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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION
3 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,) DOCKET NO. UT-941464
4)
Complainant,) VOLUME 1
5)
vs.) Pages 1 - 40
6)
U S WEST COMMUNICATIONS, INC.,)
7)
Respondent.)
8 -----)

9 A hearing in the above matter was held
10 at 9:40 a.m. on February 6, 1995, at 1300 South
11 Evergreen Park Drive Southwest, Olympia, Washington
12 before Administrative Law Judge LISA ANDERL.

13

14 The parties were present as follows:

15 U S WEST COMMUNICATIONS, by EDWARD SHAW,
MOLLY HASTINGS, WILLIAM OJILES, Attorneys at Law,
16 P.O. Box 21225, Seattle, Washington 98111

17 WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION STAFF, by STEVEN W. SMITH and GREGORY
18 TRAUTMAN, Assistant Attorneys General, 1400 South
Evergreen Park Drive Southwest, Olympia, Washington
19 98504.

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

22 AT&T, by SUSAN D. PROCTOR, RICK D. BAILEY,
Attorneys at Law, 1875 Lawrence Street, Denver,
23 Colorado 80202.

24

Cheryl Macdonald, CSR
25 Court Reporter

1 APPEARANCES (Cont.)

2 TCG SEATTLE and DIGITAL DIRECT OF SEATTLE
3 INC., by DANIEL WAGGONER and GREGORY KOPTA, Attorneys
4 at Law, 1501 Fourth Avenue, Suite 2600, Seattle,
5 Washington 98109.

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

9 TENINO TELEPHONE COMPANY and KALAMA
10 TELEPHONE COMPANY, by ROBERT S. SNYDER, Attorney at
11 Law, 30th Floor, Key Tower, 1000 Second Avenue,
12 Seattle, Washington 98104.

13 ELECTRIC LIGHTWAVE, INC., by ARTHUR A.
14 BUTLER, Attorney at Law, 601 Union Street, Suite
15 5450, Seattle, Washington 98101-2327 and ELLEN
16 DEUTSCH, Attorney at Law, 8100 NE Parkway Drive, Suite
17 200, Vancouver, Washington 98662-6401.

18 PTI COMMUNICATIONS, by CALVIN SIMSHAW,
19 Corporate Counsel, 805 Broadway, Vancouver, Washington
20 98668.

21 UNITED TELEPHONE COMPANY OF THE NORTHWEST,
22 by SETH M. LUBIN, General Counsel, 902 Wosco Street,
23 Hood River, Oregon 97031.

24 TRACER, by STEPHEN J. KENNEDY, Attorney at
25 Law, 601 Union Street, Suite 5450, Seattle 98101-2327.

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

DEPARTMENT OF DEFENSE/FEDERAL EXECUTIVE
AGENCIES, by ROBERT A. GANTON, Trial Attorney, 901 N
Stuart Street, Suite 713, Arlington, Virginia 22203

SPRINT, by RICHARD A. PURKEY, Director
State Regulatory West, 1850 Gateway Drive, 7th Floor,
San Mateo, California 94404-2467

INTEREXCHANGE ACCESS COALITION, by BRAD E.
MUTSCHELKNAUS, Attorney at Law, 1776 16th Street
Northwest, Washington DC 20006.

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APPEARANCES (Cont.)

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GTE NW, Inc., by RICHARD POTTER, Attorney
at Law, (by Bill Luce), 1800 41st Street, Everett,
3 Washington.

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2 WITNESSES: D C RD RC EXAM
(No witnesses.)

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

2 JUDGE ANDERL: Let's be on the record.

3 This is a pre-hearing conference in the matter of
4 docket No. UT-941464, which is captioned the
5 Washington Utilities and Transportation Commission,
6 complainant, vs. U S WEST Communications, Inc.,
7 respondent. My name is Lisa Anderl. I'm the
8 administrative law judge assigned to preside today.
9 As I said, this is the pre-hearing conference in this
10 matter. Like to begin by taking appearances. Start
11 with the company.

12 MR. SHAW: Thank you. Appearing for U S
13 WEST Communications Inc., Edward T. Shaw, Molly
14 Hastings and Bill Ojile, O J I L E. Our address is
15 Post Office Box 21225, Seattle, Washington 98111.

16 JUDGE ANDERL: Mr. Shaw, can correspondence
17 and other things directed to the company just be to
18 your attention?

19 MR. SHAW: Yes.

20 JUDGE ANDERL: For Commission staff.

21 MR. SMITH: Steven W. Smith and Gregory
22 Trautman, assistant attorneys general. Our address is
23 South 1400 Evergreen Park Drive Southwest, Olympia,
24 Washington 98504.

25 JUDGE ANDERL: Again, Mr. Smith, things to

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1 your attention would be sufficient?

2 MR. SMITH: Yes.

3 JUDGE ANDERL: Thank you. For public
4 counsel.

5 MR. MANIFOLD: For public counsel, Robert
6 F. Manifold and Donald T. Trotter, assistant attorneys
7 general. Our address is 900 Fourth Avenue, Suite
8 2000, Seattle, 98164 and matters can be addressed to
9 me.

10 JUDGE ANDERL: Will you be the one
11 participating in the proceedings then, in the
12 hearings?

13 MR. MANIFOLD: I believe so.

14 JUDGE ANDERL: I want to take appearances
15 from the proposed intervenors, and why don't we just
16 start with the list the way I have it. For the
17 Department of Defense.

18 MR. GANTON: Morning, Your Honor. My name
19 is Robert Ganton, G A N T O N. I'm employed by the
20 Department of Army, 901 North Stuart, S T U A R T,
21 Street, Suite 713, Arlington, Virginia 22203. I'm a
22 trial attorney and I'm representing in this proceeding
23 the U.S. Department of Defense and all federal
24 executive agencies.

25 JUDGE ANDERL: Thank you. For WITA.

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1 MR. FINNIGAN: Thank you. Rick Finnigan
2 with the firm of Vandenberg, Johnson and Gandara, 1201
3 Pacific Avenue, Suite 1900, Tacoma, Washington 98402.
4 Appearing for the Washington Independent Telephone
5 Association.

6 JUDGE ANDERL: For TCG.

7 MR. WAGGONER: Daniel Waggoner and Greg
8 Kopa of the law firm of Davis Wright Tremaine, 1501
9 Fourth Avenue, Seattle, Washington 98101 and we only
10 need one piece of correspondence.

11 JUDGE ANDERL: Addressed to you?

12 MR. WAGGONER: Yes, that's fine.

13 JUDGE ANDERL: For AT&T.

14 MS. PROCTOR: For AT&T, Rick D. Bailey and
15 Susan D. Proctor. Our address is 1875 Lawrence
16 Street, Suite 1575, Denver, Colorado 80202 and we only
17 need one piece of paper.

18 JUDGE ANDERL: Also to you?

19 MS. PROCTOR: That will be fine.

20 JUDGE ANDERL: For IAC.

21 MR. MUTSCHELKNAUS: Hello, Your Honor.
22 Brad Mutschelknaus of the law firm of Wiley, Rein &
23 Fielding in Washington D. C. for the Interexchange
24 Access Coalition.

25 JUDGE ANDERL: For TRACER.

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1 MR. KENNEDY: Morning, Your Honor. Steve
2 J. Kennedy with the law firm of Ader Wynne Hewitt
3 Dodson & Skerritt. Address is Two Union Square, Suite
4 5450, 601 Union Street, Seattle, 98101.

5 JUDGE ANDERL: For GTE.

6 MR. LUCE: Your Honor, my name is Bill
7 Luce. Richard Potter will be representing our
8 company. I'm here just to formally intervene.

9 JUDGE ANDERL: If you just state your
10 business address, please, for the record.

11 MR. LUCE: It's 1800 - 41st Street,
12 Everett, Washington.

13 JUDGE ANDERL: For MCI.

14 MS. WEISKE: Sue Weiske, 707 17th Street,
15 Suite 3900, Denver Colorado 80202.

16 JUDGE ANDERL: For Sprint.

17 MR. PURKEY: Your Honor, Richard Purkey,
18 P U R K E Y, for Sprint. My address is 1850 Gateway
19 Drive, 7th floor, San Mateo, California, 94404.

20 JUDGE ANDERL: Thank you. For -- is it
21 Tenino and Kalama telephone companies?

22 MR. SNYDER: Yes, that's correct, Your
23 Honor. Robert S. Snyder appearing for Kalama
24 Telephone Company and Tenino Telephone Company. My
25 address is 30th floor, Key Tower, K E Y, 1000 Second

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1 Avenue, Seattle, Washington 98104.

2 JUDGE ANDERL: For ELI.

3 MR. BUTLER: Arthur A. Butler, 601 Union
4 Street, Suite 5450, Seattle, 98101-2327 and Ellen
5 Deutsch -- that's D E U T S C H -- for Electric
6 Lightwave, 8100 Northeast Parkway Drive, No. 200,
7 Vancouver, Washington, 98662-6461.

8 JUDGE ANDERL: Do you need two pieces of
9 paper, Mr. Butler?

10 MR. BUTLER: I've given her two.

11 JUDGE ANDERL: But I mean --

12 MR. BUTLER: One for me, addressed to me,
13 is fine.

14 JUDGE ANDERL: For official correspondence,
15 good. For PTI.

16 MR. SIMSHAW: Calvin K. Simshaw. I'm a
17 corporate counsel for PTI Communications. My address
18 is 805 Broadway. That's Vancouver, Washington 98668.

19 JUDGE ANDERL: For United Telephone, Seth
20 M. Lubin, L U B I N. 902 Wosco Street, Hood River,
21 Oregon 97031 and one copy would be sufficient.

22 JUDGE ANDERL: Is there anyone else present
23 who wants to petition to intervene at this time?

24 I hear no response.

25 MR. FINNIGAN: Your Honor, if I might, I

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1 don't think the Interexchange Access Coalition stated
2 an address and it would be nice to have that on the
3 record.

4 MR. MUTSCHELKNAUS: 1776 K Street
5 Northeast, Washington D. C.

6 JUDGE ANDERL: As I recall that intervenor
7 did file a written petition so you could get a copy of
8 that at some point, I'm sure.

9 Anyone else who wishes to intervene in this
10 matter?

11 I hear no response. Mr. Shaw, you
12 indicated before we went on the record that you would
13 not object or would stipulate to the intervention of
14 all the parties except the Department of Defense and
15 TRACER.

16 MR. SHAW: Yes. All other appearances that
17 are on behalf of carriers or carrier associations and
18 I have no objection to their intervention.

19 JUDGE ANDERL: Who would be affected by
20 this filing of course.

21 MR. SHAW: Yes.

22 JUDGE ANDERL: Mr. Smith, you had indicated
23 to me before we went on the record that you were going
24 to make one comment about one other potential
25 intervenor.

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1 MR. SMITH: Yes, Your Honor. I received a
2 call about an hour ago from Bob Berger who is an
3 attorney for MFS who has filed a written intervention
4 in the TCG complaint against U S WEST, and because of
5 staffing problems was not able to have an attorney
6 here today but is going to file a written intervention
7 today.

8 JUDGE ANDERL: Is that entity a carrier
9 also or do you know?

10 MR. SHAW: Yes, it is a carrier. I
11 recognize it as a carrier and I have the same
12 willingness to stipulate to their intervention.

13 JUDGE ANDERL: Okay. Thank you. Mr.
14 Manifold, did you have any comment on any of the
15 carrier intervenors being granted intervention?

16 MR. MANIFOLD: No. One comment and that is
17 for any of the entities that are associations, I think
18 it would be useful if they would state a service
19 address of their client for purposes of any subsequent
20 court action or a statement that counsel will accept
21 all service of pleadings in and subsequent to
22 Commission proceedings, IAC as the one that comes to
23 mind actually of the carriers.

24 JUDGE ANDERL: Let me see.

25 MR. MUTSCHELKNAUS: Your Honor, I would be

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1 happy to state Brad Mutschelknaus for IAC that we
2 would be happy to accept services for all purposes.

3 JUDGE ANDERL: Thank you. Does that same
4 thing apply for WITA then?

5 MR. FINNIGAN: It hasn't been a problem in
6 the past. I am authorized to accept service for
7 Washington Independent Telephone Association.

8 JUDGE ANDERL: Great, thanks. Let's deal
9 with those petitions to intervene. Based on the
10 written petitions and the representations of counsel,
11 I believe that all of the intervenors except -- we're
12 not referring to DOD and TRACER at this point --
13 have stated a substantial interest in the proceedings,
14 and their petitions to intervene should be granted.
15 As I stated before we went on the record, I will state
16 again for the record, those interventions may be
17 conditioned upon the parties agreeing to consolidate
18 their presentations in order to streamline the whole
19 process including coordinating discovery,
20 cross-examination, et cetera so as to avoid
21 unnecessary duplication of effort and unnecessary
22 consumption of time. We'll talk about that a little
23 bit after we go off the record and see if some
24 agreement can be reached and memorialized yet today.

25 Mr. Ganton, you filed a written petition to

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1 intervene. Is there anything you wish to add to that
2 petition at this time?

3 MR. GANTON: Yes, Your Honor. Maybe just
4 to repeat that we are here representing the consumer
5 interests of all federal agencies and as a very large
6 consumer of telecommunications services these
7 proceedings are very important to us and we would like
8 to see all pleadings and analyze the case as it
9 develops.

10 JUDGE ANDERL: Did you indicate in your
11 written petition whether you anticipated broadening
12 the scope of the proceedings?

13 MR. GANTON: I believe we stated we would
14 not broaden the scope of the proceedings, Your Honor.

15 JUDGE ANDERL: And for TRACER Mr. Kennedy,
16 refresh my mind, did you file a written petition to
17 intervene?

18 MR. KENNEDY: No, we did not.

19 JUDGE ANDERL: Would you like to state
20 the basis for your intention now?

21 MR. KENNEDY: As I stated, my name is
22 Stephen Kennedy representing the Telecommunications
23 Ratepayers Association for Cost-based and Equitable
24 Rates. TRACER is an association of very large users
25 of telecommunications services. It is a frequent

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1 intervenor in proceedings such as this. The address
2 that I stated at the outset is the address for TRACER
3 and we will accept service on behalf of TRACER at that
4 address.

5 As customers of U S WEST and most of the
6 other telecommunications providers in the state of
7 Washington and also as potential customers of new
8 entrants and telecommunications providers, TRACER has
9 a legitimate interest worthy of intervention in this
10 case. These proceedings will determine in part the
11 conditions under which local competition will develop
12 and whether such competition will be viable in the
13 long run. It will affect the underlying cost
14 structures and ultimately the rates that TRACER's
15 members will pay for telecommunications services, and
16 for that reason we believe we have a very legitimate
17 interest in the intervention. We will not seek to
18 broaden the issues or delay the proceedings in any
19 way.

20 JUDGE ANDERL: Thank you. Mr. Shaw.

21 MR. SHAW: Yes, just briefly. These two
22 large retail customers, association of retail
23 customers in the case of TRACER, of U S WEST have no
24 direct interest in this tariff proceeding. This
25 tariff proceeding is not a general rate case. It is a

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1 tariff proposal of U S WEST for what it will charge
2 interconnecting carriers for their use of U S WEST's
3 facility and services to complete their traffic. It
4 will involve issues of whether those rates are fair,
5 just, reasonable and sufficient as between those
6 customers. It does have no direct impact at all on
7 the retail customers of U S WEST that take service
8 from an entirely different tariff which is not subject
9 to any change in this case. We have a great deal of
10 carrier interest, obviously, because this is a very
11 direct impact on all the carriers that U S WEST
12 interconnects with. DOD in particular has a special
13 standing in the laws of the state of Washington and
14 pursuant to the WACs of this Commission, DOD can take
15 all of its service, the federal government can take
16 all of its service, on contracts that are basically
17 not reviewed by the Commission because of their
18 tremendous buying power and their competitive
19 procurement of all of their telephone services through
20 through national efforts. Their intervention in this
21 case just to monitor is totally unnecessary. They
22 don't have any issue at all as to this tariff. We'll
23 be glad to talk to counsel about keeping DOD advised
24 of what's going on or even giving them a paper in the
25 case, but intervention has to mean something. There

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1 has to be some interest demonstrated. There's been no
2 interest demonstrated by DOD at all.

3 TRACER is really in the same place.
4 Apparently their concern is that the Commission might
5 do something in this case that might lead to changes
6 in rates that they might pay in another case, but
7 that's very speculative and indirect and is not an
8 adequate standard for intervention. On that basis the
9 Commission would have to allow the intervention of
10 each and every of our millions of customers if they
11 showed up at these proceedings which obviously results
12 in a totally unworkable process. We've got too many
13 parties as it is. These two parties have very
14 marginal interest. It just adds to the confusion and
15 I urge the Commission to deny these interventions.

16 JUDGE ANDERL: Thank you, Mr. Shaw. Mr.
17 Smith, do you have any comment on these two petitions
18 to intervene?

19 MR. SMITH: I have no objection to the
20 intervention.

21 JUDGE ANDERL: Mr. Manifold?

22 MR. MANIFOLD: No objection. I would like
23 the Department of Defense as admitted to know how they
24 can be served in the hopefully unlikely event anyone
25 chooses to take this to Superior Court.

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1 JUDGE ANDERL: Does any other of the
2 intervenors have any comment on petitions that we're
3 talking about now from DOD and TRACER?

4 Mr. Ganton, to the extent that the federal
5 government can be served under special contracts, how
6 are they impacted by this proceeding?

7 MR. GANTON: Well, Your Honor, I believe
8 counsel stated that that was a DOD situation, in other
9 words, Department of Defense may have the right to
10 enter into special contracts. We are here
11 representing all federal government agencies and
12 therefore that would not be covered in that situation.

13 JUDGE ANDERL: Are you proposing to offer
14 witnesses in this case?

15 MR. GANTON: Yes, Your Honor. I believe we
16 will offer one witness.

17 JUDGE ANDERL: And Mr. Kennedy.

18 MR. KENNEDY: Yes, Your Honor.

19 JUDGE ANDERL: Could you explain to me how
20 the interests of your members are not served by the
21 participation in this proceeding of all the carriers
22 who may be affected?

23 MR. KENNEDY: Well, to the extent that the
24 proceedings will determine the underlying cost
25 structures, it is going to have a direct impact on the

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1 rates that are paid by TRACER's members. These are
2 some of the largest users in this state. I think it's
3 naive to suggest that there's not going to be a direct
4 impact on its members. The question that we're
5 concerned about is whether these terms and conditions
6 that are imposed as a result of these proceedings are
7 going to have an impact on local competition, whether
8 that competition is going to be viable, and these
9 particular customers that are members of TRACER are
10 some of those who are poised to reap the benefits of
11 competition. We wanted to make sure that this
12 proceeding doesn't impact that negatively.

13 MR. SHAW: Your Honor --

14 JUDGE ANDERL: Let me think about this for
15 a minute, but do you have an additional comment,
16 Mr. Shaw?

17 MR. SHAW: Yes. I wanted to give you the
18 WAC citation that I mentioned and that counsel
19 mentioned. WAC 480-80-330 applies to all federal
20 contracts not just contracts with the DOD. If I left
21 that impression, I'm sorry.

22 JUDGE ANDERL: As I said, let me consider
23 these two petitions for just a minute. I will of
24 course rule before we close today. Let's move on
25 while we're still on the record to the issue that was

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1 brought up in the notice of pre-hearing conference
2 whether the proceeding should be bifurcated between
3 the local transport restructure and the remainder of
4 the filing and/or whether this proceeding should be
5 consolidated with the complaint of TCG Seattle in
6 docket UT-941465 which pre-hearing conference is
7 scheduled for this afternoon at 1:30.

8 Mr. Smith, perhaps you could expand a
9 little bit on the bifurcation issue. Either that or
10 we can take TCG's summary of their motion to
11 consolidate. Obviously they're linked.

12 MR. SMITH: Well, Your Honor, this notion
13 originated at the open public meetings.

14 JUDGE ANDERL: Which I did not attend so
15 you have to kind of fill me in.

16 MR. SMITH: Which the Chairman Nelson at
17 the response to TCG said that bifurcation is one of
18 the issues that would be considered, and that's why it
19 was in the notice of hearing.

20 JUDGE ANDERL: I see. So is staff neutral
21 on this or --

22 MR. SMITH: Well, Your Honor, I think we
23 favor TCG's motion, original motion, to have two
24 phases. Whether you call it bifurcation or not I
25 don't think is important but I believe Mr. Waggoner to

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1 date was shopping around a new procedure that would
2 not involve separating the issues, so maybe I should
3 defer to him now.

4 JUDGE ANDERL: Well, then let's hear from
5 you, Mr. Waggoner.

6 MR. WAGGONER: Yes, Your Honor. What I've
7 been trying to do is to determine a result that is
8 acceptable to the largest number of parties and also
9 takes care of the primary interests of TCG and the
10 other new competitive local carriers, which is to get
11 a result quickly. Those companies, in particular the
12 new competitive local carriers such as TCG, are at sea
13 where they don't know what a major cost component is
14 going to be while they're trying to provide service to
15 customers, and it's very important for those companies
16 to get resolved quickly the basic charges for
17 interconnection, so our goal is really to make sure
18 that the basic issues of local interconnection are
19 resolved quickly and we are looking for a procedural
20 vehicle that will accomplish that.

21 Let me also speak to the consolidation
22 motion since it's related. TCG did file a complaint
23 against U S WEST raising a number of issues that TCG
24 believed were not addressed in U S WEST's tariff and
25 that we also felt were important conditions for

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1 effective local competition, and I think there's some
2 dispute between U S WEST and TCG as to which of those
3 areas there are actual disagreements about. That is
4 something that we will have to develop factually and
5 through discovery, I believe. But the intent of TCG's
6 complaint and its motion to consolidate is to bring
7 before the Commission all of the issues relating to
8 the sort of building blocks of local competition, the
9 critical conditions of local competition which do not
10 only include the interconnection charge that U S WEST
11 has proposed but include items such as directory
12 assistance, white pages and the like.

13 What I would suggest after discussing with
14 a number of the parties this morning is essentially a
15 consolidated proceeding. We can certainly do it in
16 phases if that's appropriate. It may not be
17 necessary, and in fact this is something that maybe we
18 can discuss off the record, but the real goal here is
19 to get expedition on the local competition issues so
20 that as soon as possible we can resolve the question
21 of what are the interconnection rates and other rates
22 relating to local service. I believe, if the
23 Commission consolidates both the TCG complaint and the
24 U S WEST tariff, it will have before it all of those
25 issues.

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1 The suggestion I would make as to how to
2 proceed with those two proceedings would be to
3 initially have U S WEST's testimony that it has with
4 it and Teleport's testimony, TCG's testimony, that it
5 has here today for filing this afternoon in its case
6 would be an initial round of testimony. Then there
7 would be a second round of testimony for all other
8 parties and then a final round of testimony by TCG and
9 U S WEST in which U S WEST and TCG would address the
10 reply to the middle ground of testimony. Obviously,
11 there would need to be discovery as well in that
12 process, but we believe that if those three rounds of
13 written testimony are done and then a single round of
14 cross-examination occurred after that or a single
15 hearing for cross-examination, that would expedite
16 this proceeding. It would allow all of the issues to
17 be before the Commission and could lead to the
18 quickest possible resolution.

19 I do need to advise the judge that we also
20 last week filed a complaint against GTE which has not
21 been served on GTE, although we did send them a
22 courtesy copy, and we also believe that the issues
23 relating to GTE should be resolved in this proceeding.
24 I don't think there's a problem with that but we
25 haven't had an opportunity to discuss that with GTE.

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1 GTE, just so you understand it, is taking a somewhat
2 different position as to what interconnection charges
3 they want to have for competitive local carriers, so I
4 realize that was sort of a long-winded answer to your
5 question, but I thought I would attempt to address all
6 of those issues at once and perhaps we might have an
7 off the record discussion of those and then we could
8 see if that makes sense from a procedural point of
9 view.

10 JUDGE ANDERL: Sure. That's a good idea
11 but before we do that, I think even though I have an
12 answer from U S WEST in writing, I will let them
13 summarize their position on the record. I believe
14 they were opposed to the consolidation.

15 MR. SHAW: Thank you, Your Honor. I won't
16 repeat our written memoranda. Things have changed a
17 little bit here this morning. If I understand, Mr.
18 Waggoner, we're no longer talking about an adversarial
19 argument that U S WEST's tariff proceedings should
20 somehow be bifurcated or scheduled in a way that
21 interferes with its right to present its theory of the
22 case. What we seem to be really talking about now is
23 whether the complaint should be consolidated with the
24 tariff and that a procedural schedule somehow worked
25 out.

1 The procedural schedule is difficult. The
2 tariff proceeding was elected by U S WEST in the first
3 place as a vehicle to resolve critical issues that the
4 industry has to have resolved in this state in order
5 to move forward, because there is a clock and it will
6 keep things moving. Complaints between competing
7 carriers can get very bogged down. We are involved
8 with one with pay phone competitors that's over three
9 years old and still has not been ruled on by the
10 Commission, just as an example. So the tariff
11 proceeding will force, if you will, a timely
12 resolution of issues that the many, many players in
13 the industry today cannot agree on.

14 There might have been a concern by TCG and
15 others that the proceeding would be narrowly focused
16 just on a rate level. That is not the case. It is
17 the intention of U S WEST in this tariff proceeding
18 vehicle to raise itself and tee up for Commission
19 decision all of the issues that we know of that
20 revolve around local interconnection, local
21 competition. We've been through one of these
22 proceedings in Iowa. This will be our second as a
23 corporation. We know what the issues are going to be
24 and we have addressed them in our direct testimony.
25 Before the Commission rules on this motion to

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1 consolidate, it might want to review the prefiled
2 testimony which we'll distribute testimony and
3 particularly the testimony of Mr. Owens, he goes
4 through each of the issues such as directory services
5 and other ancillary and supplemental services that
6 might be involved as between the competing carriers
7 and states U S WEST's position on it.

8 So those issues will be available for
9 resolution in this case. I'm concerned about the
10 consolidation of the complaint because of the
11 conflicting burdens of proof. We have the burden, of
12 course, in the suspended tariff proceeding. TCG will
13 have the burden in its complaint against U S WEST.
14 The complaint necessarily is very generalized and
15 already stale in terms of its words based upon events
16 of a couple of months ago which have changed. It is a
17 generalized complaint about U S WEST's rates. All of
18 those issues will be addressed. I hesitate to support
19 the consolidation just because of the procedural
20 difficulties that it does create in scheduling
21 testimony and figuring out who is on first, and it
22 doesn't seem to get anywhere.

23 As a pragmatic matter, the order that will
24 come out at the end of this case will be a Commission
25 order prescribing and indicating how it wishes the

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1 industry to proceed. It will evolve -- the industry
2 will continue to discuss issues and hopefully we can
3 simplify the issues in the case and remove issues, but
4 the complaint, much less the specter of additional
5 complaints by TCG or perhaps even other new
6 competitive carriers against PTI, which is imminently
7 involved in the greater Seattle EAS area, as well as
8 perhaps some of the other smaller areas, this will get
9 unworkable, so I urge the Commission not to
10 consolidate these.

11 I'm not trying to take away TCG's right to
12 file a complaint. It can be abeyed while we thrash
13 our way through this tariff proceeding and if there
14 are any remaining issues that TCG needs to resolve in
15 a carrier to carrier complaint, we can certainly go
16 forward with those. We're hopeful that out of this
17 tariff process will come an industry and regulatory
18 vision for the future of competition in the state of
19 Washington.

20 JUDGE ANDERL: Thank you, Mr. Shaw. I
21 think that certainly the way to proceed is going to be
22 something that we might be able to get a little bit
23 further on off the record and, as I said, of course
24 it's going to depend on how the Commission rules with
25 regard to consolidation or separation.

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1 MS. WEISKE: Your Honor, may I raise a
2 concern on the record before we break?

3 JUDGE ANDERL: Sure.

4 MS. WEISKE: I'm Sue Weiske with MCI. I'm
5 a little concerned in what Mr. Waggoner just proposed
6 for Teleport that even though some of the issues that
7 their complaint addresses are in the U S WEST tariff
8 filing, in what I thought I understood his procedural
9 proposal to be, their testimony would go out first
10 because of the complaint process in terms of bearing
11 the proof. However, if we weren't going to merge
12 those that's not how I understand those would normally
13 occur and certainly is not how it has occurred when
14 I've been in multi-party multi-issue cases involving U
15 S WEST, and my concern is that if that would not
16 occur, what would normally happen is those local
17 competition issues would be addressed by all of us
18 impacted by them after U S WEST had filed its first
19 round of testimony, and I'm a little uncomfortable if
20 U S WEST -- if I understood him correctly -- if U S
21 WEST and Teleport are both filing initial rounds that
22 they're providing to us that we then would only have
23 an opportunity to react to that, and I'm not sure in
24 terms of the burden of proof if we would object to it
25 or not, but it's a confusing process to us.

1 What we understood from the written
2 pleading was that we were going to separate out these
3 issues and have two different tracks. If we're going
4 to have one track I'm actually concerned -- the way
5 Mr. Shaw raised it that we have some concerns and some
6 problems in burden of proof.

7 MR. WAGGONER: Why don't we go off the
8 record.

9 JUDGE ANDERL: I think it's best if we go
10 off the record. Before we do that let me go down my
11 checklist and see if we can handle some of these
12 noncontroversial things. I think this is obvious
13 this is a proceeding that discovery is going to be
14 necessary. To the extent that the discovery rule
15 needs to be formally invoked I will do so now.
16 Mr. Shaw indicated to me that his prefiled testimony
17 indicates confidential information. The Commission
18 will be issuing a protective order in this matter in
19 the standard format that it's used in the past. If
20 any party has any objection or comment on that, you
21 can let me know and we'll take it up when we come back
22 on the record.

23 MR. SHAW: On that issue, Your Honor,
24 anticipating that we do have some out of town counsel
25 that may not be familiar with the Washington processes

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1 and so forth, we have gone ahead and prepared some
2 exhibit A's to the Commission standard protective
3 order for counsel to sign and if counsel can
4 familiarize themselves with the standard Commission
5 protection order, we have a couple of copies and if
6 everybody would sign the attachment A's or Exhibit A's
7 in anticipation of the issuance of the order, we can
8 distribute that confidential testimony today.

9 JUDGE ANDERL: Anything else before we
10 break?

11 Let's be off the record for a while then.

12 (Recess.)

13 (Lunch recess.)

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AFTERNOON SESSION

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1:30 p.m.

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JUDGE ANDERL: Let's be back on the record.

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While we were off the record we discussed a number of things and the parties reached agreements on things including the schedule, which I will try to recite now as completely as I can. The first thing I want to do is announce that my ruling on the petitions to intervene by TRACER and the Department of Defense, federal executive agencies are granted. I believe they have stated a substantial and significant interest in the matter sufficient to warrant intervention in their own right.

I will recommend to the Commission that these two dockets, 1464 and 1465, be consolidated. I'm sure you will get a decision on that very, very soon. The parties have discussed an agreed upon schedule which presupposes consolidation, at least for hearing. Possibly the Commission would still issue separate decisions in this. The schedule that has been agreed upon is as follows: That April 6 will be the deadline for staff, public counsel and the intervenors to prefile their testimony. Mr. Waggoner has indicated to me that although his petition to intervene in the U S WEST filing has been granted he

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1 will not be filing anything as an intervenor on the
2 6th of April, since he's filed testimony today. The
3 parties agreed that the discovery cut-off for data
4 requests prior to that prefile date is March 15. The
5 next prefiling date is May 22nd, which is an
6 opportunity for all of the parties, the company, the
7 complainant, staff, public counsel and the
8 intervenors, to prefile rebuttal testimony. The
9 discovery cutoff for that prefiling date is May 5.
10 The plan is to hold cross-examination -- hearings for
11 cross-examination of all of the prefiled testimony
12 beginning on June 19 and continuing until we're
13 through possibly through, I believe that Friday, two
14 weeks later, is June 30. So block out those whole two
15 weeks. The cutoff for data requests and also for
16 depositions prior to the hearing date is June 5th.

17 In connection with these discovery cutoff
18 dates, I asked the parties to see if they could agree
19 to consolidate their discovery efforts and the
20 following parties represented to me that they will
21 endeavor to have single sets of data requests as
22 follows: TCG, ELI and MFS will attempt to coordinate
23 their data requests. PTI, United, WITA, Kalama and
24 Tenino telephone companies and GTE will attempt to
25 consolidate and coordinate their data requests to the

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1 extent possible to eliminate duplicative requests.
2 MCI, Sprint and AT&T will attempt to do the same
3 thing, and the Department of Defense and TRACER have
4 indicated to me that they will work together, again,
5 to consolidate their discovery requests.

6 The parties did ask for and agreed that
7 perhaps a second pre-hearing conference in this matter
8 would be beneficial. That is scheduled now for March
9 3rd, 1995 at 1:30 p.m. That's a Friday here in this
10 room. One of the things we'll be discussing at that
11 second pre-hearing conference is an issues list which
12 I and the parties have determined might be very
13 helpful in this proceeding. U S WEST and TCG have
14 committed to starting to work together on that issues
15 list and possibly circulating a draft to all of the
16 other parties prior to that pre-hearing conference
17 date to get the process started.

18 I did want to ask, in connection with
19 discovery and the issues in this case, Mr. Shaw had
20 indicated, I think while we were off the record before
21 lunch, his willingness to waive any objection by
22 U S WEST to any issues that are raised by the other
23 parties which may not be directly raised either in the
24 tariff filing or in the prefiled testimony. He's not
25 here right now. Ms. Hastings, can you address that.

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1 MS. HASTINGS: That's correct. He did
2 agree to do that.

3 JUDGE ANDERL: Thank you.

4 MS. HASTINGS: He agreed to allow the
5 parties --

6 JUDGE ANDERL: If you want to expand on
7 that.

8 MS. HASTINGS: He agreed to allow the
9 parties to raise additional issues that may not be
10 covered somehow in the prefiled testimony dealing with
11 the issues raised in the tariff or in the TCG
12 complaint to the extent that there may be some.

13 JUDGE ANDERL: I don't know, of course,
14 what he meant and he's not here. Where is he? Is he
15 coming back?.

16 MS. HASTINGS: No, he had another
17 commitment. I think there might be some suggestion --
18 the parties seem to be confused because they hadn't
19 read the prefiled testimony what the testimony might
20 be covering and I think in particular AT&T suggested
21 that the tariff itself may not have the words number
22 portability there and so maybe that issue wasn't
23 raised. I think that might have been in the context
24 of why it was brought up. I think what he's
25 suggesting that to the extent that you think there's

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1 an issue or party thinks there's an issue that's not
2 specifically addressed in the tariff or the prefiled
3 testimony that's related to these sort of
4 industry-wide issues, that could be addressed. That
5 was my understanding of his conversation.

6 JUDGE ANDERL: Okay. In addition to
7 thinking about the issues list prior to the second
8 pre-hearing conference in this matter, I would also
9 ask the parties to continue to think about whether
10 their cases for presentation can be consolidated in
11 any way. I realize that it's maybe not fair to ask
12 you to commit to that right now, but perhaps in three
13 or four weeks you will be able to give me a better
14 answer on whether there is any alliances that can be
15 formed between two or more of the parties to
16 streamline the process.

17 The only other thing that I have in my
18 notes that we just did off the record is the marking
19 of the exhibits of the company's prefiled direct
20 testimony and the complainant's testimony. Before we
21 go to that I will give anybody a chance now to mention
22 anything that they remember having covered that I
23 haven't mentioned. I see a couple of hands. Mr.
24 Waggoner.

25 MR. WAGGONER: I do believe we agreed to a

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1 briefing schedule to conclude on the 31st of July
2 which you did not mention.

3 JUDGE ANDERL: Thank you, you're right.

4 Yes.

5 MR. MUTSCHELKNAUS: In terms of the
6 consolidated data request responses, we had agreed in
7 our earlier discussion that we would -- IAC would
8 consolidate its requests with AT&T, MCI and Sprint.

9 JUDGE ANDERL: To the extent possible.

10 MR. MUTSCHELKNAUS: And we have agreed to
11 do so and are interested in doing so. That wasn't
12 reflected in your earlier comment.

13 JUDGE ANDERL: To the extent that they are
14 consolidated. I would just like to ask that you
15 indicate clearly on the face of the -- who the
16 consolidated requesters are, because -- well, we
17 didn't discuss this but I think it would probably be
18 fair to ask the responding party to submit separate
19 responses to each of the requesters even if they
20 consolidate their request? Streamlines it somewhat.
21 I think that it's better than getting 10 data requests
22 from separate parties and having to respond to each of
23 them and they are somewhat different but kind of
24 mostly the same.

25 MS. HASTINGS: That shouldn't be a problem.

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1 Typically a party that hasn't consolidated will ask
2 for all of the answers anyway, so I don't see it to be
3 a problem.

4 JUDGE ANDERL: Okay. If you could, I was
5 thinking about, as I said, assigning sequences of
6 numbers for data requests. I don't know. I actually
7 don't like that idea too much because we don't know
8 how you're going to group. If you could make it very,
9 very clear on the face of the data request, I think
10 Ms. Proctor suggested calling them AT&T 1 or something
11 like that. If you could just agree when you send
12 them.

13 MS. PROCTOR: I think probably we'll call
14 it IXC 1.

15 JUDGE ANDERL: Whatever. I was just using
16 that as an example.

17 MS. PROCTOR: I understand.

18 JUDGE ANDERL: Who else had a hand up about
19 something we discussed that I didn't mention?

20 MR. SNYDER: I just wanted to ask whether
21 given Ms. Hastings' remark whether to adopt a rule
22 that a copy of the answers to the data requests are
23 sent to all parties, that way you don't have to have a
24 separate data request asking for all of the other
25 responses.

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1 (Discussion off the record.)

2 JUDGE ANDERL: Let's be back on the record.

3 While we were off the record we did have a discussion
4 about responses to data requests and to whom the
5 company will be sending those responses and how the
6 company will be making some of that information
7 available. I don't believe it's anything that needs
8 to be placed on the record. The parties have agreed
9 that they will work amongst themselves. They will
10 bring up on motion or on March 3rd if it's a problem.
11 I heard somewhat of a consensus that it's not really
12 been a problem in the past and so hopefully we can
13 just go from there, and take things up as they come.

14 The documents that have been prefiled
15 today, testimony and exhibits I will identify now for
16 the record. We marked them all while we were off the
17 record. U S WEST has submitted testimony and exhibits
18 from four witnesses. The first witness and her
19 testimony is Exhibit T-1 for identification. It is
20 Barbara M. Wilcox. Her testimony is BMW-T and her
21 exhibits are BMW-1 through 8. Those are numbered as
22 Exhibits 2 through 9 for this record.

23 The next witness is Jeffrey D. Owens, O W E
24 N S. His testimony for identification is Exhibit
25 T-10. It's marked JDO-T. He submitted nine exhibits

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1 marked JDO-1 through 9. Those are Exhibits 11 through
2 19 for this record.

3 Robert G. Harris submitted testimony which
4 is marked as Exhibit T-20. It is RGH-T. And his
5 Exhibits RGH-1 and 2 are Exhibits No. 21 and 22 for
6 this record.

7 Brian E. Farrell submitted testimony and
8 exhibits. His Exhibit BEF-T or testimony is Exhibit
9 T-23 for identification. Exhibits BEF-1 through 6
10 are -- I'm sorry 1 through 5 -- are Exhibits 24
11 through 28. His BEF-6 is a confidential exhibit.
12 That is marked as Exhibit C-29. And then the
13 complainant's testimony in docket UT-941465 is the
14 next exhibit. It is the testimony of Paul Kouroupas
15 K O U R O U P A S. It is PK-T and it is Exhibit T-30
16 for identification.

17 (Marked Exhibits T-1, 2-9, T-10, 11-19,
18 T-20, 21, 22, T-23, 24-28, C-29, T-30.)

19 JUDGE ANDERL: Is there anything else to
20 come before us in this docket? I hear nothing. Let
21 us -- let me tell you that you will get a pre-hearing
22 conference order from me or the Commission if it is
23 something that requires a Commission decision on and
24 any of the procedural motions and you should look for
25 that certainly within the week. I will try to include

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1 in that the fax numbers that I have from you on the
2 list so that in the event that you need to fax to each
3 other, you have that all in one place, and that will
4 also include the schedule in this matter.

5 Let's stand in recess in this docket.

6 (Hearing adjourned at 2:10 p.m.)

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