

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Prehearing Conference
8 August 20, 2003
9 Jefferson City, Missouri
10 Volume 1
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12 In the Matter of the Traffic)
13 Termination Agreement by and Between)
14 Sprint Communications Company, L.P.,)
15 d/b/a Sprint and Southwestern Bell) Case No. CK-2004-0031
16 Telephone, L.P., d/b/a Southwestern)
17 Bell Telephone Company, Pursuant to)
18 Sections 251 and 252 of the)
19 Telecommunications Act of 1996.)
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23 NANCY M. DIPPELL, Presiding,
24 SENIOR REGULATORY LAW JUDGE.
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10

FOR: BPS Telephone Company.

11 Cass County Telephone Company.

Citizens Telephone Company.

12 Craw-Kan Telephone Cooperative, Inc.

Ellington Telephone Company.

13 Farber Telephone Company.

Goodman Telephone Company, Inc.

14 Granby Telephone Company.

Grand River Mutual Telephone

15 Corporation.

Green Hills Telephone Corp.

16 Holway Telephone Company.

Iamo Telephone Company.

17 Kingdom Telephone Company.

KLM Telephone Company.

18 Lathrop Telephone Company.

Le-Ru Telephone Company.

19 Mark Twain Rural Telephone Company.

McDonald County Telephone Company.

20 Miller Telephone Company.

New Florence Telephone Company.

21 New London Telephone Company.

Orchard Farm Telephone Company.

22 Oregon Farmers Mutual Telephone Co.

Ozark Telephone Company.

23 Peace Valley Telephone Company.

Rock Port Telephone Company.

24 Seneca Telephone Company.

Steelville Telephone Exchange, Inc.

25 Stoutland Telephone Company.

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11 P.O. Box 360
Jefferson City, Missouri 65102
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Service Commission.
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1 P R O C E E D I N G S

2 JUDGE DIPPELL: This is Case No. CK-2004-0031,
3 in the matter of the traffic termination agreement by and
4 between Sprint Communications Company, LP, d/b/a Sprint, and
5 Southwestern Bell Telephone, LP, d/b/a Southwestern Bell
6 Telephone Company, Pursuant to Sections 251 and 252 of the
7 Telecommunications Act of 1996.

8 My name is Nancy Dippell, and I'm the
9 Regulatory Law Judge assigned to this matter. And we've
10 come here today on August 20th for a prehearing conference.
11 I'd like to begin with entries of appearances from the
12 attorneys. Staff?

13 MR. KRUEGER: Keith R. Krueger and Eric W.
14 Anderson for the Staff of the Missouri Public Service
15 Commission. Our address is P.O. Box 360, Jefferson City,
16 Missouri 65102.

17 MR. BUB: Thank you, your Honor. Leo Bub for
18 SBC Missouri. Our address is One SBC Center, St. Louis,
19 Missouri 63101.

20 MS. HENDRICKS: Your Honor, Lisa Creighton
21 Hendricks appears on behalf of Sprint Communications
22 Company, LP, 6450 Sprint Parkway, Overland Park, Kansas
23 66251.

24 MS. CHASE: Your Honor, Lisa Chase and Craig
25 Johnson appearing on behalf of MITG, 700 East Capitol,

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1 Jefferson City, Missouri 65102.

2 MR. ENGLAND: Thank you, your Honor. Let the
3 record reflect the appearance of W.R. England and Brian T.
4 McCartney on behalf of a number of small independent
5 incumbent local exchange carriers, who are listed on our
6 written entry of appearance, known as the Small Telephone
7 Company Group. Our address is Brydon, Swearngen & England,
8 P.C., Post Office Box 456, Jefferson City, Missouri 65102.

9 JUDGE DIPPELL: Thank you. We've come here
10 today -- I apologize for making you-all come in so early,
11 but I wanted to bring you together so that we could not only
12 discuss a procedural schedule or let you-all discuss a
13 procedural schedule and present, which I've ordered to be
14 done by Friday. And actually I'm going to be out of the
15 office on Friday afternoon, so if you could file that Friday
16 morning, it would help me a lot in getting this -- keep it
17 moving along. If that's not possible, I understand, and
18 I'll deal with it when I get it.

19 I also wanted to discuss, we've had some
20 similar cases to these at the Commission recently where
21 there have been interventions, and the other cases, as I
22 understand it, have resolved their conflicts. And I wanted
23 to start out by finding out if the counsel can explain to me
24 the difference between maybe these -- this interconnection
25 agreement and those other cases.

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1 And I know Sprint's been involved in some of
2 those other cases, so I'll put you on the spot.

3 MS. HENDRICKS: The other cases that Sprint
4 has been involved in that were resolved involved
5 interconnection agreements which contained transit
6 provisions and covered traffic that originated within the
7 exchange of either the CLEC entering into the
8 interconnection agreement or the ILEC with whom the CLEC was
9 entering the agreement into.

10 In this case, Sprint the CLEC has an
11 interconnection agreement with SBC that contains those type
12 of transit provisions, and that's separate and apart from
13 the traffic termination agreement that's in front of the
14 court in this case.

15 Now, the traffic termination agreement that's
16 being reviewed in this case deals with traffic that is local
17 but does not originate in the exchange of the ILEC, but yet
18 it would still be local traffic based on where it originates
19 and terminates, but because it doesn't originate in the
20 exchange of the ILEC, it is not covered by our
21 interconnection agreement in the transit provisions within
22 that.

23 SBC may be able to assist in the description.
24 I'm trying to get it at the basic level at which I
25 understand it.

1 JUDGE DIPPELL: Mr. Bub?

2 MR. BUB: Your Honor, I'm not familiar with
3 the other Sprint agreements, but this agreement, as Lisa
4 says, is a traffic termination agreement that's different
5 than an interconnection agreement.

6 In this situation, if you can imagine traffic
7 that originates from a Sprint customer which would be
8 operating as a CLEC, that CLEC may be operating in territory
9 that's not Southwestern Bell territory. So from our
10 perspective, it would be traffic that comes from another
11 exchange that's not ours. It would go from Sprint PCS,
12 maybe to the incumbent ILEC that serves that territory, then
13 to us.

14 So it's not a situation where we're exchanging
15 traffic in an exchange where both the CLEC and SBC the
16 incumbent provide service.

17 MS. HENDRICKS: And one other important factor
18 I think worth mentioning is, in connection with the Sprint
19 agreements that were in front of the Commission, there was a
20 definition of transit traffic which appeared to include
21 traffic in addition to local traffic, and that was much at
22 the heart of the issue.

23 Within this contract, the definition of local
24 traffic is limited to local traffic. And we were able to
25 resolve the issue in Sprint by limiting the definition of

1 transit traffic to local traffic, something which is already
2 achieved here.

3 JUDGE DIPPELL: I'll ask counsel for the
4 intervenors to -- if they have some additional insight on,
5 and since you-all were involved in each of those other cases
6 as well, the difference between the definition of transit
7 traffic in those cases and the definition in this case.

8 MR. ENGLAND: I can honestly say that as a
9 result of the representations just made on the record, I'm
10 more confused now than I was when I filed my application to
11 intervene.

12 But I -- we also came to the prehearing
13 conference with the intention in mind -- or intention in
14 mind to visit with both the representatives of Sprint and
15 Southwestern Bell to see if some of the safeguards,
16 concessions, amendments, whatever you want to call them, in
17 the Sprint ILEC interconnection agreement with other CLECs
18 would be appropriate here.

19 So sounds to me like we've got more
20 discussions than I anticipated.

21 JUDGE DIPPELL: Okay. So it sounds to me,
22 then, like this isn't definitely headed for hearing, that
23 there may be a possibility that you-all can work out some
24 additional language or somehow explain it to each other and
25 then explain it to the Commission so that you are all

1 comfortable with the provisions of this agreement.

2 In any event, should it need to go to
3 hearing -- and I guess I should ask if Staff had anything
4 further they wanted to add?

5 MR. KRUEGER: No, your Honor.

6 JUDGE DIPPELL: I have the 90 days running on
7 this either on October 9th or I may have -- I may have that
8 date early. And so when you're considering a proposed
9 procedural schedule, of course, needs to be on an expedited
10 basis. The Commission will need some time to review the
11 transcripts and make its decision.

12 So I would look at a hearing no later than --
13 I would say no later than the 19th of September. That's
14 kind of pushing both you and the Commission, but we used up
15 a little bit of time here at the beginning, and hopefully
16 your discussions will be productive.

17 Mr. England?

18 MR. ENGLAND: Yes, your Honor. Would you
19 happen to know what dates might be available or not be
20 available, say for the two weeks leading up to the 19th?

21 JUDGE DIPPELL: I have a copy with me of the
22 Commission's current schedule calendar, and I will leave
23 that with you-all. I believe most dates in September are
24 available. There's a few prehearings scheduled, but no
25 hearings. So you-all can schedule on top of any of the

1 prehearings that are scheduled.

2 But right now September's pretty clear. The
3 calendar doesn't really get booked up until starting in
4 October.

5 MS. HENDRICKS: Your Honor, if I may. In
6 connection with the Sprint cases, while there was a request
7 for hearing made in those cases, there was a briefing of
8 whether or not the Commission had to have a hearing, and
9 prior to that decision being rendered, the parties settled
10 the issue.

11 I don't know in this case if you want
12 opportunity for us to address whether or not in the first
13 instance there would need to be a hearing before the
14 Commission could make the determinations being requested by
15 the intervenors.

16 JUDGE DIPPELL: I wasn't clear from the
17 pleadings on that whether that was still an issue in this
18 case. I take it it is. I didn't get any input from Staff
19 on that in this particular case.

20 Mr. England?

21 MR. ENGLAND: Your Honor, my recollection is
22 somewhat different, that the Commission determined to have a
23 hearing in those Sprint cases.

24 MS. HENDRICKS: Well, maybe I missed an Order.
25 Did they make a --

1 MR. JOHNSON: We had a hearing date. I don't
2 know whether they ever decided whether we were entitled to a
3 hearing. That issue may have been pending at the same time
4 we had a hearing date. As I recall, we did the amendment
5 and withdrew our request for a hearing just a day or two
6 prior to the first round of testimony.

7 JUDGE DIPPELL: A request for hearing has
8 definitely been made in this case. If Sprint and
9 Southwestern Bell are contesting that a hearing is
10 necessary, then I guess the Commission should make a ruling
11 on that.

12 MS. HENDRICKS: Well, the only thing
13 beneficial in connection with that was it was able to frame
14 the issues, too, to say exactly what do you perceive is
15 wrong with this agreement in connection with identifying
16 what they wanted to do.

17 Maybe that's what I'm trying seeking here is
18 making sure we have the issue defined before we go into a
19 full-fledged filing of testimony.

20 JUDGE DIPPELL: And I'll let the intervenors
21 respond to that. Can you phrase what issues it is that you
22 have requested a hearing for?

23 MR. ENGLAND: I guess generically we have
24 raised issues with respect to the possible discrimination
25 that this agreement creates on our companies, and the lack

1 of public interest or, I guess, alternatively public
2 detriment that may be created by this agreement. That's the
3 general issues.

4 We need to develop a factual record, but as I
5 said, based upon what I heard a minute ago, if this is a
6 traffic termination agreement like other traffic termination
7 agreements that I've been involved in in submitting to the
8 Commission where our companies are actually not the end of
9 the line as far as calling is concerned, the terminating
10 company, but only potentially an intermediate company, that
11 changes everything.

12 And that's why I think we need some time here
13 today off the record to discuss exactly what's going on with
14 respect to this agreement, because I did not get that from
15 reading the agreement, and I've read it a couple of times
16 now.

17 JUDGE DIPPELL: And so presuming that you
18 aren't able to work out those issues, the intervenors see
19 discrimination to those companies and the public detriment
20 or public interest issues as the factual issues that would
21 need to be brought to the factual evidence?

22 MR. ENGLAND: They're the ultimate issues you
23 need to decide. We need to present factual evidence to
24 support our claims.

25 JUDGE DIPPELL: And what kind of evidence?

1 What kind of witnesses or whatever would you --

2 MR. ENGLAND: I guess I can tell you what we
3 were prepared to demonstrate or bring forward in the prior
4 Sprint cases. Whether that's particularly relevant here or
5 not I won't know until I've had some further discussions
6 with counsel for Southwestern Bell and Sprint.

7 But if we are parties to whom traffic is being
8 terminated under this agreement, and that traffic is toll
9 traffic, we believe that discrimination is the change in
10 business relationship that we're entitled to pursuant to our
11 access tariffs. In other words, these two parties have
12 negotiated a way around the application of our access
13 tariffs to toll traffic that terminates to our exchanges.

14 And depending on the way in which that traffic
15 is routed, the way in which that traffic is recorded, the
16 way in which records are sent to us, that may be -- and the
17 way in which we get compensated versus how we would under
18 our access tariffs may be different, discriminatory and
19 therefore against public interest, at least in our opinion.

20 JUDGE DIPPELL: What I'll say, then, is if
21 there is some contest that a hearing in this particular case
22 is necessary, I will request that you specify that along
23 with your proposed procedural schedules.

24 MS. HENDRICKS: Yes, your Honor.

25 JUDGE DIPPELL: And then the Commission can

1 make a determination if it needs to in the form of an Order
2 as to whether a hearing is necessary if that is contested.

3 MS. HENDRICKS: Thank you.

4 JUDGE DIPPELL: Is there anything else that --
5 I don't have anything else. Is there anything else that the
6 parties want to say on the record?

7 All right. Then I will leave you to your
8 discussions. I will be up in my office if you should have
9 additional questions about the calendar or anything else for
10 that matter. I appreciate your coming in this morning and
11 good luck. We can go off the record.

12 WHEREUPON, the recorded portion of the
13 prehearing conference was concluded.

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