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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In The Matter of the Review of)	UT-023003
Unbundled Loop and Switching Rates)	Volume X
And Review of the Deaveraged Zone)	Pages 438-471
Rate Structure.)	

A pre-hearing conference in the above-entitled matter was held at 10:02 a.m. on Monday, March 24, 2004, at 1300 South Evergreen Park Drive, Southwest, Olympia, Washington, before Administrative Law Judge THEODORA MACE.

The parties present were as follows:

QWEST CORPORATION, by Lisa Anderl, Attorney at Law, 1600 Seventh Avenue, Room 3206, Seattle, Washington 98191 (Appearing via teleconference bridge.)

COMMISSION STAFF, by Shannon E. Smith, Assistant Attorney General, 1400 S. Evergreen Park Drive, S.W., P.O. Box 40128, Olympia, Washington, 98504-1028.

COVAD COMMUNICATIONS COMPANY, by Karen Frame, Senior Counsel, 7901 Lowry Boulevard, Denver, Colorado 80230.

Barbara L. Nelson, CCR
Court Reporter

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1 VERIZON NORTHWEST, by Catherine Kane
2 Ronis, Attorney at Law, Wilmer, Cutler & Pickering,
3 2445 M Street N.W., Washington, D.C. 20037-1420, and
4 Chris Huther, Attorney at Law, Preston, Gates, Ellis
& Rouvelas Meeds, 1735 New York Avenue, N.W.,
Washington, D.C. 20006 (Appearing via teleconference
bridge).

5 WEBTEC and MCI, by Arthur A. Butler,
6 Attorney at Law, Ater Wynne, 5450 Two Union Square,
601 Union Street, Seattle, Washington, 98101.

7 MCI, by Michel Singer Nelson, Attorney
8 At Law, 707 17th Street, Suite 4200, Denver,
Colorado, 80202 (via teleconference bridge.)

9 AT&T COMMUNICATIONS OF THE PACIFIC
10 NORTHWEST, INC., by Gregory J. Kopta, Attorney at
11 Law, Davis, Wright, Tremaine, 2600 Century Square,
12 1501 Fourth Avenue, Seattle, Washington, 98101.

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1 JUDGE MACE: Let's be on the record in the
2 Matter of Review of Unbundled Loop and Switching
3 Rates and Review of the Deaveraged Zone Rate
4 Structure. This is Docket Number UT-023003, this is
5 also known as the recurring cost docket.

6 Today is May 24th, 2004. This is a
7 pre-hearing conference for marking cross -- well,
8 marking exhibits, distribution of cross-examination
9 exhibits, and addressing numerous housekeeping and
10 other matters that we need to address before the
11 hearing begins.

12 My name is Theo Mace. I'm the
13 Administrative Law Judge. I'd like to have
14 appearances now, beginning with the people in the
15 room, and then I'll take appearances from people who
16 are on the conference bridge.

17 MS. RONIS: Catherine Kane Ronis, of Wilmer
18 Cutler and Pickering, representing Verizon.

19 MR. BUTLER: Arthur A. Butler, Ater Wynne,
20 LLP, appearing on behalf of MCI and WeBTEC. Michel
21 Singer Nelson, from MCI, will be joining a little bit
22 later via the conference bridge.

23 MR. KOPTA: Gregory J. Kopta, of the Law
24 Firm Davis, Wright, Tremaine, LLP, on behalf of AT&T
25 Communications of the Pacific Northwest, Inc.

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1 MS. FRAME: Karen Frame, with Covad
2 Communications Company.

3 MS. SMITH: Shannon Smith, Assistant
4 Attorney General, for Commission Staff.

5 JUDGE MACE: Thank you. I'd like to ask if
6 there are any counsel on the conference bridge that
7 want to introduce themselves at this time?

8 MS. ANDERL: Yes, Your Honor, this is Lisa
9 Anderl, representing Qwest.

10 JUDGE MACE: Thank you. Anyone else?

11 MR. HUTHER: Yes, this is Chris Huther,
12 with the Law Firm Preston, Gates, Ellis and Rouvelas
13 Meeds, LLP, on behalf of Verizon Northwest.

14 JUDGE MACE: Thank you. Anyone else? Thank
15 you. Well, I have a list here of items that we need
16 to address, and I think the first item I want to
17 cover is the motion to strike.

18 We have received AT&T's motion and Verizon's
19 response and Staff's response. The Commission is
20 still deliberating on that and I will not have an
21 answer for you on the motion to strike today at this
22 pre-hearing conference. I may have something that
23 will go out later today or very early tomorrow
24 morning so that you can more adequately prepare for
25 hearing, but I just wanted to let you know that.

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1 Another sort of brief outstanding item has
2 to do with the question of the five-minute summary.
3 I believe AT&T and Verizon asked for permission so
4 that each witness could give a five-minute summary
5 prior to beginning their testimony. I know that
6 Staff opposed that, and there has been some
7 discussion among the Commissioners. As you know, I
8 was not in favor of that, but it has been determined
9 that it would be beneficial. The Commissioners would
10 like to have some measure of summary before witness
11 testimony. It will be limited to three minutes'
12 time, and it will be strictly limited.

13 I think rehashing the testimony is probably
14 not appropriate. Hitting the high points in a very
15 brief sort of way would be okay. Three minutes only.

16 Let's see. Oh, with regard to the waiver of
17 cross-examination for Mr. Dye, Mr. Denney and Mr.
18 Flesch, the Commission does not have questions for
19 those witnesses, they do not need to appear, and we
20 can just have their testimony and exhibits stipulated
21 into the record.

22 I'm aware that, Ms. Smith, that you have to
23 be away on the 27th, and I have the proposed hearing
24 schedule in front of me. What time is it that you
25 need to be absent?

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1 MS. SMITH: 1:30, Your Honor, and I believe
2 Mr. Kopta also has to be absent.

3 JUDGE MACE: And that would be 1:30 to --

4 MS. SMITH: About 2:00.

5 JUDGE MACE: All right. I will -- I will
6 discuss that with the Commissioners, make sure
7 they're aware of that.

8 As many of you are aware, I don't know, may
9 not be aware, David Gabel is the Commission's adviser
10 in this case, and typically he also is on the bench
11 and will be asking cross-examination questions of
12 some of the witnesses. I've distributed to you,
13 unfortunately, not to all of you, but I have
14 distributed to you a copy of an exhibit that I have
15 preliminarily marked as Bench Cross Exhibit 1200, and
16 this is a part of Verizon's tariffs, and he will be
17 cross-examining some Verizon witnesses with regard to
18 this, and he wanted to make sure the parties were
19 aware of that ahead of time. I will bring extra
20 copies of that to the hearing on Wednesday, so that
21 those of you who did not receive a copy today will be
22 able to have a copy.

23 All right. I have some questions about
24 various aspects of presentation of witnesses. The
25 first one is which witnesses is AT&T sponsoring,

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1 which witnesses is AT&T XO sponsoring, which
2 witnesses is AT&T and MCI sponsoring? It wasn't
3 entirely clear how that was going to work at this
4 point and whether it should be a distinction without
5 a difference. Mr. Kopta, can you address that?

6 MR. KOPTA: Yes, Your Honor. I believe it
7 is a distinction without a difference. Originally,
8 Mr. Donovan's testimony was sponsored by both AT&T
9 and XO, but XO is not going to be actively
10 participating in this docket, and so therefore it
11 should just be sponsored by AT&T.

12 There are some pieces of testimony that have
13 been marked as being jointly sponsored by AT&T and
14 MCI. AT&T is going to be taking the lead role in
15 this particular proceeding, and so I'm not sure how
16 important it is to have those witnesses designated as
17 being sponsored by both AT&T and MCI. Certainly, at
18 a minimum, they're being sponsored by AT&T, but I
19 would let MCI address the extent to which they want
20 to also be identified as a joint sponsor of those
21 particular witnesses.

22 JUDGE MACE: All right. Very well. The
23 next thing I'd like to talk about is the Verizon
24 panels and individual witnesses. I think I talked
25 with you on the phone about that briefly, Ms. Ronis,

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1 and I want to make sure that we have a clear process
2 for how that's going to happen. And here's some of
3 the things I'm thinking about.

4 For example, on May 27th, in the afternoon,
5 you have the Verizon switching panel. And then,
6 underneath that, you have the names of the three
7 witnesses I thought were the switching panel, in
8 addition, Mr. Hinton. Now, Mr. Hinton is part of, I
9 thought, the Verizon cost model panel, and so it's
10 not clear to me how he's going to be -- is he going
11 to be cross-examined on his cost model testimony and
12 then -- so are you going to ask the testimony be
13 admitted at that time, or --

14 MS. RONIS: If you recall, I did send you a
15 revised schedule after we all agreed on the phone
16 that if any cost modeling issues came up, even if
17 they related to switching, that we would handle those
18 the next Tuesday, when Mr. Hinton was there.

19 JUDGE MACE: Oh, you did send -- sorry, I
20 must have missed that one. There was so many of
21 them.

22 MS. RONIS: Yes, I know, I know.

23 JUDGE MACE: All right. So Mr. Hinton,
24 then, is not going to appear with the switching
25 panel?

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1 MS. RONIS: No, no.

2 JUDGE MACE: I see, okay.

3 MS. RONIS: I think the parties agree that
4 most of the modeling questions go more to the loop
5 costs, and we can address those at the same time the
6 loop panel is up.

7 JUDGE MACE: Okay. I also noticed, for your
8 designation of the model loop panel, there's no
9 reference to Mr. Mazziotti, and I show him as a
10 witness -- I mean, he's listed as a witness on the
11 panel testimony.

12 MS. RONIS: Yeah, he's a switching witness.
13 I mean, generally, even -- I can see why this led to
14 a lot of confusion. We've divided up the witnesses
15 for cross by issue, even though they did file one
16 piece of panel testimony. Mr. Jones is also on that
17 big piece of panel testimony, and he appears on the
18 27th in the morning. So what we've done in other
19 proceedings is simply, when he's on the stand, he
20 will adopt those portions related to factors that he
21 is responsible for, and then we'll go ahead and cross
22 and then do the same thing with switching.

23 Mr. Mazziotti, Mr. Richter, and then,
24 actually, Mr. West has his own little separate piece
25 of testimony, but Mr. Mazziotti and Mr. Richter will

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1 be available. Again, they will adopt the switching
2 portions of the big piece of panel testimony and be
3 available for cross on switching issues on that day.

4 JUDGE MACE: Okay. There was three filings
5 for the Verizon panel, then there was a separate
6 filing, which I thought was the switching panel.

7 MS. RONIS: There was a separate piece on
8 the flat rate issue specifically.

9 JUDGE MACE: Okay.

10 MS. RONIS: But there are switching issues
11 also addressed.

12 JUDGE MACE: In the big panel?

13 MS. RONIS: Right.

14 JUDGE MACE: I know that's true, but I just
15 want to try to figure out what you're doing here.
16 Okay. So when Mr. Jones takes the stand, you're
17 going to be referring to the panel testimony, all
18 three of the filings, and he will address those
19 portions of that testimony that pertain to what -- to
20 factors, I guess, is at issue.

21 MS. RONIS: Yes.

22 JUDGE MACE: And then the Verizon switching
23 panel will exclude Mr. Hinton, but it will be Mr.
24 Mazziotti, Mr. Richter and Mr. West.

25 MS. RONIS: Correct.

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1 JUDGE MACE: So we don't have to worry about
2 Mr. Mazziotti in terms of the model loop panel.

3 MS. RONIS: No.

4 JUDGE MACE: Okay. All right. And then,
5 now, to the HAI panel, Mr. -- I know that Dippon, is
6 that how you say his name?

7 MS. RONIS: Yes.

8 JUDGE MACE: Mr. Dippon, Dr. Tardiff and Mr.
9 Murphy were -- I understood them to be on that panel.
10 Mr. Richter filed separate testimony about outside
11 plant design. Is that going to be included with this
12 --

13 MS. RONIS: Yes.

14 JUDGE MACE: -- panel? Okay.

15 MS. RONIS: Yes.

16 JUDGE MACE: All right. Anybody have any
17 questions about that other than this? Maybe it was
18 all crystal clear to you and it just wasn't clear to
19 me.

20 MS. RONIS: Would it be helpful to modify
21 the schedule to explain which pieces of testimony
22 they would be testifying on on that day? I think,
23 actually, Mr. Richter probably is the most confusing,
24 because he's the engineer, and he's going to be on
25 the switching panel, because there are some switch or

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1 engineering questions. He's also on the loop panel,
2 again, because there are loop engineering questions,
3 and then he did have a separate piece of testimony
4 just addressing the Hatfield model, and again, on
5 engineering issues he sees with the Hatfield model.
6 So it would be, of course, this engineering --

7 JUDGE MACE: Which piece of testimony was
8 that, just out of curiosity?

9 MS. RONIS: He filed on April 20th, yeah,
10 April 20th. You have it here as, I think, Exhibit
11 451.

12 JUDGE MACE: Okay. Thanks. Well, I guess
13 that clears things up for me, and I'll look at your
14 -- I thought I had gotten all the e-mails from you.
15 When you -- can you have somebody send me that e-mail
16 again? Because I thought I had all the e-mails that
17 you sent about the schedule.

18 MS. RONIS: Yeah, I can, though, modify what
19 I sent you last with a little more description of
20 what pieces of testimony --

21 JUDGE MACE: Okay.

22 MS. RONIS: -- they will be doing, because I
23 think -- because I hadn't done that, and I think that
24 would be helpful.

25 JUDGE MACE: I appreciate that. Thank you.

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1 And to the parties, as well, obviously.

2 MS. RONIS: Yes.

3 JUDGE MACE: Did anybody have any questions
4 about that? No. All right. So for the witnesses
5 that are not going to appear, then, I was assuming --
6 on the one hand, I was assuming that we would just
7 take their testimony up at the point when they are
8 shown on the schedule that you sent, but the other
9 thing we could do, since we're on the record now, is
10 for me simply to have you offer their testimony and
11 have it admitted at this point. So those are -- you
12 know, there are different ways to do that. Anybody
13 have any preferences? Then we wouldn't have to
14 address it during the hearing.

15 All right. The testimony of Mr. -- make
16 sure I've got exactly the right testimony that's
17 going to be admitted. Mr. Dye.

18 MS. RONIS: This is confusing, as well,
19 because Mr. Tucek is adopting Mr. Dye's direct
20 testimony on deaveraging, and Mr. Tucek will be
21 available to be questioned on that. So I think the
22 piece we probably want to admit now is his -- Mr.
23 Dye's April 20th testimony.

24 MR. KOPTA: Although -- excuse me. This is
25 Greg Kopta, for AT&T. I thought that geographic

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1 deaveraging was something that we weren't going to be
2 getting into. So it may be that Mr. Tucek doesn't
3 need to appear, to the extent that he's just
4 sponsoring geographic deaveraging testimony, which
5 raises the additional question of we had also
6 stipulated that Dr. Blackmon wouldn't have any cross
7 from either AT&T or Verizon and didn't know whether
8 the Commission had considered whether Dr. Blackmon's
9 presence would be necessary.

10 JUDGE MACE: Well, yes, the Commission wants
11 to have Dr. Blackmon take the stand. There may not
12 be very much questioning, but -- the only witnesses
13 that the Commission waives cross-examination on are
14 Mr. Dye, and I understood that to be the deaveraging
15 testimony, Mr. Flesch on depreciation, and Mr. Denney
16 on deaveraging. So the others, and I think there's a
17 question about Mr. Shelanski, too, but both Dr.
18 Blackmon and Mr. Shelanski will need to be here.

19 MS. RONIS: Correct. Mr. --

20 JUDGE MACE: Go ahead.

21 MS. RONIS: Mr. Tucek's going to be here for
22 the loop panel, but we -- and that's absolutely fine
23 if the parties don't have any questions on
24 deaveraging. He wasn't going to address it in his
25 summary anyway. So we can go ahead and then admit

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1 Mr. Dye's direct, which is being adopted by Mr.
2 Tucek, and then Mr. Dye's April 20th testimony.

3 MR. KOPTA: So essentially, then, it would
4 be all of the testimony and exhibits for Mr. Dye that
5 are listed?

6 MS. RONIS: Yeah.

7 JUDGE MACE: Okay. Is everybody on board
8 with that? And it would be his exhibits, which I
9 have marked 51 through 58, and they are his Exhibits
10 1, 2, 3, 4, 5, 6, 7 and 8, it includes his June 26th,
11 2003 testimony, and testimony filed April 20th, 2004.
12 All right. Any objection to my admitting that
13 testimony and evidence at this time?

14 MR. KOPTA: No objection.

15 JUDGE MACE: All right. I'll admit it.
16 Thank you. Then the other witness -- the next
17 witness is Mr. Flesch. I have preliminarily marked
18 his exhibits 151 through -- well, 159. Apparently,
19 there are some AT&T cross-examination exhibits that I
20 don't have yet, but his direct exhibits are 151
21 through 155. What did you want to do about that, Mr.
22 Kopta?

23 MR. KOPTA: We had some outstanding
24 discovery for Mr. Flesch, and I still need to
25 coordinate with Verizon in terms of potentially

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1 stipulating the responses into the record, along with
2 Mr. Flesch's testimony, but that's something we'll
3 need to take up closer to the hearing. So for now, I
4 think we can just admit Flesch's testimony and
5 exhibits.

6 JUDGE MACE: All right. Any problem with
7 that? Then let me indicate that, for the record, I
8 will admit Mr. Flesch's testimony filed April 20th,
9 2004, and his testimony filed May 12th, 2004, plus
10 three exhibits, which are actually exhibits sponsored
11 by an earlier witness, Mr. Sovereign (phonetic), and
12 these exhibits have been marked 151 through 155, and
13 I will admit them at this time.

14 MS. RONIS: That also includes the testimony
15 --

16 JUDGE MACE: Yes.

17 MS. RONIS: -- of Al Sovereign, June 26th?

18 JUDGE MACE: Yes, AES-1-T is actually
19 Exhibit 153.

20 MS. RONIS: Okay.

21 JUDGE MACE: And then, finally, Mr. Denney.
22 I preliminarily marked his exhibits 701 through 704,
23 and they consist of his April 9th testimony and his
24 April 20th testimony, as well as two other additional
25 exhibits. Any objection to the admission of those

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1 exhibits? All right. I'll admit those exhibits.

2 I guess that leaves us with getting to the
3 actual exhibits, unless somebody else has something
4 else they want to address before we start messing
5 around with those papers.

6 MR. KOPTA: Yes, Your Honor, in fact, I do.
7 One of the scheduling issues that we have raised with
8 you individually for the hearing is the request of
9 Dr. Gabel to have a tutorial on the Verizon cost
10 model.

11 JUDGE MACE: Oh, mm-hmm.

12 MR. KOPTA: I'm not sure what the -- and an
13 upshot of that was I know that one of the things that
14 we last discussed was the possibility of having that
15 occur after the hearings. And in consulting with my
16 client, it's something that AT&T has very strong
17 concerns about. Having been part of tutorials that
18 Verizon has given in the past, it's AT&T's
19 interpretation that those tend to be as much advocacy
20 pieces as informative pieces, and particularly if
21 they occur after the hearing. The concern, of
22 course, is that there's no opportunity to really
23 address any advocacy, and that that advocacy might
24 include attempts to address some of the issues that
25 came up in the hearing.

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1 So we do have some strong concerns about if
2 Dr. Gabel wants a tutorial, that that occur before we
3 have the cross-examination of the Verizon witness
4 panel, as opposed to afterwards.

5 MS. RONIS: Well, of course we disagree that
6 these training sessions are advocacy sessions. We
7 answer questions that are posed to us. If we want to
8 forego any kind of affirmative presentation, we could
9 do that and just simply respond to Dr. Gabel's
10 questions. So I disagree with that, and I don't know
11 how we could accommodate Mr. Kopta's request at this
12 point, given the schedule and I believe Dr. Gabel's
13 schedule and the schedule of his assistant that he
14 wanted to attend. So I'm not sure how we would
15 accommodate that without some moving around of the
16 schedule.

17 JUDGE MACE: Well, I think at this point
18 it's going to be after the hearing. I don't see any
19 way around it. But, Ms. Smith, I'm sorry, I didn't
20 ask you to respond. If you would.

21 MS. SMITH: Well, Commission Staff does have
22 some concerns about that, as well. We share the
23 concerns that Mr. Kopta raised on behalf of AT&T. We
24 also have a concern about a member of the bench being
25 trained on the model after, essentially, the record

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1 is closed. We just have some ex parte concerns about
2 that, as well. And doing this after the hearing just
3 seems to raise some of these issues that probably
4 wouldn't come up if this were done before the hearing
5 or somehow during the hearing process when the
6 parties would be available to join in on this, as
7 well.

8 MS. RONIS: May I make another comment?

9 JUDGE MACE: Sure.

10 MS. RONIS: I mean, we did anticipate that
11 Staff and AT&T would be present during the training,
12 so I think that would resolve any ex parte concerns.
13 Another option is to just not close the record, and
14 if, in fact, AT&T believes something -- that there's
15 advocacy and they want to respond, we could address
16 it through supplemental letters, filings, and frankly
17 a hearing, if that's what you believe is appropriate.

18 So I don't see why, at the end of next week,
19 that's some magic time that everything has to be cut
20 off. If Dr. Gabel's interested in learning our
21 model, we think it should be accommodated. And I
22 think there's other things we could do after the
23 hearing to address the concerns raised by AT&T and
24 Staff.

25 JUDGE MACE: I can take this to the

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1 Commission, and in fact, I will ask them about it.
2 Logistically, I don't see how it could possibly take
3 place before the hearing, and I personally don't see
4 how the hearing would be adjourned to accommodate it
5 at this point, but I will take it to the
6 Commissioners and we'll address it.

7 The logistical problem, you know, cuts a lot
8 of different ways. If the training takes place in
9 New York, I assume AT&T would be able to be present
10 at the hearing, but that does present difficulty for
11 Staff. On the other hand, if there are two people
12 from Dr. Gabel's shop that -- David Gabel and an
13 associate, you know, there are costs to the
14 Commission for bringing them here to accommodate
15 Staff. So it's something the Commission would have
16 to weigh which way they wanted to go on it, and it
17 may well be that it is going to take place someplace
18 on the East Coast, probably not very long after the
19 hearing is concluded, but I'll check with the
20 Commission on it and give you an answer perhaps in
21 whatever notification you get about the motion to
22 strike.

23 MR. KOPTA: Thank you, Your Honor.

24 MS. SMITH: Thank you, Your Honor.

25 JUDGE MACE: I guess just to -- as I'm

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1 thinking about it, though, I'm not clear what
2 difference it makes in terms of Verizon's advocacy,
3 in quotes, if both Staff and AT&T have a
4 representative at its training, whether that --
5 whether the training takes place today, tomorrow,
6 June 5th, June 8th. Verizon has an ample
7 opportunity, if they're going to do it, to do some
8 type of advocacy on any of those days. I'm not -- I
9 don't -- I'm not understanding what the magic is
10 about the hearing, in particular, or the time of the
11 hearing.

12 MR. KOPTA: Well, our concern is that, for
13 example, if there's an issue raised during the
14 hearing in terms of some problem that we see with the
15 Verizon model, then if Verizon has this tutorial,
16 they could say -- I mean, I'm not sure that they
17 would say this. I'm just saying the concern is that,
18 whether they do it directly or indirectly, you know,
19 Gee, this was a problem that was pointed out, but
20 here's how you work around it or here's how we fixed
21 the problem or whatever. And in addition, you know,
22 Dr. Gabel may ask questions about saying, you know,
23 Gee, this came up in the hearing, and is this true
24 that you really can't do X, Y or Z or that you have
25 to do X, Y and Z to get a particular result, in which

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1 case Verizon has the opportunity to address those
2 issues that came up in the hearing.

3 JUDGE MACE: But AT&T and Staff would know
4 about that.

5 MR. KOPTA: Well, we would be present,
6 certainly, but --

7 JUDGE MACE: And you could make some
8 representation to the Commission about that, as well,
9 I would assume.

10 MR. KOPTA: Well, no, that would certainly
11 be what we would intend to do. But if Verizon has
12 done something different or identified something
13 different that we haven't had a chance to look at
14 beforehand, then we may be limited in our ability to
15 address whatever it is that Verizon says, other than
16 to say, Gee, that wasn't our experience with the
17 model or --

18 JUDGE MACE: Well, I mean, the other thing
19 that could happen is that Dr. Gabel could not have a
20 tutorial and he could access the model after the
21 hearing in order to make adjustments the Commission
22 might want him to make, and you wouldn't even have
23 the benefit of knowing anything about what he does in
24 terms of interacting with the model at that point,
25 and he's making Commission adjustments.

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1 I mean, it seems to me, at least if you have
2 an opportunity to be present during the tutorial,
3 that if there were anything that happened that seemed
4 amiss, you would have the opportunity to present that
5 to the Commission, whereas if he has no tutorial and
6 he just goes ahead and works with the model without
7 it, then -- I mean, I'm not assuming by this
8 discussion that anything bad would happen or anything
9 that would compromise his impartiality, but I guess
10 I'm just having trouble, and maybe you can enlighten
11 me, why it's so important to have him have the
12 tutorial -- I don't see logistically how it could
13 happen right now, but how -- you know, what the
14 problem is with having the tutorial after the hearing
15 is concluded.

16 MR. KOPTA: Well, I mean, at least to
17 address the immediate question that you asked,
18 certainly, we would expect Dr. Gabel to be working
19 with both models and to make whatever adjustments or
20 modifications that he and the Commission believed
21 were appropriate. And that's just like any other
22 piece of evidence that the Commission would look at
23 and make its own evaluation and determinations as to
24 its credibility and its utility in reaching an
25 informed and accurate decision. But that is

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1 something that occurs within the decision-maker's
2 realm, if you will.

3 The concern is going outside of that realm
4 and using one of the -- one or the other party to be
5 involved in that particular process, to assist in
6 what may be part of the decision-making process. And
7 so that's the concern that we have, is that if this
8 is something that helps Dr. Gabel understand how the
9 model works, then that's something that should happen
10 before there's testimony presented on how it does or
11 doesn't do particular things.

12 If it occurs after -- the tutorial occurs
13 after that point, then you are essentially providing
14 another opportunity to address some of the issues
15 that were raised in the hearing, and would
16 potentially raise the issue of both being involved,
17 one party in particular being involved in the
18 decision-making process and seeking to use that
19 opportunity to rehabilitate or further explain or
20 perhaps even modify a model that's supposedly part of
21 the record that should have been addressed during the
22 hearings.

23 JUDGE MACE: Well, let's assume we were
24 going to try to fit him in during the hearing
25 schedule. I don't see how it could be done, but

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1 let's say June 4th came around and we were done with
2 cross-examination, and perhaps Verizon could put on a
3 program here so that Dr. Gabel could be trained at
4 that point and he's, by that time, his associate
5 could come out, or we could schedule it on June 5th
6 on the East Coast. I don't know what to do. You
7 know, I thought that the parties were going to work
8 this out, so I'm a little taken aback by this
9 objection at this point.

10 MS. RONIS: Yeah, this is the first that
11 Verizon has heard of it, as well. I still just don't
12 understand why June 4th is some magic end date. Keep
13 the record open. If AT&T believes we've done
14 something improper or made a new argument during the
15 training, they can either address it at the training
16 or file something -- a supplemental letter, or we can
17 make some arrangements for that.

18 Dr. Gabel clearly wants to learn more about
19 our model, this is an important case, an important
20 issue, and he should be accommodated. And I just
21 don't understand the argument that he may get some
22 further information that may help in his decision
23 after the hearing closes, and somehow that's a bad
24 thing. As long as AT&T is present, there's no ex
25 parte concerns.

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1 JUDGE MACE: Well, so Ms. Smith and Mr.
2 Kopta, you're raising this objection. How can we
3 schedule this? Do you have a suggestion for how it
4 could be scheduled?

5 MR. KOPTA: Well, one of the preliminary
6 versions --

7 JUDGE MACE: Absent changing the hearing
8 schedule.

9 MR. KOPTA: Yes. No, I understand that, and
10 I realize that it's a logistical concern. Kind of --
11 this came up as a result of trying to deal with
12 logistical concerns. As you would recall, it was
13 originally scheduled to happen on Wednesday morning.
14 Verizon, in order to keep all of its witnesses
15 together, had asked that it be moved to Tuesday, June
16 1st, in the morning, which, although not optimal, we
17 were okay with, in terms of at least having the
18 presentation before getting into the modeling issues,
19 but for some reason, I understand that we're not
20 going to have that morning available or Dr. Gabel
21 wasn't available or whatever.

22 JUDGE MACE: I don't know if it was that. I
23 think Dr. Gabel's concern was that a two-hour
24 presentation on the model was not going to be
25 sufficient to learn it.

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1 MR. KOPTA: And that may be what the concern
2 was. And I don't know how the cross-examination
3 estimates play out in terms of the week, the second
4 week of the hearings, and whether it would be
5 possible to devote that first day of June 1st to the
6 model tutorial and then resume cross-examination on
7 Tuesday morning, June 2nd.

8 MS. RONIS: I do believe there was the
9 additional issue, though, of his assistant not being
10 available on June 1st.

11 JUDGE MACE: Right.

12 MS. RONIS: But we should check that.

13 JUDGE MACE: Okay. I'll check with the
14 Commissioners on this and see what their take is on
15 it. Okay. Anything else that you want to bring up
16 before we start talking about the actual exhibits?

17 MS. RONIS: Just one clarification on the
18 three-minute summary. As we were discussing, Verizon
19 has panel testimony, but they touch on separate
20 issues, so for example, when the switching panel is
21 up, it would be three minutes from each member of the
22 panel, because they do address separate issues.

23 JUDGE MACE: Right, but I would really
24 caution you to make sure that there is no repetition

25 --

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1 MS. RONIS: Yes, absolutely.

2 JUDGE MACE: -- in their summaries.

3 MS. RONIS: We will do that.

4 JUDGE MACE: Anything else?

5 MS. ANDERL: Your Honor?

6 JUDGE MACE: Yes.

7 MS. ANDERL: This is Lisa Anderl. I wanted
8 to be on the bridge today to make sure there weren't
9 any issues, you know, general concerns or interests
10 that I might want to hear about or participate in,
11 but if all the rest of the pre-hearing is going to be
12 devoted to marking exhibits, then I might ask to be
13 excused. So I just wanted to check with you.

14 JUDGE MACE: I'm not sure I'm going to
15 excuse you from that.

16 MS. ANDERL: Oh, please. I put in my time.

17 JUDGE MACE: Sure. Thanks a lot.

18 MS. ANDERL: Okay, thank you. I'll see
19 everybody on Wednesday afternoon.

20 JUDGE MACE: You know, they want to stay for
21 the really sexy stuff, but, boy, when it comes to
22 marking the exhibits, they just drop like flies.
23 Okay. Let's see here. Let's go off the record for a
24 little bit.

25 (Discussion off the record.)

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1 JUDGE MACE: Let me just indicate that I
2 have -- I'm going to revise the exhibit list to
3 accommodate Staff's indication that only the May 10th
4 version of Mr. Spinks' TLS-6-T is what Staff is
5 sponsoring in this case, and there was a brief
6 exchange between counsel for Verizon and counsel for
7 Staff. Counsel for Verizon indicated that they may
8 have questions about some of the earlier versions of
9 that exhibit, and Staff has indicated that it will
10 have objections if there are questions about those
11 earlier versions of the testimony, and that will
12 unfold at the hearing as it does.

13 I did advise Verizon that they could bring
14 Mr. Spinks' earlier version of his Exhibit 6-T to the
15 hearing on May 26th, and at the time Mr. Spinks is
16 going to be cross-examined, and I would allow those
17 to be cross-examination exhibits.

18 All right. I'd like now to have from the
19 parties the cross exhibits, and we'll go off the
20 record to have them distribute those.

21 (Discussion off the record.)

22 JUDGE MACE: Let's be back on the record.
23 We have been diligently preparing stacks of
24 cross-examination exhibits during our recess, and
25 parties are nearly done with that, but in view of the

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1 hour, I wanted to give the reporter a chance to go
2 and get some lunch and thought we could finish up if
3 we had any other details to attend to.

4 I'm advised that AT&T wants to revise its
5 cross estimate for Dr. VanderWeide. Is it
6 "Vander-wide" or "Vander-widey"?

7 MS. RONIS: "Widey".

8 JUDGE MACE: VanderWeide to 120 minutes, or
9 two hours; is that right, Mr. Kopta?

10 MR. KOPTA: That is correct. Thank you,
11 Your Honor.

12 JUDGE MACE: Is there anything else we need
13 to address? I understand I'm going to be getting
14 copies of cross exhibits, and also some direct
15 exhibits, perhaps from Verizon, in light of our
16 earlier discussion on exhibits today.

17 One item I think I did not talk about with
18 you is the order of cross-examination. Have you --
19 there aren't too many options, since there aren't
20 that many people that are going to be
21 cross-examining, but I'm assuming that you all will
22 discuss that amongst yourselves and determine how you
23 want to approach that.

24 MR. KOPTA: Yes, Your Honor. I think,
25 obviously, as you suggest, we will be taking the lead

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1 on all the witnesses that Verizon is offering, and I
2 assume that Verizon will be taking the lead on all of
3 our witnesses, so I guess we'll just discuss Staff.

4 JUDGE MACE: I understood from Ms. Frame
5 that, to the extent you had cross-examination, you
6 wanted to be last?

7 MS. FRAME: That's correct.

8 JUDGE MACE: And is that a problem with
9 anybody?

10 MS. SMITH: No. As a matter of fact, this
11 is Shannon Smith for Commission Staff. We were
12 anticipating following AT&T on its cross of Verizon,
13 and so I think it would fit in.

14 JUDGE MACE: Very well. Is there anything
15 else that we should address before we adjourn today?
16 All right. If there's nothing else, then we're
17 adjourned until 1:30 in the afternoon on May 26th. I
18 guess I should make sure that I let you know that I
19 will be advising you about the motion to strike and
20 the question about Dr. Gabel by some form of notice
21 either later today or early tomorrow. Thank you.

22 (Whereupon, exhibits were marked for
23 identification.)

24 (Proceedings adjourned at 12:39 p.m.)

25