

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
2 COMMISSION

3 In re Application of GTE )  
 CORPORATION and BELL ATLANTIC )  
 4 CORPORATION, for an Order )  
 Disclaiming Jurisdiction or, in ) DOCKET NO. UT-981367  
 5 the Alternative, Approving the )  
 GTE CORPORATION--BELL ATLANTIC )  
 6 CORPORATION Merger. )  
 -----)  
 7 WASHINGTON UTILITIES AND )  
 TRANSPORTATION COMMISSION, )  
 8 )  
 Petitioner, ) DOCKET NO. UT-990672  
 9 )  
 vs. )  
 10 ) VOLUME 2  
 GTE NORTHWEST, INCORPORATED, ) Pages 35 - 66  
 11 )  
 Respondent. )  
 12 -----)

13  
 14 A prehearing conference in the above matter  
 15 was held on November 3, 1999 at 9:35 a.m., at 1300  
 16 South Evergreen Park Drive Southwest, Olympia,  
 17 Washington, before Administrative Law Judges DENNIS  
 18 MOSS and KAREN CAILLE.

19  
 20 The parties were present as follows:  
 21 GTE CORPORATION/GTE NORTHWEST, INCORPORATED,  
 by TIMOTHY J. O'CONNELL, Attorney at Law, Stoel Rives,  
 22 600 University Street, Suite 3600, Seattle, Washington,  
 98101.  
 23 BELL ATLANTIC CORPORATION/WITA, by RICHARD  
 24 FINNIGAN, Attorney at Law, 2405 Evergreen Park Drive  
 Southwest, Suite B-3, Olympia, Washington, 98502.

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1                    WASHINGTON UTILITIES AND TRANSPORTATION  
2                    COMMISSION, by SALLY G. JOHNSTON, Assistant Attorney  
3                    General, 1400 South Evergreen Park Drive Southwest,  
4                    Post Office Box 40128, Olympia, Washington, 98504.

5                    THE PUBLIC, by SIMON J. FFITCH, Assistant  
6                    Attorney General, 900 Fourth Avenue, Suite 2000,  
7                    Seattle, Washington, 98164.

8                    AT&T, by MARY TRIBBY (via bridge), Attorney  
9                    at Law, 1875 Lawrence Street, Suite 1575, Denver,  
10                    Colorado, 80202.

11                    SPRINT, by ERIC S. HEATH (via bridge),  
12                    Attorney at Law, 330 South Valley View Boulevard, Las  
13                    Vegas, Nevada, 89107.

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Kathryn T. Wilson, CCR

Court Reporter

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

2 JUDGE MOSS: We're on the record. Good  
3 morning, everyone. I'm Dennis Moss with the Washington  
4 Utilities and Transportation Commission. I am the  
5 Administrative Law Judge assigned to one of the matters  
6 that is before us this morning, and sitting on the  
7 Bench with me this morning is Judge Karen Caille, who  
8 is the judge assigned to another of the matters that is  
9 presently before the Commission in a formal  
10 adjudication. Tom Wilson is sitting at the Bench with  
11 us to provide any technical assistance that we may  
12 require during the course of our status conference this  
13 morning.

14 We are convened in Docket No. UT-981367,  
15 captioned, In re Application of GTE Corporation and  
16 Bell Atlantic Corporation, for an Order Disclaiming  
17 Jurisdiction or, in the Alternative, Approving the GTE  
18 Corporation -- Bell Atlantic Merger.

19 Although our status conference this morning  
20 was initially noticed only for the docket I have just  
21 indicated, our discussion today also touches on  
22 Washington Utilities and Transportation Commission  
23 against GTE Northwest, Inc., Docket No. UT-990672, and  
24 notice was given later in October that we would be  
25 taking up matters that touch on that proceeding this

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1 morning, and finally this morning, we are concerning  
2 ourselves with matters related to an earnings review  
3 process that's been undertaken by the Commission staff  
4 under Docket No. UT-991164, and as I understand it,  
5 that last docket is not a formal adjudication at this  
6 time.

7           Our first order of business will be to take  
8 appearances, and I will ask that those of you who have  
9 appeared previously just give your name and whom you  
10 represent. I think Mr. Heath is with us for the first  
11 time this morning, and I indicated to him off the  
12 record that I would ask him to go ahead and give us his  
13 affiliation, address, telephone number, facsimile  
14 number, and e-mail address when he makes his  
15 appearance. I think to keep an orderly and  
16 understandable record that we will go through this  
17 process for each docket because we do have some slight  
18 difference in participation. Let me rethink that  
19 point. I think we can handle it in one round. Just  
20 indicate whom you represent and which proceedings and  
21 then we'll be all right. We'll just do it once. So  
22 let's just start with you, Mr. O'Connell.

23           MR. O'CONNELL: Thank you, Your Honor.  
24 Timothy J. O'Connell on behalf of GTE Corporation and  
25 GTE Northwest, Incorporated.

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1 JUDGE MOSS: And you are appearing in both  
2 dockets.

3 MR. O'CONNELL: Yes, Your Honor.

4 JUDGE MOSS: Mr. Finnigan?

5 MR. FINNIGAN: Thank you. Richard Finnigan  
6 appearing on behalf of Bell Atlantic Corporation and on  
7 behalf of Washington Independent Telephone Association.  
8 The latter is in the access charge complaint case.

9 JUDGE MOSS: Public Counsel?

10 MR. FFITCH: Simon ffitich for Public Counsel.  
11 We are a party in the GTE/Bell Atlantic merger docket  
12 and also active in the earnings review matter.

13 JUDGE MOSS: Thank you. For Staff?

14 MS. JOHNSTON: Sally Johnston, assistant  
15 attorney general appearing in both dockets.

16 JUDGE MOSS: Thank you, and Ms. Tribby, why  
17 don't we go ahead with you.

18 MS. TRIBBY: Mary Tribby on behalf of AT&T  
19 Corporation appearing in the GTE/Bell Atlantic docket.

20 JUDGE MOSS: Mr. Heath?

21 MR. HEATH: Eric Heath on behalf of Sprint.  
22 My address is 330 South Valley View Boulevard,  
23 Las Vegas, Nevada, 89107. My phone number is (702)  
24 244-6541. My fax number is (702) 244-7380. My e-mail  
25 address is eric.s.heath@mail.sprint.com, and I'm

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1 appearing on behalf of Sprint in the UT-981367 Bell  
2 Atlantic/GTE merger docket.

3 JUDGE MOSS: Thank you. Mr. ffitch, did you  
4 have something?

5 MR. FFITCH: I was just going to ask if I  
6 might have the indulgence of having Mr. Heath repeat  
7 his e-mail address so I could get it down and get it  
8 into my system as quickly as possible.

9 JUDGE MOSS: Would you do that for us,  
10 Mr. Heath?

11 MR. HEATH: Certainly.  
12 eric.s.heath@mail.sprint.com.

13 JUDGE MOSS: I believe that concludes our  
14 appearances unless there is somebody else, and if there  
15 is, they are relatively invisible to me.

16 The purpose of our gathering this morning is  
17 to conduct a status conference to get an update on the  
18 reports I have received and that Judge Caille has  
19 received with respect to settlement that has been  
20 achieved among some of the parties in the merger docket  
21 and, my impression is, among all of the parties in the  
22 access charge docket, and of course, the other case is  
23 of a somewhat different nature, so I had previously  
24 requested that the parties treat the 29th day of  
25 October as a deadline for filing a settlement document

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1 that was being prepared, and I did receive  
2 correspondence from Mr. O'Connell, I believe it was  
3 late last week, explaining that there were still some  
4 fine points to be worked out and that that was being  
5 done, and I appreciated that update, and, of course, it  
6 imposes no impediment to our progress this morning, but  
7 I do want to ask whether the Agreement has been  
8 finalized and is available this morning.

9 MR. O'CONNELL: Your Honor, we achieved final  
10 resolution late yesterday afternoon. We have final  
11 versions of the Settlement, which I have disseminated  
12 this morning for execution by the various parties, and  
13 we were hoping that we could in this status conference  
14 discuss the appropriate procedure for filing the  
15 requisite motions in both of the formal dockets as well  
16 as the scheduled presentation later in November.

17 JUDGE MOSS: In terms of the handling of the  
18 settlement material itself, you will want to file that  
19 today, I would assume. Maybe not?

20 MR. O'CONNELL: Maybe not.

21 JUDGE MOSS: I'm certainly not going to press  
22 to make that happen before it should happen, but I  
23 think that the appropriate procedure would be to go  
24 ahead and file that as soon as it is finally executed,  
25 and, of course, the copies will come to Judge Caille

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1 and myself in due course, and we would be able then to  
2 coordinate with the Commissioners.

3 MR. O'CONNELL: At least on a gross  
4 overview -- I think I can speak on behalf of all of the  
5 settling parties -- the parties had contemplated filing  
6 joint motions in both active adjudications to resolve  
7 both of those cases based on settlement, and we had  
8 contemplated that those settlements would be part of  
9 those motions.

10 Just the process of getting execution by the  
11 parties will probably take us a couple of days. Some  
12 of the individuals will be signing on behalf of some of  
13 the parties are not located here in the state. Just to  
14 give you an idea, we were working on this until late in  
15 the day yesterday and, in fact, because of some  
16 rounding errors, there is an error in this document  
17 which I will correct today, but we do contemplate that  
18 we will have the final version of this ready for filing  
19 as an attachment to those motions probably Monday.

20 JUDGE MOSS: As I understand the status as  
21 you are reporting it, the matters are resolved so we  
22 can establish process for going forward today in terms  
23 of having some kind of a gathering later this month to  
24 allow the Commission to have an opportunity to inquire,  
25 at least in the merger docket, and I don't know. Is



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1 the Commission sitting in the other docket, Judge  
2 Caille?

3 JUDGE CAILLE: No, they are not.

4 JUDGE MOSS: Given that we are having -- I  
5 think of it as an omnibus settlement of three pending  
6 matters, and given that, the Commission certainly will  
7 have the liberty and should have the opportunity to  
8 inquire into matters touching on any of the three  
9 dockets, and so as we establish our process this  
10 morning, I want us to be mindful that that opportunity  
11 needs to be given to the Commissioners as they join us  
12 on the Bench for that opportunity.

13 I have previously reserved on the  
14 Commissioners' calendars the dates of November 22nd and  
15 23rd, and I think all the players in this community  
16 understand it is difficult to get two days in a row on  
17 the Commissioners' calendar, so I'm hoping we can stick  
18 to those dates. Is that something the parties have  
19 considered and would be able to accomplish?

20 MR. O'CONNELL: We very much wish to adhere  
21 to those dates, Your Honor.

22 JUDGE MOSS: And everyone else is in  
23 agreement with those dates?

24 MS. JOHNSTON: Yes.

25 JUDGE MOSS: Although we will allow for

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1 participation by teleconference, I will encourage  
2 parties who wish to take an active part to be here on  
3 those dates because it will certainly facilitate things  
4 in terms of developing a record.

5 MR. O'CONNELL: If I may, Your Honor, we have  
6 discussed amongst ourselves how that presentation would  
7 go, and it's not currently the intent of any of the  
8 settlement parties to present additional testimony in  
9 support of either of those motions. We believe the  
10 Settlement Agreement between the parties and the  
11 provisions of the Settlement Agreement itself frankly  
12 speaks for itself pretty well, and as a consequence of  
13 which we are hopeful that we would not need both dates  
14 that you have set aside, but we are also hoping those  
15 kind of procedural issues would be one of those things  
16 we could discuss here today.

17 JUDGE MOSS: My experience has taught me over  
18 the years to always schedule one more day than I think  
19 is going to be required, so my thinking is the same.  
20 We will probably be able to accomplish this in a single  
21 day, by we do have the two days in case we should need  
22 it.

23 We do want to turn to the question of what  
24 record we will have in the proceeding because again,  
25 all of you are familiar with the processes here. I'm

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1 not quite as sure about Mr. Heath and Ms. Tribby as I  
2 am those present here in the room who are all familiar  
3 with the fact that it is the law under which this  
4 Commission conducts its business that there must be a  
5 record in support of a settlement, so we'll talk about  
6 what that record will consist of, but before we do  
7 that, I wanted to discuss the process by which the  
8 Commissioners will have persons available to them to  
9 respond to their questions. Is the idea that we will  
10 follow the concept that has been used here before of  
11 having a panel of individuals available to the  
12 Commissioners? Have you all discussed that?

13 MR. O'CONNELL: We have not gone into that in  
14 great detail, but I believe that is the process we are  
15 contemplating just in general; that we would have a  
16 panel both of counsel and client representatives to  
17 answer questions that may come either from the ALJ's or  
18 from the Commissioners themselves.

19 JUDGE MOSS: Do the other parties want to  
20 chime in on that approach, have alternative  
21 suggestions, or is the panel approach the right  
22 approach?

23 MS. JOHNSTON: That approach would be  
24 acceptable to the Commission staff.

25 MR. FFITCH: That would be fine with Public

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1 Counsel. I think what we were envisioning was  
2 something comparable to the process in the  
3 ScottishPower case that the Commission used. There was  
4 no additional testimony. There was a panel of  
5 representatives from the settling parties that were all  
6 put up together and answered questions, and counsel --  
7 there was not a panel for counsel, as Your Honor  
8 probably recalls. The counsel made brief closing  
9 remarks after the panels were done, but the  
10 presentations were essentially made by the experts for  
11 the parties, and we'd be comfortable with that approach  
12 too.

13 In our case, I guess there is a bit of an  
14 issue. Our consultant in this matter is located in  
15 Boston, so we would either have to look at having a  
16 person available on the phone or of having perhaps  
17 Mr. Steuerwalt of our office as a spokesperson for the  
18 office on the Settlement. One of those two options, or  
19 a third option would be I could simply address  
20 questions from the Bench if that's the Bench's  
21 preference since Mr. Steuerwalt did not file testimony  
22 in the case.

23 MR. HEATH: Your Honor, I just want to make  
24 sure there would be an opportunity for those who may  
25 not be signatories to the Stipulation to ask questions

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1 as well in addition to the Commissioners or yourself in  
2 this proceeding or this hearing.

3 JUDGE MOSS: One impediment we do face this  
4 morning in terms of the order of things is that not  
5 having the Stipulation document before us, the parties  
6 are not in a position to evaluate whether they may have  
7 points they wish to oppose, and by that, I mean the  
8 nonsignatory parties, of course, and that is something  
9 that is on my mind as I sit here this morning as to how  
10 we well accommodate the due process rights of the  
11 Intervenors who may not support the Stipulation.

12 Now, in the ScottishPower case, my  
13 recollection is that we did not have cross-examination  
14 from party representatives. We limited the inquiry to  
15 inquiry from the Bench. However, we did give counsel  
16 for all parties an opportunity to make statements,  
17 whether supportive or otherwise, and we do need to have  
18 some process in this case to allow for those parties  
19 who are not signatories to participate.

20 MR. O'CONNELL: If I may.

21 JUDGE MOSS: Mr. O'Connell?

22 MR. O'CONNELL: On behalf of the joint  
23 Applicants, we had contemplated that counsel would be  
24 part of this because they were part of the negotiation  
25 of this package, and we had not contemplated bringing

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1 all of our witnesses. We filed testimony from numerous  
2 persons in the merger proceedings and a different cast  
3 of characters in the access charge complaint case, and  
4 we did not contemplate having all those persons  
5 available for presentation of the Settlement.

6 We believe we will have sufficient people who  
7 can answer questions about the underlying issues as  
8 they pertain to any of the three cases, but that  
9 doesn't mean we would have a panel -- if we presented  
10 all of those witnesses, we would literally be talking  
11 about a dozen or more people on behalf of the joint  
12 Applicants alone.

13 JUDGE MOSS: The way we proceeded in the  
14 ScottishPower case is that each party designated, I  
15 believe it was, just one representative to sit on the  
16 panel at the witness bench. However, in that case, the  
17 prefiled testimonies were urged to be made part of the  
18 record, albeit without cross-examination, and although  
19 there was some considerable effort made to identify in  
20 advance witnesses who might or might not need to be  
21 here, we found that that was functionally a very  
22 difficult thing to know, so in that case, the parties  
23 did bring their witnesses to the hearing room as a  
24 safeguard, I might say, in the event that the  
25 Commissioners had inquiry on specific points in the

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1 testimony that was being offered in support of the  
2 Stipulation.

3 My feeling about that is, my sense of what is  
4 required in that regard is that as long as you have  
5 someone available who is sufficiently versed in the  
6 particulars of the testimony or what have you that is  
7 being offered in support that that's sufficient, and,  
8 of course, we can always have further process, if  
9 necessary. If something comes up that there is not  
10 somebody available who can satisfactorily respond, then  
11 we can do a Bench request or have some further live  
12 hearing even. So we'll try to establish a process that  
13 will allow us to conclude this in even a single day,  
14 but we won't close the proceedings if that's not the  
15 appropriate thing to do. Ms. Johnston?

16 MS. JOHNSTON: I wholeheartedly agree with  
17 what you just said. It's my thought right now that  
18 Lida Tong and Glenn Blackmon would be sufficient to  
19 present the terms of the Settlement Agreement. So  
20 there may be no need, and I appreciate the possibility  
21 that we may have to summon other witnesses to be  
22 perhaps more responsive to given questions, if  
23 necessary.

24 JUDGE MOSS: For your part, Mr. ffitch,  
25 Mr. Steuerwalt could perhaps fill that role if you

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1 don't want to bring your expert in from Boston.

2 MR. FFITCH: Yes.

3 JUDGE MOSS: He did participate in  
4 ScottishPower, as I recall.

5 MR. FFITCH: Yes.

6 JUDGE MOSS: And that worked out pretty well,  
7 and I think it is important that each of the signatory  
8 parties have a representative on the panel, because one  
9 of the inquiries that I typically make is whether the  
10 parties have analyzed the matter and found that the  
11 settlement of the particular issues is consistent with  
12 the analysis they have made, so it's good to have  
13 somebody available to say yes.

14 Now, as far as the participation by the  
15 intervenors, Mr. Heath has expressed an interest in  
16 having an opportunity to inquire of the panel.  
17 Ms. Tribby, what is your feeling on that subject?

18 MS. TRIBBY: Your Honor, as you know, we were  
19 not a participant in any of the settlement discussions  
20 and so I have not had a chance to review the Settlement  
21 Agreement that was reached. I would certainly want to  
22 keep open my opportunities to either make oral comments  
23 as you suggested or have an opportunity to question the  
24 panel. However, at this point in time, I would say  
25 that with the exception of Mr. O'Connell's points, I



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1 wouldn't necessarily be planning on questioning all the  
2 witnesses that filed testimony. As long as there are  
3 representatives there to answer questions, that would  
4 be sufficient for AT&T.

5 JUDGE MOSS: Thank you. I want us to be  
6 mindful of what it is that we will be dealing with  
7 here. We'll be dealing with the question of whether  
8 the Stipulation among some of the parties is a basis  
9 upon which to resolve this case. That is the only  
10 question that will be before us on November the 22nd.

11 In the event that the Commission should  
12 decide that it was not satisfied to approve that  
13 Stipulation among some of the parties as a final  
14 resolution of the case, then the case would go forward,  
15 or I should be speaking in the plural, I suppose. The  
16 cases would go forward in the normal path of just  
17 adjudication. The witnesses would appear. The  
18 witnesses would be available for cross-examination and  
19 so forth. This is not that process, and we are  
20 substituting a process by which we will as a first step  
21 and a possible final resolution of the case consider  
22 the Settlement, so at this point, I want to take under  
23 advisement the question of whether counsel will be  
24 permitted to inquire of the panel directly, and I see  
25 three possible outcomes.

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1                   One possible outcome is that no counsel will  
2 be allowed to inquire of the panel. Another  
3 possibility is that all counsel will be allowed to  
4 inquire of the panel. I'm not going to give that right  
5 to some and not to all, and a third possibility is the  
6 submission of written questions to the Bench or  
7 requests for leave to inquire at the November 22nd  
8 hearing itself, which would be then determined from the  
9 Bench.

10                   MS. JOHNSTON: I have a proposed fifth  
11 outcome.

12                   JUDGE MOSS: We're only up to four at the  
13 moment.

14                   MS. JOHNSTON: My suggestion would be that  
15 after counsel for Sprint and AT&T have an opportunity  
16 to evaluate the terms of the Settlement Agreement that  
17 we meet informally and perhaps entertain questions of  
18 counsel concerning the terms of the Settlement either  
19 by phone or in person, and then during their  
20 opportunity to comment, they will be able to make  
21 representations or support certain things or oppose  
22 certain things at the time they make their  
23 presentations.

24                   JUDGE MOSS: I see some merit in that  
25 suggestion. I would like to have the response from

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1 Mr. Heath.

2 MR. HEATH: Thank you, Judge. That option is  
3 acceptable to Sprint, and I made my prior inquiry  
4 mostly because I had not had an opportunity to review  
5 the Stipulation. I spoke with Mr. O'Connell this  
6 morning and he said he had sent it to me via e-mail. I  
7 have not yet received that document, so without being  
8 able to review it, I wanted to make sure that Sprint's  
9 rights to question the proponents of the Settlement  
10 were fully preserved, but once Sprint does get an  
11 opportunity to review that stipulation, I think meeting  
12 with the parties to discuss and determine whether any  
13 questions will need to be asked or arguments put on the  
14 record is fine with me. I hope that answers the  
15 question.

16 JUDGE MOSS: I think that's fully responsive,  
17 and I appreciate that. Ms. Tribby, do you have  
18 anything to say with respect to Ms. Johnston's  
19 suggestion?

20 MS. TRIBBY: I would concur with Mr. Heath  
21 that that would be acceptable to AT&T. One question I  
22 would have, Your Honor, with respect to the scope of  
23 the 22nd is even if counsel are not allowed to ask  
24 questions, if counsel have some objections to the  
25 Settlement Agreement, are you contemplating that they

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1 would be allowed to make a statement with respect to  
2 those concerns at that point in time to allow the  
3 Commission to evaluate those concerns or to have an  
4 opportunity to present those in writing, and I'm not  
5 necessarily anticipating, by the way, that we will have  
6 concerns, but just to the extent that an informal  
7 meeting doesn't evolve, will there be an opportunity  
8 for us to share those with the Commission?

9 JUDGE MOSS: Yes. There will most definitely  
10 be an opportunity for the parties to share any such  
11 concerns. I suspect we will do that orally at the  
12 meeting on the 22nd; although, we can remain  
13 open-minded to the possibility of some sort of a  
14 written statement that would follow fairly quickly on  
15 the heels of that meeting on the 22nd, and Mr. Heath,  
16 with respect to some of your comments, I simply wanted  
17 to assure all parties that affording the parties their  
18 due process rights is the most essential duty that we  
19 fulfill as judges, and Judge Caille and I will  
20 certainly do everything to insure that that occurs, and  
21 Mr. O'Connell, I think you have something.

22 MR. O'CONNELL: I did, Your Honor. I think  
23 Ms. Johnston's suggestion is a good one. We are  
24 definitely committed to communicating with both  
25 intervenors. The fact that they were not part of the

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1 settlement discussions does not on the part of any of  
2 the settling parties' minds preclude them from  
3 discussing, reviewing, and perhaps, if they wish,  
4 joining into the Settlement Agreement.

5         In the telephone conversation that Mr. Heath  
6 and I had this morning, we've already made one change  
7 to the document to reflect his concerns, and we have  
8 sent copies of that to them, and I was informed that at  
9 least one of the other parties has already received  
10 their e-mail version so it's out in the net somewhere,  
11 so we are, I think, interested in pursuing that type of  
12 informal contact on a preliminary basis.

13         JUDGE MOSS: I think that Ms. Johnston's  
14 suggestion has more merit than any of my conceived  
15 outcomes, so I think that's an excellent way to  
16 proceed, and I want to encourage the parties to  
17 continue the process of discussing this among  
18 themselves, and at this point then including the  
19 Intervenors in that process, and to the extent their  
20 concerns can be addressed through informal means, then  
21 that will facilitate our process on the 22nd, so I will  
22 encourage that in the course of settlement has not been  
23 fully executed and submitted, and maybe that there is  
24 some adjustment that can be made to help that process  
25 along that that can be done too.

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1           Of course, we do need to have the document in  
2 inadequate time for the Commissioners to have an  
3 opportunity to review it, so at the same time that I  
4 encourage what I just spoke to, I also encourage us to  
5 get that document finalized and get it in fairly soon  
6 because we're on the 3rd already, so let's do that.

7           Now, is there anything further in connection  
8 with that aspect of it, or can I move on to the next  
9 point, which is what to do about the prefiled  
10 materials.

11           MR. FINNIGAN: I might just offer on that  
12 point, maybe we could set a time now on either the 12th  
13 or 15th to get together informally.

14           JUDGE MOSS: Let's go off the record until  
15 10:15 and let the parties have an opportunity to see if  
16 they can get that resolved, and then, of course,  
17 Mr. Heath and Ms. Tribby stay on the line. They will  
18 want to discuss that with you. We're off the record.

19           (Discussion off the record.)

20           JUDGE MOSS: We're back on the record. Have  
21 the parties had an opportunity to discuss the matter  
22 that we went off the record to discuss and resolve  
23 that? Mr. Finnigan, go ahead and report.

24           MR. FINNIGAN: Yes. We've established a  
25 teleconference to informally go over any questions that

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1 AT&T and Sprint might have for two o'clock Pacific time  
2 on November 16th, and GTE will establish a conference  
3 bridge and notify the parties of the number.

4 JUDGE MOSS: Thank you. Now let us return to  
5 the question of the records that we are going to have  
6 in these proceedings. I have received prefile  
7 testimonies and exhibits in the merger case. We were  
8 proceeding already along a track in that case that was  
9 going to be what sometimes is referred to as a paper  
10 hearing, which is to say we were not anticipating  
11 having live cross-examination in that proceeding, and  
12 we'll turn to the other case in a minute. Do the  
13 parties still contemplate that all of that material  
14 would be part of the record for purposes of the  
15 Settlement? I'll start with the Applicants. With  
16 respect to your testimony, do you expect all of them to  
17 be part of the record?

18 MR. O'CONNELL: We have not discussed that  
19 among the settling parties. I see no reason why not.  
20 It was put in with the contemplation that there was not  
21 going to be a live hearing, so I think it stands on its  
22 own in that regard.

23 JUDGE MOSS: How about for the Staff?

24 MS. JOHNSTON: I would agree.

25 JUDGE MOSS: Mr. ffitch?

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1 MR. FFITCH: Yes, Your Honor.

2 JUDGE MOSS: I apologize. I honestly don't  
3 recall of the top of my head and I don't have my book  
4 here. Did either of the Intervenors sponsor witnesses?  
5 I believe they did.

6 MS. TRIBBY: Yes, Your Honor. AT&T did.

7 JUDGE MOSS: Actually, I misspoke. I have in  
8 front of me the exhibit list that has been prepared, so  
9 I do have the record of that that refreshes my  
10 recollection that we had Witness Stahly for Sprint, and  
11 Levinson and Ward for AT&T. Was that it?

12 MR. HEATH: I believe that's correct.

13 MS. TRIBBY: Yes.

14 JUDGE MOSS: I suppose you may want to  
15 reserve, and I'm not meaning to say that you have to do  
16 that, but until you've had an opportunity to review the  
17 Stipulation, you may not be in a position to decide  
18 whether or not you want those witnesses' testimonies to  
19 be part of the record. Am I guessing right, or tell me  
20 what you think about that? I'll start with you,  
21 Ms. Tribby.

22 MS. TRIBBY: I guess I would presume, and  
23 maybe I'm mistaken, that the testimony would be a part  
24 of the record in this case even if a settlement was  
25 reached.



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1 JUDGE MOSS: We can certainly do that. I  
2 guess I should just back up and say what I'm asking for  
3 is an expression of preference by the parties, so  
4 Ms. Tribby, I understand then you would want the  
5 testimonies by Levinson and Ward and the exhibit by  
6 Levinson to be part of the record.

7 MS. TRIBBY: I think that's right, Your  
8 Honor. Particularly at this point in time having not  
9 reviewed the Settlement Agreement, that would certainly  
10 be my recommendation as this point.

11 JUDGE MOSS: That's what we'll plan on. How  
12 about Mr. Heath; how about Stahly for Sprint?

13 MR. HEATH: Thank you, Your Honor. I would  
14 agree with Ms. Tribby that at this point without having  
15 reviewed the Stipulation that Sprint would like that,  
16 its witness's testimony be part of the record; however,  
17 I would like to defer that decision until after I have  
18 reviewed the Stipulation and after we've had the  
19 opportunity to speak with the Applicants and Staff and  
20 Public Counsel on the 16th.

21 JUDGE MOSS: We'll plan on that, and we'll  
22 reserve the exhibit numbers, and I have previously  
23 marked all the exhibits in this case, I believe, and I  
24 don't want to take full credit for that. There were  
25 other participants in that. In fact, I believe the

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1 Attorney General's office took the initial labor to  
2 prepare the exhibit list and then we refined it  
3 somewhat in our office, and I think at this point we  
4 have it complete, but Judge Caille is distributing the  
5 exhibit list, and I just got a copy of this this  
6 morning myself and printed it off, so I apologize to  
7 Mr. Heath and Ms. Tribby that I did not get this  
8 distributed to you by e-mail or facsimile earlier, but  
9 we'll make amends for that and get you copies of this.

10           What I'm going to ask the parties to do is  
11 simply review this exhibit list and inform me by e-mail  
12 or whatever if there are any mistakes or omissions or  
13 what have you. We did discover an omission as late as  
14 a few days ago.

15           MS. JOHNSTON: There is a numbering problem  
16 on the first page. It should say Page 1 of 2.

17           JUDGE MOSS: We'll take care of that. That's  
18 a template problem.

19           So the parties have that, and we'll see to it  
20 that Sprint and AT&T get copies of the current exhibit  
21 list, which remains informal at this point.

22           I don't think we need to do anything further  
23 on that question with regard to the merger case unless  
24 somebody else has another point on that. It doesn't  
25 appear that there is. Judge Caille, I believe there is

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1 prefile testimony in the access case.

2 JUDGE CAILLE: Yes, there is.

3 JUDGE MOSS: Is there another round of  
4 testimony available?

5 MR. O'CONNELL: GTE filed testimony in that  
6 case.

7 JUDGE MOSS: Did Staff file testimony in that  
8 case? Public Counsel, you're not participating in that  
9 case?

10 MR. FFITCH: We have not filed testimony. I  
11 believe we may be a party of record, but we have not  
12 been active.

13 JUDGE MOSS: The fundamental question is -- I  
14 know that the procedural has been suspended, but was  
15 there another round of testimony scheduled?

16 MR. O'CONNELL: I don't believe so, Your  
17 Honor. The matter was suspended literally just days  
18 before the hearing.

19 JUDGE CAILLE: Right. I think the schedule  
20 for filing testimony, everyone has fulfilled their  
21 obligations and we were ready for hearing.

22 JUDGE MOSS: Then let us carry forward with  
23 the same set of questions we had before which is would  
24 it be the intentions of the parties then to have that  
25 be the record in support of the settlement of that

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1 docket?

2 MR. O'CONNELL: Yes, I believe that's

3 correct.

4 MS. JOHNSTON: Yes.

5 JUDGE MOSS: So I'm hearing yes from GTE, and

6 Mr. Finnigan, you are in concurrence with that for

7 WITA?

8 MR. FINNIGAN: We have no objection to that.

9 JUDGE MOSS: And Staff has also indicated

10 affirmance to that process, so we will have that. We

11 have discussed how we will handle any objections to

12 what the settling parties propose by giving an

13 opportunity for some kind of a statement or questions

14 or what have you by such parties. We will give a full

15 opportunity for that.

16 Again, at this juncture, I don't contemplate

17 we will be having anything in the nature of

18 cross-examination because the panel approach is not

19 really putting witnesses up there to respond with

20 respect to testimony but rather making knowledgeable

21 persons available who can respond to the substantive

22 questions that the Commission may have or the judges

23 may have from the Bench, so that's the sort of process

24 we will have with respect to the two adjudicatory

25 dockets.

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1                   What about this Docket No. UT-991164?

2 Ms. Johnston, are you going to be representing the  
3 Commission for purposes of the proceeding and the  
4 settlement in connection with that docket? How are we  
5 going to --

6                   MS. JOHNSTON: Are you referring to the  
7 Staff's informal review?

8                   JUDGE MOSS: Yes. To be perfectly blunt  
9 about it, although I have looked into it a little bit,  
10 I haven't been able to do more than scratch the surface  
11 about what that proceeding really involves. You  
12 described it as an informal investigation?

13                   MS. JOHNSTON: Informal earnings review.

14                   JUDGE MOSS: What do we need in order to  
15 resolve that docket? Of course, I haven't seen the  
16 Stipulation either. So we're not going to need to  
17 dismiss anything.

18                   MS. JOHNSTON: That's correct.

19                   JUDGE MOSS: Will we need to say anything  
20 about it at all?

21                   MS. JOHNSTON: I don't believe so.

22                   MR. O'CONNELL: The text of the Settlement  
23 Agreement itself addresses a fair number of issues that  
24 relate to the earnings review.

25                   JUDGE MOSS: I'm just thinking in terms of

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1 what our job is going to be as judges, whether we are  
2 going to need to assist the Commission to draft any  
3 sort of an order in connection with that docket. It  
4 doesn't sound to me like there will.

5 MS. JOHNSTON: No.

6 MR. O'CONNELL: The Settlement Agreement  
7 contemplates that no formal docket would be commenced  
8 for that earnings review.

9 JUDGE MOSS: Let me take this line of thought  
10 a step further. There was a mention, I believe, in  
11 your letter, Mr. O'Connell, about the dismissal of the  
12 access charge case. The motion would be to dismiss.

13 MR. O'CONNELL: Yes, Your Honor.

14 JUDGE MOSS: With respect to the merger case,  
15 then a motion would be to approve, subject to the  
16 conditions, terms and so forth of the Stipulation and  
17 Agreement.

18 MR. O'CONNELL: Correct, Your Honor.

19 JUDGE MOSS: So that is what you are looking  
20 toward in terms of a final product, and the Commission  
21 remains open on that until we complete our process and  
22 the Commission has had an opportunity to consider  
23 whether it will approve.

24 MR. O'CONNELL: When you say, you are  
25 looking, I assume you mean all of the settling parties.

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1 JUDGE MOSS: I do, and I direct my comments  
2 to you, but I'm including everyone in that. I've never  
3 dropped into the habit of the royal "you" or the royal  
4 "we," but I do mean to be inclusive.

5 MR. O'CONNELL: That's exactly correct, Your  
6 Honor. The Settlement Agreement contemplates the  
7 filing of a joint motion for dismissal with prejudice  
8 and approval of settlement in the access charge case  
9 and a joint motion for approval of the GTE/Bell  
10 Atlantic merger based on the settlement and conditions  
11 contained therein in the merger case.

12 JUDGE MOSS: Very good. Judge Caille, do you  
13 have any thing further at this point?

14 JUDGE CAILLE: No.

15 JUDGE MOSS: Do any of the parties wish to  
16 bring forward any other business at this point? Is  
17 there any question, misunderstanding, lack of  
18 understanding? I guess you don't know if you're  
19 misunderstanding, do you? That's the nature of it.  
20 Mr. Heath, Ms. Tribby, anything further?

21 MR. HEATH: Not from me, Judge. Thank you.

22 JUDGE MOSS: And I hear nothing from  
23 Ms. Tribby.

24 MS. TRIBBY: Nothing, Your Honor.

25 JUDGE MOSS: I believe that concludes our

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1 business this morning. I thank you all for coming and  
2 conducting this in such a professional way, and I look  
3 forward to the success that you will enjoy, I'm sure,  
4 as you pursue further discussions among all the parties  
5 to the proceedings, and keep me in touch if there is  
6 anything that I need to know about in contemplation of  
7 our gathering on the 22nd, during which time we will  
8 convene with the Commissioners on the Bench, and with  
9 that, thank you, and we're off the record.

10 (Hearing concluded at 10:30 a.m.)

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