

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

)	
In the Matter of the Implementation of)	DOCKET NO. UT-033025
the Federal Communications)	
Commission’s Triennial Review Order)	ORDER NO. 01
)	
)	PREHEARING CONFERENCE
)	ORDER; ORDER SETTING
)	PROCEDURAL SCHEDULE;
)	NOTICE OF HEARING;
)	(To be held the weeks of
.....)	March 1, and March 15, 2004)

1 **Nature of the Proceeding:** The Washington Utilities and Transportation Commission (Commission) initiated this proceeding in response to the Federal Communications Commission’s (FCC) Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, also known as the Triennial Review Order, released on August 21, 2003, in CC Docket Nos. 01-338, 96-98, and 98-147. In the Triennial Review Order, the FCC delegates to state commissions the responsibility to conduct more granular, fact-specific analyses of whether competing carriers would be impaired without unbundled access to certain unbundled network elements. In particular, the FCC requires such a review in the case of enterprise market switching (DS1 or higher) within 90 days of the effective date of the Order, and for certain loop, transport, and mass market switching elements within nine months of the Order.

2 **Prehearing Conference:** The Commission convened a prehearing conference in this docket at Olympia, Washington on September 26, 2003, before Administrative Law Judge Ann E. Rendahl. The purpose of the prehearing conference was to identify the persons interested in participating in proceedings held in response to the Triennial Review Order, take appearances of the parties, consider petitions for intervention, establish deadlines for persons interested in initiating proceedings in response to the Triennial Review Order, establish a procedural and evidentiary schedule for the proceeding, and address any other matters arising as a result of the Triennial Review Order.

- 3 **Appearances.** Rebecca DeCook, attorney, Denver, CO, represents AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services, d/b/a/ TCG Seattle and TCG Oregon. Brooks E. Harlow and David L. Rice, attorneys, Seattle, WA, and Karen S. Frame, Attorney, Denver, CO, represent Covad Communications Company (Covad). Stephen S. Melnikoff, attorney, Arlington, VA, represents the Department of Defense and all other Federal Executive Agencies. Mark Trinchero, attorney, Portland, OR, and J. Jeffrey Oxley and Dennis J. Ahlers, attorneys, Minneapolis, MN, represent Eschelon Telecom, Inc. Mark Trinchero, attorney, Portland, OR, represents Global Crossing Local Services, Inc, Integra TelCom, Inc., McLeod Local Services, Inc., PacWest Telecomm, Inc., Time Warner Telecom of Washington, LLP, and XO Communications, Inc. Michel Singer Nelson, attorney, Denver, CO, represents WorldCom, Inc, d/b/a MCI, Inc. Brooks E. Harlow and David L. Rice, attorneys, Seattle, WA, represent the Northwest Competitive Communications Coalition (Coalition). Lisa A. Anderl and Adam L. Sherr, attorneys, Seattle, WA, and Chuck Steese, attorney, Denver, CO, represent Qwest Corporation (Qwest). William E. Hendricks III, attorney Hood River, OR, represents Sprint Corporation. Timothy J. O'Connell and Kendall J. Fisher, attorneys, Seattle, WA, represent Verizon Northwest, Inc (Verizon). Jonathan Thompson, Assistant Attorney General, Olympia, WA, represents Commission Staff. Simon J. ffitich, Assistant Attorney General, Seattle, WA, represents Public Counsel. Contact information for the parties' representatives is attached as Appendix A to this order.
- 4 **Petitions for Intervention.** On September 26, 2003, the Coalition filed with the Commission a Petition to Intervene in the proceeding. Covad petitioned to intervene orally during the conference. Given that the Commission initiated the proceeding, any party making an appearance at the conference is entitled to party status. No party objected to the party status of the Coalition or Covad, and the petitions were withdrawn.
- 5 **Hearing Schedule for 90-Day Proceeding.** By notice dated September 19, 2003, the Commission established a deadline of October 3, 2003, as the deadline for any person wishing to file a petition requesting that the Commission rebut the FCC's national finding of no impairment for enterprise market switching. By notice dated September 5, 2003, the Commission tentatively scheduled hearings for the week of November 10, 2003, to address the issue of impairment for enterprise market switching.

6 During the conference, the parties agreed to the following procedural schedule in the event a 90-day petition is filed:¹

Petition(s) filed	October 3, 2003
Prehearing Conference	October 9, 2003 (9:30 am)
Responses to Petition(s)	October 24, 2003
Replies to Responses	November 7, 2003
Exhibit Lists including Cross-Exhibits, Witness Lists Due	November 3, 2003
Prehearing Conference	November 4, 2003 (9:30 am)
Prehearing Conference	November 10, 2003 (8:30 am)
Hearings	November 10, 12-13, 2003
Post Hearing Briefs	December 5, 2003

7 **Hearing Schedule for Nine-Month Proceeding.** The parties agreed that one generic nine-month proceeding should be held, combining any petitions filed by Qwest or Verizon.² The parties agreed to the following procedural schedule in the event a petition is filed with the Commission requesting review of the FCC's national findings of impairment concerning DS1, DS3, and dark fiber loops and transport, and mass-market switching:

Deadline for Filing Petition(s)	October 10, 2003
Prehearing Conference	October 13, 2003 (1:30 pm)
Hearings	March 1-5, March 15-19, 2004

By separate notice dated September 30, 2003, the Commission notified parties of the October 10, 2003, deadline for filing petitions and scheduled the October 13, 2003, prehearing conference. Responsive and reply filing dates, prehearing conferences, and briefing dates will be determined at the October 13, 2003, prehearing conference.

8 **Batch Cut Issue.** The Triennial Review Order appears to require, separate from the other issues to be addressed in nine months, that state commissions approve

¹ No person filed a 90-day petition on October 3, 2003, and the Commission will by separate notice, cancel the procedural schedule established for a 90-day proceeding. By notice issued on October 8, 2003, the Commission cancelled the October 9, 2003 prehearing conference.

² Verizon indicated that it is not likely to file a nine-month petition, but would participate in any proceeding should Qwest file a petition. Qwest indicated that it planned to file a petition concerning mass-market switching, but had not yet decided whether to file a petition concerning loops and transport.

a batch cut migration process to be implemented by incumbent local exchange carriers (ILECs). *Triennial Review Order*, ¶ 488. While the parties agreed that consideration of a batch cut migration process is susceptible to regional discussion, the parties disagreed over whether state commission must approve a batch cut migration process for each ILEC. By separate notice, the Commission will request comments concerning the role of state commissions in approving a batch cut process, as well as the appropriate process to address the provisions of the Triennial Review Order.

- 9 **Discovery.** The parties desire to engage in discovery of information in the proceedings addressing the Triennial Review Order. The proceedings qualify under WAC 480-09-480 as a proceeding in which inquiries may be made to the extent provided in the rule. The discovery rule will be invoked should a person file a petition requesting a 90-day proceeding or a nine-month proceeding. The parties requested a shortened time for responses to data requests, i.e., five calendar days, should a party file a petition to initiate a 90-day proceeding. The parties also requested permission to begin sending data requests to other parties for the 90-day proceeding as of October 6, 2003. Both requests were granted.
- 10 The parties also discussed coordinating discovery requests for the 90-day and nine-month proceedings. Qwest has developed certain template discovery questions, as has the National Association of Regulatory Utility Commissioners (NARUC) Triennial Review Implementation Project (TRIP) Task Force. By notice dated September 30, 2003, the Commission requested that parties share and coordinate any template discovery questions and work to reach consensus on discovery issues. The Commission requested comments on these discovery issues by Friday, October 3, 2003. The Commission also scheduled a prehearing conference on Thursday, October 9, 2003, to discuss the form and process of discovery for the 90-day and nine-month proceedings.³
- 11 **Protective Order.** The parties expressed an interest in a protective order being entered in this docket pursuant to RCW 34.05.446 and RCW 80.04.095 to protect the confidentiality of proprietary information. Similar to the discussion of discovery issues above, the TRIP task force and other parties have developed template protective orders. By notice dated September 30, 2003, the Commission requested parties to file comments by October 3, 2003, concerning the

³ The Commission has cancelled the October 9, 2003, prehearing conference and rescheduled discussion of discovery and protective order issues to a prehearing conference scheduled for October 13, 2003.

appropriate protective order to be used in the Commission's Triennial Review proceedings, the Commission's standard protective order, or another form of protective order. As with discovery issues, the issue of the proper protective order will be discussed at the October 9, 2003, prehearing conference.

- 12 **Notice of Hearing. The Commission convenes a hearing concerning any petitions for a nine-month proceeding beginning at 9:30 a.m., on Monday, March 1, 2004, for the weeks of March 1, 2004 and March 15, 2004 in Room 206, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.** Persons who cannot attend in person may participate via the Commission's teleconference bridge line **360-664-3846**. Persons desiring to participate via the bridge line must make advance reservations by calling Kippi Walker at 360-664-1139, no later than Friday, February 27, 2004.
- 13 **Service on Other Parties.** Pursuant to WAC 480-09-120(2)(b) parties must serve documents by delivering one copy to each other party via mail "properly addressed with first-class postage prepaid; commercial parcel delivery company properly tendered with fees prepaid, or by telefacsimile transmission, when originals are mailed simultaneously." WAC 480-09-120(2)(d) provides that "any party may consent to receive service by electronic mail," and provides that parties must file their consent with the Commission, in the form of a waiver of other types of service." Such a waiver is only required if the party requests service solely via electronic mail.
- 14 Qwest requests that every party serve documents on other parties via electronic mail, regardless of whether parties seek a waiver of other forms of service. The list of parties' representatives and their e-mail addresses is listed in Appendix A to this order. Parties are encouraged to serve documents on other parties electronically as well as through the other methods identified in WAC 480-09-120(2)(d) if the party has not filed a waiver of other forms of service.
- 15 **Service on the Commission, document preparation, and process issues.** Parties filing documents electronically with the Commission must do so by submitting the document to records@wutc.wa.gov. To ensure that electronic filing is complete pursuant to WAC 480-09-120(b), parties must file an original, plus six copies, of the document with the Commission by the following business day. Interested persons making paper-only filings with the Commission must file an original and 15 copies of each document filed with the Commission. Appendix B states relevant Commission rules and other directions for the preparation and

submission of evidence and for other process in this docket. Parties will be expected to comply with these provisions.

Dated at Olympia, Washington, and effective this 8th day of October, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge

NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the date of mailing of this statement, pursuant to WAC 480-09-460(2). Absent such objections, this prehearing conference order will control further proceedings in this matter, subject to Commission review.

APPENDIX A

PARTIES REPRESENTATIVES

DOCKET NO. UT-033025

Updated 10/6/03

COMPANY	REPRESENTATIVE AND ADDRESS	PHONE NUMBER	FAX NUMBER	E-MAIL ADDRESS
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Presiding Administrative Law Judge	ANN E. RENDAHL 1300 S. Evergreen Park Dr SW PO Box 47250 Olympia, WA 98504-7250	360-664-1144	360-664-2654 (ALD fax only - do not use to file)	arendahl@wutc.wa.gov

Appendix B

I. Requirements for ALL paper copies of testimony, exhibits, and briefs

The following requirements are restated from and clarify the Commission's rules relating to adjudications.

A. All paper copies of briefs, prefiled testimony, and original text in exhibits must be

- On 8-1/2x11 paper, punched for insertion in a 3-ring binder,
- Punched with OVERSIZED HOLES to allow easy handling.
- Double-spaced
- 12-point or larger text and footnotes, Times New Roman or equivalent serif font.
- Minimum one-inch margins from all edges.

Other exhibit materials need not be double-spaced or 12-point type, but must be printed or copied for optimum legibility.

B. All electronic and paper copies must be

- SEQUENTIALLY NUMBERED (all pages). **THIS INCLUDES EXHIBITS.** It is not reasonable to expect other counsel or the bench to keep track of where we are among several hundred (or sometimes even just several) unnumbered pages.
- DATED ON THE FIRST PAGE OF EACH ITEM and on the label of every diskette. If the item is a revision of a document previously submitted, it must be clearly labeled (REVISED), with the same title, and with the date it is filed clearly shown. Electronic files must be designated R for revision, when applicable, with an ordinal number showing the revision number.

II. Identifying exhibit numbers; Exhibits on cross examination.

A. **Identifying exhibits.** It is essential to mark documents so you, opposing counsel, and the Commission can find them. We ask you to comply with this clarification of prior practice, based on recent experience:

- **Use the witness's initials and add an ordinal number for each exhibit.** Identify testimony with a T and confidential exhibits with a C. Example: Witness Jane Quintessentia Public. Her original testimony would be JQP-1T or JQP-1TC, her first attached exhibit would be JQP-2, etc. NEVER identify the attachments merely with a single ordinal number, as that will provide the maximum confusion to everyone, including your witness.

B. Prepare a list of your exhibits with their title and (JQP) designation in digital form and in a format specified by the Commission. Send it to the presiding officer before the appropriate prehearing conference. That will simplify identification and ease administrative burdens.

NOTE: Be prepared to submit all of your possible exhibits on cross examination several days prior to the hearing. We will attempt to schedule a prehearing conference to deal with the exhibits as close as possible to the hearing itself, but we have administrative needs that require prefiling.