

0001

1 BEFORE THE WASHINGTON
2 UTILITIES AND TRANSPORTATION COMMISSION

3) _____
4) In the Matter of the Petition for) UT-043013
5) Arbitration of an Amendment to) Volume I
6) Interconnection Agreements of) Pages 1-75
7) VERIZON NORTHWEST INC.)
8))
9))
10))
11))
12))
13))
14))
15))
16))
17) Pursuant to 47 U.S.C. Section 252(b))
18) and the Triennial Review Order.)
19) _____)

12 A pre-hearing conference in the
13 above-entitled matter was held at 9:43 a.m. on
14 Monday, March 29, 2004, at 1300 South Evergreen Park
15 Drive, Southwest, Olympia, Washington, before
16 Administrative Law Judge ANN E. RENDAHL.

17 The parties present were as follows:

18 ADELPHIA BUSINESS SOLUTIONS OPERATIONS,
19 INC.; ALLEGIANCE TELECOM OF WASHINGTON, INC.; DSLnet
20 COMMUNICATIONS, LLC; FOCAL COMMUNICATIONS CORPORATION
21 OF WASHINGTON; ICG TELECOM GROUP, INC., INTEGRA
22 TELECOM OF WASHINGTON, INC.; LEVEL 3 COMMUNICATIONS,
23 LLC; McLEOD USA TELECOMMUNICATIONS SERVICES, INC.;
24 and PAC-WEST TELECOMM, INC., by Edward W. Kirsch and
25 Philip J. Macres, Attorneys at Law, Swidler Berlin
Shereff Friedman, LLP, 3000 K Street NW, Suite 300,
Washington, D.C. 20007 (via teleconference bridge.)

24 Barbara L. Nelson, CCR
25 Court Reporter

0002

1 XO WASHINGTON and PAC-WEST TELECOMM,
2 INC., by Gregory J. Kopta, Attorney at Law, Davis
3 Wright Tremaine, 2600 Century Square, 1501 Fourth
4 Avenue, Seattle, Washington 98101 (via teleconference
5 bridge.)

6 CENTEL COMMUNICATIONS, by Brooks E.
7 Harlow, Attorney at Law, Miller Nash, LLP, 4400 Two
8 Union Square, 601 Union Street, Seattle, Washington,
9 98101, and Hong Huynh, Attorney at Law, Miller Nash,
10 LLP, 111 SW Fifth Avenue, Suite 3400, Portland,
11 Oregon 97204 (via teleconference bridge.)

12 AT&T COMMUNICATIONS OF THE PACIFIC
13 NORTHWEST and TCG SEATTLE, by Letty S.D. Friesen,
14 Attorney at Law, 1875 Lawrence Street, Suite 1500,
15 Denver, Colorado 80202 (via teleconference bridge.)

16 ADVANCED TELCOM GROUP, INC.; BULLSEYE
17 TELECOM, INC.; COMCAST PHONE OF WASHINGTON, LLC;
18 COVAD COMMUNICATIONS COMPANY; GLOBAL CROSSING LOCAL
19 SERVICES, INC.; KMC TELECOM V, INC.; and WINSTAR
20 COMMUNICATIONS, LLC, by Andrew M. Klein, Attorney at
21 Law, Kelley, Drye & Warren, LLP, 1200 19th Street NW,
22 Suite 500, Washington, D.C. 20036 (via teleconference
23 bridge.)

24 VERIZON, by Timothy J. O'Connell,
25 Attorney at Law, Stoel Rives, L.L.P., 600 University
26 Street, Suite 3600, Seattle, Washington, 98101.

27 MCI/WORLDCOM, by Michel Singer Nelson,
28 Attorney at Law, 707 17th Street, Suite 4200, Denver,
29 Colorado 80202 (via teleconference bridge.)

30 SPRINT, by William E. Hendricks, III,
31 Attorney at Law, 902 Wasco Street, Hood River, Oregon
32 97031 (via teleconference bridge.)

33 COVAD COMMUNICATIONS COMPANY, by Karen
34 S. Frame, Attorney at Law, 7901 Lowry Boulevard,
35 Denver, Colorado 80230 (via teleconference bridge.)

36

37

38

39

40

41

42

0003

1 JUDGE RENDAHL: Okay. Well, let's be on the
2 record. My name is Ann Rendahl, the Administrative
3 Law Judge and Arbitrator presiding over this
4 proceeding. We're here before the Washington
5 Utilities and Transportation Commission this morning,
6 Monday, March 29th, 2004, for a pre-hearing
7 conference in Docket Number UT-043013, captioned In
8 the Matter of the Petition for Arbitration of an
9 Amendment to Interconnection Agreements of Verizon
10 Northwest, Inc. with Competitive Local Exchange
11 Carriers and Commercial Mobile Radio Service
12 Providers in Washington Pursuant to 47 USC Section
13 252(b) and the Triennial Review Order.

14 As I stated off the record, the purpose of
15 the pre-hearing this morning is to begin narrowing
16 the procedural and substantive issues presented in
17 the proceeding. I'd also like to discuss the
18 procedural schedule for the arbitration, including
19 the process for addressing Sprint's motion to
20 dismiss.

21 So before we go any further, let's take
22 appearances from the parties. Our process here at
23 the Commission is if you have not -- well, this is
24 the first pre-hearing, so you need to state your full
25 name, the party you represent, your full address,

0004

1 telephone number, fax number, and e-mail address.

2 As I noted off the record, to simplify the
3 Commission's process of serving notices and orders,
4 we try to identify one representative who will
5 receive mail and fax. I understand there may be a
6 need for more than one representative to receive mail
7 and fax, but if we can limit that, then we use less
8 paper, and then others will be receiving a copy of
9 notices and orders and anything sent by the
10 Commission via a courtesy e-mail. So that's why we
11 need all that information. So let's begin with
12 Verizon, with Mr. O'Connell.

13 MR. O'CONNELL: Thank you, Judge Rendahl.
14 Timothy J. O'Connell, of the law firm of Stoel Rives,
15 LLP, representing Verizon Northwest, Inc. in this
16 matter. Address is 600 University Street, Suite
17 3600, Seattle, Washington, 98101. Telephone,
18 206-624-0900; fax, 206-386-7500; my e-mail address is
19 tjoconnell@stoel.com.

20 Also representing Verizon in this matter,
21 and his address and name are correctly identified on
22 the master service list, Mr. Aaron Panner of the
23 Kellogg huber Hansen Todd & Evans Firm. As I said,
24 the information on the master service list is correct
25 for him. I would request that Mr. Panner also

0005

1 receive fax and mail copies of orders or other
2 documents issued from the Commission.

3 JUDGE RENDAHL: Okay. Do you happen to know
4 Mr. Panner's e-mail address, or if you don't, you can
5 provide it to me later.

6 MR. O'CONNELL: I believe it to be
7 apanner@khhte.com.

8 JUDGE RENDAHL: Khhte.com?

9 MR. O'CONNELL: Two Hs, khhte.com.

10 JUDGE RENDAHL: Thank you. And for the
11 other members of the Kellogg Huber Hansen firm, if
12 they would like to be included on our e-mail list, if
13 you would just send a letter identifying any other
14 persons who want to be provided notice by e-mail on
15 behalf of Verizon Northwest, that would be helpful.

16 MR. O'CONNELL: I will do that.

17 JUDGE RENDAHL: Okay. Thank you. On our
18 master service list, I note that we also have listed
19 Vice President and Associate General Counsel of
20 Verizon Wholesale Markets in Arlington, Virginia.
21 Does that group also need to receive paper and fax?

22 MR. O'CONNELL: Judge Rendahl, can I, in the
23 same letter in which I identify whether there's
24 anyone else from the Kellogg Huber firm who needs
25 service, I'll identify that. I'm frankly not certain

0006

1 who that is.

2 JUDGE RENDAHL: I understand. I'm not,
3 either. Okay. That would be very helpful.

4 MR. O'CONNELL: For example, Mr. Thoms, who
5 is also identified on the master service list, should
6 probably be taken off insofar as he has retired.

7 JUDGE RENDAHL: Ah, okay.

8 MR. O'CONNELL: But I think there is going
9 to be someone filling in for him.

10 JUDGE RENDAHL: And you don't know yet who
11 that is.

12 MR. O'CONNELL: So perhaps I will take as an
13 action item within the next couple days to get a
14 letter addressed to you to address the various
15 Verizon personnel who are identified on this service
16 list and who shouldn't and who need not receive
17 documents.

18 JUDGE RENDAHL: That would be very helpful.
19 Thanks.

20 MR. O'CONNELL: I will do so.

21 JUDGE RENDAHL: Okay. Let's proceed on to
22 Mr. Kirsch.

23 MR. KIRSCH: Yes. I represent nine entities
24 in Washington.

25 JUDGE RENDAHL: Okay. Why don't you state

0007

1 your full name first and then who you represent.

2 MR. KIRSCH: The name is Edward W. Kirsch,
3 K-i-r-s-c-h.

4 JUDGE RENDAHL: Thank you.

5 MR. KIRSCH: I'm at Swidler Berlin Shereff
6 Friedman, the address 3000 K Street Northwest, Suite
7 300, Washington, D.C., 20007. Telephone number,
8 202-424-7877; fax, 202-424-7643; e-mail address
9 ewkirsch@swidlaw.com.

10 JUDGE RENDAHL: Thank you. And you
11 represent --

12 MR. MACRES: Judge?

13 JUDGE RENDAHL: Yes, please --

14 MR. MACRES: This is Phil Macres. Should we
15 provide you with our e-mail address, other
16 individuals at the firm's e-mail address at this
17 time?

18 JUDGE RENDAHL: If you know, that would be
19 helpful. If not, as with Mr. O'Connell, if there are
20 representatives within the firm and also
21 representatives of the companies you represent who'd
22 like to receive fax -- e-mail notice, you can do that
23 in a subsequent letter.

24 MR. KIRSCH: I'd prefer to do it that way.
25 There's nine entities, and just looking at the

0008

1 service list, in nearly every case, the point of
2 contacts or the address has changed.

3 JUDGE RENDAHL: I'm not surprised. It would
4 be helpful to have a correct correction of that. So
5 if you do so by subsequent letter, that would be very
6 helpful.

7 MR. MACRES: In the meantime, could you put
8 my e-mail address along with Ed's, please?

9 JUDGE RENDAHL: Okay. And this is Mr.
10 Macres? Since you're on the phone, it's helpful for
11 us if you identify yourself first and then --

12 MR. MACRES: Okay, great.

13 JUDGE RENDAHL: So Mr. Macres, it's Philip,
14 P-h-i-l-l-i-p --

15 MR. MACRES: No, my e-mail address is
16 pjmacres@swidlaw.com.

17 JUDGE RENDAHL: Okay. But your full name is
18 P-h-i-l-l-i-p, and then M-a-c-r-e-s?

19 MR. MACRES: One L.

20 JUDGE RENDAHL: One L, okay. And any middle
21 initial?

22 MR. MACRES: J.

23 JUDGE RENDAHL: Thank you.

24 MR. MACRES: Thank you, Judge.

25 JUDGE RENDAHL: Okay. And so the entities

0009

1 that you represent, Mr. Kirsch and Mr. Macres?

2 MR. KIRSCH: The entities are as follows:

3 Level 3 Communications, LLC; Focal Communications
4 Corp. of Washington; Allegiance Telecom of
5 Washington, Inc.; DSLnet Communications, L.L.C.;
6 Integra Telecom of Washington, Inc.; Adelphia
7 Business Solutions Operations, Inc.; Pac-West
8 Telecomm, Inc.; ICG Telecom Group, Inc.; and McLeod
9 USA Telecom Services -- I'm sorry, McLeod USA
10 Telecommunications Services, Inc.

11 JUDGE RENDAHL: Okay. Thank you. So if you
12 could please look at the master service list and
13 correct the point of contact with the company, as
14 well as provide an e-mail, and then let us know who
15 else in the law firm that you work with would like
16 e-mail notification, that would be helpful. I think
17 Mr. O'Connell has a question.

18 MR. O'CONNELL: I do, Judge, thank you. And
19 I don't know whether this should be addressed to you
20 or directly to Mr. Kirsch. We received comments in
21 this docket from Mr. Gregory Kopta, of the Davis
22 Wright Tremaine Law Firm, that indicated they were on
23 behalf of Pac-West Telecomm. And I'm just curious
24 whether Mr. Kirsch is appearing in this matter in
25 lieu of Mr. Kopta or are both firms going to be

0010

1 representing Pac-West or what?

2 MR. KIRSCH: My understanding is both firms
3 will be representing Pac-West.

4 MR. O'CONNELL: All right. Thank you.

5 JUDGE RENDAHL: And for AT&T.

6 MS. FRIESEN: Good morning, Your Honor.
7 This is Letty Friesen, F-r-i-e-s-e-n. And my address
8 is 1875 Lawrence Street, Denver, Colorado, 80202. My
9 telephone number is 303-298-6475; my fax number is
10 303-298-64 -- or 6301; my e-mail address is
11 lsfriesen@att.com.

12 And I note that on the service list Ridge
13 Loux is identified for AT&T. I'd like to substitute
14 my name for Ridge's, along with Adam Walczak, my
15 docket manager, who is here to receive things when
16 I'm traveling.

17 JUDGE RENDAHL: Okay. So Mr. -- how do you
18 spell Mr. Loux's name?

19 MS. FRIESEN: L-o-u-x. And he's listed as
20 G. Ridgley Loux, which is R-i-d-g-l-e-y. He's got a
21 mailing address of Virginia. Look for Virginia.

22 JUDGE RENDAHL: I'm looking through. Do you
23 have a -- is this on --

24 MS. FRIESEN: This is on --

25 JUDGE RENDAHL: This is on Verizon's list or

0011

1 --

2 MS. FRIESEN: Yes, that's correct. That's
3 Verizon's list. We just need Verizon to substitute
4 me for Ridge.

5 JUDGE RENDAHL: And add Adam Walczak?

6 MS. FRIESEN: And add Adam Walczak; correct.
7 And I can give you his phone number and email
8 address, as well.

9 JUDGE RENDAHL: That would be helpful.

10 MS. FRIESEN: His last name is spelled
11 W-a-l-c, as in cat, z, as in Zach, a-k, as in kite.
12 His telephone -- his address is the same as mine.
13 His telephone number is 303-298-6930; his e-mail
14 address is awalczak@att.com; and his fax number is
15 the same as mine, which was 303-298-6301.

16 JUDGE RENDAHL: Okay. And should -- you're
17 representing AT&T Communications of the Pacific
18 Northwest, as well as TCG Seattle?

19 MS. FRIESEN: That's correct.

20 JUDGE RENDAHL: Okay. And one last
21 question. Should it be sent to the AT&T Law
22 Department, or what is the correct -- at 1875
23 Lawrence?

24 MS. FRIESEN: Yes, 1875 Lawrence, Suite 1500
25 should be sufficient.

0012

1 JUDGE RENDAHL: Okay. So I don't need to
2 put on AT&T?

3 MS. FRIESEN: Law department? No, you don't
4 need to do that. You just need to either put my name
5 or Adam's and the address at Suite 1500.

6 JUDGE RENDAHL: Okay. All right.

7 MS. FRIESEN: Thank you.

8 JUDGE RENDAHL: Mr. Klein.

9 MR. KLEIN: Yes, hello. This is Andrew M.
10 Klein, of Kelley Drye and Warren, which is
11 K-e-l-l-e-y D-r-y-e W-a-r-r-e-n, LLP. The address is
12 1200 19th Street Northwest, Suite 500, Washington,
13 D.C., 20036. Telephone number is 202-887-1257; fax
14 number is 202-955-9792; and my e-mail address is
15 aklein@kelleydrye.com. And based on the discussion
16 that's already been had on the record, I will be
17 submitting to the Commission and to the parties the
18 proposed inclusions on the service list for each of
19 the parties we'll be representing.

20 I'll list those parties now. It's Advanced
21 TelCom Group, Inc.; Bullseye Telecom, Inc.; Comcast
22 Phone of Washington, L.L.C.; Covad Communications
23 Company; Global Crossing Local Services, Inc.; KMC
24 Telecom V, the Roman Numeral V, Inc.; and Winstar
25 Communications, L.L.C.

0013

1 JUDGE RENDAHL: Thank you.

2 MR. KLEIN: Thank you.

3 JUDGE RENDAHL: Okay. Is there anyone else
4 who's called in on the bridge line since we began
5 this hearing? Hearing nothing, at this point we have
6 identified representation and addresses and phone
7 numbers, et cetera, for a number of the carriers
8 involved, but there remain quite a few who are not
9 represented so far in this proceeding.

10 Because this is a little different than the
11 usual hearing before the Commission, where at a
12 pre-hearing we usually take interventions, et cetera,
13 and then any party who appears later has to show good
14 cause for late appearance and late intervention,
15 because this is an arbitration and I think, through
16 this process, we may have various people appear
17 during the process, I don't think those same rules
18 apply. The APA doesn't apply to these sorts of
19 proceedings. So I'm just putting you all on notice
20 that there may be others who appear later, and
21 there's no issue in them coming in at a later date.

22 MR. O'CONNELL: And Judge, on behalf of
23 Verizon, we served numerous parties with the petition
24 in this matter, and I use that word intentionally. I
25 do think they are parties.

0014

1 JUDGE RENDAHL: Okay. I do have a question
2 for you, Mr. O'Connell, just one last bit on this
3 service list. Michel Singer Nelson filed several
4 different -- I guess the most recent filing, the
5 comments and the issues list filed on Friday
6 identified a number of CLECs as a part of the
7 Northwest Competitive Communications Coalition
8 identifying Eschelon Telecom, Oregon Telecom and Stan
9 Efferding, E-f-f-e-r-d-i-n-g, doing business as
10 Vilaire, V-i-l-a-i-r-e, and I don't see those
11 companies on the list that Verizon provided as
12 Exhibit 1 to the petition. I don't see -- I see
13 Eschelon, but not Oregon Telecom or Vilaire, and I'm
14 wondering -- unfortunately, Ms. Singer Nelson is not
15 on the line to clarify, but I wondered if you had any
16 update on Exhibit 1?

17 MR. O'CONNELL: In a sense of there being
18 additional entities, I don't think there have been.
19 I think we served the parties who the right
20 department at Verizon believed we have
21 interconnection agreements with. I mean, I will
22 represent that my understanding is we served every
23 entity with which we understood we had an
24 interconnection agreement in the state of Washington.
25 I frankly do not recognize either Oregon Telecom or

0015

1 Stan Efferding, you know, personally, but that
2 doesn't mean very much.

3 So without going back and double-checking, I
4 can't tell you whether we believed they were served,
5 whether we believe we have an interconnection
6 agreement with them. Frankly, I also just received
7 this on Friday, and I haven't had a chance to
8 double-check it with my personnel back on the East
9 Coast.

10 JUDGE RENDAHL: We're having a bit of static
11 on the line. If you can make sure you're speaking
12 into a handset, rather than a speaker phone, that
13 might reduce the static. The next issue -- I
14 appreciate you're bearing with me as we go through
15 these detailed issues about the service list.
16 Unfortunately, this is a little bit -- this is a
17 different case.

18 Again, usually the Commission doesn't hold a
19 pre-hearing in an arbitration proceeding until after
20 the petition and the answer have been filed.
21 However, this arbitration proceeding is a bit
22 different in several respects. The petition is
23 addressed to a number of parties, at least 77
24 companies, and involves provisions of the Triennial
25 Review Order, itself subject to ongoing litigation.

0016

1 The purpose of the pre-hearing is to try to
2 narrow the issues, both procedural and substantive,
3 and to try to discuss the procedural schedule. Is
4 there anything else that parties believe we need to
5 discuss this morning sort of to set the stage before
6 responses are filed to Sprint's motion and responses
7 to the petition are due?

8 Hello, this is Judge Rendahl. Who is on the
9 bridge line?

10 MS. SINGER NELSON: Judge Rendahl, this is
11 Michel Singer Nelson. I apologize for being late.
12 The pre-hearing conference was not on my calendar,
13 unfortunately.

14 JUDGE RENDAHL: Oh, I'm sorry. Well, we
15 were just -- we have Mr. O'Connell here in the room.
16 Mr. Kirsch and Mr. Macres, from Swidler Berlin, are
17 on the line. Ms. Friesen is on the line for AT&T and
18 Mr. Klein is on the line with Kelley Drye and Warren,
19 in D.C.

20 MR. MACRES: Your Honor, this is Phil
21 Macres.

22 JUDGE RENDAHL: Good morning, Mr. Macres.

23 MR. MACRES: Just -- you said to just, with
24 respect to setting the stage before we go forward
25 with our discussion?

0017

1 JUDGE RENDAHL: Yes.

2 MR. MACRES: Just so you know, it's the
3 Coalition's intent to file a motion to dismiss with
4 our response that -- when we submit it. I guess
5 that's going to be on the 13th.

6 JUDGE RENDAHL: So essentially a cross
7 motion to dismiss when you file the response to
8 Sprint's motion?

9 MR. MACRES: We are -- we're filing our own
10 independent motion to dismiss.

11 JUDGE RENDAHL: Okay. On the filing date on
12 the --

13 MR. MACRES: On the 13th.

14 JUDGE RENDAHL: On the 13th. Okay.

15 MR. MACRES: And it's on a number of
16 different grounds, so -- some of which, you know, may
17 have been touched on by the Sprint motion and some of
18 them weren't.

19 JUDGE RENDAHL: Okay. Thank you. I'd like
20 to, before we go on, now that Ms. Singer Nelson has
21 joined us, I'd like to take her appearance, as well,
22 and then we'll go back to this issue of narrowing
23 issues, et cetera.

24 Ms. Singer Nelson, just so that you know who
25 else is here, I identified who's on the line. Mr.

0018

1 Kirsch and Mr. Macres have represented that they are
2 representing Level 3 Communications -- in my
3 shorthand, I may not have the full name, Mr. Kirsch
4 and Mr. Macres, so this is sort of shorthand -- Level
5 3 Communications, Focal Communications, Allegiance
6 Telecom of Washington, DSLnet Communications, Integra
7 Telecom, Adelphia Business Solutions, Pac-West
8 Communications, ICG Telecom Group, Incorporated, and
9 McLeod USA Telecom Services. They have clarified
10 that Mr. Kopta is also representing Pac-West,
11 although he's not on the line today.

12 And Mr. Klein is -- his firm is representing
13 Advanced TelCom Group, Bullseye Communications,
14 Comcast Telecom of Washington, Covad Communications,
15 Global Crossing, KMC Telecom V, which is a Roman
16 numeral, and Winstar Communications.

17 Could you please, for the record, Ms. Singer
18 Nelson, identify your full name, the company you
19 represent, address, telephone, fax number, e-mail?

20 MS. SINGER NELSON: Yes, thank you, Judge.
21 Michel Singer Nelson, representing MCI. My address
22 is 707 17th Street, Suite 4200, Denver, Colorado,
23 80202. My telephone number's 303-390-6106; fax is
24 303-390-6333; and my e-mail address is
25 michel.singer_nelson@mci.com.

0019

1 JUDGE RENDAHL: Thank you. And what we
2 discussed with other parties is if you have access to
3 the Commission's master service list, if you can
4 clarify later, by subsequent letter, that the
5 information for MCI and its subsidiary companies in
6 -- or WorldCom and its subsidiary companies in
7 Washington are correct, including the persons, the
8 points of contact, as well as the e-mail addresses.

9 MS. SINGER NELSON: Thank you, Judge. I
10 will.

11 JUDGE RENDAHL: I do have a question based
12 on your filing from Friday. And that is that you
13 identified members of the Northwest Competitive
14 Communications Coalition, NWCCC, including Oregon
15 Telecom and Stan Efferding, doing business as
16 Vilaire. I don't see Oregon Communications Telecom
17 or Vilaire on the list identified by Verizon. Are
18 those companies -- do they have interconnection
19 agreements with Verizon in Washington?

20 MS. SINGER NELSON: Is Brooks Harlow on the
21 line or is he at the hearing?

22 JUDGE RENDAHL: He is not here and he's not
23 on the line.

24 MS. SINGER NELSON: I'm sorry, Judge. I
25 can't answer that question. Mr. Harlow represents

0020

1 those parties.

2 JUDGE RENDAHL: Okay. If you can or if he
3 can, by subsequent letter, explain why they should be
4 included in the proceeding, that would be helpful.

5 MS. SINGER NELSON: Okay. I'll do that.
6 Thank you.

7 JUDGE RENDAHL: Okay. And the only other
8 question I had for you is who are the WorldCom
9 subsidiaries in Washington?

10 MS. SINGER NELSON: The WorldCom
11 subsidiaries that currently have interconnection
12 agreements with Verizon in Washington include
13 MCImetro Access Transmission Services and
14 MCI/WorldCom.

15 JUDGE RENDAHL: MCI/WorldCom Communications?

16 MS. SINGER NELSON: Yeah, I was just going
17 to check to make sure that's correct, but that's my
18 recollection, that it is MCI/WorldCom Communications,
19 Inc.

20 JUDGE RENDAHL: Okay. And that also
21 includes WorldCom Communications, as a successor to
22 Rhythms Link?

23 MS. SINGER NELSON: Yes, it does.
24 MCI/WorldCom Communications, as a successor to
25 Rhythms.

0021

1 JUDGE RENDAHL: Okay. And if you can just
2 check that and make any corrections in your follow-up
3 letter, that would be helpful.

4 MS. SINGER NELSON: I'll do that. Thank
5 you, Judge.

6 JUDGE RENDAHL: Thank you. Okay. Let's go
7 on to where we left off, which was trying to get a
8 sense of the scope of this pre-hearing this morning
9 and trying to scope the proceeding. I had asked if
10 the parties felt we needed to discuss anything else
11 in trying to narrow the procedural and substantive
12 issues in the proceeding and to discuss the
13 procedural schedule. Mr. Macres identified that they
14 were planning on filing a motion to dismiss on their
15 own behalf on April 13th.

16 I understand that, because various parties
17 have stated -- hello, this is Judge Rendahl. Who's
18 joined us on the bridge line?

19 MR. HARLOW: Judge Rendahl, this is Brooks
20 Harlow.

21 JUDGE RENDAHL: Good morning, Mr. Harlow.

22 MR. HARLOW: Are we on the record?

23 JUDGE RENDAHL: We are on the record. We
24 have taken appearances and, at this point, we have
25 Mr. O'Connell, representing Verizon, here in the

0022

1 room; we have Mr. Kirsch and Mr. Macres, with Swidler
2 Berlin, on the line from Washington, D.C.; we have
3 Ms. Friesen on the line from Denver, representing
4 AT&T; we have Mr. Klein on the line with Kelley Drye
5 and Warren, representing a number of CLECs; and Ms.
6 Singer Nelson just joined us a few minutes ago. Are
7 you representing parties in this proceeding?

8 MR. HARLOW: Let me check the list. And I
9 apologize. This was not on my calendar. At this
10 point, I can say I'm representing Centel
11 Communications, Inc.

12 JUDGE RENDAHL: Okay.

13 MR. HARLOW: And otherwise, the other
14 companies that we've been working with have not
15 decided whether -- basically haven't decided how to
16 react to this. So I can't say I'm representing
17 anyone else.

18 JUDGE RENDAHL: Okay. I'm going to ask you
19 to state your full representation in the proceeding,
20 state your appearance, if you would.

21 MR. HARLOW: Yes, Brooks Harlow, 4400 Two
22 Union Square, 601 Union Street, Seattle, Washington,
23 98101. At this point, representing Centel
24 Communications, Inc.

25 JUDGE RENDAHL: Telephone number.

0023

1 MR. HARLOW: 206-777-7406. Fax is
2 206-622-7485.

3 JUDGE RENDAHL: And your e-mail address.

4 MR. HARLOW: Brooks.harlow@millernash.com.

5 JUDGE RENDAHL: Okay. A question I had
6 posed to Ms. Nelson, because of the filing she made
7 on Friday, was that the Northwest Competitive
8 Communications Coalition included Eschelon Telecom,
9 Oregon Telecom, and Stan Efferding, d/b/a Vilaire.
10 And the list that Verizon had included as Exhibit 1
11 to their petition did not include Oregon Telecom or
12 Vilaire. And I'm wondering if you have any
13 information as to whether those companies should be
14 included in this proceeding?

15 MR. HARLOW: Those companies are interested
16 in some of these procedural questions, but at this
17 point, we're still trying to sort out procedural
18 issues, and we haven't decided who's going to appear
19 and in what form they're going to do it, whether it's
20 directly or through a coalition. Frankly, this is
21 just moving too fast for a lot of the companies to be
22 up to speed yet.

23 JUDGE RENDAHL: Okay. Well, I think the
24 primary question I need to know is whether they have
25 an interconnection agreement with Verizon in

0024

1 Washington and whether they --

2 MR. HARLOW: I don't believe Oregon Telecom
3 does. I believe Vilaire is attempting to --

4 JUDGE RENDAHL: I'm sorry, I missed that
5 last statement. Vilaire is?

6 MR. HARLOW: I believe that Vilaire is in
7 negotiations with Verizon.

8 JUDGE RENDAHL: Okay. But it doesn't have a
9 current interconnection agreement in existence?

10 MR. HARLOW: That's my understanding.

11 JUDGE RENDAHL: Okay. Thank you. As I've
12 asked the other parties, if you could please look
13 over the Commission's master service list in this
14 proceeding, identify the contact information for the
15 parties you represent and ensure that they're correct
16 and identify via subsequent letter any corrections
17 you need to make.

18 MR. HARLOW: Your Honor, this is Mr. Harlow
19 again. Again, with great apologies, because I didn't
20 have this calendared, and it's so fast moving, I will
21 listen in as long as I can, but I may have to drop
22 off or kind of come and go, and we'll just have to
23 catch up on the pre-hearing conference order.

24 JUDGE RENDAHL: The purpose of the
25 pre-hearing conference is to try to scope, because of

0025

1 the number of parties in the proceeding and because
2 of the nature of the ongoing litigation on the
3 Triennial Review Order, as well as the motion to
4 dismiss filed by Sprint, is to try to scope as much
5 as we can at this point and to set a procedural
6 schedule in the proceeding. And I heard another beep
7 on the line. Is there someone else who's joined us
8 on the bridge line?

9 MR. KOPTA: Yes, this is Greg Kopta, from
10 Davis Wright Tremaine. I apologize. For some
11 reason, I thought, Your Honor, that this was no
12 longer going to take place. And thanks to Mr. Klein,
13 who informed me otherwise.

14 JUDGE RENDAHL: Okay. Well, I'm sorry if it
15 was not clear in the orders, but the pre-hearing was
16 not canceled. The intent was to discuss some of
17 these issues this morning.

18 Mr. Kopta, if you'd state your appearance
19 and the parties you represent, as usual in an initial
20 pre-hearing, that would be helpful.

21 MR. KOPTA: I will certainly do that, Your
22 Honor. Thank you. I apologize. I believe it was my
23 misunderstanding, not yours. Gregory J. Kopta, of
24 the Law Firm Davis, Wright, Tremaine, LLP, 2600
25 Century Square, 1501 Fourth Avenue, Seattle,

0026

1 Washington, 98101. Telephone, 206-628-7692; fax,
2 206-628-7699; e-mail gregkopta@dwt.com. And I'm
3 representing XO Washington and Pac-West Telecomm.

4 JUDGE RENDAHL: Okay. If you would please
5 identify in a subsequent letter, after reviewing the
6 Commission's master service list, just as I asked Mr.
7 Harlow, to make sure that the contact information for
8 the clients you represent is correct.

9 MR. KOPTA: I will do that, Your Honor.

10 JUDGE RENDAHL: As in past proceedings, my
11 intent is to try to have one representative and one
12 member of the company who's receiving paper and fax
13 copy to avoid, you know, the paper that is generated
14 by the Commission and to have courtesy e-mails
15 distributed to the others. I know that could pose a
16 hardship, and so if there are more than one who need
17 paper copy, please let me know.

18 MR. KOPTA: I will do that.

19 JUDGE RENDAHL: Okay. I'm hoping that this
20 is all we have on the appearances now and we can move
21 on. We have a --

22 MR. HARLOW: Your Honor, this is Mr. Harlow
23 again.

24 JUDGE RENDAHL: Mr. Harlow.

25 MR. HARLOW: I put you on hold for a minute.

0027

1 I've been able to arrange for Hong Huynh, of our
2 Portland office, to cover this call, so that I don't
3 have to come and go. She'll take notes and take back
4 any questions that we need to answer to make sure we
5 are responsive. She'll beep in any moment now.

6 JUDGE RENDAHL: Okay. So she's with the
7 Miller Nash office in Portland?

8 MR. HARLOW: Right.

9 JUDGE RENDAHL: And should we take her
10 appearance?

11 MR. HARLOW: Yes, on behalf of Centel
12 Communications.

13 JUDGE RENDAHL: Okay. All right. Well,
14 we'll do that when she beeps in. So going back to
15 the central question here, is there anything else we
16 need to talk about this morning, other than trying to
17 narrow the procedural and substantive issues and
18 trying to establish a procedural schedule in this
19 case, understanding that at least that one motion to
20 dismiss has been filed and it looks like at least one
21 other may be, and that at that point we'll have to
22 address those issues and determine what will happen
23 in the proceeding, but for now, my goal is to try to
24 establish some schedule based on the amended filing
25 by Verizon.

0028

1 So is there anything else that the parties
2 feel we need to address this morning? Hearing
3 nothing, let's go on.

4 I did receive several filings from Verizon,
5 from Ms. Singer Nelson, on behalf of the Coalition
6 and MCI, from Mr. Kopta and from Mr. Klein, et al.
7 at Kelley Drye and Warren, and from Ms. Friesen at
8 AT&T identifying a variety of issues. If I've left
9 anyone else off who've filed comments, please forgive
10 me. It appears there are a number of procedural and
11 substantive issues.

12 I guess at this point I'd like to focus more
13 on the substantive issues, as it looks like the
14 procedural issues may be raised more in the motions
15 to dismiss and the responses to the motions to
16 dismiss. Is that a fair proposal?

17 MR. O'CONNELL: Certainly, on behalf of
18 Verizon.

19 JUDGE RENDAHL: Mr. O'Connell, did you have
20 any thoughts on the substantive issues that were
21 filed? And understand that I'm not expecting you to,
22 you know, state final comments on behalf of the
23 company on the issues, but did you have a chance to
24 look them over?

25 MR. O'CONNELL: Well, I have had some

0029

1 opportunity to review the same set of comments that
2 you identified, Judge Rendahl. I think, from a big
3 picture issue, if I understand what you're saying
4 correctly about the substantive issues, Verizon
5 opposes any suggestion that any of the issues
6 identified in its petition should be deferred --
7 should be deferred to, if I got the docket number
8 right, UT-011219, which is a proceeding that has been
9 going on for about three years now, in an attempt to
10 arrive at a model interconnection agreement for
11 Verizon here in the state of Washington.

12 We believe that the issues we raised in our
13 petition are all of the issues which -- are all
14 exclusively issues which arise out of the FCC's
15 Triennial Review Order, and modifications to existing
16 interconnection agreements that must be accomplished
17 to reflect, frankly, a recognition that some of the
18 earlier obligations arising from earlier FCC
19 proceedings are simply not valid, and that's what the
20 FCC has recognized in light of repeated back and
21 forth with the federal courts.

22 We think the issues we've identified are all
23 appropriate ones. We believe the procedure we have
24 specified is, frankly, the procedure that the FCC
25 identified. I think, when you look at the TRO

0030

1 itself, Paragraphs 700 through 706, which I would
2 urge review of, I think, frankly, this is the
3 procedure they specifically call for, and the
4 comments that are made by various of the parties
5 suggesting that we should defer this proceeding until
6 judicial review of the TRO is further along in the
7 process was specifically rejected by the FCC, to be
8 specific, in Paragraph 705 of the TRO. That answers
9 that issue.

10 Under the act and under the FCC's
11 interpretation of that act in the TRO, this
12 Commission has an obligation to undertake the
13 interconnection arbitration. We're here to do that.
14 I will say, to the degree that it is -- the concern
15 that arises, by my count, Verizon's put in play about
16 a dozen issues -- some of them I recognize have
17 sub-issues -- in its petition. It is our position,
18 fairly strongly, that these are primarily, if not
19 exclusively, legal questions.

20 We don't believe that this will be a
21 substantial evidentiary hearing, perhaps other than
22 the issue of pricing, but given the current status of
23 the TRO and the D.C. Circuit's action, as it applies
24 to the TRO, we don't think that there may be very
25 much in the way of pricing that would require a

0031

1 substantial evidentiary showing. This is a hearing
2 to conform existing interconnection agreements to the
3 FCC's latest pronouncements coming out of the TRO.
4 It is again primarily, if not exclusively, a legal
5 proceeding. We don't think that this hearing will be
6 as massive an undertaking as it might appear on first
7 blush.

8 So I guess, to the degree that you're asking
9 for substantive comments, we think substantively this
10 proceeding needs to go forward on the issues we've
11 identified in our petition for arbitration.

12 JUDGE RENDAHL: Okay. In response -- thank
13 you, Mr. O'Connell. In response to what Mr.
14 O'Connell has just stated on the record, I'd like
15 parties to respond to that, specifically about the
16 issue of whether certain issues should be addressed
17 in the model interconnection agreement docket, what
18 issues should be addressed, if any, and why the
19 Commission should address issues in that docket.

20 Before we go on to do that, though, I'm
21 remembering that someone has joined us, and maybe
22 someone else has joined or left. Ms. Huynh, are you
23 on the line?

24 MS. HUYNH: I am.

25 JUDGE RENDAHL: Okay. Could you please

0032

1 state your name, address, telephone number, fax,
2 e-mail for us, please?

3 MS. HUYNH: Sure. Name is Hong, H-o-n-g,
4 last name is Huynh, H-u-y-n-h.

5 JUDGE RENDAHL: H-u-y-n-h?

6 MS. HUYNH: That's correct. And I am with
7 the Portland office of Miller Nash. The address is
8 111 Southwest Fifth Avenue, Suite 3400, Portland,
9 Oregon, 97204.

10 JUDGE RENDAHL: 972 --

11 MS. HUYNH: -- 04.

12 JUDGE RENDAHL: -- 04, thank you.

13 MS. HUYNH: Let's see, you want -- my phone
14 number is 503-205-2485.

15 JUDGE RENDAHL: And your fax number.

16 MS. HUYNH: 503-224-0155.

17 JUDGE RENDAHL: And your e-mail address,
18 please?

19 MS. HUYNH: It's hong.huynh@millernash.com.
20 Miller Nash is one word.

21 JUDGE RENDAHL: Right. Okay. Thank you
22 very much.

23 MS. HUYNH: You're welcome.

24 JUDGE RENDAHL: And Mr. Harlow, are you on
25 the line still or have you dropped off?

0033

1 MR. HARLOW: I am, but I'm getting ready to
2 drop off. Again, I apologize, because this came upon
3 us rather suddenly.

4 JUDGE RENDAHL: Okay. And is there someone
5 else who's joined us on the line? Okay. Someone has
6 dropped off, but that's okay. Okay. So I would like
7 to hear from the parties on the issue of what should
8 be included in this proceeding or what should be
9 deferred to the model interconnection agreement
10 proceeding and why, and respond to the issue --
11 respond to the comments made by Mr. O'Connell. Let's
12 begin with Mr. Kirsch or Mr. Macres, if you're on the
13 line.

14 MR. KIRSCH: Judge, this is Mr. Kirsch. We
15 didn't file comments on issues. We're taking a
16 somewhat different approach, although we do support
17 the deferring of these issues to that docket to the
18 extent the law is unclear. I mean, it is our view,
19 generally, that I don't see how you can apply the
20 laws on those issues that have been challenged by the
21 D.C. Circuit.

22 That said, we're, as we said, we're going to
23 file a motion to dismiss and reply substantively to
24 Verizon's petition on the 13th, and I guess I'd like
25 to maybe defer my further comments till that time.

0034

1 JUDGE RENDAHL: Okay. I mean, I think it's
2 clear that we're going to need to have another
3 pre-hearing after the responses to Sprint's motion
4 and the answers and this motion that you are now
5 filing. So there will be another opportunity to talk
6 about issues and process, but I'm just trying to get
7 a quicker handle on it. That's why I kept the
8 pre-hearing this morning. So I appreciate your
9 comments, Mr. Kirsch. Ms. Friesen.

10 MS. FRIESEN: Thank you, Your Honor. First
11 off, I'd like to respond to a couple of things that
12 Mr. O'Connell asserted. First, and that is that the
13 TRO in Paragraph 700 through roughly 706 suggests
14 that Verizon's recent attempts here in the state of
15 Washington to engage in a mass arbitration to enforce
16 its interpretation of the TRO is somehow appropriate
17 under the TRO.

18 I think, if you go back and look at
19 Paragraph 700 through 706, you will see that the FCC
20 in no way undermines Section -- the 252 process and
21 would allow Verizon to unilaterally set a mass
22 arbitration in place the way it's done here in
23 Washington.

24 So I would urge you, just as Verizon does,
25 to take a look at those paragraphs and determine for

0035

1 yourself, if you would, Your Honor, whether or not
2 what Verizon is doing is consistent. It's AT&T's
3 position that it is wholly inconsistent with the TRO,
4 Paragraphs 700 through 706, and wholly inconsistent
5 with Section 252.

6 Setting that procedural bit aside, AT&T did
7 provide for you -- oh, wait, one other thing Mr.
8 O'Connell asserted, I think the Verizon model
9 agreement procedure has been in place for three
10 years. It's not my recollection that it's been in
11 place for three years, and there is a current
12 procedural schedule set up in that. I don't
13 currently have it with me as we sit here. I would be
14 happy to provide it to you, if necessary.

15 That said, AT&T's position is that with
16 respect to all of the substantive areas that Verizon
17 seeks to engage in sort of a mass discussion about
18 all of the issues belong in the other docket
19 associated with the model agreement so that a single
20 agreement and all of those issues can be discussed
21 and worked out.

22 The agreement is, as you know, a big
23 document that requires all the piece parts to work
24 together, and it's AT&T's position that if we're
25 going to discuss TRO provisions in that docket

0036

1 anyway, we may as well do it once and do it there.

2 We did, however, provide, in the event that
3 this proceeding goes forward, an issues list that
4 AT&T thinks is important that all issues within that
5 list be addressed with respect to the TRO and
6 Verizon's latest attempts to interpret the TRO and
7 the D.C. Circuit's position. So to the extent that
8 substantive issues go forward in this proceeding,
9 whatever those substantive issues are, if they are
10 reflected in our issues matrix, we want the way we
11 have proposed them, I guess, to be subsumed within
12 this proceeding in whatever manifestation it
13 ultimately ends up in.

14 I hope that -- and I know that's rather
15 inarticulate, but I hope that's clear.

16 JUDGE RENDAHL: Well, I think for now, as I
17 stated, this isn't the only pre-hearing that we're
18 going to have in this case, and I don't know if --
19 how much clarity we're going to get today, if at all,
20 but I appreciate your comments. Mr. Klein. Mr.
21 Klein, are you still on the line?

22 MR. KLEIN: Yes, I am. Thank you, Your
23 Honor.

24 JUDGE RENDAHL: Okay. Go ahead.

25 MR. KLEIN: We have, as you're aware, have

0037

1 already filed an answer in this proceeding following
2 the statutory time frame. In our answer we set forth
3 our response to the Verizon petition as set forth not
4 only on a substantive manner, but also in a
5 procedural fashion what we envision would be an
6 appropriate, I guess, manner in which to proceed with
7 this arbitration.

8 While we disagree with Verizon on the
9 substantive arguments, both in terms of the mandatory
10 process it suggests, as well as what it believes is
11 the appropriate implementation of the Triennial
12 Review Order, the Coalition does believe that this
13 would be an efficient and useful proceeding to
14 conduct. And that has been our position in each of
15 the states we've filed, and it was our position in
16 this state, and as we reiterated last week, we would
17 like to see most of these issues, if not all of them,
18 handled in this proceeding.

19 As was noted at the outset, there are a lot
20 of parties that are in this proceeding that have not
21 been involved in other proceedings, particularly the
22 model interconnection proceeding. There are issues
23 that will be raised in this proceeding that will be
24 different from those, and we do think it makes sense
25 to have this proceeding continue on separate and

0038

1 apart from the other proceeding and to put all the
2 issues in this infant proceeding, in this infant
3 docket that are in here right now, which are issues
4 related to the Triennial Review Order.

5 In the meantime, what we would suggest,
6 while this is all being hashed out and while this
7 proceeding continues, we think it's critical that the
8 Commission issue a standstill order preventing
9 Verizon from taking the type of unilateral action it
10 has in the past threatened, going all the way back to
11 October 2nd last year, which Verizon threatened to
12 discontinue certain network elements without an
13 appropriate amendment of interconnection agreements.

14 And at the same time, there are certain
15 issues that are addressed in the Triennial Review
16 Order that are self-executing. One of those is the
17 clarification that Verizon and other ILECs must
18 perform routine network modifications without delay.
19 And at this point, unfortunately, competitive
20 carriers are seeing tremendous delay in trying to get
21 access to network elements because Verizon is
22 asserting that it will not perform routine network
23 modifications required by current law.

24 And Verizon is attempting to levy outrageous
25 charges for performing these routine network

0039

1 modifications, so we would suggest that that issue be
2 addressed right away. That does not require an
3 amendment to an interconnection agreement, because it
4 is not a change in law; it's a clarification of what
5 existing law was, and therefore does not need to be
6 incorporated into an amendment to become effective.

7 We'd ask the Commission to address that
8 right away, separate and apart from these other
9 issues relating to -- well, relating, I guess at the
10 outset, as to whether to go forward with the
11 arbitration, but also separate and apart from the
12 hearings and the factual determinations on the record
13 and on the rest of the issues.

14 JUDGE RENDAHL: Concerning the standstill
15 order, what exactly are you asking the Commission to
16 do?

17 MR. KLEIN: We'd ask the Commission to make
18 clear that Verizon cannot begin to take unilateral
19 action that's inconsistent with the Triennial Review
20 Order and inconsistent with the parties' existing
21 rights, particularly as they exist under
22 interconnection agreements, because there are
23 existing interconnection agreements. They do require
24 access to certain UNEs, elements, services. To the
25 extent that they do require access to those and they

0040

1 do have change in law clauses, those change in law
2 clauses are still effective. The FCC cannot abridge
3 contract rights. The contracts have to be respected
4 and an amendment is required where there is a change
5 in law.

6 Verizon has, in the past, as evidenced by
7 their October 2nd notice to competitors, an intent to
8 possibly start withholding access to UNEs. So we
9 would ask the Commission to make it clear that
10 Verizon cannot engage in that type of activity.

11 JUDGE RENDAHL: Okay. Thank you. Mr.
12 O'Connell, you'll have an opportunity to respond once
13 I get through everyone.

14 MR. O'CONNELL: Thank you, Your Honor.

15 MR. HENDRICKS: Your Honor, this is Tre
16 Hendricks, on behalf of Sprint.

17 JUDGE RENDAHL: Good morning, Mr. Hendricks.

18 MR. HENDRICKS: And I've arrived. I
19 apologize. I had a scheduling conflict and a mistake
20 in my calendar. So I apologize. I am here and
21 appearing on behalf of Sprint.

22 JUDGE RENDAHL: Okay. I'll take your formal
23 appearance after we get through comments by the
24 parties here.

25 MR. HENDRICKS: Thank you.

0041

1 JUDGE RENDAHL: Ms. Singer Nelson.

2 MS. SINGER NELSON: Yes, Your Honor, thank
3 you. At this point, MCI is prepared to go forward to
4 arbitrate the issues raised by the TRO with Verizon,
5 and so MCI does not believe that any of the Triennial
6 Review Order issues should be deferred to the SGAT
7 proceeding at this time.

8 The substantive issues that were listed in
9 our response to the Commission notice that were filed
10 last Friday are the substantive issues that really go
11 to Verizon's original petition for arbitration.

12 As far as the changes affected by the
13 circuit court opinion in USTA II are concerned, I
14 think those issues are premature for the parties to
15 arbitrate, just because the mandate has not been
16 issued and the effect, the final effect of that
17 decision is yet to be known by all parties.

18 So we think that, to the extent TRO issues
19 are affected by USTA II, we should postpone
20 arbitrating those issues until we have resolution of
21 whether USTA II is actually going to go into effect.

22 What we do think -- we would like to go
23 forward with Verizon and arbitrate the issues
24 relating to the Triennial Review Order to the extent
25 that those issues are ripe for Commission decision

0042

1 and are not affected by USTA II.

2 JUDGE RENDAHL: When you say USTA II, are
3 you referring to the USTA Roman numeral II decision
4 from the court?

5 MS. SINGER NELSON: Yes, I am, Judge.

6 JUDGE RENDAHL: Okay. Does that clarify for
7 you? The court reporter did not know that acronym
8 yet. It's a new one now to add to the library.

9 MS. SINGER NELSON: Oh, I'm sorry.

10 JUDGE RENDAHL: Okay. We'll be off the
11 record for just a moment.

12 (Recess taken.)

13 JUDGE RENDAHL: Back on the record. I'd
14 like to take your appearance, Mr. Hendricks, and then
15 we'll go on to hear responses from Ms. Hong, Mr.
16 Kopta, and you, Mr. Hendricks.

17 MR. HENDRICKS: Yes, this is Tre Hendricks,
18 on behalf of Sprint Communications Company, LP. My
19 address is 902 Wasco Street, Hood River, Oregon,
20 97031. My phone number is 541-387-9439; my fax is
21 541-387-9753; and my e-mail address is
22 tre.e.hendricks.iii@mail.sprint.com.

23 JUDGE RENDAHL: Okay. And if you could
24 please check the master service list in this
25 proceeding and make sure that the contact person,

0043

1 both as a representative and for the company, if
2 those persons are correct and the addresses are
3 correct and if there's anyone else who should be
4 included either on our e-mail list or receive paper
5 copy, that would be helpful.

6 MR. HENDRICKS: I will do that. Thank you,
7 Your Honor.

8 JUDGE RENDAHL: Okay. And if you could let
9 the Commission know by subsequent letter, that would
10 be helpful.

11 MR. HENDRICKS: I will.

12 JUDGE RENDAHL: Okay. Ms. Hong, we're
13 talking about the issues of whether any issues should
14 be deferred to the -- what we're calling the model
15 interconnection agreement proceeding. I don't know
16 if you're familiar with that or not.

17 MS. HUYNH: I'm not, but in terms of what is
18 being discussed today, however, I was asked to just
19 convey to you that our clients were taken quite by
20 surprised by this notice. In fact, I don't think
21 they were even served. We had to learn about it from
22 somebody else, and given that, we are just not
23 prepared to comment right now. We're trying to work
24 behind the scenes to develop consensus among the
25 various groups that we represent. So we're not ready

0044

1 to comment on any of the issues being discussed today
2 right now. I apologize for that.

3 JUDGE RENDAHL: Okay. Well, thanks very
4 much. Mr. Kopta.

5 MR. KOPTA: Thank you, Your Honor. We
6 largely agree with the comments made by Ms. Singer
7 Nelson and Mr. Klein. We don't have any objection to
8 proceeding with addressing some of the issues that
9 are ripe at this point, whether it's through the
10 arbitration procedure that Verizon has set up or some
11 other procedure.

12 We think that there are some issues that can
13 be addressed now and can be addressed expeditiously.
14 On the other hand, there are some issues that are
15 still up in the air, shall we say, because of the
16 D.C. Circuit's decision, and those issues we don't
17 believe should be addressed at this point, and would
18 only point out that, as Your Honor is aware, in a
19 separate docket, the Commission has postponed
20 consideration of TRO issues with respect to Qwest
21 Corporation and their petition for proceedings under
22 the TRO, and we believe that consistency would
23 counsel for the same type of approach here in
24 Verizon's case, realizing of course that the issues
25 are somewhat different, but the reasoning behind

0045

1 postponing addressing them is the same, which is
2 that, at this point, it doesn't make sense for
3 parties to devote resources to issues that are very
4 likely to be different than they are as we sit here
5 today.

6 And this is more than just some nebulous
7 possibility. It is, in fact, something that is an
8 actuality. If the D.C. Circuit's decision ultimately
9 stands, then there will be some substantial changes
10 to what the FCC has required in the TRO, and if there
11 are further appeals, then there are even likely to be
12 some additional changes.

13 So at this point, we believe that those
14 issues that are not subject to that uncertainty can
15 be addressed at this point, but those that are, just
16 as the same types of issues in the Qwest proceeding
17 were postponed by the Commission in terms of
18 consideration at this point, we believe that those
19 similarly should be postponed with respect to Verizon
20 in this proceeding.

21 JUDGE RENDAHL: Thank you. Now, as to the
22 issue of the model interconnection agreement
23 proceeding, part of the reason I asked for issues and
24 discussion was the pleading that you had filed on
25 this. I'm wondering what particular issues you

0046

1 believe or if you still believe that those issues
2 should be addressed in the model interconnection
3 agreement proceeding?

4 MR. KOPTA: Well, Your Honor, we listed in
5 our comments that we filed last week those issues
6 that we believe are ripe and can be addressed at this
7 point. The other issues we think are at least the
8 issues that we have an interest in, and there may be
9 some others that may be ripe now, but the other
10 issues are those that can be postponed.

11 And the reason that we had suggested doing
12 that in the model interconnection agreement
13 proceedings is that that is already a generic
14 proceeding that is looking at contract language. And
15 currently hearings are scheduled in that proceeding
16 in September, so while it's a little bit more
17 protracted, obviously, than the schedule contemplated
18 by Verizon's filing, it would still be something that
19 could be addressed in short order without undue
20 delay.

21 We're not saying let's just forget about
22 them for now and who knows when we'll get to them.
23 Rather, putting them in that proceeding would ensure
24 that they could be addressed in a timely fashion and
25 at least with a little more knowledge than we have

0047

1 now about what the law is or will be. So that's why
2 we had suggested that other proceeding, because it
3 seemed like one that was already established, that
4 already had a schedule, that could be -- have the
5 issues addressed in a reasonably timely fashion
6 without any undue delay.

7 JUDGE RENDAHL: So you are suggesting that
8 you believe some of the issues under the TRO are ripe
9 now and others are still up in the air because of the
10 court decision, and those ones that are not ripe now
11 should be addressed in the model interconnection
12 agreement proceeding?

13 MR. KOPTA: Yes, Your Honor.

14 JUDGE RENDAHL: Thank you. Mr. Hendricks.

15 MR. HENDRICKS: Your Honor, Sprint, at this
16 juncture, isn't taking a position on --

17 JUDGE RENDAHL: I'm sorry, can you speak up
18 a bit?

19 MR. HENDRICKS: Yes, I'm sorry. Sprint is
20 not taking a position at this time on whether any of
21 these issues should be addressed in the model
22 interconnection proceeding for Verizon. Obviously,
23 Sprint hasn't filed an answer to Verizon's petition
24 yet and would reserve the right to make any comment
25 on that in the answer, as would be appropriate.

0048

1 In regard to Sprint's motion and request to
2 dismiss the petition on -- for Sprint alone, we won't
3 make any comment at this pre-hearing conference. We
4 don't think those issues are (inaudible) --

5 JUDGE RENDAHL: Can you repeat what you just
6 said? You kind of dropped off there at the end.

7 MR. HENDRICKS: Yeah, I was just saying that
8 I -- Sprint won't comment on any issues pertaining to
9 Sprint's motion to dismiss as to Sprint at this time.

10 JUDGE RENDAHL: Okay. Thank you. Mr.
11 O'Connell, you have a lot to respond to.

12 MR. O'CONNELL: I do. Thank you, Your
13 Honor. And I think the only way I'm going to be able
14 to is kind of take them in the order in which they
15 spoke, and if I attribute one advocate's remarks to
16 another, please bear with me.

17 To the degree that I understood Ms. Friesen
18 to argue that Verizon's -- I think she referred to it
19 as a mass arbitrations was not permissible under 252,
20 I would only respectfully direct the ALJ to WAC
21 480-07-630, one of the Commission's new procedural
22 rules, and specifically Subsection 12, which refers
23 to consolidation. Quote: The Commission or an
24 arbitrator may consolidate --

25 JUDGE RENDAHL: When you read, you need to

0049

1 do it slowly for the court reporter.

2 MR. O'CONNELL: Thank you. Quote: The
3 Commission or an arbitrator may consolidate
4 arbitration proceedings --

5 JUDGE RENDAHL: Still too fast.

6 MR. O'CONNELL: Still too fast. All right.
7 I'm just in a hurry to get to so many points. This
8 is just exciting stuff.

9 JUDGE RENDAHL: That's okay.

10 MR. O'CONNELL: The Commission or an
11 arbitrator may consolidate arbitration proceedings to
12 reduce burdens on telecommunications carriers,
13 parties to arbitration proceedings, and the
14 Commission. End of quote.

15 This is -- this is, I would submit, the
16 epitome of a case for which this type of a proceeding
17 is appropriate. If it had been preferred, we could
18 have filed 80-some odd different arbitration
19 petitions. That, I respectfully submit, makes no
20 sense. Instead, we filed a petition, because it's
21 the same set of issues as to every party with whom we
22 have an interconnection agreement, and try to have it
23 done in a single proceeding.

24 I submit that we have actively involved in
25 this conference call -- if I miscounted, I apologize,

0050

1 again. While it's numerous parties, many of those
2 parties are represented by a single set of attorneys,
3 so we actively have only seven or eight sets of
4 attorneys involved in this proceeding. And as
5 Commission proceedings go, that's not all that
6 unusual.

7 So I think the suggestion that somehow the
8 proceeding is inappropriate by virtue of just the
9 numbers involved, I don't think bears a great deal of
10 weight.

11 I heard Mr. Kirsch and several of the other
12 people indicate that this case should be deferred to
13 the model interconnection docket. And I think, for
14 the comment -- the reasons I expressed before, we
15 respectfully disagree.

16 I'll talk about Mr. Kopta's specific points
17 in just a moment, but, again, the model
18 interconnection act -- the model interconnection
19 agreement docket is, in fact, it's an 01 docket, it
20 has been going on for certainly two, going on three
21 years now, it has hearings, as Mr. Kopta
22 appropriately noted, scheduled in September. That is
23 after the time period that the nine-month clock would
24 require under the act, and even as that nine-month
25 clock may get deferred by virtue of your order

0051

1 extending it for 90 days, and I'll talk about that in
2 a few moments, it's just not appropriate to put these
3 issues, which deal with amendments to existing
4 interconnection agreements, into a docket that is
5 focused on preparing a model agreement to go forward.

6 You know, we would respectfully suggest that
7 the outcome of this docket should end up being
8 incorporated into 011219, but not the other way
9 around, because 011219 is indicated at getting a
10 going forward new agreement.

11 I acknowledge that AT&T, again, responding
12 to one of Ms. Friesen's comments, did serve an
13 extensive issues matrix. And to the degree that
14 AT&T's issues matrix addresses issues that are in
15 Verizon's petition, we recognize that that's just
16 their position on those issues.

17 To the degree that AT&T's issues matrix
18 raises issues that are outside the scope of the TRO,
19 we would object to those new issues, because they are
20 not arising by virtue of the operation of the FCC's
21 new order. We think the issues that are presented in
22 Verizon's petition are the issues that need to go
23 forward.

24 And to be candid, Your Honor, I too just
25 received that issues matrix on Friday. If you've had

0052

1 a chance to look at it, it is, by my count, a 60-page
2 document. We have not had the chance to go through
3 it in detail and to respond. And if there's going to
4 be any suggestion that that's something we have to
5 do, I'd respectfully request the ability to do that,
6 which I just haven't had because of the press of
7 time.

8 To respond to Mr. Klein, I hear agreement
9 that -- from -- on behalf of his clients, the
10 Coalition, that this case needs to be handled in this
11 manner. I respectfully object to his request to what
12 he referred to as a standstill order. With all
13 respect, what the FCC did regarding routine
14 modifications in paragraphs 653 and the other
15 paragraphs regarding routine network modifications is
16 not merely clarifying a law, but in fact is enacting
17 a new obligation.

18 To suggest somehow that that single issue
19 should be subject to different treatment and resolved
20 in some kind of a summary manner, you know, again,
21 the Coalition is free to make whatever arguments they
22 want, but if they would like to make a motion for
23 some kind of preliminary interim relief, I
24 respectfully request that they be required to make
25 such a motion so that Verizon can, in an appropriate

0053

1 fashion, respond.

2 The suggestion that just by making an oral
3 request for a, quote, standstill order, close quotes,
4 that this is an appropriate time or place to respond
5 to that, I disagree with. I don't think that that's
6 appropriate under this Commission's procedures or
7 under the procedures that we've used in these
8 interconnection arbitrations before this Commission
9 in the past, and just, I think, due process requires
10 that Verizon be afforded the opportunity to respond
11 to such a motion if it's going to be made in a formal
12 manner.

13 Finally, to respond to Mr. Kopta's
14 suggestion that some issues are ripe and others are
15 not, again, I respectfully disagree. The issues
16 raised by Verizon's petition are all ones arising out
17 of the TRO. The FCC could not have been more clear
18 that it rejected the notion that modification for
19 existing interconnection agreements should wait until
20 review of the TRO is complete, and that is what Mr.
21 Kopta is suggesting.

22 The analogy to the Qwest mass market
23 switching and other proceeding that they were
24 involved in is an inapt analogy, because, in fact,
25 the proceeding that -- the very proceeding that Qwest

0054

1 had filed in that docket was what the D.C. Circuit
2 suspended. The whole notion that the FCC could
3 delegate those issues to the states is what the D.C.
4 Circuit rejected.

5 That's not the issue that we're facing in
6 these specific issues that Verizon seeks to modify
7 its interconnection agreements by virtue of the
8 changes in the TRO. Those changes should be
9 incorporated into existing interconnection
10 agreements, and that we respectfully request that the
11 proceeding go forward on the issues identified in
12 Verizon's petition.

13 I will note, what I didn't hear from any of
14 the participants in this call, Your Honor, is any
15 disagreement with the representation that I made to
16 you as part of my opening comments, which is that
17 this is a primarily legal proceeding. This is not
18 going to be a proceeding that will involve large
19 amounts of evidentiary material that we'll need to
20 put in front of you. I didn't hear anybody disagree
21 with that and I respectfully submit, just by the
22 nature of what we put before you, which is a series
23 of modifications arising specifically from a single
24 FCC order, this is not going to be an unduly
25 burdensome hearing.

0055

1 Verizon will be reasonable about scheduling
2 matters, and we certainly don't want to inaccommodate
3 anyone, but the FCC's made clear that we have a
4 certain timetable we have to follow, and we would
5 like to do that. We don't think this proceeding
6 should be held up.

7 JUDGE RENDAHL: Okay. Well, I appreciate
8 all of your comments and responses on those issues.
9 It's helpful for me to hear you all talk about it.

10 MS. FRIESEN: Your Honor, may I clarify
11 AT&T's position on something?

12 JUDGE RENDAHL: Please do so briefly, Ms.
13 Friesen, but I think we do need to move along. I
14 think these issues will also be fleshed out even
15 further, but please go ahead.

16 MS. FRIESEN: Thank you, Your Honor. It is
17 not AT&T's position, nor has it ever been that the
18 Commission doesn't have the authority to consolidate
19 arbitrations correctly brought under Section 252. It
20 is AT&T's position that the mass arbitration that
21 Verizon has filed was not correctly brought under
22 Section 252, and that's the only clarification to
23 make. Thank you.

24 JUDGE RENDAHL: Thank you.

25 MR. KLEIN: Judge, if I may, as well?

0056

1 JUDGE RENDAHL: Who is this, please?

2 MR. KLEIN: This is Andy Klein.

3 JUDGE RENDAHL: Please go ahead.

4 MR. KLEIN: Just note that the issue that I
5 raised regarding --

6 JUDGE RENDAHL: I'm sorry, Mr. Klein.
7 You'll need to speak up very loudly. We have a
8 landscaper outside the window.

9 MR. KLEIN: Okay. Is this any better?

10 JUDGE RENDAHL: That's much better.

11 MR. KLEIN: Okay. The issue that was raised
12 with regard to routine network modifications was not
13 raised orally today for the first time. If Verizon's
14 counsel had read the answer that was filed, on page
15 five, it does make that request for the relief. So
16 it was submitted in writing for the Commission's
17 consideration. And Verizon, of course, could take
18 that opportunity to respond at this time if it felt
19 it was appropriate. But that has now been raised in
20 writing.

21 And just one other quick observation. Based
22 on what Verizon's approach has been to date, I can
23 see where it thinks this would be a very quick
24 proceeding, but Verizon has chosen to ignore the
25 realistic interpretations of the Triennial Review

0057

1 Order in the amendments that we have put forth as our
2 proposed amendments.

3 Verizon has taken a position that only its
4 amendment is relevant, and anyone who disagrees with
5 its amendment is simply seeking to be obstreperous,
6 and it's simply not the case, because we believe that
7 our amendment tracks much closer to the Triennial
8 Review Order language.

9 Verizon's representation that, you know, our
10 amendment was simply a rejection of its proposed
11 amendment is just not appropriate.

12 JUDGE RENDAHL: Okay. Well, I think we're
13 now getting into the area of the arguments. I'm
14 going to allow you to respond, Mr. O'Connell, but
15 please bear me out. After I allow Mr. O'Connell to
16 speak, I'm going to talk about I think where we need
17 to go and where we need to -- how we need to handle
18 the various allegations that are being raised about
19 how Verizon has brought the proceeding and how we
20 ought to proceed here, because, as I said, this is
21 not the ordinary arbitration, simply because of the
22 number of parties and because of the issues being
23 raised.

24 And it's -- I'd like to try to set a
25 schedule that meets the revised nine-month statutory

0058

1 deadline based on the revised filing. I don't think
2 it puts it out 90 days; I think it just puts it out
3 25 additional days. And I do think that we ought to
4 set a schedule and then address some of the
5 procedural issues by motion, and then we can proceed
6 with the hearing.

7 But Mr. O'Connell, why don't you go ahead
8 and respond very briefly, and let's move on to
9 talking about procedural scheduling.

10 MR. MACRES: Your Honor, this is Phil
11 Macres. I just want to weigh in on one point before
12 he responds.

13 JUDGE RENDAHL: Please go ahead.

14 MR. MACRES: To the extent that -- we don't
15 agree with Verizon's characterization that all of the
16 issues are legal issues, although we agree that there
17 is a good portion of the issues that could be done in
18 brief, rather than full evidentiary proceedings. I
19 just want to make that point, is that there are a
20 number of issues where discovery is necessary and we
21 will need to have hearings on the issues. For
22 instance, the rates for routine network elements.

23 You know, if we -- if the Commission
24 proceeds with this proceeding, and after its
25 determinations on our motion to dismiss, then we

0059

1 would have to make that determination of what goes on
2 a track with respect to legal issues and what goes on
3 a track with respect to hearing issues and what needs
4 to be brought to hearing and have a full evidentiary
5 process in place, discovery, et cetera. Thank you.

6 JUDGE RENDAHL: Okay. Mr. O'Connell.

7 MR. O'CONNELL: I will be very brief. I
8 have no further response to Ms. Friesen. Mr. Klein's
9 -- my comment regarding the Coalition's matter is I'm
10 looking, as we speak, at page five of his answer, and
11 I see nothing in that document which purports to be a
12 motion for some kind of preliminary relief. And my
13 comments were very specific that if the Coalition is
14 going to make some kind of a motion for interim or
15 preliminary relief, it should make such a motion and
16 not attempt to do so by virtue of an oral claim at a
17 pre-hearing conference, which does not give Verizon
18 the opportunity to fully and fairly respond.

19 As far as Mr. Macres's comments, you know, I
20 -- if a party is going to say that there are facts
21 that need to be discovered, you know, we are open to
22 engaging in discovery. We believe this to be a legal
23 proceeding, and we do not agree that a separate track
24 needs to be identified for different issues.

25 JUDGE RENDAHL: Okay. As I said, I

0060

1 appreciate all of your comments at this point. I
2 think this is a -- this pre-hearing really serves as
3 kind of a preliminary -- really preliminary
4 pre-hearing to try to figure out where we are.

5 Based on your comments, this case is a
6 little different than the Commission's Triennial
7 Review proceeding with Qwest in Docket UT-033044.
8 While they both involve the Triennial Review Order,
9 in the Qwest proceeding, the Commission was asked to
10 make some factual determinations. The Commission has
11 suspended the proceeding indefinitely, although the
12 Commission intends to look at where we are I think in
13 early May, depending on what's going on with the
14 legal proceedings surrounding the TRO, but I think
15 the Commissioners -- my understanding is that they
16 were not comfortable proceeding because the
17 delegation issue was vacated, as well as put in
18 question whether the standards that the FCC
19 established for mass market switching and transport
20 were in fact the standards that states might, in the
21 future, be asked to provide some fact-finding support
22 for.

23 So I think at this point it's a little
24 different than -- my understanding is that Verizon is
25 not raising the mass market switching issue in this

0061

1 proceeding and not the transport issues, either.

2 That's my understanding.

3 MR. O'CONNELL: Judge, that is correct. We
4 did not file such a petition within the original time
5 frames contemplated by the TRO and, to my knowledge,
6 we're not about to do so any time soon.

7 JUDGE RENDAHL: But they're not raised
8 within this proposed amendment --

9 MR. O'CONNELL: That's correct.

10 JUDGE RENDAHL: -- either, to the
11 interconnection agreement?

12 MR. O'CONNELL: I believe that to be
13 correct.

14 JUDGE RENDAHL: Okay. So although -- I
15 recognize that there are some concerns and issues as
16 to whether this Commission ought to proceed. So my
17 suggestion at this time is that the Commission has
18 established a time period to respond to Sprint's
19 motion to dismiss and to file replies, and that the
20 parties should take -- should avail themselves of
21 that process and use that process to address the
22 issues raised by Sprint, as well as the issues
23 discussed here about the nature of the TRO litigation
24 process, what is at issue, what's ripe, what's not,
25 and why. And so that we can better scope, if there

0062

1 are issues that are ripe and what are not ripe to go
2 forward in this proceeding, we should do so.

3 At this point, I don't see any merit in
4 assigning any issues to the Verizon model
5 interconnection agreement proceeding, although as we
6 proceed further, it may become apparent that there's
7 some issues that should be. At this point, I'm not
8 going to defer Verizon's petition to that docket. I
9 don't think that's appropriate at this point.

10 In terms of the issues list, I think it
11 would be helpful for all of you to begin to clarify
12 that amongst yourselves, if you can, and some of that
13 may occur, again, within the responses to Sprint's
14 motion and replies. I think it may be helpful, to
15 the extent you can work with each other, to do so.
16 If that's not working, you can contact me and we can
17 set up a specific filing for that.

18 And I understand that additional motions are
19 going to be filed, or an additional motion will be
20 filed. I'm concerned that we're going to lose time
21 in this arbitration trying to resolve things by
22 motion and not have time for a hearing and briefing
23 and getting this resolved, by my count, by July 27th.
24 The original date, I understood, was July 12th -- I
25 mean, July 2nd. That would be nine months following

0063

1 the October 2nd notice of negotiation. Twenty-five
2 days past that is July 27th, and Verizon had, when it
3 filed its revised filing, requested that parties have
4 an opportunity to respond 25 days after the initial
5 response time, and I think it's only fair that we
6 defer the entire procedural schedule by 25 days so
7 that we can complete this appropriately.

8 MR. O'CONNELL: Judge, for the record,
9 Verizon has no objection to that 25-day extension.

10 JUDGE RENDAHL: Okay. So the proposal is to
11 have an Arbitrator's report and decision filed and
12 served by July 27th. Given that schedule, at this
13 point, putting aside the arguments raised in Sprint's
14 motion and that may be raised in responses and the
15 motion filed by Mr. Kirsch and Mr. Macres's clients,
16 and assuming that the dates that I've just mentioned,
17 finishing it by July 27th are a given, I'd like to
18 see if we can identify some days for hearing.

19 We need to find out how many days we think
20 we need for this hearing or for the arbitration. So
21 I guess I'll start with Mr. O'Connell and have you
22 identify how many days you think we need and a
23 proposal for when you think we ought to do it. I'm
24 sorry. Ideally, I'd like to have the last briefs
25 filed -- I mean, there is the July 4th holiday in

0064

1 here. I guess no later than the 9th. Ideally, I'd
2 like to get final briefs by the 2nd of July, but you
3 know, I'm willing to allow another week, given the
4 holiday and given the schedule, but -- so given that,
5 you know, it looks like May is hearing time, but, you
6 know, that's fast approaching. I don't know that we
7 can do that.

8 MR. O'CONNELL: And as I think I indicated,
9 Your Honor, we are perfectly prepared to be
10 reasonable about scheduling in light of the fact that
11 there are other issues going on with this Commission,
12 so --

13 JUDGE RENDAHL: Right. I think what we
14 might need to do is that if the Coalition -- and I'm
15 referring to the CCC, not the NWCCC. If the CCC
16 files its motion on April 13th, the same date as the
17 time for responses, we'll have to have a condensed
18 response and reply time in order to meet our hearing
19 deadline.

20 And there are -- the only hearings currently
21 scheduled in May are the last week in May, and that's
22 the new generic cost hearing, and I understand that
23 is -- Verizon is heavily involved in that proceeding.

24 MR. O'CONNELL: I would think so, yes.

25 JUDGE RENDAHL: So given that, do you have a

0065

1 proposal for hearing?

2 MR. O'CONNELL: So you're saying the week of
3 May 24 is out?

4 JUDGE RENDAHL: The hearing room is
5 currently scheduled for the cost -- the recurring
6 cost hearings here in Washington. So hearings are
7 scheduled the week of May 24th and the week of May
8 31st, so those two weeks are not -- the hearing room
9 is not available. Given the number of parties we
10 have, it's not possible -- the Commissioners won't
11 sit on this hearing. It will be myself. So I don't
12 have to worry about their schedules. And my schedule
13 is fairly open.

14 MR. O'CONNELL: Judge, I think what that
15 means is we're looking for a hearing in June, then.
16 I don't know that it's going to be possible for the
17 parties to get this matter heard earlier in May than
18 the end of May.

19 JUDGE RENDAHL: Well, if we -- let's be off
20 the record for a moment while we talk scheduling, and
21 then we'll go back on the record.

22 (Discussion off the record.)

23 JUDGE RENDAHL: Okay. We'll be back on the
24 record. While we were off the record, we attempted
25 to identify or scope out a procedural schedule, and

0066

1 it became clear that the parties need to talk to
2 their clients, and maybe it would be more helpful for
3 them to confer amongst each other and then bring a
4 proposed schedule back to the Commission, so I think
5 the proposal was to do so by the end of the week. Is
6 that a realistic one?

7 MR. O'CONNELL: Judge, as Petitioner, how
8 about if I just offer this on the record, that we
9 will try to get that done, and if the parties are
10 still conferring with clients and are not able to
11 resolve the issue, I will report to you by the end of
12 the week, and if we think we need to come back to you
13 for resolution, we will so advise you.

14 JUDGE RENDAHL: Okay. So I will await
15 hearing from the parties. I will also advise all of
16 you, I will be out of the office from Thursday, the
17 1st of April through the 13th of April. I will be on
18 vacation, which was scheduled based on our Triennial
19 Review hearings, which then went away. So it's not
20 the most convenient for this proceeding, but my
21 apologies.

22 If you need to reach someone immediately,
23 you can always contact our office and someone will be
24 available to talk to you. Otherwise, you can send me
25 an e-mail. I believe -- do you all have my e-mail

0067

1 address? You can send me an e-mail. I will be
2 accessing my e-mails and will try to respond. You
3 know, it may be 24 hours later than you have
4 contacted me, but I don't think there's anything
5 urgent, and if so, if I don't get a hearing schedule
6 from all of you until, you know, even close to the
7 13th, that's not going to be of consequence to me.

8 I think I'd rather have you all try to work
9 it out and try to get the best schedule and try to
10 work through as many of the issues as you can.

11 I will, when I come back, I will also
12 schedule a pre-hearing conference following the 13th,
13 so we can -- I may do that before I go, so that we
14 can have a time set where we can meet and talk about
15 where we are. I would like all the parties to
16 address as many of these procedural questions in
17 their motion -- in the motion to dismiss, responses
18 to the motion to dismiss, so we can hash out some of
19 these issues about whether it's premature to go
20 forward or not and why and AT&T's issue as to whether
21 this does or does not comply with Section 252, so
22 that we can get some of those preliminary procedural
23 issues out of the way.

24 And I guess if you -- at the pre-hearing,
25 we'll identify maybe clarifying the issues list prior

0068

1 to whatever hearing date we have. Do the parties
2 need a -- need the discovery rules to be invoked of
3 the Commission?

4 MR. MACRES: Your Honor?

5 JUDGE RENDAHL: And who is this, please?

6 MR. MACRES: This is Phil Macres.

7 JUDGE RENDAHL: Mr. Macres.

8 MR. MACRES: You mentioned earlier that
9 parties may want to have a -- we may want to have
10 more of an expedited time frame with respect to
11 response oppositions to motions to dismiss and
12 replies.

13 JUDGE RENDAHL: Yes.

14 MR. MACRES: Is that something you'd want to
15 maybe put into place right now?

16 JUDGE RENDAHL: I could do that.

17 MR. MACRES: Or do you just want to wait
18 until --

19 JUDGE RENDAHL: No, I think it probably is
20 helpful to put that into place, and thanks for
21 bringing it up. So your intent would be to file on
22 the 13th your motion to dismiss?

23 MR. MACRES: That's correct.

24 JUDGE RENDAHL: I'm going to keep the
25 schedule I've set for the Sprint motion, because it

0069

1 -- you know, it completes everything by the 13th. I
2 think the issue would be any motions that are filed
3 on the 13th, including yours. And I think we'd like
4 to try to get responses and replies done prior to our
5 hearing in advance, so that you all can move on if we
6 need to resolve some of those issues. So I guess --
7 would a response by the 27th of April be
8 unreasonable?

9 MR. O'CONNELL: Not at all.

10 JUDGE RENDAHL: Okay. So if we set a
11 response date of the 27th, and a reply date of the
12 4th, then I think that would give me sufficient time
13 to resolve any of the preliminary procedural issues
14 raised by any of the parties prior to hearing so that
15 we narrow the issues for hearing and brief. Is that
16 acceptable?

17 MR. MACRES: Your Honor, just for
18 clarification, that would be a reply date by us;
19 right?

20 JUDGE RENDAHL: Correct.

21 MR. MACRES: On May 4th?

22 JUDGE RENDAHL: Correct.

23 MR. MACRES: Right, okay. Yes.

24 JUDGE RENDAHL: Okay. So we'll have a --
25 for any briefs -- any motions that are filed on April

0070

1 13th or by April 13th, the response date is the 27th
2 of April, and the reply date is May 4th. The
3 response -- the procedural deadlines for the Sprint
4 motions are -- will remain as they were stated in
5 Order Number 02.

6 MR. O'CONNELL: Your Honor, is it possible
7 for you to order in whatever order's going to come
8 out of this that any motions to dismiss that we may
9 face be filed by that same deadline, April 13th,
10 because --

11 JUDGE RENDAHL: Yes, that's my intent, that
12 any motion -- any procedural motion needs to be filed
13 by the 13th.

14 MR. O'CONNELL: Thank you.

15 JUDGE RENDAHL: So that we can move on.

16 MR. O'CONNELL: Thank you.

17 JUDGE RENDAHL: What I may do is to try to
18 get a pre-hearing conference order out before I
19 leave, which would leave out the schedule to be
20 determined at a later date, and so that some of these
21 other issues can be resolved as soon as possible.

22 MR. O'CONNELL: Very good.

23 JUDGE RENDAHL: So that is our schedule for
24 motions. The parties will provide to me, either by
25 the end of this week or later, as needed, to what the

0071

1 proposed schedule is, understanding that the
2 Arbitrator's report and order must be filed by July
3 27th and final briefing must be completed by July
4 9th, at the latest, and that the weeks of June 7th
5 and June 14th are available for hearing at the
6 Commission, and I will check into the dates of June
7 10th and 11th. Okay. That's our schedule.

8 As to the motion for a standstill order, I
9 am in agreement with Mr. O'Connell that if the
10 Coalition does believe a standstill order is
11 necessary, that the appropriate motion be filed with
12 the Commission. It was referenced in your response,
13 but I don't believe that's sufficient to, under the
14 Commission's rules, to initiate that kind of action
15 and request it from the Commission. So again, that
16 motion would need to be filed by the 13th, as well,
17 under the motion schedule we just discussed.

18 I will establish a pre-hearing conference
19 date. Let me look at the calendar right now. Would
20 it be appropriate to do so the week of the 10th of
21 May, given that all of the replies to motions will
22 have been filed by May 4th?

23 MR. MACRES: Your Honor, this is Phil Macres
24 speaking again.

25 JUDGE RENDAHL: Yes.

0072

1 MR. MACRES: Will a decision be rendered on
2 the motions at that point in time?

3 JUDGE RENDAHL: I don't know. I can't
4 commit at this point.

5 MR. O'CONNELL: Your Honor, would it be
6 possible to do it at the end of that week? I'm
7 scheduled to be in a civil trial the first three days
8 of that week.

9 JUDGE RENDAHL: We could even do it the week
10 of the 17th.

11 MR. MACRES: Ideally, we'd like to have a
12 decision rendered on the motion by the time we have
13 that conference, so we can -- either we know we have
14 to move full steam ahead or not.

15 JUDGE RENDAHL: I understand that. I'm also
16 looking at the Commissioners' calendars. While I am
17 sitting in this case, I think they would appreciate
18 being apprised of the issues raised in the motions,
19 so depending on their calendars and whether I can be
20 able to brief them prior to the pre-hearing, I will
21 attempt to do that.

22 MR. MACRES: Thank you, Your Honor.

23 JUDGE RENDAHL: Why don't we -- is there any
24 day during the week of May 17th that is not good for
25 anyone?

0073

1 MR. KOPTA: Your Honor, this is Greg Kopta.
2 There's a pre-hearing conference in the Washington
3 cost docket on May 20th.

4 JUDGE RENDAHL: I see that. Okay.

5 MR. O'CONNELL: Your Honor, the first --
6 actually, because of travel, the first three days of
7 that week, I'll be in a hearing in front of the
8 Oregon PUC.

9 JUDGE RENDAHL: Is that the LocalDial case?

10 MR. O'CONNELL: It is not. We have a pole
11 dispute down there.

12 JUDGE RENDAHL: Okay. Well, why don't we
13 aim for the end of -- I'll look at our calendar and
14 aim for the end of the week of the 14th, or maybe on
15 the 21st. I hate to have Friday, but you all will be
16 allowed to call in and we'll try to coordinate this a
17 little better. If I know who's calling in, then I'll
18 reserve the appropriate room.

19 MR. O'CONNELL: Very good.

20 JUDGE RENDAHL: So I'll look at either the
21 14th or the 21st for a pre-hearing, at which we'll
22 put to rest the motions and move on to the next
23 phase.

24 Are there any other issues we need to
25 discuss or anything I haven't clarified on the

0074

1 record? Hearing nothing, I think we are done this
2 morning. So I'll enter a pre-hearing conference
3 order within the next -- well, by Wednesday,
4 hopefully, addressing everything except for the
5 remainder of the procedural schedule that you all
6 will work out amongst yourselves, and I think that is
7 it. So is there anything else?

8 MS. FRAME: Judge Rendahl, this is Karen
9 Frame, with Covad.

10 JUDGE RENDAHL: Hello, Ms. Frame.

11 MS. FRAME: Hello. I'm sorry. I popped on
12 late. I was tied up in a negotiation call. I would
13 like to be added to the service list. For some
14 reason, I'm not on this list.

15 JUDGE RENDAHL: Okay.

16 MS. FRAME: I know that we have outside
17 counsel, Kelley Drye. I believe Andrew Klein is on
18 the call for us?

19 JUDGE RENDAHL: Yes, he is. So why don't we
20 take your appearance, and then we will be off the
21 record. Is that acceptable?

22 MS. FRAME: That would be great.

23 JUDGE RENDAHL: Okay. Please state your
24 appearance.

25 MS. FRAME: This is Karen, K-a-r-e-n, Frame,

0075

1 F-r-a-m-e, with Covad Communications Company. The
2 address is 7901 Lowry Boulevard, in Denver, Colorado,
3 80230. E-mail is just kframe@covad.com. Telephone
4 number is 720-208-1069; and facsimile is
5 720-208-3350.

6 JUDGE RENDAHL: And your -- oh, okay. The
7 street address?

8 MS. FRAME: Street address is 7901 Lowry,
9 L-o-w-r-y, Boulevard in Denver.

10 JUDGE RENDAHL: Okay. Well, we'll add you
11 to the list. I will also attach to my pre-hearing
12 conference order a representatives list that will
13 have all of your information so you can have that for
14 setting up an e-mail list.

15 I think we are done today, and thank you all
16 for your patience, and I appreciate all of you who
17 did call in late, so we have more of a complete
18 record, and I'm sorry if it wasn't clear. So we'll
19 be off the record. Thanks, again.

20 MR. KOPTA: Thank you, Your Honor.

21 MR. MACRES: Thank you, Your Honor.

22 (Proceedings adjourned at 11:44 a.m.)

23

24

25