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

2 JUDGE TOREM: It's now Tuesday morning, May
3 27th, 2008. My name is Adam Torem, T-o-r-e-m. I'm the
4 administrative law judge for the Utilities and
5 Transportation Commission here, and we are convened in
6 Olympia, Washington, for the matter of a petition for
7 arbitration regarding an interconnection agreement with
8 Comcast Phone of Washington, LLC, and the United
9 Telephone Company of the Northwest, Incorporated, which
10 does business under the name of Embarq.

11 Let me take appearances from the attorneys
12 that are present today. For Comcast?

13 MR. KOPTA: Thank you, Your Honor. Gregory
14 J. Kopta of the law firm Davis Wright Tremaine LLP on
15 behalf of Comcast. My address is 1201 Third Avenue,
16 Suite 2200, Seattle, Washington, 98101-3045. My
17 telephone number is (206) 757-8079. My fax is (206)
18 757-7079; e-mail, gregkopta@dwt.com.

19 Also appearing for Comcast is my partner Mike
20 Sloan in our Washington DC office. Would you like him
21 to give us his full contact information?

22 JUDGE TOREM: I think we are going to be
23 using Mr. Kopta as the contact, but, Mr. Sloan, if you
24 want to tell us the city and give us your e-mail as
25 well so that's on appearance, that would be sufficient

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1 for today.

2 MR. SLOAN: Michael C. Sloan, S-l-o-a-n. I'm
3 in Washington DC. My direct phone number is (202)
4 973-4227, and my e-mail is michael Sloan@dwt.com.

5 JUDGE TOREM: Appearing for Embarq today,
6 Mr. Hendricks?

7 MR. HENDRICKS: Thank you, Your Honor. Trey
8 Hendricks on behalf of Embarq. My address is 902 Wasco
9 Street, Hood River, Oregon, 97031. My phone number is
10 (541) 386-9439. My fax is (541) 387-9753, and my
11 e-mail address is tre.hendricks@embarq.com.

12 JUDGE TOREM: Thank you. I do note that we
13 received a petition on April the 29th, 2008, when the
14 hard copy came in. In the petition for arbitration,
15 the parties indicated that this is going on in eight
16 states, including Washington, if I understood
17 correctly, that there were a year-and-a-half worth of
18 negotiations, and Comcast and Embarq were able to
19 resolve everything except for one issue. They've also
20 resolved the fact of the time lines between 135- and
21 160-day windows and decided that the dates that went by
22 statute and rule could be agreed. As my notes say, the
23 arbitration is to be concluded under the statutory
24 limit by August 22nd, 2008.

25 The issue that's left, apparently, that will

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1 we briefed prior or probably posthearing from what the
2 parties have told me is whether there would be
3 recurring charges that Embarq would impose on Comcast
4 for maintaining and storing distributor listings.
5 There is a fuller quotation under Paragraph 14 in the
6 petition, and since, Mr. Kopta, I heard from you, I
7 wanted to hear from Mr. Hendricks if that issue of the
8 recitation in Paragraph 14 met with Embarq's approval
9 as well.

10 MR. HENDRICKS: Yes, it does, and we filed
11 today by hand delivery our response to the petition,
12 and I have a hard copy of that for you today at the
13 table.

14 JUDGE TOREM: So no surprises there?

15 MR. HENDRICKS: No.

16 JUDGE TOREM: I've been informed by the
17 parties that they would like to file direct and then
18 responsive testimony first on August 1st and hold a
19 hearing either on Monday, August the 18th, or Tuesday,
20 August the 19th of 2008. As I just noticed, the August
21 22nd agreed date to have this completed would not allow
22 for other posthearing briefs or much thought if the
23 hearing was that date.

24 MR. KOPTA: That's right, Your Honor, so we
25 are willing to waive that statutory deadline until a

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1 point at which the Commission would be able to make a
2 decision.

3 JUDGE TOREM: Mr. Hendricks?

4 MR. HENDRICKS: We would concur.

5 JUDGE TOREM: I had asked off the record if
6 the other states had already set schedules, recognizing
7 that there may not be eight consistent answers.

8 MR. KOPTA: I believe that to date, and
9 Mr. Sloan can correct me if I'm wrong, there have been
10 two decisions, one in Minnesota, one in Indiana, and
11 they have gone opposite.

12 MR. SLOAN: Those are not our cases.

13 MR. KOPTA: Right. That have dealt with this
14 issue. Those are not the cases that have involved
15 these two parties, but there are other arbitrations.
16 I'm not sure when they are scheduled for decision. I
17 know that briefing is being filed for the Texas
18 arbitration tomorrow. Mr. Sloan, is that the most
19 recent?

20 MR. SLOAN: That Texas is the first case in
21 line, and then Pennsylvania and then Indiana and then
22 Washington and Minnesota and a few others to follow
23 that. I would expect our first decision -- we would
24 not receive our first decision, I would not think,
25 until after we have submitted our briefs in this case.

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1 JUDGE TOREM: Thank you, Mr. Sloan. I was
2 going down the list in the November letter that lays
3 out those states, and Washington does fall fourth in
4 there with Minnesota fast on its heals, so if there are
5 not going to be decisions out and any decision to wait
6 for such decisions, it doesn't sound like that's the
7 case for Comcast.

8 MR. KOPTA: No. We don't need to wait for
9 other decisions in the jurisdiction. We are asking the
10 Commission to make a decision based on the record
11 regarding this case.

12 JUDGE TOREM: Does Embarq have a view on
13 this?

14 MR. HENDRICKS: We agree with Comcast on this
15 matter. The schedule we are proposing should be
16 satisfactory.

17 JUDGE TOREM: Because of that waiver for
18 August 22, we would be looking at probably late
19 September, early October before the decision could be
20 issued after briefing. I want to make sure if we set a
21 target date that that would meet with everybody's
22 approval somewhere there in observation.

23 MR. KOPTA: It would for Comcast, Your Honor.

24 MR. HENDRICKS: And for Embarq.

25 JUDGE TOREM: I appreciate more --

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1 MR. SLOAN: We would be happy to extend to
2 November 1.

3 JUDGE TOREM: I anticipate being in South
4 Korea in my military uniform by November, so I do hope
5 it will be out before then. I've got a rate case that
6 goes the last week of August, and I think their
7 suspension date is November 2nd, so it would just be a
8 matter of where the briefs fall.

9 MR. SLOAN: That would be fine.

10 JUDGE TOREM: So it would be sometime in mid
11 October, and we can confirm that later.

12 The hearing, it sounds like, can be done on
13 either the Monday or the Tuesday. Does anybody have a
14 preference one way or the other?

15 MR. KOPTA: Just for logistical purposes,
16 witnesses from out of town can use that Monday to be
17 able to travel, so the 19th would be good if that would
18 work.

19 MR. HENDRICKS: I would agree with that.

20 JUDGE TOREM: As far as the court reporter
21 and waiting for a transcript, you will get that about
22 September 2nd or September 3rd from what the court
23 reporter indicated previously. Do you think we will
24 finish in one day?

25 MR. KOPTA: I expect we would, and probably

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1 less than that. Mr. Sloan just had some hearings in
2 Texas. Does that sound about right?

3 MR. SLOAN: We started at eleven. We
4 concluded at four.

5 JUDGE TOREM: So is there a preference for
6 what time you would like to start here? Do you want to
7 look at a ten o'clock or eleven o'clock start?

8 MR. SLOAN: I thought eleven o'clock was a
9 little bit late because it made it impossible to make
10 the airport. I would prefer to get started at 9:30 if
11 we could.

12 JUDGE TOREM: Would that work for you,
13 Mr. Hendricks?

14 MR. HENDRICKS: That's fine.

15 JUDGE TOREM: I don't have a facilities
16 schedule in front of me for August 19, but we will
17 either use this main hearing room or possibly a smaller
18 room downstairs, but there is nothing else on the
19 calendar on the 19th, but there are other competing
20 decisions, so who knows. It's not a week that there is
21 an open meeting, so we would be okay, unless there is
22 an agency-wide training that may get scheduled.

23 So we will see you at 9:30 a.m. on Tuesday,
24 August the 19. July 2nd for direct testimony, August
25 1st for response testimony, and there is no need for an

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1 issues list as confirmed by both parties. August 19th
2 on Tuesday, we will start the hearing at 9:30 in the
3 morning, and we will make sure Mr. Sloan will be in and
4 out of airports at the right times. Is there any other
5 business that we need to take care of today?

6 MR. KOPTA: Your Honor, just to dot i's and
7 cross t's, we will be propounding discovery, and so the
8 rule talks about having a conference scheduled for
9 status of discovery. I'm not sure at this point that
10 will be necessary, but I did want to make sure you
11 would be aware that we would be engaging in discovery
12 prior to filing testimony.

13 The second thing is, and Mr. Sloan, I'm not
14 sure we need this, but it's always good to have a
15 protective order in place given that sometimes some
16 more sensitive --

17 MR. SLOAN: We could either use those or use
18 the Washington specific order. In the other cases, the
19 discovery from both parties have included information
20 that each has considered confidential. It's also been
21 produced but pursuant to protective orders.

22 JUDGE TOREM: We do have a standard
23 protective order that we use at the Commission, and I
24 take it it would only be confidential as opposed to
25 highly confidential?

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1 MR. KOPTA: That is correct.

2 MR. HENDRICKS: It might depend on what the
3 discovery might be.

4 MR. SLOAN: Is that the decision in
5 Washington?

6 MR. KOPTA: It's a little more sophisticated
7 than that, but it's a higher level of protection than
8 merely confidential, but certainly if it gets to that
9 point, we could ask for a modification of the
10 protective order if there is some highly confidential
11 information that needs to be exchanged or become part
12 of the record.

13 JUDGE TOREM: So we will invoke the discovery
14 rules. Given the schedule, is there any need to
15 shorten response times on the data requests, or should
16 the rules that are imposed under WAC 480-07-420 through
17 425 be sufficient?

18 MR. KOPTA: We tried to set a schedule that
19 would accommodate the existing time lines and discovery
20 rules, so at this point, I don't think there is any
21 need to shorten the response period.

22 MR. HENDRICKS: We've probably already seen
23 most of the questions and know whether or not we can
24 provide most of the answers.

25 JUDGE TOREM: What I've done in the past is

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1 to invoke the discovery rules. I'll put a protective
2 order together and issue those hopefully later this
3 week, a deadline for the issuance of the arbitrator's
4 report and decision so that we have a firm date to look
5 at, and if that needs to be modified, we would do that
6 at the date of hearing.

7 As far as the number of copies, the
8 Commission has staff in the room today, but they are
9 not a party to the case. What I've done in the past,
10 I'll let you know up front, is I do want to use our
11 electronic service rules, which will allow you to file
12 the hard copy the following day. We have an original
13 plus three paper copies the last time around, so the
14 default is 12, so I want to modify that today, but I'm
15 going to ask Mr. Saunders if an original and three will
16 suit his needs, or are there more folks that are going
17 to be keeping track of this case?

18 MR. SAUNDERS: Three would be enough.

19 JUDGE TOREM: So original plus three copies,
20 we will stick with that. Mr. Hendricks, do you see any
21 other issues?

22 MR. HENDRICKS: No.

23 JUDGE TOREM: Mr. Sloan, anything else other
24 than the perspective?

25 MR. SLOAN: No. Thank you so much for

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1 conducting this hearing.

2 JUDGE TOREM: It is 11:25 and we are off the
3 record, and I will get you guys an order hopefully
4 later in the week.

5 (Prehearing adjourned at 11:25 a.m.)

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