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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

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4 In Re the Matter of) Docket No. UT-003106
) Volume I
5 Staff Request for Designation) Pages 1-16
of a Telecommunications Common)
6 Carrier to Serve the Unserved)
Area Between Grant County and)
7 U.S. Highway 2.)
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10 A hearing in the above matter was
11 held on December 20, 2000, at 10:52 a.m., at 1300
12 Evergreen Park Drive Southwest, Olympia, Washington,
13 before Administrative Law Judge KAREN CAILLE.

14 The parties were present as
15 follows:

16 QWEST CORPORATION, by Douglas N.
Owens, Attorney at Law, 1325 Fourth Avenue, Suite
17 940, Seattle, Washington, 98101.

18 AT&T WIRELESS, by Greg Diamond,
Attorney at Law, Davis, Wright, Tremaine, LLP, 2600
19 Century Square, 1501 Fourth Avenue, Seattle,
Washington, 98101.

20 THE COMMISSION, by Jonathan
Thompson, Assistant Attorney General, 1400 Evergreen
21 Park Drive, S.W., P.O. Box 40128, Olympia, Washington
98504-0128.

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23 PUBLIC COUNSEL, by Robert
Cromwell, Jr., Assistant Attorney General, 900 Fourth
24 Avenue, Suite 2000, Seattle, Washington 98164.

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25 Barbara L.Nelson, CSR
Court Reporter

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1 RCC HOLDINGS, INC., by Mark
2 Ayotte, Attorney at Law, 2200 First National Bank
3 Building, 332 Minnesota Street, St. Paul, Minnesota,
4 55101, and Beth Kohler, Legal Services Director, 302
5 Mountain View Drive, Colchester, Vermont 05446. (Via
6 Teleconference Bridge.)

7 CENTURYTEL OF WASHINGTON, by
8 Calvin Simshaw, Attorney at Law, 805 Broadway,
9 Vancouver, Washington 98660.

10 VERIZON NORTHWEST, INC., by Judith
11 A. Endejan, Attorney at Law, Williams, Kastner &
12 Gibbs, 601 Union Street, Suite 4100, Seattle,
13 Washington 98101.

14 VERIZON WIRELESS, by Peter
15 Dykstra, Attorney at Law, 701 Fifth Avenue, Suite
16 2200, Seattle, Washington 98104.

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1 JUDGE CAILLE: Let's go on the record. We
2 are here today for the first prehearing conference in
3 the proceeding captioned In Re: The Matter of Staff
4 Request for Designation of a Telecommunications
5 Common Carrier to Serve the Unserved Area Between
6 Grant County and U.S. Highway 2. This is Docket
7 Number UT-003106.

8 My name is Karen Caille, and I am the
9 Administrative Law Judge presiding in this
10 proceeding. The Commissioners intend to preside if
11 we actually do have a proceeding. They will not join
12 us today, of course. Today is December the 20th,
13 2000, and we are convened in a hearing room in the
14 Commission's offices in Olympia, Washington.

15 I would like to start out by taking
16 appearances from all the parties. I ask you to state
17 your name, spelling your last name, who you
18 represent, your street address and mailing address,
19 telephone number, facsimile number, and if you have
20 one, an e-mail address. And if we could begin with
21 Commission Staff.

22 MR. THOMPSON: I'm Jonathan Thompson,
23 Assistant Attorney General, representing Commission
24 Staff. My address is 1400 South Evergreen Park
25 Drive, S.W., P.O. Box 40128, and it's Olympia, 98504.

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1 My telephone is (360) 664-1225; fax is 586-5522; and
2 my e-mail is jthompso@wutc.wa.gov.

3 JUDGE CAILLE: Public Counsel.

4 MR. CROMWELL: Robert Cromwell, on behalf
5 of Public Counsel, Your Honor, 900 Fourth Avenue,
6 Suite 2000, Seattle, Washington, 98164-1012. My
7 direct line is (206) 464-6595; my fax number is (206)
8 389-2058; my e-mail address is robertcl@atg.wa.gov.

9 JUDGE CAILLE: Thank you. Mr. Owens.

10 MR. OWENS: Thank you, Your Honor. Douglas
11 N. Owens, Attorney at Law. My address is 1325
12 Fourth Avenue, Suite 940, Seattle, Washington, 98101.
13 My telephone number is (206) 748-0367; my fax number
14 is (206) 748-0369; my e-mail address is
15 dnowens@ricochet.net, and I'm appearing on behalf of
16 Qwest Corporation.

17 JUDGE CAILLE: And your e-mail, Mr. Owens,
18 there's an S on the end of Owens; right?

19 MR. OWENS: Yes, correct.

20 JUDGE CAILLE: Dnowens. Thank you. Mr.
21 Simshaw.

22 MR. SIMSHAW: Thank you. Calvin Simshaw,
23 that last name is S-i-m-s-h-a-w. I'm appearing for
24 CenturyTel of Washington. I'm Associate General
25 Counsel - Regulatory. My phone number is (360)

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1 905-5958; fax number is (360) 905-5953; e-mail
2 address is calvin.simshaw@centurytel.com, CenturyTel
3 being one word, and my mailing address, that's 805
4 Broadway, Vancouver, Washington, 98660.

5 JUDGE CAILLE: Thank you. And Mr. Diamond.

6 MR. DIAMOND: Greg Diamond, with Davis,
7 Wright, Tremaine, appearing on behalf of AT&T
8 Wireless Services. My address is 1501 Fourth Avenue,
9 Suite 2600, Seattle, Washington, 98101. My telephone
10 is (206) 628-7643; my fax is (206) 903-3743; and my
11 e-mail address is gregdiamond@dwt.com.

12 JUDGE CAILLE: Mr. Diamond, could you
13 please repeat your address for me?

14 MR. DIAMOND: Sure, Your Honor. 1501
15 Fourth Avenue, Suite 2600, Seattle, 98101.

16 JUDGE CAILLE: And it's Davis --

17 MR. DIAMOND: -- Wright, Tremaine.

18 JUDGE CAILLE: Wright, Tremaine, okay. And
19 Mr. Dykstra.

20 MR. DYKSTRA: Peter Dykstra, D-y-k-s-t-r-a,
21 with Carney, Badley, Smith & Spellman, on behalf of
22 Verizon Wireless. Mailing address is 701 Fifth
23 Avenue, Suite 2200, Seattle, Washington, 98104.
24 Telephone number is (206) 622-8020; fax number (206)
25 467-8215; e-mail address, dykstra@carneylaw.com

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1 JUDGE CAILLE: Ms. Endejan.
2 MS. ENDEJAN: Yes, my name is Judith
3 Endejan. That's spelled E-n-d-e-j-a-n. I'm
4 appearing for Verizon Northwest, Inc. My address is
5 Williams, Kastner, K-a-s-t-n-e-r, and Gibbs, 601 --
6 JUDGE CAILLE: Union Street.
7 MS. ENDEJAN: Union Street. Thank you.
8 Seattle, Washington, 98101. Telephone number (206)
9 233-2998; fax (206) 628-6611; and my e-mail is
10 jendejan@wkg.com.
11 JUDGE CAILLE: Could you repeat that again,
12 because I have the wrong thing down. It changed.
13 MS. ENDEJAN: It changed. They changed it
14 on me. Jendejan@wkg.com.
15 JUDGE CAILLE: Thank you.
16 MS. ENDEJAN: It's alphabet soup.
17 JUDGE CAILLE: And your suite number is --
18 MS. ENDEJAN: Forty-one hundred.
19 JUDGE CAILLE: Mr. Ayotte. If you'll
20 please enter --
21 MR. AYOTTE: Thank you. My name is Mark
22 Ayotte, that's spelled A-y-o-t-t-e. I'm appearing on
23 behalf of RCC Holdings, Inc. I'm with the law firm
24 of Briggs & Morgan, B-r-i-g-g-s and Morgan,
25 M-o-r-g-a-n, 2200 First National Bank Building, 332

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1 Minnesota Street, that's in St. Paul, Minnesota,
2 55101. My direct dial number is (651) 223-6561; and
3 my fax number is (651) 223-6450; e-mail address is
4 mayotte -- all one word, m-a-y-o-t-t-e --
5 @briggs.com.

6 JUDGE CAILLE: Thank you. Are there any
7 other appearances?

8 MS. KOHLER: Hi, Mark, it's Beth. This is
9 Beth Kohler, Legal Services Director for RCC
10 Holdings, also appearing with Mark. My spelling of
11 my name is Beth Kohler, K-o-h-l-e-r. My mailing
12 address, 302 Mountain View Drive, Colchester,
13 C-o-l-c-h-e-s-t-e-r, Vermont, 05446. My phone
14 number, (802) 654-5093; my fax (802) 654-5125; and my
15 e-mail address is bethlk@rccw.com.

16 JUDGE CAILLE: Thank you, Ms. Kohler. Are
17 there any other appearances? All right. Then let
18 the record reflect there are no other appearances.

19 Prior to going on the record this morning,
20 we had some discussion. And Mr. Simshaw, if you
21 would kindly recap that for the record, please.

22 MR. SIMSHAW: Certainly, Your Honor.
23 Again, this is Cal Simshaw, for CenturyTel of
24 Washington. Since the inception of this docket,
25 there have been discussions between the Commission

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1 Staff and CenturyTel of Washington with regard to an
2 arrangement by which CenturyTel of Washington would
3 agree to provide service to the area in question in
4 this docket.

5 I'm able to represent to the hearings
6 examiner and the parties today that we believe that
7 we have reached an agreement in principle for an
8 arrangement to provide such service, that the only
9 outstanding matter that is left is to get the
10 executive sign-off at the CenturyTel level of that
11 arrangement.

12 I wanted to notify the Judge and the
13 parties of that in the event that maybe there was an
14 opportunity to avoid some of the more contentious
15 aspects of the prehearing matters and as it might
16 reflect upon the likelihood of having to fully
17 litigate the matter.

18 JUDGE CAILLE: Thank you very much, Mr.
19 Simshaw. Mr. Thompson; is that correct?

20 MR. THOMPSON: That's consistent with
21 Staff's understanding, as well.

22 JUDGE CAILLE: Thank you. Does anyone else
23 wish to be heard on that matter? All right. We also
24 discussed the idea of not going forward with a full
25 prehearing conference until we know whether this

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1 agreement will reach fruition, and I think that
2 that's probably the best way to proceed.

3 However, I would like to try to lock in
4 some dates with the Commissioners in the event that
5 we do need to go forward. So let's go off the record
6 for a few minutes and see what we can figure out.

7 (Discussion off the record.)

8 JUDGE CAILLE: Let's go back on the record.
9 In case there is a possibility that there will be
10 hearings held in this matter, the parties have agreed
11 to May 17th and 18th.

12 Now, having said that, I want to warn you
13 that there usually is a prehearing conference for
14 filing of cross exhibits and marking of those
15 exhibits, and that generally occurs -- well, if it's
16 beginning on a Monday, it usually begins the
17 Wednesday before, so I would assume it would be like
18 towards the end of -- like around the 11th, 10th or
19 11th of May. But, again, I just bring this up
20 because it has been a problem when I start scheduling
21 at the end of our schedule. So just keep that in
22 mind in case we go forward. And we would also need
23 to be scheduling a public meeting, a public hearing
24 if we go forward.

25 Now, Mr. Simshaw has indicated that he will

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1 notify the Commission by January the 17th as to the
2 status of the settlement of this proceeding, and
3 since we're in that mode, I am not going to do a
4 full-blown prehearing here, and the only other thing
5 I think we need to address today is that several of
6 the wireless carriers have made comments off the
7 record that I believe they would like to make on the
8 record. So if we could begin with Mr. Diamond.

9 MR. DIAMOND: Thank you, Your Honor. Greg
10 Diamond, again, on behalf of AT&T Wireless. Very,
11 very brief, we had originally come today with the
12 plan to ask Your Honor to dismiss AT&T Wireless out
13 of the case on jurisdictional grounds, but in light
14 of what appears to be an imminent settlement between
15 Staff and CenturyTel, we won't do that, and -- but
16 it's my understanding, based on comments from Mr.
17 Ayotte for RCC Holdings, that Staff may be agreeable
18 to dismissing out the wireless carriers if motions to
19 dismiss were filed.

20 So that, to the extent that the case is not
21 resolved by the 17th and the Century deal were to
22 somehow fall through, that AT&T Wireless would, in
23 fact, file such a motion.

24 JUDGE CAILLE: Thank you. Mr. Dykstra.

25 MR. DYKSTRA: Peter Dykstra, for Verizon

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1 Wireless. We would agree with Mr. Diamond's comments
2 and would hold off making the arguments we were going
3 to present today relating to being dismissed and
4 we'll wait until we hear whether or not this has been
5 resolved without having to go forward. But should it
6 go forward, we would join in the same motion.

7 JUDGE CAILLE: Thank you. And Mr. Ayotte?

8 MR. AYOTTE: Judge, I'm, I think, in the
9 same boat as Mr. Dykstra and Mr. Diamond, although
10 perhaps I'm a little less patient in terms of the
11 motions to dismiss or request to be dismissed. When
12 the Commission initially sent out its notice to the
13 carriers about the potential commencement of the
14 proceedings, this is their notice of October 25th,
15 their notice indicated that parties would have an
16 opportunity to submit comment to the Commission and
17 subsequently at this prehearing conference to
18 demonstrate why they should not be made a party to
19 the proceeding, or remain a party to the proceeding.

20 RCC Holdings did that on both a
21 jurisdictional ground, which is a legal issue, as
22 well as on a practical ground. We submitted that at
23 the Commission meeting and they have deferred it to
24 Mr. Thompson and Mr. Shirley to sort of analyze and
25 get satisfied as to our request that we not be or

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1 remain a party to the proceedings. And we did have
2 those discussions with Mr. Thompson and Mr. Shirley,
3 and I believe they were satisfied as to the
4 appropriateness of RCC Holdings not remaining as a
5 party to this proceeding, and I believe they're
6 prepared to support our dismissal today, subject to
7 any objection either by yourself or any other party.

8 The jurisdictional reason, in a nutshell,
9 comes from Section 214(e)(3), which is the basis upon
10 which this request is proceeding. As a wireless
11 carrier, as a commercial mobile radio services
12 provider, RCC Holdings is regulated by the FCC, and
13 the services which we provide pursuant to our FCC
14 licenses are interstate services. And the plain
15 reading of Section 214(e)(3) indicates that it is the
16 FCC, with respect to interstate services, who has the
17 ability to designate an ETC for an unserved area.
18 And it is a state commission with respect to
19 intrastate services.

20 So the jurisdictional issue, somewhat
21 simplistically, is that as CMRS providers licensed
22 and subject to the regulation of the FCC, that the
23 services which we provide, our commercial mobile
24 radio services, are interstate services, and as a
25 legal matter, the Washington Commission would not

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1 have the right or the ability or the pleasure to
2 designate us pursuant to (e)(3) with respect to an
3 unserved area.

4 The practical reason, as we had indicated
5 in our filing with the Commission, is that our CGSA,
6 cellular geographic service area within which we are
7 licensed, does not extend throughout the Moses Coulee
8 area. There's a substantial portion of the Moses
9 Coulee area, the unserved area here, where we're not
10 licensed to provide services and do not provide
11 services today.

12 The related practical reason, I think as
13 Mr. Thompson indicated, is that there is no state
14 funding mechanism available to otherwise compensate
15 RCC as a wireless provider if we were to be tagged as
16 the 214(e)(3) carrier.

17 So for those reasons, and I'll let Mr.
18 Thompson speak for himself, but for those reasons, I
19 believe Staff was willing to allow RCC Holdings to be
20 dismissed, and we'd make that request to you today,
21 and allow the proceeding to remain without us.

22 JUDGE CAILLE: Would you like to respond,
23 Mr. Thompson?

24 MR. AYOTTE: And I'm happy to answer any
25 questions you might have.

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1 MR. THOMPSON: This is Jonathan Thompson.
2 I would -- I guess I would just remark that Staff's
3 position is that we are persuaded that there would be
4 a problem with this Commission trying to compel a
5 wireless carrier to expand its service area unless
6 they're willing to do so, willing to go to the FCC to
7 get the authority to do so.

8 I'm not sure I entirely agree with the
9 interstate jurisdictional reason that Mr. Ayotte
10 stated, but -- and also we're concerned about the
11 lack of a funding mechanism. That is a concern for
12 us. So we have no objection, if the wireless
13 carriers do not wish to be a party to this
14 proceeding, to their dismissal.

15 JUDGE CAILLE: Well, does anyone -- do any
16 of the other parties have an objection?

17 MR. OWENS: Well, my client has no position
18 on the merits of the -- now what I guess is a motion,
19 Your Honor, but it seems to me, at any rate, from the
20 standpoint of an orderly process, I don't think you
21 know whether you've got a case or controversy before
22 you at this point, because there is -- it's been
23 communicated to you that the moving party, the Staff,
24 is in the process of reaching a settlement with one
25 of the respondents. And it may be premature for you

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1 to rule on jurisdictional issues unless you have a
2 case or controversy.

3 MR. CROMWELL: Your Honor, Robert Cromwell.
4 And I'd take the chance to exercise the rare
5 opportunity to concur with Mr. Owens, and I agree. I
6 think it's premature at this point. We clearly have
7 a settlement on the table that may resolve this issue
8 in its entirety. I think it's premature to consider
9 motions to dismiss at this time.

10 JUDGE CAILLE: All right. I agree with Mr.
11 Cromwell and Mr. Owens. And should this matter go
12 forward, I would appreciate it if those parties
13 wishing to be dismissed please file a written motion,
14 and we should know something about that by January
15 17th.

16 MR. CROMWELL: Your Honor.

17 JUDGE CAILLE: Yes.

18 MR. CROMWELL: May I ask that the
19 Commission not entertain any motions prior to Mr.
20 Simshaw's letter to the Commission, so that --

21 JUDGE CAILLE: Yes.

22 MR. CROMWELL: -- we're not otherwise
23 interrupting our holidays?

24 JUDGE CAILLE: Yes, yes. I don't know that
25 anyone else is speculating about motions, but I would

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1 appreciate that, as well. Let's see. I believe
2 that's it. Is there anything else that we need to
3 cover this morning? All right, then. Thank you very
4 much for coming, and this meeting is adjourned.

5 (Proceedings adjourned at 11:33 a.m.)

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