

lw-17

1 presented to me and reviewed most of the Act the night prior
2 to the hearing on this request for interim relief. After
3 hearing the testimony and the legal arguments presented, and
4 I want to reiterate that point there, the legal arguments
5 that were presented, and based on such I recommended denial
6 of the objections of the parties and recommended that an
7 interim order issue permitting SWBT's statement of generally
8 available terms and conditions to be in effect subject to
9 final OCC review at a hearing on the merits.
10

11 I found that the OCC had the authority under
12 Section 252. Now you are going to hear discussion today
13 about Section 252 and 271. This is very important that
14 97-20 in my opinion only dealt with Section 252, although
15 the parties tried to mix 271 into it. That is a separate
16 question. That is the question involved in the second case
17 in 97-64.

18 I based the recommendation, as I said,
19 strictly on the position in Section 252 that we had the
20 authority to issue the interim order and to continue to
21 study the matter for 60 days and even beyond. Permitting
22 the SGTC, and the SGTC is the terminology for that generally
23 available terms and conditions, permitting the SGTC to take
24 effect I found harmed no parties, and I found no basis for
25 delay as SWBT was not asking the OCC to either accept or
reject the SGTC by the statute. The SGTC has been presented

1 lw-18

2 as a combination of the AT&T arbitration and the USLD and
3 Brooks Fiber interconnection agreements, along with a few
4 other items that they had added. It is not binding on
5 anyone but SWBT. Many of the legal arguments that will be
6 placed forth here this afternoon I found were misleading at
7 my level and I found that they were very good legal
8 camouflage to slow down what I considered another step
9 toward competition.

10 Several of the parties stated that SWBT
11 advanced no proper reason to grant this interim order. But
12 at the same time I found that the parties themselves did not
13 state any basic reason to deny the interim order. I heard
14 numerous arguments regarding the OCC and the AG's time
15 constraints as to compliance with Section 271 as to whether
16 SWBT should proceed under Track A, or Track B, or both or
17 otherwise. I believe those arguments were not relevant in
18 97-20.

19 Now combining these this afternoon is going
20 to make kind of a problem because you need to understand
21 that I had those as separate issues. I found that
22 specifically, I want to repeat that for you, that in that
23 proceeding I did not find that 271 had any bearing, although
24 those arguments were put in there.

25 Any filing with the FCC by SWBT I found at
that time was its business. If it was in that jurisdiction,

1 lw-19

2 those parties would be addressing such matters at that level
3 regarding 271. Such filings with the FCC would not result
4 in an FCC hearing without OCC review through a request for
5 consultation. In addition, if SWBT does proceed to the FCC,
6 as they have said that they intend to do, the OCC should
7 have completed its review of the SGTC by that time.

8 I don't know how long ago this was, but the
9 track that staff was on at that time, they may have
10 completed it by this date today.

11 I don't find that any action here by
12 recommending an interim order has any bearing on any
13 negotiations going forth or any bearing on the final hearing
14 on the merits. This interim order would strictly allow an
15 interim minimum offering to go into effect that SWBT would
16 be offering other parties. This recommendation is not, and
17 as has been argued on the record, a rush to judgment as we
18 would be having a final hearing on the merits. And I felt
19 that the failure to recommend this action would be
20 anti-competitive.

21 I think it would end up being self-serving to
22 the intervenors and against the public interest and welfare.
23 I also believe that it is in the public's interest and
24 welfare to move forward as rapidly as possible.

25 Now to the second issue, which is 97-64. I
do not find the decision and recommendation I made this

1w-20

2 morning inconsistent with any decision in PUD 97-20. The
3 question this morning was regarding my recommendation that
4 Staff and the parties be provided a 90 day notice of SWBT's
5 intended filing date of its Section 271 application with the
6 FCC. I recommended the 90 days be provided. Although the
7 cases are intertwined, they must also be kept separate. The
8 approval of the SGTC on an interim basis is just that and
9 nothing more. It is a public offering by SWBT.

10 Even though SWBT may attempt to offer or
11 utilize the SGTC in its 271 filing, that question is not a
12 part of 97-20. 97-64 is different, as that application is a
13 direct attempt by Staff to review what the requirements are
14 for a 271 filing and to evaluate whether SWBT meets those
15 requirements in the state's view.

16 It is important that the Commission En Banc
17 issue an immediate decision in this matter, from the bench
18 if possible, because of SWBT's possible immediate filing
19 with the FCC so to allow Staff's application to go forward
20 in this matter. A delay could result in the application
21 being moot if we don't have a near decision.

22 You will hear that this 90 day notice would
23 be like the OCC extending the dates allowed by law for an
24 arbitration proceeding to be completed, but this request is
25 different from extending the time on an arbitration. This
request for advance notice is akin to the notice of filing

lw-21

2 required by the OCC for rate hearings, i.e., the minimum
3 filing requirements that we require and the notice of filing
4 to be filed with the Commission before the statutory time
5 begins. The statute sets some time frames for processing a
6 rate case, but the OCC has placed rules in effect that
7 provide the OCC with advance information that allows for the
8 orderly review and processing of the case. The same
9 principle should apply here. Advance requirements to an
10 applicant in a complicated proceeding is nothing unusual,
11 and, therefore, I recommended the motion for the 90 day
12 request.

13 CHAIRMAN GRAVES: Okay. Are there any
14 questions for Mr. Goldfield?

15 VICE CHAIRMAN ANTHONY: Could you elaborate
16 on explaining the Staff's application and how it fits in the
17 process we have before us?

18 MR. GOLDFIELD: Yes, sir. What the Staff is
19 doing by their application is, like I was saying, there are
20 two steps here, actually two different issues. What they're
21 offering is to the public, to any person that wants to come
22 in and operate in Oklahoma. Here is the minimum offering.
23 You can come in and you can sign this and go out and do
24 business.

25 The 271 question is something that Staff
needs to know up front what the requirements are and if SWBT

1 lw-22

2 is meeting those requirements, because when they file with
3 the FCC they're going to file under the provisions of the
4 law and the rulings of the FCC but what they're going to do
5 is claim that they meet those requirements. It only
6 provides that we have 20 days to review that and make our
7 recommendation. So what Staff is doing is in advance and
8 what AT&T has done by their motion is said, SWBT, that is
9 fine, but you should give us 90 day notice before you file
10 it. And what Staff is doing through this application is to
11 review what those requirements are under 271 and then at the
12 same time review SWBT's statements and see if in fact they
13 do comply with that 271 filing.

14 Part of what was agreed to this morning kind
15 of off the record is that if in fact you followed my
16 recommendation, that the time limits would begin to operate
17 as of now. In other words, 90 days or the hearing,
18 whichever was over first. So if we go to the hearing on the
19 merits on Staff's application, it is over in 65 days. Then
20 if in fact SWBT meets the requirements, they can go ahead
21 and they can make their filing. So it is not a firm 90
22 days. It is a 90 or less, I guess, is the answer.

23 Did I answer that?

24 CHAIRMAN GRAVES: Any other questions for Mr.
25 Goldfield? If not, thank you, Mr. Goldfield.

MR. GOLDFIELD: May I be excused, please?

1 lw-23

2 CHAIRMAN GRAVES: If you have got items
3 below, please, feel free to go tend to business.

4 Mr. Toppins. We will allow Mr. Toppins to go
5 first, and then Mr. Fite or Mr. Rutan. Who is going to be
6 making it?

7 MR. RUTAN: Mr. Rutan. I will go next.

8 CHAIRMAN GRAVES: You will go next then.

9 MR. TOPPINS: Thank you, Your Honors. If I
10 could address one thing right at the outset while the
11 Judge's comments are still in your mind, I think there is a
12 basic inconsistency on the one hand to rule that a statement
13 of terms and conditions should be permitted to go into
14 effect, which is a triggering event for asking for long
15 distance relief and then on the other hand say but you can't
16 go for 90 days. And I will talk later about why that's
17 contrary to the Federal law.

18 COMMISSIONER APPLE: Would you run that
19 statement by me one more time?

20 MR. TOPPINS: The way the Federal law is set
21 up, if you have a statement of terms and conditions that has
22 been permitted to go into effect, you may take that
23 statement under Section 271(B) and ask the FCC for interLATA
24 freedom to be able to remove the interLATA barriers. The
25 law, the Federal law, does not have any sort of advance
notice period in it. It says once you are ready to go, you

1w-24

2 can go, and the FCC has 90 days to deal with your request.
3 What happened this morning is that an additional 90 day
4 period was ordered by the ALJ before we can even file at the
5 FCC. And we contend that that is not proper under the
6 Federal law, the Congress has spoken. And I will be happy
7 to address it a little bit more as we go on, including
8 showing you a copy of the law.

9 This case is about full competition in the
10 long distance business and whether Oklahoma is going to stay
11 at the forefront in moving ahead towards competition. It is
12 about removing artificial interLATA boundaries that have
13 been set by the Federal government.

14 As we all know, there is a major interLATA
15 boundary in the state that separates the Oklahoma City side
16 of the state from the Tulsa side. There are also small
17 pockets around the borders of the state that are also
18 interLATA boundaries where calls from Southwestern Bell or
19 actually our parent company, SBC, cannot be completed across
20 these boundaries. The LATA boundaries are also the state
21 boundaries so that if we remove the boundaries, the red
22 ones, that are inside the state, the calls can be completed
23 within the state and at that same time the state LATA
24 boundaries go away as well so calls can be completed on a
25 interstate basis. That's all what this case is about.
That's what we are all about here.

1 lw-25

2 Now this Commission, unfortunately, by itself
3 cannot remove these federally created boundaries. Only the
4 FCC can do that. So that we can get the issue to the FCC,
5 however, we have asked the Commission to permit our
6 statement of terms and conditions to go into effect.

7 We are also asking that you not violate the
8 Federal law by imposing an artificial 90 day advance notice
9 period as requested by AT&T and others, which was approved
10 this morning.

11 With an order from the Commission permitting
12 the statement of terms and conditions to go into effect, and
13 with an order that rejects a 90 day advance notice period,
14 Southwestern Bell can file a Section 271 application at the
15 FCC and we can move the state towards full long distance
16 competition expeditiously.

17 CHAIRMAN GRAVES: What are the options for
18 states under the - - your interpretation of the Federal Act?
19 How much time do we have to review a 271 filing with the
20 FCC?

21 MR. TOPPINS: Once it is filed at the FCC?

22 CHAIRMAN GRAVES: Uh-huh.

23 MR. TOPPINS: The FCC has - -

24 CHAIRMAN GRAVES: Right.

25 MR. TOPPINS: - - enacted a policy or rule,
I'm not sure which, that gives the state 20 days.

1 lw-26

2 CHAIRMAN GRAVES: Okay.

3 MR. TOPPINS: The Federal Act says the FCC
4 shall consult with the Commission. It doesn't say in 20
5 days. It says - -

6 CHAIRMAN GRAVES: So the FCC has made an
7 arbitrary decision that they are going to give the states 20
8 days?

9 MR. TOPPINS: They have made an arbitrary
10 decision.

11 CHAIRMAN GRAVES: Okay.

12 MR. TOPPINS: And there is nothing to prevent
13 all of us from going to the FCC and saying, you know, that's
14 just not right, we ought to have more time.

15 CHAIRMAN GRAVES: Has your company done that?

16 MR. TOPPINS: We have objected to the NARUC
17 proposal that we - - we further create a problem by
18 extending 90 days on top of that. But we would be happy to
19 do that. But, no, we have not.

20 CHAIRMAN GRAVES: But, I mean, you haven't
21 specifically objected to giving the states only 20 days
22 under the FCC rules?

23 MR. TOPPINS: I don't believe we have.

24 CHAIRMAN GRAVES: Okay.

25 MR. TOPPINS: Whether we all realize it or
not, the eyes of the country are on Oklahoma right now. We

1 lw-27

2 are now the state that everyone is watching in the
3 telecommunications industry to see what will happen next on
4 long distance competition.

5 Two days ago Ameritech withdrew a Section 271
6 application that it had filed for permission.

7 I don't know all the reasons for Ameritech's decision, but
8 we do know that their application did not contain a
9 statement of terms and conditions. And we think that's an
10 important component of our application and that is why we're
11 asking the Commission to put ours into effect.

12 Whatever the reasons for Ameritech's
13 withdrawal, the fact is that the country now knows that
14 Oklahoma could be the next state to move towards full long
15 distance competition. This is ironic in a way. At the time
16 the Federal Act was passed last year, Senator Pressler, who
17 was one of the movers of the bill, commented that the Act is
18 intended to get everyone into everybody's business to set
19 off, in his words, an Oklahoma land rush of competitors
20 toward markets from which they had been artificially and
21 inefficiently barred. And there was no doubt that he was
22 talking about the local exchange market, but he was talking
23 about the long distance as well.

24 CHAIRMAN GRAVES: As an aside, do you think
25 that had any bearing on Mr. Pressler's not being re-elected
to the Senate?

1 lw-28

2 MR. TOPPINS: I sure hope not. That
3 reference to Oklahoma? I sure hope not.

4 I will address the legal arguments that have
5 been raised heretofore in this case and I expect to be
6 raised again today. Before doing so, I would like to
7 address the issue of public interest.

8 Is it in the public interest for this
9 Commission to move ahead towards full long distance
10 competition in Oklahoma? We are always concerned about the
11 public interest. We often think we know what is in the
12 public interest. We think we know what is not in the public
13 interest. Rarely, however, do we actually ask the public
14 what they think is in their interest.

15 On the question of long distance competition,
16 we asked the public in Oklahoma what they thought. We
17 started - -

18 MR. FITE: Your Honor, can I object? None of
19 this was raised below at all.

20 CHAIRMAN GRAVES: Well, I tell you what, we -
21 -

22 MR. FITE: This is all new evidence.

23 CHAIRMAN GRAVES: I understand. I
24 understand. We allowed Brooks in because of the general
25 policy nature of these discussions. And unless Counsel is
going to try and present public survey data, or something,

1 lw-29

2 and make us rely on that, I mean, we will take it for the
3 relative value of what they want to represent the public
4 generally thinks, but I would hope we would keep it on a
5 relative policy level.

6 MR. TOPPINS: I'm not asking this be in
7 evidence or anything like that. But we did ask the
8 Cole/Hargrave Firm to ask 500 Oklahomans the question,
9 "Since long distance companies have recently been permitted
10 to provide local telephone service, do you think that
11 Southwestern Bell should also be allowed to compete for long
12 distance services between area codes?" It's a pretty
13 straight-forward question. The response was overwhelming,
14 84 to 5. 84 percent thought that we should be permitted to
15 do that.

16 Now we thought, well, perhaps this was an
17 aberration, this is wrong, maybe people would complain about
18 who did the survey, so we asked another firm, Tom Kielhorn's
19 Firm, to cover all our bases to do a similar survey. Just
20 about the same question was asked, and this time it came out
21 89 to 5. 84 to 5, 89 to 5. We have been wondering who this
22 five percent is and I think we have finally figured it out.
23 It is the people sitting around the table over here.

24 CHAIRMAN GRAVES: Let me ask you, Mr.
25 Toppins. How many completed interconnection arrangements
have you all filed here?

1 lw-30

2 MR. TOPPINS: About a dozen.

3 CHAIRMAN GRAVES: Completed interconnection?

4 MR. TOPPINS: Yes.

5 CHAIRMAN GRAVES: And of those dozen
6 completed interconnection filings, how many people are
7 physically interconnected at this point and able to - -

8 MR. TOPPINS: Beyond Brooks Fiber, I'm not
9 sure there are any.

10 CHAIRMAN GRAVES: Okay. But we have not yet,
11 even though this agency has issued a decision in the
12 arbitration portion of the AT&T case, you have not yet
13 finalized that agreement?

14 MR. TOPPINS: Yeah. And you cannot place the
15 blame on Southwestern Bell.

16 CHAIRMAN GRAVES: Well, I'm not placing
17 blame, but I just want to know what the status of it is,
18 because I intend to ask AT&T the same question.

19 MR. TOPPINS: The companies are in
20 negotiations still.

21 CHAIRMAN GRAVES: And, I mean, it was my
22 understanding that everything else had been agreed to but
23 for the arbitrated issues. Are you meaning there are other
24 issues that have not yet been resolved? Or is it just the
25 engineering question of how you do some of this stuff?

MR. TOPPINS: I don't want to speak for the

1 lw-31

2 negotiators. I'm surprised. I thought that we had the
3 issues that were at issue before the Commission.

4 Apparently, we didn't.

5 CHAIRMAN GRAVES: But, Mr. Rutan, at some
6 point when it is appropriate, if you can respond as well.

7 MR. TOPPINS: I will tell you in all honesty
8 that AT&T put on three or four witnesses here during the
9 arbitration case that said we intend to start out as a
10 reseller, not as a facility-based provider. We have had 10
11 or 11 agreements reached with resellers who are going to be
12 in business ahead of AT&T.

13 CHAIRMAN GRAVES: No, I understand. And I
14 don't wish to get into further discussion of the AT&T
15 interconnection arrangement, because we all know that
16 everybody is going to approach it differently. And what
17 we're trying to do is try to figure it out. And what I'm
18 trying to wrestle with is your question would imply since it
19 was phrased since they can now compete in local exchange
20 shouldn't Southwestern Bell be able to do long distance, and
21 I think the question becomes, yeah, if there is competition
22 in the local exchange, then certainly they ought to be able
23 to do that. The question is, is there, and are there, and
24 how do we get to a determination as to whether or not there
25 is competition, which is why in my opinion the 271 filing
is, quite frankly, much more important than the statement of

1 lw-32

2 terms and conditions, in my opinion, because it is much more
3 specific.

4 MR. TOPPINS: I think the question does sort
5 of match up with the way the Federal law is. It says - -

6 CHAIRMAN GRAVES: I agree.

7 MR. TOPPINS: The question is, "Since they
8 can compete." Once they can compete and the barriers are
9 removed, then you go into the long distance side.

10 CHAIRMAN GRAVES: Right. Right. And that's
11 - - And the question is, you know, have we reached that
12 point yet, which is why we need to have a complete
13 consideration of the 271 filing where I think it may be
14 appropriate for this agency to review that in some detail
15 and determine what is going to be our policy standard in
16 Oklahoma for whether or not we think there is actual
17 competition.

18 MR. TOPPINS: Well, and I was going to get
19 into this, but the 271 application I predict with some
20 confidence will mostly be a description for the FCC of what
21 this Commission has already done. It will be copies of
22 interconnection agreements that you have approved, the
23 statement of terms and conditions that you have looked at,
24 the arbitration decision. So it will not be a filing that
25 will be brand new to this Commission.

CHAIRMAN GRAVES: So to that extent, what is

1 lw-33

2 wrong with giving it to us in advance of filing it at the
3 FCC to say, hey, this is what we're going to take to
4 Washington?

5 MR. TOPPINS: What's wrong with that is it
6 delays competition. There is a 20 day period built in. I
7 think it can be done in 20 days. It is not consistent with
8 the law. The law has - -

9 CHAIRMAN GRAVES: But notwithstanding
10 whether you interpret it as consistent or inconsistent,
11 what is wrong with filing with the Commission as soon as you
12 know what you are going to file in Washington to say we just
13 want to give you a heads up, here is where we are going. I
14 mean, after all, we're merely restating the record of what
15 you all have done in Oklahoma.

16 MR. TOPPINS: I don't have a problem with
17 that. I have already talked to Staff and told them that I
18 would present them with an entire copy ahead of time.

19 CHAIRMAN GRAVES: Okay.

20 MR. TOPPINS: Now 90 days? No. Ahead of
21 time, yes. 45 days - -

22 CHAIRMAN GRAVES: Then what is the material
23 difference between whether it is 90 days or one day?

24 MR. TOPPINS: 90 days. 90 days, the way that
25 Congress has set up the Act, if a company is entitled to go
into the long distance business, they're entitled to file a

1 lw-34
2 271 application at the FCC and have it heard in 90 days,
3 just as this company had a right to have its arbitration
4 heard in 135 days, or whatever it was. So if we are right,
5 we are entitled to be in the long distance business by May
6 15th if we file today, not August 15th if we had another 90
7 days. It is just plain and simple.

8 CHAIRMAN GRAVES: Okay.

9 MR. TOPPINS: We want to move along
10 expeditiously.

11 CHAIRMAN GRAVES: Okay. So I guess the
12 company's position is that regardless of whether or not
13 specific interconnection arrangements have been met, and
14 that the fact that you are offering some basic general
15 terms, is indicia enough that there is competition to move
16 forward and make the filing?

17 MR. TOPPINS: Well, you are getting
18 everything. You might as well do it.

19 You know, under 271 you can go under Track A
20 or Track B. You hear a lot about that.

21 CHAIRMAN GRAVES: Uh-huh.

22 MR. TOPPINS: We have an agreement with
23 Brooks Fiber. Track A says if you have an agreement with a
24 company that's in operation providing service to business
25 and residence customers and it is predominantly or
exclusively facilities based, you are entitled and you meet

1 lw-35

2 the check list. You are entitled to 271 interLATA relief.

3 Now we think we may have met that with Brooks.

4 CHAIRMAN GRAVES: Brooks is going to offer
5 residential service?

6 MR. TOPPINS: They are, are they not?

7 MR. CADIEUX: Is that a policy question?

8 VICE CHAIRMAN ANTHONY: His limited
9 intervention probably prohibits him from talking about
10 specifics with his company.

11 CHAIRMAN GRAVES: Which is again another
12 example of why we need to have some sort of consideration.

13 But my point is, if the Company is prepared,
14 and this gets back to the general terms and conditions,
15 okay? I mean, it is my understanding that you can put that
16 out there and if anybody wants to accept that, you will - -
17 that's just a pro forma, hey, we can process that paperwork
18 today because we agree. And if you want something other
19 than that, then it enters into some sort of negotiation
20 phase, right?

21 MR. TOPPINS: Then you are like everybody
22 else that's heretofore.

23 CHAIRMAN GRAVES: Now what if I say I like
24 most of this in the general terms and conditions, but I want
25 the two or three provisions that Brooks has negotiated for
and I want a couple of the provisions that Sprint may have

lw-36

2 signed on, and I want the deal that - - these other elements
3 that AT&T has agreed to. Can I get those? Is that a pro
4 forma acceptance?

5 MR. TOPPINS: It is a menu. You can pick and
6 choose.

7 CHAIRMAN GRAVES: Okay. And so I guess I'm
8 troubled then that, and this may be asking for Mr. Rutan to
9 start talking about some other things as well, why we
10 haven't gotten further along in pursuing and finalizing a
11 lot of the interconnection arrangements. I mean, I think
12 most people would look and say, yeah, you may have 12
13 competitors out there, but combined they may be two percent
14 of the size of a company of AT&T, or they may only represent
15 effective competition in a very small niche markets in
16 Oklahoma that may not fully represent a competitive
17 challenge like the average person would assume would be if
18 AT&T suddenly starts marketing in Southwestern Bell's
19 territory. I think if you ask most people in your survey do
20 you think they're equal to - - able to compete against each
21 other, most people would agree. I think if you mention some
22 names like Brooks Fibers and others, you would probably get
23 a who kind of response.

24 MR. TOPPINS: As you know, the Federal law
25 says pull down the barriers, allow people to come in.

CHAIRMAN GRAVES: Right.

1 lw-37

2 MR. TOPPINS: But it does not allow them to
3 drag their feet and hold up long distance competition.

4 CHAIRMAN GRAVES: No, I understand.

5 MR. TOPPINS: And for the Commission's
6 information, we did reach an agreement with Sprint, the
7 third major carrier, that was filed out here yesterday.

8 CHAIRMAN GRAVES: I understand. And I can
9 tell you where I come down on this is, I think once you
10 enter the interconnection arrangements and we finalize
11 those kind of deals, whether or not they're able to
12 capitalize on an interconnection arrangement and suddenly
13 take a bunch of customers or seize market share is different
14 from having the opportunity to pursue market share. To me
15 that's the threshold. If you have entered into some
16 interconnection arrangement, then there are no barriers for
17 you to go out and market your services in any way you want
18 to. The fact that you may not be successful in luring
19 customers is a different kind of a matter that in my mind
20 doesn't rise to the threshold of whether or not there is
21 effective competition.

22 But I worry about until we get those
23 interconnection arrangements signed and filed that there may
24 not be the opportunity to compete. And if someone wants to
25 talk about specific issues, and it may mean that we need to
look at the specific concerns within the negotiations of an

1 lw-38

2 interconnection arrangement, because if you are right and
3 someone is just stalling for stalling sake to keep you out
4 of the check list process, that's one thing.

5 But it gets back again to the notion of if
6 you have got some concerns about that, why don't you file it
7 early and say here is why we can't get these kind of
8 agreements worked out.

9 MR. TOPPINS: Well, we did file the
10 statement. Remember Track A is if you have an agreement
11 with someone. Now they may disagree. I think that they
12 would probably argue at the FCC if we went Track A with the
13 Brooks agreement that it is not sufficient for some reason.

14 And they will tell you today we have got to go Track A.
15 But if we went Track A, they'll tell you, no, it is not good
16 enough. I can almost guaranty that. So looking at the law,
17 we looked at Track B. And it says you can file a statement
18 of terms and conditions, which has been on file here for a
19 month now, it is not like we got it filed yesterday, and it
20 contains the agreements that people could have already seen
21 out here. It is the Brooks agreement, the US Long Distance
22 agreement and the AT&T arbitration case. The law allows us
23 to proceed and file a 271 application based on that.

24 Now they are going to argue, well, no, maybe
25 the law doesn't. You have got to go A or B, you can't go
alternatively. The one thing that we know for sure, none of

1 lw-39

2 us in this room are going to be able to decide that. It is
3 going to have to be decided by the FCC. If we are right,
4 then we should be in the long distance business. If we are
5 wrong, we will find out sooner and we will get it fixed.
6 Either way, the public interest is served by moving ahead
7 faster towards competition.

8 CHAIRMAN GRAVES: And I guess to that end I
9 wonder why you would be adverse to showing us or sharing the
10 filing in advance with the Commission so that if we had a
11 problem instead of having to intervene or file a notice at
12 the FCC that, hey, wait a minute, that's not how we view
13 what is going on in Oklahoma, that we get the opportunity to
14 resolve those in advance of the actual filing so we can
15 either, where there is a common misconception, we can fix
16 it, or where there is disagreement of policy we can be free
17 to go forward.

18 MR. TOPPINS: Well, maybe we'll have to get
19 down to how much time you are talking about. If you do the
20 90 days. That's in effect 110 days, because you are going
21 to get 20 from the FCC anyway.

22 CHAIRMAN GRAVES: But if we resolve our
23 issues in advance, we don't need the 20 days.

24 MR. TOPPINS: Is 110 days necessary to look
25 at things that you have already looked at largely? You
know, is 30 days more reasonable?

2 CHAIRMAN GRAVES: Well, if it is that easy, I
3 mean, if it is that easy a deal and it is that clear cut and
4 it is so overwhelming, I suspect we are going to look at it
5 and say, well, gosh, there is not a problem here. Go ahead.
6 There is nothing that says we have to take the full 90 days
7 if it is that clear cut. But if, as I suspect, the first
8 couple of these are going to be difficult, then, you know,
9 I'm not sure that - -

10 MR. TOPPINS: There is going to be one, I
11 hope.

12 CHAIRMAN GRAVES: Well, for you all. There
13 may be for others.

14 VICE CHAIRMAN ANTHONY: Say, Commissioner
15 Graves raised a question. I want to be clear on your
16 statement on it. He mentioned the indicia of competition.
17 How do you measure it. How do you measure whether it has
18 come into effect. Now I think that's a real important
19 consideration for us. And I would like for you to tell me
20 in this process where we get to make a judgment.

21 Let me explain my consideration a little
22 further. I heard Judge Goldfield use the word
23 anti-competitive, which for a Judge who spent many of the
24 last several years doing trucking cases, there was a certain
25 irony to that. And he said delay in achieving competition,
like that's a point along a time line. But I think that our

1 lw-41

2 consideration is a little more involved than that. And I
3 think our consideration is to follow a process of achieving
4 competition and there needs to be fairness in the
5 transition. And I think one of our policy challenges is to
6 allow competitors to become established and to facilitate a
7 process that has entry. And I think that's a part of what
8 Commissioner Graves was mentioning.

9 So what do you think legally we're allowed to
10 take into consideration in those regards? And when do we do
11 so during this process?

12 MR. TOPPINS: Well, I think what we have to
13 go by is the Bible in this area, and that's the Federal
14 Act. And it has been adopted by the Commission in large
15 part in the rules. And there was a huge battle fought in
16 Congress a year ago about should there be a certain amount
17 of competition in the local exchange business before a Bell
18 Company can get into long distance competition. That battle
19 was fought fiercely. And the people who argued that there
20 has to be a certain percentage of competition in the local
21 business before the Bell companies can get into the long
22 distance business lost and instead the scheme was what we're
23 going to do is remove barriers, we're going to free - - as
24 long as competitors are free to get into the business and
25 you have either - - you are either offering access to them
under this 14 point check list, you are either providing it