

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 In the Matter of the Petition)
 4 for Arbitration of an Amendment)
 5 to Interconnection Agreements of)DOCKET NO. UT-043013
 6 VERIZON NORTHWEST, INC.)Volume IV
 7)Pages 147 - 207
 8 With)
 9)
 10 COMPETITIVE LOCAL EXCHANGE)
 11 CARRIERS AND COMMERCIAL MOBILE)
 12 RADIO SERVICE PROVIDERS IN)
 13 WASHINGTON)
 14 Pursuant to 47 U.S.C.)
 15 Section 252(b) and the Triennial)
 16 Review Order.)
 17 -----

18 A prehearing conference in the above matter
19 was held on September 7, 2004, at 1:35 p.m., at 1300
20 South Evergreen Park Drive Southwest, Olympia,
21 Washington, before Administrative Law Judge ANN E.
22 RENDAHL.

The parties were present as follows:

23 XO WASHINGTON, INC.; TIME WARNER TELECOM OF
24 WASHINGTON, by GREGORY J. KOPTA (via bridge), Attorney
25 at Law, Davis, Wright, Tremaine, 1501 Fourth Avenue,
Suite 2600, Seattle, Washington 98101; telephone,
(206) 628-7692.

VERIZON NORTHWEST, INC., by TIMOTHY J.
O'CONNELL, Attorney at Law, Stoel Rives, 600 University
Street, Suite 3600, Seattle, Washington 98101;
telephone, (206) 624-0900.

Kathryn T. Wilson, CCR

Court Reporter

0148

1

2

SPRINT COMMUNICATIONS COMPANY, by WILLIAM E. HENDRICKS, III (via bridge), Attorney at Law, 902 Wasco Street, Hood River, Oregon 97031; telephone, (541) 387-9439.

4

5

NORTHWEST TELEPHONE, INC., by RICHARD A. PITT (via bridge), Attorney at Law, Post Office Box 667, 12119 Jacqueline Drive, Burlington, Washington 98233; telephone, (360) 707-2925.

6

7

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, by LETTY S.D. FRIESEN (via bridge), Attorney at Law, 1875 Lawrence Street, Suite 1575, Denver, Colorado 80202; telephone, (303) 298-6475.

8

9

10

MCI, INC, by MICHEL SINGER NELSON (via bridge), Attorney at Law, 707 17th Street, Suite 4200, Denver, Colorado 80202; telephone, (303) 390-6106.

11

12

FOCAL COMMUNICATIONS CORPORATION OF WASHINGTON; ICG TELECOM GROUP, INC.; INTEGRA TELECOM OF WASHINGTON, INC.; MCLEOD USA TELECOMM SERVICES, INC.; PAC-WEST TELECOMM, INC., by PHILIP J. MACRES (via bridge), Attorney at Law, Swidler, Berlin, Shereff, Friedman, 300 "K" Street Northwest, Suite 300, Washington D.C. 20007; telephone, (202) 424-7877.

13

14

15

16

ADVANCED TELCOM GROUP, INC.; BULLSEYE TELECOM, INC.; COMCAST PHONE OF WASHINGTON, LLC; COVAD COMMUNICATIONS COMPANY; GLOBAL CROSSING LOCAL SERVICES, INC.; WINSTAR COMMUNICATIONS, LLC; by HEATHER T. HENDRICKSON (via bridge), Attorney at Law, Kelley, Drye & Warren, 1200 19th Street Northwest, Washington D.C. 20036; telephone, (202) 887-1284.

17

18

19

20

21

22

23

24

25

0149

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

2 JUDGE RENDAHL: I'm Ann Rendahl, and I'm the
3 administrative law judge and arbitrator presiding over
4 this proceeding. We are here before the Washington
5 Utilities and Transportation Commission this afternoon,
6 Tuesday, September 7th, 2004, for a prehearing
7 conference in Docket No. UT-043013, which is captioned,
8 In the matter of the petition for arbitration of an
9 amendment to interconnection agreements of Verizon
10 Northwest, Inc., with competitive local exchange
11 carriers and commercial mobile radio service providers
12 in Washington pursuant to 47 USC Section 252(b) and the
13 Triennial Review Order.

14 Let's take appearances from the parties
15 beginning with Verizon, and most of you, I believe all
16 of you, have already made appearances in this docket,
17 so if you just state your name.

18 MR. O'CONNELL: Timothy J. O'Connell of the
19 law firm Stole Rives, LLP, on behalf of Verizon
20 Northwest, Inc.

21 JUDGE RENDAHL: On the bridge line, beginning
22 with MCI? Okay, how about the Competitive Carrier
23 Group? Is there anyone on the bridge line?

24 MS. HENDRICKSON: I'm sorry, Judge. This is
25 Heather Hendrickson. I was speaking into mute. I'm

0150

1 with Kelley, Drye and Warren for the Competitive
2 Carrier Group.

3 JUDGE RENDAHL: And the Competitive Carrier
4 Coalition?

5 MR. MACRES: Philip Macres of the law firm
6 Swidler, Berlin, Shereff, Friedman, on behalf of the
7 Competitive Carrier Coalition, which includes Focal
8 Communications Corporation of Washington, Integra
9 Telecom of Washington, Inc., McLeod USA
10 Telecommunication Services, Inc., and Pac-West Telecom,
11 Inc.

12 JUDGE RENDAHL: And Mr. Sprague, you are also
13 here with Pac-West?

14 MR. SPRAGUE: That's correct.

15 JUDGE RENDAHL: And for Integra?

16 MS. JOHNSON: Karen Johnson just listening
17 in, Your Honor.

18 JUDGE RENDAHL: And Mr. Kopta, who are you
19 representing today?

20 MR. KOPTA: Gregory J. Kopta of the law firm
21 Davis, Wright, Tremaine, LLP, on behalf of XO
22 Washington and Time Warner Telecom of Washington.

23 JUDGE RENDAHL: And for Northwest Telephone?

24 MR. PITT: Richard Pitt for Northwest
25 Telephone.

0151

1 JUDGE RENDAHL: Ms. Singer Nelson?

2 MS. SINGER NELSON: Michel Singer Nelson
3 appearing on behalf of MCI.

4 JUDGE RENDAHL: For Sprint?

5 MR. HENDRICKS: Tre Hendricks on behalf of
6 Sprint.

7 JUDGE RENDAHL: For AT&T? Okay. Ms. Friesen
8 may join us later.

9 As I stated off the record, I appreciate your
10 all calling in and being here on short notice, given
11 that the notice went out late last week. The focus of
12 the prehearing this afternoon is to address Verizon's
13 two Triennial Review Order amendments which it filed on
14 -- it was filed with the Commission on August 23rd and
15 then Verizon's proposed procedural schedule which it
16 filed with the Commission on August 27th.

17 I've received responses to Verizon's proposal
18 from AT&T, MCI, The Competitive Carrier Group,
19 Competitive Carrier Coalition, and Pac-West Telecom.
20 So what I would like to do is address those two issues
21 as well as the motion filed by a number of CLEC's
22 seeking enforcement of Order No. 5 and enforcement of
23 the interconnection agreements and the enforcement of
24 the TRO. After we address the procedural schedule, if
25 you think it's appropriate to address that first, I

0152

1 would like to hear from the parties.

2 MR. O'CONNELL: Your Honor, I think the
3 proposal you suggested makes the most sense, to discuss
4 the schedule first and then how we would respond to
5 this motion and where we would go from there.

6 JUDGE RENDAHL: Is there any objection to
7 proceeding in that order? Hearing none, let's go
8 forward. Mr. O'Connell, if you could give us -- I
9 assume you've received the responses to your proposed
10 schedule and that you had probably heard some of those
11 responses prior to filing it.

12 MR. O'CONNELL: That is correct. As I think
13 we indicated in our filing, we had circulated the
14 schedule. Verizon's proposal was not agreed to. The
15 comments we received back were consistent with the
16 comments that the other parties have put in writing to
17 you.

18 Frankly, as I read through them, most of them
19 it seemed either sought to stay the proceeding entirely
20 or to split it into various portions and stay large
21 sections of it and go forward on other portions. By my
22 count, that is the third time CLEC parties have asked
23 you to either stay or dismiss this case in whole or in
24 part, and I think the denial the first two times was
25 correct, and I think it should continue to be denied.

0153

1 We have been at this process since October of
2 last year. It is one where I think Verizon has been
3 reasonable with all the parties about scheduling
4 things. We will continue to do so, and we tried to
5 propose a schedule that struck us as a reasonable one
6 given the things that have to get done in this case.

7 We continue to agree that bifurcating the
8 costing issues, the pricing issues makes sense, and so
9 we haven't gone that far to defer that to a subsequent
10 phase of the proceeding, but the schedule that we have
11 put forward would result in an arbitrator's ruling
12 resolving some of these nonprice issues by January of
13 next year. Again, we've been, I think, reasonable in
14 scheduling the case and not purporting to stick to a
15 nine-month clock, but we do think it's appropriate that
16 the case be brought to conclusion in a reasonable
17 period, at least for this phase.

18 As I say, we are trying to be reasonable
19 about these things, and if the schedule that Verizon
20 has proposed has some particular date or set of dates
21 that does not work either with the Commission schedule
22 or with your schedule or with any of the other
23 proceedings pending in front of this Commission, we are
24 reasonable about those things, but we think the overall
25 outline of the schedule we've proposed is the

0154

1 appropriate one for the remainder of the phase of this
2 docket.

3 JUDGE RENDAHL: I have a couple of quick
4 questions for you. First, in the TRO amendment that
5 was filed on the 23rd, you mentioned the clarification
6 of resolving which agreements require some sort of
7 dispute resolution process and which ones don't and
8 Verizon intends to file the relevant portions of the
9 agreement, and I want to make sure you and I are clear
10 on what that means, and again, I don't mean the type of
11 excerpts that were included in the briefing filed by
12 Verizon, but if there is any change in law in the
13 language and agreement that Verizon file that language
14 in its entirety.

15 MR. O'CONNELL: That is my understanding. We
16 are vigorously working on that process. I won't hide
17 the fact that it is probably a majority of the CLEC's
18 that are involved in this proceeding fall into that
19 category, so it is a fairly substantial undertaking,
20 but we are doing so.

21 JUDGE RENDAHL: I appreciate it. I just
22 wanted to make sure that you and I were clear on what a
23 "portion" meant so we don't have a subsequent
24 discussion about that.

25 MR. O'CONNELL: We would like to move this

0155

1 process along, and I think we are on the same page on
2 that issue.

3 JUDGE RENDAHL: Great. Before I move on to
4 hearing from the CLEC's, it appears to me that there is
5 three issues involved -- well, three with some
6 subissues involved in this arbitration in terms of how
7 we would address them and how we would schedule them.

8 The first is addressing the change-in-law
9 issues which you and I were just talking about, and I
10 think the FCC in its Interim Order, whether it's
11 disputed or not, allows state commissions to go forward
12 to address the change-in-law question that we are faced
13 with in this proceeding. So clearly, I think that
14 process needs to go forward, and we will definitely set
15 a schedule for that.

16 The next issue has to do with the nonprice
17 TRO issues. Now, I understand Verizon has filed
18 amendments in this petition for the Interim Order, but
19 as it stands now, the Interim Order does provide
20 essentially a standstill order similar to this
21 commission's standstill order that requires ILEC's to
22 provide, under interconnection agreements as of June
23 15th, mass-market switching transport and high-capacity
24 loops, and I believe the Interim Order is really
25 restricted to those three elements; whereas, there are

0156

1 other TRO issues that are not addressed in the Interim
2 Order that do not appear to be subject to the
3 standstill order, and then there is the pricing issues.

4 So I guess if you could also clarify for me,
5 Mr. O'Connell, how Verizon thinks we should proceed
6 based on the Interim Order that at least at this point
7 -- it's not yet enforced because it hasn't been
8 published yet, but how this commission should proceed
9 in this arbitration given the continued state of
10 uncertainty in the law on these issues.

11 MR. O'CONNELL: Judge, I think it is
12 Verizon's position that the case should not be too
13 terribly impacted by the Interim Order, whether or not
14 it is vacated by the DC Circuit as a result of the
15 Mandamus Petition, and who knows whether that is going
16 to happen. I understand the DC Circuit has requested
17 that the FCC respond to the petition, and that response
18 is due by the end of this week, is my understanding, so
19 those proceedings are moving forward, and we think,
20 frankly, that this proceeding should move forward as
21 well.

22 As you correctly note, regardless of whether
23 the Interim Order stands or not, there are a variety of
24 issues affected by the TRO that are still in place, and
25 we think those issues need to move forward, that the

0157

1 TRO has been out now for over a year. We've been
2 negotiating it for almost a year. We thought frankly
3 that we were being -- again, I won't say generous but
4 certainly reasonable by a period of 30 days.

5 These parties have been talking about these
6 sets of changes for a long time now. The parties know
7 where they are on these issues. A series of changes to
8 accommodate whether the Interim Order is going to be in
9 place or not is not going to take any of these parties
10 a great deal of time to work through. So we think that
11 we should be moving forward, and any changes to
12 accommodate the Interim Order's rules should not delay
13 this proceeding.

14 JUDGE RENDAHL: If the DC Circuit denies the
15 Mandamus Petition and the Interim Order does go
16 forward, does Verizon believe that this commission
17 should, in a sense, arbitrate two sets of language on
18 those three elements, whether, in fact, the permanent
19 rules allow it or don't allow it, allow those elements
20 to be continued to be unbundled, in a sense to prepare
21 for both possibilities, or does Verizon have a position
22 on that at this point?

23 MR. O'CONNELL: I'm not sure I can articulate
24 that we would expect to go to the effort of having two
25 different sets of language. I think we should move

0158

1 forward with the language that was in our amendment of
2 the 23rd. To the degree there is any tinkering with
3 that that results from the interim rules, I think
4 that's something that all of these parties know where
5 each other stands.

6 JUDGE RENDAHL: Thank you, Mr. O'Connell. I
7 would like to move now to hear from the CLEC's. I do
8 have your written responses, and I guess I would like
9 to hear from the Competitive Carrier Group first,
10 Ms. Hendrickson, if you are on the line.

11 MS. HENDRICKSON: Yes, Judge. As we noted in
12 our response, the Competitive Carrier Group does not
13 disagree in concept with the proposed procedural
14 schedule that Verizon issued, and we don't necessarily
15 disagree that 30 days will be an adequate amount of
16 time to review the new revised TRO amendment. However,
17 we think we can't commit to those dates until we have
18 an opportunity to review the revised amendment.

19 JUDGE RENDAHL: Okay. And in terms of the
20 questions I posed to Mr. O'Connell towards the end of
21 our discussion about the three particular issues and
22 how this commission should address them, do you have
23 any thoughts on that?

24 MS. HENDRICKSON: The Competitive Carrier
25 Group would like to go forward both on the

0159

1 change-in-law issues and the nonpricing TRO issues in
2 this proceeding.

3 JUDGE RENDAHL: What's your thought if the
4 Interim Order remains in place while the permanent
5 rules are being addressed, should this commission
6 arbitrate two sets of language to address the
7 contingencies?

8 MS. HENDRICKSON: I believe so. It's been
9 our consistent position that this arbitration
10 proceeding needs to be maintained both for going
11 forward and to have a forum which CLEC's can bring
12 questions to the Commission during the status quo
13 period, so I believe the Commission should go forward
14 and allow that while the interim rules are being
15 decided.

16 JUDGE RENDAHL: Okay, Mr. Macres?

17 MR. MACRES: With respect to the Competitive
18 Carrier Coalition, I apologize. I have the same
19 sentiments. Until we've had a reasonable opportunity
20 to review Verizon's revised amendment and negotiate
21 with Verizon and identify the issues in dispute, it's
22 entirely premature to set a procedural schedule for the
23 arbitration.

24 Verizon has offered a number of different
25 amendments, and it's an entire new rewrite, and under

0160

1 the Act, TRO contemplates the same as that. We need to
2 sit down, negotiate it with Verizon, and figure out
3 where we disagree and then come to the Commission for
4 resolution of the outstanding issues. We are not there
5 yet. We are putting the cart before the horse at this
6 point.

7 Tim's suggestion that we've been around these
8 issues, it's an entirely new amendment that we keep on
9 getting from Verizon. We have to start from square
10 one, and that's where we are again. We are starting
11 from the beginning. We have to renegotiate Verizon's
12 newest amendment. So I don't think we should get ahead
13 of ourselves, and we should allow the negotiation
14 process to work first, and if there is a problem, then
15 Verizon should refile an arbitration petition.

16 I attached that New York decision to my
17 comments because that's exactly what happened in New
18 York. They held the proceeding in abeyance. They
19 said, Verizon, refile your arbitration petition once
20 you've narrowed down the issues. And that's what we
21 are saying here. Until we get to that point, we
22 shouldn't be moving forward with respect to these
23 issues.

24 In addition, with respect to our response to
25 Verizon's arbitration petition that we submitted back

0161

1 on April 13th of 2004, Pac-West urges the Commission to
2 just move forward with respect to commingling
3 combinations and routine network modifications to
4 address those issues immediately. Our position hasn't
5 changed since day one. Verizon has gone back and forth
6 with a new amendment, but effectively, the language
7 with respect to commingling or routine network
8 modifications and combinations is the same, and we urge
9 the Commission to move forward with respect to these
10 noncost issues, and we can deal with the cost issues in
11 a later phase immediately.

12 It makes no sense. These issues weren't
13 overturned or disrupted by USTA-II. If anything,
14 Verizon's obligation may be expanded by USTA-II, but
15 with respect to what CLEC's are eligible for under the
16 TRO, it's very clear, and Pac-West would like to afford
17 to these issues. If Verizon is willing to stipulate
18 that we have an amendment to at least allow CLEC's like
19 Pac-West an order to get commingling, it would be
20 willing to actually take the black-letter law of the
21 FCC's TRO rules for commingling network modification
22 and use that as maybe a placeholder until final
23 language is established by this commission for many
24 detailed obligations or requirements.

25 But at this point in time, Verizon is not

0162

1 making commingling available, not making routine
2 network modifications available, and it's holding back
3 CLEC's from getting what they should be eligible for
4 and entitled to as a result of the TRO because of its
5 numerous changes and delays to the amendment and
6 constant revision, and I have to emphasize that to the
7 extent that Verizon's petition for Mandamus is granted
8 or denied will have a change again, and we will be
9 looking at something new at that point, and then again,
10 if the FCC comes up with new rules, we'll have to look
11 at maybe an entirely new amendment at that point.

12 The FCC was quite clear when it said that
13 parties can move forward and try to litigate. In
14 Paragraph 17 of the TRO order, AT&T made that point in
15 its filings that said what is certain from all this,
16 what is going to come out of this is a matter of
17 speculation, but such litigation at this point in time
18 is wasteful. So if we are trying to move forward with
19 wasteful aspects, then we are not urging the Commission
20 to do that. We would rather the Commission focus on
21 areas that are firm. At this point in time, routine
22 network modification, commingling, those areas we know
23 are aspects of the TRO that are available to CLEC's,
24 and we should be eligible for that, and we shouldn't be
25 precluded from getting them at this point. Thank you.

0163

1 JUDGE RENDAHL: One last question, and I will
2 need to go back to Ms. Hendrickson as well. Do you
3 agree with Verizon that there is no need on these
4 nonpricing issues to have a hearing, that the issues
5 can be addressed in brief?

6 MR. MACRES: For the most part, yes. Most of
7 the issues, the overwhelming majority of them are legal
8 issues, and they can be addressed in briefs, yes.

9 JUDGE RENDAHL: What is the minority?

10 MR. MACRES: There may be small things here
11 and there that may require facts, but we believe that
12 most of the things probably can be taken care of in
13 briefs at this point in time. The minority are the
14 cost issues, obviously. Any references to cost or
15 whether it can charge for combinations or whether
16 certain charges can be assessed for routine network
17 modification, those things, obviously, we are dealing
18 with cost issues. Those issues should be addressed in
19 a separate phase.

20 JUDGE RENDAHL: I guess I'm a bit confused.
21 Is it your thought that the issues of commingling and
22 routine network modification and the issues you think
23 should go forward immediately need to go to hearing?

24 MR. MACRES: No, they do not need to go to
25 hearing. I think they are legal issues that can be

0164

1 resolved on the briefs.

2 JUDGE RENDAHL: So the aspect that needs to
3 go to hearing is the pricing involved with those
4 issues?

5 MR. MACRES: Yes, if need be, and that was
6 what Verizon suggested, that that could be taken up in
7 a later phase.

8 JUDGE RENDAHL: Thank you. Ms. Hendrickson,
9 just a clarification as to whether you also agree with
10 Verizon that this case, the change-in-law issues and
11 the TRO issues, both under the interim and not, can be
12 addressed in brief.

13 MS. HENDRICKSON: We agree that these issues
14 can be addressed in the briefs and that pricing issues
15 should be addressed through hearings.

16 JUDGE RENDAHL: Thank you. Mr. Sprague or
17 Ms. Johnson, do you wish to add anything more to what
18 Mr. Macres just stated?

19 MS. JOHNSON: Nothing, Your Honor.

20 MR. SPRAGUE: I do not.

21 JUDGE RENDAHL: Ms. Singer Nelson?

22 MS. SINGER NELSON: Yes, Your Honor. You
23 basically are talking about three different issues, and
24 I just want clarification on your first issue in the
25 change-in-law process. When you talk about the

0165

1 change-in-law process, specifically what are you
2 talking about?

3 JUDGE RENDAHL: I'm talking about the issue
4 that was addressed in the Commission's Order No. 8 in
5 which the Commission wanted to see the specific
6 portions of the agreements that Verizon asserts does
7 not require them to have any dispute resolution process
8 before they discontinue elements to a carrier.

9 MS. SINGER NELSON: With that clarification,
10 MCI would agree that that process should go forward as
11 Verizon has set forth in its proposed schedule. As to
12 the nonprice TRO issues that are subject to the
13 standstill order, MCI agrees with the two competitive
14 carrier groups that said that we shouldn't try to
15 schedule arbitration of the amendment that Verizon is
16 going to set out in the future. So I agree that we
17 should hold off on setting a schedule until we see
18 Verizon's proposal.

19 But then even going further than that, I
20 would ask that the Commission just hold the proceeding
21 in abeyance until the FCC actually issues the permanent
22 rules. It's MCI's view that we should not go forward
23 on any of those issues, mass-market switching,
24 transport, and high-capacity loops until the FCC has
25 actually issued permanent rules on those elements.

0166

1 On the next issue, the issue is not limited
2 to the standstill order. MCI would ask the Commission
3 to also hold those proceedings in abeyance, not
4 schedule anything right now relating to the other views
5 because of resource and efficiency reasons. We would
6 like to actually arbitrate all of the issues at one
7 time instead of going through arbitration on two
8 different phase.

9 JUDGE RENDAHL: Thank you. Ms. Friesen?

10 MS. FRIESEN: Good afternoon, Your Honor. I
11 apologize I'm nine minutes late. I was engrossed in
12 other legal work.

13 JUDGE RENDAHL: I understand.

14 MS. FRIESEN: With respect to the first
15 issue, change in law, AT&T believes you can go forward
16 with it or believes you can hold it in abeyance because
17 we are not quite sure what change in law really is. So
18 to the extent that carriers are subject to a unilateral
19 change, the real question there is not so much whether
20 or not they are subject to the change but what the heck
21 that change is supposed to be, and I think the more
22 substantive question is involved in the proceeding as a
23 whole, and I think it will be determined in the
24 proceeding as a whole. That said, AT&T can go either
25 way with the change in law; although, albeit with that

0167

1 caveat --

2 With respect to the nonprice TRO issues,
3 AT&T, like MCI, would like to see those held in
4 abeyance. That would be our first preference, and it
5 for the same reasons that MCI has voiced. It is a
6 resource issue, and it comes down to how many times are
7 we going to arbitrate the parts of these agreements and
8 how many times are we going to have to go over this
9 material.

10 So from AT&T's perspective, because the law
11 itself is somewhat uncertain, because we don't know
12 what will happen with the Mandamus, AT&T's preference
13 would be to hold everything in abeyance until the final
14 rules come down from the FCC. I think you know from
15 our filing, if it does not go that route, we have
16 proposed a schedule that we believe will allow for the
17 appropriate negotiation time. We believe we need 60
18 days, not 30 days.

19 To the extent that Mr. O'Connell is
20 suggesting we've already been in these negotiations and
21 already know what everyone's position is, I would
22 suggest to you that AT&T has negotiated in the past
23 with Verizon back east, and basically, the negotiations
24 have amounted to Verizon telling us to pound sand, so
25 we are still in the process of getting a good

0168

1 negotiation going with Verizon. We are not sure in the
2 State of Washington which of the revisions we are
3 supposed to be negotiating. So we think that the
4 appropriate negotiation period is a 60-day period
5 rather than a 30-day period.

6 As for pricing, we too believe that pricing
7 ought to be bifurcated and separated from the substance
8 of the contract language in the arbitration, and I
9 think that probably wraps up what I need to say.

10 JUDGE RENDAHL: Thank you.

11 MS. FRIESEN: You did ask whether or not the
12 carriers believe that certain issues were more
13 susceptible to review and decision based on the paper
14 versus a hearing. AT&T back in May, I believe, sent an
15 issues list to Verizon in which it proposed certain
16 issues would be ripe for decision on the paper only,
17 and we gave those sections of the contract to Verizon.
18 There were other issues, however, and I'll give one
19 example. I think it was Section 3.1.2.6, which is
20 Verizon's obligation to notify CLEC's when proposing
21 retirement of copper loops and copper subloops, and my
22 client had originally believed that that would require
23 the presentation of testimony.

24 There are other issues littered throughout
25 the contract that back in May, my client had believed

0169

1 it would like to have a hearing upon. Now, I don't
2 know where my client stands today with the most recent
3 revisions to Verizon's business, and I can go back and
4 get an answer from them with respect to those, but
5 AT&T, I think, is one of the few proponents of some
6 hearing for some of these issues, and I don't think my
7 client at this point has relinquished its desire to
8 have a hearing on those issues.

9 JUDGE RENDAHL: Mr. Kopta?

10 MR. KOPTA: Thank you, Your Honor. XO and
11 Time Warner Telecom agree largely with the comments
12 made by Mr. Macres, and in addition, XO agrees with
13 Pac-West's position that the TRO issues that were not
14 overturned or the rules that were not vacated by the DC
15 Circuit in USTA-II could be addressed and should be
16 addressed at this point, because although other aspects
17 of the FCC's unbundling rules are at issue, none of
18 those other decisions by the FCC with respect to the
19 ILEC's unbundling obligations are likely to change with
20 the advent of whatever permanent rules the FCC comes up
21 with, so there is no reason at this point not to go
22 ahead and deal with those issues.

23 I think from a legal standpoint, unless
24 Verizon is willing to extend the deadline for the
25 arbitration, the Commission is in a difficult position,

0170

1 and the best way we can see out of that position is, as
2 Mr. Macres suggested, that Verizon essentially refile
3 in light of the latest change in law that have only
4 come up recently and should not be included and take
5 away time from the parties and the Commission in
6 resolving the issues that existed at the time that
7 Verizon filed its petition last spring, but the TRO
8 issues that are not subject to USTA-II or the Interim
9 Rules Order from the FCC, those issues existed when
10 Verizon filed its petition and others filed their
11 responses and thus could be dealt with at this point
12 and would be under the initial filing and the waiver of
13 the time line for reaching a decision that Verizon has
14 agreed to up until now. So I think from a legal
15 standpoint, that is certainly justifiable and makes the
16 most sense under the circumstances, but other than
17 that, we would concur with Mr. Macres's comments.

18 JUDGE RENDAHL: Thank you, Mr. Kopta. You
19 are probably more familiar with the actual language
20 than I am at this point. The language that you are
21 talking about in terms of the issues that ought to go
22 forward immediately, is there a change in the language
23 that Verizon has proposed on those issues -- let me
24 take that back. Is the proposal in the TRO Amendment
25 No. 2 Verizon's first proposal on those issues?

0171

1 MR. KOPTA: Are you asking me, Your Honor?

2 JUDGE RENDAHL: Yes. Then I will ask

3 Mr. O'Connell.

4 MR. KOPTA: I have not done a side-by-side
5 comparison, but my understanding is that Verizon's
6 proposal on the TRO issues that remain, regardless of
7 USTA-II or the Interim Rules Order, are the same and
8 that the only changes that Verizon made to its latest
9 proposal had to do with the changes that have arisen as
10 a result of USTA-II and that their proposed amendment
11 that they will be filing that incorporates the FCC's
12 interim rules would address only the three elements
13 that you earlier referred to that are the subject of
14 the FCC's interim rules, but that, of course, is
15 subject to confirmation by Mr. O'Connell.

16 JUDGE RENDAHL: Mr. O'Connell, before we go
17 farther with comments from other CLEC's, is the
18 language on the non USTA-II issues the same in the
19 latest version?

20 MR. O'CONNELL: Judge, I am not going to say
21 that I have sat down and made a word-for-word
22 comparison, but it is my general impression that the
23 positions that Verizon has espoused on those particular
24 sets of the issues has been quite consistent through
25 this proceeding.

0172

1 JUDGE RENDAHL: And the first language on
2 routine network modification, commingling, and
3 combinations is in the TRO Amendment No. 2?

4 MR. O'CONNELL: Again, don't hold me to a
5 specific word-for-word comparison, but the thrust of
6 our position I don't believe has changed materially.

7 JUDGE RENDAHL: I'm just trying to figure out
8 based on what I'm hearing from the CLEC's and from what
9 I've heard from you is whether there are, in fact,
10 issues that the positions have not changed over time
11 and what's new and what's not and how to factor that
12 in. That's really all I'm trying to....

13 MR. O'CONNELL: I understand, and I had a
14 couple of responses to the comments I've heard on that
15 set of the issues.

16 JUDGE RENDAHL: Let's hold those until I go
17 through the others on the line, and then I will come
18 back to you. Mr. Pitt?

19 MR. PITT: Yes, Your Honor, Northwest
20 Telephone would concur with the comments made by
21 Mr. Macres. I'm not really going to add much more to
22 that. However, with respect to the hearing issue,
23 whether it's a matter of being addressed only on the
24 briefs, I think back in May, we raised issues having to
25 do with impairment under state law and I think also

0173

1 comments by Ms. Friesen in the AT&T issues having to do
2 with notice and provision hearing require hearing as
3 opposed to briefing legal issues. Other than that, I
4 think that's the only comment I will make.

5 JUDGE RENDAHL: Thank you. Mr. Hendricks?

6 MR. HENDRICKS: I think Sprint largely
7 concurs with the comments of Mr. Macres and Mr. Kopta
8 but also believes that as a matter of efficiency, the
9 Commission should either hold the proceeding in
10 abeyance, or in the alternative, dismiss the petition
11 and require Verizon to file a new petition, at least in
12 the interim, until the FCC promulgates the new rule.

13 I would also like to comment if the
14 Commission should move forward, Sprint believes that a
15 60-day period would be more appropriate than a 30-day.
16 While some of the issues may have been negotiated
17 already and are familiar to the parties, once
18 negotiations are opened on the new amendment, as
19 Mr. Macres indicated, the negotiations begin afresh,
20 and it's very difficult to say, having had experience
21 with Verizon in the past, has not been found to be a
22 quick process. That will be the extent of Sprint's
23 comments.

24 JUDGE RENDAHL: Okay. Is there anyone else
25 on the bridge line who I have not asked for comments

0174

1 and who would like to state them? Okay, Mr. O'Connell.

2 MR. O'CONNELL: Thank you, Judge. I think I
3 kind of previewed one overarching comment, which is
4 that the suggestion that this is entirely new is, to my
5 ability to understand, just not correct. Verizon has
6 attempted throughout this proceeding to come forward
7 with a set of amendments to its interconnection
8 agreements that reflect the changes that occurred as a
9 result of the TRO, both good and bad, those provisions
10 that were beneficial to CLEC's as well as those that
11 were not. We believe it was appropriate to have a
12 consistent amendment, and we believe that we have been
13 consistent in that stance throughout.

14 While the amendments have been revised to
15 reflect the developments in USTA-II while we are
16 preparing amendments to reflect the Interim Order, that
17 doesn't change Verizon's consistent position throughout
18 this proceeding, and frankly, the revision necessary to
19 accommodate the Interim Order, since it only affects,
20 as you noted, three particular categories of UNE's,
21 including mass-market local-circuit switching, that is
22 not going to take the parties a great deal of time to
23 further negotiate. In fact, I think the parties have
24 been negotiating.

25 I understand but object to Ms. Friesen's

0175

1 comment that it's just Verizon saying pound sand. Any
2 legal obligation that I'm aware of to bargain in good
3 faith does not mean that we have to agree to somebody
4 else's position. I think the parties have been
5 negotiating. I think everybody knows what everybody
6 else's positions are here. 30 days is, I think,
7 reasonable, and we would like to stick with that.

8 As far as the suggestion to bifurcate the
9 proceeding into merely commingling and some of the
10 other elements as requested by Pac-West, we would
11 object to that because again, our position has been
12 that we should have a single attempt to make all of
13 these changes, both good and bad.

14 For the various parties repeated requests to
15 dismiss the proceeding and just compel us to start over
16 again, if a party is going to make a motion to that
17 effect, I would like them to make a motion to that
18 effect to give us the opportunity to respond rather
19 than just have them as comments on a scheduling docket.

20 The only other comment I would make, Judge,
21 is what I hear being the consensus of the parties that
22 most of the issues raised are ones that are amenable to
23 briefing. Ms. Friesen's recollection that AT&T had
24 identified a number of issues that they believed
25 required a hearing, I also have the same recollection.

0176

1 I did not bring that. My recollection is though that
2 out of about 60 or so issues that were in the matrix we
3 were developing at that time, AT&T's comments that some
4 issues required hearing were about a dozen, and that
5 was the extreme. I don't think any other party had
6 suggested as many issues required at hearing.

7 Verizon's position is that all of the
8 nonpricing issues are legal issues that can be
9 accomplished solely on briefing. So we will again
10 suggest that we move forward along the schedule that
11 Verizon has proposed. We are prepared to be flexible
12 with the particular dates that are inconvenient.

13 JUDGE RENDAHL: Thank you, Mr. O'Connell.
14 I'm going to take a ten-minute break and come back so
15 we can talk specific dates, because I think we do need
16 to do some scheduling, and we can address at that point
17 the issue of the protective order and whether to invoke
18 the discovery rules and then we will move on to the
19 motion. So we will be off the record. We will
20 reconvene at 2:30.

21 (Recess.)

22 JUDGE RENDAHL: Let's first take up the issue
23 that Mr. O'Connell raised at the very beginning of the
24 hearing, and that is whether we should enter a
25 protection order in this proceeding. Is anyone opposed

0177

1 to entering a protective order in this proceeding?
2 Hearing nothing, the Commission's standard protective
3 order will be entered in this proceeding, unless the
4 parties believe that some other version needs to be
5 adopted.

6 MR. O'CONNELL: On behalf of Verizon, Your
7 Honor, I think that's perfectly adequate for the
8 information we believe would be at issue.

9 JUDGE RENDAHL: The next procedural issue,
10 Ms. Singer Nelson had raised the question of whether
11 the Commission had invoked the discovery rules in this
12 proceeding. At this point, I don't believe we have,
13 and they have been invoked in other arbitrations so I
14 have no objection to them being invoked.
15 Ms. Singer Nelson, did you want to say anything further
16 on that issue? Mr. O'Connell, do you have any
17 objection to the discovery rules being invoked?

18 MR. O'CONNELL: Judge, consistent with our
19 position that we believe the issues that are raised in
20 this phase of the proceeding are legal and would be
21 resolved on briefing, I'm not sure that it would be
22 appropriate.

23 JUDGE RENDAHL: Ms. Singer Nelson, are you
24 there?

25 MS. SINGER NELSON: Yes, I am, Your Honor.

0178

1 JUDGE RENDAHL: What issues do you think the
2 discovery rules would be invoked to address?

3 MS. SINGER NELSON: I was thinking the issues
4 relating to the status quo motion that the CLEC's
5 filed, there were some factual issues that I believed
6 would be illuminating on that discussion.

7 JUDGE RENDAHL: You mean the motion for
8 enforcement?

9 MS. SINGER NELSON: Yes.

10 JUDGE RENDAHL: Why don't we hold off on the
11 discovery rule discussion until we get to that issue.

12 MS. SINGER NELSON: To be more specific, they
13 had to do with whether there would be any technical
14 impairment issues relating to requiring Verizon to
15 continue to provide services to CLEC's through UNE-P
16 versus any alternatives that Verizon envisions. That
17 was the specific issue I was thinking about.

18 MS. FRIESEN: Your Honor, this is Letty
19 Friesen, if I may.

20 JUDGE RENDAHL: If we are going to talk about
21 the motion for enforcement, I would like to address
22 that after we resolve the scheduling discussion. So
23 unless we need to discuss invoking the discovery rule
24 for the issues we were discussing before we went on
25 break, I don't know that we need to continue the

0179

1 discussion now but just hold thoughts for later.

2 MS. FRIESEN: That was my thought, and to the
3 extent that certain issues do go to hearing, I don't
4 want to foreclose AT&T's opportunity to obtain
5 discovery if necessary. There were some issues
6 identified on the issues list back in May that AT&T
7 thought were factual. So to the extent that we have
8 not resolved whether or not there will be a hearing, I
9 would like to invoke the discovery rules or at least
10 hold in abeyance on the decision to allow no discovery
11 until we've decided whether or not we want a hearing.

12 JUDGE RENDAHL: With that in mind, I
13 appreciate your informing me of that, and I think it is
14 appropriate to allow the discovery rule invoked but
15 understanding that most issues in this proceeding will
16 most likely be legal in nature.

17 Concerning the scheduling, it appears that no
18 party really objects to establishing some form of a
19 schedule on this point on the resolving the language in
20 the interconnection agreements concerning Verizon's
21 ability to take action on change in law, but I have a
22 variety of proposals that have been put forward on that
23 and also now have my own schedule in front of me to
24 mesh it all together. Mr. O'Connell?

25 MR. O'CONNELL: May I clarify one thing? The

0180

1 change-in-law discussion has focused on the filing
2 that, as I sit here, we anticipate making on the 13th
3 putting in front of you the agreements which we believe
4 made clear that we have the ability to cease providing
5 those UNE's when they are no longer legally required.

6 I hope I've made clear that there are a
7 handful of CLEC's who do not have that provision in
8 their interconnection agreement, and consequently, when
9 in our initial proposal that we put before you we
10 talked about preparing initial briefing in November, we
11 were contemplating that those provisions would be part
12 and parcel of what the parties would be briefing to
13 you, which would include whether or not if you or the
14 Commission should agree with Verizon's interpretation
15 of our agreement that we don't have to offer those
16 UNE's when they are no longer legally obligated. If
17 you disagree with that, that's part and parcel of what
18 we believe will be taken up with the initial briefing.

19 JUDGE RENDAHL: Let me see if I got that. I
20 guess what I don't understand is the connection between
21 the briefing and the change-in-law issue.

22 MR. O'CONNELL: And what I was trying to
23 clarify and maybe did not do a good job is making sure
24 we are all on the same page when we say the change in
25 law. There are certain provisions that as a result of

0181

1 the TRO, certain UNE's are no longer required on an
2 unbundled basis. Verizon believes that under our
3 interconnection agreements with a majority of the
4 CLEC's, once that determination has been made, we are
5 no longer legally obligated to do so and we don't need
6 to go through a change-in-law period.

7 JUDGE RENDAHL: Just in terms of what the
8 language in the interconnection agreements says, and
9 the other issue is is there a change in law.

10 MR. O'CONNELL: Correct, and if so, how is
11 that to be reflected in the interconnection agreements.

12 JUDGE RENDAHL: That's the briefing issue.

13 MR. O'CONNELL: Correct, but as I say, there
14 are a handful of CLEC's that don't have that type of
15 language in their interconnection agreement, and for
16 that handful and for any of the specific provisions
17 that you or the Commission should conclude do not
18 authorize Verizon to automatically cease providing
19 those UNE's, those issues would be addressed in
20 briefing.

21 JUDGE RENDAHL: Okay. So let's talk
22 scheduling. Mr. O'Connell, you've proposed a schedule
23 that would basically by the end of September, all of
24 the briefing on the issue of what's in the agreement
25 and what the language in the agreement says about

0182

1 change in law would be in place, but I didn't see a
2 date on your proposal as to when the Commission would
3 resolve that issue, and I'm wondering what Verizon's
4 thoughts were on that. Was that to be included within
5 the arbitrator's decision in January, or did you
6 anticipate an earlier decision on the change-in-law
7 question?

8 MR. O'CONNELL: Your point is well taken,
9 because it is fair to say that that's not presented in
10 our proposed schedule.

11 JUDGE RENDAHL: The reason why I ask, there
12 is a date included in AT&T's proposed schedule for a
13 decision on that issue.

14 MR. O'CONNELL: I'm aware of that, and your
15 point is well taken. That's something we should build
16 into the schedule.

17 JUDGE RENDAHL: So that is something you
18 would like to have in there?

19 MR. O'CONNELL: It would make sense for the
20 parties because I presume parties would like to know
21 the answer to that before they prepare their initial
22 briefs since some of them may not be in the arbitration
23 depending.

24 JUDGE RENDAHL: Right. Let's be off the
25 record while we do some scheduling and then go back on

0183

1 the record to do some of the other scheduling.

2 (Discussion off the record.)

3 JUDGE RENDAHL: While we were off the record,
4 we put together a schedule for the change-in-law issue
5 and the TRO issues. The change-in-law issues schedule
6 is that on September 13th, Verizon will file those
7 portions of the agreements concerning change-in-law
8 language and any pleading associated with that to
9 explain its filing, and on September 30th, the CLEC's,
10 any party affected can file a responsive filing with
11 the Commission, and on October 12th, Verizon will file
12 its reply with a decision by the arbitrator on November
13 15th.

14 As to the TRO issues, on September 10th,
15 Verizon plans to file a new TRO amendment relating to
16 the Interim Order. Whether that is an Amendment No. 3
17 or a revision to Amendment No. 1, we do not know, but
18 have requested that Verizon explain the nature of its
19 amendment when it makes its filing as well as redline
20 whatever effective amendment may be involved.

21 On November 16th, the parties will file a
22 joint issues list identifying which issues may go to
23 hearing, those fact-based issues that may go to
24 hearing. We have scheduled a hearing date of January
25 5th and 6th in Room 108. Should we not go to hearing,

0184

1 the initial briefs will be due on December 21st, 2004,
2 with responsive briefs due January 21st, 2005, and the
3 arbitrator's report and decision due on February the
4 18th, 2005. If we go to hearing, the initial brief
5 will be due on January 21st, 2005, with a responsive
6 brief due February 18th, and the arbitrator's report
7 and decision due on March 18th.

8 We had then segued to a discussion of the
9 motion for enforcement. Prior to that,
10 Ms. Singer Nelson had asked a question about what she
11 should be briefing. The issue had to do with, I
12 understand, whether the Interim Order affected a change
13 in law that would trigger certain actions by the
14 parties under MCI's interconnection agreement, and what
15 we stated off the record was that based on what Verizon
16 files on September 13th, if MCI is affected by that
17 filing, it should make those arguments at that phase of
18 the case. If not, it should be addressed in the
19 briefing phase in December and January and February,
20 whenever those dates occur.

21 And then Mr. Macres raised an issue as to
22 what is called, what he referred to as the Affirmative
23 Obligation Amendment, which is now Amendment No. 2, to
24 Verizon's petition, and his question had to do with
25 whether any party who is subject to dismissal under

0185

1 Verizon's filing on September 13th would be allowed to
2 remain in the proceeding to arbitrate Amendment No. 2,
3 and I determined that that would be part of my decision
4 in November, and I think that addresses all of the
5 issues we covered off the record.

6 Then we moved into discussing the motion for
7 enforcement. Ms. Hendrickson, if you could restate
8 what we were discussing, that would be helpful. I
9 believe I had asked you about why September 10th, and
10 you moved onto some other discussion.

11 MR. MACRES: Judge, before you go to that
12 next issue, I understand Verizon's jurisdiction has
13 somewhat stipulated indicating that CLEC's that want to
14 remain in arbitration and litigate this Amendment
15 No. 2, it would be willing to allow them to do that.
16 So to the extent that Verizon says something to that
17 effect in its filing, that may address this issue in
18 itself, regarding Amendment No. 2. I just wanted to
19 raise that with you. Timothy may be aware of it or --
20 I recently became aware of that as to a filing Verizon
21 made in New Jersey.

22 JUDGE RENDAHL: Whatever filing is made on
23 the 13th will cover that issue. Ms. Hendrickson?

24 MS. HENDRICKSON: Your Honor, this motion for
25 enforcement was filed in response to a notice of

0186

1 network change that Verizon filed for the Mount Vernon
2 switch that would affect local switching beginning
3 September 10th.

4 We teed up this issue in our response to
5 Verizon's petition for reconsideration of the
6 Commission's Order No. 5 and were directed in the
7 Commission's Order No. 8 to procedurally handle this
8 issue differently, and therefore, we filed a motion for
9 enforcement of the Commission's Order No. 5 as well as
10 the party's interconnection agreement.

11 As you can see in our motion, we ask for
12 several requests for relief, but most importantly that
13 Verizon not be able to issue a status quo to prohibit
14 Verizon from seeking this unilateral action and stop
15 providing local switching by September 10th.

16 JUDGE RENDAHL: I believe I had asked you
17 whether the parties had sought enforcement from the
18 FCC.

19 MS. HENDRICKSON: I believe the answer to
20 that is no, at least not the parties we represent.

21 JUDGE RENDAHL: Ms. Friesen, you had stepped
22 in, and why don't you start your discussion now.

23 MS. FRIESEN: Thank you, Your Honor. AT&T
24 would just like to point out that Verizon had sought in
25 other jurisdictions to switch, swap, in other words

0187

1 take circuit switches out and replace those with packet
2 switches. It then notified the CLEC's that they can no
3 longer obtain switching as a UNE as a result of this
4 network modification.

5 In the other jurisdictions, I just wanted to
6 point out to you that AT&T has filed complaint cases
7 against Verizon for violating our interconnection
8 agreement and the requirement for not only change in
9 law but network modifications. That's the way AT&T has
10 chosen to handle this particular issue.

11 JUDGE RENDAHL: So why did AT&T not file a
12 complaint here as opposed to a motion in this
13 proceeding?

14 MS. FRIESEN: Because we have this particular
15 arbitration pending before the Commission, and the
16 Commission has a status quo or a standstill in order
17 place, Order No. 5, we felt it was more appropriate
18 procedurally to ask to enforce that and deal with the
19 issues on switching in this particular arbitration
20 since they are already teed up here.

21 JUDGE RENDAHL: So do you believe the time
22 frames involved with the Commission's expedited
23 enforcement of interconnection agreements applies
24 within the context of this proceeding?

25 MS. FRIESEN: Yes, Your Honor.

0188

1 JUDGE RENDAHL: Is there any signatory to the
2 motion who wishes to add more to what Ms. Hendrickson
3 and Ms. Friesen have stated?

4 MS. SINGER NELSON: MCI is also a signatory
5 to this motion, and I think the Commission does have
6 the ability to address this issue within the context of
7 this proceeding to the extent that mass-market
8 switching is at the heart of the proceeding. What
9 Verizon is attempting to do is discontinue the
10 provision of mass-market switching in one particular
11 switch here, so that's why MCI believed it was
12 appropriate to address this issue in this proceeding
13 rather than initiate separate enforcement proceedings,
14 but otherwise, I join in the comments already made by
15 the other parties.

16 JUDGE RENDAHL: Does any other party wish to
17 weigh in? Mr. O'Connell?

18 MR. O'CONNELL: Thank you, Judge. Verizon
19 respectfully but emphatically suggests that the motion
20 is without merit. Frankly, the explanation for that is
21 more than I could purport to do before you orally here
22 today. We believe that the issues raised by the
23 conversion of the Mount Vernon switch to a packet
24 switch are ones that need to be briefed, and when they
25 are briefed, frankly, this is precisely the process

0189

1 that the FCC contemplated in the TRO would occur.

2 Again, respectfully, we disagree with any
3 suggestion that this is a modification of the status
4 quo because packet switching has never been a UNE, and
5 so consequently, the fact that we are going through the
6 process that is set out in the interconnection
7 agreements for network modernization, this is an issue
8 that, frankly, we would think deserves to be briefed to
9 the Commission because once it's briefed to you,
10 Verizon's conduct is completely in accord with the TRO,
11 the Interim Order, not to mention Order No. 5 from this
12 Commission, not to mention our interconnection
13 agreements with the CLEC's who have filed this motion.

14 That really is just a preview. Please don't
15 construe that as a response on merits because it's
16 extraordinarily high-level. We think those issues need
17 to be briefed, and the main thrust I wanted to make
18 here is I think the request for relief by September
19 10th is completely inappropriate. The CLEC's
20 acknowledge that Verizon sent out a relatively routine
21 notice on June 8, 2004, and it is a situation entirely
22 of the CLEC's making that we are here three days before
23 this conversion occurs discussing an order that would
24 purport to prevent us from making a very major switch
25 conversion.

0190

1 The Mount Vernon switch is in an exhaust
2 position. This notice went out not only to these
3 carriers but literally to every carrier who transmits
4 traffic to Verizon. Simply put, it's too late. If
5 someone was to try to stop this train at this juncture,
6 we simply cannot guarantee that there won't be dropped
7 calls or other forms of interference because other
8 carriers are required to cooperate in this process.

9 I just don't think it's remotely possible to
10 think about getting every carrier in the United States
11 to update their LERG. It's just not going to happen.
12 Not to mention the incredible amount of coordination
13 that Verizon has got to go through internally to make
14 that switch conversion occur as well as vendors. You
15 are talking about a very complicated process that has
16 been in planning for months and is scheduled to happen
17 this week.

18 Now, putting that aside, frankly, I don't
19 think the CLEC's have complied with what the Commission
20 directed them to do when it denied their request for
21 this relief as part of Verizon's request for
22 interlocutory review of Order No. 5. The Commission
23 said in Paragraph 35 of Order No. 8, "If the Company's
24 belief that Verizon's action is contrary to their
25 interconnection agreements, they may file a formal

0191

1 complaint or petition for enforcement."

2 We all know what a formal complaint is. The
3 petition for enforcement is spelled out in WAC -- I
4 left my WAC's in the office -- 480-07, I think, 370,
5 but the petition for enforcement of interconnection
6 agreements is a specified procedure in this
7 commission's procedural rules. It would permit Verizon
8 the opportunity to respond to the petition for
9 enforcement, at which point you or some other ALJ,
10 since I assume it would be a new proceeding, would have
11 a status conference, and we would go forward with
12 whatever resolution is necessary. Point being, we
13 would not be in a position where we are trying to
14 respond to this, and here we are on Tuesday and the
15 switch conversion is to occur on Friday.

16 We believe that some of the statements that
17 are made in the CLEC's motion require factual response,
18 which is why I indicated earlier that we need a
19 protective order in place. We certainly don't want to
20 disclose network information of competitors without
21 that information being treated in an appropriate
22 confidential manner, but the issue that is raised here
23 is not that big of an issue.

24 And to the degree there is an issue raised
25 here, what I notice about this request for expedited

0192

1 review is there not even an attempt made in this motion
2 to argue that this motion satisfies either the
3 Commission's statutory authority for emergency review
4 under the APA or the normal procedures for temporary
5 restraining order or preliminary injunction. There is
6 no attempt made here to show that the CLEC's would
7 suffer irreparable harm. In fact, by the text of their
8 motion itself, they make clear this is just a pricing
9 issue, and mere money is not irreparable harm,
10 particularly not in the order of the magnitude we are
11 talking about here.

12 We don't think the motion on the face of it
13 satisfies the requirements for preliminary review. We
14 kind of looked at this and concluded that it was an
15 attempt to obtain a partial summary determination on a
16 substantive issue, and if it's going to be treated as a
17 summary determination motion, we think we should be
18 given the 20 days that the Commission's ordinary
19 procedure rules permit for us.

20 We would want to put before you the briefing
21 that analyzes this not just under the interconnection
22 agreements but also the TRO, the UNE remand order, for
23 that matter, the first report and order. Packet
24 switching has never been required to be offered as a
25 UNE. This is an issue that requires some analysis, and

0193

1 we would like the ability to provide you with that
2 analysis.

3 JUDGE RENDAHL: Before I go back to the
4 CLEC's, and I understand your desire to have further
5 briefing on this if the Commission is going to
6 entertain this motion, but I'm wondering about how this
7 change jives with Verizon's pledge to the FCC that it
8 would keep UNE-P available until at least mid November
9 and how that jives with that statement.

10 MR. O'CONNELL: Judge, to put that into
11 context, to preview for you one of the issues we would
12 provide for you in our briefing, this particular switch
13 conversion issue of a circuit switch device to a packet
14 switch is one that the FCC specifically contemplated in
15 the TRO. So this change is not one that -- this is not
16 an ubiquitous attempt to eliminate the availability of
17 UNE-P. This is an ongoing network modernization issue
18 that happens from time to time in the central offices
19 as they are exhausted.

20 I think Ms. Friesen is right. I'm aware of
21 several other central offices scattered around the
22 country where this process is ongoing, and it's not an
23 ubiquitous attempt to eliminate UNE-P. It's an attempt
24 to deal with the regular management of our network.
25 When a switch is exhausted, it's got to be replaced and

0194

1 upgraded. Generally, we think it's a good thing to
2 upgrade switches to more advanced, technically
3 sophisticated switches such as this.

4 JUDGE RENDAHL: If this is really just a
5 pricing issue and that there is no change to what a
6 customer of any of these CLEC's would perceive in
7 making a call that would go through the Mount Vernon
8 switch but the pricing is now based on the resale
9 option as opposed to the UNE-P pricing, what is the
10 differential in pricing?

11 MR. O'CONNELL: That's hard for me to offer
12 you a specific dollar figure. My understanding is that
13 in general, it's going to be on the
14 less-than-ten-dollars-a-line range. It's hard for me
15 to get specific on that because there can be variation
16 depending on switch features, that type of thing, but
17 that's my general understanding, that the differential
18 is less than ten dollars a line.

19 I have some preliminary figures to put this
20 in order of magnitude without identifying any
21 particular carrier, if you would like for me to give
22 you that.

23 JUDGE RENDAHL: Let's hold off on that for
24 right now. If, in fact, the Commission does choose to
25 take up this motion but not if it is a pricing issue,

0195

1 per se, if the Commission took this issue up and found
2 that Verizon had, in fact, failed to abide by either
3 the Commission's order or the interconnection
4 agreements, is there any way to provide a circuit
5 switching option later for these carriers to, in a
6 sense, put them back in the same position or charge
7 them the UNE rate until things have changed?

8 MR. O'CONNELL: The difficulty, as I
9 understand it, Your Honor, is I don't think the Company
10 has the back systems in place to treat this type of
11 resale, and then coming out of a particular switch
12 somewhere isolated instances and then price it
13 differently. If it's a resold circuit, it's handled
14 under the back office systems as a resold circuit.
15 It's not priced as a UNE-P line, which is not to say
16 that if the parties did not pay the appropriate amount
17 as generated, we wouldn't end up in a dispute, so
18 parties are going to end up in dispute resolution. I
19 think they would.

20 JUDGE RENDAHL: What I'm trying to figure
21 out, if this conversion goes through and the Commission
22 finds or the FCC finds that the action was
23 inappropriate on Verizon's part, what is the remedy to
24 the CLEC? What are we to do if we don't do something
25 by the 10th? What are we to do to rectify the

0196

1 situation?

2 MR. O'CONNELL: At that juncture if somewhere
3 on down the line someone concludes that Verizon acted
4 inappropriately, the answer is it's a money damages
5 issue, because we have made clear that any of the UNE-P
6 circuits that are in place out of the Mount Vernon
7 switch would be transitioned to a resold circuit
8 arrangement. That difference, again, as I think I
9 said, it's less than ten dollars a line, in general.
10 No customer will be put out of service, to the best of
11 my ability to determine, and we've been scrambling on
12 this.

13 We received this Tuesday of last week. Of
14 course, actually, I don't think my client got it until
15 Wednesday just before the Labor Day holiday. They've
16 been scrambling on it to pull together material and
17 investigate the situation as to the impact on the
18 CLEC's. We don't think there is very much of it.

19 JUDGE RENDAHL: I think I would like to go
20 back to Ms. Hendrickson, Ms. Friesen, and
21 Ms. Singer Nelson on this issue of guiding the
22 Commission on how to address this motion. Is this just
23 a pricing issue? Are your customers going to be put
24 out of business as a result of this or are you aware of
25 it, and if, in fact, this occurs before the Commission

0197

1 taking action, what remedy would the CLEC's recommend
2 if Verizon is found at fault later? Ms. Hendrickson?

3 MS. HENDRICKSON: I am not clear exactly
4 whether this is just a pricing issue or whether our
5 clients would, in fact, lose customers as a result of
6 this network change. I would just like to comment that
7 we believe that this, in fact, is the correct forum for
8 bringing this issue. We believe this is particularly
9 what a status quo order is supposed to protect, which
10 is the unilateral action while this proceeding is
11 pending.

12 We did bring this up in our summons to
13 Verizon's petition for reconsideration, I believe, in
14 July, so I think that Verizon has been on notice of
15 this issue longer than a couple of days, and we are
16 willing to work within the Commission's motion rules
17 and procedures.

18 We just believe that due to the severity --
19 again, I am not clear whether my clients would actually
20 lose customers -- that Verizon should be prohibited
21 from taking this action on September 10th, and if the
22 Commission does, in fact, decide to proceed but not
23 take action by September 10th, I'm not sure what we
24 relief we would do as a remedy, whether it be monetary
25 damages. I'm assuming that would be our method, but

0198

1 I'm not certain. I would have to go back to my
2 clients.

3 JUDGE RENDAHL: Ms. Friesen?

4 MS. FRIESEN: With respect to
5 customer-impacting -- the interconnection process that
6 results in AT&T being able to use simple service in
7 Verizon's territory is fairly complicated, but for this
8 process to work correctly, AT&T systems have to work
9 with Verizon systems on a variety of tasks, including
10 ordering and provisioning and things like that. AT&T
11 doesn't concurrently purchase any resale products from
12 Verizon in Washington, and so our systems are set up to
13 manage UNE-P orders, not to handle mechanized resale
14 orders, so our systems would have to be changed.

15 Now, that's the customer-impacting problem
16 that AT&T has, and it has it because we aren't in a
17 position to upgrade our systems or use resources where
18 we have very few customers right now to change those,
19 so it's a big impact to us. AT&T would lose customers.
20 We can't make a transition from UNE-P to resale right
21 now in the CO's where Verizon is proposing these
22 changes. Verizon knows about this problem. AT&T has
23 communicated this problem to Verizon not only by letter
24 but also in the complaint case that was filed in
25 California on the 15th, so it knows there is a

0199

1 customer-impacting issue out there.

2 They will tell you that in Washington, AT&T
3 doesn't have any customers that we can discover in the
4 Mount Vernon, Seattle area, so from our perspective, it
5 probably won't affect us that way, but I would suspect
6 that if other CLEC's are set up similarly to AT&T, then
7 they are going to have the same provisioning and
8 ordering problem that AT&T has. That's the
9 customer-impacting problem that goes beyond pricing.

10 So once you lose the customers, I would
11 suggest that there is nothing that can be done to
12 remedy the situation unless Verizon wants to pay what
13 the customers would have paid had they been able to
14 stay with the CLEC -- for that reason.

15 JUDGE RENDAHL: Ms. Friesen, I have a
16 question for you based on what you just said. Is it
17 that AT&T for existing customers, is it for new
18 customers to be signed up that's the problem with AT&T
19 systems, or is it bringing new customers on line, new
20 orders for the resale that would be the problem?

21 MS. FRIESEN: It's both, and it's both
22 because we can't transfer features and functions that
23 they have ordered on the UNE-P platform to the resale
24 platform. We don't have the mechanism to do that yet,
25 so it's both new orders and existing customers. Now,

0200

1 bear in mind we don't have customers in the
2 Mount Vernon CO, so I want to be up-front about that,
3 but it may impact other CLEC's.

4 The issue for AT&T with respect to
5 Mount Vernon and why we think it's appropriate to bring
6 it up in this particular proceeding, because, as
7 Ms. Singer Nelson pointed out, the availability of
8 mass-market switching is at the heart of this TRO
9 proceeding. It's at the heart of this arbitration, and
10 what Verizon is doing is well beyond modernization of
11 its network. It's not only modernization. It's
12 leaving in place those circuit switches, and if you go
13 back and look at the notices that it sent to the
14 CLEC's, you will see that those circuit switches are
15 going to be in place, so it could continue to provide
16 circuit switching to CLEC's if it chose to. It chooses
17 not to. It's choosing not to use those switches
18 anymore for anything related to their CLEC's ability to
19 get circuit switching. It's using instead to deny the
20 CLEC's the ability to get the circuit switching by
21 upgrading its switch allegedly to incorporate the
22 packet switching.

23 That's what AT&T objects to, and that is why
24 AT&T believes not only is it a violation of Order
25 No. 5, if Verizon thinks is what Verizon told the FCC,

0201

1 it's a violation of our interconnection agreement
2 which, frankly, we are arbitrating here, so that's
3 AT&T's response.

4 JUDGE RENDAHL: Thank you.

5 Ms. Singer Nelson?

6 MS. SINGER NELSON: I would join in
7 Ms. Friesen's comments. MCI actually does have
8 customers that are served out of the Mount Vernon
9 switch in Washington, and we have the same kinds of
10 transitional problems that AT&T would have in going
11 from providing service to our end-users through UNE-P
12 to moving those customers over to the resale platform
13 that Verizon is proposing.

14 It is important that the Commission
15 understand and that you understand, Judge, that what we
16 are not seeking by this motion is to prevent Verizon
17 from upgrading it's network. We are simply asking the
18 Commission to order Verizon to continue the status quo
19 with regard to the provision of UNE-P in that central
20 office area. I think there is that problem. Our
21 customers would be directly impacted if we had to
22 switch the customers from UNE-P customers to resale
23 customers, so that's the first issue.

24 The second issue is the pricing issue, and
25 when you say just a pricing issue, ten dollars per line

0202

1 is substantial. For mass-market customers, a
2 ten-dollar increase in our wholesale rate would prevent
3 us from providing services to those customers. There
4 is a minimal margin of profit in providing services to
5 our customers as it is, and if the rate would go up by
6 ten dollars, we could not continue to provide our
7 services, and so that's why we think it's important for
8 the Commission to understand that the pricing issue, at
9 least from our perspective, is substantial.

10 So if the Commission waited and only allowed
11 us to seek the remedy later, we would have already lost
12 our customer base, and as Ms. Friesen mentioned, it
13 would be difficult to get those customers back. I
14 don't know that it would be possible to get those
15 customers back at the same level if we lose them.

16 (Pause in the proceedings.)

17 JUDGE RENDAHL: Ms. Singer Nelson, did you
18 have more to say?

19 MS. SINGER NELSON: No. Thank you, Your
20 Honor.

21 JUDGE RENDAHL: Mr. O'Connell, do you have
22 any response? At this point, I haven't decided, and I
23 may not decide on the record today. I'm going to have
24 to consult with the commissioners on this issue, so
25 what you are all providing me is guidance for the

0203

1 commissioners on how to proceed based on the motion.

2 MR. O'CONNELL: Thank you. I will quote
3 their motion, quote, and I'm referring to Page 5. It's
4 Paragraph 9, quote, "The notice is purely a Verizon
5 pricing decision that can wait until this commission
6 determines whether Verizon has the right to take
7 anything approaching the actions it proposes, and if
8 so, under what circumstances."

9 It was the CLEC's who started this record
10 saying it was a pricing issue only, and to the degree
11 that it is, it is not an issue in which irreparable
12 harm has been demonstrated that would justify
13 extraordinary relief of granting this motion without
14 giving Verizon the opportunity to brief it to you
15 because it is a legal issue that needs briefing.

16 That's the main reason in which I raised the
17 order of magnitude of the difference between UNE-P and
18 resale. It is not to suggest that the difference is
19 trivial. We know better, but it is to suggest that
20 given the number of circuits that we are talking about
21 out of Mount Vernon, which number -- again, I don't
22 want to --

23 JUDGE RENDAHL: Is it a total number of
24 circuits used by all CLEC's in Washington?

25 MR. O'CONNELL: No. Total number of circuits

0204

1 used by all CLEC's out of that switch.

2 JUDGE RENDAHL: I'm sorry, out of that
3 switch.

4 MR. O'CONNELL: Out of that switch, it's on
5 the order of --

6 JUDGE RENDAHL: Hold on a second. Is that an
7 issue that if stated on the record is a matter of
8 confidentiality, or is that an aggregated issue for the
9 CLEC's? And I'm asking the CLEC's.

10 MS. SINGER NELSON: If it's an aggregated
11 number, then MCI doesn't have a problem with it being
12 expressed out loud on the record.

13 MS. FRIESEN: AT&T has a similar position.

14 MS. HENDRICKSON: Same for the CCC.

15 JUDGE RENDAHL: Go ahead, Mr. O'Connell.

16 MR. O'CONNELL: My understanding is that
17 there is less than four hundred lines served by UNE-P
18 out of the Mount Vernon switch. The motion also makes
19 a point about line splitting. There is no, as in zero,
20 line splitting out of the Mount Vernon switch.

21 So my point about the difference in the
22 pricing issue is just that the amount of damages that
23 are at issue here does not make this irreparable and
24 does not justify the extraordinary relief of granting
25 this kind of action before Verizon briefs the legal

0205

1 issues to you.

2 JUDGE RENDAHL: Based upon that, it is
3 Tuesday, and the requested order would be by Friday.
4 Is it feasible for Verizon to file a brief response by
5 Thursday at noon?

6 MR. O'CONNELL: Judge, I just -- I just don't
7 know that that's going to be possible. The briefing on
8 this issue is -- it traces an issue that was developed
9 first in the first report and order, reaffirmed by the
10 FCC and UNE remand order, reaffirmed in the TRO. This
11 specific procedure that is in front of you was
12 specifically affirmed by the FCC in the TRO. It's a
13 set of briefing that I think needs to trace that out
14 over a period of time, and then we have to substantiate
15 what I've told you through some affidavits, which is
16 the normal procedure called for by the Commission's
17 rules in response to an enforcement petition. If you
18 are going to direct us to, Judge, I'll try, but I think
19 that's a difficult proposition.

20 And, Judge, if I could, there was one other
21 comment that the CLEC's made that I really did not want
22 to make sure you were aware of, and that is the
23 suggestion that I heard one or more of the attorneys
24 make it -- I don't recall which one said it -- that
25 what they are asking for is just to continue the

0206

1 existing arrangement while not withstanding the
2 conversion of the switch. That just is not technically
3 feasible.

4 As I understand it, once the whole issue here
5 is that this switch is being converted for end-user
6 customers being served out of Mount Vernon, and it is
7 not possible to pick and choose individual customers
8 and keep individual customers served out of the old
9 switch, which is in an exhaust position. They are
10 going to be moved to the new switch. I had asked that
11 question of my client and the response was unequivocal.
12 That's just not something that can happen.

13 JUDGE RENDAHL: I'm not going to rule right
14 now. I will confer with the commissioners, and if the
15 commissioners would like a response from Verizon by
16 noon on Thursday, I will let you know tomorrow morning
17 at the latest, and I will send out that notice to all
18 parties on the e-mail list that we have in this docket
19 and back it up with a notice so that you will have
20 notice of how the Commission chooses to proceed on
21 this.

22 I will note that it does put the Commission
23 in a rather difficult position, even though we did have
24 notice in the CLEC's response as a part of the status
25 quo petition for review, but that did not constitute a

0207

1 petition for enforcement, and requested the action, but
2 it did not provide sufficient information, and it
3 wasn't procedurally the correct way to proceed, and at
4 this point, enough time has gone by that it now puts
5 the Commission in a difficult position to act by the
6 time the parties are requesting the Commission to act.

7 So that said, the Commission seeks to do the
8 correct thing, but it may not have enough time in which
9 to do it, so I will notify the parties as soon as I
10 know how the commissioners wish to proceed on this. Is
11 there anything else we need to bring up this afternoon?

12 Is there any party who is on the line that
13 wishes to have a transcript of this afternoon's
14 proceeding? Okay. If there is nothing further, we
15 will be adjourned, and I'll issue a prehearing
16 conference notice generally with the schedule by the
17 end of the week.

18 MR. O'CONNELL: Thank you, Judge.

19 (Prehearing concluded at 4:08 p.m.)

20

21

22

23

24

25