

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 In the Matter of the Petition)
 for Arbitration of an Amendment)
 4 to Interconnection Agreements of)DOCKET NO. UT-043013
)Volume II
 5 VERIZON NORTHWEST, INC.)Pages 76 - 113
)
 6 With)
)
 7 COMPETITIVE LOCAL EXCHANGE)
 CARRIERS AND COMMERCIAL MOBILE)
 8 RADIO SERVICE PROVIDERS IN)
 WASHINGTON)
 9)
 Pursuant to 47 U.S.C.)
 10 Section 252(b) and the Triennial)
 Review Order.)
 11 -----

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13 A prehearing conference in the above matter
14 was held on June 16, 2004, at 9:35 a.m., at 1300 South
15 Evergreen Park Drive Southwest, Olympia, Washington,
16 before Administrative Law Judge ANN E. RENDAHL.

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18 The parties were present as follows:

19 XO WASHINGTON, INC, by GREGORY J. KOPTA,
Attorney at Law, Davis, Wright, Tremaine, 1501 Fourth
20 Avenue, Suite 2600, Seattle, Washington 98101;
telephone, (206) 628-7692.

21

VERIZON NORTHWEST, INC., by TIMOTHY J.
22 O'CONNELL, Attorney at Law, Stoel Rives, 600 University
Street, Suite 3600, Seattle, Washington 98101;
23 telephone, (206) 624-0900, and SCOTT ANGSTREICH (via
bridge), Attorney at Law, Kellogg, Huber, Hansen, Todd
24 & Evans, 1615 "M" Street Northwest, Suite 400,
Washington, D.C. 20036; telephone, (202) 336-7959.

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1 SPRINT COMMUNICATIONS COMPANY, by WILLIAM E.
HENDRICKS, III, Attorney at Law, 902 Wasco Street, Hood
2 River, Oregon 97031; telephone, (541) 387-9439.

3 COVAD COMMUNICATIONS COMPANY, by KAREN S.
FRAME (via bridge), Attorney at Law, 7901 Lowry
4 Boulevard, Denver, Colorado 80230; telephone, (720)
208-1069.

5 NORTHWEST TELEPHONE, INC., by RICHARD A.
6 PITT, Attorney at Law, Post Office Box 667, 12119
Jacqueline Drive, Burlington, Washington 98233;
7 telephone, (360) 707-2925.

8 AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST,
by LETTY S.D. FRIESEN (via bridge), Attorney at Law,
9 1875 Lawrence Street, Suite 1575, Denver, Colorado
80202; telephone, (303) 298-6475.

10 MCI/WORLDCOM, U.S. CELLULAR, by ARTHUR A.
11 BUTLER (via bridge), Attorney at Law, Ater Wynne, 601
Union Street, Suite 5450, Seattle, Washington 98101;
12 telephone, (206) 623-4711.

13 FOCAL COMMUNICATIONS CORPORATION OF
WASHINGTON; ICG TELECOM GROUP, INC.; INTEGRA TELECOM OF
14 WASHINGTON, INC.; MCLEOD USA TELECOMM SERVICES, INC.;
PAC-WEST TELECOMM, INC., by EDWARD W. KIRSCH and PHILIP
15 J. MACRES (both via bridge), Attorneys at Law, Swidler,
Berlin, Shereff, Friedman, 3000 "K" Street Northwest,
16 Suite 300, Washington D.C. 20007; telephone, (202)
424-7877.

17 ADVANCED TELCOM GROUP, INC.; BULLSEYE
18 TELECOM, INC.; OCOMCAST PHONE OF WASHINGTON, LLC; COVAD
COMMUNICATIONS COMPANY; GLOBAL CROSSING LOCAL SERVICES,
19 INC.; WINSTAR COMMUNICATIONS, LLC; by HEATHER T.
HENDRICKSON (via bridge), Attorney at Law, Kelley, Drye
20 & Warren, 1200 19th Street Northwest, Washington D.C.
20036; telephone, (202) 887-1284.

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24 Kathryn T. Wilson, CCR

25 Court Reporter

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

2 JUDGE RENDAHL: Let's be on the record. Good
3 morning. I'm Ann Rendahl, the administrative law judge
4 and arbitrator presiding over this proceeding. We are
5 here before the Washington Utilities and Transportation
6 Commission this morning, Wednesday, June 16th, 2004,
7 for a prehearing conference in Docket No. UT-043013,
8 which is caption
9 ed, In the matter of the petition for
10 arbitration of an amendment to interconnection
11 agreements of Verizon Northwest, Inc., with competitive
12 local exchange carriers and commercial mobile radio
13 service providers in Washington pursuant to 47 U.S.C.
14 Section 252(b) and the Triennial Review Order.

15 Let's take appearances from the parties,
16 beginning with Verizon. If you've already made an
17 appearance in this docket, please state your name and
18 the party or parties you represent. If you are making
19 an initial appearance in this docket, please state your
20 full name, the party or parties you represent, your
21 full address, telephone number, fax number, and e-mail
22 address. Mr. O'Connell?

23 MR. O'CONNELL: This is Tim O'Connell with
24 the law firm of Stoel Rives on behalf of Verizon, and
25 I've previously appeared in this matter.

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1 MR. ANGSTREICH: This is Scott Angstreich
2 with the law firm of Kellogg, Huber, Hansen, Todd and
3 Evans.

4 JUDGE RENDAHL: I'm looking to see if you've
5 given an appearance.

6 MR. ANGSTREICH: I've been on the papers,
7 Your Honor, but I believe this is my first appearance.

8 JUDGE RENDAHL: I have an address for
9 Kellogg, Huber, Hansen, Todd, and Evans in Washington
10 D.C. for Mr. Panner. Would that be the same address?

11 MR. ANGSTREICH: It would be.

12 JUDGE RENDAHL: What about your telephone
13 number and e-mail, please.

14 MR. ANGSTREICH: My telephone number is (202)
15 326-7959; e-mail, sangstreich@khhte.com.

16 JUDGE RENDAHL: Who else has joined us on the
17 bridge line, please?

18 MS. JOHNSON: Karen Johnson from Integra
19 Telecom. I'm sorry I'm late.

20 JUDGE RENDAHL: For the Competitive Carrier
21 Coalition -- I'm going to go through in alphabetical
22 order -- Mr. Kirsch?

23 MR. KIRSCH: I've previously made an
24 appearance in this proceeding. My name is Edward
25 Kirsch. I'm with Swidler, Berlin, Shereff, Friedman,

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1 LLP, representing the Competitive Carrier Coalition.

2 JUDGE RENDAHL: Can you state the members of
3 the Competitive Carrier Coalition?

4 MR. KIRSCH: Integra, Pac-West, ICG, and
5 McLeod.

6 JUDGE RENDAHL: So have we lost a few members
7 then?

8 MR. KIRSCH: It's somewhat unclear. I'm sure
9 you've seen that Level 3 is going its own way,
10 withdrawing from the proceeding or attempting to.

11 JUDGE RENDAHL: I'm not sure I have but I'll
12 take your word for it, so Level 3 is not considered
13 part of the group.

14 MR. KIRSCH: It's a little ambiguous.
15 Allegiance Telecom and DSLnet are sort of inactive
16 participants.

17 JUDGE RENDAHL: So you said Integra, ICG,
18 Pac-West, McLeod. What about Focal?

19 MR. KIRSCH: Yes, we represent Focal, Your
20 Honor.

21 JUDGE RENDAHL: What about Adelphia Business
22 Solutions?

23 MR. KIRSCH: Adelphia is inactive.

24 JUDGE RENDAHL: So for purposes of your
25 appearance this morning, you are representing Focal

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1 Communications, ICG, Integra, McLeod, and Pac-West.

2 MR. KIRSCH: That is correct.

3 JUDGE RENDAHL: Thank you for the
4 clarification.

5 MR. MACRES: Your Honor, this is Phil Macres
6 for the court reporter, just to make an appearance on
7 behalf of Swidler, Berlin, Shereff, Friedman, on behalf
8 of the Competitive Carrier Coalition.

9 JUDGE RENDAHL: So now turning to the
10 Competitive Carrier Group, Ms. Hendrickson?

11 MS. HENDRICKSON: This is Heather Hendrickson
12 with the law firm of Kelley, Drye, and Warren, and I'm
13 making an appearance on behalf of the Competitive
14 Carrier Group, which includes Advanced Telecom Group,
15 Bullseye Telecom, Comcast Phone of Washington, Covad
16 Communications, Global Crossing, and Winstar
17 Communications.

18 JUDGE RENDAHL: So KMC Telecom V is no longer
19 a member?

20 MS. HENDRICKSON: Yes. They are inactive,
21 Your Honor.

22 JUDGE RENDAHL: And Mr. Klein made an
23 appearance for the Competitive Carrier Group at our
24 first prehearing. I assume your address is the same as
25 his?

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1 MS. HENDRICKSON: Yes, Your Honor.

2 JUDGE RENDAHL: I'm assuming your fax number
3 would be the same.

4 MS. HENDRICKSON: Yes, and my telephone
5 number is area code (202) 887-1284.

6 JUDGE RENDAHL: Your e-mail address?

7 MS. HENDRICKSON:
8 hhendrickson@kelleydrye.com.

9 JUDGE RENDAHL: Thank you, very much. For
10 Covad, Ms. Frame?

11 MS. FRAME: My name is Karen Frame with Covad
12 Communications Company, and Kelley Drye is also
13 representing us.

14 JUDGE RENDAHL: Thank you. Ms. Johnson for
15 Integra? I don't believe you've made an appearance yet
16 in this proceeding; is that correct?

17 MS. JOHNSON: We are represented by
18 Mr. Kirsch, Your Honor.

19 JUDGE RENDAHL: So you're appearing today for
20 interest or to state an appearance?

21 MS. JOHNSON: Just for interest.

22 JUDGE RENDAHL: Is there anyone on the line
23 for Marathon Communications? Okay. For Northwest
24 Telephone?

25 MR. PITT: This is Richard Pitt. I've

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1 previously filed a notice of appearance. This is my
2 first inperson appearance.

3 JUDGE RENDAHL: So your notice of appearance,
4 I'm just going to go through the information to verify
5 it's still correct. You're at P.O. Box 667, 12119
6 Jacqueline Drive in Burlington, Washington, 98233, and
7 your phone number is (360) 707-2925.

8 MR. PITT: Yes.

9 JUDGE RENDAHL: And fax is (360) 707-2925,
10 and your e-mail is rapitt98232@msn.com?

11 MR. PITT: Yes.

12 JUDGE RENDAHL: For Sprint?

13 MR. HENDRICKS: This is Tre Hendricks for
14 Sprint, and I've made an appearance in this proceeding.

15 JUDGE RENDAHL: For MCI and U.S. Cellular?

16 MR. BUTLER: This is Arthur A. Butler.

17 JUDGE RENDAHL: I don't believe you've stated
18 an appearance for MCI or US Cellular.

19 MR. BUTLER: No, I haven't. Arthur A. Butler
20 with the law firm of Ater Wynne, LLP. Address is 601
21 Union Street, Suite 5450, Seattle, Washington,
22 98101-2327; telephone, (206) 623-4711; fax,
23 (206) 467-8406; e-mail, aab@aterwynne.com.

24 JUDGE RENDAHL: Thank you very much. For XO
25 Washington?

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1 MR. KOPTA: Gregory Kopta of the law firm
2 Davis, Wright, Tremaine, LLP, representing XO
3 Washington.

4 JUDGE RENDAHL: Thank you. As I stated off
5 the record, the purpose of the prehearing this morning
6 is to determine the procedural schedule for this
7 arbitration, in particular, hearings and briefs now
8 that the dispositive motions have been addressed and
9 the USTA-II decision is now in effect, and are there
10 any other issues that the parties wish to address this
11 morning?

12 MS. FRIESEN: Your Honor, this is Letty
13 Friesen for AT&T. I just wanted to enter an
14 appearance.

15 JUDGE RENDAHL: And you've previously stated
16 an appearance in this docket; correct?

17 MS. FRIESEN: Yes. I just wanted to let you
18 know I'm on the bridge.

19 JUDGE RENDAHL: We were just finishing the
20 appearances and going into the main part of our
21 prehearing this morning, and as I just said, really
22 what we need to do this morning is to finalize the
23 schedule in this proceeding now that the dispositive
24 motions have been addressed and the USTA-II decision is
25 now in effect, and I was just asking if there are any

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1 other issues the parties wish to discuss this morning.

2 Hearing nothing, I think the first order of
3 business is addressing the proposed issues list that
4 Mr. O'Connell distributed by e-mail yesterday.

5 Ms. Friesen, did you receive a copy of that?

6 MS. FRIESEN: No, I did not.

7 JUDGE RENDAHL: It was sent by e-mail late in
8 the day about five o'clock yesterday.

9 MR. O'CONNELL: I had thought Ms. Friesen was
10 one of the addressees of that. Ms. Friesen, that came
11 from me late in the day yesterday afternoon Seattle
12 time.

13 MS. FRIESEN: I'm checking for it right now.
14 We were having phone or server problems yesterday.

15 JUDGE RENDAHL: Let's be off the record for a
16 moment.

17 (Discussion off the record.)

18 JUDGE RENDAHL: While we were off the record,
19 Ms. Hendrickson agreed to forward another copy of the
20 issues list, and I'm going to ask Mr. O'Connell to go
21 over the proposed issues list and explain it for us.

22 MR. O'CONNELL: Tim O'Connell for Verizon,
23 and let me apologize again for this early summer cold.

24 The list that Verizon has circulated is our
25 best attempt to capture all of the issues that have

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1 been raised by any party in this proceeding, and
2 furthermore, it is an attempt to do so in as neutral a
3 fashion as we can without making an argumentative or
4 advocacy piece. Going through the issues list, it
5 follows the same format, which is to first identify the
6 sections in the TRO amendment or its attachments that
7 are at issue in that particular issue.

8 JUDGE RENDAHL: Can I ask, when you say the
9 "TRO attachment" is that the amended petition
10 attachment?

11 MR. O'CONNELL: Yes, it would be, Your Honor,
12 the one as filed in March.

13 JUDGE RENDAHL: So what this purports to do
14 is to address issues raised both as to the original
15 petition and the amended petition?

16 MR. O'CONNELL: The amended petition for
17 those purposes, I think, should be considered as
18 supplanting the first one. It was an attempt to revise
19 the initial one to reflect the USTA decision. The
20 language that is used in the first column sections, the
21 TRO amendment is a very short document that reflects
22 the fact that this is an amendment to the preexisting
23 interconnection agreements and also some language to
24 the TRO attachment, which the amendment is several
25 different documents. The TRO attachment is the

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1 component of the TRO amendment that actually reflects
2 the terms and conditions that are impacted by the TRO.

3 While that may seem strange, to make it
4 consistent with the form of the interconnection
5 agreements to which this is an amendment, most of those
6 interconnection agreements have a base document, and
7 then there is a resale attachment and a UNE attachment,
8 and this would be just a TRO attachment to be in the
9 same format as the underlying interconnection
10 agreements.

11 JUDGE RENDAHL: But it does address not just
12 the original petition but the USTA-II issues.

13 MR. O'CONNELL: Correct. The USTA-II issues
14 are fully encompassed within the amended version as
15 filed in mid March. The final document that makes up
16 the TRO amendment is the pricing components.

17 The issues list that we circulated,
18 therefore, refers to the relevant sections of Verizon's
19 amendment document, and when appropriate, sections that
20 Verizon has seen from proposing CLEC's. So, for
21 example, and just as an example because it's the first
22 one I see on the list, if you look at Issue No. 5 in
23 the document we circulated, you will note that it
24 refers exclusively to issues raised by various CLEC's,
25 I should say language raised by various CLEC's

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1 reflecting that same issue, the issue that is described
2 in the third column of the issues list.

3 And we have then attempted in the final
4 column of the issues list to identify those CLEC's who
5 have raised that issue or disagreed with Verizon's
6 issue as reflected in the document, and again, we've
7 attempted to capture all issues raised by all parties,
8 and to be candid, as I think we've advised the ALJ
9 before, there are parallel proceedings along the same
10 lines as this one pending in other states, so this
11 document reflects information that we've obtained in
12 other proceedings to reflect CLEC's positions on all of
13 these issues, and again, we've tried to do so in a
14 neutral and objective fashion.

15 If you turn to the very last page of the
16 document, this issues list, we were in the process of
17 preparing it when we received Order No. 5 in this
18 docket, and frankly, we anticipated some of the
19 statements that the ALJ has made in Order No. 5 that
20 this proceeding will be need to be handled in various
21 phases, and very explicitly, Verizon would suggest that
22 there needs to be a distinct phase as to pricing. The
23 prices that are included in Verizon's filing are our
24 best preliminary estimates of the costs of the various
25 UNE's reflected therein, but we want to be very clear

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1 they are just that: estimates.

2 The company is in the process of preparing
3 state-specific cost studies for those UNE's, and a
4 state-specific cost study for the State of Washington
5 isn't completed yet. We anticipate it will be by late
6 summer or early fall. The pricing attachment does
7 include, as we state very clearly in Issue No. 45,
8 interim rates, as I say, are best estimates of those
9 rates.

10 So we believe this issues list fairly
11 represents all the positions that have been advanced by
12 any party in this proceeding, and I do want to make
13 clear that this is a Washington-specific issues list.
14 We have gone through the pleadings filed by all of the
15 appearing CLEC's to reflect their issues raised here.
16 So therefore, to the best of our ability to do so, it
17 does not reflect issues that may or may not have been
18 raised in other states. This is a State of
19 Washington-specific document.

20 We would propose that the parties, to the
21 degree that anyone has any comments on this issues
22 list, that we do so promptly and resolve those
23 questions on a fairly expeditious basis so that we can
24 proceed directly to briefing those issues. Verizon
25 believes very strongly that the issues raised by the

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1 TRO and USTA-II are legal issues, and we don't believe
2 that the testimony is required for any of these
3 amendments which reflect changes of law direct from the
4 FCC.

5 JUDGE RENDAHL: So your position is that
6 there are no hearings required in this matter. Just
7 briefing.

8 MR. O'CONNELL: Correct, Your Honor. No
9 evidentiary hearing will be required. I should be
10 clear. I would be the first to say that we would
11 probably need evidentiary hearings when we get to the
12 pricing phase, but for the first phase, which addresses
13 amendments to the interconnection agreements arising
14 from the TRO and USTA-II, we do not believe any
15 evidentiary hearings are necessary.

16 JUDGE RENDAHL: I'm going to turn to the
17 other parties in this proceeding, beginning in
18 alphabetical order because that's the easiest way to go
19 through this, for comments on the issues list. Now,
20 Ms. Friesen, do you want to go later maybe having just
21 received the issues list?

22 MS. FRIESEN: Your Honor, I haven't received
23 the list yet at all, and I'm concerned maybe they've
24 gotten the wrong e-mail address perhaps? I checked
25 through all my e-mail as of last night at seven and

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1 didn't get anything, and I still haven't gotten
2 anything this morning.

3 JUDGE RENDAHL: I have lsfriesen@att.com.

4 MS. FRIESEN: You kind of cut out there. I
5 think you said "ls." That's my correct address. I
6 don't know why I don't have it.

7 MS. HENDRICKSON: Could you say that again,
8 because I think the address that I forwarded it to, the
9 one from the original e-mail, isn't correct.

10 JUDGE RENDAHL: lsfriesen@att.com.

11 MS. HENDRICKSON: I'm resending it with that
12 address.

13 JUDGE RENDAHL: We'll come back to you then,
14 Ms. Friesen. Mr. Kirsch, any comments on the proposed
15 issues list?

16 MR. KIRSCH: No specific comments at this
17 point, but we only received the list at about 8:45 p.m.
18 last night, so we haven't had a chance to inventory it
19 against our pleadings or review the characterizations
20 that Verizon assures us are neutral, as well as see if
21 they reflect our ongoing settlement discussions with
22 Verizon that have occurred over the past week or so.

23 I guess I did have one question at this point
24 and that is Verizon just now I think is proposed that
25 we bifurcate the proceedings of Phase 1 and Phase 2

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1 with Phase 2 its issues -- I don't see an indication on
2 the list as to which issues are Phase 1 and Phase 2.
3 Is it safe to assume that Issue 45 and 46 are the Phase
4 2 issues in Verizon's view?

5 MR. O'CONNELL: May I respond? Thank you,
6 Judge. No. To be very clear, we think the distinction
7 there is that Issue 45 addresses the prices that are
8 set out in the pricing attachment that was submitted
9 along with the amended petition. Those prices reflect
10 our best estimates for the new elements that are set
11 forth therein. We believe Issue 45 should be taken up
12 as part and parcel of the first phase to reflect the
13 interim prices. Issue 46, which would be the final
14 prices once a state-specific cost study has been
15 prepared, would be the issue reflected in Phase 2.

16 MR. KIRSCH: Thank you for your
17 clarification. Phil, do you have anything to add to
18 that?

19 MR. MACRES: No. I concur with what Ed has
20 said. We haven't had a chance to review this list
21 thoroughly. We have prepared lists for other states,
22 and they are far longer than what Verizon prepared. We
23 have issues that Verizon has noted in its footnote and
24 it does not believe should be included in this
25 proceeding.

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1 However, under 252, CLEC's have the right to
2 include additional issues that are associated with the
3 amendment, for instance, dark-fiber loops and whatnot,
4 so these issues are consolidated without these -- with
5 the concerns that are raised at this point in time. We
6 haven't had an opportunity to go through this, so we
7 are concerned we are getting ahead of ourselves if we
8 try to do that now before going through that exercise.

9 JUDGE RENDAHL: I'm not precluding a response
10 at a set date by the parties. This is just sort of a
11 preliminary having looked at it, what are the issues
12 that jump out at you, and one of the things we will get
13 to before we finish today is probably some sort of a
14 response by all parties as to what they would modify on
15 the proposed issues list. Mr. O'Connell?

16 MR. O'CONNELL: Just to emphasize -- I do
17 want to be clear -- this issues list is as is reflected
18 in the Footnote 1 of the list. We do not concede by
19 any means that all of the issues are appropriate, but
20 this issues list does include our best efforts to
21 capture everybody's list, and I respond only because I
22 understand Mr. Macres's concern that he hasn't had the
23 opportunity to review it, and I certainly do not mean
24 to preclude anyone from doing so, but the one issue he
25 raised, access to unbundled dark-fiber loops, is

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1 specifically identified in Verizon's issues list at
2 Issue 11.

3 So again, I don't mean to preclude anyone
4 from responding, but we have in this list attempted to
5 capture everyone's issues, even though we may not
6 concede that it is an appropriate issue. We just
7 wanted to get this as an organizational document to get
8 the case moving.

9 JUDGE RENDAHL: I appreciate your efforts in
10 doing that, and what I'm asking from parties this
11 morning is your first reaction to this list. Anything
12 we need to consider as we are contemplating a date for
13 a counter-issues list by other parties? Mr. Kirsch, I
14 have one other question for you.

15 MR. MACRES: This is Phil Macres. Just to
16 respond to Verizon's point on dark-fiber loops --

17 JUDGE RENDAHL: I don't think we need to
18 counter on the merits this morning. That's not the
19 point this morning.

20 MR. MACRES: I wasn't intending to counter,
21 but the point that we had some provisioning terms and
22 conditions that we wanted to address in the amendment,
23 and I'm not sure if that's been captured by this issues
24 list. Thank you.

25 JUDGE RENDAHL: What I would like to do after

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1 I hear from everyone is to figure out the scheduling of
2 how we get our final issues list before we either go to
3 hearing or briefing on this, and what it may involve is
4 some communication by all of you not in formal pleading
5 but by actually communicating with one another and
6 trying to come up with a list. If you need my
7 assistance in doing that in some kind of a -- I don't
8 know -- some kind of an informal process, I'm happy to
9 do that. I've done it in other proceedings before, and
10 I'm happy to guide you all to some sort, if not agreed
11 upon, but some sort of settled issues list.

12 But what I want to hear from you this morning
13 are addressing the issue Mr. O'Connell raised, such as
14 the phasing, whether hearings are required, those sorts
15 of issues, because I think whether there are actual
16 issues that are missing or not, I think that's
17 something we can address later.

18 Okay. So Mr. Kirsch or Mr. Macres, on the
19 phasing issue and on the hearing versus brief issue,
20 any response to that comment by Mr. O'Connell?

21 MR. KIRSCH: As to phasing, I don't think we
22 oppose the phasing given that there is no cost study at
23 this point in time. As to whether a hearing would be
24 required, I think Mr. Macres is closer to having
25 developed our Rhode Island list.

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1 MR. MACRES: Your Honor, as a general matter,
2 with the exception of the pricing issues, we believe
3 that we can go right into briefing. We are still
4 negotiating certain issues with Verizon at this point
5 in time. We believe they are legal issues and Verizon
6 is indicating they are more factually based, so there
7 may be some issues that require a hearing, but that's
8 just based on our differing opinions about what the
9 issues actually are.

10 With respect to the phasing issue with the
11 pricing and costing, establishing rates, interim rates,
12 we do not agree that interim rates, Verizon should go
13 into effect immediately and permanent rates be
14 established. I think we will have to address whether
15 or not the rates are effective and address that in the
16 arbitration itself, but I just wanted to make clear
17 that we are arbitrating the rates and that by no means
18 did we establish a different phase accepting the
19 proposed rates by Verizon as interim rates.

20 JUDGE RENDAHL: I think that's understood,
21 that the issue of whether the rates should go into
22 effect as interim is part of the arbitration.

23 Let me go back to Mr. O'Connell for a
24 question and then go back to the parties, including
25 this, on your list. In the order I entered yesterday,

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1 I was contemplating that the TRO issues and the USTA
2 issues may need to be phased, because the USTA issues
3 just went into effect yesterday; although, they have
4 been out there in some uncertain form for some time. I
5 understand that Verizon did amend to include those
6 issues on March 19th, but they really did just become
7 ripe and effective yesterday, so I just want you to
8 address that issue, Mr. O'Connell.

9 MR. O'CONNELL: Thank you, Judge. We would
10 not agree that there needs to be separate phases
11 addressing issues raised by the TRO as opposed to the
12 revisions to that that is accomplished as a result of
13 the USTA. The DC Circuit's opinion has been out for
14 many months. In fact, the amended petition that is
15 pending before the Commission already incorporates the
16 revisions to the TRO attachment that arise by operation
17 of the USTA.

18 So to the degree that parties are dealing
19 from Verizon's March -- I think it was March 19;
20 although, I'm doing that from the top of my memory. To
21 the degree that the parties are dealing with the
22 operative amended document, the March 19 document, that
23 already reflects the revisions that results from USTA,
24 and frankly again as a legal matter, we don't think it
25 would be appropriate to delay, considering the results

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1 of the USTA decision, given that that is the operative
2 state of the law about what is and is not required in
3 the provision of the UNE's.

4 So we would respectfully suggest that a round
5 of briefing addressed to what we believe are legal
6 issues, legal issues as raised by the TRO and modified
7 perhaps by USTA, would be the appropriate way to
8 proceed, and frankly, we believe that's one set of
9 briefings. It's not two different sets of briefing, so
10 it would be the most efficient manner to use the
11 parties' resources to address them all at the same
12 time.

13 JUDGE RENDAHL: I'll go back to Mr. Kirsch
14 and Mr. Macres to add comments on that issue.

15 MR. MACRES: Your Honor, our position is that
16 we've been working with Verizon's updated petition, and
17 I think we agree with Verizon that we could do this
18 briefing in one fell swoop.

19 JUDGE RENDAHL: Now, Ms. Hendrickson, we are
20 finally to you now. Again, any preliminary thoughts on
21 the issues list, thoughts on how to respond to it, the
22 phasing issue, and the issue of whether hearings or
23 only briefs are necessary? Are you there,
24 Ms. Hendrickson?

25 MS. HENDRICKSON: Yes. This is Heather

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1 Hendrickson from Kelley, Drye, and Warren. We do not
2 have a problem with the format of the issues list. We
3 have seen this in other states. We also got this late
4 yesterday and need an opportunity to coordinate. My
5 colleague at the time is working on negotiating with
6 Verizon, and I would like to have an opportunity to
7 make sure there are no additional issues that are
8 competitive -- we do not have an issue with the format
9 of the issues list. We have seen this before, and we
10 just need an opportunity to match the issues with what
11 we have been working with Verizon and make sure there
12 are no additional issues we would like to add.

13 JUDGE RENDAHL: Thank you.

14 MS. HENDRICKSON: As to the next issue, the
15 phasing, we can agree that the legal issues do not
16 require an evidentiary hearing and can be done on
17 briefing. However, we do believe that the pricing
18 should be done in a second phase and that it would
19 require a full evidentiary hearing, including any
20 interim rates as mentioned before. We don't believe
21 that interim rates should go into effect to then later
22 determine the final rates.

23 JUDGE RENDAHL: Just to clarify, so you would
24 agree with Mr. O'Connell that the TRO issues and the
25 USTA issues can be addressed in one round of briefing

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1 with no hearing?

2 MS. HENDRICKSON: I believe that we can agree
3 that those issues can be handled at the same time --

4 JUDGE RENDAHL: But that the pricing would
5 need to be addressed in a separate phase?

6 MS. HENDRICKSON: Exactly.

7 JUDGE RENDAHL: Anything else you would like
8 to add?

9 MS. HENDRICKSON: No, I don't think I have
10 anything else to add, Your Honor.

11 JUDGE RENDAHL: Ms. Frame?

12 MS. FRAME: Covad actually concurs with the
13 approach that Kelley Drye is talking on our behalf.
14 They are handling our matters in a variety of states,
15 and the second phase regarding pricing is more
16 appropriately handled as everyone has discussed --
17 hearing phase, but the TRO issues, USTA-II can
18 definitely be handled on paper.

19 JUDGE RENDAHL: When you say USTA-II, you are
20 referring to what I call the USTA-II decision?

21 MS. FRAME: Correct.

22 JUDGE RENDAHL: Ms. Johnson, anything to add?

23 MS. JOHNSON: No, Your Honor.

24 JUDGE RENDAHL: Mr. Pitt for Northwest
25 Telephone, anything you would like to add?

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1 MR. PITT: No.

2 JUDGE RENDAHL: Would you concur with the
3 phasing approach?

4 MR. PITT: I think it makes sense to separate
5 the pricing issues. I guess I'm not quite convinced
6 that there might not be evidentiary issues involved in
7 Phase 1, but quite honestly, I haven't had time to go
8 through the issue list.

9 JUDGE RENDAHL: And we will address the
10 responsive time period for the issues list in a few
11 minutes. For Sprint, Mr. Hendricks?

12 MR. HENDRICKS: Tre Hendricks for Sprint. We
13 do appreciate Verizon's pulling together this issues
14 list and providing it before the conference.
15 Nevertheless, I'm not sure that Verizon has complied
16 with Commission's rules yet and with the Commission's
17 Order No. 5, which the Commission acknowledged that
18 Verizon has not provided the Commission with all
19 relevant documentation to arbitrate the issues,
20 including a summary of each parties' position with
21 respect to each issue.

22 And while I can probably infer Verizon's
23 position, one because I represent an ILEC in addition
24 to a CLEC, and also because we do have the sections of
25 the TRO amendment included in this list, I think this

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1 Commission's rules do require that Verizon carry its
2 burden and indicate a position, and it would be nice to
3 see another field in this spreadsheet that would have
4 Verizon's position laid out explicitly. It would
5 certainly make it easier for the parties to respond to
6 the issues list.

7 And things are happening so quickly, I'm not
8 sure that Verizon's position now is the same as it
9 would be two months ago when this proceeding was
10 initiated, and it certainly may be different with
11 respect to each party because negotiations have been
12 ongoing, and as to the two phases, I think that does
13 sound like a reasonable way to approach it, and Sprint
14 wouldn't object to doing that.

15 JUDGE RENDAHL: Mr. Butler?

16 MR. BUTLER: I have nothing to add.

17 JUDGE RENDAHL: So you would concur with the
18 two-phased approach dealing with the TRO and USTA-II
19 issues in one phase and pricing in another?

20 MR. BUTLER: Yes.

21 JUDGE RENDAHL: Mr. Kopta?

22 MR. KOPTA: Thank you, Your Honor.

23 Obviously, we are in the same position in terms of the
24 issues list. I think that it seems to be a good start
25 and something that we can work with, and the parties

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1 ought to be able to work it out among themselves in
2 terms of making sure it's an accurate list of all the
3 issues and that the issues are presented in what
4 everyone agrees is a neutral fashion, so we agree with
5 the other parties that have spoken on that issue to
6 date.

7 We also agree that the phrasing makes sense,
8 but we do part company with other parties on whether
9 the USTA-II issues should be included in the first
10 phase for two reasons. First, the FCC has, or at least
11 Chairman Powell has made public statements to the
12 effect that the FCC is considering interim rules that
13 address the USTA-II impacts on TRO, and it seems to
14 make sense to delay at least a little while to see what
15 the FCC is going to do, since it may, in fact, moot any
16 discussion of those particular issues, or it may raise
17 additional issues that need to be addressed by the
18 Commission. Who knows at this point.

19 The second reason is that to the extent that
20 the Commission needs to undertake its own inquiry with
21 respect to Verizon's obligation to provide unbundled
22 network elements that the DC Circuit vacated the FCC
23 rules on, then there may be some factual issues that
24 arise that need to be addressed through a hearing.
25 Specifically, the extent to which the Commission would

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1 need to undertake any kind of impairment analysis,
2 either under Section 251 of the Act or under Washington
3 State law is something that is obviously fact intensive
4 and would necessitate a hearing.

5 So I think that to the extent there is a
6 bifurcation, we agree that makes sense that the legal
7 issues, predominantly those arising out of the TRO,
8 should be addressed in the first phase, but the second
9 phase should include not only pricing but also USTA-II
10 issues.

11 JUDGE RENDAHL: Thank you. And now,
12 Ms. Friesen?

13 MS. FRIESEN: In large measure, I agree with
14 what Mr. Kopta has just said. AT&T would support a
15 phasing both the pricing and USTA-II issues, quite like
16 Mr. Kopta represented and for the very same reasons.
17 As far as interim rates are concerned, AT&T strongly
18 disagrees with Verizon's attempt at setting interim
19 rates.

20 In terms of holding a hearing, AT&T has
21 submitted earlier to Verizon a list of the issues it
22 believed requires a hearing. The list wasn't long. We
23 do believe that the predominant number of issues are
24 ripe for consideration and determination on the paper
25 alone, but we did have a few issues that we had

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1 proposed for hearing. I did not hear back from
2 Mr. O'Connell. At this juncture, I'm concerned he
3 didn't receive our proposal.

4 That said, I would like an opportunity to
5 look at this issues list, assuming that it assumed all
6 the issues that AT&T had already presented to Verizon,
7 I would like at least an opportunity to go through it
8 and mark those which we think we would prefer a hearing
9 on. So I guess that's where AT&T comes out with
10 respect to the schedule of the events so far.

11 JUDGE RENDAHL: Thank you. Mr. O'Connell,
12 any response?

13 MR. O'CONNELL: Well, yes. Just as a
14 logistics matter, Ms. Friesen and I have may be having
15 some e-mail problems because I do not recall the e-mail
16 she's referring to, and when I sent out the issues list
17 yesterday afternoon, I did not mean to exclude her
18 since I sent it to everyone else who appeared in the
19 docket. So I really just wanted to respond because
20 I've not seen the e-mail she's referring to.

21 I heard a fair amount of consensus on most of
22 these issues until we got to the question of X0 and
23 AT&T's position on how to structure the phases of this
24 document. We would respectfully disagree that there
25 needs to be any distinct phase for USTA-II issues. I

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1 believe both of the questions raised by Mr. Kopta and I
2 heard echoed by Ms. Friesen are inappropriate reasons
3 to defer consideration.

4 The FCC's announced intent to consider
5 interim rules, with all respect, we've all seen the
6 pace at which the FCC acts on these issues before, and
7 we think it would be inappropriate to defer
8 implementing operative law predicated on the FCC acting
9 at some time period in the future that is undetermined
10 and from experience we know is likely to be long.

11 As far as the need for the Commission to
12 conduct any inquiry of its own, we think that's
13 something that can be addressed on the papers.
14 Frankly, if the parties want to make a showing that
15 evidentiary hearing are necessary, let them make such a
16 showing, but we believe the issues that are raised by
17 the TRO and USTA-II are legal issues, and we should,
18 perhaps, move forward with those. So we would
19 reiterate our position as, I believe, is the consensus
20 position with a couple of outliers.

21 As to phasing and the format of the issues --
22 one other issue. I heard several of the parties
23 comment that they do want to review the issues list,
24 and we think that's completely appropriate. We are
25 very confident we've made an effort to capture

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1 everyone's identified issues. Mr. Hendricks raised the
2 question of whether or not Verizon has complied with
3 the Commission's procedural requirements for the rules,
4 and we think this issues list moves the parties forward
5 in that regard quite a bit. The sections that are
6 identified captures everyone's positions as to the
7 issues.

8 It is, frankly, a very difficult process,
9 because I certainly do not mean to suggest that the
10 different parties participating for the Commission do
11 not have nuanced differences in their positions on some
12 of these issues, and it is very hard to capture in a
13 single document that would be useful for the ALJ those
14 nuances on the parties' positions, and I respectfully
15 submit that having identified the issues and identify
16 broadly speaking what the parties' positions on those
17 issues are, which is what this issues list does, it
18 would not be a productive use of everyone's time for us
19 to spend a fair amount of time going through and trying
20 to capture the nuance of what makes the Swidler Berlin
21 take on Issue No. 1 different than the Kelley Drye take
22 on Issue No. 1 and what makes both of those takes
23 different than AT&T's take on Issue No. 1.

24 That is a process that would take a long
25 time. I submit it would not be terribly useful in the

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1 context of a multiparty proceeding, and having
2 identified the issues and broadly speaking what the
3 parties' positions are, we would suggest that those
4 nuances would be better reflected in the parties'
5 briefing, which I believe everyone thinks is a good way
6 to proceed.

7 JUDGE RENDAHL: Having heard from everyone,
8 this is what I'm thinking, considering my ruling in
9 Order No. 5. I do recognize the difficulty. This
10 isn't just a one-on-one arbitration, which makes it
11 difficult, but that was Verizon's choice, so it is
12 incumbent on Verizon as the petitioning party to bring
13 these issues to the Commission in a way that does what
14 arbitration is supposed to do, which is to resolve
15 issues in a very efficient manner. So I appreciate, as
16 other parties do, that you've attempted to consolidate
17 everything in your proposed issues list and understand
18 that other parties haven't had the necessary time to
19 review it and respond.

20 I think this is a good start, but I tend to
21 agree with Mr. Hendricks that an additional column or
22 columns might make this more helpful and almost as an
23 outline for the briefing, and I think that's what I
24 would like you all to discuss amongst yourselves is
25 whether this would provide, the issues as you've

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1 identified in here, would be the order in which the
2 issues would need to be briefed, whether they need to
3 be reorganized in a different order, and what columns
4 might need to be added to address Verizon's position,
5 whether it may have changed, as Mr. Hendricks
6 identified, to allow the parties to best brief the
7 issues.

8 I understand there have been negotiations
9 going on, and they probably are continuing, given
10 what's happened yesterday, and that there may be some
11 movement, and I think that kind of an issues list that
12 includes all the parties, not all of the nuanced
13 positions but a more general statement of positions, is
14 a very useful tool both for all of you in doing your
15 briefing and also for me as I'm going through the
16 issues.

17 Now, the next question is the timing. I
18 guess I am tempted to agree that although USTA issues
19 were not ripe until yesterday that in order to do this
20 most efficiently that the briefing should address all
21 the issues together. Given that, I think we need to
22 talk about the schedule and how much additional time we
23 need in the schedule, both to address the fact that I
24 don't think Verizon has at this point yet completely
25 complied with the Commission's procedural rules and

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1 given the holding the proceeding in abeyance and the
2 fact that the petition was amended and given the great
3 uncertainty that has been out there for all parties on
4 the legal issues until yesterday.

5 So I think we need to talk realistically
6 about how much time you all need to put together a
7 workable issues list that the parties can brief from
8 and that will be useful to me and then what the
9 appropriate briefing schedule would be, so I would like
10 to have us go off the record and have those discussions
11 off the record and then we will go back on the record
12 and put them on. Let's be off the record.

13 (Discussion off the record.)

14 JUDGE RENDAHL: Let's be back on the record.
15 While we were off the record, we discussed the
16 scheduling for the first phase, which would be the
17 issues relating to implementation of the Triennial
18 Review Order and any modifications under the USTA-II
19 decision.

20 The schedule the parties have agreed to is
21 that by June 23rd, a week from today, the CLEC's and
22 CMRS providers will respond to Verizon's proposed
23 issues list identifying if there is a different order
24 of the issues, identifying if there is any hearing
25 issues, and clarifying any of the issues how they are

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1 stated. It might also be helpful to clarify any party
2 positions that would be useful, and if parties do use
3 the proposed issues list that was sent out
4 electronically, provide any redlined changes to
5 Mr. O'Connell, that will make it much more easy for
6 Mr. O'Connell to provide the next draft.
7 Mr. O'Connell?

8 MR. O'CONNELL: I was just going to say for
9 the purposes of the bridge line, if there is anyone who
10 did not receive from me the actual document, please get
11 in touch with me and they can get it in a Word format.

12 JUDGE RENDAHL: Thank you. Verizon through
13 Mr. O'Connell will circulate to the parties a revision
14 to the proposed issues list by June 30th, and then
15 based on any comments that Mr. O'Connell receives on
16 that first draft that a final version, and hopefully
17 agreed-to version, of the proposed issues list would be
18 filed with the Commission by July 7th, and again, as I
19 stated off the record, I do not need to see the
20 responses by the parties to Verizon's initial list or
21 Verizon's revised draft. I would like to see the final
22 version. I understand that given the e-mail lists that
23 are out there, I may receive one or two of them, but in
24 general, I don't need to receive them. Take me and
25 Records off your list when you do that.

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1 On July 7th, Verizon should identify what
2 parties have identified as hearing issues, if those are
3 issues that all parties agree need to go to hearing,
4 meaning evidentiary hearing, or if one party or several
5 parties believe that certain issues need to go to
6 hearing, along with a proposed schedule for those
7 hearing issues, and we will resolve that either by an
8 additional prehearing conference or electronically
9 after my reviewing the Commission's schedule and my
10 schedule what will work.

11 On the issues that don't require a hearing,
12 initial briefing from the parties is due at the
13 Commission by July 30th, and reply briefing, those
14 briefs are due at the Commission on August 18th, and
15 then I will endeavor to put together an arbitrator's
16 report and decision by the end of September. Given
17 that, I will look to identify a date for the
18 commissioners based on the dates for responding and
19 providing petition for approval or petitions to review
20 the arbitrator's report decision so I can get something
21 on the commissioners' calendar given that the calendar
22 is quickly filling up.

23 As far as Phase 2, there is some discussion
24 about how to proceed on that, whether to consolidate it
25 with the current cost docket, which is Docket No.

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1 UT-023003; is that correct?

2 MR. KOPTA: That's correct.

3 JUDGE RENDAHL: At this time, given that
4 Mr. O'Connell doesn't know yet when the cost study for
5 Washington will be ready; although, he estimates the
6 end of the summer, early fall, those are always moving
7 targets, and one never knows when the cost study may,
8 in fact, be ready, so we will defer any scheduling or
9 consolidating of the cost study until it's filed.

10 So when Verizon is ready with its cost study
11 for Washington, Verizon should file it with the
12 Commission. It will be docketed separately from this
13 arbitration and from the cost docket, and at that time,
14 we will determine whether it needs to be consolidated
15 with the ongoing cost docket in No. UT-023003, and I
16 think that captures everything we discussed off the
17 record.

18 Is there anything I haven't stated on the
19 record that we discussed off the record that needs to
20 be discussed on the record? Hearing nothing, this
21 prehearing is adjourned. Thank you very much for your
22 time this morning and look forward to what you send to
23 me on the 7th.

24 (Prehearing concluded at 11:10 a.m.)

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