

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 In Re Petition of)
4 US WEST COMMUNICATIONS, INC.,)
5 for a Declaration Order Ending) DOCKET NO. UT-980948
6 Imputation of Revenues Derived) VOLUME IX
7 from Transferred Yellow Pages) Pages 192 - 221
Publishing Business.)

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9 A prehearing conference in the above matter
10 was held on July 8, 1999 at 1:05 p.m., at 1300 South
11 Evergreen Park Drive Southwest, Olympia, Washington,
12 before Administrative Law Judges ROBERT WALLIS AND
13 LAWRENCE BERG.

14
15 The parties were present as follows:

16
17 US WEST COMMUNICATIONS, INC., by DOUGLAS N.
18 OWENS, Attorney at Law, 1325 Fourth Avenue, Suite 940,
Seattle, Washington 98101 (via bridge.)

19 US WEST COMMUNICATIONS, INC., by LISA A.
20 ANDERL, Attorney at Law, 1600 Seventh Avenue, Suite
3206, Seattle, Washington 98191 (via bridge.)

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

24 TRACER, by STEPHEN J. KENNEDY, Attorney at
Law, 601 Union Street, Suite 5450, Seattle, Washington
25 98101 (via bridge.)

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1 AARP, by RONALD L. ROSEMAN, Attorney at Law,
2 2011 14th Avenue East, Seattle, Washington 98112 (via
3 bridge.)

4 THE PUBLIC, by SIMON J. FFITCH, Assistant
5 Attorney General, 900 Fourth Avenue, Suite 2000,
6 Seattle, Washington 98164 (via bridge.)

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Kathryn T. Wilson, CCR
Court Reporter

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

2 JUDGE WALLIS: Let's be on the record,
3 please. This is a prehearing conference in the matter
4 of Commission Docket UT-980948 that's been convened
5 with the consent of the parties to address discovery
6 and other issues. Let's begin by asking counsel to
7 identify themselves beginning with the Petitioner.

8 MS. ANDERL: Lisa Anderl and Doug Owens
9 appearing on behalf of U S West.

10 JUDGE WALLIS: For Public Counsel?

11 MR. FFITCH: Simon ffitich, assistant attorney
12 general for Public Counsel.

13 JUDGE WALLIS: For Intervenors?

14 MR. KENNEDY: Steve Kennedy for TRACER.

15 MR. ROSEMAN: Ronald Roseman for AARP.

16 JUDGE WALLIS: And for Commission staff?

17 MR. TRAUTMAN: Greg Trautman, assistant
18 attorney general for Commission staff.

19 JUDGE WALLIS: Is there any other person on
20 the line who is appearing in a representative capacity?
21 Let the record show there is no response. Our
22 principle purpose today is to consider a question
23 regarding discovery that's being raised by U S West.
24 In addition, both Public Counsel and Commission staff
25 have indicated that they have questions regarding

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1 witness scheduling. Let's begin with the U S West
2 issue, and because it appears that U S West is the
3 moving party as to this issue, let's begin with
4 US West.

5 MS. ANDERL: Thank you, Your Honor. I would
6 like to allow Mr. Owens to share my time to the extent
7 he has anything to add. He was personally present at
8 the scheduling conference that was held on May 28th
9 that was referenced so could certainly speak to that
10 better than I.

11 However, as we described in our cover letter,
12 we found that we had a disagreement with Staff and
13 Public Counsel as to the appropriateness of the data
14 requests that we propounded. We did attempt to work
15 out our differences with counsel but found we were
16 unable to do so and felt that we should ask for ruling
17 as to whether the data requests that we sought answers
18 to were proper discovery.

19 We do feel that it is important that we know
20 what the parties contend are disputed issues of
21 material fact if they so contend there are any, and in
22 order for us to be able to address those at the only
23 time in the proceeding when issues of fact are
24 developed, really, which is during the upcoming
25 hearing, and I think that, as set out in the data

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1 request saying in our letter requesting the discovery
2 conference today, we feel it's highly appropriate and
3 prejudicial to us not to know the answers to that,
4 which would put us at a significant risk of being
5 either blindsided or faced with evidence that we would
6 not be able to respond to. We would like the
7 Commission to order that the data requests need to be
8 answered. Doug, I don't know if there is anything you
9 wanted to add to that.

10 MR. OWENS: Well, just briefly, Your Honor,
11 the Commission made it clear in the Twelfth
12 Supplemental Order that it was denying the motion only
13 for the time being. It indicated it does not preclude
14 the parties from arguing any position after the
15 presentation of the evidence, or if appropriate, from
16 renewing the motion to strike, so the issue that we're
17 facing is we're going to go to hearing.

18 We've reviewed the testimony of the Staff and
19 Public Counsel. It doesn't appear to negate the
20 allegations that we made in the motion, and so we're
21 somewhat at a loss to know what we're going to be
22 facing after the hearing by way of claims that there
23 were disputed issues that weren't addressed at the
24 hearing, and it seems to us, at any rate, that we're
25 entitled to know the claims of the governmental parties

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1 and have an opportunity to meet them with evidence, and
2 that's the purpose of these requests.

3 As far as the technical objection that it's
4 not a proper data request under 480-09-480(3)(c), it
5 seems to us that it is correct in that it does seek a
6 narrative explaining a position, because it was stated
7 at the scheduling conference that there were issues of
8 fact that need to be addressed, so all we're asking in
9 these requests is to tell us what they are so we can
10 address them.

11 We put in our pleading what we believe are
12 statements of fact supported by the record, and I think
13 we're entitled to know what the dispute is so that we
14 can litigate that.

15 JUDGE WALLIS: Thank you, Mr. Owens.
16 Mr. ffitch?

17 MR. FFITCH: Thank you, Your Honor. I
18 believe that by reviewing the responses that we
19 provided in writing to the data requests that were
20 attached to Mr. Owens' letter, you will see a good
21 outline of our position on this. I will address those
22 and review those briefly, but I wanted to start at
23 another place and suggest a couple of things.

24 First of all, I'd ask the Commission or the
25 presiding officers to actually go back and look at the

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1 transcript of the conference at which this motion was
2 discussed, and I think that the argument here to the
3 extent that it's based on assertions about whether
4 Public Counsel was hinging its position here on the
5 existence of specific disputed issues of material fact,
6 it is somewhat of a mischaracterization of what
7 occurred at that hearing, a significant
8 mischaracterization.

9 Just briefly, the essential point that we
10 were making -- and I'm referring to Pages 163 and
11 164 -- in our opening argument, there was that the
12 issues raised on the motion to strike go directly to
13 the core issue which the Commission will consider in
14 any event at the hearing. Those are all issues that
15 the witnesses addressed for both sides extensively in
16 their testimony already and to which they will be
17 subject to cross-examination at the hearing. Those
18 issues are listed in some summary form at Page 164.
19 They are, in fact, as we noted then, issues that the
20 parties were directed to address in this proceeding by
21 Commission order, and when I say "issues," I'm talking
22 about the core nature of the transaction, the shifting
23 the Yellow Pages publication to a related corporation,
24 to use the Commission's terminology out of the Twelfth
25 Supplemental Order.

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1 We were directed to address that in this
2 proceeding through evidence. This is the very matter
3 that's going to be presented at the hearing. Our point
4 in addressing the motion at that time was that it was
5 redundant for the Commission to have to deal with all
6 of those issues before the hearing. We did, I think,
7 make sort of an analogy to the fact that this was sort
8 of an effort to have the Commission deal with this on
9 summary judgment before it had an opportunity to hear
10 the evidence and for cross-examination to occur, and I
11 think that's sort of the connection that the Company is
12 making here in support of this motion, so I wanted to
13 make that point to kind of frame this a little
14 differently.

15 The second point I wanted to make is that you
16 actually need to compare what U S West has just asked
17 for in terms of an identification of the material facts
18 at issue with -- that's actually not what the data
19 request asks for, and if you look at Data Request No.
20 36, essentially I think boils down to its essence the
21 parties or Public Counsel is simply being asked to
22 state whether or not certain quotations that are
23 included in the motion are accurate or not;
24 alternatively, whether we agree or disagree with some
25 of the characterizations or interpretations of the

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1 quotations that are incorporated in the motion. That's
2 actually the scope of the data request, and so I think
3 that's an important focus also, Your Honor, and now
4 having said those two preliminary things, I'll just
5 note that we have objected on the following grounds,
6 first of all, that this is not a proper data request,
7 does not really seek a narrative related to our
8 positions in the case, but simply verification of
9 quotations.

10 Secondly, you're looking at our motion there.
11 I think the second point is the one I already made, but
12 essentially we're either being asked to just verify the
13 accuracy of specific quotes or to agree or disagree
14 with paraphrases or interpretations from those quotes.

15 A third point is that the data request is
16 generally vague and ambiguous in its reference to each
17 and every allegation of fact. We're not directed to
18 any specific allegation of fact, other than clarity
19 about whether we're dealing with allegations of fact or
20 law or the application of law to a set of facts.

21 I think the fourth point that we would make
22 is that it's really unduly burdensome to require us to
23 go through and verify every quotation that U S West
24 seeks to draw out of the record in this case. These
25 textual quotations that are presented are matters of

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1 record in various proceedings before the Commission,
2 and U S West is free to quote those to the Commission.
3 It has a burden to make sure those are accurate and
4 duty of good faith to do that, and I'm not questioning
5 that they would abide by that duty. Then if we feel
6 that there is then some misquotation, we certainly are
7 free to respond to that, but I don't think we can be
8 required to go through long lists of textual quotes and
9 verify accuracy.

10 Finally, I think that perhaps the most
11 important or a very important point here is that it's
12 very difficult to see this as anything except as an
13 effort to require Public Counsel to reargue the motion
14 to strike. The motion was denied. The motion is not
15 before the Commission right now. We are engaged in
16 trying to prepare for this hearing, and to require us
17 to now go back and continue to proceed as this motion
18 is currently pending before the Commission I think is
19 also unduly burdensome, so we just don't see the need
20 for this request to be granted; in fact, we see that it
21 would prejudice us in diverting us from our hearing
22 preparation and not serve any valid purpose for the
23 Commission or U S West, so we would ask the motion be
24 denied.

25 JUDGE WALLIS: Mr. Trautman?

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1 MR. TRAUTMAN: Thank you, Your Honor. I
2 concur with the points that were raised by Mr. ffitch.
3 I'd like to add a few other observations. As to the
4 first objection, and Mr. Owens referred to this as a
5 technical objection, but it really is not because the
6 question comes down to what exactly is this data
7 request asking for? And we were presented with the
8 same data request as Public Counsel simply under a
9 different number.

10 The data request in referring back to the
11 motion to strike, it refers in one sense to statements
12 made either by the Commission in its prior orders or by
13 parties in their briefs or by parties in their
14 testimony. Now, to the extent that the request is
15 simply asking whether these quotes occurred, I think
16 it's clear that U S West is free to make any quotations
17 to items from the record, and they don't need Staff's
18 permission to do so.

19 Now, whether or not a particular quotation
20 means what the Company states that it means or whether
21 it's being interpreted properly or whether the entire
22 context is being considered, all those are questions of
23 interpretation that will be argued, I would assume, in
24 a brief. U S West can argue that a certain quotation
25 was made. They can say that it means such and such.

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1 The other parties are certainly free to argue to the
2 contrary, or if they think it's correct, they can agree
3 to the point. I don't believe a data request is
4 necessary for that, but furthermore, what the request
5 is asking is not a request that in many cases that the
6 witnesses in this case can answer. A data request is
7 given to a witness in a proceeding, typically, to ask
8 them to amplify upon something that they stated. For
9 example, if Dr. Selwyn made a particular point, you
10 might have a data request saying, You testified to a
11 particular thing. On what do you base that? What
12 assumptions did you make? What treatises did you
13 consult? Did you consider this? Did you consult with
14 why is this so? You can do follow-up.

15 What's being asked here in many cases has to
16 do with quotations from orders or briefs from ten years
17 ago. Commission staff through both our original
18 testimony and through the surrebuttal has presented
19 our -- we presented our presentation of what we believe
20 happened in 1984 and subsequently, but Dr. Selwyn or
21 Ms. Strain, for example, would not be able to give
22 firsthand information on what the Commission said in
23 1988. They can certainly interpret it. But as far as
24 a data request, it would not fall within that purview.
25 Those things would be argued in brief by counsel in

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1 interpreting what has been said in the past as opposed
2 to what's being said now, so if all that's been asked
3 is a verification of quotations, I think that can be
4 done.

5 The other point was made by Mr. ffitch was
6 that it is a vague request, and it is in the sense that
7 if one gets beyond the quotations, there are several
8 statements throughout the paraphrased portion of the
9 motion which could be construed as statements of fact,
10 but some of them involve interpretation of terms, and
11 it's certainly not clear to me exactly what the witness
12 would be asked to respond to, and again, the witness in
13 this proceeding could not testify as to what the
14 Commission said ten years ago.

15 So with that overview of the request, I also
16 agree with Mr. ffitch that I think that this is, in a
17 sense, a second motion asking that we respond to the
18 motion to strike, and the ruling has already been made
19 on that motion. It's not presently before the
20 Commission. The types of materials that are being
21 sought are things that would be answered in a brief,
22 and I do not see, having heard Mr. Owens' argument, I
23 don't see how the Company has been precluded from
24 arguing anything that they wish. I don't see how they
25 are precluded from seeing what Staff's position is on

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1 the matter as filed in all of the testimony. How they
2 want to relate that to what was done 10 years or 15
3 years ago is something they can argue in the brief. I
4 don't see how the Company has been prejudiced in any
5 way if this motion is denied and the matter goes to
6 hearing and the parties make their appropriate
7 arguments.

8 JUDGE WALLIS: Ms. Anderl?

9 MS. ANDERL: Thank you, Your Honor. Just a
10 couple of things. Most of the objections that counsel
11 have raised today are things that I really believe in
12 fairness were or should have been clarified when
13 Mr. Owens and I called to discuss the matter with them.
14 The vagueness, the overbreadth, the burdensome issues
15 we discussed with counsel and said, Look, if you don't
16 like the way these questions are written, here is what
17 we're asking for. Clear as day, you said there were
18 disputed issues of material fact. We want to know what
19 they are because the Commission relied on that in
20 either denying or holding in abeyance our motion to
21 strike. That's all we want. We don't want issues of
22 law. You don't have to discuss those.

23 I think that the discussions today maybe go
24 to the paper record that is before you in terms of what
25 the question is and what the objections were, but we

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1 thought to address those concerns when we talked with
2 counsel, and all I'm really hearing is that they simply
3 don't want to have to say what their position is ahead
4 of briefs, and I don't think that's fair. I think
5 fundamentally the parties are entitled to know what the
6 other parties' positions are. That's why we file
7 testimony, and if they can't respond to this type of a
8 what-is-your-position data request, I think they need
9 to clarify that they can't respond to it because they
10 don't know what they are going to say yet or there
11 aren't any disputed issues of fact really, or that to
12 the extent there are any, they feel they've already
13 adequately raised them in testimony, but we don't know
14 what the answer to that is, and I think we do have a
15 right to know that in order for us to be able to
16 prepare our case and proceed understanding what's going
17 to be required of us.

18 With regard to the other issue that
19 Mr. Trautman raised to say that a data request is only
20 given to a witness, I don't think that's correct. I
21 don't expect either Dr. Selwyn or Ms. Strain, the two
22 staff witnesses, to answer this question of these data
23 requests. I don't expect Mr. Brosch to be able to
24 answer them, but I don't believe the Commission rule
25 requires that data requests only be directed at

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1 witnesses. They are, in fact, directed at parties, and
2 it is the parties' duty to respond to a proper data
3 request. There is no mandate that the only proper data
4 request is one that one of the witnesses can answer.
5 And I apologize; Mr. Owens and I are not in the same
6 room. We can't really confer or give each other hand
7 signals here. I would like to see if I've omitted
8 anything that he would like to mention.

9 MR. OWENS: This is Doug Owens. First, it's
10 been variously characterized that this request amounts
11 to a reargument of the motion to strike or a request
12 that the other side respond to the motion to strike. I
13 guess I would point out that the motion to strike never
14 was argued; that it was disposed of essentially after
15 the scheduling conference but never argued on the
16 merits; and secondly, this is not a request to respond
17 to the motion to strike. We're not asking the other
18 side to say why they would argue that the doctrines of
19 estoppel or waiver or any of these other things that
20 were in the motion to strike apply.

21 All we're asking them to do is tell us what
22 disputed issues of fact there are so that those can be
23 addressed with evidence at the hearing, and the
24 Commission left U S West the right to renew the motion
25 after the hearing; and therefore, we should have the

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1 right to know what those disputed issues are and meet
2 those issues with evidence.

3 JUDGE WALLIS: Ms. Anderl, Mr. Owens, do
4 either of you have any authority in statute or rule or
5 cases that is directly analogous in the civil
6 litigation setting to the question you're asking the
7 Commission to decide here?

8 MR. OWENS: I would say we do, Your Honor.
9 Normally in civil litigation, the case is commenced by
10 a complaint, and then there is usually an answer which
11 controverts facts. We haven't had an answer in this
12 case, so I think the principle in civil litigation is
13 that the parties are supposed to know before they are
14 required to go to trial what the disputed issues of
15 fact are, and in some cases you even have a pretrial
16 order which they are listed what the disputed issues of
17 fact are, and that's all we're trying to get at here.

18 MR. TRAUTMAN: May I respond briefly, Your
19 Honor?

20 JUDGE WALLIS: Mr. Trautman?

21 MR. TRAUTMAN: There is one tremendous
22 difference, and if you have a civil case, you don't
23 have prefile testimony before trial. We have extensive
24 testimony from all parties, including the surrebuttal
25 which was filed at the end of June, and I must say I'm

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1 at a loss to determine where the Company is stating
2 that they do not know what the position is of
3 Commission staff, particularly with relation to the
4 allegations that have been made by the Company because
5 we have responded to those allegations, and we have
6 certainly and in great detail set forth our view of the
7 facts, so I'm at a loss at the claim that there is
8 nothing in the record by which U S West can ascertain
9 the positions of Commission staff or of Public Counsel.

10 MR. OWENS: Your Honor, I guess I would beg
11 to differ. There was nothing in the testimony of the
12 Commission staff or Public Counsel that said that any
13 of the statements that U S West recited or quoted in
14 its motion didn't occur, so we're at a loss to know on
15 what basis there can be a claim of disputed fact about
16 that, and that was the basis of our motion to strike.

17 MR. FFITCH: Your Honor, I think that
18 Mr. Owens' statement is quite telling. We've just
19 heard a lot of prior discussion about the parties'
20 general right to know the position of another party,
21 and clearly, Mr. Trautman has correctly stated that our
22 position is very clear on the face of the record, all
23 the matters at issue.

24 What Mr. Owens has just said is what they are
25 really talking about here or all they are really

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1 talking about here is asking the other parties to agree
2 with their particular quotations from prior briefs and
3 orders of the Commission and of the parties, and I
4 would just suggest that is not an appropriate use of
5 discovery. It's burdensome. It really is not anything
6 that advances the proceeding towards the determination.
7 That's really the focus of this motion.

8 MR. OWENS: Your Honor, U S West made a
9 motion because it believed it had a legal right to have
10 the doctrine of judicial estoppel applied based upon
11 specific factual averments that were included as an
12 attachment, quotations from various pleadings and
13 orders. The Commission denied that on the basis that
14 there were disputed issues of fact, and they were
15 unsure as to what role those would have in resolving
16 the issues.

17 It seems to us, at least to go forward, we
18 need to know what the position of the parties is on
19 whether the fundamental facts as quoted in those orders
20 and pleadings are accurate or not. The significance of
21 them we're not asking people to concede. It's the
22 facts.

23 JUDGE WALLIS: Why would not the documents
24 speak for themselves? Why do you require a party's
25 acknowledgment that a document, which is a public

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1 record, says what it says?

2 MR. OWENS: Well, Your Honor, we're
3 proceeding on the basis that the Commission ruled
4 against our motion on the basis of the existence of
5 disputed issues of fact, and all we did in our motion
6 was cite the matters from the record. We're simply
7 trying to establish that nobody is saying when they
8 dispute the facts that the record has been inaccurately
9 quoted.

10 JUDGE WALLIS: Mr. Berg?

11 JUDGE BERG: I'll just say, at some level,
12 even though the Commission referred to disputed issues
13 of fact, it seems there is a pretty fine line here
14 between a disputed issue of fact such as, did the
15 statement occur, and an issue of law of, what does the
16 statement mean in the context in which it appears, and
17 even though, Mr. Owens, you represent that you're just
18 looking for responses to statements of fact, it seems
19 what I'm hearing is you really want to know prior to
20 briefing how the other parties intend to interpret
21 those statements in their legal arguments.

22 MR. OWENS: Well, if I've given that
23 impression, Your Honor, that wasn't correct.

24 JUDGE BERG: All right. So in that case, all
25 you're looking for is an acknowledgment, for example,

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1 that with regards to the attachment to U S West's
2 motion, the Exhibit CTI-1, all you're looking for then
3 is verification of whether or not those specific
4 excerpts from various briefs and direct testimony or
5 cross-examination testimony, whether or not those were
6 accurately quoted; isn't that correct?

7 MR. OWENS: Yes, Your Honor.

8 JUDGE BERG: So that brings us back to Judge
9 Wallis's question as to if, in fact, you're quoting
10 those matters of public record accurately, what
11 necessity is there for the other parties to acknowledge
12 that those quotes are accurate?

13 MR. OWENS: Your Honor, I guess I have to go
14 back to the fact that we don't know what was in the
15 Commission's mind in deciding that there were disputed
16 issues of fact because we filed a motion in which we
17 relied on those quotes. The Commission was persuaded
18 not to hear the motion based on the statement that
19 there were issues of fact, and so we're simply
20 attempting to narrow down the possible issues that
21 could be deemed issues of fact that have to be heard at
22 the hearing.

23 JUDGE WALLIS: So in essence then, Mr. Owens,
24 are you rearguing your motion to the Commission?

25 MR. OWENS: No, Your Honor. I'm simply

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1 trying to prepare for the hearing to know what evidence
2 needs to be introduced to establish facts that are
3 disputed that were pertinent to the motion. I'm not
4 asking that the motion be heard.

5 JUDGE BERG: One moment, please.

6 JUDGE WALLIS: All right. We're going to
7 take this under advisement and would like to turn to
8 the other scheduling matters that parties indicated
9 that they would like to discuss. Let's begin with
10 Mr. ffitich.

11 MR. FFITCH: Thank you, Your Honor. I think
12 that we're okay on this based on discussions I've had,
13 and Lisa helped me out on this, but I'll give an
14 overview. As I understand it, the U S West preferred
15 order of witnesses would be -- let me start with our
16 preference.

17 I guess, the reason for bringing this up is
18 we have been of the understanding that we would want to
19 schedule Mike Brosch between U S West and the Staff
20 witnesses, and up until today, we had a reserve date
21 for Lee Selwyn of Thursday. I wanted to get
22 confirmation that we could bring Mike in and basically
23 get him on and off on Wednesday afternoon, and it's my
24 understanding from U S West that that is doable, that
25 their estimates of cross for him would allow that to

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1 happen. There is the question of whether we would be
2 finished with the U S West witnesses who would go on
3 Monday and Tuesday, Wednesday morning being a public
4 meeting.

5 It's our estimate right now, and I've
6 conferred with cocounsel, is that we would have an hour
7 of cross for Inouye and for Kohler-Christianson, and a
8 little less, forty-five minutes to an hour for Max
9 Johnson and Tim Golden. I have talked with Staff about
10 their timing, and they can obviously speak for
11 themselves, but based on their general estimates, it
12 does seem realistic to believe that we would finish all
13 of U S West's witnesses on Monday and Tuesday, and
14 Lisa, you had indicated that if we needed to go a
15 little bit late on Tuesday to do that, that would be
16 acceptable.

17 MS. ANDERL: Yes.

18 MR. FFITCH: So on that basis, I would like
19 to be able to schedule Mike definitely for Wednesday
20 afternoon and assume that he'll be done -- and Lisa, I
21 don't want to put words in your mouth, but I think you
22 said you definitely would be able to finish him by
23 5:00, whenever we start. Hopefully we can start
24 promptly right after lunch, like at one o'clock.

25 MS. ANDERL: Certainly if we start at 1:00

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1 or 1:30 and go straight into my cross-examination of
2 him, I can't imagine that he wouldn't be done by 5:00.
3 I don't believe there would be any questions for him
4 from anyone other than myself or the Bench, and then
5 whatever redirect you would have.

6 MR. FFITCH: I don't know if Staff has any
7 cross. That was the nature of our request as to
8 Brosch, Mr. Brosch's testimony, Your Honor, and I think
9 it sounds like that would work as between us and
10 U S West. Other people obviously haven't had a chance
11 to speak yet.

12 MS. ANDERL: Your Honor, the only thing I
13 wanted to add -- and I think Simon has represented our
14 conversation fairly. The only thing I would like to
15 add is I did say that it would be our very, very strong
16 preference not to interrupt U S West's presentation of
17 witnesses, and I believe that there is an open meeting
18 on Wednesday morning, so we would really like to be
19 done, have all four of our witnesses done on Monday and
20 Tuesday or by Wednesday at noon if we were to take
21 Brosch in the afternoon. Like I said, I don't foresee
22 a problem with that, but it depends, really, on what
23 some of the other cross-examination estimates are for
24 our witnesses.

25 JUDGE WALLIS: Have Staff and Public Counsel

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1 consulted also with the Intervenors?

2 MR. FFITCH: Yes, Your Honor. The time
3 estimates I gave were combined Public Counsel and
4 Intervenors but did not include Staff.

5 JUDGE WALLIS: Thank you. Mr. Trautman, you
6 also had something?

7 MR. TRAUTMAN: Yes, Your Honor. We received
8 a call yesterday late afternoon from Lee Selwyn, and he
9 is scheduled to be in Ireland for a judicial hearing
10 which will go during the beginning of the week of July
11 26th, and because of their procedures, he's not sure
12 exactly how many days he may be needed. He may need to
13 be there through Wednesday, in which case he would take
14 a flight from Dublin to Seattle on Thursday; and
15 therefore, we'd ask to have Dr. Selwyn scheduled for
16 Friday, July the 30th.

17 JUDGE WALLIS: Let me ask if Mr. Brosch is
18 heard on Wednesday, if we were concluded with the
19 Company case at that point, what would we be doing on
20 Thursday while waiting for Dr. Selwyn to come?

21 MR. TRAUTMAN: I don't know. I would point
22 out though that to the extent that it creates any
23 inconvenience, I would point out that we did adjust the
24 schedule for one of U S West's witnesses and we
25 adjusted his appearance a month, and he is not coming

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1 until the 26th of August.

2 JUDGE WALLIS: We understand that, and we
3 also know that his schedule was definite at the time
4 the scheduling decision was made. The Commission also
5 had scheduling challenges that resulted in that time
6 frame.

7 MR. FFITCH: Your Honor, we could have a
8 break day. Another thought is that -- and I appreciate
9 U S West's desire to keep their case contiguous, and I
10 don't see any reason why that will not work, frankly,
11 any reasonable estimate, but to the extent that we're
12 not done on Wednesday, that would be another use for
13 Thursday if we had another hour or so for
14 Ms. Christianson or a witness who is not going out of
15 town. I fear to even suggest that because it sounds
16 like we're trying to set up a break in their
17 presentation which I don't think is going to occur, but
18 it is a possible use of that day.

19 MR. TRAUTMAN: We would also have Ms. Strain,
20 and I don't think she has any definite time now. It's
21 still probably more convenient to have her on the same
22 day as Dr. Selwyn, but certainly that is one possible
23 use for the time.

24 MS. ANDERL: We understand the need to
25 accommodate witness scheduling needs; however, we're

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1 running to check on something right now. I am totally
2 in reliance upon the fact that Dr. Selwyn is going to
3 testify on a date certain, July 29th. I don't know
4 that Mr. Inouye is going to be in town on the 30th, and
5 we're running to double-check that right now. It would
6 be our preference to have Mr. Inouye in the room when
7 Dr. Selwyn is crossed, and we did fill out the schedule
8 in the hopes of being able to work that out.

9 JUDGE WALLIS: I think that we're prepared to
10 state our views on the scheduling issues. I think it's
11 appropriate that we commit to allowing U S West to
12 present its case, with the exception of Witness
13 Perlman, in sequence. I think it's reasonable to
14 prognosticate based upon the estimates of the parties
15 that that schedule will allow us to take Mr. Brosch on
16 Wednesday.

17 I would like to begin, barring other
18 instructions from the Commissioners, reasonably soon
19 after the Commission meeting concludes. I don't know
20 yet how long the agenda is likely to be, but I would
21 like to proceed straight through until we reach a
22 conclusion. We did establish the schedule based in
23 part upon Mr. Selwyn's earlier representations about
24 when he would be available. I would like to hold to
25 that. Judge Berg and I have consulted, and we both

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1 agree that we want to hold to that schedule. However,
2 if Dr. Selwyn would be risking violation of Irish law
3 or some other serious problem by failing to be here to
4 be inquired of in sequence, then we can accommodate to
5 that, but I would ask that the witness take all
6 reasonable steps to get here so that he is available to
7 be inquired of in the sequence in which we had earlier
8 agreed.

9 I have a strong preference against taking a
10 day off or breaking the continuity of the proceeding in
11 that manner, and I cannot commit to the Commissioner's
12 availability for evening sessions, so I think that our
13 schedule is about as firm as we're able to make it now,
14 and while we can't anticipate all of the contingencies,
15 we do ask that the witness take all reasonable steps to
16 be available for questions on Thursday.

17 MR. TRAUTMAN: I'll call him back and see
18 what we can work out.

19 JUDGE WALLIS: Judge Berg and I would like to
20 consult for a few moments. If parties wish to stay on
21 the line or perhaps to call back in 15 or 20 minutes.

22 MR. TRAUTMAN: I'll go see if I can call
23 Dr. Selwyn.

24 JUDGE WALLIS: Why don't we say that we will
25 be back in 20 minutes or as soon thereafter as we're

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1 able. Will that work for the parties?

2 MR. FFITCH: Would that be by your watch,

3 Your Honor?

4 JUDGE WALLIS: Yes, 20 minutes by my watch.

5 MR. FFITCH: 2:15?

6 JUDGE WALLIS: My watch says 1:50:44 at the
7 present time, but I know it's not necessarily accurate.

8 MR. FFITCH: So about 2:10?

9 JUDGE WALLIS: About 20 minutes.

10 (Recess.)

11 JUDGE WALLIS: Judge Berg and I have
12 consulted and believe it's appropriate to carry this to
13 the Commissioners for resolution, particularly in as
14 much as it seems to be centered on their Twelfth
15 Supplemental Order, and consequently, we've asked for a
16 daily transcript which will be supplied to us in an
17 electronic format tomorrow, and we will ask the
18 Commissioners to expedite an order and attempt to have
19 the matter resolved at the earliest feasible time.

20 Are there any further questions, comments or
21 anything else to come before the Commission at this
22 time?

23 MS. ANDERL: No. Thank you, Your Honor.

24 JUDGE WALLIS: Thank you very much. Have a
25 great weekend.

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(Prehearing conference concluded at 2:15 p.m.)