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1 BEFORE THE WASHINGTON STATE
2 UTILITIES AND TRANSPORTATION COMMISSION
3 In the Matter of the Joint)
4 Application of) DOCKET NO. UT-050814
5)
6 VERIZON COMMUNICATIONS, INC.) Volume IV
7 AND MCI, INC.) Pages 108 to 125
8)
9 For Approval of Agreement and)
10 Plan of Merger)
11)
12 _____)

9 A pre-hearing conference in the above matter
10 was held on November 1, 2005, from 9:15 a.m to 9:40
11 a.m., at 1300 South Evergreen Park Drive Southwest, Room
12 206, Olympia, Washington, before Administrative Law
13 Judge C. ROBERT WALLIS.

14 The parties were present as follows:

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2 INDEX OF EXHIBITS

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5 EXHIBIT: MARKED: ADMITTED:

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

2 JUDGE WALLIS: Let's be on the record,
3 please, for our pre-hearing conference in the matter of
4 Commission Docket UT-050814, which involves a proposal
5 for merger of Verizon and MCI. Let's go around counsel
6 table, please, at this point, and I will ask each lead
7 counsel to introduce yourself, state your name, state
8 the name of your client, and if you have associate
9 counsel working with you, please identify that person.
10 Let's begin with Verizon.

11 MR. CARRATHERS: Thank you. Good morning,
12 Your Honor. Charles Carrathers for Verizon, and with me
13 is Judy Endejan with the firm of Graham & Dunn, and we
14 have one other lawyer assisting us in this case who will
15 be putting on Mr. Steve Smith's testimony and
16 cross-examining Mr. Charles King on behalf of the joint
17 counsel, and his name is Henry Weissmann with the firm
18 of Munger Tolles in California. He has not made an
19 appearance in this case to date, but he is prepared to
20 do so right now if you would prefer.

21 JUDGE WALLIS: I would prefer I believe for
22 him to be introduced and give his particulars when the
23 Commissioners are on the Bench.

24 MR. CARRATHERS: Thank you.

25 JUDGE WALLIS: So that he is able to

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1 introduce himself to them at the same time.

2 Meantime, will you please see that the court
3 reporter has the correct spelling of his name and firm
4 and so on, perhaps a business card would be of
5 assistance.

6 MR. CARRATHERS: Yes, Your Honor.

7 JUDGE WALLIS: Thank you.

8 For MCI.

9 MS. SINGER NELSON: Thank you, Judge, good
10 morning. Michel Singer Nelson here on behalf of MCI,
11 and with me is Art Butler from Ater Wynne.

12 MR. KOPTA: Gregory Kopta of the law firm
13 Davis Wright Tremaine LLP on behalf of XO and also a
14 limited appearance for Covad in the event that there are
15 issues with respect to Covad's participation in this
16 docket.

17 JUDGE WALLIS: For Public Counsel.

18 MR. FFITCH: Your Honor, Simon ffitch for
19 Public Counsel.

20 JUDGE WALLIS: Commission Staff.

21 MR. THOMPSON: Jonathan Thompson, Assistant
22 Attorney General for Commission Staff.

23 JUDGE WALLIS: And is there any other party
24 seeking to appear today?

25 MR. NUSBAUM: Jay Nusbaum, Your Honor, with

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1 Integra Telecom.

2 JUDGE WALLIS: Thank you.

3 Let's take the easy things first, assuming
4 that my crystal ball is correct in identifying what's
5 easy and what's hard. In terms of marking three news
6 releases and a public sentiment, Mr. ffitch, let's begin
7 with that, what is the nature of the public sentiment
8 exhibit that you wish to offer?

9 MR. FFITCH: Your Honor, this is a place
10 holder. I have inquired of the Commission's public
11 affairs department, which collects the comments filed
12 with the Commission on various dockets about whether
13 there has been public comment on this case, and I would,
14 if there is, I would then offer that as a public comment
15 exhibit in the -- according to the standard procedure
16 that we typically use in such cases. I'm not aware
17 right now whether there is any public comment one way or
18 the other. The other source of that would be comments
19 received at our office, and we will also be checking
20 that to see if we have received, you know, letters or
21 E-mails. I'm not aware right now that we have, but
22 again a place holder exhibit, Your Honor.

23 JUDGE WALLIS: Very well. Is there any
24 objection to that procedure?

25 MR. CARRATHERS: No objection, Your Honor,

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1 again Chuck Carrathers from Verizon. There is a letter
2 that was sent to the Commission by the IBEW expressing
3 its support of the merger, and we just want to make sure
4 that's included.

5 MR. FFITCH: Your Honor, I just have one
6 other observation, and that is that, as you know, there
7 has been no public comment hearing in this case, and it
8 is my understanding that to date the customers in effect
9 have not received any notice from the merging parties of
10 the pendency of the merger directly. Just this morning
11 I received from Mr. Carrathers a proposed notice which
12 may go out to customers and which invites them to file
13 comments in the case with the Commission. So we may
14 need to set a date to close the record on public comment
15 that's consistent with whatever the notice tells folks
16 in terms of when the -- how much time they have to
17 comment.

18 JUDGE WALLIS: Very well.

19 Mr. Carrathers, will you consult with Public
20 Counsel, Staff, and any other counsel who wishes to
21 participate in that discussion about the timing of the
22 notice and how that would appear to fit in with the
23 briefing schedule and with the conclusion of the
24 proceeding.

25 MR. CARRATHERS: Yes, Your Honor.

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1 JUDGE WALLIS: Very well. And please bring
2 that back to me by the end of the process. Let's
3 reserve Exhibit Number 510 for that document or
4 compilation of documents.

5 There are in addition three news releases
6 that describe decisions of various bodies including the
7 FCC, the Department of Justice, and the California
8 Public Utilities Commission. Are parties agreed that
9 those documents may be received in evidence?

10 MR. KOPTA: Your Honor, this is Greg Kopta
11 for XO, that's no problem for us. We would just want to
12 point out that the FCC did issue a corrected press
13 release that updates the press release that was
14 circulated earlier, so we just want to make sure that
15 the corrected notice is the one that's part of the
16 record.

17 JUDGE WALLIS: Very well, what party wishes
18 to take the lead in producing documents that are
19 accurate and corrected for submission?

20 Ms. Endejan.

21 MS. ENDEJAN: Yes, Your Honor, we have copies
22 of both of these news releases, and I guess we were not
23 aware that the FCC had issued a corrected one.
24 Obviously we want the corrected one in the record, but
25 we may have to get that marked and introduced after we

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1 print it and get it copied, unless Mr. Kopta has a copy.

2 MR. KOPTA: I do in fact.

3 MS. ENDEJAN: Then perhaps we could have
4 copies made and that would be marked as the exhibit.

5 JUDGE WALLIS: Very well.

6 And for the California document, Mr. Ffitch?

7 MR. FFITCH: Your Honor, I have prepared
8 copies of the press release which we got off the Web
9 site of the California Commission and have that marked
10 as an exhibit, and I can distribute that whenever you
11 would like.

12 I also have one other comment about these
13 exhibits.

14 JUDGE WALLIS: Your comment?

15 MR. FFITCH: It's my understanding that the
16 FCC has, as it often does, only issued a press release
17 here. However, the press release that I have seen
18 references a memorandum opinion and order. With regard
19 to the DOJ matter, there are available copies of the
20 actual consent decree and other related pleadings, there
21 is no final court decision at this time. I have a copy
22 of the DOJ materials here. I guess in summary I would
23 suggest that if there are original or fundamental
24 documents available on these matters that the Commission
25 may and parties may actually prefer to have those in the

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1 record as well at least by the time we close the record.
2 Folks may be comfortable going through the hearing on
3 the basis of the press releases, but we may want, since
4 some of these documents are available, the Bench may
5 wish to actually have them made a part of the record.

6 JUDGE WALLIS: Because the underlying
7 documents appear to be documents of the sort that are
8 ordinarily relied on as legal research materials, would
9 there be any objection to the Commission and parties
10 referring to those documents in the original when they
11 are available?

12 MR. CARRATHERS: No objection, Your Honor.

13 MR. FFITCH: No objection from Public
14 Counsel, Your Honor.

15 JUDGE WALLIS: Very well, why don't we
16 proceed on that basis, and if and when people find that
17 they are available, if you issue an all points bulletin,
18 then we can all go to the appropriate Web site and refer
19 to those documents. In the meantime, let's call the
20 corrected FCC document Exhibit 511, the Department of
21 Justice document 512, and the California document 513.

22 MR. FFITCH: Your Honor, do you want me to
23 provide the Bench copies of the California press
24 release?

25 JUDGE WALLIS: Yes, if you would do that on a

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1 break, either the mid morning break or the lunch break
2 today, unless you anticipate that there will be
3 examination on those documents.

4 MS. SINGER NELSON: Can we get a copy of the
5 California press release?

6 MR. FFITCH: Yes.

7 Well, Your Honor, I'm not sure how the
8 sequence would go this morning, it's possible we may get
9 to that.

10 JUDGE WALLIS: Very well, why don't you aim
11 for distributing those on the morning break, and if we
12 get to them earlier, then we will distribute it at that
13 time.

14 Schedule for Mr. Wood, the Commission has
15 indicated that it is acceptable to them if he appears by
16 telephone. He need not, unless he is anxiously amassing
17 frequent flier miles, come out in person as far as the
18 Commission is concerned. And I did not in the chatter
19 about this via electronic mail see that any party would
20 object to that procedure.

21 MR. KOPTA: Your Honor, that's fine with us.
22 I mean obviously we're more than happy to have him come
23 out, but if the only questions are going to come from
24 the Commissioners and they may not have that many, then
25 it might behoove everyone to have him appear by

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1 telephone Wednesday rather than in person on Thursday.

2 JUDGE WALLIS: Is his schedule flexible
3 enough seeing as how he now need not pack himself into a
4 crowded airplane for hours and hours and sit in our
5 audience for a length of time before actually coming to
6 the Bench or to the witness stand?

7 MR. KOPTA: My assumption was that he would
8 probably be flying at some point during Wednesday, and
9 he has reserved that day, and therefore I assume that he
10 would be available with a minimal amount of notice.

11 JUDGE WALLIS: Very well, if you could make
12 arrangements with him, it would be my preference I
13 believe to proceed according to the schedule that we
14 have set out in the estimates of time on cross and have
15 him appear at the appointed place in that order unless
16 things get really messed up, in which case we'll try to
17 be flexible enough to offer the least inconvenient
18 possible remedy for him and for the rest of us.

19 MR. KOPTA: Thank you, Your Honor.

20 JUDGE WALLIS: Any other comments about that
21 witness scheduling issue?

22 I think the same will be true of the Public
23 Counsel witnesses, and we would aspire to take them in
24 order. If it appears because of the length of
25 cross-examination that that will not be feasible, then

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1 we will be interrupting the schedule in a way that will
2 reflect our best efforts to minimize the disruption of
3 the examination of other witnesses.

4 Turning to the estimates of time on
5 cross-examination, let me ask if the parties have any
6 updates to their estimates. Mr. ffitch, you're on first
7 here, so.

8 MR. FFITCH: No, Your Honor, we have no
9 updates, these are still our best estimates.

10 JUDGE WALLIS: Mr. Kopta.

11 MR. KOPTA: I will not have any cross for
12 Dr. Danner. If I have any cross for Dr. Taylor, it will
13 probably be only 5 minutes, and I would say probably 45
14 minutes for Mr. Beach.

15 JUDGE WALLIS: Very well.

16 For the Staff witnesses, again Mr. ffitch.

17 MR. FFITCH: Same, Your Honor, no change in
18 our estimates.

19 JUDGE WALLIS: Very well.

20 For Mr. King and Mr. Roycroft, Staff.

21 MR. THOMPSON: No change.

22 JUDGE WALLIS: And for Mr. King and
23 Mr. Roycroft for the company.

24 MR. CARRATHERS: No change to Mr. King. And
25 Mr. Roycroft, I believe we anticipated for Verizon and

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1 MCI close to an hour each, I think the cumulative cross
2 would probably be closer to the hour.

3 JUDGE WALLIS: Very well.

4 And for Mr. Wood, am I correct that Verizon
5 and MCI no longer intend to cross examine Mr. Wood?

6 MR. CARRATHERS: That's correct, Your Honor,
7 with one possible exception, and that's if for example
8 that he gets a question from the Commissioners about
9 something that we want to follow up on.

10 JUDGE WALLIS: Very well.

11 I indicated earlier that there were some
12 formatting challenges with some of the exhibits that
13 have been received. It is my intention to talk
14 individually I think with counsel rather than take up
15 time at the present and ask that either counsel or a
16 paralegal or a legal assistant from your office come to
17 the Commission and make corrections on the original
18 documents that will be a part of the record in this
19 proceeding. And I think for the most part this relates
20 to documents that Verizon has offered on
21 cross-examination of witnesses, and we will I think find
22 it helpful to look at the conclusion of the hearing what
23 documents there are that remain that need the correction
24 to be self explanatory.

25 All right, is there anything further of a

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1 procedural nature?

2 MR. FFITCH: Your Honor, I think there are
3 two matters. One, just briefly, we do have an
4 illustrative exhibit which we have prepared for
5 Dr. Danner, and we would propose to add that to the list
6 and distribute it to parties. It's simply a compilation
7 of data that's in an existing exhibit.

8 And then the other matter, Your Honor, is the
9 stipulation with regard to exhibits which the parties
10 have been discussing via E-mail, and I guess I can start
11 that discussion if you would like me to by representing
12 what our position is on stipulation of exhibits.

13 JUDGE WALLIS: Yes.

14 MR. FFITCH: Public Counsel has no objection
15 to the admission of pre-filed testimony and exhibits of
16 any party. Public Counsel also agrees if there is a
17 mutual stipulation on this point to admission of
18 parties' responses to data requests. And so for example
19 in our case, we would not object to -- we would agree to
20 stipulate to the admission of cross exhibits designated
21 for Public Counsel witnesses which are simply our
22 responses to data requests. We will also not object to
23 non-discovery generated cross exhibits as long as the
24 proponent of those cross exhibits examines our witness
25 on that document. And I believe that completes our

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1 representations.

2 JUDGE WALLIS: Ms. Endejan.

3 MS. ENDEJAN: Your Honor, basically that's
4 Verizon's understanding as well with respect to the
5 exhibits that have been pre-distributed. As I
6 understand it, and someone can correct me, no one
7 objected to the admission of pre-filed testimony and
8 accompanying exhibits. And Mr. ffitch stated his
9 understanding with respect to discovery responses
10 submitted by Public Counsel, and I guess for the sake of
11 completeness, and Ms. Singer Nelson can address that,
12 there may be two that we would want to add because two
13 that he's designated refer to other data requests. And
14 with respect to Mr. Wood, we believe that we indicated
15 in a previous E-mail that in light of the fact that we
16 have no cross-examination, we would be withdrawing those
17 cross exhibits as well.

18 JUDGE WALLIS: Yes.

19 MS. ENDEJAN: Okay.

20 JUDGE WALLIS: Very well. So as we work
21 through the hearing, we will acknowledge that
22 stipulation, we will recite the receipt of the exhibits
23 on direct by stipulation of the parties as the witnesses
24 take the stand, and we will wait until the conclusion of
25 the examination for Public Counsel witnesses regarding

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1 those exhibits, and Mr. ffitch can identify those
2 documents that under the stipulation he has no objection
3 to. Is that satisfactory to parties?

4 MR. FFITCH: That's fine, Your Honor. I
5 would just say that I wasn't quite sure I understood
6 part of Ms. Endejan's comment about additional DR
7 responses, but we can talk about that at a break or
8 something, and she can enlighten me further, so I'm sure
9 we will be fine.

10 JUDGE WALLIS: All right.

11 Is there anything further?

12 MR. CARRATHERS: Just one clarification, Your
13 Honor.

14 JUDGE WALLIS: Mr. Carrathers.

15 MR. CARRATHERS: Thank you. Mr. ffitch noted
16 I thought that he had another I don't know if it was an
17 exhibit or some --

18 JUDGE WALLIS: A compilation I believe he
19 described.

20 MR. CARRATHERS: A compilation he intended to
21 ask Mr. Danner, is that being marked as a cross exhibit,
22 and if so or even regardless, can we see a copy of that?

23 JUDGE WALLIS: Mr. ffitch, would you make a
24 copy available now so that the parties can take a look
25 at it.

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1 MR. FFITCH: All right.

2 JUDGE WALLIS: All right, unless there's
3 something further, let's conclude this procedural
4 pre-hearing conference and then take up with the hearing
5 itself. As we are off the record, I will ask the
6 members of the witness panel to step forward and be
7 seated.

8 So this conference is concluded.

9 (Pre-hearing conference adjourned at 9:40
10 a.m.)

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