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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

NORTHEAST MISSOURI RURAL)
TELEPHONE COMPANY and MODERN)
TELECOMMUNICATIONS COMPANY,)
)
Petitioners,)
)
vs.) Case No. TC-2002-57
)
SOUTHWESTERN BELL TELEPHONE)
COMPANY, et al.,)
)
Respondents.)

PREHEARING CONFERENCE
TRANSCRIPT OF PROCEEDINGS
KEVIN THOMPSON, Presiding
DEPUTY CHIEF REGULATORY LAW JUDGE

Volume 8
June 16, 2003
10:00 a.m.
Public Service Commission
200 Madison Street
Jefferson City, Missouri

REPORTED BY: Monnie S. VanZant, CCR, CSR, RPR
Associated Court Reporters
714 West High Street
Jefferson City, MO 65101
(573) 636-7551

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1 TRANSCRIPT OF PROCEEDINGS

2 JUDGE THOMPSON: Good morning. My
3 Name is Kevin Thompson. I'm the regulatory law
4 judge assigned to reside over this matter, which
5 is Northeast Missouri Rural Telephone Company
6 and Modern Telecommunications Company,
7 Petitioners, versus Southwestern Bell Telephone
8 Company and others, Respondents, Case No.
9 TC-2002-57. We'll go ahead and take oral
10 entries of appearance at this time. Why don't
11 we begin with the complainant?

12 MR. CRAIG JOHNSON: Thank you, your
13 Honor. Craig Johnson and Lisa Chase, 700 East
14 Capitol, Jefferson City, Missouri, 65102, here
15 for the petitioners.

16 JUDGE THOMPSON: Thank you. Why
17 don't we take staff?

18 Mr. ANDERSON: Good morning, your
19 Honor. Eric Anderson representing the staff of
20 the Missouri Public Service Commission, 200
21 Madison Street, Jefferson City, Missouri, 65102.

22 JUDGE THOMPSON: Thank you. Do we
23 have public counsel here? Not seeing public
24 counsel, let's go ahead and move to the various
25 respondents. And we can take them in whatever

1 order you would like to do. And we have
2 Southwestern Bell here?

3 MR. DORITY: Your Honor, Larry
4 DORITY, Fischer & DORITY, P.C, 101 Madison,
5 Suite 400, Jefferson City, Missouri, 65101.
6 Judge, I'm appearing this morning on behalf of
7 the two of the respondents.

8 JUDGE THOMPSON: Go ahead and enter
9 your appearance for them as well.

10 MR. DORITY: Thank you.
11 Southwestern Bell Telephone, LP, d/b/a SBC
12 Missouri; also, Southwestern Bell Wireless, LLC,
13 d/b/a Cingular Wireless. And also representing
14 Cingular this morning is Mr. Joseph Murphy.
15 Joe, why don't you --

16 MR. MURPHY: On behalf -- by the
17 way, we've established that the correct
18 corporate name for our client is Cingular
19 Southwestern Bell Wireless, LLC, d/b/a Cingular
20 Wireless, LLC, instead of just Cingular
21 Wireless.

22 JUDGE THOMPSON: I appreciate that
23 clarification.

24 MR. MURPHY: My name is Joseph
25 Murphy. I'm here at 306 West Church Street,

1 Champaign, Illinois, 61820.

2 JUDGE THOMPSON: Thank you.

3 MR. MARK JOHNSON: Your Honor,

4 appearing on behalf of Voicestream Wireless,

5 Western Wireless and Aerial Communications, Mark

6 P. Johnson of the law firm of Sonnenschein, Nath

7 & Rosenthal, 4520 Main Street, Suite 1100,

8 Kansas City, Missouri, 64111 (sic). I point out

9 for the record that Voicestream has changed its

10 name officially to T-Mobile USA, Incorporated.

11 That was effective August of last year.

12 JUDGE THOMPSON: Thank you, sir.

13 MR. PULLIAM: Good morning, your

14 Honor. Thomas E. Pulliam, Law Offices of

15 Ottsen, Mauze, Legget & Belz, LC, 112 South

16 Hanley Road, St. Louis, Missouri, 63102, on

17 behalf of Respondents Ameritech Mobile

18 Communications, Inc., CMT Partners, Ameritech

19 Cellular and Verizon Wireless; also, all

20 entities d/b/a Verizon Wireless.

21 JUDGE THOMPSON: Thank you.

22 MS. HENDRICKS: Good morning, your

23 Honor. Appearing on behalf of Sprint Spectrum,

24 LP, d/b/a Sprint PCS and Sprint Missouri, Inc.,

25 Lisa Creighton Hendricks, 6450 Sprint Parkway,

1 Overland Park, Kansas, 66251.

2 JUDGE THOMPSON: Now, you're here
3 for both Sprints today?

4 MS. HENDRICKS: Yes, sir.

5 JUDGE THOMPSON: Thank you.

6 MR. BROWNLEE: Richard Brownlee from
7 the law firm of Hendren & Andrae, 221 Bolivar
8 Street, Jefferson City, appearing on behalf of
9 U.S. Cellular.

10 JUDGE THOMPSON: Thank you,
11 Mr. Brownlee. Anyone else? Very well. I think
12 the Commission's order of June 3rd speaks for
13 itself. The Commission has determined after the
14 reviewing the record and the briefs of the
15 parties that it is essential to determine the
16 proportion of the traffic that is intra MTA and
17 the proportion of the traffic that is inter MTA.

18 Now, it is my understanding from the
19 hearing that we had, gosh, last summer, that
20 this was not recorded at the time that the
21 traffic was passed, that, in fact, all of the
22 complainants know about the traffic is what they
23 read on the CTUSR reports provided by
24 Southwestern Bell, which I guess carries most of
25 the traffic. Is that correct? Perhaps all of

1 it.

2 MR. CRAIG JOHNSON: Yes. Except for
3 Sprint, which I believe some of the traffic
4 Southwestern Bell carries it all for the rest of
5 it.

6 MR. PULLIAM: Well, your Honor, I'd
7 like to make a clarification.

8 JUDGE THOMPSON: Yes.

9 MR. PULLIAM: We don't carry any
10 traffic for Verizon Wireless. All of our
11 traffic is being currently shipped by
12 interexchange carriers.

13 JUDGE THOMPSON: Very good. Thank
14 you, Mr. Pulliam. And I believe I recall seeing
15 that in the record. Now, we had a similar
16 prehearing conference and a somewhat similar
17 case about a month ago, and Mr. Johnson made a
18 very good -- I speak of Mark Johnson, not
19 Mr. Craig Johnson -- made a very useful
20 suggestion at that time. He suggested that
21 rather than doing an expensive traffic study
22 that a very reliable estimate of traffic
23 proportions could be developed based on tower
24 locations and the locations of the MTA
25 boundaries and the various switches; is that

1 correct?

2 MR. MARK JOHNSON: Yes, your Honor.

3 On behalf of --

4 JUDGE THOMPSON: I'm sure I garbled

5 that somehow.

6 MR. MARK JOHNSON: Not at all. I'll

7 be happy to try to summarize it for all the

8 parties. We had a prehearing a few weeks ago in

9 the 1077 case, I guess.

10 JUDGE THOMPSON: Right.

11 MR. MARK JOHNSON: The number in

12 which the other group of ILECs --

13 JUDGE THOMPSON: The Tripp England

14 ILECs?

15 MR. MARK JOHNSON: The Tripp England

16 ILECs --

17 JUDGE THOMPSON: As opposed to Craig

18 Johnson ILECs?

19 MR. MARK JOHNSON: -- against

20 T-Mobile and Western Wireless. In essence, the

21 -- the summary of the proposal is this.

22 T-Mobile and Western Wireless -- and by the way,

23 Aerial has been acquired by T-Mobile, so Aerial

24 technically may still be in existence, but it's

25 really not. In any case, what we would be

1 pleased to do is provide both -- by map
2 coordinates and a -- you know, a map itself,
3 locations of my clients' cell sites in Missouri
4 and using that overlaid with a map showing the
5 -- the MTA lines, I believe we could come up --
6 we collectively, I should say, not just my
7 client, but collectively in discussions with
8 everyone, could come up with a good proxy or
9 default, if you will, for the percentage of
10 traffic, which is inter MTA as opposed to intra
11 MTA.

12 I -- I -- I'm pleased to report that
13 we've had some subsequent discussions with
14 Mr. England's clients. And we are making
15 progress towards reaching a number. I
16 understand that it was staff's position in the
17 1077 case was that a traffic study should be
18 conducted. Our feeling about that is that it
19 would be time consuming, expensive and may not
20 come up with the number that is substantially
21 different from the number that the parties could
22 agree on voluntarily.

23 JUDGE THOMPSON: And I assume that
24 that holds as well for this case?

25 MR. MARK JOHNSON: Oh, absolutely,

1 yes.

2 JUDGE THOMPSON: Right. The
3 proposal, in other words, is that the parties
4 would develop figures that they were reasonably
5 comfortable with that they would then stipulate
6 to and which could go into the record on the
7 basis of the agreement of all parties. In
8 formulating proportions in this way, none of the
9 parties would surrender any of the legal
10 positions or defenses that they have staked out.
11 But it would spare the parties the expense and
12 trouble going through a traffic study. Sir?

13 MR. MARK JOHNSON: Could I make one
14 more point? In the discussions with
15 Mr. England's clients, it's become apparent that
16 the numbers are going to vary.

17 JUDGE THOMPSON: Okay.

18 MR. MARK JOHNSON: Among the -- you
19 know, among the ILECs. So although perhaps we
20 entered into the discussions with the thought
21 that we might come up with a single number, it's
22 become clear that that's not going to be likely.
23 And so we found that the number of ILECs
24 involved is sufficiently manageable, that we're
25 probably going to be able to come up with

1 individual percentages for each company.

2 JUDGE THOMPSON: Thank you, sir.

3 So --

4 MR. BROWNLEE: Let me ask a

5 question.

6 JUDGE THOMPSON: Sure. Go ahead.

7 MR. BROWNLEE: I have 289 cell sites

8 within the MTA. Got four outside of it. So

9 that means that the intra MTA traffic is like

10 98.5 if I -- if I compute the -- is that the way

11 it's supposed to work, Mark?

12 MR. MARK JOHNSON: Well, not

13 necessarily. Maybe yes. Make no. Our

14 discussions with -- with Tripp's clients have

15 indicated that many of their -- many of his

16 clients -- we don't have any cell sites in their

17 territories at all. On the other hand, there

18 are several in which, I think -- most of the

19 cell sites are concentrated. So I think you --

20 you have to look at it on a company by company

21 basis rather than sort of collectively

22 state-wide basis.

23 MR. BROWNLEE: Well, that's what I

24 mean. For my company, I mean, that would be the

25 way you'd compute it. Is that the -- I --

1 MR. MARK JOHNSON: That's -- that's
2 certainly -- that's where the discussions
3 started.
4 MS. HENDRICKS: Your Honor, if I --
5 I'm sorry.
6 JUDGE THOMPSON: Go ahead.
7 MS. HENDRICKS: One thing if I can
8 add on to what Mr. Johnson is saying. Not only
9 is this figure, I think, going to be unique for
10 the ILEC, but it will be unique for each
11 wireless provider. So we are looking at various
12 different numbers.
13 JUDGE THOMPSON: I would expect them
14 to be unique for everybody. I think we're
15 looking at a matrix probably.
16 MS. HENDRICKS: Are we looking to
17 get the inter MTA factors for those companies
18 who currently have tariffs or just for the
19 companies who do not have tariffs?
20 JUDGE THOMPSON: The Commission
21 would like it for all of the companies, whether
22 they have a tariff or not.
23 MS. HENDRICKS: With respect to the
24 companies that have tariffs and we have
25 negotiated agreements, can we just take the

1 inter MTA factor from those agreements? For
2 example, Sprint PSC and MO-KAN, have an
3 agreement.

4 JUDGE THOMPSON: But do the
5 agreements cover all the traffic at issue and
6 all the time at issue?

7 MS. HENDRICKS: It just -- it covers
8 the traffic being sent over the same facilities
9 from a point in time.

10 MR. CRAIG JOHNSON: It would be
11 respective to the date the agreement was
12 approved, your Honor. With respect to the case
13 that was submitted to the Commission, I don't
14 think that the agreement contemplates it going
15 back and applying to that. There is no retro
16 compensation.

17 JUDGE THOMPSON: I understand.

18 MR. CRAIG JOHNSON: Adjustments --

19 JUDGE THOMPSON: I think -- for
20 periods not covered by such an agreement, I
21 think an estimate would have to be developed in
22 the same manner as estimates would be done where
23 there are no agreements at all. I mean, that's
24 my thought.

25 MS. HENDRICKS: Okay.

1 JUDGE THOMPSON: I'm trying to lead
2 you down the path of making an agreement,
3 obviously, so that we don't have to have
4 extensive new litigation in order to -- in order
5 to come up with these numbers, which weren't
6 recorded at the time.

7 MR. CRAIG JOHNSON: Your Honor, if I
8 might --

9 JUDGE THOMPSON: You may.

10 MR. CRAIG JOHNSON: -- be so bold as
11 to ask a question. As I recall the evidence,
12 this is a general summary of it, we had
13 testified that because of the lack of
14 information in the CTSR reports that we had
15 received, we didn't have enough information to
16 distinguish between the originating cell towers
17 and thus we couldn't distinguish between the
18 inter and intra MTA traffic. We suggested, I
19 believe, that that information was exclusively
20 in the possession of the wireless carrier, and
21 we asked the Commission to establish
22 presumptions since they failed to provide it.
23 And their testimony was at the hearing we can't
24 do it now, that we apply some sort of
25 presumptions to the traffic. And I take it from

1 your comments that the Commission is not going
2 to accept that invitation.

3 JUDGE THOMPSON: Well, I don't think
4 you should -- I don't think you should deduce
5 what the Commission is going to do from what I
6 do. The Commission and I are -- are separate
7 and sometimes not aligned. I am their servant.
8 It is my job to -- to do the things that a law
9 judge does. But eventually, the case goes into
10 the agenda room where the Commissioners, as you
11 know well, argue back and forth, and they're
12 going to do whatever it is they're going to do.

13 MR. CRAIG JOHNSON: Right.

14 JUDGE THOMPSON: So what I have to
15 do is provide them with the very best record
16 that I can so that what they do will be guided
17 by all of the information that is necessary,
18 that -- that is not only reasonably necessary
19 but perhaps even goes a little bit beyond what's
20 reasonably necessary so that they can make the
21 best decision that they can and also so that we
22 can provide the best record and the best
23 decision to the Circuit Court, which after all
24 is where this is heading. Okay?

25 MS. HENDRICKS: Your Honor, if I may

1 make a point in response?

2 JUDGE THOMPSON: You may.

3 MS. HENDRICKS: The evidence --

4 Sprint PCS did put in substantial evidence about

5 how our traffic was routed and then discussed

6 how -- the likely percent or the likelihood that

7 inter MTA was within the LEC to LEC traffic

8 being delivered. And then I'd also like to make

9 a suggestion. It sounds as if you were

10 directing us to go out and negotiate.

11 JUDGE THOMPSON: That is exactly

12 what I'm doing.

13 MS. HENDRICKS: The question becomes

14 the time frame in which we are working.

15 JUDGE THOMPSON: I'm going to want

16 to hear back in 30 days. I think that's what we

17 did in the 1077 case.

18 MR. MARK JOHNSON: I think our

19 response to you -- our report to you is due this

20 Friday, the 20th.

21 JUDGE THOMPSON: Yeah. And that's

22 just so that -- you know, we don't want to throw

23 this out into limbo because none of the parties

24 and litigants deserve that. But at the same

25 time we want to provide an adequate interval for

1 real negotiations to occur. So in 30 days I
2 want to hear back, and I'll task staff with the
3 primary obligation of filing something. And if
4 things come to an impasse sooner, then, of
5 course, let me know. And we'll go ahead and
6 ramp up a traffic study if that's what it's
7 going to take. But it's my understanding from
8 Mr. Johnson is that traffic studies are
9 extensive, require hardware changes and
10 switches, software changes and switches as well
11 as a period of time over which the traffic has
12 to be measured; isn't that correct?

13 MR. MARK JOHNSON: Yes, sir.

14 MS. HENDRICKS: And your Honor, I
15 struggle with --

16 JUDGE THOMPSON: Mr. Murphy was up
17 first.

18 MS. HENDRICKS: Okay. I'm sorry.

19 JUDGE THOMPSON: Yes, sir.

20 MR. MURPHY: I believe Cingular's
21 perfectly willing to sit down and try to
22 negotiate these factors. I am concerned as to
23 whether 30 days is adequate because I'm not
24 aware that Cingular has a map -- in fact, I'm
25 reasonably confident Cingular does not currently

1 have a map which maps its tower sites to MTAs.

2 JUDGE THOMPSON: Okay.

3 MR. MURPHY: And I -- I don't know
4 whether that is a huge task, a small task, a
5 menial task or a gargantuan task. But assuming
6 that it is something that Cingular would be
7 willing to do as part of these negotiations, I
8 suspect creating a map is probably somewhat time
9 consuming. And I'm perfectly willing to go on a
10 30-day calendar on the understanding that if
11 these negotiations are going somewhere, part of
12 that may be requesting some sort of an extension
13 so that we can put together the necessary tools
14 to negotiate this along these lines.

15 JUDGE THOMPSON: Absolutely. I want
16 this to succeed, not fail. And so if
17 negotiations are proceeding and are progressing
18 fruitfully, then staff need merely notify me on
19 the 30th day that discussions continue and that
20 an agreement is expected soon. Okay? And you
21 don't even have to ask for an extension. Just
22 provide that response. Okay? Mr. Johnson, you
23 had something?

24 MS. HENDRICKS: Well, and I -- and I
25 -- it also went to the time on this that was

1 raised by Mr. Murphy, my comment. I guess we
2 have a lot of parties with time commitments on
3 time on behalf Craig's client because we're all
4 going to have to sit down for each one of the
5 companies in this case, pull out our maps and
6 have a discussion.

7 JUDGE THOMPSON: Okay.

8 MS. HENDRICKS: Now, I am concerned
9 also that we could not do that within a 30-day
10 time frame. And, furthermore, I'm concerned
11 that the party who is really punished by the
12 failure to do it in a 30-day time frame is the
13 wireless carries. And if we have some equal --

14 JUDGE THOMPSON: Why are you
15 punished?

16 MS. HENDRICKS: Because we are
17 forced into a traffic study.

18 JUDGE THOMPSON: Well, gosh, I feel
19 bad about that. I mean, the traffic has been
20 delivered, hasn't it?

21 MS. HENDRICKS: It has been
22 delivered.

23 JUDGE THOMPSON: So I don't see why
24 I should feel very sympathetic about that.
25 Mr. Johnson?

1 MR. CRAIG JOHNSON: Your Honor, it's
2 an observation that occurs to me that it looks
3 like the Commission -- or you're asking us to do
4 a negotiation to come up with a factor. To me,
5 that would be part of what would be involved,
6 maybe a big part of what might be involved in a
7 regular inter-connection agreement negotiation.
8 And I think I sent a letter -- I'm getting
9 around to this letter I sent to you and the
10 parties.

11 JUDGE THOMPSON: I have not
12 forgotten that.

13 MR. CRAIG JOHNSON: The Commission
14 originally said in both the Bell tariff
15 proceedings as well as a certain
16 inter-connection agreements that this traffic
17 wasn't supposed to come to us without such an
18 agreement. And as I pointed out in my letter, I
19 think the final solution to all this litigation
20 we've been going through the last several years
21 is for somebody to make the inter-connection
22 agreement process be completed. Now, after four
23 or five years of that not being done because of
24 wireless carriers' failures to adhere to orders
25 and agreements, you're suggesting that my

1 clients now go out and negotiate what would be
2 part of an agreement. And I was suggesting in
3 the letter that the way to make that the real,
4 complete inter-connection agreement process work
5 is to authorize the traffic to be blocked by
6 Southwestern Bell, and we would pay Bell for the
7 translations so that it will really happen.

8 JUDGE THOMPSON: Well, let's take up
9 the several issues that you have raised because
10 I think that is appropriate to do. No. 1, with
11 respect to traffic blocking, if that is what
12 your clients want, then you're going to have to
13 file a motion and you're going to ask for
14 traffic blocking and you're going to have to
15 provide all the factual predicates that you can
16 possibly think of and all the legal explanation
17 you can possibly think of. And perhaps the
18 Commission will order traffic blocking and
19 perhaps they won't. I don't know.

20 Frankly, I think I -- I am not erring to
21 say that I don't think that they are very
22 friendly to the idea of traffic blocking. But
23 we do have a very recent Missouri Appellate
24 Court decision saying that, well, of course, if
25 people don't pay, block the traffic. That's

1 what happens when State senators don't pay their
2 water bills and that's what happens when people
3 don't pay for utilities, right? They get turned
4 off. So -- but that isn't really on the table
5 yet because there's no motion. Okay? If
6 there's a motion, it will be on the table. and
7 the Commissioners, as I say -- I keep saying
8 will do what they're going to do, and I don't
9 know what that is. Okay?

10 Everyone else in the room will get a
11 chance to respond, will be told that traffic
12 blocking is unlawful under the federal law, will
13 be told it's unlawful under state law, will be
14 told it's a bad, bad thing for everyone in
15 Missouri. And the Commissioners will do what
16 they're going to do.

17 Now, with respect to burdening your
18 clients with this negotiation, you know, there
19 is an evidentiary pull in your case. You have,
20 after all, the affirmative. And we're looking
21 to fill this evidentiary hole. And we're
22 looking to do it through a stipulation. And as
23 I said, the parties will preserve all of their
24 defenses and all of the legal positions and
25 factual positions they have staked out. But it

1 will permit the Commission to render Findings of
2 Fact and Conclusions of Law in this case. And
3 then the case can go wherever the case is going
4 to go. And I think we know where that is
5 because we can't give you money. I mean, if you
6 win, we can't order anybody to pay you anything.
7 So you're going to have to go down and get Tom
8 Brown or Rich Callahan to order somebody to pay
9 you something. Right?

10 So we would like the case to go down
11 there with all of the necessary facts and with
12 adequate Conclusions of Law, right or wrong,
13 based on those facts. So that's what we're
14 trying to do. From my point of view, I'm trying
15 to improve the record. I'm trying to improve
16 the record by getting this crucial information.
17 Because think about it. In the position papers
18 that the parties filed and in the hearing and in
19 the briefs, most of the parties, I think, have
20 agreed that inter MTA traffic is long distance
21 traffic. Right? And that if there's any of
22 that, then it's probably subject to access like
23 any other long distance traffic. After all, the
24 joker in this deck is the position that the FCC
25 has taken, correct, with respect to the local

1 calling scope of a wireless carrier being as big
2 as an MTA. That's the only thing that renders
3 the intra MTA traffic, perhaps not long distance
4 traffic, right? Otherwise, it would be just
5 long distance traffic. So in terms of the
6 tariffs that apply, well, for those companies
7 who have tariffs that cover part of this period,
8 those tariffs distinguish between intra MTA
9 traffic and inner MTA traffic. Do they not?

10 MR. CRAIG JOHNSON: Yes, they do.

11 JUDGE THOMPSON: Yes, they do.

12 Which causes a difficult conundrum for the
13 Commission because it is a distinction that is
14 not present in the data. So -- and the rates
15 are different. So for this intra MTA traffic
16 delivered under these tariffs, the tariff -- the
17 tariff rate is the appropriate rate. And the
18 tariff directs us in the case of inter MTA
19 traffic, why it directs to that exchange access
20 tariff, a different rate, a different tariff.
21 So under the file tariff doctrine, the
22 Commission has to apply the correct tariff. We
23 have to know the proportion of the traffic.
24 Right?

25 Now, with respect to the traffic

1 delivered without any tariff, the question there
2 may be not what tariff applies, but who pays?
3 Who pays? Perhaps for inter MTA traffic that
4 everyone after all agrees is long distance
5 traffic, perhaps it is the LEC who delivered it
6 to the small ILEC after all. That's how long
7 distance works, isn't it? An IXC delivers
8 traffic to an ILEC and they pay access. Well,
9 in this case, the traffic was delivered mostly
10 by Bell, partially by Sprint, and some by an
11 IXC, by an admitted IXC who paid access, right?

12 So these are questions that all turn on
13 the nature of the traffic. Right? If there is
14 no tariff and it's intra MTA traffic, as you
15 pointed out, well, the only tariff there is the
16 access tariff. So let's say the Commission
17 says, Yeah, we'll buy access to that. And I
18 don't want to suggest that that's what they're
19 going to do because, frankly, I don't know what
20 they're going to do. But let's say they say
21 that. Then who is going to pay? Probably not
22 the ILEC, the LEC who delivered it. Probably
23 the wireless company that originated it. So,
24 you know, even where there is no wireless
25 termination tariff and even though they're both

1 going to be billed under the exchange access
2 tariff, one assumes, the pay -- the person who
3 pays may be different depending, again, on the
4 flavor of the traffic.

5 So it looks like we absolutely have to
6 have that. Otherwise, this case is going to go
7 down to the circuit judges, and the Commission's
8 going to say, Well, there was traffic, but we
9 don't know how much of it was inter MTA and we
10 don't know how much of it was intra MTA, so we
11 can't tell you that. But we can tell you here's
12 who would pay and here's the tariff they would
13 pay under if we did know that. Right? Now, I
14 don't know what the circuit judges would do with
15 a case that came to them like that. But my
16 guess is it would come back, and they would say,
17 Find out. Sir?

18 MR. MARK JOHNSON: Judge Thompson,
19 let me suggest something that -- that we found,
20 sort of kick-started our discussions. And Tripp
21 -- I'll give him credit for this. He prepared
22 two maps, which we have found immensely helpful.
23 They're large maps. One -- they're both,
24 obviously, State of Missouri. One has -- by
25 county has -- has all the counties of the state

1 and the MTA boundaries overlaid. The second map
2 has every exchange in the state, and it's --
3 it's colored in for each of the companies
4 involved in that case. And what I'm going to
5 suggest that I -- I'd be happy to do and I could
6 get this to everybody probably within a couple
7 of days is I could make copies of -- make paper
8 copies of the Missouri map with the MTA and
9 county boundaries. And then ascitate, in other
10 words, clear copies of the exchange map that you
11 could overlay on top of that so you could see
12 where each exchange -- exchange -- not just
13 county, but where each exchanges lies would --
14 in which -- in which MTA --

15 JUDGE THOMPSON: Right.

16 MR. MARK JOHNSON: -- each exchange
17 lies.

18 JUDGE THOMPSON: Certainly sounds
19 useful.

20 MR. MARK JOHNSON: And that map has
21 a key that shows which inter -- which ILEC has
22 which exchanges. And -- and we -- we would --
23 we found that that's very useful in saying --
24 you know, talking about, say, Frontier or, you
25 know, all of the companies. We could talk about

1 each company individually that way. We could
2 say, okay, what about BPS? Okay. Well, they're
3 in this part of the state. They're in this MTA.
4 Voicestream, as far as we know, it doesn't
5 generate any traffic in that MTA. I mean, I'm
6 just --

7 JUDGE THOMPSON: Right.

8 MR. MARK JOHNSON: You know,
9 speaking hypothetically.

10 JUDGE THOMPSON: Hypothetically.

11 MR. MARK JOHNSON: And so from that,
12 we -- we talk back and forth and we might be
13 able to come up with a number that way. So just
14 a thought. And I'd be happy to get that to
15 everybody in a couple of days.

16 JUDGE THOMPSON: I appreciate that.

17 MS. HENDRICKS: You know, I kind of
18 want to go back to my concern. Even with that
19 -- I think that will be helpful. If you look at
20 the number of companies here involved and the
21 number of MTA factors you're going to have to
22 develop, is it realistic within the 30 days?

23 JUDGE THOMPSON: You don't have to
24 be done in 30 days.

25 MS. HENDRICKS: Just progress?

1 JUDGE THOMPSON: I just want to know
2 what's happening in 30 days. I want some kind
3 of a report. They refuse to speak to each
4 other. Bring them back in. Or we're making
5 great progress and -- and you know, we're now
6 doing round robin dinners at each other's homes.
7 Whatever the progress is, let's me know. Sir?

8 MR. CRAIG JOHNSON: May I ask
9 Mr. Johnson a question?

10 JUDGE THOMPSON: You may.

11 MR. CRAIG JOHNSON: I understand
12 that if we had originating cell tower location
13 information and we had this map that show where
14 my clients' exchanges were that that would give
15 us possible paths for originated and terminated
16 paths which would distinguish inter from intra
17 MTA traffic. Also, some of my clients can get
18 traffic out -- we need to know which tandem it's
19 coming through. Is this part of the study that
20 you're doing, looking at which part of the
21 tandem?

22 MR. MARK JOHNSON: No. But -- but
23 in the discussions, we -- you know, we say,
24 well, we think all of the traffic from this area
25 is going through the Kansas City tandem, for

1 example, or it's going through Kansas City or
2 it's going through St. Louis. In the case of
3 T-Mobile, it's -- it's going through either
4 Kansas City or St. Louis. Maybe -- we're trying
5 to determine if some of it's going through
6 Springfield. The folks out in Seattle are
7 trying to figure that out right now. But those
8 are the only -- as I understand it, there's only
9 three possibilities. That's what they're
10 telling me. Now, with the other wireless
11 carriers, I don't know. I mean, that's why I
12 think, as Lisa pointed out, this would be an
13 individual, I mean, wireless company by wireless
14 company discussion.

15 MR. CRAIG JOHNSON: Okay. We're
16 certainly willing to sit down and try do this
17 within 30 days, your Honor.

18 JUDGE THOMPSON: I appreciate your
19 willingness to sit down. As I say, you don't
20 have to be done in 30 days, but I'd like to hear
21 back on how it's going in 30 days. And I think
22 that -- I mean, if, in fact, the parties reach a
23 stipulation, it can be as easy as saying, well,
24 you know, I like 50/50. Or if you want to do it
25 in a more complicated way, in a more rigorous

1 way that you think will more likely give us the
2 same number that a traffic study would do,
3 that's fine. But the point of stipulation is
4 that everybody agrees, says, okay, let's
5 supplement the record with these numbers. Where
6 you get the numbers, I don't care. Sir?

7 MR. PULLIAM: Your Honor, two
8 questions.

9 JUDGE THOMPSON: Yes, sir.

10 MR. PULLIAM: One addresses the
11 stipulation aspect of this. If it is to proceed
12 on a carrier by carrier basis and respondent by
13 respondent basis, I -- I'm not so certain I'm
14 even in a position to stipulate as Verizon
15 Wireless on any agreement between any of Craig's
16 clients and any of the other carriers here.

17 JUDGE THOMPSON: Why not?

18 MR. PULLIAM: Because I just -- I
19 don't know what I don't know.

20 JUDGE THOMPSON: Okay. Well, that's
21 why I'm giving you 30 days.

22 MR. PULLIAM: I just bring that up
23 for one issue. And, secondly, your Honor, this
24 goes more towards globally why we are here
25 today.

1 JUDGE THOMPSON: Okay.

2 MR. PULLIAM: And some -- some

3 language in the order. And I think you

4 referenced it in -- in statements you were

5 making about why we are here, and that is

6 something to the effect that there's a hole in

7 the evidence --

8 JUDGE THOMPSON: Right.

9 MR. PULLIAM: -- in this proceeding.

10 And one of the positions that we have taken

11 throughout this proceeding, certainly in our

12 briefs, is that it is intendant upon the

13 complainant to carry the burden of proof and

14 that a failure to carry burden of proof

15 necessitates a ruling against the -- the

16 petitioners in this case.

17 JUDGE THOMPSON: I'm well aware of

18 that position.

19 MR. PULLIAM: Well --

20 JUDGE THOMPSON: You're not done

21 yet. Please proceed.

22 MR. PULLIAM: No, sir. I view this

23 proceeding as -- as an attempt, as you say, by

24 the Commission to fill in that hole --

25 JUDGE THOMPSON: That's correct.

1 MR. PULLIAM: -- in order so that a
2 decision by the Commission in this proceeding
3 maybe has some teeth. I think you described the
4 potentiality of a decision rendered by the
5 Commission in this proceeding at the Circuit
6 Court without this information as I don't know
7 what the Judge -- Judge Brown or Judge Callahan
8 would do up there.

9 JUDGE THOMPSON: I don't know
10 either.

11 MR. PULLIAM: But from a procedural
12 point of view, if it is our position -- I'm not
13 speaking on behalf of any other carrier at this
14 point. If it's our position that this
15 proceeding itself is objectionable in that the
16 record has been developed, it's been submitted
17 since -- well, evidence, last August, briefs,
18 probably since November and that the burden
19 being on the -- the complainants to establish by
20 substantial and competent evidences each of
21 their issues, if by our participation in this
22 case, I certainly don't want to have Verizon
23 Wireless waive our objections to that burden
24 being still intendant upon the complainants, nor
25 do I want to have our participation in this

1 proceeding be viewed as a waiver or as -- a
2 waiver of our perhaps objection to the entire
3 proceeding as somehow deficient or uncalled for
4 in light of the strict burdens that are placed
5 upon the parties with respect to producing the
6 evidence necessary to support their positions.

7 And I'm questioning -- it's much like, in
8 my mind, a special entry of appearance when
9 you're questioning jurisdiction in a civil
10 matter. You're appearing not so much to address
11 any merits of the case. You're simply
12 questioning the objections or the -- the ability
13 of the court perhaps to reach your -- to reach
14 your client. Similarly here, I just, in
15 essence, want to preserve for the record, I
16 guess, my objection in participating in this
17 proceeding to the extent it's viewed as the
18 complainant being allowed to supplement the
19 record that stands before the Commission today.

20 JUDGE THOMPSON: Okay. And -- and I
21 think that's very good point. And I will
22 respond to that. First of all, it's the
23 Commission supplementing the record and not the
24 complainants. And on behalf of your clients,
25 you -- you must, of course, file whatever you

1 feel best protects their interests, be that a
2 motion, a writ, go get a writ, whatever you
3 think you need. But I will say this, that if --
4 it is my view -- and, again, I don't know what
5 the Commissioners are going to do, so it makes
6 it hard to sit here as though I were a judge
7 because I can't say, I'm going to give X, Y and
8 Z because I can't -- I can only go to them and
9 ask them to do X, Y and Z and they may ignore
10 me. Okay? But I will say that what I will do
11 is if any of the parties do not cooperate, then
12 I will ask that a traffic study be ordered and
13 that the cost of that be borne by the
14 non-cooperating party. The evidence as it
15 currently stands is sufficient to show that
16 traffic was delivered. There was traffic.
17 We're not in a situation where we're say, Gosh,
18 Mr. Johnson's failed to show there was even any
19 traffic. Right? Let's all just go home. I
20 think the record shows there was traffic. And
21 so what we need is to know the flavor of the
22 traffic. Okay? And it would be different if
23 there were no showing that there was traffic.
24 And I think I've said enough on that.

25 MR. CRAIG JOHNSON: Your Honor, I

1 just want to put a thought out there for
2 everybody's digestion and possible comment. It
3 seems to me if we're going to go through this
4 exercise and try to develop a factor based on
5 Mr. Johnson's methodology or something else, if
6 that resultant agreement, the stipulation,
7 whatever we're going to call it is not applied
8 to the traffic in this case, it's not any good.

9 JUDGE THOMPSON: Absolutely.

10 MR. CRAIG JOHNSON: So I think the
11 parties needs to understand that the use of the
12 stipulation is going to be retrospective of
13 looking.

14 JUDGE THOMPSON: Well, yeah. It's
15 going to be for this case. It's essentially an
16 evidentiary stipulation, right, stipulated facts
17 for the purpose of this case, and as far as I'm
18 concerned, no other purpose.

19 MR. CRAIG JOHNSON: I mean, I
20 envision stipulation saying these -- this
21 complainant and this wireless carrier respondent
22 have agreed between them the traffic factor is
23 95 percent inter MTA, 5 percent intra MTA, and
24 that is a -- a fair approximation of the
25 proportions of traffic that are at issue in this

1 case as well as if it's based on current traffic
2 studies or call information that might -- what
3 I'm saying we can't go back and duplicate the
4 past. Part of the stipulation has to be to
5 apply this factor to the traffic in this case.

6 JUDGE THOMPSON: Right. But I also
7 know that it is not at all unusual in the
8 telephone industry to do traffic studies and use
9 the results of those studies for periods other
10 than when the traffic study was actually done.
11 So we would not, I think, be veering very far
12 from the, you know, business as usual in this
13 industry.

14 MR. BROWNLEE: I have a little
15 question.

16 JUDGE THOMPSON: Yea, sir.

17 MR. BROWNLEE: I probably don't --
18 I'm not the sharpest tack in the drawer on the
19 technical side of this, but one thing that
20 concerns me about this ratio -- I happen to know
21 where my cell sites are. I don't know whether
22 that's a big problem. I think most of these
23 companies would know it. But the problem is
24 that on June 16th, 2003, there's a different --
25 my cell sites are different today than where

1 they were six months ago and a year ago and when
2 all this bitching started between the companies,
3 whenever that was. So the situation is we're --
4 all of us looking at the facts today assume you
5 could make us all come up and show us your cell
6 sites or your maps is a different situation and
7 maybe a completely different ratio than it may
8 have been six months ago or a year ago. And
9 that's a real problem because maybe my four cell
10 sites outside the MTA as it relates to my 300 or
11 whatever other ones, two years ago, I may have
12 only had a hundred within inter MTA and still
13 four outside, and that would have changed the
14 percentage of my traffic substantially.

15 JUDGE THOMPSON: I understand that.

16 MR. BROWNLEE: Now that's a real
17 problem that I perceive. And I don't know how
18 -- unless we all are just saying we're going to
19 start looking effective July 1, 2003, that's a
20 real problem. I mean, I think -- I think that
21 will skew -- when you look at that, the growth
22 of the cell sites is really likely to skew
23 something. I mean, you know, I guess if we're
24 all -- if we all have to climb the same
25 mountain, it's all going to be the same as of a

1 certain date. But -- that's a problem.

2 JUDGE THOMPSON: As Mr. Johnson

3 said, we're looking to develop a proxy.

4 MR. BROWNLEE: Yeah.

5 JUDGE THOMPSON: There is really no

6 replacement for the data at the time the traffic

7 was delivered. But this information, as far as

8 I know, was not recorded at the time.

9 MR. BROWNLEE: Yeah.

10 JUDGE THOMPSON: So --

11 MS. HENDRICKS: Your Honor, I have a

12 point of just clarification. Are we to report

13 to staff or is staff going to be involved in the

14 negotiations? Do you have a --

15 JUDGE THOMPSON: That's -- staff --

16 I will leave that up to staff.

17 MS. HENDRICKS: Okay.

18 JUDGE THOMPSON: They may not want

19 to be involved. They don't really have a dog in

20 the fight. If they want to, if they feel they

21 can help things move along, that's fine.

22 Otherwise, just advise staff how you're doing.

23 Why don't you talk to Mr. Anderson after we go

24 off the record and --

25 MS. HENDRICKS: Okay.

1 JUDGE THOMPSON: -- work that part
2 out?
3 MR. BROWNLEE: Another inquiry?
4 JUDGE THOMPSON: Yes, sir.
5 MR. BROWNLEE: Are you going to
6 issue an order like the one that was in
7 Mr. England's case, or is there going to be a --
8 I'm not sure exactly what --
9 JUDGE THOMPSON: There will be an
10 order. Yes, there will.
11 MR. BROWNLEE: And what does that
12 order look like? I was not participating in
13 that. I mean, is it going to say, tell us how
14 many cell sites have you within --
15 MR. MARK JOHNSON: As I remember,
16 Richard, all it says is -- you know, we had a
17 prehearing conference today and the parties
18 agree that they report back to me by June 20.
19 JUDGE THOMPSON: There you are.
20 Short and sweet.
21 MR. MARK JOHNSON: There's more than
22 that than that, but not much.
23 JUDGE THOMPSON: Mr. Anderson?
24 MR. ANDERSON: Your Honor, I would
25 assume any of these agreements would have to be

1 entered into the record for the Commission to
2 consider the information?

3 JUDGE THOMPSON: What the Commission
4 wants are the numbers, the proportions. And I
5 think to get them into the record, they have to
6 be stipulated to. That's -- you know, on the
7 one hand, the beauty of stipulated facts is we
8 don't have to, you know, check their teeth. You
9 guys stipulate to a number, and we'll say great.
10 We'll take this number. We don't care how
11 reliable the number is or how right it is or
12 anything else because everybody has said, We
13 agree, use this number. Or these numbers, which
14 is really what we're talking about. On the
15 other hand, if we have to come up with them in a
16 different way, then we have all those issues of,
17 Well, how do you measure this and is this
18 measurement done now really descriptive of the
19 traffic delivered? You get into just -- you
20 know, you guys are great lawyers -- an endless
21 array of litigable issues about how we come up
22 with these numbers. Right? And perhaps this
23 thing could go on for several years. It would
24 be like one of those famous English chancery
25 cases where the grandchildren and the great

1 grandchildren finally get the inheritance.

2 Now, of course, the Circuit Court can do
3 things we can't do. They can do equity. The
4 administrative tribunal can't do equity. They
5 can say, Well, gosh, we know there was traffic
6 and it would be equitable then in the absence of
7 this evidence to do X. And they can do that.
8 But we can't. And that's why we are on this
9 question for this supplement to the record.
10 Okay? Anything else?

11 I appreciate all of you coming in today.
12 And I appreciate your good faith and best
13 efforts in this matter. Please let me know. I
14 will issue an order today. I will be leaving
15 early today, so if -- if some sort of eruption
16 occurs, I may not be here. I'll let Judge Mills
17 know that perhaps someone will be asking some
18 questions. All right? Sir?

19 MR. MARK JOHNSON: One more point.
20 Everybody who wants copies of these maps, give
21 me your card with your -- not just a post office
22 box, but with your street address so I can
23 overnight this thing to you.

24 JUDGE THOMPSON: If there is nothing
25 further, thank you all very much. We will go

1 ahead and go off the record now, and the
2 recorded portion of this prehearing conference
3 is adjourned. Thank you.

4 (The proceedings were concluded at
5 10:35 a.m. on June 16, 2003.)

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REPORTER'S CERTIFICATE

STATE OF MISSOURI)
) ss.
COUNTY OF OSAGE)

I, Monnie S. VanZant, certified Shorthand
Reporter, Certified Court Reporter #0538, and
Registered Professional Reporter, and Notary Public,
within and for the State of Missouri, do hereby certify
that I was personally present at the proceedings as set
forth in the caption sheet hereof; that I then and
there took down in stenotype the proceedings had at
said time and was thereafter transcribed by me, and is
fully and accurately set forth in the preceding pages.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal on July 2, 2003.

Monnie S. VanZant, CSR, CCR #0539
Registered Professional Reporter