

00001

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 In the Matter of the Petition of )  
4 MOUNT ST. HELENS TOURS, INC. ) DOCKET NO. UT-991930  
5 for Designation of a )  
6 Telecommunications Common )  
7 Carrier to Serve an Unserved )  
8 Community, or Portion Thereof. )

9 ----- )  
10 In the Matter of the Petition of )  
11 BARBARA BRADY ) DOCKET NO. UT-991931  
12 for an Exchange Area Boundary )  
13 Change. )

14 ----- )  
15 In the Matter of Designation of )  
16 a Telecommunications Common )  
17 Carrier to Serve WILDERNESS LAKE ) DOCKET NO. UT-993000  
18 COMMUNITY, or Portion Thereof, ) VOLUME I  
19 on the Commission's Own Motion ) Pages 1 - 38

20 U S WEST COMMUNICATIONS, INC. )  
21 GTE NORTHWEST INCORPORATED. )  
22 ----- )

23

24

25 A prehearing conference in the above matter  
was held on March 24, 2000, at 1:54 p.m., at 1300 South  
Evergreen Park Drive Southwest, Olympia, Washington,  
before Administrative Law Judge KAREN M. CAILLE and  
LOIS E. GOLD.

26

27

28 The parties were present as follows:

29

30 CENTURYTEL, by CALVIN SIMSHAW (via bridge  
31 line), Attorney at Law, 805 Broadway, Vancouver,  
32 Washington 98660.

00002

1 BARBARA BRADY, by BARBARA BRADY (via bridge  
line), 24378 SR 97, Chelan, Washington 98816.

2

3 PUBLIC COUNSEL, by ROBERT W. CROMWELL, JR.,  
Assistant Attorney General, 900 Fourth Avenue, Suite  
2000, Seattle, Washington 98164-1012.

4

5 GTE NORTHWEST INCORPORATED, by JUDITH A.  
ENDEJAN and CHRISTOPHER DAHL, Attorneys at Law,  
Williams, Kastner & Gibbs, 601 Union Street, Suite  
6 4100, Seattle, Washington 98101-2380.

7

8 U S WEST COMMUNICATIONS, INC., by DOUGLAS N.  
OWENS, Attorney at Law, 1325 Fourth Avenue, Suite 940,  
Seattle, Washington 98101; and STEVEN R. BECK (via  
bridge line), Attorney at Law, 1801 California Street,  
9 Suite 5100, Denver, Colorado 80202

10 WASHINGTON INDEPENDENT TELEPHONE ASSOCIATION,  
TOLEDO TELEPHONE COMPANY, by RICHARD A. FINNIGAN,  
11 Attorney at Law, 2405 Evergreen Park Drive Southwest,  
Suite B-3, Olympia, Washington 98502

12

13 MOUNT ST. HELENS TOURS, INC., by ODINE H.  
HUSEMOEN, Attorney at Law, Walstead, Mertsching,  
Husemoen, Donaldson & Barlow, 1000 Twelfth Avenue,  
14 Suite 2, Post Office Box 1549, Longview, Washington  
98632-7934; and MARK W. SMITH, Owner/Operator, Post  
15 Office Box 149, Toutle, Washington 98649.

16

17 THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION, by SHANNON E. SMITH, Assistant Attorney  
General, 1400 South Evergreen Park Drive Southwest,  
Post Office Box 40128, Olympia, Washington 98504-0128.

18

19 SPRINT, by GLENN HARRIS, Docket Manager, 902  
Wasco Street, Hood River, Oregon 97031.

20

21 U S FOREST SERVICE, by REED E. GARDNER,  
Deputy Monument Manager, 42218 Northeast Yale Bridge  
Road, Amboy, Washington 98601-4646.

22

23 WILDERNESS LAKE COMMUNITY, by BILL BENISH  
(via bridge line), President, West 4228 Indian Trail,  
Spokane, Washington 99208.

24

25 Kathryn T. Wilson, CCR  
Court Reporter

00003

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

2 JUDGE CAILLE: We are here today for the  
3 prehearing conference in three consolidated  
4 proceedings. Docket UT-991930, which is a petition by  
5 Mount St. Helens Tours, Incorporated, for designation  
6 of a communications carrier to serve an unserved  
7 community. Docket No. UT-991931, a petition by Barbara  
8 Brady for an exchange area boundary change, and Docket  
9 No. UT-993000, the Commission's own motion for the  
10 designation of a telecommunications carrier to service  
11 Wilderness Lake Community.

12 My name is Karen Caille, and I'm the  
13 presiding administrative law judge in this proceeding.  
14 To my left is Judge Gold, and she will be assisting in  
15 this proceeding. The Commissioners will be presiding.  
16 They are not with us today, and depending on how their  
17 schedules are arranged, they will be joining us for the  
18 hearings. Today is March the 24th, 2000, and we are  
19 convened in the hearing room in the Commission's  
20 offices in Olympia Washington.

21 I would like to start this afternoon with  
22 taking appearances from all the parties. I think we'll  
23 begin with Staff. I will ask you to please spell your  
24 last name, who you represent, your street address, your  
25 mailing address, telephone number, facsimile number,

00004

1 and if you have one, an e-mail address. Ms. Smith?

2 MS. SMITH: Shannon Smith, S-m-i-t-h,  
3 Assistant Attorney General, counsel for Commission  
4 staff. My address is 1400 South Evergreen Park Drive  
5 Southwest, P.O. Box 40128, Olympia, Washington,  
6 98504-0128. My telephone number is (360) 664-1192.

7 Also counsel for Staff on this case is Jonathan  
8 Thompson, T-h-o-m-p-s-o-n. He has the same address  
9 that I have, but I don't know what his phone number is.

10 JUDGE CAILLE: Did you give me your facsimile  
11 number?

12 MS. SMITH: It's (360) 586-5522. My e-mail  
13 is ssmith@wutc.wa.gov.

14 JUDGE CAILLE: Since we have three dockets, I  
15 will also ask if you are appearing on one or all three.

16 MS. SMITH: John Thompson and I are appearing  
17 on all three together.

18 JUDGE CAILLE: And you, sir?

19 MR. HUSEMOEN: I'm Odine Husemoen. Last name  
20 is H-u-s-e-m-o-e-n; first name, O-d-i-n-e, attorney for  
21 Mount St. Helens Tours, and Mark Smith, who is with me.  
22 My street address is 1000 Twelfth Avenue, Suite 2,  
23 Longview, Washington, 98362-7934, Post Office Box 1549  
24 is the mailing address. E-mail is  
25 husemoen@walstead.com, and the fax number is (360)

00005

1 423-1478.

2 JUDGE CAILLE: Thank you. Mr. Harris?

3 MR. HARRIS: My name is Glenn Harris,  
4 H-a-r-r-i-s, representing Sprint, 902 Wasco Street,  
5 Hood River, Oregon, 97031. Voice phone is (541)  
6 387-9290. Fax is (541) 387-9753. My e-mail is  
7 glenn.harris@mail.sprint.com. I'm here, I think, just  
8 for UT-993000.

9 MR. FINNIGAN: Richard Finnigan,  
10 F-i-n-n-i-g-a-n, 2405 Evergreen Park Drive Southwest,  
11 Suite B-3, Olympia, 98502. My phone is (360) 956-7001.  
12 Fax is (360) 753-6862. E-mail is rickfinn@yelmtel.com.  
13 I'm appearing on behalf of the Washington Independent  
14 Telephone Association and also upon behalf of the  
15 Toledo Telephone Company. I believe as far as Toledo  
16 is concerned, it is in reference to the Mount St.  
17 Helens' proceeding, and as far as WITA is concerned, it  
18 is for all three dockets.

19 JUDGE CAILLE: Thank you. Mr. Owens?

20 MR. OWENS: I'm Douglas N. Owens, Attorney at  
21 Law, 1325 Fourth Avenue, Suite 940, Seattle,  
22 Washington, 98101. My telephone number is (206)  
23 748-0367. My fax telephone number is area code (206)  
24 748-0369. My e-mail is dnowens@ricochet.net. I'm  
25 appearing for U S West Communications, Inc.

00006

1           Also appearing for U S West Communications,  
2 Inc., is Lisa A. Anderl, Attorney at Law, 1600 Seventh  
3 Avenue, Room 3206, Seattle, Washington, 98191. Her  
4 telephone number is area code (206) 345-1574. Her fax  
5 number is area code (206) 343-4040. Her e-mail address  
6 is landerl@uswest.com. Also appearing for U S West is  
7 Steven R. Beck, Attorney at Law, 1801 California  
8 Street, Suite 5100, Denver, Colorado, 80202. His  
9 telephone number is area code (303) 672-2736, and I'm  
10 not positive of the fax, but I think he may be on the  
11 bridge.

12           MR. BECK: Fax is (303) 295-7069, and my  
13 e-mail is srbeck@uswest.com.

14           MR. OWENS: That concludes our appearance.

15           JUDGE CAILLE: Thank you.

16           MS. ENDEJAN: My name is Judith Endejan  
17 appearing for GTE Northwest Incorporated. Also  
18 appearing with me is my colleague, Christopher Dahl,  
19 D-a-h-l. We're from Williams, Kastner and Gibbs.  
20 Business address is Two Union Square, 601 Union Street,  
21 Suite 4100, Seattle, Washington, 98101. Telephone  
22 number is (206) 628-6611. My direct line is (206)  
23 233-2998. My e-mail is endejaja@wkg.com. Mr. Dahl's  
24 e-mail is dahlcl@wkg.com.

25           JUDGE CAILLE: Mr. Cromwell?

00007

1 MR. CROMWELL: First I should start off with  
2 my apologies for my tardiness.

3 MS. ENDEJAN: Ditto, Your Honor. I'm very  
4 sorry to have been so late. It's never taken me two  
5 hours to get here.

6 JUDGE CAILLE: It's quite all right. It's  
7 understandable.

8 MR. CROMWELL: It's Robert W. Cromwell,  
9 Junior, on behalf of Public Counsel with the Attorney  
10 General's Office. My mailing address is 900 Fourth  
11 Avenue, Suite 2000, State Mail Stop TB-14, Seattle,  
12 Washington, 98164-1012. My direct phone line is (206)  
13 464-6595. My fax number is (206) 389-2058. My e-mail  
14 address is robertc1@atg.wa.gov.

15 JUDGE CAILLE: Is there anyone else present  
16 in the room who will be making an appearance today?  
17 Let's go to the bridge line. Ms. Brady, is it?

18 MS. BRADY: Yes, it is.

19 JUDGE CAILLE: Ms. Brady, could you try to  
20 speak a little more loudly just for the benefit of the  
21 court reporter. She's having trouble hearing you.

22 MS. BRADY: Is that better?

23 JUDGE CAILLE: Yes. If you will please enter  
24 your appearance.

25 MS. BRADY: My name is Barbara Brady,

00008

1 B-r-a-d-y. My address is 24378 State Route 97, Chelan,  
2 C-h-e-l-a-n, Washington. My telephone number is (509)  
3 682-3474. I have no other number that you can reach me  
4 at.

5 JUDGE CAILLE: Thank you, Ms. Brady.  
6 Mr. Eachus?

7 MS. ENDEJAN: Mr. Eachus is with GTE in  
8 Dallas, Texas.

9 JUDGE CAILLE: Mr. Simshaw?

10 MR. SIMSHAW: My name is Calvin Simshaw, and  
11 that last name is S-i-m-s-h-a-w. I'm appearing on  
12 behalf of Centurytel, all one word. My mailing address  
13 is 805 Broadway. That's in Vancouver, Washington,  
14 98660. My voice telephone is (360) 905-5958. My fax  
15 number is (360) 905-5953, and my e-mail address is  
16 calvin.simshaw@centurytel.com.

17 JUDGE CAILLE: Mr. Simshaw, which of these  
18 dockets are you appearing in today?

19 MR. SIMSHAW: Actually, all three, Your  
20 Honor.

21 JUDGE CAILLE: I forgot to ask.

22 MR. OWENS: We're entering an appearance in  
23 all three dockets, and I apologize for that oversight.

24 JUDGE CAILLE: You probably didn't hear this  
25 when I asked, Ms. Endejan.



00009

1 MS. ENDEJAN: I probably wasn't here yet.  
2 The same. We would be entering an appearance on behalf  
3 of GTE in all dockets because my understanding is this  
4 is a consolidated proceeding.

5 JUDGE CAILLE: That's correct.

6 MR. GARDNER: I'm with the U S Forest  
7 Service. Call on me if you have questions.

8 JUDGE CAILLE: Thank you very much for  
9 coming. I wasn't sure if our invitation was going to  
10 get accepted or not.

11 This brings us to petitions to intervene. It  
12 doesn't look like there are any other intervenors here  
13 other than the folks that are present with us now. I  
14 haven't received any petitions to intervene by mail.  
15 Are there any other preliminary motions that --

16 MR. BENISH: Your Honor, I'm sorry. This is  
17 William Benish. I'm also on the bridge.

18 JUDGE CAILLE: Mr. Benish, the reason I did  
19 not take your appearance is because you have counsel  
20 representing you here.

21 MR. BENISH: Very good.

22 JUDGE CAILLE: But we will note that you are  
23 appearing. On the petitions to intervene -- did you  
24 receive a notice of this hearing?

25 MR. HARRIS: Yes.

00010

1 JUDGE CAILLE: Are there any other  
2 preliminary motions this afternoon?

3 MR. HARRIS: Speaking for Sprint PCS, we are  
4 rather surprised to get service of the Notice, and we  
5 would like to make a motion to -- I'm not sure how to  
6 put it since I'm not an attorney -- get out of this,  
7 because we don't currently have coverage for Wilderness  
8 Lake, and we don't plan to have coverage for Wilderness  
9 Lake, and we don't have the resources to participate  
10 just because U S West put our name on a list, which  
11 according to the Notice, appeared to be the reason why  
12 we are here. We certainly will if we have to, but I  
13 did want to make that motion.

14 JUDGE CAILLE: Is there any response by  
15 anyone?

16 MR. OWENS: This probably is going to be  
17 addressed somewhat in the motion that I'm going to  
18 make. It's not directly in response, but I think it  
19 probably bears on Mr. Harris's point. If you want to  
20 hear that motion at this point, probably the grounds  
21 and the response will be apparent.

22 JUDGE CAILLE: Go ahead, Mr. Owens.

23 MR. OWENS: In the First Supplemental Order,  
24 the Commission declined to expand the parties to this  
25 case and limited its response to U S West's observation

00011

1 that under Section 214 E-3, the Commission only has  
2 power to order a common carrier to serve an unserved  
3 area if no common carrier will serve, and that without  
4 knowing through the process of a hearing on the full  
5 population of common carriers within the state of  
6 Washington whether any of them meet that description,  
7 the Commission couldn't really enter an order by  
8 suggesting that it would be up to U S West or GTE to  
9 identify carriers that they knew had an interest in  
10 serving and moving to join them.

11 U S West believes that isn't the way the  
12 statute is set up and that it's really up to the  
13 Commission to establish a factual basis for an order  
14 directing anyone to serve, and since GTE and U S West  
15 were, up until today, the only common carriers who are  
16 parties to this case, it appears that they are at least  
17 possibly targets of such an order. In order to do its  
18 duty to attempt to allow the Commission to make the  
19 proper record, U S West at this point moves to join all  
20 common carriers on the Commission's list of common  
21 carriers as parties.

22 MS. ENDEJAN: Your Honor, I guess GTE's  
23 position is we would join in that motion but at the  
24 very least would like to make the following point,  
25 which is at the very least, all common carriers which

00012

1 have been designated as incumbent local exchange  
2 carriers should certainly receive notice if the subset  
3 of parties or companies to receive notice is limited.

4 We concur that it is impossible to identify  
5 who might be a willing and able and appropriate common  
6 carrier without including the population of all  
7 potential candidates. There have been instances where  
8 small carriers have gone out of their geographic locale  
9 and have, in fact, elected to provide telephone service  
10 in other areas, and I don't know the exact  
11 circumstances, but Whidbey Telephone Service, Point  
12 Roberts, and there are a lot of instances, but I'm just  
13 saying that they should not have been ignored for  
14 purposes of providing notice of this proceeding, which  
15 is an important proceeding.

16 MR. FINNIGAN: Thank you. First I'll correct  
17 a misstatement. Whidbey's service at Point Roberts is  
18 not going outside its territory to serve. There was a  
19 proceeding in the 1980's involving Whidbey Telephone  
20 Company, the predecessor to Centurytel, BC Tel, and  
21 maybe some others to determine who was best suited to  
22 provide service to what the Commission designated as an  
23 unserved area, but it was not -- Whidbey had applied,  
24 among others, to serve the area. It was not a  
25 proceeding where Whidbey went outside its service area

00013

1 to serve, nor is it like this proceeding, because there  
2 were four companies all asking to serve that particular  
3 area in that proceeding, so I wanted to make that  
4 correction.

5       Upon behalf of WITA, I will note that all  
6 CLEC's that have received registration in the state of  
7 Washington, to the best of any knowledge, received  
8 statewide authority, and I do not see any basis to  
9 limit, if we are going to name common carriers, to  
10 limit it to the incumbents, who generally are not found  
11 to have statewide authority in terms of what their  
12 tariffs or price lists indicate they will serve. It's  
13 the competitive local exchange companies that file to  
14 serve on a statewide basis under our present way of  
15 doing things, so I don't see a basis to say that the  
16 incumbent companies should be the ones who are  
17 designated. If we are going to designate common  
18 carriers, we should designate all common carriers.

19       JUDGE CAILLE: Does anyone else wish to be  
20 heard on this? Anyone on the bridge line wish to be  
21 heard on this? As you know, when this initially went  
22 out, it was just service to GTE and U S West, and the  
23 Commission elected to expand the service to the list of  
24 companies that Staff included, and there were two  
25 companies that U S West included that were not on

00014

1 Staff's list, and they also decided to expand this to  
2 include all CLEC's.

3 Part of the reasoning behind that was in  
4 order to serve -- the service list for all the common  
5 carriers in the state of Washington, I believe, is  
6 about 600. We noted Staff's arguments that this  
7 proceeding should be moved along quickly in order to  
8 determine whether there is an eligible carrier to serve  
9 the folks in these respective petitions. So I will  
10 take your motion under advisement, and I will consult  
11 with the Commissioners on this since they are sitting  
12 on this case, and we will issue an order addressing  
13 your motion, Mr. Owens.

14 MR. OWENS: Thank you, Your Honor.

15 JUDGE CAILLE: Is there anything else anyone  
16 would like to add?

17 MR. FINNIGAN: I think Mr. Harris would like  
18 some consideration of his motion.

19 MR. HARRIS: Yes. The point of my motion is  
20 we are not, in fact, on that list of 600 some odd  
21 common carriers, and we are here only because we are on  
22 U S West's list of three. We still think we would like  
23 some special consideration for that because PCS does  
24 not cover this area.

25 JUDGE CAILLE: I will take that up with the

00015

1 Commission as well.

2 MR. OWENS: I guess I would like to amend my  
3 motion to the extent it was limited to the common  
4 carriers on the Commission's list. I want to include  
5 all common carriers doing business within the state  
6 whether or not on the Commission's list, because that's  
7 the way the statute reads. I have another motion.

8 MR. FINNIGAN: Out of curiosity, is there a  
9 list that shows who was served?

10 JUDGE CAILLE: Yes. There is a CLEC list,  
11 Mr. Finnigan, and I believe it's available at the  
12 records center.

13 MR. FINNIGAN: So the CLEC's were the only  
14 parties served?

15 JUDGE CAILLE: The CLEC's plus -- appended to  
16 the Notice of Prehearing Conference is also a list of  
17 Staff's -- these were cellular companies that Staff had  
18 listed in their response, so those were also served,  
19 and two companies that were not on Staff's list that  
20 were in U S West's response, and the U.S. Forest  
21 Service. Mr. Owens?

22 MR. OWENS: This motion is directed only to  
23 Docket UT993000, and that is that it appears from the  
24 Staff memorandum that precipitated the Commission's  
25 order in this docket that the condition in Section 214

00016

1 E-3 under which the Commission would have the authority  
2 to order a common carrier to provide service cannot be  
3 satisfied; namely, that no common carrier will serve,  
4 because the Staff memo indicates that after the Staff's  
5 request to U S West, U S West indicated it would serve  
6 under conditions, and therefore, U S West believes the  
7 Commission doesn't have any jurisdiction to proceed in  
8 this particular docket based on that, and I would state  
9 for the record that recitation by the Staff is correct;  
10 that U S West will serve Wilderness Lake under the  
11 conditions mentioned in the Staff's memo.

12 JUDGE CAILLE: I'm sorry, Mr. Owens, which  
13 memo are you referring to?

14 MR. OWENS: I'm referring to the memo -- I  
15 believe it was in September. Excuse me -- October 27,  
16 1999, headed, Docket UT-993000, memo from Mr. Shirley  
17 of the Staff, says it's for the agenda date of October  
18 27th, 1999, and it contains the recommendation to  
19 commence a proceeding under Section 214 E-3 of the  
20 Federal Telecommunications Act, and RCW 80.36.230 to  
21 designate an eligible telecommunications carrier for  
22 Wilderness Lake, Pend Oreille County, and I would also  
23 note that nothing in RCW 80.36.230 has anything to do  
24 with designating an eligible telecommunications  
25 carrier.



00017

1 MR. CROMWELL: Your Honor, a point of  
2 clarification. I haven't heard Mr. Owens' motion.

3 MR. OWENS: You haven't heard it?

4 MR. CROMWELL: You stated your argument, but  
5 are you moving to dismiss the case?

6 MR. OWENS: Yes. Essentially, under Rule  
7 12-H of the tribunal lacks jurisdiction over the  
8 subject matter it shall dismiss the proceedings, so  
9 yes, that's the bottom line.

10 JUDGE CAILLE: I hadn't had an opportunity to  
11 look at this memo, Mr. Owens, but you are saying in the  
12 memo that there were conditions, and the condition  
13 was -- and U S West agreed to the condition that it  
14 would serve the Wilderness Lake area?

15 MR. OWENS: I'll read it: Commission staff  
16 contacted both U S West and GTE by a letter, September  
17 22nd, 1999, to ask that they verified the location of  
18 Wilderness Lake in relation to their respective  
19 exchange boundary. In that letter, Staff informed the  
20 companies that we would request to volunteer to serve  
21 the area if it proved to be an unserved territory. In  
22 addition, Staff indicated we would consider requesting  
23 a 214 E-3 proceeding if neither company volunteered. A  
24 subsequent letter on October 13, 1999, referred to the  
25 initial letter and asked for the requested information.

00018

1 GTE has not volunteered to provide service, and U S  
2 West responded they would do so if the residents would  
3 pay the full cost of construction (a greater cost than  
4 line extension fees.)

5 And that, for the record, is a correct  
6 summary of U S West's position, and I would also note  
7 it is consistent with the treatment U S West has  
8 accorded similarly situated applicants in that area and  
9 other areas with the full knowledge and approval of the  
10 Commission in the past.

11 JUDGE CAILLE: Any response?

12 MS. SMITH: I think Staff would want to  
13 respond to that by -- I don't feel I can respond to  
14 that motion at this point in time during this  
15 prehearing conference. I'm wondering if perhaps Staff  
16 could respond to that motion in writing, perhaps, next  
17 week or the week after?

18 JUDGE CAILLE: As a matter of fact,  
19 Mr. Owens, I would like you to file your motion in  
20 writing, and then Staff can respond to it.

21 MR. OWENS: I'll be happy to, Your Honor.  
22 When would you like that?

23 JUDGE CAILLE: How long will it take?

24 MR. OWENS: How about Tuesday.

25 JUDGE CAILLE: Tuesday will be fine.

00019

1 Ms. Smith, how much time do you think you will need?

2 MS. SMITH: Could Staff possibly have until  
3 the following Monday?

4 JUDGE CAILLE: It's Tuesday the 28th for  
5 Mr. Owens.

6 MR. OWENS: That's correct, Your Honor.

7 JUDGE CAILLE: And April 3rd -- did you say  
8 the following Monday?

9 MS. SMITH: Yes, the following Monday.

10 JUDGE CAILLE: April 3rd.

11 MR. CROMWELL: Your Honor, I would ask if  
12 Mr. Owens could file the memo he's referring to as an  
13 attachment to his motion.

14 MR. OWENS: I would be happy to.

15 MS. SMITH: Your Honor, I think all other  
16 parties who would like to respond to that motion should  
17 have an opportunity to respond as well, not just the  
18 Staff.

19 JUDGE CAILLE: Anyone else who would like to  
20 respond to the motion, your response will be due the  
21 same day as Staff, April 3rd.

22 MR. CROMWELL: Thank you, Your Honor.

23 JUDGE CAILLE: Any other motions? The next  
24 item to take up is do the parties feel there will be  
25 the need for a protective order in this proceeding?

00020

1 MR. FINNIGAN: Too early to tell.

2 MR. OWENS: I would assume it's possible. I  
3 guess if the Commission gets past the threshold of  
4 finding any particular area that no common carrier is  
5 willing to serve, then it has to decide which may be  
6 best able, and that may involve an analysis of  
7 facilities, investments, and so forth or that exist or  
8 that need to be made, and that could all be  
9 confidential information.

10 MS. ENDEJAN: Your Honor, I think more  
11 efficient is at the outset to have one issued. It has  
12 become -- I don't know what that means, but in my  
13 experience it has become relatively customary practice  
14 in proceedings because we are in a competitive era, so  
15 I think it would be a good idea to have one issued.  
16 That way, we wouldn't have to take the Commission's  
17 time to come back to get one and reinvent the wheel.

18 MS. SMITH: Staff doesn't object to the entry  
19 of the protective order in this matter.

20 JUDGE CAILLE: A protective order will be  
21 prepared for the Commissioners' signature. Next,  
22 discovery; is there any reason to invoke the discovery  
23 rule in this proceeding?

24 MR. HUSEMOEN: Mount St. Helens Tours would  
25 like discovery in order to obtain necessary data from

00021

1 various entities such as Cowlitz County, Weyerhaeuser  
2 Company, and U S West, and maybe from the Forest  
3 Service and a company called Food Master that are all  
4 being serviced by telephone service at the present time  
5 along the highway passing to Mount St. Helens, and we  
6 need to understand the nature and extent of the service  
7 currently being provided and to whether or not we are  
8 in an unserved area or if there is a discriminatory  
9 practice.

10 MR. OWENS: I don't really have any comment  
11 about counsel's observation, other than to say that  
12 most of those entities don't appear to be parties to  
13 this case, but U S West would like discovery of Mount  
14 St. Helens Tours to at least on the basis of the  
15 allegations we may be expected to meet with evidence.

16 JUDGE CAILLE: Ms. Smith?

17 MS. SMITH: Commission staff may need to  
18 conduct discovery to find out information such as  
19 exchange boundaries, where companies have facilities or  
20 have customers, and to the extent those companies may  
21 be the companies that are best able to serve the areas  
22 at issue in these proceedings.

23 JUDGE CAILLE: The discovery rule will be  
24 invoked for purposes of this proceeding. Please follow  
25 the discovery process that is outlined in WAC

00022

1 480-09-480. If there are discovery problems that you  
2 are not able to work out amongst yourselves, please let  
3 me know, and I will be available on an expedited basis  
4 to make rulings on that.

5 Counsel for Mount St. Helens, I do believe  
6 Mr. Owens is correct that some of the entities that you  
7 mentioned that you would like to have discovery on are  
8 not parties to the proceeding, so maybe you can  
9 explain.

10 MR. HUSEMOEN: For example, Weyerhaeuser  
11 Company we know has dealings with U S West through  
12 preliminary informal discovery. Weyerhaeuser Company  
13 may have data, contracts, information, invoices that  
14 would be either consistent or is inconsistent with the  
15 data that we may get directly from U S West, and that  
16 is the reason, for example, for Weyerhaeuser Company,  
17 and Mr. Dick Ford would be the source of that  
18 information.

19 The same would be true with Food Master and  
20 the information that they might have with Cowlitz  
21 County, who has U S West telephone service being  
22 provided, as we understand it in talking to the  
23 representatives of Cowlitz County, and then there is a  
24 new concessionaire, like Food Master, that is being  
25 provided service that has information that would bear

00023

1 on it. They need not be parties because they would not  
2 be providing the service. They would be providing  
3 information relating to the service availability or  
4 nonavailability.

5 MR. FINNIGAN: Your Honor, I just note for  
6 what it's worth, I don't believe the Commission's  
7 jurisdiction extends to customers, and I don't think  
8 the Commission can compel them to respond to discovery,  
9 and discovery issued under this administrative  
10 proceeding to those parties probably would not be  
11 proper.

12 MR. HUSEMOEN: The way I read the discovery  
13 rule, it seems as though it is broad enough to make  
14 available for discovery of that data through deposition  
15 and subpoena duces tecum, even though it does not say  
16 it's directed to parties to the hearing, the way I read  
17 the rule.

18 JUDGE CAILLE: Why don't you file a motion  
19 with the basis for your argument.

20 MS. SMITH: Your Honor, perhaps if we could  
21 move to a different point with respect to discovery.  
22 Mrs. Brady, who is a party to this case, she is a  
23 pro se party, and to the extent she wants to issue data  
24 requests to any party, she certainly can do that as a  
25 pro se in this matter. But if she were to wish to

00024

1 issue subpoenas in this matter, our rules say that  
2 attorneys must issue subpoenas. Perhaps we could just  
3 put on the record that the Commission will issue  
4 subpoenas on her behalf if she feels it necessary to  
5 issue subpoenas.

6 JUDGE CAILLE: All right. Is there any  
7 objection to that? Ms. Brady, if you find you need to  
8 issue subpoenas in order to conduct discovery, the  
9 Commission will issue those subpoenas for you.

10 MR. OWENS: Would we understand, Your Honor,  
11 that notwithstanding that Ms. Brady is pro se, her  
12 subpoenas would be held to the same standards of  
13 reasonableness as those of a lawyer?

14 JUDGE CAILLE: Yes. Mr. Husemoen, I'll need  
15 a date. When do you think you will be able to file  
16 your motion?

17 MR. HUSEMOEN: Probably by Wednesday. It  
18 would be in the mail on the Wednesday or served by --

19 JUDGE CAILLE: Do you want to say the 30th  
20 then? The 30th is Thursday.

21 MR. HUSEMOEN: That will be fine. I will  
22 need the list. I was not able to copy down all the  
23 necessary fax numbers and stuff to give, especially U S  
24 West, proper notice, and I'll need to get that later  
25 on.



00025

1                   JUDGE CAILLE: Some of that may be available  
2 in our records center office. If not, let me know and  
3 I will help you get that together. Will there be  
4 responses to Mr. Husemoen's motion?

5                   MR. OWENS: Your Honor, it appears, if I  
6 understand the thrust of this motion correctly, this  
7 motion will be directly against entities that I don't  
8 represent, so I don't know that my client would have a  
9 position on it.

10                  MS. SMITH: I think, and of course, if I'm  
11 misstating the purpose of your motion, please let me  
12 know. I think the motion is a motion for the  
13 Commission to order discovery of --

14                  MR. HUSEMOEN: Witnesses.

15                  MS. SMITH: -- of witnesses, and I think any  
16 party who wishes to respond would be able to respond to  
17 that. It's not an attempt to actually serve the  
18 discovery request on those parties at this time. It's  
19 to ask the Commission to exert its jurisdiction to that  
20 extent.

21                  MR. HUSEMOEN: That's what I was just reading  
22 in the scope of 6-B in 080, and it seems to say that  
23 depositions are available of witnesses and may depose  
24 witnesses, and it seemed to be broad enough to get the  
25 information we are looking for. That's the way I was

00026

1 looking at it. And then notice would be served upon  
2 the parties.

3 MR. CROMWELL: Perhaps we could just set it  
4 over for a week, and any party that wishes to respond  
5 to it could do so in that time frame.

6 JUDGE CAILLE: The 6th then. I think we've  
7 reached the point to consider scheduling. Have the  
8 parties done any talking about schedule?

9 MS. SMITH: Your Honor, before we get into  
10 the discussion of scheduling, Staff has a point to  
11 raise. I don't want to raise this as a motion, perhaps  
12 just as an item for discussion. When we get to the  
13 hearing in this matter, perhaps to have live direct  
14 testimony and live cross testimony rather than have all  
15 of the parties prefile direct as is typically done in  
16 Commission cases where the evidence often times is much  
17 different than the type of evidence we think we will  
18 hear in this case, and again, I'm not making a motion.  
19 I just thought perhaps it would be something the  
20 parties would be willing to consider or at least think  
21 about in these cases.

22 JUDGE CAILLE: Maybe before taking a recess  
23 to discuss the schedule, we should consider the topic  
24 of issues. Have the parties had any discussions among  
25 themselves about what the appropriate issues are in

00027

1 this proceeding?

2 MR. OWENS: Your Honor, again, sort of taking  
3 a lead from the Assistant Attorney General. This is  
4 not a motion; however, it was our view it was incumbent  
5 upon the Commission under the Administrative Procedure  
6 Act to either include a statement of the matters  
7 asserted by the agency or a short and plain statement  
8 of the issues involved. We don't believe that that  
9 occurred in any of either the original order or the  
10 order of consolidation or the First Supplemental Order  
11 in any of these proceedings.

12 MS. ENDEJAN: Your Honor, to sort of add onto  
13 these sort of nonmotion comments, in looking at this  
14 case, what strikes GTE at the outset is that there  
15 appear to be a lot of policy issues and unresolved  
16 questions from which an evidentiary record, if  
17 necessary, would flow, and it seems to me that without  
18 some sort of identification of the questions that need  
19 to be answered as a threshold matter by the Commission,  
20 it's very difficult to figure out what kind of a case  
21 you can put on, so I'm not certain procedurally how we  
22 go about doing that, but I do think that it is  
23 incumbent on the Commission to have this sort of  
24 preliminary threshold issue identification resolution  
25 phase before we start talking about, you know, who

00028

1 actually has or could place facilities along this  
2 particular road at this particular time.

3 JUDGE CAILLE: Mr. Cromwell?

4 MR. CROMWELL: Thank you, Your Honor. I'm  
5 certainly cognizant of the basis for Mr. Owens' comment  
6 regarding the APA and Ms. Endejan's concern, but I  
7 think also the Commission will need to recognize the  
8 pro se nature of some of the litigants in this matter,  
9 and I think that the case law in Washington is rather  
10 clear about the accord that courts offer pro se  
11 litigants, particularly in complex litigation in the  
12 context that I think this will qualify as.

13 One means that the Commission might be able  
14 to resolve Mr. Owens' and Ms. Endejan's concern would  
15 be in the prehearing conference order that the Court  
16 will be issuing to expressly identify the issues that  
17 the Court believes the parties have placed at issue in  
18 these joint matters, offer the parties the opportunity  
19 to either clarify or request addition to the issues,  
20 and I should make it clear, not to move to exclude  
21 issues or to in any way litigate the merits of the  
22 matters before the Court, but to simply make it clear  
23 that everyone is on the same page and understands,  
24 perhaps, in a more traditional legal statement of the  
25 issues what is before the Court. I don't know if that

00029

1 would be a process that the Court might want to  
2 consider, but it's something I've seen in other  
3 contexts that helps.

4 JUDGE CAILLE: That would be something we  
5 could consider. Are there any comments from anyone  
6 else?

7 MR. FINNIGAN: Your Honor, I concur with the  
8 comments made by GTE Northwest and U S West. At least  
9 one of the three matters is a Commission-initiated  
10 matter and certainly should comply with the  
11 requirements, but Public Counsel's suggestion is a good  
12 way to perhaps solve that particular problem.

13 It also strikes me that scheduling may be a  
14 bit premature at this point. Perhaps the Commission  
15 ought to determine where it wants to go in light of U S  
16 West's motion or motions, one or the other, and at that  
17 time, it could include its decision in the prehearing  
18 conference order, perhaps setting another prehearing  
19 conference to go over the issues list to see if there  
20 is some supplementing of that issues list and to set  
21 scheduling at this time.

22 I agree that right now it's very hard to get  
23 your hands around what we're doing, and if you don't  
24 know what you're doing, it's hard to set a schedule.

25 MR. HUSEMOEN: An observation on behalf of

00030

1 Mount St. Helens Tours, as of July 1st, wireless phone  
2 service now being provided from the U.S. Army Corps of  
3 Engineers Sediment Dam 2, our property will be cut off  
4 by the U.S. Corps of Engineers, so time is of the  
5 essence in this procedure.

6 JUDGE CAILLE: Anyone on the bridge line wish  
7 to be heard?

8 MS. SMITH: Your Honor, Staff understands and  
9 appreciates the comments from Mr. Finnigan about the  
10 difficulty in setting the schedule when there is some  
11 uncertainty as to how the Commission will rule on  
12 certain motions. However, Staff also believes that  
13 this matter should move ahead as expeditiously as  
14 possible, so if Your Honor is inclined to set a  
15 schedule at this prehearing conference but perhaps do  
16 it at a later prehearing conference that that  
17 prehearing conference be scheduled fairly soon, perhaps  
18 on the heels of the Commission's ruling on the motions  
19 that will be filed.

20 JUDGE CAILLE: Thank you, Ms. Smith.  
21 Mr. Owens?

22 MR. OWENS: Yes, Your Honor, with regard to  
23 counsel for the Staff's suggestion about live  
24 testimony, it seems to me that that likewise is  
25 somewhat premature to decide until we have a clear idea

00031

1 of what the issues may be and what kind of evidence the  
2 Commission is going to need.

3           It seems to me that if you get past the  
4 threshold issue of is no common carrier willing to  
5 serve and get into issues of which common carrier or  
6 carriers is best able to serve, you are going to be  
7 looking at potentially some expert testimony. The  
8 Commission has evolved over many years of the practice  
9 of prefiled evidence in order to save the parties the  
10 time of extensive interrogatories and depositions of  
11 experts, so I think it may be a misplaced view of  
12 economy of time to say we can dispense with some of the  
13 time by having only live testimony if the subject  
14 matter is still going to be expert testimony.

15           MS. SMITH: Perhaps, Your Honor, if I might  
16 respond and offer another suggestion. Mr. Owens  
17 presents an issue that I think is likely to happen in  
18 this case, that we may have expert testimony. Perhaps  
19 one way to look at this is for the Commission to hold a  
20 hearing and take the testimony of the individuals who  
21 reside in these areas and take that testimony, live  
22 testimony. It could be scheduled on a separate date  
23 than, perhaps, the expert testimony. That way, a lot  
24 of these folks who are somewhat without resources, and  
25 by "without resources," I also mean without telephones

00032

1 to even contact the Commission to say, "I can't file my  
2 prefile testimony on time," perhaps we could have a  
3 hearing where those folks would come in and give their  
4 evidence, which I would expect to be, "My name is  
5 Mrs. Jones. I live on Elm Street and I don't have a  
6 telephone."

7 That kind of testimony certainly is not the  
8 type of expert testimony that Mr. Owens is referring  
9 to. I think it would allow all parties an opportunity  
10 to hear what those folks have to say, to cross-examine  
11 those witnesses, and then perhaps have the other expert  
12 type testimony or company witness testimony offered to  
13 the Commission in the typical prefiled manner.

14 JUDGE CAILLE: Any comment?

15 MR. CROMWELL: We would concur with Staff's  
16 position. I think that there is significant value in  
17 modifying the Commission's, perhaps, accustomed or  
18 standard procedures to accommodate the needs of  
19 citizens who are appearing before it, particularly the  
20 unrepresented.

21 MS. ENDEJAN: Your Honor, another suggestion  
22 that might help move this case along would be perhaps  
23 not to schedule at this point hearings and testimony  
24 and all of that, but to first identify the issues and  
25 second of all, identify or set a time when a settlement



00033

1 conference when the parties might actually talk about  
2 seeing if this matter can be resolved, short of  
3 commencing a full-blown proceeding. That might be a  
4 more judicious use of the Commission's resources,  
5 particularly because what I think troubles GTE is the  
6 fact that this is sort of an unusual case in which to  
7 resolve what are some fairly major policy issues, and I  
8 think, you know, it's not the best vehicle to  
9 accomplish that sort of regulatory purpose, so I would  
10 encourage the Commission, if at all possible, to view  
11 the alternatives and perhaps see if something  
12 acceptable to all parties can't be achieved short of a  
13 full-blown hearing.

14 MR. OWENS: Your Honor, I think GTE's  
15 suggestion is a worthwhile one, and I would even go  
16 further to suggest that even if the matters cannot be  
17 globally settled, there may well be the possibility of  
18 stipulations on facts which would obviate the need for  
19 evidence. I suspect that GTE and U S West could  
20 stipulate that most of the named individuals that don't  
21 appear on their customer records don't have wireline  
22 service from GTE or U S West. That may obviate some  
23 testimony.

24 Some of the statutory issues, such as is the  
25 area a community or part of the community, and is the

00034

1 area unserved, may present sort of areas in the middle  
2 that may have some sort of lay elements and some expert  
3 elements, but I would certainly think we could address  
4 that in the kind of conference that Ms. Endejan  
5 discussed.

6 JUDGE CAILLE: Mr. Finnigan?

7 MR. FINNIGAN: Thank you, Your Honor. I will  
8 concur in all of those suggestions. I think where we  
9 can accommodate members of the public, we ought to try  
10 to do that, and recognize there may be some discovery  
11 needed of prior to those persons taking the stand to  
12 testify, and then the idea of a settlement conference  
13 is a good one to see what we can work out that might  
14 move this proceeding along more quickly.

15 JUDGE CAILLE: Anything from Staff?

16 MS. SMITH: No.

17 JUDGE CAILLE: Anything from anyone on the  
18 bridge line?

19 MR. CROMWELL: Your Honor, I think that some  
20 good suggestions have been made, and I think that they  
21 are largely suggestions that the parties could  
22 implement independently of the Court's supervision, and  
23 there is certainly nothing that prevents the parties  
24 from doing so. I think that has been stated. There is  
25 value in moving this case along in a timely fashion,

00035

1 particularly given the facts in these cases, and Public  
2 Counsel would encourage the Court to establish a case  
3 schedule, particularly in light of the Commission's  
4 larger schedule and the issues that revolve around that  
5 in this year, which seem to be unprecedented, and also  
6 just noting for the record that as to the large public  
7 policy issues that both U S West and GTE have averred  
8 to, I noticed that there is an ongoing rulemaking  
9 proceeding that does also implicate some of the issues  
10 that are present in this case.

11 I don't think that Public Counsel would agree  
12 that this is not necessarily the best or wisest form.  
13 I think litigation often will best flush out the  
14 relevant perspectives on a legal issue and will allow  
15 the Commission to adequately rule on the issues placed  
16 before it.

17 JUDGE CAILLE: Thank you, Mr. Cromwell.

18 MR. HUSEMOEN: Mount St. Helens Tours would  
19 like to say that yes, we think a settlement conference  
20 might very well expedite this as far as, like you say,  
21 stipulated facts. I do not know because of our  
22 perspective the policy issues that concern GTE and U S  
23 West, but from our perspective, I know that the  
24 precedent to be set in this case may not be best  
25 overall for the circumstances, so we might do a better

00036

1 job in a settlement conference than getting a final  
2 decision. We understand the policy behind that so we  
3 would like some sort of expedited date to get the  
4 settlement conference by.

5 MS. SMITH: Staff doesn't at all disagree  
6 with Ms. Endejan's suggestion that perhaps we have a  
7 settlement conference to resolve a lot of these issues,  
8 and Staff would note for the record that there are real  
9 people involved in these cases who probably care a lot  
10 less about the policy issues than Staff or the  
11 Commission or the companies do, but they care about  
12 getting phone service, and perhaps settlement  
13 conferences might be a good way to resolve the issues  
14 as to those particular individuals.

15 Regardless of whether Your Honor decides to  
16 establish a schedule today or hold off on doing that,  
17 Staff would suggest that the parties perhaps  
18 communicate within the next couple of weeks about maybe  
19 the best way to get the evidence before the Commission,  
20 whether it be through sort of a hybrid approach to  
21 testimony where part of it is live and part of it is  
22 prefiled and perhaps part of it stipulated, and Staff  
23 agrees with Public Counsel's suggestion that that is  
24 something that perhaps the parties should try to work  
25 out without having the Bench try to manage that, and

00037

1 maybe we could take a stab at it and get back to the  
2 Commission.

3 JUDGE CAILLE: Anything from anyone else on  
4 this subject? We're going to go off the record, and we  
5 are going to discuss scheduling. When we go back on  
6 the record, I'll summarize what was discussed, so let's  
7 go off the record.

8 (Discussion off the record.)

9 JUDGE CAILLE: Pursuant to an off-record  
10 discussion, the parties have come to an agreement on  
11 certain dates. I'm not going to repeat the dates of  
12 the filing for the motions and responses. I assume you  
13 folks already have those in your notes, and they are in  
14 the record.

15 The parties will meet for a settlement  
16 conference on April the 13th, and that will be hosted  
17 by the Attorney General's office, the Public Counsel's  
18 office, in Seattle. The dates for hearing will be  
19 either the September 11th, 12th, 13th, or 12th, 13th  
20 and 14th of September. I will recheck the calendars of  
21 the Commissioners, and you will see that adjustment in  
22 the prehearing conference order. As an alternative, in  
23 the event the Commission believes this should be  
24 expedited, the parties have agreed to the dates of July  
25 5th, 6th and 7th for hearings. At this point, is there

00038

1 any other business from anyone?

2 MS. SMITH: I think that's it.

3 JUDGE CAILLE: Let me just give you the  
4 reminders that fact stipulations are encouraged, and  
5 the parties have acknowledged that they will try to  
6 engage in that method. The parties are also encouraged  
7 to consider alternative dispute resolution and  
8 settlement discussions, which they are also doing, and  
9 please advise the Commission of any progress that you  
10 make.

11 I will issue a prehearing conference order  
12 that will include the procedural schedule and other  
13 matters. It will also hopefully include the decision  
14 on the motions that are going to be filed. Everything  
15 must be filed with the Commission secretary at 1300  
16 South Evergreen Park Drive Southwest, Post Office Box  
17 47250, Olympia, Washington, 98504. We will need an  
18 original plus 15 copies of everything you file, and I  
19 will also ask of the parties that are able to file an  
20 electronic format as well in Word or Word Perfect, or  
21 you can e-mail the Commission's records center. I  
22 thank you all for coming together today, and this  
23 meeting is adjourned.

24

25 (Prehearing conference concluded at 4:00 p.m.)