

0001

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 In re the Petition of the)Docket No. UT-020667
4 WASHINGTON INDEPENDENT)Volume I
5 TELEPHONE ASSOCIATION for)Pages 1-25
6 Declaratory Order on the Use of)
7 NPA/NXX Calling Patterns.)
8 _____)

9 A prehearing in the above matter
10 was held on July 19, 2002, at 1:32 p.m., at 1300
11 Evergreen Park Drive Southwest, Olympia, Washington,
12 before Administrative Law Judge KAREN CAILLE.

13 The parties were present as
14 follows:

15 VERIZON NORTHWEST, INC., by
16 Kendall J. Fisher, Attorney at Law, Stoel Rives, 600
17 University Street, Suite 3600, Seattle, Washington
18 98101.

19 SPRINT, by William E. Hendricks,
20 Attorney at Law, 902 Wasco Street, Hood River,
21 Oregon, 97031.

22 WASHINGTON INDEPENDENT TELEPHONE
23 ASSOCIATION, by Richard A. Finnigan, Attorney at Law,
24 2405 Evergreen Park Drive, S.W., Suite B-4, Olympia,
25 Washington 98502.

26 AT&T COMMUNICATIONS OF THE PACIFIC
27 NORTHWEST, INC., TCG-OREGON, TCG-SEATTLE, FOCAL
28 COMMUNICATIONS CORPORATION OF WASHINGTON, FOX
29 COMMUNICATIONS CORPORATION, INTERNATIONAL TELECOM,
30 INC., PAC WEST TELECOM, INC., TIME WARNER TELECOM OF
31 WASHINGTON, LLC, XO WASHINGTON, INC., and AT&T
32 WIRELESS SERVICES, INC., by Gregory J. Kopta,
33 Attorney at Law, Davis, Wright, Tremaine, 1501 Fourth
34 Avenue, Suite 2600, Seattle, Washington 98101.

35 Barbara L. Nelson, CCR
36 Court Reporter

0002

1 THE COMMISSION, by Shannon E.
Smith, Assistant Attorney General, 1400 Evergreen
2 Park Drive, S.W., P.O. Box 40128, Olympia, Washington
98504-0128.

3
4 WHIDBEY TELEPHONE COMPANY, TENINO
TELEPHONE COMPANY, and KALAMA TELEPHONE COMPANY, by
Robert S. Snyder, Attorney at Law, 1000 Second
5 Avenue, 30th Floor, Seattle, Washington 98104.

6 LEVEL 3 COMMUNICATIONS, by Rogelio
Pena, Attorney at Law, 1919 14th Street, Boulder,
7 Colorado, 80302.

8 KMC TELECOM, by Todd Daubert,
Attorney at Law, Kelley Drye Warren, 1200 19th
9 Street, N.W., Washington, D.C. 20036 (Appearing via
teleconference bridge.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0003

1 JUDGE CAILLE: Let's be on the record. We
2 are here today for a prehearing conference in Docket
3 Number UT-020667, which concerns a petition from
4 Washington Independent Telephone Association for a
5 declaratory order on the use of virtual NXX calling
6 patterns.

7 My name is Karen Caille, and I am the
8 Administrative Law Judge assigned to this proceeding.
9 Today is July the 19th, 2002, and we are convened in
10 a hearing room in the Commission's offices in
11 Olympia, Washington. The purpose of our conference
12 for today is to discuss what is a necessary party, do
13 we have necessary parties in this proceeding, and if
14 so, do they consent to a determination of this matter
15 by a declaratory order of proceeding. Following this
16 discussion, we can also discuss any other issues you
17 wish to raise.

18 So let's begin by taking appearances. And
19 if we could begin with counsel for WITA.

20 MR. FINNIGAN: This is Richard Finnigan,
21 appearing on behalf of the Washington Independent
22 Telephone Association. My address is 2405 Evergreen
23 Park Drive, S.W., Suite B-1, Olympia, Washington,
24 98502. The phone number is 360-956-7001; fax is
25 360-753-6862, and e-mail is rickfinn@ywave.com.

0004

1 JUDGE CAILLE: All right.

2 MR. PENA: Good afternoon, Your Honor. My
3 name is Rogelio Pena. I'm here on behalf of Level 3
4 Communications. My address is 1919 14th Street,
5 Suite 330, Boulder, Colorado, 80302. My phone number
6 is 303-415-0409; my fax number is 303-415-0433; and
7 my e-mail address is repena@boulderattys.com.

8 JUDGE CAILLE: Thank you.

9 MR. PENA: Thank you.

10 JUDGE CAILLE: Mr. Kopta.

11 MR. KOPTA: Gregory Kopta, of the Law Firm
12 Davis, Wright, Tremaine, LLP. My address is 2600
13 Century Square, 1501 Fourth Avenue, Seattle,
14 Washington, 98101-1688. Telephone, 206-628-7692;
15 fax, 206-628-7699; e-mail, gregkopta@dwt.com, and I'm
16 here representing AT&T Communications of the Pacific
17 Northwest, Inc. TCG Oregon and TCG Seattle, Focal
18 Communications Corporation of Washington, Fox
19 Communications Corporation, International Telecom,
20 Inc. Pac West Telecom, Inc., Time Warner Telecom of
21 Washington, L.L.C., XO Washington, Inc., and AT&T
22 Wireless Services, Inc.

23 JUDGE CAILLE: Thank you. Mr. Hendricks.

24 MR. HENDRICKS: Tre Hendricks, on behalf of
25 Sprint. My address is 68 -- I'm sorry, it's 902

0005

1 Wasco Street, Hood River, Oregon, 97031. Phone
2 number is 541-387-9439; fax is 541-387-9753; and my
3 e-mail is tre.e.hendricks.iii@mail.sprint.com.

4 JUDGE CAILLE: Thank you. Ms. Smith.

5 MS. SMITH: Shannon Smith, Assistant
6 Attorney General, for Commission Staff. My address
7 is 1400 South Evergreen Park Drive, S.W., P.O. Box
8 40128, Olympia, Washington, 98504-0128. My telephone
9 number is 360-664-1192; fax is 360-586-5522; e-mail
10 is ssmith@wutc.wa.gov.

11 JUDGE CAILLE: Thank you. Mr. Snyder.

12 MR. SNYDER: I'm Robert S. Snyder,
13 S-n-y-d-e-r. I'm appearing on behalf of Whidbey
14 Telephone Company, W-h-i-d-b-e-y, Tenino Telephone
15 Company, and Kalama Telephone Company. My office
16 address is 1000 Second Avenue, 30th Floor, Seattle,
17 Washington, 98104. Telephone number, 206-622-2226;
18 fax number, 206-622-2227; and for purposes of this
19 proceeding, my e-mail address is rss@whidbey.com.

20 JUDGE CAILLE: Thank you. And on the
21 bridge line?

22 MS. FISHER: I --

23 JUDGE CAILLE: Excuse me. I'm sorry.

24 MS. FISHER: My name is Kendall Fisher, and
25 I'm representing Verizon Northwest, Inc. My address

0006

1 is Stoel Rives, LLP. The address is 600 University
2 Street, Suite 3600. Telephone is area code
3 206-386-7526; fax number is 206-386-7500; and my
4 e-mail address is kjfisher@stoel.com.

5 JUDGE CAILLE: Thank you. And now on the
6 bridge line. I'm not sure who is out there, so if
7 one of you will just step up to the plate and enter
8 your appearance.

9 MR. MEACHAM: Yes, this is Randy Meacham.
10 I'm with KMC Telecom. My address is 1755 North Brown
11 Road, in Lawrenceville, Georgia, 30043. My phone
12 number is 678-985-6258; fax number is 678-985-6213;
13 and the e-mail address is rmeach@kmctelecom.com.

14 MR. DAUBERT: This is Todd Daubert, on
15 behalf of KMC Telecom.

16 JUDGE CAILLE: I'm sorry, excuse me. Could
17 you say your last name and spell it for the record?

18 MR. MEACHAM: Are you directing that to me?

19 JUDGE CAILLE: I'm directing that to Mr.
20 Todd --

21 MR. DAUBERT: Daubert, D, as in Delta,
22 a-u-b, as in bravo, e-r-t, as in tango.

23 JUDGE CAILLE: All right.

24 MR. DAUBERT: I'm here on behalf of KMC
25 Telecom. My address is Kelley Drye Warren --

0007

1 JUDGE CAILLE: I'm sorry. Is it Paubert?
2 Am I pronouncing it right?

3 MR. DAUBERT: It's Daubert, D --

4 JUDGE CAILLE: Oh, D-a, I'm sorry.

5 MR. DAUBERT: That's all right.

6 JUDGE CAILLE: D-a-u-b-e-r-t?

7 MR. DAUBERT: That's right.

8 JUDGE CAILLE: Daubert. Could you speak a
9 little more loudly, a little more slowly and -- for
10 the court reporter's benefit?

11 MR. DAUBERT: Yes. My address is Kelley
12 Drye and Warren, and that's K-e-l-l-e-y, D-r-y-e,
13 W-a-r-r-e-n, at 1200 19th Street, N.W., Washington,
14 D.C., 20036. My phone number is 202-955-9788; my fax
15 is 202-955-9792; my e-mail is
16 tdaubert@kelleydrye.com.

17 JUDGE CAILLE: Thank you. That was
18 perfect. Let me see. Is there a Bill Hunt on the
19 line?

20 MR. PENA: Your Honor, he's not going to
21 make it.

22 JUDGE CAILLE: All right. Ms. Gage, are
23 you on the line, Joan Gage? Okay. Is there someone
24 else from Verizon on the line?

25 MR. HAYNES: Yes, this is Terry Haynes. I

0008

1 wasn't sure if you wanted the non-legal
2 representatives identified or not.

3 JUDGE CAILLE: Just for purposes of knowing
4 who's on the bridge line, state your name.

5 MR. HAYNES: Yes, it's Terry, T-e-r-r-y,
6 Haynes, H-a-y-n-e-s, with Verizon, and I'm based in
7 Irving, Texas.

8 JUDGE CAILLE: Okay. That's all I'll need
9 from you, Mr. Haynes.

10 MR. HAYNES: Okay. Thank you.

11 MR. MEACHAM: Your Honor, this is Randy
12 Meacham again. And I do want to clarify, I'm not an
13 attorney for KMC Telecom. Mr. Daubert is
14 representing us for that.

15 JUDGE CAILLE: All right. Thank you, Mr.
16 Meacham.

17 MR. MEACHAM: Thank you.

18 JUDGE CAILLE: Is there Ms. Murray with
19 Eschelon?

20 MS. MURRAY: Yes, I am here today.

21 JUDGE CAILLE: And would you like to enter
22 your appearance?

23 MS. MURRAY: No, I'm just listening in.
24 Thank you.

25 JUDGE CAILLE: Okay. Mr. Charbonneau

0009

1 (phonetic), from Allied Systems, are you on the line?

2 MR. CHARBONNEAU: Yes, I am.

3 JUDGE CAILLE: Would you like to enter your
4 appearance?

5 MR. CHARBONNEAU: No, I am just listening
6 in today.

7 JUDGE CAILLE: All right. And is Ms. Dean
8 from Qwest on the line?

9 MS. DEAN: Yes, I am.

10 JUDGE CAILLE: Would you like to enter your
11 appearance?

12 MS. DEAN: No, I'm just listening. Thank
13 you.

14 JUDGE CAILLE: Okay. Thank you. Is there
15 anyone else on the bridge line who I haven't
16 identified or who hasn't entered an appearance or let
17 me know that they're out there? All right. Then let
18 the record reflect there are no other appearances.

19 Before I begin, I think I'll just, so that
20 everyone is on the same page, just give a little bit
21 of background as to how we got here today. And if
22 there is any disagreement with what I've stated,
23 please speak up and we can amend the record.

24 This petition arises out of a May 20th,
25 2002 request by Level 3 for mediation by the

0010

1 Commission on interconnection negotiations between
2 Level 3 and CenturyTel, YCom Networks, Ellensburg
3 Telephone Company, Inland Telephone Company, and
4 Lewis River Telephone Company.

5 The Commission issued notice of the
6 petition -- did I leave somebody out?

7 MR. PENA: Your Honor --

8 MR. FINNIGAN: I think the petition was
9 filed by the Washington Independent Telephone
10 Association.

11 JUDGE CAILLE: Oh, okay. I know what I'm
12 doing here. The mediation was a request --

13 MR. FINNIGAN: Correct.

14 JUDGE CAILLE: -- for all of those. Maybe
15 you better correct me right now, Mr. Finnigan.

16 MR. FINNIGAN: Yeah, I think there are two
17 slightly different items going on. There is an
18 overlapping relationship, but the petition was filed
19 by the Washington Independent Telephone Association.
20 What you're referring to is a request for mediation
21 that was filed by Level 3 related to the named
22 companies that you've identified. That has since
23 been resolved by the Commission declining to mediate.

24 JUDGE CAILLE: Yes.

25 MR. FINNIGAN: And so, I mean, certainly

0011

1 Level 3 has indicated that it desires to offer
2 virtual NXX services, but it's part of the reason why
3 the petition was filed, but it is not specifically
4 related to their request for mediation.

5 JUDGE CAILLE: Okay. Then I think maybe
6 what I'm getting mixed up is that, in your letter, in
7 response to the --

8 MR. FINNIGAN: The letter --

9 JUDGE CAILLE: In your letter in response
10 to the mediation, you mentioned something about
11 filing the petition.

12 MR. FINNIGAN: That's correct.

13 JUDGE CAILLE: Okay. Do I have the correct
14 companies, though, that are involved in the
15 interconnection negotiations?

16 MR. FINNIGAN: Well --

17 JUDGE CAILLE: Are those --

18 MR. FINNIGAN: I can't agree to
19 characterize that as an interconnection negotiation.

20 JUDGE CAILLE: Okay, okay. I see.

21 MR. FINNIGAN: We've put Level 3 on notice
22 that we don't consider this as part of a negotiation
23 pursuant to Section 251(b)(c), or Section 252. So --
24 but I will put it this way. Those companies were the
25 ones that Level 3 requested that the Commission

0012

1 mediate --

2 JUDGE CAILLE: Okay.

3 MR. FINNIGAN: -- an agreement between
4 Level 3 and those companies.

5 JUDGE CAILLE: That's probably a more
6 precise description. Anyway, pursuant to the filing
7 of WITA's petition, the Commission issued notice of
8 the petition and called for statements of law and
9 fact from interested persons. And the Commission
10 received statements from KMC Telecom, Level 3
11 Communications, Sprint, Verizon Northwest, and the
12 joint CLECs.

13 In its comments, Level 3 objected to the
14 determination of this matter through a declaratory
15 order proceeding citing RCW 34.05.240(7), subsection
16 7. And that subsection provides that an agency may
17 not enter a declaratory order that would
18 substantially prejudice the rights of a person who
19 would be a necessary party and who does not consent
20 in writing to a determination of this matter -- of
21 the matter by a declaratory order proceeding.

22 So that sort of sets us up for where we are
23 today and the purpose of today's prehearing
24 conference. And what I would like to do is hear from
25 each of you who have positions or arguments or

0013

1 comments on the questions that I outlined earlier,
2 and that would be what is a necessary party, do we
3 have necessary parties in this proceeding, and if so,
4 do they consent to a determination of this matter by
5 a declaratory order proceeding. And I'm not going to
6 -- who would like to go first? Probably --

7 MR. FINNIGAN: It's Level 3's issues.

8 JUDGE CAILLE: It's Level 3, yes. Why
9 don't we hear from you.

10 MR. PENA: I'll be more than happy to go
11 first, Your Honor.

12 JUDGE CAILLE: It's Mr. Pena?

13 MR. PENA: "Pen-ya".

14 JUDGE CAILLE: Pena, thank you.

15 MR. PENA: As Level 3 noted in its comments
16 and what's already been noted on the record, Level 3
17 has, in fact, approached some WITA member companies
18 and they have discussed the intent of providing a
19 foreign exchange type, or FX type service. Level 3
20 is mentioned in WITA's petition for declaratory order
21 and we -- Level 3 clearly believes that it's a
22 necessary party. It won't be impacted by any
23 decision entered by the Commission in this matter.

24 As to what is -- do we have necessary
25 parties here, I believe that all ILECs are probably

0014

1 necessary parties, or any company that provides FX or
2 virtual NXX type service. And really, that's the
3 only thing I can respond to. As to your third
4 question, I'll defer to Mr. Finnigan.

5 MR. FINNIGAN: I guess I'm confused by the
6 last statement. May I ask a question of counsel?

7 JUDGE CAILLE: Well, actually, I don't
8 think -- yes, ask it to me.

9 MR. FINNIGAN: Can I ask it to the bench?

10 JUDGE CAILLE: But I'll ask counsel,
11 because I have the same question. The third
12 question, Mr. Pena, was does your company -- if your
13 company is considered a necessary party, does your
14 company consent to a determination of this matter by
15 a declaratory order proceeding?

16 MR. PENA: Oh, I'm sorry. I misunderstood
17 the question. The answer is no. We can make that
18 clear on our comments.

19 JUDGE CAILLE: Perhaps what I'll do is go
20 through everyone except WITA. And Mr. Snyder, are
21 you -- yeah, since it's WITA's petition, then I'll
22 let you go last, Mr. Finnigan.

23 MR. FINNIGAN: Sure, thank you.

24 JUDGE CAILLE: All right. Mr. Kopta, would
25 you like to go next?

0015

1 MR. KOPTA: Sure. Thank you, Your Honor.
2 We didn't raise this precise issue in our comments,
3 although we did raise a similar issue, which was the
4 propriety of proceeding as a declaratory order. We
5 don't think that the petition properly invokes that
6 particular statute. But, at the same time, we don't
7 want to elevate form over substance.

8 If the Commission wants to undertake an
9 investigation of this particular issue, then
10 certainly we don't have any objections to the
11 Commission doing that; it's just a question of coming
12 up with the proper procedural vehicle and making sure
13 that we do what we need to do and to provide notice
14 to all parties affected.

15 I would agree with Mr. Pena that all
16 parties affected would include the incumbent local
17 exchange companies, as well as competing local
18 exchange companies, and would probably expand it to
19 include anyone who provides service using NPA/NXX
20 codes, because I think that, as we interpret the
21 petition that WITA has filed, it sweeps rather
22 broadly in terms of how number resources can be used
23 and how services can be provided using those number
24 resources.

25 So I think that any company that is

0016

1 assigned number resources in the state of Washington
2 is a company that, at a minimum, needs to be provided
3 notice that this is an issue that the Commission
4 wants to investigate and to be provided with the
5 opportunity to participate.

6 With respect to whether or not we consent
7 to a declaratory judgment or declaratory order type
8 of proceeding, again, I'm not sure that we're willing
9 to take a position on that particular question just
10 because, as I say, we're fine with addressing the
11 issue; it's just that we need to find the appropriate
12 procedural vehicle. And if this is not it, then we
13 don't have any problem with finding a vehicle that
14 would be appropriate.

15 JUDGE CAILLE: From what I recall of your
16 comments, Mr. Kopta, though, you believe that the
17 declaratory order isn't the appropriate vehicle or
18 that the company hasn't met the statutory --

19 MR. KOPTA: Well, we can go round and round
20 about whether they've satisfied the statute. In our
21 comments, we say that they haven't. The way that the
22 petition is framed, that it's really not in
23 compliance with the statute, but I'm not sure that
24 that's the most productive use of the parties' or the
25 Commission's time to go round and round on that

0017

1 particular issue. That's why I say, if this isn't
2 the appropriate procedural vehicle, I'm sure there is
3 one, and we don't have any problem with the
4 Commission addressing the substantive issue that WITA
5 has raised. So I'm not, as I say, not pushing that
6 particular point.

7 JUDGE CAILLE: All right. Now, I know I
8 called on Mr. Kopta. I did say I was only going to
9 hear from those people who wished to speak, so I
10 don't want to put people on the spot, but Mr. Pena,
11 you're indicating to me that --

12 MR. PENA: Yes, Your Honor. I do want to
13 clarify that while Level 3 objects to the petition
14 for declaratory order, I think that the thrust there
15 is, as Mr. Kopta has mentioned, it's the form or the
16 vehicle for addressing the issues. Level 3 does not
17 necessarily object to the Commission addressing the
18 issues; it's just in that format that Level 3 objects
19 to.

20 JUDGE CAILLE: Thank you. Is there anyone
21 else present in the hearing room who wishes to speak
22 on those three questions I outlined? All right.
23 Anybody on the bridge line?

24 MR. DAUBERT: Yes, Your Honor. This is
25 Todd Daubert, on behalf of KMC Telecom. Before I

0018

1 make this statement, I'd like to clarify something.
2 Steven Kennedy is the local counsel for KMC Telecom,
3 and unfortunately he could not be on this bridge
4 today or attend the meeting today. I am not a member
5 of the Washington bar, so I'm not certain whether you
6 can accept my appearance.

7 JUDGE CAILLE: I can accept your
8 appearance.

9 MR. DAUBERT: Okay, thank you. Well, in
10 KMC's comments, we made the argument that WITA did
11 not satisfy the burden of meeting the statute
12 requirements. We also do not consent to resolving
13 this matter through this particular procedural
14 format, and we do believe that we are a necessary
15 party and we agree with earlier comments that any
16 service provider who uses an NXX in Washington
17 (inaudible) --

18 JUDGE CAILLE: Excuse me. Sorry. Mr.
19 Daubert, if you'll please repeat your last comment,
20 which was kind of overshadowed by noise in the
21 hallway, we've now rectified that. Go ahead, please.

22 MR. DAUBERT: Okay. To summarize, we agree
23 with earlier comments that the definition of
24 necessary parties would include any carrier that uses
25 NXX codes in Washington. We do not consent to

0019

1 addressing this issue in the procedural form of a
2 declaratory ruling.

3 JUDGE CAILLE: All right. Is that it?

4 MR. DAUBERT: Yes. Thank you, Your Honor.

5 JUDGE CAILLE: Thank you. Is there anyone
6 else on the bridge line who wishes to speak? All
7 right. Mr. Finnigan.

8 MR. FINNIGAN: Thank you, Your Honor. And
9 to some extent, I agree with Mr. Kopta. I don't want
10 to elevate form over substance. But, to address the
11 question that you have raised, a necessary party, if
12 one draws an analogy to the civil rules, would be one
13 -- would be a party whose presence is indispensable
14 to fashioning a remedy. In other words, to resolving
15 the question.

16 Here we have a question of what is or is
17 not authorized as an industry practice, which is one
18 that's committed to the Commission's regulatory
19 authority. The Commission could use any number of
20 vehicles, one of which would be a rule-making, and it
21 would not be necessary for the Commission to provide
22 a notice to each and every entity that held an
23 NPA/NXX within the state of Washington. Another
24 would be a complaint action. Another would be for
25 the Commission to issue a declaratory ruling as to

0020

1 what is or is not an authorized practice within the
2 state of Washington.

3 It's somewhat ironic -- and I don't
4 remember which party -- I believe it was Level 3
5 suggested that arbitration is the appropriate
6 vehicle. Well, in arbitration, the only allowed
7 parties are the two parties to the arbitration before
8 -- of the agreement that's being arbitrated before
9 the Commission. The Commission's ruled that other
10 parties cannot intervene in such a proceeding.

11 I do acknowledge that, in many states, that
12 is precisely how this issue has been addressed, so
13 there's always a question in those states as to
14 whether or not the Commission's decision in a
15 particular arbitration has any force or effect as to
16 other parties. So here, what we came up with was
17 trying to find a middle ground, if you would, to make
18 that presentation.

19 I really don't believe that any specific
20 company is a necessary party, as that term is used in
21 statute, for the Commission to make a determination
22 on this issue. By analogy, again, the Commission, a
23 few years back, decided that it would address EAS
24 bridging issues by a complaint against a particular
25 entity that was engaged in that practice. Notice was

0021

1 not provided to every company that could possibly
2 have been engaged in EAS bridging, and the Commission
3 came out with an order, and that actually established
4 the precedent for the state as to what was or was not
5 the allowed practice as far as EAS bridging is
6 concerned.

7 In many ways, we think what's done here is
8 maybe a more sophisticated version, but it
9 constitutes -- it has the same practical effect. So
10 we don't believe that these -- that any of the
11 companies are necessary parties, as that term's used
12 in statute. Therefore, their consent is not
13 required.

14 But, to get to the bottom of this, the form
15 over substance issue, the Commission does possess the
16 authority in its rules to convert a proceeding. If
17 it believes that this is the inappropriate format,
18 the Commission can convert it to a format that it
19 believes is more appropriate.

20 JUDGE CAILLE: All right. Thank you. Is
21 there anyone else who would like to be heard on the
22 three questions? All right. Are there any other
23 issues that the parties wish to discuss today?

24 MS. FISHER: Your Honor, this is Kendall
25 Fisher, on behalf of Verizon Northwest.

0022

1 JUDGE CAILLE: Yes.

2 MS. FISHER: We'd just like to state that
3 should the Commission decide either to reject the
4 application for a declaratory order and/or convert
5 the proceedings, we would recommend that the
6 proceedings be converted to an adjudicative
7 proceeding. It's something that was noted in the
8 prehearing conference order and, quite frankly, we
9 were here prepared to discuss the issues related to
10 that.

11 And if the Commission does, in that
12 instance, decide to treat the proceeding as an
13 adjudicative proceeding, we would like to invoke the
14 discovery rule.

15 JUDGE CAILLE: All right. If the
16 Commission does decide to do this as an adjudicative
17 proceeding, we would have another prehearing
18 conference and we would go through the discovery and
19 all those prehearing matters that we usually take
20 care of along with scheduling. Thank you, Ms.
21 Kendall. Is there anyone else?

22 MR. SNYDER: Your Honor.

23 JUDGE CAILLE: Yes.

24 MR. SNYDER: It's not clear what status the
25 Commission regards those who have entered appearances

0023

1 as having in this proceeding. The prehearing
2 conference notice provided for petitions for leave to
3 intervene. Thus far you've taken appearances, but
4 not entertained any petitions for intervention, and I
5 didn't know whether you wished to do that today or at
6 such subsequent time as you might set a later
7 prehearing conference.

8 JUDGE CAILLE: I think that I'll wait, Mr.
9 Snyder. This was an unusual prehearing conference,
10 and it was specifically to address the issue of
11 necessary parties. And I apologize if it was
12 confusing to some of you, as I am aware it was. So
13 if the Commission decides to convert this to an
14 adjudicative proceeding, then we'll have our normal
15 prehearing conference and take petitions to intervene
16 at that time. If you'll -- we were not certain,
17 actually, how to list the people who commented on
18 WITA's petition. We didn't want to formally call
19 them parties, so we called them participants. So
20 maybe for right now you could be a participant, as
21 well.

22 MR. SNYDER: We could ask for participant
23 status -- what I wanted to make sure was that
24 although --

25 JUDGE CAILLE: That you get notice of --

0024

1 MR. SNYDER: That we will receive notice
2 and that, because it is listed in the prehearing
3 conference notice that this is the appropriate time
4 and place for leave to intervene, that that
5 opportunity will be extended at a later time.

6 JUDGE CAILLE: It will be extended at a
7 later time. But I'm just wondering if maybe -- would
8 you mind stopping at Records Center and letting them
9 know that you are a participant? I will do it, as
10 well, but --

11 MR. SNYDER: I would be happy to do so.

12 JUDGE CAILLE: Thank you. Yes, Mr.
13 Hendricks.

14 MR. HENDRICKS: Tre Hendricks, for Sprint.
15 Sprint would just like to request that if the
16 Commission does decide to continue with the
17 proceeding, that the issues be narrowed and clarified
18 for further comment, if the Commission decides to
19 take it to include only CLECs, as that appears to be
20 the focus of the petition for declaratory order.

21 Sprint also just would like to note that
22 the Commission has ruled on this issue in the past as
23 to what -- as to a party, a nonconsenting party,
24 whether or not it can continue with a declaratory
25 order proceeding, and there was an order in Docket

0025

1 UT-001713 that the Commission may wish to review in
2 making its decision.

3 JUDGE CAILLE: Thank you. It was
4 UT-001713?

5 MR. HENDRICKS: That's correct.

6 JUDGE CAILLE: All right. Is there
7 anything further from anyone or from anyone on the
8 bridge? As you know, the Commission has a certain
9 amount of time to take the next step, and we will
10 take this under advisement and get something out to
11 you soon. Thank you.

12 (Proceedings adjourned at 2:07 p.m.)

13

14

15

16

17

18

19

20

21

22

23

24

25