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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 NEW EDGE NETWORK, INC.,)
)
4 Complainant,)
)
5 vs.) DOCKET NO. UT-000141
)
6 US WEST COMMUNICATIONS, INC.,) VOLUME I
) Pages 1 - 25
7 Respondent.)

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9 A prehearing conference in the above matter
10 was held on March 27, 2000, at 1:40 p.m., at 1300 South
11 Evergreen Park Drive Southwest, Olympia, Washington,
12 before Administrative Law Judge LARRY BERG.

13 The parties were present as follows:

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

17 NEW EDGE NETWORK, INC. d/b/a NEW EDGE
18 NETWORKS, by MARK P. TRINCHERO, Attorney at Law, and R.
DALE DIXON, JR., Attorney at Law, 1300 Southwest Fifth
Avenue, Suite 2300, Portland, Oregon, 97201.

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

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25 Joan E. Kinn, CCR, RPR
Court Reporter

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1 JUDGE BERG: We will be on the record. This
2 is a prehearing conference before the Washington
3 Utilities and Transportation Commission in Docket Number
4 UT-000141. Today's date is March 27th, 2000. This
5 prehearing conference is being conducted in the
6 Commission's hearing room 108 subsequent to effective
7 notice served to the parties on March 9th, 2000.

8 As the parties will note, at the request of
9 the Complainant, New Edge Networks Inc., and US West
10 Communications Inc., today's prehearing conference was
11 held earlier than the 20 day notice requirement as
12 specified in Commission rules and statutes. The
13 Commission found that there was good cause to hear this
14 matter on a shortened notice.

15 The Complainant, New Edge Network, Inc., will
16 also be referred to as New Edge. The Respondent, US
17 West Communications, Inc., will also be referred to as
18 US West.

19 My name is Lawrence Berg. I am the presiding
20 administrative law judge in this proceeding, and I will
21 preside along with the Commissioners at hearing.

22 At this point in time, we will take
23 appearances of counsel beginning with the Complainant,
24 then Respondent, and then Commission staff. I know
25 parties have entered their appearances in other

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1 proceedings, and they're well known to the Commission,
2 but I would ask just as a formal matter in this case
3 that you provide your name, business address, and
4 telephone, fax, and E-mail contact information.

5 Also for the Complainant New Edge, please
6 introduce any co-counsel that may be participating in
7 this proceeding. And if co-counsel will be actively
8 representing the Complainant, we should also get contact
9 information for those other individuals. And I will
10 want to confirm with New Edge that we have one point of
11 contact for service of all documents in this proceeding.

12 MR. TRINCHERO: Thank you, Your Honor.
13 Appearing on behalf of New Edge, Mark P. Trincherro, 1300
14 Southwest Fifth Avenue, Suite 2300, telephone number
15 (503) 778-5318, fax number (503) 778-5299, E-mail
16 address Marktrincherro@dwt.com. We will also have
17 appearing on behalf of New Edge R. Dale Dixon, Jr., same
18 address, telephone number (503) 778-5283, same fax
19 number, E-mail address Daledixon@dwt.com.

20 MS. ANDERL: Your Honor, appearing for the
21 Respondent, US West Communications, Inc., is Lisa
22 Anderl. My business address is 1600 Seventh Avenue,
23 Room 3206, Seattle, Washington, 98191. My telephone is
24 (206) 345-1574, my fax is (206) 343-4040, and my E-mail
25 is landerl@uswest.com.

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1 MS. SMITH: For Commission staff, Shannon
2 Smith, Assistant Attorney General, 1400 South Evergreen
3 Park Drive Southwest, P.O. Box 40128, Olympia,
4 Washington, 98504-0128, telephone (360) 664-1192, fax
5 (360) 586-5522, my E-mail address is Ssmith@wutc.wa.gov.

6 JUDGE BERG: Thank you, counsel.

7 MR. TRINCHERO: Your Honor, for the record.

8 JUDGE BERG: Yes, Mr. Trincherero.

9 MR. TRINCHERO: I neglected to mention the
10 city and zip code, that's Portland, Oregon, 97201. Also
11 just for the record, you will note on the complaint that
12 Gregory J. Kopta of our Seattle office also entered an
13 appearance through the complaint. Mr. Kopta will upon
14 occasion also be called upon to represent New Edge in
15 this matter, but the single point of contact should be
16 myself in Portland.

17 JUDGE BERG: All right, thank you, Mr.
18 Trincherero. I would just take note that the Complaint in
19 this matter was filed with the Commission on February
20 2nd, 2000, under the statutes relating to governing
21 adjudications in the State of Washington. The
22 Commission has ten months within which to issue a final
23 order resolving disputes among the parties. That would
24 be on or before December the 2nd, 2000. I would just
25 indicate that US West timely filed an answer in this

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1 matter on February 24, 2000.

2 Let me just ask the parties, Mr. Trincherro,
3 are there any similar parallel proceedings between these
4 parties pending at this time in other jurisdictions?

5 MR. TRINCHERO: Not currently, Your Honor.

6 JUDGE BERG: All right, thank you. Do the
7 parties request for the Commission to invoke its
8 discovery rule 480-09-480?

9 MR. TRINCHERO: Yes, please, Your Honor.

10 JUDGE BERG: All right, the parties should
11 consider the Commission's discovery rule invoked at this
12 time. Let's go off the record for a brief discussion.

13 (Discussion off the record.)

14 JUDGE BERG: We will be back on the record.
15 While off the record, discussions were conducted
16 regarding the scope and nature of discovery in this
17 proceeding. There were three separate issues that were
18 identified.

19 The first issue related to timely response to
20 data requests already propounded by New Edge to US West
21 including US West concerns over the number of requests
22 it has received and other potential objections to the
23 requests themselves.

24 US West expressed some concern that
25 limitations may need to be imposed upon the data

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1 requests that New Edge propounds to conform with the
2 nature of an adjudicatory proceeding such as this one.

3 A third point that was raised related to
4 notice of depositions that New Edge has served on US
5 West.

6 With regards to the first point, both parties
7 agree that a timely response to data requests previously
8 served would be ten business days counting from today.
9 However, because of the large number of data requests
10 presented, the parties agree to confer with each other
11 and with Commission staff outside of today's proceeding
12 to further segregate those interrogatories or data
13 requests into a schedule that would both allow New Edge
14 to receive the information it needs to present its case
15 and allow US West to timely respond to those requests.

16 There was discussion regarding the
17 Commission's perspective and interest in this
18 proceeding. The Commission is looking forward to a full
19 and complete record relating to all of the claims that
20 are presented. And rather than impose limitations
21 strictly on the basis of numbers, the Commission will be
22 more interested in looking to the relevancy of
23 interrogatories or data requests propounded within the
24 four corners of the complaint.

25 To the extent that the parties are unable to

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1 work out a schedule that meets both their needs, the
2 Commission will conduct another prehearing conference in
3 the near future to further address these issues, and we
4 will schedule that prehearing conference a little bit
5 later in this afternoon's proceeding.

6 With regards to notices of depositions served
7 on US West by New Edge, New Edge agrees for the time
8 being to suspend the notice of depositions pending
9 discussions among the parties regarding the full scope
10 of discovery. New Edge indicates that it's possible
11 that full and complete responses to some or all of the
12 data requests may diminish the need to pursue the
13 notices of depositions already served. The parties are
14 encouraged to factor that into the schedule of responses
15 to data requests and to try and determine whether or not
16 data requests or responses to data requests will remove
17 the need to conduct depositions as presently noticed.
18 Likewise this issue will be addressed at the next
19 prehearing conference if the parties are unable to
20 resolve all related issues themselves.

21 Is there anything additional that the parties
22 would wish to add? Mr. Trincherro, you first.

23 MR. TRINCHERO: Not on this issue, Your
24 Honor. Obviously we will want to schedule that
25 additional prehearing conference as soon as practicable,

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1 giving us, of course, enough time to discuss the issues,
2 but also ensuring that we don't unduly delay the
3 proceeding.

4 JUDGE BERG: All right. And, Ms. Anderl,
5 anything that you would like to add at this time?

6 MS. ANDERL: No, thank you, Your Honor.

7 JUDGE BERG: Ms. Smith?

8 MS. SMITH: Nothing, thank you.

9 JUDGE BERG: Okay, the next issue on my
10 agenda relates to the issuance of a protective order.
11 It seems pretty clear, but I will just seek confirmation
12 from you, Ms. Anderl, that discovery in this case is
13 likely to reach to information that US West would
14 consider to be confidential and proprietary.

15 MS. ANDERL: Yes, and I think that any
16 discovery that we do of New Edge might have the same
17 result, so I think we could probably both agree that a
18 protective order ought to be entered.

19 MR. TRINCHERO: That's absolutely correct,
20 Your Honor, and we would simply request that when the
21 protective order is issued that it is quite clear that
22 it covers disclosure by both the Plaintiff and
23 Respondent's confidential information.

24 JUDGE BERG: All right. I think that is the
25 case, but I will double check and make sure, see if any

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1 of the language of the Commission's standard protective
2 order needs to be tweaked to make that clear.

3 MR. TRINCHERO: Thank you.

4 JUDGE BERG: All right, the next thing that
5 I'm going to do is I'm going to distribute a document
6 that at the top is headed as Appendix A. This is a
7 document, Ms. Anderl, you will have seen attached to the
8 prehearing conference notice in UT-003013, Phase Quatro
9 as it's affectionately referred to.

10 MS. ANDERL: Yes, I think I know what you're
11 talking about.

12 JUDGE BERG: It consists of two Roman
13 numerals. The first is requirements for all paper
14 copies of testimony, exhibits, and briefs, and Roman
15 Numeral II is identifying exhibit numbers, exhibits on
16 cross-examination. This is a document that Judge Wallis
17 has developed and that I think the parties will continue
18 to see on a routine basis attached to initial prehearing
19 conference orders.

20 It does not specifically make references to
21 requirements under 480-09-736, but I believe that more
22 than a scintilla of the requirements on this sheet are
23 also included in that rule. To the extent that this
24 document which will be attached to the prehearing
25 conference notice, excuse me, the prehearing conference

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1 order in this case does not supersede 480-09-736, 736
2 remains in full force and effect.

3 And I would just like to in particular call
4 the parties' attention to 480-09-736 (6)(b), changes or
5 corrections. In at least two proceedings here at the
6 Commission that I'm aware of, there have been changes to
7 either exhibits or testimony prior to the actual hearing
8 in the case where the parties did not disclose to other
9 parties the changes until the hearing itself.

10 And I want to make sure that all parties
11 understand that to the extent that exhibits are
12 prepared, data responses or responses to data responses
13 are made, or testimony is filed, and the parties
14 discover that changes or corrections are necessary and
15 appropriate, I expect counsel to give notice to all
16 other parties in full compliance with this rule section
17 that can possibly be made.

18 And if the Commission learns that, in fact,
19 notice of corrections or changes have not been made as
20 soon as reasonably possible, that the Commission will
21 certainly consider that as a factor in whether or not
22 any changes or corrections are allowed at hearing, so
23 please don't take that particular section for granted.

24 Also I will just indicate to the parties that
25 the prehearing conference order will also include

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1 reference to a requirement that the parties file
2 electronic versions of all documents which they want the
3 Commission to consider in making decisions. That would
4 exclude, for example, routine correspondence or cover
5 letters in addition to testimony that is prefiled along
6 with prefiled exhibits. To the extent that the parties
7 file briefs or letters that they want the Commission to
8 consider in a more substantive fashion, they need to
9 make sure that electronic versions are filed with the
10 Commission. If there are exhibits or attachments that
11 do not exist in electronic form or format, it is not
12 necessary for the parties to scan them or otherwise
13 convert them into an electronic format. But certainly
14 to the extent to which exhibits can be presented in that
15 fashion, it will be appreciated.

16 The parties should also expect that at some
17 point there may be some follow-up requirements in
18 prehearing conference orders relating to the filing of
19 confidential information including providing separate
20 copies of both the hard copy, hard paper, and a diskette
21 versions of confidential documents to avoid the
22 inadvertent disclosure of confidential information.

23 The Commission is presently working on
24 procedures to ensure that the confidentiality of
25 proprietary documents is maintained. And as soon as I

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1 can confirm that those additional requirements are ready
2 to be distributed to the parties, I will make it
3 available to you.

4 Any questions about any of that,
5 Mr. Trincherro or Ms. Anderl?

6 MR. TRINCHERO: No, Your Honor.

7 MS. ANDERL: No, Your Honor.

8 JUDGE BERG: All right, and Ms. Smith?

9 MS. SMITH: No.

10 JUDGE BERG: All right. The next issue that
11 I wish to address is the reference to statutes in the
12 complaint filed by New Edge. New edge's first and
13 second claims for relief refer to violations of state
14 law. Thereafter in a section entitled requests for
15 relief, subpart N as in Nancy, there is a reference to a
16 request that penalties be imposed by the Commission for
17 violations of state law which are made in the first and
18 second claims for relief.

19 That subpart N refers to RCW 80.04.380.
20 However, there is another penalty statute in the State
21 of Washington, 80.04.405, which provides for independent
22 and additional penalties for state violations. Is it US
23 West's position that for the Commission to consider the
24 imposition of penalties pursuant to 80.04.405 that
25 specific reference would be required in either the

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1 complaint or the Commission's notice of prehearing
2 conference?

3 MS. ANDERL: I think that it would only be it
4 would be required in the complaint, and it could not be
5 included in the notice of prehearing conference unless
6 it had been pled in the complaint.

7 JUDGE BERG: All right. So, Mr. Trincherro,
8 you will need to consult, take that into consideration,
9 consult with your client, and if there is any need to
10 deal with that in the future, it will be up to New Edge,
11 I believe, to bring the matter to the Commission's
12 attention. But I think you should consider yourself put
13 on notice at least at this point in time that that is
14 the position of US West.

15 MR. TRINCHERO: Yes, Your Honor. And it
16 would be New Edge's position that an amended complaint
17 is not necessary, as paragraph P requests that the
18 Commission provide such other legal and equitable relief
19 as is just and proper, and this would fall within that.
20 However, we are advised and will consider further
21 actions.

22 JUDGE BERG: All right. Unless the parties
23 take some relevant initiative prior to the hearing, it's
24 a matter that will just be addressed in the Commission's
25 final order based upon arguments of counsel presented in

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1 post hearing briefs.

2 And then before we go off the record to
3 discuss scheduling in this case, I wanted to confirm
4 with New Edge that it is still seeking some form of
5 injunctive relief in this proceeding.

6 MR. TRINCHERO: Yes, Your Honor. New Edge
7 has pleaded in its complaint a request for an order that
8 would come out before the final order in this case
9 providing for certain injunctive relief mandating that
10 US West refrain from certain activities and/or provide
11 services in a particular manner. It is our intent that
12 prior to requesting the Commission to act on any such
13 request in the complaint, we would file a motion for
14 such relief.

15 JUDGE BERG: Okay, very good.

16 And, Ms. Anderl, in looking at US West's
17 answer, I just was going to ask some clarification with
18 regards to the affirmative defenses asserted by US West.

19 MS. ANDERL: Yes.

20 JUDGE BERG: There is more or less a general
21 affirmative defense at paragraph 64 stating that some or
22 all of Complainant's claims are barred for lack of
23 jurisdiction. And then in paragraph 65, there is a
24 specific reference to the injunctive relief requested.
25 And again, the affirmative defense states that the

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1 Commission lacks jurisdiction to award the same.

2 MS. ANDERL: Yes.

3 JUDGE BERG: Are those two affirmative
4 defenses different, overlapping, or the same?

5 MS. ANDERL: Overlapping at least. I don't
6 have at the tip of my fingers whether there were other
7 specific matters that were requested over which we felt
8 the Commission lacks jurisdiction. However, clearly the
9 reference to the injunctive relief is one of the areas
10 in which we do not feel the Commission has the
11 authority to grant the relief requested.

12 And in that regard, I would refer you to
13 80.04.260, which is a summary proceedings statute, and
14 it says that if the Commission is of the opinion that a
15 company is failing to do anything that is required of it
16 by law, it shall direct the attorney general to commence
17 an action or proceeding in Thurston County Superior
18 Court or some other county superior court for the
19 purposes of having such violations or threatened
20 violations stopped and prevented, either by mandamus or
21 injunction, leading me to believe that the Commission
22 does not have independent authority to issue an
23 injunction if, in fact, the statute directs them to the
24 superior court.

25 JUDGE BERG: Thank you, I appreciate that

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1 reference. Although the Commission's practice in
2 several recent cases has been to carry the determination
3 of jurisdictional issues along with the case and to
4 resolve them after a hearing is conducted, I think that
5 the Commission's preference is that if the parties in
6 fact have the intent to raise claims that jurisdiction
7 does not exist, that in fact they do so sooner rather
8 than later. So that if, in fact, the Commission chooses
9 to resolve those claims on a prehearing basis to either
10 narrow or eliminate disputes in their entirety, that the
11 parties present those positions to the Commission.

12 So, Mr. Trincherro, I appreciate that the
13 Commission need not take any action on this until and
14 unless New Edge files a motion for injunctive relief
15 consistent with its complaint.

16 And, Ms. Anderl, if, in fact, there are other
17 claims by New Edge which are barred for lack of
18 jurisdiction, I'm not going to require that US West file
19 a motion at any particular point in time, but I would
20 just indicate to you that the successful presentation of
21 an issue like that is also dependent on the time it's
22 presented, and sooner would be better than later.

23 MS. ANDERL: Well, Your Honor, I guess I
24 would like a clarification on that, whether we will be
25 barred from raising jurisdictional issues unless we make

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1 a motion at a particular time even though we have raised
2 it in our complaint, in our answer. You know, I don't
3 -- I can't know if I need to file something unless I'm
4 required to do so. Right now the rules leave it
5 optional if we wish to file a motion to dismiss at any
6 point in time, but it's not been my understanding that
7 the defense is waived or even that it could be if it is
8 a subjective matter, jurisdictional issue.

9 JUDGE BERG: I appreciate that, and I
10 apologize. To the extent that my statement may seem to
11 curtail what other rights US West may have and the
12 consideration that would be given to any claims when
13 raised, that really wasn't my intent. My intent was
14 just to suggest on an informal basis that if the parties
15 have claims that relate to jurisdictional issues that
16 the Commission would appreciate the opportunity to
17 address those before the parties invest a considerable
18 amount of time, energy, and resources into developing
19 their case as well as before the Commission invests a
20 similar amount of time in hearing the disputes of the
21 parties.

22 MR. TRINCHERO: Your Honor, if I might just
23 address that issue briefly. Certainly I agree that US
24 West would not be waiving its claim that there is a lack
25 of jurisdiction for injunctive relief until such time as

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1 New Edge actually moves for such injunctive relief. It
2 is my understanding that under the Commission's rules,
3 the deadline for a motion to dismiss for lack of
4 jurisdiction is the deadline for filing the answer and
5 that US West has already waived that.

6 MS. ANDERL: And, Your Honor, I'm not aware
7 that such a deadline exists. If counsel could provide
8 me with a citation to the authority to the basis for
9 that belief, perhaps I could respond.

10 MR. TRINCHERO: I am sorry that I do not have
11 that in front of me right now, but would gladly provide
12 that to you when we discuss the discovery issues.

13 JUDGE BERG: And, Ms. Anderl, I understand
14 your concern was raised by my statement that timeliness
15 or the time that a motion based on jurisdictional
16 grounds was filed would also somehow go towards the
17 merits of whether relief would be granted. That really
18 wasn't my purpose, and if, in fact, those were my words,
19 they're wrong.

20 MS. ANDERL: All right, Your Honor. No, I
21 just didn't want to misunderstand and allow a deadline
22 to pass by.

23 JUDGE BERG: Okay, good, then I think we're
24 past that then, and I appreciate counsel continuing to
25 share with each other the statutory basis for claims or

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1 positions.

2 I think I have already expressed to counsel
3 that I think this is a case where both parties would
4 benefit from a settlement of all claims, and I think
5 that the exchange of legal positions between parties is
6 a sign of good faith and an indication, in fact, that
7 there is still some benefit from the parties engaging in
8 settlement discussions with each other.

9 At this time then, I'm going to propose that
10 we go off the record to discuss scheduling of specific
11 dates. But before I do so, I just want to give the
12 parties a chance to make any other statements they have.
13 Or if there's something else they want to address on the
14 record before we talk about scheduling off the record,
15 let me know.

16 Mr. Trincherro.

17 MR. TRINCHERO: I have nothing else at this
18 time, Your Honor.

19 JUDGE BERG: Ms. Anderl.

20 MS. ANDERL: I have nothing further.

21 JUDGE BERG: Okay, in that case, we will be
22 off the record.

23 (Discussion off the record.)

24 JUDGE BERG: After a discussion among the
25 parties regarding a procedural schedule in this case,

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1 the following events and dates should be noted.

2 The parties agree to confer regarding
3 discovery issues on Wednesday, March 29, in the
4 afternoon and again throughout the day on Monday, April
5 the 3rd. The parties will confer with the assistant
6 attorney general representing Commission staff at least
7 once during the day on Monday the 3rd to provide her
8 with a status update.

9 There will be a teleconference on Thursday,
10 April the 6th, at 10:00 a.m. for the parties to present
11 the status of their discovery discussions to the Bench,
12 at which time we may resolve pending discovery disputes.
13 Any pending discovery disputes that are not resolved at
14 the April 6th prehearing conference will require that
15 discovery motions or rather -- yes, discovery motions be
16 filed on April the 13th and that answers to those
17 motions be filed on April the 18th.

18 Thereafter New Edge shall file opening
19 testimony on June the 13th, US West shall file reply
20 testimony on July the 19th, and New Edge shall file
21 rebuttal testimony on August the 2nd. The parties
22 filing testimony on those dates shall also effect
23 service on other parties on the filing date.

24 There will be a discovery cutoff date of
25 August the 10th, which will require that responses to

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1 discovery requests be made on August the 24th. Any
2 other motions regarding discovery disputes shall be
3 filed and served by noon on August the 28th. Answers to
4 those motions shall be filed and served by noon on
5 August the 30th. Filing and service on the 28th and the
6 30th may be effected by facsimile transmission.

7 The Commission will conduct a prehearing
8 conference on Thursday, August the 31st, at 10:00 a.m.
9 to resolve pending motions, to exchange exhibit lists,
10 cross-examination exhibits, and to work out other
11 details of the hearing to be conducted before the
12 Commission on September 6th, 7th, and 8th.

13 MS. SMITH: Your Honor.

14 JUDGE BERG: Yes.

15 MS. SMITH: I'm not certain if for the record
16 you indicated that Commission staff, if staff is filing
17 testimony, will be filing testimony on August 2nd, and
18 any request to respond to that testimony will come
19 thereafter.

20 JUDGE BERG: That's correct, thank you very
21 much.

22 Anything else that the parties want to add to
23 that recitation?

24 Mr. Trincherero.

25 MR. TRINCHERO: Your Honor, I'm simply

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1 assuming that if indeed staff files rebuttal testimony
2 on August the 2nd, that will also be served on that same
3 day.

4 MS. SMITH: Yes.

5 MR. TRINCHERO: Thank you.

6 JUDGE BERG: Ms. Anderl, anything that you
7 wanted to add?

8 MS. ANDERL: No, Your Honor, that covers it.

9 Your Honor, did you state when the hearings
10 were? I don't know if we said that on the record or
11 not.

12 JUDGE BERG: I did, I caught that at the very
13 end.

14 MS. ANDERL: Okay, good.

15 JUDGE BERG: The schedule for post hearing
16 briefs will be determined at the conclusion of the
17 hearing.

18 It seemed to me that there was one other item
19 or detail I wanted to mention, but like any short trip,
20 the adventure isn't complete unless you forget something
21 at home. So that if there are other details that come
22 to mind, I will notify the parties in the prehearing
23 conference order. Likewise, if the parties think of any
24 other details we have discussed either before or after
25 service of the prehearing conference order, be sure to

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1 contact myself and other parties, and we will make sure
2 that those other details are properly documented.

3 Mr. Trincherro, is there anything else you
4 want to discuss at this time?

5 MR. TRINCHERO: Your Honor, the other thing
6 that we had on our list was a discussion of potential
7 dates for settlement conferences, but I am assuming that
8 Ms. Anderl and I can discuss that off line when we
9 discuss these discovery issues as well.

10 JUDGE BERG: Yes, I'm going to want the
11 parties to be thinking about settlement every waking
12 moment and to discuss them at every possible
13 opportunity, both in terms of trying to find a solution
14 that serves the long-term interests and needs of both
15 parties as well as possibly narrowing the issues that
16 are coming up at the hearing. Be mindful that in New
17 Edge's own words, this complaint addresses three
18 specific problem areas. To the extent any of those can
19 be resolved before hearing would make a lot of sense.

20 MS. SMITH: If I might add also, while the
21 parties certainly are entitled to settle this matter
22 without the participation of Commission staff, we would
23 like to be included in those settlement discussions,
24 because any settlement would have to be approved by the
25 Commission. And if Commission staff is comfortable with

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1 any proposed settlement ahead of time, it might make
2 things a little easier as we go along.

3 MR. TRINCHERO: That makes sense.

4 JUDGE BERG: And that's fine with you too,
5 Ms. Anderl?

6 MS. ANDERL: Absolutely.

7 JUDGE BERG: All right. What you might want
8 to do is if the parties get to a point where some or all
9 of the issues have been resolved in the form of a
10 settlement, before you present it to the Commission,
11 present it to Ms. Smith and confer with her, and then go
12 ahead and make your filing.

13 And to the extent that the parties do settle
14 any or all of the issues in this case, it would be my
15 preference that, in fact, the parties would take steps
16 to notify the Commission that they have succeeded in
17 that respect as soon as possible.

18 Anything else from your end, Ms. Anderl?

19 MS. ANDERL: Let me just look at my notes
20 here, Your Honor. I don't have anything else. The only
21 thing that I will clarify, I guess, for the record is
22 that we had originally stated that we felt that
23 discovery and settlement negotiations should not happen
24 concurrently but rather sequentially. And while we
25 still believe that, we have decided not to push that

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1 point at this juncture, and we will engage in the
2 discovery discussions with Mr. Trincherro that we have
3 talked about on the record today as well as attempting
4 to pursue settlement.

5 JUDGE BERG: That's right.

6 MS. ANDERL: Concurrently with that.

7 JUDGE BERG: Yes, please.

8 And the one other item that I think was in
9 the back of my mind was that if staff does file
10 testimony concurrent with the filing of rebuttal
11 testimony by New Edge, on August the 2nd, we will
12 conduct other informal or formal discussions to
13 establish a time for US West to timely file a response.

14 Is that satisfactory, Ms. Anderl?

15 MS. ANDERL: Yes.

16 JUDGE BERG: Okay. In that case, we will
17 consider the prehearing conference adjourned at this
18 time.

19 (Hearing adjourned at 4:05 p.m.)

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