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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION
3 AT&T COMMUNICATIONS OF THE)
 PACIFIC NORTHWEST, INC.,) Docket No. UT-020406
4)
 Complainant,) Volume III
5) Pages 39 to 94
 vs.)
6)
 VERIZON NORTHWEST, INC.,)
7)
 Respondent.)
8 _____)

9

10 A hearing in the above matter was held on
11 August 27, 2002, from 3:05 p.m to 5:00 p.m., at 1300
12 South Evergreen Park Drive Southwest, Room 206, Olympia,
13 Washington, before Administrative Law Judge MARJORIE R.
14 SCHAER.

15 The parties were present as follows:
16 THE COMMISSION, by GREGORY J. TRAUTMAN,
17 Assistant Attorney General, 1400 South Evergreen Park
18 Drive Southwest, Olympia, Washington 98504-0128,
19 Telephone (360) 664-1187, Fax (360) 586-5522, E-mail
20 gtrautma@wutc.wa.gov.

21 AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST,
22 INC., by GREGORY J. KOPTA, Attorney at Law, Davis,
23 Wright, Tremaine, LLP, 1501 Fourth Avenue, Suite 2600,
24 Seattle, Washington 98101, Telephone (206) 628-7692, Fax
25 (206) 628-7699, E-mail gregkopta@dwt.com.

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25 Joan E. Kinn, CCR, RPR
 Court Reporter

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1 VERIZON NORTHWEST, INC., by JUDITH A.
2 ENDEJAN, Attorney at Law, Graham & Dunn PC, 1420 Fifth
3 Avenue, 33rd Floor, Seattle, Washington 98101,
Telephone (206) 340-9694, Fax (206) 340-9599, E-Mail
jendejan@grahamdunn.com.

4 THE PUBLIC, via bridge line, by ROBERT W.
5 CROMWELL, JR., Assistant Attorney General, 900 Fourth
6 Avenue, Suite 2000, Seattle, Washington, 98164-1012,
Telephone (206) 464-6595, Fax (206) 389-2058, E-Mail
robertcl@atg.wa.gov.

7 WORLDCOM, INC., via bridge line, by MICHEL
8 SINGER NELSON, Attorney at Law, 707 - 17th Street, Suite
9 4200, Denver, Colorado 80202, Telephone (303) 390-6106,
Fax (303) 390-6333, E-mail
michel.singer_nelson@wcom.com.

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1 P R O C E E D I N G S

2 JUDGE SCHAER: We're here this afternoon for
3 a third pre-hearing conference in Docket Number
4 UT-020406, which is a complaint proceeding brought by
5 AT&T Communications of the Pacific Northwest against
6 Verizon Northwest Incorporated. The date today is
7 August 27th, 2002, and we are meeting in the
8 Commission's hearing room 206 at the Commission's
9 headquarters building in Olympia. My name is Marjorie
10 Schaer, and I will be the Administrative Law Judge
11 conducting this hearing.

12 As a first order of business, I have names
13 for four people who have indicated to my staff that they
14 are going to be appearing by the conference bridge
15 today, and so I want to check and see if you are there
16 and if you are there to have you make your appearance.
17 Start with you, Mr. Cromwell.

18 (Discussion off the record.)

19 JUDGE SCHAER: Did anybody hear any of that
20 over the bridge?

21 MR. CROMWELL: No.

22 JUDGE SCHAER: I'm sorry, I was talking right
23 into the microphone, but the microphone was not on.
24 They keep making new demands of us.

25 I have called the hearing to order, indicated

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1 that this is the third pre-hearing conference in Docket
2 Number UT-020406, which is a complaint proceeding
3 brought by AT&T Communications of the Pacific Northwest
4 against Verizon Northwest Incorporated. Today's date is
5 August 27th, 2002, and we are meeting in the
6 Commission's hearing room 206 at the Commission's
7 headquarters building in Olympia. My name is Marjorie
8 Schaer, and I will be the Administrative Law Judge
9 conducting this hearing.

10 I have received names of four people from my
11 staff who have indicated that they would be appearing
12 over the teleconference bridge today, and I would like
13 to start taking appearances with you, please, starting
14 with you, Mr. Cromwell.

15 MR. CROMWELL: Robert Cromwell on behalf of
16 the Public Counsel Section of the Washington Attorney
17 General's Office.

18 JUDGE SCHAER: Thank you.

19 And then, Ms. Singer Nelson.

20 MS. SINGER NELSON: Michel Singer Nelson
21 appearing on behalf of MCI WorldCom.

22 JUDGE SCHAER: Thank you. And then the next
23 two names are Natalie Baker and Letty Friesen.

24 MR. KOPTA: Letty Friesen.

25 JUDGE SCHAER: Okay, it's spelled

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1 phonetically. Ms. Friesen, are you with us?

2 Okay, that brings me to one of the questions
3 I'm going to have for you, Mr. Kopta, but I will go
4 ahead and take appearances from counsel in the room
5 first. Go ahead, Mr. Kopta.

6 MR. KOPTA: Thank you, Your Honor, Gregory
7 Kopta of the law firm Davis Wright Tremaine LLP on
8 behalf of AT&T.

9 JUDGE SCHAER: Okay.
10 Ms. Endejan.

11 MS. ENDEJAN: Judy Endejan from Graham and
12 Dunn appearing on behalf of Verizon Northwest, Inc.

13 JUDGE SCHAER: Thank you.
14 Mr. Trautman.

15 MR. TRAUTMAN: Greg Trautman, Assistant
16 Attorney General for Commission Staff.

17 JUDGE SCHAER: Okay. Mr. Kopta, on August
18 20th, 2002, the Commission received a notice of
19 appearance seeking to remove David Miller and add this
20 is spelled here Let Friesen to the service list, and is
21 Ms. Friesen on the bridge line now?

22 What I need to know is if this person is
23 seeking to appear in this matter or only to be added to
24 the service list?

25 MR. KOPTA: She will be added to the service

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1 list at this point. She's in-house counsel with AT&T.

2 JUDGE SCHAER: Okay.

3 MR. KOPTA: So there was a change in
4 responsibility, and Mr. Miller is no longer responsible
5 for the state of Washington, but Ms. Friesen is, and so
6 it was just an administrative matter. And so to the
7 extent that pleadings or other documents are filed or
8 sent out by the Commission to a broader service list
9 than just the immediate counsel, then we would like to
10 have her included in any distribution or filing.

11 JUDGE SCHAER: Certainly. One of the things
12 the Commission likes to have in any proceeding is one
13 contact person for each party so that if we do need to
14 move quickly we know who to contact.

15 MR. KOPTA: I will remain the primary contact
16 for this case, but to the extent there's additional
17 opportunity to provide beyond just the primary contact,
18 then we would like to have Ms. Friesen receive whatever
19 it is that's being sent out.

20 JUDGE SCHAER: Okay. It's my understanding
21 that she has been added to the service list.

22 MR. KOPTA: Thank you.

23 JUDGE SCHAER: And I will clarify that you
24 are the primary party with the records center.

25 Is there anyone else who wishes to appear

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1 this afternoon who has not already made an appearance?

2 I'm going to remind counsel in the room that
3 we do have people appearing by the conference bridge,
4 and so it makes it very important for you to speak
5 directly and closely into your microphone so that they
6 can hear adequately and participate fully.

7 We're here today to continue our
8 conversations about an appropriate schedule for this
9 matter, and it appears to me in reviewing the file that
10 a part of that conversation may need to be a
11 conversation about the issues that are presented and
12 about the scope of what this particular complaint case
13 contains, and so those are the areas I would like to be
14 certain that everyone discusses. Are there other items
15 that we need to discuss this afternoon?

16 MR. KOPTA: Only just as an alert to Your
17 Honor that we have some discovery issues that we're
18 trying to work out among the parties but are likely
19 going to need to seek some assistance from you in terms
20 of resolving. That's not something that we're going to
21 present to you substantively today, but just to give you
22 kind of an advanced notice that we will need to probably
23 seek some guidance from yourself in terms of some
24 discovery issues.

25 JUDGE SCHAEER: Okay. Well, let me encourage

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1 you to continue your attempt to work those out between
2 the parties. We're lucky in this case to have highly
3 professional counsel appearing for all parties, and I'm
4 hopeful that most of these disputes can be worked out
5 among you. But I'm certainly available if there's
6 anything that you need to bring before the Commission.
7 We can handle it either by telephone or by calling a
8 quick conference like this one.

9 MR. KOPTA: Thank you, Your Honor, that was
10 our anticipation. And certainly depending on the
11 schedule that we establish, it may determine the need
12 for fast action via telephone or something that may be a
13 little bit less immediate.

14 JUDGE SCHAEER: All right.

15 Any other party have anything to bring before
16 us at this point as possible issues we will need to
17 discuss today?

18 Hearing no response, I'm going to ask you,
19 Mr. Kopta, as the party who contacted me with concerns
20 about what was decided at the last pre-hearing
21 conference to go ahead and argue this and put out your
22 party's position both on the scoping issue and on the
23 scheduling issue, if you would, please.

24 MR. KOPTA: Okay, thank you, Your Honor. At
25 the last pre-hearing conference, the parties worked out

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1 the best schedule they could in terms of what was a
2 potentially agreeable schedule for all parties. When I
3 returned to my clients to inform them of the schedule
4 that we had been able to work out, that schedule was not
5 acceptable to them. The concern is that we filed this
6 complaint back in early April of this year, and that
7 proposed schedule would not have hearings and briefing
8 completed until about a year from now. And given the
9 nature of the complaint, the allegations made in the
10 complaint, my client is not prepared to wait for that
11 long to get a resolution or at least present to the
12 Commission all of the evidence and argument to get a
13 resolution of the allegations in the complaint.

14 And I contacted the other parties to discuss
15 this issue with them, and at which point I discussed a
16 little bit in more detail what Verizon had in mind in
17 terms of their case filing, and certainly Ms. Endejan
18 will provide you with Verizon's view on what they
19 believe the scope of the proceeding is. But there was
20 some concern that Verizon needed to present several cost
21 studies and supporting witnesses, and my understanding
22 is that those cost studies would go toward most if not
23 all of Verizon's regulated services in the state of
24 Washington in terms of a rebalancing of the rates. And
25 AT&T's view is that that is far beyond the scope of this

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1 proceeding.

2 What we have alleged is that there is a price
3 squeeze between access and total charges that Verizon is
4 engaging in, that access charges are set at unreasonable
5 levels, and those issues do not require a review of the
6 costs of other types of services. I realize that
7 Verizon certainly may defend against the allegations in
8 the complaint, and I won't postulate how they will do
9 that, but I don't think that turning this proceeding
10 essentially into a rate case or even a rate design
11 portion of a rate case is within the scope of the
12 complaint. So from my client's perspective, if we focus
13 on the allegations in the complaint and a reasonable
14 defense to those allegations, there's no reason why we
15 could not have hearings in December as you had
16 originally suggested at the beginning of the last
17 pre-hearing conference.

18 So we developed a schedule that we believe
19 that we could live with in terms of preparation of the
20 case, which included essentially treating the affidavit
21 or declaration that we attached to the complaint as our
22 direct testimony and then having responses to that due
23 in by the 1st of October and our reply to those
24 responses in late November with hearings in December.
25 And again, as the complaining party, we would get two

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1 rounds and a reply round, because we bear the burden of
2 proof on the complaint, on the allegations in the
3 complaint, and so it would be limited to three rounds
4 essentially as opposed to what we had developed last
5 time with the sort of back and forth burdens of proof.
6 So we believe that that is a proposed -- provides a
7 reasonable schedule and would allow a resolution of this
8 complaint at least close to one year after the time it
9 was filed, which we believe is a reasonable -- the
10 outside bounds of a reasonable time period in which the
11 complaint should be resolved.

12 JUDGE SCHAER: Okay. Earlier in this
13 proceeding I asked all of the parties to file an issues
14 statement and I believe that you, Mr. Cromwell, may not
15 have been participating with us at that point, but we do
16 have a fairly extensive list of issues on behalf of
17 AT&T, WorldCom, and then another well thought out list
18 of issues provided by Verizon.

19 And in terms of discussing the scope of what
20 we're looking at today, if you could refer to your
21 issues statement, Mr. Kopta, and perhaps go through
22 that, and say whether all of these issues are still the
23 ones you see, and talk a bit about what kind of case you
24 would need to put on in order to develop those issues, I
25 think it might be useful to me.

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1 MR. KOPTA: Well, yes, the issues list that
2 we presented to you is the list of issues that we see in
3 this case, and that issues list was developed from the
4 complaint, from the allegations in the complaint. And
5 they all focus on the relationship between the access
6 charges that Verizon imposes and the toll rates that
7 Verizon and its affiliates charge end user customers for
8 toll services within the state of Washington. There are
9 various legal theories that we have with respect to that
10 relationship, price squeeze being one of them,
11 unreasonableness being another, but they all focus on
12 those two services that Verizon provides, access and
13 toll.

14 JUDGE SCHAEER: Let's go off the record for
15 just a moment.

16 (Discussion off the record.)

17 JUDGE SCHAEER: Okay, it would be very useful
18 for me if you could kind of go through those and tell me
19 if you can where in Mr. Selwyn's affidavit those issues
20 are addressed and what evidence you're relying on for
21 those. Some more detail may help prepare for our --

22 MR. KOPTA: This is --

23 JUDGE SCHAEER: I really do need to know today
24 what people think the scope of this hearing is before I
25 can make decisions on perhaps how much time things are

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1 going to take, so.

2 MR. KOPTA: Well, I believe that we have
3 addressed all of these issues in Mr. Selwyn's affidavit,
4 which is why we are prepared to use that as our direct
5 testimony. We believe that that outlines the scope of
6 the issues in this case and touches on each of these
7 issues that we have raised here to the extent that
8 Mr. -- that Dr. Selwyn is talking about factual issues.
9 Obviously legal argument is not included in this
10 testimony, or at least we tried to minimize the amount
11 of legal argument that's included in his testimony. But
12 his affidavit provides what we believe is, you know,
13 adequate factual support for the allegations that we
14 made in the complaint.

15 And as I explained earlier, each of the
16 issues that we have listed are -- provide a legal basis
17 and a legal framework for analysis in terms of our
18 concerns with respect to Verizon's access charges, the
19 rate, the level at which they're set, and the
20 relationship between those charges and the toll rates
21 that Verizon has on file for various rate plans. But
22 all of those issues relate to access charges and toll
23 rates. There is also some comparison with unbundled
24 network element rates, but again, that goes to what is
25 the cost of the underlying service, and what are other

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1 carriers paying for what we believe is comparable to
2 access services.

3 JUDGE SCHAER: Thank you.

4 Ms. Endejan, would you like to discuss the
5 schedule and the issues or the scoping as you go or in
6 separate pieces so I can --

7 MS. ENDEJAN: I can do it all at once.

8 JUDGE SCHAER: Okay.

9 MS. ENDEJAN: I'm assuming that Your Honor
10 has read the letter that we filed last week expressing
11 Verizon's position on what we perceive to be AT&T's
12 about face. And I recognize the difficulties sometimes
13 in communicating between, you know, when you represent a
14 company and then communicating internally with the
15 company, but I do want to make a point here that there
16 was a representative of AT&T here at the last
17 pre-hearing conference. We discussed these issues at
18 length. They said that they wanted to file their new
19 testimony by October 16th. And it appears to me that if
20 they had intended to simply use Dr. Selwyn's testimony,
21 they should have been in a position to present that at
22 the last pre-hearing conference and then tee off of
23 that. They didn't do that. We then spent a lot of time
24 working out an agreed upon schedule.

25 The parties at that time did not seem to have

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1 a problem with the scope or the issues that Verizon
2 intends to address in its defense of this complaint.
3 And now two weeks later we're back here in front of Your
4 Honor with as far as I can tell no perceived
5 justification for why AT&T has had this about face and
6 how it would be harmed by handling this case in a more
7 integrated fashion. So with all due respect to
8 Mr. Kopta, I think his client here should be estopped
9 from dictating the schedule when it didn't get its act
10 together in time for the first pre-hearing conference to
11 clearly lay out what it perceived to be the game plan.
12 We don't think we should be here again.

13 However, leaving that aside, we are here, and
14 what we're trying to do is impress upon the Commission
15 Verizon has a slightly different view of this case.
16 AT&T in this case wants to reduce access charges. As we
17 pointed out time and again, you can not look at one set
18 of rates in a vacuum without causing ramifications on
19 other rates and rate structures. Verizon has made no
20 secret from day one in this case that it views this
21 request for access charge reduction as part of a larger
22 puzzle, which even I believe the Commission Staff
23 conceded the legitimacy of in stating its position on
24 Verizon's motion to dismiss. And the reason for this is
25 because you can't simply grant AT&T the remedy it seeks,

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1 which is reduced access charges, without looking at the
2 impact that that would have on Verizon's overall
3 regulated rates and earnings.

4 Now we pointed this out, and we pointed out
5 that that would require quite a bit of testimony. We
6 identified it in our -- the remedy issues here, because
7 in any complaint case there are first the issues of
8 establishing liability, if there is any, and if there
9 isn't any liability, then you don't need to proceed to
10 the remedy issues. But if the Commission were to make a
11 finding of liability, then it has to go to the remedy
12 issue, what is appropriate for this Commission to do to
13 resolve whatever it might or might not find.

14 Obviously we don't agree with the allegations
15 in the complaint, but at the same time Verizon has to be
16 able to present the defense that it believes it's
17 entitled to present. And I cited a statute, the
18 complaint statute, says that Verizon is entitled to
19 introduce such evidence as it may desire. AT&T isn't
20 entitled to dictate the nature and scope of the
21 company's defense to the allegations here. That then
22 leads to, well, then why do we need so much time.

23 As I explained at the last pre-hearing
24 conference, Verizon hasn't really done a cost study of
25 its -- for all of its rates and services for many years,

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1 and it would have to do so for this case. And in
2 talking to the regulatory experts, they have told me
3 that the earliest they could have cost studies and be in
4 a position to file testimony that addresses them would
5 be December, first week in December. So at this point,
6 what we're really quibbling about, I think, is about a
7 two month period. And given the severity of the
8 ramification of the relief that AT&T is requesting on
9 Verizon and AT&T's failure to show any actual harm that
10 it would suffer from having to wait another two months,
11 I think that it's only fair and reasonable for this
12 Commission to allow Verizon sufficient time to present
13 its defense. In the letter, I informed Your Honor that
14 we intend to present seven areas and seven witnesses
15 dealing with policy, cost studies, financial
16 presentation, general forecast, pricing rate design,
17 depreciation, and imputation. These are all fairly
18 technical and complicated but interrelated matters.

19 So at this point, our first position would be
20 that we should adhere to the schedule that everybody
21 agreed on at the August 13th pre-hearing conference.
22 Failing that, it would severely prejudice my client if
23 we had to present any testimony before the first week in
24 December. So Mr. Kopta's alternate proposed schedule is
25 just simply unworkable from our standpoint, and we

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1 couldn't meet it. So at this point, I guess that's our
2 position. If you look at the issues raised by the
3 parties here, this is a complicated case. This is not
4 simply a, oh, it's just a simple little prize squeeze.
5 There is no such thing as a, quote, simple little price
6 squeeze that involves an examination of a huge segment
7 of the company's intrastate regulated revenues. So
8 we're, you know, we're not trying to be unreasonable
9 here, but I have to be adamant about the prejudice we
10 would suffer if we didn't have enough time to do a
11 professional, thorough, competent job to fully apprise
12 the Commission of all of the facts that it needs in
13 order to craft whatever remedy it might have to craft in
14 this case.

15 JUDGE SCHAEER: Okay. You mentioned estoppel,
16 and to make sure I understand what your argument there
17 is, can you kind of tell me what the elements of
18 estoppel are and how you think that they are applied
19 here?

20 MS. ENDEJAN: Well, it's, loosely put,
21 estoppel is when a party represents to a tribunal one
22 position and then in a later segment attempts to do an
23 about face of the previous position. And in a sense,
24 what tribunals do is they ask a party to come in and
25 tell us your position. Two weeks ago AT&T's position

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1 was very different than it was today. AT&T had every
2 opportunity to fully brief Mr. Kopta on how they wanted
3 this case handled and fully give Mr. Kopta the go ahead
4 to say we're not going to really file testimony except
5 for the affidavit of Dr. Selwyn. Now AT&T did not do
6 that.

7 And so here -- just it's -- estoppel is an
8 equitable principle that relates to concepts of, you
9 know, fairness and inequity. Now if something really
10 horrible had happened that justified factually why AT&T
11 should come forward now and say no, no, no, we want to
12 have everything on an abbreviated schedule, that's one
13 thing, but we haven't heard that.

14 JUDGE SCHAEER: Well, let me ask you this. If
15 Mr. Kopta had come to the hearing two weeks ago and said
16 what he has said today about timing and made the same
17 arguments that he has made today, how is your client
18 prejudiced that he didn't do that two weeks ago but is
19 doing it today I guess?

20 MS. ENDEJAN: Well, if the Commission grants
21 his request and forces us on an abbreviated schedule,
22 for all the reasons I just told you we're going to be
23 prejudiced in our ability to effectively prepare our
24 case. And I have been consistent all along in telling
25 everybody that we can not get testimony done and cost

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1 studies done and everything pulled together before the
2 first week in December at the earliest. And that would
3 have been my position then, it was my position then.
4 And the reason that the schedule kind of got dragged out
5 is because we were teeing off of the October 16th filing
6 deadline that AT&T had proposed for its testimony. So
7 we would have been very prejudiced if the Commission had
8 granted that, granted AT&T's request then.

9 But the fact -- but that's not the facts.
10 The facts are AT&T did come in here and say this is okay
11 with us. You specifically asked AT&T if they had a
12 problem with, quote, the ten month deadline. They said
13 no. If ever there was an estoppel argument there,
14 that's the argument is they had every opportunity to
15 raise objections at that point, they didn't do it, so
16 now why should my client be harmed.

17 JUDGE SCHAEER: You have just raised another
18 question that I had for you. You have talked about the
19 language in the complaint statute that provides
20 companies responding to a complaint the opportunity to
21 present a full case. That same statute does include a
22 ten month time limit, doesn't it?

23 MS. ENDEJAN: Which may be waived by the
24 Commission for good cause or for cause.

25 JUDGE SCHAEER: So that would have been your

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1 argument if Mr. Kopta had clung to the ten months, that
2 we should waive that deadline for cause?

3 MS. ENDEJAN: Correct, and I think that one
4 of the reasons that would justify that waiver is the
5 Complaint may have been filed in April. We promptly
6 filed a motion to dismiss. You know, whether or not the
7 Commission got a timely order out or not is not really
8 the point, but it did take some time for the Commission
9 to process that, and we didn't get a decision I think
10 until sometime in late July. I don't have the exact
11 date. Anyway so -- and then that then set out the
12 pre-hearing conference, so we wait, you know, all of
13 these weeks were kind of until we had a decision from
14 the Commission on the motion to dismiss, you know, we
15 really kind of lost a fairly large chunk of time there.

16 JUDGE SCHAER: I'm just looking at the docket
17 sheet for the case, and I note that you did file your
18 motion on April 25th, and then we have a letter from
19 Staff seeking an extension of time, we have answers to
20 your motion to dismiss, we have a letter from you to me
21 asking about getting an extension to file a reply. You
22 were allowed to file a reply. It looks like we got your
23 reply on May 24th, and then we got an answer following
24 the pre-hearing when we had a party appear at the
25 pre-hearing. Their answer to your motion was on June

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1 19th. And I believe that you also sought permission and
2 were granted permission to reply to that and that you
3 filed a reply on June 27th. Is that your understanding
4 of the history of the case?

5 MS. ENDEJAN: I believe so. I think that
6 WorldCom was a late intervenor here, and you gave them
7 an opportunity to file a position paper on the motion to
8 dismiss.

9 JUDGE SCHAER: Was there a pre-hearing
10 conference in this matter before the one where WorldCom
11 intervened?

12 MS. ENDEJAN: I believe there was, Your
13 Honor, but I don't really recall.

14 MR. TRAUTMAN: It was June 12th, and Shannon
15 Smith was attending.

16 MS. ENDEJAN: That's right, Shannon Smith was
17 there.

18 JUDGE SCHAER: And isn't that the conference
19 where WorldCom intervened, so that was the first
20 opportunity to intervene in the case; am I correct?

21 MR. TRAUTMAN: You are correct, Your Honor.

22 JUDGE SCHAER: Thank you.

23 Ms. Singer-Nelson, I note that actually the
24 request to continue this was made on behalf of you, I
25 believe, and your client as well with AT&T; is that

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1 correct?

2 MS. SINGER NELSON: The request to continue?

3 JUDGE SCHAER: The request to -- actually,
4 I'm sorry, the request to change the schedule to the one
5 proposed by Mr. Kopta.

6 MS. SINGER NELSON: No. In fact, Judge,
7 WorldCom did not join in that request, and WorldCom has
8 no position on the issue.

9 JUDGE SCHAER: Okay. I should have checked
10 with you after Mr. Kopta, and I apologize. But as you
11 indicate, you do not have a position; is that correct?

12 MS. SINGER NELSON: That's correct. And the
13 primary reason, Judge, is that, as I said at the last
14 pre-hearing conference, WorldCom does not play a big
15 roll in this docket, so I don't want our opinions to
16 affect the Commission's decision on any issues that the
17 parties think are important.

18 JUDGE SCHAER: Then Mr. Trautman and
19 Mr. Cromwell, who would like to go next?

20 MR. TRAUTMAN: I can go next, Your Honor.

21 JUDGE SCHAER: Okay, go ahead, please, on
22 behalf of Staff.

23 MR. TRAUTMAN: As to the nature of the issues
24 presented and what the time line should be or the
25 schedule for the case, Staff concurs with AT&T. And I

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1 think in looking at the issues and what needs to be
2 decided in this docket, I think it's helpful to look at
3 the two issue statements. And in particular, of course,
4 AT&T's raises issues, as Mr. Kopta indicated, regarding
5 the access charges and toll charges, whether there is a
6 price squeeze, you know, whether imputation standards
7 have been met. Now in addition, Verizon has an issues
8 statement, and it has a list of what it -- it entitles
9 remedy issues. Now even Verizon's issue statement, I'm
10 looking at this from June 21st of 2002, even it says
11 only if AT&T satisfies the burdon on its issues should
12 the Commission address the appropriate remedies.

13 And it seems to Staff that on one hand you
14 have issues that are directly raised by the complaint,
15 which is are the access charges unreasonable, should
16 they be reduced. We don't know how the Commission is
17 going to rule. They could rule yes, they could rule --
18 they could say no. If the answer were yes, then
19 Verizon's defenses raise additional issues, should other
20 rates be raised. Earnings, they raise a question of
21 earnings and revenue requirement, and we agree that part
22 of the defense might include Verizon's overall earnings
23 and their profit levels. We don't believe, however,
24 that that would necessarily require entire new cost
25 studies and entire new cost studies of all of Verizon's

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1 other rates and which would bring in rate design issues.
2 Because only if you then answer the second question --

3 JUDGE SCHAER: And could you just help all of
4 us stay on the same page by telling me where you are
5 with the second question, Mr. Trautman, please.

6 MR. TRAUTMAN: About whether other rates
7 should be raised?

8 JUDGE SCHAER: Yes.

9 MR. TRAUTMAN: Well, it's actually if you
10 look at the last on the remedy issues of the issues
11 statement of Verizon, you have the question is raised,
12 if the Commission orders any reduction in Verizon's
13 access charges, what offsetting increases should be
14 ordered to other Verizon rates. I think you have to
15 first determine should any, should there be any offset,
16 does there need to be any offset, because that's
17 premised upon an assertion or a claim that in order to
18 maintain their earning levels to earn a reasonable
19 return, you would have to make such an offset. Again,
20 you would have to resolve that issue. But our belief is
21 that new cost models would not be required to do that.

22 Now only if you answer the first two
23 questions in the affirmative, (a) that Verizon's access
24 charges are unreasonable, need to be lowered, and (b)
25 that the revenue requirement would be affected or

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1 earnings levels so that you have to make offsetting
2 rates, only then would you get to the next potentially
3 large set of issues, which is, well, what do you do with
4 all of these other rates. And at that point, then
5 perhaps you would need to look at the other rates, but
6 that would -- that would be the only -- that would be
7 the issue it appears that would generate the need for
8 the cost models. And my understanding was that it was
9 the cost model factor was the factor that was generating
10 the original schedule Verizon proposed for the case.

11 And furthermore, if I recall, it wasn't
12 simply an additional two months for Verizon to file a
13 case. But just comparing the extent of the schedule
14 under the AT&T new proposed schedule, the briefs would
15 be filed January 31st, 2003, and I believe under the
16 proposed schedule we had before I believe briefs were to
17 be filed in July of 2003, so I believe that it was six,
18 it was a total of six months of additional time. And so
19 it's our belief that AT&T's issues could be addressed
20 within the time frame proposed in the new schedule.

21 On the issue of estoppel, it would be my
22 opinion, to me estoppel is, as Ms. Endejan indicated, an
23 equitable doctrine, but it requires some element of
24 detrimental reliance, and I don't see that there has
25 been any detrimental reliance one way or the other

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1 within the last two weeks. Even when the schedule was
2 proposed, and it was proposed by Your Honor, I believe
3 it was presented as simply that. It was not presented
4 as a schedule which had been accepted by the Commission.
5 And so what we have had simply is we have had two weeks
6 of intervening time, and I don't believe there's been
7 the detrimental reliance that would be required to
8 invoke an estoppel defense that would prevent adjusting
9 the schedule for the issues that are presented.

10 MS. ENDEJAN: Your Honor, if I might respond.

11 JUDGE SCHAER: You will have an opportunity,
12 but I would like to continue with my questions to
13 Mr. Trautman first, and then in the usual case I would
14 only let Mr. Kopta respond, but I believe that because
15 arguments are being raised about your presentation, I
16 will also let you respond, Ms. Endejan. That will
17 probably be after Staff and then after Public Counsel
18 and then before Mr. Kopta.

19 So, Mr. Trautman, if I'm hearing you
20 correctly, you seem to be indicating that this hearing
21 could go forward on two issues, and I'm not sure I
22 jotted them down very well, but one would be whether the
23 rates being charged are unreasonable, and another would
24 be whether making a change in those rates to a level
25 found to be reasonable would have some kind of an

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1 earnings effect. And then only at the point where those
2 two questions, whose answers are wide open right now,
3 might be answered yes would there be a need perhaps for
4 a third phase of this proceeding to look into the issues
5 of any cost model or how other rates might be redesigned
6 in order to go forward. Is that, am I hearing you
7 correctly to start with?

8 MR. TRAUTMAN: I believe that accurately
9 reflects our position, correct.

10 JUDGE SCHAEER: And I heard you discussing the
11 schedule that Mr. Kopta has presented in his letter that
12 started this hearing which would end up with briefs at
13 the end of January, and then discussing whether a
14 different schedule would have briefs later in the year.
15 And the question comes to mind, is what you're proposing
16 that the Commission should go ahead on some kind of more
17 accelerated schedule to at least answer the first two
18 questions? And then if those two answers are yes, then
19 it should bifurcate the third question and examine it
20 afterwards? Or if it says no on one of those, then
21 there would be no need to hold the -- I'm trying to
22 decide practically how you see this information working
23 through what we're doing today in terms of scoping and
24 scheduling.

25 MR. TRAUTMAN: Well, I think that's how it

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1 might well play out. It would seem to me if the
2 Commission were to decide that the access charges did
3 not need to be adjusted, there wouldn't be any need for
4 the remedies that are being proposed. Or if there was a
5 determination that other charges didn't have to be
6 raised, you wouldn't have to reach that issue either. I
7 don't -- I guess -- I'm not -- I'm not sure that that
8 has to be scheduled at this time. I think -- the latter
9 issue.

10 JUDGE SCHAER: So the issue of --

11 MR. TRAUTMAN: Of rate rebalancing.

12 JUDGE SCHAER: -- rate rebalancing is not one
13 that you think needs to be scheduled now, it could wait
14 until the answers are in on the other two topics; is
15 that what --

16 MR. TRAUTMAN: I believe that could be done,
17 yes.

18 JUDGE SCHAER: And would that be Staff's
19 proposal, or what is Staff's proposal?

20 MR. TRAUTMAN: That would appear to be a
21 reasonable proposal.

22 JUDGE SCHAER: Okay.

23 MS. ENDEJAN: Your Honor, I don't understand
24 precisely what the that is, if you could ask for
25 clarification on what Staff is specifically proposing.

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1 JUDGE SCHAER: Could you go ahead and outline
2 using nouns instead of pronouns exactly what Staff is
3 advising.

4 MR. TRAUTMAN: Well, again, I'm working off
5 of AT&T's complaint and the response from Verizon. I
6 believe that AT&T's issues on access charges and toll
7 charges and whether the -- on whether access charges are
8 appropriate, that can be addressed at this point, or
9 whether there is an effect on earnings can be addressed
10 at this point. I believe that rate rebalancing issues
11 if it comes to that need not be addressed at this point.

12 JUDGE SCHAER: Did that make it clear for
13 you, Ms. Endejan?

14 MS. ENDEJAN: Thank you, Your Honor.

15 JUDGE SCHAER: If there are any other
16 questions you have, we'll get them addressed certainly.

17 Okay, Mr. Cromwell.

18 MR. CROMWELL: Thank you, Your Honor.

19 JUDGE SCHAER: Go ahead, please.

20 MR. CROMWELL: I would concur with the
21 position as articulated by counsel for AT&T and Staff.

22 I won't --

23 JUDGE SCHAER: Mr. Cromwell, you're going to
24 need, please, to speak directly into your telephone.

25 Our court reporter can not hear you.

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1 MR. CROMWELL: Is this better?

2 JUDGE SCHAEER: Yes, it is, thank you.

3 MR. CROMWELL: Okay.

4 JUDGE SCHAEER: Could you start over, please.

5 MR. CROMWELL: Sure. I concur with the
6 positions articulated by Mr. Trautman and Mr. Kopta on
7 behalf of their respective clients. I would note that
8 the scope of the complaint is relatively narrow in terms
9 of the relief requested from the Commission. I would
10 note that the remedy the Commission could offer would be
11 equally narrow. In addition, the scope of the
12 proceeding would also allow the Commission a method by
13 which to narrow the scope of the evidence that is
14 relevant to the issues before the Commission pursuant to
15 the complaint filed. I think that if as a consequence
16 of a Commission decision, Verizon believes it would be
17 underearning on its allowed rate of return, it would
18 certainly have the option under Washington law to file a
19 general rate case, which I would also note is found
20 rather near what Ms. Endejan had been describing
21 earlier. Those would be my comments regarding those.

22 As to scheduling, I would disagree with Ms.
23 Endejan's characterization of the need for just an
24 additional two months. I'm afraid that if this case
25 evolves into, for want of a better term, we might deem a

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1 mini rate case involving the presentation of cost
2 studies and then their review, analysis, and rebuttal by
3 other parties, Ms. Endejan's client might require a
4 couple of months to develop those cost studies, present
5 testimony supported by them. But I would assert that on
6 behalf of the other parties to the proceeding that due
7 process as well as the Commission prior practice in such
8 cases would warrant at least an 8 to 12 week review for
9 other parties to analyze those cost studies, conduct
10 discovery, develop responsive testimony, and then file
11 it with the Commission. But in terms of scheduling, I
12 don't think that going to a full case that allows
13 Verizon to present the responsive case they seek would
14 merely be a matter of an additional two months. I think
15 we really are looking at more like what we had all
16 discussed at the last pre-hearing conference with
17 resolution sometime next spring, early summer.

18 So I guess in sum, what I would add to
19 Mr. Trautman's analysis is that if the Commission
20 decided in the affirmative or granted relief to AT&T,
21 you know, one option would be a multiphased proceeding
22 with subsequent proceedings teeing off of this one.
23 Another option would simply be for the Commission to
24 rule on the complaint as filed, and if Verizon believes
25 that it is underearning as a result of that ruling, then

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1 it could simply file a rate case. That would
2 procedurally be another way of addressing issues that
3 have been presented by the parties' issue lists as well
4 as preserving Verizon's right to seek an allowed rate of
5 return in the state of Washington.

6 JUDGE SCHAEER: Ms. Endejan, would you like
7 now to have a chance to respond to Staff and Public
8 Counsel?

9 MS. ENDEJAN: Yes, I would, Your Honor.
10 Frankly, I'm very saddened and quite surprised that they
11 are taking this position for a couple of reasons. First
12 of all, it's sort of odd to hear Staff and Public
13 Counsel articulate an argument which I think
14 fundamentally would deprive my client of fundamental due
15 process, which is the right to present a defense to a
16 complaint that under the law it is allowed to present.
17 What you have heard are arguments in terms of how they
18 see the case. Understandably they don't agree with how
19 we see the case. But what we are talking about here,
20 Your Honor, is a \$50 Million price tag. That is a very
21 significant sum of money to this company, and I'm not
22 about to sit here and let that amount of money be
23 disposed of with a bunch of hypothecations that may or
24 may not be true.

25 What would -- and besides which, let me talk

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1 about the practical ramifications of following the
2 approach that Mr. Trautman seems to be advocating would
3 be somehow or other the Commission is supposed to
4 narrowly decide whether or not just one set of Verizon's
5 rates are reasonable. What if it decides that it wants
6 to make an adjustment? If it makes that adjustment,
7 then my client is significantly harmed, because the
8 Commission may order an adjustment without offsetting
9 increases in other rates. If the Commission decides,
10 well, maybe the access charges need to be adjusted, but
11 we'll look at that in a later proceeding, then what have
12 we accomplished? AT&T basically wants lower access
13 charge rates now. We're saying if you're going to make
14 a decision on that question, then you can not do it
15 without looking at the impact on Verizon's other rates.
16 That is the core of our defense here.

17 Now Mr. Trautman may not think we need to do
18 cost studies, but it's not Mr. Trautman's job or
19 position to be dictating what Verizon should do in terms
20 of constructing an adequate defense against claims that
21 have serious prejudicial impact to it of \$50 Million.
22 What is also completely surprising to me is what harm is
23 AT&T going to suffer if we give Verizon the due process
24 that it's entitled to get to present the defense that is
25 constructs that it is entitled to construct in this

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1 complaint case. Verizon simply can not have responsive
2 testimony available by October 1st. It can't physically
3 be done. And on the record I will state that when and
4 if this were to go before court or a judicial body, the
5 record will have been made by me here today telling you
6 that my client will be prejudiced. AT&T, Staff, and
7 Public Counsel will not be prejudiced by giving us a
8 little more time to present our defense.

9 I feel like a criminal defendant accused of a
10 major felony being told I have to put on a major case,
11 but oh, I can't call this witness because, well, there's
12 no need to hear that witness, or we don't think, you
13 know, if you're innocent, then we don't need to hear
14 from that witness. No good defense lawyer goes into a
15 case preparing a case, preparing a defense on the
16 supposition that, gee, you know, well, we won't have to
17 do this if the Commission lets us off. You have to
18 examine all the possibilities in order to present a
19 thorough picture here.

20 And to respond to Mr. Trautman on the issue
21 of, you know, estoppel, I think we're getting a little
22 hung up here on, you know, something that is an
23 equitable principle that's not necessarily a technical
24 legal operative here.

25 JUDGE SCHAER: Ms. Endejan, you're the one

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1 who --

2 MS. ENDEJAN: Well, I --

3 JUDGE SCHAER: -- raised that issue, do you
4 think we should drop it, or are you still claiming that
5 there is --

6 MS. ENDEJAN: No, I want --

7 JUDGE SCHAER: -- an estoppel problem?

8 MS. ENDEJAN: What I'm telling -- that
9 there's a fairness problem.

10 JUDGE SCHAER: Is there an estoppel problem?

11 MS. ENDEJAN: Fairness and estoppel are
12 equitable principles here.

13 JUDGE SCHAER: Yes.

14 MS. ENDEJAN: And I'm talking in terms of
15 making a decision, balancing the competing interests of
16 the parties where you have three parties who seem to be
17 saying, well, we can just sort of narrowly decide this
18 case because that's how we view it should go down one
19 path and present -- and then it's particularly hard to
20 take because two weeks ago everybody was on the same
21 page in saying, well, yeah, Verizon should be entitled
22 to present, you know, evidence of the overall impact on
23 rates and earnings. Mr. Trautman didn't have a problem
24 with that two weeks ago, and neither did Mr. Cromwell.
25 So now we're sitting here today, and I don't see the

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1 prejudice to AT&T or anyone for giving Verizon the time
2 that it's entitled to.

3 I have never heard of this Commission
4 depriving parties before of a fair shake and the chance
5 to compose what is really going to be an affirmative
6 defense. An affirmative defense is just that, it's a
7 defense, it's not part of the complaint, it is a
8 response to it. So I'm just absolutely astounded why we
9 are sitting here quibbling over whether or not my client
10 gets to present the defense it thinks is appropriate
11 just because the other parties don't think that that's
12 appropriate.

13 So, Your Honor, what I would suggest if we
14 could do this is perhaps have an off the record
15 discussion about a more elongated schedule, not
16 something as abbreviated as that proposed by Mr. Kopta,
17 and there might be some way that we can work something
18 out here. We have not had that opportunity.

19 JUDGE SCHAER: Did counsel discuss this with
20 each other informally before you came here today?

21 MS. ENDEJAN: Not specifically.

22 JUDGE SCHAER: Okay. I think an off the
23 record discussion at some point this afternoon is
24 probably a very good idea.

25 I'm going to ask you, Mr. Kopta, if you would

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1 like to respond at this point or if you think it would
2 be more valuable to have some off the record
3 conversation. How would you like to proceed?

4 MR. KOPTA: Well, I think a brief response
5 followed by perhaps some attempt on the parties to
6 develop a schedule. There were discussions, just to
7 clarify the record, I called each of counsel for the
8 parties to this case to discuss scheduling issues,
9 AT&T's concerns. And we did not discuss specifically
10 the dates that I provided to you as a proposed schedule
11 in my letter to you, but I did discuss with the parties
12 the possibility of having hearings in December, as you
13 had initially indicated was your thought when you first
14 came into the pre-hearing conference the last time. And
15 so our discussions were only general in that sense, but
16 there was some discussion. There wasn't any further
17 discussion in terms of doing something different than
18 that but also different than the schedule that was
19 discussed last time, so just in the interest of trying
20 to give you a full picture of what was discussed. So I
21 do think that there -- to the extent that Verizon is
22 willing to come back and talk about a schedule that's
23 shorter than the one that was discussed last time, then,
24 you know, we certainly would be willing to try and work
25 out something if that's possible.

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1 But by way of response to Ms. Endejan
2 primarily, there are two sides to the \$50 Million coin.
3 We're paying that \$50 Million, and we're paying a big
4 part of that \$50 Million. And our prejudice is we're
5 paying that \$50 Million when we shouldn't be, and the
6 longer it's delayed, the more we're paying, and we
7 shouldn't. There's no provision that I'm aware of that
8 this Commission can go back and order any kind of a true
9 up back to the date of the complaint or earlier if it
10 finds that price squeeze has been happening. The
11 Commission's relief, at least as far as I know, is
12 prospective. And therefore, the longer this case is
13 delayed, the more money that my client is paying to
14 Verizon in its view than is reasonable. So there's your
15 prejudice, our \$50 Million is going to Verizon instead
16 of to serving our customers.

17 And I realize that Verizon has its own view
18 of its case, but if it really believes that a rate case
19 is necessary, then it's our position that they should
20 have filed it at the time of the complaint. If it
21 really wanted to make an affirmative defense that rate
22 rebalancing is appropriate and that it's underearning,
23 those are the issues that you file in a rate case. I
24 therefore agree with Mr. Cromwell's suggestion that the
25 Commission should address the allegations in the

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1 complaint. If it finds that a reduction in access
2 charges is appropriate, it should order that reduction,
3 and it is incumbent upon Verizon to step forward and
4 actually file a rate case to demonstrate that it is
5 underearning and that any kind of rate rebalancing is
6 appropriate.

7 We don't see this as any different than any
8 other triggering event that requires or counsels a
9 company to come in with a rate case. There are numerous
10 types of internal and external circumstances that prompt
11 a company to file a rate case, and the company needs to
12 demonstrate that it is currently underearning when it
13 files its rate case and so it is by necessity in its
14 view suffering a shortfall in revenue and therefore
15 needs the Commission to increase its rates to make up
16 for that shortfall. We don't see this as being anything
17 different than that if, in fact, that is what's
18 happening.

19 So we think that the appropriate thing to do
20 is to address the allegations in the complaint, if the
21 Commission agrees with the allegations, to provide the
22 remedy that the Commission believes is just, at which
23 point Verizon will do what it needs to do. And we think
24 that that's the appropriate way to proceed with this,
25 and there's no reason why we couldn't do that in the

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1 space of the last few months remaining in this year.

2 With respect to estoppel, I don't know that
3 we need to discuss that much more than it's already been
4 discussed. It is a legal doctrine. There is case law,
5 as Mr. Trautman indicated, there are elements to it
6 above and beyond what Ms. Endejan is talking about. I
7 think that she is really arguing in terms of what she
8 believes is fairness. But in response to questions from
9 Your Honor, I don't believe she identified anything
10 different in Verizon's position or any prejudice that
11 Verizon would have suffered in the last two weeks
12 because -- in fact, not even two weeks since it was
13 shortly after the pre-hearing conference that I
14 contacted counsel, and so it was within days of having
15 the prior pre-hearing conference. And the Commission
16 has not yet established a schedule, and so I think we
17 are early enough in the process where we can make
18 adjustments to the schedule, and we can make corrections
19 to statements or positions that didn't fully reflect the
20 views of our respective clients.

21 JUDGE SCHAER: I need to ask you just because
22 I haven't heard you say, well, I believe you did respond
23 to some extent regarding the \$50 Million, using a number
24 that's been used as an example by both sides, something
25 that you're paying now. But what prejudice do you see

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1 to your client by having the longer schedule?

2 MR. KOPTA: Taking the allegations in the
3 complaint as true, we are enduring a price squeeze,
4 which inhibits our ability to provide service to
5 customers, inhibits our ability to gain or retain market
6 share in the long distance market. We make less money,
7 we serve fewer customers because we can't match prices
8 that Verizon establishes because it can cross subsidize.
9 Therefore, our prejudice is the longer this complaint
10 drags on, the less competition there is in the state of
11 Washington, and the less we are able to compete
12 effectively, and at the same time we are paying access
13 charges to Verizon for those customers that we are able
14 to retain. So we're dealing in a situation where our
15 business is hampered, competition in the state of
16 Washington is hampered, and the longer that goes on, the
17 more harm there is to my client as well as to the public
18 interest in our view. And, of course, you know, it's in
19 Verizon's interest to delay things as much as they
20 possibly can. I'm not impugning anyone's motives here,
21 I'm just stating that the fact is the longer that this
22 is delayed, the more detriment to my client and the more
23 benefit to Verizon.

24 JUDGE SCHAER: Thank you.

25 Ms. Singer-Nelson, did you have anything to

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1 add at this point?

2 MS. SINGER NELSON: No, I don't, I just would
3 concur with Mr. Kopta's final comments.

4 JUDGE SCHAER: Mr. Trautman, I see your hand
5 in the air.

6 MR. TRAUTMAN: I just had one point I wanted
7 to make in light of whether Verizon would be precluded
8 from presenting their defense. I don't believe they
9 would be, and because under the scenario that I posited,
10 the Commission, in order to arrive at the rate
11 rebalancing decision, the Commission would have decided,
12 would have determined (a) that the access charges in
13 some respect were unreasonable, again a hypothetical
14 conclusion, and but that (b) that Verizon would have
15 shown that they needed an adjustment or else they would
16 be underearning. And that decision, that -- Verizon can
17 present a defense on their earnings at this time. They
18 don't need the rate rebalancing. If you get to that
19 point and the Commission were then to determine whether
20 to issue an order on the complaint, and I'm reading from
21 RCW 80.04.120, there's that statute has a provision that
22 says:

23 When an order can not in the judgment of
24 the Commission be complied with within
25 20 days, the Commission may prescribe

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1 such additional time as is reasonably
2 necessary and may on application and for
3 good cause shown extend the time for
4 compliance fixed in the order.

5 Well, if the order said, access charges need
6 to be reduced by X amount but the Commission had already
7 determined that to do that would create underearnings, I
8 would think the Commission would be agreeable in that
9 case to extend the time for compliance so that Verizon
10 could show what need and what rates should be rebalanced
11 to avoid that problem. So I think that -- I believe
12 that the statute would provide a remedy for that
13 occurrence and would allow Verizon to petition for the
14 order to a compliance order to be stayed, and I believe
15 the Commission might well do that given those
16 circumstances.

17 JUDGE SCHAEER: Mr. Trautman, if this is not
18 something that's on the top of your head, then just feel
19 free to say that. But I have in my mind some sense that
20 complaint cases of certain kinds, at least perhaps those
21 brought by the Commission, that remedies can relate back
22 to the date of the complaint.

23 MR. TRAUTMAN: I don't know off the top of my
24 head.

25 JUDGE SCHAEER: Okay. I don't either, but I

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1 just had heard Mr. Kopta say something that I wasn't
2 sure was correct but I wasn't sure was incorrect. And
3 if you could have clarified that, I would have
4 appreciated it.

5 MR. KOPTA: I would love to be proven
6 mistaken.

7 MS. ENDEJAN: It's called the principle of
8 retroactive rate making.

9 MR. CROMWELL: Your Honor, this is Robert
10 Cromwell.

11 JUDGE SCHAER: Yes, Mr. Cromwell.

12 MR. CROMWELL: I have had the dubious honor
13 of spending the last week examining that question in the
14 context of a different case.

15 JUDGE SCHAER: Enlighten us.

16 MR. CROMWELL: And I think there is some
17 authority both in the Commission's own decision in the
18 energy field as well as both state and federal case law
19 supporting the assertion that the Commission authority
20 to provide a remedy that goes back in any fashion prior
21 to the date of the order is limited due to the doctrine
22 of retroactive rate making and the notice and
23 participation requirements that are implicit in the
24 doctrine.

25 JUDGE SCHAER: Thank you for that.

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1 MR. CROMWELL: Certainly something that could
2 be briefed separately.

3 And I just did want to very briefly address
4 the comments Ms. Endejan made.

5 JUDGE SCHAEER: Go ahead, please.

6 MR. CROMWELL: I think that the Commission
7 may have to in its pre-hearing conference order provide
8 some scope to the proceeding. I certainly don't want
9 Ms. Endejan or her clients to think that we're trying to
10 preclude them from presenting a relevant defense to the
11 claims made in the complaint; I'm not supporting that
12 position. But I think there is a reasonable question
13 before the Commission in this docket as to what the
14 appropriate scope of a responsive defense or evidence
15 that Verizon might wish to present to the claim that
16 AT&T has made would be in this proceeding. I think that
17 it is reasonable for the Commission to limit defenses
18 that are not relevant to the assertions in the
19 complaint. I think that this is within the Commission's
20 authority to do so. I believe that if the Commission
21 wishes, it can procedurally establish either a
22 multiphased proceeding based on the outcome of the first
23 phase or simply issue an order that would adjust access
24 charges, leave it to Verizon to respond as it may.

25 But I think that as a prospective matter, it

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1 would be helpful to me and likely the other parties if
2 some guidance were provided by the Commission. And if
3 necessary, the parties could brief that issue. That was
4 my thinking in terms of procedural aspects of this, and
5 I didn't want to leave anyone there with the impression
6 that we're trying to limit Ms. Endejan's client's
7 ability to raise an appropriate defense to the complaint
8 that's been filed with the Commission, but simply that
9 as a procedural matter, if the Commission does permit
10 cost study type testimony and evidence into the record
11 in this proceeding, that I believe that due process
12 similarly requires that other parties have a reasonable
13 time made available to analyze, conduct discovery, and
14 respond. That was all.

15 JUDGE SCHAER: Did I hear you say brief?

16 MR. CROMWELL: Yes, probably carrying over
17 from what I'm doing in my other case right now, but we
18 are dealing with the retroactive rate making issue in an
19 energy proceeding at the Commission now. If the
20 Commission wishes, and far be it for me to seek
21 additional work at this point in my life, but if the
22 Commission wished the parties to brief the question of
23 whether it is necessary for the Commission to consider
24 affirmative defenses such as rate rebalancing in the
25 context of AT&T's complaint, we could certainly do that.

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1 I feel somewhat generous in making this suggestion,
2 because I won't actually be here.

3 JUDGE SCHAER: Well, I'm just asking more in
4 my scheduling hat than I am in my briefing hat. I think
5 that it's always helpful to the Commission and to the
6 administrative law judges to have the research and
7 thoughts of the parties written down. But if we are
8 going to start building a briefing schedule on that
9 issue and some time for a decision before going forward
10 on other things, we tend to start answering some of our
11 questions at least to some limited extent about what we
12 can do between now and December. Where if we try to do
13 things on two tracks, that's also possible, and it may
14 be appropriate in certain settings.

15 I'm going to ask Ms. Endejan if she has
16 anything else she would like to say on the record at
17 this point, and then I'm going to follow up on her
18 request to have off the record conversation between the
19 parties.

20 MS. ENDEJAN: Your Honor, I guess just a
21 couple of brief points. If Mr. Trautman's proposal were
22 accepted by the Commission, that would accomplish two
23 things, I guess. It would unduly, I think, complicate
24 this proceeding by making its resolution piecemeal in
25 nature, and it certainly wouldn't give AT&T the relief

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1 that it's seeking as quickly as AT&T is seeking it. If
2 anything, it would probably delay the outcome, because
3 clearly, and this ties into my final point, which is
4 relevancy is always I guess a moving target depending
5 upon who is doing the shooting and what they intend to
6 shoot. But from Verizon's view of the world, the
7 relevancy of ordering significant reductions in one of
8 its major rate segments and its impact on Verizon's
9 customers, the rates, the company, and the rate payers
10 is extremely relevant. And Verizon can't see how the
11 Commission could make a principled decision which would,
12 and we're hoping it won't reach this decision, but that
13 it could reduce access charges, then of course the
14 company is going to be before the Commission asking for
15 its entire rate design to be looked at.

16 What the company had proposed was at the time
17 seemed to be a more comprehensive and thorough
18 presentation of what this case is all about in its
19 greater ramifications, including major public policy
20 issues the Commission has to decide. So we thought that
21 resolving it along the schedule that we had agreed to a
22 couple of weeks ago was relatively concise given the
23 enormity of the issues. So I would hope that the
24 Commission in ruling on what a party can present by way
25 of defense allows the party to decide what it feels is

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1 the best defense and that it does not foreclose it from
2 presenting the evidence that the party is entitled to
3 present, and that's what I hear being proposed here.

4 Be that as it may, let's hope that maybe we
5 can come up with something off the record that might be
6 a little more workable for all sides. Verizon, I'm not
7 here to be unreasonable in terms of scheduling, it's
8 just that the schedule set two weeks ago set in motion a
9 lot of things within the company, and the company was in
10 a sense prejudiced by this delay because it handles --
11 Verizon serves in 29 states and has a limited number of
12 personnel, as does AT&T, as does everyone, assigned
13 responsibilities for those states. And budgeting what
14 are becoming increasingly scarce internal resources in a
15 prudent manner is very much impacted by the schedule, so
16 Verizon was harmed.

17 However, maybe we should at this point go off
18 the record simply because the hour grows late, and we
19 want to see if we can accomplish something today. Thank
20 you.

21 JUDGE SCHAER: Okay, are other parties
22 agreeable that it's appropriate at this point to go off
23 the record and allow conversation between you?

24 MR. KOPTA: Yes, Your Honor.

25 MR. TRAUTMAN: Yes, Your Honor.

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1 MS. SINGER NELSON: Judge, this is Michel
2 Singer Nelson, may I be excused, I need to meet an
3 appointment, and I think that parties can discuss the
4 schedule without my participation.

5 JUDGE SCHAER: Okay, you are excused.

6 Before we go off the record, I would like to
7 say just a couple of things. As I had indicated when we
8 came into the hearing room two weeks ago, I had looked
9 at schedules from complaint cases that had been finished
10 just to see about how long or what schedules other
11 groups thought might be relevant, and I was looking both
12 at the total length of time and at the length of time
13 between different pieces of the schedule. And at that
14 time, I had decided that it looked to me like we could
15 wrap this up by mid December. I told you that at the
16 last hearing. I don't think that's a surprise to anyone
17 who is listening. And, of course, that is not where our
18 conversation ended that day.

19 I have looked at the schedule proposed by
20 Mr. Kopta in his letter to the Commission, and if the
21 parties should continue to look at this schedule as one
22 of the possibilities here, I'm just going to indicate
23 that it looks to me like there are some pretty generous
24 times even in this and that maybe if you were to
25 redefine how the time was used, that might be helpful.

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1 What I'm speaking to here is that we had again AT&T
2 filing direct in one of the proceedings, and then we had
3 49 days before responsive testimony and then 28 days
4 before rebuttal. You have a proposal right now to have
5 the affidavit that's in the record treated as pre-filed
6 testimony, so I would assume that that would start a
7 date of today if that were what we were going to go
8 with. And just looking at this, it might be appropriate
9 to push some time back for responses and then shorten
10 the time that AT&T had for rebuttal if we were to
11 fashion the schedule to be similar to ones that I have
12 seen in other proceedings.

13 I think it is appropriate for the parties to
14 discuss this and to see what you can work out. I think
15 it might be appropriate to look at either a bifurcation
16 or some other means of structuring this. If we were to
17 know that the complainant were going to win on the first
18 two issues, then it would be probably most efficient to
19 get through those and keep the third issue with them.
20 But since at this point I have no sense, I'm sure the
21 Commissioners have no sense of whether the complainant
22 is right or wrong on those first two issues, it seems to
23 me it might be much more efficient should they turn out
24 to be wrong to have the case end at that point and not
25 have to go into more depth. It might also be a means of

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1 solving some scheduling problems if we could look at the
2 first two issues, and then if the complainant were to
3 win those, perhaps Ms. Endejan's workers, who certainly
4 have to be recognized as an important part of this,
5 would have had time to finish their cost studies and to
6 be ready to go in that next piece. I'm not certain
7 that's the way it will go.

8 I should also let the parties know that I am
9 going to take the matter under advisement at the
10 conclusion of today's hearing. I will attempt to get
11 back to you as quickly as I may, but I am not going to
12 make the decision in the hearing room today. So that
13 even if you should have no success in planning today, if
14 you should have some other conversations, which may be
15 hard because Mr. Cromwell and Mr. Kopta apparently are
16 going to be off having fun, but if you can work
17 something out.

18 MR. KOPTA: Not together.

19 JUDGE SCHAEER: Excuse me if I made any
20 indication I did not intend.

21 MR. CROMWELL: I didn't know you cared.

22 MR. KOPTA: Not on the record anyway.

23 JUDGE SCHAEER: So having said all this, I
24 think it is appropriate to go off the record, and I am
25 going to return to my office. I am going to give the

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1 court reporter her afternoon break, so we will reconvene
2 no sooner than 10 'til. I will check in with you then.
3 If you think more discussion would be productive, then
4 we will set another check back time, or somebody can
5 call me and I will come back up.

6 We're off the record.

7 (Discussion off the record.)

8 JUDGE SCHAEER: Okay, let's be back on the
9 record. While we were off the record, the parties were
10 able to work on a schedule. At the beginning of our
11 time on the record, Ms. Endejan, you had made some
12 statements about cost studies when we were first off the
13 record that sounded like perhaps should be on the
14 record. Would you like to repeat those now, or is that
15 moot?

16 MS. ENDEJAN: Very briefly, Your Honor. I
17 just wanted to remind Your Honor that there was some
18 discussion as to why Verizon would need to do cost
19 studies and whether they were necessary, and they are
20 necessary with respect at least to access services,
21 because that is the subject matter of the complaint, and
22 so the time constraints that we have for all access, all
23 cost studies, apply to the access studies as well. But,
24 Your Honor, I think that in light of our off the record
25 discussion, I am pleased to report that I think the

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1 parties have reached an agreed upon schedule that might
2 be doable.

3 JUDGE SCHAER: Okay.

4 MS. ENDEJAN: If the Commission accepts it.

5 JUDGE SCHAER: Could somebody give me that
6 schedule.

7 MS. ENDEJAN: I would be happy to.

8 JUDGE SCHAER: Go ahead, please.

9 MS. ENDEJAN: AT&T and Commission Staff would
10 file their testimony on September 30th, 2002.

11 JUDGE SCHAER: Does that include Public
12 Counsel?

13 MS. ENDEJAN: If Public Counsel wants to.

14 JUDGE SCHAER: Okay.

15 MS. ENDEJAN: But the intent there was the
16 parties filing I guess in support of the allegations of
17 the complaint.

18 JUDGE SCHAER: Okay, go ahead, please.

19 MS. ENDEJAN: Verizon would then file its
20 response on December 2nd, 2002. The reply to Verizon's
21 response from AT&T, Public Counsel, and Staff, and MCI
22 WorldCom would then be January 31st, 2003. And hearings
23 would be scheduled sometime either the end of February
24 or the first week in March depending upon the
25 Commission's schedule. I also advised the parties that

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1 Verizon may seek to file a response to the July or to
2 the January 31st reply, in which case we would be moving
3 sometime in the month of February for permission to do
4 that, if necessary, depending upon the content of the
5 reply testimony. Briefs would be due 30 days after the
6 conclusion of the hearing.

7 JUDGE SCHAER: Okay, let me report to the
8 parties that I walked into the room for a moment and
9 heard someone saying last week in February, first week
10 in March, so I have just reviewed schedules informally.
11 The last week of February is winter NARUC meetings in
12 Washington D.C. so is not available. First week in
13 March looked really pretty, and so I have tried to
14 pencil it in, and we will have to follow up with that.

15 MS. ENDEJAN: Okay.

16 JUDGE SCHAER: Is there anything else that
17 needs to be done on the record today?

18 MS. ENDEJAN: No, Your Honor.

19 JUDGE SCHAER: I want to thank you all for
20 your efforts, and we're off the record.

21 (Proceedings adjourned at 5:00 p.m.)

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