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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,) DOCKET NO. UT-950200
4)
Complainant,) VOLUME 9
5)
vs.) Pages 456 - 508
6)
U S WEST COMMUNICATIONS, INC.,)
7)
Respondent.)
8 -----)

9 A hearing in the above matter was held at
10 8:20 a.m. on October 17, 1995, at 2430 Chandler Court,
11 Olympia, Washington Administrative Law Judges C.
12 ROBERT WALLIS and TERRENCE STAPLETON.

13

14 The parties were present as follows:

15 U S WEST COMMUNICATIONS, by EDWARD SHAW,
16 Attorney at Law, 1600 Bell Plaza, Seattle, Washington
98191.

17 WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION STAFF, by STEVEN W. SMITH and GREGORY
18 TRAUTMAN, Assistant Attorneys General, 1400 South
Evergreen Park Drive Southwest, Olympia, Washington
19 98504.

20 FOR THE PUBLIC, DONALD TROTTER, Assistant
Attorney General, 900 Fourth Avenue, Suite 2000,
21 Seattle, Washington 98164.

22 AT&T, by DANIEL WAGGONER, Attorney at Law,
1501 Fourth Avenue, Suite 2600, Seattle, Washington
23 98101.

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Cheryl Macdonald, CSR
25 Court Reporter

1 APPEARANCES (CONT.)

2 WITA, by RICHARD A. FINNIGAN, Attorney at
3 Law, 1201 Pacific Avenue, Suite 1900, Tacoma,
4 Washington 98402.

5 TRACER, by ARTHUR A. BUTLER, Attorney at
6 Law, 601 Union Street, Suite 5450, Seattle, Washington
7 98101-2327.

8 ELECTRIC LIGHTWAVE, INC., by SUSAN
9 MCADAMS, Vice-President Government Affairs, 8100 NE
10 Parkway Drive, Suite 200, Vancouver, Washington
11 98662-6401.

12 MCI, by CLYDE MACIVER, Attorney at Law,
13 4400 Two Union Square, 601 Union Street, Seattle,
14 Washington.

15 DEPARTMENT OF DEFENSE/FEDERAL EXECUTIVE
16 AGENCIES, by SHERYL A. BUTLER, Trial Attorney, 901 N
17 Stuart Street, Suite 713, Arlington, Virginia 22203.

18 SPRINT, by LESLA LEHTONEN, Attorney at Law,
19 1850 Gateway Drive, 7th Floor, San Mateo, California
20 94404-2467 and SUE MCCANLESS, Attorney at Law, 7171
21 West 95th Street, Overland Park, Kansas 66212.

22 DEPARTMENT OF INFORMATION SERVICES, by
23 ROSELYN MARCUS, Assistant Attorney General, 1125
24 Washington Street Southeast, PO Box 40100, Olympia,
25 Washington 98504.

26 NORTHWEST PAYPHONE ASSOCIATION and METRONET
27 SERVICES CORPORATION, by BROOKS E. HARLOW, Attorney at
28 Law, 601 Union Street, Suite 4400, Seattle, Washington
29 98101-2352.

30 AMERICAN ASSOCIATION OF RETIRED PERSONS, by
31 RONALD L. ROSEMAN, Attorney at Law, 401 Second Avenue
32 South, Suite 401, Seattle, Washington 98104.

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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 for a
3 continued pre-hearing conference in the matter of
4 docket No. UT-950200 involving U S WEST Communications
5 Inc. This pre-hearing conference is being held before
6 Terrence Stapleton and Robert Wallis who are the
7 administrative lay judges for purposes of this
8 proceeding. Let's begin by taking appearances
9 beginning with the company,

10 MR. SHAW: Ed Shaw for U S WEST
11 Communications, Inc.

12 JUDGE WALLIS: Commission staff.

13 MR. SMITH: Steven W. Smith and Gregory J.
14 Trautman, assistant attorneys general.

15 JUDGE WALLIS: Public counsel.

16 MR. TROTTER: Donald T. Trotter, assistant
17 attorney general, public counsel section.

18 JUDGE WALLIS: Other participants.

19 MR. MACIVER: MCI, Clyde MacIver.

20 MR. WAGGONER: Daniel Waggoner for AT&T
21 Communications.

22 MR. BUTLER: Arthur A. Butler for TRACER.

23 MR. HARLOW: Brooks Harlow for Northwest
24 Payphone Association and Metronet Services
25 Corporation.

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1 MS. MARCUS: Roselyn Marcus, assistant
2 attorney general for Department of Information
3 Services.

4 MR. ROSEMAN: Ronald Roseman for AARP.

5 MR. FINNIGAN: Rick Finnigan for the
6 Washington Independent Telephone Association.

7 JUDGE WALLIS: Are there any other
8 appearances?

9 MS. LEHTONEN: This is Lesla --

10 JUDGE WALLIS: On our bridge line we have
11 Sprint.

12 MS. LEHTONEN: Lesla Lehtonen.

13 JUDGE WALLIS: We have the Department of
14 Defense.

15 MS. BUTLER: Sheryl Butler.

16 JUDGE WALLIS: And we have ELI.

17 MS. MCADAMS: Susan McAdams.

18 JUDGE WALLIS: Very good. The principal
19 purpose for today's pre-hearing conference is to
20 receive a report regarding the possibility of
21 settlement and the company's request for an extension
22 of time to pursue settlement. Mr. Shaw.

23 MR. SHAW: Thank you. Where we are is
24 we've had some additional discussions with staff and
25 with the public counsel and we've received as of

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1 yesterday settlement demands, I will characterize them.

2 MS. BUTLER: I'm sorry, I can't hear you,
3 Mr. Shaw.

4 MR. SHAW: I will move up a little closer
5 here. And as of yesterday we received settlement
6 demands from a couple of the key customer groups. The
7 decision that the company has to make is, given the
8 various positions of the parties, whether we still are
9 optimistic, at least guardedly optimistic, that a
10 settlement could be arrived at in this case. We are
11 not able on the short notice from the detailed
12 positions given us yesterday by the customer groups to
13 unequivocally commit that we can meet those requests,
14 but we think that there's a possibility that they can
15 be met with good faith negotiations, and therefore
16 after a lot of thought, we will request a continuance
17 of the case for settlement discussions with the
18 hearings to be held, to the extent necessary, in the
19 first two weeks of January, and I believe that that
20 would, if we keep the same spacing of the briefs and
21 the time necessary for the Commission preparation of
22 the final order, I think a final suspension period of
23 March 15 would be in order, but that's subject to your
24 agreement, of course.

25 That's what we are willing to do. I

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1 understand that perhaps some of the parties are not as
2 optimistic as we are that we can settle, but weighing
3 all of the conflicting positions negotiating a major
4 RBOC rate case in the '90s is maybe a little less
5 difficult than peace in Bosnia but not a lot, but
6 we're still guardedly optimistic that we can pull
7 together something here.

8 JUDGE WALLIS: Commission staff.

9 MR. SMITH: Your Honor, Commission staff
10 if there's no consensus among the parties the general
11 consensus is to go along with the continuance.
12 Commission staff would not be in favor. We certainly
13 don't oppose one.

14 JUDGE WALLIS: Public counsel.

15 MR. TROTTER: As the Commission may recall,
16 I requested a Thursday continuance -- continue to
17 Thursday because I knew the time would be very tight,
18 and we have spent a great deal of time coming to grips
19 with this case and trying to work with the company,
20 and I think we may well be in a position of supporting
21 this continuance, but I need a very short period of
22 time, for example, about a half an hour or 20 minutes,
23 in order to confer with one of our consultants, and
24 perhaps confer with some other parties very briefly to
25 confirm basically where we stand. But I agree with

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1 Mr. Shaw that this is -- this is an extremely
2 difficult undertaking but we will support them if I
3 can have just a little bit more time to make sure I
4 know exactly where we are.

5 JUDGE WALLIS: Let's hear from other
6 parties starting with the bridge line. Ms. Lehtonen.

7 MS. LEHTONEN: Basically Sprint is willing
8 to go along with the decision of the other parties who
9 have had more opportunity to discuss the negotiation
10 possibilities with U S WEST directly.

11 JUDGE WALLIS: ELI.

12 MS. MCADAMS: I believe ELI is somewhat of
13 the same position. We are in hearings in Salem even
14 as we speak and have been unable to participate with
15 the other parties. We do not oppose a continuance if
16 in fact there is a reasonable opportunity for a
17 settlement.

18 JUDGE WALLIS: Department of Defense.

19 MS. BUTLER: I would agree with both of the
20 other ladies on the bridge line. The Department of
21 Defense would have no objection to a continuance.

22 JUDGE WALLIS: MCI.

23 MS. MARCUS: MCI would oppose a continuance
24 based on what it knows at this point or what its
25 impression is that there is no opportunity or

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1 realistic opportunity for a universal settlement.

2 JUDGE WALLIS: Mr. Waggoner.

3 MR. WAGGONER: AT&T remains willing to
4 discuss settlement during the next two weeks during
5 hearings or thereafter. I think it's a little unfair
6 of Mr. Shaw to characterize what was made yesterday
7 as a demand. We still have yet to receive any
8 concrete proposal from U S WEST with any numbers even
9 vaguely associated with it. At this time we strongly
10 object to a continuance. We believe it prejudices
11 AT&T and others who are ready to proceed and
12 advantages U S WEST.

13 We also frankly believe that it undercuts
14 the likelihood of settlement rather than enhancing it.
15 It would be one thing if we were talking about an
16 additional week. We think, however, what will happen
17 with a two and a half month continuance is that it
18 will simply deter the likelihood of settlements. My
19 experience with settlements is that you get
20 settlements when everybody has no choice but to make
21 compromises. And we think this is simply a move by
22 U S WEST to gain an advantage in the litigation.

23 JUDGE WALLIS: Mr. Butler.

24 MR. BUTLER: TRACER also strenuously
25 objects to a continuance. We made a good faith effort

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1 to give U S WEST a concrete proposal which represented
2 our bottom line on what we would find to be an
3 acceptable basis to settle this case to avoid any game
4 playing. We took out all room for negotiation. We
5 have not received a response to that. We do not
6 believe that there is any basis to believe that
7 additional time of the magnitude of two months is
8 necessary to resolve this case. Like AT&T we're
9 willing to continue to listen to proposals during the
10 hearing process, but we believe that we would be
11 substantially prejudiced by any delay. Emphasize,
12 again, we strenuously object to any continuance of the
13 hearings in this case.

14 JUDGE WALLIS: Mr. Harlow.

15 MR. HARLOW: Northwest Payphone Association
16 is skeptical that this case can be settled although we
17 don't really -- I guess we oppose a continuance, not
18 strenuously so. U S WEST hasn't even talked to us
19 about how they might settle with Northwest Payphone
20 Association, so it's difficult to say that that is
21 possible or not possible. But in any event, the
22 Northwest Payphone Association does believe that if
23 there is going to be a continuance that the motions to
24 limit issues be decided promptly and argued this
25 morning since we're all down here ready to argue it.

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1 We feel that that would facilitate settlement if there
2 is a continuance.

3 MS. MARCUS: DIS would not oppose a
4 continuance if there was a reasonable opportunity to
5 settle. Based on what we know at this time it doesn't
6 seem like there is a reasonable possibility for a
7 universal settlement, but if we had indication from
8 the parties who have been in more contact with U S
9 WEST, then DIS would not oppose a continuance.

10 MS. MCADAMS: Mr. Wallis, I'm sorry, it
11 sounds like you've gotten to a back row or something
12 and we can't hear.

13 JUDGE WALLIS: Yes, we have. I'm going to
14 ask counsel to stand and repeat your comments. If you
15 would like you can come up closer. We want to make
16 sure the bridge can hear us.

17 MS. MARCUS: Shortened version. DIS would
18 not oppose a continuance if there was a reasonable
19 opportunity for a universal settlement and we would
20 defer to the parties who have had more contact with
21 U S WEST. Based on what we know it doesn't seem like
22 a universal settlement can be had in this period of
23 time, but again, we would defer to those who have had
24 more contact with U S WEST.

25 JUDGE WALLIS: Mr. Roseman.

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1 MR. ROSEMAN: After a meeting yesterday
2 with U S WEST we are pretty pessimistic that we could
3 reach agreement on residential rates, but I don't have
4 a position on the continuance until we consult with
5 our expert during the recess.

6 JUDGE WALLIS: WITA.

7 MR. FINNIGAN: Thank you. Since we haven't
8 been a party to any of the settlement discussions or
9 position papers started to look at this from a neutral
10 perspective and that if the primary moving party in
11 this matter thinks that they are -- I believe the word
12 was guardedly optimistic that settlement can be
13 reached, I think they ought to be given that
14 opportunity, particularly in light of the Commission's
15 position to encourage settlements and encourage
16 discussions.

17 JUDGE WALLIS: Mr. Smith, in light of the
18 comments that you've heard from other parties, do you
19 have a position now on the continuance?

20 MR. SMITH: Well, Your Honor, there appears
21 to be some feeling, at least among some of the
22 parties, that this still might be settled. I would
23 still like to hear public counsel's position. If
24 public counsel is going to oppose the continuance we
25 will oppose -- we will oppose it as well.

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1 JUDGE WALLIS: Let's take a 15 minute
2 recess for public counsel to consult with his
3 consultant.

4 (Recess.)

5 JUDGE WALLIS: Let's be back on the record,
6 please, following a brief recess. Public counsel
7 reports that it has not been able to reach its
8 consultant to make a determination, and while we're
9 waiting for the consultant to get back, we're going to
10 go ahead and hear comments from the parties about the
11 pending motions. I would like to note that there's
12 been a substitution in representation for Sprint. Ms.
13 McCanless, would you state your name and your business
14 address for the record, please.

15 MS. MCCANLESS: Susan McCanless, M C C A N
16 L E S S. Business address is 7171 95th Street,
17 Overland Park, Kansas, 66212.

18 JUDGE WALLIS: Thank you very much. We
19 have a motion from Commission staff to exclude certain
20 issues. I'm going to ask the parties in their
21 comments to either make a brief summary of the party's
22 position or add something to their written
23 presentations but not repeat their written
24 presentation, please. We do have a limited time to
25 hear these. Mr. Smith, do you wish to state anything?

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1 MR. SMITH: Briefly, Your Honor. The
2 motion is not complicated. I don't have much to add
3 to the motion itself. In UT-940641 the Commission
4 decided three issues related to depreciation. That
5 order was issued May 24, 1995. RCW 80.36.200
6 generally precludes any party affected by an order
7 from requesting a rehearing within two years without
8 making a certain showing of changed conditions, and
9 there's really been no showing here. Certainly the
10 Commission in its discretion may take up the issue
11 again if it is likely to change its mind. This
12 particular case with upwards of 50 witnesses and
13 nearly 20 attorneys --

14 MS. BUTLER: I'm sorry. This is Sheryl
15 Butler with the Department of Defense. I cannot hear.

16 JUDGE WALLIS: I'm going to ask Mr. Smith
17 to come forward. We'll try this.

18 MR. SMITH: In this particular case with
19 over 50 witnesses and 16 to 20 attorneys, seems to me
20 this is an appropriate case for not relitigating that
21 particular issue.

22 In response to the company's response, I
23 would just like to make a couple of points.
24 Commission requests that the response be limited to
25 five pages, and I think everyone tried to abide by

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1 that. Company filed a seven page response which is 40
2 percent longer than requested by the Commission in
3 addition to argument in its cover letter. I would ask
4 the Commission in the future to mandate page limits
5 because it's really to the disadvantage of people --
6 parties who comply with them when others do not.

7 Company indicated that when it filed its
8 earlier depreciation petition it had no idea when or
9 if it would file a rate case. I would simply point
10 out, as a condition of a new AFOR the company was
11 aware and everyone was aware that they were going to
12 have to rebase their rates. So I think any claim that
13 they did not know they were going to file a general
14 rate case is baseless.

15 Company also claims that in the three-way
16 meetings in March that the depreciation lives are
17 likely to be changed. In the first place that's pure
18 speculation. Secondly, it is certainly possible for
19 the Commission in its order to make some provision for
20 reflecting any changed lives that come out of the
21 three-way meetings. Company witness Easton even
22 alludes to that in his rebuttal testimony.

23 Company makes what appears to be a
24 constitutional argument that it's entitled to its
25 depreciation expense. The issue is not whether

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1 they're entitled to it. The Commission did not deny
2 them a penny of depreciation expense. It's a question
3 of methodology and when they receive it, not whether
4 they will receive it. There's nothing -- the company
5 is fully allowed its depreciation expense as a result
6 of that prior order.

7 Finally, I would just say that certainly
8 this claim that it would be efficient to relitigate
9 this matter some five months later is really hard to
10 understand. It would be a duplication of effort. It
11 is not going to -- it is going to prolong the
12 proceeding contrary to what the company argues. I
13 mean, if you just do the math on a big issue like this
14 and all these attorneys, it's going to be very
15 difficult without the depreciation issue to wrap this
16 thing up in the two weeks set for hearing.

17 As I indicated earlier, the Commission in
18 its discretion may reopen it if it wishes to. We
19 don't think there's any basis for doing so in this
20 case. In fact we think there's good reason not to do
21 so, and we would request the Commission to dismiss the
22 depreciation portion of the company's case.

23 JUDGE WALLIS: Mr. Shaw.

24 MR. SHAW: As Mr. Smith indicates, this is
25 addressed to the discretion of the Commission. He is

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1 not arguing, nobody is arguing, that this has to be
2 dismissed by some sort of a statutory mandate or
3 jurisdictional rule of law. The situation that the
4 company is in is that when it filed its petition
5 without tariffs to ask the Commission to reconsider
6 the amount booked to depreciation expense, at that
7 time the Commission was in an active informal
8 investigation of revenue requirements and possible
9 rate rebalancing that could have gone into a follow-on
10 AFOR without a formal rate case. That was the hope I
11 think of the Commission, of the Commission staff and
12 the company, and that's the reason it was sequenced
13 that way. When that became clear that that was not
14 going to be possible, and that in order to get
15 resolution of rate rebalancing and revenue
16 requirements the company would have to file a formal
17 rate case, a decision was made to do that. That was
18 not foreseeable or absolutely inevitable contrary to
19 Mr. Smith's representations.

20 The general rate case, of course, puts at
21 issue reasonableness of all of the company's expenses
22 for the purposes of ratemaking. The staff and the
23 Commission have always reserved the right to ignore
24 the booked amounts of the company and recognize for
25 ratemaking purposes different amounts than are on the

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1 books of the company despite the books reflecting the
2 prescribed accounting procedures. Fundamental due
3 process and fairness, the company in a general rate
4 case is entitled to advocate at least that fair, just
5 reasonable and sufficient rates should recognize for
6 ratemaking purposes different amounts than are on the
7 company's books. I think it's pretty clear that it is
8 a fundamental issue for a rate case, and that the
9 Commission should entertain the evidence.

10 We also have a unique situation, I think.
11 We are not in a static position where we can pretend
12 that only every three years should depreciation
13 expense be re-examined as we have historically done.
14 This industry is in a very rapid transition. Many
15 things have happened since the Commission declined to
16 fully grant our depreciation petition five months ago.
17 We have the remarkable announced divestiture of AT&T.
18 We have the perhaps imminent passage of landmark
19 legislation by the federal Congress. We have
20 anticipated rapid expansion of wireless services. We
21 have ever increasing evidence of the rapid
22 obsolescence of the company's old wire line plant.
23 Plus squarely teed up in this is the issue of service.
24 The Commission has interjected that issue. That
25 obviously raises the issue of whether or not the

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1 company is being allowed sufficient recovery of
2 depreciation expense so as to allow it to expand and
3 replace its plant in order to improve service.

4 So if we're going to entertain the issue of
5 whether or not the company's service is adequate with
6 the company at risk of not being granted rate relief
7 just because of service conditions, the company is
8 certainly entitled to demonstrate why that service is
9 declining and offer evidence relating it to inadequate
10 depreciation recovery, so these issues are embedded in
11 the case. To just pretend that they're not dooms us
12 to an immediate further rate case, which may happen
13 anyway, but it absolutely guarantees a further rate
14 case because expense levels of the magnitude that are
15 driven by depreciation simply do not go away, and in
16 this rapidly changing environment it's the company's
17 position that recovery delayed is recovery denied, and
18 it does duplicate a fundamental constitutional issue.
19 To just keep pushing it off to the future in the hope
20 that it might go away is an issue of confiscation
21 of the company's assets.

22 So it's a very serious issue for the
23 company, and we urge the Commission to exercise its
24 discretion and entertain this evidence. Thanks.

25 JUDGE WALLIS: Thank you. Mr. Trotter,

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1 do you wish to comment?

2 MR. TROTTER: Yes. On behalf of TRACER and
3 public counsel section of the attorney general's
4 office we did reply to this motion of staff and we are
5 supporting the staff motion. We participated in UT-
6 940641 in which the company was asking for
7 represcription of its depreciation rates. That case
8 went to hearing, was fully litigated. A decision was
9 issued just this spring. The identical I think word
10 for word testimony of the company witness in that case
11 was then filed in this case, and I assumed that
12 everyone was thinking that, well, that order in the
13 depreciation docket will govern and that's why they
14 filed the identical testimony. And so we got that
15 order, and it has been appealed. We think that very
16 plainly is a collateral estoppel issue presented, and
17 if the company wants to reopen that former docket they
18 may simply move to do so, and even move to consolidate
19 if that's -- if the Commission decides to allow
20 rehearing, but we see no basis for relitigating the
21 issues that were litigated in that case.

22 The only remaining issue then is the lives.
23 The three-way meetings may or may not confirm confirm
24 this coming spring, and we have some significant
25 problems with that in terms of assuming there are

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1 changes in lives which, as staff mentioned, is
2 speculation, but assuming there are changes it could
3 be March or April or May when that's occurring, and if
4 that's allowed into rates at that time, what about any
5 offsetting factors due to increased revenue, lower
6 costs due to efficiencies that are coming on that
7 aren't in the test year. There's a whole host of
8 issues that are raised by such a request. Of course,
9 that request hasn't even been made to have any kind of
10 deferred recognition once those lives are agreed to if
11 they are.

12 The company of course can file -- doesn't
13 have to file a single issue rate case. They can file
14 a full rate case and include that depreciation in an
15 appropriate test year. But with respect to the ELG
16 issues and some of the other issues other than lives
17 that were directly decided by the Commission in that
18 prior docket, we are entitled to have that order
19 enforced as a matter of good policy, good practice and
20 good law, so we are supporting the staff motion.
21 Thank you.

22 JUDGE WALLIS: Mr. Smith, do you have a
23 final comment?

24 MR. SMITH: I have nothing further to add.

25 JUDGE WALLIS: Any other parties have a

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1 comment on that?

2 Very well. Let's move on to the motion to
3 exclude Yellow Page revenues from consideration.

4 Mr. Shaw.

5 MR. SHAW: Yellow Page issue is a
6 fundamental jurisdictional issue and that's why the
7 company is presenting it. Pursuant to the
8 Commission's notice, motions to exclude evidence had
9 to be filed on a certain schedule. So it's incumbent
10 upon the company to raise that. The argument is
11 extremely simple. The company recognizes that the
12 Commission has resisted this argument in the past, but
13 nonetheless the company is of the firm belief that
14 this argument is sound, and it is very simple. Yellow
15 Page advertising services are not a telecommunications
16 service. They are not a telecommunications service by
17 statute definitions in RCW 80. They are not a
18 telecommunications service by pronouncement of this
19 state's courts in the context of deciding whether or
20 not a tariff limitation of liability or a contract
21 limitation of liability should apply. And therefore
22 the Commission cannot regulate that service and does
23 not. There are no tariffs filed. It's clearly a
24 nontelecommunications service.

25 In the monopoly environment when there was

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1 an integrated Bell system that supplied inside wire,
2 CPE, all the telephone books and associated
3 advertising, manufacturing, the company was treated as
4 a whole and it volunteered and the regulatory
5 environment came to require a certain cross-subsidy
6 in the interests of concepts of universal service.
7 Many things have changed since that environment grew
8 up. There's no longer a Bell system. Many services
9 that were in fact considered telecommunications
10 services like CPE, inside wire, various enhanced type
11 services, the revenues and expenses of those services
12 are separated from the provision of telecommunications
13 services. AT&T, for example, is not expected to
14 subsidize its toll service with its revenues from CPE
15 cells and equipment manufacture and cells inside wire
16 is not a part of the telephone service any more.

17 Things have evolved. The advertising
18 business can no longer voluntarily be considered part
19 of the overall operations of the company which the
20 Commission can look to to satisfy a revenue
21 requirement. It's clear that a public service company
22 is a company that offers telecommunications services
23 and the rates for those telecommunications services
24 shall be fair, just, reasonable and sufficient, and
25 just because the company has a very profitable line of

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1 nonregulated business does not mean that the
2 Commission can reach out under the cover of the
3 affiliated interest statute and confiscate that
4 revenue in order to keep rates at unfair, unjust,
5 unreasonable and insufficient levels. It's a
6 fundamental issue of jurisdiction. It is a black and
7 white issue. The company in a monopoly environment
8 was willing to continue that historical practice. In
9 a competitive environment it no longer can be expected
10 to acquiesce in that and has to insist on its
11 jurisdictional rights.

12 It's suggested that because the Commission
13 in an order approving the merger of PNB, Mountain Bell
14 and Northwestern Bell required the subsidy to
15 continue, and the company acquiesced in that, that
16 that somehow estops the company from ever arguing
17 that the Commission has no jurisdiction to confiscate
18 its nontelecommunications revenues. The agreement of
19 U S WEST or past Commission orders cannot confer
20 jurisdiction on the Commission which it does not have.
21 For over 50 years in this state the Commission
22 believed that it had the right and had the obligation,
23 in fact, to award exclusive monopolies for exchange
24 services despite the acquiescence in the industry of
25 that and many Commission orders that were based upon

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1 that belief. When you put the cold light of the law
2 on whether or not the Commission had jurisdiction to
3 do that the court has had no problem concluding that
4 the Commission did not have that jurisdiction despite
5 the long industry belief that that was the proper way
6 to approach it.

7 This is an analogous issue. No matter how
8 it's been treated in the past when you analyze the
9 jurisdiction it just simply is not there. If the
10 Commission has no jurisdiction to do it then there
11 should be no evidence in the case about the issue. If
12 the argument is that the company should charge an
13 affiliate 80 million dollars a year for the listings
14 of its customers which it can in turn exploit in the
15 advertising business, that makes no sense at all
16 either. The law is that telephone listings are not
17 copyrightable. Anybody can just Xerox them and those
18 listings are made available to all advertising
19 publishers at the same rate including the affiliate so
20 that there's no issue there that the company is not
21 charging an affiliate enough for something that is in
22 the nature of a telecommunications service like
23 listings, so there's no way for the Commission to get
24 jurisdiction to seize this revenue.

25 I have to note that when it runs the other

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1 way, when the Commission is deciding whether or not to
2 treat the revenues of, say, furnace and windows in the
3 context of the natural gas and energy industry as part
4 of the business, when there's a belief that that
5 results in either anticompetitive practices or
6 subsidies the companies are ordered to separate. We
7 have separated our nontelecommunications business.
8 Just because it is profitable instead of unprofitable
9 does not allow the Commission on a result-oriented
10 basis to seize those revenues. So based upon the
11 Commission practice in terms of a public service
12 company offering a nonpublic service company service,
13 its own orders indicate that they should be separated
14 and the revenues and expenses should be separated.
15 Thank you.

16 JUDGE WALLIS: Thank you. Mr. Smith.

17 MR. SMITH: Briefly, Your Honor. I think,
18 as Mr. Shaw indicated, the Commission's notice
19 required all dispositive motions to be teed up at this
20 time, and the company was constrained to do so. I
21 don't really anticipate that the Commission is going
22 to change its view, however, on the question of
23 whether it has jurisdiction over Yellow Pages revenue.
24 In the third supplemental order in the U S WEST merger
25 case U-89-33524 AT, the Commission stated that after

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1 the end of the first AFOR revenues from Yellow Pages
2 will continue to be imputed accordingly unless and
3 until altered by subsequent order of the Commission.

4 Now, this doesn't estop U S WEST from
5 arguing that the Commission doesn't have jurisdiction
6 or that the level of imputation should be different,
7 but it does indicate the company was always on notice
8 that this was an issue in the rate case, and that it
9 was going to require some order by the Commission to
10 change that status quo. The Commission has previously
11 determined that it has jurisdiction over Yellow Pages
12 revenues in the revenue requirement. Second
13 supplemental order in docket U-86-156 Commission found
14 a statutory basis first in the affiliated interest
15 statute and then in the general rate making authority,
16 those statutes are referred to in my brief. I won't
17 repeat them now.

18 Finally, in the MFJ the district court
19 determined that the Bell operating companies should
20 retain the ability to publish Yellow Pages in part to
21 contribute the -- to continue the contribution that
22 the Yellow Page revenues made to keeping local rates
23 affordable, and that was the basis of the company's
24 argument in favor of the original publishing agreement
25 with U S WEST Direct. At that time the company

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1 indicated that this was a stream of revenues that was
2 going to be guaranteed for local ratepayers.

3 There are numerous court decisions and
4 Commission decisions throughout the country. The page
5 limitation of the responses did not allow extensive
6 discussion of those. On brief, depending on the page
7 limit for the final briefs in this matter, we can go
8 into greater detail. It is enough to say now that
9 there is substantial authority from the courts
10 authorizing public utility commissions to impute
11 Yellow Pages revenues in setting rates.

12 Lastly, Mr. Shaw alluded to a state
13 appellate court Allen case for the proposition the
14 Commission has no jurisdiction over Yellow Pages
15 revenues. The issue before the court in Allen was the
16 validity of limitations on liabilities and tariffs.
17 It is not the same issue that is before the
18 Commission, and that was before the courts around the
19 country who have addressed the issue squarely, so it
20 does not support the proposition squarely before the
21 Commission here that it lacks jurisdiction to impute
22 Yellow Pages revenues.

23 So we would ask the Commission to deny the
24 company's motion to exclude consideration of Yellow
25 Pages revenues in this matter.

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1 JUDGE WALLIS: Thank you, Mr. Smith. Mr.
2 Trotter, do you want to address this?

3 MR. TROTTER: Yes. Public counsel and
4 TRACER filed a response to the staff motion supporting
5 the relief sought. Mr. Smith talked about perhaps the
6 company hasn't waived rights to assert jurisdiction.
7 We're not so sure they have not waived their rights.
8 We believe perhaps they have. Repeatedly this company
9 has said it's appropriate and beneficial for the
10 company's ratepayers to have directory revenue
11 imputation or have those revenues available for the
12 Commission to consider in ratemaking. They
13 specifically proposed the condition in the merger case
14 that the revenues will continue to be imputed unless
15 and until altered by subsequent order of the
16 Commission, not by a court but by a Commission. I
17 think they have made this matter a matter of
18 discretion for the Commission and they have done so in
19 waiver of whatever rights they might otherwise have
20 had.

21 We think plainly the Commission has
22 asserted jurisdiction. They are correct in the basis
23 for assertion of that jurisdiction. This is an asset
24 that the company has. It grants the directory the
25 exclusive right to use the company logo and market

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1 itself as the official directory, and those are
2 substantial economic benefits conferred from the
3 operating side to Yellow Pages, and it's fully
4 appropriate that the economic reality of that
5 transaction be reflected in regulated rates for this
6 company.

7 We are standing on that merger order.
8 We're relying on it. We're entitled to rely on it.
9 We think there's substantial statutory ground for
10 doing so. The cases that U S WEST cites that I won't
11 repeat them word for word, but basically the courts
12 have soundly rejected U S WEST's theory and have seen
13 a basis for commissions to impute Yellow Page
14 directory revenues, and that is the practice in all of
15 the U S WEST states.

16 So we think it would be inconsistent with
17 prior Commission orders and the law in this state to
18 depart from that long standing interpretation that is
19 well-founded both in company admissions, in filings
20 with the Commission, and in express terms of
21 Commission orders conditioning relief sought by the
22 company which they accepted. So we believe the
23 Commission does have jurisdiction in this case to
24 continue imputing directory revenues and they should
25 definitely continue to do so. Thank you.

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1 JUDGE WALLIS: Thank you. Does anyone else
2 wish to address this briefly?

3 Let the record show that there is no
4 response. Let's be off the record for a moment,
5 please.

6 (Recess.)

7 JUDGE WALLIS: Let's be back on the record,
8 please. It's going to be necessary for me to leave
9 and meet another commitment and Mr. Stapleton will be
10 presiding at the balance of the pre-hearing
11 conference. I do need to make a disclosure for the
12 record, and that is that I have been a member of AARP,
13 as shocking as it may seem, as young as I look, and I
14 have drafted a letter of termination of that
15 association and am in the process of sending it. I do
16 not believe that that membership will affect my
17 response to any of the parties that appear before the
18 Commission in this proceeding. So with that I would
19 --

20 MR. SMITH: Your Honor, may I just ask if
21 anyone has any objection to your participation by
22 virtue of your membership in AARP to just indicate
23 that now if they're in a position to do so.

24 MR. SHAW: Company certainly has no
25 objection. Probably many of us are unfortunately

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1 members of the AARP.

2 JUDGE WALLIS: Very well. Let me echo
3 that. Is there any objection? And let the record
4 show that there is no response. Very well. Thank you
5 very much.

6 (Recess.)

7 JUDGE STAPLETON: Let's be back on the
8 record. Next motion we need to consider is U S WEST
9 motion to exclude testimony from the Northwest
10 Payphone Association. Mr. Shaw.

11 MS. BUTLER: Mr. Stapleton, this is Sheryl
12 Butler from the Department of Defense. I hate to
13 interrupt you. I'm having a hard time hearing. The
14 phone is going in and out and I guess my question is
15 are we going to have a decision today on whether the
16 hearings will be in October or January or is that
17 going to come at some later time?

18 JUDGE STAPLETON: As I indicated very
19 quietly, Mr. Trotter for public counsel has gone to
20 try to establish contact with his witness. We will
21 take these additional motions, take argument on these
22 additional motions, and at the end of that time if
23 there's any other procedural matters we will attend
24 to, we will see whether or not Mr. Trotter has had any
25 success and then I will poll the parties on what their

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1 preference is on continuing this pre-hearing
2 conference.

3 MS. BUTLER: Would it be possible for me to
4 call you either late today or tomorrow morning? It's
5 three hours later here which is no big deal. I don't
6 know -- I mean, I'm sure I can call you around 5 here
7 which would be 2 your time there if you would know
8 something.

9 JUDGE STAPLETON: Yes, that will be fine.

10 MS. BUTLER: Okay.

11 JUDGE STAPLETON: Yes. Do you have a
12 direct dial telephone number for me?

13 MS. BUTLER: Well, I have one that was in
14 the file but is it 6404?

15 JUDGE STAPLETON: 6402.

16 MS. BUTLER: Thank you so much.

17 JUDGE STAPLETON: Thank you.

18 MS. BUTLER: Bye-bye.

19 JUDGE STAPLETON: Mr. Shaw.

20 MR. SHAW: Which one are we on?

21 JUDGE STAPLETON: Payphone Association.

22 MR. SHAW: Briefly, this is another
23 straight jurisdictional issue based upon the
24 Commission's previous orders and existing rules
25 regarding pay phones. Apparently Commission considers

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1 the provision of public pay phone service by anybody
2 not a local exchange company to be COPTS or customer-
3 owned pay telephone service and therefore they are
4 customers of U S WEST and not public service companies
5 and not competing common carriers.

6 The Commission's jurisdiction is severely
7 limited. It does not sit as a court of general equity
8 jurisdiction to solve antitrust claims between the
9 customers and regulated companies. Two statutes
10 directly limit it in its jurisdiction. First of all,
11 complaints raising issues of anticompetitive conduct
12 specifically can only be brought by public service
13 companies against other public service companies.
14 Secondly, by statute the Commission has authority to
15 adjudicate disputes about anticompetitive
16 discrimination in the pricing of monopoly services by
17 one public service company only to another public
18 service company. The issue of whether or not an
19 unregulated competitor of U S WEST is discriminated
20 against vis-a-vis U S WEST is not an issue for the
21 general discrimination statutes.

22 This issue, if the Commission continues to
23 assert its right to consider the competitive impacts
24 of U S WEST's regulated rates on nonpublic service
25 companies, introduces yet more reversible error into

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1 this case, and it's incumbent upon the company to move
2 to exclude that evidence on the utter lack of
3 jurisdiction of the Commission to remedy the situation
4 even if it found in fact that it was the case, and the
5 fundamental unfairness of -- in a general rate case
6 allowing the customers of U S WEST to argue that the
7 rates of U S WEST should be set in a way to give them
8 private advantage over their competitive services with
9 U S WEST which is far beyond the jurisdiction of this
10 Commission to set fair, just, reasonable and
11 sufficient rates.

12 JUDGE STAPLETON: Thank you, Mr. Shaw. Mr.
13 Harlow.

14 MR. HARLOW: Thank you. Good morning.
15 It's interesting that Mr. Shaw would cite the
16 complaint statute again. Clearly, the threshold for a
17 complaint is higher than the Commission's general
18 jurisdiction in a rate case, but interestingly U S
19 WEST raised the same arguments in response to the
20 complaint in UT-920174 and the Commission found not
21 once but in three separate orders that the
22 complainants had met the higher threshold of the
23 complaint statute.

24 In this proceeding the context is
25 different. Northwest Payphone has been granted the

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1 opportunity to intervene, and has raised issues that
2 are squarely within the Commission's general
3 jurisdiction which is set forth -- starting point
4 to look at is RCW 80.01.040 which commands the
5 Commission to exercise all powers and perform all
6 duties as set forth in title 80 and further to
7 regulate telecommunications companies such as U S WEST
8 in the public interest.

9 The Northwest Payphone Association members
10 are captive customers of U S WEST. U S WEST at the
11 present time has a monopoly on the public access line
12 that competitive pay phone providers need to compete.
13 In this proceeding the Northwest Payphone Association
14 seeks reductions in PAL rates to eliminate a recurring
15 price squeeze, and the Northwest Payphone Association
16 in support of that recommendation alleges that the
17 rates, which contribute to the price squeeze, are
18 unjust, unreasonable, unjustly discriminatory and
19 unduly preferential.

20 RCW 80.36.140, which is one of the statutes
21 that the Commission is directed in 80.01.040 to
22 enforce, provides that whenever the Commission shall
23 find after hearing had upon its own motion or upon
24 complaint that the rates, charges, tolls, rentals, et
25 cetera are unjust, unreasonable, unjustly

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1 discriminatory or unduly preferential, it shall
2 thereafter fix the reasonable rates and so on and so
3 forth.

4 So U S WEST may dispute Northwest Payphone
5 Association's claim, but clearly the issue that is
6 raised by the Payphone Association's testimony is the
7 very one that the UTC is mandated to decide by RCW
8 80.36, 140, 170, 180 and 186. The UTC -- the issues
9 presented are squarely within the issues in a rate
10 case. U S WEST has again raised Cole, which is a 24,
11 25 year-old case. It simply has no application here.
12 In that case, Mr. Cole who happened to be a customer
13 of the gas company as the Northwest Payphone
14 Association members are customers of U S WEST public
15 access line service, Mr. Cole's complaint was not
16 dismissed. The reason being he was in fact a
17 customer. It was only the fuel oil heat dealer's
18 complaint that was dismissed. Cole simply has no
19 application. If the Northwest Payphone Association
20 members weren't customers of U S WEST there wouldn't
21 be a price squeeze because we could simply go to a
22 competitor.

23 The reason the Northwest Payphone
24 Association is in this rate case is to challenge
25 whether the rates that they are charged are fair,

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1 just, reasonable and not unduly discriminatory.

2 JUDGE STAPLETON: Thank you, Mr. Harlow.

3 Does any other party wish to comment on this motion?

4 Thank you. I believe the next motion we
5 have is U S WEST's motion to compel AT&T to answer
6 data requests. Mr. Shaw.

7 MR. WAGGONER: Your Honor, I believe
8 Mr. Shaw also filed a motion to exclude the testimony
9 of one of AT&T's witnesses. I believe that was
10 unrelated to the discovery motion.

11 Is that correct, Mr. Shaw?

12 MR. SHAW: That's correct.

13 MR. WAGGONER: Do you want to have those
14 both argued simultaneously or separately? I just
15 wanted to know which of the two motions we're arguing.

16 JUDGE STAPLETON: Mr. Shaw, do you have a
17 preference?

18 MR. SHAW: No. I'm willing to go ahead and
19 argue them both although they're unrelated. Perhaps
20 we should argue them separately so that we don't get
21 them confused.

22 JUDGE STAPLETON: For a clearer record
23 let's argue the motion to compel AT&T to answer data
24 requests, please.

25 MR. SHAW: This argument is very

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1 straightforward. In this general rate case AT&T as a
2 party has been privy to a tremendous amount of
3 discovery against the company. The company under
4 Commission practice is expected to and does provide an
5 immense amount of data, much of it of marginal
6 relevance, but under the liberal and generally
7 accepted discovery practices, anything that might lead
8 to the discovery of admissible evidence is fair game
9 for discovery against the company; but, on the other
10 hand, AT&T in its own words in its objections
11 indicates that it is immune from discovery. Compared
12 to the thousands of questions addressed to the
13 company, the company addresses three questions to AT&T
14 directly relevant to this case and we're told that all
15 that is at issue in this case is our cost, rates,
16 revenues and services and that any data within the
17 exclusive control of AT&T is irrelevant and we're just
18 simply harassing AT&T.

19 The questions are very simple. AT&T, as
20 well as others in this case, allege that U S WEST
21 services are all noncompetitive, that we have a
22 monopoly, and that rates for monopoly services should
23 be set at certain levels. Also at issue is whether
24 or not advertising expense is a prudent expense to
25 expend for U S WEST services. AT&T provides an

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1 absolute identical like service to U S WEST, intraLATA
2 toll, and we've asked for data directly dealing with
3 the level of their advertising expenses. That will
4 lead to relevant evidence and evidence of issue to the
5 Commission if introduced into evidence to the extent
6 of what kind of marketing is necessary to change
7 market share to stimulate customers to change
8 carriers, and is generally directly relevant to the
9 issues in this case, that is, at what levels should
10 U S WEST rates be set at in an emerging competitive
11 environment and what expenses are legitimate for the
12 company to incur in competing in those markets.

13 Even more directly, the second question, in
14 terms of the costs, the long-run incremental costs, of
15 AT&T for providing absolute like services to U S WEST,
16 AT&T in essence argues that U S WEST's access charges
17 should be set at LRIC or long-run incremental cost
18 with no contribution in order to mimic competitive
19 environment. AT&T claims that it operates in a
20 competitive environment but yet it does not set its
21 rates at its LRIC costs.

22 Also, in this case, there is a great deal
23 of testimony by AT&T on what U S West's LRIC costs
24 should be and what they should be limited to. It's
25 obviously of tremendous impeaching power to show that

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1 AT&T prescribes a different LRIC methodology for U S
2 WEST than it in fact uses itself with different
3 inputs. Nothing could be more relevant.

4 Another fundamental question that we've
5 asked is to the extent to which U S WEST uses its own
6 facilities or facilities of others, at least in part,
7 to provide transport to itself, to provide access to
8 LEC services in the state of Washington. This is
9 fundamentally relevant to what the proper imputation
10 price floor should be for toll services. That is an
11 issue that is joined in this case and if in fact
12 certain services offered by U S WEST -- like the
13 Commission has recognized billing and collection in
14 the past. If certain services like transport are not
15 essential to be obtained from U S WEST, therefore,
16 that imputation test is different. For AT&T to simply
17 blow us off and refuse to answer the questions is a
18 fundamental violation of the discovery rules. It is
19 strategic nondisclosure.

20 These cases have a clock that the company
21 has very little time in which to conduct its discovery
22 of its many opponents' testimony. By just simply
23 refusing to answer it runs the company out of time.
24 Here we are two weeks from the scheduled hearings and
25 we don't have any responses from three data requests

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1 as compared to the thousand that we've answered. It's
2 a fundamental deprivation of our right to discovery
3 and our right to cross-examination for AT&T to be
4 allowed to get away with this. We ask that their
5 testimony be struck if they don't fully answer these
6 questions and stop playing games denying to give us
7 this data.

8 MR. WAGGONER: Your Honor, AT&T would like
9 to ask for sanctions for the costs of responding to
10 this motion. Mr. Shaw completely failed to follow the
11 rules of the Commission which require him to consult
12 prior to filing such motions. We filed our objections
13 on a timely manner in early September. We filed
14 answers thereafter citing the objections again in
15 answering two out of three of the questions. We fully
16 answered two out of three of the questions. I never
17 heard a word from Mr. Shaw and I return to discover
18 that a motion to compel has been filed. We would like
19 to ask for sanctions for the expense of responding to
20 this entirely frivolous motion.

21 I think Mr. Shaw's characterization of our
22 responses is, well, certainly offensive. We fully
23 answered 2 and 3 exactly as we were asked them. If
24 Mr. Shaw had wanted further explanation he should have
25 asked for it. Question 1 was a standard form question

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1 served on all interexchange carriers in this case
2 obviously for the purpose of harassment and a fishing
3 expedition. There is no relevance to any issue in
4 this case and Mr. Shaw made no effort to consult or
5 seek further clarification information.

6 I think this really is not the way this
7 should be done. We filed objections in early
8 September. We then filed answers September 11. The
9 next thing that happens is a motion to compel in early
10 October. As I said, we would ask for sanctions.
11 Thank you, Your Honor.

12 JUDGE STAPLETON: Does anyone else wish to
13 comment on the U S WEST motion on AT&T? All right.
14 Thank you very much.

15 Let's be off the record for a moment.
16 (Discussion off the record.)

17 JUDGE STAPLETON: Finally we have one
18 motion, final motion, U S WEST motion, to strike
19 testimony of Ms. Toomey AT&T witness. Mr. Shaw.

20 MR. SHAW: Just want to briefly emphasize
21 for Your Honor because the filed paper on this motion
22 is very brief, but again, to just emphasize that the
23 fundamental issue in a rate case of a public service
24 company is whether its rates are sufficient to cover
25 its reasonably found revenue requirement. Totally

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1 irrelevant is whether the company has spent its return
2 on capital, and shareholder return on the operation on
3 something different than service in the state of
4 Washington. It is essentially irrelevant whether the
5 company burns its profits, donates it to charity or
6 invests it in totally legitimate businesses. For AT&T
7 to say that they do not have anything to say about
8 what the revenue requirement of U S WEST is and then
9 say it should be denied rates to recover that revenue
10 requirement because it has shareholder return is
11 irrelevant to the issues in this case. It's
12 expansive. We've had to file extensive reply to it
13 before this motion was argued. It will substantially
14 cut down totally irrelevant hearing time and cross on
15 this issue. This issue is just simply not relevant to
16 the issues presented by statute. It doesn't have
17 anything to do with the long recognized approach of
18 this Commission to identifying what the revenue
19 requirement of the company is. Thank you.

20 JUDGE STAPLETON: Mr. Waggoner.

21 MR. WAGGONER: Very briefly. It's
22 interesting, I note Mr. Shaw seems to often change his
23 mind as to what the issues in the case are. Now he
24 thinks it's only what U S WEST is doing.
25 Fundamentally I think Mr. Shaw misperceives the

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1 testimony. The testimony was not simply limited to
2 rate of return or profits as Mr. Shaw characterized
3 it. It was simply to show where the money goes. It's
4 not to infrastructure or service quality improvements
5 in Washington state but it's to other investments and
6 dividends to the parent.

7 I think also what's interesting is that it
8 provides an alternative way of looking at the revenue
9 requirement issues. What U S WEST would like to do in
10 this case of course is control exactly how the
11 Commission looks at the revenue requirement issue.
12 AT&T is simply offering an alternative view of how to
13 look at revenue requirement and where the money is
14 going. Of course U S WEST will have the right to
15 cross-examine, but there is no reason to strike the
16 testimony at this time. I will be happy to rely on
17 our brief for the remainder of the argument. Thank
18 you.

19 JUDGE STAPLETON: Thank you, Mr. Waggoner.
20 Off the record for a moment.

21 (Recess from 10:00 a.m. to 11:23 a.m.)

22 JUDGE STAPLETON: Let's be back on the
23 record. When we left we were awaiting Mr. Trotter's
24 conversation with his witness. Mr. Trotter, do you
25 have anything to report?

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1 MR. TROTTER: Well, we did, I guess more to
2 the point, have an opportunity to talk to the other
3 parties just to see where we were, and there was -- at
4 this point I don't think there is general support for
5 a continuance to the first two weeks of January.
6 However, I think there was an interest to have the
7 parties communicate a little bit more with each other
8 this week, if at all possible, with the hope that if
9 there was an acceptable resolution we could come back
10 to you immediately to deal with that, but I just -- I
11 am getting the sense subject to other parties'
12 confirmation, of course, that there's not enough
13 consensus for the motion right now but every party can
14 speak for themselves on that point. But we have been
15 talking throughout the morning and we're doing our
16 best.

17 JUDGE STAPLETON: Would the company like to
18 add some comments?

19 MR. SHAW: Yeah, a few observations.
20 Company is in an impossible situation. We wanted to
21 go the last mile to try to facilitate settlement
22 discussions. We are faced with a situation where a
23 number of parties are willing to extend the hearings
24 for meaningful settlement discussions, and a
25 suggestion that we might be able to close any

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1 remaining differences between us over the next couple
2 of days. The company's dilemma is it has a very short
3 period of time within which to prepare its case. It's
4 got the burden of going forward. It just simply
5 cannot be negotiating in a meaningful way at the same
6 time it's preparing for the case. We are not
7 withdrawing from the Commission our offer to extend
8 the timetable in the case to allow more meaningful
9 negotiations. We will not withdraw the motion. If
10 nobody else supports it, if nobody else wants to
11 negotiate it, we can't go any further than that. We
12 are willing to continue to talk, but just
13 realistically we cannot put in the hours of effort
14 that we've been putting into that process to this
15 point. We're just simply out of time and we have to
16 switch our attention to preparing for what certainly
17 promises to be a very difficult piece of
18 administrative litigation.

19 JUDGE STAPLETON: Any other parties like to
20 comment?

21 MR. BUTLER: I will just say from TRACER's
22 standpoint we're certainly willing to talk to explain
23 anything in the proposal that we sent, but we don't
24 believe at this point that it's in our interests or
25 the public interest to delay the hearings.

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1 MR. WAGGONER: On behalf of AT&T I would
2 make the same comment.

3 MS. LEHTONEN: Sorry. Difficult to hear
4 you.

5 MR. WAGGONER: On behalf of AT&T I would
6 make the same comments that we are certainly willing
7 to discuss settlement but do not believe continuance
8 is appropriate at this time.

9 MS. LEHTONEN: This is Lesla. I have a
10 somewhat different view of it. It seems to me that
11 it's very difficult for many of the parties to engage
12 in settlement discussions within the next couple of
13 days when we are going to be preparing for the case,
14 and it would be helpful if we're going to engage in
15 discussions to have something formally set up that we
16 can attend or participate in in some way. Otherwise
17 it just seems to me that we should just plan on going
18 to the hearing.

19 JUDGE STAPLETON: Staff.

20 MR. SMITH: Staff agrees with Mr. Trotter,
21 that the consensus is not here today. We believe that
22 this case is capable of being settled. We think we
23 are -- it is within range and doable and we are
24 willing to talk to all the parties including the
25 company whether there's a continuance or not.

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1 MR. MACIVER: MCI's position is similar to
2 that stated by Mr. Waggoner and Mr. Butler, and we
3 indeed are willing and anxious to engage in settlement
4 discussions but have seen nothing so far to encourage
5 us to the point where we would believe a continuance
6 in the hearing is in the best interests at this point.

7 JUDGE STAPLETON: Well, would someone like
8 to tell me where that leaves us? I'm personally not
9 in the frame of mind to leave this an open-ended
10 motion. I believe that the parties need the sense of
11 finality. I know the commissioners do. I know the
12 Commission, the advisory staff does. I don't see a
13 reason to walk away from here today without anything
14 that's further affirmative or solid between the
15 parties about what happens after we leave this room.
16 Mr. Trotter, would you like to --

17 MR. TROTTER: Well, there was a proposal to
18 -- for the parties to get together one additional time
19 as a group in a conference call on Thursday morning.
20 That would obviously not involve you or the
21 Commission, and if there is interest in that we're
22 committed to it. Mr. Shaw left his motion open. I
23 don't know what the difference is if that motion is
24 denied now with obviously an interest in having it
25 refiled if there is a consensus. I think that's a

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1 matter of semantics, but we have been discussing ways
2 of trying to keep the ball rolling, but we'll just try
3 to resolve that among ourselves. I don't know if that
4 needs to be done on the record as such, but that's the
5 extent of the discussion that's occurred basically.

6 JUDGE STAPLETON: Well, I would assume that
7 the parties would have the same problem that Ms.
8 Lehtonen had from Sprint and that Mr. Shaw has had
9 from the outset here is that you can't simultaneously
10 be trying to prepare for cross-examination less than
11 two weeks away in a case of this magnitude and expect
12 to be available and have unscheduled and
13 undisciplined, even among yourselves, opportunities
14 for settlement conferences, settlement negotiations,
15 settlement discussions.

16 Is everyone in this room intending to
17 participate in this conference call on Thursday? Is
18 there anyone who is intending to simply avoid that
19 conference call?

20 MS. LEHTONEN: Can you tell me when it was
21 scheduled?

22 JUDGE STAPLETON: I don't think anyone has
23 actually --

24 MR. TROTTER: 10 a.m.

25 JUDGE STAPLETON: Well, if all parties who

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1 are present intend to participate in that conference
2 call at 10 a.m. on Thursday, I would agree to continue
3 the pre-hearing conference until Thursday at noon, and
4 I would expect the parties then to alert me into the
5 conference call and let me know what the parties'
6 decisions are absolutely on the motion for continuance
7 and the Commission will make a ruling at that time.

8 I'm wondering if we should finish up with a
9 few procedural items before we adjourn this
10 pre-hearing conference. The Commission with or
11 without a continuance will continue to hold the public
12 testimony hearings scheduled for November 9 here in
13 Olympia at 1:30. The notice has gone out on that.
14 There's been substantial interest expressed and the
15 Commission feels at this point it would be improper to
16 cancel that public hearing.

17 I guess I probably would like to poll the
18 parties on whether or not -- if a continuance is to be
19 forthcoming on Thursday whether or not the Commission
20 needs to decide the motions during any stay of the
21 suspension period and negotiations among the parties.
22 Is there any feel for that? Mr. Shaw.

23 MR. SHAW: It's still the company's
24 position that the motions are moot if we can settle
25 the case understanding that other parties would like

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1 the motions granted in case they're favorable to them.
2 Will limit the scope of the negotiations, but I think
3 that prejudices the issues. What the company is
4 willing to do is to negotiate pragmatic results of the
5 case without regard to the legalities that underlie
6 the motions. If the Commission rules on the motions
7 that will certainly affect the conduct of the parties
8 in any negotiations. If the Commission does not rule
9 on it, it may foster negotiations, so the company does
10 not require answers on the motions prior to the
11 hearing.

12 JUDGE STAPLETON: Commission staff.

13 MR. SMITH: Well, if the hearings scheduled
14 go forth as it's presently set we would request
15 decisions on those motions. We should have a better
16 idea on Thursday as to whether that will be the case.

17 JUDGE STAPLETON: Public counsel.

18 MR. TROTTER: No objection.

19 JUDGE STAPLETON: Anyone else on whether or
20 not the motion should be decided if the hearings are
21 continued?

22 We'll leave that unresolved until Thursday
23 as well. Mr. Wallis indicated to me before he left
24 that he had discussed with you off the record
25 submitting your list of witnesses and exhibits in the

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1 record that you wanted presented. Is everyone
2 agreeable to do that? You can simply fax those in and
3 it would be acceptable.

4 MR. TROTTER: This is Don Trotter, public
5 counsel. It also appears that probably every party
6 has some scheduling issue, and I would recommend if
7 you are willing to, in addition to the fax of the
8 parties' witnesses and their exhibits, to also
9 entertain their witness availability. Just makes
10 sense to me. It appears a lot of witnesses are not
11 available the first week, and this would also provide
12 some certainty to the parties that they can get their
13 witnesses in and out at a time that they find
14 acceptable.

15 JUDGE STAPLETON: Thank you. If parties
16 would indicate that as well.

17 MR. MACIVER: What was that, indicating a
18 special scheduling requirements?

19 MR. TROTTER: Witness availability.

20 JUDGE STAPLETON: Also, I don't know -- I
21 haven't reviewed all of the statements of
22 participation, but if there are any witnesses that do
23 not require cross-examination maybe those could be
24 identified, but I haven't gone through that stack of
25 filing yet.

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1 I will also ask the parties just to make
2 a note that in the event that Thursday's conversation
3 does result in a continuance that the Commission will,
4 following the public hearing on November 9, convene a
5 pre-hearing conference just to get a gauge from the
6 parties about where they are in the settlement
7 negotiations, and you certainly don't have to attend
8 the Olympia public hearing to do that. We can do that
9 by telephone as well.

10 Anything else to come before us at this
11 time? We will reconvene at noon on Thursday. Thank
12 you very much.

13 (Hearing adjourned at 11:35 a.m.)

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