

0419

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

In The Matter of the Review of)
Unbundled Loop and Switching Rates) UT-023003
And Review of the Deaveraged Zone) Volume IX
Rate Structure.) Pages 419-437

A pre-hearing conference in the above-entitled matter was held at 9:31 a.m. on Wednesday, March 10, 2004, at 1300 South Evergreen Park Drive, Southwest, Olympia, Washington, before Administrative Law Judge THEODORA MACE.

The parties present were as follows:

QWEST CORPORATION, by Lisa Anderl, Attorney at Law, 1600 Seventh Avenue, Room 3206, Seattle, Washington 98191.

COMMISSION STAFF, by Shannon E. Smith, Assistant Attorney General, 1400 S. Evergreen Park Drive, S.W., P.O. Box 40128, Olympia, Washington, 98504-1028.

COVAD COMMUNICATIONS COMPANY, by Karen Frame, Senior Counsel, 7901 Lowry Boulevard, Denver, Colorado 80230 (via teleconference bridge.)
Barbara L. Nelson, CCR
Court Reporter

0420

1 VERIZON, by Bill Richardson and Marc
2 Blitz, Attorneys at Law, Wilmer, Cutler & Pickering,
3 2445 M Street N.W., Washington, D.C. 20037-1420, and
4 Chris Huther, Attorney at Law, Preston, Gates, Ellis
5 & Rouvelas Meeds, 1735 New York Avenue, N.W.,
6 Washington, D.C. 20006 (via teleconference bridge).

7 WEBTEC, by Arthur A. Butler, Attorney
8 At Law, Ater Wynne, 5450 Two Union Square, 601 Union
9 Street, Seattle, Washington, 98101 (via
10 teleconference bridge).

11 MCI, by Michel Singer Nelson, Attorney
12 At Law, 707 17th Street, Suite 4200, Denver,
13 Colorado, 80202 (via teleconference bridge.)

14 AT&T OF THE PACIFIC NORTHWEST, INC., XO
15 WASHINGTON, INC, PAC-WEST, INC., by Gregory J. Kopta,
16 Attorney at Law, Davis, Wright, Tremaine, 2600
17 Century Square, 1501 Fourth Avenue, Seattle,
18 Washington, 98101.

19

20

21

22

23

24

25

0421

1 JUDGE MACE: Let's be on the record in the
2 Matter of the Review of Unbundled Loop and Switching
3 Rates, the Deaveraged Zone Rate Structure, Unbundled
4 Network Elements, Transport and Termination,
5 Recurring Costs. This is Docket Number UT-023003.
6 Today's date is March 10th, 2004, and we're convened
7 at the offices of the Washington Utilities and
8 Transportation Commission in Olympia, Washington, for
9 a pre-hearing conference to -- primarily to discuss
10 scheduling of this proceeding.

11 My name is Theodora Mace. I'm the
12 Administrative Law Judge who's been assigned to hold
13 hearings in this case. I'd like to take the oral
14 appearances of counsel now, and I'd like to begin
15 with Qwest.

16 MS. ANDERL: Thank you, Your Honor. Lisa
17 Anderl, representing Qwest.

18 JUDGE MACE: And let's turn next to -- well,
19 whoever's in the room.

20 MS. SMITH: Shannon Smith, for Commission
21 Staff.

22 JUDGE MACE: Is your microphone on?

23 MS. SMITH: Shannon Smith, for Commission
24 Staff.

25 JUDGE MACE: Thank you. Let's turn next to

0422

1 the counsel on the conference bridge. For AT&T?

2 MR. KOPTA: Gregory Kopta, of the Law Firm
3 Davis, Wright, Tremaine, LLP.

4 JUDGE MACE: MCI.

5 MS. SINGER NELSON: Michel Singer Nelson,
6 appearing on behalf of MCI.

7 JUDGE MACE: And Verizon.

8 MR. RICHARDSON: Bill Richardson and Marc
9 Blitz, Wilmer, Cutler, Pickering.

10 MR. HUTHER: Chris Huther, Preston, Gates
11 and Ellis, Rouvelas Meeds.

12 JUDGE MACE: Mr. Huther, we can hardly hear
13 you.

14 MR. HUTHER: Sorry. Can you hear me better
15 now?

16 JUDGE MACE: Yes, I think that's a little
17 better.

18 MR. HUTHER: Again, it's Chris Huther, with
19 the Law Firm Preston, Gates, Ellis and Rouvelas
20 Meeds.

21 JUDGE MACE: Thank you. Are there any other
22 appearances? Anyone else on the conference bridge
23 who wants to enter an appearance today? Thank you.
24 I hear no response, so let's go ahead with our
25 agenda.

0423

1 We have only an hour for this prehearing
2 conference, and so I may be speeding through some
3 items. If it turns out that we need more time, I can
4 perhaps schedule more time later on, but I think we
5 can accomplish what we need to today without an
6 extension of the time.

7 I want to first turn to the issue of
8 scheduling. And I received a motion from Verizon
9 requesting an amendment of the schedule. I received
10 responses from AT&T, Staff, and MCI. I'm not going
11 to hear argument on the motion at this point. I have
12 received -- I've read all of the documents that have
13 been filed and I have considered them and looked at
14 the Commission's overall calendar and have conferred
15 with the Commission and, having done that, I'm going
16 to make a ruling today that the schedule for hearing
17 will not be extended.

18 We will still hold the hearings as they're
19 currently scheduled, May 24th to June 4th. Having
20 said that, I am going to propose the following
21 schedule, but there could be some minor adjustments
22 to it, depending on what the parties' positions are
23 on it. But, again, because of the overall
24 Commission's schedule, they can most likely only do
25 minor adjustments.

1 April 16th would be the date for filing
2 responsive testimony, for example, the Verizon
3 response to the HAI model and also the responses to
4 Staff's deaveraging proposal. May 7th would continue
5 to be the date for the rebuttal filing. May 19th
6 would be the date for a pre-hearing conference.

7 I have added the date May 17th, upon which
8 all cross-examination exhibit lists, the order of
9 parties and witnesses, the order of cross and
10 cross-examination estimates would have to be
11 submitted. And then May 24th through June 4th would
12 be the evidentiary hearing.

13 And I wanted to establish a briefing
14 schedule at this point, so that the Commission can
15 also determine what its post-hearing process will be,
16 and the schedule that I'm proposing is July 1st for
17 initial post-hearing briefs, and July 22nd for reply
18 briefs. There is some wiggle room in this schedule,
19 but not much. And we do have to hold to the current
20 hearing schedule.

21 So I wanted to give the parties a little bit
22 of time to digest what I've just recited, and if
23 anyone has any comments or would seek to make some
24 minor changes to the schedule, I'd be willing to hear
25 them. Does anybody need me to repeat the schedule

0425

1 that I've recited? Anyone on the conference bridge?

2 MR. RICHARDSON: Your Honor, this is Bill
3 Richardson. One concern that Verizon has --

4 JUDGE MACE: I can't hear you, Mr.
5 Richardson. I'm sorry. Can you speak up?

6 MR. RICHARDSON: Sure. Can you hear me now?

7 JUDGE MACE: Yes.

8 MR. RICHARDSON: One concern that Verizon
9 has, as I understand it, is that as a result of this
10 schedule, we've cut the surrebuttal times from six
11 weeks to three weeks, and we're concerned about that
12 because Verizon has a new model, VZ Cost. We
13 anticipate we're going to have new arguments that
14 we're going to have to deal with in response to that
15 from AT&T and Staff. And it's my understanding, in
16 California, that AT&T is intending to rerun VZ Cost.
17 I don't know whether it's intending to do that here,
18 but if so, that would be a very, very difficult time
19 period in which to be able to prepare a surrebuttal.

20 JUDGE MACE: I guess I'm not certain what
21 you're referring to. We don't have any provision in
22 the schedule for surrebuttal.

23 MR. RICHARDSON: I'm sorry, rebuttal. The
24 third round --

25 JUDGE MACE: I see.

0426

1 MR. RICHARDSON: -- of filing. I'm sorry.

2 JUDGE MACE: Well, as I said, there is some
3 wiggle room in the schedule, and if you could come to
4 agreement with the parties about some continuance of
5 the rebuttal filing date, I think that would be fine
6 with the Commission. I think the Commission's main
7 concern is to hold to the current hearing dates.
8 However, if you move the rebuttal filing date further
9 down into May, then you're butting up against
10 preparation for hearing. But if you have a date that
11 you'd like to suggest for the rebuttal filing date
12 and the parties agree, then we might be able to
13 adjust that.

14 MR. RICHARDSON: Well, Your Honor, one of
15 the things in your order or your notice was the
16 suggestion that you'd possibly slightly be altering
17 the beginning date of the hearing. Was that to push
18 it back or --

19 JUDGE MACE: Yes, thank you for referring to
20 that. As it turns out, at this point, that's become
21 a moot issue. The Commission does not require that
22 day for preparation for the hearing, so we can begin
23 on May 24th. But, actually, that does bring up the
24 subject of whether or not, since Verizon is
25 essentially the main party in interest in this case,

0427

1 if there still is a need for the full two weeks of
2 hearing, and only you can determine that, because
3 you're the ones who are going to have to conduct the
4 cross-examination, but of course, although it's true,
5 the Commissioners have questions, as well. But if
6 you, as parties, feel that you don't need the full
7 two weeks, perhaps there could be some adjustment
8 there.

9 I think when I said that we want to hold
10 fast to the hearing dates, the main thing is that we
11 be done by June 4th, and that whatever hearing is
12 held occur during that May 24th to June 4th period.

13 MS. ANDERL: Your Honor, can you tell us
14 what -- which week the Commission has an open
15 meeting?

16 JUDGE MACE: Yes, I believe I can. There's
17 an open meeting on May 26th.

18 MS. ANDERL: Okay.

19 JUDGE MACE: And then there's no open
20 meeting until July 28th.

21 MS. ANDERL: And --

22 JUDGE MACE: There's an open meeting May
23 12th, to the extent that that's appropriate.

24 MS. ANDERL: And then there would be no
25 hearings on Monday, the 31st, because of the Memorial

0428

1 Day holiday?

2 JUDGE MACE: I don't know that that's the
3 case.

4 MS. ANDERL: Okay. That's why I was asking.

5 JUDGE MACE: Actually, I do not know that.
6 I have not queried the Commissioners about that. And
7 there are times, when it appears a hearing needs to
8 be held, the Commissioners would go ahead and hold a
9 hearing on a holiday. So I don't know the answer to
10 that question.

11 Well, is there any other input about this
12 at this time? I don't hear any response, then. Let
13 me just leave it with the parties that if you want to
14 make some adjustment to the schedule, you know where
15 there isn't any room for adjustment and you know
16 where there is room for adjustment. So if you can
17 come to some agreement with the parties about how you
18 want to change the schedule perhaps to better
19 accommodate a rebuttal filing, then you know what you
20 have to do. Otherwise, this is the schedule I'm
21 going to put in the prehearing conference order. All
22 right.

23 MR. RICHARDSON: Your Honor, this is Mr.
24 Richardson again.

25 JUDGE MACE: Yes.

1 MR. RICHARDSON: We would like the
2 opportunity to talk to the other parties about that.
3 Would it be appropriate to do that now, to give us a
4 few minutes to do that?

5 JUDGE MACE: I can give you a few minutes to
6 do that now, sure. How about 10 minutes? Do you
7 think that would be enough?

8 MR. RICHARDSON: That would be great.

9 JUDGE MACE: All right. Why don't we do
10 that. I'll leave the room and let you confer about
11 it. We're adjourned for 10 minutes.

12 (Recess taken.)

13 JUDGE MACE: Let's go back on the record.
14 Let me indicate that the parties have discussed
15 scheduling and have suggested that the rebuttal
16 filing be slipped to May 12th, that the submission of
17 cross-examination exhibit lists, et cetera, be
18 slipped to May 18th, and that the pre-hearing
19 conference take place on May 20th.

20 And the only other addition or change to the
21 schedule is the agreement of the parties that, after
22 the May 12th rebuttal filing, there will be five
23 business day turnaround on discovery responses. Is
24 that correct?

25 MR. KOPTA: That's correct, Your Honor.

0430

1 JUDGE MACE: Then, otherwise, the schedule
2 remains as I recited earlier to the parties. And I
3 have indicated to the parties that if there's any --
4 I have to confer with the Commission about the May
5 18th and May 20th dates as to whether or not I can
6 actually make the changes that are proposed.

7 Then let's continue on to the next issue
8 that I want to raise, and that has to do with David
9 Gabel, who is the Commission adviser on this case.
10 And he has asked me to discuss with the parties
11 whether or not during the hearings, in that May/June
12 time frame, Verizon would be able to provide a few
13 hours tutorial with regard to running their model and
14 whether the parties would have any objection to that.

15 So number one, Mr. Richardson, would it be
16 possible for Verizon to provide Mr. -- I guess Dr.
17 Gabel some opportunity to learn about running the
18 model?

19 MR. RICHARDSON: Your Honor, do you mean at
20 some time other than during the hearing or --

21 JUDGE MACE: I assume so. I have only a
22 note from him, and that's what he's asking.

23 MR. RICHARDSON: We would have no problem
24 with that. In fact, if it were -- if it made more
25 sense to Dr. Gabel, we could do that in advance of

0431

1 the hearing, if that would make it -- it might be
2 more educational for him to have that before the
3 hearing began.

4 JUDGE MACE: Does any party have any
5 objection to Dr. Gabel pursuing this with Verizon so
6 that he could receive a tutorial either before the
7 hearing or during the hearing?

8 MR. KOPTA: This is Greg Kopta. We don't
9 have any objection to that, although we would like to
10 have one of our representatives be present at the
11 time that that happens, for our education, as well as
12 to be present when Dr. Gabel is receiving whatever
13 information he receives from Verizon.

14 JUDGE MACE: Does Verizon have any problem
15 with that?

16 MR. RICHARDSON: No, Your Honor. As I'm
17 thinking about this, though, I'm wondering whether it
18 wouldn't be better to do it before the hearing, not
19 just for Dr. Gabel, but also for -- because obviously
20 the rest of us will be pretty engaged in the hearing
21 process.

22 JUDGE MACE: All right.

23 MS. SMITH: This is Shannon Smith, for
24 Commission Staff. I would echo Mr. Kopta's comment,
25 that we would want to have the opportunity for

0432

1 someone from Commission Staff to be present while
2 Verizon is providing information to Dr. Gabel
3 regarding VZ Cost.

4 JUDGE MACE: Any objection, Mr. Richardson?

5 MR. RICHARDSON: No, Your Honor.

6 MS. SINGER NELSON: Your Honor, this is
7 Michel Singer Nelson. MCI would have the same
8 request. We would have no objection as long as we
9 would be able to be present during any kind of
10 instruction from Verizon to Dr. Gabel.

11 JUDGE MACE: Okay. I think what I would do,
12 then, is talk to Dr. Gabel, explore what time he has
13 in advance of the hearing for this to take place, and
14 then provide some way that the parties could receive
15 notice of it so that everyone could know when it's
16 going to take place and could send a representative,
17 if they wish to do so.

18 Dr. Gabel has also asked whether or not, if
19 he has problems running either the HAI or the VZ
20 models, whether he would -- whether the parties would
21 object to his contacting Verizon or AT&T, MCI for
22 assistance. This would probably be either during the
23 hearing or after the hearing. And I'd like to hear
24 from the parties about that.

25 MR. KOPTA: Your Honor, this is Greg Kopta.

0433

1 We would have no objection, although we would like to
2 know when any such contact is made, if it's with
3 Verizon, and certainly if it's made with us, at least
4 a notification of the information that was requested
5 and provided so that we can all be fully aware of any
6 contacts that occur between Dr. Gabel and any of the
7 individual parties.

8 MR. RICHARDSON: Verizon would agree, Your
9 Honor.

10 JUDGE MACE: Ms. Smith.

11 MS. SMITH: The Commission Staff agrees, and
12 we think that that kind of information would be more
13 a matter of necessity than just a preference on the
14 part of the parties.

15 JUDGE MACE: Very well. I think that
16 accomplishes the -- what I wanted to with regard to
17 Dr. Gabel.

18 I want to turn briefly to the question of
19 the issues list. A question has been raised whether
20 or not the issues in this case still correspond to an
21 issues list that went out with, I believe, the Fourth
22 Supplemental Order in this proceeding. Qwest has
23 been essentially eliminated from the case, except for
24 a few limited issues, and there may perhaps be some
25 other issues that have been removed.

0434

1 What I want to propose is that I send out a
2 notice to the parties with the issues list from the
3 Fourth Supplemental Order and ask the parties to
4 respond what they -- whether or not any of the issues
5 are no longer in play, and then I suppose if there's
6 some objection or problem with regard to that, we can
7 address it.

8 Does anyone have any comment on this or
9 suggestions with regard to how we can approach this,
10 other than what I've suggested?

11 MS. SMITH: Your Honor, this is Shannon
12 Smith, for Commission Staff. I think that that's a
13 very good idea. I would request, though, that any
14 responses to that perhaps be due in a couple of
15 weeks, as opposed to right away, or 10 days or so.
16 Tom Spinks, our expert for most of the issues in this
17 matter, is out of town at the moment, so I'd like to
18 have a little time to have him take a look at that
19 and go through the issues. So if it was something
20 that you had wanted to accomplish, say, by the end of
21 the week or early next week, I would just ask that
22 you give us a little more time than that.

23 JUDGE MACE: I guess, just preliminarily, I
24 don't have a problem with that. It seems rather odd
25 to be discussing what issues are in play when the

0435

1 testimony is being filed, I know, but in order to
2 clarify and make sure that we have a good list, I
3 think it would be helpful to do this.

4 Does anyone have any problem with delaying
5 the response to this, as Ms. Smith suggests? Does
6 anyone have any problem with this per se? Okay. I
7 don't hear any response. Then that's what I'll do.

8 I'll send out a notice and ask the parties
9 to respond in 10 days or two weeks, and we'll see
10 what we can --

11 MS. SMITH: I'm sure 10 days is plenty long.

12 JUDGE MACE: Okay. Is there anything else
13 that anyone wants to raise at this point? We seem to
14 have managed to finish most of what I had as an
15 agenda well prior to the hour.

16 Oh, I know. There is something I wanted to
17 find out. Mr. Richardson, you have someone else with
18 you on the conference bridge, and I didn't catch the
19 name. Could you tell me who that is?

20 MR. RICHARDSON: Marc, M-a-r-c, Blitz,
21 B-l-i-t-z.

22 JUDGE MACE: Thank you.

23 MS. FRAME: And Your Honor, this is Karen
24 Frame again, with Covad Communications. I just want
25 to make sure that we were here for the record.

0436

1 JUDGE MACE: Yes. And Mr. Butler, as well.

2 MS. FRAME: Thank you.

3 JUDGE MACE: We have that. We've noted
4 that. Is there anyone else on the conference bridge
5 who has not yet entered an appearance? Sounds like
6 there isn't anyone else. Is there anything else that
7 the parties want to raise at this point?

8 MS. ANDERL: Your Honor, Lisa Anderl. I've
9 just been sitting here having second thoughts about
10 whether Qwest ought to go first, because Qwest is not
11 advocating anything in this case. Qwest isn't
12 advocating any changes to the existing rate
13 structure. I don't have any problem with Qwest's
14 witnesses going at the beginning of the hearing, but
15 I do, the more I think about it, feel strongly that
16 perhaps they should follow Staff's witnesses on this
17 same topic.

18 And that's something that I just want to
19 note for the record. I'll certainly talk to Ms.
20 Smith about it. But before I had said
21 unconditionally we have no problem going first, and I
22 would just like to throw that little caveat in there.

23 JUDGE MACE: Surely. There's still some
24 time before hearing, and I'm hoping you'll talk about
25 how this will play out.

0437

1 MS. ANDERL: We will.

2 JUDGE MACE: All right. If there's nothing
3 else, then, we're adjourned. Thank you very much.

4 (Proceedings adjourned at 10:14 a.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25