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

2 JUDGE RENDAHL: Let's be on the record. We
3 are here before the Washington Utilities and
4 Transportation Commission, Wednesday, December 10th, in
5 the matter of the petition for arbitration of an
6 interconnection agreement between Comcast Phone of
7 Washington, LLC, and Lewis River Telephone Company,
8 d/b/a, TDS Telecom, pursuant to 47 U.S.C., Section
9 252(b), in Docket UT-083055. I'm Ann Rendahl. I'm the
10 arbitrator and administrative law judge in this
11 proceeding, and this morning, we are here for a
12 scheduled discovery conference to address discovery
13 disputes between the parties.

14 Yesterday, I received from Mr. Finnigan two
15 letters and an attachment identifying some discovery
16 disputes and indicating that Mr. Finnigan may have
17 further disputes to bring here this morning. He handed
18 me a stack of papers which indicates further disputes
19 or questions for Comcast relating to TDS's data
20 requests, and so we will be addressing these discovery
21 disputes, but before we do that, there are a few
22 preliminary matters I want to go through, starting with
23 brief appearances by the parties, starting with the
24 petitioner.

25 MR. KOPTA: Gregory J. Kopta of the law firm

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1 Davis, Wright, Tremaine, LLP on behalf of Comcast Phone
2 of Washington, LLC.

3 MR. FINNIGAN: Richard Finnigan on behalf of
4 Lewis River Telephone Company, d/b/a TDS Telecom.

5 JUDGE RENDAHL: I'll note for the record that
6 with me in the hearing room is Brian Thomas, the
7 Commission's telecommunications policy advisor, and
8 Mr. Kopta, would you like to identify a representative
9 from Comcast for the record?

10 MR. KOPTA: Yes. Rhonda Weaver is here also
11 on behalf of Comcast.

12 JUDGE RENDAHL: I don't expect that either
13 Mr. Thomas or Ms. Weaver will be speaking this morning,
14 but in the event they do, now we've identified them for
15 the record.

16 While we were off the record, I explained my
17 proposal for the agenda this morning. The first thing
18 we need to do is clarify what standard we are using for
19 resolving these disputes. Then I have a few clarifying
20 questions that will help me in understanding the issues
21 and some factual matters in this case.

22 Then I would like to go through and identify,
23 based on TDS's Attachment 2 to TDS's answer, which is a
24 list of all the data requests and requests for
25 production that TDS has tendered to Comcast so we know

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1 which matters are in dispute, and then starting with
2 Mr. Finnigan, I would like to have argument on these
3 items, and maybe the best way to do it is start with
4 the first one in dispute and have Mr. Finnigan make a
5 brief argument as to why it's appropriate and Mr. Kopta
6 make a response and any brief rebuttal, and then we
7 will move on, and I will not be making a decision at
8 that point on the record, but then I will take a recess
9 after we are done and come back and hopefully state on
10 the record my decision on these disputes.

11 Then at that point, we can discuss whether
12 it's appropriate to have a written order of these
13 issues or whether the transcript itself is sufficient
14 for the decision. So that's my plan for this morning.
15 Anything the parties wants to add to that?

16 MR. KOPTA: No, Your Honor.

17 MR. FINNIGAN: That sounds appropriate.

18 JUDGE RENDAHL: The first thing we need to do
19 is talk about the standard for decision. This is an
20 arbitration proceeding, and I've forgotten my rules,
21 but 480-07-630 of the Commission's rules provides the
22 rules for arbitrating interconnection agreement
23 disputes before the Commission, and that rule indicates
24 that the parties can seek information that's relevant
25 to the issues in dispute, which is similar but not

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1 complete to the WAC in our procedural rules,
2 480-07-400(4), which identifies the usual standard for
3 discovery disputes in adjudicative proceedings. The
4 parties can only seek information that's relevant to
5 the issues in the proceeding and that would lead to the
6 production of information that is relevant, so
7 relevance to me is the standard.

8 Then we have the federal statute that governs
9 arbitrations, 252(b)(4)(b), where the state commission
10 may require the petitioning party and the responding
11 party to provide such information as may be necessary
12 for the state commission to reach a decision on
13 unresolved issues, and further goes on to say that if a
14 party refuses to respond in a timely basis, then the
15 state commission can use the best information available
16 to it from whatever source derived.

17 So that is what I'm basing my understanding
18 of the standard on. I see it as a relevant standard,
19 what is necessary and relevant to the proceeding. Is
20 there any objection to using that standard?

21 MR. KOPTA: No, Your Honor.

22 MR. FINNIGAN: No, Your Honor.

23 JUDGE RENDAHL: That's good. I had a few
24 preliminary questions before we go on because I think
25 it will help us to understand what's going on. The

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1 parties, or in particular TDS, uses a number of terms
2 for the companies: Comcast Phone, which I understand
3 to be short for Comcast Phone of Washington, LLC; is
4 that correct?

5 MR. FINNIGAN: That's the way it was defined
6 in other data requests, yes.

7 JUDGE RENDAHL: Then there is what's referred
8 to as Comcast II, and could you, Mr. Finnigan, tell me
9 what Comcast II refers to?

10 MR. FINNIGAN: We did not provide you in the
11 answer to the introduction to the data requests, just
12 the questions themselves, and what we defined in the
13 introduction to the data requests as Comcast II is
14 Comcast IP Phone II, LLC, which is the entity that
15 Comcast Phone has subsequently identified as the
16 interconnected voice-over Internet protocol provider.

17 JUDGE RENDAHL: Either counsel can answer
18 this. Is Comcast IP Phone II, LLC, a national
19 corporation, or is it just a corporation within the
20 state of Washington?

21 MR. KOPTA: I think that's the licensed name
22 of the entity in Washington. I don't know whether it's
23 a Washington corporation or whether it's solely
24 restricted to Washington.

25 JUDGE RENDAHL: Mr. Finnigan?

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1 MR. FINNIGAN: You probably ought to ask
2 Comcast to verify that. It's either the same entity or
3 a very similarly named entity that operates in other
4 states. There are other proceedings similar to this
5 going on in other states, and I read some of the
6 material from that, and there is, at least if it's not
7 the same entity it's a parallel entity, so you should
8 probably check.

9 JUDGE RENDAHL: I think there will be a
10 number of Bench requests in this matter, so for Bench
11 Request No. 1, it's a two-part question. First, is
12 Comcast IP Phone II, LLC, solely a Washington
13 corporation or does it operate in other states, and
14 secondly, in TDS's Data Request 1-2, there is a list of
15 a number of Comcast entities. It lists as "h," Comcast
16 IP Phone II, LLC, as well as "i", Comcast IP Phone of
17 Washington, LLC, and is Comcast IP Phone of Washington,
18 LLC, an affiliate of what I will call Comcast II, or is
19 it a separate company operating in Washington? Does
20 that make sense?

21 MR. KOPTA: I'm not sure whether you mean is
22 it the same company or are they two different
23 companies?

24 JUDGE RENDAHL: That would be a good
25 clarifying subsection of that Bench request, whether

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1 Comcast II and Comcast IP Phone of Washington, LLC, are
2 the same corporation, separate corporations, or whether
3 one is an affiliate of the other. Does that make
4 sense?

5 MR. KOPTA: Sure.

6 JUDGE RENDAHL: I'm assuming that they are
7 all affiliates of the larger Comcast Company; is that
8 correct?

9 MR. KOPTA: That's my understanding.

10 JUDGE RENDAHL: And this is another question.
11 This is not a Bench request. Mr. Finnigan, when you
12 refer to Comcast companies, what does that mean?

13 MR. FINNIGAN: It's intended to mean the
14 ultimate parent and all of its subsidiaries. The
15 theory was that if we get through the first three data
16 requests and the information has been scaled down to
17 identify those that are actually involved in the IP
18 service in any way, then it meant from that point on
19 Comcast companies would refer to that set of companies
20 that was identified as being involved in the IP
21 service.

22 JUDGE RENDAHL: We may need to clarify as we
23 go on which set of companies we are talking about, but
24 when I refer to Comcast II, that means Comcast Roman
25 numeral two, and Comcast Phone as Comcast Phone of

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1 Washington, LLC.

2 Second question for the parties, and this is
3 primarily for Mr. Finnigan, but if, Mr. Kopta, you have
4 any information on this, you can chime in. TDS's
5 holding company, is Vermont the only state where TDS
6 and Comcast have reached an interconnection agreement
7 that's been approved by the state commission?

8 MR. FINNIGAN: There are two preexisting
9 interconnection agreements when Comcast was offering
10 its switched or circuit-based service that it has since
11 withdrawn from in most states, and those two states
12 where that agreement was in place are, I believe,
13 Tennessee and Indiana, but that was the context in
14 which the agreement in those two states was reached was
15 under the former sort of non IP-based service.

16 JUDGE RENDAHL: So then Vermont is the only
17 state where TDS and Comcast have an approved agreement
18 that relates to the service at issue in this matter?

19 MR. FINNIGAN: I will double-check that, but
20 I believe that is correct.

21 JUDGE RENDAHL: Do you know and can you
22 check, so I guess Bench Request No. 2 to TDS is whether
23 Vermont is the only state where TDS and Comcast have an
24 approved agreement.

25 MR. FINNIGAN: In the context of an IP?

1 JUDGE RENDAHL: That involves the same issue
2 at dispute in this matter. That's Part A. Part B is
3 whether VoIP traffic, voice-over Internet protocol
4 traffic, also known as VoIP, is discussed at all in the
5 agreements approved in Tennessee and Indiana and
6 Vermont, for that matter.

7 Then not a Bench request yet, but we shall
8 see, Mr. Finnigan, in Washington, and for that
9 matter -- actually, this is a question for Mr. Kopta.
10 In Washington, and I know this is in the pleadings, and
11 maybe you can direct me to where it is because I
12 couldn't find it this morning when I was looking, which
13 companies have entered into interconnection agreements
14 with Comcast in Washington? And I don't recall who
15 mentioned it in their pleadings. Why don't we go off
16 the record for a minute while we look for it if you
17 know.

18 (Discussion off the record.)

19 JUDGE RENDAHL: While we were off the record,
20 we clarified that the information I was requesting
21 relating to the Comcast interconnection agreements with
22 carriers in Washington is identified in Paragraph 3 of
23 Beth Choroser's declaration in Docket UT-083056, WITA's
24 petition for declaratory ruling, and that was attached
25 to Comcast's answer in that proceeding.

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1 I would include as Bench Request No. 3 if,
2 Mr. Kopta, you will identify the docket numbers for
3 those agreements in Washington.

4 MR. KOPTA: Okay.

5 JUDGE RENDAHL: While we were off the record,
6 I identified for Mr. Kopta my next question, which had
7 to do with the filings that Comcast made before the FCC
8 to discontinue certain service under Section 6371. I'm
9 assuming those are rulings rules of the FCC, and while
10 we were off the record, we identified that in WITA's
11 petition for declaratory ruling, the filings before the
12 FCC are identified in Footnote 33, and a notice to the
13 Commission of the FCC's filing is identified in
14 Footnote 34 in Docket UT-072024.

15 The question I have, Mr. Kopta, for you or
16 for Comcast is what service or services did Comcast
17 identify to the FCC that they were discontinuing, and
18 so you can provide as response to Bench Request No. 4
19 either by providing a copy of the filing related to
20 Washington made before the FCC or an explanation of
21 what services Comcast identified that it was
22 discontinuing under that notice to the FCC, and
23 separately, what service is Comcast Phone of Washington
24 currently providing in Washington, and while we were
25 off the record, I believe both counsel indicated that

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1 might be answered either in part or in whole as a
2 result of this morning's conversation. If so, we will
3 note that on the record, and those are the questions I
4 have just as preliminary questions before we start
5 talking about the specific disputed requests, so I
6 thank you for your patience on that.

7 The next thing we need to talk about is what
8 is actually in dispute, and I will start with TDS's
9 answer to the petition for arbitration, Attachment 2,
10 which although as Mr. Finnigan states does not include
11 the preliminary discussion in the letter, does include
12 all of the requests for information, or what we will
13 call data requests, as well as requests for production.

14 Let's just start with the request for
15 production, and unfortunately, my pages are not dated,
16 but it's the very last page of Attachment 2, and as I
17 understand it, Mr. Finnigan, the only request for
18 production at this point that you are asking me to
19 direct Comcast to provide is the response to 2-1, any
20 contract between Comcast Phone and Comcast II.

21 MR. FINNIGAN: That's correct.

22 JUDGE RENDAHL: So none of the other requests
23 for production are in dispute?

24 MR. FINNIGAN: Technically that's correct.

25 JUDGE RENDAHL: Do you anticipate any

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1 additional disputes relating to these requests for
2 production?

3 MR. FINNIGAN: No. Comcast indicated they
4 wouldn't respond to any part of those items listed.
5 2-1 is the most important, and that's why we've chosen
6 to pursue.

7 JUDGE RENDAHL: I note that 2-5 relates to
8 interconnection agreements to which Comcast Phone is a
9 party, which I think we are already addressing.

10 MR. FINNIGAN: Correct.

11 JUDGE RENDAHL: And also 2-6. So 2-1 is in
12 dispute. Let's go back to the top, and this is the
13 request for information or the data requests, and I'll
14 go briefly through it. Is 1-1 in dispute in any way?

15 MR. FINNIGAN: No.

16 JUDGE RENDAHL: 1-2?

17 MR. FINNIGAN: No.

18 JUDGE RENDAHL: 1-3?

19 MR. FINNIGAN: Yes.

20 JUDGE RENDAHL: That is the first page you
21 have identified in the information you've provided me
22 today; correct?

23 MR. FINNIGAN: That's correct.

24 JUDGE RENDAHL: Is this dispute something the
25 parties can discuss amongst themselves, or do we need

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1 to discuss that this morning?

2 MR. FINNIGAN: We might be able to discuss it
3 on a break. What I'm asking for is a clarification of
4 Comcast's response, and if we can reach an agreement
5 among counsel, then we wouldn't need to go through it
6 here.

7 JUDGE RENDAHL: So what I'll propose to do is
8 once we go through the list and identify which ones
9 might be able to be discussed, we will take a brief
10 15-minute break, let you all discuss what we need to
11 discuss on the record and what you can resolve, and
12 then we will come back on the record. 1-4?

13 MR. FINNIGAN: That is in dispute.

14 JUDGE RENDAHL: Is that similar to 1-3?

15 MR. FINNIGAN: No. There is more to it than
16 that one.

17 JUDGE RENDAHL: So that one we will need to
18 talk about. 1-5?

19 MR. FINNIGAN: No.

20 JUDGE RENDAHL: 1-6?

21 MR. FINNIGAN: No.

22 JUDGE RENDAHL: 1-7?

23 MR. FINNIGAN: No. It's provided in here in
24 my material more as a reference for some of the other
25 questions that refer back to it, but it's really not in

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1 dispute as such, but it's in the material because you
2 will need to understand what they said for other data
3 requests.

4 JUDGE RENDAHL: So we won't need to discuss
5 1-7 this morning.

6 MR. FINNIGAN: Not as to itself. It will
7 come up in the course of discussing other data
8 requests.

9 JUDGE RENDAHL: 1-8?

10 MR. FINNIGAN: Yes.

11 JUDGE RENDAHL: We will need to discuss that
12 this morning. 1-9?

13 MR. FINNIGAN: No.

14 JUDGE RENDAHL: 1-10?

15 MR. FINNIGAN: No.

16 JUDGE RENDAHL: 1-11?

17 MR. FINNIGAN: Yes.

18 JUDGE RENDAHL: 1-12?

19 MR. FINNIGAN: No.

20 JUDGE RENDAHL: 1-13?

21 MR. FINNIGAN: No.

22 JUDGE RENDAHL: 1-14?

23 MR. FINNIGAN: No.

24 JUDGE RENDAHL: 1-15.

25 MR. FINNIGAN: No.

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1 JUDGE RENDAHL: I note that the letter
2 included the letter from yesterday identified 1-16 as
3 one for discussion this morning. Is that still
4 correct?

5 MR. FINNIGAN: That is correct.

6 JUDGE RENDAHL: 1-17?

7 MR. FINNIGAN: No.

8 JUDGE RENDAHL: 1-18?

9 MR. FINNIGAN: Yes.

10 JUDGE RENDAHL: And that was included in the
11 letter from yesterday?

12 MR. FINNIGAN: That is correct.

13 JUDGE RENDAHL: 1-19?

14 MR. FINNIGAN: Yes.

15 JUDGE RENDAHL: 1-20?

16 MR. FINNIGAN: Yes.

17 JUDGE RENDAHL: 1-21?

18 MR. FINNIGAN: No.

19 JUDGE RENDAHL: 22?

20 MR. FINNIGAN: No.

21 JUDGE RENDAHL: 23?

22 MR. FINNIGAN: No.

23 JUDGE RENDAHL: 24?

24 MR. FINNIGAN: No.

25 JUDGE RENDAHL: 25?

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1 MR. FINNIGAN: No.

2 JUDGE RENDAHL: 26?

3 MR. FINNIGAN: Yes.

4 JUDGE RENDAHL: 27?

5 MR. FINNIGAN: No.

6 JUDGE RENDAHL: 28?

7 MR. FINNIGAN: Yes.

8 JUDGE RENDAHL: 29?

9 MR. FINNIGAN: No.

10 JUDGE RENDAHL: And 30 was identified in the
11 letter; correct?

12 MR. FINNIGAN: Yes.

13 JUDGE RENDAHL: So we will be discussing that
14 as well, and this was quite a lengthy one that included
15 the diagram?

16 MR. FINNIGAN: Yes.

17 JUDGE RENDAHL: 1-31?

18 MR. FINNIGAN: Yes.

19 JUDGE RENDAHL: Is this one that needs
20 clarification, or is this a more substantial
21 discussion?

22 MR. FINNIGAN: I'll ask about this during the
23 break, and looking back, 1-4 may be something we can
24 resolve during the break. I'll go over those. If you
25 hold on just a minute, let me make a note.

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1 JUDGE RENDAHL: So 1-3, 1-4, and 1-31 we will
2 be discussing over the break?

3 MR. FINNIGAN: Yes.

4 JUDGE RENDAHL: 1-32?

5 MR. FINNIGAN: No.

6 JUDGE RENDAHL: 1-33?

7 MR. FINNIGAN: Yes.

8 JUDGE RENDAHL: Is this one you can discuss
9 at the break as well?

10 MR. FINNIGAN: Doubt it, no.

11 JUDGE RENDAHL: 1-34?

12 MR. FINNIGAN: Yes.

13 JUDGE RENDAHL: This one needs to be argued
14 as well or can be discussed at break?

15 MR. FINNIGAN: 1-34, 1-35, 1-36, 1-37 can all
16 be discussed at break.

17 JUDGE RENDAHL: 34, 35, 36 and 37?

18 MR. FINNIGAN: Correct.

19 JUDGE RENDAHL: That brings us to 38.

20 MR. FINNIGAN: Not at issue.

21 JUDGE RENDAHL: 39?

22 MR. FINNIGAN: Not at issue.

23 JUDGE RENDAHL: And 40?

24 MR. FINNIGAN: 40, 41, 42, and 43 can all be
25 discussed at break.

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1 JUDGE RENDAHL: Then that brings us to the
2 end of the list. So I'm thinking right now is a good
3 time for a break, and let's reconvene at 10:25, and
4 then we will see what happened over the break with your
5 discussions, if we can eliminate any from our list, and
6 then we will start going through the argument, and I
7 would like to have very brief argument on each one back
8 and forth. If you can consolidate your discussions on
9 any of these, that would be helpful too. Let me know
10 which ones we can do that for. With that, let's be off
11 the record.

12 (Discussion off the record.)

13 JUDGE RENDAHL: Back on the record. While we
14 were off the record, I gave the parties an opportunity
15 to see if they could reduce the number of disputed
16 questions. So who would like to report on your
17 discussions?

18 MR. FINNIGAN: I can do that. There has been
19 agreement to clarify the response to 1-8 and the
20 responses to 1-34 through 1-37 and 1-40 through 1-43.
21 Just for Your Honor's information, on 1-34 and above --
22 I'm sorry, 1-33 and above -- let me double-check that.

23 JUDGE RENDAHL: 1-34 through 1-43?

24 MR. FINNIGAN: It starts with 1-34. We've
25 had a discussion, and they are going to be supplemented

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1 in a couple of ways we've agreed on. In addition,
2 there are some supplemental data requests that were
3 delivered to Comcast this morning that go to that same
4 end, and so we are going to work cooperatively to get
5 those things clarified.

6 JUDGE RENDAHL: So we won't be discussing
7 this morning 1-8 or 1-34 through 1-37 and 1-40 through
8 1-43?

9 MR. FINNIGAN: That's correct.

10 JUDGE RENDAHL: Is it likely from the
11 supplemental data requests that were submitted this
12 morning that we are likely to need to schedule another
13 discovery conference? You know my preference would be
14 that you all resolve these things on your own.

15 MR. FINNIGAN: We've had a very brief
16 discussion about them.

17 MR. KOPTA: Obviously, I just have looked at
18 these briefly, and just a quick perusal seems they are
19 follow-up to the responses we provided to them, so I
20 would hope we wouldn't need to have another discovery
21 conference. That doesn't mean we shouldn't schedule
22 one and cancel it if we need to.

23 JUDGE RENDAHL: Then let's go forward with
24 the ones that are in dispute starting with 1-3, and
25 again, I would like, Mr. Finnigan, for you to make a

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1 very brief explanation as to why the answers to this
2 question would be relevant. Mr. Kopta will have an
3 opportunity to respond, and Mr. Finnigan, brief
4 rebuttal, if necessary, and then we will move on to the
5 next one, so 1-3.

6 MR. FINNIGAN: In 1-3, we are trying to
7 obtain the information as to what entities are involved
8 in the provision of the IP service in Washington. The
9 response that has been given identifies a relationship
10 between Comcast Phone and Comcast II as we've
11 identified those but doesn't tell us if those are the
12 only companies involved.

13 Based upon my reading of materials in similar
14 disputes in other states, it would appear that the
15 Comcast Cable Company entity is also involved in that
16 to a very substantial extent. Ms. Choroser has
17 testified in other states that that's where the
18 facilities come from is from the Comcast Cable entity.
19 That may not be the case in Washington; I don't know,
20 but we were seeking a complete response, and this is
21 just a partial response.

22 JUDGE RENDAHL: Mr. Kopta?

23 MR. KOPTA: Thank you, Your Honor. I think
24 the problem that we have with this request and most of
25 the others is we have a fundamentally different view of

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1 what the facts are that would need to be determined by
2 this commission in conjunction with a single issue
3 that's presented for resolution, which is whether
4 Comcast Phone of Washington, LLC, is a
5 telecommunications carrier.

6 That's a defined term, "telecommunications
7 carrier," under both federal and Washington law, and
8 under federal law, a telecommunications carrier is a
9 company that provides or offers telecommunications
10 services to the public or to such subset of users that
11 comprise the public. So the services that Comcast
12 Phone provides, whether it's registered and authorized
13 by this commission to provide telecommunications
14 services, are the facts that may be explored in this
15 proceeding.

16 What Comcast affiliates do, how IP service is
17 provided, who provides the IP service is not something
18 that's at issue in this proceeding, and it's not even
19 within the jurisdiction of the Commission. So our
20 problem with this request is that TDS is asking who is
21 involved in the provision of IP service, and that's
22 simply not relevant as to whether or not Comcast Phone
23 is a telecommunications carrier.

24 JUDGE RENDAHL: Mr. Kopta, have you completed
25 your response?

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1 MR. KOPTA: Yes.

2 JUDGE RENDAHL: Mr. Finnigan?

3 MR. FINNIGAN: The issue is not quite as
4 simple as Mr. Kopta portrays it. Certainly the one
5 threshold question is whether Comcast Phone is a
6 telecommunications carrier. To do that, it has to be
7 providing telecommunications service and it has to do
8 that on a common-carriage basis. These questions are
9 designed to go to that issue.

10 Another issue is whether the only traffic
11 that would be delivered over the interconnection
12 through the interconnection agreement that's sought by
13 Comcast Phone is information service traffic, or
14 nontelecommunications traffic, however you want to
15 characterize it. Under the FCC's rules, then they are
16 not entitled to interconnection if all that they are
17 seeking is information or nontelecommunications service
18 traffic. So there is a broader issue, and
19 understanding the nature and the relationship of that
20 traffic and how it works gets to the question of
21 resolving all of those questions.

22 JUDGE RENDAHL: When you refer to,
23 Mr. Finnigan, in your data request, which Comcast
24 companies are you referring to? All Comcast companies
25 to the discussed before or only those in Washington?

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1 MR. FINNIGAN: It would be only those that
2 are involved in the provision of service in Washington.
3 I'm not trying to inquire about their activities in
4 Oregon or any other state.

5 JUDGE RENDAHL: The reason why I ask is the
6 third sentence, "Please identify which Comcast company
7 or companies are involved in providing purported
8 telecommunications services to end-user customers is
9 not limited to Washington." Although, the next two
10 are, so I'm just simply trying to clarify how we are
11 limiting this answer.

12 MR. FINNIGAN: I strive for perfection but
13 sometimes don't draft perfection.

14 JUDGE RENDAHL: Just wanted to clarify.
15 Let's move on unless you have anything further on this.

16 MR. FINNIGAN: The question that relates to
17 retail data services, the sub question under that is
18 not particularly one we need to have answered if
19 Comcast in its umbrella does not view the
20 interconnected VoIP service as a data service. That's
21 really the reason it's asked that way is if they are
22 going to do semantic divisions and say, Well, it's
23 really a data service, then they need to answer that
24 question, but if we are beyond that, we are not trying
25 to get at a second subset of services is what I'm

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1 trying to get at. We are not concerned about Internet
2 access, for example.

3 JUDGE RENDAHL: So if Comcast were to answer
4 the first three questions, you would not need to know
5 the last two?

6 MR. FINNIGAN: No. It's the next to last
7 one. To the extent that that's read to say, "Internet
8 access service as a data service," we are not
9 interested in that. The reason the question was asked
10 is that if the interconnective VoIP service is viewed
11 by Comcast as a data service, then we needed to ask the
12 question that way.

13 JUDGE RENDAHL: So you are not asking about
14 general Internet service.

15 MR. FINNIGAN: That's correct.

16 MR. KOPTA: Just one observation, that we did
17 provide some response after the objection noting
18 services that Comcast Phone provides, and again, this
19 is consistent with our view that at issue are the
20 services that Comcast Phone provides, so we did provide
21 that information.

22 JUDGE RENDAHL: Let's move on. Turn now to
23 question 1-4.

24 MR. FINNIGAN: Question 1-4 is really an
25 extension of what's being asked in Question 1-3, trying

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1 to look at the way in which a carrier can offer service
2 that they claim to offer on a common-carrier basis. If
3 I look at, for example, in the transportation industry
4 sort of by analogy, if an entity that holds a permit
5 goes to another entity and says to them, "You use your
6 drivers, your trucks. You do the invoicing, the bill
7 of lading. We will slap our name on the end and tell
8 the warehouse that their traffic is coming, and you can
9 do that under our permit, and we are going to do this
10 with you because you meet our specified criteria for
11 how we want to operate," I don't think that's common
12 carriage. So this is trying to get at how they are
13 offering their service, in what way they are offering
14 their service. As I said, it's an extension of what we
15 are trying to get at under 1-3.

16 JUDGE RENDAHL: Mr. Kopta?

17 MR. KOPTA: Again we go back to the issue
18 that we have, which is how to determine whether or not
19 Comcast Phone is a telecommunications carrier, and
20 "telecommunications carrier" is not defined by whether
21 it owns network facilities or whether it has employees.
22 That's not part of the definition. In fact, it's not
23 part of the FCC rules. It's not part of the statute.

24 There are telecommunications carriers that
25 rely entirely on the facilities of other carriers.

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1 UNE-P providers relied entirely on facilities of an
2 ILEC. Resellers rely entirely on the facilities of
3 another carrier. To the extent that a carrier is
4 providing or offering service on a common-carrier
5 basis, that's the focus, not how it does it.

6 JUDGE RENDAHL: Mr. Finnigan?

7 MR. FINNIGAN: Your Honor, whether an entity
8 is a common carrier or not depends on the totality of
9 the facts around how they offer their service. As the
10 Court has said in the NARUC one and two cases, you are
11 looking at the facts and trying to determine whether
12 someone is offering to the public or a subset of the
13 public or is choosing to deal with one or two entities
14 on a particular set of circumstances under terms that
15 they choose and they dictate and would become then
16 private carriage.

17 So in order to understand that, you have to
18 have more than a simple statement that we're reselling
19 somebody's services. It could be you are a common
20 carrier if you do resell services. I'm not disagreeing
21 with that, but we need to know the totality of the
22 circumstances, and that's what 1-3 and 1-4 and some of
23 the others are trying to get at.

24 JUDGE RENDAHL: 1-7 is not one that we need
25 to talk about?

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1 MR. FINNIGAN: No. That was provided as
2 reference for 1-8, and we've clarified 1-8.

3 JUDGE RENDAHL: So 1-11?

4 MR. FINNIGAN: In 1-11, again we are going
5 towards the same thing, but here the focus is on the
6 wholesale provision. It's possible for someone to be a
7 common carrier through the provision of wholesale
8 services. We were asking Comcast to identify the way
9 in which they offer wholesale services. The term here
10 is "wholesale services." I assume under the response
11 that they provided they now call that local
12 interconnection service is what they list in response
13 to 1-3, but presumably, those are meant to be the same
14 things. It's just looking at it the same idea but in
15 the context of the wholesale provision of services.

16 JUDGE RENDAHL: So what you are looking at in
17 this question is another way of looking at whether
18 Comcast Phone is providing telecommunications service
19 as a common carrier?

20 MR. FINNIGAN: That's correct.

21 JUDGE RENDAHL: Mr. Kopta?

22 MR. KOPTA: Without sounding like a broken
23 record, we have provided information in response to
24 this, or at least cross-referenced 1-7 which provides
25 information in terms of what Comcast Phone intends to

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1 do in the TDS service area. Obviously, we wouldn't be
2 here if we weren't seeking an interconnection agreement
3 that would allow us to be able to provide service in
4 the TDS service territory. Any other Comcast entity,
5 whatever service it provides, is not relevant.

6 In addition, this question asks whether any
7 Comcast company is seeking, planning, or contemplating
8 to provide. In other words, are they going to provide
9 something in the future, which is asking for business
10 plans, and business plans are not appropriate for
11 discovery and are not the types of information that TDS
12 is entitled to obtain from Comcast Phone or any other
13 Comcast entity.

14 We provide the information that we need to
15 provide to demonstrate that we are a telecommunications
16 carrier and that we are legitimately seeking an
17 interconnection agreement with TDS, and above and
18 beyond that, what plans for service that Comcast Phone
19 or any other entity has is well outside the scope of
20 this proceeding.

21 JUDGE RENDAHL: Mr. Finnigan?

22 MR. FINNIGAN: We are not trying to find out
23 their future business plans to address any sort of
24 competitive issue, and to that extent, we can view this
25 request as being modified. What we are looking at is

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1 what sort of basis do they have to claim to be a common
2 carrier in the TDS service territories in the state of
3 Washington, and within that context, we are seeking
4 responses to these questions.

5 JUDGE RENDAHL: Let's move on to question
6 1-16, which is explained in more detail in a letter
7 dated December 9th, and before you begin, Mr. Finnigan,
8 I have a question for you, and that is, it seems to me
9 this question is actually two questions, and so I would
10 ask you to first explain to me how they are related,
11 and if they are not in any way, whether they can be
12 separated into an "A" and a "B."

13 MR. FINNIGAN: One asks the question of "if"
14 and the second asks the question of methodology, so
15 there is some relationship, but there can certainly be
16 an "A" and a "B."

17 JUDGE RENDAHL: So I would break them after
18 the date 2007, period, and then the next one, "B,"
19 would begin, "For each Comcast company, please indicate
20 whether the company bases its estimate...", etcetera.
21 Does that work?

22 MR. FINNIGAN: Yes.

23 JUDGE RENDAHL: So let's discuss them in
24 terms of "A" and "B," and you go ahead and discuss both
25 and then Mr. Kopta can address both.

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1 MR. FINNIGAN: I don't have any anything in
2 addition to what I put in my letter, so I won't repeat
3 myself, Your Honor.

4 JUDGE RENDAHL: Thank you. Mr. Kopta, any
5 response?

6 MR. KOPTA: Yes, Your Honor. Again, whether
7 or not any Comcast company contributes to the Federal
8 Universal Service fund does not shed any light on
9 whether Comcast Phone is a telecommunications carrier.

10 In the first place, companies other than
11 telecommunications carriers are required to contribute
12 to the fund, one being interconnected VoIP providers.
13 So whether or not Comcast Phone contributes to the USF
14 fund is not an indication of whether or not it's a
15 telecommunications carrier, and conversely, there are
16 telecommunications carriers that do not contribute to
17 the fund. So again, this is not information that is
18 relevant to the inquiry that the Commission needs to
19 undertake.

20 As far as "B," that's even farther afield.
21 How an individual company estimates its federal USF
22 contribution is a matter for the FCC, not for this
23 commission, and it has absolutely nothing to do with
24 whether Comcast Phone is a telecommunications carrier.

25 JUDGE RENDAHL: Mr. Finnigan?

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1 MR. FINNIGAN: I have nothing further on this
2 one.

3 JUDGE RENDAHL: Let's take a break.

4 (Discussion off the record.)

5 JUDGE RENDAHL: So for the next item on our
6 list is Request 1-18, and that's also addressed in your
7 letter, Mr. Finnigan. Do you wish to elaborate on your
8 discussion in the letter?

9 MR. FINNIGAN: No, Your Honor. I stated the
10 reason for the request.

11 JUDGE RENDAHL: Mr. Kopta?

12 MR. KOPTA: Again, a couple of points, Your
13 Honor. One is whether or not Comcast or any Comcast
14 company has received an access bill, or first, whether
15 any Comcast entity is providing toll service, because
16 those are the only companies that would be providing
17 and getting an access bill, Comcast Phone is not
18 seeking interconnection as an interchange carrier, or
19 IXC. They are providing local service or want to
20 provide local service. They need an interconnection
21 agreement to be able to do that, and whether or not
22 they operate as an IXC is irrelevant. In addition,
23 whether any entity other than Comcast Phone is
24 operating as an IXC similarly has no bearing on whether
25 Comcast Phone is a telecommunications carrier.

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1 The second aspect of the question asking if
2 there are any disputes, again, totally irrelevant. The
3 purported justification is that some dispute may have
4 been based on claiming that the traffic was information
5 services and not telecommunications services, and
6 that's speculation, number one, but number two, that's
7 not the only basis on which any kind of a bill can be
8 disputed. There can be a dispute over the number of
9 minutes, a dispute over the rate. All of these things
10 have absolutely nothing to do with this particular
11 proceeding. So again, all of this information is not
12 germane to whether or not Comcast Phone is a
13 telecommunications carrier.

14 JUDGE RENDAHL: Mr. Finnigan, any rebuttal?

15 MR. FINNIGAN: Yes. Certainly there can be
16 some access disputes that would not be relevant to this
17 proceeding, but it's impossible to ask that question,
18 so what we've done is ask the question for them to
19 identify the basis for any disputes, because if they
20 claim they are not subject to access because the
21 traffic is an information service traffic, then that
22 goes to whether or not they are entitled to
23 interconnection.

24 If they are claiming that the traffic they
25 deliver is information service traffic, that would be

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1 an important fact. If they have other disputes and
2 identify them and say that we had this dispute; it was
3 over the number of minutes, well, fine. We've asked
4 the question. They've answered it, and we didn't
5 happen to come up with anything that was relevant, but
6 just because you may not come up with something that's
7 relevant does not mean the question itself is not
8 appropriate, because it's designed to produce
9 information that may be relevant, and that's what we
10 are asking for.

11 JUDGE RENDAHL: Mr. Finnigan, if I were to
12 agree with you that this is relevant, would it be
13 appropriate to limit the question so that if there were
14 disputes, they wouldn't need to identify the nature of
15 the dispute if it was not related to VoIP. So they
16 could say, for example, "Yes, we had X number of
17 disputes. One of them was related to VoIP." Would
18 that satisfy your need without any detail of what the
19 other disputes were?

20 MR. FINNIGAN: That would be fine by me. If
21 they have disputes over the number of minutes they are
22 billing, I don't care.

23 JUDGE RENDAHL: So let's move on to 1-19,
24 which was not in the letter. Mr. Finnigan?

25 MR. FINNIGAN: That's correct. I guess we

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1 are at the point where I can say, "See the arguments
2 above." Again, we are trying to get at the issue of
3 common carriage and the issue of information service
4 traffic, and that's the purpose of asking this
5 question, and quite frankly, 1-26 and 1-28 if we want
6 to do this more quickly.

7 JUDGE RENDAHL: So this would also relate to
8 1-26 and 1-28?

9 MR. FINNIGAN: Right. One area where I think
10 Comcast and TDS agree is we do have a limited number of
11 issues. We are just in disagreement about how limited
12 and what is needed to be provided so you can answer
13 those issues, and again, what we tried to do is we
14 tried to develop questions that would come at the
15 issues of is Comcast a telecommunications carrier. Is
16 Comcast offering its services on a common-carriage
17 basis. Is the traffic that's going to be delivered
18 solely information service traffic from a number of
19 perspectives, and these questions are in that same
20 vein.

21 JUDGE RENDAHL: Mr. Kopta?

22 MR. KOPTA: Thank you, Your Honor.

23 JUDGE RENDAHL: Do you agree that this would
24 cover 1-19, 1-26, and 1-28, or do you wish to have
25 separate discussion on this?

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1 MR. KOPTA: I can address all three of them
2 at the same time. There are some differences between
3 them. In the first one, again, we did provide
4 information or refer to a data request response in
5 which we provided the information on the services that
6 Comcast Phone provides in Washington, which we think is
7 the appropriate inquiry. Anything outside of that we
8 have a problem with because we don't think it has
9 anything to do with the issues that the Commission
10 needs to resolve in this proceeding, and if you look
11 more carefully at Data Request No. 1-19, it's asking
12 for information on whether any Comcast companies at any
13 time have obtained a certificate of public convenience
14 and necessity to provide local exchange service in any
15 other state, whether digital phone service was included
16 in that authorization. This goes not only outside the
17 scope of this proceeding but outside the scope of this
18 state. This is classic fishing expedition on
19 information that is far beyond what the Commission
20 needs to consider in this proceeding.

21 No. 26 is a little bit different than that
22 because it's asking Comcast's opinion on whether the
23 definition of telecommunications service in the federal
24 statute covers TDS's description of particular
25 services. That's got things flipped around. We are

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1 not here to engage in an intellectual discussion over
2 whether certain services are or are not
3 telecommunications services. We are here to determine
4 whether the services that Comcast Phone of Washington
5 offers are telecommunications services. How Comcast
6 Phone characterizes its services is at issue, not how
7 TDS says, "Here's a list of services. What do you
8 think? Are these telecommunications services under the
9 definition in the Act?"

10 The same thing for No. 28, which is asking
11 under state law, Are these services that TDS lists
12 telecommunications services. Well, that's not the
13 issue. The issue is what are the services that Comcast
14 Phone offers and are those services telecommunications
15 services, not some hypothetical list of services and
16 whether or not they happen to be within or without the
17 definition in Comcast's opinion of telecommunication
18 service under state or federal law.

19 JUDGE RENDAHL: Mr. Finnigan?

20 MR. FINNIGAN: I will note that as to Data
21 Request 1-19, in part, it overlaps what the Commission
22 is seeking under Bench Request 4, which is have they
23 ceased services and what services have they ceased to
24 operate. It does go into other states on this one and
25 that's on purpose, and that is to determine whether or

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1 not Comcast is viewing itself as offering
2 telecommunications services or how many states has it
3 withdrawn from offering at least a certain type of
4 telecommunications service, and while we've done some
5 of our own due-diligence and listed the states in the
6 footnote that we know of, we are asking for
7 confirmation that we haven't missed any, and we
8 understand what they are doing and how they are
9 approaching this issue of interconnective VoIP service
10 on a general level.

11 On 1-26 and 1-28, we are sort of in a
12 Catch 22. Comcast won't tell us how it's offering the
13 service, so we came up with a list of questions that
14 would get at, do they view this as information service
15 or telecommunications service if this was involved or
16 if that was involved. Since they refuse to tell us
17 what they are doing, that's the only way we could get
18 at those questions is by posing a series of scenarios
19 and asking for them to explain if that is a
20 telecommunications service or information service.

21 MR. KOPTA: If I might very briefly on that
22 last point, these are the first data requests that TDS
23 has propounded, so they've not asked us what services
24 we provide yet. They actually have in their subsequent
25 data requests that have yet to be responded to. So

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1 it's not as if we were trying to hide the ball or not
2 telling them anything. These are the first data
3 requests out of the box.

4 JUDGE RENDAHL: All right. Thank you both on
5 those. I appreciate your covering more than one.
6 Before we leave today, I want to go back to --

7 MR. FINNIGAN: We are not finished, however.

8 JUDGE RENDAHL: I know. Before we leave, I
9 do want to go back to Bench Request 4 and make sure
10 that that is clear and whether it does cover any of the
11 topics in these requests for information.

12 Okay. I think we are now up to 1-20, which
13 is covered in the letter. Mr. Finnigan, is there
14 anything else you want to ask about? I believe this
15 question relates to how each Comcast company, and
16 again, is that nationwide or within Washington state?

17 MR. FINNIGAN: Where are you, Your Honor?

18 JUDGE RENDAHL: Data Request 1-20.

19 MR. FINNIGAN: I'm sorry.

20 JUDGE RENDAHL: It states, "Please state how
21 each Comcast company provides or plans to provide
22 IP-based service to its residential and business
23 customers." There is more, but are you referring in
24 that question simply to Washington state, or is this
25 all Comcast companies nationwide? You need to clarify

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1 that.

2 MR. FINNIGAN: This should be focused on the
3 state of Washington.

4 JUDGE RENDAHL: So any Comcast company
5 operating in the state of Washington or simply Comcast
6 Phone?

7 MR. FINNIGAN: Whoever they have identified
8 in response to Data Request 1-3 is essentially what
9 should be considered as the Comcast companies for this
10 purpose.

11 JUDGE RENDAHL: Go ahead, Mr. Finnigan, if
12 there is anything else.

13 MR. FINNIGAN: No, and I will qualify this in
14 that we don't need information regarding high-speed
15 data interLATA long distance or interLATA long distance
16 in order to focus this question a little bit more.

17 JUDGE RENDAHL: So you would delete the
18 reference to high-speed data intraLATA long distance
19 and intraLATA long distance?

20 MR. FINNIGAN: Yes.

21 JUDGE RENDAHL: So you would be seeking
22 information only about dial tone and features then.

23 MR. FINNIGAN: Correct.

24 JUDGE RENDAHL: Anything further before
25 Mr. Kopta has an opportunity?

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1 MR. FINNIGAN: No, Your Honor.

2 MR. KOPTA: This again is dealing with IP
3 services, information services, not telecommunications
4 services, and are not at issue in this proceeding, but
5 what is at issue are the telecommunications services
6 that Comcast Phone provides.

7 MR. FINNIGAN: May I inquire, Your Honor?

8 JUDGE RENDAHL: If Mr. Kopta is finished,
9 yes.

10 MR. KOPTA: Yes.

11 MR. FINNIGAN: Do I understand that to be a
12 statement by Comcast that the interconnective
13 voice-over IP service is viewed by Comcast as an
14 information service?

15 MR. KOPTA: That is my understanding.

16 JUDGE RENDAHL: Mr. Finnigan, would that
17 reduce your need for any of the information in those
18 data request responses?

19 MR. FINNIGAN: It actually could, but I would
20 have to go back through them and identify which ones
21 that might resolve, and I would like to think about
22 that a little bit, but I can let the parties know, let
23 the Commission know after I've had a chance to chew
24 that over a little bit.

25 JUDGE RENDAHL: Anything further on 1-20?

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1 MR. FINNIGAN: No, Your Honor.

2 JUDGE RENDAHL: So the next question at issue
3 is 1-30, which is also in a letter, and this relates to
4 the diagram, and Mr. Finnigan, is there anything you
5 want to discuss about this question, which is quite
6 lengthy?

7 MR. FINNIGAN: It is lengthy, and the reason
8 it is it's essentially asking for an explanation of the
9 diagram, to understand what the diagram is meant to
10 convey.

11 JUDGE RENDAHL: Can I interrupt you for just
12 a moment?

13 MR. FINNIGAN: Yes.

14 JUDGE RENDAHL: Where did you receive this
15 diagram? Is this something Comcast provided to you or
16 something TDS has created itself?

17 MR. FINNIGAN: I was just going to get to
18 that. It was provided to me by TDS personnel as a
19 diagram that Comcast had provided in a proceeding in
20 another state as a description of their service, and
21 last night, I had the TDS people confirm to me that
22 that is where they obtained it, and I can't tell you
23 which state at this point, but that was my
24 understanding, and that's been since confirmed by the
25 TDS staff.

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1 So if they are offering this as a means to
2 describe their service, then the questions are asked,
3 and I agree that it's a lengthy set of questions, but
4 they are asking essentially for an explanation of this
5 diagram in part in hopes that we can save an hour or so
6 of cross-examination at a later date.

7 JUDGE RENDAHL: Mr. Kopta, before you
8 respond, are you done, Mr. Finnigan?

9 MR. FINNIGAN: Yes.

10 JUDGE RENDAHL: Do you know, Mr. Kopta, and
11 you can consult with Ms. Weaver if you need to on this,
12 do you know if this diagram refers to how Comcast Phone
13 provides service in Washington?

14 MR. KOPTA: It is not how Comcast Phone
15 provides service in Washington.

16 JUDGE RENDAHL: Mr. Finnigan, I sense you
17 have something you want to say.

18 MR. FINNIGAN: Yes. The negative implication
19 is for Mr. Kopta's response, and what I would agree
20 with is that this is a description of how Comcast II or
21 Comcast IP provides services and relates to Comcast
22 Phone.

23 JUDGE RENDAHL: And if this is relating to
24 how Comcast II provides service in Washington,
25 Mr. Finnigan, how is this relevant to the inquiry about

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1 how Comcast Phone provides service in Washington and
2 what services it provides service in Washington?

3 MR. FINNIGAN: And how it relates to Comcast
4 Phone, because it does describe the media gateway and
5 connection to the PSTN, which at some point we need to
6 know whether Comcast Phone is providing that or Comcast
7 II is providing that.

8 JUDGE RENDAHL: So can your questions be
9 limited related to this diagram to how Comcast Phone
10 provides service?

11 MR. FINNIGAN: As it relates to its
12 relationship to Comcast II and the manner in which the
13 traffic flows between those two entities, then yes,
14 that is what this is getting at, and I don't know that
15 it shortens the question any, but that is what we are
16 trying to find out.

17 JUDGE RENDAHL: Mr. Kopta, if the question
18 were limited in some way to how Comcast Phone provides
19 service and how it is -- I hate to use the word
20 interconnected because I don't think that's the right
21 terminology, but the physical connection between
22 Comcast Phone and Comcast II, would Comcast still
23 object to the question?

24 MR. KOPTA: That's a difficult question to
25 answer because the diagram in its entirety has to do

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1 with how Comcast IP Phone II provides services. It's
2 the network for interconnective VoIP service. The
3 Comcast Phone piece goes from the switch over
4 interconnection facilities to another carrier's switch.
5 So virtually, the entirety of the diagram has to do
6 with Comcast Phone's customers' network, not Comcast
7 Phone's network.

8 So yes, if the question were targeted at how
9 Comcast Phone provides service, then that would be a
10 legitimate question, but everything that's in this
11 particular question has nothing to do with Comcast
12 Phone's network, so the entirety of the question would
13 be excluded if you were to put that kind of a
14 limitation on it.

15 JUDGE RENDAHL: Mr. Finnigan, any response?

16 MR. FINNIGAN: I guess my response is I'm not
17 quite sure I follow the argument raised by Mr. Kopta
18 because there is a description on the diagram of the
19 switch and the PSTN, and if this is inaccurate, maybe
20 it's not for the state of Washington, but if it is,
21 then this type of diagram may be helpful in
22 understanding the relationship between Comcast Phone
23 and Comcast II, but again, based on what Mr. Kopta has
24 said, there are portions of this diagram that relate to
25 Comcast Phone, if I understood his statement correctly,

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1 but it's their diagram. That's parts of my problem is
2 I'm trying to figure it out.

3 JUDGE RENDAHL: Is there anything more we
4 need to talk about with this question?

5 MR. FINNIGAN: No, Your Honor.

6 JUDGE RENDAHL: Then let's move on to the
7 remaining two questions, and that would be data request
8 1-31 and 1-33; Mr. Finnigan?

9 MR. FINNIGAN: Unfortunately, 1-31 I forgot
10 to talk about when I had the break with Mr. Kopta.
11 Really what we are asking is a clarification of the
12 response. They have stated that the conversion of
13 calls, the conversion occurs at a media gateway, and I
14 guess for clarification purposes I would like to
15 understand, does that conversion happen anywhere else,
16 so there is seven sub-parts, and if they clarify their
17 answer that it does not happen anywhere else, then I
18 view that as a complete response.

19 JUDGE RENDAHL: Mr. Kopta?

20 MR. KOPTA: My understanding is that it
21 occurs only at the media gateway, but I would be glad
22 to go back and confirm with my client if that is
23 correct or if there is another point at which the
24 conversion takes place.

25 JUDGE RENDAHL: So you would have no

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1 objection to and clarifying whether the conversion
2 occurs solely at the media gateway or if there is
3 another location identifying or explaining that other
4 location?

5 MR. KOPTA: That's correct.

6 JUDGE RENDAHL: So I'll consider this not in
7 dispute, but you can let me know if it becomes a
8 dispute. The last question it seems to me is Question
9 1-33; Mr. Finnigan?

10 MR. FINNIGAN: And the Request for Production
11 No. 2-1.

12 JUDGE RENDAHL: Thank you.

13 MR. FINNIGAN: And actually, those two items
14 are related.

15 JUDGE RENDAHL: This question 1-33 and the
16 Request for Production 2-1?

17 MR. FINNIGAN: That is correct.

18 JUDGE RENDAHL: So you want to argue them
19 both together?

20 MR. FINNIGAN: That's correct. What the goal
21 is under 1-33 is to find out what services that Comcast
22 Phone actually offers to Comcast II that goes directly
23 to is it telecommunications service, which even
24 Mr. Kopta agrees is a threshold question.

25 The partial response was that there is a

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1 contract between the companies, but they object to
2 providing the contract. So in essence, they don't
3 answer the question because they don't identify what
4 services are provided except that they may be listed in
5 some unproduced agreement, and as we've indicated, we
6 believe that agreement is important to have to address
7 the question of whether Comcast Phone is acting as a
8 telecommunications carrier in its relationship with
9 Comcast II.

10 JUDGE RENDAHL: So is there a need to answer
11 sub-question 1-33(c), whether any Comcast company
12 provides services to Comcast Phone if the issue in this
13 case relates to Comcast Phone and Comcast II?

14 MR. FINNIGAN: No. Sub-part "c" can be
15 deleted.

16 JUDGE RENDAHL: And sub-part "d", if the
17 answers to "a" and "b" are answered?

18 MR. FINNIGAN: Yes, with one caveat, Your
19 Honor. If in the response to 1-3 they identify another
20 company involved, such as Comcast Cable, then that
21 would need to be answered, but if they say that there
22 are no other Comcast companies involved in this
23 relationship, then certainly we don't need "c" and "d."

24 JUDGE RENDAHL: So it's dependent on the
25 answer to 1-3, both "c" and "d" could be omitted.

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1 MR. FINNIGAN: We are not interested if there
2 is -- like some corporate entities are set up that
3 there is a service corporation where somebody provides
4 accounting services to them. That's not what we are
5 trying to get at.

6 JUDGE RENDAHL: Anything further from you,
7 Mr. Finnigan, on these two?

8 MR. FINNIGAN: No, Your Honor, I'm finished.

9 JUDGE RENDAHL: Mr. Kopta?

10 MR. KOPTA: Yes, Your Honor, really the
11 inquiry here is whether the telecommunications services
12 that Comcast Phone provides or offers are offered on a
13 common-carrier basis. We have terms and conditions for
14 our service offerings on our Web site. As you know,
15 the Commission no longer requires or even accepts
16 filings for price lists or competitively classified
17 companies, including Comcast Phone, so we do make those
18 terms and conditions available publicly.

19 What the specific arrangements between
20 Comcast Phone and Comcast II are are irrelevant to
21 whether or not Comcast Phone is offering
22 telecommunications services effectively to the public.
23 Essentially what TDS is asking for is a copy of a
24 customer contract. Comcast II is Comcast Phone's
25 customer for the wholesale local interconnection

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1 service. The specifics of that contract do not go to
2 the issues in this case.

3 JUDGE RENDAHL: Mr. Finnigan, any response?

4 MR. FINNIGAN: Thank you. This is actually a
5 very critical question. If, as we suspect, the only
6 interconnective VoIP service provider that Comcast
7 Phone is providing service to is Comcast II and they do
8 so under terms of a contract that look very much like
9 private carriage, then they would not meet the test of
10 providing telecommunications service on a
11 common-carriage basis.

12 The terms of that contract are absolutely 100
13 percent relevant to the issue of whether Comcast Phone
14 is providing telecommunications service on a
15 common-carriage basis. Without looking at that
16 contract, there is no way that an evaluation can be
17 made as to whether that service is provided on a
18 private-carriage basis or a common-carriage basis.

19 JUDGE RENDAHL: Before I let Mr. Kopta
20 answer, I have a question for you, Mr. Finnigan. If
21 Comcast Phone is providing telecommunication services,
22 hypothetically, as a common carrier, generally, and has
23 a contract with Comcast II that would not be considered
24 common carriage but more private contract, private
25 carriage, does that service to Comcast II render

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1 Comcast Phone not to be providing common carriage as a
2 whole?

3 MR. FINNIGAN: No, that's not our position.
4 A carrier can be both a common carrier and a private
5 carrier at the same time, conceivably even within the
6 same market, but no, it doesn't, but where the purpose
7 of the interconnection agreement signed by Comcast
8 Phone is for traffic that originates and terminates to
9 Comcast II, then that relationship is critical to
10 answering the question of whether for purposes of that
11 interconnection request they are acting as a
12 telecommunications carrier offering service on a
13 common-carriage basis.

14 JUDGE RENDAHL: Mr. Kopta, any response?

15 MR. KOPTA: Yes, Your Honor, and I think your
16 question is one that I wanted to bring out. If we were
17 talking about Verizon, for example, that has an
18 arrangement with its VoIP affiliate to provide
19 connectivity to the PSTN, then I think we all agree
20 that there would be no need to look at that particular
21 contract because everybody agrees that Verizon is a
22 telecommunications carrier because they have a variety
23 of other customers.

24 What TDS is claiming is that if, as they
25 suspect, Comcast Phone has a single customer, then

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1 somehow that converts this arrangement into private
2 carriage as opposed to common carriage, and that is
3 simply not the case. Comcast Phone holds itself out to
4 offer local interconnection service as defined on its
5 Web site to any other carrier that is eligible to
6 obtain that service. They provide schools and
7 libraries services.

8 I don't even know that you could tell from
9 the face of an agreement whether or not it's for
10 private carriage because that has to do with whether or
11 not the company makes the same or similar terms
12 available to other companies. It's not going to say on
13 the front of the agreement, "This is for private
14 carriage. Nobody else can get this except you." So
15 all we have is an agreement between Comcast Phone and
16 Comcast II establishing the rates, terms, and
17 conditions for the local interconnection service that
18 Comcast Phone provides.

19 That agreement is not relevant any more than
20 any other customer agreement. TDS's agreements with
21 customers, if it has any, does not determine whether
22 TDS is a telecommunications carrier, for example. It's
23 whether Comcast Phone makes its services available to
24 the public.

25 JUDGE RENDAHL: Mr. Finnigan, any closing

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1 comments on this particular request?

2 MR. FINNIGAN: Two brief ones. First, I
3 would not join in Mr. Kopta's statement that we would
4 all agree about his hypothetical concerning Verizon.
5 If Verizon has an interconnected VoIP affiliate where
6 it is seeking an interconnection agreement solely for
7 traffic generated by that interconnected VoIP
8 affiliate, the same questions would be raised as are
9 raised here. I don't see that as being any different.
10 As I indicated before, a carrier can be both a common
11 carrier for some purposes and a private carrier for
12 others, and that goes to the heart of this issue.

13 The nature of the relationship and whether
14 its common carriage or private carriage has been the
15 focus of these data requests and this request for
16 production. Comcast asserts that when all is said and
17 done, it will show its holding itself as a common
18 carrier. That may be the ultimate result, but we don't
19 know, and what Comcast is saying is, "We don't want to
20 produce for you the information that may shed light on
21 that question," so they are trying to use objections to
22 discovery as a way of saying that the information is
23 not going to be provided, and it's the classic
24 chicken-and-egg problem that you have in discovery.
25 You are not going to know if something sheds light on

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1 the issue until you see what it is and whether it sheds
2 light on the issue. I think we've tried to be as
3 focused as we can on those questions, and this is a
4 very important element of those questions.

5 JUDGE RENDAHL: All right. Well, unless
6 there is anything more we need to add, Brian and I will
7 now caucus and to the extent we can, provide a
8 response, and I encourage you all to continue your
9 discussions. If there is anything further you can
10 clarify while we are off the record in recess, that
11 would be useful; particularly, I would say, on the
12 question of 1-30. If there is any way to further
13 narrow that question, that might be a useful
14 conversation for you all to have. With that, we will
15 be off the record.

16 (Recess.)

17 JUDGE RENDAHL: We took a brief recess to
18 consider the disputes on these data requests and
19 requests for production, so I'm going to go through the
20 disputed ones that we discussed on the record, and I'll
21 begin with Data Request 1-3. Before I do that, I'll
22 restate what the basis of the decision is. Under the
23 Act, the issue is whether the information is necessary
24 to the Commission to make a decision on the disputed
25 issues, and also under our own rules, whether it's

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1 relevant to the dispute, so it's both necessary and
2 relevant is the basis for my decision.

3 For Data Request 1-3, I think this answer
4 needs to be provided more completely, and in looking at
5 the answer, it goes back to my trying to clarify the
6 names. Comcast needs to specify what it means by
7 "Comcast" in the statement: "Subject to and without
8 waiver of that objection, Comcast is registered," blah,
9 blah, blah. So the reference to Comcast needs to be
10 specified more narrowly, and that may be resolved in
11 other data requests that are not disputed, but for my
12 purposes, it doesn't help me.

13 So who is Comcast in the response, and yes,
14 the answer needs to be answered more completely with
15 the clarification that Mr. Finnigan made on the record
16 that the reference to retail data services means it's
17 not related to Internet service, and I also believe
18 that this question is limited to services provided in
19 Washington; correct?

20 MR. FINNIGAN: That is correct.

21 JUDGE RENDAHL: So I'm granting TDS's request
22 for an answer to Data Request 1-3 as both necessary and
23 relevant to the dispute.

24 I'm going to deny the request for further
25 response to Data Request 1-4. It's not necessary or

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1 relevant to the dispute because this is related to
2 Comcast Phone providing telecommunications service, and
3 as stated in the argument on the record, how using a
4 physical network is not necessary to answer this
5 question, and whether the entity has employees is not
6 necessary to answer this question, so I'm denying the
7 request for 1-4.

8 Data Request 1-11 I'm going to grant in part,
9 and I will be talking about each of the subsections.
10 The question itself is asking about any Comcast company
11 or companies in TDS's service area, and again, the
12 question in this case relates to Comcast Phone. So as
13 to this particular question, it was also too broad in
14 its implication that it's seeking business plans, so
15 I'm going to deny the request of sub "i" as well as sub
16 little wrist as well as the request for "ii." For the
17 remaining questions, "iii" through "ix", I will grant
18 the request if it's limited to Comcast Phone.

19 For 1-16, and that was in the letter, based
20 on the argument and the information we've received, I
21 don't believe that this information is necessary or
22 relevant to the dispute at hand given that universal
23 service fund contributions isn't necessarily an
24 indication of telecommunications service given the
25 variety as to who contributes, and how the company

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1 would estimate that I would agree with Mr. Kopta is
2 even further unrelated, so I'm denying the request for
3 1-16.

4 For 1-18, I'm going to grant this request in
5 part, but limited only to the question if there is a
6 dispute about paying access charges because the service
7 is for information service, and if there is a dispute
8 related to that limited service, that limitation on the
9 question, who disputed and for what service would be
10 appropriate to include in the answer, but that is how I
11 am granting in part, and that is only limited to the
12 state of Washington.

13 For question 1-19, again, it's appropriate to
14 limit this question to respond to the following
15 questions on behalf of Comcast Phone. Even with that
16 limitation, I don't believe that "ii" is relevant
17 because it relates to services nationwide, and what we
18 are focused on in this case is service by Comcast Phone
19 in Washington, and I believe that also refers to "iii",
20 unless it is limited to the state of Washington.

21 Mr. Finnigan, is there any other question
22 that would ask this question just for the state of
23 Washington? Or if we limit "iii" to the State of
24 Washington, would that be appropriate?

25 MR. FINNIGAN: If that's what Your Honor

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1 orders, of course it's appropriate.

2 JUDGE RENDAHL: What I'm asking is there any
3 other question that would capture the question for the
4 state of Washington?

5 MR. FINNIGAN: I don't remember whether there
6 is or is not.

7 JUDGE RENDAHL: Then I will grant "iii"
8 limited to Comcast phone for the state of Washington,
9 and the rest of the questions are limited to Comcast
10 Phone of Washington.

11 Turning to Data Request 1-26 and 1-28, I'm
12 going to deny those questions on the basis they are
13 seeking the ultimate legal conclusions in this case,
14 which we will resolve once we know the factual issues
15 or once the parties resolve the factual issues or it's
16 brought to hearing, and on the question of 1-30 -- I
17 think I missed 1-20. Let's be off the record for a
18 moment.

19 (Discussion off the record.)

20 JUDGE RENDAHL: I believe Data Request 1-20
21 is granted in part focusing on service in the state of
22 Washington, and I think it depends on the answer to
23 Data Request 1-3, and so dependent upon the answer to
24 1-3, limited to the state of Washington and qualified,
25 as Mr. Finnigan stated, to leave only dial tone and

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1 features, that question is granted in part.

2 Moving on to 1-30, which is the question
3 about the diagram --

4 MR. FINNIGAN: Your Honor, if I might, we did
5 discuss this while you were out of the room, and
6 contingent on a couple of things that Mr. Kopta needs
7 to check on, I think we had some agreement that a good
8 portion of the question can be eliminated and portions
9 of the question would be responded to. Is that
10 accurate?

11 MR. KOPTA: Yes.

12 JUDGE RENDAHL: So there is no dispute to be
13 resolved?

14 MR. FINNIGAN: It depends on checking with
15 his client.

16 MR. KOPTA: I just received word that my
17 understanding is correct; that Comcast does consider
18 interconnective VoIP to be an information service.

19 MR. FINNIGAN: That certainly eliminates a
20 great deal of 1-30 that needs to be responded to, but
21 there is a portion of it that has to do with the
22 relationship between Comcast Phone and Comcast II that
23 Mr. Kopta was going to check to see if he could provide
24 an explanation of.

25 MR. KOPTA: Exactly the physical way in which

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1 traffic is picked up from Comcast II and delivered to
2 the PSTN.

3 JUDGE RENDAHL: If that is the answer, do you
4 have any further dispute over 1-30?

5 MR. FINNIGAN: No. If that portion of the
6 data request is responded to, then we are fine.

7 JUDGE RENDAHL: Then I will not opine on
8 1-30, which I believe leaves us with Data Request 1-33
9 and Request for Information 2-1, and after thinking
10 this one over, I think this information is both
11 necessary and relevant information both for the
12 Commission and for the parties to move further to
13 resolve this issue, both the contract and what services
14 Comcast Phone provides to Comcast II, and by answering
15 that question, it will assist the Commission and the
16 parties in moving forward, and as I mentioned on the
17 record before we took the recess, I don't believe it's
18 necessary to answer subsections "c" and "d."

19 Now, I understand, Mr. Finnigan, you said
20 that is dependent on how they answer question 1-3, I
21 believe, so if there is a further dispute about whether
22 "c" and "d" are necessary and relevant, I expect you
23 all will bring that to my attention, but for now, I
24 believe "a" and "b" are the necessary questions to
25 answer.

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1 With that, are there any further disputes I
2 have not resolved on the record this morning?

3 MR. FINNIGAN: No, Your Honor, not that I'm
4 aware of.

5 JUDGE RENDAHL: My preference would be that
6 my decision on the record is sufficient to allow the
7 parties to move forward in this matter. If you foresee
8 a need to dispute my decision, which would be
9 interlocutory review, then I would prepare an order.

10 So as I mentioned off the record, I would
11 likely not be able to prepare an order until after the
12 holidays, the Christmas holidays, and so why don't we
13 go off the record for a moment and then we will go back
14 on record and relate our discussion on this.

15 (Discussion off the record.)

16 JUDGE RENDAHL: While we were off the record,
17 the parties agreed, we all agreed together that by the
18 end of the day Monday, the parties would let me know if
19 they would like a written order instead of just simply
20 the transcript stating my decision on these issues. So
21 Monday, December the 15th at the close of business,
22 please let me know if I need to be preparing an order,
23 and the transcript will be available on the 24th, and
24 we will set a date for the order to come out if that
25 needs to happen.

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1 I also understand the parties may need to
2 seek a continuance of the December 18th date for
3 whether we are going to hearing or not, so please give
4 me ample notice if you need to reschedule that date.
5 Other than that, is there anything else we need to do
6 this morning?

7 MR. KOPTA: Not that I'm aware of, Your
8 Honor.

9 MR. FINNIGAN: Not that I'm aware of either,
10 Your Honor.

11 JUDGE RENDAHL: Thank you both very much, and
12 enjoy the remainder of the day. We are adjourned.

13 (Discovery conference adjourned at 12:12 p.m.)

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