

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
2 COMMISSION

3 AT&T COMMUNICATIONS OF THE )  
4 PACIFIC NORTHWEST, INC., )  
5 Complainant, )  
6 vs. ) DOCKET NO. UT-020406  
7 VERIZON NORTHWEST, INC., ) Volume No. IV  
8 Respondent. ) Pages 95 - 141  
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9 A hearing in the above matter was held on  
10 December 19, 2002, at 2:39 p.m., at 1300 South  
11 Evergreen Park Drive Southwest, Olympia, Washington,  
12 before Administrative Law Judge MARJORIE R. SCHAER,

13 The parties were present as follows:

14 AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST,  
15 INC., by GREGORY J. KOPTA, Attorney at Law, Davis,  
16 Wright, Tremaine, LLP, 1501 Fourth Avenue, Suite 2600,  
Seattle, Washington 98101.

17 VERIZON NORTHWEST, INC., by JUDITH A.  
18 ENDEJAN, Attorney at Law, Graham & Dunn PC, 1420 Fifth  
Avenue, 33rd Floor, Seattle, Washington 98101.

19 VERIZON NORTHWEST, INC., by CHARLES  
20 CARRATHERS, Vice President and General Counsel, 600  
Hidden Ridge, Irving, Texas 75038.

21 THE WASHINGTON UTILITIES AND TRANSPORTATION  
22 COMMISSION, by SHANNON SMITH, Assistant Attorney  
General, 1400 South Evergreen Park Drive Southwest,  
23 Post Office Box 40128, Olympia, Washington 98504.

24 Kathryn T. Wilson, CCR  
25 Court Reporter

0096

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

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3 JUDGE SCHAER: We are on the record. We are  
4 here this afternoon for a discovery conference in  
5 Docket No. UT-020406, which is a complaint proceeding  
6 brought by AT&T Communications of the Pacific Northwest  
7 against Verizon Northwest, Incorporated. The date  
8 today is December 19th, 2002. We are meeting in the  
9 Commission's hearing room 206 at the Commission's  
10 headquarter building in Olympia.

11 One party is appearing by teleconference  
12 bridge as authorized by the notice of hearing, and that  
13 is Ms. Endejan representing Verizon, and Ms. Endejan  
14 had previously contacted my office to let us know she  
15 would be appearing telephonically. My name is Marjorie  
16 Schaer, and I will be the administrative law judge  
17 conducting this hearing.

18 I would like to start by taking appearances.  
19 If you have already appeared in this matter, then  
20 please give an abbreviated appearance of your name and  
21 client. Would you start, please, Mr. Kopta?

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

25 JUDGE SCHAER: Then Ms. Endejan?

0097

1 MS. ENDEJAN: Judy Endejan of Graham and Dunn  
2 for Verizon Northwest, Inc., and I would also like to  
3 have Mr. Carrathers enter an appearance. I'm not  
4 certain that he has formally entered an appearance in  
5 this docket or not, but we might want to do that at  
6 this point.

7 JUDGE SCHAER: Why don't you give us a  
8 complete appearance, Mr. Carrathers, unless you  
9 remember that you had appeared before. It's not my  
10 recollection that you have.

11 MR. CARRATHERS: The name is Charles  
12 Carrathers, C-a-r-r-a-t-h-e-r-s, vice president and  
13 general counsel, Verizon Northwest. Business address  
14 is 600 Hidden Ridge, Irving, Texas. Telephone number  
15 is (972) 718-2415.

16 JUDGE SCHAER: Since this is your first  
17 appearance, please also give us your e-mail address and  
18 your telefax number, if you would, please.

19 MR. CARRATHERS: The e-mail address is  
20 chuck.carrathers@verizon.com. Fax number is  
21 (972) 718-0936.

22 JUDGE SCHAER: Just so our records are clear,  
23 we often have more than one counsel appearing for a  
24 party, but we designate one as the official contact  
25 person so if some kind of official action needs to be

0098

1 taken, we know whom the Commission or the parties must  
2 serve, and usually as a courtesy, we serve everybody,  
3 but if you could let me know between you and  
4 Ms. Endejan who will be the official contact person for  
5 Verizon Northwest, please.

6 MR. CARRATHERS: Ms. Endejan will be, thank  
7 you.

8 JUDGE SCHAER: Thank you. Let me mention  
9 that Mr. Cromwell has advised the Commission he would  
10 not participate in this conference. We have not had a  
11 response from Ms. Singer Nelson at this point. Are you  
12 on the line, Ms. Singer Nelson? If she joins us later,  
13 we will go from there, and then we are going to have  
14 Ms. Smith appear for herself this afternoon. She's  
15 previously appeared in this matter on behalf of  
16 Mr. Trautman, but we need to get her contact  
17 information, so go ahead, please.

18 MS. SMITH: Shannon Smith, assistant attorney  
19 general representing Commission staff. My address is  
20 1400 South Evergreen Park Drive Southwest, P.O. Box  
21 40128, Olympia, Washington, 98504-0128. My telephone  
22 number is area code (360) 664-1192. My fax number is  
23 area code (360) 586-5522. My e-mail address is  
24 ssmith@wutc.wa.gov.

25 JUDGE SCHAER: Thank you. We are here this

0099

1 afternoon to resolve an AT&T motion to compel Verizon  
2 to respond to data requests, and I would plan to go  
3 forward by having Mr. Kopta address his motion, and  
4 perhaps in doing that address the response that was  
5 provided by Verizon this week and why he may agree or  
6 disagree with it, and then I might ask whoever is  
7 speaking on behalf of Verizon to respond to that, and  
8 then I will inquire if Commission staff has any  
9 comments they wish to make at that point and then have  
10 Mr. Kopta have an opportunity to respond to what's been  
11 said, so go ahead, Mr. Kopta, at this point, please.

12 MR. KOPTA: Thank you, Your Honor. I think  
13 we've laid out the grounds for our motion in our  
14 papers, and I don't want to repeat that and will not.  
15 So therefore, I will focus on the response that Verizon  
16 has filed previously.

17 There are several different data requests to  
18 which we are seeking a response, and Verizon's response  
19 focuses almost entirely on the few that have to do with  
20 information on Verizon's affiliates. So I'm going to  
21 leave that for the moment and address two other types  
22 of requests.

23 There are two data requests, No. 4 and 5,  
24 that have to do with the number of minutes of use for  
25 each of Verizon's toll programs, and they in their

0100

1 response refer us to information that they have just  
2 provided to Commission staff, and without having had  
3 time to review it since I just received it yesterday,  
4 it appears as though that seems to be the same  
5 information that we have looked for, so at this point,  
6 I think that unless we have some problem with the  
7 information that Verizon has provided, it seems to be  
8 responsive to what we have asked for, so we won't be  
9 pushing ahead for any kind of order on Requests No. 4  
10 and 5.

11           The other actually larger number of requests  
12 has to do with the types of services that Verizon  
13 provides to unaffiliated interexchange carriers as well  
14 as to its affiliate toll providers, and Verizon doesn't  
15 address those requests in its response, so I'm a little  
16 bit at a loss to understand why they are continuing to  
17 be unwilling to provide that type of information, and I  
18 just simply would refer to Request No. 6 which asks for  
19 billing and collection service information with respect  
20 to what Verizon provides to unaffiliated carriers, and  
21 No. 16, which asks for basically the same information  
22 from affiliates. No. 17 asks for the number of local  
23 exchange customers that Verizon serves in the State of  
24 Washington and how many are presubscribed to Verizon  
25 services or affiliates' toll services.

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1           I don't want to keep going through all of  
2 them, but most of the requests have had to do with  
3 information that Verizon has in its control,  
4 information about Verizon, what it provides, what are  
5 the rates that Verizon charges, and in some cases, what  
6 are the costs that Verizon incurs, and we think those  
7 are squarely within the purview of this docket, and  
8 Verizon hasn't said otherwise.

9           There are a couple of data requests in which  
10 we have asked for information about Verizon affiliates,  
11 and at least with respect to how that relates to this  
12 case, our concern has been that Verizon's switched  
13 access rates are too high. I think that's undisputed  
14 in terms of what the scope of this docket is, but  
15 Verizon as part of its defense in this case has claimed  
16 that it's underearning, or at least not making as much  
17 as the Commission has authorized it to make, and we  
18 think that one of the responses to that is to  
19 demonstrate that the excess between Verizon's costs in  
20 providing switched access and the rates for switched  
21 access, that some of that may be used to subsidize  
22 its affiliates, and so therefore, that's an improper  
23 use, and that if Verizon is underearning, it's because  
24 it's using its revenues to subsidize affiliates as  
25 opposed to demonstrating that it's making its rate of

0102

1 return.

2           In order to substantiate that or investigate  
3 whether it's true or not, we want to know what kind of  
4 facilities and services its affiliates have in the  
5 provision of toll service, and particularly those that  
6 the affiliates are receiving from Verizon. At this  
7 point, the data requests that probably most squarely  
8 presents or has the most information requested about  
9 affiliates is No. 34, in which we've asked for the  
10 rates, terms, and conditions under which its affiliates  
11 provide long distance services since Verizon in  
12 response to an earlier data request had stated that its  
13 affiliates provide toll service on a resold basis as  
14 opposed to a facilities basis, and at this point, our  
15 primary interest is whether the affiliates in the  
16 provision of those services are receiving any services  
17 from Verizon or from another affiliate of Verizon from  
18 which Verizon also receives comparable services just to  
19 see or compare the extent to which those affiliates are  
20 able to obtain services at rates, terms, and conditions  
21 that other companies can't.

22           So again, we think that this is something  
23 that is squarely within the purview of this particular  
24 docket. Verizon makes the -- I don't want to  
25 characterize it as legalistic, but certainly the



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1 procedural issue that those affiliates are not named  
2 parties in this proceeding. That is certainly true,  
3 and if we want to play, I guess, according to Hoyle,  
4 then I guess we could do that. We could ask the  
5 Commission for authority to subpoena these particular  
6 companies and ask them to provide this information. We  
7 could ask for a public record request to get their  
8 annual reports, in which case those affiliates would  
9 then be obligated to proceed to Superior Court to  
10 obtain a protective order to insure that confidential  
11 information isn't disclosed, and that seems like a  
12 roundabout way of getting that information.

13           As I say, we could do it that way, but I  
14 wouldn't think the Commission or the parties would want  
15 to do it that way. It seems like a simple matter,  
16 particularly with respect to the annual reports, to  
17 provide that information directly to us under the terms  
18 and conditions of the existing protective order, and  
19 with respect to the other information we have  
20 requested, if it's in the possession of Verizon or  
21 easily obtained by Verizon, then it seems like that's  
22 the most direct way of providing the information rather  
23 than going through additional hoops to get that from  
24 the affiliates directly.

25           So as I say, we can certainly do it that way.

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1 It just seems like a waste of time and effort upon  
2 behalf of the Commission and all parties, but I guess  
3 that's up to Verizon whether it wants to continue to  
4 press for that. But the bottom line is it's  
5 information that's germane to the allegations in the  
6 complaint, the issues that are raised by the complaint,  
7 and most specifically to Verizon's defenses to the  
8 complaint, and therefore, we think that we are entitled  
9 to obtain that information.

10 JUDGE SCHAER: Looking at the middle section  
11 of requests that you indicated have not been responded  
12 to in any way, could you at least give me the numbers  
13 at this point so we all know we are talking about the  
14 same thing?

15 MR. KOPTA: The responses, of course, are  
16 attached to our motion, and in virtually every case,  
17 Verizon has not provided any response other than an  
18 objection. Those include No. 6, No. 16, No. 17,  
19 No. 18, No. 20. No. 21, they do provide a partial  
20 response.

21 JUDGE SCHAER: What is it you seek beyond  
22 that partial response?

23 MR. KOPTA: In No. 21, we are interested in  
24 the extent to which each affiliate provides intraLATA  
25 or interLATA toll services, and I believe that Verizon

0105

1 makes some reference to that is discernible from their  
2 tariffs or price lists. I'm not sure that that is the  
3 case. I've not reviewed their tariffs or price list,  
4 so if that information is provided in their tariffs or  
5 price lists, than we can certainly review those.

6           No. 22, Verizon provides a partial response  
7 with respect only to Verizon as opposed to any of its  
8 affiliates, and that one, we are asking for the date on  
9 which Verizon or any of its affiliates and to provide  
10 interLATA toll services. I believe that Verizon says  
11 that we could discern that information from the tariffs  
12 or price lists. That one I'm not so sure about because  
13 one can file a tariff or price list and not begin to  
14 provide service for a particular period of time. One  
15 can completely refile a tariff or price list with a new  
16 effective date without any indication of whether they  
17 actually began providing service, and particularly  
18 given the name changes that have occurred with the  
19 merger of Bell Atlantic and GTE, I don't know that  
20 there is any way of telling from the existing tariffs  
21 or price lists of the date on which any of those  
22 affiliates actually began providing service, which is  
23 what we are looking for.

24           No. 23 is the same kind of request only for  
25 interLATA services. And No. 34, again, Verizon

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1 provides a partial response with respect to one  
2 subsection of that data request, and this is the one in  
3 which we've asked for the resale or how the affiliates  
4 obtain the service that they resell and the rates,  
5 terms, and conditions for that as well as the extent to  
6 which those affiliates obtain services and facilities  
7 either from Verizon or from a common source with  
8 Verizon, and Verizon provides a partial response to  
9 that saying that Verizon does not provide any of the  
10 operating, installation, and maintenance services to  
11 its affiliates nor finance human resources, legal, or  
12 accounting services, but that doesn't respond to the  
13 issue of whether the affiliates of Verizon obtain those  
14 services from a common source and what those terms and  
15 conditions are with respect to how Verizon and its  
16 affiliates obtain those services, under what terms and  
17 conditions. Those are all the data requests at this  
18 point that are still at issue.

19 JUDGE SCHAER: When you speak of affiliates,  
20 you haven't, to my reading, discussed the relationship  
21 of these affiliates to Verizon in terms of the  
22 Commission's affiliated interest statutes or rules. Did  
23 I miss something, or is there something more you can  
24 tell me there about that relationship and what kinds of  
25 things should be filed with the Commission that might

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1 be available to you?

2 MR. KOPTA: At this point, we are a little in  
3 the dark because we don't know all of the  
4 interaffiliate relationships or how the corporate  
5 structure works. What we are interested in is who and  
6 how in the Verizon family of companies provides toll  
7 services, intrastate toll services, in Washington.  
8 Verizon has identified three of its affiliates that  
9 provide such services. That's the extent of our  
10 knowledge in terms of what the relationship is, so I  
11 don't know anything above and beyond that.

12 What we are trying to do is get at how  
13 Verizon provides, whether it's Verizon Northwest or  
14 Verizon as the family of companies, provides toll  
15 services and the relationship between that provision of  
16 toll services and Verizon Northwest, Inc.'s switched  
17 access services. Certainly, we have separate companies,  
18 and we are not claiming that that is not the case, but  
19 one can use separate companies as affiliates to do a  
20 variety of things, both appropriate and inappropriate.  
21 And at this point, we are not claiming that Verizon is  
22 doing anything inappropriate because we don't know.

23 What we are trying to do is get the  
24 information that would allow us to determine whether  
25 Verizon Northwest, Inc., is essentially providing

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1 services and other types of facilities or resources or  
2 whatever to its toll-providing affiliates and financing  
3 that, essentially, with the excess between cost and  
4 price and its switched access services.

5           So whether Verizon Northwest is providing the  
6 toll service or whether one of its affiliates is  
7 providing the toll service, I don't think that Verizon  
8 should be able to say, "Hey, it's not us providing the  
9 toll service," when they are, in fact, pumping their  
10 affiliates under the table by their high access charges  
11 to compete in a way that other nonaffiliated  
12 interexchange companies can't.

13           So at this point, we are trying to find the  
14 information, and Verizon has said, "Hey, it's different  
15 affiliates," but we are not satisfied with that  
16 explanation. We want to make sure that if there is a  
17 wall, how high, how wide, how deep, and how many holes  
18 are in that wall. At this point, we just don't know.

19           JUDGE SCHAER: So am I understanding you  
20 correctly to say you are withdrawing your motion as to  
21 Data Requests 4 and 5, and if there is some concern  
22 about whether the response is answering what you are  
23 seeking, you will pursue that through further data  
24 requests or some other way?

25           MR. KOPTA: That is correct. At this point,

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1 it seems as though they have provided information that  
2 appears responsive. If that's not the case, we will  
3 continue to work with them and see if there is some  
4 other means of resolving that issue, so at this point,  
5 we don't need Commission intervention on those two.

6 JUDGE SCHAER: Then Nos. 6, 16, 17, 18, 20,  
7 21 and 22 and 23 have received no objection or no  
8 response to your motion, and on both 21 and 22, you've  
9 received partial response but have not received an  
10 objection related to the rest of the response; is that  
11 correct?

12 MR. KOPTA: We've received objections to all  
13 of the responses. It's just that on most of these,  
14 Verizon does not in its written response to our motion  
15 explain above and beyond its simple objection why it's  
16 continuing to withhold the information. The only  
17 objection that Verizon explains in its written response  
18 has to do with information that is within the  
19 possession of its affiliates and allegedly not within  
20 Verizon's possession, and that is one or two of the  
21 data requests. The rest of them have to do with  
22 information that is unquestionably within Verizon's  
23 possession and control.

24 JUDGE SCHAER: From my notes, I note that  
25 No. 34 is one that you believe falls in this third

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1 category, and I'm not sure if the unanswered portions  
2 of 21 and 22 belong there also.

3 MR. KOPTA: I believe that's correct, but  
4 with 34 also there is some information that Verizon  
5 also unquestionably has in terms of whether Verizon is  
6 receiving certain services and facilities from a common  
7 source with its affiliates, so there is some overlap,  
8 but I think 34 is predominantly the data request to  
9 which most of Verizon's response goes to in terms of  
10 explaining their objection to providing the information  
11 that has been requested.

12 JUDGE SCHAER: Are there any other data  
13 requests that are in that third category?

14 MR. KOPTA: I think that there may be.

15 JUDGE SCHAER: Off the record for just a  
16 moment at this point.

17 (Pause in the proceedings.)

18 JUDGE SCHAER: Back on the record. The court  
19 reporter has solved her technical problem, so go ahead,  
20 Mr. Kopta.

21 MR. KOPTA: Request No. 3 is for the annual  
22 reports for the affiliates, and so I don't know whether  
23 Verizon Northwest has that information in its  
24 possession or not, so that may be one of those that is  
25 information that is within the possession and control



0111

1 of the affiliates, and that's information that goes to  
2 Verizon's response.

3 No. 20 asks for the number of end-user  
4 customer's presubscribed to Verizon's toll services but  
5 not Verizon local exchange customers. Again, that is  
6 probably information that they would claim only within  
7 their affiliates' possession.

8 JUDGE SCHAER: So No. 20 needs to move from  
9 Section 2 to Section 3.

10 MR. KOPTA: Yes.

11 JUDGE SCHAER: Ms. Endejan in her response  
12 referred extensively to Civil Rule 34 and case law  
13 under that rule, and it's my understanding that under  
14 that rule, the party needs to provide anything that it  
15 has in its possession that it controls.

16 MS. ENDEJAN: Would you like me to respond?  
17 I don't want to jump into Mr. Kopta's argument. I'd be  
18 happy to do so at any time, if you want me to.

19 JUDGE SCHAER: Why don't you list for me the  
20 three items under Rule 34.

21 MS. ENDEJAN: Civil Rule 34, which we  
22 discussed extensively in our response to the motion,  
23 makes it clear that requests for production of  
24 documents are only properly directed to parties. The  
25 named party in this case is Verizon Northwest, Inc.

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1 The other affiliates are not parties, have not been  
2 made and are not. They are separate companies from  
3 Verizon Northwest, Inc., which is why it is erroneous  
4 to assume that Verizon Northwest, Inc., somehow or  
5 other can get the requested information from them. It  
6 cannot. The information is not within the possession,  
7 custody, or control of Verizon Northwest, Inc., which  
8 is the second requirement of Civil Rule 34 when it  
9 comes to requesting data.

10 JUDGE SCHAER: Those were the three items I  
11 was looking for, possession, custody, or control.  
12 Thank you, Ms. Endejan.

13 MS. ENDEJAN: I guess where we are coming  
14 from --

15 JUDGE SCHAER: What I would like to do is --  
16 I appreciate your assistance in giving me what I was  
17 looking for in my notes with those three terms, and I  
18 want to ask a few more questions of Mr. Kopta so you  
19 have heard the questions and his answers before you  
20 proceed with your argument, if you would wait just a  
21 moment, please.

22 So my understanding at this point from what  
23 I've read on Rule 34 is that if Verizon has something  
24 in its possession, something in its custody, or  
25 something in its control, then it should turn that over

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1 to another party making a request. Is that how you  
2 read the rule, Mr. Kopta?

3 MR. KOPTA: Yes, it is. And I think there  
4 are a couple of concerns here. No. 1, this is the  
5 first time that Verizon has ever said that it doesn't  
6 have these documents. The objection has simply been,  
7 "This is information about our affiliates and they  
8 aren't parties, so we aren't obligated to provide it."  
9 So obviously, it changes things for Verizon to say it  
10 does not have any of this information in its  
11 possession, custody, or control. It could be any of  
12 those three. It doesn't need to be all three. Verizon  
13 could have them in its possession, and we don't know  
14 enough about the interaffiliate relationship to know  
15 whether it did or did not. Obviously, we will accept  
16 Ms. Endejan's representation and not question that.

17 But the other issue, of course, is that we  
18 are dealing here with regulated utilities. All of  
19 those companies are under the Commission's regulation,  
20 jurisdiction. There are requirements for  
21 interaffiliate transaction, filings, overview by the  
22 Commission, and so I don't know that the civil rule, as  
23 in many cases, needs to be followed to the letter of  
24 the civil rule in proceedings before the Commission. I  
25 think the Commission's emphasis has always been more

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1 practical, much less of a game and more interested in  
2 obtaining information that's going to help the  
3 Commission make its decision than in making sure that  
4 everyone does everything exactly correctly.

5           That's why I mentioned earlier that one  
6 alternative would be to ask the Commission for a  
7 subpoena to serve on these three affiliates to obtain  
8 this information. That seems like needless procedural  
9 hoops. We can do that if the Commission thinks it's  
10 the way it wants to do this, but we had hoped that it  
11 would be simpler, more straightforward and more  
12 economical, both in terms of effort and time given that  
13 we have an existing procedural schedule, to pursue it  
14 this way. If the Commission decides that that's too  
15 much of a shortcut, then we will take the long way.

16           JUDGE SCHAER: Is there anything further you  
17 want to say at this point?

18           MR. KOPTA: Not at this point.

19           JUDGE SCHAER: Ms. Endejan, are you going to  
20 be making the argument for Verizon?

21           MS. ENDEJAN: Yes, Your Honor.

22           JUDGE SCHAER: Go ahead, please, and please  
23 do try to speak clearly into the microphone. You are  
24 still not loud enough.

25           MS. ENDEJAN: I apologize for the inadequacy

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1 of my AT&T phone system here. Well, Your Honor, I  
2 think that the problem that we have, I think I could  
3 break down into four general categories in terms of why  
4 we are having a disconnect here in responding to AT&T's  
5 discovery requests.

6 The first is the relevancy issue, which we do  
7 discuss in our response, and that means that in order  
8 to determine whether a data request asks for relevant  
9 information, you go to the complaint and the answer to  
10 the complaint to see what the issues are. I went back  
11 and looked at AT&T's complaint. They basically have  
12 four claims for relief, none of which have anything to  
13 do with any Verizon affiliate.

14 They ask for relief in the form of lower  
15 switched access charges, claiming that essentially they  
16 should be provided the same rates as effectively local  
17 providers get for purposes of interconnection. They  
18 also allege that Verizon has violated the Commission's  
19 communication standard --and we are not basing our  
20 rates on the proper cost standard set forth in 47 USC,  
21 Section 251, C 2(d) --

22 JUDGE SCHAER: Ms. Endejan, I'm sorry, but  
23 the court reporter is not getting what you are saying.  
24 Would you go back to No. 2 and go forward, please?

25 MS. ENDEJAN: There are four claims for

0116

1 relief in the AT&T complaint, and the first essentially  
2 alleges that we are pricing our switched access charges  
3 too high above cost. The second claim for relief  
4 claims that we are discriminating because we provide  
5 the same functionality to CLECs and to CMRS or mobile  
6 providers but we charge different rates.

7           The third claim for relief is they claim that  
8 Verizon Northwest has violated the Commission's  
9 imputation standard, and the fourth claim for relief of  
10 the complaint is that Verizon has not priced its  
11 interconnection with its network, i.e., the switched  
12 access charges, according to Section 251 of the  
13 Telecommunications Act.

14           None of these claims for relief raise any  
15 question or issue about potential cross subsidization  
16 between Verizon Northwest, Inc., and its affiliates.  
17 What they are going to and trying to, I guess, unravel  
18 is the Commission's well-defined imputation standard,  
19 which was set forth in the dockets that I've cited in  
20 my response.

21           JUDGE SCHAER: Where is that, please?

22           MS. ENDEJAN: That was Page 4. The  
23 imputation requirement was set forth in Docket No.  
24 UT-970767, so it's against that background that you  
25 have to approach these data request responses.

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1           You also have to take into account that a lot  
2 of the information, and I probably would like to go  
3 through each one of the data requests very shortly to  
4 explain why there is a problem, is the fact that they  
5 are asking for information about separate companies  
6 that we do not own or control. They ask for  
7 information about companies that are not parties. When  
8 we served our answers to AT&T's data requests in our  
9 first preliminary objection in Section 1 A(1), we told  
10 AT&T that Verizon Northwest has no control over its  
11 affiliates, which are separate companies. Therefore,  
12 we submit that the Commission really can't order us to  
13 provide information from a company we don't control.

14           So as you go through the data requests that  
15 deal with affiliate companies, what I think AT&T is  
16 saying is because we somehow or other have the name  
17 Verizon, we have some magic power to get information  
18 from our sister companies, which is an assumption that  
19 does not have a basis in reality here, and what they  
20 are saying here is really, "Let's put the burden on  
21 Verizon because they have some connection to do our  
22 work for us," and we don't think that's fair.

23           Turning specifically to the data requests, I  
24 can give you an example of this. Data Request No. 3  
25 calls for providing annual reports with the Commission.

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1 Well, apparently, if you go to the Commission's records  
2 center, you can get the annual reports from Verizon  
3 long distance and VSSI. AT&T can get those reports  
4 just as easily as we can. We don't have them. We  
5 probably would have to get them from the Commission, so  
6 why should Verizon have to be forced to provide that  
7 information to AT&T if they want it? They can get it  
8 as easily as we can.

9           With respect to No. 6, they have inquired  
10 about whether we provide billing and collection  
11 services to the interexchange carriers in Washington  
12 for toll service. We did address that on Page 4 of our  
13 response, 4 and 5, in which we explained to the  
14 Commission that what other interexchange carriers pay  
15 for billing and collection services is not germane to  
16 the point here of what we pay and what we impute into  
17 our costs for purposes of setting our toll prices, so  
18 therefore, there is absolutely no relevancy to the  
19 issues raised by the complaint by Data Request No. 6,  
20 even if that one does appear to ask for information  
21 from Verizon Northwest, Inc., as opposed to its  
22 affiliates.

23           Turning to Data Request No. 16, that asks for  
24 information regarding affiliates. I won't repeat my  
25 argument on that point, but we think that that has no



0119

1 connection to the issues in this case, not raised by  
2 the complaint, calls for information not within our  
3 custody or control. No. 17, the only marginally  
4 relevance number there is asking for the number of  
5 customers who are presubscribed to Verizon Northwest,  
6 Inc.'s toll services, and I don't know. I will ask the  
7 client to see if that's something we can provide  
8 subject to the protective order.

9           The other two categories of this data request  
10 calls for information about services provided by  
11 Verizon affiliates. We don't have that information.  
12 The same would hold true for Data Request No. 18. I'm  
13 looking through that here. Yes, to the extent that it  
14 calls for information about presubscribed toll services  
15 provided by Verizon affiliates, we don't have it.

16           Same would hold true for Data Request No. 20.  
17 This one calls for the number of end-user customers who  
18 are prescribed to Verizon affiliates' toll services but  
19 are not Verizon local exchange customers. We do not  
20 have information about customers from our affiliates.  
21 We couldn't answer that if we wanted to and we can't.

22           No. 21, I have a dual response to this one.  
23 First of all, we did identify what we believe are the  
24 pertinent names of affiliates that offer land line toll  
25 services in Washington. I believe that, two things,

0120

1 AT&T could go to the Commission and get information  
2 about all of these companies that we have listed just  
3 as easily as Verizon Northwest, Inc., could. The  
4 Commission has access to identifying information and  
5 price lists because they are required to be filed.  
6 AT&T can get an answer to its questions by doing some  
7 homework at the Commission with respect to these  
8 filings, and in doing so, it could also answer AT&T  
9 Data Request No. 22 by going in and doing some research  
10 at the Commission. It could find the dates on which  
11 any of these affiliates began providing toll service in  
12 Washington. Verizon Northwest is not the keeper of  
13 that knowledge.

14           The same would hold true for Data Request No.  
15 23, and then finally with Data Request No. 34, this  
16 best illustrates the problems we have with responding  
17 with the data request as phrased. We answered the only  
18 relevant question here which called for us to identify  
19 or respond about the services that Verizon Northwest,  
20 Inc., has. That's what the question called for. What  
21 does Verizon Northwest, Inc., share with any of its  
22 affiliates. We answered that question. Subparts A, B,  
23 C, and E all called for the type of affiliate  
24 information that we do not possess and we don't control  
25 and we should not have to provide.

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1           So in sum here, AT&T should ask for  
2 information that civil rules require us to provide, and  
3 we don't think the rules of this Commission would call  
4 for us to have to provide it under some formal  
5 arrangement. It's not that simple. AT&T can get this  
6 information and has admitted in its argument that it  
7 has the ability to do so several ways. It can go to  
8 the Commission and ask for information from the records  
9 on file at the Commission, or it can subpoena it from  
10 the pertinent entities, or it can name the entities as  
11 parties.

12           In other jurisdictions, for instance in the  
13 state of Texas, when AT&T filed a similar complaint  
14 against Southwestern Bell, it named Southwestern Bell  
15 long distance as a party. This is Texas Docket No.  
16 23063, so it clearly knows how to name long distance  
17 affiliates as parties to regulatory proceedings, and it  
18 would be improper for this Commission to on some sort  
19 of informal basis somehow have these entities involved  
20 as shadow parties because that would deprive them of  
21 all the due process that they are entitled to under the  
22 law.

23           So I think in sum, AT&T has not made a  
24 showing of relevancy here with respect to the  
25 information sought. It's not shown an inability to get

0122

1 it from other commonly accessible sources. It's not  
2 shown that Verizon has this information within its  
3 custody or control, and therefore, the motion should be  
4 denied.

5 JUDGE SCHAER: I asked Mr. Kopta a moment ago  
6 and I will ask you also, you made a great deal of  
7 reference in your response to Civil Rule 34, Evidence  
8 Rule 34, and the standard in that rule which allows  
9 another party to seek from you something which you have  
10 possession of, custody or control of. Do you recall  
11 those references?

12 MS. ENDEJAN: Yes, Your Honor.

13 JUDGE SCHAER: As I read your response, I  
14 really just kind of want to make sure that I'm  
15 understanding some of the portions correctly. You are  
16 saying at Page 3 in the first full paragraph that  
17 Verizon cannot produce the documents of its affiliates  
18 because such documents are not in Verizon's custody or  
19 control, and I just want to ask you, for each part of  
20 that, has your client checked and have you verified  
21 that none of these documents are in the possession of  
22 Verizon Northwest?

23 MS. ENDEJAN: You mean none of the documents  
24 for all of the data requests?

25 JUDGE SCHAER: That's correct.

0123

1 MS. ENDEJAN: The only one where I might say  
2 that Verizon Northwest would have information deals  
3 with a question that might be directed specifically to  
4 Verizon Northwest, such as No. 18, the total number of  
5 local exchange end-user customers that Verizon served  
6 in the State of Washington on January 1st, 1995. Of  
7 that, identify the number who are presubscribed to  
8 Verizon's toll services.

9 We probably have that information and we  
10 probably can get that. I'm sure we have access to that  
11 information, but sub B we do not have.

12 JUDGE SCHAER: What I'm wanting to know is  
13 have you or at your direction has someone confirmed  
14 that none of these other documents are in the  
15 possession of Verizon Northwest?

16 MS. ENDEJAN: If it calls for information  
17 about the affiliates, that is correct.

18 JUDGE SCHAER: So you don't have any of this  
19 in any form in your possession.

20 MS. ENDEJAN: No.

21 JUDGE SCHAER: Then I would ask you the same  
22 question about custody. Are any of these documents in  
23 some form in the custody of Verizon Northwest?

24 MS. ENDEJAN: No.

25 JUDGE SCHAER: Finally, I would ask you about

0124

1 control. I found your references to federal practice  
2 and procedure very useful, and looking there at some of  
3 the definitions -- I actually should have asked you  
4 this about possession -- one of the cases cited there  
5 indicates that production of documents not in party's  
6 possession is required if party has the practical  
7 ability to obtain the documents from another  
8 irrespective of legal entitlement to the documents.

9           Have you checked or has someone checked on  
10 your behalf to see if Verizon Northwest has the  
11 practical ability to obtain any of the documents  
12 discussed in these data requests?

13           MS. ENDEJAN: Your Honor, I guess the term  
14 "practically available" would encompass -- say, for  
15 instance, the annual reports. I'm confused because  
16 does that mean that Verizon Northwest, Inc.'s staff has  
17 to go to the Commission to get the publicly filed  
18 reports?

19           JUDGE SCHAER: I'm just asking you a factual  
20 question of what you have or someone on your behalf has  
21 confirmed with your client.

22           MS. ENDEJAN: What we've confirmed with the  
23 client is that each of these affiliates are very  
24 careful to maintain separate distinct corporate  
25 entities for a variety of legal reasons, which I'm sure

0125

1 you can imagine. So consequently, the data that is  
2 associated with each of those entities resides with  
3 those entities, and it would take a direction from I  
4 don't know who, but no one from Verizon Northwest Inc.,  
5 has that authority to compel an affiliated sister to  
6 produce information, so practically, I would say that  
7 it does not have access to this information except to  
8 the same extent that AT&T has in terms of retrieving  
9 publicly filed information with the Commission.

10 JUDGE SCHAER: So you don't have a practical  
11 ability to obtain the documents even though you may not  
12 have a legal entitlement; is that correct?

13 MS. ENDEJAN: No, we definitely don't have a  
14 legal entitlement.

15 JUDGE SCHAER: That was not my question. Let  
16 me try to ask it more clearly. Are you saying that  
17 Verizon Northwest does not have the practical ability  
18 to obtain the documents even though you may have no  
19 legal entitlement to the documents?

20 MS. ENDEJAN: It has the same ability as AT&T  
21 practically to get the information from the Commission,  
22 but it does not have the practical ability to get it  
23 from within Verizon Northwest, Inc.

24 JUDGE SCHAER: Another question I asked  
25 Mr. Kopta and I would like you to answer is we've

0126

1 spoken of affiliates, and are these affiliates  
2 affiliates within the purview of the Commission's  
3 statutes and rules?

4 MS. ENDEJAN: Is that directed to me or  
5 Mr. Kopta?

6 JUDGE SCHAER: That's directed to you. Would  
7 you like me to repeat the question?

8 MS. ENDEJAN: Yes.

9 JUDGE SCHAER: We've spoken today about  
10 companies that may be affiliates of Verizon Northwest,  
11 and I'm asking you if any of the companies we've  
12 discussed this afternoon are companies with whom  
13 Verizon would have an affiliated interest relationship  
14 in terms of affiliated interest statute civil rules of  
15 the Commission.

16 MS. ENDEJAN: I don't know as I sit here,  
17 Your Honor, if there are any contractual arrangements  
18 between these entities and Verizon Northwest, Inc. If  
19 there was, the contractual arrangements would have to  
20 be filed with the Commission.

21 JUDGE SCHAER: That was my next question. Do  
22 you have any such contracts on file with the  
23 Commission?

24 MS. ENDEJAN: I don't know the answer to  
25 that, Your Honor. I apologize.



0127

1                   JUDGE SCHAER: At this point, I'm going to  
2 ask Ms. Smith to see if she has anything to say, and  
3 then I'm going to let Mr. Kopta respond briefly. Do  
4 you have anything to contribute at this point,  
5 Ms. Smith?

6                   MS. SMITH: No, Your Honor.

7                   JUDGE SCHAER: Mr. Kopta, did you have any  
8 brief response to the arguments made by Verizon?

9                   MR. KOPTA: Yes, Your Honor, thank you.  
10 First let me say if we are playing according to Hoyle  
11 under the civil rules, the standard for discovery is  
12 whether it has the tendency to lead to the discovery of  
13 admissible evidence, not relevance, so you've got a  
14 much broader standard.

15                   With respect to how this relates to the  
16 claims, I think I've already explained that the  
17 reasonableness of Verizon's rates is also a broad  
18 inquiry, and to the extent that Verizon is using  
19 revenues from switched access to cross-subsidize  
20 affiliates, then it's our contention that's one more  
21 reason why the excess between cost and price is not  
22 reasonable. So all of the information that we've asked  
23 for goes to that particular claim that we have made and  
24 the defense to the claim that Verizon has raised  
25 itself.

0128

1           I think it's a good idea to look at the  
2 individual data requests to see what we are asking for  
3 and whether Verizon actually has the information, or as  
4 you appropriately point out, can practically get the  
5 information. With respect to Data Request No. 3, yes,  
6 we can get the publicly available annual report, but  
7 it's my understanding that most, if not all the  
8 companies, include in their annual report information  
9 that they have designated as confidential and/or  
10 proprietary. We obviously cannot get that simply by  
11 asking for it from the Commission.

12           What happens under the circumstances, as  
13 everyone is probably very well aware, is that the  
14 Commission notifies, if we were to make such a request,  
15 the party whose information has been requested that  
16 confidential information is being requested and that  
17 the Commission will provide that information within ten  
18 days unless the Superior Court orders otherwise, which  
19 triggers a mad dash to the Superior Court to try to get  
20 a protective order. We can do that, but I don't think  
21 that's the best use of party resources.

22           Data Request No. 6 asks for billing and  
23 collection services that Verizon provides to  
24 unaffiliated carriers, and that is in contrast to  
25 No. 16, which is the same information from affiliates.

0129

1 Again, what we are trying to understand is whether  
2 Verizon is using its switched access revenues as a way  
3 of funding its affiliates' toll-provisioning services.  
4 One way to decide about that is to say, What are you  
5 providing and charging to unaffiliated carriers? What  
6 are you providing and charging for those services to  
7 affiliated carriers? Again, information that goes to  
8 the reasonableness of the switched access rates that  
9 Verizon is charging currently.

10           Also, with respect to the prices that Verizon  
11 charges for those services to unaffiliated carriers,  
12 that needs to be juxtaposed with the cost that Verizon  
13 is claiming with respect to how much those are for  
14 imputation purposes. So again, it's another data point  
15 in terms of determining the accuracy of Verizon's cost  
16 estimates, particularly with respect to affiliates,  
17 since Verizon is providing those services below what it  
18 says its costs are, then one needs to wonder whether  
19 the costs are accurate or whether Verizon is providing  
20 the low cost services to its affiliates.

21           With respect to No. 17, I think Verizon has  
22 admitted that it can provide the information with  
23 respect to which of its local end-user customers are  
24 presubscribed to Verizon. I think it's a little  
25 disingenuous to claim that Verizon doesn't know which

0130

1 of those are also presubscribed to other carriers.  
2 Verizon is the carrier that makes that assignment in  
3 the switch, whether it's AT&T, MCI or one of its  
4 affiliates. Verizon knows to which long distance  
5 carrier each of its local customers are presubscribed  
6 to, so Verizon has that information.

7 JUDGE SCHAER: Let me interrupt you there and  
8 ask Ms. Endejan, do you agree that Verizon has that  
9 information or not?

10 MS. ENDEJAN: Your Honor, I don't know. I  
11 would have to check with the toll people at Verizon. I  
12 certainly didn't mean to be disingenuous. It was my  
13 understanding we didn't have it, but I'm happy to go  
14 back and inquire.

15 JUDGE SCHAER: I don't consider anything  
16 you've said disingenuous, Ms. Endejan. I just want to  
17 have as much clarity as I can in knowing who has what  
18 and how it can be produced so I can make a reasonable  
19 ruling, so thank you for offering to do that. When  
20 could you get back to Mr. Kopta with that information?

21 MS. ENDEJAN: I'll make the call today.  
22 Whether I can get the information tomorrow or before  
23 next week, which is going to be a difficult week to get  
24 ahold of anybody, I don't know, but I will make the  
25 effort.

0131

1           I guess the other thing that I am having a  
2 problem with is this really is a question directed to  
3 trying to ascertain market share of AT&T's competitors  
4 more than it is a question designed to obtain relevant  
5 information in this docket about Verizon's switched  
6 access rates, so I am very troubled by having to turn  
7 over market share information of other providers in  
8 this state, which that is highly, highly commercially  
9 sensitive information, and I guess I don't hear the  
10 point of relevancy here, even given the broad standard  
11 of relevancy as to why that information is important  
12 here.

13           JUDGE SCHAER: Let me indicate to you that my  
14 inclination at present is to find that all of these  
15 requests are relevant in the sense that they could lead  
16 to information that could be relevant in this  
17 proceeding, so my concern now is more with what is in  
18 your possession or what needs to be obtained by AT&T in  
19 some other manner.

20           You've raised a concern about privacy, and I  
21 also want to indicate that if you have concerns that  
22 the current protective order is not adequate to protect  
23 any data, the Commission would entertain a request from  
24 you to amend the protective order to cover certain  
25 kinds of data that may be more highly sensitive than

0132

1 others, and I can refer you to the Fourth Supplemental  
2 Order in Docket No. TO-011472, the case involving the  
3 Olympic Pipe Line Company, or in Docket No. UE-001952,  
4 which is a complaint case against Puget Sound Energy,  
5 and that case, this is Third Supplemental Order  
6 amending protective order, and if some higher level of  
7 protection is desired, it would be particularly nice if  
8 I could get a joint motion from the parties indicating  
9 how a protective order should be amended, but that is  
10 something that we are willing to consider in order to  
11 address your concerns.

12 MR. KOPTA: And I would also point out that  
13 in the telecommunications context, the Commission has  
14 recently issued an order in the Qwest Dex sale docket  
15 that allows for the production of what's termed highly  
16 confidential information subject to greater restraints  
17 than your garden variety confidentiality, so as you  
18 have pointed out, I think it well within the Commission  
19 precedent to take into consideration the parties'  
20 concerns and try to address the need for heightened  
21 protection of particular information.

22 JUDGE SCHAER: Can you give us a docket  
23 number for that proceeding, Mr. Kopta? If you can't,  
24 I'll let you provide it by telephone call.

25 MR. KOPTA: I can certainly provide that to

0133

1 her as well as to the other parties here. I don't have  
2 it off the top of my head.

3 JUDGE SCHAER: Do I correctly understand you  
4 that this is an issue that you would be willing to  
5 address with Ms. Endejan and try to reach agreement on  
6 and present it to the Commission?

7 MR. KOPTA: Absolutely. We certainly  
8 understand the highly sensitive nature of customer  
9 data, and we are willing to work with Verizon to make  
10 sure that their comfort level is maintained with  
11 respect to providing information that they want to  
12 restrict as much as possible.

13 JUDGE SCHAER: Thank you.

14 MS. ENDEJAN: Your Honor, what my mission is  
15 is to determine to what extent there are within Verizon  
16 Northwest custody, possession, or control, the  
17 information requested in No. 17 and all its subparts?

18 JUDGE SCHAER: That is correct. I hadn't  
19 gotten to the specific rulings. I'm trying to  
20 understand the arguments and what is factually  
21 obtainable, but that is where I'm headed so let's go  
22 ahead and make that a ruling now, that response to  
23 No. 17, I would like you to find the information that  
24 appears to be to me, it should be in Verizon's custody,  
25 possession, or control since it appears to be

0134

1 information that Verizon would have to have available  
2 in order to provide service to its customers.

3           Go ahead then, Mr. Kopta, if you would,  
4 please.

5           MR. KOPTA: No. 18 is the same request only  
6 for more historical data, so that's exactly the same as  
7 No. 17. No. 20 does ask for information that is  
8 outside of Verizon's local exchange customers, so the  
9 same does not apply to No. 20. This one would come  
10 under the standard of whether it's practically  
11 unavailable to Verizon Northwest.

12           I certainly do not have any personal  
13 knowledge of the interworkings of the Verizon family of  
14 companies; although, I'm understandably somewhat  
15 unconvinced that Verizon Northwest does not have a  
16 practical access to this type of information from its  
17 parent or a joint parent with the other affiliates. It  
18 just seems to me that this information is available  
19 within the Verizon family of companies, and certainly,  
20 this information is not anything that AT&T would have  
21 any access to, and I would think that a common parent  
22 would have this type of information.

23           No. 21 fits into that same category;  
24 although, I don't know whether Verizon, since we have  
25 both inter and intraLATA presubscription, it seems to



0135

1 me that, again, from a local provider perspective,  
2 Verizon would know which companies are providing inter  
3 and intraLATA services that are being offered to its  
4 customers since it would need to presubscribe those  
5 customers with the companies to provide either  
6 intraLATA or interLATA or both types of services.

7 Same thing with No. 22. Verizon ought to  
8 know when it first began presubscribing customers to  
9 its affiliates' services. It would have to be able to  
10 do that in order to actually route the traffic the  
11 right way to the right carrier. No. 23 would go into  
12 the category of whether the information is practically  
13 available. I wouldn't expect that Verizon itself would  
14 have this information since it has to do with local  
15 exchange service provided outside of Verizon's local  
16 service territory.

17 Much of No. 34 would go under that same  
18 category, except to the extent that Verizon itself  
19 provides any of those services; although, Verizon has  
20 stated that it does not. I think one of my concerns on  
21 Verizon's response is that it's very careful to say  
22 that it does not provide any of these services when the  
23 question is not only does Verizon Northwest provide any  
24 of those services, but whether the affiliates and  
25 Verizon Northwest obtain these services from a common

0136

1 source, and if it's something like human resources or  
2 legal, it's hard for me to believe that Verizon  
3 Northwest doesn't know whether it's obtaining legal  
4 services from the same outfit that provides those legal  
5 services to its affiliates, and I suspect the same sort  
6 of inquiry would require many if not all the additional  
7 services we have specified. So it seems to me that  
8 information ought to be either within Verizon  
9 Northwest's possession, custody, or control, or  
10 something that is as a practical matter easy for it to  
11 obtain.

12 I think that's really what I would say in  
13 response, that this information is information that is  
14 reasonably calculated to lead to the discovery of  
15 admissible evidence, and we believe the information is  
16 either within the possession, custody, or control of  
17 Verizon Northwest or something that as a practical  
18 matter, Verizon Northwest can obtain, certainly, much  
19 more easily than AT&T, and in many cases, information  
20 that AT&T could never obtain and that its information  
21 that should be required to be produced.

22 JUDGE SCHAER: At this point, I wonder if it  
23 would be beneficial to go off the record and let  
24 counsel converse about what resolutions they may be  
25 able to agree on to the different sections of this

0137

1 motion, or if it would be more useful if I were to go  
2 ahead and rule and go forward from there.

3 MR. KOPTA: I'm certainly willing to continue  
4 to talk to counsel for Verizon if they feel there is  
5 some basis on which they would be willing to produce  
6 the majority of the information we've asked. If that's  
7 not the case, then it might behove us to simply have  
8 you issue a ruling, but that's something for Verizon's  
9 counsel to state.

10 JUDGE SCHAER: Ms. Endejan?

11 MS. ENDEJAN: I think we should go off the  
12 record and have a brief conversation.

13 JUDGE SCHAER: Do you think it would be  
14 useful to have me in the conversation, or would you  
15 prefer to have some time to talk with Ms. Smith and  
16 Mr. Kopta without my presence in the hearing room?

17 MS. ENDEJAN: I don't think it particularly  
18 matters one way or the other, Your Honor. I just had a  
19 couple items of brief thought I would like to lay on  
20 the table, and it might be more useful for you to sit  
21 there and hear it than to have me repeat it for you.

22 JUDGE SCHAER: That makes a lot of sense to  
23 me. I think at this point we will go off the record to  
24 allow the parties to discuss what they may be able to  
25 do in working together to provide Mr. Kopta with the

0138

1 information that his client believes it needs to go  
2 forward with his case, so we are off the record.

3 (Discussion off the record.)

4 JUDGE SCHAER: We are back on the record.

5 While we were off the record, there was an extensive  
6 discussion between the counsel and between the  
7 administrative law judge and counsel about the  
8 different kinds of questions that have been asked and  
9 about what kinds of responses were going to be ones  
10 that Verizon could provide.

11 I have indicated to the parties that at this  
12 point, I consider all of these questions relevant for  
13 the purposes of discovery, by which I mean for the  
14 purpose of seeking information that would make it a  
15 certain fact more likely than not a correct fact in the  
16 hearing. I have not ruled on the admissibility of any  
17 of the data that will be provided here at the hearing  
18 itself.

19 I am asking Verizon to provide to AT&T all of  
20 the data described in these questions which is within  
21 its possession, custody, and control, and I'm asking  
22 Verizon in providing information that if there is  
23 information which is filed with the UTC that it is  
24 filed with some kind of a confidentiality claim to the  
25 entire document or to portions of the document, that if

0139

1 it has copies of those documents, I would prefer to  
2 have them provided to AT&T under the protection of the  
3 protective orders in this matter rather than having to  
4 have AT&T have to seek those documents by public  
5 records request, and then if objection is made by going  
6 to Superior Court, but I've also indicated that, of  
7 course, if the party filing the documents believes that  
8 it should be kept confidential and that it could obtain  
9 that result through the Superior Court, then that party  
10 other than Verizon Northwest could pursue that outcome,  
11 but Verizon Northwest to the extent that it has that  
12 information needs to provide it to AT&T.

13 I've also indicated that if the parties wish  
14 to have an amendment to the protective order in this  
15 matter, which would protect highly sensitive materials  
16 they don't think the current protective order protects  
17 their interests, that I would be willing to work with  
18 them on that, and I believe the parties have indicated  
19 they are willing to work together on that.

20 Parties have discussed specifically how they  
21 will work out particular questions about particular  
22 requests, and at this point, I would let them reflect  
23 any of that information they would like to have on the  
24 record on the record. Otherwise, I would indicate that  
25 beyond these general statements at this point, I don't

0140

1 believe I have to rule on whether to compel responses  
2 to any of the questions asked because I believe the  
3 parties have worked out between themselves the way that  
4 they are going to manage that information and move  
5 forward in this proceeding. Is there anything you  
6 would like to add to this, Mr. Kopta?

7 MR. KOPTA: Thank you, Your Honor. I think  
8 that you've accurately summarized our discussions off  
9 the record and I think the results of those discussions  
10 as well. Based on the general decision that you have  
11 just made, the parties have discussed each of the  
12 individual outstanding data requests and I believe have  
13 come to an understanding at this point of the type of  
14 information that either will be provided or at least  
15 will be investigated to the extent that that is  
16 possible to determine whether Verizon has or  
17 practically can obtain the information that's  
18 requested, and so at this time, there is no need for  
19 you to make any ruling on a specific outstanding data  
20 request.

21 JUDGE SCHAER: Ms. Endejan?

22 MS. ENDEJAN: I have nothing further to add,  
23 Your Honor. We have a clear guidance in terms of what  
24 we have to do.

25 JUDGE SCHAER: Thank you. Ms. Smith?

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1 MS. SMITH: We don't having to add either.

2 Thank you, Your Honor.

3 JUDGE SCHAER: Is there anything further to  
4 come before the Commission this afternoon? Then I will  
5 thank you again for your skill in working together to  
6 resolve these issues and indicate how pleasant it is to  
7 work with counsel who are professional problem solvers  
8 and can work together to make things operate smoothly.  
9 Thank you, everyone. We are off the record and we are  
10 adjourned.

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12 (Prehearing concluded at 4:30 p.m.)

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