

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3
4 In the Matter of the Continued) Docket No. UT-003013
5 Costing and Pricing of Unbundled) Part E
6 Network Element and Transport) Volume XLII
7 and Termination) Pages 5065 to 5157
8 _____) _____

9 A prehearing in the above matter was held
10 on July 11, 2002, at 9:30 a.m. at 1300 South Evergreen
11 Park Drive Southwest, Room 108, Olympia, Washington,
12 before Administrative Law Judge LAWRENCE BERG.

13 THE WASHINGTON UTILITIES AND
14 TRANSPORTATION COMMISSION, by SHANNON SMITH, Assistant
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16 Southwest, Post Office Box 40128, Olympia, Washington
17 98504-0128, Telephone (360) 664-1192, Fax (360) 586-5522,
18 E-mail ssmith@wutc.wa.gov; and by MARY M. TENNYSON, Senior
19 Assistant Attorney General, (360) 664-1220, E-mail
20 mtennyso@wutc.wa.gov.

21 QWEST CORPORATION, by LISA A. ANDERL,
22 Corporate Counsel, 1600 Seventh Avenue, Room 3206,
23 Seattle, Washington 98191. Telephone (206) 345.1574, Fax
24 (206) 343-4040, E-mail landerl@qwest.com; and by ADAM L.
25 SHERR, Telephone (206) 398-2507, E-mail asherr@qwest.com.

26 VERIZON NORTHWEST, INC., by JENNIFER
27 McCLELLAN, Attorney at Law, appearing by telephone.
28 Hunton & Williams, 951 East Byrd Street, Richmond,
29 Virginia 23219. Telephone (804) 788-8571, Fax (804)
30 788-8218, E-mail jmcclellan@hunton.com.

31 AT&T OF THE PACIFIC NORTHWEST, INC., XO
32 WASHINGTON, INC., and PACWEST TELECOM, INC., by GREGORY J.
33 KOPTA, Attorney at Law, Davis Wright Tremaine, LLP, 2600
34 Century Square, 1501 Fourth Avenue, Seattle, Washington
35 98101-1688. Telephone (206) 628-7692, Fax (206) 628-7699,
36 E-mail gregkopta@dw.com.
37 JUDITH CEDERBLOM, CCR, Court Reporter

1 THE PUBLIC, by SIMON FFITCH, Assistant
2 Attorney General, 900 Fourth Avenue, Suite 2000,
3 Seattle, Washington 98164-1012, Telephone (206)
4 389-2055, Fax (206) 389-2058, E-mail simonf@atg.wa.gov.

5 TRACER, by ARTHUR A. BUTLER, Attorney at
6 Law, appearing by telephone. AterWynne LLP, 601 Union
7 Street, Suite 5450, Seattle, Washington 98101-2327.
8 Telephone, (206) 623-4711, Fax (206) 467-8406, E-mail,
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10 MCI/WORLDCOM, INC., by Michel Singer
11 Nelson, Corporate Counsel, appearing by telephone. 707
12 17th Street, Suite 4200, Denver, Colorado 80202.
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14 michel.singer nelson@wcom.com.

15 COVAD COMMUNICATIONS COMPANY, by K. MEGAN
16 DOBERNECK, Corporate Counsel, appearing by telephone.
17 7901 Lowry Boulevard, Denver, Colorado 80230. Telephone
18 (720) 208-3636, Fax (720) 208-3350, E-mail
19 mdoberne@covad.com.

20 ESCHELON TELECOM, by David Frame,
21 appearing by telephone. 730 Second Avenue South, Suite
22 1200, Minneapolis, Minnesota 55402. Telephone (612)
23 436-1631, Fax (612) 436-1731, E-mail,
24 dmframe@eschelon.com.

25 ALLEGIANCE TELECOM OF WASHINGTON, INC.,
by MORTON J. POSNER, Corporate Counsel, appearing by
telephone. 1919 M Street Northwest, Washington DC, 20036.
Telephone (202) 464-1792, Fax (202) 464-0762, E-mail
morton.posner@algx.com.

ALSO PRESENT for the COMMISSION, DAVID
GRIFFITH, Policy Adviser; and DR. GABLE, Policy Advisor,
appearing by telephone.

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9:38 a.m.

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JUDGE BERG: Let's go ahead and be on the record. This is a joint prehearing conference being conducted before the Washington Utilities and Transportation Commission in docket numbers UT-023003 and docket No. UT-003013. Separate notices of prehearing conference were issued in both cases, but I'll note that all counsel representing all parties in either case are present.

Today's date is July 11th, 2002. This joint prehearing conference is being conducted at the Commission's headquarters in Olympia, Washington.

At this point we'll proceed to take appearances by the parties, and I will ask that parties' representatives, in addition to providing all contact information, also indicate whether you're representing parties in both proceedings. And if you are, please indicate which parties and which proceedings those are.

We'll begin by going around the room, and we'll start with Commission staff.

MS. SMITH: Thank you. Shannon Smith Assistant Attorney General, representing Commission staff in docket No. 023003. 1400 South Evergreen Park Drive Southwest, PO Box 40128, Olympia, Washington

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1 98504-0128. My telephone number is 360.664.1192. Fax
2 number, 360.586.5522. E-mail, ssmith@wutc.wa.gov.

3 MS. TENNYSON: My name is Mary M.
4 Tennyson, I'm a Senior Assistant Attorney General
5 representing Commission staff in docket UT-003013. My
6 mailing and office address are the same as
7 Ms. Smith's. However, my direct line telephone number
8 is 360.664.1220. Fax number is 360.586.5522. E-mail
9 is mtennyso@wutc.wa.gov.

10 MR. KOPTA: Gregory J. Kopta of the law
11 firm Davis Wright Tremaine, LLP, on behalf of AT&T and
12 XO in both dockets, and PacWest Telecom, Inc. in
13 docket UT-003013. My address is 2600 Century Square
14 1501 Fourth Avenue, Seattle, Washington 98101-1688.
15 Telephone, 206.628.7692; fax, 206.628.7699; e-mail
16 gregkopta@dwt.com.

17 MR. SHERR: This is Adam Sherr, in-house
18 counsel for Qwest. Address is 1600 Seventh Avenue,
19 Room 3206, Seattle, Washington 98101. Telephone
20 number 206.398.2507. Fax number, 206.343.4040.
21 E-mail address, asherr@qwest.com, representing Qwest
22 in both dockets.

23 MS. ANDERL: Thank you, Your Honor.
24 Lisa Anderl, in-house counsel representing Qwest. My
25 mailing dress and fax numbers are the same as

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1 Mr. Sherr's. My direct line telephone is
2 206.345.1574. My e-mail address is landerl@qwest.com.

3 MR. FFITCH: Good morning, Your Honor.
4 Simon ffitich, Assistant Attorney General, the Public
5 Counsel section of the Washington Attorney General's
6 office. The address is 900 Fourth Avenue, Suite 2000.
7 The telephone number is 206.389.2055; fax,
8 206.389.2058; e-mail is simonf@atg.wa.gov. And, Your
9 Honor, I'm appearing in both dockets this morning.

10 JUDGE BERG: Verizon?

11 MS. McCLELLAN: Jennifer McClellan,
12 representing Verizon Northwest, Inc. I'm with the law
13 firm of Hunton & Williams. Address is River Front
14 Plaza, East Tower, 951 East Byrd Street, Richmond,
15 Virginia 23219. My telephone number is 804.788.8571.
16 My fax is 804.788.8218, and my e-mail address is
17 jmccllellan@hunton.com. And I'm representing Verizon
18 in both dockets.

19 JUDGE BERG: TRACER?

20 MR. BUTLER: Arthur A. Butler of the law
21 firm AterWynne LLP, representing TRACER. My address
22 is 601 Union Street, Suite 5450, Seattle, Washington
23 98101-2327. Telephone number, 206.623.4711; fax
24 number, 206.467.8406; e-mail, aab@aterwynne.com.

25 JUDGE BERG: MCI/WorldCom?

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1 MS. SINGER NELSON: Michel Singer Nelson
2 on behalf of WorldCom, Inc. Address is 707 17th
3 Street, Suite 4200, Denver, Colorado 80202. The phone
4 number is 303.390.6106. Fax is 303.390.6333. And my
5 e-mail address is michel.singer nelson@wcom.com.

6 JUDGE BERG: Covad?

7 MS. DOBERNECK: Megan Doberneck on
8 behalf of Covad Communications Company. My address is
9 7901 Lowry Boulevard, L-O-W-R-Y, Denver, Colorado
10 80230. Telephone number, 720.208.3636; fax number,
11 720.208.3350. E-mail address, mdoberne@covad.com, and
12 I am representing Covad in both dockets.

13 JUDGE BERG: Eschelon?

14 MR. FRAME: David Frame, Eschelon
15 Telecom, 730 Second Avenue South, Suite 1200,
16 Minneapolis, Minnesota 55402. Telephone is
17 612.436.1631. Fax, 612.436.1731. E-mail,
18 dmframe@eschelon.com. We're a party in 23003.

19 JUDGE BERG: Allegiance?

20 MR. POSNER: Morton Posner, appearing
21 for Allegiance Telecom of Washington, Inc. --

22 JUDGE BERG: Mr. Posner, I'm going to
23 have to ask you to speak up a little.

24 MR. POSNER: All right. Can you hear me
25 now?

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1 JUDGE BERG: That's much better, thank
2 you. Could you start again?

3 MR. POSNER: Certainly. This is Morton
4 Posner, and I represent Allegiance Telecom of
5 Washington, Inc. in docket 023003. I'm at Allegiance
6 Telecom, 1919 M Street Northwest, Washington DC,
7 20036. My telephone number is 202.464.1792, my fax
8 number is 202.464.0762, and my e-mail address is
9 morton.posner@algx.com.

10 JUDGE BERG: Thank you, Counsel. Let me
11 just ask if there are any other counsel who wish to
12 enter an appearance at this time. Let the record
13 reflect that there was no response.

14 Mr. Posner, I'll just indicate you were
15 the only party that was sort of coming through on the
16 weak side, so you will want to speak up. If you need
17 to close your office door so no one thinks that
18 you're ranting, please do so.

19 The first thing that I want to
20 address --

21 MS. ANDERL: Your Honor?

22 JUDGE BERG: Yes, Ms. Anderl.

23 MS. ANDERL: A point of clarification on
24 the appearances: two issues. Mr. Posner, this is Lisa
25 Anderl for Qwest. Could I ask you to please fax a

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1 copy of your petition to intervene to my office as we
2 do not appear to have received a copy?

3 MR. POSNER: All right.

4 MS. ANDERL: But I believe we don't have
5 an objection. I just need a copy for our file.

6 And then, Your Honor, the Eschelon
7 petition to intervene indicates that the
8 representative is Dennis Ahlers, an attorney. I'd
9 like clarification whether Mr. Frame is substituting,
10 and whether he's an attorney for Eschelon or whether
11 he is just standing in for today.

12 MR. FRAME: This is David Frame. I'm
13 not an attorney, and I am just substituting today for
14 Mr. Ahlers.

15 MS. ANDERL: Thank you.

16 JUDGE BERG: Let me indicate that --
17 noting that there are no objections to the
18 intervention of Allegiance Telecom of Washington,
19 Inc., that petition to intervene is granted.

20 I'll also note that in UT-003013,
21 Part E, there is a petition to intervene that has
22 been filed by PacWest Telecom, Inc. Let me just ask
23 whether or not there are any objections to the
24 intervention of PacWest in UT-003013, Part E. And if
25 there are some concerns, we'll go ahead and inquire

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1 further based on that petition.

2 MS. ANDERL: No, there's not from Qwest
3 an objection.

4 JUDGE BERG: All right. Verizon?

5 MS. McCLELLAN: No, Your Honor.

6 JUDGE BERG: Any other party?

7 PARTICIPANTS: No.

8 JUDGE BERG: All right. PacWest
9 Telecom, Inc.'s petition to intervene in 003013 is
10 granted. Let me just say for ease of reference, let's
11 call the UT-003013 preceding "Part E"; and the 023003
12 proceeding we'll just call the "new cost case," if
13 that makes it easier for parties.

14 I will also note that there is a motion
15 to suspend schedule pending in the new cost case
16 filed by Verizon, and I'd like to pass over that for
17 a moment and just engage in some discussion regarding
18 the various elements that the parties have proposed
19 for consideration in 023003.

20 What I've done is gone through all of
21 the comments of each party and made a list, compiled
22 list of those particular elements. And there are
23 some questions for clarification and there are some
24 elements that are suggested that I want to have
25 parties who are proposing elements make further

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1 statements why those elements should be reviewed in
2 the new cost case as well as let parties opposing
3 those -- consideration of those elements make
4 statements.

5 I'll indicate that David Griffith is an
6 advisor to the Commission in the new cost case. At
7 this point in time, he is not an advisor in the
8 Part E case.

9 Dr. Gable is also on line on the
10 conference bridge. He is an advisor to the
11 Commission in both the new cost case and Part E.
12 Dr. Gable likewise as we discuss these elements may
13 have some questions, and I've asked him to please
14 interrupt and pose questions whenever he feels it
15 necessary.

16 I'm just going to start with the Qwest
17 list. There was one filing by Qwest on April 8th,
18 2002 that indicated the elements of 2-wire loop, a
19 4-wire loop, deaveraged zones, and shared transport,
20 and I just have a question about the shared transport
21 element. Is that particularly associated as part of
22 the UNE-P, or how does that transport element factor
23 into consideration of loop and switching rates?

24 MS. ANDERL: It's part of UNE-P.

25 JUDGE BERG: All right. And so that's

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1 the main reason why it's proposed there?

2 MS. ANDERL: Right. And, Your Honor, I
3 don't know whether we will be proposing radical
4 changes to shared transport, but there is a new rate
5 structure that we have proposed. It's actually in the
6 SGAT, and the parties have a choice in the SGAT of
7 either the blended permitted of use rate or the
8 capacity-based structure that the Commission had
9 originally ordered.

10 I think we're just seeking, by
11 proposing shared transport as a rate element, to end
12 up getting the permitted of use rate formalized into
13 the tariff. And it may or not be changes proposed to
14 the rate level from what we have in the SGAT, but
15 certainly we think the issue ought to be opened to be
16 addressed.

17 JUDGE BERG: Let me check with Verizon.
18 Verizon also indicated in its April 8th submission to
19 the Commission submission under recurring charges that
20 it was proposing to review both common and shared
21 transport termination as well as common and shared
22 transport facility.

23 Ms. McClellan, are those being offered
24 in the same sense that Qwest is suggesting review of
25 shared transport?

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1 MS. McCLELLAN: Yes, they are, Your
2 Honor.

3 JUDGE BERG: Would you repeat that
4 response?

5 MS. McCLELLAN: Yes, they are.

6 JUDGE BERG: Thank you. Anything
7 further, Ms. McClellan, on that?

8 MS. McCLELLAN: Yes. In our letter of I
9 guess yesterday, Verizon was proposing that that and
10 the new cost docket to address all UNEs other than the
11 line sharing, line splitting, conduit switching
12 related UNEs. The reason we propose to do that is
13 twofold.

14 First, the Commission has indicated
15 that it would like to address a permanent common cost
16 rate for Verizon. It has been Verizon's position
17 throughout this proceeding that common cost
18 calculations has to look at all direct costs and
19 should be consistent with the way that the direct
20 costs are calculated. The Part B proceeding shows
21 the difficulty of trying to establish common costs
22 when the direct costs have been calculated piecemeal.
23 We hope to avoid that by addressing all costs at the
24 same time.

25 The second reason is that most of the

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1 UNE rates are related, particularly the loop rates,
2 all of the various subloop pieces, high capacity
3 loops, even some switching when you look at the
4 combinations. Both the prior docket and this docket
5 have shown that when you try to calculate rates that
6 are related, or elements rates -- or for elements
7 that are related in a piecemeal fashion at various
8 points in time, you run into difficulties about
9 whether or not they are consistent, trying to make
10 them consistent.

11 To avoid that problem, Verizon proposes
12 to address all related UNEs through one cost
13 methodology at one point in time, and the new generic
14 cost docket gives us an opportunity to do that.

15 JUDGE BERG: I'll just mention again for
16 the record that the Commission's original purpose in
17 UT -- in the new cost case was to consider specific
18 rates that caused the Commission concern because if
19 they were set too high, those rates might inhibit the
20 development of local competition within the State of
21 Washington.

22 I understand the points you've made on
23 that, Ms. McClellan, and I also just want to say that
24 we'll present all proposed rates to the Commissioners
25 for consideration. I don't necessarily think the

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1 Commissioners are locked into that initial purpose
2 for this proceeding, but I -- personally, I know I
3 have concerns about reviewing rates that either have
4 recently been approved and don't require additional
5 consideration, or rates that aren't as clearly linked
6 to developing local competition in the State of
7 Washington.

8 Let's go ahead and take this suggestion
9 by opening this suggestion by Verizon up for comment
10 from other parties, and then there are some other
11 proposed rates by Verizon, specific proposed rates,
12 that I want to come back to.

13 Is there any party that wants to
14 comment on the Verizon proposal, that the Commission
15 review all UNEs except certain DSL-related rates in
16 the new cost case? And I'll start with Ms. Anderl,
17 and then Mr. Kopta.

18 MS. ANDERL: Thank you, Your Honor. We
19 don't have any objection to the Commission doing that
20 for Verizon if that's what the Commission wants to do.

21 But we do not believe that -- we,
22 Qwest, do not have an appetite to relitigate all of
23 those rates insofar as they have been established for
24 Qwest. Indeed -- and I don't know if this is the
25 time to talk about it or not, but we believe that

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1 many of the concerns expressed that prompted the
2 opening of the new docket insofar as Qwest's rates
3 are concerned may be well on their way to being
4 addressed or addressed by Qwest's rate reductions
5 that were recently filed to the loop rate. Now, I
6 understand that parties still may wish to litigate
7 either the loop rate or other aspects of the basic
8 UNE-P package, and parties may wish to look at the
9 deaveraging and test whether the zones are
10 established properly.

11 So I'm not going to say, you know, gee,
12 Qwest's issues are -- Qwest didn't have any issues in
13 this docket because everybody ought to be happy with
14 what we did, but we don't want to relitigate high
15 capacity loops. We just got an order on those. We
16 don't necessarily want to relitigate a lot of the
17 basic UNE elements, some of which we're still writing
18 a brief on in Part D.

19 That said, we have no issue with the
20 Commission expanding the scope of the docket to
21 include a review of all UNEs if it is limited to
22 Verizon's rates. If that's what Verizon wants to do,
23 certainly they have a right to ask for that.

24 JUDGE BERG: Mr. Kopta?

25 MR. KOPTA: I don't want to reargue our

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1 petition for reconsideration and/or rehearing in
2 docket 3013. I want to say that up front because we
3 share some of the same concerns that Verizon has in
4 terms of consistency, establishing the same cost
5 estimates for the underlying facilities or
6 functionalities that cut across multiple UNEs.

7 The best example that comes to mind is
8 for loops. A 4-wire loop uses many of the same
9 facilities as a DS1 loop, and our position is that
10 the Commission needs to establish consistent costs
11 when you're trying to develop the prices or the costs
12 for each of those loops that use the same methodology
13 and have the same cost estimate for the underlying
14 facilities.

15 That having been said, certainly we
16 have posed that issue to the Commission in the
17 current cost docket, and we've asked not only for
18 reconsideration but also the possibility of
19 rehearing. So it may be that the Commission decides
20 to address that in the existing cost docket as
21 opposed to the new cost docket. That's certainly up
22 the Commission in its discretion if it wants to try
23 and limit the scope of the new cost docket.

24 I'm not really sure how the Commission
25 would do that, just because right now we already have

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1 two different sets of methodologies that are used to
2 establish some of these common rates, and the risk
3 that we run if we continue on this path is that then
4 we'll have potentially a third different way of
5 estimating these common costs in the new cost docket.
6 So you run the risk of having common elements, or
7 elements that are using common facilities that are
8 based on three different sets of costs because they
9 were reviewed in three separate dockets, and we want
10 to try to avoid that.

11 So we certainly think that, to the
12 extent that you're dealing with issues in the new
13 cost docket that involve facilities that are also
14 used to provide UNEs that perhaps weren't initially
15 to be included in the new cost docket, that it only
16 makes sense to take a look at those elements as well
17 to make sure there is consistency in the cost
18 estimates that the Commission determines and bases
19 the prices on.

20 JUDGE BERG: Ms. Smith?

21 MS. SMITH: Thank you. This is Shannon
22 Smith for Commission staff. We don't disagree with
23 Verizon's comment that there's a need to review common
24 cost rates in the new loop docket. However, we do
25 disagree that we need to apply that rate to all of the

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1 other UNEs as Verizon suggests in this docket.

2 We share the concern that this docket
3 was open to review rates that were set several years
4 ago as opposed to UNE rates that were set more
5 recently, and we believe that the proper scope of
6 this proceeding is to look at those rates that are
7 fairly old that need readjustment sooner than rates
8 that were set more recently.

9 JUDGE BERG: Mr. ffitch?

10 MR. FFITCH: Thank you, Your Honor.

11 This is Simon ffitch for Public Counsel. Our
12 understanding of the scope of 023003, the new cost
13 case, is consistent with the way you've described it.
14 That's the basis for our appearance. We don't have a
15 position on whether the docket should be expanded to
16 include the consideration of these other matters.

17 However, I would say that if it is
18 expanded, we would like to ask that the Commission
19 adopt procedural mechanisms that would allow parties
20 who have -- perhaps want to just have a narrower
21 focus on the original issues to be able to
22 participate in an efficient fashion without perhaps
23 having to participate broadly in all of the other
24 issues that are out there that may get brought in.

25 I guess I'll just add that public

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1 counsel is still reviewing the scope of our
2 involvement in the loop cost issues that were
3 originally announced for the 23003 docket.

4 JUDGE BERG: Ms. Singer Nelson, any
5 comment?

6 MS. SINGER NELSON: Yes, Judge, thank
7 you. I guess my first thought is that I would like to
8 see the scope of this docket to be focused on what's
9 required to provide local service through UNE-Ps. So
10 the rate elements that I identified in the letter that
11 I circulated yesterday are the rate elements that I
12 would really like to see reviewed in this case, and
13 that's consistent with the Commission's original
14 purpose in opening the new docket.

15 That being said, I agree with
16 everything that Mr. Kopta said relating to the
17 consistency between rate elements that share
18 facilities. I think there is a problem with --
19 unfortunately, just because of time passing and cost
20 models changing, there is a problem with a lack of
21 consistency between UNE elements that should be
22 consistent.

23 And I don't know how the Commission
24 will ultimately resolve that problem. But I do want
25 to make sure that to the extent the Commission

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1 decides to expand the scope of the new cost docket
2 that we don't get bogged down too much in a delay of
3 resolving the issues relating to providing local
4 service through UNE-Ps.

5 So that -- I know that is kind of
6 indefinite, so overall I really don't have an
7 objection to addressing more rate elements in this
8 case, but I don't want to see a delay in the original
9 purpose.

10 JUDGE BERG: Mr. Butler, any comment?

11 MR. BUTLER: Yes. Let me agree with the
12 comments of Mr. Kopta and also with the comments of
13 Ms. McClellan. We think that it is critically
14 important that the Commission try to establish some
15 consistency in the UNE rates that are going to be in
16 effect, and if we're going to do that, you need to
17 take a consistent, comprehensive look at what those...

18 JUDGE BERG: Mr. Butler, you're trailing
19 off.

20 MR. BUTLER: Is this better?

21 JUDGE BERG: Yes, sir. Thank you.

22 MR. BUTLER: I was just saying that we
23 think it's critically important that the Commission
24 establish consistency among the UNE costs that are
25 established in this case, and the only way to do that

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1 is to take a comprehensive look at those.

2 So we would echo again Mr. Kopta's
3 comments and those of Ms. McClellan.

4 JUDGE BERG: Ms. Doberneck?

5 MS. DOBERNECK: Thank you, Your Honor.
6 I'm probably sounding somewhat like a broken record.
7 I think our primary concern is staying on track
8 schedule-wise because it is very important to Covad
9 that some of the rates -- even though we don't use
10 UNE-Ps we certainly use portions of UNE-Ps such as
11 just a local loop -- is to get those rates sooner
12 rather than later. And so, while I think we all
13 benefit from consistency, our primary focus is
14 ensuring we remain somewhat on track with the schedule
15 that was originally laid out by the parties. I don't
16 even remember what month the prior prehearing
17 conference was held.

18 The one thing I would note, I know
19 Ms. McClellan pointed out that they think, for
20 reasons related to decisions coming out of the DC
21 Circuit, certain DSL-related issues should be set
22 aside and not included in any of the cost
23 proceedings, whether they're consolidated, expanded,
24 or remain in their current form. And I would note --
25 and it probably comes as no surprise -- that of

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1 course we vehemently disagree with that and will
2 certainly be providing our response since it was
3 raised by Verizon in its motion for reconsideration
4 of the 32nd supplemental order.

5 JUDGE BERG: Mr. Frame?

6 MR. FRAME: Eschelon would like to be
7 able to participate expeditiously, but also we would
8 like see the schedule maintained as much as possible.

9 JUDGE BERG: All right, thank you.

10 Mr. Posner?

11 MR. POSNER: Your Honor, UNE-P is not my
12 client's primary concern. We don't oppose expanding
13 the proceeding except to say that Allegiance would
14 like to be able to participate if it's expanded, and I
15 think that --

16 JUDGE BERG: Can you speak up,
17 Mr. Posner?

18 MR. POSNER: -- that might be most
19 effective in 023003 rather than Part E. But, as I
20 say, I don't take a position substantively on that.

21 JUDGE BERG: Ms. McClellan, let me just
22 ask, the common cost issue that I think you're
23 referring to flows out of Paragraph 379 of the Part B
24 order where the Commission established an interim
25 common cost factor and deferred to Part E the

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1 establishment of a permanent rate. Is that correct?

2 MS. McCLELLAN: That's correct.

3 JUDGE BERG: All right. And if the
4 Commission was in the position to set a permanent
5 common cost rate in Part B, and it was able to set an
6 interim rate and now is going to consider the common
7 cost factor rate, the permanent common cost factor
8 rate in Part E, I still don't quite understand where
9 the flaw was in considering that element or that
10 factor outside of the review of loop switching and
11 deaveraged zone rates in the new cost docket.

12 MS. McCLELLAN: I will try to address
13 that, with the understanding that I am a lawyer and
14 not a common cost expert. But my understanding of the
15 way the common cost mark-up is calculated is that it
16 is a function of what the direct costs are, including
17 loop costs and switching costs.

18 To the extent the Commission is going
19 to revisit loop costs in the new docket, we are
20 probably going to have to take another look at the
21 common cost rate anyway. And Verizon believes it's
22 more efficient to, rather than addressing a permanent
23 common cost rate in Part B and then turning right
24 around and having to readdress the common cost rate
25 in the new docket, to just do it all at one time.

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1 With your permission, I'd like to also
2 go ahead and respond to a couple of the other points
3 made. If you look at the list of elements, the rates
4 set in Part B for Verizon, a lot of them are
5 loop-related. And if the Commission changes
6 Verizon's loop rates in the new docket, by necessity
7 they are going to have going to go back and revisit
8 some of the rates established in Part B; in
9 particular, the subloop rates and the UNE-P rates.
10 And, as Mr. Kopta has alluded to there, there is some
11 issue about whether or not how closely tied to the
12 unbundled loop rates the high capacity loop rates
13 should be. So, by definition, once you set new loop
14 rates for Verizon, you're going to have to revisit
15 some of the same B rates anyway.

16 On the issue of the schedule, from
17 Verizon's point of view, the schedule is going to be
18 the same -- the schedule we can meet is the same
19 whether you limit the cost docket to loops and
20 switches only or whether you expand it. As the
21 parties know, Verizon has moved toward integrated
22 cost models that can address multiple elements at one
23 time. So, for us, it takes the same amount of time
24 to do a model to address loops and switching as it
25 does to do a full-blown UNE model.

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1 As a practical matter, we pointed out
2 in our motion to suspend the schedule, depending on
3 what happens in the Part B on our petition for
4 reconsideration, we may not be able to meet the
5 current schedule anyway. So the issue of the
6 schedule for the new docket is not dependent on the
7 number of elements that are included in that docket.
8 It is really dependent on what happens on the
9 petition for reconsideration in Part B.

10 JUDGE BERG: Anything further, Counsel,
11 before we continue down the list of specific elements?

12 All right. Ms. McClellan, Covad
13 requested some clarification of the proposed
14 nonrecurring charges for service order charges for
15 loops, ports and NIDs, and I believe also the service
16 connection charges and the disconnect service order
17 charges.

18 Let me just start with Ms. Doberneck.
19 What was the clarification that you were seeking,
20 Ms. Doberneck?

21 MS. DOBERNECK: Your Honor, I was just
22 pulling it up to make sure I state it all correctly.

23 MS. McCLELLAN: Judge Berg, while she's
24 doing that, are you referring to their petition for
25 reconsideration as a Part B order?

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1 JUDGE BERG: No. I'm kind of looking
2 for Covad's written comments at this time. In Covad's
3 April 12th correspondence, Covad states: Covad is
4 unclear as to what Verizon means by reference to
5 nonrecurring service charges.

6 MS. DOBERNECK: Wait, I'm sorry, I'm
7 looking at the wrong thing altogether. What I'm
8 referring to is there is a number of service order
9 charges: there's service order charges, there's
10 service connection charges, and, in looking through
11 the text as well as our IA there is duplication of
12 types of service order charges.

13 And so I simply wanted to get just an
14 itemization of the individual service order charges
15 or within the categories through the generic phrase
16 "service order charge." It was more just what
17 exactly are we talking about rather than any
18 particular concern about a rate element proposed.

19 MS. McCLELLAN: I am not in a position
20 to give you that itemization right now. I can tell
21 you as a general matter that what Verizon was trying
22 to say in its comments was that, for whatever elements
23 we propose costs for in the new cost docket, we would
24 be proposing both nonrecurring and recurring rates.
25 So we will be looking at both the nonrecurring and the

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1 recurring sides, and not just limit it to one or the
2 other.

3 JUDGE BERG: So, Ms. Doberneck, it
4 doesn't sound like that provides you with the kind of
5 specificity -- well, forget that word.

6 MS. TENNYSON: Detail.

7 JUDGE BERG: The kind of detail that you
8 were looking for.

9 MS. DOBERNECK: That would be correct.
10 And as I mentioned, I want to be clear, it's not --
11 I'm certainly not questioning Verizon's ability to
12 propose those charges, just to know exactly what they
13 are. Because they are a whole -- you know, there are
14 several different types of service order charges, and
15 it was simply just to request their enumeration.

16 And I think that can probably be
17 provided whenever Verizon is prepared to do that.

18 JUDGE BERG: All right. Certainly it
19 would become available at the time Verizon filed
20 direct evidence. But if Verizon could provide some
21 additional clarification prior to that point in time,
22 I think that would be helpful.

23 MS. DOBERNECK: That would work for me,
24 Your Honor.

25 JUDGE BERG: I'm not going to give

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1 Verizon any directive with a time deadline, but,
2 Ms. McClellan, if you can discuss the matter with your
3 client and provide additional information as to what
4 Verizon might be addressing in that regard, I'd sure
5 appreciate it. Are you with us, Ms. McClellan?

6 MS. McCLELLAN: Yes, I will do that.

7 JUDGE BERG: Great. Thank you. And the
8 last issues that I had under Verizon were coordinated
9 conversion and hot-cut coordinated conversion. And I
10 was hoping, Ms. McClellan, you could tie that in to
11 loop and switching rates.

12 MS. McCLELLAN: I guess those, I
13 believe, are nonrecurring rates. And I think what
14 Verizon's proposal was if the reasons for opening a
15 new cost docket in part was to address the staleness
16 of our cost studies, those conversion rates I believe
17 were established in the 960369 docket as well, and
18 that nonrecurring cost study is equally stale.

19 JUDGE BERG: Okay, thank you.

20 MR. KOPTA: And if I might just jump in,
21 those are involved with the analog loops that you were
22 just discussing in terms of the nonrecurring charge
23 for accessing just the loop as opposed to the loop as
24 part of UNE-P. So that would be one of the
25 nonrecurring charges that I think would be included in

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1 the scope, even as the Commission had initially
2 outlined it.

3 MS. McCLELLAN: That is correct. Thank
4 you.

5 JUDGE BERG: I'm going to move on to
6 both the XO and AT&T comments and the Eschelon
7 comments. In both cases there is a reference to the
8 EICT, and the interconnection tie pair rates as stated
9 by Qwest in its SGAT compared to tariffs, and it's
10 unclear to me whether there is an issue here or not.

11 And let me ask you, Ms. Anderl, if you
12 can help clarify, at least for the other parties if
13 not for myself, how it is that there would be a zero
14 rate in the SGAT but then an established rate in the
15 tariff and whether that conflicts with Commission
16 orders.

17 MS. ANDERL: Okay. I can, and it
18 doesn't. But let me just check and see. Mr. Frame,
19 are you one of the Eschelon folks who was on the
20 conference call that we had about a week ago?

21 MR. FRAME: No, I was not.

22 MS. ANDERL: We are discussing the
23 matter with Eschelon on a business-to-business basis.
24 I guess I would say in the first instance that's
25 really more of a terms and conditions-type issue. I

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1 don't know that it's appropriately in a cost docket.
2 It might be more appropriately addressed in a
3 carrier-specific proceeding.

4 But the real answer is that the
5 Commission ordered Qwest to zero rate the EICT for
6 purposes of interconnection when the EICT is provided
7 as a part of an interconnection arrangement. And
8 Qwest has done that. So the EICT is the zero rated
9 in Section 7 of the SGAT.

10 However, there is an interconnection
11 tie pair which is -- EICT is sometimes referred to as
12 interconnection tie pair. But there is an
13 interconnection tie pair rate element that is also
14 applicable when a carrier accesses unbundled network
15 elements through a co-location arrangement, and Qwest
16 believes that the Commission has not told it that it
17 cannot charge that rate.

18 And so there's been some terminology
19 confusion and some differences between some parties.
20 Qwest has been trying to work through those issues
21 with the parties and explain to them exactly what we
22 think is going on.

23 But the point of fact is, is that
24 Qwest did zero rate the EICT and is not charging for
25 interconnection tie pairs associated with the

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1 interconnection of carriers' networks for exchange
2 of traffic. It is charging an interconnection tie
3 pair rate that is tariffed under co-location, and it
4 charges those rates when a carrier accesses
5 unbundled network elements through a co-location
6 arrangement.

7 That's kind of the short version. We
8 could obviously sketch it out for you in a lot more
9 detail. I recently had to do some research on this
10 and so that's why I'm familiar with it. But we can
11 track back through all the various cost studies,
12 show you the Commission orders that said zero rate
13 this for purposes of interconnection, but then show
14 you parallel Commission orders during about the same
15 time frame that approved Qwest's tariff filings of
16 its co-location rates and its cost studies that had
17 the separate interconnection tie pair rate element
18 associated with co-location, and we probably don't
19 have time for all that today.

20 JUDGE BERG: So, Mr. Kopta, then your
21 concern would be the charge associated with connecting
22 the loop to facilities in a co-location cage? Is that
23 correct?

24 MR. KOPTA: That's correct. I mean, I
25 think that there is a terminology and terms and

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1 condition issue as well as a costing issue. Because
2 we already pay for terminations that go from the
3 co-location cage to the intermediate distribution
4 frame. And the intermediate distribution frame is
5 supposed to be a frame used by all carriers, and
6 therefore that's where we should be able to access the
7 loop and there would be no need for an interconnection
8 tie pair, or ITP.

9 I think what's happened is that in the
10 SGAT proceeding, you had separate discussion of these
11 issues than you had in the cost docket. And so
12 there's been sort of a disconnect and a falling
13 between the cracks and a misunderstanding, however
14 you want to term it, in terms of whether this should
15 be an element. And if it is an element, whether it
16 duplicates a different element, whether there should
17 be any charge for it.

18 I think it kind of runs the gamut of
19 various issues, and whether it's going to be
20 addressed in this cost docket or in a different
21 proceeding, I guess, is kind of what we're here to
22 try to decide. But we do believe that there is an
23 outstanding issue with respect to that particular
24 element.

25 JUDGE BERG: All right. I think I

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1 understand that.

2 MS. SMITH: Your Honor, for the record,
3 staff does not oppose including that element in this
4 docket.

5 JUDGE BERG: What about including the
6 underlying issue of whether or not Qwest can impose
7 those charges? Is that inclusive in the issue from
8 your perspective?

9 MS. SMITH: That would be inclusive in
10 the issue. It would make sense to address those both
11 at the same time.

12 JUDGE BERG: All right.

13 MS. ANDERL: And, Your Honor, from our
14 standpoint, it's not pure cost docket but it probably
15 saves resources from opening up a complaint. So...

16 JUDGE BERG: It sounds like the kind of
17 issue that would need to be addressed one place or the
18 other. We do have Part E.

19 Mr. Kopta, is there some reason why, if
20 in fact we stay on two tracks with the Part E
21 proceeding and a new cost docket, is there any reason
22 why it should be addressed in the new cost case as
23 opposed to Part E?

24 MR. KOPTA: Not other than sort of a
25 general concern of trying to keep things all in one

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1 place, but I don't think that the ITP is one that
2 falls into that category. If anything, it would
3 overlap with co-location elements which are already in
4 part of 3013 and nobody has proposed be included in
5 the new cost docket.

6 So, just sort of thinking out loud, I
7 don't see any reason why, as long as we would have
8 two different tracks, that it couldn't stay within
9 the current cost docket as opposed to being part of
10 the new cost docket.

11 JUDGE BERG: Okay. Thank you.

12 Mr. Kopta, also in your July 30th
13 comments on behalf of XO/AT&T, you make reference to
14 high capacity and high capacity loops and dark fiber
15 transport and loops. To the extent that that's also
16 the subject of a petition for reconsideration or
17 rehearing in Part B proceeding, what is there that
18 would compel the Commission to turn right around and
19 review those rates again in the new cost case?

20 MR. KOPTA: Well, one of the reasons is
21 that we're sort of covering our bases here in terms of
22 where the Commission decides they want to address
23 these issues. One of the things that we proposed in
24 our petition for reconsideration and/or rehearing is
25 that the Commission either reopen the record in the

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1 current proceeding, or simply deal with the issues in
2 the new cost docket.

3 So that is an alternative that we have
4 presented to the Commission as one way to resolve
5 multiple concerns, is to simply allow additional
6 evidence to be presented on the high capacity loop
7 issue, to deal not only with more recent evidence
8 that's come up since the hearings but also to deal
9 with the consistency issue that we had. And we feel
10 like that's the cleanest way to deal with it, is to
11 put it into the new cost docket as opposed to having
12 additional proceedings with this current docket.

13 And that's why we included it in our
14 comments for this, for the new docket, just because
15 it's following up on our petition for reconsideration
16 and/or rehearing in the current docket. But that's
17 one alternative way for the Commission to deal with
18 these particular issues that we faced.

19 JUDGE BERG: All right.

20 MS. TENNYSON: Judge Berg, you've
21 referred to this as his "July 30th letter." I'm
22 assuming that you mean June?

23 JUDGE BERG: Yes, it's probably
24 June 30th. While sometimes it seems like the future
25 is today, it would be difficult to deal with the

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1 future being the past.

2 MR. KOPTA: Actually, it's July 10th.

3 JUDGE BERG: July 10th, okay.

4 MS. SMITH: Your Honor, this is Shannon
5 Smith for Commission staff. I think our position is
6 that we would prefer those matters that are included
7 within a petition for rehearing or a petition for
8 reconsideration be addressed in that particular docket
9 and not move any of those items into the new docket.

10 If the Commission wanted to take new
11 evidence, I suppose, on these issues as suggested by
12 Counsel, we still believe that the proper procedural
13 mechanism for doing that would to reopen the record
14 in the other case and consider whatever new evidence
15 is presented in the context of that record and not
16 expand the scope of the record in the new cost docket
17 to include something that has just been recently
18 litigated.

19 JUDGE BERG: Any other comments?

20 All right. Turning to Covad's
21 comments, Covad in its characterization of the 2-wire
22 loop and 4-wire loop rates made reference to both
23 a -- I believe it was intended to be both a rate for
24 a loaded and a nonloaded loop. Is that correct,
25 Ms. Doberneck?

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1 MS. DOBERNECK: Yes. When the other
2 parties had listed the elements for the new
3 proceeding, understandably since we're talking about
4 UNE-Ps, the reference was to 2- and 4-wire analog
5 loops. And I simply wanted to make clear that, to the
6 extent we're addressing analog loop, we should also
7 have the 2- and 4-wire nonloaded loops.

8 I think that probably would happen
9 anyway, but I just wanted to make that clear, that
10 our expectation is that on rates established for
11 analog would also be established for nonloaded loops.

12 JUDGE BERG: So you would be looking for
13 the same rate for both?

14 MS. DOBERNECK: Typically at least,
15 that's the way Qwest has costed and priced its loops.
16 And Verizon, at least under our interconnection
17 agreement with Verizon, we are proceeding on the same
18 costing and pricing basis.

19 So I'm not necessarily saying the rates
20 should be the same, depending on how Qwest or Verizon
21 wants to proceed, but simply that those -- that that
22 particular loop type be costed and priced.

23 JUDGE BERG: And then if there was a
24 situation where a loop was loaded and a CLEC was
25 requesting it to be conditioned, then the loop

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1 conditioning charges established by the Commission
2 would arise. Is that correct?

3 MS. DOBERNECK: I mean, that's actually
4 a third issue. One is that we can purchase loaded
5 loops. The other thing is if there is no loop
6 available that meets the technical parameters of what
7 a nonloaded loop is, then yes, then we would pay the
8 Commission-established rate for conditioning.

9 But I think that's actually a separate
10 issue from just establishment of 2-wire nonloaded
11 loop rates.

12 JUDGE BERG: Ms. Anderl, do we have
13 loaded and nonloaded loop rates in Washington?

14 MS. ANDERL: They are not different from
15 each other. A 2-wire loop is a 2-wire loop. Whether
16 it's provided on an analog basis and may or may not
17 have load coils on it, or deloaded and digitally
18 capable, it's the same rates. But I think that when
19 the Commission engaged in the costing exercise, it
20 kind of looked at all of the different types and then
21 did, as you suggested, establish a nonrecurring charge
22 for loop conditioning or deloading.

23 JUDGE BERG: Is your concern,
24 Ms. Doberneck, that a loaded loop might be higher
25 priced than a nonloaded loop?

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1 MS. DOBERNECK: Again, you know, my
2 comment was more to the scope of the proceedings
3 because those ILECs do offer different 2-wire loop
4 types. I mean, both ILECs do offer a 2-wire analog
5 loop and a 2-wire -- it can be nonloaded loop in
6 Qwest's cases or in a digital-capable loop in
7 Verizon's case, and I just wanted to make sure those
8 get priced. They are currently priced at the same
9 rate. And so I just wanted to make sure that that was
10 part of the scope of the proceeding, and I wasn't
11 re-raising the conditioning issue.

12 I guess I'm sort of struggling to
13 answer because I wasn't trying to get to merits but
14 getting to just simply the scope of the proceeding in
15 the way we looked at what Qwest had filed with its
16 recent tariff filing. I mean, it did propose in that
17 tariff filing rates for both loaded and nonloaded
18 loops that had nothing to do with what the
19 conditioning rate was.

20 JUDGE BERG: All right. Let me check
21 with you, Ms. McClellan. Do you have any comments in
22 that regard?

23 MS. McCLELLAN: No, I don't. I think as
24 a practical matter that both types of loops would be
25 addressed anyway. I don't think we're necessarily

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1 expanding the scope beyond what the Commission
2 originally would have intended, I think it's just a
3 matter of what loop is called what.

4 JUDGE BERG: Okay, thank you. With
5 regard to Commission staff, there seemed to be an
6 issue just with regard to Commission staff's raising
7 the possibility that staff may seek to address
8 unbundled switching rates on a deaveraged zone rate
9 basis. Does that sound familiar?

10 MS. SMITH: That's what's in our
11 comments, yes.

12 MS. TENNYSON: That was the original
13 proposal, I think.

14 MS. SMITH: That was our original
15 proposal, yes, that that is something that should be
16 considered in this docket.

17 JUDGE BERG: Is that something that's
18 been considered before?

19 MS. SMITH: I don't believe the
20 Commission has issued an order on that before, but the
21 Commission has considered it before. One moment while
22 I confer.

23 Yes, Your Honor. Staff is suggesting
24 that Commission look into the issue of deaveraged
25 rates for switching, and if there is a need to do

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1 that, that the Commission consider doing it. So we
2 believe it's something that the Commission should
3 look into, and if the Commission does feel the need
4 to order that as result of this docket, then the
5 Commission could make that decision as well, but we
6 believe it should be considered.

7 JUDGE BERG: And so by looking into it,
8 that would mean the Commission would direct the
9 parties, Qwest and Verizon, to file a proposal for
10 something, a structure that would be different than
11 the zone loop rates? Or would those same ratios
12 apply? I'm trying to figure out if the Commission
13 wanted to follow up, what does the Commission need to
14 do to make that happen.

15 MS. ANDERL: Obviously, Your Honor, I
16 think after Ms. Smith has a chance to answer, other
17 parties might wish to address the issue as well.

18 JUDGE BERG: I know Verizon has already
19 stated some opposition as well. I'll want to go
20 around and get comments.

21 MS. SMITH: Your Honor, Commission
22 staff -- if the Commission directs that this is an
23 issue that needs to be considered, staff is proposing
24 that staff go about the exercise of looking into that
25 as opposed to the Commission directing the parties to

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1 do that.

2 JUDGE BERG: All right. And so then if
3 I'm clear then, staff is proposing that the Commission
4 consider deaveraged rates for unbundled switching, and
5 if the Commission were to agree, then Commission staff
6 would file direct evidence of a proposal or a
7 methodology to do so.

8 MS. SMITH: That is correct.

9 JUDGE BERG: All right. Let me just
10 first turn to Verizon because Verizon did file
11 comments in opposition. And after we hear from
12 Ms. McClellan, then we'll hear from Ms. Anderl.

13 MS. McCLELLAN: Thank you, Your Honor.
14 When the Commission addressed deaveraging in the
15 original generic cost docket, Part 3, it asked the
16 parties what rates should be deaveraged. At the time,
17 the only thing in the record was an acknowledgment by
18 all parties that the only -- or that the only
19 unbundled network element that shows cost variances
20 between regions or zones would be loops. And on that
21 basis, the Commission had the parties only address
22 deaveraging for loops.

23 The Commission has never addressed the
24 question of whether or not it's appropriate to
25 deaverage switching because they have never found or

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1 had the parties produce any evidence on whether or
2 not there are cost variances in different parts of
3 the state. I think that question has to be answered
4 before anyone can propose a deaveraging proposal. It
5 is Verizon's position that the costs of switching do
6 not vary from, you know, different parts of the state
7 enough to warrant deaveraging.

8 And so we would oppose any -- we would
9 oppose skipping the first step to figure out whether
10 or not deaveraging is appropriate at all and going on
11 to having staff or anyone else actually propose a
12 deaveraged switching scheme.

13 JUDGE BERG: Wouldn't the determination
14 of whether there is a variance be the same exercise as
15 staff filing a proposed deaveraged zone rate
16 structure? In other words, how would you address one
17 without addressing the other?

18 MS. McCLELLAN: I guess I'm not sure how
19 to answer that. As I understand how it's done with
20 the loops, is that you take a look at your loop rates
21 to figure out if there are variances among rates in
22 different -- dependent on where they are in the state.
23 And my understanding is that it's a function of loop
24 links. With switching, it's -- I'm struggling with --
25 I don't see in my head how you could address what the

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1 proposal would be without first saying is there a
2 variance at all.

3 JUDGE BERG: But it seems like that's
4 just, either it's a gut check or it would require some
5 offer of proof that those rates do vary. But the only
6 kind of offer of proof I can think of would be to have
7 a deaveraged zone rate structure put on the table with
8 some kind of support.

9 What I'm trying to get at here,
10 Ms. McClellan, what I hear you saying is there is
11 some sort of threshold determination that would have
12 to be made.

13 MS. McCLELLAN: Right.

14 JUDGE BERG: And I'm just trying to
15 figure out whether the Commission can make that
16 threshold determination based on what it has before it
17 as a result of the parties' comments, and in reaching
18 that threshold just tell the parties the Commission
19 has this concern and wants to receive evidence, or
20 whether there is some other process that -- practical
21 process that would be initiated to get to that point.

22 And I know this may be as new for you
23 as it is for me, and so that's why I'm trying to push
24 the envelope, so to speak.

25 MS. McCLELLAN: Your Honor, I honestly

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1 don't know whether or not the Commission has enough
2 information based on the comments alone, or whether
3 direct evidence would be needed.

4 I don't know enough about the switching
5 costs and what is already in the record to figure out
6 whether there's enough there to determine whether
7 there's a variance. I just know that you have
8 Verizon's word that there isn't, and a consensus from
9 the prior cost docket that loops were the only
10 elements that should be deaveraged.

11 MS. SMITH: Your Honor, this is Shannon
12 Smith for Commission staff. Perhaps I can clarify.

13 If the Commission directs that that be
14 an issue -- that whether there should be deaveraged
15 switching costs be an issue, that will be considered
16 in this docket. The Commission staff's direct
17 testimony on that point would include testimony as to
18 whether or not there is a cost variance and there is
19 a need for deaveraged switching rates. So it would
20 address both the threshold question that Your Honor
21 and Ms. McClellan were discussing, and a proposal for
22 the deaveraged rates themselves.

23 So we would include both issues in
24 whatever presentation we made, should the Commission
25 direct that issue be considered in this docket.

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1 JUDGE BERG: And is it fair to presume
2 that staff would not be making a proposal if it did
3 not believe that there is a variance?

4 MS. SMITH: Staff would not be proposing
5 deaveraged switching rates if we didn't believe that
6 there was cost difference that would justify those
7 deaveraged rates.

8 JUDGE BERG: Ms. Anderl, you wanted to
9 comment?

10 MS. ANDERL: Yes, Your Honor. I guess
11 just one point of clarification for Ms. Smith then,
12 would it then also be fair to assume -- doing a lot of
13 assuming -- that staff would in its direct testimony
14 be presenting one or more cost models, at least a
15 switching cost model?

16 MS. SMITH: Let me confer.

17 MS. ANDERL: Because, Your Honor, I
18 guess my concern is a timing issue.

19 MS. McCLELLAN: That's my concern as
20 well. What I don't want to see happen is that Verizon
21 offers direct testimony that says there's not a cost
22 variance justifying deaveraging, and then we have to
23 come back in rebuttal and somehow not only rebut, if
24 staff believes that there is a variance, not only
25 rebut staff's beliefs, but then come up with a

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1 deaveraging proposal.

2 JUDGE BERG: I don't think that's a --
3 all right, I understand. I don't think it would be
4 appropriate to do that preemptive direct evidence
5 that -- it's either a party files direct evidence and
6 other parties respond, or I don't think the
7 Commission -- what I hear staff saying is that staff
8 would not be proposing or recommending that the
9 Commission direct any party who doesn't believe there
10 is a variance to propose an alternative schedule,
11 but -- or an alternative structure, but that's just
12 part of the nature of a decision.

13 Sounds like that's more of a strategic
14 decision for parties to make in terms of how they
15 want to respond in any given situation. But let me
16 go back to Ms. Smith for a moment, and then take off
17 from there.

18 MS. SMITH: In answer to Ms. Anderl's
19 question, the Commission staff would be proposing --
20 if the Commission were to propose rates, they would be
21 produced by a cost model. And where we are in that
22 modeling process, we're not far along, so I can't give
23 you any more information than that. But we will be
24 producing rates from a cost model.

25 MS. ANDERL: Thank you for that

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1 clarification. Because it's my concern, Your Honor,
2 is when we went forward, you know, charged ahead and
3 deaveraged loops that was because the determination
4 that there were geographically significant differences
5 in costs had already been made. And that had been
6 made by the FCC. And there had been a mandate by the
7 FCC that commissions had to go forward and deaverage
8 loops into geographic zones reflecting the cost
9 differences. And so we didn't have to clear that
10 threshold question, but here we do because there is no
11 FCC mandate to deaverage switching.

12 I think it's fair to say that some of
13 us in the room and on the bridge don't believe that
14 there are geographically significant differences in
15 switching costs, and we'd probably continue to take
16 that position throughout the hearing.

17 However, if staff's testimony
18 simultaneously contained a switching cost model of
19 production of costs that showed, in staff's view, a
20 geographically significant difference in costs and a
21 proposal for switching costs to deaveraging, I don't
22 think that that would be inappropriate.

23 JUDGE BERG: Mr. Kopta?

24 MR. KOPTA: I'm glad to hear that
25 conclusion because that was basically what I was going

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1 to say. I think that, if my understanding is correct,
2 that the purpose of this new docket was to address the
3 issues that the Commission -- or the rates that the
4 Commission had established in the first cost docket;
5 specifically, those that would be needed to provision
6 UNE-P. Switching is one of those elements, I think
7 unquestionably it's one of those elements.

8 And I don't know that it's appropriate
9 for anyone to limit what someone may want to propose
10 with respect to a rate for or cost and a rate for
11 that particular element if the Commission is going to
12 reexamine it. Whether it's geographic deaveraging,
13 whether it's flat-rating, whether it's something
14 else, then I think that parties ought to be free to
15 propose whatever cost estimates and rate structure
16 that they believe is appropriate for that particular
17 element. And at this stage of the game, all we're
18 trying to do is identify general issues, not preclude
19 specific types of sub-issues within the more general
20 issue of a particular element.

21 JUDGE BERG: I know I find myself still
22 trying to deal with the scope of the case. And what I
23 want to avoid is getting any deeper into the case
24 where parties are filing direct evidence and then
25 having motions to strike or other similar types of

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1 contested issues about what is or what isn't within
2 the scope of the case.

3 And I know that we've -- part of the
4 Commission has been sort of driving this process
5 forward towards more specificity to better define the
6 overall scope of the proceeding. But your comment
7 that you can only go so far in that regard is well
8 taken.

9 Any other comments from other parties?
10 All right. We'll move on. Ms. Singer Nelson, in
11 looking at WorldCom's list of points in the
12 April 8th, supplemented by the July 10th
13 correspondence, when WorldCom refers to recurring and
14 nonrecurring loop and switching costs in a generic
15 sense, are those all more or less then, do those
16 rates then appear in those several sections from the
17 SGAT that you referred to?

18 MS. SINGER NELSON: Yes. I think the
19 sections that were outlined most recently, I think in
20 the letter that was sent out yesterday is more
21 comprehensive. But the ones -- the nonrecurring and
22 recurring rates for the loop and switching is included
23 in the information that we provided yesterday. I
24 added some rate elements, some more specific rate
25 elements that aren't necessarily included in the

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1 categories.

2 I used Qwest SGAT Exhibit A as a guide
3 and, in looking at the categories for loop and
4 switching, there were some UNE-P rate elements that
5 are not within that specific section. So I added
6 those specific sections as well so it could be as
7 specific as I needed to be in order to identify all
8 the rate elements that we thought were important for
9 the UNE-P product.

10 JUDGE BERG: So when you refer to shared
11 transport and UNE combinations, are both of those in
12 the context of UNE-P?

13 MS. SINGER NELSON: Yes.

14 JUDGE BERG: And would you explain the
15 daily record usage file?

16 MS. SINGER NELSON: Yes. That rate
17 element is also something that is important in the
18 service that we provide, in costing the service that
19 we end up providing to the end user, so the service
20 that we get from Qwest when we're providing local
21 service through UNE-Ps.

22 JUDGE BERG: So is that more of a loop
23 related cost or a switching cost element?

24 MS. SINGER NELSON: That is a rate
25 element that relates to one of the directory listings.

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1 Let me look at them specifically, just give me a
2 minute. That was 12.3, I think.

3 JUDGE BERG: Yes.

4 MS. SINGER NELSON: Oh, it's actually
5 part of our communications with Qwest through the OSS
6 system.

7 JUDGE BERG: All right. Any comments,
8 Ms. Anderl?

9 MS. ANDERL: A couple, Your Honor. I
10 think I understand why all of these rates are listed,
11 and I don't think I have a problem with any of them
12 except that 9.23 is the section in the SGAT price
13 list, Exhibit A, that contains all of the nonrecurring
14 charges for UNE combinations, both conversions of
15 existing service to a UNE combination and
16 establishment of new.

17 So it's kind of a shorthand, it's
18 "UNE-P new" and "UNE-P existing," and I thought that
19 between Parts B and D we had covered all of those.
20 And so I would consider those to be pretty recently
21 developed nonrecurring POPs and would question their
22 inclusion again in the new docket. But that's the
23 only issue that I have.

24 JUDGE BERG: Thank you.

25 MS. SINGER NELSON: Judge, to the extent

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1 that those are not completed in Parts D and B and some
2 of those are continued into Part E, we would just ask
3 that those rate elements be finalized. So if we do
4 that, if a decision is made to combine the two
5 dockets, then that's fine, but I think those are just
6 rate elements that we've thought we needed to have
7 finalized.

8 JUDGE BERG: All right. And from that
9 perspective, you would be looking -- they could be
10 finalized in Part E or in the new cost docket?

11 MS. SINGER NELSON: Yes.

12 JUDGE BERG: But you think that it's
13 more closely related to the Commission's review of
14 loop and switching rates in the new cost docket?

15 MS. SINGER NELSON: Right. That it is
16 related to that. I just wanted to be comprehensive in
17 my listing of rate elements. So if we finalize it in
18 Part E, that's fine; if we finalize it in the new
19 docket, that's fine.

20 JUDGE BERG: All right. Mr. Butler, the
21 two additional items that WorldCom refers to -- excuse
22 me, that TRACER refers to in addition to the WorldCom
23 list are subloops and unbundled dark fiber. Is that
24 correct?

25 MR. BUTLER: Yes, that's correct.

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1 order was requiring the filing of nonrecurring cost
2 studies supported by time and motion studies at the
3 point in time that an incumbent is also seeking
4 authorization for additional OSS recovery, that the
5 perspective was that where requests are made for
6 additional OSS cost recovery, the Commission would
7 anticipate that there would also be an increased
8 efficiency that should be accounted for in terms of
9 an adjustment based upon a time and motion study.

10 But again, I'm just working off my
11 recollection, and so I'm looking for whether or not
12 that resonates with you at all or whether staff has
13 some other understanding.

14 MS. ANDERL: Your Honor, before we do
15 that, staff's is a letter I did not receive, so I'm a
16 little bit at sea here in terms of understanding what
17 the reference was.

18 JUDGE BERG: All right. Why don't we
19 take a short break and pick up again at 11:30, and
20 I'll make a copy of that for you right now,
21 Ms. Anderl.

22 MS. ANDERL: Thank you. Actually, I've
23 got Mr. ffitch's.

24 JUDGE BERG: Let's be off the record for
25 a moment.

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1 (Discussion off the record.)

2 JUDGE BERG: I think we're ready to be
3 back on the record. Ms. Anderl, have you had a chance
4 to review staff's letter dated July 10th regarding
5 Part E?

6 MS. ANDERL: Yes. Thank you.

7 MS. TENNYSON: That was e-mailed to all
8 parties yesterday.

9 MS. ANDERL: I don't know what happened.
10 I printed everybody's I got.

11 MS. TENNYSON: It shows up on our list,
12 our copy of the e-mail. You were e-mailed and it
13 didn't come back, as far as I know, so...

14 MS. ANDERL: That's fine.

15 MS. TENNYSON: Judge Berg, I think your
16 recollection of the part of the order that discusses
17 this is correct, that it was related to the OSS costs
18 and interrelationship to OSS, then the nonrecurring
19 rates, nonrecurring costs.

20 And what staff just wanted to raise for
21 discussion with the other parties is what do we
22 anticipate the impact of updated OSS transition costs
23 is going to be. Is it going to change all of the
24 nonrecurring costs, and should we sort of start over
25 on that part as opposed to briefing it in Part D, or

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1 should we just proceed on as we have?

2 We have had lots of discussion of
3 nonrecurring costs in Part D, we have a briefing
4 schedule with a brief due on the this 19th of this
5 month. Should we continue with all of those elements
6 in the proof that we have there, the evidence we have
7 there, or do we want to try to abbreviate our Part D
8 briefs and kick some of those issues over into
9 Part E.

10 JUDGE BERG: From my perspective, this
11 is part of a problem that I have heard from other
12 parties at different times when you have a --
13 simultaneously you would have, in various stages of
14 production, a Part B proceeding, a Part D proceeding,
15 a Part E proceeding, and a new cost proceeding. But
16 and even though this isn't -- there was no notice of
17 this being a Part D prehearing conference, or a
18 post-hearing conference as the case may be, I think we
19 had a record in Part D, and I was given a mandate to
20 produce an initial order on all the issues. And I
21 don't know how we could, having produced a record,
22 decide to disregard it, and start over again in some
23 other part.

24 I think, again, and I'm certainly
25 willing to hear other discussion on this, but my

1 reaction is that if we had had the ability to deal
2 with this beforehand, we may very well have carried
3 some issues over. And it may be that when Part D is
4 over, the parties will be making some arguments in
5 Part D based on what was in Part B in terms of how
6 the Commission should regard those nonrecurring cost
7 studies under consideration.

8 MS. TENNYSON: I believe the reason that
9 staff wanted to raise this was because we were -- this
10 came out of the Part B order. And that had been an
11 issue, it was pending and was discussed in some detail
12 in the course of the Part D proceedings of time and
13 motion studies versus how do we -- the SME estimates,
14 how do we deal with estimating these costs, how do we
15 allocate them.

16 And since it was only part of -- we
17 only received the Part B order recently, I think
18 after our original briefing date for Part D, so...

19 MS. ANDERL: Yes, Your Honor. We have
20 serious concerns with the issue of time and motion
21 studies, and frankly have not yet worked through how
22 we address that question out of the Part B order.
23 Especially since it was my understanding that the
24 issue of time and notion studies was a lot more teed
25 up in Part D as in dog than it was B as in boy. We

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1 didn't ask for reconsideration of that requirement for
2 various reasons.

3 But let me just, you know, fire a shot
4 across the bow and tell people that our nonrecurrent
5 cost studies are a thousand pages long, and that
6 doesn't even cover all the elements. And I don't
7 know how good of an idea it is to re-look at all the
8 nonrecurring costs, especially since the compliance
9 tariffs that implement a lot of the nonrecurring
10 costs set up for Part B aren't even effective yet.

11 JUDGE BERG: Anybody else want to
12 comment?

13 MS. McCLELLAN: Yes. This is from
14 Verizon, I guess this is not as big an issue for us
15 with Part D, of course, but just as a practical
16 matter, the way our OSS costs are calculated their
17 past costs that had already been implemented and are
18 already, to the extent they can be reflected in NRC
19 studies that are filed after those OSS modifications
20 were made. So as a practical matter for us for
21 Part B, the multiplexing NRC that we filed represents
22 whatever mechanization resulted from OSS modifications
23 that were already made.

24 So I think the way that we read the
25 Part B order was to say in the future as you file --

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1 as you make OSS modifications that would affect your
2 work times, we would expect that when you are seeking
3 recovery for those that you would also be looking at
4 your nonrecurring costs to figure out if you need to
5 update them to reflect that mechanization. That's a
6 situation we haven't gotten to yet, and obviously we
7 take issue with and have filed a petition for
8 reconsideration on whether or not the appropriate way
9 to calculate costs are time and motion studies. But
10 from our perspective this is sort of a future issue
11 that doesn't have a practical implication yet.

12 JUDGE BERG: We'll address this point in
13 the prehearing conference order, but I think in the
14 meantime it would be prudent for parties to just
15 proceed as if they expected all of the Part D issues
16 to be addressed in Part D.

17 MS. TENNYSON: Certainly.

18 JUDGE BERG: And keep in mind that
19 there's going to be an initial order that's going to
20 be issued, and this may be something that could also
21 be raised in a petition for administrative review. It
22 may be as appropriate there as anywhere, but I'll try
23 and provide some clarification on that in short order.

24 I did like the suggestion that we would
25 refer to Part B as "Part Boy" and D as "Part Dog."

1 Part E could be "Part Eternal."

2 Let me do -- the two things I want to
3 accomplish in the remaining time is I want to check
4 off with parties the issues that are to be addressed
5 in Part E, and then to have some discussion regarding
6 the Verizon motion to suspend schedule in the new
7 cost proceeding.

8 When I noticed the prehearing
9 conference for Part E, I actually had some ambition
10 of setting up a hearing schedule, a schedule for
11 filing evidence and for conducting a hearing. But it
12 sounds like there are too many balls up in the air to
13 do that. And before I go any further, I thought I'd
14 check with the other parties to see if they agree.

15 Mr. Kopta, I see your head nodding.

16 MR. KOPTA: Yes. I believe that we
17 would agree because I think one of the things we have
18 discussed here is the scope of the issues in the new
19 cost docket. And to the extent that some of those, of
20 the issues that perhaps had been originally slated for
21 Part E would go into the new cost docket, and that
22 would impact what kind of a schedule we could put
23 together for Part E.

24 I mean, if it's just going to be, as
25 Verizon has proposed, dealing with OSS and some DSL

1 issues, then you may have one schedule, and if it's
2 going to be everything that the Commission identified
3 in Part B, then it might be a different schedule.

4 So I think we could set a preliminary
5 schedule to the extent that we need to modify the
6 existing schedule in the new cost docket, but I think
7 that until the Commission decides what issues are
8 going to go into which basket, that we might be
9 better served by waiting to establish a schedule for
10 Part E until that time.

11 JUDGE BERG: It sounds like let's go
12 ahead and we'll bump up some discussion on the motion
13 to suspend schedule. But it sounds like what you're
14 saying, Mr. Kopta, is that there would be two issues
15 to address. The first is getting some guidance from
16 the Commission as to whether or not some Part E issues
17 were going to merge into the new cost docket
18 proceeding. But then there's also the issue of the
19 pending petitions for reconsideration in Part B.

20 Is it also your position that before
21 Part E schedule can be established that there needs
22 to be an order on reconsideration in Part B?

23 MR. KOPTA: I think that would be
24 beneficial because, certainly, we have asked for
25 rehearing on some issues, and to the extent the

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1 Commission permits that, I would assume that it would
2 be as part of Part E. And as opposed to a Part F or a
3 Part B, sub little i, or however you want to
4 denominate it. But I guess the bottom line is at this
5 point I don't think anyone is secure enough to know
6 what all is going to be addressed in Part E to really
7 establish a meaningful schedule at this point.

8 JUDGE BERG: Ms. Tennyson?

9 MS. TENNYSON: I would concur with
10 Mr. Kopta's comments.

11 JUDGE BERG: Ms. Anderl?

12 MS. ANDERL: I have nothing to add.

13 JUDGE BERG: Is that like concurring?

14 MS. ANDERL: Yes. It's consistent with
15 what we've been thinking, along the lines of why we
16 suggested just kind of potentially make it one big
17 docket.

18 Because, administratively, when you
19 have got a Part E, and an 023003 docket proceeding
20 kind of next to each other or staggered by not very
21 much, every Friday on your calendar you're either
22 serving something or getting something. And it makes
23 it more -- you know, from an administrative
24 standpoint, it makes it more difficult to manage the
25 case. And substantively maybe makes it more

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1 difficult to keep track of everything in your mind in
2 terms of what's in each docket and where you're doing
3 discovery, and keep the issues all segregated.

4 But again, I guess it's probably too
5 soon to even recommend a full consolidation until we
6 understand what the Commission's view of scoping is
7 on the new generic proceeding.

8 JUDGE BERG: All right. Anybody on the
9 bridge line want to comment?

10 MS. McCLELLAN: This is Ms. McClellan.
11 I would just add that we've outlined that we believe
12 that we can't do a schedule until we get on order on
13 reconsideration.

14 But I can say that if the Commission
15 were to want to go forward in Part E on OSS alone,
16 Verizon would recommend that it use the current
17 schedule for the new docket as the OSS phase being
18 scheduled. Because we believe that we could, with a
19 slight modification, at direct evidence just filed on
20 August 30th, we believe we could go forward with OSS
21 on that schedule as we've already got those dates
22 blocked off.

23 JUDGE BERG: So what you would be
24 looking for is to take the existing schedule in the
25 new docket and convert it to Part E, OSS?

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1 MS. McCLELLAN: Yes.

2 JUDGE BERG: All right.

3 MS. McCLELLAN: We would like to push
4 the direct evidence back. And if we're only looking
5 at an OSS study, I don't think we need as much time
6 built in between the direct case and responses. So we
7 would ask to push the direct evidence date to
8 September 6th but keep the rest of that schedule.

9 JUDGE BERG: And that would be just
10 dealing with updated OSS costs for both Qwest and
11 Verizon?

12 MS. McCLELLAN: Correct.

13 JUDGE BERG: And then we probably
14 wouldn't need two weeks of hearings.

15 MS. McCLELLAN: Right.

16 JUDGE BERG: Probably one week of
17 hearing?

18 MS. McCLELLAN: Right.

19 JUDGE BERG: Anybody else want to
20 comment on that possibility?

21 MS. TENNYSON: Your Honor, Mary
22 Tennyson. Since I don't have copy of the schedule for
23 the new cost docket that Ms. McClellan is referring
24 to, I don't know how those dates would affect staff
25 because we have different staff working on the two

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1 parts.

2 MS. McCLELLAN: I can give you the
3 dates, and I understand you still need to check your
4 calendars. But just so the record is clear under our
5 proposal, direct cases would be filed on
6 September 6th, responsive cases on October 11th, the
7 rebuttal case on November 8th, prehearing conference
8 would be held on November 21st, and then hearings
9 would begin on December 2nd.

10 MS. TENNYSON: Thank you for that.
11 Yeah, I would need to check with the staff because we
12 have also different staff working with the OSS matters
13 than might be working on the cost docket.

14 JUDGE BERG: All right. And then let's
15 go ahead then and take a look at the Verizon motion to
16 suspend schedule in 023003. So it appears then, that
17 the motion to suspend schedule would also be based on
18 two grounds. Number one, the parties would need --
19 Verizon would need to have a Commission order
20 regarding the scoping of elements under review in
21 addition to a Part B order on reconsideration.

22 Would that be fair, Ms. McClellan?

23 MS. McCLELLAN: Yes.

24 JUDGE BERG: I'll note that Commission
25 staff agreed in principle to a suspension of the

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1 procedural schedule but proposed an alternative plan
2 for reestablishing critical dates that also was
3 somewhat dependent upon the establishment of a date
4 for a Part B reconsideration clarification order. And
5 there was a hypothetical date proposed, that being
6 August the 13th, being a six-week extension from
7 the -- I had this all figured out.

8 MS. SMITH: Your Honor, perhaps I can
9 help just a bit if I may.

10 JUDGE BERG: Okay.

11 MS. SMITH: At first, I wouldn't
12 necessarily say that the Commission staff agrees in
13 principle to a suspension of the procedural schedule.
14 What I believe we're saying is that -- and maybe we
15 did say that -- but I guess just to clarify, we don't
16 object to that.

17 Our concern with Verizon's proposal
18 wasn't so much in the request to suspend the schedule
19 but the open-endedness of that request. And
20 Commission staff is asking that if a reconsideration
21 order is important in terms of setting the schedule
22 in Part B is important in terms of setting a schedule
23 for the new cost docket, that perhaps we could get a
24 date certain for the reconsideration order and build
25 a schedule for the new docket that takes that into

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1 consideration.

2 So we're not asking the Commission to
3 tee off a schedule off an unknown date. You know,
4 we're asking for date certain to get a date certain
5 and a certain schedule so everybody knows what the
6 schedule will be instead of waiting until an order
7 comes out and then waiting till Verizon notifies the
8 Commission about how much time it's going to need
9 after that point in time. We're concerned with the
10 open-endedness of the motion to suspend.

11 JUDGE BERG: Would it be consistent with
12 staff's position to say that if the Commission
13 establishes a date for entry of a Part B
14 reconsideration clarification order whenever that date
15 is that that would define the extension period?

16 MS. SMITH: I don't believe so, Your
17 Honor. I think what we're looking for is a date, not
18 a whatever-the-date-is. We are looking for the date.
19 And unfortunately I don't have a copy of my comments
20 in front of me, I loaned them to our court reporter so
21 she could get the caption, so I'm not exactly sure.
22 But I believe we proposed a date for the order on
23 reconsideration, and then we proposed a procedural
24 schedule as well.

25 JUDGE BERG: Yes.

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1 MS. SMITH: So that is our proposal.

2 JUDGE BERG: So I can guarantee you that
3 you would not have an order on the date proposed. And
4 without going into the details of the Commissioners'
5 schedule, let me posit it to you in a slightly
6 different way. Would staff's position change if the
7 date for a reconsideration order was more like
8 September 20th rather than August the 13th?

9 MS. SMITH: Your Honor, I guess perhaps
10 it would. Perhaps that would be workable to maybe
11 keep this at a six-week time frame from the date of
12 the reconsideration order. What concerns staff is the
13 fact that a reconsideration order is an unknown date,
14 and we would like some certainty. So if the
15 Commission could say we will have the reconsideration
16 order on August 13th, that would be fine. We have
17 proposed a schedule teeing off of that date.

18 If the Commission were to say we can
19 have a reconsideration order by September 20th, this
20 schedule then could be kicked out, I guess, another
21 five weeks or whatever that is, whatever the duration
22 of time is from August 13th to September 20th.

23 I believe that what we are asking in
24 our comments is that the Commission have an idea of
25 when that reconsideration order will come out. And

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1 it's hard to agree in principle with Verizon that,
2 well, once this order comes out, then we can turn
3 around and decide what kind of schedule we're going
4 to have when there really is no deadline for that
5 order.

6 MS. McCLELLAN: Your Honor, this is
7 Ms. McClellan --

8 JUDGE BERG: Wait, Ms. McClellan. I
9 need to finish up here because I'm still not getting
10 sort of the information that I need.

11 MS. McCLELLAN: I just wanted to let you
12 all know, I have not received staff's comments. I
13 don't know what their proposed schedule is it. I just
14 checked e-mail, and I have not seen their proposal.

15 JUDGE BERG: Their proposal is
16 essentially that the Commission establish a date for a
17 reconsideration order in Part B, and that direct
18 testimony be due six weeks later.

19 MS. McCLELLAN: Thank you.

20 JUDGE BERG: All right. So here's my
21 concern, Ms. Smith, and forgive me if I'm being dense.
22 I'm trying to figure out whether staff could live with
23 an extension, an overall extension of the schedule out
24 beyond hearings to begin in January 2003, taking a
25 hypothetical that a reconsideration order would not be

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1 out in the middle of August but would be out in the
2 end of September.

3 MS. SMITH: Your Honor, I of course
4 don't have staff here and I don't know how staff is
5 scheduled in other matters that are coming up. Taking
6 that into consideration, I believe the staff could
7 live with that.

8 What staff is concerned about is having
9 a procedural order that says direct testimony will be
10 due six weeks after the order on reconsideration is
11 filed, and perhaps the reconsideration order is
12 issued, say, in April 2003. And then we are sort of
13 stuck in a situation where we don't know when
14 hearings may begin or when testimony may have to be
15 filed. We're sort of in I think a situation where we
16 just -- we can't plan for the case.

17 If it looks as though the
18 reconsideration order will be issued in September,
19 that is relatively close to the August date that was
20 hypothetically provided in the comments, then I
21 believe that we could live with hearing dates that
22 begin sometime in February.

23 JUDGE BERG: Okay, thank you.

24 MS. SMITH: If that helps, that's our
25 position.

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1 JUDGE BERG: It would be some kind of
2 extension that would be across the board.

3 MS. SMITH: Yes, Your Honor.

4 JUDGE BERG: So let me go ahead and hear
5 from other parties with regards to the Verizon motion
6 to suspend schedule. Let me start with Mr. Kopta and
7 then go to Ms. Anderl.

8 MR. KOPTA: Thank you, Your Honor. We
9 are pretty much in the same position as Commission
10 staff. We don't oppose a continuance of the schedule,
11 but we don't -- we definitely oppose any idea of
12 having it be to some indefinite time in the future.

13 I mean, the whole reason that the
14 Commission initiated this docket was to address stale
15 rates and the concern that these may be inhibiting
16 competition. And the longer that persists -- I mean,
17 this docket opened around the beginning of this year
18 and here we are in July and we are still just talking
19 about schedule. If we were talking about not having
20 hearings on this until a year from now without an
21 order will the end of next year, that we're looking
22 at a date that's pretty far off in the future. And
23 so I'm not saying that that would happen, and I'm not
24 saying that the Commission would be responsible for
25 that. What I am saying is that it doesn't make sense

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1 to have an indefinite schedule.

2 And one of the things that Verizon is
3 basing its motion on is the idea that there needs to
4 be a Part B reconsideration order before we can
5 proceed with the new cost docket, and we're not
6 willing to accept that premise. Certainly it may
7 depend to the extent that the Commission rejuggles
8 issues in terms of what's going to be decided in the
9 new cost docket and what's going to stay in the
10 existing cost docket.

11 But if the Commission were to determine
12 that the scope of the issues was, as it pretty much
13 initially was set up to be, which was analog loops,
14 switchings, shared transport, sort of the UNE-P
15 components, then there's very little from the Part B
16 order that's going to impact that and certainly not
17 enough to hold up the entire new cost docket until
18 the Commission issues an order on reconsideration.

19 So what we think the Commission ought
20 to do at this point is go ahead and create a schedule
21 that pushes things back approximately six weeks so
22 that we have hearings that are scheduled sometime in
23 late January or early February. And to the extent
24 that parties may feel a need to modify that schedule,
25 that they could come back at such time as the

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1 Commission issues its Part B reconsideration order
2 and ask for that schedule to be modified as opposed
3 to simply waiting until some indefinite time to
4 establish a schedule.

5 JUDGE BERG: I need to make two points.
6 Number one, we have a schedule. We have a schedule
7 for hearing in this case, and that schedule was set at
8 a point in time when the Part B order was pending.
9 And at that time, there was no issue raised that we
10 can't have a hearing in 2003 -- 3003 in the new cost
11 docket until Part B was done. So we have a schedule.

12 And, you know, I understand that now
13 we're looking at a different -- a slightly different
14 issue, that we also have a Part E proceeding and
15 there may be some differences among parties about the
16 scope of issues that should be addressed in 3003.
17 But we have a schedule. And what we're dealing with
18 now is, certainly if the issues change in 3003 beyond
19 what the Commission originally envisioned, there
20 would certainly be some validity to providing -- to
21 revising the schedule.

22 Likewise, Verizon has made the argument
23 that, in terms of timing, that it's the same
24 personnel that it has trying to work on compliance
25 with Part B are also the personnel that it relies

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1 upon to prepare its direct case, and so it has a
2 resource problem that didn't exist before.

3 And the Commission likewise is
4 interested in trying to either avoid future conflicts
5 or gain efficiencies by combining, considering the
6 combination of Part E with 3003 to what makes sense.
7 But we have a schedule.

8 And I want to make it clear that when
9 you say an extension of six weeks, the proposal that
10 staff was putting on was that the direct evidence
11 would follow an order on reconsideration by six weeks
12 whenever that might be.

13 MS. SMITH: Your Honor, I think our
14 comments may not have been as clear on that as they
15 could have been. If the Commission decides that we
16 can't schedule -- agrees with Verizon and decides that
17 we want can't schedule this case without the Part B
18 order on reconsideration coming out, then the trigger
19 would be -- then the proposal would follow from that.

20 Otherwise, I think if that's not the
21 case, if we can still proceed with this, then -- and,
22 you know, there still is a need to suspend the
23 schedule to decide what the issues might be, you
24 know, we would look to perhaps a four- to six-week
25 extension from the current schedule without working

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1 in the reconsideration order.

2 JUDGE BERG: All right. And so,
3 Mr. Kopta, when you started talking about a six-week
4 extension, I got a little bit concerned because I
5 wasn't sure whether when you were talking about a
6 January or February hearing date if your proposal is
7 either conditioned similar to staff's, or if you're
8 actually supporting a continuance but for a certain
9 time after the Part B order.

10 It may be that the Part B order, the
11 defined date that the Commission sets, will be so
12 that the hearing is not January or February, it might
13 be March or April. So I just, you know, I want to
14 be -- I don't want to create any misunderstandings
15 here --

16 MR. KOPTA: Nor do I, obviously.

17 JUDGE BERG: -- about where we measure
18 an extension of time from.

19 MR. KOPTA: And let me back up and sort
20 of make sure that I'm clear on what our position is.

21 We're fine with the schedule the way
22 that it is right now. What I'm saying is that we
23 don't oppose an extension because we understand that
24 there are some new issues, that we need to define
25 what the issues are going to be in the new docket,

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1 and that obviously is going to impact what people do
2 on direct. And so it might benefit all parties to
3 have a little bit more time to establish their direct
4 testimony. And we think four to six weeks, as staff
5 had proposed, would be a reasonable time to
6 accommodate those kinds of additional concerns.

7 JUDGE BERG: And that sounds like a
8 perspective that is irrespective to Part B, that's
9 just based upon getting further definition of the
10 issues within the 3003, the new cost case.

11 MR. KOPTA: That's exactly right.
12 That's what our position is. If you think it would be
13 beneficial to the parties to firmly establish what the
14 issues are so that everybody can know what those are
15 in enough time to conduct discovery and to prepare
16 their direct case, then we think an extension of four
17 to six weeks would be appropriate.

18 JUDGE BERG: Okay.

19 MR. KOPTA: If the Commission were to
20 decide that really we can't proceed with the new cost
21 docket until there's been a determination on the
22 Part B reconsideration petitions, then we also agree
23 with staff that the triggering time should come from
24 the date of the order on reconsideration, and it
25 should be approximately six weeks after that date.

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1 That still is awfully indefinite, and
2 our preference would be to go ahead and establish a
3 schedule right now that works in a delay of six
4 weeks, let's say, having direct testimony filed in
5 first week of the October with hearings sometime in
6 late January or February. And if there is a need to
7 revisit that schedule, we can do that, and that gives
8 parties enough time to start preparing now. Because
9 we know that there are going to be some issues, I
10 think it's unquestioned that there are some issues
11 that are going to be in the new cost docket, so there
12 is some preparation that can be done now. It's just
13 a question of whether we're going to add some more
14 issues on top of that. So I don't think that parties
15 can't start getting ready right now.

16 So I think that what we want to see is
17 a schedule that allows parties to adequately prepare,
18 but at the same time make sure that we keep on a
19 track that's going to get us some resolution of these
20 issues expeditiously, as I think the Commission
21 contemplated when it opened the docket.

22 JUDGE BERG: I understand, thank you.

23 Ms. Anderl?

24 DR. GABLE: Judge Berg. I just want to
25 let you know that I am dropping off the line.

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1 JUDGE BERG: All right, thank you,
2 Dr. Gable. Ms. Anderl?

3 MS. ANDERL: Thank you, Your Honor. As
4 Qwest stated in its letter, we support Verizon's
5 request for suspension of the schedule and believe
6 that it is a reasonable request under the
7 circumstances presented. I can only take Verizon's
8 word for how much work they have to do and how
9 complicated it is to comport their model to whatever
10 is ordered. And we don't have those same issues, but
11 we have in the past, and we understand where Verizon
12 is now.

13 We do have an issue that independently
14 supports a continuance, and we mentioned that in our
15 letter as well. As I was discussing Verizon's
16 request to suspend schedule with the Qwest cost
17 folks, they advised me that if we did have additional
18 time, we would be able to complete work on and file a
19 new switching cost model in the new generic docket,
20 and we would like to do that. And so we would need
21 four to six weeks on the existing schedule, at least,
22 to do that. If the Verizon suspension of the
23 schedule takes the schedule out further than that, we
24 don't have a significant concern with that either,
25 though.

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1 JUDGE BERG: All right. Mr. ffitch, do
2 you have any perspective?

3 MR. FFITCH: We just concur with the
4 comments of staff, Your Honor.

5 JUDGE BERG: All right. Ms. McClellan,
6 before I take your comments and responses, let me go
7 ahead and check with other counsel to see if they have
8 any comments. Mr. Butler?

9 MR. BUTLER: I have nothing to add.

10 JUDGE BERG: Ms. Singer Nelson?

11 MS. SINGER NELSON: Judge, I do have
12 just a few things to add. I would like to see the
13 case go forward, the new cost case go forward on the
14 schedule that we've already set for the rate elements
15 that we've identified relating to UNE-P. We moved for
16 this several months ago, almost a year ago, and the
17 Commission agreed that these rate elements needed to
18 be addressed, and we are now in the residential local
19 market. We want to expand our presence in the state
20 of Washington, and we would like to see some rates set
21 sooner rather than later to get that going.

22 So I would like to just urge the
23 Commission to continue on the schedule that it set
24 out, and, as you said earlier, when the schedule was
25 initially set up, no one said anything about this

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1 schedule being dependent upon the Commission issuing
2 orders in the other phases of 3013. So I would like
3 to see the case go forward as originally envisioned
4 by the Commission.

5 JUDGE BERG: Ms. Doberneck?

6 MS. DOBERNECK: I have nothing else to
7 add.

8 JUDGE BERG: Mr. Frame?

9 MR. FRAME: Nothing to add.

10 JUDGE BERG: Mr. Posner?

11 MR. POSNER: Nothing, Judge.

12 JUDGE BERG: All right. Ms. McClellan?

13 MS. McCLELLAN: Thank you, Your Honor.

14 The comments of all of the parties except for Qwest
15 misunderstand the fundamental problem that Verizon
16 has, and it is this. Verizon was ready to go with
17 preparing its direct case to file ICM to address the
18 new cost elements to be addressed.

19 The Commission's Part B order requires
20 significant changes to ICM. What the Commission's
21 order did was to make -- basically order Verizon to
22 reconfigure the model to develop specific outputs
23 that, in our opinion, parties in the Commission
24 assumed were inputs to the model but they are not.
25 And that's why we filed our petition for

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1 reconsideration. Because the way the model is
2 structured, some of the changes ordered by the
3 Commission cannot be made without completely
4 rebuilding the model, which will take well beyond
5 nine months, which is why we sought reconsideration.

6 If the Commission grants
7 reconsideration and changes its mind and doesn't
8 require Verizon to make those changes to the ICM, we
9 could continue to file in September and meet the
10 current schedule. If the Commission says no, we
11 meant what we said and we want you to change your
12 model to fit the order, that is something that has to
13 be done not only in our compliance filings but has to
14 be done in the new docket.

15 If you set a schedule that says six
16 weeks after a motion for reconsideration comes out
17 Verizon has to file its direct case, or that we have
18 to file a direct case in September, and if in that
19 order for reconsideration the Commission has said
20 your cost model must comport with 32nd supplemental
21 order the way that we issued it, you're effectively
22 saying to Verizon, you cannot file a cost model under
23 this new cost docket because we can't make those
24 changes in anything less -- we don't know how long
25 it's going to take to make the changes. We haven't

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1 figured out to do it yet. But we know it's going to
2 take nine months, and it certainly can't be done in
3 just six weeks.

4 JUDGE BERG: So you're saying the
5 proceeding would be on ice for nine months, minimum?

6 MS. McCLELLAN: That's the way it's
7 looking right now.

8 JUDGE BERG: Sounds looks Verizon needs
9 to hire a few people.

10 MS. McCLELLAN: Well, Your Honor, I
11 mean, where we are is -- the changes ordered by the
12 Commission fundamentally changed the model.

13 JUDGE BERG: Sure.

14 MS. McCLELLAN: And it takes time to
15 build a model to being with, and normally these
16 proceedings are scheduled so that the parties have the
17 time to build their model. And another alternative,
18 Verizon was in the process of trying to build a
19 completely brand new model that didn't have to be put
20 on hold. I mean, models can't be built overnight.

21 JUDGE BERG: I understand, and I
22 apologize for the sort of flip comment. It just seems
23 extraordinary, and -- but the point is, it's still
24 understood that whatever amount of time it takes, it
25 takes more time than the schedule allows.

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1 MS. McCLELLAN: Right.

2 JUDGE BERG: And I think I'll try and
3 keep it on that basis. Is there anything else you
4 want to add, Ms. McClellan?

5 MS. McCLELLAN: No.

6 JUDGE BERG: Anything further from other
7 parties? Mr. Kopta.

8 MR. KOPTA: This is just a
9 off-the-top-of-my-head idea, that taking Verizon at
10 their word that it would be take a significant amount
11 of time to revise their cost model, one thing that the
12 Commission might want to consider is having separate
13 proceedings for Qwest and Verizon.

14 I haven't heard that Qwest would have a
15 hard time as long as there is six weeks approximately
16 for them to finish work on their new cost model. And
17 we could proceed with Qwest, and then get to Verizon
18 whenever it would work for them to be able to make
19 whatever modifications they need to make to the
20 model. And all of this is assuming that it really
21 does take longer than a couple of months to make
22 those changes, and I'm not here saying that it is and
23 I'm not here saying that it isn't. But this is just
24 a consideration, because I certainly don't want the
25 whole docket to be delayed because Verizon had

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1 problems with its cost models.

2 MS. McCLELLAN: And Verizon would not
3 oppose doing that.

4 MS. SINGER NELSON: WorldCom wouldn't
5 oppose that either.

6 MS. DOBERNECK: Neither would Covad.

7 MS. ANDERL: Your Honor, I'm very
8 surprised to hear that. I don't think we oppose it
9 either, but typically whenever we've tried to
10 bifurcate things, we have heard howls of protests
11 about flying witnesses out twice and all of the
12 inefficiencies that that builds into a proceeding.

13 But with that little editorial comment
14 that I could not resist, I would say that we have no
15 particular desire to have the docket consolidated
16 with Verizon.

17 MS. SMITH: And Commission staff is in
18 no position to comment on that. I know that Mr. Kopta
19 wasn't asking for comment on it, but we can't comment
20 on it at this time.

21 JUDGE BERG: All right. Commission
22 will, at a minimum, try and expedite an order in
23 response to the motion to suspend schedule. It may
24 take a little bit longer to work through some of the
25 other related issues that have been raised, such as

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1 the scope of the proceeding and whether or not there
2 are efficiencies to be obtained by combining the
3 cases. As the parties know, the Commissioners have a
4 very busy schedule, and it remains difficult to get
5 time to consult with them and to make effective
6 presentations on some of these kinds of matters.

7 There is one other thing I should
8 probably address with the parties, and that was
9 previously there was some reservations or parties
10 were unable to commit as to whether or not they would
11 object to a Part E proceeding that was ALJ only; that
12 is, the Commissioners would not preside. If I recall
13 right, some of Verizon's concerns were that there
14 might be DSL issues carried over into Part E that
15 would require direct presentation to the
16 Commissioners.

17 Let me check with the parties now at
18 least just based on the issues that are presently
19 identified for Part E, and let me tick those off.
20 First of all, we have the updated OSS cost recovery
21 for both Qwest and Verizon.

22 Then we have Part E issues raised in
23 the Part B order. In my search of the Part B order,
24 I identified the following paragraphs:

25 Paragraph 27, provisioning splitters in

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1 a line-splitting arrangement.

2 Paragraph 51, OSS.

3 Paragraph 61, Verizon's nonrecurring
4 charge for loop conditioning. And, actually, that
5 may be more generic.

6 MS. TENNYSON: Yes. 60 was Verizon's
7 loop conditioning, and 61 is for both.

8 JUDGE BERG: 61 is for both.

9 Paragraph 105, tandem switch
10 compensation rate.

11 Paragraph 125, Qwest's nonrecurring
12 cost study methodology, the ISC order processing
13 time.

14 Paragraph 157, Qwest nonrecurring
15 costs, nonrecurring charges subloops.

16 Paragraph 169, Qwest's nonrecurring for
17 poles, ducts, and right-of-way.

18 Paragraph 174, Qwest's nonrecurring for
19 unbundled dark fiber.

20 Paragraph 301, Verizon nonrecurring
21 subloop migration as-is charge.

22 Paragraph 320, Verizon nonrecurring
23 high capacity loops.

24 Paragraph 360, Verizon recurring
25 inflation.

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1 Paragraph 379, Verizon recurring common
2 costs.

3 And Paragraph 422, Verizon recurring
4 intra-building riser cables.

5 Now I don't have --

6 MS. TENNYSON: Your Honor, I had two
7 additional paragraphs that I thought were, Paragraphs
8 438 and 440.

9 JUDGE BERG: Okay.

10 MS. TENNYSON: 438 is Verizon's costs to
11 provide unbundled packet switching, and 440 was file
12 cost studies for unbundled signaling and call-related
13 databases. Both for Verizon.

14 JUDGE BERG: All right.

15 MS. TENNYSON: And then in Paragraph 34
16 I had just written it as an issue. The order
17 established the Washington line-splitting
18 collaborative, sort of throwing things out into a
19 separate proceeding.

20 And for the parties' benefit, as Judge
21 Berg went through that, I pulled the same paragraphs
22 out. I'll e-mail you a copy of what I've got just so
23 you don't have to rely on your notes for today.

24 JUDGE BERG: Thank you, Ms. Tennyson.
25 Mr. ffitch?

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1 MR. FFITCH: I'm sorry, Your Honor. I
2 was going to ask permission to leave the hearing. I
3 have 12 o'clock meeting which I would try to make, and
4 public counsel does not have issues with concern with
5 regard to Part E. If there is going to be further
6 discussion, we wouldn't have any further input on
7 that. So I was going to ask your permission if I
8 could leave the prehearing at this point.

9 JUDGE BERG: Yes, sir, thank you for
10 asking. The only other issue I'm looking to address
11 with the parties is whether or not, based upon the
12 issues that have been identified, whether parties
13 would object to an ALJ only proceeding if it goes
14 forward as presently conceived.

15 MR. FFITCH: Thank you. We would not
16 have any objection to that.

17 JUDGE BERG: Thanks, Mr. ffitch. It may
18 be that there were one or two other issues that had
19 previously been identified for Part E in addition to
20 OSS. I had a rough memory that there might have been
21 something else. Ms. Tennyson?

22 MS. TENNYSON: I have the same
23 recollection, Your Honor, and I haven't found it in
24 any orders. I haven't gone through my notes of the
25 hearings where we may have discussed that. That would

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1 be the only source of possibly throwing something over
2 during the course of a hearing.

3 JUDGE BERG: On that basis, let me just
4 check with the parties if they can state at this time
5 if a Part E proceeding were to consist of those
6 issues, whether parties have objections to an ALJ only
7 proceeding.

8 And we'll just go around the room,
9 beginning with Commission staff. Ms. Tennyson?

10 MS. TENNYSON: Staff would have no
11 objection.

12 JUDGE BERG: Mr. Kopta?

13 MR. KOPTA: At this point, I can't say
14 one way or the other. We would certainly have some
15 concerns, just because I think there are some policy
16 issues that it may be best to have the Commission here
17 directly as opposed to on a paper record.

18 But I'm not -- I'd have to discuss
19 those concerns with my clients, since this is the
20 first time that I think that this possibility has
21 been raised, to determine from them whether they
22 would have any more than just some concerns as
23 opposed to an objection.

24 JUDGE BERG: We have some time to deal
25 with that, so what we'll do is we'll get some closure

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1 on the scope of the Part E, and then we'll call for
2 comments and give counsel on opportunity to confer
3 with their clients.

4 Anything else that any party would like
5 to raise before we adjourn the joint prehearing
6 conference?

7 MS. McCLELLAN: Yes, Your Honor, there
8 was one thing I forgot to add. To the extent that the
9 Commission needs a little more information from
10 Verizon as to just why it takes so long to make all
11 the orders -- or all the changes to ICM ordered by the
12 Commission, I've been authorized to say that Verizon
13 would be willing to make one of its cost folks
14 available to discuss that with the Commission or the
15 parties, either through a conference call or however
16 the Commission or the parties would like to handle
17 that.

18 JUDGE BERG: I appreciate that. It may
19 merit some follow-up.

20 Ms. Anderl, did you have something?

21 MS. ANDERL: Yes, Your Honor. There was
22 a proposal on the table earlier about how we do the
23 schedule if Part E is OSS only, and the suggestion was
24 it would only need one week of hearing.

25 I'd like to recommend that if that

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1 particular suggestion is adopted, that we take the
2 second week beginning December 9th instead of the
3 first week beginning December 2nd since Thanksgiving
4 is very, very late in November this year.

5 JUDGE BERG: That's right. And that was
6 a short week, there was actually only four days
7 scheduled that week. I don't recall whether the
8 following week is an open meeting week or not. It may
9 be that it would only allow four full days, but your
10 suggestion is taken.

11 MS. SMITH: One last thing. This is
12 directed to Ms. McClellan, this is Shannon Smith.

13 I wanted to apologize that you did not
14 get our comments in advance of today's prehearing
15 conference. I have checked our certificate of
16 service, and our staff had mailed that as opposed to
17 e-mailing it and faxing it, and I'll make sure that
18 you get items in a timely manner from this point
19 forward.

20 MS. McCLELLAN: I appreciate that.

21 JUDGE BERG: Anything else, Counsel?
22 All right. Hearing nothing further, prehearing
23 conferences are adjourned.

24

25 (JOINT PREHEARING CONFERENCES ADJOURNED AT 12:20 P.M.)

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17 e-mailing it and faxing it, and I'll make sure that
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19 forward.

20 MS. McCLELLAN: I appreciate that.

21 JUDGE BERG: Anything else, Counsel?
22 All right. Hearing nothing further, prehearing
23 conferences are adjourned.

24

25