

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 THE WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION)
4)
Complainant,)
5)
vs.) DOCKET NO. UT-060762
6) Volume II
WESTGATE COMMUNICATIONS, LLC,) Pages 27 - 54
7 d/b/a WEAVTEL,)
8 Respondent.)

9
10 A settlement conference in the above matter
11 was held on February 20, 2007, at 1:32 p.m., at 1300
12 South Evergreen Park Drive Southwest, Olympia,
13 Washington, before Administrative Law Judge DENNIS
14 MOSS.

15 The parties were present as follows:

16 THE WASHINGTON UTILITIES AND TRANSPORTATION
17 COMMISSION, by DONALD T. TROTTER, Assistant Attorney
18 General, 1400 South Evergreen Park Drive Southwest,
19 Post Office Box 40128, Olympia, Washington 98504;
telephone, (360) 664-1189.

20 WESTGATE COMMUNICATIONS, LLC, by MICHAEL
21 KELLY, Attorney at Law, VanSiclen, Stocks & Firkins,
721 45th Street Northeast, Auburn, Washington
98002-1381; telephone, (253) 859-8899.

22
23
24 Kathryn T. Wilson, CCR
25 Court Reporter

0028

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INDEX OF EXHIBITS

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EXHIBIT:

MARKED:

OFFERED/ADMITTED:

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31

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

2 JUDGE MOSS: Good afternoon, everyone. My
3 name is Dennis Moss. I'm an administrative law judge
4 for the Washington Utilities and Transportation
5 Commission. We are convened this afternoon in the
6 matter styled Washington Utilities and Transportation
7 Commission against Westgate Communications, LLC, doing
8 business as Weavtel. We have three dockets
9 consolidated -- are they consolidated?

10 MR. TROTTER: Yes.

11 JUDGE MOSS: Docket UT-060762, UT-060920, and
12 UT-060921. The matter before us today is a settlement
13 hearing. The parties filed a settlement agreement on
14 January the 31st. I have that here. We will make that
15 an exhibit. In fact, I'll make that Exhibit 1.

16 MR. TROTTER: Sorry to interrupt, Your Honor.
17 Hopefully you received this morning a letter. There
18 were a couple of typos, not in the Agreement itself but
19 in the narrative, and I do have a substitute copy for
20 you on the narrative.

21 JUDGE MOSS: Exhibit 1 will be the Settlement
22 Agreement, and I will mark as Exhibit 2 the parties'
23 narrative statement. Mr. Trotter just mentioned it has
24 been amended slightly since it was filed.

25 (Marked Exhibits No. 1 and 2.)

0030

1 JUDGE MOSS: Let me take appearances for the
2 record, and we will start with the Company. Mr. Kelly,
3 is this your first appearance in this matter?

4 MR. KELLY: Yes.

5 JUDGE MOSS: Could you give me your name,
6 address, affiliation, phone number, fax number, and
7 e-mail?

8 MR. KELLY: Michael Kelly here on behalf of
9 Richard Weaver and Weavtel. I'm with the law firm of
10 VanSiclen, Stocks and Firkins, 721 45th Street
11 Northeast, Auburn, 98002. Phone number is (253)
12 859-8899, and the fax number is (866) 947-4647.

13 JUDGE MOSS: Mr. Richard J. Weaver is here
14 with us today and will appear as your witness?

15 MR. KELLY: Yes.

16 JUDGE MOSS: For Staff?

17 MR. TROTTER: My name is Donald T. Trotter
18 assistant attorney general, appearing for Commission
19 staff.

20 JUDGE MOSS: And you have with you
21 Mr. Zawislak, who will appear as your principle
22 witness, and Mr. Shirley is here if we need him.

23 MR. TROTTER: That's right.

24 JUDGE MOSS: I have previously marked for
25 identification Exhibit No. 1, the Settlement Agreement

0031

1 the parties filed on January 31st, 2007, and as
2 Exhibit 2, the narrative statement filed by the parties
3 simultaneously with the settlement and later amended,
4 and that was filed this morning, Mr. Trotter?

5 MR. TROTTER: The amendment was filed this
6 morning, yes.

7 JUDGE MOSS: So as amended, Exhibit 2 will be
8 as amended. Are there any changes or corrections to
9 either of those documents the parties wish to bring to
10 my attention?

11 MR. KELLY: None here, Your Honor.

12 JUDGE MOSS: They will be exhibits as marked
13 on my own motion then. What else should our record
14 consist of in this case? I know we had the prefiled
15 submission from the Company that consisted of four
16 volumes. We can make that an exhibit or not or
17 subexhibits, I guess. What's your preference,
18 Mr. Kelly? Do you intend that to be part of the
19 record?

20 MR. KELLY: I guess so, Your Honor.

21 MR. TROTTER: That's acceptable to Staff.

22 JUDGE MOSS: Without objection, we'll mark as
23 Exhibit 3 what is identified on its cover as the
24 Weavtel, WUTC submittal, and this includes a written
25 statement, not sworn, but written statement by

0032

1 Mr. Richard J. Weaver, who we will swear today and have
2 him verify this. I'm going to keep this informal.
3 I'll swear any potential witnesses now, and as I talk
4 to you, then everything you say to me is going to be
5 under oath. Does everybody understand? Would you all
6 three raise your right hands?

7

8 Whereupon,

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THE WITNESSES,

10 having been first duly sworn, were called as witnesses
11 herein and testified as follows:

12

13 JUDGE MOSS: So I will then turn to you,
14 Mr. Weaver, and ask you to confirm that this letter
15 dated November 28th, 2006, bearing your signature, and
16 if you wish to examine it, you may, is the submission
17 you filed with the Commission.

18 MR. WEAVER: I recognize it.

19 JUDGE MOSS: You recognize that is a product
20 of your efforts?

21 MR. WEAVER: Yes, Your Honor.

22 (Marked Exhibit No. 3.)

23 JUDGE MOSS: The rest of the materials in
24 this folder as well as in the remaining exhibits, which
25 I will mark for identification as Exhibit 4 for

0033

1 purposes of our proceeding will -- I'll just identify
2 it in this way: Weavtel's Stehekin project design
3 memorandum, and then as Exhibit 5, 2006 construction
4 cost for Manson and Stehekin, and as Exhibit 6 in this
5 proceeding, intrastate cost study, estimated, 2006.

6 (Marked Exhibits No. 4 through 6.)

7 Again, Mr. Weaver, I'll show you these documents, and
8 if you can from where you are sitting see these
9 documents ask you to confirm that they are work product
10 that you prepared or that was prepared under your
11 supervision or direction.

12 MR. WEAVER: Yes, they are.

13 JUDGE MOSS: And I understand there is no
14 objection to the admission of these.

15 MR. TROTTER: That's correct, Your Honor, for
16 settlement purposes.

17 JUDGE MOSS: Yes, very good. Then we will
18 make those exhibits as marked on my motion. Is there
19 anything else we need to include in the record for the
20 Company?

21 MR. KELLY: Nothing, Your Honor.

22 JUDGE MOSS: Mr. Trotter, is there anything
23 in the way of documentation you wish to put in?

24 MR. TROTTER: Not at this time, Your Honor.

25 JUDGE MOSS: Did you all have any statements

0034

1 Q. 28You wanted to make? Mr. Kelly, did your
2 client wish to
3 make a statement, or Mr. Trotter, your witnesses, or
4 shall we just proceed to questions from the Bench?

5 MR. KELLY: Questions from the Bench, Your
6 Honor.

7 MR. TROTTER: If you wish a statement, we can
8 make one. Otherwise, we are prepared to go to your
9 questions.

10 JUDGE MOSS: I don't really need a statement.
11 You gave me a good narrative statement along with the
12 other materials.

13 There is one matter of the record that I need
14 to take up, I suppose. The agency has received some
15 correspondence from interested persons in this
16 proceeding. Normally in proceedings, we do make that
17 filed to correspondence part of the record. Public
18 Counsel normally does that, and Public Counsel is not
19 participating actively in this proceeding. If there is
20 no objection, it would be my preference to acknowledge
21 the public's input by making it a matter of record.

22 MR. KELLY: No objection, Your Honor.

23 MR. TROTTER: No objection. It's our
24 understanding that is for illustrative purposes,
25 recognizing that we don't have an opportunity to ask

0035

1 questions of those people. With that understanding,
2 Staff has no objection.

3 JUDGE MOSS: Thank you for making that matter
4 of the record, Mr. Trotter, and I'll have the records
5 center furnish that, and you can all get copies if you
6 want.

7 What I'm going to do is just work through the
8 Settlement Agreement. I have questions on various
9 paragraphs, and I'll tell you what the paragraph
10 numbers are, and the references I'm making are to the
11 numbers in the left margin of the Agreement, italicized
12 numbers.

13 Looking at Paragraph 3, I just need some
14 clarification here. The Agreement refers from my
15 perspective vaguely to two of three pools under the
16 WCAP program, and I have done a little research on that
17 and I think I know, but I want to be sure I'm correct
18 that the pools referred to are the interim universal
19 service fund and the common carrier line access pools.
20 Is that correct, Mr. Zawislak?

21 MR. ZAWISLAK: Yes, that is correct. I might
22 add those were established in Docket UT-971140.

23 JUDGE MOSS: And that was effective in 1999,
24 apparently. Okay.

25 MR. TROTTER: Your Honor, my witness may want

0036

1 to comment on the effective date of that.

2 JUDGE MOSS: I just have a brief white paper
3 on the subject. It says to see the Eighth Supplemental
4 Order, November 30th, 1999. If that's not the correct
5 date, please correct me.

6 MR. ZAWISLAK: I have a copy of the Ninth
7 Supplemental Order. It's approving the Washington
8 carrier access plan for WCAP, and the date on that is
9 June 28th, 2000.

10 JUDGE MOSS: Thank you for that. Mr. Weaver,
11 I have a question for you that does not relate
12 specifically to any paragraph in here. In fact, I have
13 several questions that don't. Let me ask those. I
14 wanted to ask you if Weavtel is currently providing
15 service in Stehekin.

16 MR. WEAVER: No.

17 JUDGE MOSS: So are there any subscribers to
18 the service to be?

19 MR. WEAVER: We have been providing service,
20 but it was turned off last month. There are four
21 subscribers.

22 JUDGE MOSS: Why was the service turned off?

23 MR. WEAVER: Because we've run out of funds
24 waiting through this process.

25 JUDGE MOSS: How quickly would you anticipate

0037

1 service would be restored assuming that the Commission
2 accepts the Settlement as approved?

3 MR. WEAVER: Five hours.

4 JUDGE MOSS: As much as anything, I'm
5 curious. What infrastructure did you end up putting in
6 place? Is this wireless now?

7 MR. WEAVER: It's being done by wireless
8 technology and satellite service.

9 JUDGE MOSS: This was as discussed at the
10 last Commission open meeting where your dockets were
11 before the Commission and this process was initiated?

12 MR. WEAVER: That is correct.

13 JUDGE MOSS: All right. Let's look at
14 Paragraph 11 in the Settlement Agreement. Now, this
15 says that the last clause in this sentence is subject
16 to the conditions in this agreement. I want to
17 understand exactly what conditions you are referring to
18 there. So anybody can answer, including counsel.

19 MR. TROTTER: Your Honor, this is Donald
20 Trotter. I'll attempt to answer that. I think it's on
21 the legal side of it. Yes, the Agreement contains a
22 number of conditions, primarily in Paragraphs 15
23 and 16; again, using the left-hand paragraph reference,
24 and then, of course, the overall Settlement. I guess
25 technically, if a condition was violated, then we could

0038

1 come back to the Commission and ask the refund
2 condition be placed back on; for example, perhaps, in
3 an extreme situation.

4 JUDGE MOSS: And you have gotten at the core
5 of my problem, which is what happens if these
6 conditions aren't satisfied, because let's just assume
7 a hypothetical case for the purposes of discussion
8 which is one whereby I enter an initial order
9 essentially recommending that this settlement be
10 approved and adopted by the Commission and that becomes
11 effective as a final order. As a matter of law, then
12 we will have permanent rights with no refund condition.

13 So there is -- I hesitate to use the word
14 "nothing," but certainly those rates would not be
15 subject to refund at that point in time. So what I'm
16 struggling with here is how I might discuss in an order
17 what the parties have in mind here when they say
18 "subject to these conditions," assuming at some point
19 these conditions prove to be unsatisfied.

20 MR. TROTTER: In my unlikely hypothetical, if
21 the refund condition went back on could only be
22 prospective in any event. We are more just stating
23 that every line item is subject to every other line
24 item of the Agreement. It's all part of the package,
25 but I think that's all that it was meant to convey. I

0039

1 don't think we are intending anything more than that.

2 JUDGE MOSS: So it's really not an operative
3 clause in this sense.

4 MR. TROTTER: Not uniquely so. It's as
5 operative as any other condition of the Settlement.

6 JUDGE MOSS: We are struggling with language
7 here, but I think we are understanding each other. Of
8 course, I suppose, Mr. Trotter -- let me speculate with
9 you here a little bit -- assuming worst-case scenario
10 and the one or more conditions of this agreement were
11 not satisfied prospectively, I believe that Staff would
12 have the option of bringing a complaint against the
13 Company; is that right?

14 MR. TROTTER: Yes. Staff could ask the
15 Commission to issue a complaint for violation of the
16 Agreement and any other relief that might be
17 appropriate.

18 JUDGE MOSS: I believe I understand. It may
19 be that the answers are largely the same, but I did
20 have the same question with regard to Paragraph 13,
21 because here we are providing in the first sentence
22 that the Commission should approve the revenue
23 objective subject to the conditions in this agreement,
24 so is this again more explanatory than it's operative,
25 Mr. Trotter?

0040

1 MR. TROTTER: I think the same answer would
2 apply.

3 JUDGE MOSS: So there is not some thought
4 that we would reserve the award of some portion or the
5 designation of some portion of the revenue objective?

6 MR. TROTTER: No.

7 JUDGE MOSS: Now, the next sentence in that
8 paragraph says, "This is an annual (12 months) figure."
9 As I understand it -- I want to be sure I'm clear on
10 this -- well, in fact, the next sentence says, "This
11 revenue objective will expire on June 30 of 2008." So
12 what happens at that point in time? Mr. Zawislak,
13 could you answer that for me?

14 MR. ZAWISLAK: Sure. What me mean by that is
15 at that point in time, WECA will no longer be
16 essentially authorized to include Weavtel's, this
17 revenue objective in their rate calculations or their
18 distributions, and so in order for the Company to
19 continue on with the revenue objective after June 30th,
20 2008, they would need to come to the Commission,
21 request a new revenue objective that they would submit
22 to WECA prior to July 1st, 2008, so that they could
23 continue on. Absent that action, they will drop out of
24 the WECA pool.

25 JUDGE MOSS: I don't recall if it's in the

0041

1 narrative or the Agreement itself, but there is some
2 discussion in this connection about the potential
3 availability of the universal service funds after a
4 year. Is that when that happens?

5 MR. ZAWISLAK: Generally, yes. There is at
6 least a year leg, 18-month leg with regard to the
7 NECA-USAC high-cost loop funds, HCLS. NECA through
8 USAC has several funds --

9 JUDGE MOSS: Can you tell me what NECA and
10 USAC are, what those acronyms stand for?

11 MR. ZAWISLAK: NECA is the National Exchange
12 Carrier Association, and USAC is Universal Service
13 Administrative Corporation or company.

14 JUDGE MOSS: So it's a 12-month or 18-month
15 process before those funds would be available to
16 Weavtel?

17 MR. ZAWISLAK: That is true for the high-cost
18 loop funds. They do receive already the interstate
19 common line support, which doesn't have that leg
20 associated with it.

21 JUDGE MOSS: They are receiving that now?

22 MR. ZAWISLAK: They are receiving one form of
23 support but not the other.

24 JUDGE MOSS: How much is that? I assume that
25 figure is in here somewhere, but I don't know where.

0042

1 MR. ZAWISLAK: Approximately \$5,680 per
2 month, I believe.

3 JUDGE MOSS: And that's in the attachments, I
4 imagine.

5 MR. ZAWISLAK: Attachment to the narrative.
6 Actually, that does not show up in the attachment. I
7 was looking at Attachment 5 to the narrative, and the
8 reason that doesn't show up in that exhibit is because
9 they are interstate funds, and this is on an intrastate
10 basis.

11 JUDGE MOSS: So all the operating costs and
12 so forth that we see reflected here that are part of
13 the calculation of the revenue objective are intrastate
14 costs; is that right?

15 MR. ZAWISLAK: That's right, and just as an
16 addition, the high-cost loop funding mechanism,
17 although it comes from a federal source, it is to be
18 used for intrastate purposes, so when we do see those
19 funds, we will expect to see those adjusted in the
20 intrastate results of operations.

21 JUDGE MOSS: Recognizing that I'm asking you
22 to speculate to a degree, do you have a sense of how
23 much revenue the federal funds will contribute; in
24 other words, how much of the subsidy will be picked up
25 by the federal funds relative to the state funds? Can

0043

1 you give me an idea of that? And if it's not possible
2 to do so, you may simply tell me that.

3 MR. ZAWISLAK: We can turn to Exhibit 4 and
4 possibly the intrastate cost study. I believe Johnson,
5 Stone, and Pagano.

6 JUDGE MOSS: I have that.

7 MR. ZAWISLAK: I believe that's not in this
8 package. I believe that was a response to a data
9 request.

10 MR. TROTTER: He was looking at Commission
11 Exhibit No. 6. I think he said the information he was
12 thinking about was in response to a data request.

13 JUDGE MOSS: The reason for the confusion in
14 the exhibit numbers is these also bear exhibit numbers,
15 but they are different from the ones I used. This is
16 where I should look?

17 MR. ZAWISLAK: It is in response to a data
18 request that we had done.

19 JUDGE MOSS: Do you recall the figure
20 approximately, or do you have that with you?

21 MR. ZAWISLAK: I do have it with me. The
22 number I received from Johnson, Stone, and Pagano is
23 \$73,920.

24 JUDGE MOSS: Now, all other things being
25 equal, would that amount that the Company would

0044

1 receive, would that reduce the revenue objective for
2 the draw on the state funds; that is to say the WECA
3 pool funds?

4 MR. ZAWISLAK: That is correct, Your Honor,
5 all other things remaining equal.

6 JUDGE MOSS: Just to get a sense of how it
7 works is all I'm trying to do. Is that data response
8 fairly brief?

9 MR. ZAWISLAK: Yes.

10 JUDGE MOSS: Unless there is an objection,
11 I'm going to make that an exhibit.

12 MR. KELLY: No objection, Your Honor.

13 MR. TROTTER: Could we just have the number
14 of the data request?

15 MR. ZAWISLAK: No. 9.

16 JUDGE MOSS: The response to Staff's Data
17 Request 9, I'll mark as Exhibit 7.

18 (Marked Exhibit No. 7).

19 JUDGE MOSS: And there being no objection,
20 I'll admit that to the record, and if you could furnish
21 that to me in the next day or so.

22 MR. ZAWISLAK: There is an exhibit to the
23 response, and on the last page of that exhibit, there
24 is a monthly amount of \$6,160, and if you multiply that
25 by 12, you will arrive at the number previously stated.

0045

1 JUDGE MOSS: Thank you.

2 MR. TROTTER: So, Your Honor, we will provide
3 you with the data request page and then the page of the
4 attachment in which that number appears.

5 JUDGE MOSS: Is that whole group there?

6 MR. TROTTER: There is a one-page summary,
7 and then it says, "see Exhibit 3." It only contains
8 two pages, so we will give you that entire thing.

9 JUDGE MOSS: Thank you. Turning back to the
10 Agreement, some of the problems I have, as you
11 perceive, are with the language used in the Agreement
12 itself. So my first question with respect to Paragraph
13 15 is what do you mean by "qualified person"? Or how
14 do we measure that? How is that to be measured or
15 evaluated, and I assume Staff would be interested in
16 monitoring that process, so I'll ask Staff.

17 MR. ZAWISLAK: I think what we meant by that
18 was that it would be a person with the experience in
19 matters of regulatory compliance, whether it be an
20 employee or a consultant.

21 JUDGE MOSS: So this would presumably be
22 someone who has appeared before this commission in one
23 capacity or another or at least interactive with the
24 Staff; is that the idea?

25 MR. ZAWISLAK: I would say yes, maybe not

0046

1 even necessary this commission. Perhaps another state
2 commission or the FCC.

3 JUDGE MOSS: I see. So this is something
4 that when we say "retain the services," we might mean
5 just periodically for purposes of regulatory
6 compliance?

7 MR. ZAWISLAK: Yes. We tried to keep it open
8 so that they would be able to hire an employee or on a
9 consulting basis given the level that was anticipated
10 in the Settlement Agreement and the attachment to the
11 narrative.

12 JUDGE MOSS: How much is in the revenue
13 objective for the services of this qualified person?

14 MR. ZAWISLAK: That would be in the
15 attachments to the Settlement narrative.

16 MR. WEAVER: I thought you said we had to
17 apply for that once we hired that person. Did you
18 figure in that person, the qualified person in these
19 numbers?

20 MR. TROTTER: You are in Exhibit 2, the
21 narrative; what attachment, Mr. Zawislak?

22 MR. ZAWISLAK: Attachment 1.

23 MR. TROTTER: What column?

24 MR. ZAWISLEK: Column D.

25 MR. TROTTER: What line?

0047

1 MR. ZAWISLEK: Line 7.

2 MR. TROTTER: Would you state the amount,
3 please?

4 MR. ZAWISLAK: \$26,920 on an intrastate
5 basis.

6 JUDGE MOSS: We can look back to the
7 narrative at Paragraph 32, I believe. Is that what we
8 are referring to in Footnote B there?

9 MR. ZAWISLAK: Yes.

10 MR. TROTTER: You mean adjustment to B?

11 JUDGE MOSS: Yes. Well, there is a footnote
12 in the Attachment 1. There is a note next to it, B,
13 and it says that's explained in the narrative, and
14 that's why I'm trying to be sure of what place in the
15 narrative.

16 MR. ZAWISLAK: You are correct in that it is
17 Paragraph 32. That was one of the typos, and now it's
18 \$26,920.

19 JUDGE MOSS: So the table in Attachment 1 is
20 correct.

21 MR. ZAWISLAK: Yes.

22 JUDGE MOSS: Before we leave this point, if
23 you consult with your client, Mr. Kelly, if there is
24 some question about this that you wish to put to
25 Mr. Zawislak, this would be the time to do it.

0048

1 MR. KELLY: No thank you, Your Honor. It's
2 been clarified.

3 JUDGE MOSS: Thank you. The next paragraph,
4 Paragraph 16, refers to the current position of
5 bookkeeper. I gather you have someone in your employ
6 who is a bookkeeper, or is this a part-time thing?

7 MR. WEAVER: Yes. We have a full-time
8 bookkeeper now.

9 JUDGE MOSS: Is that the person who has been,
10 I assume, working with the numbers and working with the
11 Staff through this phase of this proceeding?

12 MR. WEAVER: That is correct.

13 JUDGE MOSS: Both of these paragraphs, 15 and
14 16, include in one instance a parenthetical reference
15 and the other just a plain reference to the point that
16 these employees or consultants that we are referring to
17 will not be related to the Weaver family, and I need to
18 understand what that means.

19 Do we mean they are not blood relationships
20 to the Weaver family, or do we mean they are not
21 financially involved with the Weaver family, or what do
22 we mean exactly by "unrelated"?

23 MR. ZAWISLAK: I think that was meant to mean
24 not blood related, basically arms-length transaction.

25 JUDGE MOSS: Wouldn't that include financial

0049

1 relationships as well if you intend for these people to
2 be arms length, vis-a-vis the family in its business
3 operations?

4 MR. ZAWISLAK: That would be true as well.

5 JUDGE MOSS: Is that something that's
6 consistent with your understanding of how this
7 operates, Mr. Weaver?

8 MR. WEAVER: Yes, Your Honor.

9 JUDGE MOSS: Very good. At Paragraph 17, the
10 statement in the first sentence there is that the rates
11 are not excessive, which certainly is something we have
12 a concern about, but that's only half the equation. I
13 think it's pretty clear they are not excessive since
14 they represent something less than ten percent of the
15 operating revenues of the Company.

16 What about the sufficiency side of the
17 equation, Staff's perspective? Are these rates as high
18 as they should be given that most of the operating
19 expenses are going to be subsidized? As I recall the
20 history of this unfolding, the rates that precipitated
21 this particular proceeding are higher than the rates
22 that were originally in place.

23 So my question is whether they are to Staff's
24 satisfaction in the meaning of fair, just, reasonable,
25 and sufficient, whether they are sufficient?

0050

1 MR. ZAWISLAK: It's Staff's position that
2 they are sufficient when taken together with the WCAP
3 revenue objective. They are also the same rates that
4 the Commission allowed in the Beaver Creek case, which
5 settled this last summer, and they are comparable to
6 the other companies in the state, local rates in that
7 range.

8 JUDGE MOSS: You anticipated my follow-up
9 questions. I thank you for that. You will be happy to
10 know I'm going to skip several paragraphs and go to
11 Paragraph 21. The last part of the second sentence in
12 Paragraph 21 confused me a little bit. It says,
13 basically, "that no party shall be deemed to agree to
14 any provision of this settlement agreement other than
15 the conditions in the Agreement itself at Paragraph 12,
16 15 and 16.". This is the part that confuses me, "is
17 appropriate for resolving issues in any other
18 proceeding," which to me begs the question in what
19 fashion or how might the conditions in Paragraphs 12,
20 15 and 16 be appropriate for resolving issues in some
21 other proceeding? I'm not sure what is meant here.

22 MR. TROTTER: Can I respond to that? It kind
23 of bears on the legal.

24 JUDGE MOSS: Yes.

25 MR. TROTTER: In Paragraph 12, Weavtel agrees

0051

1 to propose no other material change to the replacement
2 page until March 31st of 2008. So I think what we are
3 intending to refer to there back in 21 is if they file
4 between now and then, this agreement would control the
5 revision and will either reject that tariff or upon
6 hearing, you could amend the Settlement Agreement, but
7 if you are going to implement the Settlement Agreement,
8 then such a tariff filing would not be allowed to go
9 into effect.

10 Then on 15 and 16, those are the additional
11 personnel, so in the next rate case or WCAP objective,
12 if we find out that these personnel are not in
13 existence, that we would impute -- or they've added too
14 many personnel, then we can use this as a basis. This
15 would be precedential for determining a correct
16 staffing level for the Company.

17 So often times, as you are well aware, Your
18 Honor, these settlement agreements have no precedential
19 value going forward, but in these three isolated areas,
20 we thought it did have continuing effect.

21 JUDGE MOSS: You are establishing sort of a
22 baseline against which things can be measured in the
23 next proceeding.

24 MR. TROTTER: That's right, as opposed to
25 saying what's said in this agreement doesn't matter

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1 going forward.

2 JUDGE MOSS: I understand. Thank you for
3 that explanation.

4 MR. TROTTER: Perhaps we can ask the Company
5 if they concur in my assessment.

6 MR. KELLY: Yes.

7 JUDGE MOSS: My last question you may have
8 already answered, Mr. Zawislak, and that is how the
9 facts and circumstances here are similar to or
10 different from those in Beaver Creek, and I believe you
11 told me just a moment ago that the result with respect
12 to the rates is similar. Is the result likewise
13 similar in terms of the relationship between the
14 revenue produced by the rates and the overall revenue
15 requirement?

16 MR. ZAWISLAK: Yes.

17 JUDGE MOSS: And I think you mentioned that
18 this is also consistent with what we have seen in other
19 circumstances of perhaps more distance vintage.

20 MR. ZAWISLAK: Yes, very similar.

21 JUDGE MOSS: That completes my set of
22 questions, and I will ask if the Company has anything
23 it wishes to add to the record at this time. I
24 certainly would entertain that, or if you have any
25 questions you might like to ask of Staff at this time,

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1 I will entertain that.

2 MR. KELLY: No thank you, Your Honor. My
3 client indicates he has no questions.

4 JUDGE MOSS: Likewise, I will offer this
5 opportunity to Staff.

6 MR. TROTTER: I just have one clarification.
7 Mr. Zawislak, you were asked a question from Judge Moss
8 about federal subsidies, and I think you mentioned they
9 were available after 12 months. Do you remember the 12
10 months statement that you made?

11 MR. ZAWISLAK: I think I stated somewhere
12 between 12 and 18.

13 MR. TROTTER: When does that 12- or 18-month
14 period start?

15 MR. ZAWISLAK: I believe it has already
16 started.

17 MR. TROTTER: When did it start?

18 MR. ZAWISLAK: I don't have a precise number.
19 I think NECA works on a July 1st basis where they
20 review the tariffs at that point, so I think it's July.

21 MR. TROTTER: So if it's 12 months, it will
22 be up this coming July, and if it's 18 months, it will
23 be six months after that.

24 MR. ZAWISLAK: Yes.

25 MR. TROTTER: Thank you. Your Honor, that's

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1 all I have.

2 JUDGE MOSS: That timing is consistent with
3 the terms of the Agreement itself expiring on June
4 30th, and I believe there is something in the narrative
5 that says sort of "may be" as opposed to "will be."
6 There may be federal funds available at that time, and
7 those would be taken into consideration. Anything
8 else?

9 MR. TROTTER: No, Your Honor. Thank you.

10 JUDGE MOSS: If the parties have nothing
11 further, I have nothing further for you. I thank you
12 all for being here today and for helping me to
13 understand this so I can write an intelligible order,
14 and we will take it from there.

15 (Settlement conference adjourned at 2:15 p.m.)

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