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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 In the Matter of the Petition of)
4 QWEST CORPORATION,)DOCKET NO. UT-073033
5 For Commission Approval of 2007)Volume I
6 Additions to Non-Impaired Wire)Pages 1 - 22
7 Center List.)

8 In the Matter of the Petition of)
9 QWEST CORPORATION,)DOCKET NO. UT-073035
10 For Investigation Concerning the)Volume I
11 Status of Competition and Impact)Pages 1 - 22
12 of the FCC's Triennial Review)
13 Remand Order on the Competitive)
14 Telecommunications Environment)
15 in Washington State.)
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14 A prehearing conference in the above matter
15 was held on July 31, 2007, at 1:30 p.m., at 1300 South
16 Evergreen Park Drive Southwest, Olympia, Washington,
17 before Administrative Law Judge PATRICIA CLARK.

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The parties were present as follows:

19

20 QWEST CORPORATION, by LISA A. ANDERL,
21 Associate General Counsel, 1600 Seventh Avenue, Room
22 3206, Seattle, Washington 98191; telephone, (206)
23 345-1574.

22

23 ESCHELON TELECOM OF WASHINGTON, INC., by
24 KAREN CLAUSON (via bridge line), 730 Second Avenue
25 South, Suite 900, Minneapolis, Minnesota, 55402;
telephone, (612) 436-6026.

24

25 Kathryn T. Wilson, CCR
Court Reporter

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1 XO COMMUNICATION SERVICES, INC.; INTEGRA
TELECOM OF WASHINGTON, INC.; COVAD COMMUNICATIONS
2 COMPANY; MCLEOD USA TELECOMMUNICATION SERVICES, INC.;
by GREGORY J. KOPTA (via bridge line), Attorney at Law,
3 Davis, Wright, Tremaine, LLP, 1201 Third Avenue, Suite
2200, Seattle, Washington 98101-3045; telephone, (206)
4 757-8079.

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

2 JUDGE CLARK: Good afternoon. It's
3 approximately 1:30 p.m., July 31st, 2007, in the
4 Commission's hearing room in Olympia, Washington. This
5 is the time and the place set for a prehearing
6 conference in the matter of the petition of Qwest
7 Corporation for Commission approval of 2007 additions
8 to non-impaired wire center list, given Docket No.
9 073033, and in the matter of the petition of Qwest
10 Corporation for investigation concerning the status of
11 competition and impact of the FCC's triennial review
12 remand order on the competitive telecommunications
13 environment in Washington State, given Docket
14 UT-073035, Patricia Clark, administrative law judge for
15 the Commission presiding.

16 Docket 073033 came before the Commission on
17 June 22nd, 2007, when Qwest filed its petition
18 requesting approval of additions to non-impaired wire
19 center list. On June 29th, 2007, Qwest filed a
20 settlement agreement between Qwest and a coalition of
21 competitive local exchange carriers regarding
22 competition and the impact of the FCC's TRRO order in
23 Washington. The settlement agreement was initially
24 filed in UT-053025 on June 22nd, 2007.

25 The prehearing conference in this matter was

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1 scheduled by Order No. 3 issued in UT-073033, and Order
2 No. 1 in UT-073035. Absent objection, I will assume
3 that all parties designated in that order will be
4 parties in both proceedings, and I will call for
5 appearances and objections to that.

6 There are a couple of outstanding matters.
7 There is an outstanding motion for protective order
8 filed July 27th, 2007, by Eschelon. The deadline for
9 responding to that motion is August 6th, unless the
10 parties are able to orally respond to the motion today.
11 At this juncture, I will take appearances on behalf of
12 the parties. Appearing on behalf of Qwest?

13 MS. ANDERL: Lisa Anderl, in-house attorney
14 representing Qwest Corporation. My full appearance
15 since this is the first hearing is business address is
16 1600 Seventh Avenue, Room 3206, Seattle, Washington,
17 98191. My telephone is (206) 345-1574. My fax is
18 (206) 343-4040, and my e-mail is lisa.anderl@qwest.com.

19 JUDGE CLARK: Thank you, Ms. Anderl. We do
20 have two representatives appearing by telephone on the
21 Commission's bridge line. Whenever we have individuals
22 appearing telephonically, I would like to encourage
23 everyone to please speak a little louder than you would
24 perhaps ordinarily speak and slow down a little bit.
25 It's also important for you to identify yourselves

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1 prior to speaking so that the court reporter can get an
2 accurate transcript. Appearing on behalf of Eschelon?

3 MS. CLAUSON: This is Karen Clauson,
4 C-l-a-u-s-o-n, representing Eschelon Telecom of
5 Washington, Inc. My address is Eschelon Telecom, Inc.,
6 730 Second Avenue South, Suite 900, Minneapolis,
7 Minnesota, 55402; telephone, (612) 436-6026; fax
8 number, (612) 436-6816, and I have with me on the
9 telephone Doug Denny of Eschelon.

10 JUDGE CLARK: Thank you, Ms. Clauson. Is
11 there another appearance on behalf of Eschelon? All
12 right. Mr. Kopta, I understand you are representing
13 from our prehearing conversation a number of parties,
14 if you could designate those at this time.

15 MR. KOPTA: I will certainly do that, Your
16 Honor. Gregory J. Kopta of the law firm Davis, Wright,
17 Tremaine, LLP, on behalf of XO Communications Services,
18 Inc.; Integra Telecom of Washington, Inc.; Covad
19 Communications Company, and McLeod USA
20 Telecommunications Services, Inc. My address is 1201
21 Third Avenue, Suite 2200, Seattle, Washington,
22 98101-3045. Telephone, (206) 757-8079; fax, (206)
23 757-7079; e-mail, gregkopta@dwt.com.

24 JUDGE CLARK: Thank you, Mr. Kopta. I have
25 just a couple of preliminary matters. Although I don't

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1 believe it has been a problem in these proceedings, I
2 do want to remind the parties that whenever you are
3 submitting a pleading electronically, if you would
4 please send me a courtesy copy of that filing, I would
5 appreciate it, and secondly, when you make filings with
6 the records center, please be sure to insure that you
7 segregate confidential and redacted copies of
8 documents.

9 Ms. Anderl, I'm going to turn to you first to
10 see if there is any objection to the individuals named
11 previously being designated parties to these
12 proceedings.

13 MS. ANDERL: No objection.

14 JUDGE CLARK: Thank you. The purpose of this
15 afternoon's prehearing conference is to establish a
16 procedure for resolving the outstanding issues in the
17 consolidated proceedings, to address issues, and to
18 discuss perhaps the outstanding procedural matters,
19 such as the motion for a different protective order. I
20 think that I have the background on those sort of well
21 in hand, but I want to make sure I do.

22 Just want to make sure that in the second
23 docket, and I'm starting with 073035 because I think
24 it's a little simpler. That's the proceeding in which
25 a settlement was filed by the parties, and in that

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1 proceeding, the parties recommended that no hearing be
2 conducted and that no witnesses be called, and so I'm
3 just needing to confirm with the parties that that is
4 their understanding about the appropriate way to
5 address the stipulations or settlement; Ms. Anderl?

6 MS. ANDERL: Yes, Your Honor.

7 JUDGE CLARK: Mr. Kopta?

8 MR. KOPTA: That is correct, Your Honor.

9 JUDGE CLARK: Ms. Clauson?

10 MS. CLAUSON: Yes, Your Honor.

11 JUDGE CLARK: I have a couple of questions
12 about that particular docket. One of the things that
13 is required by the Commission's regulations,
14 WAC 480-07-741, is that the parties need to include a
15 recommended effective date for the settlement
16 agreement. I have reviewed that document. It doesn't
17 mean that it isn't there, but I certainly cannot find a
18 recommended effective date.

19 MS. ANDERL: Your Honor, this is Lisa Anderl
20 on behalf of Qwest. I confess to not having knowledge
21 off the top of my head as to whether the settlement
22 agreement includes that thing or not. I'm sure the
23 parties could between the three of us here today figure
24 something out.

25 JUDGE CLARK: I'm certain you can. Either

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1 Mr. Kopta or Ms. Clauson, are you aware if there is a
2 proposed or recommended effective date in the
3 agreement?

4 MS. CLAUSON: The settlement agreement in
5 Section 2 in the definition section defines effective
6 date of the settlement agreement as the effective date
7 of the Commission order approving the settlement
8 agreement. It does not in agreement go on to say
9 recommended date. It simply links it to the effective
10 date whenever the Commission order approves the
11 agreement.

12 JUDGE CLARK: Thank you, Ms. Clauson. That
13 was my understanding, and that's why I cited the
14 Commission's regulation. I think the purpose of that
15 regulation is to get an idea of when the parties would
16 like to have some kind of decision in the proceeding.
17 That's something that I will permit the parties to
18 discuss off record, but it would certainly be helpful
19 for consideration of that settlement to have that.

20 The second thing is that the Commission's
21 regulations, WAC 480-07-740(2)(a), also require a
22 narrative supporting a settlement, and I don't have
23 something that I would consider a narrative supporting
24 a settlement either.

25 MS. ANDERL: Your Honor, I think that at

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1 least Qwest believed that the petition for
2 consideration and approval of the settlement, even
3 though it wasn't captioned "supporting narrative,"
4 included the central components of what would be in a
5 narrative supporting a settlement agreement.

6 JUDGE CLARK: Okay. I'm not trying to be
7 overly rigid in applying the Commission's regulations.
8 What I'm concerned about is trying to address
9 establishing a record for this proceeding absent
10 conducting a hearing as is the preference of the
11 settling parties and without calling witnesses, and I
12 know that there are perhaps general statements in
13 there, for example, and this is merely used for
14 illustrative purposes, that the settlement is in the
15 public interest.

16 However, the type of information that would
17 ordinarily be included in a narrative would include an
18 explanation regarding why. That information is not in
19 the petition. I think the petition certainly
20 adequately covers what should be covered in a petition,
21 but rather there is usually a document in addition to
22 that petition, and so I'm trying to think of the most
23 expeditious way to address this, and I think perhaps I
24 could give the parties the opportunity, again, to
25 discuss off record the possibility of composing such a

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1 narrative and coming up with a filing deadline for that
2 that would be amenable to everyone. Ms. Anderl?

3 MS. ANDERL: We are certainly willing to
4 discuss that off record.

5 JUDGE CLARK: Thank you.

6 MS. ANDERL: Although, I guess, and I'm not
7 trying to be difficult or argumentative, but other than
8 representing to the Commission the contested issues
9 which are resolved by this settlement, the method in
10 which they are resolved, and the fact that the parties
11 believe that that in and of itself is in the public
12 interest because it resolved contested issues without
13 litigation and offers certainty going forward, I'm not
14 sure how much else we can say.

15 JUDGE CLARK: Hopefully, the content is
16 something that would also be an appropriate topic for
17 discussion. My suggestion would be that that
18 discussion not take place today but rather that the
19 parties simply confer regarding the procedural matters,
20 and if it appears that you are unable to do that, I
21 suppose you will advise the Commission of that
22 contingency.

23 I certainly don't want to provide advice to
24 any of the parties, but you could look at other
25 proceedings in which the Commission did receive

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1 settlements with narrative supporting those settlements
2 for perhaps some input around the kinds of things that
3 distinguish that from a petition. What I'm trying to
4 do is obviate the need for either witnesses or a
5 hearing on the settlement, and so I'm just going to
6 reserve judgment on that.

7 The more complicated matter is coming up with
8 some kind of manner of addressing the petition in
9 UT-073033, and so I would like to hear from the parties
10 if they have an approach about how to address that
11 particular docket.

12 MS. ANDERL: Your Honor, this is Lisa Anderl
13 on behalf of Qwest. I think part of what makes these
14 dockets a little bit complicated is that in a more
15 perfect world than the one we are living in, they
16 wouldn't have been filed roughly contemporaneously, and
17 the settlement agreement would have been filed first,
18 and the Commission would have done whatever it needed
19 to do to approve the settlement agreement, and then
20 upon having approved the settlement agreement, the
21 Commission would have a road map for how to address the
22 2007 wire center filing because that's really what the
23 settlement does is it tries to remove the contested
24 issues from making a determination on the next wire
25 center docket.

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1 So it's our belief and advocacy and hope that
2 the Commission would follow the process set forth in
3 the settlement agreement to address the wire center
4 docket. That process in the settlement agreement, I
5 believe, allows for 30 days after the Qwest filing to
6 file objections with the Commission, and now that's
7 after filing of the designated wire centers along with
8 the supporting data, and we can talk about whether the
9 parties feel if they have everything they need or not
10 yet. Bear in mind that there are only three wire
11 centers in this new docket, one in Vancouver, one in
12 Spokane, one in Bellevue, and we would then ask the
13 Commission to follow the outlines up in the settlement
14 document for consideration of these three wire centers
15 in the 033 docket.

16 JUDGE CLARK: Before I hear from the other
17 parties, I understand the process, and while it would
18 have been idyllic to have filed the settlement
19 agreement and have the Commission act on that prior to
20 filing the second docket, it appears that the
21 settlement itself requires Qwest to make a filing prior
22 to July 1 and to use the wire center data from you
23 prior year if you wish to make modifications to the
24 list of non-impaired wire centers. So I'm assuming
25 that that was a factor in the timing of that particular

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1 filing.

2 That having been said, we do have an
3 objection filed from Eschelon regarding that. I don't
4 want to address the merits of that objection but rather
5 would like to hear from Eschelon regarding any input on
6 the appropriate process or procedure we could use to
7 address these outstanding issues. Ms. Clauson?

8 MS. ANDERL: I'm sorry, Ms. Clauson. I don't
9 mean to interrupt, but I did want you to know that I
10 don't seem to have received Eschelon's Friday filing,
11 so if Your Honor had an extra hard copy, I would sure
12 appreciate it. I've just checked my e-mail, and I'm
13 not saying I didn't get it because I've cleaned things
14 out since then, but that's not the kind of thing I
15 normally overlook.

16 JUDGE CLARK: I don't have an extra copy, but
17 I can get an extra copy when we go off record of that
18 particular objection. Do you need that to --

19 MS. ANDERL: No. If we are not going to
20 address the merits, that's fine.

21 JUDGE CLARK: We are not addressing the
22 merits. We are simply talking about the process and
23 how to address these two dockets. Ms. Clauson?

24 MS. CLAUSON: Thank you, Your Honor. This is
25 Karen Clauson, and we do ask that as the settlement

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1 agreement is not approved that those time lines in the
2 agreement, the 30 days, for example, not be used but
3 rather that you set comment and response deadlines
4 and/or testimony response deadlines that made sense
5 given that we don't have a settlement agreement
6 approved yet and allow people an opportunity to comment
7 on that.

8 I don't want to say really much more than
9 that because I don't want to go into the substance of
10 that motion. I will add, for example, in Arizona, the
11 Commission has set its deadlines for testimony and for
12 Staff input, and we are working on a date for hearing
13 should it be needed or not, and that is not obviously
14 following the deadline in the agreement. When the
15 agreement is effective, and if that's approved, then
16 those deadlines will apply to the parties, but it's
17 simply not yet approved for the reasons Ms. Anderl went
18 over.

19 JUDGE CLARK: Thank you, Ms. Clauson.
20 Mr. Kopta?

21 MR. KOPTA: I think that we would agree with
22 Eschelon that given the fact that the settlement
23 agreement is not yet effective that we are dealing with
24 a situation in which the Commission needs to establish
25 the proper procedure for addressing the merits of this

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1 particular case, and while certainly we might look to
2 the settlement agreement as far as the parties'
3 positions on how much time may be necessary and that
4 sort of thing and what kind of process might work, I
5 think we are in a situation where we need to establish
6 in this prehearing conference an appropriate schedule
7 for considering the merits of that filing.

8 JUDGE CLARK: Anything further, Ms. Anderl?

9 MS. ANDERL: No, Your Honor.

10 JUDGE CLARK: Well, my suggestion then is
11 that we take a few moments off record. I want the
12 parties to confer, first regarding Docket 073033, and
13 come up with a recommended effective date for the
14 settlement agreement in order to comply with the
15 regulation and to come up with a deadline for filing a
16 narrative supporting statement in compliance also with
17 the Commission's regulation, and since you will have
18 the advantage of being off record and I will not be
19 present in the hearing room, I would like you to also
20 discuss and see if you can come up with what I would
21 consider a more traditional schedule for addressing the
22 merits in Docket 073035, including deadlines for
23 prefiled direct testimony, responsive testimony,
24 rebuttal testimony, hearing, if there is a need for a
25 public hearing, and any other procedural matters

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1 regarding the schedule the parties wish to address. Is
2 there anything the parties would like me to consider
3 before we go off record? Ms. Anderl?

4 MS. ANDERL: No, Your Honor.

5 JUDGE CLARK: Mr. Kopta.

6 MR. KOPTA: No, Your Honor.

7 JUDGE CLARK: Ms. Clauson.

8 MS. CLAUSON: No, Your Honor.

9 JUDGE CLARK: We are at recess until further
10 call.

11 (Discussion off the record.)

12 JUDGE CLARK: We are back on the record.

13 Have the parties been able to reach a schedule that is
14 amenable to everyone?

15 MS. ANDERL: We think so, Your Honor. We
16 could run it past you and I will see if it's
17 acceptable, if I recite it correctly, for Ms. Clauson
18 for Mr. Kopta, and then if it meets your needs as well.

19 JUDGE CLARK: Which docket are we talking
20 about?

21 MS. ANDERL: For Docket 073033, the parties
22 would propose to file a joint narrative supporting the
23 settlement by August 22nd and would propose an
24 effective date of the settlement September 7th, 2007,
25 and that's that for that docket, and then for Docket

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1 073035, basically what we would propose to establish is
2 a Commission order in the other docket plus 30 days to
3 kick off a schedule, and so if the Commission order
4 accepts settlement or approves the settlement on the
5 7th of September, that would be October 8th would be a
6 Monday deadline for filing any objections to the wire
7 center list.

8 JUDGE CLARK: So you would follow the process
9 in the settlement?

10 MS. ANDERL: If the settlement is approved,
11 yes.

12 JUDGE CLARK: If the settlement is approved,
13 then what the Commission would see in lieu of the
14 traditional prefiled direct testimony instead would be
15 objections to.

16 MS. ANDERL: It would be objections to, and
17 then subsequent to the objections, we may establish a
18 procedural schedule that would either be written
19 comments or testimony, but we actually can't get that
20 far yet.

21 JUDGE CLARK: I understand, and so that would
22 be the filing that would precipitate any further
23 procedural action by the Commission.

24 MS. ANDERL: Exactly, and if there is
25 Commission approval of the settlement and no filing of

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1 objection to the wire center list, then the settlement
2 process would control and wire center lists would be
3 either deemed approved or approved and parties would go
4 forward and amend the interconnection agreements in
5 accordance with that new list. Is that fair?

6 MS. CLAUSON: That's not what it says, Lisa,
7 but I think your point is that the process described in
8 the settlement agreement would come into play.

9 MS. ANDERL: That is my point, yes.

10 JUDGE CLARK: I understand.

11 MS. ANDERL: If the schedule we build for
12 3035, if the Commission were to reject or significantly
13 modify the settlement, that kind of puts us into an
14 all-bets-are-off situation, but we would also at that
15 point propose a 30-day deadline for filing comments or
16 recommendations with regard to process for the wire
17 center docket.

18 JUDGE CLARK: All right. Ms. Clauson, do you
19 have anything further to add to that summary?

20 MS. CLAUSON: I'm just wondering whether we
21 reversed the docket numbers on that. I believe the
22 narrative and effective date related to the settlement,
23 and isn't that 073035?

24 MS. ANDERL: That's right, sorry.

25 MS. CLAUSON: If the settlement approves, my

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1 understanding is it would be basically what we had
2 proposed in our objection, which would be 30 days --
3 the objection would be 30 days from the date the
4 settlement is approved. If it's not approved or
5 significantly modified, it would be 30 days from the
6 date of that order rejecting the settlement, people
7 would file comments or recommendations for process on
8 the wire center docket.

9 JUDGE CLARK: I'm very glad that you brought
10 that up, Ms. Clauson, because I wanted to remind
11 everyone that when I gave you my summary before our
12 recess, I transposed the docket numbers, so I think
13 it's pretty simple to do in this proceeding, but I do
14 understand that one relates to the settlement agreement
15 and one relates to the modifications to the current
16 non-impaired wire center list, and if I stay away from
17 the docket numbers, I can probably keep it straight.

18 Mr. Kopta, do you have something further to
19 add?

20 MR. KOPTA: I do not. Thank you, Your Honor.

21 JUDGE CLARK: I just have one additional task
22 in conjunction with the settlement and the deadline of
23 August 22nd for a joint narrative and an effective date
24 of September 7th, or certainly what the parties can
25 request in terms of that. The Commission will

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1 certainly accept the joint narrative when it's
2 received.

3 In addition, it would be helpful to me for
4 you to specify either in that joint narrative or in a
5 separate document comparable to a legal brief to
6 explain whether the methods used in this particular
7 settlement follow the precedent established by the
8 Commission in prior proceedings, and if it does not, to
9 distinguish the process that has been followed by the
10 parties in the settlement.

11 The other thing I have that is procedural,
12 and I want to do this just very quickly, is to indicate
13 that we have an outstanding joint motion by Eschelon to
14 modify a protective order in this proceeding. As I
15 indicated at the onset of this afternoon's prehearing
16 conference, that matter is not yet ripe. The deadline
17 for responses to that motion does not expire until
18 August the 6th, 2007.

19 MS. ANDERL: I'm sorry, Your Honor.

20 JUDGE CLARK: I'm assuming you are not
21 prepared to orally respond.

22 MS. ANDERL: That's apparently another
23 document which I didn't receive a copy of.

24 JUDGE CLARK: Actually, there was a joint
25 filing, and I believe it was on Friday the 27th. I did

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1 confirm during the recess that you were on the e-mail
2 list, I believe, for this, unless I'm mistaken, and
3 that is two documents came in. One was the objection,
4 and at the same time, the motion for modified
5 protective order.

6 MS. ANDERL: Both of those arrived in my
7 e-mail earlier today then. No problem.

8 JUDGE CLARK: Those are the documents I'm
9 talking about. Are there any other procedural matters
10 that we need to address during this afternoon's
11 prehearing conference? Ms. Anderl?

12 MS. ANDERL: Your Honor, we already have a
13 protective order and discovery is ongoing. I don't
14 know if we have a determination of how many copies of
15 things we need, and I would just ask that if when the
16 Commission enters a prehearing conference order, if
17 it's something other than 12 or less than 12 that we
18 find that out.

19 JUDGE CLARK: I need to verify that with the
20 records center, but my recollection is it is less than
21 12, and I will put that in the prehearing conference
22 order.

23 MS. ANDERL: That's all I had. Thank you.

24 JUDGE CLARK: Ms. Clauson?

25 MS. CLAUSON: Nothing further, Your Honor.

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1 JUDGE CLARK: Mr. Kopta?

2 MR. KOPTA: Nothing further, Your Honor.

3 JUDGE CLARK: Thank you for your

4 participation this afternoon. We are adjourned.

5 (Prehearing conference adjourned at 3:15 p.m.)

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