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

2 JUDGE WALLIS: The hearing will please come  
3 to order. This is a prehearing conference in the matter  
4 of Commission Docket Number UT-041394, which is a  
5 complaint by AT&T against Qwest. This conference is  
6 being held at Olympia, Washington on the 14th of October  
7 of the year 2004 before Administrative Law Judge C.  
8 Robert Wallis.

9 I'm going to take appearances now beginning  
10 with the Complainant.

11 MR. KOPTA: Thank you, Your Honor, Gregory J.  
12 Kopta of the law firm Davis Wright Tremaine, LLP, 2600  
13 Century Square, 1501 Fourth Avenue, Seattle, Washington  
14 98101-1688, telephone (206) 628-7692, fax (206)  
15 628-7699, E-mail gregkopta@dwt.com, appearing on behalf  
16 of AT&T Communications of the Pacific Northwest as well  
17 as AT&T Corp. Also appearing is T. Scott Thompson of  
18 the law firm Cole Raywid, R-A-Y-W-I-D, & Braverman, LLP,  
19 1919 Pennsylvania Avenue Northwest, Second Floor,  
20 Washington, D.C. 20006, telephone (202) 659-9750.  
21 And, Scott, would you provide your fax number and E-mail  
22 address.

23 MR. THOMPSON: Sure. The fax number is (202)  
24 452-0067, and my E-mail address is sthompson@crvlaw.com.

25 JUDGE WALLIS: Thank you.

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1 For the Respondent.

2 MS. ANDERL: Thank you, Your Honor. Lisa  
3 Anderl representing Qwest Corporation. My business  
4 address is 1600 Seventh Avenue, Room 3206, Seattle,  
5 Washington 98191, my phone is (206) 345-1574, my fax is  
6 (206) 343-4040, and my E-mail is lisa.anderl@qwest.com.  
7 In addition, there may be an appearance subsequently in  
8 the proceeding from my co-counsel, Adam Sherr,  
9 S-H-E-R-R, his E-mail is adam.sherr@qwest.com, and his  
10 telephone is (206) 398-2507. His business address and  
11 fax are the same as mine.

12 JUDGE WALLIS: For Commission Staff.

13 MS. JOHNSTON: Sally G. Johnston, Assistant  
14 Attorney General for Commission Staff, my street address  
15 is 1400 South Evergreen Park Drive Southwest, Olympia,  
16 Washington 98504. My telephone number is area code  
17 (360) 664-1193, my fax number is area code (360)  
18 586-5522, and my E-mail address is  
19 sjohnston@wutc.wa.gov.

20 JUDGE WALLIS: Thank you.

21 For the parties who have indicated that there  
22 will be other counsel appearing, we're going to list  
23 those who appeared as lead counsel this morning as the  
24 parties to contact on the official list, and if that  
25 changes, please notify us and the record center in

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1 writing so that we'll make sure that the communications  
2 go where they're supposed to go.

3 MR. KOPTA: We will, thank you, Your Honor.

4 JUDGE WALLIS: Are there any petitions for  
5 intervention? Let me ask if there is anyone in the  
6 hearing room that is here in a representative capacity  
7 that wishes to intervene in this matter?

8 Let the record show that there is no  
9 response.

10 Let me now ask if there is anyone on the  
11 bridge line who is acting in a representative capacity  
12 and would like to intervene in this matter?

13 Again let the record show that there is no  
14 response.

15 Do the parties desire a protective order in  
16 this docket?

17 MS. ANDERL: Yes, Your Honor.

18 MR. KOPTA: Yes, Your Honor.

19 JUDGE WALLIS: Very well, a protective order  
20 will be entered.

21 Do the parties desire to engage in discovery?

22 MR. KOPTA: Yes, Your Honor.

23 MS. ANDERL: Yes, Your Honor.

24 JUDGE WALLIS: Very well.

25 MS. JOHNSTON: I don't know.

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1                   JUDGE WALLIS: The prehearing order will  
2 invoke the discovery process as set out in the  
3 Commission's rules.

4                   Is there likely to be any request for or  
5 filing of dispositive motions in this docket?

6                   MS. ANDERL: Yes, Your Honor, Mr. Kopta and I  
7 have discussed this, and we believe that the case is  
8 amenable for a decision through cross motions for  
9 summary determination and would ask that a schedule be  
10 established that will contemplate such a filing.

11                   MR. KOPTA: That's correct, Your Honor.

12                   JUDGE WALLIS: Very well. Am I correct that  
13 the parties have discussed scheduling?

14                   MR. KOPTA: Yes, you are.

15                   JUDGE WALLIS: And is Staff aware of the  
16 proposed schedule that you have developed?

17                   MR. KOPTA: We had not had a chance to  
18 consult with Staff prior to the prehearing conference,  
19 so I would say that they probably are not aware.

20                   JUDGE WALLIS: Very well.

21                   Ms. Johnston, would you desire that we go off  
22 the record now for you to discuss with the parties their  
23 proposed schedule?

24                   MS. JOHNSTON: Yes, please.

25                   JUDGE WALLIS: We're off the record.

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1 (Discussion off the record.)

2 JUDGE WALLIS: The parties have had the  
3 opportunity to discuss the proposed schedule with Staff.  
4 Is that proposal going to be acceptable to the Staff?

5 MS. JOHNSTON: Yes, Your Honor.

6 JUDGE WALLIS: Could you read the proposal  
7 into the record, please.

8 MR. KOPTA: Certainly, Your Honor. We have  
9 agreed on the following schedule. By October 28th, the  
10 parties will serve data requests. The responses to the  
11 data requests will be due no later than November 11th.  
12 On the 19th of November, any motions to compel responses  
13 to those data requests will be filed. Responses to that  
14 or those motions will be due on December 1st. Whenever  
15 the ALJ is available during the week of December 6th  
16 there will be a hearing on those motions. And by  
17 December 21st, responses to compelled or compelled  
18 responses to data requests will be served on the  
19 requesting party. Initial cross motions for summary  
20 determination will be due on January 24th, 2005.  
21 Responses are due February 7th, 2005. And to the extent  
22 that the Administrative Law Judge or the Commissioners,  
23 depending on who will be hearing oral argument, is  
24 available, then oral argument on the motions would be  
25 sometime during the week of February 14th.

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1                   JUDGE WALLIS: Very well. And do I  
2 understand that the parties are not willing to waive an  
3 initial order if the Administrative Law Judge hears  
4 argument, but they are willing to waive the initial  
5 order if the Commissioners hear that argument?

6                   MR. KOPTA: That is correct, Your Honor.

7                   JUDGE WALLIS: Very well.

8                   I do not see a time here for the parties'  
9 agreement upon a record for consideration. What's the  
10 parties' view on that?

11                   MS. ANDERL: As to whether parties could  
12 stipulate facts?

13                   JUDGE WALLIS: Yes, that's correct.

14                   MS. ANDERL: We discussed that, and we do not  
15 think that that's something that's likely to occur or  
16 feasible to pursue at this time.

17                   JUDGE WALLIS: So the motion will be, what's  
18 the word I'm looking for, irrelevant to any underlying  
19 facts?

20                   MS. ANDERL: Excuse me, Your Honor?

21                   JUDGE WALLIS: Or vice versa, facts will be  
22 irrelevant to the motions?

23                   MS. ANDERL: We believe that discovery will  
24 produce a set of facts upon which the Commission can  
25 make a decision and that disputed facts, if any, won't

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1 be material to the Commission's determination. Whether  
2 the parties would actually be willing to sit down and  
3 agree that their discovery responses are facts that they  
4 would stipulate to for purposes of the decision I think  
5 is the hurdle.

6 JUDGE WALLIS: You think is what?

7 MS. ANDERL: Is going to be the hurdle. So I  
8 think if we can get the discovery responses in and then  
9 the parties can argue from those. I don't know that the  
10 parties are going to be able to sit down and stipulate  
11 facts 1 through 20 for purposes of decision.

12 Is that correct, Mr. Kopta?

13 MR. KOPTA: That's correct, our anticipation  
14 is that the factual information that the Commission  
15 needs to render a decision will be presented in the form  
16 of responses to data requests, and those obviously will  
17 not be disputed since they will be responses of the  
18 party to the data request, and that no other factual  
19 information will be presented.

20 JUDGE WALLIS: Very well. Is there any  
21 comment on this proposal?

22 MS. JOHNSTON: That's perfectly acceptable to  
23 Staff, Your Honor.

24 JUDGE WALLIS: Very well.

25 MS. ANDERL: And, Your Honor, one

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1 clarification. I agree with the schedule as Mr. Kopta  
2 read, I simply don't want there to be an impression, and  
3 I don't think AT&T has the impression, that the October  
4 28th date is the only date or a discovery cutoff of some  
5 kind. We contemplated that that would be the point in  
6 time by which parties should have served all of their  
7 discovery that we might ultimately need to tee up in  
8 motions to compel, but there may well be follow-on  
9 discovery. For example, if we file -- if we serve  
10 discovery on the 28th and we get some responses on the  
11 11th that we do not need to move to compel on, we may  
12 have some follow-up questions to those answers. And I  
13 don't think the parties have contemplated that we  
14 couldn't do follow-up discovery. I think there's just  
15 an understanding from some disputes in other  
16 jurisdictions that there may be objections and motions  
17 to compel necessary, and that's why we built that in.

18 JUDGE WALLIS: Very well.

19 Mr. Kopta, is that consistent with your  
20 understanding?

21 MR. KOPTA: Yes, Your Honor. I mean our  
22 preference, of course, would be that all discovery would  
23 be served by October 28th, but since at this point we  
24 don't have that discovery in hand or the responses, then  
25 we don't need to foreclose the opportunity for follow-on

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1 discovery. Our only concern, of course, is to make sure  
2 that the schedule proceeds as we have outlined it. And  
3 so if there is follow-up discovery, then if there are  
4 disputes as to responses to that, we would want to make  
5 sure that those are resolved prior to the dates that we  
6 have established for cross motions.

7 JUDGE WALLIS: Very well.

8 MR. THOMPSON: Your Honor, if I may, this is  
9 Mr. Thompson, might I suggest that, in fact, we set some  
10 sort of overall discovery deadline, perhaps a few weeks  
11 after the 11th date so that the parties have a chance to  
12 review documents that are produced. But I just am  
13 suggesting that so that all the parties understand that  
14 there is a particular time in which discovery will, in  
15 fact, be closed so that they can then concentrate on  
16 preparing for the summary disposition motions.

17 JUDGE WALLIS: Would that appropriately be a  
18 relatively short period after the 21st of December,  
19 which is the due date for any compelled responses?

20 MR. THOMPSON: I think that that probably is  
21 a correct timing, so maybe even the 31st of December,  
22 which is ten days later, and it's also a Friday.

23 MS. ANDERL: Your Honor.

24 JUDGE WALLIS: I'm conscious of the competing  
25 activities during that time frame, would it still be

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1 feasible if the motion is due on the 24th to have the  
2 deadline a few days following that?

3 MS. ANDERL: Your Honor, the compelled  
4 responses being due on the 21st and so the discovery  
5 cutoff being something like the 27th or 28th?

6 JUDGE WALLIS: No, I'm thinking sometime  
7 after the 1st, or are the parties happy with this?

8 MS. ANDERL: Well, Your Honor, from a purely  
9 personal standpoint, I have no vacation left this year.  
10 I will be working the week between Christmas and New  
11 Years.

12 JUDGE WALLIS: All right.

13 MS. ANDERL: So we can select a discovery  
14 cutoff date that is that week sometime without affecting  
15 me in any negative way. I don't know about anybody  
16 else.

17 JUDGE WALLIS: Well, the 31st then.

18 Very well, there is no dissension regarding  
19 that.

20 Very well, is there anything else to come  
21 before the Commission at this time?

22 MR. KOPTA: Your Honor, I would make one  
23 other procedural point, and that is in light of the fact  
24 that there are two parties here, at least with respect  
25 to discovery can we serve data requests and responses

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1 electronically with follow-on hard copy? I don't know  
2 whether it will be necessary to do that with respect to  
3 filings with the Commission, but certainly that's been  
4 the practice up to now. And I haven't discussed this  
5 with Ms. Anderl, but I would be hopeful that that would  
6 continue to be the sort of informal as well as formal  
7 process for discovery.

8 MS. ANDERL: Your Honor, we would consent to  
9 that so long as, I know this won't be a problem, so long  
10 as my co-counsel is added on the electronic copy.

11 JUDGE WALLIS: Very well.

12 For Staff.

13 MS. JOHNSTON: That's fine.

14 JUDGE WALLIS: Excellent.

15 We still are not at a point where any actual  
16 filings with the Commission may be filed solely  
17 electronically, so to the extent that any document is  
18 necessary for consideration, it must be filed in an  
19 analog fashion on paper and pursuant to the Commission's  
20 formatting requirements for such paper filings.

21 MR. KOPTA: Thank you, Your Honor, and I  
22 assume, as has been the practice in other proceedings,  
23 should there be a need, unforeseen at this point but  
24 that arises later, to request electronic filing on the  
25 due date with follow-on hard copy that we would be

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1 allowed to present that to you?

2 JUDGE WALLIS: The parties will certainly be  
3 allowed to make that request.

4 MR. KOPTA: Yes, that's what I'm saying a  
5 little less directly.

6 JUDGE WALLIS: If absolutely necessary in as  
7 much as these dates are selected by the parties.

8 MR. KOPTA: Well, that's true, but, you know,  
9 hindsight may be 20/20, but the future is not.

10 MS. ANDERL: There are always circumstances  
11 that intervene, Your Honor, as I'm sure you understand.

12 JUDGE WALLIS: We have noticed that  
13 occasionally, yes.

14 All right, is there anything further to come  
15 before the Commission at this time?

16 MS. ANDERL: No.

17 MR. KOPTA: No, Your Honor.

18 JUDGE WALLIS: Very good. Thank you all very  
19 much, and a prehearing order will be entered, and a  
20 discovery order will also be entered. Thank you.

21 (Hearing adjourned at 10:00 a.m.)

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