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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION
3 MCI TELECOMMUNICATIONS)
CORPORATION AND AT&T)
4 COMMUNICATIONS OF THE)
PACIFIC NORTHWEST,) Docket No. UT-970658
5)
 Complainants,) Volume V
6) Pages 480 to 532
 vs.)
7)
U S WEST COMMUNICATIONS, INC.,)
8 GTE NORTHWEST, INC., AND)
UNITED TELEPHONE COMPANY OF)
9 THE NORTHWEST,)
)
10 Respondents.)
)
11 _____)

12 A hearing in the above matter was held on
13 April 2, 2002, at 1:30 p.m., at 1300 South Evergreen
14 Park Drive Southwest, Room 206, Olympia, Washington,
15 before Administrative Law Judge MARJORIE R. SCHAER.

16 The parties were present as follows:

17 COMMISSION STAFF, by MARY M. TENNYSON, Senior
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20 QWEST CORPORATION formerly U S West
21 COMMUNICATIONS, INC., by LISA ANDERL, Attorney at Law,
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24

Joan E. Kinn, CCR, RPR
25 Court Reporter

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1 VERIZON NORTHWEST, INC., formerly GTE
2 NORTHWEST, INC., by JUDITH A. ENDEJAN, Attorney at Law,
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7
8 MCI WORLDCOM AND AT&T COMMUNICATIONS OF THE
9 PACIFIC NORTHWEST, INC., by BROOKS E. HARLOW, Attorney
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1 P R O C E E D I N G S

2 JUDGE SCHAER: This hearing will come to
3 order. This is a hearing in Docket Number UT-970658,
4 which is a complaint by MCI Telecommunications
5 Corporation and AT&T Communications of the Pacific
6 Northwest, Inc., against U S West Communications, Inc.,
7 GTE Northwest, Inc., and United Telephone Company of the
8 Northwest regarding pay phone rates.

9 This is a pre-hearing conference that was set
10 by a notice of pre-hearing conference dated March 7th,
11 2002. It was originally set for March 20th, 2002, and
12 was continued to today, Tuesday, April 2nd, 2002. The
13 hearing is being held before Administrative Law Judge
14 Marjorie Schaer in Olympia, Washington.

15 This is a case in which the Commission's
16 Fifth Supplemental Order in this docket, dated March
17 25th, 2002, was appealed to the Superior Court and the
18 Court of Appeals and was upheld by those courts. The
19 courts have now returned the matter to the Commission,
20 and the purpose of this hearing is to discuss what
21 issues remain, what the parties have done or can do to
22 resolve the matter, and what the next step should be.

23 I would like to start by taking appearances,
24 and I will note that I believe every company name that
25 was in the caption of this complaint has now changed, so

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1 if you would like to identify your client's former and
2 current names, that would be of help to the record.

3 Let's start with you, Ms. Anderl.

4 MS. ANDERL: Thank you, Your Honor, Lisa
5 Anderl representing Qwest Corporation, formerly U S West
6 Communications, Inc. Do you want the address and
7 telephone numbers as well?

8 JUDGE SCHAER: Have they changed in the last
9 three years?

10 MS. ANDERL: I believe my telephone number
11 may have changed, the address is the same. The
12 telephone number is (206) 345-1574.

13 JUDGE SCHAER: Thank you.

14 And Ms. Endejan.

15 MS. ENDEJAN: Yes, my name is Judith Endejan,
16 and today I represent Verizon Northwest, Inc., formerly
17 known as GTE Northwest, Inc. To confuse matters
18 further, on the appeal I jointly represented Qwest/U S
19 West and Verizon/GTE Northwest. Do you need my name and
20 address?

21 JUDGE SCHAER: I think that your address and
22 phone numbers and fax numbers and E-mail numbers have
23 all changed in the last three years, so perhaps --

24 MS. ENDEJAN: All right. I am now with
25 Graham & Dunn, and my address is 1420 Fifth Avenue,

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1 Seattle, Washington 98101, telephone number (206)
2 340-9694, fax is (206) 340 --

3 MR. HARLOW: I can look it up for you if you
4 would like, Judy.

5 MS. ENDEJAN: I never faxed myself.

6 JUDGE SCHAER: I'm certain the Commission
7 records center will have it.

8 MS. ENDEJAN: Right, they will.

9 JUDGE SCHAER: Otherwise, we can call you and
10 get it.

11 MS. ENDEJAN: Right. My E-mail, that I know,
12 is jendejan@grahamdunn.com. Thank you.

13 JUDGE SCHAER: Thank you.

14 Mr. Harlow.

15 MR. HARLOW: Thank you, Your Honor, Brooks
16 Harlow, my numbers and addresses and firms have all
17 remained the same. I'm representing MCI WorldCom and
18 AT&T this morning. MCI WorldCom was known years ago as
19 just MCI. I don't believe AT&T has changed its name.

20 JUDGE SCHAER: So they are still AT&T
21 Communications of the Pacific Northwest, Inc.?

22 MR. HARLOW: As far as I know.

23 JUDGE SCHAER: All right, thank you.

24 MR. HARLOW: But they're still known as AT&T.

25 Is there something else?

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1 MS. TENNYSON: Just making sure you were
2 finished.

3 JUDGE SCHAER: No, I heard the sound, and I
4 didn't know if somebody needed a moment to --

5 MR. HARLOW: Only if you want Ms. Endejan's
6 fax number.

7 JUDGE SCHAER: If you can put that in,
8 please.

9 MR. HARLOW: It's (206) 340-9599.
10 Did you write that down, Judy?

11 MS. ENDEJAN: Thank you, Mr. Harlow.

12 JUDGE SCHAER: Okay, then Ms. Tennyson.

13 MS. TENNYSON: Thank you, I'm Mary M.
14 Tennyson, Senior Assistant Attorney General, appearing
15 on behalf of Commission Staff.

16 JUDGE SCHAER: Okay, as I indicated before we
17 went on the record, the purpose of this hearing is to
18 discuss what needs to be done to implement a three year
19 old final order and make sure that we deal both with
20 issues involving refunds and issues involving tariffs
21 going forward. And if any of those things are fine and
22 don't need to be dealt with beyond reflecting that, that
23 is one way of dealing with them, of course.

24 Let me check again to see if there's anybody
25 on the Commission's conference bridge. I had had

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1 indications that people would be joining us on the
2 bridge, but I do not -- and the bridge is turned on, so
3 I'm going to go ahead and proceed. I know that all
4 parties are represented by counsel here in the room, so
5 I have no concerns about going forward with the
6 conference.

7 And so the two things I would like to do is
8 discuss what issues remain, if any, and between whom,
9 and what the parties have done or can do to resolve the
10 matter, and from that what next steps should be.

11 And I think I would like to start with you,
12 Ms. Anderl, because my understanding is that you have a
13 pretty nice neat resolution to report upon. Go ahead,
14 please.

15 MS. ANDERL: Thank you, Your Honor. I have
16 discussed this issue with Mr. Harlow and Ms. Tennyson,
17 and I believe that we are -- those parties as with Qwest
18 are ready to stipulate that Qwest's previously filed
19 tariff, compliance tariff, dated February 6th, 2002,
20 ought to be either reinstated or allowed to be refiled
21 in order to become effective on less than statutory
22 notice. I think that the parties agreed that that
23 tariff effects the order properly on a going forward
24 basis to reduce Qwest's access charges by the ordered
25 amount, and we think that that's all that's required,

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1 that the compliance tariff on a going forward basis was
2 pretty simple.

3 And from an administrative standpoint, we
4 think that if you were to just permit us to refile that
5 tariff, we would do that rather than try to resurrect
6 something that's been rejected, we will go ahead and
7 refile it so you have a new clean filing.

8 JUDGE SCHAER: I think that makes sense.

9 MS. ANDERL: So that addresses that.

10 And the parties have also been discussing the
11 refund issue and have an agreement on the methodology
12 for the refunds. All we really need is an effective
13 date for the tariff to reduce rates going forward, and
14 that will close the period during which a refund must be
15 calculated, and we will do that just as soon as we know
16 what the effective date is. We do have a couple of
17 details like that mostly around timing that need to be
18 worked out.

19 But then I believe we would be prepared to
20 submit to Your Honor an agreed upon order for the
21 Commission's signature that would allow, well, I was
22 going to say I guess the order that we were talking
23 about did both things, it approved our tariff going
24 forward and approved the refunds and the methodology. I
25 don't know that it's necessary for there to be a single

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1 order. If we needed to make it into two orders, you
2 know, to approve the compliance filing in one order and
3 approve the refund methodology in a second order, those
4 are certainly something easy enough to accomplish.

5 But the point that I was trying to make, not
6 very artfully at this point, is that I don't think that
7 we have any remaining issues. We just don't have it
8 reduced to writing to present to you yet in final form.
9 Ms. Tennyson does have a draft that we would be willing
10 to present to the Bench and let you know that we believe
11 that the final would look very much like that.

12 JUDGE SCHAER: Thank you.

13 And, Mr. Harlow, would you like to speak to
14 the arrangements between your clients and Qwest at this
15 point?

16 MR. HARLOW: I don't really have anything to
17 add to what Ms. Anderl stated. She pretty much summed
18 it up. It is a question of timing. We want to make
19 sure that the refund syncs up with the effective date in
20 the going forward tariff. I don't anticipate we will
21 have any trouble doing that once we can predict with
22 some certainty the effective date.

23 And then the other issue which we were
24 discussing and anticipate would work out is just making
25 sure that the refunds are timely made by bill credits or

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1 some other mechanism. We are accruing interest at 12%
2 on these refunds, which is pretty good these days, but
3 quite frankly we would like to get it all behind us as
4 quickly as possible.

5 JUDGE SCHAER: So do you concur in
6 Ms. Anderl's remarks then?

7 MR. HARLOW: Yes, Your Honor, I do.

8 JUDGE SCHAER: And then, Ms. Tennyson, let's
9 hear from you on this portion of the proceeding, the
10 Qwest portion.

11 MS. TENNYSON: As far as Qwest, Staff has
12 worked with Qwest and had agreed with the filing that
13 was made on February 6th and the proposed methodology
14 for the refund. We have received adequate information
15 to be able to audit the calculations that Qwest has made
16 and agree that the amounts are appropriate. And I have,
17 in connection with my offer to draft an order and your
18 invitation that I do so, I do have a draft that
19 currently does both, approves a compliance filing and
20 directs refunds. But if we do -- if Qwest does a
21 revised filing or a new filing just so it's clean, then
22 obviously we will need to modify this order. And I can,
23 you know, can give it to you electronically and in
24 regular form if you would like to review it or make any
25 suggestions, or we can work on further agreed orders.

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1 JUDGE SCHAER: I think I would like to see
2 the next step of the order after you reflect what we
3 have talked about today, and I think that we do need to
4 communicate to some extent just -- what I will probably
5 try to do is send around a nice looking draft, which is
6 why I like to have the nice looking draft, to let the
7 commissioners know what is happening, and then I will
8 also check their availability so that hopefully when
9 everything is filed, I have people here to sign what
10 needs to be signed, and we don't end up having some
11 administrative problem interfere with getting the
12 correct refund with the correct LSN date for the tariff.
13 Does anyone see any problems in proceeding that way?

14 MS. ANDERL: No, Your Honor.

15 MR. HARLOW: No, Your Honor.

16 JUDGE SCHAER: And, Ms. Endejan, would you
17 like to be included in all of those communications so
18 that you know what's going on?

19 MS. ENDEJAN: I would, thank you.

20 JUDGE SCHAER: I would ask everyone who
21 communicates about this to send things to all parties,
22 and I will do the same.

23 Is there anything else we need to talk about
24 in terms of the U S West situation?

25 Is there anything you would like to add to

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1 the discussion, Ms. Endejan?

2 MS. ENDEJAN: No, Your Honor, I think that
3 it's all been adequately covered.

4 JUDGE SCHAEER: All right. Well, let's
5 proceed in the manner just discussed then.

6 And next I would like to hear what's
7 happening in terms of Verizon and what you have been
8 working on with Mr. Harlow's clients and with Commission
9 Staff and just have a similar summing up of where we are
10 in the situation, please, Ms. Endejan.

11 MS. ENDEJAN: Thank you, Your Honor. First
12 of all, I want to thank you and counsel for agreeing to
13 continue the original pre-hearing conference date to
14 today.

15 JUDGE SCHAEER: Certainly.

16 MS. ENDEJAN: Where we're at today, Your
17 Honor, is we did make a filing on February 6, 2002, in
18 which we advised the Commission in our letter, in our
19 letter of compliance filing, of the reasons why Verizon
20 believes that it is in compliance with the Fifth
21 Supplemental Order in this docket, which is the order
22 that was reinstated as a result of the Court of Appeals
23 decision.

24 Prior to making this compliance filing, we
25 had several discussions with Ms. Tennyson and

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1 Mr. Zawislak for the Commission Staff. We went over our
2 proposals and ultimately agreed to make a second refund
3 reduction to deal with Staff's concerns, which would
4 bring the total amount of refunds to all the parties to
5 approximately \$3.2 Million.

6 Verizon does not, can not, and will not
7 propose an ongoing access charge reduction for several
8 reasons, and most importantly, and Staff agrees, as a
9 result of several subsequent events after the date of
10 the pay phone order, Verizon's access charge revenue
11 requirement, and indeed its overall revenue requirement,
12 was reduced sufficiently as a result of the merger
13 settlement and the settlement of its 1998 earnings
14 review so that it's clear, clear to Staff, that there
15 are no remaining subsidies that could be attributable to
16 any pay phone operations that were deregulated as of
17 April 15, 1997.

18 Obviously this case has been going on for a
19 long time, three years. A lot of events have occurred
20 that have altered the financial conditions of all the
21 players, you know, not only name changes but, you know,
22 a number of other regulatory proceedings that have had a
23 bearing, which the ultimate question in this case, which
24 is before the Commission, which is have the pay phone
25 subsidies been removed. That was what we were ordered

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1 to do, and Verizon believes that it has done that. It
2 has returned back to affected customers any amounts that
3 they would have paid, and we believe that the
4 appropriate course of action for the Commission is to go
5 forward and to approve our compliance filing and close
6 out this docket.

7 If Mr. Harlow's clients have a beef with some
8 other thing dealing with access, there are other forums
9 and other ways to deal with it. But Verizon explained
10 in its compliance letter, and I don't know, Your Honor,
11 have you had an opportunity to see the February 6th
12 compliance filing?

13 JUDGE SCHAER: Yes, I have, I have reviewed
14 the Fifth Supplemental Order and then everything that
15 has been filed since that time.

16 MS. ENDEJAN: Okay. Because part of the
17 problem comes from the fact that the Fifth Supplemental
18 Order ordered a specific reduction to a specific rate
19 element, the terminating CCL.

20 JUDGE SCHAER: Yes.

21 MS. ENDEJAN: And then that was reduced, went
22 away to zero, all the revenues sort of shifted, and
23 ultimately at the end of the day when all the dust
24 cleared, Verizon's revenue requirement situation was
25 very different than it was in 1997 when this case

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1 started. And we have gone over this with Mr. Zawislak
2 and Ms. Tennyson, and we believe that we have reached an
3 agreement with the Commission Staff that what we're
4 recommending would be the appropriate course of action
5 to take in this case. As I sit here today, I can state
6 unequivocally that Verizon can not, will not, and does
7 not intend to make any further access charge reductions
8 as a result of this docket.

9 JUDGE SCHAEER: So there are two pieces, as I
10 indicated earlier, that I'm interested in. One is
11 what's being done in terms of a refund, and is that
12 being done in a way that everyone thinks is appropriate;
13 and the other is what do we need to do going forward,
14 and I think you have addressed both of those. I'm going
15 to ask Mr. Harlow for his comments and then ask
16 Ms. Tennyson to comment as well. And I would like you
17 to be thinking, if you would, about whether there is
18 some possibility that we could work out a resolution
19 similar to the U S West/Qwest resolution where there
20 would be some kind of an agreed order that would address
21 both of those items in whatever manner the parties think
22 appropriate, whether or not that involves a new
23 compliance filing or a new tariff filing, excuse me, or
24 some other change.

25 And so, Mr. Harlow, I would like your

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1 comments next on relationships between your clients and
2 Ms. Endejan's client, what you think needs to happen.

3 MR. HARLOW: Well, I hope overall the
4 relationship between our clients is good, but on this
5 particular issue, they're not good. I can't really
6 stress enough, we kind of I guess feel like Charlie
7 Brown who has just come up to kick the football only to
8 have it pulled away from him at the last minute, and now
9 we're lying on our backs. We won the case, and yet
10 Verizon says, you don't get the brass ring, you don't
11 get compliance with the order.

12 I'm not going to repeat our lengthy comments,
13 I understand you have read them.

14 JUDGE SCHAEER: Yes, I have.

15 MR. HARLOW: But basically Verizon did lose
16 the case at two levels of appeal as well as before this
17 Commission and on administrative review of this
18 Commission. We have an order that's quite clear in
19 terms of what Verizon is to do going forward, they're to
20 make an access reduction with a particular annual
21 revenue effect, \$564,000 I think, annually. And Verizon
22 is saying to you adamantly, they will not do it because
23 of actions that they took in other dockets, to which not
24 both of my clients certainly were parties to those
25 dockets. In fact, neither of my clients was party to at

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1 least some of those other dockets.

2 If Verizon intended those other filings in
3 those other dockets to be compliant in this docket, they
4 had to do something in this docket. They had to file
5 something. Potentially they had to move to reopen and
6 to notify the parties, hey, we're changing the landscape
7 here on you, events are overtaking us, so we need to
8 reopen. Verizon didn't do that. They continued to
9 argue on appeal that there was no pay phone subsidy, an
10 argument that they lost. And they even tried to take it
11 to the Supreme Court, and they failed in that effort.

12 We feel very strenuously we're entitled to
13 compliance. In terms of going forward, how do we
14 resolve this, we don't think there ought to be any
15 hearings, there shouldn't be any new evidence. You
16 know, this is enforcement of a judgment, if you will.
17 This is enforcement of an order. The terms of the order
18 are clear in the Commission's records, which the parties
19 can certainly cite, and we can have further comments or
20 briefing I suppose, but all the documents that -- this
21 is really a legal issue. It's not a time to bring in
22 new fact. We have already tried the case once, and so
23 the parties can look at and argue the implications and
24 the orders in this docket, the filings in this docket.

25 Verizon is free to cite the filings in other

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1 dockets, and if they find some evidence in those filings
2 that supports their claim that those also were
3 compliance filings in this docket, they can make those
4 arguments. But we certainly don't want to try another
5 rate case. You know, that's a whole can of worms that
6 we don't want to get into, the question of whether
7 Verizon is earning their authorized rate of return or
8 not, whether they would be if they made this filing or
9 not.

10 You know, we did already try this case, and
11 we have evidence on the appropriate level of access
12 charges, and there has been a final order, which has now
13 been affirmed by two courts. So we don't want to open
14 that Pandora's box, Your Honor. We think that the
15 Commission has before it today really everything it
16 needs to decide whether Verizon has complied or not.
17 And if you want to invite further rounds of comments,
18 you could, but we don't even think that's necessary.
19 But we certainly don't want to reopen the record, not
20 after this case had been tried for over several years.

21 JUDGE SCHAER: Well, I did receive comments
22 from you, and then I did receive information that the
23 amount of refund that Verizon thought appropriate was
24 going to a larger number. I believe that was in
25 someone's Staff materials, and it was also mentioned

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1 today that it had gone up to \$3.2 Million. So I think
2 at a minimum, I would want to know on that portion of
3 the case how far that number is from your number and
4 what we're talking about there.

5 MR. HARLOW: Well, first of all, and I should
6 have addressed this, we believe that AT&T and WorldCom
7 may have received refunds for the period April 15th,
8 1997, through December of 1998, which doesn't total
9 anywhere near \$3.2 Million. I say we believe that
10 because the -- nothing has been filed with the
11 Commission to document the refund calculations, nor was
12 anything provided to our clients. They just said,
13 here's a credit, that settles the case.

14 MS. ENDEJAN: Your Honor, if I could address
15 that, because that's not entirely accurate.

16 JUDGE SCHAER: I will make a note of that,
17 and I will come back to you and let you respond.

18 Go ahead, Mr. Harlow.

19 MR. HARLOW: But to my knowledge, there
20 haven't been any -- that refund was made last year
21 before the February 6th filing, and to my knowledge, we
22 haven't received any further refunds or bill credits
23 that would reach this \$3.2 Million. Of course, the \$3.2
24 Million is industry wide. It doesn't all go to WorldCom
25 and AT&T. So we have to kind of guess what our market

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1 share is to try to figure out whether we have received
2 the right amount.

3 JUDGE SCHAER: And then going forward?

4 MR. HARLOW: So we understand that Verizon
5 has proposed, and I guess they're waiting to see whether
6 it's approved before they issue further refunds, that
7 that refund period be pushed out to is it July of 2001,
8 and I guess that would theoretically total \$3.2 Million.
9 I haven't actually done the calculations to determine if
10 that would indeed be a full refund including interest
11 through that time period. That would leave us then, if
12 you take from July until now, we would contend we're
13 entitled to refunds for that time period, so an
14 additional nine months would be roughly another, I'm not
15 very good at math on the spur of the moment, but another
16 probably 20% on top of the \$3.2 Million just ball park.
17 And then, of course, a reduction of the ordered amount I
18 think again is \$564,000 going forward.

19 There is an issue to address with regard to
20 where to apply that going forward reduction. Verizon
21 did choose between the initial order and the final order
22 in this docket to eliminate the rate element to which
23 both the initial and final order directed the refund be
24 made. They did that for reasons related to the change
25 in the access rule, which is now of course invalidated,

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1 so they might actually conceivably reinstate that. They
2 have a right to under the settlement agreement in the
3 merger docket. But that was acknowledged at the time.
4 Ms. Endejan wrote a letter to the Commission before
5 Verizon named the stay and said, look, we've got to
6 figure out another element to apply this to so -- and
7 that shouldn't be any kind of a stumbling block to the
8 going forward rate reduction. Just like we switched the
9 reduction in Qwest's case from the terminating side to
10 the originating, and we have agreed on that. I don't
11 think that's our stumbling point. I think our stumbling
12 point is purely this contention that other reductions in
13 other dockets constitute a compliance in this docket.

14 JUDGE SCHAER: So what your client is looking
15 for is refund from the April '97 date to the date that
16 an order is entered by the Commission regarding
17 compliance and also looking for filing of a tariff
18 change that would reflect the half million approximately
19 ordered reduction going forward; is that a correct
20 understanding where you are?

21 MR. HARLOW: Well, close.

22 JUDGE SCHAER: Okay.

23 MR. HARLOW: The refund period would end not
24 at the date of the order, but the effective date of the
25 tariff reducing the rates going forward.

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1 JUDGE SCHAER: I'm going to go ahead and hear
2 from Ms. Tennyson, and then I'm going to come back to
3 you, Ms. Endejan. And if we need to take two or three
4 rounds, we will do that since there's a lot more
5 complications here than there were on the Qwest
6 discussion.

7 So, Ms. Tennyson, would you like to provide
8 Commission Staff's viewpoint at this point.

9 MS. TENNYSON: Certainly. Mr. Zawislak and I
10 did have several conversations with Ms. Endejan and her
11 client about Verizon's position with its February 5th or
12 6th filing that it had fully complied with the order.
13 We did not believe that the change or removal of the
14 particular rate from which the Commission's order in
15 this docket had ordered the reductions be made, we
16 didn't think that that change that Verizon made
17 constituted compliance with the order.

18 What I was looking for in my materials and I
19 don't know that I have, although Verizon may well have
20 provided it to Staff in the past, Verizon made some
21 refunds in 2001 to carriers. I don't know whether we
22 have a calculation of those amounts that were made by
23 carrier. But that was without, as Mr. Harlow indicated,
24 without discussing those amounts with the carrier, but
25 they were given bill credits.

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1 After receiving the mandate from the Court of
2 Appeals in this case and returning it back to the
3 Commission, that's when Staff started looking at it
4 again. And after, as I indicated, further discussions
5 with Ms. Endejan and her client, we believed that
6 effective with the modifications to Verizon's tariff
7 that were effective July 1st of 2001, that at that point
8 Verizon's rates basically would have eliminated any
9 subsidies for pay phone operations that would have been
10 included.

11 It is correct that Mr. Harlow's clients were
12 not party to some of the -- to the matters by which some
13 of those rate reductions were made and revenue
14 reductions were made. It was in connection with the
15 merger docket, and there were -- what we looked at were
16 each phase of the reductions that were ordered as a
17 result of the approval of the merger between GTE and,
18 I'm not sure who it was, but it ended up as Verizon.
19 And looking at the amounts and the rates that were
20 affected in each instance, Staff did agree with Verizon
21 that effective with the filing of the tariff changes
22 that were effective July 1st of 2001 that other pay
23 phone subsidies were removed from Verizon's rates.
24 Verizon then did a recalculation of an amount of
25 additional refund that would need to be made to carriers

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1 as a result of continuing or not having removed the
2 \$564,000 from its terminating access rates prior to July
3 1st of 2001. And Staff has reviewed those amounts and
4 believe that the calculations were appropriately done.

5 We're still at a bit of a loss as to how to
6 technically effectuate the concerns or to deal with the
7 concerns raised by Mr. Harlow on behalf of his client,
8 the fact that his clients were not parties to those
9 proceedings and there wasn't a tariff filing that
10 specifically said we're complying with 970658 orders by
11 doing this. Staff does believe that from a practical
12 point of view that Verizon is currently in compliance
13 with the spirit of the order, if not technically having
14 made a filing that refers to this docket and complies
15 with the order in that sense.

16 JUDGE SCHAER: And what would you recommend
17 that we do from here?

18 MS. TENNYSON: Well, your suggestion that if
19 we could reach an agreed order obviously would be our
20 best manner of going about it. I don't see a lot of
21 prospect of that from Mr. Harlow's perspective. I
22 don't, again though, I don't know what precise
23 information he may have in terms of dollar amounts and
24 how they were calculated, and I'm currently not aware
25 without having Mr. Zawislak here whether we have the

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1 initial refund amounts included. I believe Mr. Zawislak
2 has looked at those, but I don't have them personally.

3 JUDGE SCHAER: It's sounding to me like we
4 have a fair amount of objective information that should
5 be available that may not have been shared among all
6 parties or may not have been part of a conversation
7 among the people of all parties who are good at math,
8 which would also exclude me. But do you think there
9 might be some benefit from some kind of a conference
10 where this information that Staff has could be reviewed
11 in detail with the companies and a discussion held of
12 whether or not that refund took place. And then it
13 seems that there should be data available to figure out
14 how much refund has been applied and perhaps
15 confidential data which Staff could see but might not be
16 shown in its entirety to Mr. Harlow's clients, I'm just
17 thinking aloud here, but on market share figures so you
18 could calculate how much AT&T and MCI -- am I giving the
19 right bodies with you?

20 MR. HARLOW: I understand what you're talking
21 about.

22 JUDGE SCHAER: Okay. So that you could
23 figure out if the amount of the refund at least up to
24 July of last year would reflect the refund that would
25 have come out of the case. I guess I'm just asking you

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1 if you think there's some benefit to holding that
2 conversation, and then when we go around again, I will
3 let both of you comment on that, of course. But to the
4 extent that we have objective information and we can
5 tell what period it applies to and how much it is, it
6 seems to me that might give us at least a basis of
7 shared understanding to work from.

8 So I'm asking you if you think that might be
9 useful, Ms. Tennyson.

10 MS. TENNYSON: From my perspective, I think
11 it would be. I don't know what information, if any, has
12 been exchanged between Verizon and Mr. Harlow's client,
13 so.

14 JUDGE SCHAER: And it might be useful to
15 have, it might be essential to have Mr. Zawislak in that
16 conversation as well when he's able to do that.

17 MS. TENNYSON: Okay, absolutely.

18 JUDGE SCHAER: Okay. Is there anything else
19 that you would like to report or say at this time?

20 MS. TENNYSON: Not at this point, no.

21 JUDGE SCHAER: Okay, let's go back to you,
22 Ms. Endejan, and I will let you respond to what you have
23 heard, and if there's other ideas that have sprung out,
24 let's hear those also.

25 MS. ENDEJAN: Sure. Well, first of all, let

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1 me get right to the issue of the refund amounts, and I
2 have here a copy of the materials that were provided to
3 Mr. Zawislak that is probably what you were looking for,
4 Ms. Tennyson. And it does show, in fact, the amounts
5 there, you know, there are two refund amounts here. The
6 first is a refund amount that were made last fall and
7 which were accomplished by November 15, 2001, and that
8 totalled \$1.554 Million. I do know from correspondence
9 that I have seen between staff at Verizon and staff at
10 both Verizon and WorldCom that both of those entities
11 were given the opportunity to look at the calculation of
12 the amount of the refund that they got before November
13 15th. AT&T accepted it. I don't know if MCI had a
14 problem with the math or they just had a problem with
15 what I see to be the core impediment here, which is an
16 ongoing rate reduction. In any event, the credits were
17 made, the carriers accepted that amount.

18 The other half of the refund pot, which is
19 \$1,600,575, Verizon broke that down and calculated the
20 amounts that each company would receive, and that also
21 is contained in this information that was provided to
22 Mr. Zawislak. That amount will be made if, you know,
23 assuming the Commission issues an order approving or
24 entering a finding that we are in compliance and
25 concluding this docket.

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1 So what you have here is you have, one, you
2 know, almost half of the refund amount has already been
3 made, and the remaining half remains to be made subject
4 to an order from this Commission so -- and I don't know
5 if we heard from MCI or AT&T that they have any quarrel
6 about the amounts of the -- that they did get. I think
7 they were more than happy to get their credit, and we
8 haven't heard anything from them on that. We're happy
9 to share this amount, these amounts with Mr. Harlow. I
10 guess we're going to have to do something -- actually,
11 we're probably going to have to share it with
12 Mr. Zawislak and figure out how we want to communicate
13 with Mr. Harlow simply because I don't know how
14 commercially sensitive this is in terms of breakdown by
15 revenue and minutes or whatever. I mean I don't think
16 -- I think that's something we can work out.

17 JUDGE SCHAER: Certainly.

18 MS. ENDEJAN: And I think that we can work
19 out the amount that is due to Mr. Harlow's clients.

20 Unfortunately, what I don't think we can work
21 out is the idea that we can come to any agreement to
22 make any further access charge rate reductions. And
23 it's unfortunate because it's my nature and my serious
24 desire always in Commission proceedings to try to find a
25 reasonable compromise to situations. But in this

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1 situation, unfortunately, my client, and with Commission
2 Staff's concurrence, believes that we have achieved
3 compliance.

4 Let me step back a minute here and explain
5 why I think this is such a unusual complicated
6 situation. It stems from the fact that, you know, the
7 order did -- well, there are a couple of interrelated
8 factors here that are going on. The first key factor is
9 the order itself specified that a reduction was to be
10 made in a particular rate element, the terminating CCL.
11 And you may or may not recall the testimony, I do, but
12 the testimony from Mr. Zawislak was that it was his
13 belief and opinion that the source of pay phone
14 subsidization stemmed from the CCL, and that had a lot
15 of historical reasons, et cetera. So therefore,
16 elimination of -- and in his view, that was the source
17 of the subsidy.

18 Okay, it would take the Commission to reopen
19 that order and rewrite that order to require Verizon to
20 make a reduction in some other rate element. That would
21 require the Commission to make a finding that some other
22 rate element serves as a source of subsidy for its pay
23 phone operations, a fact which Mr. Zawislak and the
24 Commission Staff says no longer exists.

25 And it no longer exists because of some of

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1 these intervening subsequent events, most significantly
2 the merger docket and the earnings review docket. And
3 at the time, I believe, and I can't be quoted on this,
4 but I believe AT&T was a party to the merger docket. I
5 don't know if MCI was. I'm sure it was for whatever
6 reason elected not to participate. Like all parties,
7 you know, they're given the opportunity to participate,
8 and they can either choose to participate or not. And
9 as a result of that full scale earnings review,
10 Verizon's entire 1998 test year was open for review and
11 was reviewed by the Commission Staff, and there were a
12 lot of subsequent adjustments.

13 So we're kind of in this bizarre situation
14 where had the company not appealed, as it had every
15 right to do when it felt that it was aggrieved by a
16 Commission order, had it not appealed, and the entire
17 access structure would have been looked at, and this
18 amount would have been stripped from the access charges
19 anyway. We don't know, we didn't specifically focus on
20 that, no one did, no party, no Staff member, nothing.
21 Verizon honestly thought it was pursuing its lawful
22 rights to appeal, and I guess no one kind of thought
23 through the logical conclusion of the what ifs if the
24 appeal goes one way as opposed to another given the fact
25 that there are all these other revenue proceedings going

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1 on.

2 This is probably, pardon me, a long winded
3 way of getting to the bottom line here, which is, what
4 was this case all about in the first place, and it was
5 all about the claim that Verizon's rates contained
6 subsidies for its pay phone operations that continued
7 past, you know, this April 15th, 1997, demarcation
8 point. The Staff is satisfied the subsidies don't exist
9 anymore. Verizon clearly submits the subsidies don't
10 exist anymore. Therefore, the letter and the spirit of
11 that Fifth Supplemental Order have been complied with,
12 and the Commission has fulfilled its responsibility to
13 make sure that the subsidies were depleted.

14 I think that, and much as I would love to see
15 an agreed order in this case, I think the prospects of
16 that, of an agreed order that would call for any sort of
17 ongoing rate reduction on Verizon's part are
18 non-existent, and we can't agree to that. I think what
19 this calls for is entry of an order from the Commission
20 as it has, and I could find you a few statutes that
21 would allow the Commission to enter such an order,
22 deeming Verizon to be in compliance, having had the
23 opportunity to look at all of our rates and charges in
24 several occasions, most notably the earnings review, and
25 to conclude this docket.

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1 One of the WACs allows the Commission to make
2 exceptions to these rules in individual cases when it is
3 just and reasonable, which is kind of the standard
4 against which to gauge most, if not all, Commission
5 action, and that's what WAC 480-09-010 allows the
6 Commission to do. Because it recognizes that there are
7 going to be times and situations where you can not
8 contemplate every foreseeable, you know, outcome here.
9 But what the outcome the Commission wanted, it got. It
10 got the elimination of the pay phone subsidy, it got
11 refunds for the parties that paid too much.

12 I guess I take a little bit of issue with
13 Mr. Harlow's characterization of this as, you know,
14 Charlie Brown with the football. His clients have got a
15 lot of money back. They got pretty significant or will
16 get, you know, a good chunk of that \$3 Million, so they
17 did win, they did get their money. What they aren't
18 entitled to is to preserve in amber forever an ongoing
19 rate reduction, which they may have been entitled to for
20 a certain period of time, but they're no longer entitled
21 to because of these subsequent events.

22 So we would ask the Commission to conclude
23 this docket. It's obviously been going on far longer
24 than -- we will all grow gray and old if we keep this
25 up. We feel that there really isn't any way we can

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1 "settle" this except to make the refund. If someone has
2 a problem with the math, we are more than happy to sit
3 down and work through the math, but we just can't make
4 any other ongoing rate reductions.

5 So I don't know if your Honor has any other
6 questions about this.

7 JUDGE SCHAER: I do have a few.

8 MS. ENDEJAN: Okay.

9 JUDGE SCHAER: But go ahead and finish what
10 you have to say.

11 MS. ENDEJAN: I will conclude.

12 JUDGE SCHAER: You mentioned two different
13 refunds, one of \$1.225 Million which has been made, and
14 one of \$1.65 Million approximately that will be made if
15 the Commission enters an order. And I was just
16 wondering what time periods those cover.

17 MS. ENDEJAN: The first refund that has been
18 made was for \$1,554,396.

19 JUDGE SCHAER: Thank you.

20 MS. ENDEJAN: Okay, and it covered the period
21 of April 1997 through December 31, 1998. The second
22 refund amount which will be made, we have calculated it
23 now as \$1,600,575, and it is intended to cover the
24 period between December 31, 1998, and July 1st, 2001.

25 JUDGE SCHAER: Now as we all know, this is a

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1 complaint case that was brought by Mr. Harlow's clients
2 alleging that there were subsidies in the pay phone
3 rates of your client and Ms. Anderl's client, and I'm a
4 little concerned that there has been a lot of
5 communication with Commission Staff but maybe not as
6 much communication with the complainants in this matter,
7 and so I'm going to ask you the same thing I asked
8 Ms. Tennyson. First, I want to check my recollection.
9 It is my recollection that we do have a confidentiality
10 order in place in this docket.

11 MS. ENDEJAN: We do.

12 JUDGE SCHAER: Is that correct?

13 MS. ENDEJAN: We do.

14 JUDGE SCHAER: And I'm wondering if, and this
15 is the same question I asked Ms. Tennyson, if you think
16 it might be a useful exercise to get your people who
17 know how the numbers come together and what their
18 sources are to bring that information and sit down and
19 have a conversation between your client, Mr. Harlow's
20 clients, and Staff where you make sure everybody
21 understands the numbers that are going on and what they
22 cover and what they don't cover and just try to get a
23 common base of objective information.

24 MS. ENDEJAN: I don't see any problem with
25 that. I think that I guess Mr. Harlow would probably

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1 have to show the numbers to his clients, some internal
2 clients, and I don't know if they're signed up for the
3 confidentiality order, but we could fix that. I do
4 know, and I can't tell you who, but we could perhaps
5 have this discussion off line, a lot of the internal
6 Verizon folks that deal with the internal MCI and AT&T
7 folks have had discussions and run the numbers with
8 them.

9 I think it's probably a good idea to pick an
10 appointed date by which we meet or confer to lock in or
11 to resolve any issues about the refund amounts. We're
12 not aware of any dispute from Staff with respect to how
13 we calculated the amount, and it's probably a good idea
14 to give Mr. Harlow's clients an opportunity to see if
15 they have any problems with the math.

16 JUDGE SCHAER: And I would like to have Staff
17 there as well to see if they think up some new questions
18 or, you know, just to make sure. I would like all the
19 parties to be at the same basic understanding of
20 objective information.

21 MS. ENDEJAN: Sure.

22 JUDGE SCHAER: And that, I think, might be a
23 useful tool to get people talking and figuring out where
24 the gaps are and how much. I would like Staff to do
25 something similar as well as you, to talk about the

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1 tariff changes that they think would satisfy the tariff
2 change going forward so that that information at least
3 is understood on a common basis by everyone in the
4 conversation.

5 MS. ENDEJAN: It's my understanding, Your
6 Honor, that Staff supports us in our position that we --
7 that no going forward tariff change is required.

8 JUDGE SCHAER: I think that that's what you
9 have said, and that's what Ms. Tennyson has said, and
10 I'm not saying this for that reason. I'm saying that
11 the complainants in this case, who won and have been
12 upheld, are Mr. Harlow's clients, and I'm not certain
13 they share that understanding, and I think it might be
14 useful even though they may never agree on the so what
15 part of the equation, if they at least know what it is
16 that you and Staff are talking about as being what in
17 your understanding would answer that need for change,
18 would show where that need for change has come in.

19 MS. ENDEJAN: Well, we could -- I think that
20 could be part of a discussion in terms of helping them
21 understand why we -- why there are no more ongoing pay
22 phone subsidies.

23 JUDGE SCHAER: I think just taking this is
24 what we did and this is where the money came from and
25 this is how it's working out, as I say, as much

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1 objective information and objective shared
2 understandings you could have I think would be useful to
3 however we have to go forward, whether it's some kind of
4 decision on the current record from the Commission or
5 whether there needs to be anything further. I think we
6 do need to, to the extent that we can, not have
7 disagreements about what number goes where or what
8 things relate to.

9 And then I would like to ask, you know, I
10 perfectly comprehend and perfectly agree with you that
11 your client had every right in the world to appeal these
12 decisions and to pursue their appeals, and I don't want
13 this to be taken as anything slighting that, I think
14 it's the appropriate thing to do when you think
15 something is wrong, but I am, you know, a little bit
16 curious about if you had won, going forward, what would
17 be different than it is now? Would the second refund
18 not be made? Would there be some attempt to get the
19 first refund back? Would some tariff be increased? And
20 I know you can't speculate, but to the extent that
21 you've thought about it, I'm just trying to figure out
22 what difference it makes under how you're looking at
23 this that the court case came out as it did.

24 MS. ENDEJAN: Your Honor, I can tell you that
25 no refunds would have been made, and the refunds that

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1 were made last November were made after the Court of
2 Appeals decision and before I believe we got the order
3 on rehearing, because we had filed a motion for
4 rehearing. And so I would tell you that they would not
5 have made any refunds. I think that because of the
6 magnitude of the reductions and changes as a result of
7 the rate case, I'm sorry, not, well, earnings review and
8 settlement docket, you know, the amount that was taken
9 out, you know, far exceeded the \$554,000 which was at
10 issue here in this case. So I guess what we're saying
11 is would we have maybe not reduced it \$554,000 back
12 then? I don't know, I can't speculate.

13 And in terms of what -- how the, you know,
14 the Commission and the parties that looked at the actual
15 situation of the company, they looked at their earning
16 reviews and the number in order to come up with, you
17 know, something that was settled and a settlement that
18 the Commission approved as being just and reasonable in
19 the public interest, and that's -- that is a standard
20 that is not always particularly capable of precision in
21 terms of looking at every number and every line item to
22 figure out, well, if you were to tweak this, how would
23 it have affected that. I don't know.

24 JUDGE SCHAER: Okay, and I don't expect you
25 to know. I'm hearing from you and from Ms. Tennyson

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1 that there were discussions about this and that there is
2 a comfort level between you and Staff about these rates
3 being at a right level and not including a subsidy, and
4 I'm just trying to figure out if there is information
5 there that is available that could be shared that would
6 in any way move us any closer to resolving the problem
7 we're dealing with today. Because, you know, it is a
8 problem that we're going to have to resolve in some
9 manner, and as I say, I think the base of shared
10 understanding, objective information, will be useful in
11 whichever way we need to go forward. Is there anything
12 else you wanted to address at this time, Ms. Endejan?

13 MS. ENDEJAN: No, Your Honor, just except
14 perhaps to recommend some steps for closure on this, and
15 that might be to schedule a date by which we have a
16 meeting with the participants to have discussion about
17 how we calculated the refunds and to explain to MCI and
18 AT&T representatives why Verizon's new rates contain no
19 pay phone subsidy. And then I guess we would like to
20 request that the Commission shortly thereafter enter an
21 order finding compliance with the Fifth Supplemental
22 Order and closing the docket.

23 JUDGE SCHAEER: There's one other thing that
24 Mr. Harlow mentioned that I forgot to ask you, and that
25 was that based on a different case which Verizon won at

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1 the Court of Appeals, it appears that your company may
2 again be able to file a terminating access tariff; is
3 that correct?

4 MS. ENDEJAN: That's technically correct, but
5 -- and I -- the company has not done anything formally
6 with respect to that result, but I do know that there
7 will be no reinstatement of the terminating CCL. The
8 company has no intention of reinstating that rate
9 element.

10 JUDGE SCHAER: Okay, I'm just wondering, I
11 noted that he noted that you have the right under the
12 merger agreement to do so or to attempt to do so.

13 MS. ENDEJAN: Right.

14 JUDGE SCHAER: And I'm just wondering, I'm
15 trying to think of things that are some of the loose
16 ends that relate to our issues, and I know we can't
17 resolve them all here, but I'm wondering to the extent
18 that something like the statement you just made, you
19 know, could be made more formally, if that would be
20 something that would provide any sense of security going
21 forward to any of the other parties that you're going to
22 be meeting there. And so I'm just suggesting, making
23 that suggestion. It's not something that I would expect
24 you to answer to the Commission or to me at this point,
25 but just one more thing to think about. I guess I would

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1 say if you're going -- if it does look like you might be
2 able to put together some kind of a package that would
3 work for everyone.

4 MS. ENDEJAN: I would be happy to investigate
5 whether I can provide assurances that the company will
6 not be filing for reinstatement of the terminating
7 carrier common line charge. I don't think that will be
8 a problem either.

9 JUDGE SCHAEER: Okay, maybe you can do that
10 and then take that information to the meeting that we
11 most likely will be holding.

12 Mr. Harlow.

13 MR. HARLOW: Thank you, Your Honor. I'm just
14 kind of really in shock that we're seriously discussing
15 Verizon's actions as a compliance filing. It's
16 certainly creative. I understand why Verizon wants to
17 save roughly half a million dollars going forward into
18 the indefinite future and would like to keep charging
19 rates that are higher than were approved under this
20 docket.

21 I can kind of understand Staff, I guess.
22 They negotiated with Verizon, and indeed they entered
23 into a stipulation that indicated they wouldn't seek
24 further access reductions for a certain period of time,
25 and that time period is still not up. You know, they

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1 were at the negotiating table, and they did what they
2 thought was best for the general public interest. But
3 different story as you kind of indicated for the
4 complainants, we were not at the negotiating table.

5 Now let me delve into the place I really
6 don't want us to go in a more formal way, which is to
7 kind of engage in the hypothetical discussion, kind of
8 the what ifs. Verizon did have every right to appeal,
9 but in so doing, they assumed the risk that the
10 regulatory landscape was going to change over the time
11 period of the appeal. It's been a long time. A lot of
12 things have changed. Indeed, if you look at Qwest's
13 access rates for the same time period, you will find
14 that Qwest's access rates have changed for a number of
15 times. I believe they have gone down over that time
16 period. Qwest did not come in with this creative
17 argument that, oh, well, we have already eliminated the
18 subsidy.

19 The theoretical basis for the elimination of
20 the subsidy is the reduction of access charges as part
21 of an earnings review. But again, if you take a look at
22 the publicly filed documents in that case, that case was
23 not resolved by a Commission order after a full rate
24 hearing. It was resolved as a settlement. And on a
25 theoretical basis, we still have enormous procedural

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1 problems with this docket, but on a theoretical basis,
2 you can't really say that the subsidy of \$564,000 has
3 been eliminated unless you can say as a theoretical
4 matter that Verizon's overearnings were taken down to
5 zero or at least down to a number below the 564. Then
6 you might be able to theoretically say, well, we've
7 wrung out some or all of the subsidy.

8 Rate making isn't that exact of a science.
9 We work with test year data. We're always a year or two
10 behind due to regulatory lag. So even as a theoretical
11 matter, the merger docket and the earnings review were
12 settled out, and both parties reserved their rights and
13 said, we're not contending that we agree with the other
14 parties' position. So there really was no finding based
15 on an exhaustive review of evidence that Verizon through
16 the rate reductions that took place that it cites as
17 compliance in this docket now did eliminate all of the
18 subsidies.

19 Access rates in Washington are a product of
20 residual rate making. In other words, the company's
21 revenue requirement is determined, and typically access
22 and certain other rates that are well above the economic
23 cost of providing the service make up the difference.
24 Whatever is left over in the end when you set the
25 residential rate and the business rate, kind of whatever

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1 is left over typically gets made up by access. So
2 therefore, again, as a theoretical matter, unless you
3 eliminate every penny of overearning by Verizon and are
4 sure that has taken place, you can't really say that
5 this subsidy was eliminated. So therefore, you have to
6 do it in the context of this docket.

7 Again, on a theoretical basis, all right,
8 what if this Commission agrees with AT&T and WorldCom
9 and says, you have got to file the reduction going
10 forward, what if that works a great harm on Verizon
11 because they already eliminated all their overearnings
12 in the merger in the earnings review docket. Verizon
13 has a remedy. I mean if that's what tips the balance
14 from being, you know, at or above their authorized rate
15 of return and tips it into at or below the -- to below
16 the authorized rate of return, they can come in and file
17 a rate case and prove that, in fact, they're not earning
18 enough, that indeed too much subsidy was eliminated from
19 access rates, so they're not without a remedy.

20 AT&T and WorldCom on the other hand are
21 without a remedy, because it was found that they were
22 paying \$564,000 a year too much, and it was found that
23 they were entitled as complainants to that amount of
24 reduction going forward, and that was affirmed by the
25 Superior Court, and it was affirmed by the Court of

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1 Appeals, and the Supreme Court rejected an appeal and
2 didn't accept cert on that, and now they're not going to
3 get it, I guess, unless they start over and start a
4 whole new case and relitigate the issues and start a new
5 general rate case I suppose. You know, we're left
6 without a remedy.

7 We have an order. Verizon did continue to
8 litigate, I think in all candor to the courts, had they
9 felt that in December of 1998 they had eliminated the
10 subsidy as they have contended recently, they shouldn't
11 have gone to the court and said we need a stay because
12 otherwise we're going to have to reduce our rates going
13 forward. Because according to their argument today,
14 that was not, in fact, true when they applied for the
15 stay in the spring of 1999.

16 I have kept it pretty calm, but I just really
17 need to stress the frustration level of both me and my
18 clients. It's been nine months now since we won at the
19 Court of Appeals and over three months since the mandate
20 was issued. We appreciate the Bench's efforts to help
21 us resolve certain issues. The meeting is what comes to
22 mind here. I think the parties need to have some
23 discussions. I don't think, to the extent the Staff and
24 Verizon have agreed on an additional amount of refund, I
25 don't think that should be held hostage to a blessing of

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1 that as the complete refund. I think we can continue to
2 deal with that process. If Verizon has agreed with
3 Staff that it's appropriate to make another \$1.65
4 Million refund. I think they ought to do that post
5 haste.

6 The math part, working out the numbers,
7 that's really fairly easy. It takes a little time. We
8 did it with Qwest. We don't anticipate that's going to
9 be a problem. We do need the data to be shared. Sounds
10 to me as though Verizon is willing to do that. I don't
11 think we need Commission intervention on that.
12 Procedurally I think that they can share the
13 confidential data subject to the protective order with
14 me, and what we did with Qwest is I simply shared
15 company specific information, AT&T specific information
16 with AT&T only, MCI WorldCom specific information with
17 MCI WorldCom only, and I think that's the way we can do
18 it here. We do anticipate that that can be worked out.
19 For example, we did find some mistakes in Qwest's
20 calculations, and we have corrected those jointly. We
21 may find the same thing with Verizon, and so we do want
22 to look at those numbers. But I think we assumed that
23 would happen all along.

24 What I don't want to have to do is to spend a
25 whole bunch of time doing that and then do it all over

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1 again should the Commission agree with our position that
2 -- unless we're going to get that refund right away,
3 then it might be useful to go ahead and approve those
4 numbers subject to the potential of additional refunds
5 on top of it. But if we're going to wait for refunds
6 until the whole thing is determined, then I think we
7 ought to just do it once once there's been a
8 determination on the going forward issue.

9 Have I left anything out that Your Honor
10 would like to hear about?

11 JUDGE SCHAER: I don't think so at this
12 point.

13 MR. HARLOW: Thank you, Your Honor.

14 JUDGE SCHAER: We do have a confidentiality
15 order in place, and if there are people that are not on
16 the order that you want to have look at things, then, of
17 course, you can file the form.

18 MR. HARLOW: Right.

19 JUDGE SCHAER: Or you can work informally
20 with Ms. Endejan to work out the process such as you
21 have described or something else that would limit what
22 they could see.

23 Ms. Tennyson, did you have any further
24 comments?

25 MS. TENNYSON: I don't believe I do at this

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1 point.

2 JUDGE SCHAER: Okay. I think I see utility
3 in having this meeting that I have mentioned happen no
4 matter what happens next, and I don't know if that would
5 mean that anything could be resolved or that -- and if
6 it can't, I think it would still be useful at least in
7 allowing the parties to describe to me in a little bit
8 more detail exactly where disagreements are, how much
9 they involve, and then the Commission would have to
10 determine whether we can act from that information or
11 whether there's going to be any other information we
12 need to gather. It may be that a report back from that
13 session and then some kind of briefing on unresolved
14 issues would be sufficient.

15 But I don't feel that at this moment I would
16 be able to write an order and put the correct numbers in
17 it in the correct way, and so I think it's sufficiently
18 valuable to start down that path and see, you know, if
19 there -- what can be resolved, if anything, if you can
20 reach common factual understanding and then just put in
21 legal argument, just to explore what we can do. And we
22 can either set a date informally, or we can -- I can set
23 one from the Bench. Perhaps it would be wise to have
24 both a meeting date and a report back date.

25 Now this has been back kind of in my lap

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1 since the beginning of February, and we have called for
2 comments and follow-up comments and have proceeded to
3 get where we are today. And I agree I wouldn't like
4 this to go on too much longer, but I don't, as I say,
5 feel like I have adequate information to rule today. So
6 I'm going to suggest that we go forward in that way on
7 the Verizon issues. And as we have already discussed
8 with the Qwest issues, I will be looking for the agreed
9 order.

10 It has occurred to me listening to what has
11 been talked about by Mr. Harlow that if you come up with
12 an agreed order in the LSN but don't make the LSN
13 tomorrow but build in a week or two, then probably we
14 can deal with schedules and getting signatures and still
15 have it out by the date named, so you might want to
16 think about that when you're putting this together. I
17 was thinking, okay, I will get this, and we'll get it
18 out the next day, and that never works. Somebody gets a
19 cold and goes home or something.

20 MS. ENDEJAN: Your Honor.

21 JUDGE SCHAER: Yes.

22 MS. ENDEJAN: Just to move this thing along
23 because we too would like to get this wrapped up, could
24 we propose that we have a meeting of the parties
25 sometime the week of April 22nd? It's going to involve

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1 getting -- and we may have to do it telephonically
2 because my clients are in Texas. I don't know where
3 yours are, Mr. Harlow.

4 MR. HARLOW: Well, I would hope we would
5 exchange written information maybe next week, and I can
6 look at it, and maybe we can either truncate the meeting
7 or avoid it all together or narrow the people who need
8 to be involved, so on and so forth.

9 MS. ENDEJAN: Let's pick a meeting date so we
10 know we have some date that we have to do something by.
11 I will get you written materials so long as you get to
12 me signed, you know, agreements from the confidentiality
13 order.

14 MR. HARLOW: To answer your question, where
15 are the people, they're out of town. That's all I know.
16 They do it by E-mail. I have no clue where they are.

17 MS. ENDEJAN: Right.

18 JUDGE SCHAEER: Let me suggest that we go off
19 the record for a few minutes, give the court reporter a
20 break, maybe take five minutes to stretch, and then this
21 is the kind of thing we can talk about when we pick a
22 date but also gives some leeway to the parties to move
23 that date around without having to consult me. And so
24 it's 5 minutes to 3:00, why don't we call this our
25 afternoon break, and we will be off the record until

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1 3:10. We're off the record.

2 (Brief recess.)

3 JUDGE SCHAER: Let's be back on the record
4 after our afternoon recess. At the time that we broke
5 for the recess, Ms. Anderl representing Qwest/U S West
6 asked to be excused from the remainder of the hearing
7 and was excused.

8 During the time we were off the record, there
9 was a discussion of where we should go from here in
10 terms of resolving the remaining disputes in this
11 matter, and the parties have agreed to have a meeting to
12 try to reach common factual understanding, and then if
13 there are issues that are not resolved among them, to
14 brief those issues. And I'm going to ask Mr. Harlow to
15 report out on that and then ask Ms. Endejan and
16 Ms. Tennyson to comment if they have any comments to
17 add.

18 Go ahead, Mr. Harlow.

19 MR. HARLOW: Thank you, Your Honor. The
20 parties have agreed to exchange information subject to
21 the protective order in this docket and engage in
22 informal discussions and perhaps resulting in a
23 resolution of certain issues or agreement on certain
24 calculations, perhaps also resulting in a meeting on
25 April 29th of this year if the matters aren't resolved

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1 prior to that time. The parties propose to file a
2 report on the outcome of the discussions and the meeting
3 on May 10th, and assuming that there are still impasse
4 issues, that the parties will brief their positions on
5 the impasse issues also on May 10th, simultaneous briefs
6 by all parties, and that the parties would also file
7 reply briefs on May 17th of this year.

8 JUDGE SCHAER: And is my understanding
9 correct that in the first round report that parties are
10 going to attempt to at least reach an agreement of
11 stipulation of the relevant facts so that there will be
12 no factual issues remaining?

13 MR. HARLOW: Either stipulation on relevant
14 facts or perhaps stipulation on relevant Commission
15 documents and orders that can form the basis of the
16 decision on the impasse issues.

17 JUDGE SCHAER: Thank you.

18 Ms. Endejan, did you have anything that you
19 would like to add at this point or comment on?

20 MS. ENDEJAN: No, Your Honor. I believe that
21 Mr. Harlow has adequately stated what we agreed to prior
22 to going back on the record. It would be our hope that
23 we could reach a prompt resolution of this case, and I
24 think that the document will be -- I'm not quite certain
25 what the document will look like that you will get on

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1 May 10th, but we will do our best to have the things
2 that are agreed to clearly delineated and the remaining
3 items of controversy adequately explained.

4 JUDGE SCHAER: Thank you.

5 Ms. Tennyson, anything else?

6 MS. TENNYSON: No, nothing further.

7 JUDGE SCHAER: Is there anything else that
8 needs to come before us this afternoon?

9 MR. HARLOW: No, Your Honor.

10 JUDGE SCHAER: All right, well, thank you all
11 for your helpful participation, and I encourage you to
12 work together and try to help make this process as clear
13 and as smooth as we can, recognizing that there may be
14 issues where Commission will have to make decisions.
15 Thank you.

16 (Hearing adjourned at 3:30 p.m.)

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