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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION
3 UNITED & INFORMED CITIZENS)
ADVOCATES NETWORK,) Docket No. UT-960659
4)
 Complainant,) Volume X
5) Pages 253 to 263
 vs.)
6)
PACIFIC NORTHWEST BELL)
7 TELEPHONE COMPANY d/b/a U.S.)
WEST COMMUNICATIONS, INC.,)
8)
 Respondent.)
9)
10 GTE NORTHWEST, INC.,)
) Docket No. UT-970257
11)
 Complainant,) Volume X
12) Pages 253 to 263
 vs.)
13 UNITED & INFORMED CITIZENS)
ADVOCATES NETWORK,)
14)
 Respondent.)
15)

16 A hearing in the above matter was held on
17 October 22, 2002, from 9:45 a.m. to 9:55 a.m., at 1300
18 South Evergreen Park Drive Southwest, Room 206, Olympia,
19 Washington, before Administrative Law Judge ROBERT
20 WALLIS.

21 The parties were present as follows:
22 QWEST CORPORATION, via bridge line, by ADAM
23 SHERR, Attorney at Law, 1600 Seventh Avenue, Suite 3206,
Seattle, Washington 98191, Telephone (206) 345-1574, Fax
(206) 343-4040, E-mail asherr@qwest.com.
24
25 Joan E. Kinn, CCR, RPR
Court Reporter

1 THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION, by SHANNON SMITH, Assistant Attorney
3 General, 1400 South Evergreen Park Drive Southwest, Post
4 Office Box 40128, Olympia, Washington, 98504-0128,
5 Telephone (360) 664-1192, Fax (360) 586-5522, E-Mail
6 ssmith@wutc.wa.gov.

7
8 VERIZON NORTHWEST, INC., via bridge line, by
9 TIMOTHY J. O'CONNELL, Attorney at Law, Stoel Rives, 600
10 University Street, Suite 3600, Seattle, Washington
11 98101, Telephone (206) 624-0900, Fax (206) 386-7500,
12 E-mail tjoconnell@stoel.com.

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

2 JUDGE WALLIS: This is a pre-hearing
3 conference in the matter of Docket Number UT-960659, a
4 complaint by United and Informed Citizens Advocates
5 Network against U S West, now Qwest. It is consolidated
6 with Docket Number UT-970257, a complaint by General
7 Telephone Incorporated, now Verizon, against U&ICAN
8 claiming that U&ICAN has improperly avoided paying
9 access charges when using long distance service.

10 This morning we are here for a status
11 conference to address the status of this matter and the
12 process that is being undertaken in this and other
13 venues to contribute to an ultimate resolution of this
14 matter. My name is Robert Wallis, and I am substituting
15 today for Judge Schaer, who is unavailable.

16 May we have a brief statement of appearance,
17 please, beginning with your name and the name of the
18 client for whom you are appearing, and let's take Qwest
19 first.

20 MR. SHERR: Good morning, Judge, Adam Sherr,
21 S-H-E-R-R, appearing for Qwest.

22 JUDGE WALLIS: Mr. Sherr, you were almost
23 inaudible, so I will also ask you to speak up and speak
24 directly into your telephone instrument.

25 MR. SHERR: I will do so.

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1 JUDGE WALLIS: Thank you.

2 For Verizon.

3 MR. O'CONNELL: This is Tim O'Connell of the
4 Stoel Rives firm. I have previously appeared in this
5 matter.

6 JUDGE WALLIS: And for Commission Staff.

7 MS. SMITH: Shannon Smith for Commission
8 Staff.

9 JUDGE WALLIS: Let me ask if there is any
10 other person on the bridge line who wishes to appear
11 this morning.

12 Let the record show that there is no
13 response. Let the record also show that there is no
14 person in the hearing room other than counsel for Staff,
15 myself, and the court reporter.

16 The purpose of today's conference is to get a
17 status report on matters that have been occurring. Does
18 anyone volunteer to begin that report?

19 MR. O'CONNELL: Judge Wallis, this is Tim
20 O'Connell, I perhaps will go ahead and take the lead,
21 because I have been --

22 JUDGE WALLIS: Mr. O'Connell, you kind of
23 faded in and out, and I heard that you were volunteering
24 to take the lead, and much of the rest I did not hear,
25 so let's start over again.

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1 MR. O'CONNELL: I am speaking right into the
2 mike, Judge Wallis. I don't know that I can do any
3 better than that.

4 JUDGE WALLIS: You're doing fine right now.

5 MR. O'CONNELL: All right.

6 JUDGE WALLIS: Just keep it up.

7 MR. O'CONNELL: I will try and keep my voice
8 as loud as possible.

9 I will take the lead because I or other
10 lawyers from my firm have been pursuing the current
11 stage of these proceedings, which is we are currently in
12 Superior Court seeking to compel enforcement of a
13 subpoena that has been issued and been outstanding for
14 some months now. Judge Wallis, just because you have
15 not been involved in the case, it obviously has a long
16 history, and I won't go over all of that for you.

17 JUDGE WALLIS: I am generally familiar with
18 it, and I have read the file in this matter as to events
19 over the past four or five months.

20 MR. O'CONNELL: All right. Well, then you're
21 aware that we have, in fact, commenced an action in
22 Superior Court. We had a hearing about now almost a
23 month ago at which point the Court Commissioner of the
24 Superior Court did, in fact, enter an order approving or
25 rather enforcing the subpoena that had previously been

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1 issued. Shortly thereafter, U&ICAN filed what it
2 referred to as a motion for reconsideration which the
3 parties briefed and the Court Commissioner denied in an
4 order that was entered on October 14th, last Thursday.
5 That is the most recent action that happened in the
6 matter.

7 By virtue of having denied the motion for
8 reconsideration, Petitioners now believe that we have a
9 valid subpoena that's been enforced by the Superior
10 Court. Frankly, I have not yet concluded the legal
11 research as to whether the court would in a contempt
12 enforcement proceeding hold the approximately two and a
13 half weeks that the motion for reconsideration was
14 pending, whether the court would hold that time period
15 against the respondent who was required to respond to
16 the subpoena. Even if the court was to not do so, the
17 time period for U&ICAN to respond to the subpoena should
18 be up by I would assume the end of this week, and we
19 have heard -- we have had no response from U&ICAN. It's
20 our intent, assuming that we have no response from
21 U&ICAN by the end of this week, to move forward with
22 contempt proceedings.

23 JUDGE WALLIS: Does any other party wish to
24 add to that statement?

25 MR. SHERR: Judge, this is Adam Sherr, I have

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1 nothing to add to what Mr. O'Connell said.

2 JUDGE WALLIS: Very well. What is the
3 parties' views on the effect of the process that's just
4 been described on this docket? What is your preference
5 in terms of proceeding here?

6 MR. O'CONNELL: Your Honor, there have not
7 been further proceedings. I think some months ago the
8 consensus was that it was not possible to schedule a
9 hearing and schedule the filing of testimony until such
10 time as we had compelled U&ICAN to produce the
11 information. The information that is sought in the
12 subpoena is information that is relevant not just to the
13 question of whether or not U&ICAN's practices do, in
14 fact, unlawfully evade the payment of access charges,
15 but just as significantly from our perspective, by how
16 much. We're frankly left just to make some presumptions
17 as to the amount of traffic that's at issue until such
18 time as we can force them to turn over the relevant
19 documents. And so I continue to believe that it's
20 appropriate to complete this process and obtain, and by
21 contempt citation if nothing else will work, production
22 of U&ICAN records so as we can ascertain the amount of
23 access charges that we believe they have been unlawfully
24 evading.

25 JUDGE WALLIS: Do you have any estimate as to

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1 the time frame that would be required to obtain those
2 records?

3 MR. O'CONNELL: Assuming that we adhere to
4 what I suggested earlier, which was initiate contempt
5 proceedings next week, the court will give U&ICAN some
6 period of time to respond to the show cause order why
7 they should not be held in contempt. I would estimate
8 that that process will take a minimum of two to three
9 weeks, likely -- well, I will stick to that, it would
10 take a minimum of two to three weeks.

11 JUDGE WALLIS: What would the parties'
12 preference be as to further process in this docket,
13 further status conferences or actually the scheduling of
14 an evidentiary hearing?

15 MR. SHERR: Your Honor, this is Adam Sherr.
16 As Mr. O'Connell was saying, we really can't go to
17 scheduling a hearing at this point because we don't yet
18 have the necessary information. I would suggest that we
19 schedule another status conference for the latter part
20 of next month so that we can again check the status and
21 advise the ALJ of whether we can now finally set the
22 matter for a hearing schedule.

23 JUDGE WALLIS: Very well, do you have
24 preference for a date?

25 MR. SHERR: I would say the last week of

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1 November might be appropriate. There is no particular
2 date.

3 MR. O'CONNELL: That would include
4 Thanksgiving, and, Judge Wallis, just on a personal
5 note, I have family coming into town that week.

6 JUDGE WALLIS: Is this Mr. Sherr?

7 MR. O'CONNELL: No, I'm sorry, this is Tim
8 O'Connell.

9 JUDGE WALLIS: Mr. O'Connell.

10 MR. O'CONNELL: If it was possible to do it
11 that first week in December, I would be most
12 appreciative.

13 JUDGE WALLIS: Mr. Sherr, Ms. Smith, what's
14 your views on that?

15 MS. SMITH: This is Shannon Smith, I don't
16 have any opinion on a status conference date. The first
17 week in December if I can't make it, I will be sure that
18 somebody will be here on my behalf.

19 MR. SHERR: And this is Adam Sherr, that's
20 perfectly fine with me. The only date I know I'm
21 unavailable is Monday the 2nd. I will be traveling back
22 to Seattle, so I won't be available that day, but the
23 3rd through the 6th are all fine days for me.

24 JUDGE WALLIS: Very well, I will see that a
25 notice is issued establishing a further pre-hearing

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1 conference for the purpose of receiving a status report
2 from the parties as to process to be held during the
3 first week in December of this year, excluding Monday,
4 December 2nd.

5 MR. O'CONNELL: Again, Judge Wallis, just
6 looking at my calendar, when we're saying excluding
7 Monday, if we could also exclude Wednesday the 4th. I'm
8 scheduled to be in a deposition that entire day.

9 JUDGE WALLIS: Very well, we will also
10 exclude Wednesday the 4th, and in the event that
11 facilities or staff unavailability requires it, we may
12 depart from that week, but we will make our best efforts
13 to schedule something during that week.

14 Is there anything further to come before the
15 Commission at this time?

16 MR. SHERR: Thank you, Judge, no.

17 MR. O'CONNELL: No, Your Honor.

18 JUDGE WALLIS: Let the record show that there
19 is no affirmative response.

20 I would also like the record to reflect that
21 this matter was scheduled to begin at the hour of 9:30,
22 and we delayed the start of this proceeding by 15
23 minutes to provide an opportunity to any other party, in
24 particular a U&ICAN representative, to join us either in
25 person or on the bridge line. I would like the record

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1 to reflect at this time that no representative appeared
2 in the hearing room, and there was no tonal notification
3 that any other party joined the bridge line during the
4 period from the time the hearing was scheduled to begin.

5 So with that note, this conference is
6 concluded, thank you all for attending.

7 (Hearing adjourned at 9:55 a.m.)

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