

Docket No. UT-200898 - Vol. I

In the matter of the Petition of Asotin Telephone
Company, et al.

December 15, 2020



1325 Fourth Avenue • Suite 1840 • Seattle, Washington 98101

206.287.9066

www.buellrealtime.com

Olympia | **360.534.9066** Spokane | **509.624.3261** National | **800.846.6989**

email: info@buellrealtime.com



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the matter of the petition of)
)
ASOTIN TELEPHONE COMPANY, D/B/A)
TDS TELECOM; CONSOLIDATED)
COMMUNICATIONS OF WASHINGTON) DOCKET UT-200898
COMPANY, LLC; HAT ISLAND)
TELEPHONE COMPANY; HOOD CANAL) Virtual Prehearing
TELEPHONE CO., INC.; INLAND) Conference
TELEPHONE COMPANY; KALAMA)
TELEPHONE COMPANY; LEWIS RIVER) Pages 1 - 20
TELEPHONE COMPANY, D/B/A TDS)
TELECOM; MASHELL TELECOM, INC.,)
D/B/A RAINIER CONNECT; MCDANIEL)
TELEPHONE COMPANY, D/B/A TDS)
TELECOM; PIONEER TELEPHONE)
COMPANY; PEND OREILLE TELEPHONE)
COMPANY, D/B/A RTI PEND OREILLE)
TELECOM; SKYLINE TELECOM, INC.;)
ST. JOHN TELEPHONE, INC.; TENINO)
TELEPHONE COMPANY; THE TOLEDO)
TELEPHONE CO., INC.; WESTERN)
WAHKIAKUM COUNTY TELEPHONE)
COMPANY; AND WHIDBEY TELEPHONE)
COMPANY, D/B/A WHIDBEY TELECOM,)
)
To Establish an Alternative Form)
of Regulation.)

VOLUME I
VERBATIM REPORT OF PROCEEDINGS

HELD BEFORE

ADMINISTRATIVE LAW JUDGE GREGORY KOPTA

December 15, 2020
(By Videoconference)

Reported By:
Connie Church, CCR, RPR, CRR, CRC
Certified Court Reporter, #2555

1 APPEARANCES

2 FOR THE PETITIONERS: MR. RICHARD A. FINNIGAN
3 ATTORNEY AT LAW
4 2112 Black Lake Blvd. SW
5 Olympia, WA 98502
6 (360) 956-7001
7 rickfinn@localaccess.com

8 FOR THE COMMISSION: MS. JENNIFER CAMERON-RULKOWSKI
9 ASSISTANT ATTORNEY GENERAL
10 Office of the Attorney General
11 UTC Division
12 P.O. Box 40128
13 Olympia, WA 98504-0128
14 (360) 664-1186
15 jennifer.cameron-rulkowski@utc.wa.gov

16 PUBLIC COUNSEL: MS. ANN N.H. PAISNER
17 ASSISTANT ATTORNEY GENERAL
18 Office of the Attorney General
19 Public Counsel Unit
20 800 Fifth Avenue, Suite 2000
21 Seattle, WA 98104-3188
22 (206) 464-6595
23 ann.paisner@atg.wa.gov

24 FOR THE WASHINGTON STATE MILITARY DEPARTMENT, 911 COORDINATOR'S OFFICE: MS. DAWN CORTEZ
25 ASSISTANT ATTORNEY GENERAL
Office of the Attorney General
P.O. Box 40113
Olympia, WA 98504-0113
(360) 586-2436
dawnc@atg.wa.gov

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

2
3 JUDGE KOPTA: All right. Let's be on the record
4 in Docket UT-200898, captioned In the Matter of the
5 Petition of Asotin Telephone Company, et al, to Establish
6 an Alternative Form of Regulation.

7 Today is Tuesday, December 15th, 2020. And we are
8 here this afternoon for a prehearing conference to
9 establish the procedural schedule and pick up any other
10 preliminary matters.

11 First of all, let's begin with appearances, starting
12 with the Petitioners.

13 MR. FINNIGAN: This is Rick Finnigan, appearing
14 on behalf of the Petitioners.

15 JUDGE KOPTA: And Commission staff?

16 MS. CAMERON-RULKOWSKI: Jennifer Cameron-
17 Rulkowski, Assistant Attorney General appearing on behalf
18 of Commission staff.

19 JUDGE KOPTA: And public counsel.

20 MS. PAISNER: Good afternoon. My name is
21 Ann Paisner, and I'm an Assistant Attorney General with
22 the Public Council Unit of the Washington State Office of
23 the Attorney General.

24 JUDGE KOPTA: All right. And I believe we have
25 one other attorney who wants to make a Notice of

1 Appearance.

2 MS. CORTEZ: Yes. I'm Dawn Cortez with the
3 State Attorney General's Office, representing the
4 Washington State Military Department, State 911
5 Coordinator's Office.

6 JUDGE KOPTA: All right. Thank you. Anyone
7 else wishing to make an appearance?

8 Hearing none, we will go on to the next item of
9 business, which is petitions to intervene. The
10 Commission has received only one petition to intervene,
11 and that's from the military department. First of all,
12 let me ask: Is there are any objections to that
13 petition?

14 MR. FINNIGAN: No objection from the
15 Petitioners.

16 JUDGE KOPTA: All right. Hearing no objection,
17 then we will grant that petition and allow the Military
18 Department to participate in this proceeding as an
19 intervenor.

20 The next matter is discovery. Do the parties wish
21 to have the Commission's discovery rules available for
22 this proceeding?

23 MS. CAMERON-RULKOWSKI: Yes, Your Honor. From
24 Commission staff perspective, yes.

25 JUDGE KOPTA: All right. Then we will make

1 those available to the parties.

2 What about a protective order? Is that going to be
3 necessary in this case?

4 MR. FINNIGAN: Depends on what's requested in
5 the discovery. Probably yes.

6 JUDGE KOPTA: All right. Well, since we are on
7 a statutory clock, we might want to as well go ahead and
8 enter a protective order just to make sure so that we
9 don't have to deal with that issue later.

10 The other sort of administrative issue is a service
11 list. There's a master service list already that's in
12 the docket, which is comprised of folks that have already
13 identified themselves as being participants or
14 representatives of participants in this proceeding. If
15 any of you want additional persons who are not on that
16 list to be on the electronic service list, please let me
17 know, preferably by the end of the day today, so that we
18 can make sure that they are included. Since we are
19 serving electronically, it's fairly easy to add another
20 e-mail address. And I want to make sure that, to the
21 extent possible, we have everybody listed that we want to
22 have on the service list and right at the beginning of
23 the proceeding.

24 And that leads us to a discussion about the
25 procedural schedule. I received an e-mail earlier today

1 from Ms. Cameron-Rulkowski with a list of items that
2 Staff and Public Counsel I believe, as well as the
3 Military Department, are recommending that the
4 Petitioners address in their direct testimony.

5 And I also understand from Mr. Finnigan via the
6 e-mail exchange that we had that that may impact the
7 schedule that we adopt in this proceeding.

8 So first of all, Ms. Cameron-Rulkowski, let me let
9 you sort of explain what it is that you have provided to
10 me and why that is something that you want to have
11 addressed at this juncture.

12 MS. CAMERON-RULKOWSKI: Thank you, Your Honor.
13 When staff took a look at the petition, it's -- we found
14 that it was pretty sparse and that there were items that
15 are in the AFOR statute that were not addressed in the
16 petition or were really only cursorily addressed. And we
17 would expect that all of the items in the AFOR statute
18 would be addressed in testimony. But we're already a
19 little bit short on time at this point.

20 And we're also concerned about shifting the burden
21 onto staff and other parties to elicit the information
22 that we need in the record for evaluation under the
23 statute through discovery. That is very time-consuming
24 and takes a lot of effort. And so staff put quite a lot
25 of thought and work into developing a list of those items

1 that we believe need to be addressed at a minimum in the
2 testimony of the petitioners.

3 The other thing that we were looking at was there
4 are a number of petitioners, and so we were also trying
5 to think about where we would need individual testimony
6 from a company and where that wasn't so important. And
7 so we've also -- so we've also designated that or
8 indicated that on the testimony content document that I
9 shared with you, Your Honor. And that document has been
10 shared with all of the parties and both Public Counsel
11 and SECO do support that list as a minimum list of items
12 that would need to be in the testimony.

13 And most of those items come directly from the terms
14 of the statute itself. Some of them then are indirect
15 items, meaning that staff would need to know these things
16 in order to make an evaluation of the statutory item.

17 And then there are also some places where we just knew
18 right away that there were questions where the petition
19 had not elaborated. For example, there is no explanation
20 of why the individual waivers that are requested are
21 requested. So that was -- that was one item that we'd
22 need to know right up front, what the purpose was of each
23 of those waivers.

24 And that's the -- and so what we hoped was that this
25 list of items would create the record that staff and the

1 other parties needed to evaluate the AFOR petition and
2 also would have the benefit of resulting in an adequate
3 record for the Commission to be able to make a decision
4 on the petition. And so we really viewed it as hopefully
5 something that could make the process a little more
6 efficient and also would make -- would let the
7 petitioners know what it was that we needed.

8 There are other items, too, that staff feels that we
9 needed that we would then conduct discovery on. But
10 these items in the list represent things that come
11 directly from the statute.

12 JUDGE KOPTA: All right. Ms. --

13 MS. CAMERON-RULKOWSKI: Oh, I'm sorry. I needed
14 to add that the intent of this list was to have it
15 appended to the Prehearing Conference Order and be made a
16 part of the Prehearing Conference Order so that everyone
17 knows what the expectations are for testimony, that at
18 least these items to be addressed.

19 JUDGE KOPTA: All right. Anything in addition
20 from Public Counsel or the Military Department?

21 MS. PAISNER: This is Ann for Public Counsel. I
22 just want to say that we do support the schedule in the
23 testimony document proposed by Ms. Cameron-Rulkowski.
24 That testimony document, we view it as asking for the
25 minimum required under the statute. So it would be

1 impossible to analyze this request without more
2 information. And it does appear only to be asking for
3 what is required under RCW 80.36.135.

4 MS. CORTEZ: And the state 911 office agrees.
5 It did not have any information about how these things
6 would impact the 911 answering points. The state
7 Military Department has the obligation to administer the
8 911 excise tax account, which they do on behalf of the
9 counties. They also pay the telephone bills for the
10 county 911 offices. And so it has a vested interest in
11 finding out how those fees by the telephone companies are
12 charged and any increase, why there would be any increase
13 to the charges. So we also support the staff's request.
14 Thanks.

15 JUDGE KOPTA: All right. Mr. Finnigan, your
16 response?

17 MR. FINNIGAN: Well, I disagree with the
18 statement that that list -- that three-page list is
19 simply repeating what the statute requires. I disagree
20 entirely. It goes well beyond what the statute requires.
21 And I think it's up to us, if we want to move forward, to
22 craft our own case. I don't think it's up to the staff
23 and the intervenors to tell us how to prepare our case
24 and what they want to see.

25 The statute is pretty clear. And quite frankly --

1 quite frankly, that list and the things that are on it
2 pretty well demonstrate why regulatory relief is needed.
3 I mean it's simply overkill. And so I got that this
4 morning and I sent it out to my member companies and
5 their reaction, quite frankly, was if this is really what
6 people want, then we're going to withdraw and we'll go
7 find another way to get relief. But what's being done
8 there is very expensive, very time-consuming, and goes
9 well beyond the statute.

10 JUDGE KOPTA: Anything further,
11 Ms. Cameron-Rulkowski?

12 MS. CAMERON-RULKOWSKI: So I think the reaction
13 of Mr. Finnigan is partly why we put the list together.
14 The statute does have a number of elements to be
15 addressed. And in order to have a record that we can
16 adequately evaluate, we need a lot more information than
17 was in the petition. And if the Petitioners are not
18 willing to provide that information, then -- then going
19 forward with the AFOR probably doesn't make sense. It
20 would certainly be a lot of -- a lot of time and effort
21 and resources spent in ways that no one really wants to
22 spend them.

23 And when I say that, I mean it sounds like the WITA
24 companies are not interested in providing this
25 information. Staff is not interested in trying to

1 extract it through discovery and multiple rounds of
2 discovery and follow-up discovery.

3 So you know, if we know from the outset that the
4 companies are not -- the Petitioners are not going to be
5 providing this information and don't even think it's
6 necessary, even though it's stated right there in the
7 statute, then I think -- I would certainly not object to
8 a withdrawal of the petition.

9 JUDGE KOPTA: Well, this is a bit unusual. I
10 have not seen a proposal like this at this stage of any
11 proceeding to sort of delineate what one party is
12 proposing that a petitioner include in its direct
13 testimony. I realize that in some cases, we have rules
14 that require certain things to be included, for example
15 in re cases. We do not have a similar type of rule for
16 this type of petition. I hesitate to be as prescriptive
17 as Staff and Public Counsel and the Military Department
18 want to be.

19 I will state the obvious, which is that the
20 Petitioners have the burden of proof. They have the
21 obligation to demonstrate what is required under the
22 statute. And if they fail to do so, then they will not
23 carry their burden of proof and will not be able to
24 obtain the relief that they have requested. I am not
25 sure at this stage that it's necessary to delineate every

1 area in which they need to provide information.

2 This is an unusual proceeding. I mean we've done
3 AFORs before for the large telecommunications companies
4 but not for the smaller ones, and certainly not in a
5 group, as we have here.

6 So I am at this point not inclined to include that
7 list as part of the Prehearing Conference Order.
8 Instead, I will leave it up to the Petitioners to decide
9 what information they want to include to support their
10 petition as part of their direct case.

11 I caution that I don't want to be in a position
12 where there is a light direct case and a heavy reply
13 case. I think if nothing else, this list demonstrates
14 the areas where the other parties believe that the
15 Petitioners need to provide information. If they do not
16 provide it as part of their direct testimony and instead
17 wait to provide it as part of their reply testimony, I
18 will look on that with a great deal of skepticism shall
19 we say.

20 And I'm not suggesting, Mr. Finnigan, that you would
21 engage in that kind of gamesmanship. I'm just saying
22 that this is kind of a note to the -- to the other
23 parties in the docket that this is the type of
24 information that the others are looking for and if you,
25 for whatever reason, decide not to include that with your

1 direct case, then I will look long and hard at any
2 attempts to do so at a later date.

3 MR. FINNIGAN: Your Honor, you don't need to
4 worry about that. If we don't produce it, I'm not going
5 to come in at the last minute.

6 JUDGE KOPTA: All right. Like I say, I'm not
7 suggesting in any way, shape or form that you would do
8 that, Mr. Finnigan. I'm just, you know, laying cards on
9 the table so that everyone knows where we're coming from.

10 MR. FINNIGAN: All right. And just in that
11 light, the reaction from the members this morning to that
12 list and the tone that it sets is -- it's something they
13 want to think about. And so it may be something
14 where . . . Well, what it looks like to us -- and it may
15 not be the case -- is that staff is really telling us
16 that they don't want us to go forward on this petition.
17 So that's something that we're thinking about, and we'll
18 have a response very soon.

19 JUDGE KOPTA: All right. Just a moment,
20 Ms. Cameron-Rulkowski.

21 I understand the reluctance. And though I was
22 interested that these companies decided to file a
23 petition, I have been involved in almost all, if not all,
24 of the AFOR proceedings involving the other companies,
25 and they do tend to be long and complex and require quite

1 a bit of resources to adjudicate. And so I can
2 understand that that might be more than what some of your
3 members want to undertake at this point.

4 I don't want to -- I will not characterize staff's
5 effort as any type of attempt not to have parties
6 proceed. I construe it as an attempt by staff to
7 delineate the sort of information that they believe is
8 necessary in any type of AFOR proceeding, regardless of
9 who the company is. So I'm not going to cast aspersions
10 on anyone's motivations in this proceeding but instead
11 will just reflect that we are in slightly unusual
12 circumstances and they are challenging.

13 MS. PAISNER: Judge Kopta, if I may, I would
14 like to address a couple of issues that weren't
15 addressed. At this point, there are 17 companies in this
16 petition requesting to be part of a plan where there's,
17 you know, very little, if any, factual -- or facts
18 underlying the request in order for anyone else to
19 analyze whether it's in the public interest. So that is
20 our motivation behind supporting the requests in that
21 document provided by Ms. Cameron-Rulkowski.

22 And as you said, the Petitioner does have the burden
23 to provide that information. And I don't see how we
24 could do an analysis without it. It talks about duration
25 of a plan. Very little facts about this plan except for

1 the fact that the ability to change rates would be made
2 on a much shorter timeframe, which is troubling right
3 now, given the economic situation that everyone is in.
4 So to Public Counsel, it's very troubling the dearth of
5 facts in the petition as it is right now.

6 The second thing I wanted to bring up is given that
7 there are 17 companies, we don't know anything about how
8 many customers each of these companies has. But given
9 the high number of companies in this petition, we would
10 want a minimum of two public comment hearings. And three
11 would be better. So I did want to make that clear in the
12 record today. So thank you.

13 JUDGE KOPTA: All right. Thank you,
14 Ms. Paisner.

15 Anything further from you, Ms. Cameron-Rulkowski?

16 MS. CAMERON-RULKOWSKI: Yes, Your Honor. I
17 believe that you did characterize Staff's motivations
18 accurately. This is -- the list of testimony contents is
19 not an attempt to shut out the Petitioners. It is an
20 effort to make sure that there's an appropriate record
21 for a decision.

22 The things that I'm very concerned right now is --
23 that I'm concerned about right now is I hope that
24 Mr. Finnigan understands that everything in the list that
25 we provided is something that if it's not addressed in

1 the testimony, staff will need to seek through discovery.
2 And so if -- if that is not something that the companies
3 can comply with, then it would be certainly easier to
4 have that decision made up front. And I do -- I do not
5 say that because I'm trying to make this go away;
6 certainly not. I'm simply trying to explain the
7 pragmatic difficulties of evaluating a case without a
8 sufficient record.

9 JUDGE KOPTA: Well, and I believe Mr. Finnigan
10 understands that that list also represents information
11 that staff and the other parties believe that they need
12 and will ask for if it's not provided up front, which, as
13 I understand it, is part of a calculus that his clients
14 will be considering in terms of whether they wish to
15 proceed.

16 Is that fair, Mr. Finnigan?

17 MR. FINNIGAN: Yes, that is fair. That's a fair
18 characterization. One of the difficulties is we just got
19 the list this morning, and so I haven't heard back from
20 most of the companies actually. I have heard back from
21 some of them. I won't characterize their responses at
22 this point, but --

23 JUDGE KOPTA: We have a --

24 MR. FINNIGAN: Yeah. I'm still in the process
25 of getting input from the members. But I'm not planning

1 on taking very long to finish that process.

2 JUDGE KOPTA: Is that something that we need to
3 take into account in any procedural schedule that we
4 adopt today? Is this a serious issue, from your
5 perspective, Mr. Finnigan?

6 MR. FINNIGAN: Yes, it is. I mean if we are
7 going to provide the information that staff and the
8 others have requested, you know, the January 25th date is
9 problematical. But what I would suggest in order to move
10 this forward is we go ahead and adopt staff's proposed
11 schedule, with the understanding that I may need to come
12 in and make a motion to modify it at some point in time.
13 But at this -- at this point, we need something and so --
14 and to get us started, I'm fine with what staff is
15 proposing.

16 JUDGE KOPTA: Well, I reviewed it and I agree.
17 Given that we do have a statutory deadline to have a
18 decision from the Commission, that schedule will get us
19 there. And there's not much room to extend it without an
20 agreement by the Petitioners to waive that statutory
21 deadline for a period of time.

22 MR. FINNIGAN: I understand that.

23 JUDGE KOPTA: Okay. Then that would be my
24 inclination would be to go ahead and to adopt the
25 schedule that staff has proposed, understanding, of

1 course, that there may be circumstances in which we need
2 to make adjustments. And I think -- I believe that
3 schedule has two public -- no, it doesn't -- just has one
4 public comment hearing. But that's again something that
5 can be addressed later on in the process. We need to
6 just have at least one in the schedule, as well as a
7 settlement conference. And that's included in the
8 schedule as proposed right now.

9 And to the extent that we need additional public
10 comment hearings and need to find a location, et cetera,
11 we can do that at a later date.

12 I believe Ms. Cameron-Rulkowski, you represented
13 that the other parties were okay with your proposed
14 schedule. Is that correct?

15 MS. CAMERON-RULKOWSKI: I have since received
16 confirmation. But I'm happy to have them speak for
17 themselves.

18 JUDGE KOPTA: All right. Ms. Paisner, is that
19 schedule acceptable to you?

20 MS. PAISNER: Yes. And we will further discuss
21 with the parties additional dates for public comment
22 hearing.

23 JUDGE KOPTA: All right. And Ms. Cortez?

24 MS. CORTEZ: Yes. The Military Department
25 agrees.

1 JUDGE KOPTA: All right. Then we will
2 officially adopt that schedule. I will enter a
3 Prehearing Conference Order within the next couple of
4 days that includes all of the decisions that I have made
5 here today, and we will proceed along those lines.

6 Is there anything else that we need to take up
7 today?

8 MS. CAMERON-RULKOWSKI: Nothing further from
9 staff.

10 MR. FINNIGAN: Nothing from the Petitioners.

11 JUDGE KOPTA: All right. Then that concludes
12 this prehearing conference and we are adjourned. Thank
13 you all very much.

14 (Concluded at 2:00 p.m.)
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, CONNIE CHURCH, a Certified Court Reporter in and for the State of Washington, residing at Montesano, do hereby certify:

That the foregoing proceedings were reported by me and thereafter reduced to a typed format under my direction; that the transcript, consisting of pages 1 - 20, is a full, true and complete transcript of said proceedings;

That as a CCR in this state, I am bound by the Rules of Conduct as Codified in WAC 308-14-130; that court reporting arrangements and fees in this case are offered to all parties on equal terms;

That I am not a relative, employee, attorney or counsel of any party to this action, or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That upon completion, the original transcript will be securely sealed and served upon the appropriate party.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of December, 2020.

CONNIE CHURCH
CERTIFIED COURT REPORTER #2555