

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3	WASHINGTON UTILITIES AND)	
	TRANSPORTATION COMMISSION,)	DOCKET NO. UT-950200
4)	
	Complainant,)	VOLUME 1
5)	
	vs.)	Pages 1 - 59
6)	
	U S WEST COMMUNICATIONS, INC.,)	
7)	
	Respondent.)	
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9 A hearing in the above matter was held
10 at 9:30 a.m. on April 6, 1995, at 1300 South Evergreen
11 Park Drive Southwest, Olympia, Washington before
12 Chairman SHARON L. NELSON, Commissioners RICHARD
13 HEMSTAD, WILLIAM R. GILLIS, and Administrative Law
14 Judge ELMER CANFIELD.

15
16 The parties were present as follows:

17 U S WEST COMMUNICATIONS, by EDWARD SHAW,
18 MOLLY HASTINGS, DOUG OWENS, Attorneys at Law, P.O. Box
19 21225, Seattle, Washington 98111, and SHERILYN
PETERSON and JAMES VAN NOSTRAND, Attorneys at Law, 411
108th Avenue Southeast, Washington 98122.

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

23 FOR THE PUBLIC, ROBERT MANIFOLD, DONALD
24 TROTTER, Assistant Attorneys General, 900 Fourth
Avenue, Suite 2000, Seattle, Washington 98164.

25 Cheryl A. Macdonald, Court Reporter

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1 APPEARANCES (Cont.)

2 AT&T OF THE PACIFIC NORTHWEST, by DANIEL
3 WAGGONER and GREGORY KOPTA, Attorneys at Law, 1501
4 Fourth Avenue, Suite 2600, Seattle, Washington 98101.

5 AT&T, by SUSAN PROCTOR, Attorney at Law,
6 1875 Lawrence Street, Suite 1575, Denver Colorado
7 80202.

8 WITA, by RICHARD A. FINNIGAN, Attorney at
9 Law, 1201 Pacific Avenue, Suite 1900, Tacoma,
10 Washington 98402.

11 TRACER, by ARTHUR A. BUTLER, Attorney at
12 Law, 601 Union Street, Suite 5450, Seattle, Washington
13 98101-2327.

14 ELECTRIC LIGHTWAVE, INC., by ELLEN DEUTSCH,
15 Attorney at Law, 8100 NE Parkway Drive, Suite 200,
16 Vancouver, Washington 98662-6401.

17 PTI COMMUNICATIONS, by CALVIN SIMSHAW,
18 Corporate Counsel, 805 Broadway, Vancouver, Washington
19 98668.

20 MCI, by SUE E. WEISKE, Senior Attorney, 707
21 17th Street, Suite 3900, Denver, Colorado 80202.

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

25 SPRINT, by LESLA LEHTONEN, Attorney at Law,
18 1850 Gateway Drive, 7th Floor, San Mateo, California
19 94404-2467.

20 GTE NW, Inc., by RICHARD POTTER, TIM
21 WILLIAMSON, TIMOTHY J. O'CONNELL, Attorneys at Law,
22 1800 41st Street, Everett, Washington 98201.

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

26 DEPARTMENT OF SOCIAL AND HEALTH SERVICES, by
27 LESLIE BIRNBAUM, Assistant Attorney General, (by
28 Charles Pollock), PO Box 45400, Olympia, Washington
29 98504-5400.

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APPEARANCES (Cont.)

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

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ENHANCED TELEMAGEMENT, INC., by GENA M.
DOYSCHER, Director External Affairs, 730 Second Avenue
South, Minneapolis, Minnesota 98104.

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

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

2 JUDGE CANFIELD: This pre-hearing
3 conference will please come to order. We're convened
4 in docket No. UT-950200, Washington Utility and
5 Transportation Commission, complainant, versus U S
6 WEST Communications Inc., respondent. I'm Elmer
7 Canfield, administrative law judge from the Office of
8 Administrative Hearings. This matter is being heard
9 before the Washington Utilities and Transportation
10 Commission consisting of Sharon L. Nelson, chairman,
11 Richard Hemstad, commissioner and William R. Gillis,
12 commissioner. The conference is being held on
13 Thursday, April 6, 1995 pursuant to due and proper
14 notice to all interested parties. As indicated on the
15 notice of hearing, we'll be taking appearances,
16 interventions as well as marking and distributing
17 respondent's direct testimony and exhibits. We'll
18 also be dealing with discovery matters, the schedule
19 and other preliminary matters. At the outset I would
20 like to start by taking appearances, beginning with
21 the respondent, please.

22 MR. SHAW: For the respondent, U S WEST
23 Communications, Ed Shaw, Doug Owens, Molly Hastings of
24 U S WEST and also Perkins Coie, and also allow them to
25 enter their appearance.

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1 MS. PETERSON: For Perkins Coie, Sherilyn
2 Peterson and James M. Van Nostrand.

3 JUDGE CANFIELD: And can I get an address?.

4 MS. PETERSON: Yes. 111 108th Avenue
5 Northeast -- I'm sorry, 411 108th Avenue Northeast,
6 Bellevue, Washington 98004.

7 JUDGE CANFIELD: Thank you. Maybe we can
8 just go down the table then.

9 MR. WILLIAMSON: For GTE Northwest, Tim
10 Williamson. Also Richard Potter and Tim O'Connell.
11 Address is 1800 41st Street, Everett, Washington.
12 Phone number 206-261-5006. Fax number 206-258-9275.

13 MR. HARLOW: Morning, Your Honor. Brooks
14 Harlow representing Northwest Payphone Association
15 and Metronet Service Corporation. My address is 4400
16 Two Union Square, 601 Union Street, Seattle,
17 Washington, 98101-2352.

18 MR. FINNIGAN: For the Washington
19 Independent Telephone Association, my name is Richard
20 Finnigan with the firm Vandeberg, Johnson and Gandara.
21 Firm's address is 1201 Pacific Avenue, Suite 1900,
22 Tacoma, Washington 98402.

23 JUDGE CANFIELD: Thank you.

24 MR. ROSEMAN: Representing the intervenor
25 the American Association of Retired Persons, my name

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1 is Ronald L. Roseman. I'm attorney with Evergreen
2 Legal Services, 401 Second Avenue South, Suite 401,
3 Seattle, Washington 98104. Telephone number is
4 206-464-1422. Fax number is 206-382-3386.

5 JUDGE CANFIELD: Thank you.

6 MR. BUTLER: Arthur A. Butler appearing on
7 behalf of intervenor TRACER. I'm with the law firm of
8 Ader Wynne Hewitt Dodson & Skerritt. My address is
9 601 Union Street, Suite 5450, Seattle, Washington
10 98101-2327. Phone number area code 206-623-4711. Fax
11 number 206-467-8406. Thank you.

12 MS. WEISKE: I'm Sue Weiske. I'm
13 representing MCI Telecommunications Corporation. The
14 address is 707 17th Street, Suite 3900 Denver,
15 Colorado, 80202. Phone number is 303-291-6729 and the
16 fax is 303-291-6333.

17 JUDGE CANFIELD: Thank you.

18 MR. POLLOCK: My name is Charles Pollock.
19 I'm with the Department of Social and Health Services.
20 Our assistant attorney general is Leslie Birnbaum who
21 is not present today. My mailing address is P.O. Box
22 45400 Olympia, 98504. Phone number area code
23 360-438-8329. Fax area code 360-438-8257.

24 MR. TROTTER: For the public counsel
25 section of the attorney general's office I'm Donald T.

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1 Trotter assistant attorney general and to my right is
2 Robert F. Manifold, assistant attorney general. Our
3 address is 900 Fourth Avenue, Suite 2000, Seattle,
4 Washington 98164.

5 JUDGE CANFIELD: Thank you.

6 MR. SMITH: For the Commission staff,
7 Steven W. Smith and Gregory J. Trautman assistant
8 attorneys general. Our business mailing address is
9 PO Box 40128 Olympia, 98504-0128.

10 JUDGE CANFIELD: Thank you. This side,
11 please.

12 MR. SIMSHAW: Appearing for PTI
13 Communications my name is Calvin Simshaw. I'm a
14 corporate counsel. My address is 805 Broadway.
15 That's Vancouver, Washington 98668. Telephone number
16 is area code 360-905-5958. Fax number is 360-905-5953.

17 MS. DOYSCHER: I'm Gina Doyscher, director
18 of external affairs for Enhanced Telemanagement,
19 Incorporated. Our address is 703 Second Avenue South,
20 Suite 1200, Minneapolis, Minnesota 55402. Phone
21 number is 612-342-2186. Fax number is 612-349-6232.

22 JUDGE CANFIELD: Thank you.

23 MR. DEUTSCH: For Electric Lightwave my
24 name is Ellen Deutsch. Address is 8100 Northeast
25 Parkway Drive, Vancouver, Washington 98662. Phone

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1 number 360-896-3311. Fax number 360-253-4425.

2 JUDGE CANFIELD: Thank you.

3 MS. MARCUS: Roselyn Marcus, assistant
4 attorney general representing the Department of
5 Information Services. My address is 1125 Washington
6 Street Southeast, PO Box 40100, Olympia, Washington
7 98504.

8 JUDGE CANFIELD: Okay. Thank you.

9 MR. WAGGONER: Do you want appearances
10 from back here?

11 JUDGE CANFIELD: Yes, I do. I was going to
12 go to the ones that have not made appearances yet.

13 MR. WAGGONER: Okay. Daniel Waggoner and
14 Gregory Kopta, the law firm of Davis Wright Tremaine,
15 appearing for intervenor AT&T Communications of the
16 Pacific Northwest. Our address is 2600 Century
17 Square, 1501 Fourth Avenue, Seattle, Washington 98101.
18 Phone 206-622-3150. Fax 206-6287440. Also appearing
19 for AT&T Susan Proctor, AT&T, 1875 Lawrence Street,
20 Suite 1575, Denver, Colorado 80202.

21 JUDGE CANFIELD: Thank you.

22 MS. LEHTONEN: Lesla Lehtonen on behalf of
23 Sprint Communications Company LP. Our address is 1850
24 Gateway Drive, 7th floor, San Mateo, California 94404.
25 My phone number is 415-513-2712 and my fax number is

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1 415-513-2737.

2 JUDGE CANFIELD: Okay.

3 MS. BUTLER: My name is Sheryl Butler. I'm
4 here on behalf of the Department of Defense and all
5 other federal executive agencies, and the address is
6 901 North Stuart Street, Suite 713, Arlington,
7 Virginia. The zip is 22203. My phone number is area
8 code 703-696-1642 and the fax is area code
9 703-696-2960.

10 JUDGE CANFIELD: Thank you. Are there any
11 other appearances being made at this time? Let the
12 record reflect there are none, and I will note that
13 there were some petitions to intervene filed with the
14 Commission and there are obviously going to be some
15 oral requests to intervene at this morning's session
16 as well. I don't particularly care in which order we
17 deal with the interventions. I can just --

18 MR. SHAW: Your Honor, if I might
19 interrupt.

20 JUDGE CANFIELD: Go ahead, Mr. Shaw.

21 MR. SHAW: In order to expedite things, the
22 company is willing to stipulate that it has no
23 objection to the intervention of those that have made
24 an appearance except that I would like to urge that
25 the state of Washington consolidate its appearance --

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1 I don't mean the staff and public counsel but DSHS and
2 DIS. It seems like there ought to be some way to keep
3 moldable units of the state from being separate
4 intervenors, but other than that I will not have any
5 objection to any of the parties that have entered
6 their appearances.

7 JUDGE CANFIELD: Any other comments on
8 that? Any comments from Commission staff?

9 MR. SMITH: We have no objection to any of
10 the interventions.

11 JUDGE CANFIELD: Any comments from public
12 counsel?

13 MR. TROTTER: No.

14 JUDGE CANFIELD: Let me hear from the state
15 of Washington representatives that we've got, the
16 comments of Mr. Shaw concerning consolidation of
17 interventions in the matter. We've got Department of
18 Information Services and Department of Social and
19 Health Services. I don't know whether -- who wants to
20 go first, but let me hear from the parties on that.

21 MS. MARCUS: I will go first, Your Honor.
22 DIS has no objection to consolidating wherever
23 possible our presentation with DSHS. DSHS is a
24 separate customer with U S WEST. They do not get all
25 of their telephone service through DIS, so wherever

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1 possible we will consolidate and insure that there is
2 no duplication of any presentation of testimony.

3 JUDGE CANFIELD: I think the comment might
4 have gone to service of documents as well. We've got
5 separate appearances and separate requests for
6 intervention. Are you still of the opinion that both
7 should be recognized as separate intervenors, Ms.
8 Marcus?

9 MS. MARCUS: I believe they should since
10 DSHS -- they can speak for themselves but I believe
11 they have separate contracts with U S WEST, so they
12 might have some different requests or different issues
13 that DIS would not have as we would not be their
14 service provider for all U S WEST services.

15 JUDGE CANFIELD: And from Social and Health
16 Services I believe Mr. Pollock is present; is that
17 correct?.

18 MR. POLLOCK: Mr. Pollock, yes. I don't
19 know about consolidation. I think we would be more
20 than willing to coordinate our responses and questions
21 with DIS. I think their concerns or interests might
22 be slightly different than ours.

23 JUDGE CANFIELD: Okay. Any other comment
24 before I get back to Mr. Shaw?

25 Any additional comments, Mr. Shaw?

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1 MR. SHAW: Only that this case is going to
2 be difficult enough with a tremendous burden on the
3 company in terms of discovery and so forth, so
4 moldable parties that are virtually the same thing
5 increases that burden, and neither DSHS or DIS
6 indicated what their particular interest in this case
7 is. I speculate and presume that DSHS has got
8 concerns about W tap and that program for the support
9 of low income telephone subscribers. DIS of course is
10 the procurement arm of the state for telephone service
11 and so I understand their interest, but state of
12 Washington of course has many, many entities and
13 certainly wouldn't be appropriate to have all of those
14 entities appear in here separately. I would request
15 that there just be one party and it seems like they
16 could coordinate internally and speak on behalf of the
17 interests of the state of Washington. I can't see how
18 they could have conflicting interests, certainly to
19 where they need to be here to represent conflicting
20 interests as between the two of them.

21 JUDGE CANFIELD: And any comments, Mr.
22 Smith, one way or the other on that issue?

23 MR. TROTTER: No, I don't.

24 JUDGE CANFIELD: I think it might be
25 appropriate to designate one address for service.

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1 That might take care of part of it, and assist in
2 consolidating efforts and not duplicating all the
3 extra paperwork. I don't know if that can be worked
4 out between the two, DIS and DSHS. Ms. Marcus, have
5 you had any discussions along that regard with Mr.
6 Pollock?

7 MS. MARCUS: No, we have not discussed this
8 case with DSHS.

9 JUDGE CANFIELD: I'm talking about the
10 mechanics of possibly having one filing with the two
11 entities and coordinating in that regard.

12 MS. MARCUS: No, we haven't. We would
13 certainly be glad to explore it, but as Mr. Shaw
14 pointed out, DSHS is a separate state entity with
15 separate representation and they have a different
16 purpose than the Department of Information Services,
17 and therefore might have different issues, and so I'm
18 not sure consolidation would be appropriate at this
19 time, but we would certainly be glad to discuss it
20 with them and see where our interests diverge and
21 might be different.

22 JUDGE CANFIELD: I don't know whether just
23 designating one service entity is going to alleviate
24 all the concerns. Would the parties be willing to
25 discuss that among themselves -- because we are going

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1 to request that all parties sign up on a sheet and
2 designate one representative as the representative for
3 service of documents, and I would like on that sheet
4 also to have phone numbers and fax numbers so that we
5 can make that known to the others, and I plan to
6 incorporate that into the pre-hearing conference order
7 in the matter, but yeah, I'm inclined to grant the
8 intervention status of each, but I'm also willing to
9 look at the possibility of just having one set of
10 documents filed with the two entities and you're
11 indicating, Ms. Marcus, that you would be willing to
12 discuss that with DSHS?

13 MS. MARCUS: Yes, we would.

14 JUDGE CANFIELD: Why don't you do that, and
15 I will hold off on that aspect of it. As far as the
16 separate interventions, I think there's been enough of
17 a distinction to allow separate party status to each
18 of those entities, so with that I will grant
19 intervention status to DIS as well as DSHS, and as I
20 understood, there were no objections to any of the
21 other interventions that were made known earlier in
22 their appearances, so some have filed petitions and
23 some apparently were going to orally intervene at this
24 morning's session, and Mr. Shaw, you don't have any
25 objection to the interventions of those parties that

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1 made appearances; is that correct?

2 MR. SHAW: That is correct.

3 JUDGE CANFIELD: Okay. So noted, and there
4 were no other comments or objections. The
5 intervention status is granted to all of those
6 parties that have appeared at this session.

7 MR. HARLOW: Excuse me, Your Honor. I
8 would make one request for those who were going to
9 petition to intervene orally, and that includes my
10 clients as well, and that is interventions require a
11 statement of address of the parties themselves and one
12 of the important purposes of that is in case there
13 needs to be service of process at the conclusion of
14 the proceeding on a petition for judicial review, and
15 to save time what I would suggest is those who were
16 going to orally intervene perfect their intervention
17 by notifying the Commission in writing of their
18 addresses as well as the addresses of their clients so
19 that that would be available in the public record.

20 JUDGE CANFIELD: Okay. I would have no
21 problem with that. Any comments from any of the
22 others on that?

23 MR. SHAW: I would support that. Company
24 would like to have the address of the client of each
25 of the interventions.

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1 JUDGE CANFIELD: Okay. With that I will
2 make that part of the ruling as well, that the
3 intervenors, if they hadn't already done so by way of
4 a petition, that they do file that with the Commission
5 and serve it on the other parties as well, showing the
6 party and party address as well as the representative
7 name and address.

8 MR. BUTLER: Excuse me, Your Honor. Could
9 we simply circulate a sheet at this hearing and
10 everyone list that address so it can be included in
11 the transcript of this hearing and we have one place
12 to look for the service list?

13 JUDGE CANFIELD: I was going to be having a
14 sheet signed up so that I could incorporate that into
15 the pre-hearing conference as far as designated
16 service entity. Is that basically the same thing
17 you're referring to?

18 MR. BUTLER: I just propose that we do it
19 all today instead of sending in separate pieces of
20 paper.

21 JUDGE CANFIELD: Would that suffice as far
22 as your request, Mr. Harlow and Mr. Shaw?

23 MR. HARLOW: Yes. I think that's a good
24 way to do it.

25 MR. SHAW: That's fine.

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1 JUDGE CANFIELD: Okay. Why don't we do
2 that at today's session. We will circulate a piece of
3 paper with that on it then and how would you request
4 that be handled, then, Mr. Butler.

5 MR. BUTLER: Just include it in the
6 transcript of the hearing today.

7 JUDGE CANFIELD: Give it to the court
8 reporter to include in the transcript?

9 MR. BUTLER: Yes.

10 JUDGE CANFIELD: I guess we could certainly
11 do that and have the court reporter deal with it in
12 the transcript then so that will be included there.
13 Okay, with that we'll have that list circulated. I
14 believe there's a note pad over on the podium that can
15 be used for that purpose so that that can be started
16 to be circulated. I think that will be helpful to all
17 concerned then.

18 Is the company going to be requesting a
19 protective order, Mr. Shaw? I noticed that some of
20 the prefilled documents are designated confidential.

21 MR. SHAW: Yes, Your Honor. We would
22 request the protective order in the usual form. I
23 think the most recent one in the U S WEST case was in
24 the interconnection docket and that form will be
25 satisfactory to the company. We have by way of

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1 information copies of the form A's and the form B's
2 here with us today, and any counsel that wants a set
3 of the confidential material we would request that
4 they execute a form A at least before we give that to
5 them on the supposition that that protective order is
6 going to be entered and that they would commit
7 themselves to be bound by that protective order even
8 before it's entered.

9 JUDGE CANFIELD: Any comments on the
10 protective order matter from anyone? Let the record
11 reflect there are none. I will grant the request for
12 a protective order and that will be issued as soon as
13 possible, but as indicated, in the meantime there are
14 form A's and B's available, and those can be assigned
15 and the parties would agree to be bound by the
16 protective order. That would be issued soon, and I
17 think the general order is the one patterned after the
18 Electric Lightwave case UT-901029. So I will have
19 that prepared and issued as soon as possible, but
20 meanwhile to get the confidential materials there are
21 forms to fill out for that in the hearing room then.

22 I didn't recall, I would have to
23 double-check, but, Mr. Smith, was the discovery rule
24 referenced in the notice of hearing WAC 480-09-480?

25 MR. SMITH: No, it was not. So it will

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1 have to be invoked at this conference.

2 JUDGE CANFIELD: And that was the
3 understanding then of the request being made that the
4 discovery rule be invoked then, Mr. Smith?

5 MR. SMITH: Yes.

6 JUDGE CANFIELD: Any comments on that?

7 MR. SHAW: Your Honor, we'll concur that
8 the discovery rule should be invoked and we would also
9 request that pursuant to the rules that discovery
10 cutoffs be set. I suppose that would be appropriate
11 when we discuss the scheduling.

12 JUDGE CANFIELD: Okay. That would be
13 appropriate time, so we'll note that then and come
14 back to that. Let the record reflect there are no
15 other comments, so the discovery rule, WAC 480-09-480
16 is invoked and the method for data in that rule are
17 available. The parties are also free to use informal
18 procedures as appropriate as well. We'll come back to
19 the discovery schedule or cutoff dates when we discuss
20 scheduling later on.

21 Any other matters that we have before we're
22 going to get to that? We're going to deal with the
23 schedule, we're going to mark the exhibits and we can
24 deal with that later on, but any matters that the
25 parties have to deal with currently?

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1 MR. SHAW: Your Honor, you haven't
2 mentioned yet the notice of pre-hearing conference
3 specifically said that the proceeding would focus on
4 issue identification and requested respective parties
5 to be prepared to do that, and I was just curious how
6 the bench plans to handle that process this morning.

7 JUDGE CANFIELD: Yeah. I note that the
8 notice of hearing did request that of parties
9 indicating the parties were requested to formulate
10 lists of what they view to be the public policy issues
11 involved in the docket, and maybe I can open that up
12 for comment. Mr. Smith?

13 MR. SMITH: Well, the Commission staff has
14 prepared its list of public policy issues which we
15 could distribute.

16 MR. SHAW: Your Honor, because of the
17 number of parties, based upon recent painful
18 experience, I don't think there's going to be much
19 merit in adjourning and trying to get this many
20 parties when they haven't seen each other's list to
21 try to hammer out a joint list. It's very important
22 for the company to identify the policy issues in this
23 case, and we certainly support the thrust of the
24 notice of hearing to do that. Because I don't think
25 it's going to work to try to discuss those on an ad

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1 hoc basis, I wondered if the bench had any ideas of
2 how it was going to approach that. Take the lists and
3 then contemplate some other further process, an
4 additional pre-hearing conference or what?

5 The request of the company in this case has
6 been for the Commission to become involved at the
7 front end and give these parties some guidance on what
8 the issues that they want addressed in this case are,
9 and so we are assuming without knowing that with the
10 issues list of parties that there will be some sort of
11 feedback from the bench on what the bench considers
12 the issues to be, so I'm just curious as to whether
13 you had any comment that would enlighten us along
14 those lines.

15 JUDGE CANFIELD: We can certainly hear from
16 the parties on that, and I understand that the
17 commissioners will be sitting on the conference this
18 morning, and they're not here currently so we can
19 certainly touch base on that momentarily, but any
20 comments other than those you've already made, Mr.
21 Smith, other than the fact that you've got a list that
22 you're willing to share?

23 MR. SMITH: Well, I would agree with
24 Mr. Shaw to the extent that there would be little
25 purpose in sitting around this morning to try to hash

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1 out an agreed list. It just isn't going to happen.
2 What the other process is I don't have any comment at
3 this time.

4 MR. TROTTER: Your Honor, we also have put
5 together a list of issues that we could distribute
6 today. We also agree that with this number of parties
7 trying to come to some agreement -- even in cases
8 where there's been three or four parties we have
9 problems finding agreement. So we would certainly
10 offer to distribute our list. We would also like to
11 hear from the Commission as to the purpose of the list
12 because it's unclear at this point exactly how it is
13 to be used, and if it turns out that issues are
14 identified for which there has not been provided
15 testimony or detailed testimony how are we going to
16 accommodate that and what does that do to the
17 schedule? There's just a whole host of issues that go
18 along with that, including is the issue list exclusive
19 or just general policy issues that need to be teed up,
20 and so on and so forth. So I agree to the extent that
21 Mr. Shaw sought the guidance from the bench on the
22 purpose and extent of this list and if that was one of
23 the points he was making we agree with him on that.

24 JUDGE CANFIELD: I will ask if there are
25 any other comments. I don't know whether any other

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1 parties have prepared an issues list as well. Maybe I
2 can just ask those parties to so indicate on the
3 record if they have in preparation for this morning's
4 conference.

5 MR. WAGGONER: Just because I know how much
6 fun it is to circulate issues list, AT&T also prepared
7 an issues list to try and identify based on the
8 Commission's order policy issues and also some other
9 issues which it wasn't entirely clear whether they
10 were policy issues or just other kinds of issues in
11 the case, so we have prepared a form and just have
12 made 30 copies of that available.

13 MS. BUTLER: Department of Defense has also
14 prepared a list and I only have 20 copies but
15 hopefully we could make more if that were necessary.

16 MR. BUTLER: TRACER has reviewed the DOD
17 list and with one minor addition we would be prepared
18 to recommend that list as well.

19 MS. WEISKE: Your Honor, MCI has actually
20 reviewed a number of lists and would have some
21 proposed additions and modifications to those lists.

22 JUDGE CANFIELD: What was that again, that
23 you would propose what?

24 MS. WEISKE: We have some proposed
25 additions and modifications to a number of the

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1 parties' lists that we've already been able to review
2 informally.

3 JUDGE CANFIELD: Any others that have
4 prepared lists?

5 MR. SHAW: Your Honor, I might state that
6 the company, public counsel and the staff had a
7 meeting prior to the hearing and compared lists and
8 the company's list was its effort -- the company's
9 list that it's prepared to distribute was its effort
10 to incorporate what it perceived to be the public
11 counsel and staff list. I'm not representing that
12 they agree with our characterization at all. I just
13 wanted you to know that the list that we will
14 distribute is what we understand to be the issues at
15 least raised so far by three parties.

16 JUDGE CANFIELD: Any others that haven't
17 made their preparation of a list known then?

18 Let the record so reflect. We could take a
19 break and have the parties distribute those having not
20 seen the other parties' lists, and I don't know
21 whether a proposed schedule has been distributed
22 either. We can deal with that as well before we take
23 a break and have those issues list circulated and
24 copies made as necessary. Mr. Smith, is there a
25 proposed schedule circulated in the matter?

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1 MR. SMITH: I've been informed by Mr.
2 Stapleton this morning that there is a schedule that
3 would be announced but that one of the critical weeks
4 is still in doubt and won't be resolved until tomorrow
5 at the earliest depending on what happens in another
6 proceeding that the Commission has to sit on.

7 JUDGE CANFIELD: Yeah. I've seen a
8 proposed list of dates as well, and there were some
9 complications as far as scheduling goes. I can go
10 ahead and supply that information, and we can come
11 back and make an announcement on that, but we can deal
12 with that off the record and give the parties the
13 benefit of the dates and come back on and make an
14 adoption on that, but before I take a break, as far as
15 the circulation of the issues list and dealing with
16 the schedule, any other matters to be dealt with?

17 MR. SHAW: Yes, Your Honor. As kind of
18 part of the need to identify issues in this case, the
19 company has proposed previously when this matter was
20 suspended for investigation and has had further
21 discussions with public counsel and staff about
22 possible role of a mediator in this process. Given
23 the number of parties and given the number of very
24 critical issues in the case that at a minimum such a
25 function could get the issues focused and get some

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1 consensus around some issues. We're still very
2 interested in pursuing that. There are some details
3 about would the Commission be the one that hires
4 such a mediator and would that be required and I know
5 Mr. Smith was thinking about some of those issues, but
6 whatever comments from the bench about that issue
7 could be made would be appreciated and it's something
8 that the parties should in our view continue to
9 pursue.

10 JUDGE CANFIELD: Additional comments on
11 that, Mr. Smith?

12 MR. SMITH: Yes. As Mr. Shaw indicated, we
13 have discussed this issue in some detail. There are
14 some concerns about who the mediator would be, whether
15 it would have to be someone with expertise in
16 telecommunications regulations and if so whether we
17 could agree to one. If it were someone without
18 expertise, in talking to people from other states
19 yesterday, that has not always been satisfactory
20 because of the level of technical detail involved in
21 regulating this industry.

22 As far as paying the mediator is also
23 problematical. If the company pays that may raise
24 problems under the new ethics statute and also might
25 give us concerns even if it is lawful for the company

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1 to pay, and if the Commission pays I have no knowledge
2 of the -- of how that fits in the present budget, but
3 we are certainly willing to explore ADR in this case.
4 Obviously it's going to be more difficult because of
5 the number of parties, but I think we're all committed
6 to try to see whether we can resolve some of these
7 issues in some alternative fashion.

8 CHAIRMAN NELSON: Well, that's where we
9 were at the open meeting is who and how much would it
10 cost. It sounds like you've not made any progress at
11 all. The other parties have any comments on that?

12 MR. TROTTER: We don't have anything more
13 to add other than the impact on the schedule is a
14 major concern of ours. If we take time out, which we
15 are in favor of, to try to resolve issues informally,
16 that's great, but if we have deadlines to distribute
17 testimony and so on it does pose issues for being able
18 to meet those deadlines.

19 COMMISSIONER HEMSTAD: Has the company
20 thought about precisely that point about how long such
21 a period would encompass and almost it would seem to
22 me the absolute requirement to extend appropriately
23 the time for decision by the Commission to take that
24 into account? Is that implicit in your proposal?

25 MR. SHAW: Our thoughts are this. First on

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1 the issues, it's very unclear to us whether we're
2 going to proceed with this case as a traditional
3 telecommunications rate case where you just identify
4 the revenue requirement and then you place that
5 revenue requirement first on business and carrier
6 customers with large contribution levels and then
7 residually on residential customers. That's the
8 standard model we've done for years and years and
9 years. If that is not the model that we need to
10 pursue in this case I think we need to get pinned down
11 some of the fundamental policy issues.

12 Our discussions with staff and public
13 counsel have been not fruitful in identifying those
14 issues. I think that the role of a mediator if
15 nothing else to get those issues focused and presented
16 to the Commission would be valuable if the Commission
17 itself may not be able to do that. That could be
18 done, I think, as an overlay on the case and I don't
19 think it affects the schedule. We of course have
20 prefiled our testimony as required and are ready to
21 distribute it today, so in that sense the company is
22 on the record of what it thinks the issues are. Our
23 concern is that the parties flail away for 11 months
24 over whether or not all rates should cover costs. We
25 could save a lot of pain and agony in this case if we

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1 could get it resolved, just as an example, that all
2 rates should cover costs. We should be able to flog
3 those kinds of relatively high level public policy
4 issues out and get the testimony focused.

5 In terms of settling the issues I think a
6 mediator could help identify where in fact there is
7 not any dispute or where there is dispute precisely
8 what that dispute is, and in terms of settling the
9 case, at this juncture it's probably premature to talk
10 about settling the case, but if we could get it
11 focused we would have a much better prospect of
12 settling the case, and if that looks possible as we
13 proceed the company would certainly be willing to
14 consider extending time. We also have, I think, some
15 interrelated issues of the AFOR petition and the
16 interconnection proceeding which involve exactly the
17 same issues and I think with the hope of a mediator
18 perhaps we could get those cases considered together,
19 at least informally if not informally, in order to try
20 to resolve these issues and not just push them back
21 and forth between dockets. So I think that there
22 could be a very good role of a mediator early on in
23 this case that would not require delaying or
24 postponing the schedule, and if it works we might be
25 able to extend the schedule. If we need to sit down

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1 for some very intensive work I think that we can do
2 a lot of this essentially outside the hearing room on
3 top of the case.

4 MR. WAGGONER: Your Honor, might I be heard
5 for a second?

6 JUDGE CANFIELD: Go ahead.

7 MR. WAGGONER: Daniel Waggoner for AT&T.
8 My experience with mediation is that mediation works
9 if you have information and if you're trying to avoid
10 pain, and the pain is sticking to the schedule, and I
11 guess I agree with Mr. Shaw that I believe there is a
12 role for mediation, but that it does not require, at
13 least initially, any postponement of the schedule, and
14 that in fact mediation will be enhanced if we are
15 moving forward with discovery, getting information,
16 understanding the positions of the various parties. I
17 don't see any reason why mediation can't run in
18 parallel with the normal schedule and then, as
19 Mr. Shaw suggests, if there needs to be delay, so be
20 it, but I would certainly urge the Commission to
21 either adopt or encourage mediation, but I see no
22 reason why that should require any postponement in the
23 scheduling. In fact, if we have a good schedule with
24 discovery and testimony dates I think that will
25 encourage the mediation process rather than hurt it.

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1 MR. TROTTER: My only concern, Your Honor,
2 is that at some point if we're going to have
3 cross-examination we need to be prepared for it and if
4 we're spending time in mediation productively, very
5 productively, we still need time to adapt to the
6 cross-examination environment at some point. If the
7 mediation doesn't work or if it streamlines issues it
8 still needs time. My calendar is pretty full with
9 several other dockets before this Commission. So
10 that's my only concern, and the notion that the
11 company is only willing to extend the time schedule if
12 it works, we're going to be pretty far down the line
13 before we know that.

14 MR. HARLOW: Your Honor, I have a concern
15 that may well be shared by several other intervenors
16 in this room, is probably something that U S WEST and
17 the staff and public counsel may not think of it a
18 lot, and that is that although the issues that affect
19 the Northwest Payphone Association and Metronet
20 Services Corporation are of great significance to
21 those companies this case is a lot bigger than that.
22 This is a 200-and-some million dollars rate case for a
23 billion dollar company and my client simply can't
24 afford to sit in a week of mediation listening for
25 four days and seven and a half hours to get their 30

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1 minutes of discussion in on the issues of importance
2 to them.

3 I think that we could perhaps mediate some
4 of our issues with U S WEST. What I would suggest is
5 that some consideration be given as we get into this
6 process, and I think maybe the parties can work it out
7 amongst themselves, but it's important that my clients
8 be able to participate and yet it's important that
9 their participation can somehow be limited so that we
10 don't have to invest the tremendous resources to go
11 through a mediation of huge, huge issues that are far
12 beyond the scope of my clients' interests. I think
13 that would be beneficial to everyone. There may be
14 parties who just don't want to sit in and listen to
15 the issues that we have to discuss.

16 COMMISSIONER HEMSTAD: Make a comment. I
17 don't see why it would be incumbent on you to attend
18 every minute of the mediation process. Wouldn't that
19 be a self-selecting, self-identifying mechanism?

20 MR. HARLOW: Yeah. I just want to make
21 clear that we will have that flexibility in the
22 mediation process, and that maybe we establish some
23 kind of a schedule about which issues will be dealt
24 with on which days and which timetable.

25 MR. BUTLER: If I can just add, based on

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1 experience in other states, these kind of proceedings
2 can get hijacked and in effect be used as a mechanism
3 to exclude participation by people that have
4 legitimate interests. They can become extremely
5 expensive and ultimately not productive, and that has
6 to be guarded against.

7 MS. WEISKE: And I would echo that concern,
8 after three years with U S WEST and other parties in
9 Oregon trying to resolve a number of these issues and
10 we are now trying to determine what our adjudication
11 schedule is going to be, that this process does not
12 get used to either unnecessarily delay the rate case
13 schedule or to, as Mr. Trotter indicated,
14 unnecessarily accelerate or constrain preparation for
15 actual hearing.

16 JUDGE CANFIELD: Any other comments?

17 MR. SHAW: Just briefly the issue of who it
18 is and who pays for it. It's always been my view, and
19 I admit I have not briefed it out elegantly, that
20 there is no problem with the company paying for it in
21 that it pays for the Commission's investigation anyway
22 as the regulated company. In our view that getting
23 somebody that was not necessarily expert in
24 telecommunications was the only practical thing to do
25 because of the tremendous time it would take with

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1 everybody proposing and vetoing candidates that they
2 think have some vested interest. If they're
3 knowledgeable in telecommunications they've been
4 making their living in it in some fashion and
5 presumably they're tainted to somebody in this room,
6 so I think just as a practical matter we need to look
7 for a mediator, a professional mediator, somebody that
8 knows how to scope people out and get people to agree
9 where there's really no disagreement instead of the
10 pit we fall into as lawyers of never agreeing to
11 anything in case it might be a mistake.

12 And that's what I hope for. Maybe I'm
13 Pollyanna, but if we don't know what the issues are in
14 this case until after we read the final briefs I think
15 this proceeding is going to be a disaster and I'm just
16 fishing for some way to get these issues focused. An
17 alternative, and I know the Commission staff is
18 stretched very, very thin, but if there is some
19 nontrial staff member of the Commission staff that
20 could fill that role we would certainly be willing to
21 consider that, but some effort to get input to the
22 Commission and input from the Commission without
23 offending any sense of propriety or ex parte or
24 whatever.

25 JUDGE CANFIELD: With that why don't we

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1 take our break and, as indicated, several lists have
2 been prepared and are available for distribution which
3 can be done at this time, and we can also discuss the
4 schedule and we'll come back on the record. Let's
5 take a break until 10 minutes to 11.

6 (Recess.)

7 JUDGE CANFIELD: We're back on the record
8 after our morning break, and I will note that the
9 parties did distribute lists and the parties have had
10 those to look at and discuss among themselves during
11 the break, and as far as the use of the lists, I think
12 that they are going to facilitate the understanding of
13 the parties and will serve as tools in that regard,
14 but I don't know if it was suggested earlier that the
15 Commission consolidate the lists and make one
16 overriding list, I don't think that's going to happen.
17 I think the parties will make use of the lists for
18 understanding purposes in preparing their cases, and
19 hopefully this will come together, and at the same
20 time the parties are certainly encouraged to agree on
21 the use of a mediator. I know it's been discussed,
22 there have been comments made earlier about the
23 mechanics of that. I think the parties are certainly
24 free to work out those details among themselves, and
25 as far as it being someone in or out of the

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1 telecommunications industry, there's certainly a merit
2 to have someone outside of the telecommunications
3 industry itself, a possible staff person has been
4 mentioned as well, and there are, I understand,
5 several staff persons that might be appropriate for
6 that function.

7 CHAIRMAN NELSON: Just looking at the five
8 lists of issues that have been submitted this morning
9 is daunting to us. It shows how far apart the parties
10 are, and U S WEST not having had a rate case in 13
11 years, I guess that's not surprising the parties would
12 be very far apart, and given the change in this
13 industry in the last 13 years that shouldn't be a
14 surprise to any of us. And as a couple of you are
15 careful to point out, this does not even begin to
16 address the specific accounting issues that may be
17 submerged in this case, so we would like to use the
18 lists as ways of encouraging you, the parties, to get
19 on with your data requests and your discovery as
20 efficiently as you can. We would like to encourage
21 you to do what you're doing and many of you are doing
22 in the parallel interconnection case, which is to try
23 to group yourself according to common interest, to try
24 to wherever possible combine parties with witnesses,
25 maybe several parties sponsoring a witness.

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1 Suggestion was made by Mr. Stapleton that
2 data requests perhaps be served on all parties and
3 responses to data requests be served on all parties
4 and to avoid redundancy in the discovery process,
5 and I think the judge didn't mention, but I think the
6 commissioners agree that we would like to keep the
7 schedule, however it turns out but pretty much the
8 schedule that's been circulated, to keep those
9 deadlines. As Mr. Shaw indicated, having those
10 deadlines may be efficient and provide some incentives
11 to trying to clarify, streamline and come to some
12 agreement on narrowing issues if possible.

13 And then with respect to the mediator, I
14 think it is a good idea to not look for someone with
15 telecom expertise. I would, however, suggest a list
16 of names of people known to the Commission who do ADR
17 in the environmental area or electric power area. And
18 they include Jim Arthur, who I think is still at the
19 Office of Financial Management here in state
20 government; Maura O'Neill, who has a consulting
21 business in Seattle; Alice Sharette, who I think has
22 her own consulting business in Seattle and has been
23 associated with the University of Washington; Bill
24 Elkerson, who is a lawyer in Tacoma and who used to be
25 the director of the Department of Wildlife and came up

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1 with the accord with the Indians and so on fishing a
2 long time ago; and former judge Bob Windsor who is
3 with that judicial mediation service in Seattle. And
4 those would be just names known to the Commission.
5 It's not meant to be a complete list. It's not
6 meant to exclude anyone, but that's a profile. Those
7 people are profiles of people who we think might
8 assist the parties, and we would suggest that the
9 parties see if any of those work.

10 We would like to suggest that our staff and
11 Mr. Shaw work out the question of the payment. You
12 have to agree on that or it won't begin. Arrangements
13 -- and perhaps staff, company and public counsel as
14 statutory parties could try very seriously to see if
15 this could work. It may be that you won't know each
16 other's positions until you get to the intervenors'
17 case, and we're thinking that perhaps we should summon
18 you all back and perhaps either have another
19 pre-hearing conference or a post-hearing conference
20 perhaps after the company presents its case to see how
21 you're doing on narrowing or settling issues. So see
22 how you react to that. I think Commissioner Hemstad
23 had another procedural question he wanted to ask.

24 COMMISSIONER HEMSTAD: The question has
25 been raised about consolidating proceedings, the

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1 interconnection case and whatever other related
2 matters. The question I have is if it is advantageous
3 -- is it better to have these run on simply a parallel
4 track or for due process purposes is it better to
5 consolidate them but within that consolidation
6 continue to have them run on different but parallel
7 tracks? Do counsel have any comments?

8 MR. SHAW: One observation, Commissioner.
9 The statutory periods are not that far off. I believe
10 the 11 months runs in October in the interconnection
11 case and in January in this case, and the company is
12 certainly willing to waive its right to the 11-month
13 period in the interconnection case. We think it's
14 very important that they be married, and whether we
15 continue to have the hearings on the separate track as
16 a subset of the rate case, that would be fine with us,
17 but we think that the Commission cannot make
18 intelligent decisions about how to restructure the
19 company's rates in the new environment we have without
20 seeing revenue requirement when it makes its decisions
21 about interconnection rates and rate design, so we
22 very much would support the idea of integrating them
23 for decision making purposes.

24 COMMISSIONER HEMSTAD: We can come out with
25 separate orders.

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1 MR. SHAW: Certainly, certainly.

2 COMMISSIONER HEMSTAD: In sequentially time
3 if things work out well. The narrow technical
4 question is, is it procedurally better to consolidate
5 them so that the parties are -- we can't have letter
6 claims that someone was not a party to someone or
7 other of the proceedings, consolidate them for
8 purposes of a unified record?

9 MR. SHAW: I think the parties are
10 virtually identical. The only one I can think of off
11 the top of my head that isn't here is TCG in the
12 interconnection case, and I suppose a couple of the
13 individual LECs are also in the interconnection case,
14 but parties overlap to a very substantial degree.

15 MR. BUTLER: There's MFS that is not here.
16 TCG.

17 MR. TROTTER: The interexchange.

18 MR. BUTLER: I certainly have --
19 Interexchange Coalition is not here.

20 COMMISSIONER HEMSTAD: Let me phrase it
21 this way. Is there any disadvantage to consolidating
22 so that those kinds of issues would be -- have been
23 addressed, I suppose, but then leaving them on
24 separate tracks?

25 MR. BUTLER: Well, I would certainly oppose

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1 consolidation because, one, I think it will
2 unnecessarily confuse the two cases. I think it's
3 important to get to an early decision in the
4 interconnection case. I don't think you have to wait
5 for some of the important policy decisions about the
6 terms and conditions, arrangements for interconnection
7 for the resolution of the U S WEST rate case. By the
8 same logic you'd say you would have to wait for a GTE
9 rate case. I don't think the two are necessarily the
10 same. I certainly have a personal problem as well
11 since I represent different parties in the two cases
12 and we have taken steps to make sure that those things
13 don't overlap. I'm not the only one in that
14 circumstance. Creates a great deal of difficulty in
15 my view. I think it's also from a substantive
16 standpoint would be undesirable. I think you get a
17 very confused mess and it makes it more difficult to
18 reach a rational decision on some very important
19 questions.

20 MS. WEISKE: And MCI Telecommunications as
21 well as MCI Metro -- and MCI Metro was not intending
22 to intervene in this case, but we have both intervened
23 in the other case -- would concur with everything
24 Mr. Butler said. You have a commonality,
25 Commissioner, of a specific set of issues that's a

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1 very specific subset in the local transport
2 restructure interconnection case. You have much
3 broader policy issues in that case that are not in the
4 current rate case. Having reviewed, unfortunately,
5 from my personal time, both cases in preparing both
6 the issues lists for today and testimony in the other
7 case, I would think it would be unduly cumbersome and
8 not particularly helpful to you as a decision maker to
9 consolidate the cases and would prefer to keep them
10 the way they are, but taking account in your decision
11 making and your final order with what we have done in
12 the current case in terms of how you want to deal with
13 it in this case.

14 MR. WAGGONER: If I might add, the other
15 factor in the interconnection case is that that's a
16 complaint case as well against GTE as to GTE's rates,
17 terms and conditions of interconnection, which doesn't
18 seem to have very much to do with U S WEST rate case.

19 MR. TROTTER: We think there is some merit
20 to having the revenue requirement being before you in
21 a procedurally correct way, although we do agree that
22 the hearings ought to be kept on a separate track for
23 both proceedings so that the important issue -- there
24 are many important issues in both dockets and so they
25 can be seen on their own stage, so to speak, but we do

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1 see some merit in having the revenue requirement
2 aspect before you in both dockets if that can be done
3 only through consolidation, although perhaps if a
4 decision was made in the interconnection case and then
5 the rate impact or whatever deferred pending the rates
6 case. I mean, you could imagine some other way of
7 doing it but certainly much more efficient if they
8 were consolidated that way.

9 MR. SMITH: Staff discussed or had
10 considered consolidation and we were inclined to favor
11 it as long as the separate hearing schedules went and
12 the company waived the suspension date in the
13 interconnection case. It does solve the problem of
14 linking the rate design with the revenue requirements
15 in the two cases, and it also gives you a record where
16 you're not going to miss anything. You will have a
17 consolidated record. So it avoids that problem. I
18 guess our concern was in deference to the alternative
19 exchange carriers and their interest in a quick
20 decision we sort of backed off on that idea and the
21 conflicts that some of the counsel have, but there are
22 some definite benefits we see. As Ms. Weiske and Mr.
23 Trotter pointed out, you're going to have to make this
24 linkage between the orders of the two cases to bring
25 the revenue requirements issue into line.

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1 MS. WEISKE: But, Your Honor, one way to
2 make that linkage is to make the policy determination
3 of how you want those interconnection rates to be
4 set and then account for the revenue requirement in
5 the rate case, which we do think has some logic to it,
6 rather than trying to take a very complex case and
7 overlay it on a very specific rate case as to U S
8 WEST, and, as Mr. Waggoner pointed out, GTE has also
9 been consolidated into that first case and this is not
10 a GTE rate case. Yet.

11 CHAIRMAN NELSON: Well, we will think about
12 that. Anything else?

13 COMMISSIONER HEMSTAD: We'll take that
14 under advisement.

15 MR. SHAW: I don't think that the
16 complaints involving GTE involve rate levels. Those
17 complaints are what tariffs should be paid, so I think
18 we can accommodate that, but just listening to
19 everybody it sounds like we can accommodate the need
20 for the Commission and the need for the company to set
21 those rates in relation to revenue requirement, and if
22 the case has two phases perhaps a policy phase and
23 then a rate phase which rolls into the rate case, it
24 seems like we can make it work and meet everybody's
25 objections. That's our main point is that we just

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1 don't think you can do something with 40 percent of
2 the company's revenue in a vacuum.

3 MR. WAGGONER: Excuse me, I have to
4 correct. There are specific requests for rates and
5 complaints against GTE.

6 COMMISSIONER HEMSTAD: Well, Mr. Shaw, from
7 your comment, I take it if the issues are
8 appropriately addressed then it wouldn't be inherent
9 that a consolidation would be required if it is done
10 -- if we do it right. We will get to the ultimate
11 result.

12 MR. SHAW: Cutting right to it, I don't
13 think it would be appropriate for the Commission to
14 decide that a rate is going to be X in the
15 interconnection case until it has the revenue
16 requirement before it. It could decide, I think, in
17 the interconnection case that that rate is going to be
18 computed or based upon certain public policy
19 considerations subject to finally being set in the
20 rate case.

21 CHAIRMAN NELSON: Let's just take it under
22 advisement.

23 COMMISSIONER HEMSTAD: We will take it
24 under advisement.

25 JUDGE CANFIELD: With that we still have to

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1 mark exhibits. We can take a break and do that and
2 come back on and do that. As far as a schedule, I
3 believe that's been alluded to earlier. The cross of
4 company for May 23, 25, 26, 30 and 31, and, as I
5 indicated, there are currently some conflicts that
6 will have to be worked out so this can 'tbe finalized
7 until next week sometime, so you can block these dates
8 off, but it will be firmed up and in the pre-hearing
9 conference order; and the prefiling date for staff,
10 public counsel and intervenors set at July 28; cross
11 of staff, public counsel and intervenors at August 28
12 through September 1; the prefiling date for company
13 rebuttal at September 25 with cross of company
14 rebuttal October 30 through November 3 with
15 simultaneous briefs set at December 8. Now, that's
16 tentative schedule at this point and will be firmed up
17 in the pre-hearing conference order that's going to be
18 issued hopefully next week sometime.

19 MR. TROTTER: Your Honor, could I ask a
20 procedural question on that?

21 JUDGE CANFIELD: Yes.

22 MR. TROTTER: We have had some recent
23 experimentation with, I think, what's being termed
24 cross rebuttal where parties -- staff, public counsel
25 and intervenors -- could respond to each other's cases

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1 on the same date that the company files its rebuttal.
2 Sometimes it adds work but -- and the Commission
3 can decide for itself if it's been helpful, but from
4 our perspective we think it's been reasonably helpful
5 and we would ask whether the Commission would be
6 interested in doing that this time.

7 CHAIRMAN NELSON: Sure.

8 COMMISSIONER HEMSTAD: Yes. Looks good.

9 COMMISSIONER GILLIS: Yes.

10 JUDGE CANFIELD: Any other comments on
11 that?

12 MR. SHAW: Well, I'm concerned about the
13 company losing its ability to rebut everybody's case,
14 and as long as that absolute right is preserved we're
15 willing to consider it, but since we have the burden
16 we have the absolute right to rebut any evidence that
17 the Commission considers.

18 JUDGE CANFIELD: Comments so noted and that
19 can be certainly looked at and dealt with as well and
20 in the pre-hearing conference order. We could break
21 to mark the exhibits and I think that should be about
22 it.

23 COMMISSIONER HEMSTAD: Your Honor, I would
24 like to add an additional comment to comments of the
25 chairman, with which I entirely agree. Obviously in

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1 case as complex as this, even as you're trying to
2 experiment with other mechanisms to facilitate these
3 cases, the fact that from the commissioners'
4 perspective at this point it seems not feasible for us
5 to come up in advance with an articulated list of
6 issues with some of the consequences of foreclosing
7 parties from potentially raising issues. That having
8 been said I would urge as strong as possible
9 admonition to encourage the parties to try to clarify,
10 simplify and agree upon issues that can overall
11 simplify these proceedings. Ultimately I think that
12 is in everybody's interest, and we will certainly be
13 as open as we possibly can to ways from our
14 perspective to try to enhance that process, but in
15 this environment it seems the burden is on the parties
16 to try to accomplish that result in the very tight
17 time frames that we have to deal with.

18 MR. TROTTER: Your Honor, just another
19 question. I noticed that the schedule -- again, in
20 other cases the company files its rebuttal before it
21 crosses the staff and intervenors. I think they call
22 it modified Oregon approach or whatever the term is,
23 but that's not being invoked here. I was wondering if
24 -- that would obviously streamline the hearing process
25 in terms of eliminating one phase, but I was just

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1 wondering if the company was opposed to that or if
2 they were neutral on that.

3 MR. SHAW: I'm sorry, Mr. Trotter. I don't
4 quite understand what your proposal is.

5 MR. TROTTER: In many other cases after
6 cross of the company and the distribution of the staff
7 and public counsel, intervenor testimony the company
8 engages in discovery and then files rebuttal before
9 crossing those parties and so then the cross of staff,
10 intervenor and public counsel and cross of the
11 company's rebuttal and any cross rebuttal would occur
12 all in one session as opposed to a separate cross
13 of staff- and intervenor-only phase. In other words
14 it would just eliminate the August 28/September 1
15 phase and maybe add a couple of days perhaps at the
16 back end. It's been viewed favorably by other
17 utilities. I don't know if this company has any
18 particular --

19 MR. SHAW: I would have to give a lot of
20 thought. Our first preference is for one set of
21 hearings, I think. Since we're not going to do that
22 I'm not going to argue that issue, we're doing it in
23 the traditional staggered way, I don't see where that
24 would partially consolidate other than to have the
25 same days of hearings in a sequence instead of

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1 breaking them up.

2 MR. TROTTER: Not to belabor, I think it
3 does tend to focus the issues because having the
4 rebuttal case and the direct cases all at once it does
5 tend to focus more on what the issues are, but I'm
6 sure the Commission can't force it on anyone but it
7 has been viewed favorably by other utilities.

8 MR. BUTLER: I would say from TRACER'S
9 standpoint we would support the notion of one set of
10 hearings.

11 MS. WEISKE: As would MCI. In other states
12 U S WEST rate cases are done in one set of hearings
13 rather than staggered in the traditional way that
14 Washington has chosen to do that.

15 MR. WAGGONER: We would support that as
16 well from AT&T perspective. Our experience is that
17 the record is best at the point in time when all of
18 the written testimony has been exchanged. Everybody
19 really has had a chance to focus their positions. It
20 certainly is possible that issues will fall out along
21 the way of that process. Not meaning to denigrate the
22 experience of crossing company at the end of May, but
23 I think it would be beneficial to all parties if we
24 exchange dall testimony and then had a single set of
25 hearings sometime in the fall with a very complete

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1 record. I truly think a lot of issues will fall out
2 along the way.

3 CHAIRMAN NELSON: So you're saying the
4 company testimony, staff and intervenors and the
5 company's rebuttal all at the same time.

6 MR. WAGGONER: Yes.

7 MS. WEISKE: Actually, Chairman, what you
8 will see is the cross of that witness can occur all at
9 the same time, too, for the reasons that Mr. Waggoner
10 pointed out. It does seem that that has been helpful
11 for commissions in other states.

12 MR. WAGGONER: And in fact that is the
13 procedure I believe we're using in the interconnection
14 case which allows us to get to a single set of
15 hearings at the end of June.

16 MR. SHAW: I support all the remarks of
17 counsel. That is our preference is for just one set
18 of hearings.

19 MR. SMITH: Hate to be the voice in the
20 wilderness here, but I have no objection to Mr.
21 Trotter's proposal and we certainly have done the
22 Oregon procedure in many cases including the
23 interconnect case, so it's not new. The staff,
24 however, would prefer to cross the company before
25 prefiling our direct case, but we will of course abide

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1 by whatever procedural ruling we get.

2 MR. TROTTER: Could I have a second? .

3 I have nothing further then.

4 CHAIRMAN NELSON: Well, do you object to
5 having them all at one time?

6 MR. TROTTER: Well, I think there is a
7 benefit to conducting cross of the company. In my own
8 mind whether that can be done through depositions,
9 which is of course available under the rules, or not,
10 or whether it has to be live here with all the
11 trappings, I don't know, but some opportunity to cross
12 the company before we distribute is often extremely
13 helpful. I noticed with this schedule we probably
14 wouldn't have depositions because of the timing
15 involved.

16 MR. WAGGONER: There's certainly -- if we
17 did go to a single hearing approach there would be
18 time for depositions prior to the prefiling of staff
19 and intervenor testimony and then of course prior to
20 the prefiling of rebuttal testimony and that way you
21 do get a chance to get the information you need
22 without doing it in the hearing room setting which is,
23 occasionally at least, more efficient and certainly
24 often some parties will just choose not to participate
25 in the depositions at all.

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1 COMMISSIONER HEMSTAD: Well, Commissioner
2 Gillis just made the comment to me that it also might
3 facilitate the simplification of issues process
4 because if everything is filed then everybody knows
5 what everyone else is saying and perhaps that's the
6 point at which clarification or simplification could
7 occur.

8 CHAIRMAN NELSON: Why don't we give you
9 another 10 minute break. Mr. Stapleton is here now
10 who controls our schedule and see if you could agree
11 on this. Five minutes.

12 JUDGE CANFIELD: We can take a recess at
13 this time. And come back at around 11:35.

14 (Recess.)

15 JUDGE CANFIELD: We're back on the record
16 after the recess during which time the parties had
17 some off-the-record discussion, and who will update
18 the record?

19 MR. SMITH: Several of us got together but
20 not all of us but I think it's okay. We haven't
21 changed much from the schedule announced earlier.
22 July 28 would remain the prefiling date for staff,
23 public counsel and the intervenors. The August
24 hearing dates would be unnecessary, as would the
25 May hearing dates. All parties would prefile the

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1 rebuttal on September 25. The change is on the grand
2 Oregon cross which would go from October 30th to
3 November 10, so we add a week of hearing in there.
4 November 10 is a holiday, but I think we would like to
5 have the possibility if agreeable with the bench of
6 going on a holiday if necessary. Briefs would be due
7 December 8th.

8 MR. SHAW: What was the discovery cutoff
9 date we had agreed to?

10 MR. SMITH: Thank you. The discovery
11 cutoff would be October 11th. Presumably all of the
12 discovery of direct would be done by then so that
13 would be the cutoff for the rebuttal discovery, and we
14 would have a seven calendar day response time subject
15 to the usual provision for providing a later response
16 if it's impossible to respond within the seven days.

17 JUDGE CANFIELD: We can certainly take some
18 time to look at that. It doesn't leave a lot of time
19 for briefing and commissioner deliberation and order
20 preparation.

21 MR. WAGGONER: Well, there's no change in
22 the brief schedule and the counsel have agreed to the
23 briefing so it's the burden on us to get the briefs
24 done in the short time period.

25 CHAIRMAN NELSON: Do you really think we

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1 can do an adequate brief in that short period of time
2 considering you've just had your hearing?

3 MR. SMITH: That's a concern. We're to the
4 point where things have to give and there was no other
5 way out of the dilemma that we could agree on area.

6 MR. WAGGONER: We have agreed on daily
7 transcripts which will assist in briefing as well, so
8 there won't be like we get the transcripts a week
9 after the hearing are done.

10 CHAIRMAN NELSON: From our point of view
11 this becomes a riskier proposition than it first
12 sounded because we really depend on the briefs to
13 figure out what the issues have been in the
14 traditional sense. And if the briefs aren't adequate
15 then we have a very short period of time, or if the
16 hearing schedule just becomes unrealistically short,
17 then we're looking at many of us take vacations around
18 the Christmas holidays. It gets to be very hard order
19 to think about doing by January 21.

20 MR. SMITH: Well, we would certainly
21 welcome more time on the brief but we understand your
22 review staff's problem, too, but maybe it would be
23 more beneficial to him and his staff to give us more
24 time on the brief. We certainly could well use the
25 time. Maybe I can just raise the issue again of

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1 waiving the suspension period by a week or two weeks
2 or whatever. I understand the company's position, but
3 part of the dilemma is the two filings at the same
4 time from the company.

5 MR. SHAW: Well, I just have no authority
6 to potentially waive the billion dollars of revenue
7 relief for the company at this juncture. We obviously
8 think that there's room at the front end of this
9 schedule but that was non-negotiable with some of the
10 parties that just simply would not agree to prefile
11 before July 28th which is over four months from now,
12 and plus our testimony has been on file for several
13 months with the staff and public counsel so it's not
14 like it's a big surprise, plus we've been audited for
15 many months before that when we were trying to do a
16 negotiated revenue review, so from the company's
17 perspective there's way too much time in the front end
18 of this schedule.

19 MR. WAGGONER: Setting that aside, though,
20 the burden is on us to do the briefs, and I personally
21 believe that there will be so much benefit in a
22 consolidated single set of hearings at a point in time
23 when everybody knows everybody else's full position
24 including rebuttal that those hearings will be much
25 more expeditious, and that many issues will no longer

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1 be in the case and that certainly counsel, if they are
2 wise and know this briefing schedule can begin the
3 process of writing briefs after they've got all of the
4 rebuttal testimony, and now obviously you change your
5 brief and you work on it as a result of the
6 cross-examination, but it's not as if you don't know
7 what the case is about before the cross-examination.
8 You know what the case is about when you've got all
9 the rebuttal testimony and will have all of that, as I
10 understand it, on September 25, and there's going to
11 be discovery going on during this entire process,
12 depositions, whatever, so it's not as if we're
13 starting out on November 10 writing briefs. We're
14 really starting out earlier with this schedule. And
15 we certainly have -- the parties have the greatest
16 interest of all in briefing the Commission well so
17 that the Commission understands fully the parties'
18 perspective on the issues.

19 CHAIRMAN NELSON: Okay.

20 JUDGE CANFIELD: We'll try the proposed
21 schedule and adopt it hopefully with the cooperation
22 that's been mentioned by the parties and that this
23 will be a workable undertaking, but with that we'll
24 adopt that modified schedule. And we're almost
25 through. We have the exhibits to deal with, but the

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1 company has provided a list of witness order so I can
2 go ahead and deal with that. No need to keep the
3 parties here to go through each of the exhibits with
4 that, so I can certainly announce that in the
5 pre-hearing conference order.

6 MR. SHAW: Your Honor, does the bench need
7 any further copies of the testimony?

8 JUDGE CANFIELD: I assume one official copy
9 is downstairs so I can take one just to make sure but
10 I'm assuming there's one downstairs, but thanks for
11 that offer and anyone who doesn't have a copy see
12 Mr. Shaw on that, and the list was circulated as far
13 as the service person and if you haven't designated
14 that, be sure to do so before you leave. This is up
15 front here, and as far as the possible consolidation
16 of DIS and Department of Social and Health Services
17 service person that was, was any discussion made of
18 that?

19 MS. MARCUS: It was but the attorney for
20 DSHS is not here. I've agreed to accept service on
21 behalf of both agencies and I have to wait until I
22 talk to the attorney.

23 JUDGE CANFIELD: Okay. So with that, the
24 service should be to you then, Ms. Marcus?

25 MS. MARCUS: Right.

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1 JUDGE CANFIELD: Okay. Thank you. And as
2 far as the -- there's going to be a notice of hearing
3 issued by the Commission then.

4 MR. SMITH: That's correct, Your Honor.

5 JUDGE CANFIELD: And as indicated our
6 office will be getting out a pre-hearing conference
7 order. The Commission will also be getting out the
8 protective order that was discussed earlier, and
9 anything further at today's session then? Hearing
10 nothing we'll adjourn today's pre-hearing conference
11 then. Thank you all.

12 (Hearing adjourned at 12:20 p.m.)

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