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1 AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST,
2 INC., and XO WASHINGTON, INC., by GREGORY J. KOPTA,
3 Attorney at Law, Davis Wright Tremaine, LLP, 1501
4 Fourth Avenue, Suite 2600, Seattle, Washington 98101.

5 ESCHELON TELECOM, INC., by DENNIS D. AHLERS
6 (via bridge line), Senior Attorney, 730 Second Avenue
7 South, Suite 1200, Minneapolis, Minnesota 55402.

8 COVAD COMMUNICATIONS COMPANY, by MEGAN
9 DOBERNECK (via bridge line), Attorney at Law, 7901
10 Lowry Boulevard, Denver, Colorado 80230

11 TRACER, by ARTHUR A. BUTLER (via bridge
12 line), Attorney at Law, Ater Wynne, LLP, 601 Union
13 Street, Suite 5450, Seattle, Washington 98101.

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

2 JUDGE BERG: With that, let's be on the
3 record. This is a prehearing conference in Docket No.
4 UT-023003 before the Washington Utilities and
5 Transportation Commission. This docket has been
6 captioned, In the Matter of the Review of Unbundled
7 Loop and Switching Rates and Review of the Deaveraged
8 Zone Rate Structure. This prehearing conference is
9 being conducted pursuant to notices. An initial notice
10 was served on parties on February 12th, 2002, and a
11 subsequent notice was served on parties on March 4,
12 2002.

13 I'm Administrative Law Judge Larry Berg.
14 I've been assigned as the presiding officer in this
15 case. I will be presiding along with the
16 commissioners. The commissioners will be advised by
17 David Griffith, senior policy telecommunications
18 analyst, and David Gable, the commissioners' outside
19 consultant, who has been active in all other generic
20 proceedings here at the commission. Today's date is
21 March 15th, 2002. This prehearing conference is being
22 convened at the commission's headquarters in Olympia,
23 Washington.

24 At this time, we will proceed to take
25 appearances. We will begin with commission staff,

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1 followed by public counsel. Then we'll come back to
2 the hearing room to Mr. Kopta, Ms. Anderl, and then we
3 will just let other parties on the conference bridge
4 announce their appearance. I've already reviewed the
5 information that parties should provide when stating
6 their appearance. We will begin now with Ms. Smith.

7 MS. SMITH: Thank you. Shannon Smith,
8 assistant attorney general, counsel for Commission
9 staff. My address is 1400 South Evergreen Park Drive
10 Southwest, Olympia, Washington, 98504-0128. The P.O.
11 box is P.O. Box 40128. My telephone number is area
12 code (360) 664-1192. Fax number is (360) 586-5522. My
13 e-mail address is ssmith@wutc.wa.gov.

14 MR. FFITCH: Simon ffitch, assistant attorney
15 general, public counsel section of the Washington
16 attorney general's office, 900 Fourth Avenue, Suite
17 2000, Seattle, Washington, 98164-1012. Phone number is
18 (206) 389-2055. Fax number is (206) 389-2058. E-mail
19 is simonf@atg.wa.gov.

20 MR. KOPTA: Gregory J. Kopta of the law firm
21 Davis Wright Tremaine, LLP, on behalf of AT&T
22 Communications of the Pacific Northwest, Inc., and XO
23 Washington, Inc. My address is 2600 Century Square,
24 1501 Fourth Avenue, Seattle, Washington, 98101-1688.
25 Telephone is (206) 628-7692; fax, (206) 628-7699;

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1 e-mail, gregkopta@dwt.com.

2 MS. ANDERL: Lisa Anderl on behalf of Qwest
3 Corporation, 1600 Seventh Avenue, Room 3206, Seattle,
4 Washington, 98191. Phone is (206) 345-1574; fax,
5 (206) 343-4040; e-mail, landerl@qwest.com.

6 JUDGE BERG: I'll try and assist parties on
7 the bridge. Let's start with Ms. McClellan.

8 MS. MCCLELLAN: Jennifer McClellan
9 representing Verizon Northwest, Inc. I'm with the law
10 firm of Hunton and Williams, 951 East Byrd Street,
11 Richmond, Virginia, 23219. Telephone is
12 (804) 788-8571; fax, (804) 788-8218; e-mail is
13 jmccllellan@hunton.com.

14 JUDGE BERG: Ms. Singer-Nelson?

15 MS. SINGER-NELSON: Michelle Singer-Nelson on
16 behalf of MCI WorldCom. My address is 707 17th Street,
17 Suite 4200, Denver, Colorado, 80202. My phone number
18 is (303) 390-6106. My fax number is (303) 390-6333,
19 and my e-mail address is michel.singer
20 nelson@wcom.com.

21 JUDGE BERG: Ms. Singer-Nelson, will you be
22 lead representative for MCI WorldCom?

23 MS. SINGER-NELSON: I will be lead
24 representative. I did want to say that Mr. Harlow
25 asked me this morning to mention that he would like to

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1 remain on the service list, however, so that he could
2 get direct filings of everything instead of relying on
3 either me or Megan to forward things to him, and since
4 there aren't as many people on the service list as
5 there were in past versions of the cost case, he asked
6 that we make this special request.

7 JUDGE BERG: Let me take that up after we've
8 concluded with other appearances. Thank you for
9 mentioning that, Ms. Singer-Nelson.

10 MS. SINGER-NELSON: Do you want me to put
11 his information in the record?

12 JUDGE BERG: Not at this point in time.
13 Ms. Doberneck?

14 MS. DOBERNECK: Megan Doberneck with Covad
15 Communications Company. My address is 7901 Lowry
16 Boulevard, Denver, Colorado, 80230. My telephone
17 number is (720) 208-3636. My fax number is (720)
18 208-3350, and my e-mail address is mdoberne@covad.com.

19 JUDGE BERG: Ms. Doberneck, will you be lead
20 representative for Covad?

21 MS. DOBERNECK: Yes, I will.

22 JUDGE BERG: Mr. Butler?

23 MR. BUTLER: Arthur A. Butler of the law firm
24 Ater Wynne, LLP, appearing on behalf of TRACER. My
25 address is 601 Union Street, Suite 5450, Seattle,

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1 Washington, 98101-2327. My telephone number is
2 (206) 623-4711. Fax number is (206) 467-8406. E-mail
3 is aab@aterwynne.com.

4 JUDGE BERG: Mr. Ahlers?

5 MR. AHLERS: My name is Dennis Ahlers,
6 representing Eschelon Telecom. The address is 730
7 Second Avenue South, Suite 1200, Minneapolis,
8 Minnesota, 55402. Phone number is (612) 436-6249, and
9 fax number is (612) 436-6349, and e-mail address is
10 ddahlers@eschelon.com.

11 JUDGE BERG: Are there any other parties
12 present or on the bridge line who wish to state an
13 appearance at this time?

14 MR. SHERR: Your Honor, this is Adam Sherr.
15 I would like to take appearance at this time on behalf
16 of Qwest as well.

17 JUDGE BERG: Ms. Anderl, will you be the lead
18 representative for Qwest?

19 MS. ANDERL: Yes.

20 JUDGE BERG: Mr. Sherr, why don't you go
21 ahead for the record and state your personal
22 information.

23 MR. SHERR: Address is 1600 Seventh Avenue,
24 Room 3206, Seattle, Washington, 98191. Telephone
25 number, (206) 398-2507; fax number, (206) 343-4040, and

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1 e-mail, asherr@qwest.com, and my last name is spelled
2 S-h-e-r-r.

3 JUDGE BERG: Anyone else?

4 MR. FFITCH: This is Simon ffitich. I just
5 wanted to also note that I may not be able to be in
6 attendance for the entire prehearing conference due to
7 a conflict with other matters. I did want to make sure
8 that public counsel made an appearance in this
9 proceeding. We have not made a final decision about
10 whether to file testimony, but we will proceed on the
11 understanding that we would expect to file some
12 testimony in the case and otherwise participate and
13 file briefs, and we would advise the Bench and parties
14 if we decide not to file testimony later in the
15 proceeding.

16 JUDGE BERG: That would be much appreciated.
17 At some point, we will go to an off-the-record
18 discussion. Feel free to cut in and let other parties
19 know when you need to leave, Mr. ffitich.

20 MR. FFITCH: Thank you, Your Honor.

21 JUDGE BERG: Anyone else? Let the record
22 reflect that there are no other responses. With
23 regards to Mr. Harlow, I know parties are accustomed to
24 working with Mr. Harlow as a lead representative in
25 this case, but we've also sought to maximize efficiency

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1 among parties by limiting service to one lead counsel.
2 Let me just open it up to other parties to see whether
3 any other parties object to also making service on
4 Mr. Harlow.

5 MS. SMITH: Commission staff does not object.

6 MR. FFITCH: No objection from public
7 counsel.

8 MS. ANDERL: Qwest does not object either,
9 and on that note, we would like to take up later
10 agreeing upon a different service list and more
11 inclusive for e-mail-type service. In other words, we
12 would not ask that hard copies be served on both myself
13 and Mr. Sherr since our offices are next to one
14 another, but for e-mail service, if we agree on that as
15 a substitute or additional type of service in this
16 docket, we both certainly would like to be included on
17 that list.

18 JUDGE BERG: Other parties?

19 MS. MCCLELLAN: Verizon does not have an
20 objection and would also be interested in exploring the
21 option of having an --

22 JUDGE BERG: Ms. McClellan, there was some
23 beeping on the bridge line, but I understand you do not
24 object to the service of Mr. Harlow and you also
25 endorse an expanded e-mail list?

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1 MS. MCCLELLAN: Correct.

2 JUDGE BERG: Anyone else wish to comment?

3 MR. KOPTA: We have no objection.

4 JUDGE BERG: As is our practice, I will
5 prepare a list of parties' representatives that will be
6 attached to the prehearing conference order to follow
7 this morning's proceeding, and along with other lead
8 counsel, I will include Mr. Harlow.

9 With regards to an e-mail list, I'll just
10 indicate to all parties that anyone who is not a lead
11 representative who also wants to receive e-mails from
12 myself need only let me know, and on those occasions
13 when I send e-mail to parties, I will also include
14 those other persons, whether it be a government
15 affairs, regulatory affairs person within the companies
16 or co-counsel.

17 Likewise, we will provide some time off the
18 record for other counsel to talk about this among
19 themselves. Whatever parties are willing to agree to,
20 they are certainly able to perform. The commission
21 also has in its rule a provision for parties to
22 formally accept service by electronic means, and if
23 it's the parties' intent to formally accept service,
24 they need to pay special attention to the commission's
25 rule.

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1 Also, the purpose of establishing a lead
2 representative list is only intended to be a minimal
3 service list among parties. Parties are free to enter
4 into any agreements with any other parties that they
5 wish for the service of additional copies. There may
6 be reasons why parties wish to extend some kind of a
7 quid pro quo. I will ask that parties also add
8 Dr. David Gable to their service list, and what I will
9 do is in the parties' representative list that is
10 attached to the prehearing conference order, parties
11 will find Dr. Gable's contact information as well.

12 During today's prehearing conference, I will
13 remind parties on the bridge that it may be necessary
14 while we are on the record that you identify yourself
15 before speaking, and also because the court reporter
16 doesn't have the benefit of a lot of the other visual
17 cues that she has when parties speak in person, you
18 will need to speak at just a slightly slower rate than
19 you may be accustomed to.

20 I've received two petitions to intervene.
21 There was a petition to intervene by Covad
22 Communications Company. Ms. Doberneck, I will just
23 indicate that based on my review of the commission's
24 records and the way the case has been established,
25 Covad is already identified as a party, and there was

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1 no need for Covad to file a petition to intervene or
2 for the commission to rule on that matter. Covad is
3 already recognized as a party.

4 MS. DOBERNECK: Thank you, Your Honor.

5 JUDGE BERG: Next, there is a written
6 petition to intervene by Eschelon Telecom of
7 Washington, Inc., submitted by Senior Attorney Dennis
8 Ahlers. Mr. Ahlers, let me just ask, based on your
9 review of the notices in this proceeding and other
10 information, do you believe that Eschelon would be
11 expanding the scope of matters before the commission
12 any broader than they already are?

13 MR. AHLERS: We would not.

14 JUDGE BERG: Do you represent that Eschelon
15 has an interest in this proceeding?

16 MR. AHLERS: Yes, we do, Your Honor. We are
17 a CLEC taking unbundled elements subject to these
18 prices.

19 JUDGE BERG: Do any of the parties have an
20 objection to the petition to intervene upon behalf of
21 Eschelon?

22 MS. ANDERL: No.

23 JUDGE BERG: Hearing no objection, the
24 petition to intervene upon behalf of Eschelon
25 Telecommunications is granted.

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1 MR. AHLERS: Thank you, Your Honor.

2 MS. ANDERL: Your Honor, based on your
3 comments with regard to Covad's petition, would it be
4 correct that the commission similarly considers Qwest
5 to be a party already to the docket?

6 JUDGE BERG: Yes. In the prehearing
7 conference notice that was served on parties on
8 February 12th, there was a list at Paragraph 9 of
9 parties and their representatives. I'll indicate that
10 to the extent there are parties identified on that list
11 that have not been identified in today's proceeding,
12 they will be dropped as parties overall.

13 For example, it shows Teligent Services,
14 Inc., as a respondent. The representative for Teligent
15 was Mr. Butler. Mr. Butler has only entered an
16 appearance for TRACER here this morning, so the
17 commission will just presume that Teligent Services
18 Inc., is not appearing to the extent that counsel
19 represents multiple parties, and they should certainly
20 make that known. To the extent that the parties that
21 counsel represent changes at any time during the
22 proceeding, we anticipate that counsel will notify the
23 commission right away. There is probably one other
24 respondent on that list that is identified. Otherwise,
25 all respondents identified in Paragraph 9 are

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1 considered parties to this proceeding based upon their
2 appearance here this morning. Any other questions
3 about that?

4 The next matter on my list is just a very
5 brief check of whether parties request that the
6 commission invoke the discovery rule in this
7 proceeding, that being WAC 480-09-480. Would staff
8 move for that discovery rule to be invoked?

9 MS. SMITH: Yes.

10 JUDGE BERG: Any objections? 480-09-480 is
11 invoked in the proceeding. Likewise, as a matter of
12 formality, the commission always checks with the
13 parties whether any party is going to request a
14 protective order in this matter. Let me just check
15 with Qwest Communications. Will Qwest be requesting a
16 protective order?

17 MS. ANDERL: It may be that one would be
18 necessary, so yes.

19 JUDGE BERG: Based on that, a protective
20 order will be entered. It's the commission's
21 expectation that there will be substantial confidential
22 materials in this docket, but let me also state that as
23 in the past, the commission requests that parties
24 carefully review documents that they are requesting
25 confidential treatment and see if it's possible to

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1 segregate nonconfidential information from confidential
2 information in order to maximize the ability of the
3 commission to deal with records and documents on the
4 record without taking other precautions. Any questions
5 about the protective order or the discovery rules?

6 MR. BUTLER: I assume that we will have a
7 chance to see the protective order and an opportunity
8 to object?

9 JUDGE BERG: Certainly, Mr. Butler. The
10 protective order will be served on parties as a
11 supplemental order. The commission has what you might
12 call a pro forma discovery order. It is constantly
13 being tweaked as the commission deems appropriate. If
14 parties have suggestions, whether it's framed as an
15 objection or a request for modification or a suggestion
16 for improvement of the protective order, that can be
17 made at any time. We will not limit the parties from
18 addressing the issues regarding the protective order to
19 a set period after the order is served. It can be made
20 at any time during this proceeding.

21 At this point, let's go ahead and conduct
22 further discussion off the record, and we will go back
23 on the record as necessary to formalize either
24 positions of the parties or decisions that are made.
25 We will be off the record.

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1 (Discussion off the record.)

2 JUDGE BERG: While we were off the record,
3 there has been a lengthy discussion regarding the
4 parties that intend to file direct evidence, the issues
5 to be addressed, and a hearing schedule. There is a
6 tentative hearing schedule to be made part of this
7 record.

8 The tentative schedule that we have is that
9 parties will file direct evidence on August 16th, 2002,
10 except for commission staff, which will file direct
11 evidence on August 30, 2002. All parties will file
12 response testimony on October 11. Parties will file
13 rebuttal testimony on November 8. There will be a
14 prehearing conference for the exchange of cross
15 exhibits and to conduct other prehearing business on
16 the morning of November 21. Parties shall file
17 prehearing motions no later than November 15 and
18 answers to motions no later than noon on November 20.
19 Hearings will begin at noon on Monday, December the
20 2nd, and will continue until completed. Our
21 anticipated date of completion will be December 13.

22 The commission will address the suggestion of
23 public counsel that a hybrid study be designated for
24 all parties to run data through as an apples-to-apples
25 comparison in addition to other cost studies they may

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1 be preparing as part of this prehearing conference
2 order to follow. There was another issue raised by
3 Mr. Kopta regarding the scope of issues to be addressed
4 in the XO, AT&T, and MCI WorldCom direct evidence
5 regarding loops. At this time, I will let Mr. Kopta
6 restate those issues regarding the consideration of
7 voice grade and high-capacity loops that the parties
8 propose be addressed in this proceeding. Subsequent to
9 the service of the order in docket No. UT-003013, Part
10 B, parties will be requested to submit comments on a
11 schedule that will be noticed to parties. Mr. Kopta?

12 MR. KOPTA: Our basic concern is to make sure
13 there is a consistent methodology used to determine the
14 prices and costs for both two-wire voice-grade analog
15 loops and higher capacity loops, D-1 and D-3 loops,
16 recognizing, of course, that the commission will be
17 issuing a decision in Part B in Docket UT-003013 that
18 addresses costs for high-capacity loops. We want to
19 make sure that whatever decision comes out of this
20 docket we are in today is going to be consistent with
21 the way that all loops are costed and priced.

22 By way of example, the copper and fiber
23 facilities used to provision two-wire loops are often
24 used to provision higher capacity loops. Same with
25 some of the electronics, if not most or all of the

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1 electronics used for provisioning two-wire or analog
2 DS-0-type loops over fiber would be the same
3 electronics that are used for DS-1 circuit, for
4 example, and we just want to make sure that the
5 estimate of cost for those facilities are the same and
6 are reflected the same in all of the loop rates that
7 the commission establishes.

8 So what we want to make sure is that when we
9 define the scope of this docket that if based on the
10 commission's decision in Part B there is a need, sync
11 up or perhaps revise some of the information the
12 commission used in Part B that there would be an
13 opportunity for that, and there have been additional
14 developments in other states since the record in Part B
15 of UT-003013 was closed. That may be something we need
16 to deal with in 3013, but just by way of making sure
17 that there is uniformity between the ways the various
18 types of loops are costed out by the commission, and
19 again, this will depend in large measure on the
20 commission's decision in that cost docket.

21 So I think it's appropriate to have comments
22 from parties, as you have suggested, once the Part B
23 order is ordered out and there is some ability to more
24 closely narrow the scope of what it is that we need, or
25 in our view, would need to be revisited by the

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1 commission in this docket with respect to high-capacity
2 loops.

3 JUDGE BERG: Thank you, Mr. Kopta. At the
4 time comments are requested by the commission, the
5 commission will indicate to parties whether there will
6 be one round or two rounds, and parties will have an
7 opportunity to prepare comments in a way that does not
8 conflict with the upcoming hearing in Docket No.
9 UT-003013 Part D. Anything else from the parties
10 before we adjourn?

11 MS. SMITH: No.

12 MS. ANDERL: Your Honor, we have a proposal
13 with regard to e-mail service, but I think we will just
14 put it in a letter and send it in as opposed to taking
15 -- maybe it won't take a lot more time. We would just
16 like the judge and parties to consider creating a
17 separate e-mail service list whereby parties would
18 agree to accept service via e-mail, that we could
19 include more counsel on that list and that the hard
20 copies could follow the due day or the next day just to
21 the official hard-copy parties.

22 MS. SMITH: I think we can work that out
23 among us. Unfortunately, Mr. Spinks has left, and I
24 don't know who he would want to include on the staff
25 list, so I can't address that right now anyway.

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1 JUDGE BERG: I think at this point, I
2 wouldn't want to either approve a fax filing on a
3 wholesale basis or give a sense that electronic filing,
4 that is, filing via e-mail attachment, is approved. I
5 will consider that on a case-by-case basis or an ad hoc
6 basis as due dates approach.

7 There will be an e-mail list that could be
8 put together from the representatives list that I will
9 attach to the prehearing conference order, and I
10 suggest that parties construct an initial list based on
11 those e-mail addresses and then circulate additional
12 addresses that the parties would like to have added to
13 the list, and if there was some disagreement, certainly
14 parties can come to me if they think that that process
15 is being abused or if parties are not being totally
16 fair with each other. I would be willing to get
17 involved, but otherwise, I expect that parties will
18 work that out.

19 As a general practice, I want parties to be
20 mindful that whenever fax filing or filing via e-mail
21 attachment is allowed, parties should expressly state
22 that they have authorization in their cover letter.
23 Also, we encourage parties, in fact, to provide
24 electronic versions via e-mail attachments just as a
25 matter of courtesy among counsel, and likewise, we will

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1 request that parties provide myself with the electronic
2 copy as well when pleadings are to be filed in addition
3 to the electronic version that parties will file at the
4 records center at the same time paper copies are
5 delivered.

6 MS. MCCLELLAN: Related to that, I would
7 clarify that service on the parties would be done so
8 that the other parties receive it on the same day that
9 it is due rather than it being mailed on the day that
10 it's due, and if that means that parties get it by
11 e-mail, that's okay with me, but there have been times
12 in the past where something is mailed, particularly
13 from parties in Washington State, that does not reach,
14 at least me, for at least a week.

15 JUDGE BERG: I think that it's a good
16 practice that the date that is set is a date for filing
17 and service to parties. If parties want to make
18 alternative arrangements among themselves, that is
19 satisfactory, but I will make that clear in the order
20 that unless parties have otherwise made separate
21 arrangements or unless separate authority is granted by
22 the commission that all dates that have been set are
23 dates for filing of copies at the commission and
24 service of copies to other parties.

25 MS. ANDERL: Your Honor, the only

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1 clarification I would add there is that the rule draws
2 a distinction between filing at the commission, which
3 means received at the commission, and service on the
4 parties, which does, to Ms. McClellan's point, just
5 mean sent, so if you intend both of those to mean a
6 received-by-other-party date, I would request that you
7 clarify that in the prehearing conference order,
8 because it's a different definition than the rule sets
9 forth.

10 JUDGE BERG: I will look at the rule and
11 consult with the records center and Bob Wallis,
12 director of the ALD, to see if there is a preferred way
13 to go, and I will make that clear in the prehearing
14 conference so parties know what to expect. Your
15 preference is noted, Ms. McClellan. Anything else from
16 the parties? Thank you everyone. We will be
17 adjourned.

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19 (Prehearing conference concluded at 12:00 noon.)

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