

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS
5
6 Hearing
7 November 7, 2003
8 Jefferson City, Missouri
9 Volume 5
10
11 BPS Telephone Company, Cass County)
12 Telephone company, Citizens Telephone)
13 Company of Higginsville, Missouri,)
14 Craw-Kan Telephone Cooperative, Inc.,)
15 Fidelity Communication Services I,)
16 Inc., Fidelity Telephone Company,)
17 Grand River Mutual Telephone)
18 Corporation, Green Hills Telephone)
19 Corporation, Holway Telephone)
20 Company, IAMO Telephone Company,)
21 Kingdom Telephone Company, K.L.M.)
22 Telephone Company, Lathrop Telephone)
23 Company, and Mark Twain Rural)
24 Telephone Company,)
25
26 Complainants,)
27
28 vs.) Case No. TC-2002-1077
29
30 Voicestream Wireless Corporation,)
31 Western Wireless Corp., and)
32 Southwestern Bell Telephone Company,)
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34 Respondents.)
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36
37 KEVIN A. THOMPSON, Presiding,
38 DEPUTY CHIEF REGULATORY LAW JUDGE.
39
40 STEVE GAW, Chair,
41 CONNIE MURRAY,
42 BRYAN FORBIS,
43 ROBERT M. CLAYTON, III,
44 COMMISSIONERS.
45
46
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1 PROCEEDINGS

2 JUDGE THOMPSON: I think we're ready for
3 recross of Mr. Scheperle based on questions from the bench,
4 and I believe, Mr. England, you're up.

5 MR. ENGLAND: Thank you.

6 CROSS-EXAMINATION

7 QUESTIONS BY MR. ENGLAND:

8 Q. Good morning, Mr. Scheperle.

9 A. Good morning, Mr. England.

10 Q. I'm going to try to be brief, just a couple
11 questions on -- kind of the information you looked at to
12 determine whether or not these interMTA factors are
13 appropriate or not. Would you agree with me that to some
14 degree, the location of the exchanges, the location of the
15 cell sites in relation to the MTA and lata boundaries does
16 give you some intuitive feel for whether or not there's
17 going to be interMTA or intraMTA calling?

18 A. Yes.

19 Q. Would you also agree with me that following up
20 on that question, that for a Southwestern Bell, who's more
21 predominantly located in the large metropolitan areas where
22 the wireless carriers tend to connect, interMTA calling
23 patterns will be different, and perhaps significantly
24 different, than for companies such as Mark Twain, BPS,
25 Craw-Kan, who are sort of on the fringes of either the MTA

1 boundaries or the lata boundaries or both?

2 A. I would agree with that. I mean, basically,
3 I'm looking at Southwestern Bell being in the St. Louis
4 metropolitan area, the Kansas City metropolitan area, and
5 the Springfield area, and those are well-defined within
6 their MTA areas versus a small LEC may be located -- they
7 may have certain exchanges in different MTA areas.

8 Q. And that's not to say Southwestern Bell
9 doesn't serve maybe some rural exchanges out on the borders
10 of the MTA's or the latas, but just the sheer numbers are
11 more concentrated in those metropolitan areas such that you
12 would expect a much more predominance, if you will, or
13 preponderance of intraMTA calling terminating to their
14 exchanges, wouldn't you?

15 A. I would agree with that.

16 MR. ENGLAND: Thank you. No other questions.

17 JUDGE THOMPSON: Thank you Mr. England. Mr.
18 Johnson.

19 MR. JOHNSON: Thank you, your Honor.

20 CROSS-EXAMINATION

21 QUESTIONS BY MR. JOHNSON:

22 Q. Mr. Scheperle, just briefly, I want to make
23 sure that I understood some of the testimony, which you gave
24 in response to, I believe it was questions from the
25 Commissioner Gaw, pardon me, Chairman Gaw.

1 I believe he asked you about the information
2 that was elicited from Western Wireless in response to data
3 requests that I believe you issued; is that correct?

4 A. That is correct.

5 Q. Okay. And as I remember in your testimony,
6 you talk about five items that could be considered by
7 parties in their negotiation of appropriate interMTA
8 factors; is that correct?

9 A. That is correct.

10 Q. Okay. And as I understand it, you issued data
11 requests to Western Wireless relating to four of those
12 factors, the first four, and specifically, I believe you
13 discussed that the types of information that would be
14 elicited from those data requests on Pages 5 and 6 of your
15 additional rebuttal testimony?

16 A. Actually, I have pages -- the bottom of Page 4
17 and Page 5.

18 Q. Okay. Thank you. And as I understand it, the
19 data request related to the first four items of those five.

20 A. That is correct.

21 Q. And you received that information from Western
22 Wireless?

23 A. Yes.

24 Q. In your consideration of the appropriateness
25 of the interMTA factors, which Western Wireless and Voice --

1 pardon me, T-Mobile negotiated with the Complainants, did
2 you take that information into consideration that you had
3 received from Western Wireless?

4 A. Yes, I did. The concern from Staff's point of
5 view is that Western Wireless did not agree to any interMTA
6 factors until surrebuttal testimony, so I was going to
7 develop factors if they did not agree.

8 Q. I understand, and that's why you issued the
9 data requests?

10 A. That is correct.

11 Q. And as I remember, the data requests were
12 issued after the filing of direct testimony.

13 A. That is correct, for Western Wireless. There
14 was some data requests before that, but I don't believe any
15 to Western Wireless.

16 Q. The data requests certainly going to these
17 five factors, those were issued after Mr. Williams filed his
18 direct testimony?

19 A. Yes.

20 Q. Okay. And just to make sure that we're clear,
21 you took into consideration the information which you
22 received from Western Wireless in response to those data
23 requests into consideration when you were formulating your
24 answers to the Commissioners' questions relating to the
25 appropriateness of the interMTA factors; is that right?

1 A. That is correct.

2 Q. Thank you Mr. Scheperle.

3 MR. JOHNSON: Your Honor, thank you very much.

4 JUDGE THOMPSON: Thank you, Mr. Johnson. Mr.

5 Bub.

6 MR. BUB: None, your Honor, thank you.

7 JUDGE THOMPSON: Mr. Bates, Redirect.

8 MR. BATES: Yes, thank you, your Honor.

9 REDIRECT EXAMINATION

10 QUESTIONS BY MR. BATES:

11 Q. Mr. Scheperle, I just have a few questions on

12 Redirect. Regarding questions from, I believe, Chair Gaw

13 asked you yesterday, did I understand that you testified

14 that you only reviewed the factors for Western Wireless?

15 A. That is correct.

16 Q. Okay. Why did you review only those factors?

17 A. Mr. Schoonmaker, who's representing the

18 Complainants in this, in direct testimony filed the interMTA

19 factors that were agreed to between T-Mobile and the

20 Complainants, and at that time, Western Wireless had not

21 agreed to any factors.

22 Q. Okay. I think you mentioned that a little bit

23 in answering Mr. Johnson's questions; is that right?

24 A. Yes.

25 Q. And do you have anything else to add to that

1 at this point?

2 A. No.

3 Q. Okay. Does Staff typically review or
4 challenge rates, terms, or factors that are negotiated
5 between two parties in any interconnection agreement type
6 situation?

7 A. No, we do not. The one -- the standard we
8 look at, though, is whether it's discriminatory to any party
9 or whether it's in the public interest.

10 Q. Okay. And do I take it in this case you did
11 not believe that it was discriminatory nor was it against
12 the public interest, convenience, or necessity?

13 A. That is correct.

14 Q. Have there been any situations where Staff has
15 challenged factors for termination of wireless traffic?

16 A. Yes, there has been.

17 Q. What was different about those circumstances
18 compared to what happened in this case?

19 A. In this case, there's -- the parties, which
20 was the wireless carriers and the Complainants, were
21 negotiating and agreeing to factors. Where Staff did
22 challenge them was when factors were proposed to be in
23 tariffs themselves and in that -- in that situation, Staff
24 became involved.

25 Q. Based on the testimony that you've read and

1 heard in this hearing room from both Mr. Schoonmaker and
2 from Mr. Williams, do you think the parties in this case
3 negotiated the other factors similar to the method used to
4 calculate the three in question in this case?

5 A. Yes.

6 Q. And why do you think that?

7 A. Well, when you're going to negotiate, there's
8 14 Complainants, and the wireless carrier really has it to
9 negotiate individual rates with each of those 14
10 Complainants, and the same methodology would be used to --
11 for any agreement that they would reach for interMTA factors
12 for all 14 companies from each wireless carrier.

13 Q. And I believe you also testified in response
14 to questions from Chair Gaw that you felt the three factors
15 in question were too high in some instances, while in other
16 circumstances, you felt the factors were too low. Did I
17 understand you correctly?

18 A. That is correct.

19 Q. And I think you also testified in your
20 opinion, factor of 95 percent or 90 percent for BPS might be
21 reasonable; is that correct?

22 A. I believe I did state that to Chairman Gaw.

23 Q. Well, what impact would a shift from 52
24 percent to 95 percent have on the traffic in question here?

25 A. Basically I looked at the last five months of

1 traffic based on the CTUSR reports, and for BPS, there is no
2 traffic coming from Western Wireless, and based on that
3 information, whether you increase the rate from 52 percent
4 to 95 percent, it would have -- there would be no money
5 involved in it.

6 There's -- there's also one other thing that
7 has to do with secondarily liable that if the rate was
8 increased from 52 to 95 percent based on what Mr. Williams
9 said that they would be responsible for inter -- any
10 interMTA traffic, the secondary -- to me, the secondary
11 liability becomes intraMTA traffic to Southwestern Bell, and
12 in that case, if you actually up the percent, Southwestern
13 Bell would be liable for less -- less amount.

14 Q. Okay. If all the factors were calculated
15 using the same methodology, does it make any sense to you to
16 challenge only the factors for BPS, Craw-Kan, and Mark
17 Twain?

18 A. No.

19 Q. What would be the impact if you challenged all
20 the factors that have been negotiated?

21 A. Well, based on my understanding, I could say
22 some were appropriate, some may be a little bit too high,
23 some may be a little bit too low. To me, the best people to
24 negotiate and agree on factors are the two parties involved.

25 Q. And do I understand, then, that you would not

1 feel the -- that that would be -- in these cases, that that
2 would be against the public interest, convenience, or
3 necessity?

4 A. That is correct.

5 MR. BATES: Thank you very much. Thank you,
6 your Honor.

7 JUDGE THOMPSON: Thank you, Mr. Bates. You're
8 excused, Mr. Scheperle. Thank you for your testimony. Now,
9 let's get Mr. Kern back up there, and we were engaged in the
10 initial round of cross-examination, and my notes show that
11 Mr. England had, at least, started. Had you finished, Mr.
12 England?

13 MR. ENGLAND: I believe I have.

14 JUDGE THOMPSON: You had. Okay. Very well.
15 So that would be Mr. Johnson would be next. I'll remind
16 you, sir, you are still under oath.

17 THE WITNESS: Yes, sir.

18 CROSS-EXAMINATION

19 QUESTIONS BY MR. JOHNSON:

20 Q. Mr. Kern, would you agree with me that
21 interMTA factors are usually negotiated?

22 A. Yes, I would.

23 Q. And those are usually negotiated in the
24 context of interconnection agreements?

25 A. That's correct.

1 Q. Is it correct that T-Mobile and the
2 Complainant companies negotiated interMTA factors as a
3 result of this proceeding?

4 A. It's my understanding.

5 Q. Okay. And it's also your understanding that
6 Mr. Williams testified that Western Wireless has adopted
7 those negotiated interMTA factors; is that correct?

8 A. Yes, that's correct.

9 Q. Now, according to my count, there are 14
10 Complainants in this case; is that right?

11 A. Yes, sir.

12 Q. And as I read your testimony, you challenged
13 the interMTA factors relating to three of those companies;
14 is that right?

15 A. Correct.

16 Q. So with respect to the other 11, you're not
17 challenging the appropriateness of those interMTA factors?

18 A. No, we're not.

19 Q. Now, pardon me, Page 7, Line 22 of your
20 testimony, you're testifying about the Craw-Kan interMTA
21 factor there. Do you see that testimony?

22 A. Yes.

23 Q. And you state there that little T-Mobile
24 traffic terminates to Craw-Kan. Is it correct that the
25 source of that information is Mr. Schoonmaker's testimony?

1 A. Yes, it is.

2 Q. Did -- in preparation of your testimony, did
3 you or anyone acting under your direction issue data
4 requests to any of the respondent wireless companies?

5 A. I know that we -- well, I know that we sent
6 some data requests out earlier in the case, but I think for
7 my testimony, for this round of the case, if you will --

8 Q. Right.

9 A. -- I believe -- I'd have to check to make
10 sure, but I believe the data requests went to Complainants.

11 Q. Right, and that's my understanding as well, so
12 is it correct that Southwestern Bell did not issue or SBC, I
13 should say, didn't issue any data requests to any of the
14 Respondents asking for traffic data?

15 A. That's correct.

16 Q. And so in your analysis of Mr. Schoonmaker's
17 testimony concerning the appropriateness of the interMTA
18 factors, you didn't have before you any traffic data from
19 any of the Respondents as a result of data requests?

20 A. No, I was merely looking at Mr. Schoonmaker's
21 testimony.

22 Q. And as I read your testimony, you don't refer
23 to any specific traffic data, do you?

24 A. No, I do not.

25 Q. You don't refer to any traffic data from your

1 own company's CTUSRs.

2 A. That's correct.

3 Q. Now, did you hear Mr. Scheperle's testimony

4 indicating that Western Wireless had responded to data

5 requests from Staff?

6 A. Yes.

7 Q. Now, in the negotiation of the -- let me ask

8 you this. To your knowledge, was Southwestern Bell aware

9 that the Respondents and Complainants were negotiating with

10 the goal of reaching appropriate interMTA factors?

11 A. Well, I wasn't at the -- I believe that

12 prehearing was in May. I was not at that prehearing, but

13 I've read the transcript from it, and from that, I could

14 deduce that that's exactly what you all were doing.

15 (CHAIRMAN GAW ENTERED THE HEARING.)

16 MR. JOHNSON: Good morning, Mr. Chair.

17 CHAIRMAN GAW: Good morning.

18 Q. (By Mr. Johnson) To your knowledge, did

19 Southwestern Bell ask to participate in those negotiations?

20 A. I don't know.

21 Q. Mr. Kern, if it were not for the issue of

22 secondary liability, to use that term, would SBC have any

23 interest in this proceeding?

24 A. No.

25 Q. Thank you.

1 MR. JOHNSON: That's all I have. Thank you,
2 your Honor.

3 JUDGE THOMPSON: Thank you, Mr. Johnson. Mr.
4 Bates.

5 MR. BATES: None for this witness. Thank you,
6 your Honor.

7 JUDGE THOMPSON: Very well. Questions from
8 the bench, Chairman Gaw. I'm going to pass right now,
9 Judge.

10 JUDGE THOMPSON: Okay. Thank you, sir. Mr.
11 Kern, I'm going to ask you simple questions because I, once
12 again, want to make sure I understand what's going on.

13 THE WITNESS: I appreciate that.

14 QUESTIONS BY JUDGE THOMPSON:

15 Q. In these telephone cases, that's not easy.
16 When I look at the factors that are in dispute for BPS
17 telephone company, it's 52 percent, does that factor mean
18 that the people who entered into that agreement with respect
19 to that factor, that they have agreed this 52 percent of the
20 traffic is interMTA traffic and that 48 percent of the
21 traffic, then, is intraMTA traffic?

22 A. Yes, I believe the factor that you see is --
23 denotes the interMTA part.

24 Q. Okay. And that's what I guess I don't
25 understand. As far as you know, there's two types of

1 traffic at issue. We've been through that. I finally
2 grasped that; part of it is interMTA, part of it is
3 intraMTA. For which type of traffic is Bell concerned about
4 secondary liability?

5 A. Well, my understanding is that the
6 Complainants, if the Complainants would come to SBC to
7 collect the money they've come to collect, all of the money,
8 meaning --

9 Q. Both types?

10 A. Yes, that's my understanding.

11 Q. Okay. And we've heard that the theory of
12 secondary liability is based on a commission case from 19 --
13 December of 1997; isn't that correct?

14 A. Yes.

15 Q. In which Bell was permitted to change its
16 wireless tariff. I believe it originally had a wireless
17 termination tariff, they got in a little trouble with Sprint
18 United, as I recall, and so they changed the tariff to
19 indicate they were transiting the traffic, but they were no
20 longer terminating it; is that correct?

21 A. That's my understanding, yes.

22 Q. Okay. Did that order make any distinction as
23 to inter or intraMTA traffic, if you recall?

24 A. Well, I don't recall specifically, but I
25 believe that the tariff probably looked at -- I mean, that

1 tariff was for -- well, probably because it was a transiting
2 tariff, if you will, it probably took care of both types of
3 traffic, but you know, without looking at the tariff, and
4 it's been, what, six years, I'm sorry, I can't say.

5 Q. I understand. And that tariff is still in
6 existence, still in force, isn't it?

7 A. Yes, it is.

8 Q. But it's my understanding that most traffic is
9 passed pursuant to interconnection agreements now; is that
10 right?

11 A. And I haven't looked recently, the last time I
12 looked was maybe a year ago, but over 99 percent of the
13 traffic that SBC handles is handled under interconnection
14 agreements.

15 Q. And does SBC have interconnection agreements
16 with the Complainants?

17 A. Specifically -- if you're talking about an
18 interconnection agreement like we would have with Western
19 Wireless, I mean, that type of a document, we may have an
20 agreement with Fidelity, one of the Fidelity companies
21 that's in this. I'm not sure, but I don't know that I would
22 -- while these agreements that we have with those companies
23 may do the same thing, I don't know that they would refer to
24 them specifically as an interconnection agreement.

25 Q. Okay. And yet, Bell is, in fact, connected to

1 all of the Complainants, correct?

2 A. Yes.

3 Q. That's why this case -- Bell is in this case,
4 I mean, you couldn't pass the traffic if you weren't
5 interconnected with them, could you?

6 A. That's -- yes.

7 Q. Okay. I realize there may be more indirect
8 means for passing the traffic.

9 A. Or the reasons why we're in the case, but yes,
10 I think you're correct.

11 Q. Okay. Thank you. Now, at the time of the
12 decision of this Commission in December of 1997, as far as
13 you know, none of these small LECs had wireless termination
14 tariffs at that time, did they?

15 A. No, I believe that happened in February 2001,
16 I believe, the wireless -- the wireless termination tariffs
17 for the Complainants, and there may be a couple after that,
18 but the bulk, I believe, were February of 2001.

19 Q. And does that tariff -- do any of those
20 tariffs, if you know, impose any kind of secondary liability
21 on Bell?

22 A. I don't believe they do.

23 Q. Okay. And there's also been illusion during
24 the course of this case to a decision of the Missouri Court
25 of Appeals with respect to the validity of those tariffs, do

1 you recall?

2 A. Yes.

3 Q. And in fact, have you read that decision or

4 you're aware of it?

5 A. Well, I'm aware of it, and as far as I know,

6 the wireless termination tariffs have the full effect of the

7 law.

8 Q. And as far as you know, and if you know, did

9 the Missouri Court of Appeals make any mention of secondary

10 liability on the part of Bell with respect to that type of

11 traffic?

12 A. I don't know.

13 Q. You don't know. Okay. I guess the thing I

14 don't understand, and I'd like you to help me with, if

15 they're going to come to Bell to collect payment through

16 this traffic, and if Bell says we don't think we owe it,

17 we're not going to pay, and they go whether through the

18 Commission or not, to a Missouri court to get that money

19 from Bell, it seems to me they would -- it's a settled

20 question as far as who owes the intraMTA traffic. There's a

21 court decision saying it's owed by the wireless carriers,

22 isn't that what we just discussed?

23 A. Yes.

24 Q. Okay. So that's why I'm wondering why Bell is

25 objecting to these factors because it seems to me it leaves

1 you on the hook for more traffic rather than less. In other
2 words, if only five percent of the traffic is interMTA
3 traffic and 95 percent of the traffic is intraMTA traffic,
4 which the Missouri Court of Appeals has said the wireless
5 company has to pay and which presumably any Circuit Judge is
6 going to enforce, then why would you object? You see?

7 A. I see, and I guess, and Mr. England mentioned
8 this yesterday, he doesn't have a check in his hand for any
9 of the traffic, be it intra or interMTA. Mr. Williams sat
10 here yesterday and said he was responsible for interMTA.

11 Q. I didn't see him get out his checkbook though.

12 A. That's my point exactly. He did not get out
13 his checkbook. He said that, and if he would have gotten
14 out his checkbook and he would have written out a check to
15 the Complainants, we could have walked out of here. I mean,
16 the bottom line is until they pay SBC, at least we think, is
17 on the hook.

18 Q. Okay. And you feel you may be on the hook for
19 both types?

20 A. I think that's what the Complainants think.

21 Q. Okay. And the rate for the interMTA traffic
22 is higher; is that correct?

23 A. That's correct.

24 Q. Because it's subject to exchange access rather
25 than to the lower rates in the wireless termination tariffs?

1 A. That's correct.

2 Q. So from that angle, you want the amount of

3 interMTA traffic to be reduced because it reduces the amount

4 of money involved?

5 A. Right.

6 Q. Okay. I understand it now. I knew we'd get

7 there.

8 A. And you're correct, if this was only about

9 intraMTA traffic, we would be rooting for those factors to

10 be 100 percent.

11 Q. I see. Thank you very much.

12 JUDGE THOMPSON: Chairman Gaw, do you have any

13 questions at this time?

14 CHAIRMAN GAW: No, thank you, Judge.

15 JUDGE THOMPSON: Well, in that case we will go

16 on to Recross based on questions from the bench. I believe,

17 Mr. England, you're up.

18 MR. ENGLAND: No questions. Thank you.

19 JUDGE THOMPSON: Mr. Johnson.

20 MR. JOHNSON: I have nothing, thank you.

21 JUDGE THOMPSON: Mr. Bub. Oh, no, excuse me,

22 he's your witness. Where am I? Mr. Bates.

23 MR. BATES: No, thank you, Judge.

24 JUDGE THOMPSON: Mr. Bub, Redirect.

25 MR. BUB: I don't have any, your Honor.

1 JUDGE THOMPSON: I would say you better get
2 down as quick as you can. They might change their mind.

3 JUDGE THOMPSON: Sir.

4 MR. BUB: Your Honor, before we do move on, I
5 think there's something that I need to correct in what I
6 said yesterday, some representations that I made --

7 JUDGE THOMPSON: Please.

8 MR. BUB: -- to Commissioner Clayton and
9 perhaps to Chairman Gaw. Yesterday, I was asked questions
10 about what our interconnection agreements with Western
11 Wireless and T-Mobile said with respect to indemnification.
12 I was asked to describe those, and I apologize, because I
13 didn't have the -- those agreements with me, so I couldn't
14 give a firm, correct answer.

15 Last night, we got a hold of those contracts,
16 and I've gone through them, and I can confirm that what Mr.
17 Johnson read as far as the indemnification for the transit
18 traffic, that is in there.

19 There's also a general indemnification
20 language where each party indemnifies each other for the
21 acts and omissions and liability that might be brought by
22 third parties, but in that provision, there's nothing for
23 attorneys fees, and nothing for costs.

24 I was also asked about whether there's a
25 remedy in there for blocking, because I think yesterday

1 there was a big discussion about, well, if we have secondary
2 liability, we would have a whole lot more leverage over the
3 wireless carriers because we could block all their traffic
4 going throughout Missouri, and for sure, if that was the
5 hammer over their head, they'd pay. We looked through the
6 contract, and we do not have that remedy there.

7 What we have is a dispute resolution
8 provision, and this was a negotiated agreement. I would
9 expect -- I didn't participate in it, but I would expect,
10 you know, a big general blocking provision like that, the
11 wireless carriers would probably have a problem with, so it
12 was probably negotiated away, so it's not in there.

13 What's in there is a dispute resolution
14 process that has two parts. The first part is for disputes
15 under \$25,000. For those types of disputes, we agree that
16 we will appoint knowledgeable executives from each company
17 to come in and try and resolve it, and if that under \$25,000
18 dispute can't be resolved, then it goes to commercial
19 arbitration.

20 Anything over \$25,000 contract is silent, so
21 in that instance, it would have to come here or have to go
22 to court. So in that situation, and as all this traffic is
23 flowing under our interconnection agreements, we wouldn't
24 have that leverage that we all thought we might yesterday,
25 so we don't have a big hammer. What we'd be left with would

1 be just another lawsuit, because we would have to come back
2 here and we'd be trying the same thing over again.

3 JUDGE THOMPSON: What if the Commission
4 specifically directed Bell to block that traffic?

5 MR. BUB: If we were directed to block that
6 traffic, we certainly would, but we don't have that remedy
7 to us. Now, if you compare it to our wireless
8 interconnection tariff, there is a general blocking
9 provision in that that gives us the ability to block for
10 nonpayment to us, and if this -- all this traffic came under
11 the tariff, I would agree we would have that remedy, and
12 that when our tariff was approved, that was a big topic of
13 discussion because small companies compared themselves to
14 us, and they said, we, Bell, has that blocking remedy, they
15 don't.

16 And in balancing the interest, the Commission
17 at the time said, okay, we agree that blocking is not
18 appropriate, so we're not going to make you, Bell, block
19 when they ask you to, but we'll make you secondary liable if
20 they don't pay. A lot has changed since then. We still
21 have the problem with some carriers not paying, and the
22 wireless -- the small companies have filed wireless
23 interconnection tariffs.

24 They made the same argument and asked for that
25 blocking remedy, and it was given to them, so they have this

1 remedy under the tariff that is there, it is available, and
2 at least in that one instance a couple months ago, it worked
3 with T-Mobile with three very small companies. I don't have
4 any reason to believe it wouldn't work here.

5 What I would submit here is that we really
6 need to address the real problem. And remember all LECs now
7 that want them have wireless interconnection tariffs that
8 have blocking. There's only three small LECs that don't
9 have them, and for reason, it's their business not to file
10 it, but it's available to them if they want it.

11 All the Complainants here have that tariff.
12 Larger company like I think Spectrum and Century also wanted
13 that kind of remedy, filed tariffs, and that authority was
14 given to them, and the record reflects that all the wireless
15 carriers but these two are paying, so shouldn't the goal
16 here be to get these two back on the ranch. You know, I
17 have to admit that yesterday when we were here, we kind of
18 felt like the whipping boy.

19 JUDGE THOMPSON: Mr. Bub.

20 MR. BUB: Yes, sir.

21 JUDGE THOMPSON: I don't want to interrupt you
22 in terms of correcting your representations from yesterday,
23 but it sounds to me like you're doing closing argument.

24 MR. BUB: Okay. Well, if I would ask the
25 Commission's leave, because I think --

1 JUDGE THOMPSON: We want to hear your closing
2 argument, don't get me wrong, but we also want to hear
3 everybody else's, too, and we want to hear them in the
4 agreed order or the appropriate order, and we want to hear
5 them with everybody understanding that's what we're hearing.

6 MR. BUB: Okay. That's absolutely fair.

7 THE COURT: And I don't mean to be rude.

8 MR. BUB: And to give you some feedback from
9 yesterday, it was kind of a surprise to me after our opening
10 statements to get questions, but in stepping back, you know,
11 what better way to get information that the Commission wants
12 than through that type of an exchange, and I have to admit
13 that it was a lot less fun when Mr. England was up here when
14 it was my turn, but that exchange, I think, was very
15 helpful.

16 I think it will lead you to a better decision.
17 It will give you the information that you need to make a
18 balanced decision here, because this is a dispute that has
19 been our company compensation issue, it's about money, it's
20 been going on for a long time, and I think it's in
21 everybody's interest to come up with a resolution, so we can
22 all move forward, something that's balanced and fair that we
23 can all live with, and all throughout these -- I'm getting
24 into argument again, so I should probably stop.

25 JUDGE THOMPSON: Yeah. Now, with respect to

1 the record, I have a couple points I need to clear up. With
2 respect to the provision that Mr. Johnson read yesterday,
3 can we treat that as substantive evidence or do we need to
4 put a witness on the stand and have it read again?

5 MR. JOHNSON: Your Honor, I was going to
6 suggest, and I asked Mr. England about this, whether you, in
7 some proceeding, or whether the parties had proposed that
8 the Commission take official notice of the interconnection
9 agreements, and we were unable to establish whether that had
10 happened. I know that in Mr. Johnson's case --

11 JUDGE THOMPSON: It was done in Mr. Johnson's
12 case and they were all filed.

13 MR. JOHNSON: Yes.

14 JUDGE THOMPSON: Yes.

15 MR. JOHNSON: I would be happy to move that
16 the Commission take official notice of the interconnection
17 agreements between Southwestern Bell, Western Wireless,
18 Voicestream/T-Mobile and Aerial Communications.

19 JUDGE THOMPSON: That would be great. Who's
20 going to supply them so that we can get them --

21 MR. JOHNSON: And then I was going to go on to
22 say I would be happy to supply copies of the agreements.

23 JUDGE THOMPSON: Well, then, in that case, I
24 will grant your request. Any objections? No objection,
25 fine, and that will cover the portion that you read, I

1 assume.

2 MR. JOHNSON: Yes.

3 JUDGE THOMPSON: Okay.

4 MR. JOHNSON: As I remember, there were as

5 many as six or seven agreements total, but I'll go back to

6 the record in Case No. 57 and get that.

7 JUDGE THOMPSON: My concern started with the

8 portion that you read yesterday and can we treat that as

9 substantive evidence. If it's in the material we're going

10 to take notice of and that you're going to supply to us,

11 we've got what we need, that's great. That takes care of

12 that. Now, we've had some testimony from a couple of

13 attorneys, and I want to know what we can do with that. Do

14 we need to have a witness on the stand to tell us those

15 things, do you mind if we treat what Mr. England said or Mr.

16 Bub said as substantive evidence?

17 MR. ENGLAND: I do, your Honor.

18 JUDGE THOMPSON: You do mind.

19 MR. ENGLAND: Yeah.

20 JUDGE THOMPSON: Okay.

21 MR. ENGLAND: While I believe I accurately and

22 truthfully responded to questions from the bench.

23 JUDGE THOMPSON: I'm sure you did.

24 MR. ENGLAND: I viewed my comments more in the

25 nature of argument, and I think they were either supported

1 by testimony we've submitted in this phase, testimony we
2 submitted in the earlier phase, or as part of our verified
3 complaint.

4 JUDGE THOMPSON: I understand.

5 MR. ENGLAND: And --

6 JUDGE THOMPSON: So you don't believe your
7 comments went beyond the evidence?

8 MR. THOMPSON: No, I don't.

9 JUDGE THOMPSON: Okay.

10 MR. ENGLAND: And if they did, I apologize,
11 and I expect them to be disregarded.

12 JUDGE THOMPSON: Thank you.

13 MR. JOHNSON: Your Honor, I agree with that.
14 Had I believed that any of the statements from counsel would
15 be considered substantive evidence, I would, perhaps, would
16 have interjected an objection or two.

17 JUDGE THOMPSON: I understand, and normally
18 it's not treated as substantive evidence, but I will say
19 that I think the indemnification issue is an important one,
20 and I believe the Commissioners are going to want to,
21 perhaps, rely on that in some way or another. I don't know,
22 but I think it needs to be in the record in such a way that
23 we can make Findings of Fact about it and rely on it in
24 resolving this case, so if we need to put Mr. Kern or
25 someone back up there to testify or if there's a document,

1 well, I guess they're part of the ones that Mr. Johnson is
2 going to supply; isn't that right?

3 MR. BUB: Your Honor, the indemnification
4 provisions will be in those agreements. One thing we might
5 want to get into the record that's not is our wireless
6 interconnection tariff that was approved because I think we
7 all are kind of referring back to the tariff.

8 JUDGE THOMPSON: If you're willing to supply a
9 copy of it --

10 MR. BUB: We can do that.

11 JUDGE THOMPSON: -- we'll take notice of it
12 just like we're going to do with these agreements. I'm sure
13 we have it in the basement somewhere on the shelf, but I'm
14 not going to go down there and look for it.

15 MR. BUB: And I would also concur with Mr.
16 England and Mr. Johnson that what -- the remarks of counsel,
17 I would treat as argument. Certainly if there's something
18 in there where we may have made an admission against
19 interest, that certainly can be taken as evidence, but I
20 concur with them that anything that we say as attorneys
21 would be argument.

22 JUDGE THOMPSON: I understand, and that's why
23 I raised the point to just make sure we're all on the same
24 page, and that we have the record -- as far as the facts go,
25 we understand where they are and where they're not, okay, so

1 that no one is surprised by anything and so the Commission
2 can rely upon the information that it has that it wants to
3 rely on, so you're going to supply the -- so I guess we're
4 going to have some late filed exhibits as we call them here.
5 I think we might have changed the name of that lately, but I
6 don't know what it is.

7 So you're going to supply three of them, Mr.
8 Johnson?

9 MR. JOHNSON: At this point, I don't know how
10 many there are. I know that in --

11 JUDGE THOMPSON: Well, I'll just give you one
12 exhibit number then.

13 MR. JOHNSON: That's fine.

14 JUDGE THOMPSON: Number 7.

15 MR. JOHNSON: A, B, C, D, E --

16 JUDGE THOMPSON: Absolutely. File as many as
17 you want, they're all going to be Exhibit No. 7, and can you
18 give me some idea of when they'll get here?

19 MR. JOHNSON: Next week.

20 JUDGE THOMPSON: That will work great.

21 MR. JOHNSON: Thank you, your Honor.

22 JUDGE THOMPSON: Just let me know if you can't
23 do it next week, just let me know.

24 JUDGE THOMPSON: Now, Mr. Bub, I'll give you
25 No. 8. Okay. Again, I don't care how many pages it is, and

1 do you think you can get it to me next week as well?

2 MR. BUB: Yes, your Honor.

3 JUDGE THOMPSON: Thank you, I appreciate that.

4 Now, the one problem we have with late filed

5 exhibits is that, of course, they come in after the close of

6 the hearing, and sometimes folks want to object, so what I

7 want to do is have any objections now, and if you don't

8 object now, then you have waived your opportunity, okay? I

9 don't know if that will hold up, but of course, if you still

10 want to file a written objection later, there's nothing to

11 stop you, but let's at least do a round on whether or not

12 anybody objects to these proposed exhibits.

13 With respect to the interconnection agreements

14 between Voicestream now known as T-Mobile, between Western

15 Wireless and between Aerial communications, if there is one,

16 with Bell, correct?

17 MR. JOHNSON: Yes, your Honor.

18 JUDGE THOMPSON: With respect to those

19 interconnection agreements, do I hear any objection to the

20 Commission's receipt of those items? Hearing no objections,

21 then we will make those part of the record when they arrive.

22 Now, with respect to Southwestern Bell's wireless tariff, I

23 don't know exactly what it's called.

24 MR. BUB: It's called wireless termination

25 service tariff, I believe.

1 JUDGE THOMPSON: Okay. The wireless
2 termination service tariff approved, I believe, by this
3 Commission in December of 1997, Mr. England.

4 MR. ENGLAND: I'm sorry, but I think it's
5 actually a wireless interconnection tariff.

6 MR. KERN: Yeah, I think specifically it's the
7 wireless --

8 MR. JOHNSON: I think you guys got away from
9 the termination language.

10 MR. KERN: It's the wireless carrier
11 interconnection service tariff. It's PSC Missouri No. 40.

12 JUDGE THOMPSON: Great.

13 MR. KERN: I just happened to have one page
14 out of it.

15 JUDGE THOMPSON: That's extremely helpful.
16 PSC Missouri No. 40, do I hear any objections to receipt of
17 that tariff? Very well. We will receive it and make it
18 part of the record of this proceeding when Mr. Bub supplies
19 it next week. Okay. Have we taken care of those two
20 things?

21 Now, do you want to brief this case or do you
22 want to argue it? We'd be more than happy to listen to your
23 arguing now if you'd like to do that.

24 MR. BUB: Your Honor, I think I'd like the
25 opportunity to at least have some argument now. It might be

1 a good idea to follow-up with a brief because I think with
2 briefing you kind of bring things together, and I know from
3 my prospective that there is some subsequent authority that
4 I'd like to bring to the Commission's attention, and it's
5 been awhile since we've briefed it, and it might be helpful
6 to have one more round.

7 JUDGE THOMPSON: How about argument and then
8 one round of briefing, simultaneous round, how does that
9 sound? Mr. Johnson.

10 MR. JOHNSON: My preference would be simply to
11 brief it.

12 JUDGE THOMPSON: Brief it, no argument.

13 MR. JOHNSON: No argument.

14 MR. BATES: And that would be Staff's
15 preference, too, your Honor.

16 JUDGE THOMPSON: Mr. England.

17 MR. ENGLAND: I concur.

18 JUDGE THOMPSON: Well, I got 3 to 1, so I
19 guess we'll go ahead and just do a traditional briefing
20 schedule. Now, I know we've already briefed the first
21 phase, right, so are you going rebrief that plus weave in
22 what's happened here, do you just want to brief what we've
23 done since we've reopened the record? I'll let Mr. England
24 speak first this time.

25 MR. ENGLAND: Well, I guess I was laboring

1 under the misapprehension that when the parties agreed on
2 the list of issues, those would be the set the boundaries of
3 this phase of the hearing. Obviously that's not the case
4 since we got into the secondary liability issue, which was
5 not identified as an issue in this phase of the proceeding.

6 I would hope that we could limit ourselves for
7 purposes of the second phase to the appropriateness of the
8 interMTA factors, the burden of, at least, the contested
9 factors, excuse me, the burden of proof, which I believe was
10 identified in the issues list, and now the secondary
11 liability, but.

12 JUDGE THOMPSON: Yeah, you're going to have to
13 --

14 MR. ENGLAND: But since I've been surprised
15 once, I could be surprised again, and obviously we'll need
16 an opportunity to -- I would suggest simultaneous initial
17 briefs.

18 JUDGE THOMPSON: Two rounds?

19 MR. ENGLAND: Two rounds.

20 MR. JOHNSON: Your Honor, on behalf of the
21 Respondents, I agree with Mr. England's recommendation. If,
22 however, either you or the Chair wishes us to brief other
23 issues, I'm perhaps reluctant to say this, but if either of
24 you would like us to brief other issues, please let us know,
25 and I suppose we'll do -- we are at your disposal.

1 JUDGE THOMPSON: Well, you know, that's very
2 helpful. I don't know what to tell you in terms of what you
3 need to do to present your case. Okay.

4 It's -- as far as I don't think anyone meant
5 to surprise you, Mr. England, as far as the secondary
6 liability issue, but the first phase of the case has never
7 been decided, so I guess, naturally, questions of concern
8 that might have more properly been in that phase were arose
9 during this phase because the Commissioners and myself need
10 to ask questions and need to understand exactly what's going
11 on here, and you know, you're not going to get a good
12 resolution of the case unless we have some idea of what's
13 going on, right, so I don't want to say wide open briefing
14 and make you feel like you've got to redo the whole first
15 phase, so what do you think, Mr. Bub?

16 MR. BUB: Your Honor, we would like the
17 opportunity to address this issue. Commission has decided
18 the secondary liability issue --

19 JUDGE THOMPSON: That's true.

20 MR. BUB: -- and I think the case has gotten a
21 little bit bigger, and there's been a lot more evidence on
22 that topic than we had when we had the first round of
23 briefing, and I think it would be very helpful to the
24 Commission to have us pull it all together, either in a
25 brief, and I really would like the opportunity to engage in

1 a little bit further dialogue, and anybody can certainly
2 have the last word and I'll sit down, but there's a couple
3 things that I would like to say to the Commission, even if
4 it's just the two of you, a couple things that I think just
5 need to be said, and that with regard to --

6 JUDGE THOMPSON: So there's two things there.
7 Suggestion to do oral argument, and also request to rebrief
8 the entire case. Anybody else want to jump in there?

9 MR. ENGLAND: I thought we voted 3 to 1 not to
10 do oral argument.

11 JUDGE THOMPSON: That's what I thought, too.

12 MR. BUB: I know we live in a democracy, but.

13 MR. JOHNSON: And I don't know if anybody's
14 vote really counts but yours, your Honor.

15 JUDGE THOMPSON: Mine counts least of all.

16 MR. BUB: That was my point, too.

17 JUDGE THOMPSON: The whole question here is
18 fairness and thoroughness. We want to have the issues
19 presented as thoroughly as counsel are able and willing to
20 present them. These are difficult issues. None of us on
21 this side of the bench is a telephone expert or telephone
22 professional, and sometimes, it's difficult to learn how
23 these things work or maybe in this case don't work, so that
24 we know how to resolve these things, so the more we hear is
25 the more helpful it is.

1 MR. BATES: Your Honor.

2 JUDGE THOMPSON: Mr. Bates.

3 MR. BATES: If I may, certainly it's within
4 the discretion of the Commission to schedule oral arguments,
5 if they wish, but I'd like to point out that they were --
6 oral closing arguments were not part of the procedural
7 schedule.

8 JUDGE THOMPSON: You're absolutely right, and
9 there could be no bigger surprise than to tell an attorney
10 okay stand up, now it's time to argue your case.

11 MR. BATES: It seems to me that it would be in
12 the interest of completeness that it would be best simply to
13 do written briefs here and the parties can argue whatever
14 they wish in those briefs for the Commission's benefit.

15 JUDGE THOMPSON: I like that. We'll do two
16 rounds of brief, you can say whatever you want in your
17 brief. If you feel your initial brief handling the first
18 phase was sufficient, then you don't have to do it again, if
19 there's anything you want to say about it, go ahead. Okay?

20 MR. BUB: Your Honor, we can live through
21 that.

22 JUDGE THOMPSON: You can live with that.
23 Great. So when do you all want to give me that first brief?
24 When will the transcript be available? Not for two weeks,
25 probably, unless we ask for expedition, so 30 days from two

1 weeks from now would have us just prior to the Christmas
2 break. Is that all right?

3 MR. ENGLAND: That's fine with Complainants.

4 JUDGE THOMPSON: Mr. Johnson.

5 MR. JOHNSON: That's fine, thank you.

6 JUDGE THOMPSON: Mr. Bates.

7 MR. BATES: That's fine.

8 JUDGE THOMPSON: Mr. Bub, will that work for
9 you? I think he's digging for his calendar.

10 MR. BUB: I am.

11 MR. ENGLAND: Your Honor, while Mr. Bub is
12 digging for his calendar and at the risk of belaboring a
13 point I raised in prehearing conference.

14 JUDGE THOMPSON: Yes, sir.

15 MR. ENGLAND: While I'm as interested in due
16 process as the next attorney, I think the parties to this
17 case have certainly had plenty of it, and as we've heard in
18 the testimony, the longer this case goes on, the longer my
19 clients remain unpaid, so I'm very interested in getting
20 this to a point where it can be resolved by the Commission
21 quickly, so I guess I'm anticipating, and perhaps
22 unreasonably so or unnecessarily so, a request to postpone
23 briefing beyond the Christmas holidays, to which I would be
24 -- maybe not violently opposed, but strongly opposed.

25 JUDGE THOMPSON: Well, we could avoid that by

1 expediting the transcript.

2 Ms. Reporter, if we did expedite the

3 transcript, how soon could we get it?

4 COURT REPORTER: Monday.

5 JUDGE THOMPSON: Well, I would ask you, then,

6 to have the transcript by Monday, that takes us two weeks

7 sooner, let's see, Monday is the 10th. That means we could

8 have briefs by, say, the 8th of December. How does that

9 sound? That's four weeks.

10 MR. JOHNSON: Could you give us to the 9th?

11 JUDGE THOMPSON: Absolutely.

12 MR. JOHNSON: Because the 8th is a Monday.

13 JUDGE THOMPSON: Yeah, I don't like to ruin

14 people's weekends. How about I give you to the 12th?

15 MR. ENGLAND: Fair enough.

16 MR. BUB: That's fine with us, too, your

17 Honor.

18 JUDGE THOMPSON: Two weeks after that, that

19 takes us to the 26th, so we'll go, you know, then the

20 following week we've got 2nd of January, and I certainly

21 don't want any of you typing briefs on New Year's Eve or

22 even the day after. How about we say the 9th of January.

23 Is that going to work?

24 MR. ENGLAND: Fair enough.

25 JUDGE THOMPSON: Okay. So principal briefs

1 will be due on December 12th, reply briefs will be due by
2 January the 9th, and we will get this case out likidy-split
3 after the briefs are in. How is that?

4 Yes, sir.

5 CHAIRMAN GAW: Thank you, Judge. I have one
6 question that I think you will be addressing, but just --
7 and it may not even be something that's that relevant to
8 anything, but the dynamic here of the non-unanimous
9 stipulation being filed, which in a regular -- in a normal
10 utility case would mean that the Commission would not give
11 it any special credence, but in this case, because we're
12 dealing with this issue of whether or not this agreement
13 under the guide, which has -- has some other issues dealing
14 with the Federal Act may come into play, I'm just not sure
15 if that -- if that gives it more than what we normally have,
16 and you may have already addressed this, and I haven't
17 looked at it yet, but that's a dynamic to this that has --
18 that I -- if it's relevant, if it's something you think is
19 important, you might want to touch on. That's all.

20 MR. ENGLAND: Just for purposes of
21 clarification, because I think I understand what you're
22 saying and I tend to agree with you, right now, I don't have
23 an answer.

24 CHAIRMAN GAW: Oh, well, at least that means
25 it wasn't a completely --

1 MR. ENGLAND: No, it's an interesting dynamic.
2 I understand what you're saying, the fact that two parties
3 -- two parties but not all parties --
4 CHAIRMAN GAW: Right.
5 MR. ENGLAND: -- have agreed to these factors,
6 does that lend any more significance to the agreement in
7 light of the Telecommunications Act.
8 CHAIRMAN GAW: Right.
9 MR. ENGLAND: If not requirement, desire for
10 agreements.
11 CHAIRMAN GAW: Yeah, if we weren't dealing
12 with anything around the Federal Act, the normal rules, as
13 you all know, would be that it's -- it is an agreement, but
14 it's not to be given anything of significance as evidence,
15 but in this case, that -- there may be a completely
16 different set of rules around it, and so if that's something
17 that's of significance, you might want to suggest it.
18 MR. ENGLAND: That's a very good point, and
19 I'm sure we will address it in our briefs.
20 MR. BUB: I also agree it's an issue that we
21 probably need to address, and my initial thoughts on it is
22 it would depend on how you would want to go in your order.
23 If you would want to go in your order imposing
24 secondary liability, my initial thought would be that it
25 would be given the same weight it normally would in any old

1 case, but if you were to decide that there's no secondary
2 liability, taking us out, taking SBC out of the picture,
3 then I think it would fall into the camp of a normal
4 agreement subject to the rules of the Federal Act where the
5 standard of non-discrimination and public interest, which is
6 a very low indifferential standard would apply and you could
7 disregard our objection, and I think it would become a
8 unanimous stipulation, or in my view, you could consider it
9 as that, but that's my initial thought.

10 CHAIRMAN GAW: I sort of gathered that, but
11 I'm interested in whether or not -- in a little bit of an
12 analysis about how the Federal Act plays into that argument
13 as opposed to how it impacts the parties' decisions about or
14 reactions to the agreement itself, but that said, I think
15 that's all I had on this, and if, I mean, I realize all the
16 parties want to brief this at this point, but if you want to
17 shorten the time even further, we could dispense with
18 briefing, and just do oral argument, and that would shorten
19 down the time even more, so it just, and I'm not trying to
20 reinject that argument, but just for the sake of time here,
21 if that is a huge issue, that would be one way of handling
22 it.

23 MR. ENGLAND: I'm not adverse to that, either.
24 Earlier the discussion was, I thought, briefing and oral
25 argument.

1 CHAIRMAN GAW: Yeah.

2 MR. ENGLAND: And I sensed that everyone

3 wanted briefs, a few of us or one of us wanted oral argument

4 in addition to that. I thought briefs would be sufficient.

5 I'd be willing -- I think we would have to reschedule it so

6 that we'd have the full Commission.

7 CHAIRMAN GAW: Well, I don't disagree with

8 that.

9 JUDGE THOMPSON: What if we came back at 2

10 o'clock for oral argument?

11 MR. ENGLAND: I'm afraid I have a conference

12 call this afternoon.

13 CHAIRMAN GAW: And I don't mean to hurry you

14 all up in wrapping things up, but I just offer it up because

15 I know this has been going on, and I agree we need to get

16 these issues resolved, so whatever you end up deciding.

17 MR. ENGLAND: I would be willing to come back

18 in a week or two and argue it in lieu of briefs.

19 MR. BUB: That would be okay with us as well.

20 I agree with --

21 JUDGE THOMPSON: Okay. Well, there's two. Do

22 we have a third?

23 MR. JOHNSON: You have a third. I wouldn't

24 want to argue it today.

25 JUDGE THOMPSON: Okay. But you would be

1 willing to argue it some time in the future?

2 MR. JOHNSON: Yes.

3 JUDGE THOMPSON: Mr. Bates.

4 MR. BATES: Your Honor, provided we had

5 opportunity to prepare a good oral argument, then I would be

6 willing to dispense with briefs, too.

7 JUDGE THOMPSON: I'm confident you would

8 prepare a wonderful oral argument.

9 So I would have to go look at the calendar and

10 see when the room is available, but are we -- in other

11 words, about two weeks out would be okay? I have no idea

12 what the calendar looks like. I can look at it

13 electronically, but the electronic version is sometimes not

14 quite as up-to-date as the one up on the wall. Let's see

15 what we have here.

16 CHAIRMAN GAW: Judge, the main thing is going

17 to be whether or not the Commission calendar is going to be

18 a problem because it is full, but.

19 JUDGE THOMPSON: Thursday, November 20th is

20 open as far as the adjudication calendar goes.

21 MR. ENGLAND: Your Honor, I apologize, I don't

22 have my calendar.

23 JUDGE THOMPSON: Okay.

24 MR. ENGLAND: Perhaps we can do it from

25 e-mails from your office and you could give us some dates

1 and we could respond.

2 JUDGE THOMPSON: That would be great. Do I

3 have everybody's e-mail address?

4 MR. ENGLAND: I believe we've submitted

5 Pleadings and Statements of Position to you.

6 JUDGE THOMPSON: I tell you what, when you get

7 back to the office, send me an email, tell me hi, how are

8 you, Judge, and that way I will have your email addresses.

9 Does everyone have my email address? Kevin Thompson, all

10 lower case, at PSC dot state dot MO dot US. Okay.

11 MR. ENGLAND: Dot globe.

12 JUDGE THOMPSON: We do have watchers and that

13 reminds me that they've been listening to this. Normally,

14 we don't let them hear us do briefing schedules, my

15 goodness. Secrets of the lawyers revealed for all to see.

16 (AN OFF-THE-RECORD DISCUSSION WAS HAD.)

17 JUDGE THOMPSON: We're adjourned. Thank you

18 very much.

19 (WHEREUPON, the on-the-record portion of the

20 hearing was concluded.)

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