question. Because
24 if hearing requests were due by a certain date and
25 then applications to intervene are filed after that

1 date, then hearing requests would be out of time.
2 However, it does say parties, and if an intervenor is
3 not a party at the time, then that would create a
4 problem. But fortunately we don't have to deal with
5 that problem today, I don't think.

6 Now, we've had this problem before; is
7 that correct? Do you all agree with me with the --
8 with MITG's reasons for wanting to intervene?
9 They're concerned about getting paid.

10 MR. GRYZMALA: We certainly have, your
11 Honor.

12 JUDGE JONES: And are you in agreement,
13 Mr. Johnson?

14 MR. JOHNSON: Yes, Judge.

15 JUDGE JONES: And in cases that I dealt
16 with this before were in 2003, Cases TK-2004-0058 and
17 0070. In those cases, intervention was granted. The
18 Commission found that the MITG did have an interest
19 different than the general public which is not a very
20 difficult hurdle to get over.

21 However, with regard to them being
22 adversely affected by a final Order of the
23 Commission, that had to do specifically with the
24 MIG'S being able to receive compensation for traffic
25 that is being sent their way, terminating with them,

1 I should say, specifically.

2 And if I recall during our discussions,
3 there was a problem with the MITG being able to even
4 give records. Was that the problem in being able to
5 get paid, Mr. Johnson?

6 MR. JOHNSON: That was part of the
7 problem, your Honor, yes.

8 JUDGE JONES: There's another part of
9 the problem?

10 MR. JOHNSON: Well, records are sort of
11 a -- an interim step to getting paid. You need to
12 have the records to create bills to send to get paid,
13 so I view it as a subset of the same problem of
14 getting -- not getting paid.

15 JUDGE JONES: Okay. Now, you realize we
16 do have the new rule, Enhanced Record Exchange Rule,
17 that recently went into effect. Do you think this
18 rule will solve that problem?

19 MR. JOHNSON: I think maybe I can
20 shorten this whole proceeding, your Honor.

21 JUDGE JONES: Go for it.

22 MR. GRYZMALA: I'm sorry. I didn't hear
23 that part.

24 JUDGE JONES: He says he thinks he can
25 shorten this whole proceeding.

1 MR. GRYZMALA: Okay. That would be
2 great. Thank you.

3 MR. JOHNSON: We have gotten our points
4 on record, the MITG I'm speaking on behalf of.

5 Can you hear me, Mr. Gryzmala?

6 MR. GRYZMALA: Just barely, but I can
7 hear, I believe.

8 MR. JOHNSON: Do you mind if I stand
9 closer to the phone?

10 MR. GRYZMALA: I heard the portion of,
11 Mr. Johnson, where you said something to the effect
12 of, we've gotten our points on the record; is that
13 right.

14 MR. JOHNSON: Yeah. I was just going to
15 say that we understand that the interconnection
16 approval process is not well suited to intervention
17 or amicus. The problem with some of these two-party
18 transit agreements is that it affects other parties,
19 or could potentially affect other parties.

20 I do feel like we stand partially
21 chastised and correctly chastised by SBC because the
22 Enhanced Record Exchange Rule which is now, I
23 believe, in effect, or soon to be in effect, does
24 address this, and if we do happen to have traffic
25 that comes to us pursuant to these agreements and we

1 have problems, we have a procedural mechanism with
2 respect to fixing that problem.

3 We still have a serious reservation
4 about SBC's position that these types of agreements
5 can be done outside the regulatory approval context.
6 We have extreme reservations about carry relations
7 being removed from regulatory oversight.

8 Having said all that, we've made our
9 position known on the record, and we understand that
10 intervention is probably not appropriate in this
11 place and that we won't be proceeding in
12 these dockets -- we won't be participating in these
13 dockets as parties or amicus.

14 JUDGE JONES: Okay.

15 MR. GRYZMALA: May I make a comment
16 briefly, your Honor?

17 JUDGE JONES: Why?

18 MR. GRYZMALA: Do I understand, then,
19 Mr. Johnson, you are formally withdrawing your
20 motion?

21 MR. JOHNSON: Yes.

22 MR. GRYZMALA: From the record of the
23 case?

24 MR. JOHNSON: Yes. Well, I can't
25 withdraw from the record. I'm just withdrawing the

1 request. That will be a separate entry in the
2 record.

3 JUDGE JONES: And --

4 MR. GRYZMALA: I think that's an
5 appropriate course, your Honor. If I may, I mean,
6 the way -- my take away from this is that with
7 respect to that portion of the pleading which has to
8 do with the application to intervene or alternative
9 application to participate without intervention, that
10 would be withdrawn.

11 JUDGE JONES: Well, I think we're
12 miscommunicating.

13 MR. GRYZMALA: Okay.

14 JUDGE JONES: I think what you're
15 thinking is that Mr. Johnson will -- is doing
16 something that will remove his application from the
17 Commission's purview, so to speak. Is that what
18 you're assuming?

19 MR. GRYZMALA: I took it to mean that he
20 was withdrawing his application.

21 JUDGE JONES: As if he were striking his --

22 MR. GRYZMALA: Exactly.

23 JUDGE JONES: Well, I don't take that to
24 be what he means. I think he's just saying at this
25 point he no longer seeks to intervene.

1 MR. GRYZMALA: Oh.

2 JUDGE JONES: But his application -- the
3 points that he makes in his application are still
4 part of the record, though.

5 MR. JOHNSON: Your Honor, the way I would
6 say it is that the Commission's file is going to have
7 to reflect that the application was filed. It will
8 also reflect that today I withdrew the application.

9 But Mr. Gryzmala's earlier comments were
10 suggesting that it would be completely removed from
11 the Commission's files, and I don't think that's
12 appropriate.

13 JUDGE JONES: Right. Mr. Gryzmala?

14 MR. GRYZMALA: Yes, sir.

15 JUDGE JONES: Is that the point you're
16 trying to make, that the application should be
17 completely removed from the Commission's file?

18 MR. GRYZMALA: Well, I'll be real
19 candid, your Honor. If the point is that the -- is
20 that MITG, as I heard them say, wishes to withdraw
21 the application, then I don't know if there's a
22 technical matter that should be withdrawn from the
23 record, but I don't think that given the statement,
24 that it should be considered in -- as to whether the
25 ICA should be approved or not.

1 My conundrum here is that, you know, at
2 some point it may occur to someone to ask staff's
3 recommendation on MITG's application, and I don't
4 think that that's any longer necessary. I don't
5 think the points raised in the application need to be
6 considered for purposes of approval of the ICA if
7 Mr. Johnson is withdrawing it today.

8 JUDGE JONES: Yeah, your point's well
9 taken. I should point out, however, that one of the
10 alternatives that the MITG proposed was that they be
11 able to file as a friend of the Court.

12 MR. GRYZMALA: Yes, sir.

13 JUDGE JONES: And anyone can just do
14 that. It's not something you need to request leave
15 to do. You just do it. And if the Commission wants
16 to consider what they filed, then they can. His
17 application, as far as I'm concerned, serves the same
18 purpose as a brief would have served that he would
19 have filed as friend of the Court.

20 MR. GRYZMALA: I think that's a real
21 good point, your Honor. I think that what I
22 understand, then, where we may be going here is that
23 the application is withdrawn insofar as Mr. Johnson's
24 clients no longer wishes to pursue it, but under the
25 rule, 2.0756, a party who -- or a person who wants to

1 participate as amicus curae must file for leave to
2 file a brief.

3 JUDGE JONES: Okay.

4 MR. GRYZMALA: And we can assume, you
5 know, that the filing that MITG made was a request
6 for leave, if you will. And the outcome of that
7 rule, I think, if the petition -- or the motion for
8 leave is granted, is that the brief in here, the
9 brief that MITG filed within the very same document,
10 is considered and no more.

11 In other words, the rule says the brief
12 may be submitted simultaneous with the petition. So
13 if that were to mean, then, your Honor, that you
14 might be inclined to grant that portion of the
15 application seeking to file a brief as amicus curae
16 and then determining that the comments made in the
17 June 23 pleading will stand as the amicus curae brief
18 without more, I -- I think that's what you're --
19 you're --

20 JUDGE JONES: Well, all of this, quite
21 frankly, is academic.

22 MR. GRYZMALA: Yeah.

23 JUDGE JONES: I mean, because the points
24 that are made in the application are points that the
25 Commission has already considered.

1 MR. GRYZMALA: I agree with that
2 wholeheartedly, your Honor.

3 JUDGE JONES: So from a practical
4 standpoint, we're just, you know, exercising the
5 court reporter.

6 MR. GRYZMALA: Okay.

7 JUDGE JONES: Now, as far as the
8 Commission granting leave for this to take the place
9 of an amicus curae brief, then I don't think that's
10 gonna happen because everything has already been
11 considered by the Commission.

12 I mean, from a procedural standpoint, to
13 me, it will be like they -- they requested
14 intervention and then withdrew their request, and
15 that will be the end of it.

16 MR. GRYZMALA: Okay. I agree.

17 JUDGE JONES: Okay. Does anyone have
18 anything else?

19 MR. POSTON: No.

20 JUDGE JONES: Mr. Poston? Okay. Seeing
21 nothing else, then we will adjourn.

22 (WHEREUPON, the prehearing was concluded.)

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