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BEFORE THE WASHINGTON UTILITIES AND

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TRANSPORTATION COMMISSION

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4 In the Matter of the Petition) Docket No. UT-991878
of) Volume I
5) Pages 1-33
MR. and MRS. W. NEIL THOMPSON)
6)
for a Boundary Change and)
7 Designation of a)
Telecommunications Common)
8 Carrier.)

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A hearing in the above matter was held on February 17, 2000, at 1:39 p.m., at 1300 Evergreen Park Drive Southwest, Olympia, Washington, before Administrative Law Judge LOIS ELLEN GOLD.

The parties were present as follows:

THE PETITIONERS, Pro Se, by W. Neil Thompson and Janet Thompson, 9704 Kensington Parkway, Kensington, Maryland, 20895. (Appearing Via Teleconference Bridge.)

US WEST COMMUNICATIONS, INC., by Douglas N. Owens, Attorney at Law, 1325 Fourth Avenue, Suite 940, Seattle, Washington 98101.

CENTURYTEL, by Calvin K. Simshaw, Attorney at Law, 805 Broadway, Vancouver, Washington, 98660.

BARBARA L. SPURBECK, CSR
COURT REPORTER

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THE COMMISSION, by Jonathan
Thompson, Assistant Attorney General, 1400 Evergreen
Park Drive, S.W., P.O. Box 40128, Olympia, Washington
98504-0128.

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1 JUDGE GOLD: We'll go on the record now.
2 The hearing will please come to order. This is a
3 prehearing conference in Docket Number UT-991878, in
4 the matter of the petition of Mr. and Mrs. W. Neil
5 Thompson, filed January 21st, 2000. The hearing is
6 being held in Olympia, Washington, on the 17th of
7 February, 2000, before Administrative Law Judge Lois
8 Ellen Gold, pursuant to due and proper notice to all
9 parties.

10 Mr. and Mrs. Thompson are taking part by
11 the Commission bridge link, and I have confirmed off
12 the record that all participants can hear each other.
13 And I have also requested, since we cannot see each
14 other, that you speak slowly, identify yourself, when
15 you are speaking, and to speak loud enough so all
16 parties, including our court reporter with us today,
17 Ms. Barbara Nelson, will be able to hear exactly what
18 you're saying.

19 Let's begin with appearances, beginning
20 with the petitioners. Please state your name,
21 whether you have a client or whether you're appearing
22 pro se, your business address, telephone number, fax
23 number, and e-mail address, if you have one. Mr. and
24 Mrs. Thompson, please speak one at a time.

25 MR. NEIL THOMPSON: Okay. This is Neil

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1 Thompson, and our home number is 301-933-6060. Our
2 fax number is 301-949-7295. I have an office number
3 that I can be reached at, area code 301-415-5858.

4 Our home address --

5 JUDGE GOLD: Is that your business address?

6 MR. NEIL THOMPSON: Business, sorry,
7 uh-huh.

8 JUDGE GOLD: Thank you.

9 MR. NEIL THOMPSON: And my wife's office
10 business telephone number is 703-248-0102. Our home
11 number and residence in the state of Maryland is 9704
12 Kensington Parkway, Kensington, Maryland, 20895.

13 JUDGE GOLD: We'll now ask each of the
14 companies, US West and CenturyTel of Washington,
15 Inc., to put their appearances on the record, please.

16 MR. OWENS: Thank you, Your Honor. For US
17 West Communications, Inc., I'm Douglas N. Owens,
18 Attorney at Law. Business address, 1325 Fourth
19 Avenue, Suite 940, Seattle, Washington, 98101. My
20 business phone number is area code 206-748-0367. My
21 fax number is area code 206-748-0369. My e-mail
22 address is dnowens@ricochet.net.

23 JUDGE GOLD: Thank you, Mr. Owens. For
24 CenturyTel of Washington, please.

25 MR. SIMSHAW: Thank you, Your Honor. My

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1 name is Calvin Simshaw. My last name is
2 S-i-m-s-h-a-w. I am an inside corporate counsel for
3 CenturyTel of Washington. My business address is 805
4 Broadway. That is in Vancouver, Washington. That's
5 98660. My voice telephone number is area code
6 360-905-5958. My fax number is area code
7 360-905-5953. My e-mail address is
8 calvin.simshaw@centurytel.com.

9 JUDGE GOLD: Thank you, Mr. Simshaw. Mr.
10 Thompson.

11 MR. NEIL THOMPSON: Yes.

12 JUDGE GOLD: We have two Mr. Thompsons.
13 Let me be specific. The Assistant Attorney General,
14 I'll repeat again, who represents the Commission
15 Staff, is also a Mr. Thompson, Mr. Neil Thompson.
16 His name is Mr. Jonathan Thompson.

17 MR. NEIL THOMPSON: Okay.

18 JUDGE GOLD: Mr. Jonathan Thompson.

19 MR. J. THOMPSON: Yeah, I think I was
20 assigned to this case just to cause the most
21 confusion possible. So anyway, it's Jonathan
22 Thompson, Assistant Attorney General, representing
23 Commission Staff. My address is 1400 South Evergreen
24 Park Drive S.W. It's P.O. Box 40128, Olympia,
25 Washington, 98504. My telephone number is area code

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1 360-664-11225, fax is 360-586-5522, and my e-mail
2 address is jthompso@wutc.wa.gov.

3 JUDGE GOLD: Thank you, Mr. Jonathan
4 Thompson. I'm going to be hoarse by the time we
5 finish this. We also have a member of the Commission
6 Staff, and I would like him to put his appearance on
7 the record, please.

8 MR. SHIRLEY: Certainly, Your Honor.
9 Robert Shirley, S-h-i-r-l-e-y, and what is our
10 address here? At the Washington --

11 JUDGE GOLD: Thirteen hundred.

12 MR. SHIRLEY: 1300 South Evergreen Park
13 Drive S.W., P.O. Box 47250, Olympia, Washington,
14 98504-7250. My phone number is area code
15 360-664-1292. My e-mail address is
16 bshirley@wutc.wa.gov.

17 JUDGE GOLD: Thank you, Mr. Shirley.

18 MR. SHIRLEY: Thank you.

19 JUDGE GOLD: There have been no motions to
20 intervene and there is no one in the room that
21 represents someone who wants to intervene.

22 MR. OWENS: Your Honor, Douglas Owens, for
23 US West. I did have a question along those lines.
24 I've received no pleading from the Staff stating
25 their position. And as far as I can tell, this

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1 appears to be an issue between the Thompsons, as
2 petitioners, and the two exchange companies whose
3 boundaries are at stake. And I wondered if the Staff
4 or its counsel would make a statement of position as
5 to Staff's interest in this matter?

6 JUDGE GOLD: Mr. Thompson, Mr. Jonathan
7 Thompson.

8 MR. J. THOMPSON: Right. Well, actually,
9 at this time, there's a bit of confusion remaining as
10 to what the relevant facts are, which I think Mr.
11 Thompson, the Petitioner, alluded to while we were
12 off record, and that is I think US West's motion to
13 dismiss is based on the allegation in Mr. Thompson's
14 petition that providing him service would require US
15 West to go outside of their exchange or boundary.

16 It appears to us now, in examining the
17 exchange area maps that are filed with the tariffs,
18 that US West may already have extended service
19 outside of this exchange area boundaries to people in
20 the neighborhood of Mr. Thompson, and that, as such,
21 we may have a different legal issue than was briefed
22 by Mr. Owens in his motion to dismiss.

23 I think we would reserve the right to
24 respond to US West's motion to dismiss, and I think
25 the time for doing that under the rules would allow

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1 us 20 days from the date it was filed with the
2 Commission, which I think was the 3rd of this month.

3 JUDGE GOLD: I believe it was the 2nd.

4 MR. J. THOMPSON: Or the 2nd. In any case,
5 which I think would put it to next Tuesday. Yeah.
6 Mr. Shirley was whispering in my ear, but I should
7 note that this is an issue of concern to the
8 Commission generally, the policy behind this kind of
9 request, and so we would want to go on record on the
10 policy that's at issue here.

11 JUDGE GOLD: Thank you. I'm going to now
12 -- yes? I was going to ask you if you had any
13 responsive comment prior to my addressing the motion
14 to dismiss, which I expect to do next. Mr. Owens or
15 Mr. Simshaw, do either of you have a comment on
16 Staff's stated position?

17 MR. OWENS: I didn't really hear a
18 statement of position. There was an allusion to the
19 possibility that the Staff would respond to my
20 client's motion, and am I understanding, then, that
21 the Staff's interest is in support of the petition?

22 MR. J. THOMPSON: Well, without committing
23 to what we might file in our response, my -- I think
24 our view at this point would be to oppose the motion
25 to dismiss.

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1 JUDGE GOLD: Well, I'm going to
2 short-circuit this at this point, Mr. Owens and Mr.
3 Thompson, in the sense that since the matter of
4 telecommunications within the state of Washington
5 comes under the jurisdictional purview of the
6 Commission, it is certainly appropriate for Staff to
7 participate in this proceeding.

8 I don't know that it is mandatory under any
9 code section of which I am aware for Staff to, at a
10 prehearing conference, need to state its position
11 that it may or may not take in an evidentiary
12 proceeding or in stipulations of fact. The motion to
13 dismiss is the next item that I want to address.

14 MR. OWENS: Before you proceed, Your Honor,
15 may I just make one point in response to that?

16 JUDGE GOLD: One final comment, Mr. Owens.

17 MR. OWENS: Yes, Your Honor. The reason I
18 was asking these questions is that, under Morgan v.
19 United States, which is found at 304 US1 1936, a
20 party brought into contest with the State, the
21 Government, is entitled to fair notice of the claims
22 of the Government and an opportunity to meet those
23 claims.

24 If we are left to an evidentiary proceeding
25 before we know what the position of the state agency

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1 here is, I believe we may be prejudiced, so that was
2 why I was asking --

3 MR. NEIL THOMPSON: I'm sorry, you dropped
4 off. Hello?

5 JUDGE GOLD: Can you hear me, Mr. Thompson?
6 Hello?

7 MR. NEIL THOMPSON: No, I can't hear.
8 Hello? I can't hear.

9 JUDGE GOLD: Let's go off the record for a
10 minute.

11 (Discussion off the record.)

12 JUDGE GOLD: Back on the record now,
13 please. Telecommunications have been restored, and I
14 believe that at least Mr. Thompson, Mr. Owens, did
15 not hear your last comment.

16 MR. OWENS: Okay. I'll be glad to repeat
17 it, Your Honor, and --

18 JUDGE GOLD: Can you hear Mr. Owens as he's
19 speaking? He's soft-spoken.

20 MR. NEIL THOMPSON: Yeah, I got the Morgan
21 v. whatever, 1936.

22 JUDGE GOLD: Did you get the cite on that?

23 MRS. THOMPSON: I did not.

24 MR. OWENS: 304 US1 1936.

25 JUDGE GOLD: 1936.

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1 MR. OWENS: Right. Under that case, a
2 party that's brought into contest with the State in
3 an administrative proceeding is entitled to fair
4 notice of the claims of its governmental adversary
5 and a reasonable opportunity to meet those.

6 That is why I was asking for the Staff, if
7 it is going to participate in this case, to state
8 what its position is, so that my client will be
9 informed and have a reasonable opportunity to meet
10 the claims of the Staff. And without that reasonable
11 opportunity, I believe my client may be prejudiced in
12 this hearing.

13 JUDGE GOLD: Mr. Owens, I have a question
14 as to your interpretation, and then I'm going to ask
15 for Staff's response to what you have said. But if I
16 understood what you're citing this case as
17 authority for, it's for a petition by the state.
18 This is a petition by an individual; is that not
19 correct?

20 MR. OWENS: That's why I'm somewhat
21 nonplused about the presence of the Staff in this
22 case, Your Honor, and its statement that it intends
23 perhaps to file something in opposition to our motion
24 to dismiss. That is the basis of this. I was not
25 aware that the Staff was going to be taking positions

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1 in this matter, and that is why I'm asking as, in
2 effect, a protective measure, that we be given notice
3 of what those positions are.

4 JUDGE GOLD: Mr. Thompson, Mr. Jonathan
5 Thompson, do you have any comment at this time in
6 addition to what you've said?

7 MR. J. THOMPSON: I would just add that
8 this is the petition of Mr. Thompson, and that the
9 fact that Staff is involved I guess doesn't change
10 that fact. We haven't brought this on our own
11 motion, and I'm a little bit at a loss to address the
12 question.

13 The other part I would add is that the
14 Company will have Staff's position on the Company's
15 motion to dismiss within the time period set out in
16 the rules for responses by parties.

17 JUDGE GOLD: All right. Both of these
18 comments have been duly noted on the record, and I am
19 now going to move along. The only thing I think that
20 remains to be addressed that I had on the motion to
21 dismiss, filed by US West on the 2nd of February,
22 2000, is that, to date, no comments or responses have
23 been filed. However, the statutory time for answers,
24 pursuant to WAC 480-09-425(3)(a) has not expired.

25 And we've had the comments on the record

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1 made by both Mr. Owens and responsively by Mr.
2 Jonathan Thompson, and depending on whether there are
3 responses and the nature of those responses, I will
4 either rule on that specific motion to dismiss prior
5 to hearing or I will take it under advisement and
6 rule on it after the hearing.

7 Now we're going to proceed and discuss some
8 procedural matters. And we are here largely to have
9 a better understanding of what's coming in the way of
10 issues to be determined and to establish suitable
11 procedures for evidentiary proceedings, including
12 location, time requirements, and dates. To date, no
13 party has requested discovery in this proceeding.
14 Does any party now wish to invoke the discovery rule?

15 MR. OWENS: Your Honor, my client is not
16 really certain that this is the type of case --

17 MRS. THOMPSON: I'm sorry, this is Janet
18 Thompson.

19 JUDGE GOLD: Mrs. Thompson, Mr. Owens has
20 started to speak, and since he has started, I'm going
21 to let him make his comment, and then, if you and/or
22 your husband have a comment, we'll be glad to put
23 that on the record.

24 MRS. THOMPSON: Thank you.

25 MR. OWENS: Thank you, Your Honor. Doug

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1 Owens, for US West. My client is really not certain
2 or convinced that this is the type of case that the
3 discovery rule, by its terms, applies to. However,
4 we would have no objection to agreeing to exchange
5 data requests; that is, to submit data requests and
6 to respond to data requests, as if the case were one
7 within the scope of the rule.

8 JUDGE GOLD: Mr. Simshaw, do you have a
9 comment?

10 MR. SIMSHAW: Yes, Your Honor. Let me
11 preface by indicating that I did just today file in
12 the records office an answer of CenturyTel. I made
13 an attempt before I left my office this morning to
14 have that answer faxed to the petitioners. I'm not
15 sure whether they've received it prior to the
16 convening of this prehearing conference or not.

17 I'd like to also at this time apologize for
18 the lateness of that submission. I just yesterday
19 became aware of this prehearing conference due to
20 probably some communication disconnects within our
21 corporation. I'm not implying there's any fault on
22 the Commission in their noticing process. The notice
23 was sent to our parent's corporate headquarters in
24 Monroe, Louisiana, and for some reason it did not get
25 communicated to our Washington operation, so I

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1 apologize for the lateness of that.

2 JUDGE GOLD: Well, as I read the code
3 section, your answer is not overdue.

4 MR. SIMSHAW: Oh, okay. I believed it was
5 past the date that was indicated in the prehearing
6 conference, which, as I say, I just saw that notice
7 yesterday, so --

8 JUDGE GOLD: My second comment is the
9 Commission does not have this address and your name
10 on the contact list.

11 MR. SIMSHAW: I understand that. That's
12 why I wanted to clarify that it's certainly no
13 shortcoming on the Commission's part. In fact, I
14 think we're probably going to explore either
15 expanding that list to include our local people or a
16 substitution.

17 JUDGE GOLD: The issue that we were
18 previously discussing, Mr. Simshaw, and for which I
19 asked whether you had comment was on the issue of
20 invoking the discovery rule and the comment that Mr.
21 Owens just made regarding exchange of data requests.
22 I would like to hear your thoughts on that, if you
23 have any.

24 MR. SIMSHAW: Yes. I believe there may be
25 some productive use -- on our part, it would probably

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1 be limited discovery to petitioners. But in my
2 review of the situation to this point, I think it
3 would be helpful to determine the scope of the
4 potential future service at that location, that we're
5 talking one line or whether we're talking potential
6 use for multiple lines will affect some of the issues
7 in this matter and the calculation of some of the
8 underlying costs.

9 So therefore, I guess similar to Mr. Owens'
10 statement, we would be amenable to discovery
11 occurring in this docket.

12 JUDGE GOLD: Does Staff have any comment on
13 this?

14 MR. J. THOMPSON: Well, I think in the
15 interest of a good record, it would be important to
16 have discovery on the issue of the location of the
17 exchange boundaries and plant with respect to the
18 petitioners' property. That's not particularly
19 well-developed in the pleadings, so I think Staff
20 would be in favor of invoking the discovery rule.

21 JUDGE GOLD: Well, I'm going to let the
22 record reflect that we shall now invoke the discovery
23 rule pursuant to WAC 480-09-480. And when we go off
24 record, I want the parties to agree to a cutoff date
25 for discovery. And should they not agree, I'm going

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1 to have discovery cutoff date five business days
2 before any prefiled witness and exhibit lists are due
3 prior to hearing.

4 Now, on filings, and we're going to do a
5 little bookkeeping right now, we're going to need at
6 the Commission the original, plus 16 copies for
7 internal distribution. Remember that all filings
8 must be made through the Commission's Secretary,
9 either by mail to the Secretary at the Washington
10 Utilities and Transportation Commission, P.O. Box
11 47250, Olympia, Washington, 98504-7250, or by other
12 means of delivery to the Commission's offices at 1300
13 South Evergreen Park Drive S.W., Olympia, Washington,
14 98504. Service on all parties must be simultaneous
15 with filing.

16 And ordinarily, the Commission does not
17 accept filings by facsimile, so don't rely on that
18 method without prior permission, which may be granted
19 in an extraordinary circumstance.

20 Should the petitioners or any party find
21 filing 16 copies burdensome, please contact me and I
22 shall see if any other arrangements can be made.

23 I shall ask all of you to pre-file
24 exhibits, as well as exhibit and witness lists with a
25 concise synopsis of the proposed testimony of each

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1 witness at least three business days before the
2 hearing. And let me remind you that if there's no
3 cutoff date for discovery, the cutoff date is five
4 business days prior to that. So it would be eight
5 business days prior to hearing.

6 All paper copies should be punched for
7 insertion in a three-ring binder and, except for the
8 exhibits, the other material does not need to be
9 filed, but can be faxed. You can fax it to me at
10 360-664-2654, and you can copy the other parties by
11 fax at that time also.

12 All electronic and paper copies must be
13 formatted with paragraph numbers unless it is data or
14 other nonparagraphed displays. Pages must be
15 numbered, and all submissions must be dated on the
16 first page of each item.

17 Any party bringing exhibits or evidence to
18 the hearing that have not been prefiled should be
19 prepared with copies for all parties, including the
20 reporter. I shall need two copies of any material
21 brought to the hearing and not prefiled.

22 Before we go off record to discuss
23 scheduling, I would like the parties to consider
24 whether a four or six-week time window prior to
25 submission of prefiled documents would be

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1 constructive and allow time to discuss settlement of
2 the issues prior to hearing. If so, the Commission
3 Staff should be given the opportunity to participate
4 in any such discussions, and the Commission should be
5 advised of any progress that you make.

6 I wish to remind all parties that
7 stipulations as to fact are encouraged, pursuant to
8 WAC 480-09-470. We've already heard on record that
9 there are some issues that are, at this juncture,
10 unclear as to factual matters, such as boundaries.

11 Parties are encouraged also to consider
12 whether alternate dispute resolution would be
13 appropriate to resolve their differences prior to
14 hearing. While off record, I suggest that the
15 parties explore the prospect both for stipulated
16 facts and to discuss and decide whether they will
17 accept signed affidavits in lieu of testimony. These
18 matters may help resolve the case without hearing.

19 As to the hearing, when we go off the
20 record, please consider how many hours, how many
21 witnesses, the time of each testimony you foresee as
22 necessary. We need to consider where to hold the
23 hearings and arrange for a facility there. We need a
24 window of dates so that we have some flexibility in
25 finding the appropriate facility. We'll go off

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1 record now so that the parties may discuss procedural
2 and scheduling matters.

3 Mr. and Mrs. Neil Thompson, you're still
4 with us?

5 MR. NEIL THOMPSON: Yes.

6 JUDGE GOLD: All right. Now, should you
7 care to discuss settlement, I can excuse myself from
8 the room and return at an appropriate time, if you
9 think that settlement discussions and a window for
10 such would be constructive. Let's go off the record
11 now, please.

12 (Recess taken.)

13 JUDGE GOLD: We're going to go back on the
14 record now. And before we get to the procedural
15 matters, which were discussed off record by the
16 parties, I want to correct an understanding that I
17 had prior as to CenturyTel's filing.

18 I had misunderstood you, Mr. Simshaw, to
19 say you had filed an answer to the motion, and I had
20 indicated I thought it was timely. This was an
21 answer to the petition, and that's all I really want
22 to say about it. It's filed and dated as of this
23 date.

24 Now we'll go to the procedural matters, and
25 I'd like very much to hear from the parties what they

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1 discussed while I was out of the room pertaining to
2 the possibility of resolution or progress through
3 settlement discussions, stipulated facts, and the
4 possibility of an alternate type of resolution prior
5 to hearing. Mr. Thompson. Mr. and Mrs. Thompson.

6 MR. NEIL THOMPSON: Mr. John Thompson or --

7 JUDGE GOLD: No, Petitioners, how's that?

8 Mr. and Mrs. Neil Thompson.

9 MR. NEIL THOMPSON: Well, I guess that
10 since the \$9,000 figure and the \$30,000 figure
11 offered as quotes for getting a one-line service --

12 JUDGE GOLD: Could you clarify, quotes for
13 service from whom?

14 MR. NEIL THOMPSON: CenturyTel of
15 \$9,188.25, and whatever the numbers were from US
16 West, which amounted to 30-some odd thousand dollars
17 -- let's see what that number is now, let's see,
18 \$33,795 -- are two figures that I think is
19 unacceptable for the public to have to pay.

20 JUDGE GOLD: All right. I'm going to
21 interrupt -- Mr. Thompson, I'm going to interrupt
22 you, because my inquiry is appropriate now only to
23 whether, after your discussion at which I was not
24 attendant, whether it indicated to you, as
25 Petitioner, whether there would be -- it would be

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1 constructive to hold settlement discussions, and if
2 so, we would schedule a window of time in which to
3 have such discussion. So that's the matter at this
4 point.

5 MR. NEIL THOMPSON: It doesn't sound like
6 there's an opportunity for settlement.

7 JUDGE GOLD: Okay. Do any of the other
8 parties have a comment on this?

9 MR. OWENS: I didn't hear what he said,
10 Your Honor. I think both you and he might have been
11 speaking at the same time when he started to speak.

12 JUDGE GOLD: Would you repeat what you said
13 for Mr. Owens. He didn't hear it.

14 MR. NEIL THOMPSON: Oh. What I -- I said
15 that regarding the possibility of settlement, that it
16 doesn't sound like there's a possibility of a
17 settlement with the \$33,000 quote and \$10,000 quote
18 from the two different parties.

19 JUDGE GOLD: Thank you.

20 MR. OWENS: Okay.

21 JUDGE GOLD: Now I've asked the other
22 parties if they have a comment on settlement
23 discussions. The Petitioner has indicated he does
24 not think they would be constructive.

25 MR. OWENS: Your Honor, Doug Owens,

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1 speaking for US West. Based on the discussion, which
2 I'm not going to reveal, I do not see any reason to
3 schedule a window of settlement in the procedural
4 phase of the case.

5 JUDGE GOLD: Thank you. Does CenturyTel
6 have anything to add to that, Mr. Simshaw?

7 MR. SIMSHAW: No, Your Honor. Based upon
8 the off-the-record discussion, we did not see any
9 potential good coming of that, as well.

10 JUDGE GOLD: Okay. Mr. Thompson.

11 MR. J. THOMPSON: I guess I would concur
12 with that. We probably don't need to build in a
13 window.

14 JUDGE GOLD: Then we will not schedule time
15 for settlement discussions. Was there any progress
16 made as to whether there could be some issues
17 resolved through stipulation of facts?

18 MR. OWENS: We didn't discuss that, Your
19 Honor. We spent the entire time discussing the
20 possibility of settling the entire case.

21 JUDGE GOLD: Okay.

22 MR. OWENS: If you'd like us to explore
23 that in a further off-the-record discussion, we could
24 do that.

25 JUDGE GOLD: I'll let you all explore that

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1 informally at a time different than at this
2 prehearing conference. What I'm going to ask you to
3 do is going to look at your calendars and make a
4 suggestion. I'm going to block out -- I'm going to
5 schedule the hearing for one day, but block out two.
6 And we have to look at what your positions are about
7 when this hearing should take place, and then where
8 it should take place. And we'll start with when.

9 We're looking at two days. I can, at this
10 juncture, tell you when I am not available. I'm not
11 available the 2nd, the 9th through the 15th of March,
12 the 21st, 28th, and 29th of March, as well as the
13 24th through the 28th of April, when I expect to be
14 in trial.

15 Mr. and Mrs. Neil Thompson, you do
16 understand that if we have an evidentiary hearing,
17 you will have to appear somewhere in the state of
18 Washington for this hearing. And our options for
19 location are really open for discussion once we
20 establish an approximate time window. We don't have
21 to establish a definite one now.

22 MRS. THOMPSON: This is Janet, if I could
23 speak?

24 JUDGE GOLD: Could you speak slowly and
25 louder, Mrs. Thompson?

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1 MRS. THOMPSON: Okay. And Neil, you can
2 check your calendar.

3 JUDGE GOLD: I can't hear you.

4 MRS. THOMPSON: I'm sorry, I'll pick up the
5 hand set. I'm looking at our calendar, but I'm at a
6 different location than Neil right now.

7 JUDGE GOLD: When will you both or one of
8 you be in Washington and foresee having had time to
9 gather whatever information you believe is necessary
10 to establish whatever your position is?

11 MRS. THOMPSON: Neil, I was looking at John
12 Neil's breaking time. That's in between -- it would
13 be in between March 22nd and March 31st.

14 JUDGE GOLD: Let me advise you, Mr. and
15 Mrs. Thompson, you have to have time, since the
16 discovery rule is invoked, to get information or data
17 requests out to the parties that you want information
18 from, and they have to have a time for response and
19 to meet that time for response, which I am going to
20 request that the parties hold to that.

21 So I don't know that a hearing somewhere by
22 the end of March is a sufficient time window. I
23 would like to hear the other parties' positions on
24 time, but I have one other question for you, Mr.
25 Thompson. Are you presently commuting between the

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1 East Coast and West Coast, or are you residing there?

2 MR. NEIL THOMPSON: No, I'm residing here,
3 and that was -- you know, we're trying to build out
4 there and tried to go out last summer to coordinate
5 this, so we could --

6 JUDGE GOLD: I understand. Well, I can
7 arbitrarily, after we take comments from everybody,
8 have us, you know, have a hearing date established.
9 I prefer not to do that. So it would be helpful if
10 you gave us some time windows, since you are the
11 furthest away.

12 MRS. THOMPSON: If I understood your
13 guidelines for how long it could be, the next window
14 for us would be -- that makes it not a hardship --

15 JUDGE GOLD: Mrs. Thompson, I'm going to
16 have to ask you to speak louder or speak into a hand
17 set.

18 MRS. THOMPSON: The next open time for us
19 would probably be sometime after June 7th or June
20 6th.

21 JUDGE GOLD: Okay. So you have a time
22 frame at the end of March and you have a time frame
23 after June 6th or 7th; is that correct?

24 MRS. THOMPSON: Correct.

25 JUDGE GOLD: Okay. I'd like to hear from

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1 the other parties now, please. Mr. Simshaw.

2 MR. SIMSHAW: Your Honor, speaking for
3 myself, I do not know the availability of my
4 witnesses, but I would like to block out our school
5 spring break, which is March 31st through April 8th.

6 JUDGE GOLD: Did you hear that, Mr. and
7 Mrs. Thompson?

8 MRS. THOMPSON: No.

9 MR. NEIL THOMPSON: No.

10 MR. SIMSHAW: This is Cal Simshaw from
11 CenturyTel. I was just asking if the Administrative
12 Law Judge could accommodate my request that we not
13 conduct the hearing between March 31st and April 8th.
14 I believe, then, Your Honor, that I am okay up and
15 through July 12th.

16 MRS. THOMPSON: I couldn't hear the end of
17 that. I'm sorry.

18 MR. NEIL THOMPSON: Yeah, speak up.

19 JUDGE GOLD: Mr. Simshaw, they didn't hear
20 you.

21 MR. SIMSHAW: I was just adding to that
22 that, as far as I'm able to determine at this point,
23 I would then be available and would not have any
24 other conflicts up until July 12th.

25 JUDGE GOLD: Okay.

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1 MRS. THOMPSON: This is Janet again. I do
2 have a business conflict June 13th through June 15th.

3 JUDGE GOLD: Okay. So shall we say after
4 June 15th, instead of -- or are you talking about
5 that you would be back and forth? I'm not clear.

6 MRS. THOMPSON: Totally after would be --

7 JUDGE GOLD: All right. So your
8 availability is at the end of March or after June
9 15th. And Mr. Simshaw, you said your availability is
10 flexible through the 12th of July, exclusive of the
11 31st of March to the 8th of April?

12 MR. SIMSHAW: Yes, Your Honor. If I might,
13 I just now recalled that May 10th through 12th is
14 also not good for me.

15 JUDGE GOLD: Okay. Mr. Owens.

16 MR. OWENS: Thank you, Your Honor. I don't
17 know of specific conflicts at this point. Like Mr.
18 Simshaw, I don't know my witnesses' schedules yet.
19 However, in terms of a starting point, it seems
20 unlikely to me that the discovery process would be
21 completed in time for a hearing to be held at the end
22 of March. Just in the nature of these things, if you
23 send out a data request and time goes by and you
24 receive a response, then that may prompt additional
25 questions, and so you have to think of at least two

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1 rounds, potentially, of data requests, one after
2 another, and it seems unlikely to me that we complete
3 that in time for a hearing by the end of March.

4 JUDGE GOLD: All right. Staff, do you have
5 anything to add to that?

6 MR. J. THOMPSON: Well, I would just add
7 that one thing we might consider is just that the
8 Petitioners might be allowed to appear by phone, if
9 there were no other alternative.

10 MR. OWENS: I don't --

11 MRS. THOMPSON: Is there telephone
12 conferencing?

13 JUDGE GOLD: Well, for an evidentiary
14 hearing, Mrs. Thompson, that's difficult, but not
15 impossible. I'd like to hear the comments from the
16 other parties, please.

17 MR. OWENS: I don't believe my client could
18 accept that, Your Honor. I think a number of the
19 issues, at least to the extent I can analyze them,
20 based on just reading the petition and having done
21 some investigation, are going to involve disparate
22 witness accounts of the same events, and it seems to
23 me that in order for the court or the judge to make
24 an informed decision on witness credibility, the
25 witnesses should be present in person.

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1 JUDGE GOLD: All right. It appears to me,
2 from what all of you said, that the week of the 19th
3 of June would allow time for discovery and also be
4 within everyone's window of availability. So
5 tentatively, let's look at June 19th and 20th,
6 expecting the hearing to last one day, but blocking
7 out two.

8 I would like next to briefly address
9 location, and location is largely up to the parties.
10 Mr. Thompson, have you a sense of where your
11 witnesses are going to be located? That might help
12 you in determining --

13 MR. NEIL THOMPSON: They would be in the
14 Colville area.

15 JUDGE GOLD: The what area, please?

16 MR. NEIL THOMPSON: The Colville,
17 Washington area.

18 JUDGE GOLD: Colville? How far is Spokane
19 from there?

20 MR. NEIL THOMPSON: It's an hour and a half
21 drive north or south from there to Spokane.

22 JUDGE GOLD: Okay. Mr. Simshaw and Mr.
23 Owens, where would your witnesses be located?

24 MR. SIMSHAW: Your Honor, this is Mr.
25 Simshaw. I expect that my network witness probably

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1 is in eastern Washington, probably Cheney,
2 Washington. My policy and/or tariff witnesses would
3 come out of Vancouver, as would myself.

4 JUDGE GOLD: Mr. Owens.

5 MR. OWENS: Your Honor, Doug Owens, for US
6 West. I believe US West's network witness would
7 probably be in the Colville area. The policy
8 witnesses or witness and tariff witness would
9 probably be from Seattle.

10 JUDGE GOLD: Okay. Mr. Jonathan Thompson.

11 MR. J. THOMPSON: Well, I imagine Staff's
12 witnesses would probably be located, of course, in
13 Olympia, but I think it's not unusual -- or actually
14 preferred to have cases affecting real estate heard
15 in the county where they're located, although I don't
16 know that that rule would necessarily apply here. It
17 might, by analogy, and I think it's a good idea
18 probably to have it in the Colville area.

19 JUDGE GOLD: All right. We've had input
20 from all of you, and we will establish a location
21 most probably in the east Washington area of
22 Colville, but that will be announced in the
23 prehearing conference order, which I shall draft and
24 circulate in the very near future.

25 Is there anything else at this time before

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1 we close these proceedings? Mr. and Mrs. Neil
2 Thompson.

3 MR. NEIL THOMPSON: Well, I guess I brought
4 this up before, is that I would like to orally amend
5 the petition and add that US West had already gone
6 beyond their exchange boundaries.

7 JUDGE GOLD: Well, I would recommend that
8 you discuss with Staff as to whether an oral
9 amendment of your petition is appropriate or you need
10 a written amendment.

11 MR. NEIL THOMPSON: Okay.

12 JUDGE GOLD: Secondly, have we got an
13 agreement for a date for discovery cutoff?

14 MR. OWENS: We did not discuss that, Your
15 Honor, in any off-the-record discussion.

16 JUDGE GOLD: All right. Then, let's have
17 discovery cutoff of -- first of all, I would request
18 that the parties try to reach and notify me within
19 the next seven days of a discovery cutoff. If not,
20 we're going to have discovery cutoff eight business
21 days before the 19th, and I have to figure out when
22 that is. I'm looking at June. And the latest that
23 discovery will be cut off will be June 6th at 5:00
24 p.m.

25 MR. OWENS: Your Honor, Doug Owens for US

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1 West. Is that the date that responses are due or is
2 that the date that new requests may be submitted?

3 JUDGE GOLD: No, that's the latest date
4 that responses may come in.

5 MR. OWENS: Okay, thank you.

6 MR. J. THOMPSON: So to further clarify --
7 this is Jonathan Thompson -- any requests would need
8 to be -- the latest request would need to be ten days
9 prior to the 6th?

10 JUDGE GOLD: Yes. Is there anything else?

11 MR. OWENS: You had asked, Your Honor,
12 about willingness to accept affidavits, rather than
13 testimony at a hearing. At this point, unless
14 something changes, I believe my client would not
15 accept affidavits, other than as part of a motion for
16 summary disposition, of course.

17 JUDGE GOLD: Does any other party have
18 comment on that? All right. I want to thank you all
19 for your participation, and this hearing is
20 adjourned. I shall enter a prehearing conference
21 order in the near future, which will solidify the
22 dates of hearing and the location and the cutoff date
23 for discovery. Thank you all.

24 MR. NEIL THOMPSON: Okay, thank you.

25 (Proceedings adjourned at 3:00 p.m.)