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BEFORE THE WASHINGTON UTILITIES AND

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TRANSPORTATION COMMISSION

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4 In the Matter of the Pricing ) Docket No. UT-960369  
Proceeding for Interconnection, ) Phase III  
5 Unbundled Elements, Transport ) Volume I  
and Termination, and Resale ) Pages 2122 -

6

In the Matter of the Pricing ) Docket No. UT-960370  
7 Proceeding for Interconnection, )  
Unbundled Elements, Transport )  
8 and Termination, and Resale )  
for US WEST COMMUNICATIONS, )  
9 INC. )

10 In the Matter of the Pricing ) Docket No. UT-960371  
Proceeding for Interconnection, )

11 Unbundled Elements, Transport )  
and Termination, and Resale )  
12 for GTE NORTHWEST, )  
INCORPORATED. )

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15 A hearing in the above matter was  
16 held on September 23, 1999, at 9:37 a.m., at 1300  
17 Evergreen Park Drive Southwest, Olympia, Washington,  
18 before Administrative Law Judge C. ROBERT WALLIS.

19

20 The parties were present as  
21 follows:

22 AT&T, by Michel Singer, Attorney  
at Law, 1875 Lawrence Street, Suite 1575, Denver,  
23 Colorado, 80202 (Via conference bridge.)

24 US WEST COMMUNICATIONS, INC., by  
Lisa A. Anderl, Attorney at Law, 1600 Seventh Avenue,  
25 Room 3206, Seattle, Washington 98191.

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1 THE COMMISSION, by Ann Rendahl,  
Assistant Attorney General, P.O. Box 40128, Olympia,  
2 Washington 98504-0128.

3 PUBLIC COUNSEL, by Simon ffitch,  
Attorney at Law, 900 Fourth Avenue, #2000, Seattle,  
4 Washington 98164.

5 NEXTLINK WASHINGTON, ELECTRIC  
LIGHTWAVE, INC., ADVANCED TELCOM, INC., NORTHPOINT  
6 COMMUNICATIONS, INC., and NEW EDGE NETWORKS, INC., by  
Gregory J. Kopta, 2600 Century Square, 1501 Fourth  
7 Avenue, Seattle, Washington 98101-1688.

8 GTE, by Lewis Powell, Attorney at  
Law, Hunton & Williams, 951 E. Byrd Street, Richmond,  
9 Virginia, 23219, and Christopher S. Huther, Attorney  
at Law, Collier, Shannon, Rill & Scott, PLLC, 3050 K  
10 Street, N.W., Washington, D.C. 20007 (Via conference  
bridge.)

11  
12 COVAD COMMUNICATIONS COMPANY and  
MCI, by Brooks E. Harlow, Attorney at Law, 4400 Two  
Union Square, 601 Union Street, Seattle, Washington  
13 98101.

14 RHYTHMS LINKS, INC., by Angela Wu,  
Attorney at Law, Two Union Square, Suite 5450, 601  
15 Union Street, Seattle, Washington 98101.

16 TRACER, by Arthur A. Butler,  
Attorney at Law, Two Union Square, Suite 5450, 601  
17 Union Street, Seattle, Washington 98101.

18 SPRINT, by Eric Heath, Attorney at  
Law, 330 S. Valley View Boulevard, Las Vegas, Nevada  
19 89107.

20 WASHINGTON INDEPENDENT TELEPHONE  
ASSOCIATION, by Richard A. Finnigan, Attorney at Law,  
21 2405 Evergreen Park Drive, S.W. #B-1 Olympia,  
Washington 98502.

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25 Barbara L. Spurbeck, CSR

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1 Court Reporter

2 JUDGE WALLIS: The conference will please  
3 come to order. This is a prehearing conference in  
4 the matter of Commission Dockets UT-960369, et al.,  
5 that is being held in Olympia, Washington, on  
6 September 23, 1999, before Administrative Law Judge  
7 C. Robert Wallis, upon due and proper notice to all  
8 interested persons. This matter is an ongoing  
9 proceeding. This conference was noted in the  
10 Commission's 17th Supplemental Order, and is  
11 established to begin addressing an ensuing phase of  
12 the proceeding.

13 I'm going to call for appearances at this  
14 time. I'm going to start at the right side of the  
15 room, my left, and go around the table and ask people  
16 to introduce themselves and the client that they  
17 represent. If you have associated counsel appearing  
18 with you or that will be involved in this proceeding,  
19 to your knowledge, if you would like to state their  
20 names, as well, that would be helpful.

21 MS. ANDERL: Thank you, Your Honor. Lisa  
22 Anderl, representing US West Communications. My  
23 address is already on record in this proceeding.

24 MS. WU: I'm Angela Wu, with the law firm  
25 of Ater Wynne, representing Rhythms Links, Inc. My

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1 business address is Two Union Square, Suite 5450, 601  
2 Union Street, Seattle, Washington 98101. Phone  
3 number is 206 -- you don't need that?

4 JUDGE WALLIS: Don't need your phone  
5 number. Thank you.

6 MR. HARLOW: Good morning, Your Honor.  
7 Brooks Harlow. I have previously appeared in this  
8 docket. I'm appearing this morning on behalf of  
9 Covad Communications and also MCI. Also appearing  
10 this morning and will be participating in this case  
11 as it goes forward for Covad is Clay Deanhardt, who's  
12 sitting behind me to my right. I believe his address  
13 is also on the record. He is essentially  
14 substituting for, I think, Bernard Chow, who may have  
15 been shown on earlier service lists for Covad, and  
16 Mr. Chow should be deleted from any service lists and  
17 Mr. Deanhardt should be substituted. I ought to  
18 spell his last name. D-e-a-n-h-a-r-d-t.

19 JUDGE WALLIS: Thank you very much. If you  
20 could provide a letter to the Commission with that  
21 information, that would be very helpful, and that  
22 would help the people who keep track of our paper to  
23 help direct it to the right person or persons.

24 MR. HARLOW: Certainly.

25 JUDGE WALLIS: Thank you, Mr. Harlow.

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1 MR. BUTLER: Arthur A. Butler, appearing on  
2 behalf of Tracer. I've previously appeared, and the  
3 address is of record.

4 MR. KOPTA: Gregory J. Kopta, of the law  
5 firm Davis, Wright, Tremaine. My address is already  
6 of record. I'm here appearing for existing parties  
7 Nextlink Washington, Inc. and ELI, Electric  
8 Lightwave, Inc., and also for petitioners for  
9 intervention Advanced TelCom Group, Inc., NorthPoint  
10 Communications, Inc., and New Edge Networks, Inc.

11 MR. FFITCH: Simon ffitich, Assistant  
12 Attorney General. I've previously appeared. I'm  
13 appearing for the Public Counsel Office of the  
14 Attorney General's Office. Mr. Manifold of our  
15 office was of counsel earlier in the case. Just as  
16 an alert, we did file a substitution of counsel quite  
17 a while ago in Phase II, but just as an alert to  
18 people to check their service list and make sure that  
19 I am on there now instead of Mr. Manifold, who is no  
20 longer with the Attorney General's Office.

21 JUDGE WALLIS: Thank you, Mr. ffitich.

22 MS. RENDAHL: Ann Rendahl, Assistant  
23 Attorney General, representing Staff. I represented  
24 Staff with Shannon Smith in the last phase of the  
25 proceeding.

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1 JUDGE WALLIS: Now, let's turn to the  
2 bridge line. I'm going to begin with the people that  
3 have previously been identified, and then, after  
4 that, ask if any others have joined the line.  
5 Beginning with GTE.

6 MR. POWELL: Judge Wallis, this is Lewis  
7 Powell for GTE. I have previously made an  
8 appearance.

9 JUDGE WALLIS: For WITA.

10 MR. FINNIGAN: Richard A. Finnigan. I've  
11 previously made an appearance.

12 JUDGE WALLIS: For Sprint.

13 MR. HEATH: This is Eric Heath for Sprint.  
14 I've not made an appearance, other than through a  
15 substitution of counsel letter we had sent out last  
16 year, so --

17 JUDGE WALLIS: Could you state your  
18 business address for the record, please?

19 MR. HEATH: -- South Valley View Boulevard,  
20 Las Vegas, Nevada, 89107.

21 JUDGE WALLIS: What was the number of that  
22 address, please?

23 MR. HEATH: 330 South Valley View  
24 Boulevard.

25 JUDGE WALLIS: Thank you. For AT&T.

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1 MS. SINGER: Michel Singer, that's  
2 M-i-c-h-e-l, last name S-i-n-g-e-r. And my address  
3 is 1875 Lawrence, Suite 1575, Denver, Colorado,  
4 80202.

5 JUDGE WALLIS: I understand, Mr. Powell,  
6 that you also have Chris Huther on the line for GTE;  
7 is that correct?

8 MR. POWELL: That is correct, Your Honor.

9 JUDGE WALLIS: And let me ask at this time  
10 if there's any other representative on the bridge  
11 line that wishes to make an appearance at this time?  
12 Let the record show that there is no response.

13 Let's turn to administrative matters. One  
14 of the filings following up on the 17th Supplemental  
15 Order indicated a question as to whether the 17th  
16 Order was a final order or not. I don't want to  
17 address that, but I did want to state that I believe  
18 it is the Commission's intention to enter an order on  
19 clarification, so that any process would presumably  
20 follow upon the order on clarification, as opposed to  
21 the 17th Order.

22 We will take up at this time the petitions  
23 to intervene. I have copies of previously-filed  
24 paper petitions from ATG, NorthPoint, and Rhythms,  
25 Inc., and I believe I heard Mr. Kopta mention a name

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1 that I was not familiar with. Was that correct, Mr.  
2 Kopta, New Edge?

3 MR. KOPTA: Yes, Your Honor, New Edge  
4 Networks, Inc. We just filed a written petition this  
5 morning on behalf of New Edge, and handed out paper  
6 copies to those counsel who are present here and will  
7 provide you with copies, as well.

8 JUDGE WALLIS: Very well. Would you be  
9 able to do that now while we proceed?

10 MR. KOPTA: Yes.

11 JUDGE WALLIS: Okay. While Mr. Kopta is  
12 doing that, I would like to go back to the ATG  
13 petition and ask if the proponent has any additional  
14 information to provide in support of the petition for  
15 intervention?

16 MR. KOPTA: We stated the grounds for  
17 intervention in our written petition. Unless the  
18 bench or any of the other parties have any questions,  
19 then we have nothing to add.

20 MR. HARLOW: Do you have a copy of the ATG  
21 petition?

22 MR. KOPTA: Yes.

23 MR. HARLOW: I don't have one. Do you also  
24 have a NorthPoint?

25 MS. ANDERL: Mr. Kopta, may I also have



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1 one?

2 JUDGE WALLIS: Let's be off the record,  
3 please.

4 (Discussion off the record.)

5 JUDGE WALLIS: All right. Let's be back on  
6 the record, please. We have engaged in a brief  
7 discussion regarding petitions to intervene, and it  
8 has been decided that inasmuch as some of the parties  
9 have not seen the petitions to date, that brief time  
10 will be allowed for response to the petitions, and in  
11 the interim, the petitioners will be allowed to  
12 participate subject to a later ruling. What time  
13 would be appropriate for responses to the petitions?  
14 Would a week be sufficient?

15 MR. POWELL: It would for GTE, Your Honor.

16 JUDGE WALLIS: Would that be insufficient  
17 for any other party? All right. Let me ask at this  
18 time if any of the parties in the room or on the  
19 bridge line are prepared at this time to respond to  
20 the petitions for intervention. Mr. Butler.

21 MR. BUTLER: Yes, this is Art Butler for  
22 Tracer. Tracer supports all of the petitions for  
23 intervention that have been made. They all state  
24 good cause for late intervention. It is obvious, in  
25 our view, that all would provide valuable perspective

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1 to this proceeding. Important issues are at stake in  
2 this proceeding, including issues about whether end  
3 user customers, such as Tracer members, are ever  
4 going to get any realistic chance of competitive  
5 alternatives. It is critical that parties such as  
6 these petitioners be permitted to participate in  
7 these proceedings and provide valuable perspective on  
8 the impact of proposals that are at stake.

9           Additionally, we note that they state  
10 grounds that are virtually identical to the grounds  
11 that were stated by Covad in its petition for late  
12 intervention, which was granted by the Commission.

13           MR. HARLOW: Your Honor, Brooks Harlow --

14           JUDGE WALLIS: Mr. Harlow.

15           MR. HARLOW: -- for Covad. Covad supports  
16 the petitions, as well. Essentially, I was going to  
17 make the point that Art did, and that is that Covad  
18 was permitted to intervene at the beginning of Phase  
19 II of this docket. The interests of the four  
20 intervenors are very similar to Covad's. All five of  
21 the companies are representing all the DSL end  
22 services markets, and we think their participation  
23 would be very helpful to the Commission and is in the  
24 public interest.

25           MS. ANDERL: Your Honor, I can comment on

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1 the petitions filed by Mr. Kopta on behalf of his  
2 clients, not on the one for Rhythms Links, although  
3 maybe having had an opportunity to look at it  
4 quickly, I would be able to do that, as well.

5         With regard to these interventions, in  
6 general, to the extent that all of these petitions  
7 state, as a basis for late intervention, that some of  
8 these companies did not exist until recently, we  
9 certainly don't quarrel with that as adequate grounds  
10 for late intervention. We know that CLECs are  
11 created every day, who have not participated in these  
12 hearings to date, and don't dispute that they may  
13 have some interest in some resolution of the issues.

14         We are very concerned, though, about the  
15 impact of the additional intervenors on the  
16 proceedings. Our hope has been that Phase I was the  
17 broadest phase of the proceeding, Phase II was more  
18 narrow, and Phase III will be even more narrow, I  
19 hope. And the additional parties, I fear, will  
20 really broaden the scope of the proceedings, or at  
21 least attempt to do so. We experienced that with  
22 Covad's intervention, that Covad attempted to  
23 relitigate issues that had been already decided in  
24 Phase I.

25         I think it's a serious concern for the

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1 Commission and the parties in terms of resources that  
2 we should have to -- we should not be required to  
3 deal with that or even debate those issues again. So  
4 to the extent that there's that danger, I would, at  
5 minimum, urge the Commission to be both cautious and  
6 strict in allowing these interventions, that the  
7 parties do not broaden the scope of the proceedings.  
8 Specifically, it does appear as though New  
9 Edge will attempt to broaden the scope of the  
10 proceedings. In their petition, they state that they  
11 are uniquely impacted by the issues raised in this  
12 docket because they intend to offer service in areas  
13 that currently are not served by existing providers.  
14 To the extent that this opens up some sort of an  
15 obligation to serve or an obligation to provision  
16 unbundled network elements or interconnection or  
17 collocation outside of territory where an incumbent  
18 LEC currently serves outside of assigned exchange  
19 boundaries or, quote, unquote, incumbent territory, I  
20 think that's a significant new issue and could  
21 potentially broaden the proceedings by a great deal.  
22 And I think it would be inappropriate to address  
23 those issues in this docket. If that's New Edge's  
24 interest, then I don't think they ought to be allowed  
25 in.

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1           There are obligation to serve dockets that  
2 this Commission is pursuing in rule-makings, and  
3 there are other forums in which to address those  
4 issues.

5           I guess the only other caution that I would  
6 offer on intervention, and I don't know that it rises  
7 to the level of an objection, but it does seem to me  
8 that the interests of these parties are very much  
9 overlapping, and would ask the Commission, if the  
10 interventions are granted, to instruct the parties to  
11 coordinate their presentations so as not to burden  
12 the record with duplicative information.

13           I would like to reserve the opportunity to  
14 comment on the Rhythms petition in writing within the  
15 week that you've allowed.

16           JUDGE WALLIS: Very well. As to the  
17 others, with the exception of Rhythms and New Edge,  
18 would it satisfy your interests on broadening of  
19 issues that an order granting intervention, if the  
20 Commission chooses to do so, specify that doing so  
21 does not broaden the issues and that the parties are  
22 bound by the previously established record?

23           MS. ANDERL: Yes. I mean, that is  
24 obviously the concern that we have, and if the  
25 Commission incorporates that in an order and the

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1 parties adhere to that, it should address our  
2 concerns.

3 JUDGE WALLIS: Let me ask Mr. Kopta if the  
4 parties ATG and NorthPoint intend to broaden the  
5 issues?

6 MR. KOPTA: No, Your Honor, they do not.  
7 In fact, I would include New Edge, in that the only  
8 reason that the reference that Ms. Anderl referred to  
9 in the petition is simply to reflect that one of the  
10 issues before the Commission is geographic  
11 deaveraging, which means that those who are serving  
12 areas in different geographic locations than current  
13 parties have their unique perspective. It's not any  
14 attempt to expand the issues or add new issues, but  
15 merely to aid the Commission in seeing as many  
16 different viewpoints as possible.

17 I would also note that Advanced TelCom  
18 Group is a more traditional CLEC and that, with their  
19 merger of shared -- with Shared Communications, which  
20 is a party, they're also uniquely situated, and that  
21 it's questionable as to whether they would even need  
22 to intervene, since they are essentially part of an  
23 existing party. But in an excess of caution, we  
24 filed that petition on their behalf.

25 But with respect to all three of my

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1 clients, they are certainly willing to accept the  
2 conditions that you've just outlined to Ms. Anderl.

3 JUDGE WALLIS: Let me ask you and Mr.  
4 Harlow and Ms. Wu whether there would be any  
5 objection if the Commission directed you to  
6 coordinate your presentations to the extent your  
7 interests are aligned?

8 MR. KOPTA: That would certainly be  
9 acceptable to us.

10 MS. WU: Angela Wu responding. Actually,  
11 in fact, I've had discussions with Greg Kopta about  
12 Rhythms' interest in coordinating efforts on issues  
13 that overlap, and I just would like to add that  
14 Rhythms Links feels that it's important for them to  
15 participate, because although there are many issues  
16 that overlap, many of the petitioners are also  
17 competitors and so need to make sure that their  
18 individual interests are represented in this  
19 proceeding.

20 JUDGE WALLIS: We understand that. Mr.  
21 Harlow.

22 MR. HARLOW: We actually have had  
23 experience with at least one of these companies in  
24 other jurisdictions, and our experience is that the  
25 parties naturally want to coordinate their efforts.

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1 They do have limited resources, of course, like  
2 everyone. And so, you know, we don't want to have  
3 anything be rigidly applied. Some flexibility is  
4 needed, but certainly I think we plan to coordinate  
5 and don't wish to duplicate the efforts of the other  
6 intervenors.

7 JUDGE WALLIS: Do Staff or Public Counsel  
8 wish to be heard on the issue of intervention?

9 MR. FFITCH: Your Honor, Simon ffitch for  
10 Public Counsel. Public Counsel does not object to  
11 any of the petitions for intervention. I think we  
12 generally concur with the reasons in favor that have  
13 been stated already by the parties. In general, the  
14 further proceedings that are going to be held have a  
15 direct impact on the competitors, and we think they  
16 should be permitted to participate in order to  
17 advocate their interests.

18 Also, just sort of an observation, perhaps.  
19 Although some of these have been characterized as  
20 late interventions, in fact, no Phase III was  
21 initially contemplated here, at least perhaps except  
22 as a twinkle in the eye of -- I don't know who, but  
23 Darth Vader or something.

24 But there are -- and in fact, the issues  
25 that are laid out for Phase III haven't been really



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1 comprehensively explored yet -- geographic  
2 deaveraging, collocation prices, that is the purpose  
3 of Phase III. So, again, it seems appropriate to  
4 allow parties to come in who might not have  
5 previously wanted in, because those issues are, in  
6 effect, new to the proceeding, at least in the scope  
7 that they're going to be evaluated.

8 MS. RENDAHL: Staff also does not object to  
9 the petitions for intervention for many of the same  
10 reasons Mr. ffitich mentioned.

11 JUDGE WALLIS: Is there any other party who  
12 is prepared to comment at this time?

13 MS. SINGER: Michel Singer, from AT&T,  
14 would just like to express AT&T's support for the  
15 interventions for all the reasons stated by Mr.  
16 Butler and Mr. Harlow.

17 JUDGE WALLIS: Thank you, Ms. Singer. So  
18 any additional comments will be due in the Commission  
19 offices within one week from today, and the  
20 Commission order will be entered as to intervention  
21 considering both any written comments and the oral  
22 comments that the parties have made today. Anything  
23 further on interventions? Okay. Let's move on.

24 One matter that we would like to broach  
25 with the parties has to do with follow-up questions

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1 involving the submissions in response to the 17th  
2 Supplemental Order, and I want to ask whether there  
3 is any objection to proceeding with asking those  
4 questions and allowing parties to supplement their  
5 written submissions in that manner?

6 MS. ANDERL: No.

7 JUDGE WALLIS: Very well. There being no  
8 objection, let us proceed. One of the questions that  
9 the parties raised was whether it is proper for the  
10 Commission to authorize interim rates, in particular  
11 on the part of GTE and US West. And the Commission  
12 would like any additional comments or responses that  
13 the parties have in supplement of what they have  
14 already submitted. This means, of course, that you  
15 need not repeat what you have already said.

16 MS. ANDERL: Your Honor, could I get some  
17 clarification in terms of what specifically the  
18 Commission is looking for? It seems that --

19 JUDGE WALLIS: A paragraph of the --

20 MS. ANDERL: -- we all -- I'm sorry. We  
21 all filed comments or petitions on the 9th. I know  
22 parties were authorized to file responses on the  
23 21st. I don't know that I've gotten all of those  
24 yet, and so -- just in terms of what the specific  
25 issue is.

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1 JUDGE WALLIS: The issue is the paragraph  
2 in the Commission's order that purports to authorize  
3 US West and GTE to file interim averaged rates.

4 MS. ANDERL: Is that 527?

5 JUDGE WALLIS: Yes.

6 MS. ANDERL: Versus 539?

7 JUDGE WALLIS: Yes.

8 MS. ANDERL: Okay. Thank you.

9 MR. BUTLER: Excuse me, Your Honor. The  
10 specific question that's being asked is whether the  
11 Commission has authority to authorize US West and GTE  
12 to file or to charge interim geographically averaged  
13 rates at the level set in the 17th Order, or are you  
14 asking about the authority to charge interim rates at  
15 the default level or the level set in the arbitration  
16 proceedings?

17 JUDGE WALLIS: There is no question that  
18 I'm aware of as to the propriety of charging rates  
19 authorized in the arbitrations.

20 MR. BUTLER: So this question is geared  
21 specifically to the 18, 16 and the 23?

22 JUDGE WALLIS: Yes. Perhaps, Mr. Kopta, I  
23 think the question arises out of your response to the  
24 petitions for clarification.

25 MR. POWELL: Judge Wallis, this is Lewis

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1 Powell. Excuse me for interrupting. Maybe I'm the  
2 only one on the phone having difficulty hearing. I  
3 can hear the bench very well, but if anyone sitting  
4 at counsel table is speaking, I cannot hear it.

5 JUDGE WALLIS: We will attempt to assure  
6 that you are able to hear everything that goes on,  
7 Mr. Powell.

8 MR. POWELL: Thank you, sir. I apologize  
9 for jumping in.

10 JUDGE WALLIS: Thank you for calling that  
11 to our attention. Do you have Mr. Kopta's response?

12 MS. ANDERL: I do not. I apologize. I was  
13 out of the office all day yesterday.

14 JUDGE WALLIS: Do you want to summarize  
15 your response on that issue?

16 MR. KOPTA: I can try. I thought I said  
17 what I needed to say in writing, but essentially, I  
18 think there are some concerns as to what happens if  
19 the Commission alters the existing interim rates.  
20 The Commission, in its arbitration orders, refer to a  
21 final order out of this docket as being the trigger  
22 for altering existing interconnection agreements.

23 The 17th Supplemental Order, by its own  
24 title and terms, is an interim order. And so it  
25 would be inappropriate, under the past Commission

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1 practice, to change existing interconnection  
2 agreements based on an interim order, as opposed to a  
3 final order.

4           The other concern is that if there is a  
5 change to the agreements, that triggers judicial  
6 jurisdiction under the act section, 47 USC, Section  
7 252(E)(6), and our fear is that there would be  
8 piecemeal appeals of various aspects of this docket  
9 while it is continuing on at the Commission. And our  
10 concern is that that is not an appropriate use of  
11 judicial and Commission resources.

12           JUDGE WALLIS: Ms. Anderl.

13           MS. ANDERL: I think I understand the  
14 argument or the question. Just for clarification, I  
15 think you may have mentioned earlier that you were  
16 not aware of whether there was a question about the  
17 propriety of charging the interim arbitrated rates,  
18 and we just wanted to clarify that we believe that we  
19 did raise that question in our petition.

20           JUDGE WALLIS: To the extent that you are  
21 urging a replacement of those rates, that is correct.

22           MS. ANDERL: Thank you.

23           MR. POWELL: And the same, of course, would  
24 be true on behalf of GTE, Your Honor.

25           JUDGE WALLIS: Thank you, Mr. Powell. And

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1 do you wish to respond?

2 MS. ANDERL: I'd like to have an  
3 opportunity to read the pleading, if I may. I  
4 understood that the Commission was asking these  
5 questions now to set up a responsive writing. If  
6 that was wrong, then I could perhaps be prepared to  
7 address that issue orally after a moment's thought.

8 JUDGE WALLIS: Let's be off the record.  
9 (Discussion off the record.)

10 JUDGE WALLIS: Let's be back on the record,  
11 please. In some discussions about the procedural and  
12 administrative matters, the parties have discussed a  
13 number of issues. We first inquired as to the  
14 parties' preferences and amplification of their  
15 positions on the effect of interim rates, as  
16 contemplated in the 17th Order, that is, filing of  
17 new averaged rates, at least by GTE and US West.

18 And it was Mr. Kopta's view that the rates  
19 should not go into effect, in US West's view and  
20 GTE's; that, in fact, they should on the schedule  
21 that was noted; and that positions contemplated all  
22 affected rates, those higher and those lower. Is  
23 that a sufficiently complete statement, Mr. Kopta?

24 MR. KOPTA: I believe so, Your Honor.

25 JUDGE WALLIS: Ms. Anderl.

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1 MS. ANDERL: We would like the opportunity  
2 to expand a bit.

3 JUDGE WALLIS: Please do.

4 MS. ANDERL: In our view, there are really  
5 three kinds of interim rate issues, the first one  
6 being the issue of a rate such as the loop, where  
7 there have been interim rates, and the Commission has  
8 now determined with what we believe is finality what  
9 the appropriate statewide average rate is. The  
10 question's whether those should become effective now.  
11 We believe that they obviously should.

12 There are other rates that are similarly  
13 situated, such as rates for switching and transport,  
14 where there were previously arbitrated or negotiated  
15 rates that we believe should be supplanted with what  
16 the Commission's determination is now to be the  
17 appropriate statewide average rate.

18 The second piece is rates for which there  
19 was no rate before, such as OSS cost recovery and  
20 shared transport. I believe that no existing  
21 interconnection agreements have those rates for those  
22 elements in place and question whether US West should  
23 be permitted to begin charging those now. Again, we  
24 believe yes, because why not. The Commission's made  
25 a determination that cost recovery's appropriate,

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1 they've made a determination, either finally as to  
2 shared transport, or on an interim basis as to OSS,  
3 what type of cost recovery should be permitted, and  
4 there doesn't seem to be any basis to not allow cost  
5 recovery through charging of those rates.

6         The third one is where there were interim  
7 rates before, like collocation, and the Commission  
8 wants to continue to have interim rates pending Phase  
9 III. That's a little bit more of a difficult issue,  
10 because -- you know, because it's easy to argue both  
11 sides about it. You could say, Well, the  
12 Commission's closer to the truth now, and so the new  
13 interim rates should be effective, and maybe that's  
14 right. And then our position is totally consistent  
15 that everything out of the 17th Supplemental Order  
16 ought to become effective that the Commission has  
17 determined to be the appropriate or more appropriate  
18 rate over what was arbitrated or negotiated.

19         And so let me just leave my remarks at that  
20 as maybe a good summary of where we are on those  
21 pieces of timing of prices. Thank you.

22         JUDGE WALLIS: Mr. Huther.

23         MR. HUTHER: Thank you, Judge Wallis. I  
24 don't believe I have anything else to add. I think  
25 GTE's position is aptly stated in the papers earlier



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1 filed.

2 JUDGE WALLIS: Mr. Kopta.

3 MR. KOPTA: Thank you, Your Honor. Just in  
4 brief response to Ms. Anderl's remarks. From our  
5 point of view, every rate is the same. We would not  
6 categorize them into three separate types. Any time  
7 that the Commission issues a rate that is effective,  
8 it triggers the finality of whatever order it is that  
9 those rates are established, and correspondingly,  
10 judicial appeals.

11 And in this case, because we're talking  
12 about rates that are established pursuant to Section  
13 252 of the act, we're talking about both state court  
14 and federal court appeals. So I think that the  
15 Commission is faced with the same dilemma, whether  
16 it's changing existing rates and interconnection  
17 agreements, adding new rates to existing  
18 interconnection agreements, or establishing new  
19 interim rates that are to apply to interconnection  
20 agreements. All of those represent a change to  
21 existing interconnection agreements, a change in the  
22 status quo, and correspondingly, finality and appeal.  
23 And that would certainly embroil the Commission in  
24 piecemeal litigation, as well as the parties, and we  
25 continue to believe that that's an improper use of

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1 party and Commission resources.

2 JUDGE WALLIS: Any concluding comments?

3 MR. HARLOW: Covad concurs with Mr. Kopta's  
4 comments.

5 JUDGE WALLIS: Very well. I am going to  
6 remind folks, as a courtesy to those on the bridge  
7 line, if you're going to say something, pull the  
8 microphone over and talk into the mic.

9 The question of whether to deaverage loops  
10 or all UNEs evolved into a discussion of the pending  
11 Federal Communications Commission order. The parties  
12 will be able to address what they want deaveraged in  
13 their testimony. It was felt appropriate to allow  
14 parties the opportunity to comment on the FCC order,  
15 and then to schedule a prehearing conference so that  
16 the effect can be discussed by all parties  
17 collectively with the Commission.

18 The schedule for comments is starting from  
19 the date the order is released, two weeks for  
20 parties' initial simultaneous comments, one week  
21 following for responses, and approximately one week  
22 following responses for a prehearing conference. The  
23 Commission will provide notice of that conference  
24 once the FCC order is issued.

25 We mentioned that there is a question

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1 involving GTE that GTE has raised regarding the  
2 application of paragraph 536 of the order, and it is  
3 anticipated that the Commission will respond by  
4 letter to answer that question.

5 We identified seven elements to be filed as  
6 compliance filings in the Phase II docket. These  
7 include three identified by GTE -- collocation  
8 building modification charges, interim nonrecurring  
9 charges for order processing, separate nonrecurring  
10 charges for connect and disconnect, shared transport.  
11 And then to amplify, to expand on that list, shared  
12 transport referring to paragraph 396 of the order,  
13 customer transfer charge as found on page five in  
14 paragraphs 464 and 465 of the 17th Order. Flat rate  
15 transport termination issue, paragraphs 423 and four.  
16 Compliance UNE, paragraph numbers 208 and 209. And I  
17 believe that is a complete list.

18 Scheduled a compliance filing for all  
19 elements, as identified, on November 15th, with  
20 comments by other parties due no later than December  
21 15th, and any responses by the filing parties due on  
22 January 7th. However, if the parties believe it's  
23 unnecessary to respond, they can indicate sooner and  
24 the matter will then go to the Commissioners for  
25 their decision.

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1                   Anything else on the compliance filings?  
2 Then we turn to matters to be addressed in Phase III.  
3 These are two of the matters identified in the GTE  
4 response of September 8th, namely new OSS and  
5 transition cost studies and new collocation costs and  
6 prices, referring to paragraphs 526 and perhaps 475  
7 as to the first, and paragraphs 258, 61, 62, and 531  
8 as to the second issue. A third matter is loop  
9 conditioning, referring to paragraphs 236 and 237.

10                   In addition, depending upon the  
11 Commission's decision on the first matter, that is  
12 the status of interim rates, geographic deaveraging  
13 may be a part of Phase III overall proceeding, or it  
14 may be segregated for individual treatment. If it  
15 is a part of the overall, then it would follow the  
16 same schedule as identified for the first three  
17 matters and become a fourth matter to be addressed.

18                   The schedule, irrespective of whether it is  
19 three or four matters, as identified, is for the  
20 filing of the cost studies and supporting testimony  
21 by any -- well, testimony on January 31,  
22 approximately. The Commission will identify specific  
23 dates. Responses, answering testimony would be due  
24 March 31, approximately, and rebuttal on  
25 approximately April 30, with a hearing to follow in



