

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 In the Matter of the Joint)
 Application of)
 4)
 VERIZON COMMUNICATIONS INC.,) DOCKET NO. UT-050814
 5 and MCI, INC.) Volume III
) Pages 76 - 107
 6 For Approval of Agreement)
 and Plan of Merger)
 7 -----

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9 A prehearing conference in the above matter
 10 was held on October 24, 2005, at 10:32 a.m., at 1300
 11 South Evergreen Park Drive Southwest, Olympia,
 12 Washington, before Administrative Law Judge C. ROBERT
 13 WALLIS.

14

The parties were present as follows:

15

VERIZON COMMUNICATIONS, INC., by CHARLES H.
 16 CARRATHERS III (via bridge), Vice President and General
 Counsel, 600 Hidden Ridge, HQE02H45, Post Office Box
 17 152092, Irving, Texas 75015-2092; telephone, (972)
 718-2415.

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MCI, INC., by ARTHUR A. BUTLER (via bridge),
 19 Attorney at Law, Ater Wynne, 601 Union Street, Suite
 5450, Seattle, Washington 98101-2327; telephone, (206)
 20 623-4711.

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MCI, INC., by MICHEL SINGER NELSON (via
 bridge), Senior Attorney, 707 17th Street, Suite 4200,
 22 Denver, Colorado 80202; telephone, (303) 390-6106.

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24 Kathryn T. Wilson, CCR

25 Court Reporter

0077

1 INTEGRA TELECOM OF WASHINGTON, INC, by JOHN
2 (JAY) P. NUSBAUM (via bridge), Associate Regulatory
3 Attorney, 1201 Northeast Lloyd Boulevard, Suite 500,
4 Portland, Oregon 97232; telephone, (503) 453-8000.

5 WASHINGTON UTILITIES AND TRANSPORTATION
6 COMMISSION, by JONATHAN THOMPSON (via bridge),
7 Assistant Attorney General, 1400 South Evergreen Park
8 Drive Southwest, Post Office Box 40128, Olympia,
9 Washington 98504-0128; telephone, (360) 664-1225.

10 PUBLIC COUNSEL, by SIMON J. FFITCH (via
11 bridge), Assistant Attorney General, 900 Fourth Avenue,
12 Suite 2000, Seattle, Washington 98164-1012; telephone,
13 (206) 389-2055.

14 COVAD COMMUNICATIONS COMPANY, by GREGORY T.
15 DIAMOND (via bridge), Senior Counsel, 7901 Lowry
16 Boulevard, Denver, Colorado 80230; telephone, (720)

17 670-1069.

18 XO WASHINGTON, INC., by GREGORY J. KOPTA (via
19 bridge), Attorney at Law, Davis Wright Tremaine, 1501
20 Fourth Avenue, Suite 2600, Seattle, Washington
21 98101-1688; telephone, (206) 628-7692.

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

2 JUDGE WALLIS: This is a prehearing
3 conference in the matter of Commission Docket
4 UT-050814, which concerns the joint petition of Verizon
5 Communications, Inc., and MCI, Inc., for approval of an
6 agreement and a plan of merger. This conference is
7 being held in Olympia, Washington, on October 24, 2005,
8 pursuant to due and proper notice to all interested
9 parties.

10 I would like to identify the appearances
11 today. I will note for the record that all counsel are
12 appearing on the Commission's bridge line, and let's
13 begin with the Companies, Verizon. Just identify your
14 name as counsel. That would be sufficient. For
15 Verizon?

16 MR. CARRATHERS: Charles Carrathers, counsel
17 for Verizon.

18 JUDGE WALLIS: Thank you, Mr. Carrathers.
19 Could you pull that microphone closer to your mouth and
20 keep your voice up so we can hear? Our PA system in
21 the hearing room is calibrated for a modest crowd, and
22 looking out at all those empty chairs, sometimes the
23 automatic level doesn't operate quite right when there
24 are fewer people in the room. For MCI?

25 MR. BUTLER: Arthur A. Butler.

0079

1 MS. SINGER NELSON: Michel Singer Nelson.

2 JUDGE WALLIS: Which of you is lead counsel,
3 please?

4 MS. SINGER NELSON: I am for this call.

5 JUDGE WALLIS: For Public Counsel?

6 MR. FFITCH: Simon ffitch for Public Counsel,
7 Your Honor.

8 JUDGE WALLIS: For Integra?

9 MR. NUSBAUM: Jay Nusbaum for Integra
10 Telecom.

11 JUDGE WALLIS: For Covad?

12 MR. DIAMOND: Greg Diamond for Covad.

13 JUDGE WALLIS: For XO?

14 MR. KOPTA: Gregory J. Kopta.

15 JUDGE WALLIS: For Commission staff?

16 MR. THOMPSON: Jonathan Thompson.

17 JUDGE WALLIS: Is there any other party
18 present today on the bridge line? Let the record show
19 there is no response. I would like to begin with the
20 request for withdrawal of Covad. Mr. Diamond, do you
21 have any words that you would like to say at this time
22 with regard to that request?

23 MR. DIAMOND: No, Your Honor, I do not.

24 JUDGE WALLIS: Is there any side agreement or
25 arrangement that the Companies request for withdrawal?

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1 MR. DIAMOND: There is an understanding that
2 was reached between Covad and Verizon regarding
3 withdrawal, but nothing that would require Commission
4 approval.

5 JUDGE WALLIS: Could you briefly describe the
6 nature of that?

7 MR. DIAMOND: The parties have agreed to -- I
8 can only give you a high level because I don't have
9 specific authority to make any additional exposures
10 about it, but one is that the parties, MCI and Verizon,
11 had agreed at a high level to allow a commercial
12 transaction between Covad and MCI to come forward, and
13 then secondly, Verizon specifically has agreed to enter
14 into an amendment to its interconnection agreement with
15 Covad that will address the question of the team member
16 modification pursuant to the FCC's Triennial Review.

17 JUDGE WALLIS: Very well. For Verizon, do
18 you have any comments?

19 MR. CARRATHERS: No, Your Honor.

20 JUDGE WALLIS: For MCI?

21 MS. SINGER NELSON: No, Your Honor.

22 JUDGE WALLIS: Does any other party have any
23 comment; Commission staff?

24 MR. THOMPSON: No comment from Commission
25 staff.

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1 JUDGE WALLIS: We will take that request
2 under advisement --

3 MR. FFITCH: Your Honor, I believe it would
4 be appropriate for the agreement between Covad and
5 Verizon, MCI being made a matter of record in the
6 proceeding, whether or not it's subject to Commission
7 approval.

8 MR. DIAMOND: Your Honor, I'll follow up on
9 Mr. ffitich's request. I don't know whether the
10 parties' understanding has actually been reduced to a
11 formal agreement of any kind other than the amendment
12 to the interconnection agreement that I mentioned
13 specifically, but I will follow up on that promptly and
14 give you an answer. I don't know if Mr. Carrathers has
15 any idea whether it's been reduced to a formal
16 agreement or not.

17 MR. CARRATHERS: I do not.

18 MR. DIAMOND: I have not either, Your Honor,
19 so that's why I have limited information. I apologize
20 for that.

21 JUDGE WALLIS: Is it your intention to submit
22 any document that relates to this arrangement?

23 MR. DIAMOND: I will see if I can do that.
24 It will probably depend upon consent from both MCI and
25 Verizon, which I believe there are other persons other

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1 than counsel on the line that are actually handling
2 that.

3 JUDGE WALLIS: With that, Mr. Diamond, if you
4 choose to absent yourself from the remainder of the
5 proceeding, you may do so.

6 MR. DIAMOND: I think I will remain on the
7 call, if you don't mind.

8 JUDGE WALLIS: Very well. The settlement
9 proposal that the parties have submitted is what is
10 called under the Commission rules a "multiparty
11 settlement," and I would like to discuss briefly the
12 process for review of that document.

13 There has been some discussion in the
14 exchange of electronic mail among the parties and
15 between the Commission and the parties. I would like
16 to make sure that everybody is on the same wavelength
17 and that the process for the hearing next week is clear
18 to all.

19 Mr. Ffitch, you, I believe, make the most
20 specific suggestion for process, and I did not hear any
21 dissent to that subject. Would you care to identify
22 your vision of the process for the hearing?

23 MR. FFITCH: Thank you, Your Honor. I'm not
24 necessarily representing that there is no dissent, but
25 we do have a proposal that we sent out by e-mail on

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1 Friday morning last week, and I will just walk through
2 that quickly.

3 Public Counsel has no objection to excusing
4 witnesses Canny and Koenders from appearing at the
5 evidentiary hearing. Next, we recommend starting the
6 hearing on November 1st rather than on Monday the 31st,
7 and then if we would need additional time, depending on
8 cross-estimates, we would suggest slightly longer
9 hearing days.

10 Getting to sort of the guts of the proposal
11 for the hearing itself, we would recommend using the
12 same approach that was used last week in the Avista
13 multiparty settlement hearing. Specifically, the
14 settlement panel would be seated. One or two
15 representatives of the settling parties would provide a
16 brief statement, an overview describing the settlement
17 and the basis for the agreement. The Commissioners
18 could at their option ask questions, of course. The
19 panel would not be tendered for cross.

20 After the panel, each witness who has been
21 identified for cross-examination in advance of the
22 hearing would be called separately in the normal
23 fashion and thus could be examined on any of their
24 testimony in the case or on the narrative statement or
25 the settlement document.

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1 And then in general, we had proposed the
2 order of witnesses would be Verizon, MCI, Staff,
3 settling intervenors, if there are any witnesses for
4 them that were being called for cross, and then
5 finally, Public Counsel and XO witnesses, who are
6 opposing the settlement.

7 We had previously, Your Honor, indicated that
8 our witnesses had a travel preference for Wednesday,
9 November 2nd, and we had asked to have a date certain
10 for their appearance on that date. I don't believe we
11 had, to my knowledge, any objections to that proposal,
12 and they have now made their travel arrangements for
13 Wednesday, November 2nd.

14 In our view, Your Honor, that means that by
15 virtue of that, it may be that other witnesses for the
16 proponents of the settlement would inevitably come
17 after our witnesses, and we have no objection to that
18 if it's necessary to complete the cross-examination.

19 We do, Your Honor, object to the notion,
20 however, of having rebuttal witnesses in the case
21 designated as such would who effectively wait until all
22 testimony of the proponents was finished and then
23 appear as a rebuttal witness. We don't believe that's
24 consistent with this commission's practice in hearings,
25 and we are concerned it may give multiple bites to the

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1 apple to the parties in the case who are the multiparty
2 proponents.

3 The only other item, Your Honor, is the
4 briefing schedule, just to finish the overview. Public
5 Counsel has a conflict with another matter with the
6 briefing date, also on November 14th. That's the
7 Avista case, which I'm also lead counsel, and we would
8 request to resolve that conflict in this case the
9 Commission set the briefs for just one round of briefs
10 and that the single brief be due on November 22nd by
11 electronic filing with hard copies due on November
12 23rd. That completes the recommendation that we had
13 sent in last week and sent around to the parties.

14 JUDGE WALLIS: Thank you, Mr. ffitch. Let's
15 take these items one at a time. First of all, excusing
16 the witnesses Canny and Koenders, is there any
17 objection?

18 MR. THOMPSON: Your Honor, I would just make
19 one observation about that. One of the conditions in
20 the Proposed Settlement, Item No. 4, really was an item
21 that was advocated by Mr. Koenders and Integra, and he
22 is probably best able to speak to that particular
23 condition if either the ALJ or the Commissioners have
24 questions about that, so just to point that out for the
25 Commission's consideration.

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1 JUDGE WALLIS: Would that person be available
2 to respond to questions on the first day of the
3 hearing?

4 MR. NUSBAUM: If that's necessary, he
5 certainly would be available to be part of the
6 settlement panel. Unless I'm mistaken, that's what I'm
7 hearing, that he would be available as part of the
8 settlement panel but not that any party has
9 cross-examination for him.

10 JUDGE WALLIS: Does any party anticipate
11 cross-examination of that witness? Let the record show
12 there is no response. So it would be the question of
13 whether the Commission has any questions, and I do not
14 believe so at this point. However, I would ask that
15 the witness be prepared to appear unless we notify the
16 witness that presence would not be required. Would
17 that be satisfactory, Mr. Nusbaum?

18 MR. NUSBAUM: That would, Your Honor. That's
19 fine.

20 JUDGE WALLIS: Is there any anticipation that
21 Witness Canny would you required?

22 MR. FFITCH: Not for Public Counsel, Your
23 Honor.

24 JUDGE WALLIS: Let the record show there is
25 no response, and barring some review of the proposal

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1 and the proposed testimony, we will not anticipate the
2 presence of that witness. My assumption is -- let me
3 check this -- the testimony of both witnesses would be
4 received by stipulation; is that correct?

5 MR. NUSBAUM: That's what we've been
6 anticipating, Your Honor.

7 JUDGE WALLIS: Is there any objection to
8 that?

9 MR. FFITCH: Not from Public Counsel.

10 JUDGE WALLIS: Let the record show there is
11 no stated objection.

12 JUDGE WALLIS: As to the start date of the
13 hearing, is there any objection to beginning at 9:30
14 a.m. on November 1st rather than the afternoon of
15 October 31st? Let the record show there is no
16 objection, and we will serve a notice of hearing that
17 acknowledges that change in schedule.

18 Mr. ffitch has proposed that to the extent
19 more time than three days is necessary that we do our
20 best to accommodate that through extended days; that
21 is, a longer time each day. Is there any objection to
22 that anticipated procedure? Let the record show there
23 is no stated objection?

24 In terms of witness scheduling and the
25 scheduling of Public Counsel and XO witnesses on

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1 November 2nd, is there any objection to that?

2 MR. KOPTA: Your Honor, I don't know that we
3 had specific need to have our witness appear on that
4 Wednesday. That was certainly Public Counsel's witness
5 scheduling issue. I don't know that as a practical
6 matter it will come up, but our witness certainly will
7 be available on that Wednesday if in the normal order
8 of things he would be called to testify.

9 JUDGE WALLIS: Very well. So for Public
10 Counsel witnesses, we will be prepared to take those
11 witnesses out of order, if necessary, and to do our
12 best to get them on and off the stand on November 2nd.

13 MR. CARRATHERS: Your Honor, our witnesses
14 will, of course, start on Tuesday, and we would ask
15 that if at all possible instead of breaking up our
16 presentation and putting on some witnesses and then
17 Public Counsel's and then XO's and then ours, if the
18 schedule were such that we could finish up if we had to
19 go into, let's say, Wednesday, finish up in the
20 morning, if there were sufficient time to put Public
21 Counsel's witnesses on, we would prefer to do that.

22 JUDGE WALLIS: Yes, that would be my
23 preference as well. Sometimes when we break up the
24 examination, it becomes difficult for people to follow
25 the train, and it is much preferable to proceed in the

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1 manner you have suggested.

2 Related to that, you in one of the e-mail
3 exchanges ask that rebuttal witnesses be presented
4 following other witnesses. Could you describe what
5 your intention was with that request?

6 MR. CARRATHERS: We agree with, and I think
7 it was Greg Kopta's e-mail, where initially, we would
8 provide our witnesses. They would be available for
9 cross on both direct and rebuttal. Should one of the
10 nonsettling parties, either Public Counsel or XO, when
11 their witnesses are on, make some statement or claim,
12 for example, in response to a Commission question and
13 it wasn't in their prefiled testimony, we would, of
14 course, like an opportunity to briefly call rebuttal
15 witnesses if need be. I think it was Mr. Kopta in his
16 e-mail that spelled out that procedure, and that's what
17 we are proposing. We are now proposing two bites at
18 the apple.

19 JUDGE WALLIS: With that understanding that
20 Verizon and MCI would in the normal course of events
21 have the opportunity to request leave to present
22 rebuttal in limited situations such as that, is there
23 any objection to that procedure?

24 MR. FFITCH: Your Honor, with the
25 understanding that we are not going beyond or expanding

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1 the proponents' right, which parties have in any
2 proceeding, to make showing that there is a good cause
3 for being permitted to bring rebuttal witnesses onto
4 the stand, we would have no objection.

5 The observation is that that is a narrowly
6 applied opportunity and that in general, the
7 expectation is that issues will be addressed through
8 cross-examination in the normal course. Only in the
9 special circumstances that the Companies are able to
10 demonstrate would they be allowed to bring back
11 rebuttal witnesses, and I say that because the whole
12 nature of the case is for the proponents to lay out and
13 discuss their view of why the settlement is
14 appropriate, and then our witnesses will, by
15 definition, be talking about their testimony and their
16 different views.

17 So when our witnesses are being
18 cross-examined, by definition, they are going to be
19 discussing their views of the pros and cons of the
20 settlement proposal as well as the pros and cons of our
21 alternative suggestion. So in our view, that would not
22 automatically create the right to put on rebuttal
23 witnesses.

24 MR. KOPTA: Your Honor, we certainly concur
25 in Mr. ffitch's statements, and I would clarify that

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1 the e-mail that I sent out, my contemplation was that
2 there might be an occasion for rebuttal witnesses if
3 there were a provision for either our witness or Public
4 Counsel's witness prior to them giving any testimony on
5 cross-examination to make some kind of a statement on
6 the settlement.

7 I have not proposed that there be such a
8 statement nor have I heard anyone else propose that, so
9 certainly with respect to what Mr. ffitch was saying,
10 our contemplation would be that unless there was
11 something unusual that happened during
12 cross-examination that there would be no occasion for
13 there to be a rebuttal witness, at least as the
14 procedure has been contemplated today.

15 JUDGE WALLIS: Do any others wish to be
16 heard? I believe there is a common understanding, and
17 with that understanding, the process that
18 Mr. Carrathers identified and clarified is supported by
19 Mr. ffitch's and Mr. Kopta's statements, and that will
20 be the procedure that we will use in this docket.

21 The briefing schedule --

22 MR. CARRATHERS: Your Honor, I apologize.
23 Before we get to the briefing schedule, one more item
24 on the witness schedule, if I may. If our witnesses
25 are broken up and on Wednesday, Public Counsel puts its

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1 witnesses on, we would request that that be followed
2 with XO's witness and then we finish up with our
3 witnesses so we are not breaking up the presentation
4 further. I've not discussed this with Mr. Kopta, and I
5 don't know whether he would object to that, but I
6 wanted to make that request.

7 MR. KOPTA: Your Honor, we are sort of
8 talking about theory at this point, and I would rather
9 address that issue at such time as it actually happens.
10 I don't in theory have an objection, but I don't know
11 if and where the break is going to occur and what's
12 going to happen with respect to the timing of the
13 hearings in light of the various witnesses'
14 availability. So at this point, I would prefer that we
15 address that issue or cross that bridge, if you will,
16 when we get to it.

17 JUDGE WALLIS: Cross those witnesses when we
18 get to them; right?

19 MR. KOPTA: It might be more appropriate to
20 say it that way.

21 MR. FFITCH: Your Honor, I don't know if you
22 want to get into cross-estimates at all at this early
23 date, but I will say that we have come up with some
24 preliminary estimates for the Company witnesses, and my
25 calculation is that we could probably conclude cross of

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1 those witnesses on the first day of hearing. I have a
2 preliminary estimate of a total of four hours of cross
3 for four different proponent witnesses, not including
4 Staff.

5 If that's the case, it seems to be feasible
6 that we could complete the Company witnesses on the
7 first of November, and then we would be having Staff
8 witnesses coming after the Public Counsel witnesses.
9 Again, if there is some overlap to Mr. Carrathers
10 request to not be broken up, we don't know how much
11 cross is going to be proposed for Mr. Roycroft or
12 Mr. King for Public Counsel, but I would suspect if we
13 have a little bit of cross left over from the Tuesday,
14 takes us into early Wednesday, that's going to be
15 workable so that we can complete all the Verizon, MCI
16 witnesses before getting to the Public Counsel folks.

17 MR. CARRATHERS: Your Honor, based on this, I
18 agree with Mr. Kopta. If you prefer, we can cross that
19 bridge if the issue arises.

20 JUDGE WALLIS: Very well. In terms of the
21 briefing schedule, is there objection to one round of
22 simultaneous briefs to be filed electronically on
23 November 22 and in paper form on November 23?

24 MR. THOMPSON: Your Honor, Staff would object
25 to that, and I believe this issue arose when we were

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1 discussing the schedule for the earlier prehearing
2 conference, and it is our preference to have two rounds
3 of briefing. I think the record is definitely improved
4 by having two rounds and giving opportunity for parties
5 to present the counter-arguments to arguments that
6 might be presented for the first time in a posthearing
7 brief. I think it makes for a better Commission
8 decision-making process and for a better order
9 ultimately, so we would object to that, and Staff would
10 prefer to retain the existing briefing schedule.

11 JUDGE WALLIS: The existing briefing schedule
12 apparently is not going to work because of conflict
13 with the Avista briefing schedule, and I think that
14 having consulted with the commissioners about their
15 preferences for schedule that it is their preference to
16 take the Avista matter first.

17 Consequently, that will push back the filing
18 date for briefs in this docket, and the Commission
19 still intends to make its best efforts to accommodate
20 the scheduling desires of Verizon and MCI for an early
21 order subject to the accumulation of a satisfactory
22 record and an opportunity for the parties to address
23 matters. We will take the request for an opportunity
24 for responding briefs under advisement.

25 What we have done in some situations is

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1 allowed for very brief and very speedy responding
2 briefs limited to a small number of pages. It does
3 strike me that the parties have with the witnesses the
4 opportunity to explore the parties' positions. It is
5 unlikely that new arguments are likely to arise on
6 briefing, and it is possible that we might be able to
7 accommodate that possibility with the allowance for a
8 very small responding brief to the extent necessary to
9 respond to truly new arguments. So with that, why
10 don't we leave that pending.

11 That does raise a related question. In all
12 recent matters of which I'm aware when there has been a
13 simultaneous briefing schedule, the parties have been
14 asked to develop a list of issues that they wish to
15 address and outline or an order for presenting those
16 issues. That does not mean the definition of issues in
17 a way to advantage one or another parties but rather an
18 identification of which the parties disagree and a
19 presentation of a logical approach to allowing every
20 party a full opportunity to explore those issues in
21 argument and with citations to both the evidentiary
22 record and legal precedent in a way that makes sense to
23 the Commission and prevents the parties from becoming
24 ships passing in the night.

25 Now, it is customary in proceedings in which

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1 I have been a participant to ask the parties at the
2 conclusion of the hearing to prepare such an outline
3 within a few days following, and given the briefing
4 schedule that it looks like we are heading for, that
5 would be my intention. Is there any party that has a
6 thought or a comment on this matter? Let the record
7 show there is no response, and we will follow that
8 procedure in this docket.

9 MR. CARRATHERS: Just a clarification.
10 Verizon and MCI joins in Staff's objection to changing
11 the briefing schedule, but did I understand you that
12 the briefing schedule has been changed, or is the
13 Commission still considering that and an order will be
14 issued if it does change?

15 JUDGE WALLIS: It is my intention to enter an
16 order changing the briefing schedule based on
17 Mr. ffitich's suggestion after discussions with the
18 Commissioners in terms of the Commission priorities.

19 MR. CARRATHERS: Thank you very much.

20 MR. FFITCH: Your Honor, just a belated
21 thought or suggested thought about the briefing
22 outline, it might help to expedite matters if you were
23 to assign one of the counsel to at least prepare a
24 preliminary draft, and we would be comfortable if Staff
25 wanted to take on that initial chore to get the ball

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1 rolling.

2 JUDGE WALLIS: Is there any objection to
3 doing that? Mr. Thompson, you are not eligible to
4 respond.

5 MR. THOMPSON: I appreciate Mr. ffitich
6 volunteering me for that job.

7 JUDGE WALLIS: Is that a task that you are
8 willing to accept if other parties are accepting?

9 MR. THOMPSON: Yes, I think so.

10 JUDGE WALLIS: Is there any objection to
11 that?

12 MR. CARRATHERS: No objection, Your Honor,
13 and Verizon will offer to write Public Counsel's brief.

14 JUDGE WALLIS: The parties' generosity is
15 overwhelming.

16 Are there any other matters that the parties
17 would like to address? I have a couple of technical
18 issues that I would like to address before we conclude,
19 but there is nothing of a terribly significant nature,
20 but I would like the parties to have an opportunity to
21 raise anything that you would like to raise.

22 MS. SINGER NELSON: I was just curious at
23 your comment at the beginning of the prehearing
24 conference where you said that it may not be necessary
25 to hold the prehearing conference later this week.

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1 What did you have in mind when you made that statement?

2 JUDGE WALLIS: I have a desire to cancel that
3 prehearing conference, and the remaining matters I have
4 relate to whether we will be able to do that or not.

5 MS. SINGER NELSON: Okay.

6 MR. FFITCH: Your Honor, I just have one
7 small matter, relatively small matter, and I had
8 already communicated with counsel for Verizon, MCI this
9 morning on this. We are not sure we have received a
10 copy of confidential attachment to the settlement
11 agreement and narrative statement that was filed last
12 week, and I wanted to make sure that that was forwarded
13 to us. I've got my staff checking on it, but we don't
14 appear to have received it, so I'm asking that the
15 Company provide that to us today.

16 MR. CARRATHERS: We will do that.

17 JUDGE WALLIS: Thank you very much.

18 In reviewing the confidential documents and
19 revised documents that are in our files, it is apparent
20 that a number of them are not presented consistent with
21 the requirements of Commission rules, and I'm asking
22 each of the parties to review your filing and to
23 ascertain that it does comply with WAC 480-07-160 and
24 the provisions of that rule that relate to the
25 preparation and submission of confidential and highly

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1 confidential documents.

2 For example, in some materials that have been
3 filed, the entire document is presented on colored
4 paper rather than only those pages that are actually
5 containing confidential or highly confidential
6 information. The manner in which the confidential
7 information is presented does not appear in some cases
8 to comply with the Commission rules.

9 In other recent proceedings, the Commission
10 has directed that testimony be refiled so that it does
11 comply with the rules, and I'm asking each of the
12 parties to prepare and present no later than November
13 1st the official copies for the record in this matter
14 that comply with those requirements.

15 In addition, to revised testimony, the
16 Commission has required, and I believe the rules also
17 require that any change be noted on the page on which
18 that change occurs and the change highlighted.

19 Instead what we have received at least in one
20 instance is an entire document marked "revised," and it
21 is impossible for me clearly and easily to identify
22 what the changes are, where they appear, and what their
23 significance is, so I would like the parties to look at
24 your presentations and verify that, in fact, you do
25 comply with all of the exhibit filing rules. Is that

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1 clear to the parties?

2 MR. FFITCH: Yes, Your Honor. I know that we
3 have filed, I believe it's corrected testimony for
4 Mr. King, and I'm wondering if that was one of the
5 filings that you were referring to.

6 JUDGE WALLIS: I believe it is.

7 MR. FFITCH: Thank you, Your Honor. We will
8 take a look at that and make sure that we comply with
9 the rule.

10 JUDGE WALLIS: Thank you.

11 MR. BUTLER: Are there any other others that
12 you specifically had in mind?

13 JUDGE WALLIS: I believe that there is
14 testimony on behalf of the merger proponents that fails
15 to comply.

16 MR. BUTLER: Did you have specific ones?

17 JUDGE WALLIS: I do not have the testimony
18 with me on the Bench this morning, but I think it's
19 clear if you open a document and it's all yellow or all
20 blue that unless there is marked "confidential
21 information" on each of those pages that it fails to
22 comply with the requirements of the rule. So this
23 relates to the rebuttal testimony, I believe,
24 principally.

25 MR. KOPTA: As counsel for another party in

0101

1 another case that has recently been apprised of the
2 Commission's desire to adhere more strictly to its
3 procedural rules, one of the things that was pointed
4 out was the convention we have traditionally used and
5 has been used in the testimony in this case of
6 essentially bracketing information that is considered
7 to be confidential or highly confidential with the
8 notation at the beginning, "begin confidential," and
9 then at the end of that, "end confidential," is not, in
10 fact, what is called for under the rules, and I'm
11 asking at this point whether the Commission is seeking
12 refiling of testimony in this proceeding that removes
13 that bracketing information and instead highlights it
14 as the rules specifically require.

15 JUDGE WALLIS: I'm not asking that at this
16 time. I understand that that request has been made.
17 However, to my understanding based on my read of this
18 testimony and the notation, while it does make the
19 information less fluent, perhaps, than it might be
20 otherwise that it does not unduly detract from the
21 presentation, and I'm not asking that that be changed.

22 MR. KOPTA: Thank you for that clarification.

23 MR. CARRATHERS: Your Honor, as you were
24 talking, I picked up a filing, for example, of rebuttal
25 testimony from Carl Danner. It appears that we filed a

0102

1 confidential version that just reprints his testimony
2 on all yellow paper, so I think that's an example of
3 what you were talking about.

4 JUDGE WALLIS: I believe that's true.

5 MR. CARRATHERS: To be clear, what the
6 colloquy between you and Mr. Kopta just went through,
7 the only Yellow Pages should be those that actually
8 contain the confidential information, and it's
9 permissible at this point to bracket and put the words
10 "confidential", "begin confidential," and "end
11 confidential," on the other side as has been the
12 practice.

13 JUDGE WALLIS: Yes.

14 MR. FFITCH: Your Honor, I have another
15 matter.

16 JUDGE WALLIS: Mr. ffitch?

17 MR. FFITCH: My staff has just handed me a
18 copy of the Confidential Appendix A, to, I believe, the
19 narrative supporting multiparty's settlement, and so it
20 appears that we do have that in hard copy. So all we
21 need, I think, is an electronic version of that
22 document from the settling parties or from Verizon,
23 MCI.

24 MR. CARRATHERS: We will send you an
25 electronic version.

0103

1 JUDGE WALLIS: Thank you. I did distribute
2 the draft exhibit list with the prehearing conference
3 notice, and I will ask that any party having a
4 correction to that please present that correction by
5 the end of the day on Wednesday.

6 I also am asking the parties to provide to me
7 a copy of any exhibit on cross that you intend to offer
8 or that you may offer of which you are aware no later
9 than the close of business on Wednesday with the
10 understanding that the drop-dead date for presentation
11 is noon on Thursday, but it will help me immensely if I
12 have that information in advance and am able to take
13 care of that administrative process on Wednesday
14 afternoon rather than waiting until basically the time
15 of the prehearing conference, so your ability to do
16 that will enable me to confirm the cancellation of
17 Thursday's prehearing conference, and I ask you if you
18 would please do your best to give me that information
19 as soon as possible.

20 MR. THOMPSON: Just one clarifying point.
21 You said that you wanted parties to provide you with
22 copies of cross-exhibits, and I assume that that would
23 mean providing copies to other parties as well.

24 JUDGE WALLIS: I know that there is some
25 sensitivity about that, and that is why I asked that

0104

1 parties provide that information to me and that the
2 filing need not be accomplished until the following
3 day, if that is acceptable to the parties.

4 The only reason I'm asking that is to
5 accomplish the administrative task of identifying the
6 exhibits and organizing them, if we are able to do
7 that, and I would ask that the presentation be done as
8 early on Wednesday as possible if we are able to do
9 that, and I think it's clear that we will be able to
10 work out any glitches in the exhibit list via
11 electronic mail and it will be unnecessary for us to
12 have that conference. Then the parties would be free
13 to release to each other the documents that they have
14 on Thursday according to the original schedule. Will
15 that work for the parties?

16 MR. FFITCH: Yes, Your Honor, that's fine
17 with Public Counsel.

18 MR. CARRATHERS: Yes, Your Honor, that's fine
19 with Verizon.

20 JUDGE WALLIS: Very well.

21 MR. FFITCH: Your Honor, I have one exhibit
22 matter that I'm not sure we really need to finalize
23 this now, but it appears that there may be rulings or a
24 ruling from federal agencies or entities just prior to
25 the start of the hearing, perhaps this week, and we

0105

1 would expecting to ask for official notice of those to
2 be taken during the hearing, and it may be a matter of
3 discussion perhaps.

4 It's hard to predict. They may be a matter
5 of a cross-examination or discussion during the
6 hearing. Would you like us to identify those at least
7 as a placeholder on an exhibit list, or is it
8 sufficient to just at this point ask for official
9 notice to be taken? I'm expecting what I'm referring
10 to is either an FCC decision or a Department of Justice
11 decision or both.

12 JUDGE WALLIS: Do the parties have any
13 response?

14 MR. CARRATHERS: If those are good orders in
15 favor of Verizon and MCI, we have no objection
16 whatsoever. Simon, seriously, I agree. I think when
17 they come out we can discuss that, and it may very well
18 be we may want to talk about that as a preliminary
19 matter before the hearings on the first.

20 MR. FFITCH: I raise it now just to primarily
21 alert you, Your Honor, and I think that we can deal
22 with that as it comes in, even prior to the hearing
23 without too much trouble.

24 JUDGE WALLIS: Very well. I take it that
25 there is no sense that further discussions are

0106

1 necessary right now; is that correct?

2 MR. FFITCH: That's correct for us, Your
3 Honor, Public Counsel.

4 JUDGE WALLIS: Thank you for alerting us to
5 that matter. Is there any other matter that any of the
6 parties wishes to raise at this time? Let me clarify
7 that the testimony earlier presented by Covad for its
8 witness Covad is not intending to offer into the
9 record; is that correct?

10 MR. DIAMOND: That's correct, Your Honor.

11 MR. KOPTA: Our witness, Mr. Wood, does
12 cross-reference that testimony, and it may be we would
13 want Mr. Wood to adopt some portion of that testimony
14 to which he referred in his own testimony. So we will
15 try to let you know that as early as possible and with
16 hopes of being able to do so when we provide the filing
17 of cross and any cross-exhibits and estimates on
18 Wednesday by noon.

19 JUDGE WALLIS: Thank you.

20 MR. CARRATHERS: We reserve our right to
21 object to that.

22 JUDGE WALLIS: We understand. Very well. Is
23 there anything further?

24 MR. THOMPSON: Just to clarify, there is an
25 expectation that parties will be providing estimates of

0107

1 the amount of time they expect for cross-examination
2 later this week on Wednesday?

3 JUDGE WALLIS: Yes, and again, my request
4 would be that if you have that information available
5 that you provide it to me on Wednesday. All right, is
6 there anything further?

7 MR. FFITCH: Just one brief thing. I will be
8 out of state between Friday and then over the weekend,
9 so if there are any matters that need to be taken up on
10 Friday, I will be traveling, Your Honor, so I won't be
11 available at that time. There will be people in the
12 Public Counsel office who can attend to administrative
13 matters, but I will not be available for any
14 conferences or dealing with other issues on Friday.

15 JUDGE WALLIS: Very well. Is there anything
16 further? Let the record show there is no response.
17 Thank you all for your participation this morning, and
18 this conference is concluded.

19 (Prehearing conference concluded at 11:23 a.m.)

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