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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 In the Matter of the Petition)
of) DOCKET NO. UT-011439
4) Volume IV
VERIZON NORTHWEST, INC., for) Pages 65 - 105
5 Waiver of WAC 480-120-071(2)(a).)

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7 A prehearing conference in the above matter
8 was held on January 17, 2003, at 9:40 a.m., at 1300
9 South Evergreen Park Drive Southwest, Olympia,
10 Washington, before Administrative Law Judge THEODORA
11 MACE.

12 The parties were present as follows:

13 QWEST CORPORATION, by DOUGLAS N. OWENS,
Attorney at Law, 1325 Fourth Avenue, Suite 940,
14 Seattle, Washington 98101; telephone, (206) 748-0367.

15 THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION, by GREGORY J. TRAUTMAN, Assistant Attorney
16 General, 1400 South Evergreen Park Drive Southwest,
Post Office Box 40128, Olympia, Washington 98504;
17 telephone, (360) 664-1187.

18 VERIZON NORTHWEST, INC., by JUDITH A.
ENDEJAN, Attorney at Law, Graham and Dunn, 1420 Fifth
19 Avenue, 33rd Floor, Seattle, Washington 98101;
telephone, (206) 340-9694.

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RCC MINNESOTA, INC., by DAVID L. RICE,
21 Attorney at Law, Miller Nash, 601 Union Street, Suite
4400, Seattle, Washington 98101; telephone, (206)
22 622-8484.

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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 MACE: Let's be on the record in the
3 petition of Verizon Northwest, Inc., for a waiver of
4 WAC 480-120-071(2)(a), Docket No. UT-011439. This is
5 the day we have scheduled for a prehearing conference
6 in this hearing. My name is Theodora Mace. I'm the
7 administrative law judge. I would like to have the
8 appearances of counsel, beginning with Staff.

9 MR. TRAUTMAN: Thank you, Your Honor.
10 Gregory J. Trautman, assistant attorney general for
11 Commission staff.

12 MR. RICE: My name is David Rice. I'm here
13 on behalf of RCC Minnesota, Inc. I'm with the firm of
14 Miller Nash, and do you want the long form?

15 JUDGE MACE: Yes.

16 MR. RICE: My address is 4400 Two Union
17 Square, 601 Union Street, Seattle, 98101. My telephone
18 number is (206) 777-7424. My fax number is (206)
19 622-7485, and my e-mail is rice@millernash.com.

20 MR. OWENS: Douglas N. Owens, attorney at law
21 appearing on behalf of Qwest Corporation, and I
22 previously entered the long form of appearance.

23 JUDGE MACE: I want to note that Ms. Endejan
24 has indicated she's going to be a little delayed coming
25 to the hearing this morning. What I propose is we go

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1 off the record at this point and try to deal with some
2 of the cross-exhibits that have already been tendered
3 to the Bench and then resume on the record when
4 Ms. Endejan comes in, and we will deal with items such
5 as the motion to compel that Staff has filed, the order
6 of presentation of witnesses, order of cross, and then
7 dealing with additional cross-exhibits.

8 Does anybody have anything they want to bring
9 up at this point before we go off the record to deal
10 with the exhibits? Let's be off the record.

11 (Discussion off the record.)

12 JUDGE MACE: Since we went off the record,
13 Ms. Endejan has arrived, and would you enter your
14 appearance at this point?

15 MS. ENDEJAN: Yes, Your Honor. Judith
16 Endejan with Graham and Dunn appearing for Verizon
17 Northwest, Incorporated.

18 JUDGE MACE: We've had appearances from other
19 counsel. One thing I neglected to do is to ask whether
20 there is anybody on the bridge line who wants to enter
21 an appearance. It doesn't sound like there is anyone.

22 Ms. Endejan, when we were on the record
23 earlier, I said that I wanted to follow this agenda,
24 which has to do with dealing first with the motion to
25 compel, then with the housekeeping matters for the

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1 hearing, order of witnesses, cross-exhibits, order of
2 cross-examination, and any other items that the parties
3 want to bring up to try to make sure that the hearing
4 starting next Wednesday runs smoothly.

5 Does anybody have any suggestions to make
6 regarding that agenda, any idea about whether it should
7 be handled that way or another way? I'm happy to hear
8 suggestions. If not, I would like to go ahead with
9 hearing argument on the motion.

10 There is one problem, if you want to
11 characterize it that way, and that is, as I indicated
12 to Ms. Endejan yesterday, the notice offering an
13 opportunity to respond to Staff's motion indicated that
14 the parties had to respond on the 15th by e-mail and
15 fax with a hard copy the following day. I did not
16 personally receive Verizon's e-mail response on the
17 15th. I understand, after examining records at the
18 records center later, that Verizon did e-mail a
19 response.

20 What the problem was there was no indication
21 in that e-mail that I had given authorization to make a
22 filing by e-mail, and when that happens -- in other
23 words, if the records center doesn't have an indication
24 that I've authorized it, they don't distribute it and
25 it's not a filing, and so there is a bit of a problem

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1 in that technically, you didn't file your response in a
2 timely way, even though I know you did e-mail the
3 response to the Commission on the 15th and we did get a
4 hard copy on the following day. I'm going to ask if
5 the parties have any objection to Verizon responding on
6 the record today to Staff's motion?

7 MR. TRAUTMAN: No, Your Honor.

8 MR. OWENS: No objection.

9 MS. ENDEJAN: Your Honor, I apologize. I
10 spoke with my assistant, and apparently when I directed
11 her to file it with the Commission, I probably wasn't
12 clear enough in terms of putting the appropriate
13 designation.

14 JUDGE MACE: It's just very important
15 whenever a notice asks you to file by e-mail or fax
16 that you indicate both on the e-mail and on the fax
17 that you've been given authorization to do that.
18 Otherwise, the records center doesn't respond in a way
19 that you might find helpful. I'm not saying anything
20 derogatory about the records center, but that's the way
21 to try to work the system out so everybody understands
22 what's going on, so Mr. Trautman?

23 MR. TRAUTMAN: Thank you, Your Honor. We
24 have filed a motion to compel discovery in the case of
25 Verizon for Data Requests 110 through 122, and I

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1 believe since then, we've received responses to 110 and
2 111, so the outstanding requests for 112 to 122, and
3 for Qwest Corporation, a motion to compel responses to
4 Data Request Nos. 33 through 39.

5 These data requests simply ask for
6 information involving other line extensions that have
7 been done in Washington, questions involving the cost
8 of the extensions, the number of customers served, the
9 length of the extensions and other information
10 associated with them. They are directly relevant to
11 what's at issue in this case, and this case involves,
12 in the case of Verizon, a request for a petition for a
13 waiver of an obligation to provide line extension; in
14 the case of Qwest, the question of whether the boundary
15 should be adjusted, and in that case whether Qwest
16 should be obligated to serve, in which case the same
17 issues would arise in terms of whether Qwest should be
18 required to file a line extension, and the Qwest
19 witness agreed that if the boundary be moved, a request
20 for service would very likely be made and these issues
21 would present themselves.

22 The factors to be considered in the line
23 extension rule and in this hearing in determining
24 whether a waiver should be granted include the cost of
25 the extension, the number of persons served, the effect

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1 on the company, the effect on the public. There is a
2 list of factors in 480-120-071, Subsection 7, and the
3 assertion is made in this case that a waiver should be
4 granted because it's too costly, too burdensome. It is
5 not fair to the company, not fair to the ratepayers, to
6 require that this extension be built and that the cost
7 then be paid for by ratepayers.

8 In order to determine whether a particular
9 line extension is, in fact, outside the norm or too
10 costly, one needs to look at other line extensions that
11 have been performed. Part of Verizon's objection is
12 supposedly prefaced on this commission's ruling in the
13 Tenth Supplemental Order, and that order was an order
14 that struck certain testimony of Staff.

15 The order indicated that the testimony was
16 struck because it was not filed timely enough. The
17 order states that it could have been filed earlier
18 because the knowledge of the extension, although there
19 was no ratepayer recovery sought, was known, and that
20 was the basis for the order. There isn't any
21 indication at all in the order that questions about
22 other line extensions are irrelevant. Indeed, it would
23 have made little sense to suggest that Staff should
24 have filed testimony earlier if the view was that it
25 was on an irrelevant topic, and the Commission never

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1 held that. It's highly relevant, and that is why the
2 company doesn't want the evidence in the record. It's
3 very relevant to determining whether this line
4 extension is within the norm of line extensions in
5 general.

6 I would also point out that the extensions
7 mentioned include not only the particular one for Cedar
8 Ponds. There are questions involving many other
9 extensions, and these are extensions for which Verizon
10 has sought recovery, and they've sought recovery before
11 the Commission and the Commission has granted recovery
12 for these line extensions and agreed that these should
13 be paid for by the ratepayers.

14 This is also a topic upon which Staff engaged
15 in discovery earlier in the proceeding in June and
16 July, and the Commission granted our request to compel
17 discovery at that time, certainly finding that they
18 were relevant, and the issues are also relevant for
19 Qwest as far as the amounts that Qwest may have
20 provided for line extensions in determining again if
21 the boundary -- hypothetically, if it were determined
22 that the boundary should be moved, the same issues
23 would arise for Qwest whether they should be granted a
24 waiver and whether it would be appropriate for Qwest to
25 provide the extension, and so we feel strongly that

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1 this is very relevant evidence and that the Commission
2 has never held to the contrary and that the motion to
3 compel should be upheld.

4 JUDGE MACE: What does Staff plan to do with
5 this information if I grant your request?

6 MR. TRAUTMAN: It would certainly be
7 information that would be directly relevant to the
8 factors for waiver.

9 If the request isn't granted, and now we are
10 left simply with an assertion by Verizon that this is
11 too expensive. This is not normal, and effectively, I
12 guess, we have a situation where we are not allowed to
13 look at anything else that's going on, so we won't have
14 evidence of other extensions that we can compare it to.

15 JUDGE MACE: What will you do if you get the
16 information?

17 MR. TRAUTMAN: We will use it for comparison
18 purposes. It's part of the landscape.

19 JUDGE MACE: And you are going to have them
20 marked as exhibits?

21 MR. TRAUTMAN: Perhaps, yes, just like other
22 data responses, I would assume. It may depend upon the
23 response. We don't know what the responses will be,
24 but they very possibly could be marked as data
25 responses for entering into the record similar to

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1 what's been done with other data responses of Verizon
2 and of Qwest.

3 JUDGE MACE: Ms. Endejan?

4 MS. ENDEJAN: Yes, Your Honor, thank you.

5 Let's step back in time here, because this is about the
6 third or fourth time that we have visited the issue of
7 the Cedar Ponds line extension, which in our motion to
8 strike Mr. Shirley's testimony, we explained to the
9 Commission why that extension and the cost recovery
10 sought for it is not germane to the issue in this case,
11 and that's because the Cedar Ponds project was a
12 project undertaken at gun point with the threat of a
13 complaint being brought against the Company, and it was
14 done at a time prior to the effective date of the new
15 line extension rule.

16 So it was done under the old tariff under a
17 unique set of circumstances that the Company would have
18 to move out of fairness to supplement its testimony to
19 put that Cedar Ponds line extension project in context
20 here, because as we see this case, this is a case
21 involving the criteria for waiver under the new line
22 extension rule for line extensions made after that
23 date. The Cedar Ponds project does not fall into that
24 category, and I will state here on the record that had
25 the rule and its waiver provisions been in effect at

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1 the time, Verizon most likely would have come in and
2 asked for a waiver. Those provisions didn't exist, and
3 also, as we've explained in previous filings with the
4 Commission, the Cedar Ponds project ended up costing
5 approximately twice as much as had originally been
6 estimated because of a variety of environmental factors
7 and other construction issues.

8 So it would be very prejudicial to Verizon to
9 have Staff be allowed to treat the Cedar Ponds
10 extension as if it was a line extension like all the
11 other line extensions now under the new rule. So I
12 think we would state that compelling responses to this
13 would only make it -- it would be irrelevant. It's not
14 the issue before the Commission. The Commission is,
15 what does this new line extension rule waiver provision
16 mean? And the previous line extension under the Cedar
17 Ponds project has no bearing on that and cannot be
18 construed as an indication that the Company willingly
19 incurred \$700,000 in expense to serve nine customers.

20 So our fundamental objection to this is the
21 Commission has indicated its view of the Cedar Ponds
22 project in the ruling striking Mr. Shirley's testimony
23 and the Commission's order affirming the ruling
24 striking the testimony. Here we are again dealing with
25 the issue, which clearly you've ruled is not to be

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1 considered in this case.

2 Secondly, if you look at the actual data
3 requests themselves, they are fashioned in the manner
4 in which, when did you stop beating your wife manner.
5 For instance, Staff Data Request No. 122: "Did Verizon
6 ever violate an agreement with Commission staff
7 concerning any of the extensions included in the May
8 2nd, 2002, tariff filing?" Well, of course, Verizon
9 never violated any agreement. It's not in the business
10 of violating agreements with the staff, and I would
11 point out again as evidenced by the declarations in the
12 record of Joan Gage, that filing was made at the
13 suggestion of Staff. So it's a little bit murky here
14 in terms of whether we want to get sidetracked by the
15 issue of, was there an agreement with Staff; did
16 Verizon violate an agreement with Staff on a project
17 that's not relevant to the waiver issue under the new
18 rule here before the Commission.

19 I would also point out that apparently, Staff
20 has made no showing for the need for this information
21 because it has a copy of the tariff filing. The first
22 data request asks the Commission: "Did you make this
23 tariff filing," which tariff filing can speak for
24 itself, and Staff apparently knows what was sought in
25 the tariff filing because most of the data requests

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1 that it deals with costs of approximately 703,000 for
2 an extension to serve nine customers. So Verizon
3 questions what purpose these data requests are intended
4 to serve, except perhaps to be construed as some form
5 of request to admit, and we are not going to admit that
6 the Cedar Ponds project has any relevancy to the issues
7 in this case.

8 So consequently, we don't think it's
9 appropriate to compel a response. If a response is
10 compelled, then I'm going to orally move here today for
11 permission to supplement the testimony of Verizon so
12 that Verizon's witnesses can explain and put into
13 context the Cedar Ponds project. Thank you.

14 JUDGE MACE: I want to ask you a little bit
15 more about what information is supplied when the
16 Company made a tariff filing like the May 2nd tariff
17 filing. Are all of the costs of the extension in the
18 filing?

19 MS. ENDEJAN: I don't have the tariff filing
20 in front of me, but according to Ms. Gage, there is
21 cost support that is provided with the tariff filing to
22 the Commission.

23 JUDGE MACE: Thanks. Mr. Owens?

24 MR. OWENS: Thank you, Your Honor. I won't
25 belabor the points that I made in the written response

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1 other than to note that I didn't hear any argument,
2 even this morning, on Requests 33 and 38, which Qwest
3 noted in its written response, Staff's motion
4 completely failed to address the alternative grounds on
5 which Qwest objected to those, specifically that 33 was
6 information that the staff already had; namely, whether
7 a Qwest employee contacted the staff within a
8 particular period of time and discussed a particular
9 subject, and as to 38 that the request was unduly
10 vague.

11 In that connection with Request 38, I point
12 out that Okanogan County, I believe, is the largest
13 geographic extent of any county in the state, so to say
14 in the vicinity of Turtle Lake is, I think, quite
15 vague, and we shouldn't be required to answer it for
16 that reason as well.

17 Moving now to the general topic of whether
18 these Requests 33 through 39 are reasonably calculated
19 to lead to the discovery of admissible evidence, which
20 is the standard in the Commission's rule 480-09-480,
21 Subsection 6, Paragraph A, Subparagraph 6, I would
22 submit that we haven't heard any argument here why
23 those requests are likely to lead to the discovery of
24 admissible evidence on the issue of whether Qwest's
25 boundaries should be redrawn.

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1 The Commission said in the Third Supplemental
2 Order that it was unclear at that time which factors
3 should be considered in determining whether or not to
4 exercise what the Commission believed would be its
5 authority under RCW 80.36.230 to redraw Qwest's
6 exchange boundaries. The staff has never to this day
7 said specifically what it believes would justify
8 redrawing Qwest's boundaries. The closest you could
9 come would be in Exhibit RBS 4-T at Page 6, which would
10 be Mr. Shirley's testimony of, I believe, June 20th, in
11 which he identified four factors that the Commission
12 could consider.

13 The first is relative cost. In that context,
14 it's clear that he was talking the relative cost of
15 having Verizon build this particular extension to the
16 Timm Ranch or alternatively have Qwest build the
17 extension. There is no indication in that testimony
18 that what he means is relative cost to the entire
19 universe of all extensions that Qwest has ever made in
20 the State of Washington.

21 The second factor is maintenance. Clearly,
22 these requests have nothing to do with the issue of
23 what the impact on Qwest's maintenance expense would be
24 of having to have its exchange boundary redrawn to
25 include the Timm Ranch. The third is what the staff

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1 calls a noncost factor, community of interest of
2 Mr. Nelson and the Timm Ranch. Clearly, Your Honor,
3 the questions about what extensions Qwest has made in
4 other areas of the state, how many customers they
5 served, how long they were, how much they cost, how
6 short they were, how many requests Qwest has pending,
7 all these have absolutely nothing to do with Mr. Nelson
8 as community of interest.

9 And finally, customer choice, and that may
10 not even be a separate topic but it was, at least,
11 separately mentioned. Again, Your Honor, none of these
12 requests have anything to do with customer choice. So
13 on the face of it, Your Honor, there is nothing that
14 you could point to that would say that under the
15 factors the staff has identified in its testimony as
16 being those the Commission should consider in deciding
17 the issue for which Qwest was made a party in this case
18 by the Third Supplemental Order to determine how to
19 protect Qwest's interests under CR 19 in the event of a
20 redrawing of its boundaries, that these are likely to
21 lead to the discovery of admissible evidence.

22 I would point out that Staff in its written
23 argument but not in its oral argument made the point
24 that these requests of Qwest are potentially likely to
25 lead to the discovery of admissible evidence as to

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1 whether Verizon's waiver should be granted, and the
2 only suggestion that you could even say that the staff
3 has made in its oral argument on that point was that
4 Mr. Trautman used the term "outside the norm" twice in
5 his argument. He said, These requests are necessary to
6 determine whether these extensions, either by Verizon
7 or alternatively Qwest if Qwest's boundaries are
8 redrawn, are outside the norm.

9 I think Your Honor is sophisticated enough to
10 know that the norm is a statistical term, and it
11 implies definition of a universe, and here, Your Honor,
12 we don't have a universe. We have a part of a
13 universe. Even granting the staff's suggestion that we
14 should produce all this information, we don't have all
15 the extensions of all the other companies, and it was
16 up to the staff that they thought it should be a
17 statewide investigation of whether these particular
18 extensions are outside the norm of all extensions to
19 get that information from the other companies, and they
20 haven't done that. They haven't made them a party.
21 They haven't used the staff's discovery power to
22 require those companies to produce that information for
23 the Commission to consider whether, in fact, a norm
24 exists or can be established from a properly defined
25 universe.

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1 Finally, Your Honor, I think the staff's
2 argument puts the cart well before the horse. As I
3 pointed out, Qwest was made a party to this case to
4 determine whether or not its boundaries should be
5 redrawn. There is no evidence Qwest has ever received
6 a request or an application for service from anybody in
7 the area of the Timm Ranch. Qwest said that if its
8 boundary is redrawn, it expects it may well receive
9 such a request, in which case Qwest would be entitled
10 under the rule, 071, to file a request for a waiver.

11 At that time, whatever issues the Commission
12 considers it will consider, but the staff's argument
13 here tries to brush aside the main issue in this case
14 for Qwest, which is what grounds are there to redraw
15 Qwest's boundary, and there is no showing these data
16 requests are likely to lead to the discovery of
17 admissible evidence on that point. Thank you, Your
18 Honor.

19 MR. TRAUTMAN: Thank you, Your Honor. I
20 would like to respond to a number of the statements
21 that have been made. First of all, at the outset,
22 there was reference to Data Request 122 and whether a
23 question of whether an agreement has been violated, and
24 Ms. Endejan says you're asking have we beat your wife.

25 The staff has never asserted there was ever

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1 any violation of any agreement at any time. We never
2 asserted that in the prior motion. There were
3 statements in the Tenth Supplemental Order to the
4 effect that such an assertion was made. It never was.
5 It's not an issue in the case. It's not the reason for
6 admitting any of the evidence.

7 Staff's point at that time was that it was
8 simply that at the time the testimony was filed, there
9 had not been cost recovery filed by Verizon. There was
10 never any claim that there was a violation of a promise
11 or an agreement. As far as the argument that it's
12 wholly disingenuous for Staff to raise this because
13 Staff has some of the information sought -- I should
14 say, the argument that Staff has some of the
15 information sought, is wholly disingenuous, because if
16 Staff attempts to place those items in the record,
17 Verizon objects that it should be stricken.

18 So what we are trying to do is get a response
19 from Verizon as to matters on which they have knowledge
20 for admission into the record so that the Commission
21 may consider the whole record. When we attempted to
22 provide testimony, Verizon attempted to strike the
23 testimony. So to say, well, Staff has knowledge, that
24 doesn't do the Commission any good if that evidence
25 isn't in the record, and Verizon had ordered it should

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1 not be in the record.

2 As far as the relationship to the prior
3 tariff, we would like to point out also that Ms. Ruosch
4 in her own testimony testifies in some detail about
5 what is labeled the line extension tariff background,
6 and it gives the history of the prior tariff, and in
7 fact, it mentioned that Verizon was in the process of
8 trying to devise a new tariff and says, My
9 understanding from regulatory department is that this
10 approach met some resistance from the Commission staff,
11 and then they go on and talk about some of what
12 happened afterwards but not all of what happened
13 afterwards and part of what's involved in the Cedar
14 Ponds and that particular line extension, and for that
15 matter, what Verizon felt that line extension was worth
16 is directly relevant to Ms. Ruosch's own testimony
17 where she raises the issue in the line extension tariff
18 and directly responsive to that.

19 I would also point out that the information
20 that we have sought does not relate only to that
21 tariff. Your Honor asked whether there was cost
22 information filed with the tariff filing in July where
23 the Company sought recovery for a number of extensions,
24 not just Cedar Ponds, and the answer is yes, and in
25 fact, that's one of the cross-exhibits we've included

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1 with Verizon and, of course, it's information that was
2 prepared by Verizon, but that cost information needs to
3 be made part of the record, and the extensions for
4 which we sought information are not just Cedar Ponds.
5 There are other extensions as well.

6 The argument I heard Mr. Owens make was that,
7 well, if you don't include every single extension done
8 by anyone anytime in the state, your alternative is you
9 must focus only on this one. Now, the companies are
10 free to argue that it's abnormally expensive and a huge
11 burden, but no one is allowed, including the
12 Commission, evidently, to look at anything else to
13 determine whether, in fact, that assertion is true.

14 JUDGE MACE: Let me make sure I understand
15 that Staff has proposed as a cross-exhibit the tariff
16 filing for recovery?

17 MR. TRAUTMAN: Yes, that's correct.

18 JUDGE MACE: That includes the Cedar Ponds
19 extension?

20 MR. TRAUTMAN: It includes that one Verizon
21 made a request for recovery for, I believe, 1.3
22 million, and I believe it was for a total of 34 -- I
23 believe there were about 10 extensions.

24 JUDGE MACE: And the tariff breaks that
25 information down by extension; is that correct?

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1 MR. TRAUTMAN: Yes, it does. It has all the
2 extensions listed, how much was paid, and then there is
3 an overhead factor, and then it says how many persons
4 for each of the extensions and what the recovery was.

5 As far as the argument that Mr. Owens made
6 about Staff putting the cart before the horse, again,
7 Qwest's own witness put the cart before the horse
8 because Qwest's own witness said, as it must, if a
9 boundary change were made, he said it was very likely,
10 he absolutely expected a request for service to be
11 made, at which point the issues would also apply to
12 Qwest.

13 JUDGE MACE: But you agree those issues would
14 not be part of this case.

15 MR. TRAUTMAN: I'm not sure.

16 JUDGE MACE: Because until this case is
17 resolved, we can't know about what your change would be
18 in the offing.

19 MR. TRAUTMAN: Perhaps. But even in that
20 case, evidence of extensions provided, let's say, by
21 Qwest and evidence of what types of extensions other
22 companies are doing and what they cost and whether they
23 are doing those extensions, whether they are seeking
24 recovery under the rule is relevant on the issue of
25 Verizon as well. It's part of the issue of what other

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1 extensions are being done.

2 We have companies here that are arguing that
3 a particular extension qualifies for a waiver because
4 it is not within the norm. If it is within the norm,
5 they have to provide service under the line extension
6 rule. They are arguing that when you apply factors
7 that talk about the cost of the extension the customers
8 serve, the length of the extension, the effect on the
9 company, they are arguing that when you apply that to
10 this extension, you should come to the conclusion that
11 a waiver is justified because it is unusual. That's
12 what the waiver applies to, and yet to determine
13 whether it's unusual, they don't want the Commission or
14 anyone else to look at any other extension --

15 JUDGE MACE: I understand the argument. Let
16 me just ask another question. With regard to these
17 Qwest discovery requests where you've asked how many
18 service extensions must be done but not completed,
19 etcetera, you couch the question -- for example, it's
20 No. 34 -- how many service extensions has Qwest done
21 and completed for which it believes it may recover
22 costs. Are you implying in that question that the
23 Commission has not received a request for recovery for
24 those extensions?

25 MR. TRAUTMAN: I believe that would be the

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1 case --

2 JUDGE MACE: Has Qwest filed any requests --

3 MR. TRAUTMAN: No, they have not. The other
4 point I would like to make is there was an argument
5 made that one of the data requests that we put out was
6 vague, and the question was, has Qwest extended service
7 in the vicinity of Turtle Lake in Okanogan County, and
8 the remainder of the question said, What's the length,
9 the total cost, the reinforcement cost, how many
10 customers were served. Obviously, those aren't vague.

11 One reason we didn't answer to the vagueness
12 question on the first issue about whether Qwest would
13 be willing to serve in the vicinity of Turtle Lake, as
14 Qwest's own response to Data Request 32 said, and this
15 is a statement from Ms. Jensen to GTE, she asked, Would
16 GTE be willing to serve two customers located close to
17 the Turtle Lake development? So we didn't think that
18 was grounds for objection when Qwest has used the exact
19 same terminology in their own letter.

20 JUDGE MACE: So you are referring to that
21 particular extension request where you have asked that
22 question?

23 MR. TRAUTMAN: Yes. The same one that I
24 would surmise that Qwest was referring to. Thank you.

25 JUDGE MACE: Thank you.

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1 MR. OWENS: May I briefly say one thing, Your
2 Honor? When Mr. Trautman used the term "companies" in
3 the plural, talking about arguing and applying the
4 waiver criteria in the rule with respect to particular
5 extension, that isn't Qwest's primary point here. Our
6 point is that this commission hasn't changed Qwest's
7 exchange boundary to apply that rule to Qwest, and
8 there isn't any indication yet as to why it should, so
9 the "companies" plural isn't correct.

10 JUDGE MACE: I'm going to grant the motion in
11 part and deny the motion in part. The overall premise
12 I'm operating from is that the rules for allowing
13 discovery are not as rigorous as the rules relating to
14 admissibility, and I think that some of this
15 information arguably could be relevant to this
16 proceeding, and so, therefore, with that in mind, I'm
17 going to grant some of these requests, but I'm going to
18 go through the items number by number and indicate one
19 way or the other.

20 I do have a concern that some of this
21 information is already in Staff's hands and part of
22 this tariff filing, and that's another factor that I'm
23 going to consider in terms of making my ruling. I
24 would indicate that my review of the Commission's prior
25 rulings on this whole issue of the Cedar Ponds

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1 extension is that the Commission did not specifically
2 rule that this information is irrelevant, that that
3 issue is yet to be determined. We haven't had
4 anything -- there were other reasons for granting the
5 prior motion to strike and denying the motion for
6 administrative review.

7 Having said that, I don't think that the
8 Commission has come to the determination either way
9 whether or not this information should be brought into
10 the record. Let me go through the data requests one at
11 a time. My understanding is that some of them have
12 already been responded to. No. 110 and 111 of the
13 requests to Verizon, those have been provided; is that
14 right, Ms. Endejan?

15 MS. ENDEJAN: That's correct, Your Honor.

16 JUDGE MACE: I am going to deny the discovery
17 motion with regard to Request No. 112 because I believe
18 that information is in Staff's hands. Whatever Verizon
19 filed for on May 2nd in terms of cost recovery, they
20 filed for, and Staff has that information. With regard
21 to No. 113, 114, 115, again, those are all pieces of
22 information that should be apparent from the tariff,
23 which Staff has proposed as a cross-exhibit, and I'm
24 going to deny the request with regard to those data
25 requests.

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1 I will ask Verizon to answer Data Request No.
2 116, 117 and 118 and 119 and 120. I'm going to deny
3 the request with regard to 121 because Verizon
4 apparently requested recovery of extension costs, and
5 that is in the record, or -- strike that. And that is
6 the part of a cross-exhibit that the staff has
7 proposed. It's also part of the tariff filing.

8 With regard to Request No. 122, Staff has
9 apparently indicated there was no violation of an
10 agreement, and based on the argument, I don't see the
11 relevance of this information to the proceeding. I'll
12 deny the discovery request with regards to No. 122.
13 That concludes the ruling with regard to Verizon.

14 With regard to Qwest, I'm aware of your
15 argument, Mr. Owen, that we haven't really gotten to
16 the point yet of dealing with whether Qwest would be
17 required to serve the Timm Ranch, whether there would
18 be a waiver request and so on. However, based on
19 Staff's argument about the possible relevance of this
20 evidence to judging or comparing cost of extensions as
21 presented by Verizon and by Qwest, I am going to
22 require that you answer the questions. I would like to
23 have some idea though of how long it would take you to
24 prepare responses.

25 MR. OWENS: Your Honor, I don't believe Qwest

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1 has the information gathered for the year 2002 yet. I
2 don't know. I'll have to find out how long it would
3 take to gather that information.

4 JUDGE MACE: You need to bear in mind the
5 hearing begins on Wednesday.

6 MR. OWENS: I'm aware of that, Your Honor. I
7 believe Qwest has the information for 2001, but as I
8 said, I'll have to ask my client how long it will take.
9 There isn't a client representative in the hearing room
10 today, and I will check and try to get back to you as
11 soon as possible. If you would like to take a recess,
12 I can get that information shortly.

13 JUDGE MACE: That's a good point, taking a
14 recess.

15 MR. OWENS: So are you compelling all
16 responses?

17 JUDGE MACE: My understanding of them is they
18 all had to do with cost and various extensions, but
19 I'll review them briefly right now. Actually, I won't
20 compel an answer to each response. No. 33, that
21 information is in Staff's hands. I will compel a
22 response to No. 34, No. 35, No. 36, No. 37. I will
23 also compel the answer to No. 38 with the qualification
24 that it refers to the extension Ms. Jensen mentioned.
25 I believe Mr. Trautman referred to that. Was it

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1 information in that discovery request?

2 MR. OWENS: I can answer that on the record.

3 The answer is no.

4 JUDGE MACE: The answer to...

5 MR. OWENS: The answer to the data request is

6 no. If that's what the request is narrowed to, the

7 answer is no.

8 MR. TRAUTMAN: Now we get to the question in

9 the vicinity of Turtle Lake and --

10 JUDGE MACE: I'll only allow discovery with

11 regard to that particular extension you were talking

12 about that Ms. Jensen referred to.

13 MR. TRAUTMAN: Fine.

14 MR. OWENS: We'll provide a supplemental

15 response in writing, but at least we don't have to wait

16 for that, Your Honor.

17 JUDGE MACE: I'll require a response to

18 No. 39. Go ahead.

19 MS. ENDEJAN: Your Honor, in light of -- and

20 I don't know quite how you want to deal with this

21 issue. Apparently, Staff is going to attempt to

22 interject this whole Cedar Ponds line extension into

23 the record someday or another. If that is the case,

24 out of fundamental fairness to my client, Verizon needs

25 to have the opportunity to respond or reply.

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1 JUDGE MACE: Let me ask you this before you
2 go any further. I'm puzzled, I guess, by the need to
3 file testimony. You would have the ability to examine
4 your witness, if Staff did bring this subject up, to
5 examine your witness so you would be able to bring out
6 further details about the project on the record.

7 MS. ENDEJAN: The problem is one of the
8 witnesses who has knowledge, Ms. Gage, is not one of
9 the witnesses for which we filed prefile testimony.

10 Ms. Ruosch knows about the project; that's
11 true, but if we get into this whole business of was
12 there an agreement to seek recovery, etcetera, the only
13 person who would really have knowledge of that would be
14 Ms. Gage. Her declarations are on the record.

15 JUDGE MACE: But Staff is going to have
16 trouble asking one of your current witnesses questions
17 about it in the first place; isn't that correct, if you
18 don't have a witness who is knowledgeable?

19 MS. ENDEJAN: I guess it depends on where
20 they go with Ms. Ruosch. I don't want to have to file
21 supplemental reply testimony here, but nor do I want to
22 be deprived of the opportunity to present our side of
23 the case should this issue go much further, and maybe
24 as the hearing develops, I may renew my motion and put
25 on the stand a witness, if necessary, if Ms. Ruosch

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1 cannot adequately address what comes out.

2 JUDGE MACE: I would say at this point it's
3 premature to deal with this issue. On the other hand,
4 I don't want to have the commissioners, when they are
5 presiding and have limited time, have to deal with
6 something like this. Yet, we don't know what use is
7 going to be made of this discovery. We don't know if
8 Staff is going to be able to propound questions to one
9 of your witnesses, who might not be able to answer.
10 There are a lot of unknowns at this point, and I
11 believe it's premature to deal with this issue.

12 MR. OWENS: I have a similar concern, Your
13 Honor. As we mentioned in our written motion, this
14 appears to be a brand-new theory by the staff as to why
15 Qwest should be required to have its boundary changed.
16 I identified the four factors in Mr. Shirley's
17 testimony, and I'm not questioning your ruling. The
18 only other issue that the staff raised we responded to
19 in our December 20th testimony. The theory that the
20 relative number of customers benefited by spending the
21 same amount of money could also be a reason to require
22 Qwest to have its boundary redrawn.

23 We don't have notice of this new staff theory
24 that apparently in context, the cost that Qwest would
25 incur if it were required to have its boundary redrawn

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1 and served is not out of the norm with regard to other
2 extensions it's made. We haven't been able to put on
3 evidence to counter that theory, which apparently we
4 may only see in the staff's brief, and I will have to
5 make an objection at the time that evidence is offered,
6 if it is offered.

7 JUDGE MACE: I appreciate your comments. Let
8 me indicate that the ruling that I made on the motion
9 has to do with the argument Staff had about placing
10 Verizon's costs to extend in context. Any other issue
11 that Staff wants to raise with regard to the
12 information, we will have to deal with later on down
13 the road. I'm sure you will have many opportunities to
14 advance your position to the Commission.

15 MR. OWENS: Thank you, Your Honor.

16 JUDGE MACE: Let's take 15 minutes at this
17 point.

18 MR. OWENS: I just had one point, and I don't
19 mean to get ahead of ourselves, but I noticed something
20 on the pre-distributed exhibit list that you circulated,
21 Your Honor. You had caught an error that I made in the
22 exhibit list I sent out last night. I had left out
23 Ms. Jensen's Exhibit 4, which I didn't intend to do,
24 but that needs to be a 4-C because that is a
25 confidential exhibit, so that correction needs to be

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1 made. It's on Page 2.

2 JUDGE MACE: I show it as 53-C, but the TAJ-4
3 doesn't include a confidential notation.

4 MR. OWENS: Thank you.

5 JUDGE MACE: This might give you some time to
6 look at the exhibit list I passed out, and you might
7 want to start getting your piles of exhibits onto the
8 Bench. What I would appreciate if you would do is if
9 you have a stack of exhibits, put them all in one stack
10 for one party instead of distributing them across the
11 Bench as if the commissioners were here. Let's be off
12 the record.

13 (Recess.)

14 JUDGE MACE: I would like to resume now so we
15 can deal with the order of witnesses. I would like to
16 have each of you indicate the order in which you intend
17 to present your witnesses, starting with Staff.

18 MR. TRAUTMAN: Thank you, Your Honor. We had
19 intended to have provided that his presence is
20 necessary, Professor Duft?

21 JUDGE MACE: I have not heard back yet on my
22 inquiry to the commissioners on whether or not they
23 would have questions of him, and I will try to pursue
24 that today.

25 MR. TRAUTMAN: He is only available on the

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1 24th, however, so even though we would like him to go
2 first depending on the pace of the hearing, he has to
3 go on the 24th. He can't go prior to that, and then
4 Tom Spinks, Bob Williamson, and Bob Shirley.

5 JUDGE MACE: Verizon?

6 MS. ENDEJAN: Let me clarify, Your Honor,
7 that is it your thinking that Staff would go first?

8 JUDGE MACE: My thinking is that Verizon
9 would go first because you filed the application. My
10 thinking was that the Company would present their
11 witnesses first and then Staff.

12 MR. OWENS: May we be heard on that, Your
13 Honor?

14 JUDGE MACE: You may, but let me first hear
15 the order of witnesses Verizon intends.

16 MS. ENDEJAN: The order of witnesses, we will
17 have Kay Ruosch first and Dr. Danner second.

18 JUDGE MACE: Thanks. Qwest?

19 MR. OWENS: Qwest will present Robert Hubbard
20 first, Theresa Jensen second, and Pamela Morton third.

21 JUDGE MACE: Your comments about the order of
22 presentation of parties?

23 MR. OWENS: Yes, Your Honor. Qwest's
24 position is that under the Commission's rule, the
25 proper order would be Verizon first, Staff second,

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1 bearing in mind that RCC Minnesota has already by
2 agreement been given a date certain, so whenever that
3 falls within that order, their witnesses would be
4 taken.

5 JUDGE MACE: Did I miss something that RCC
6 had been given a date certain?

7 MR. OWENS: I thought the parties agreed that
8 they should be given the 23rd because their witnesses
9 were only available that day.

10 JUDGE MACE: Perhaps you communicated with me
11 about that, and I don't recall the communication.

12 MR. RICE: Mr. Owens is correct that the 23rd
13 was the date the RCC witnesses were intended to
14 testify. I don't know how that was communicated to
15 Your Honor, however, unfortunately. I can look into
16 that.

17 JUDGE MACE: As long as I know now, that's
18 good.

19 MR. RICE: I'm sorry if it was not
20 communicated to you.

21 JUDGE MACE: So your witnesses would be on
22 the 23rd. Go ahead, Mr. Owens.

23 MR. OWENS: The staff would present its case
24 second in order, and then Qwest would follow the staff,
25 and the reason for that is, Your Honor, that as you

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1 pointed out, Verizon initiated this case with its
2 request for a waiver, so under the Commission's order
3 of precedence rule, 480-09-735, Verizon would go first
4 and the staff would follow Verizon, but as to Qwest,
5 Qwest was made a respondent in this case, and under
6 subparagraph 1(a) of that rule, the respondent follows
7 the staff, and so we believe it's appropriate that
8 Qwest follow the staff in order of presentation.

9 MR. TRAUTMAN: The rule is that 480-09-735, I
10 guess our view is that this case doesn't really neatly
11 follow in the rule because it's a case initiated by
12 Verizon, and then following that, other parties were
13 added with varying interests, and the rule, in any
14 event, does allow the administrative law judge or the
15 presiding officer to modify the order of proceeding,
16 and that's in Subsection 2. Our view was it seemed
17 more appropriate for Verizon to go first and then
18 either RCC or Qwest and Staff to be last, but I don't
19 think this case follows neatly within the rule.

20 MR. OWENS: Your Honor, I agree that
21 Paragraph 2 does allow modification of procedure.
22 However, it's not clear from Staff's comments why Staff
23 believes it's appropriate that Staff should follow
24 Qwest. Our position is that to any relief the staff
25 seeks against Qwest, and I realize Staff doesn't

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1 believe they do seek relief against Qwest, but Qwest
2 has a different view, the staff has the burden, and the
3 staff should therefore go before Qwest.

4 JUDGE MACE: Anything further?

5 MR. TRAUTMAN: No.

6 JUDGE MACE: I'm going to rule that the
7 Company should precede Staff just purely so that
8 information that comes in regarding the companies all
9 comes in initially and then Staff presents its case.

10 I think that the Commission can sort this
11 out, and I think the parties will have adequate
12 opportunity for cross-examination so that any of these
13 problems will be alleviated. I think purely for
14 organization of the information, it would be better to
15 do it that way, so I will indicate that the order will
16 be Verizon, Qwest, RCC, and Staff.

17 Of course, we will have to make an allowance
18 for RCC to come present its witnesses on the 23rd if
19 you have all agreed to that.

20 MR. RICE: Thank you, Your Honor.

21 JUDGE MACE: I think I need to know the order
22 of RCC witnesses.

23 MR. RICE: RCC will present Kyle Gruis first
24 and then Beth Kohler.

25 JUDGE MACE: Before we turn to deal further

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1 with exhibits, have you had a chance, Mr. Owens, to
2 find out about the length of time it will take Qwest to
3 respond to discovery?

4 MR. OWENS: I have, Your Honor, and the
5 answer is it varies by specific request. I did discuss
6 with Mr. Trautman that Qwest can provide today some of
7 the information. However, as to responses to others of
8 the requests, it may be a matter of weeks because Qwest
9 does not have information for 2002 readily available,
10 and that includes both jobs that have been completed in
11 2002 and jobs that are pending, and it would require
12 some research by the person in charge, and that person
13 is on vacation until Monday, so I think it's impossible
14 to get that information by the beginning of the
15 hearing.

16 JUDGE MACE: You would be able to have the
17 2001 information though?

18 MR. OWENS: I have it here. Some of what the
19 staff has requested, for example, the length of the
20 jobs is not available, and that would again have to
21 come from the person who isn't on site until Monday. I
22 don't know. I may be able to get that information on
23 Monday, but I have information on the numbers of jobs,
24 the wire centers, the cost of the jobs, and the
25 proportion of reinforcement for 2001, and I believe

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1 that's responsive at least in part to 34.

2 JUDGE MACE: You have that available today,
3 you say?

4 MR. OWENS: I can download it onto a floppy
5 disk and provide it to Staff immediately.

6 JUDGE MACE: I need to get some clarity here
7 about which items of the discovery you can respond to
8 today and which you need more time for. Can you break
9 it down by the numbers?

10 MR. OWENS: I believe No. 34 is the one that
11 can be responded to immediately, at least for those
12 parts of it other than the length of the extension.
13 34, we can respond with 2001 data today. 35, it would
14 probably be a week. 36, we can provide the information
15 for 2001, excluding the length.

16 We can provide, by inference, I suppose, 37
17 for 2001, if you use the cost as a surrogate for
18 length; that is, we can determine the shortest but we
19 don't have the actual number of feet involved. 38,
20 I've already responded to, and we can provide a written
21 response to that today. 39, it would take between a
22 week and two weeks to gather that information.

23 JUDGE MACE: Thank you. Let's turn to
24 cross-examination exhibits, and let's be off the record
25 for that.

0104

1 (Discussion off the record.)

2 JUDGE MACE: Let me indicate for the record
3 that I will find out whether Professor Duft needs to
4 actually appear next week for the hearing. I will find
5 out an exact starting time for Wednesday. I will find
6 out from Mr. Owens whether or not Qwest has an
7 objection to the map that Staff has provided showing
8 the locations of the various residences that are
9 underlying applicants or in some way connected with
10 this hearing; that I will send out a revised exhibit
11 list showing the cross-exhibits and that I will send
12 out a grid for cross-examination. Staff has advised me
13 that they may have only 45 minutes of cross-examination
14 for Ms. Jensen and that their cross-examination time
15 for Ruosch and Danner may -- I'm sorry.

16 MR. TRAUTMAN: At this point, it looks like
17 it might be a net equal. One may go up and one may go
18 down.

19 JUDGE MACE: So the only change is that you
20 may have less for Ms. Jensen.

21 MR. TRAUTMAN: At this point.

22 JUDGE MACE: And I have advised the parties
23 that if they have any other concerns that need to be
24 addressed before the hearing, they should bring them to
25 me either this afternoon or on Tuesday next week so we

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1 don't have to deal with them while the commissioners
2 are presiding. Nothing else? Then we are adjourned
3 until Wednesday.

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(Prehearing concluded at 12:08 p.m.)

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