

00001

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
-----)
2 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,) DOCKET NO. UT-941136
3 Complainant,)
4 vs.)
5 PAYTEL NORTHWEST INC.,)
Respondent.)
6 -----)
7 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,) DOCKET NO. UT-911483
8 Complainant,)
9 vs.)
10 FONE AMERICA, INC.,)
Respondent.)
11 -----)
12 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,) DOCKET NO. UT-940923
13 Complainant,)
14 vs.)
15 U.S. LONG DISTANCE, INC.,)
Respondent.)
16 -----)
17 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,) DOCKET NO. UT-941133
18 Complainant,)
19 vs.)
20 DIVERSIFIED SERVICE COMPANY,)
Respondent.)
21 -----)

20 A hearing in the above matter was held on
21 January 13, 1995, at 1:30 p.m. at 1300 South Evergreen
22 Park Drive Southwest before Commissioner HEMSTAD and
23 Commissioner GILLIS and Administrative Law Judge Alice
24 Haenle.
25 Cheryl Macdonald, Court Reporter

00002

1 -----)
2 WASHINGTON UTILITIES AND)
3 TRANSPORTATION COMMISSION,) DOCKET NO. UT-9441134
4 Complainant,)
5 vs.)
6 SMJ COMMUNICATIONS, INC.,)
7 Respondent.)
8 -----)
9 WASHINGTON UTILITIES AND)
10 TRANSPORTATION COMMISSION,) DOCKET NO. UT-941135
11 Complainant,)
12 vs.)
13 INTERWEST TELECOM SERVICE,)
14 Respondent.)
15 -----)

11 The parties were present as follows:

12 PAYTEL NORTHWEST, U.S. LONG DISTANCE,
13 FONE AMERICA, and SMJ COMMUNICATIONS by BROOKS E.
14 HARLOW, Attorney at Law, 4400 Two Union Square, 601
15 Union Street, Seattle, Washington 98101-2352.

16 DIVERSIFIED SERVICE COMPANY, by MICHAEL T.
17 KENNEDY, Pro Se, North 624 Madelia, Spokane,
18 Washington 99202.

19 INTERWEST TELECOM, by RICHARD MAGNUSSEN,
20 Pro Se, 229 South Wenatchee Avenue, Wenatchee,
21 Washington 98801.

22 WASHINGTON UTILITIES AND TRANSPORTATION
23 COMMISSION STAFF, by ANN RENDAHL, Assistant Attorney
24 General, 1400 South Evergreen Park Drive Southwest,
25 Olympia, Washington 98504.

21

22

23

24

25

00003

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

2 JUDGE HAENLE: The hearing will come to
3 order. This is a day of hearing in -- there are six
4 hearings set for 1:30 today. It's January 13, 1995
5 and this hearing is being held before the
6 commissioners at Olympia. This was set to hear
7 information about proposed settlement agreements
8 involving six companies. They were all set for
9 settlement hearing this afternoon. Let me read the
10 docket numbers and the company names. UT-911483, the
11 Commission versus Fone America, Inc.; UT-940923, the
12 Commission versus U.S. Long Distance, Inc.; UT-941133,
13 the Commission versus Diversified Service Company;
14 UT-941134, Commission versus SMJ Communications, Inc.;
15 UT-941135, the Commission versus Interwest Telecom
16 Service; and UT-941136, the Commission versus Paytel
17 Northwest Inc.

18 I would like to take appearances at this
19 time, please. Would you state your name and your
20 company's name, your business address and if you are
21 president of the company or representative or what,
22 you will need to state also your position with the
23 company. If we could begin with you, Mr. Magnussen.

24 MR. MAGNUSSEN: My name is Rich Magnussen.
25 I'm with Interwest Telecom. Address is 229 South

00004

1 Wenatchee Avenue in Wenatchee, Washington and I am the
2 president of the company.

3 JUDGE HAENLE: Thank you. Mr. Kennedy.

4 MR. KENNEDY: My name is Mike Kennedy. I'm
5 with Diversified Service Company, North 624 Madelia,
6 Spokane, Washington, and I'm the president of the
7 company.

8 JUDGE HAENLE: Mr. Harlow.

9 MR. HARLOW: Brooks Harlow. My address is
10 601 Union Street, Suite 4400, Seattle, Washington, and
11 I am here today representing U.S. Long Distance, Fone
12 America, Paytel Northwest and SMJ Communications.

13 JUDGE HAENLE: Thank you. For the
14 Commission.

15 MS. RENDAHL: Ann Rendahl, assistant
16 attorney general representing the Commission staff.
17 My address is 1400 South Evergreen Park Drive
18 Southwest, Olympia, Washington 98504.

19 JUDGE HAENLE: Is there anyone else who
20 needs to enter an appearance in this matter?

21 Hearing no response, then, we discussed
22 before we went on the record consolidating these six
23 causes for purposes of this hearing, the settlement
24 hearing, and for purposes of an order to try to be as
25 efficient as possible. The Commission could if it

00005

1 decided not to treat them all in the same manner, I
2 suppose then, break them apart for order, but the idea
3 would if all of the settlement agreements are
4 ultimately approved that it would be done in one order
5 to avoid unnecessary paperwork.

6 Is that all right with you, Ms. Rendahl?

7 MS. RENDAHL: Yes, Your Honor.

8 JUDGE HAENLE: Mr. Harlow?

9 MR. HARLOW: We would appreciate that.

10 JUDGE HAENLE: Mr. Kennedy?

11 MR. KENNEDY: Yes.

12 JUDGE HAENLE: Mr. Magnussen?

13 MR. MAGNUSSEN: Yes, it is.

14 JUDGE HAENLE: I think it would be more
15 efficient in that manner. These have all up to this
16 point been ALJ only cases. Is it all right with you
17 if a proposed order is waived so that this is
18 presented directly to the commissioners for
19 consideration of the settlements? Ms. Rendahl?

20 MS. RENDAHL: Yes.

21 JUDGE HAENLE: Mr. Harlow?

22 MR. HARLOW: Yes, it is.

23 JUDGE HAENLE: Mr. Kennedy?

24 MR. KENNEDY: Yes, it is.

25 JUDGE HAENLE: Mr. Magnussen?

00006

1 MR. MAGNUSSEN: Yes, it is.

2 JUDGE HAENLE: Have signed originals of all
3 of the settlement stipulations been sent to the
4 Commission's official file, Ms. Rendahl?

5 MS. RENDAHL: Yes. Five were filed on
6 December 23rd, and the remaining Interwest was filed
7 on January 4th.

8 JUDGE HAENLE: Thank you. The
9 commissioners may have questions of you, but before we
10 do that, would one of you like to give a brief
11 description of what's in the settlement, some kind of
12 overview of the settlements?

13 MS. RENDAHL: I would like to make a
14 presentation about these cases and the settlements as
15 there is no initial order in these cases as there is
16 in the IPI matter.

17 JUDGE HAENLE: Thank you.

18 MS. RENDAHL: Good afternoon,
19 commissioners, Judge Haenle. At issue this afternoon
20 are six proposed settlement agreements through which
21 the staff and six alternate operator service companies
22 or AOS companies seek to settle Commission complaints
23 against the companies. The six settlement agreements
24 are presented together in this one hearing as the
25 complaint against each company has certain similar

00007

1 issues and the settlements propose similar resolutions
2 of these issues. I plan to describe the settlements
3 and the reasons why staff believes it is appropriate
4 for the Commission to approve these settlements.

5 First, however, I would like to present some
6 background information concerning the complaints, the
7 companies against whom the complaints were issued and
8 the industry in which these companies operate.

9 The six companies seeking to settle
10 Commission complaints are Fone America, U.S. Long
11 Distance, Paytel Northwest, Diversified Service
12 Company, Interwest Telecom Service and SMJ
13 Communications. All six of these companies provide
14 AOS services. An AOS company provides operator-
15 assisted telecommunications services to the public
16 through telephones and/or pay phones located at
17 hotels, restaurants, convenience stores and other
18 locations. These entities are known as aggregators.
19 The AOS companies pay a commission to the aggregator
20 so that the aggregator will use the company's operator
21 services. In order to pay larger commissions and thus
22 compete with other AOS companies to obtain more
23 aggregators as customers, AOS companies have
24 historically assessed members of the public who use
25 the phones a surcharge in addition to the charge for

00008

1 placing the telephone call.

2 The six companies before you today provide
3 the same type of service as International Pacific
4 whose settlement agreement was the subject of a
5 hearing this morning. Fone America and U.S. Long
6 Distance provide service in a number of states across
7 the country. Fone America operates out of Portland,
8 Oregon and U.S. Long Distance operates out of San
9 Antonio, Texas. The remaining four companies'
10 operations are based in Washington state. Paytel
11 provides service statewide while Diversified,
12 Interwest and SMJ provide service primarily in Eastern
13 Washington.

14 By way of background, the Commission
15 adopted rules in 1991 which established a benchmark
16 rate for operator-assisted telephone calls. The
17 benchmark rate adopted in this rule is based on the
18 rates of the dominant carriers in the Washington
19 market, AT&T and
20 U S WEST. When the rule was adopted 53 companies were
21 registered to provide alternate operator services in
22 Washington state. 30 of these companies provided
23 services at tariffed rates higher than the benchmark
24 rates. These 30 companies were allowed to continue
25 to charge rates in excess of the benchmark rates under

00009

1 a grandfather clause in the rule.

2 In 1991 the staff initiated an
3 investigation into the earnings of the two larger AOS
4 carriers providing service in Washington state,
5 International Pacific and Fone America. Also in 1991,
6 the same year that the Commission filed its complaints
7 against International Pacific, the Commission filed a
8 similar complaint against Fone America. The complaint
9 asserted that Fone America was not complying with the
10 benchmark rule, that the company's rates and charges
11 were not fair, just reasonable and sufficient and
12 sought penalties for failure of the company to keep
13 its books in accordance with the uniform system of
14 accounts.

15 In June of 1992, Fone America filed for
16 bankruptcy and the Commission's complaint against the
17 company was stayed until March of 1993 when the
18 company was discharged from bankruptcy. Due to
19 active negotiations by staff, 23 of the 30 AOS
20 companies filed tariffs lowering their rates to the
21 benchmark level between 1992 and February of 1994.
22 The seven remaining companies were IPI and the six
23 companies represented here this afternoon. While the
24 rates of these seven companies are higher than the
25 benchmark, the remaining 46 companies' rates are at or

00010

1 lower than the benchmark rate.

2 In July of 1994 the Commission issued an
3 amended complaint against Fone America asserting that
4 the company's rates were not fair, just, reasonable
5 and sufficient and that the company was not keeping
6 its books in accordance with the uniform system of
7 accounts.

8 The complaint was also modified to reflect
9 the company's discharge from bankruptcy. Also in
10 July of 1994, the Commission issued a complaint
11 against U.S. Long Distance asserting again that the
12 company's rates were not fair, just, reasonable and
13 sufficient and seeking penalties for the failure of
14 the company to keep its books in accordance with the
15 uniform system of accounts. In September of 1994, the
16 Commission issued similar complaints against the other
17 four companies.

18 Before and after the complaints were filed,
19 the staff issued a number of data requests to the
20 companies to obtain information about their operations
21 and financial status. After the complaints were
22 filed, the staff conducted audits of the company's
23 operations and in conducting the audits the staff
24 prepared preliminary results of operations of each
25 company making adjustments in the areas of commission

00011

1 fees, salaries, depreciation and adjusting interest
2 expenses from above to below the line, and in many
3 cases the staff found it necessary to review the
4 companies' books on a total company basis. Because
5 the companies don't keep their books on the basis of
6 uniform system of accounts the staff could not
7 properly allocate the companies' revenues and expenses
8 between interstate, intrastate and other operations.
9 Pre-hearing conferences have been held in each of the
10 cases establishing schedules for filing testimony,
11 cross-examination, rebuttal and filing of briefs and
12 under the schedules and barring any delays, hearings
13 and briefing of all six cases would be completed in
14 February of 1996. This schedule doesn't take into
15 account the time for initial orders and final orders
16 and judicial appeals.

17 While preparing for the pre-hearing
18 conferences and during the audits, the staff and each
19 of the companies discussed alternatives to litigation
20 and given the protracted nature of the IPI proceeding
21 ultimately the staff and each company concluded it was
22 in the best interest of the companies, staff and the
23 public to settle the cases.

24 Now I would like to describe the
25 settlements and what's proposed in the agreements. In

00012

1 the settlements the companies agree to reduce their
2 rates by filing tariffs at AT&T daytime rates plus an
3 additional 25 cent per call charge. The settlement
4 essentially establishes a price cap for alternate
5 operator services. In exchange the Commission will
6 dismiss the complaints against the companies. The
7 settlement agreements also contemplate that the
8 companies will file petitions for waiver of WAC
9 480-120-031 which requires telecommunications
10 companies to keep their books in accordance with the
11 uniform system of accounts. The complaint could not
12 be settled without resolving the issue of rates and
13 compliance with the uniform system of accounts and the
14 petitions for waiver are not before you this afternoon
15 but will be presented later at an open meeting after
16 the Commission rules on the settlement agreements.
17 If the Commission approves both the settlement
18 agreements and the petitions for waiver, the companies
19 will file tariffs lowering their rates to AT&T daytime
20 rates plus the 25 cent per call charge.

21 Practically the settlements will work in
22 the following way: If the Commission approves both
23 the settlement agreements and the waiver petitions,
24 the companies will file tariffs lowering their rates.
25 In particular, within five days after the Commission

00013

1 approves both the settlement agreements and the waiver
2 petitions, whichever occurs later, the companies will
3 file tariffs reducing their rates. These tariffs will
4 become effective within 30 days after filing and the
5 Commission will dismiss its complaints once the
6 tariffs become effective. The tariff rate proposed in
7 the six settlement agreements is consistent with the
8 tariff rate proposed in the IPI settlement: AT&T
9 daytime rates plus 25 cents. However, the settlement
10 agreements are not contingent on a rulemaking as in
11 the IPI settlement. The six settlement agreements are
12 identical with the exception that the Interwest
13 settlement agreements includes an additional provision
14 that's not included in the other five settlement
15 agreements. This provision is found in paragraph 5
16 which provides that "nothing in the settlement shall
17 preclude the company from submitting to the Commission
18 a request to increase its rates for operator
19 services." This provision was included because in
20 discussions with the company the company asserted that
21 it does not believe it can operate at AT&T daytime
22 rates plus 25 cents over the long-term. However, the
23 company has not yet provided staff with the necessary
24 information to establish this. Therefore, in order to
25 settle the matter the staff and the company agreed

00014

1 that if the company can demonstrate that it is
2 justified in charging a higher rate than the
3 settlement would not preclude the company from filing
4 for a rate increase. This option is open to any AOS
5 company under the Commission's current AOS rules.
6 Under the rule any company may petition for higher
7 rates if it can justify rates higher than the
8 benchmark.

9 In addition, the settlements are not
10 contingent on the Commission's approving any of the
11 other settlements. Each settlement stands on its own.
12 Under the settlements, if AT&T lowers its rates, each
13 company must file a conforming tariff change with the
14 Commission within 30 days of the new AT&T rate
15 becoming effective. Each company must also file
16 conforming tariffs if AT&T raises its rates. However,
17 as discussed this morning, if a company did not seek
18 to raise its rates it could request the Commission to
19 stay at the rate it is currently charging.

20 The Commission staff entered into these
21 settlements in order to resolve the long standing
22 dispute with these companies concerning the rates to
23 be charged to the public. As all but seven AOS
24 companies have filed tariffs setting rates at the
25 benchmark levels, these remaining seven companies have

00015

1 been able to dominate the market. By entering into
2 settlements which establish a price cap, these
3 companies will no longer be able to compete by
4 charging higher rates and commanding more aggregator
5 locations due to the ability to pay larger
6 commissions. The settlement price cap will enable the
7 Commission to resolve the inequities in the market
8 sooner than through lengthy litigation. The IP
9 settlement contemplates a rulemaking proposal to
10 establish the benchmark rate at AT&T plus a quarter.
11 Should such a rule change be approved all the AOS
12 companies would charge the same rates. The sooner
13 the rates are lowered and the sooner there's an
14 effective price cap for the industry the sooner there
15 will be an even playing field amongst the competing
16 companies.

17 Through its preliminary audits of the
18 companies' books the staff estimates that the rate
19 reductions for the six companies will be approximately
20 1.8 million dollars each year if the companies reduce
21 their rates to AT&T daytime plus 25. If the companies
22 reduce their rates to AT&T rates the rate reductions
23 for the six companies would be approximately 2.2
24 million dollars per year which is a difference of
25 approximately \$425,000. Under the settlement the

00016

1 Commission would be giving up \$425,000 a year at a
2 future date to achieve immediate savings to the public
3 of \$1.8 million dollars. The chairman requested
4 during the hearing this morning what percent reduction
5 in rates the settlement would result in. Concerning
6 the six companies here this afternoon overall the rate
7 reduction is approximately 42 percent.

8 Given that the IPI case has taken three
9 years of litigation to reach the initial order stage
10 the staff compared the rate reductions with the staff
11 resources necessary to fully litigate the six
12 remaining complaints to completion and determined that
13 it was best to enter into the settlements. The staff
14 believes that the settlements are in the public
15 interest. By settling with the companies now there
16 will be an immediate reduction in rates with a
17 relatively small difference between the reductions
18 achieved through the settlement rate and the current
19 benchmark rate. These settlements benefit the public
20 by lowering rates immediately and establishing a price
21 cap which will force the companies to compete on the
22 basis of internal efficiencies and innovation and upon
23 quality of service rather than upon the basis of
24 commission fees. When competition is not working to
25 benefit the ultimate consumer it's not in the best

00017

1 interests of the public or the industry. The price
2 caps will control the level of commission fees which a
3 company may pay by limiting the amount which the
4 ultimate consumer must pay for operation services.

5 As was mentioned this morning on the record
6 public counsel has reviewed these settlements as well
7 and does not oppose them. For all of those reasons
8 the staff recommends that the Commission approve these
9 settlements. This concludes my presentation and
10 should you have any questions, I'm available and the
11 members of the staff are available to respond.

12 JUDGE HAENLE: Should we take response from
13 the companies as well before we take commissioners?

14 Mr. Harlow.

15 MR. HARLOW: Very briefly. While my
16 client puts a little different spin on things than the
17 assistant attorney general overall, we feel satisfied
18 with the settlement. It recognizes the public
19 interest and I think serves the ultimate public
20 interest while recognizing the business necessity that
21 face the AOS companies and the AOS industries, the
22 higher costs that were mentioned this morning, and
23 hopefully all four of my clients will continue to be
24 able to do business in the state of Washington under
25 the new rates. Certainly that is their expectation in

00018

1 agreeing to this.

2 I also do want to commend the staff. In
3 particular there's been a lot of leg work to do in
4 terms of audits and investigations and so forth, but
5 the real trick here was getting all seven of these
6 companies to come in at roughly the same time on the
7 same basis as well as develop a proposal on a forward
8 looking basis so that the nongrandfathered companies
9 can come up to the same level, and that's been quite a
10 delicate balancing act and it's really that effort and
11 that skill that has made these settlements possible
12 today, I believe. So we of course urge the Commission
13 to approve these settlements.

14 JUDGE HAENLE: Did you have any comments,
15 Mr. Kennedy?

16 MR. KENNEDY: Just one of a point of
17 clarification. I should mention it was the six
18 companies all provide operator service. I'm assuming
19 you're giving the impression that we all had operators
20 and of the three of the companies, our company being
21 one, we do not provide in fact operators for that
22 service. We use technology and some strictly pay
23 phones. Three of the companies operate no pay phones,
24 of the three of the companies who are represented here
25 do operate pay stations out in the field whereas the

00019

1 others do not have any. So that's always kind of been
2 a point of confusion.

3 JUDGE HAENLE: All right. Did you have any
4 comments, Mr. Magnussen?

5 MR. MAGNUSSEN: Yes, Your Honor.

6 JUDGE HAENLE: Move the microphone right up
7 in front of you.

8 MR. MAGNUSSEN: Interwest signed the
9 settlement offer primarily to obtain the waiver
10 petition of the uniform accounting rules which we feel
11 are cumbersome in our case and don't really apply to
12 our type of business. We do feel that the settlement
13 rates are not just, fair and reasonable in our case.
14 Our company operates primarily in rural areas of
15 Eastern Washington where the costs for that type of
16 operation is higher just due to the fact of the low
17 density of locations. The surcharge that is charged
18 does subsidize the operation of the pay phone route as
19 far as keeping the telephones maintained and collected
20 and that type of thing.

21 We do intend to show the Commission in the
22 future a need for future rate increase through the
23 normal procedures. We would also like to state that
24 we hope sometime in the near future that maybe the
25 Commission would act on some type of dial around

00020

1 compensation that would be helpful in alleviating some
2 of the costs of our operations. I think most people
3 have seen the advertisements on TV where you dial an
4 800 call to access long distance carrier. A pay phone
5 operator receives no revenue out of that type of call
6 and I believe the current activity in pay phone
7 locations or general locations are 40 percent of the
8 traffic that goes through those locations are 800 type
9 calls and increasing daily. So you can see that the
10 revenue coming to the pay phone operator is decreasing
11 over time.

12 We would also like to see some reduction in
13 our costs. Our fixed costs are a large part -- PAL
14 service which is provided by the local telephone
15 companies, and those rates vary from sometimes \$25 up
16 to a high of \$60 a month for the same type of service,
17 and we do operate, again, in rural Eastern Washington
18 and primarily through some of the independent
19 telephone companies who do charge a higher rate for
20 PAL service, so that does increase our costs on a per
21 phone basis. That's all I would like to say.

22 JUDGE HAENLE: Commissioners, do you have
23 questions of the parties regarding the settlement
24 proposals?

25 COMMISSIONER HEMSTAD: Well, addressed to

00021

1 counsel in response to those last comments again, the
2 company is not foreclosed then from petitioning the
3 Commission at any time it wishes to come in and seek
4 to establish a higher rate.

5 MS. RENDAHL: Right, that any time the
6 company can come in and make a petition to increase
7 its rates if it feels that it's justified in getting
8 those higher rates.

9 COMMISSIONER HEMSTAD: And you're aware of
10 that?

11 MR. MAGNUSSEN: Yes, I am.

12 MR. HARLOW: Commissioner, I also
13 understand that in spite of the lack of that specific
14 provision there is a clause in all the settlement
15 agreements that states that this settlement is not
16 precedent in other cases, so I would likewise believe
17 that our clients would have the right if they wanted
18 to file the same kind of a petition and make the same
19 kind of showing to do the same thing.

20 MS. RENDAHL: Yes, any of the companies
21 could do that. I think just for purposes of the
22 settlement with Interwest it was felt that that was
23 necessary to spell out in the settlement agreement.

24 COMMISSIONER HEMSTAD: This is addressed to
25 either counsel. What is the benchmark rate in the

00022

1 current rule?

2 MS. RENDAHL: It's -- I believe it states
3 AT&T and U S WEST rates.

4 COMMISSIONER HEMSTAD: Their rates only and
5 so the settlement is AT&T and plus 25?

6 MS. RENDAHL: That's correct.

7 COMMISSIONER HEMSTAD: The other 30
8 companies that agreed to file lower rates, what rate
9 did they file?

10 MS. RENDAHL: They have filed either
11 tariffs at the benchmark rates or if they chose to
12 they filed tariffs at lower than those rates.

13 COMMISSIONER HEMSTAD: This settlement has
14 no arrangement similar to the IPI one with regard to
15 costs. Is that something that can be discussed or was
16 that not an issue?

17 MS. RENDAHL: I don't believe it was as
18 much of an issue because there was not the same length
19 of the time and litigation involved with these
20 companies, so it was not addressed.

21 COMMISSIONER HEMSTAD: That's all I have.

22 JUDGE HAENLE: As counsel indicated, the
23 procedural point that we're at is just having
24 completed the pre-hearing conferences schedule and a
25 bit of discovery has occurred.

00023

1 Commissioner.

2 COMMISSIONER GILLIS: A question of
3 clarification. Would you expand a little bit more for
4 me on the petition for waiver, the result of it?

5 MS. RENDAHL: The result of the petition
6 for waiver would be the companies would still file, I
7 believe, certain filings with the Commission, annual
8 reports, under the competitive classification rule.
9 They would not be required to keep their books
10 according to USOA but would still be required to
11 report certain financial information to the
12 Commission.

13 MR. HARLOW: Companies would have to keep
14 their books according to generally accepted accounting
15 principles.

16 COMMISSIONER GILLIS: Staff feels that the
17 result would give them a strong enough basis to
18 evaluate costs when a company does, as they've
19 indicated, potentially come back later for higher
20 costs?

21 MS. RENDAHL: Well, if the company chooses
22 to increase -- petitions to increase rates, then the
23 burden is on the company to prove why they should get
24 it, and I believe that the staff is comfortable,
25 otherwise they would not have ventured into this type

00024

1 of settlement with the companies. Comfortable with
2 the general accounting -- generally accepted
3 accounting practices.

4 JUDGE HAENLE: Did you indicate that these
5 have -- these waiver petitions have not yet been filed
6 because I think that one of the settlement agreements
7 at least recites that they have already been --

8 MS. RENDAHL: The petitions will be filed
9 and once the Commission order issues on the
10 settlements then the petition for waiver will be
11 heard at an open meeting.

12 JUDGE HAENLE: What happens to the
13 settlement if hypothetically the Commission approved
14 the settlement but found that there was some problem
15 with the waiver petition so that it couldn't grant the
16 waiver petitions, what would be the status of the
17 settlement then?

18 MS. RENDAHL: The settlement would not be
19 affected but hopefully it could be modified if the
20 problem with the petitions for waiver could be
21 remedied.

22 JUDGE HAENLE: Is that your understanding,
23 Mr. Harlow?

24 MR. HARLOW: It sounded to me as though you
25 were talking about possibly nonacceptance or a clear

00025

1 rejection of the waiver petition?

2 JUDGE HAENLE: I just wanted to know how
3 they were all tied together, what would happen if
4 something happened to one piece or another piece.

5 MR. HARLOW: That is the only contingency
6 in the settlement agreements is that they are
7 contingent on approval of the waiver petition and so
8 if they were rejected clearly we would have to either
9 resume litigation or try to renegotiate. If they were
10 not rejected but simply there was some need for
11 additional information or hearings or what have you, I
12 think the parties would probably continue to leave the
13 settlement executory and wouldn't implement it or
14 consider it off until the ultimate conclusion of the
15 waiver petition proceedings. Would that be your
16 understanding?

17 MS. RENDAHL: That would be my
18 understanding.

19 JUDGE HAENLE: And you gentlemen as well,
20 Mr. Kennedy and Mr. Magnussen?

21 MR. MAGNUSSEN: That's correct.

22 JUDGE HAENLE: I have no reason to think
23 anything would happen in particular. I was just
24 trying to figure out how the pieces were
25 interconnected.

00026

1 COMMISSIONER HEMSTAD: One other question.
2 The IPI settlement, which we discussed this morning,
3 has the rulemaking mechanism as part of the
4 arrangement. This does not. The settlements are
5 relatively symmetrical and I suppose that rulemaking
6 would apply to all of it. Would that not be an issue
7 in these proceedings, that is, in contrast -- in
8 contrast with the IPI activities?

9 MS. RENDAHL: Well, it was discussed as --
10 settlement was a product of negotiations and
11 discussions and so that was discussed but was never
12 put into the settlement agreement. It's my
13 understanding, but please clarify if this is
14 incorrect, but I believe all the companies would
15 support the rulemaking as proposed in the IPI order
16 and would agree to adhere to that rule should it come
17 into effect.

18 COMMISSIONER HEMSTAD: I assume the
19 companies probably have a common position on that with
20 regard to the proposed rule.

21 MR. HARLOW: I haven't actually asked my
22 client. I expect they would support the rule
23 primarily for the reason that it would enable them to
24 obtain competitive classification under an arrangement
25 -- similar to the arrangement under the current rule,

00027

1 and that is companies that will agree to abide by the
2 rule, stipulate to that, will be granted competitive
3 classification, and there are still some other
4 regulatory restrictions on the companies besides the
5 accounting rule that I'm sure my client would like to
6 see waived in the competitive classification order.

7 JUDGE HAENLE: Anything else,
8 commissioners?

9 COMMISSIONER GILLIS: No other questions.

10 JUDGE HAENLE: Let's go off the record for
11 a minute to discuss procedure.

12 (Discussion off the record.)

13 JUDGE HAENLE: Let's go back on the record.
14 The commissioners have indicated that they are not
15 able to meet at this time about this issue but they
16 will meet about it very soon and will issue a
17 Commission order as soon as they can on the settlement
18 proposal. We would like to get this taken care of as
19 soon as possible one way or the other. In the
20 meantime, because all of the companies have procedural
21 schedules and prefiling dates, I will just in general
22 suspend those dates now. If it does turn out we're
23 going to need hearings for some reason, we'll have to
24 redo the schedules entirely anyway, so for all six of
25 the companies I will vacate now all of the prefiling

00028

1 dates, all of the schedules that we had set up, and if
2 for any reason we need to redo them we will just redo
3 the schedules from scratch then, so do not worry now
4 about prefiling dates.

5 Any other procedural things we need to take
6 up in view of the settlement and Commission order and
7 all? Anything else procedurally?

8 MR. HARLOW: No.

9 JUDGE HAENLE: Then the hearing will be
10 adjourned and a Commission order will issue. Thank
11 you all.

12 (Hearing adjourned at 2:06 p.m.)

13

14

15

16

17

18

19

20

21

22

23

24

25