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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 In the Matter of the Joint )  
 Application of )  
 4 )  
 VERIZON COMMUNICATIONS, INC. ) DOCKET NO. UT-090842  
 5 AND FRONTIER COMMUNICATIONS ) Volume I  
 CORPORATION ) Pages 1 - 41  
 6 )  
 For an Order Declining to Assert )  
 7 Jurisdiction Over, or, in the )  
 Alternative, Approving the )  
 8 Indirect Transfer of Control of )  
 Verizon Northwest, Inc. )  
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11 A prehearing conference in the above matter  
 12 was held on July 7, 2009, at 10:00 a.m., at 1300 South  
 13 Evergreen Park Drive Southwest, Olympia, Washington,  
 14 before Administrative Law Judge PATRICIA CLARK.

15

16 The parties were present as follows:

17 VERIZON NORTHWEST, INC., by GREGORY M.  
 ROMANO, General Counsel for Northwest Region, 1800 41st  
 18 Street, Everett, Washington 98201; telephone,  
 (425) 261-5460.

19

20 VERIZON NORTHWEST, INC., by KEVIN SAVILLE,  
 Attorney at Law, 2378 Wilshire Boulevard, Mound,  
 Minnesota 55364; telephone, (952) 491-5564

21

22 FRONTIER COMMUNICATIONS CORPORATION, by  
 CHARLES L. BEST, Attorney at Law, 1631 Northeast  
 Broadway, Suite 538, Portland, Oregon 97232;  
 23 telephone, (503) 287-7160.

24 Kathryn T. Wilson, CCR

25 Court Reporter

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1 WASHINGTON UTILITIES AND TRANSPORTATION  
2 COMMISSION, by JONATHAN THOMPSON, Assistant Attorney  
3 General, 1400 South Evergreen Park Drive Southwest,  
4 Post Office Box 40128, Olympia, Washington 98504;  
5 telephone, (360) 664-1225.

6 PUBLIC COUNSEL, by SIMON J. FFITCH, Senior  
7 Assistant Attorney General, 800 Fifth Avenue, Suite  
8 2000, Seattle, Washington 98104; telephone, (206)  
9 389-2055.

10 INTEGRA TELECOM OF WASHINGTON, INC.; TW  
11 TELECOM OF WASHINGTON, LLC; XO COMMUNICATIONS SERVICES,  
12 INC.; COVAD COMMUNICATIONS COMPANY; PAETEC  
13 COMMUNICATIONS, INC., by MARK P. TRINCHERO, Attorney at  
14 Law, Davis, Wright, Tremaine, 1300 Southwest Fifth  
15 Avenue, Suite 2300, Portland, Oregon 97201; telephone,  
16 (503) 778-5318.

17 COMCAST PHONE OF WASHINGTON, LLC, by GREGORY  
18 J. KOPTA (via bridge line), Attorney at Law, Davis,  
19 Wright, Tremaine, 1201 Third Avenue, Suite 2200,  
20 Seattle, Washington 98101; telephone, (206) 757-8079.

21 IBEW LOCAL 89, by SCOTT J. RUBIN, (via bridge  
22 line), Attorney at Law, 333 Oak Lane, Bloomsburg,  
23 Pennsylvania 17815; telephone, (570) 387-1893.

24 BROADBAND COMMUNICATIONS ASSOCIATION OF  
25 WASHINGTON, by BROOKS E. HARLOW (via bridge line),  
26 Attorney at Law, Miller Nash, 601 Union Street, Suite  
27 4400, Seattle, Washington 98101; telephone, (206)  
28 777-7406.

29 LEVEL 3 COMMUNICATIONS, LLC; 360 NETWORKS  
30 (USA) INC., by LISA F. RACKNER (via bridge line),  
31 Attorney at Law, McDowell & Rackner, 520 Southwest  
32 Sixth Avenue, Suite 860, Portland, Oregon 97204;  
33 telephone, (503) 595-3925.

34 DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL  
35 EXECUTIVE AGENCIES, by TERRANCE A. SPANN (via bridge  
36 line), Attorney at Law, 901 North Stuart Street, Suite  
37 700, Arlington, Virginia 22203; telephone, (703)  
38 696-2852.

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

2 JUDGE CLARK: It's approximately ten a.m. in  
3 the Commission's hearing room at Olympia, Washington.  
4 This is the time and the place set for a prehearing  
5 conference in the matter of the joint application of  
6 Verizon Communications, Incorporated, and Frontier  
7 Communications Corporation for an order declining to  
8 assert jurisdiction over, or in the alternative,  
9 approving the indirect transfer of Verizon Northwest,  
10 Incorporated, given Docket Number UT-090842, Patricia  
11 Clark, administrative law judge for the Commission  
12 presiding.

13 This matter came before the Commission on May  
14 29th, 2009, with a filing of the aforementioned  
15 application. There are a number of outstanding  
16 petitions to intervene, but I'm going to take  
17 appearances prior to addressing any of those, and I  
18 will start first with representative for Verizon,  
19 please.

20 MR. ROMANO: Thank you, Your Honor. My name  
21 is Gregory M. Romano, general counsel of the Northwest  
22 Region of Verizon. My business address is 1800 41st  
23 Street in Everett, Washington, 98201. The phone number  
24 is (425) 261-5460. My fax number is (425) 252-4913,  
25 and my e-mail address is gregory.m.romano@verizon.com.

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1           JUDGE CLARK: Thank you, Mr. Romano.  
2 Everyone needs to follow Mr. Romano's excellent lead  
3 and provide all of the aforementioned information when  
4 entering your appearance. I'll take now appearances on  
5 behalf of Frontier.

6           MR. BEST: Charles L. Best, attorney at law  
7 representing Frontier. My address is 1631 Northeast  
8 Broadway, Suite 538, Portland, Oregon, 97232. My  
9 telephone number is (503) 287-7160. My fax number is  
10 the same. My e-mail address is chuck@charleslbest.com.

11           JUDGE CLARK: And Mr. Best, do you also want  
12 to enter an appearance an behalf of Mr. Saville at this  
13 time?

14           MR. BEST: Yes. I'll have Mr. Saville do  
15 that himself.

16           MR. SAVILLE: Good morning, Your Honor.  
17 Kevin Saville, S-a-v-i-l-l-e, and my address is 2378  
18 Wilshire Boulevard, Mound, Minnesota, 55364. My  
19 telephone number is area code (952) 491-5564. My fax  
20 number is (952) 491-5577. My e-mail address is  
21 kevin.saville@frontiercorps.com.

22           JUDGE CLARK: Thank you, Mr. Saville. I know  
23 there are a number of people appearing on the  
24 Commission's bridge line, and I'll take those  
25 appearances in a minute. I'm going to take appearances

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1 first on behalf of those individuals in the hearing  
2 room. Appearing on behalf of Commission staff?

3 MR. THOMPSON: Jonathan Thompson, assistant  
4 attorney general. My address is 1400 South Evergreen  
5 Park Drive Southwest. It's PO Box 40128, and that's in  
6 Olympia, 98504-0128. My telephone number is  
7 (360) 664-1225. Fax is (360) 586-5522, and my e-mail  
8 address is jthomps@wutc.wa.gov.

9 JUDGE CLARK: Thank you. Appearing on behalf  
10 of Public Counsel?

11 MR. FFITCH: Good morning, Your Honor, thank  
12 you. Simon ffitch, senior assistant attorney general.  
13 Street address is 800 Fifth Avenue, Suite 2000,  
14 Seattle, Washington, 98104-3188. The phone number is  
15 (206) 389-2055. Fax is -- I have an out-of-date fax  
16 number on this card; I apologize. Let's see if we can  
17 locate the current fax number. The current fax number  
18 is (206) 464-6451. E-mail is simonf@atg.wa.gov, and  
19 I'm appearing on behalf of Public Counsel.

20 Also appearing on behalf of Public Counsel is  
21 Assistant Attorney General Sarah Shifley, and her  
22 information is the same except her e-mail address is  
23 sarah.shifley@atg.wa.gov.

24 JUDGE CLARK: Thank you, Mr. ffitch.  
25 Appearing on behalf of Integra, tw telecom, XO

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1 Communications, Covad, PAETEC?

2 MR. TRINCHERO: Thank you, Your Honor. Mark  
3 P. Trincherro, T-r-i-n-c-h-e-r-o, Davis, Wright,  
4 Tremaine. Address is 1300 Southwest Fifth Avenue,  
5 Suite 2300, Portland, Oregon, 97201. My phone number  
6 is (503) 778-5318. Fax number is (503) 778-5299, and  
7 my e-mail address is marktrincherro@dwt.com. Thank you,  
8 Your Honor.

9 JUDGE CLARK: Thank you, Mr. Trincherro. I  
10 have a number of people on the bridge line. When you  
11 are speaking on the brine line, it's necessary for you  
12 to identify yourself and perhaps speak a little more  
13 slowly and clearly that you would ordinarily speak.  
14 I'll start with Comcast.

15 MR. KOPTA: Gregory J. Kopta of Davis,  
16 Wright, Tremaine, LLP, on behalf of Comcast Phone of  
17 Washington, LLC. My address is 1201 Third Avenue,  
18 Suite 2200, Seattle, Washington, 98101-3045. Phone,  
19 (206) 757-8079; fax, (206) 757-7079; e-mail,  
20 gregkopta@dwt.com.

21 JUDGE CLARK: Thank you, Mr. Kopta.  
22 Appearing on behalf of Level 3 and 360 networks?

23 MS. RACKNER: This is Lisa Rackner of the law  
24 firm of McDowell and Rackner, PC. My address is 520  
25 Southwest Sixth Avenue, Suite 860, Portland, Oregon,

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1 97204. Phone number is (503) 595-3925, and fax is  
2 (503) 595-3928. I also would like to enter an  
3 appearance for Gregory L. Rogers of Level 3. Address  
4 is 1025 Eldorado Boulevard, Bloomfield, Colorado,  
5 80021. Phone number, (720) 888-2512; fax  
6 (720) 888-5134. E-mail is greg.rogers@level3.com. I'm  
7 also entering an appearance for Michel Singer-Nelson,  
8 360 networks (USA), inc. The address is 867 Coal Creek  
9 Circle, Suite 160, Louisville, Colorado, 80027. Phone  
10 number is (303) 854-5513, and I'm sorry I don't have a  
11 fax number for Ms. Singer-Nelson. I can forward that  
12 after.

13 JUDGE CLARK: There is an individual on the  
14 line who is overspeaking the appearance of Ms. Rackner.  
15 If you would proceed, Ms. Rackner.

16 MS. RACKNER: The e-mail address is  
17 mnelson@360.net.

18 JUDGE CLARK: Thank you. Appearing on behalf  
19 of IBEW?

20 MR. RUBIN: Good morning, Your Honor. This  
21 is Scott J. Rubin appearing on behalf of IBEW Local 89.  
22 My address is 333 Oak Lane, Bloomsburg, Pennsylvania,  
23 17815. The telephone is (570) 387-1893; fax,  
24 (570) 387-1894; e-mail, scott.j.rubin@gmail.com.

25 JUDGE CLARK: Appearing on behalf of BCAW?

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1           MR. HARLOW: This is Brooks E. Harlow with  
2 Miller Nash, LLP, representing Broadband Communications  
3 Association of Washington. I would also like to  
4 mention that Ron Main, the executive director of BCAW,  
5 should be in the hearing room there today. My address  
6 is 4400 Two Union Square, 601 Union Street, Seattle,  
7 Washington, 98101; telephone, (206) 777-7406; fax  
8 number, (206) 622-7485; e-mail address,  
9 brooks.harlow@millernash.com.

10           JUDGE CLARK: Thank you, Mr. Harlow.  
11 Appearing on behalf of Department of Defense and all  
12 Federal Executive Agencies?

13           MR. SPANN: Terrance A. Spann, S-p-a-n-n, and  
14 I'm an attorney with the regulatory law office, U.S.  
15 Army Litigation Center, 901 North Stuart Street, Suite  
16 700, Arlington, Virginia, 22203. Telephone number is  
17 (703) 696-2852, and the fax number is (703) 696-2960,  
18 and my e-mail, terrance.spann@hqva.army.mil.

19           JUDGE CLARK: Thank you, Mr. Spann. Are  
20 there any preliminary matters the parties would like to  
21 address before we turn to the petitions for  
22 intervention? Jumping right into the petitions to  
23 intervene, I have primarily unopposed petitions to  
24 intervene. Is there anyone who wishes to be heard on  
25 the petitions to intervene that are unopposed thus far?



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1           MR. ROMANO: Yes, Your Honor. First I would  
2 like to address the petition to intervene filed by the  
3 Broadband Communications Association of Kentucky. That  
4 petition indicates that members of the Association are  
5 competitors of Verizon Northwest with regard to local  
6 and long-distance voice services, but my understanding  
7 is that the Association and the member companies take  
8 the position that those services are provided over VoIP  
9 and therefore are unregulated by the Commission under a  
10 1971 Washington Supreme court case, Cole versus UTC.

11           Generally speaking, an unregulated competitor  
12 is not permitted to intervene into the transaction of a  
13 regulated competitor with regard to the effect on that  
14 particular entity. So on those grounds, we would  
15 object to the intervention.

16           We would also object to the petition just on  
17 the general grounds that it is a trade association, and  
18 it's unclear what the particularized interests of the  
19 Association is as opposed to the various interests of  
20 some of the members.

21           JUDGE CLARK: Mr. Harlow?

22           MR. HARLOW: Thank you, Your Honor. Brooks  
23 Harlow representing Broadband Communications  
24 Association of Washington. First all, the Cole case is  
25 distinguishable. The Cole case has been cited by Qwest

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1 and its predecessor US West and several instances  
2 involving interventions by the Pay Phone Association,  
3 and the Commission readily allowed the intervention of  
4 the Pay Phone Association, even though pay phone  
5 providers are not regulated the same as the Commission  
6 regulates carriers, so the Commission recognizes that  
7 trade associations such as that may intervene.

8           Secondly, the petition that we filed also  
9 notes that BCAW's members are purchasers directly or  
10 indirectly of services provided by Verizon, and so we  
11 have standing to intervene as a wholesale customer  
12 directly or indirectly, and so I think there is ample  
13 precedent. BCAW itself has intervened in a number of  
14 Commission proceedings, and each time, the intervention  
15 has been allowed. To my knowledge, intervention has  
16 never been denied based on the Cole case.

17           JUDGE CLARK: Mr. Harlow, do you have  
18 citation to Commission proceedings in which we have  
19 allowed or your intervention?

20           MR. HARLOW: I think we intervened in the  
21 CenturyTel and Bar case. It's one that just wrapped  
22 up. Perhaps Mr. Main can remember the case if he's  
23 there.

24           JUDGE CLARK: Mr. Best is moving toward the  
25 mike here.

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1           MR. BEST: I do not believe they intervened  
2 in that case. I did represent CenturyTel in that, and  
3 I don't believe Mr. Harlow or the Association were in  
4 that case.

5           MR. HARLOW: We were given no notice of this  
6 objection so I didn't have time to go back and gather  
7 cites. If you give me just one second here. Lewis  
8 River, Comcast case, we intervened in that one, Docket  
9 UT-083056, and we also intervened in WECA versus Local  
10 Dial, UT-031472, and possibly others.

11           JUDGE CLARK: Mr. Romano?

12           MR. ROMANO: Yes, Your Honor. My  
13 understanding of the Lewis River case is that it  
14 specifically addressed whether VoIP services were  
15 potentially regulated by the Commission, so I think  
16 that's a bit different than the situation here where  
17 you have unregulated competitors seeking to intervene  
18 in the matter of a regulated company by the UTC.

19           JUDGE CLARK: All right. Does anyone else  
20 want to be heard on the petition to intervene by the  
21 BCAW? Mr. Thompson.

22           MR. THOMPSON: I think for Staff's part, we  
23 would generally agree that the interests that the  
24 Commission could sort of recognize in this case and  
25 allow intervention based on would be the interest of a

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1 wholesale purchaser. Typically, we allow intervention  
2 by consumer groups, groups that represent large  
3 consumers. This may be an example of that.

4 To the extent that it concerns competition  
5 between the two entities, I don't think that would  
6 probably fall within the Commission's public interest  
7 review of a transaction.

8 JUDGE CLARK: Does anyone else wish to be  
9 heard? Mr. ffitch.

10 MR. FFITCH: I've just observed that in both  
11 the Verizon, MCI merger and the Qwest AFOR matter, the  
12 Commission addressed broadband issues in both of those  
13 cases in its order. So while the scope of the  
14 Commission's jurisdiction over broadband is somewhat  
15 unclear, I would agree. It has addressed broadband  
16 matters in some of its recent major telecommunications  
17 cases.

18 JUDGE CLARK: Mr. Romano, I just have a  
19 question for you. It's been some time since I reviewed  
20 the joint application of Verizon and Frontier, but  
21 isn't one of the benefits of this proposed transaction  
22 intended to be an expansion of broadband services  
23 within the state of Washington beyond those services  
24 that are provided by Verizon currently?

25 MR. ROMANO: That is a stated benefit. I

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1 think we could get into a big argument about the  
2 jurisdiction of the Commission over broadband, but with  
3 regard to the specific objection, it's not based on  
4 that general point. What the point is that if this  
5 association is representing members who are unregulated  
6 competitors of the regulated Verizon Northwest, then  
7 that alone is grounds to deny the intervention, not  
8 based on some broader point of whether the Commission  
9 has jurisdiction over broadband or not.

10 JUDGE CLARK: Fair enough. Anyone else wish  
11 to be heard? All right. I'm going to grant the  
12 intervention of BCAW, and that intervention is granted  
13 specifically on the assertion of the wholesale customer  
14 interest expressed by Mr. Harlow.

15 MR. HARLOW: Thank you, Your Honor.

16 JUDGE CLARK: Are there any objections, other  
17 than IBEW, which I have clearly a written objection to,  
18 any of the interventions of any of the other entities  
19 in this proceeding?

20 MR. ROMANO: Yes, Your Honor. I would  
21 respectfully request that you also limit the  
22 intervention of Comcast in a similar manner to what  
23 you've done for the Broadband Association. The  
24 petition to intervene states that they are both a  
25 competitor of Verizon as well as a wholesale customer,

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1 so I would ask that their intervention be limited to  
2 the latter point.

3 JUDGE CLARK: Mr. Kopta?

4 MR. KOPTA: Thank you, Your Honor. I'm not  
5 sure what the basis of Mr. Romano's objection is.  
6 Comcast is a regulated telecommunications carrier  
7 registered with the Commission as a telecommunications  
8 carrier. We have an interconnection agreement with  
9 Verizon Northwest that has been approved by the  
10 Commission as a telecommunications carrier, so we are  
11 not in the same kind of position that Mr. Romano is  
12 describing, so we believe we are entitled to full  
13 intervention just as any other regulated carrier is in  
14 Washington.

15 JUDGE CLARK: Mr. Romano?

16 MR. ROMANO: Yes, Your Honor. Mr. Kopta is  
17 focused on Comcast's status as a telecommunications  
18 carrier. However, in the petition to intervene, it  
19 specifically cites that it's a competitor of Verizon  
20 Northwest, so the services that Mr. Kopta just focused  
21 on I do not believe are the types of things that  
22 Comcast competes with Verizon on.

23 My understanding is that Comcast competition  
24 with Verizon is based on their retail VoIP service, and  
25 all I would ask is that their intervention be limited

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1 in a similar manner to the Broadband Communications  
2 Association.

3 JUDGE CLARK: Anyone else wish to be heard on  
4 this petition? All right. At this juncture, I'm  
5 inclined to not limit the participation of Comcast  
6 based not only on the petition to intervene filed but  
7 also on the Commission's ruling in the most recent  
8 transfer proceeding, telecommunications transfer  
9 proceeding, and that is the CenturyTel, Embarq  
10 proceeding. I believe it's UT-082119, and at this  
11 juncture, I'm not entitled to limit intervention.

12 If, however, in the future it appears that  
13 Comcast is presenting argument that exceeds the  
14 reasonable scope of this proceeding, that intervention  
15 may be limited at a future time.

16 MR. KOPTA: Thank you, Your Honor.

17 JUDGE CLARK: Is there anyone else who wishes  
18 to be heard on any of the other petitions to intervene  
19 other than that filed by IBEW? All right. Then the  
20 petitions to intervene by Comcast, Integra, tw telecom,  
21 XO Communications, Covad, PAETEC, Level 3,  
22 360 networks, Department of Defense and other Federal  
23 Executive Agencies are granted intervention. Each of  
24 these intervenors met the standards of WAC 480-07-355,  
25 and demonstrated a substantial interest in the outcome

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1 of this proceeding.

2 I'm going to turn next to the contested  
3 petition file by IBEW, and the first thing I want to  
4 note is that the petition to intervene filed by IBEW, a  
5 response was filed in objection to that petition to  
6 intervene, and IBEW filed a motion to accept reply.  
7 I'm not interested in argument on the merits of the  
8 reply, but rather whether or not the Commission should  
9 entertain the reply filed by IBEW. Does anyone want to  
10 be heard on that?

11 MR. ROMANO: Yes, Your Honor. Thank you.  
12 Verizon does not object to the filing of the response  
13 because we believe that it displays the IBEW's  
14 continuing misunderstanding of the limited role and the  
15 limited jurisdiction of the Commission, particularly  
16 the last three to four pages of the filing, which seem  
17 to take issue with the Commission's rulings as opposed  
18 to clarifying that they will not be conducting  
19 themselves in this incident in a similar way in the  
20 CenturyTel, Embarq proceeding.

21 JUDGE CLARK: Mr. Best?

22 MR. BEST: Frontier does not object to  
23 allowing them to respond.

24 JUDGE CLARK: Anyone else want to be heard on  
25 the motion to accept reply? All right. The record



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1 should reflect that WAC 480-07-355 does not  
2 automatically allow for reply, and it is necessary to  
3 file a motion and show cause why that reply should be  
4 granted. It is somewhat tenuous whether or not the  
5 motion to accept reply states cause to allow reply.

6           Nonetheless, in the interest of developing a  
7 full record on this issue and without objection from  
8 the joint applicants in this proceeding, I'm going to  
9 accept the reply itself and consider the argument in  
10 the reply in support of the petition to intervene.

11           Now, turning to the merits, we have the reply  
12 filed by IBEW. Does anyone wish to be heard on the  
13 merits of those arguments raised in reply?

14           MR. ROMANO: Yes, Your Honor. I believe the  
15 reply itself demonstrates that the IBEW continues to  
16 not understand the limited jurisdiction of the  
17 Commission, and it continues to reflect a  
18 misunderstanding of the nature of this proceeding.  
19 Thank you.

20           JUDGE CLARK: Does anyone else wish to be  
21 heard?

22           MR. THOMPSON: Yes, Your Honor. I guess from  
23 Staff's perspective, I would just add that the labor  
24 unions are a bit different than the other types of  
25 groups that are typically granted intervention, such as

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1 groups representing the interests of large consumers or  
2 wire line competitors that have interconnection  
3 agreements with the regulated company in that while the  
4 Commission regulates obviously in the consumer interest  
5 and it also regulates the terms of competition to some  
6 degree and certainly has jurisdiction over terms of  
7 interconnection, it doesn't regulate the terms of  
8 employment, so there is a distinction to be made there.

9           It is possible, of course, that labor union  
10 has interests that do overlap some degree with consumer  
11 interests, so the Commission is sometimes allowing  
12 intervention from unions, sometimes not. Most recently  
13 in the Puget Sound Energy transfer case, the Commission  
14 denied intervention, and I think the notion there was  
15 that to the extent that that union had consumer  
16 interests that it could work with the Public Counsel  
17 division of the attorney general's office to have those  
18 interests represented. So I think that's probably my  
19 only remark on the matter.

20           JUDGE CLARK: Anyone else want to be heard?

21 Mr. ffitch.

22           MR. FFITCH: Since the Public Counsel office  
23 has been mentioned, Your Honor, as a matter of, I  
24 think, policy, I will just say that in these cases  
25 where the argument has been made that we can represent

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1 a different consumer group or group of interests, we  
2 have ordinarily supported the intervention and then  
3 indicated that we would be willing to coordinate with  
4 that party to make sure that the intervention is not a  
5 burden on the process.

6 We don't view it as our role or an  
7 appropriate definition of our role to act as a  
8 representative of specific identified other  
9 organizations or interest groups. We are the  
10 representative of the customers of the regulated  
11 company, but we are reluctant to be put in the  
12 position, in a sense, of being a legal representative  
13 of another legal entity such as a labor union or other  
14 kind of consumer association. We prefer if that is the  
15 interest of the Commission in having that, those in  
16 this case labor consumer interests represented, we  
17 think that we would recommend allowing the  
18 intervention, and then we can coordinate with them to  
19 make sure there is not duplication.

20 JUDGE CLARK: All right; Mr. Rubin?

21 MR. RUBIN: Yes, thank you, Your Honor. If  
22 our papers were unclear, I apologize for that. We  
23 certainly do understand the limited nature of the  
24 Commission's jurisdiction. I think we had said pretty  
25 clearly that we will not raise any issues in this case

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1 that are outside of the Commission's jurisdiction. Our  
2 focus is not on labor relations matters but on issues  
3 that relate directly to whether the proposed  
4 transaction is in the public interest and the fitness  
5 of the applicant.

6 I would also just note that right in the  
7 joint application, there is a specific representation  
8 about the impact of the proposed transaction on  
9 Verizon's employees and on the labor union and its  
10 collective bargaining agreement. That's Paragraph 33  
11 of the joint application. So the applicants themselves  
12 appear to recognize the relevance of the impact of the  
13 proposed transaction on Verizon's employees, and I  
14 respectfully submit those employees should have the  
15 right to be heard on those issues and other issues that  
16 directly affect them as a result of the transaction.

17 Obviously, if we stray from that and try to  
18 get into issues that are outside the scope of this  
19 proceeding, I would expect appropriate motions to be  
20 made at that time.

21 JUDGE CLARK: Thank you, Mr. Rubin.

22 Mr. Romano?

23 MR. ROMANO: Yes, Your Honor. Perhaps  
24 Mr. Best can speak better to this, but my understanding  
25 is that similar representations were made in the

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1 CenturyTel, Embarq case and they didn't bear out, at  
2 least as I read the Commission's order in that case, so  
3 I think counsel's representations on that score need to  
4 be considered with that backdrop.

5 JUDGE CLARK: Mr. Best?

6 MR. BEST: Very briefly, Your Honor, I think  
7 what you need to do is boil this down to its basic  
8 element, and the question is what does IBEW bring to  
9 the table here that aren't already covered by Public  
10 Counsel and by Staff, and I think the answer is none.

11 If you look at it, what other interests could  
12 they have other than the impact on employees, and  
13 frankly, that's just not something the Commission has  
14 jurisdiction over in my view.

15 JUDGE CLARK: Thank you. I've taken a look  
16 at the reply file by IBEW and will note that IBEW cites  
17 two cases in this jurisdiction that are pretty old.  
18 The PSE case that is cited by IBEW is 12 years old.  
19 The PacifiCorp, ScottishPower case cited by IBEW is ten  
20 years old, and there is much more recent precedent by  
21 this commission on this particular issue, most notably  
22 in the PSE merger proceeding. That is UE-072375, and  
23 in that proceeding, the Commission denied intervention  
24 on behalf of the labor union and allowed the labor  
25 union to serve as an interested person in that

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1 proceeding.

2           Again, in the CenturyTel, Embarq proceeding,  
3 which I believe is UT-082119, the Commission initially  
4 allowed intervention. However, in its final order  
5 issued in that matter, IBEW had an outstanding motion  
6 to withdraw from further participation in the  
7 proceeding, and while the Commission denied the motion  
8 to withdraw, the Commission on their own motion  
9 dismissed the intervention of IBEW in that matter.

10           The other point I would like to make is IBEW  
11 cited two other cases from other jurisdictions,  
12 specifically those in Pennsylvania and Maine, and those  
13 cases are not persuasive, and the Commission is  
14 certainly not bound by the precedent in other  
15 jurisdictions.

16           I'm mindful of Mr. ffitch's concern that  
17 Public Counsel is not somehow burdened with  
18 representation of a group of individuals who are  
19 employees of Verizon, but if I look at Page 5 of the  
20 reply that was filed by Verizon, it appears that that  
21 interest is not as members of the union but rather as  
22 customers of the utility. So I see no distinction  
23 between customers who happen to be employed by Verizon  
24 and customers who happen to be employed by any other  
25 employer in that service territory.

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1           The IBEW also states interest in the  
2 financial fitness and managerial expertise of Frontier.  
3 That interests appears to be based on addressing any  
4 adverse employment effect that could result from  
5 granting the application, and that issue exceeds the  
6 scope of the Commission's jurisdiction. So I conclude  
7 that IBEW has not demonstrated that the interests the  
8 union would represent in this proceeding that seek to  
9 protect or are germane to the purpose, and that is the  
10 purpose of the labor union itself. Accordingly, the  
11 petition to intervene by IBEW is denied, and IBEW is  
12 granted interested person status in this proceeding.

13           I would like to turn next to the standard of  
14 review in this case, and I want to know if anyone  
15 intends to raise in their testimony the standard of  
16 review that should be employed in this proceeding.

17           MR. BEST: I'm afraid I don't understand the  
18 question. Are you talking about what the parties  
19 believe the standard of review is?

20           JUDGE CLARK: Yes. What I'm concerned with  
21 is having someone raise in responsive testimony or  
22 other testimony a standard of review that perhaps is  
23 different from what the Commission would ordinarily  
24 evaluate this case under.

25           MR. BEST: Thank you, Your Honor. On behalf

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1 of Frontier, we would not.

2 JUDGE CLARK: I bring this up because  
3 recently, the legislature modified the statute  
4 applicable to mergers and acquisitions by natural gas  
5 and electric utilities. I point out that that statute  
6 is not applicable to telecommunications utilities and  
7 that the Commission standard in a review of this  
8 proceeding remains the no-harm from the result of the  
9 merger or acquisition, and that is also consistent with  
10 the Commission's long-standing precedent in  
11 WAC 480-180-143.

12 Moving right along, we have the prefiled  
13 direct testimony and exhibits of Verizon and Frontier  
14 that were filed yesterday electronically, July 6th, and  
15 we don't yet have paper copies of those; although, I  
16 suspect they might have been dropped off this morning  
17 en route to the prehearing conference. I haven't had  
18 an adequate opportunity to review those documents  
19 thoroughly yet, but I would at least like to note a  
20 couple of things.

21 I would like to note and remind Verizon and  
22 Frontier as joint applicants in this proceeding that  
23 you have the burden of proof, and that if there is  
24 information you would like the Commission to consider  
25 in support of your application, you need to provide it



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1 to the Commission, and that the Commission's review of  
2 this application will be limited exclusively to the  
3 evidence adduced on the record.

4 For an example, there are some matters that  
5 are presented in the prefiled testimony that don't  
6 appear to have support. There are numerous references  
7 to analyses and plans and demonstrations of tangible  
8 benefit without demonstrations of what those might be  
9 or providing additional information on those topics.  
10 For example, Mr. McCarthy in the footnote on Page, I  
11 believe it is, 34 references a 401-K plan that is not  
12 provided to the Commission. I believe there is an  
13 Internet cite in that footnote, and the Commission is  
14 not going to go to that cite and pull that 401-K plan,  
15 so if you would like the Commission to consider that  
16 information, you need to actually provide it to the  
17 Commission.

18 All right. Maybe it would be appropriate to  
19 turn next to the topic of discovery before we look at  
20 the procedural schedule, since discovery may impact the  
21 procedural schedule that the parties wish to propose.  
22 Commission has not invoked the discovery rules in this  
23 case. Do the parties wish the Commission to invoke its  
24 discovery rules?

25 MR. FFITCH: Yes, Your Honor. Public Counsel

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1 would request the discovery rule be invoked.

2 JUDGE CLARK: Mr. Romano?

3 MR. ROMANO: Yes, and we would as well. If  
4 this is the appropriate time, we would ask that a  
5 protective order be issued both for confidential  
6 information as well as a higher level of highly  
7 confidential information.

8 JUDGE CLARK: The Commission's discovery  
9 rules are invoked in this proceeding, and the  
10 Commission will issue a protective order addressing  
11 both confidential and highly confidential information  
12 by subsequent order. I intend to issue, for lack of a  
13 better term, rather standard form of protective order  
14 unless the parties request a specific form they would  
15 like me to consider.

16 MR. ROMANO: The standard form is acceptable  
17 to Verizon.

18 JUDGE CLARK: Two other matters: When you  
19 are considering the procedural schedule, which is what  
20 we are going to turn to next, one of the things I'm  
21 going to required the parties to do in this proceeding  
22 is establish a deadline for the predistribution of  
23 cross-examination exhibits. According to the  
24 Commission's rule, which is 480-07-460, the  
25 Commission's rules are not applicable unless we invoke

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1    them unless it's a rate case.  This is not a rate case,  
2    so the parties will be required to predistribute their  
3    cross-examination exhibits, and I would like a deadline  
4    coordinated amongst the parties for that so that we do  
5    not have a number of cross-examination exhibits coming  
6    in at the 11th or 12th hour during the hearing in this  
7    matter, and so that's one item I would like you to  
8    consider.

9                    I would also like the parties to consider  
10   when you are discussing a procedural schedule whether  
11   or not there is a need for a public comment hearing in  
12   this case, and if so, what might be an appropriate  
13   location for that hearing.  Do the parties have a  
14   proposed schedule that addresses all of those elements  
15   you would like me to consider?

16                   MR. ROMANO:  Yes, Your Honor.  We proposed a  
17   procedural schedule back on June 23rd to Commission  
18   staff, Public Counsel, and the parties that had filed  
19   to intervene as of that particular date that we based  
20   heavily on other proceedings, including the CenturyTel,  
21   Embarq proceeding.  I can run through that proposal  
22   here if Your Honor is interested in that, or we can go  
23   off line with the other parties and see -- until this  
24   morning, I hadn't seen any counter-proposal on a  
25   proposed schedule.

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1                   JUDGE CLARK: I take it from your comment  
2 that you haven't had an opportunity to address that  
3 proposed schedule with those individuals who filed  
4 petitions to intervene after the June 25th, 26th date;  
5 is that correct?

6                   MR. ROMANO: That is correct.

7                   JUDGE CLARK: We have several of those, so  
8 I'm thinking it might be a good idea to take a recess  
9 off record to give the parties the opportunity to  
10 discuss a proposed procedural schedule and submit it to  
11 the Commission for consideration. I'm going to return  
12 to my office. If you need me for anything, including  
13 availability on the Commission calendar, send someone  
14 to get me.

15                   MR. HARLOW: Your Honor, before we go off the  
16 record, BCAW will accept any schedule the parties in  
17 the room agree to, so unless there are other matters  
18 other than scheduling to come back when you reconvene,  
19 I would request leave to drop out of the prehearing  
20 conference at this point.

21                   JUDGE CLARK: Is there any other matter that  
22 Mr. Harlow's participation would be required for? All  
23 right. Only one other matter I have, and that is in  
24 this proceeding, the Commission is going to require an  
25 original plus 20 copies of all documents filed, and

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1 with that, I believe you can disconnect, Mr. Harlow.

2 MR. HARLOW: Thank you, Your Honor.

3 MR. FFITCH: Your Honor, as we discuss  
4 scheduling, I believe that you had provided some  
5 information about Commission availability for hearings.  
6 Perhaps we should confirm that to help us in our  
7 discussions.

8 JUDGE CLARK: I had two requests for  
9 information regarding the Commission's availability for  
10 hearing. One was an e-mail from Assistant Attorney  
11 General Jonathan Thompson inquiring about availability  
12 of the Commission for a hearing in October and the  
13 first week of November. As I advised by return e-mail,  
14 those dates are not available.

15 The Commission does have availability the  
16 second week of November; although, that is interrupted  
17 by the Veterans Day holiday on November 11th. The  
18 Commission also has availability on the first week of  
19 December.

20 Secondly, in response to a phone call  
21 yesterday from Public Counsel, specifically Ms. Sarah  
22 Shifley, inquiring about the availability of other  
23 dates on the Commission's calendar, I noted that there  
24 is other availability in the month of December;  
25 specifically, if my memory serves me correctly, the

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1 week of the 14th of December and some availability on  
2 the week of December 21st, noting that there is a  
3 holiday at the end of that week. The Commission also  
4 has some availability in January 2010 for an  
5 evidentiary hearing. I don't recall the specific dates  
6 that I mentioned to Ms. Shifley at this juncture, but  
7 there is some limited availability in January, and in  
8 February, the Commission's calendar is clear.  
9 Mr. Best?

10 MR. BEST: When you say the first week of  
11 December, is that the week beginning November 30th?

12 JUDGE CLARK: Yes, that is the week beginning  
13 November 30. Is there any other calendaring  
14 information I can provide to the parties before you go  
15 off record to discuss a procedural schedule? All  
16 right; hearing nothing, we are adjourned until further  
17 call.

18 (Recess.)

19 JUDGE CLARK: We are back on the record, and  
20 after a somewhat lengthy recess, the parties have been  
21 attempting to reach a procedural schedule to everyone's  
22 mutual satisfaction, and I'll have the parties report  
23 on that particular progress, but before I do, it was  
24 brought to my attention that I misspoke earlier, and  
25 when I referenced a footnote in Mr. McCarthy's

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1 testimony, I talked about a 401-K filing, and I should  
2 have mentioned the 10-K, that is referenced in his  
3 footnote.

4 With that, who would like to memorialize on  
5 the record the parties' offered discussion regarding  
6 the procedural schedule? Mr. ffitch?

7 MR. FFITCH: Your Honor, I think that we did  
8 discuss a number of options. Based on your guidance, I  
9 think we would at this point present our  
10 recommendation. I believe there was some consensus  
11 around a good part of it, but I won't speak for other  
12 counsel.

13 We would recommend that -- I can give you a  
14 written version of this, Your Honor.

15 JUDGE CLARK: That would be helpful.

16 MR. FFITCH: May I approach?

17 JUDGE CLARK: Please. Thank you.

18 MR. FFITCH: Your Honor, we have presented a  
19 written proposal to you and shared this with the other  
20 parties with two options. Option two in the right-hand  
21 column is our perfect-world option, our wish-list  
22 option which avoids conflict with a number of the other  
23 major dates in fall for our office and the Commission  
24 involved with the Pacific, Avista, and Puget Sound  
25 general rate case. We believe option two is actually

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1 also manageable in terms of the needs of the joint  
2 applicants to get a decision prior to the closing of  
3 the transaction.

4           In the interest of compromise, we developed  
5 an option one, understanding the parties' interests,  
6 the joint applicants' interest in getting a decision  
7 earlier. Under that proposal, parties would report  
8 back on the status of the public notice drafting and  
9 content by August 11th. Intervenor testimony would be  
10 due September 25th.

11           Rebuttal testimony would be due on November  
12 9th. When I say "intervenor," I mean Staff, Public  
13 Counsel and Intervenor. Verizon, Frontier rebuttal due  
14 November 9th, a settlement conference on November 18th.  
15 The hearing would begin December 14th and would be  
16 scheduled for four days. We anticipate probably  
17 needing three and having a fourth day in reserve.  
18 Briefs would be due on January 18th, 2010.

19           There are a couple of other points to note,  
20 Your Honor. The exchange of cross-examination  
21 exhibits, we would be under this schedule recommending  
22 that that happen on or about December 9th, 2009, and  
23 parties had also discussed scheduling an initial issue  
24 discussion, preliminary settlement conference prior to  
25 the testimony on September 25th. We would be agreeable



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1 to that. We did not pick a date for that specifically.

2 So that is our primary recommendation for the  
3 procedural schedule, and we do have some comments about  
4 why this is a good schedule or responses to  
5 alternatives, but maybe I should wait. I would like an  
6 opportunity to address some of the rationales for  
7 alternative schedules, but maybe I shouldn't go there  
8 yet until you've heard from other counsel.

9 JUDGE CLARK: Well, I guess my first question  
10 on this is probably to Mr. Romano and Mr. Best, and  
11 that is given my earlier comments on the prefiled  
12 testimony that was submitted yesterday; that is, one  
13 day in advance of the prehearing conference, which I  
14 will note is a little bit unusual. We ordinarily  
15 either see prefiled direct testimony filed with the  
16 application or you go to the prehearing conference and  
17 set a deadline to file that. This is somewhat unusual,  
18 because I really don't have a chance to adequately  
19 review that, but do the parties see a need to  
20 supplement the testimony you intend to present in this  
21 proceeding, or is that it?

22 MR. ROMANO: Your Honor as to why we  
23 submitted the testimony just the day before the  
24 prehearing conference, the goal there was so we  
25 wouldn't have to build in extra time for that step in

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1 the procedural schedule.

2           As to whether we need to supplement our  
3 direct testimony, I would need to confer with Frontier,  
4 but I wouldn't think we would actually supplement the  
5 direct testimony, but we could address issues that were  
6 raised in our next round.

7           MR. BEST: Your Honor, I hear what you are  
8 saying and I understand what you are getting at, and  
9 the specific references you made, I believe we could  
10 file supplement exhibits to the testimony that might  
11 solve a lot of the issues we raised or things you  
12 mentioned thus far, and I don't see that that would  
13 delay the schedule particularly, but I don't think the  
14 companies are contemplating refiling testimony.

15           JUDGE CLARK: I wasn't contemplating the  
16 companies refiling testimony. I just wanted to know if  
17 you wanted to supplement what you already have, and in  
18 response to Mr. Romano's question, I'm not too thrilled  
19 with the concept of putting all that into reply,  
20 because at that juncture, the other parties to the  
21 proceeding will already have submitted their responsive  
22 testimony won't have the opportunity to address  
23 anything, so I think that reply would be an  
24 inappropriate time to do that. It needs to be done in  
25 advance of that in some other format, and I'm not

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1 trying to tell the companies how to put their cases on.  
2 I'm just reminding you that you do have the burden of  
3 proof and that the Commission is not going to  
4 independently go out and gather evidence. If you want  
5 the Commission to look at something, you have to give  
6 it to us. The Commission will limit its review to the  
7 evidence in the record. The horse is dead.

8 I have the proposed procedural schedule that  
9 Mr. ffitich presented. I wasn't really interested in  
10 going into a lengthy discussion of this. If the  
11 parties can't agree, you can't agree, and the  
12 Commission will establish a procedural schedule, so if  
13 you would like to present a procedural schedule for the  
14 Commission to consider, submit it to me via e-mail  
15 probably by five o'clock tomorrow, and the Commission  
16 will take under advisement the procedural schedule  
17 proposed by the parties and will establish that  
18 schedule.

19 There are a couple of pieces missing here.  
20 One of the things I asked for was some discussion --  
21 there is that lovely phone ringing in the background on  
22 the bridge line -- asked the parties to look at a  
23 particular comment hearing and whether there was a need  
24 for such a public comment hearing, and if so, a  
25 proposed location for that, and I don't see that or

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1 hear that anywhere in this proposed procedural  
2 schedule.

3 MR. FFITCH: Your Honor, I intended to  
4 address that separately. We don't have a specific date  
5 for that. I'm prepared to address that for Public  
6 Counsel.

7 JUDGE CLARK: Do you have a location?

8 MR. FFITCH: Public Counsel's recommendation  
9 is that the Commission schedule one public comment  
10 hearing in this matter and that it be scheduled in a  
11 town or community in the north I-5 corridor in the  
12 Company's service territory, which begins in the  
13 northern Seattle suburbs and runs up to the Canadian  
14 border, excluding Bellingham, so we would be  
15 comfortable with a hearing anywhere along that corridor  
16 in any one of the towns, Edmonds, Bothell, close to  
17 Seattle or somewhere further north as facilities are  
18 available or as the Commission feels is appropriate.  
19 That would be an evening public comment hearing.

20 JUDGE CLARK: So Public Counsel supports one  
21 public comment hearing. Does anyone else want to be  
22 heard on that? Mr. Romano?

23 MR. ROMANO: Verizon does not believe a  
24 public hearing is necessary. Given the public's  
25 ability to get involved in this particular docket,

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1 we've been working on a detailed customer notice which  
2 will tell customers how to get involved here, but  
3 unless Your Honor believes it is something that would  
4 be helpful, we think at this point, particularly given  
5 the budgetary climate and so forth, it would not be a  
6 good use of resources to have a public hearing.

7 JUDGE CLARK: I'm also interested in hearing  
8 from you, Mr. Thompson.

9 MR. THOMPSON: Consumer affairs staff  
10 supports one public comment hearing with the conditions  
11 that Mr. Ffitch described. They do believe it's a  
12 close call as to whether it's needed in this sort of a  
13 transfer case, so I think it's not essential, but that  
14 we would support one such hearing with the restrictions  
15 that Mr. Ffitch described.

16 JUDGE CLARK: All right. I'll take that  
17 under advisement. That will be part of the procedural  
18 schedule. Is there anything further you would like me  
19 to consider on the record?

20 MR. FFITCH: Your Honor, for Public Counsel,  
21 I hear your guidance on not arguing the schedules, but  
22 there are some very key considerations for us in  
23 presenting this particular schedule, and I guess I  
24 would, if I may, just comment very specifically on the  
25 hearing date.

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1                   We had debate about whether to hold the  
2 hearing the first week of December or December 14th, as  
3 we've proposed, and our position, unfortunately, is  
4 that my office is simply not able to go to hearing on  
5 the first week of December. The immediately preceding  
6 week is Thanksgiving week, and we also have briefs in  
7 two other matters that are due immediately the  
8 preceding week, so we just felt that was not a workable  
9 option for us to do those other briefs in the other  
10 cases and prepare and distribute cross-examination  
11 exhibits in this case and prepare for hearing, so we  
12 had recommended the December 14th date as giving  
13 adequate time for hearing preparation.

14                   The entire schedule for the months of October  
15 and November and really even September is very, very  
16 full already, so our recommendations are very much  
17 based upon trying to work with fitting this case into  
18 all of the other matters that are currently pending.

19                   JUDGE CLARK: Thank you, Mr. ffitch. I'm  
20 cognizant that there are a number of large cases before  
21 the Commission, including the PSE rate case, the  
22 PacifiCorp rate case, and the Avista rate case, and all  
23 three commissioners who will hear this particular case  
24 will also be sitting on those, so I think it's  
25 appropriate for them to make the determination about a

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1 reasonable procedural schedule in this matter. Does  
2 anyone else want to be heard?

3 MR. BEST: Your Honor, I don't need to say  
4 much. I just want to make sure it's clear on the  
5 record, and I appreciate Mr. ffitch's situation, but  
6 just so it's clear, the Company did compromise on a  
7 number of dates, tried to move up its rebuttal  
8 testimony, and the only thing it came down to was the  
9 hearing date, and we would like this to be done so we  
10 are not in the Christmas season, which is the other  
11 issue that Mr. ffitch didn't mention, which will affect  
12 everybody as well, because the schedule he proposes  
13 shifts the problem to another problem and makes it  
14 worse for us. I want to make sure that the record is  
15 clear that we really did try to work this out and we  
16 just couldn't find a date that worked.

17 JUDGE CLARK: Mr. Romano?

18 MR. ROMANO: Just to add to that, we were  
19 hoping to have a hearing the week of November 9th when  
20 I understand the Commission is available, but we ended  
21 up talking about that first week in December, which we  
22 also understand the Commission is available then, and  
23 that's where the wheels went off the tracks here in  
24 terms of trying to negotiate the final schedule, so we  
25 originally hoped for a hearing in October. We then

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1 were thinking of November. Then we started talking  
2 about the first week in December, and now, Public  
3 Counsel doesn't want to do that first week in December,  
4 and I think that's where a large part of the dispute  
5 is.

6 JUDGE CLARK: I appreciate that  
7 clarification, and again, if you have a proposed  
8 procedural schedule you want the commissioners to  
9 consider, e-mail that to me by five o'clock tomorrow  
10 afternoon. I will ensure that it's presented to the  
11 commissioners. My e-mail is pclark@utc.wa.gov. Is  
12 there anything further to be considered on this  
13 morning's record, now afternoon?

14 MR. FFITCH: One other matter for the  
15 housekeeping, may we submit additional staff members  
16 for the Commission's electronic service list in this  
17 matter?

18 JUDGE CLARK: Yes, you may, and if you could  
19 also do that electronically by five p.m. tomorrow, I  
20 will put those individuals on the interested person's  
21 list. In some of the petitions to intervene, there are  
22 other individuals noted, most notably executive  
23 director or other staff members that are not attorneys  
24 and don't go on the appearance list, but I'll prepare  
25 an interested person's list, and if you want to add



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1 people in addition to those you've mentioned in your  
2 petitions to intervene or notices of appearance, please  
3 advise me and I will add those. Any other housekeeping  
4 matters, other matters we should consider? Hearing  
5 nothing, we are adjourned.

6 (Prehearing adjourned at 12:04 p.m.)

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