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1 BEFORE THE WASHINGTON STATE

2 UTILITIES AND TRANSPORTATION COMMISSION

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3 In the Matter of the Joint )

Application of )

4 )

QWEST COMMUNICATIONS ) DOCKET UT-100820

5 INTERNATIONAL, INC. AND )

CENTURYTEL, INC. )

6 ) VOLUME II

For Approval of Indirect ) PAGES 40-106

7 Transfer of Control of Qwest )

Corporation, Qwest )

8 Communications Company LLC, )

and Qwest LD Corp. )

9 ------------------------------)

10 A prehearing conference in the above matter was held on

11 Thursday, December 30, 2010, at 2:00 p.m., at 1300 South

12 Evergreen Park Drive Southwest, Olympia, Washington, before

13 Administrative Law Judge MARGUERITE FRIEDLANDER.

14

15 The parties were present as follows:

16 WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, by

JENNIFER CAMERON-RULKOWSKI, Assistant Attorney General, P.O.

17 Box 40128, Olympia, Washington 98504; Telephone 360-664-1186

18 PUBLIC COUNSEL, by SIMON J. FFITCH, Senior Assistant

Attorney General, 800 Fifth Avenue, Suite 2000, Seattle,

19 Washington 98104; Telephone 206-389-2055

20 QWEST COMMUNICATIONS INTERNATIONAL, by LISA A. ANDERL,

Associate General Counsel, 1600 Seventh Avenue, Room 3206,

21 Seattle, Washington 98191; Telephone 206-345-1574

22 CENTURYTEL, INC. (CENTURYLINK), by CALVIN K. SIMSHAW,

Senior Counsel, 805 Broadway, Vancouver, Washington 98660;

23 Telephone 360-905-5958

24 (Appearances continued on Page 2.)

25 Tami Lynn Vondran, CCR No. 2157

Court Reporter

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1 The parties were present as follows: (continued)

2 JOINT CLECS XO COMMUNICATIONS, COVAD, TW TELECOM OF

WASHINGTON, MCLEOD TELECOMMUNICATIONS d/b/a/ PAETEC, CHARTER

3 FIBERLINK and PAC-WEST TELECOMM, by MARK TRINCHERO, Attorney

at Law, Davis, Wright, Tremaine, 1300 Southwest Fifth

4 Avenue, Suite 2300, Portland, Oregon 97201; Telephone

503-241-2300

5

SPRINT/T-MOBILE, by JUDITH A. ENDEJAN, Attorney at Law,

6 Graham & Dunn PC, 2801 Alaskan Way, Suite 300, Seattle,

Washington 98121; Telephone 206-340-9694

7

LEVEL 3, 360NETWORKS & CBEYOND, by ARTHUR BUTLER, (via

8 bridge line), Attorney at Law, Ater Wynne, 601 Union Street,

Suite 1501, Seattle, Washington 98101; Telephone

9 206-623-4711

10 DEPARTMENT OF DEFENSE & FEDERAL EXECUTIVE AGENCIES, by

STEPHEN MELNIKOFF, (via bridge line), General Attorney,

11 Office of the Judge Advocate General, 901 North Stuart

Street, Suite 700, Arlington, Virginia 22203; Telephone

12 703-696-1643

13 INTEGRA, by DOUGLAS DENNEY, (via bridge line) Integra

Telecom, 730 Second Avenue South, Suite 900, Minneapolis,

14 Minnesota 55402; Telephone 612-436-1606

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

2 (On the record at 2:04 p.m.)

3 JUDGE FRIEDLANDER: Good afternoon. This is

4 Thursday, December 30, 2010. My name is Marguerite

5 Friedlander. I'm the Administrative Law Judge presiding

6 today. We are here before the Washington Utilities &

7 Transportation Commission for a prehearing conference in the

8 matter of the joint application of Qwest Communications

9 International, Inc., and CenturyTel, Inc., for approval of

10 an indirect transfer of control of Qwest Corporation, Qwest

11 Communications Company LLC and Qwest LD Corp.

12 Let's begin by taking appearances. And we'll

13 start with Qwest.

14 MS. ANDERL: Okay. Thank you, Your Honor. Lisa

15 Anderl, in-house attorney representing Qwest. I've

16 previously given my email and address and other contact

17 information.

18 JUDGE FRIEDLANDER: That's fine. I should have

19 indicated we'll be doing brief appearances today.

20 And appearing on behalf of CenturyLink?

21 MR. SIMSHAW: Thank you, Your Honor. Calvin

22 Simshaw, in-house counsel for CenturyLink.

23 JUDGE FRIEDLANDER: Thank you. Appearing this

24 afternoon on behalf of Staff?

25 MS. CAMERON-RULKOWSKI: Jennifer

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1 Cameron-Rulkowski, Assistant Attorney General.

2 JUDGE FRIEDLANDER: Thank you. Appearing today on

3 behalf of Public Counsel?

4 MR. FFITCH: Good afternoon, Your Honor, I'm Simon

5 ffitch, Assistant Attorney General, Office of Public

6 Counsel.

7 JUDGE FRIEDLANDER: Thank you. Appearing on

8 behalf of the Joint CLECs?

9 MR. TRINCHERO: Your Honor, Mark Trinchero.

10 JUDGE FRIEDLANDER: Thank you. And why don't we

11 go ahead for the Joint CLECs, Mr. Trinchero, if you would go

12 ahead and state the entities that make up the Joint CLECs,

13 that would be most helpful.

14 MR. TRINCHERO: Yes. The Joint CLECs that I

15 represent are XO Communications, Covad, tw telecom of

16 Washington, PAETEC, also known at McLeod Telecommunications

17 and Charter Fiberlink. I also represent Pac-West

18 Communications which has supported the other Joint CLEC

19 conditions but also has some issues of its own.

20 JUDGE FRIEDLANDER: Thank you. And appearing

21 today -- well, first, let me unmute you. Appearing today on

22 behalf of Level 3?

23 MR. BUTLER: This is Arthur A. Butler appearing on

24 behalf of Level 3. Also appearing on behalf of 360networks

25 and Cbeyond.

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1 JUDGE FRIEDLANDER: Thank you. Appearing today on

2 behalf of the Department of Defense and all other Federal

3 Executive Agencies?

4 MR. MELNIKOFF: Thank you, Your Honor. This is

5 Stephen S. Melnikoff appearing on behalf of the United

6 States Department of Defense and all other Federal executive

7 agencies.

8 JUDGE FRIEDLANDER: Thank you. Appearing today on

9 behalf of Sprint?

10 MS. ENDEJAN: Thank you, Your Honor. Judy

11 Endejan, appearing on behalf of Sprint Nextel Corporation

12 and T-Mobile West Corporation.

13 JUDGE FRIEDLANDER: Thank you. And appearing

14 today on behalf of Integra?

15 MS. ANDERL: Your Honor, I don't know if Integra's

16 counsel is on the phone.

17 (Someone says something over the bridge

18 line.)

19 JUDGE FRIEDLANDER: I'm sorry, could you repeat

20 that? This is Judge Friedlander, we're having a bit of

21 technical difficulty.

22 MR. DENNEY: Doug Denney is on the phone as a

23 company representative for Integra. (This is what I think

24 he said, it was very hard to hear over the bridge line.)

25 MS. ANDERL: Your Honor, if I may?

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1 JUDGE FRIEDLANDER: Sure.

2 MS. ANDERL: Could you mute again?

3 JUDGE FRIEDLANDER: Sure.

4 MS. ANDERL: I'm advised that Doug Denney is on

5 the phone as the Integra Company representative and that

6 when the hearings begin they will be represented by separate

7 counsel by the name of Ted Gilliam, G-i-l-l-i-a-m.

8 JUDGE FRIEDLANDER: Great, thank you. It was

9 difficult hearing Mr. Denney. So that's most helpful.

10 Okay. I'm going to take the conference bridge off

11 mute again just to ask if I've missed anybody. Okay. I

12 didn't hear anything for that brief second.

13 So I would like to give everybody a roadmap of

14 where I would like to be today. After that we'll get into

15 what was discussed by the parties prior to the prehearing

16 conference, and we'll find out what exactly was decided.

17 I envision today that the prehearing conference

18 will encompass the exhibit list so that we can finalize that

19 this afternoon. I would also like to resolve some issues

20 related to witness presentation, which I imagine you all

21 will be addressing, as well, given what was said before the

22 prehearing conference. And we still need to address who's

23 going to be in attendance at the public comment period on

24 Wednesday, the 5th. And, finally, I want to give some last

25 instructions on my expectations for the hearing.

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1 So who is the spokesperson for the agreement that

2 was reached prior to the prehearing conference commencing?

3 MS. ANDERL: Your Honor, either I or Mr. Simshaw

4 or Mr. Trinchero can speak to it. We do have an email

5 that's been printed out. We can provide a copy up to the

6 Bench if you don't have it already?

7 JUDGE FRIEDLANDER: That would be excellent.

8 Thank you.

9 MS. ANDERL: Would you like a brief explanation or

10 a review?

11 JUDGE FRIEDLANDER: Yes. Why don't we go ahead

12 and get an oral overview on the record. Because as far as I

13 know this email has not been filed with the Commission. So

14 let's get some kind of an explanation.

15 MS. ANDERL: Sure. Your Honor, we have been

16 taking--"we" the Joint Applicants have been talking--with

17 the Joint CLECs, Mr. Trinchero's clients, about a process to

18 streamline the hearings if possible. That process as agreed

19 is memorialized in that email. That email is a little

20 informal, it refers to you and your as opposed to Joint

21 CLECs and Joint Applicants.

22 But what it basically says is that instead of the

23 process outline in Your Honor's scheduling order of giving

24 oral testimony in opposition to the settlement agreements,

25 Mr. Trinchero's clients would file three pieces of written

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1 testimony by the close of business on Monday and distribute

2 those electronically. Those three pieces of testimony would

3 be filed by Mr. Gates, Mr. Pruitt and Mr. Haas, who has not

4 previously been identified as a witness in this cause, but

5 who is a VP at PAETEC. And we've agreed on the format of

6 those testimonies to be -- and the content to be the same as

7 testimonies that we have previously seen in Oregon and

8 Arizona saved for some agreed upon state specific

9 modifications that those would have to be made so the

10 testimony makes sense in Washington.

11 In return for those witnesses being allowed to

12 file written testimony the Joint Applicants have agreed that

13 we would not ask that they come in for cross-examination, we

14 would waive cross-examination on that on those witnesses.

15 We would then kind of pick back up on the process

16 Your Honor outlines and still allow both Qwest and

17 CenturyLink witnesses, and any other witnesses in support of

18 the settlement agreement, to give oral surrebuttal. And

19 then those witnesses would stand cross by Mr. Trinchero on

20 their oral surrebuttal. But he would not cross Joint

21 Applicants' witnesses on any of -- you know, those witnesses

22 that gave oral surrebuttal would not be crossed on any of

23 their written prefiled testimony. So that kind of saves a

24 lot of time.

25 And then I think the third component is the

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1 parties have had an ongoing dispute about the admissibility

2 of what is called the APAP proposal. So that's all caps,

3 APAP. And that was originally sponsored by Mr. Denney.

4 We've of course settled with Integra who is Mr. Denney's

5 employer. And the agreement was that Mr. Denney's testimony

6 would be withdrawn. There was scheduled to be a protracted

7 dispute on Wednesday morning about that admissibility of

8 information around the APAP. And what we've agreed to is a

9 limited admissibility.

10 In other words, Mr. Denney's testimony would not

11 be admitted into the record consistent with the settlement

12 agreement between the Joint Applicants and Integra. But his

13 Exhibit DD-2, which is the actual APAP proposal, would be

14 admitted and then Mr. Williams' testimony, who is a Qwest

15 witness, his testimony and one exhibit that rebut or reply

16 to the APAP proposal would be admitted. And then I believe

17 the Joint CLECs would be content with that degree of the

18 record and, you know, brief it after that.

19 MR. TRINCHERO: That's correct.

20 MS. ANDERL: I don't know if that's a summary or

21 actually longer than the email, but just to give you some

22 context around what we have set up there.

23 MR. TRINCHERO: And, Your Honor, this is Mark

24 Trinchero, just a couple of clarifications. The testimony

25 that would be filed on Monday would come in no later than

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1 close of business. I know that's a modification to the

2 normal filing deadline of 3:00 p.m. But given the tight

3 timeframes here we've tried to negotiate an extension on

4 that. So we would file the testimony no later than 5:00 and

5 get that distributed to the parties via email also by 5:00

6 on Monday.

7 Also, I wanted to clarify that the testimony that

8 was filed in Oregon and in Arizona has exhibits attached, as

9 well. And the testimony that would be filed on the third

10 would also have exhibits attached.

11 And, finally, just to clarify on the APAP issue,

12 the testimony of Mr. Gates in Oregon, and of course the

13 testimony that will come in from Mr. Gates on the third,

14 does have a discussion of that APAP document which now will

15 make much more sense because the document itself will also

16 come in.

17 JUDGE FRIEDLANDER: Okay, thank you. With that

18 summary I have some concerns. We're going to be having

19 prefiled testimony, but we won't be having these witnesses

20 made available for clarification questions from the Bench?

21 MR. TRINCHERO: And, Your Honor, obviously if Your

22 Honor or any of the commissioners have questions for our

23 witnesses we will make them available. We had some

24 discussion about this before we commenced the prehearing

25 conference. And I believe it is CenturyLink's and Qwest's

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1 position that that would probably not unravel the deal so

2 long as they also have an opportunity to do

3 cross-examination on those witnesses on the matters that the

4 commissioners ask them about on that testimony.

5 JUDGE FRIEDLANDER: I see.

6 MR. TRINCHERO: That should be fine. Although I

7 think they were also reserving the right that the whole

8 thing might just have to unravel depending on what happens

9 there. In which case I guess I go back to cross-examination

10 on everything.

11 JUDGE FRIEDLANDER: Okay.

12 MR. TRINCHERO: Which we're hoping doesn't happen.

13 JUDGE FRIEDLANDER: Right.

14 MS. ANDERL: I think that's about right. Your

15 Honor, I guess it's hard to make commitments without knowing

16 what's coming.

17 JUDGE FRIEDLANDER: Right.

18 MS. ANDERL: And I think that's probably also

19 true, you know, hard to ask the commissioners to commit that

20 they don't have questions before they've seen what's going

21 to be filed.

22 JUDGE FRIEDLANDER: Right. And that's the

23 conundrum I think we're facing. Because I can't tell you,

24 Mr. Trinchero, not to have your witnesses made available.

25 Because not having seen the testimony, I don't know if I

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1 have clarification questions, much less the tribunal. So we

2 are going to have to wait and see. But I would say that

3 those witnesses will need to be available and ready to

4 answer questions. Whether or not there's cross-examination

5 after that is up to the parties, but I definitely want those

6 witnesses available for the Commission.

7 MR. TRINCHERO: And, Your Honor, would it help at

8 all if upon my return to the office tonight I were to send

9 to you the testimony that was filed in Oregon and Arizona so

10 at least you would know what subjects are being covered that

11 will come in in the testimony on Monday? Would that be at

12 all helpful in determining whether or not there might be

13 questions?

14 JUDGE FRIEDLANDER: Right. It would be helpful

15 for me. I'm not sure it would be completely -- it would not

16 completely rule out the need for --

17 MR. TRINCHERO: Understood.

18 JUDGE FRIEDLANDER: -- for your witnesses to be

19 made available. Because I won't be able to get the

20 testimony to the commissioners in any event. And really

21 that -- yeah, that probably -- I think it would be fine if

22 we just waited until Monday to get the actual testimony,

23 because I'm not sure how much usefulness it will be over the

24 holiday weekend.

25 MR. TRINCHERO: And, Your Honor, one other

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1 question and/or suggestion on that. Given the fact that you

2 probably won't know until Tuesday the 4th whether you're

3 going to have questions, and these witnesses would have to

4 travel. I know that we have currently set aside three days

5 for the hearing. Given the streamlining and the

6 settlements, I'm assuming we probably only need two or maybe

7 even one and a half. Perhaps if in fact the Commission has

8 clarifying questions from those witnesses if we could have

9 them be presented on Thursday, and on Wednesday do the

10 panels on the settlement and other witnesses. Then we could

11 actually get them out here in time to testify on Thursday.

12 If we can make that accommodation I think that will all

13 work.

14 JUDGE FRIEDLANDER: So if I understand you

15 correctly, you would be having your witnesses available for

16 clarification questions Thursday morning after opening

17 statements? It would be first thing Thursday morning?

18 MR. TRINCHERO: As I understand it we commence

19 Wednesday.

20 JUDGE FRIEDLANDER: I'm sorry, Wednesday, that's

21 right.

22 MR. TRINCHERO: All I'm asking is that if in fact

23 the commissioners end up wanting to ask these witnesses

24 questions if we could have them go Thursday instead of

25 Wednesday?

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1 JUDGE FRIEDLANDER: Actually, I think that would

2 be the best solution of all. I had planned on having -- and

3 we'll discuss this more after dealing with the exhibit list,

4 we'll discuss the order of presentation of witnesses. More

5 than likely they will be in a panel. And I had anticipated

6 having witnesses in support of the settlement agreements

7 going first. And then we would have the panel of witnesses,

8 in this case it would be Joint CLEC witnesses for

9 clarification questions opposing the settlement agreements.

10 And that most likely would take place on Thursday given the

11 time structure.

12 Okay. Well, I did have another question just to

13 make sure that I understand this. Mr. Trinchero will be

14 filing prefiled supplemental or rebuttal testimony of three

15 witnesses at the close of business on Monday, January 3rd.

16 The Joint Applicants would waive cross-examination on those

17 witnesses assuming, and depending upon what clarifications

18 questions were to be asked by the Commission. And then

19 those witnesses would not offer any kind of oral testimony,

20 oral direct testimony, it would only be the clarification.

21 Okay. But Joint Applicants reserve the right for oral

22 surrebuttal?

23 MS. ANDERL: Yes.

24 JUDGE FRIEDLANDER: Okay.

25 MS. ANDERL: And I have to say that would be any

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1 party who has oral surrebuttal to the opposition to the

2 settlement agreements.

3 JUDGE FRIEDLANDER: Right. Since there are

4 multiple parties to the settlement agreement certainly.

5 And I'm still a little confused on the limitation

6 on exhibits. But why don't we address that next when we

7 deal with the exhibit list itself.

8 MR. TRINCHERO: Yes.

9 JUDGE FRIEDLANDER: Hopefully everybody has a copy

10 of the exhibit list that was distributed this morning. And

11 if not we have several available in the hearing room.

12 I did email to the parties a current version. So

13 let's hope that everyone got it. It has been revised since

14 I sent you one this morning. Let's begin on Page 5. I have

15 a question for Mr. Trinchero. And these questions may

16 not -- you may not be able to answer them today. If that's

17 the case, I would expect some kind of a reply clarifying

18 your exhibits by no later than Monday at 9:00 a.m. And that

19 can be done via email. It does not have to be filed with

20 the Commission.

21 Mr. Trinchero, on Page 5 I have what looks to be

22 testimony Exhibits TS-9 and TS-10. They look to be

23 duplicative of TS-7 and eight. Having examined the exhibits

24 that were filed I saw that at least my copies are identical.

25 So I'm not sure if they're the wrong exhibits or what

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1 happened. But as I said, if you're not able to clarify that

2 today that's fine. I just wanted to bring that to your

3 attention.

4 MR. TRINCHERO: I will check on that and confirm.

5 JUDGE FRIEDLANDER: That's fine. The next item I

6 have is for Joint Applicants. And that is on Page 6.

7 I spoke to Mr. Trinchero about this earlier. I

8 know that we have a lot of confidential information in this

9 docket, and it's very sensitive. However, we need something

10 a little bit more descriptive than what's given for

11 Mr. Hunsucker for Exhibit MRH-4HC. If there is any kind of

12 title to that document or anything a little bit more

13 descriptive without violating confidentiality that would be

14 very helpful.

15 MR. SIMSHAW: Your Honor, Calvin Simshaw, counsel

16 for CenturyLink. I did get a chance to look at this before

17 I left the office this morning. A description -- and

18 hopefully it meets with what you were looking for here. I

19 would offer it would be a one page excerpt from HSR Document

20 4(c)-36 entitled "Consumer sales approach."

21 JUDGE FRIEDLANDER: That's what I was looking for.

22 I just wanted to make sure we had some kind of a title.

23 That's consumer plural or singular?

24 MR. SIMSHAW: One second, Your Honor, and I'll

25 look at the actual document.

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1 JUDGE FRIEDLANDER: Sure. It's better if you guys

2 make these kind of determinations than if the Bench.

3 MR. TRINCHERO: Sure.

4 MS. ANDERL: Yes, we agree.

5 MR. SIMSHAW: Consumer is singular.

6 JUDGE FRIEDLANDER: Thank you. With that we will

7 move on to Pages 14 and 16. This is for Sprint/T-Mobile.

8 Again, we have the same issue. And that is that there are a

9 multitude of documents that are labeled SR documents. So to

10 distinguish those it would be most helpful if we could have

11 something. I understand you will probably have to talk to

12 Joint Applicants about that since they are the holder of the

13 designation. So if you would get back to me by 9:00 on

14 Monday by email.

15 MS. ENDEJAN: Would it be possible, Your Honor, to

16 make that a little later on Monday, because I want to be

17 able to talk to Ms. Anderl and Mr. Simshaw, because I

18 designated it as HSR documents out of superabundance of

19 caution.

20 JUDGE FRIEDLANDER: Sure.

21 MS. ENDEJAN: I know CenturyLink has a major

22 concern. And I wanted to be able to talk to them.

23 JUDGE FRIEDLANDER: In that case why don't we have

24 Mr. Simshaw and Ms. Anderl look over the documents and

25 possibly forward the revised or elaborated titles to you and

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1 then you can forward them to me. Would that work?

2 MS. ENDEJAN: That would be fine. If you want to

3 decide what it's okay to call the document, that's fine with

4 us.

5 JUDGE FRIEDLANDER: And that's fine with the Bench

6 if Joint Applicants are agreeable.

7 MS. ANDERL: Sure. We can do that.

8 JUDGE FRIEDLANDER: Okay. Thank you, I appreciate

9 that.

10 MS. ANDERL: One thing I was going to say, I think

11 we had previously provided a nonconfidential index to both

12 of the Qwest and the CenturyLink HSR documents, and if you

13 wanted to use the title from the index. But if you feel

14 more comfortable with us making the designation that's fine.

15 MS. ENDEJAN: I do. Because the vast majority of

16 these actually are CenturyLink documents. So I would be

17 more comfortable having CenturyLink tell me what they're

18 comfortable with.

19 JUDGE FRIEDLANDER: Certainly, I understand. So

20 if we can have that -- if you all can have it emailed to me

21 by 9:00 a.m. that would be most helpful.

22 I had two others, the first is on Page 21 of the

23 exhibit list, and this is for Joint CLECs. And, again, it

24 is a request for something a little more descriptive than

25 what has been provided.

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1 MR. TRINCHERO: Is this on TJG-15C?

2 JUDGE FRIEDLANDER: Yes, it is.

3 I also have a question for Integra's counsel, I

4 guess that would be Mr. Gilliam, who is not on the

5 conference bridge or appearing in person today. But,

6 Mr. Denney, if you can relay this to him, or I will shortly,

7 the last clarification I have is on Page 22. It appears

8 that Bonnie Johnson's Exhibits 2 and 3 are identical.

9 Having looked at these they look identical. So that we

10 don't muck up my record it would be nice to have one of them

11 eliminated if they are duplicative. And I still have you on

12 mute, Mr. Denney. So if you could relay that, or I will, to

13 Mr. Gilliam.

14 I also have a late filed exhibit that was filed

15 yesterday by Joint CLECs. Mr. Trinchero, did you want to

16 make a motion on that?

17 MR. TRINCHERO: Your Honor, given the agreement

18 that we have reached with CenturyLink and Qwest with respect

19 to that document I will be in a position to withdraw that

20 request all together, as that document will now be

21 stipulated into the record.

22 Now, do you want to have us simply have that be an

23 attachment to the testimony that comes in on the 3rd just to

24 make it easier?

25 MS. ANDERL: Just for clarification, only part of

0059

1 the exhibit that you filed yesterday as a late filed cross

2 exhibit will be coming because it is --

3 MR. TRINCHERO: It's just DD-2.

4 MS. ANDERL: -- just DD-2. You know, we can

5 handle that however you want. If you want to just offer

6 DD-2 off of the exhibit list because it's marked as an

7 exhibit under Mr. Denney. You know, we have this agreement,

8 we'll just do it that way.

9 MR. TRINCHERO: Yeah. And, Your Honor, that's

10 really up to you as far as what would be easier, whether we

11 have DD-2 come in simply as Exhibit DD-2 even though Exhibit

12 DD-1, which is the Denney testimony, will not be offered.

13 Or we could attach DD-2 to the Timothy Gates testimony that

14 will be file on Monday, seeing as that's the testimony that

15 references the APAP. So whichever would make it easier for

16 the Commission to sort of know where that document belongs.

17 JUDGE FRIEDLANDER: Right. I guess I'm a little

18 confused. Because I have DD-1T as Denney's responsive

19 testimony, and he's actually testifying on behalf of

20 Integra; correct?

21 MS. ANDERL: Yes, that's correct, Your Honor. But

22 because of the settlement agreement that the Joint

23 Applicants have reached with Integra that testimony was not

24 going to be offered.

25 JUDGE FRIEDLANDER: Okay. So that will be

0060

1 withdrawn?

2 MS. ANDERL: The testimony will be. And then the

3 agreement that we have reached with the Joint CLECs

4 separately would allow the admission of DD-2, even though

5 that would have originally been withdrawn under the Integra

6 settlement, as well.

7 JUDGE FRIEDLANDER: I see. So DD-2 has been

8 stipulated to be offered into evidence. What was filed

9 yesterday with the Commission I thought was an entirely new

10 exhibit?

11 MR. TRINCHERO: What we filed with the Commission

12 yesterday was actually a combination of DD-1 and DD-2.

13 JUDGE FRIEDLANDER: I see.

14 MR. TRINCHERO: And what we've agreed to with the

15 applicants, instead of having that come in as a cross-exam

16 exhibit is we would just have the attachment come in and not

17 the testimony.

18 JUDGE FRIEDLANDER: I see. That's fine. Thank

19 you for the clarification.

20 MS. ANDERL: Not to speak for Mr. Trinchero or

21 anything, but just so that you kind of have the context, I

22 think what Mr. Trinchero was doing was trying to make sure

23 that that exhibit was admitted because Mr. Denney and

24 Integra were not going to offer that.

25 MR. TRINCHERO: Right.

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1 JUDGE FRIEDLANDER: Thank you.

2 MR. TRINCHERO: We were going to have to do it

3 through cross-examination of Mr. Denney instead of this

4 cleaner way of getting it done.

5 JUDGE FRIEDLANDER: Okay. Thank you. That's all

6 the clarification that I needed on the exhibit list. Is

7 there anyone in the hearing room that has any questions,

8 edits or clarifications?

9 MS. ENDEJAN: Your Honor, Judy Endejan for Sprint

10 and T-Mobile. It was brought to my attention by

11 Ms. Cameron-Rulkowski that we had listed an exhibit on our

12 exhibit list, and we failed to provide it. And so I believe

13 if you turn to page -- where am I? Eight. No, Page 6, we

14 had listed as MRH-15 Qwest and CenturyLink response to

15 Sprint Data Request No. 36. I have brought additional

16 copies for everyone, and I don't know, you know...

17 JUDGE FRIEDLANDER: If you would also file that

18 with our records center on your way out, and they will also

19 need an electronic copy to post on the Internet.

20 MS. ENDEJAN: Right. And in my haste as I was

21 running out the door I did not put the designation on the

22 top what the exhibit number is. So let me read that into

23 the record and let counsel know. That would be MRH-15.

24 JUDGE FRIEDLANDER: Thank you.

25 (Document handed up to the Bench.)

0062

1 MR. TRINCHERO: Your Honor, just one other

2 clarification?

3 JUDGE FRIEDLANDER: Sure.

4 MR. TRINCHERO: In addition with yesterday's

5 filing, in addition to cross Exhibit 1DD-JCX which we will

6 withdraw, we also filed replacement cross Exhibits 32-MRH

7 and 1-TS. And I just want to make sure the replacement

8 versions are the ones that we're going to use. It was

9 brought to our attention that we had filed responses to data

10 requests that did not include the final supplements to

11 responses. And so we've now filed the ones that have all of

12 the supplemental responses so it's a more complete record.

13 JUDGE FRIEDLANDER: Excellent, thank you. And

14 just refresh my memory. You said MRH-32, and what was the

15 other exhibit that was replaced?

16 MR. TRINCHERO: The first one is 32-MRH-JCX and

17 the next one is 1-TS-JCX.

18 JUDGE FRIEDLANDER: Okay. Thank you.

19 So that on my exhibit list would be TS-7; is that

20 correct?

21 MR. TRINCHERO: Is that right?

22 MS. ANDERL: I think so.

23 JUDGE FRIEDLANDER: That would be Page 5?

24 MR. TRINCHERO: Yes, that's correct.

25 JUDGE FRIEDLANDER: Okay, thank you. Are there

0063

1 any other edits, clarifications? Yes, Mr. ffitch.

2 MR. FFITCH: Your Honor, Public Counsel would like

3 to request that an exhibit number be reserved for the public

4 comment exhibit which we will be preparing after the

5 deadline for submission of public comments, which I believe

6 is January 7th.

7 JUDGE FRIEDLANDER: Okay. Thank you.

8 MR. FFITCH: We will be compiling the written

9 comments and letters and so on from the public into one

10 exhibit, as is our standard procedure, and offering that as

11 a public comment exhibit.

12 JUDGE FRIEDLANDER: Thank you.

13 MS. ANDERL: One other clarifying item, Your

14 Honor?

15 JUDGE FRIEDLANDER: Sure.

16 MS. ANDERL: We had an informal conversation. I

17 think I had an informal conversation with Mr. Trinchero.

18 It's hard to remember all of them.

19 MR. TRINCHERO: I think all of our conversations

20 are very formal.

21 MS. ANDERL: Some of the cross-examination

22 exhibits that the Joint CLECs have identified for a

23 particular witness we may not agree that that's the exact

24 right witness --

25 JUDGE FRIEDLANDER: Sure.

0064

1 MS. ANDERL: -- that that would be the one to be

2 asked questions. That whole issue is either moot because

3 Mr. Trinchero is not going to use those exhibits or can

4 be -- what I would suggest would be addressed when it was

5 offered.

6 JUDGE FRIEDLANDER: That's fine.

7 MS. ANDERL: By not saying, gee, we don't think

8 Mr. Reynolds is the exact right witness for this cross

9 exhibit, we're not really waiving that, but we don't want to

10 muddy things up now.

11 JUDGE FRIEDLANDER: I understand. That's fine.

12 As we get into the hearing it may become more and more

13 obvious that certain witnesses have a predisposition for a

14 certain topic and exhibit numbers and place holders may have

15 to be changed.

16 MR. TRINCHERO: Also, Your Honor, just to clarify

17 on that, given the fact that the applicants are likely to

18 have fewer witnesses appear than they would have absent this

19 format, we will be asking for some leeway to ask the

20 witnesses who are appearing to answer questions that may not

21 have been in their particular bailiwick. But because the

22 witness who would have had the expertise in that area isn't

23 here, you know, we may need to have a little bit of leeway

24 on that.

25 JUDGE FRIEDLANDER: Okay. Well, I can't guarantee

0065

1 anything, and it's certainly subject to challenge.

2 MR. TRINCHERO: Obviously.

3 JUDGE FRIEDLANDER: Yeah. Okay, if there's

4 nothing else let's get into the presentation of witnesses.

5 As I spoke earlier, what I had anticipated was a

6 panel of witnesses to testify in support of each of the

7 settlement agreements. And I've actually grouped them into

8 two panels, the first one being the Staff and Public Counsel

9 settlement with Joint Applicants, and the DoD/FEA settlement

10 that was also with the Joint Applicants. That panel would

11 go first.

12 And having seen the joint testimony filed today in

13 support of the Staff/Public Counsel settlement I can already

14 guess there's going to be four witnesses presented for that

15 panel. I do not, however, know yet -- and maybe

16 Mr. Melnikoff can enlighten me as to which, if any witnesses

17 he would be presenting in support of the DoD settlement.

18 And I will take the bridge line off of mute.

19 MR. MELNIKOFF: Your Honor, can you hear me?

20 JUDGE FRIEDLANDER: I can. Thank you.

21 MR. MELNIKOFF: This is Stephen Melnikoff.

22 Charles King will be available for the panel. As I

23 understand it you're going to have that panel on Wednesday?

24 JUDGE FRIEDLANDER: Yes. That will be immediately

25 following opening statements.

0066

1 MR. MELNIKOFF: Could I ask, because it's my

2 understanding that there is no cross-examination or

3 opposition to that settlement, do you know if there are

4 questions from the commissioners? So that if there are I

5 clearly am going to make Mr. King available in Olympia,

6 don't want to risk a telephone connection. If there are --

7 I hate to bring him out if there's nothing that the

8 commissioners need to question him about.

9 JUDGE FRIEDLANDER: Well, at this point it really

10 is hard for me to say simply because we just got the

11 settlement. So not even having looked at it myself--I know

12 that the commissioners have not--and I can't make any

13 predictions offhand.

14 I can ask the commissioners after the holiday

15 weekend. But, again, because we are getting so close to

16 hearing I think it would be a good idea to assume that you

17 should make Mr. King available. Now, certainly whether you

18 make him available via conference bridge is up to you. But

19 I just can't at this point guarantee for sure that we're not

20 going to have clarification questions.

21 MR. MELNIKOFF: What I would like to do is I will

22 have Mr. King make his proper arrangements so he will be

23 physically there on Wednesday for the panel. If it would be

24 okay with you I would like to check in sometime Monday with

25 you to see whether or not you have been able to confirm one

0067

1 way or the other whether Mr. King needs to be physically

2 there?

3 JUDGE FRIEDLANDER: That's fine. I don't have a

4 problem with that at all. Please make it Monday afternoon,

5 because I don't know what the commissioners' schedules look

6 like.

7 MR. MELNIKOFF: I will make it -- clearly I will

8 make it Monday afternoon Pacific time.

9 JUDGE FRIEDLANDER: Okay, thank you.

10 MR. MELNIKOFF: Thank you very much, Your Honor.

11 JUDGE FRIEDLANDER: So I would anticipate then

12 that that first panel would have five witnesses. And unless

13 anybody has any objections to that, or knows of anything

14 else, I would believe that would be five witnesses.

15 And do we have any estimates on cross-examination

16 time, Mr. Trinchero, for the CLECs?

17 MR. TRINCHERO: Given the agreement that we just

18 reached, I believe we would not have cross-examination for

19 those witnesses, unless on that panel they present oral

20 rebuttal to what we are filing on January 3rd. Is that your

21 understanding, as well, Ms. Anderl?

22 MS. ANDERL: Yes. And at this point I think that

23 we're contemplating that oral rebuttal will be done by the

24 witnesses who speak in support of the Integra settlement?

25 MR. TRINCHERO: Yes.

0068

1 MS. ANDERL: Not in the context of this kind of

2 what we're calling, you know, retail settlement?

3 JUDGE FRIEDLANDER: Right.

4 MR. TRINCHERO: And that is my anticipation as

5 well, Your Honor. The one clarification that I would put

6 out there is that there is one provision in the Staff/Public

7 Counsel settlement with the Joint Applicants that relates to

8 wholesale issues. It is nearly identical to the provision

9 in the Integra agreement.

10 JUDGE FRIEDLANDER: Uh-huh.

11 MR. TRINCHERO: My guess is that we would not have

12 any cross unless one of the four witnesses on the first

13 panel actually addresses that particular condition. And I

14 suppose if they do then we would have to at least reserve

15 the right to cross on that --

16 JUDGE FRIEDLANDER: Sure.

17 MR. TRINCHERO: -- to the extent such testimony

18 could be deemed as oral rebuttal of what we file on the 3rd.

19 JUDGE FRIEDLANDER: At this point do Joint

20 Applicants or Staff or Public Counsel anticipate wholesale

21 issues being addressed on the stand in direct in this first

22 panel?

23 MR. FFITCH: Not for Public Counsel, Your Honor.

24 JUDGE FRIEDLANDER: Thank you.

25 MS. CAMERON-RULKOWSKI: Not from Staff, Your

0069

1 Honor.

2 JUDGE FRIEDLANDER: Thank you.

3 MS. ANDERL: No other than that those OSS issues

4 are, you know, part of the overall settlement, and then the

5 witnesses will be supporting the overall settlement.

6 JUDGE FRIEDLANDER: Sure.

7 MS. ANDERL: But I do think there will be

8 witnesses--like Mr. Viveros and Mr. Hunsucker who are not on

9 this panel who will testify later--who have much more

10 expertise and much better able to talk about those

11 particular issues and why that provision is in the agreement

12 in both the Integra agreement and in the Staff agreement.

13 JUDGE FRIEDLANDER: Okay, thank you.

14 MR. TRINCHERO: Your Honor, with that

15 understanding we would anticipate having cross-examination

16 then just on the second panel so long as that

17 cross-examination can also be deemed to relate to that one

18 provision in the Staff and Public Counsel settlement --

19 JUDGE FRIEDLANDER: Okay.

20 MR. TRINCHERO: -- since they're nearly identical.

21 MS. ENDEJAN: Your Honor, I have a couple of

22 questions. Could we identify with specificity who the

23 witnesses are going to be on the panel, again?

24 JUDGE FRIEDLANDER: Sure. I have that the

25 witnesses would be Jones, Reynolds, Vasconi and Johnson, as

0070

1 well as Mr. King on behalf of DoD.

2 Is that everyone else's understanding? I see

3 heads nodding.

4 MS. CAMERON-RULKOWSKI: From Staff, yes.

5 JUDGE FRIEDLANDER: Thank you.

6 MS. ENDEJAN: My second question, because it's

7 never really been clear to me in all the proceedings where

8 there's a combination of settling parties and not settling

9 parties, and a lot of testimony in the record that may or

10 may not relate to the settlement, when is the appropriate

11 time to cross-examine a witness on testimony that is -- was

12 prefiled and has nothing to do with the settlement, when do

13 we do that?

14 JUDGE FRIEDLANDER: Well, go ahead, Ms. Anderl.

15 MS. ANDERL: That is such an excellent question.

16 I think we all struggle with that.

17 JUDGE FRIEDLANDER: Sure.

18 MS. ANDERL: I think in this case we could go

19 really either way. I mean after everyone was done with the

20 settlement, if Ms. Endejan has noted that she has some cross

21 for Mr. Jones or Mr. Reynolds I would say there wouldn't be

22 any reason why she couldn't ask those questions before the

23 panel was excused. I would also say there wouldn't be any

24 reason, as well, why those witnesses, for whom she has cross

25 on their prefiled testimony that doesn't relate to the

0071

1 settlement, couldn't be brought back up.

2 My understanding is in Oregon there were points in

3 time where you couldn't tell which was going on in the

4 Oregon hearing. So it does get a little fuzzy.

5 MS. ENDEJAN: It was very fuzzy. And I guess

6 because I know, you know, I kind of view the questions in

7 two buckets. One is why we oppose the settlement and so we

8 want to question the witnesses about the basis of the

9 settlement, which is "bucket one." Then "bucket two" is,

10 oh, and by the way, we also have some questions for you

11 witnesses on your testimony. And so what would be cleaner

12 for the record and cleaner for the tribunal in terms of

13 reaching a decision?

14 JUDGE FRIEDLANDER: Well, I think--and having

15 talked to the commissioners about this--we decided that it

16 would be perfectly acceptable for nonsettling parties to ask

17 the settlement witnesses questions on the prefiled

18 testimony, even if it involves the issues that have not been

19 in the settlement agreements.

20 So if an issue is still in dispute that was not

21 settled, and that witness is in the panel, you would be able

22 to cross-examine them on that issue.

23 We have another -- there's a little bit of a

24 concern that parties may have cross-examination for

25 witnesses that are not being presented in support of any

0072

1 settlement. And I don't know if any of the parties have

2 that issue.

3 MS. ENDEJAN: You've read my mind. Because

4 unfortunately -- and I believe, again, I owe a lot to

5 Ms. Cameron-Rulkowski for pointing out some omissions in the

6 letter that got filed with our exhibits. The wrong letter

7 got attached to the filing in terms of listing

8 cross-examination estimates.

9 JUDGE FRIEDLANDER: Oh, I see.

10 MS. ENDEJAN: So there are some witnesses that

11 Sprint/T-Mobile would like to cross-examine on, and we

12 hadn't identified them in that letter. And so I don't know

13 when you want to talk about that, but we don't really have

14 that many.

15 JUDGE FRIEDLANDER: Let's talk first about the

16 structure of the hearing and then we can get into when

17 certain witnesses are going to be called.

18 As I said, two panels will come up. We'll have

19 the Staff, Public Counsel and DoD settlement parties, who

20 are offering testimony in support of those two settlements,

21 come up first. We'll do direct, cross, redirect. They will

22 sit down.

23 We'll have the next panel come up. That will be

24 the 360networks, Integra settlement parties. They will come

25 up. We'll do direct, cross, redirect.

0073

1 At that point I was going to have Joint CLECs do

2 their oral rebuttal. It now looks like you won't be doing

3 oral rebuttal because you're prefiling testimony on Monday.

4 So I have next that Sprint/T-Mobile would be doing

5 their rebuttal. And, again, it will be direct, cross,

6 redirect.

7 After that we'll have Level 3, Cbeyond. If--and

8 I'm going to take you off mute Mr. Butler--if you had

9 planned on offering any witnesses for oral rebuttal?

10 MR. BUTLER: Your Honor, no, we were not going to

11 offer any witnesses on oral rebuttal.

12 I do need to raise one question, and that is my

13 understanding is there is a possibility that there will be

14 settlement between the Joint Applicants and Level 3 by the

15 time of the hearing.

16 JUDGE FRIEDLANDER: Okay.

17 MR. BUTLER: So if that comes to pass I guess

18 Level 3 would join panel two; if that's correct?

19 JUDGE FRIEDLANDER: Yes, that would be the

20 appropriate spot, I believe.

21 MR. BUTLER: And will it be necessary for 360 and

22 Level 3 to have a witness appearing in person?

23 JUDGE FRIEDLANDER: I think it would be a good

24 idea. I can't -- I really can't say at this point, because

25 we don't know what the settlement contains. It's the same

0074

1 conundrum that we're running into with the Joint CLECs, with

2 DoD and the like. If we don't know what's in it we can't

3 know if we have questions. So I hate to do it, but I can't

4 tell you no.

5 MR. BUTLER: Okay. Thank you.

6 JUDGE FRIEDLANDER: With that I'm going to mute

7 you now.

8 So my understanding then is that there won't be

9 any Level 3, Cbeyond rebuttal. The only oral rebuttal we

10 will be having at that point, assuming that the agreement

11 between Joint CLECs and Joint Applicants holds, will be with

12 Sprint/T-Mobile.

13 MS. ENDEJAN: I believe that's correct.

14 JUDGE FRIEDLANDER: Okay. And so after that we

15 would have very limited surrebuttal of the two panels on

16 anything that was raised by Sprint/T-Mobile.

17 Yes Ms. Anderl?

18 MS. ANDERL: And the written testimony that comes

19 in.

20 JUDGE FRIEDLANDER: Exactly. I apologize for that

21 omission. Exactly. So there would be those two panels set

22 up again. So that is the general structure. We have the

23 two settlement panels. We have Sprint/T-Mobile oral

24 rebuttal panel, I assume. If not, just one witness. We'll

25 find out in a minute. And then we would have the oral

0075

1 surrebuttal.

2 With that why don't we start getting into the

3 actual witnesses that will be appearing on these panels so

4 that we can nail down with a little bit more specificity

5 what the cross-exam estimates will be.

6 We already have the Staff, Public Counsel, DoD

7 settlement panel. I can't ask Integra. I guess I could ask

8 Mr. Denney, but not being an attorney I doubt he's going to

9 know whether there are cross-examination questions. I doubt

10 it considering they have already settled with the Joint

11 Applicants, unless Joint Applicants know of anything.

12 And, Mr. Butler, I'm going to take you off mute

13 for just a second. Will you be having any cross-examination

14 for the retail, quote/unquote, settlement panel.

15 MR. BUTLER: No.

16 JUDGE FRIEDLANDER: Okay. Thank you.

17 MR. DENNEY: Your Honor, this is Doug Denney. I

18 do know we will not have any cross-examination.

19 JUDGE FRIEDLANDER: Thank you. Ms. Endejan, were

20 you going to stick to that 30 minutes that you had for

21 Mr. Jones or did you have some other?

22 MS. ENDEJAN: Yeah. I hate to complicate things,

23 I truly do.

24 JUDGE FRIEDLANDER: Okay.

25 MS. ENDEJAN: But when you're referring to panel

0076

1 number one as the retail panel, that also will include the

2 Joint Applicant witnesses, and not all the Joint Applicant

3 witnesses are on that panel. So I know we had indicated in

4 the letter of December 23rd, 30 minutes for Mr. Jones, who I

5 believe you said was going to be on the panel. We also

6 would like 15 minutes for Mr. Reynolds, who's going to be on

7 the panel.

8 Then the other Qwest witnesses, for which we have

9 cross-examination, are Bailey, Schafer and Hunsucker, but I

10 don't know where they're going to fit into this.

11 JUDGE FRIEDLANDER: Really at this point it's my

12 understanding that's up to the Joint Applicants. I mean if

13 the Joint Applicants are not presenting witnesses. I'm not

14 exactly sure if they're going to.

15 MS. ANDERL: Well, we would still tender our

16 witnesses for cross on their testimony but they may not --

17 but maybe it makes sense to have them at a separate point in

18 time from the settlement panel.

19 JUDGE FRIEDLANDER: Right. Because they won't be

20 on the panel themselves. I was thinking after all of the

21 rebuttal and surrebuttal we'll get into disputed issues of

22 the nonsettling parties questioning witnesses who are not

23 testifying on behalf of the settlement. Does that make

24 sense?

25 MS. ENDEJAN: Yes.

0077

1 JUDGE FRIEDLANDER: Okay. In answer to your

2 question, we will have a portion of the hearing that will

3 address witnesses that are not being presented in support of

4 the settlement agreements. And that will be at the end

5 after we have dealt with the settlements. So that would be

6 bucket two.

7 MR. FFITCH: Your Honor, can I ask a question?

8 JUDGE FRIEDLANDER: Sure.

9 MR. FFITCH: It's a question/suggestion. It may

10 make things worse, I don't know.

11 I guess I'm concerned that we might have a

12 situation where the retail panel is sitting there while

13 extensive cross-examination is going on with one witness for

14 perhaps Mr. Jones or Mr. Reynolds. And I don't know that

15 that makes a lot of sense. If there's going to be a

16 separate period of time when there's going to be a

17 questioning of Joint Applicant witnesses anyway maybe all of

18 that could be done together. And I'm not trying to direct

19 counsel's approach. It just struck me that maybe if they're

20 going to be going into similar areas anyway that would avoid

21 the problem of having other retail witnesses just sitting --

22 having four other witnesses sitting there waiting for long

23 periods of time while this other cross goes on. So it's

24 just another approach that might work.

25 MS. ENDEJAN: And, Simon, I don't necessarily

0078

1 disagree with that because I think, you know, it's our

2 intent and purpose is we want to cross-examine the Joint

3 Applicants' witnesses on a number of issues that are

4 obviously in dispute because we don't agree. So it may make

5 more sense, if it's acceptable to the Joint Applicants, to

6 have these two witnesses, you know, come back when we're

7 doing that last chunk. That would be, I guess, Jones and

8 Reynolds. And I don't know if they would be here anyway.

9 They probably would be, I suspect, knowing their positions

10 with your companies. So it may make more sense to limit the

11 cross-examination on the panels to settlement specific

12 issues and then defer to that last bucket. But I can do it

13 either way.

14 JUDGE FRIEDLANDER: Do the Joint Applicants have a

15 preference?

16 To my way of thinking it doesn't -- having heard

17 what Ms. Endejan has predicted for cross-examination times

18 for this first panel it seems to be under an hour. If

19 that's the case I don't know why -- unless you're limiting

20 that number strictly to issues relating to the settlement or

21 were you thinking under an hour for everything total?

22 MS. ENDEJAN: Well, we also have--and we failed to

23 identify--Mr. Vasconi as a witness we would like to

24 cross-examine, as well.

25 JUDGE FRIEDLANDER: On the settlement?

0079

1 MS. ENDEJAN: On the settlement, yes.

2 JUDGE FRIEDLANDER: How long were you estimating?

3 MS. ENDEJAN: Thirty minutes. We sort of looked

4 at -- actually, let me step back. When we provided these

5 initial estimates we were looking at it in a nonsettlement

6 world, because the settlement had not been filed as of that

7 time. We're now operating in a settlement world where we

8 have questions about whether the settlement addresses --

9 well, the very fact that it's being referred to as a retail

10 settlement agreement sort of says a lot about what's

11 happening to the wholesale customers. So I think that adds

12 some more time to our questioning.

13 So, frankly, I'm inclined to agree with Simon, if

14 the Joint Applicants are okay with this. That we come back

15 and ask, you know, 30 minutes we would have for Mr. Jones

16 and the 15 minutes for Mr. Reynolds tied to their testimony

17 as opposed to the settlement. So if they could come back

18 during that last portion of the hearing it may make it

19 easier for the Commission in order to separate the

20 settlement issues from the...

21 JUDGE FRIEDLANDER: Right. Just so I'm clear,

22 what I'm understanding you to say is you have questions for

23 these three witnesses, Jones, Reynolds and Vasconi, relating

24 to both the settlement and the prefiled testimony?

25 MS. ENDEJAN: That is correct.

0080

1 JUDGE FRIEDLANDER: So what is the estimate of

2 your cross-examination for those three witnesses relating

3 strictly to the settlement only?

4 MS. ENDEJAN: Well, I think for those three

5 witnesses, and we may have one or two questions for

6 Ms. Johnson, I haven't confirmed that with my client,

7 Mr. Shiffman. I would estimate max an hour for

8 cross-examination for all of the panel one witnesses on the

9 issue of the settlement.

10 JUDGE FRIEDLANDER: I'm just trying to get an idea

11 so I know where we're at during these three days so we're

12 allowing enough time. Because we're also going to be

13 doing -- all the parties will have the opportunity to give

14 opening statements. But those are going to be limited in

15 time, and we're going to be strictly adhering to that

16 because it sounds like there's going to be a lot of other

17 stuff going on over these three days. At the end we'll be

18 offering the opportunity for closing arguments, as well.

19 And, again, that's going to be fairly limited.

20 So what I needed to know -- and it looks like

21 Sprint/T-Mobile is the only party that will be asking

22 cross-examination of this panel, which is fine, I just

23 wanted to make sure I had that correct.

24 Let's go ahead and move on to the second panel,

25 which is a little more difficult because we don't have

0081

1 Integra's attorney here, so I don't know who the witness

2 will be for Integra unless, Ms. Anderl, you have an idea?

3 MS. ANDERL: Oh, it will be Mr. Denney.

4 JUDGE FRIEDLANDER: Okay, thank you. Who will be

5 the witnesses for Joint Applicants?

6 MS. ANDERL: Well, Mr. Hunsucker for CenturyLink,

7 Mr. Viveros for Qwest.

8 JUDGE FRIEDLANDER: Okay.

9 MS. ANDERL: Possibly, depending on what we see on

10 Monday -- no, we're not talking rebuttal.

11 MR. TRINCHERO: Yeah, because it's a separate

12 panel.

13 MS. ANDERL: Nevertheless, possibly Mr. Williams.

14 MR. TRINCHERO: On the settlement or as a

15 rebuttal?

16 MS. ANDERL: Well, you know, I'm a little soft on

17 that because I haven't been thinking of it in -- it's hard

18 to think of it in this structure, it's hard to make bright

19 line boxes. I would say at a minimum Mr. Denney,

20 Mr. Viveros and Mr. Hunsucker.

21 JUDGE FRIEDLANDER: Okay. And possibly

22 Mr. Williams?

23 MS. ANDERL: Possibly.

24 JUDGE FRIEDLANDER: Okay. And, Mr. Butler, do you

25 have an idea who 360 will be presenting in support of the

0082

1 settlement?

2 MR. BUTLER: Likely to be Michel --

3 JUDGE FRIEDLANDER: I'm sorry, I didn't catch

4 that?

5 MR. BUTLER: Michel Singer Nelson.

6 JUDGE FRIEDLANDER: Thank you. I'm going to take

7 you off. Forgive me for just a second. So we have five in

8 this panel. Obviously Joint Applicants are not going to be

9 cross-examining. As settling parties do Staff and Public

10 Counsel, I presume you're not opposing the settlement for

11 wholesale, but I hate to make assumptions.

12 MS. CAMERON-RULKOWSKI: No, Your Honor, Staff is

13 not opposing it.

14 JUDGE FRIEDLANDER: Okay. And Public Counsel?

15 MR. FFITCH: No.

16 JUDGE FRIEDLANDER: As far as the Joint CLECs do

17 you have estimates for cross-examination of these five

18 witnesses?

19 MR. TRINCHERO: Your Honor, that is going to

20 depend in large part on what they say. It is my

21 anticipation that given the fact that we are breaking these

22 into two separate panels that I would be reserving any

23 cross-examination for when they get back up on the

24 surrebuttal panel, and given our agreement. Unless of

25 course somehow they stray and start bashing my witnesses on

0083

1 this panel. But at this point if in fact this proceeds as I

2 anticipate, which is this panel would be an

3 affirmative--this is why we believe the settlement is good

4 only--panel then I would have no cross-examination for them.

5 And I would wait until they are presented again on the

6 surrebuttal panel.

7 JUDGE FRIEDLANDER: Okay, thank you. And,

8 Ms. Endejan, do you have an estimate for these five

9 witnesses, the cross-examination time we're looking at?

10 MS. ENDEJAN: Well, I know that we do want to

11 examine Mr. Hunsucker on a variety of wholesale issues. And

12 it is primarily, I guess, the absence of provisions in the

13 settlement that would be the subject of inquiry. I would

14 not imagine -- I mean if we have the opportunity to

15 cross-examine Mr. Hunsucker on his testimony later in the

16 proceedings then I would anticipate that cross-examination

17 would be under half an hour.

18 JUDGE FRIEDLANDER: Okay.

19 MS. ENDEJAN: And we don't have any cross for any

20 of the other witnesses, just Mr. Hunsucker.

21 JUDGE FRIEDLANDER: Okay, thank you. I'm going to

22 go ahead and take the bridge line off of mute now. I assume

23 that the DoD/FEA and 360 -- well, obviously 360 doesn't

24 oppose this. But the DoD/FEA does not oppose the

25 settlement? Mr. Melnikoff?

0084

1 MR. MELNIKOFF: I'm sorry, Your Honor, which

2 settlement?

3 JUDGE FRIEDLANDER: It's actually two settlements.

4 It's the settlement panel encompassing 360networks and

5 Integra.

6 MR. MELNIKOFF: We do not oppose that.

7 JUDGE FRIEDLANDER: Okay, thank you. And,

8 Mr. Butler, I put all of your clients into a combined

9 column, but do Level 3 or Cbeyond oppose the settlements in

10 the second panel?

11 MR. BUTLER: My understanding is that a settlement

12 is likely between the Joint Applicants and Level 3, in which

13 case they might be joining that panel. And if so the

14 witness would be Mr. Thayer. Apart from that Cbeyond does

15 have about ten minutes of cross-examination of the panel.

16 JUDGE FRIEDLANDER: Okay, thank you. Let's go to,

17 after I mute the bridge line again, let's go to the

18 Sprint/T-Mobile rebuttal. Which witnesses can we expect to

19 be testifying orally in the Sprint/T-Mobile rebuttal?

20 MS. ENDEJAN: Sprint/T-Mobile only has one

21 witness, that's Mr. Appleby.

22 JUDGE FRIEDLANDER: Okay. And so as far as

23 cross-examination goes, obviously this is going to depend on

24 what gets said, can we anticipate much -- having looked at

25 the prefiled testimony do Joint Applicants anticipate much

0085

1 in the way of questioning? It's difficult to know because

2 we don't have the oral.

3 MS. ANDERL: Your Honor, I think at this point it

4 would be safe to say that if Mr. Appleby did not give any

5 additional testimony beyond his prefiled we would not have

6 any cross-examination for him. But we likely will have some

7 questions for him based on whatever oral presentation he

8 gives.

9 JUDGE FRIEDLANDER: Okay, thank you.

10 And, Staff, would you anticipate any kind of

11 additional cross?

12 MS. CAMERON-RULKOWSKI: We wouldn't anticipate any

13 cross, no.

14 JUDGE FRIEDLANDER: Okay, Public Counsel?

15 MR. FFITCH: Your Honor, I would like to reserve

16 five minutes. I do not know if we will use it but I would

17 like to reserve the ability.

18 JUDGE FRIEDLANDER: Sure, definitely.

19 Do the Joint CLECs wish to question Mr. Appleby?

20 MR. TRINCHERO: Based on his prefiled, no, but

21 just as an abundance of caution five minutes reserved,

22 probably not to be used.

23 JUDGE FRIEDLANDER: Okay, thank you.

24 MS. CAMERON-RULKOWSKI: Your Honor, could I

25 clarify?

0086

1 JUDGE FRIEDLANDER: Sure.

2 MS. CAMERON-RULKOWSKI: Were you referring to the

3 surrebuttal at that point when you asked about cross?

4 JUDGE FRIEDLANDER: Yeah, it's surrebuttal. It's

5 actually what we're calling rebuttal because it's nonfiled

6 oral, and it's in rebuttal to the settlements.

7 MS. CAMERON-RULKOWSKI: Then Staff would also like

8 to reserve five minutes.

9 JUDGE FRIEDLANDER: Okay, fine. Thank you.

10 MS. ANDERL: Your Honor, before you unmute the

11 bridge I would say, again, we didn't give you a time, but I

12 would say maybe 30. If we reserved 30 minutes for your

13 planning purposes that would probably be enough.

14 JUDGE FRIEDLANDER: Okay, thank you. And I will

15 unmute the bridge line. Mr. Melnikoff, do you have any

16 questions, can you anticipate any kind of cross-examination

17 estimates for Mr. Appleby?

18 MR. MELNIKOFF: I don't anticipate any, it depends

19 on what he may say during answers to cross-examination.

20 JUDGE FRIEDLANDER: Sure. Okay. And on behalf of

21 Level 3, Cbeyond and 360networks, Mr. Butler?

22 MR. BUTLER: We estimate no cross.

23 JUDGE FRIEDLANDER: Okay, thank you. That would

24 move us to -- because Level 3, Cbeyond have indicated that

25 they will not be providing oral rebuttal, that takes us into

0087

1 surrebuttal. And, obviously, surrebuttal you're not going

2 to know, so I'm not going to ask if people are going to have

3 any kind of cross-examination for something we have no idea.

4 What I would like to do now is just get a sense --

5 MR. TRINCHERO: Your Honor, just as a

6 clarification; however, if in fact the company knows which

7 surrebuttal witnesses it will likely put up in response to

8 Joint CLECs we could, you know, that would be helpful.

9 JUDGE FRIEDLANDER: Sure, I don't know if they do.

10 But, Ms. Anderl, do you any idea the witnesses you would be

11 putting up?

12 MS. ANDERL: We know that it would be Mr. Viveros

13 and Mr. Hunsucker. We expect Mr. Williams might be tapped.

14 In fact, maybe even Mr. Reynolds. I don't think Mr. Bailey

15 and Mr. Schafer or Mr. Jones, but I'll let Mr. Simshaw.

16 MR. SIMSHAW: Possibly, Your Honor, possibly

17 Mr. Schafer.

18 MR. TRINCHERO: Thank you.

19 JUDGE FRIEDLANDER: Okay. Thank you. What about

20 Staff, Public Counsel, do you have any idea of the

21 witnesses? Would they be the same ones that were originally

22 on the panel, Ms. Johnson and Mr. Vasconi?

23 MS. CAMERON-RULKOWSKI: Yes, Your Honor, for the

24 Staff.

25 MR. FFITCH: Yes, Ms. Johnson for Public Counsel.

0088

1 JUDGE FRIEDLANDER: Thank you. And,

2 Mr. Melnikoff, I assume that would be Mr. King, as well?

3 MR. MELNIKOFF: For what testimony, Your Honor?

4 JUDGE FRIEDLANDER: This would be the oral

5 surrebuttal in response to the oral rebuttal that is done by

6 Sprint/T-Mobile.

7 MR. MELNIKOFF: I don't anticipate them addressing

8 our issues, but if they do it would be Mr. King.

9 JUDGE FRIEDLANDER: Okay, thank you.

10 MR. MELNIKOFF: And when would that panel be?

11 JUDGE FRIEDLANDER: That would be -- I can't give

12 you a day, but I'm going to say it's immediately following

13 oral rebuttal which does not sound like it's going to be

14 very extensive.

15 MR. MELNIKOFF: So it would be on Wednesday?

16 JUDGE FRIEDLANDER: I can't guarantee it. I would

17 say more like Thursday.

18 MR. MELNIKOFF: Okay.

19 MS. ANDERL: And, Your Honor, just to clarify,

20 this is also the surrebuttal panel to give oral testimony to

21 anything that Mr. Trinchero's clients file?

22 JUDGE FRIEDLANDER: Right.

23 MS. ANDERL: Put in writing to kind of keep making

24 sure of that.

25 MR. TRINCHERO: These witnesses?

0089

1 MS. ANDERL: Yes, the ones we just talked about.

2 MR. TRINCHERO: Right.

3 JUDGE FRIEDLANDER: Definitely.

4 Then we also have the surrebuttal of 360 and

5 Integra. Mr. Butler, do you any idea who? I assume for

6 Integra it will still be Mr. Denney. And for 360 are we

7 still talking Singer Nelson?

8 MR. BUTLER: Correct.

9 JUDGE FRIEDLANDER: And possibly Thayer with Level

10 3 depending on what gets filed?

11 MR. BUTLER: Correct.

12 JUDGE FRIEDLANDER: Okay. Then I'm going to mute

13 the bridge line again. Let's talk about the second bucket,

14 what has been aptly described as the "second bucket," the

15 disputed issues that have not been resolved via the

16 settlement agreement. I assume that Sprint/T-Mobile has

17 some cross-examination for witnesses that have prefiled

18 testimony?

19 MS. ENDEJAN: That is correct, Your Honor. Just

20 to, you know, give you an idea, for Mr. Reynolds we have 15

21 minutes, Mr. Jones 30 minutes, Mr. Bailey 30 minutes,

22 Mr. Schafer 15 minutes --

23 JUDGE FRIEDLANDER: Slow down.

24 MS. ENDEJAN: Sorry.

25 JUDGE FRIEDLANDER: Can you start from the

0090

1 beginning and we'll just go through them slowly?

2 MS. ENDEJAN: Sure. Mr. Reynolds 15 minutes,

3 Mr. Jones 30 minutes, Mr. Bailey 30 minutes, Mr. Schafer 15

4 minutes, Mr. Hunsucker 45 minutes and Mr. Brigham 15

5 minutes. And then for Staff we had identified 30 minutes

6 for Mr. Vasconi and for Ms. Liu 10 minutes. So those are

7 the only witnesses who we identified on the basis of their

8 prefiled testimony as who we would like to cross-examine.

9 JUDGE FRIEDLANDER: Okay, thank you. And did

10 Joint CLECs have, as a nonsettling party, any other disputed

11 issues that they would not be addressing through the panels

12 or rebuttal testimony filed on Monday?

13 MR. TRINCHERO: Pursuant to the agreement we've

14 reached with the Joint Applicants we would not.

15 JUDGE FRIEDLANDER: Okay.

16 So that I believe just leaves Mr. Butler's

17 clients. Were you anticipating calling any or

18 cross-examining any witnesses with regard to issues not

19 addressed in the settlement agreements that are still in

20 dispute?

21 MR. BUTLER: No.

22 JUDGE FRIEDLANDER: Okay. So the only party that

23 will be calling witnesses it sounds like is Sprint/T-Mobile,

24 but I just want to put that out there, again, for anybody

25 else. Kind of going once, going twice. So I have a sense

0091

1 of who's going to be doing what in that second half of the

2 hearing. Okay. I'm going to mute the conference bridge at

3 this point.

4 So does anybody have questions? I'm sure you have

5 questions about the presentation of the witnesses, but do

6 you have any questions about the order that they will be

7 presenting testimony? I hope that this has provided at

8 least a better roadmap of where we will be going on

9 Wednesday, Thursday and Friday of next week.

10 MS. ANDERL: Your Honor, thanks. I don't have any

11 questions, this is Lisa Anderl. I have to refresh my

12 recollection about Mr. Brigham's testimony. He may be a

13 sort of focused panel witness, as well, on the surrebuttal.

14 I just didn't want to leave that out and have people later

15 say --

16 JUDGE FRIEDLANDER: And he will be in the 360,

17 Integra or the Staff?

18 MS. ANDERL: The Staff.

19 JUDGE FRIEDLANDER: Okay, Mr. Brigham.

20 MS. ANDERL: Well, I guess I'm trying to remember

21 what his testimony contains. It would be -- I think it's

22 more along the lines of wholesale issues.

23 JUDGE FRIEDLANDER: Okay. So it would be in the

24 360, Integra panel?

25 MR. TRINCHERO: Surrebuttal, right?

0092

1 MS. ANDERL: Yeah.

2 JUDGE FRIEDLANDER: Right.

3 MS. ANDERL: I guess I'm kind of seeing the

4 witness on the Joint Applicant, Staff, DoD/FEA surrebuttal

5 panel. Some of those that we've identified really are

6 wholesale witnesses, like Mr. Hunsucker and Mr. Viveros.

7 Maybe they should be in the 360, Integra panel, but they're

8 going to be addressing those issue. Whether they're kind of

9 identified as the first surrebuttal panel or the second

10 surrebuttal panel I think may need a little fine-tuning

11 we'll just have to do when we're in the hearing.

12 JUDGE FRIEDLANDER: Sure.

13 MR. TRINCHERO: So, Your Honor, I'm just going to

14 ask clarification, because I thought that was where you were

15 listing them, this is 360, Integra surrebuttal?

16 JUDGE FRIEDLANDER: I had them listed in the

17 retail, Staff, DoD.

18 MR. TRINCHERO: Hunsucker?

19 MS. ANDERL: Yeah, that's why I wanted to clarify

20 that, that's not what I meant to say.

21 MR. TRINCHERO: So I'm hoping now I've written

22 down what you meant to say, which is that for the 360

23 Integra surrebuttal panel the likely witnesses are

24 Hunsucker, Viveros, Williams, Reynolds and Schafer and maybe

25 Brigham.

0093

1 MS. ANDERL: I think that's right, yes. And it

2 depends, there may be overlap for them.

3 MR. TRINCHERO: They may also be on the retail.

4 That makes sense.

5 JUDGE FRIEDLANDER: As Ms. Anderl indicated, we'll

6 obviously be doing fine-tuning on the day of the hearing in

7 setting up the panel.

8 MS. CAMERON-RULKOWSKI: Your Honor, to make sure

9 that I understand the terminology. When you're talking

10 about the oral rebuttal and surrebuttal, that is

11 contemplating an oral narrative by the witness?

12 JUDGE FRIEDLANDER: Yeah, that's what I was

13 thinking of. We're going to be having one rebuttal panel,

14 oral rebuttal panel, and it's not technically a panel,

15 because there's one witness, that will be Mr. Appleby. Yes,

16 it will be a narrative direct in effect, and then we'll go

17 through cross and redirect. So there will be an opportunity

18 to cross-examine Mr. Appleby. I don't know if that answers

19 your question?

20 MS. CAMERON-RULKOWSKI: I believe so, Your Honor.

21 Thank you.

22 JUDGE FRIEDLANDER: Okay, thank you. So are there

23 any other questions or points of clarification for the

24 witness presentation? Actually, I should ask that and

25 unmute the conference bridge. Are there any other questions

0094

1 or clarifications with regard to witness presentation?

2 MR. MELNIKOFF: Your Honor, this is Stephen

3 Melnikoff.

4 JUDGE FRIEDLANDER: Yes.

5 MR. MELNIKOFF: When would -- are you going to

6 allow the prefiled testimony that doesn't have

7 cross-examination potential, like Mr. King, to be stipulated

8 into the record or do you -- and when would that be?

9 JUDGE FRIEDLANDER: Yes. And I would anticipate

10 allowing admission of the exhibits, the prefiled exhibits,

11 including testimony, at the beginning of the hearing. We

12 will be -- and actually that takes me into another topic

13 that I need to address. The beginning of the hearing is

14 going to encompass procedural matters which will be motions

15 if parties have any, the admission of exhibits that are

16 uncontested, what have you. That will be the beginning of

17 the procedural portion of the hearing. The commissioners

18 will not be sitting for that. When we are finished with the

19 procedural aspects I will go and get them and they will sit

20 for the evidentiary, the substantive portion of the hearing.

21 The topic I was going to get to, the question I

22 had for the parties, because we do have it seems like a lot

23 of issues to deal with, I don't know what the receptive

24 attitude of the parties may be to this, but if it would help

25 we could start at 9:00. And I can issue a revised notice to

0095

1 go out saying that we will be starting the hearing at 9:00

2 and commencing the substantive portion of the evidentiary

3 proceedings at 9:30. So does anybody have any issues with

4 that or would like to speak to that?

5 MS. ENDEJAN: That's fine. I guess I'm a little

6 confused. When is the public hearing scheduled?

7 JUDGE FRIEDLANDER: The public comment hearing is

8 scheduled for 5:30 in the evening on the first day of

9 hearing, that Wednesday. Did anybody have a serious issue

10 with starting at 9:00? Mr. Melnikoff or Mr. Butler,

11 Mr. Denney?

12 MR. MELNIKOFF: 9:00 for DoD would be fine, Your

13 Honor.

14 JUDGE FRIEDLANDER: Thank you.

15 MR. DENNEY: That's fine for Integra, Your Honor.

16 JUDGE FRIEDLANDER: Okay, thank you. And,

17 Mr. Butler?

18 MR. BUTLER: 9:00 is fine.

19 JUDGE FRIEDLANDER: Okay, thank you. I will go

20 ahead and issue a revised notice saying that the Commission

21 will begin the hearing at 9:00 instead. We'll get a little

22 bit further along by the time the end of the day comes.

23 Speaking of the public comment hearing, I was

24 wondering if any of you know in advance who you will be

25 having in attendance? I know sometimes the Joint Applicants

0096

1 will have representatives. I wanted to get a sense of this

2 before I start drafting a script for the public comment

3 period. I think Staff is planning on having somebody, as

4 well as I'm sure Public Counsel. So if I could get some

5 information on who would be attending that it would be most

6 helpful. If Staff wanted to go first?

7 MS. CAMERON-RULKOWSKI: Your Honor, I don't know

8 who exactly it will be, someone from consumer protection.

9 And I can find out exactly who that is and email that to

10 you.

11 JUDGE FRIEDLANDER: Okay, thank you. I believe

12 I've heard Mr. Cupp might be in attendance. But if you

13 could verify that I would really appreciate that.

14 MS. CAMERON-RULKOWSKI: I will do that, and I will

15 also be there.

16 JUDGE FRIEDLANDER: Thank you. Mr. ffitch?

17 MR. FFITCH: I will be there on behalf of Public

18 Counsel, Your Honor.

19 JUDGE FRIEDLANDER: Okay. Great, thank you. Were

20 the Joint Applicants going to have anybody in attendance as

21 a representative for the companies?

22 MS. ANDERL: Your Honor, it's my understanding

23 that at a minimum for Qwest I will be there and Mr. Reynolds

24 will be there.

25 MR. SIMSHAW: At a minimum for CenturyLink, Your

0097

1 Honor, will be myself and Mary Taylor.

2 JUDGE FRIEDLANDER: Okay, great. Thank you. Just

3 so I have all of the pertinent information.

4 And the last thing that I wanted to discuss today

5 was hearing protocol, because we've had a little bit of

6 problems--at hearings lately--to practices and procedures.

7 And I want to make sure everybody knows that this is going

8 to be a very organized tightly run hearing. I want people

9 to come prepared. I know you're all professionals, so I'm

10 not going to go over this and belabor the point. But I want

11 to make sure there's no shenanigans going on.

12 If you have a motion to present please let know in

13 advance so that I'm not surprised. And, you know, we will

14 get this done in the most professional and orderly manner as

15 possible.

16 I would prefer that if you have any kind of

17 questions please do not hesitate to call me or email me,

18 procedural questions only, obviously. And if you have

19 filing concerns please do talk with the records center

20 because I know on occasion we have had our system go down,

21 but they also have certain protocols for that.

22 So does any other -- does any of the parties have

23 anything else they would like to add, discuss at this point,

24 raise before we adjourn? Mr. ffitch?

25 MR. FFITCH: Your Honor, I just wanted to get a

0098

1 better sense of what the Bench would like in terms of the

2 presentation of the panels, of our panel, in particular.

3 You had mentioned, for example, opening statements a couple

4 of times. And I know that actually the practice varies from

5 case to case. We don't always have opening statements, or

6 there's always a question of whether the panelists will be

7 provided to make a brief opening statement. So I guess I

8 just wanted for us to address that a little bit and get some

9 guidance.

10 JUDGE FRIEDLANDER: Sure. What I had envisioned

11 was more along the lines of counsel presenting opening

12 statements much like a regular legal proceeding. If counsel

13 have any arguments to be made, or they want to provide the

14 Commission with a roadmap of where they're going, that would

15 be really helpful to the commissioners and myself.

16 I did not anticipate the panels making opening

17 statements, but that is something that can be drawn out on

18 direct, as far as the oral examinations go. If you have

19 something that you wish to raise, that would be the

20 appropriate time. Some of the settling parties have filed

21 testimony already, some have not. So it really is the

22 attorney's prerogative.

23 And the same for closing statements, closing

24 statements will be made by the attorneys only. Ms. Anderl?

25 MS. ANDERL: Your Honor, you said those would be

0099

1 strictly time bound, do you know at this point what our

2 allocations will be?

3 JUDGE FRIEDLANDER: I don't at this point. I will

4 be discussing that with the commissioners. I would think

5 that the closing statements will be limited in scope to

6 approximately two hours total. I mean that is just an

7 estimate from the latest that I've discussed with the

8 tribunal. I don't know about opening statements, but I can

9 provide you with that information. And I'll try to do that

10 in advance of the hearing. Obviously, it's not going to be

11 very helpful if I tell you at the hearing because that

12 limits preparation time.

13 MS. ANDERL: Thank you, Your Honor.

14 JUDGE FRIEDLANDER: Sure.

15 MS. ANDERL: You also did mention in passing, just

16 a second ago, not to interrupt you, Simon, but something

17 about eliciting information from your witnesses on direct.

18 And I was wondering if you contemplated anything for, say,

19 the first panel other than please identify yourself, is this

20 your testimony, the end?

21 JUDGE FRIEDLANDER: I personally don't because

22 the -- at least for the Staff Public Counsel settlement you

23 have filed joint testimony. I don't know about DoD because

24 I have not seen the settlement. And obviously that's a

25 personal call that the attorneys have to make.

0100

1 What I had thought was that the panel would

2 receive the typical direct examination, laying the

3 foundation of who the witnesses are. If there's anything

4 further that the counsel wants to present, wants to ask the

5 witnesses, that's certainly your prerogative.

6 MR. TRINCHERO: And, Your Honor, just as a

7 clarification, that is what I was anticipating for the panel

8 on the Integra, 360network settlement, as well. We're going

9 to put them up there, foundation, and then they're open to

10 questioning; right?

11 MS. ANDERL: The initial panel?

12 MR. TRINCHERO: The initial panel.

13 MS. ANDERL: The surrebuttal panel may look

14 differently?

15 MR. TRINCHERO: Obviously, yes.

16 MS. ANDERL: Yeah, that's my thinking.

17 JUDGE FRIEDLANDER: Okay. And, Mr. ffitch, did

18 you have any other questions?

19 MR. FFITCH: I think that answers my question. I

20 was going to raise the same point Ms. Anderl did about how

21 to present our witnesses. And I think that brief

22 introduction is what I expected. So that sounds fine, Your

23 Honor.

24 JUDGE FRIEDLANDER: Thank you. I just didn't want

25 to limit counsel. If you wanted to go further I certainly

0101

1 don't want to hinder your opportunity to do that. It is

2 direct so you can feasibly go beyond that. But if you're

3 just laying the foundation I have no problems with that at

4 all. And it certainly will speed things along.

5 MS. ANDERL: Your Honor, one final question. I

6 don't know if we will need this, but do you know if the

7 technical issues regarding the bridge will be resolved by

8 Wednesday?

9 JUDGE FRIEDLANDER: That's the $64,000 question.

10 Honestly, I have no idea. We thought we had resolved it

11 from this morning's open meeting. But apparently rebooting

12 the system does not fix the problem. We do have another

13 line we can use. However, the conference bridge line, the

14 main conference bridge line, can hold up to 20 phone calls

15 coming into the system. The other line that we have, the

16 alternative line, can hold one. And we might have to

17 conference people in which will be very difficult. So if

18 need be we can go that route, I'm told through the IT

19 department, but it really is a guess at this point what is

20 going to happen.

21 MR. TRINCHERO: Your Honor, on a related question.

22 For clients that would like to listen in, how many ports

23 total will be available, do you know?

24 JUDGE FRIEDLANDER: I don't. From what I

25 understand it's a limit of 20. But I honestly don't know.

0102

1 They may know at the records center if you were to call

2 them, because I know that they handle some of the technical

3 aspects. Yeah, hopefully we will be up and running with the

4 conference bridge in much better shape. And I'm going to

5 unmute the conference bridge at this point to ask one last

6 time if any of the parties listening in on the conference

7 bridge have anything else to add?

8 MR. MELNIKOFF: Your Honor, this is Stephen

9 Melnikoff again. It appears to me in the prefiled testimony

10 of Mr. King there are some minor corrections that we may

11 have to make orally. So I presume we would do that first

12 thing?

13 JUDGE FRIEDLANDER: Yes, that would be on direct I

14 would imagine.

15 MR. MELNIKOFF: Thank you.

16 JUDGE FRIEDLANDER: Sure. Mr. Butler, Mr. Denney,

17 any other questions?

18 MR. DENNEY: This is Doug Denney, I don't have

19 any.

20 JUDGE FRIEDLANDER: Thank you.

21 MR. BUTLER: Nothing further.

22 JUDGE FRIEDLANDER: I'm going to go ahead and mute

23 the bridge line again. If there's nothing further then

24 we're adjourned.

25 MS. CAMERON-RULKOWSKI: Your Honor, I do have a

0103

1 couple of questions.

2 JUDGE FRIEDLANDER: Hold on. We're going back on

3 the record, I guess.

4 MS. CAMERON-RULKOWSKI: In the notice that you had

5 issued talking about the procedure at hearing it says that

6 issues will be selected by the Commission for briefing?

7 JUDGE FRIEDLANDER: Yes.

8 MS. CAMERON-RULKOWSKI: When is that going to

9 occur exactly?

10 JUDGE FRIEDLANDER: That is a good question. And

11 hopefully everybody stayed on the conference bridge. Those

12 issues will be selected, and most likely given to the

13 parties at the hearing, because we will need to know what

14 gets presented on oral rebuttal and surrebuttal. It will be

15 composed of questions that the Commission -- topics that the

16 Commission would like delved into a little bit further. It

17 will be very narrowly tailored. So it will be a much

18 tighter focus than what was initially anticipated.

19 Yes, Ms. Anderl?

20 MS. ANDERL: When Ms. Cameron-Rulkowski is done I

21 have one other thing to add.

22 JUDGE FRIEDLANDER: Okay, sure.

23 MS. CAMERON-RULKOWSKI: The other question I had

24 from the notice was about presenting oral issue statements

25 at the start of the hearing?

0104

1 MS. ENDEJAN: Yes, I would anticipate that being

2 done during the opening statements.

3 MS. CAMERON-RULKOWSKI: Thank you, Your Honor.

4 JUDGE FRIEDLANDER: And that would probably be the

5 most helpful to have it in opening statements. And,

6 Mr. Anderl?

7 MS. ANDERL: I just wanted to note either now or

8 later I could make this observation. But in light of the

9 compressed schedule and the briefing, and I know there's to

10 be some argument by the parties by noon on Monday about

11 whether the briefing schedule should be re-expanded. But we

12 did contact the court reporting associates earlier this week

13 and did ask about the feasibility of next day transcripts.

14 And the Joint Applicants would, of course, pay the upcharge

15 for those. And I think we have a preliminary agreement that

16 we would be most likely able to have transcripts of

17 Wednesday and Thursday by the close of business Friday.

18 JUDGE FRIEDLANDER: Okay.

19 MS. ANDERL: If there were problems with that

20 Monday early. And if we go Friday then the Friday

21 transcript would be on Monday. Just so that everybody knows

22 that we've made those arrangements already.

23 JUDGE FRIEDLANDER: Right. Thank you for

24 providing that information. Was there anything else that

25 the parties wanted to raise as an issue?

0105

1 Anything on the bridge line?

2 MR. MELNIKOFF: Your Honor, this is Stephen

3 Melnikoff. I apologize, but I could not hear the subject of

4 Ms. Cameron-Rulkowski's questions. It has to do something

5 with opening statements in addition to something else.

6 JUDGE FRIEDLANDER: Yes, I believe

7 Ms. Cameron-Rulkowski was asking about wording in the notice

8 that provided the opportunity for parties to orally inform

9 the Commission of remaining issues in an issue statement.

10 And I suggested that that might best be done in opening

11 statements.

12 MR. MELNIKOFF: Okay. I understand that, thank

13 you very much.

14 JUDGE FRIEDLANDER: Sure. Anybody else on the

15 conference bridge have issues to address?

16 Okay. Then we are adjourned. Thank you.

17 (Off the record at 3:39 p.m.)

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0106

1 C E R T I F I C A T E

2

3 I, TAMI LYNN VONDRAN, a Certified Court Reporter,

4 do hereby certify that I reported in machine shorthand the

5 foregoing proceedings in the above-entitled cause; that the

6 foregoing transcript was prepared under my personal

7 supervision and constitutes a true record of the testimony

8 of the said witness.

9 I further certify that I am not an attorney or

10 counsel of any parties, nor a relative or employee of any

11 attorney or counsel connected with the action, nor

12 financially interested in the action.

13 DATED at Edgewood, Washington this 4th day of

14 January, 2011.

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Tami Lynn Vondran, CCR

19 Certified Court Reporter

License No. 2157

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