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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION
3 AT&T COMMUNICATIONS OF THE)
4 PACIFIC NORTHWEST, INC.,)
5)
6) DOCKET NO. UT-020406
7) Volume No. VI
8) Pages 164 - 176
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10 A prehearing in the above matter was held on
11 February 24, 2003, at 9:52 a.m., at 1300 South
12 Evergreen Park Drive Southwest, Olympia, Washington,
13 before Administrative Law Judge MARJORIE SCHAER.

14 The parties were present as follows:

15 AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST,
16 INC., by GREGORY J. KOPTA, Attorney at Law, Davis
17 Wright Tremaine, 1501 Fourth Avenue, Suite 2600,
18 Seattle, Washington 98101.

19 VERIZON NORTHWEST, INC., by JUDITH A.
20 ENDEJAN, Attorney at Law, Graham & Dunn PC, 1420 Fifth
21 Avenue, 33rd Floor, Seattle, Washington 98101.

22 VERIZON NORTHWEST, INC., by CHARLES H.
23 CARRATHERS III, Vice President and General Counsel, 600
24 Hidden Ridge, E02H28, Irving, Texas 75038.

25 MCI WORLDCOM, by MICHEL SINGER NELSON, (via
 bridge) Senior Attorney, 707 17th Street, Suite 4200,
 Denver, Colorado 80202.

26 Kathryn T. Wilson, CSR
27 Court Reporter

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

5 PUBLIC COUNSEL, by ROBERT W. CROMWELL, JR.,
6 Assistant Attorney General, 900 Fourth Avenue, Suite
7 2000, Seattle, Washington 98164.

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

2 JUDGE SCHAER: Let's be on the record at this
3 time. We are here in Docket No. UT-020406, which is a
4 complaint proceeding brought by AT&T against Verizon.
5 Today's date is February 24th, 2003, and we are here in
6 Commission's hearing room No. 206 in the Commission
7 headquarters building in Olympia, Washington. This is
8 a prehearing conference that was scheduled in the
9 Fourth Supplemental Order on September 4th, 2002. The
10 purpose of this hearing identified there is to exchange
11 cross-examination exhibits and time estimates for
12 cross-examination for hearings that will be starting on
13 March 3rd, 2003.

14 What I'm going to recommend that we do at
15 this point is take appearances and ask if there are any
16 preliminary comments parties would like to put on the
17 record, and then we have had some discussions off the
18 record this morning about how to proceed with
19 identifying the exhibits and the cross-exhibits, and we
20 will move forward with that at that point, so I'm going
21 to ask that we have appearances now starting with you,
22 Mr. Kopta.

23 MR. KOPTA: Gregory Kopta of the law firm
24 Davis Wright Tremaine, LLP, on behalf of the
25 complainant, AT&T Communications of the Pacific

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1 Northwest, Inc.

2 JUDGE SCHAER: Ms. Singer Nelson, are you
3 with us still?

4 MS. SINGER NELSON: Michel Singer Nelson on
5 behalf of MCI WorldCom.

6 JUDGE SCHAER: Thank you, and then for
7 Commission staff.

8 MS. SMITH: Shannon Smith with the Attorney
9 General's office representing Commission staff.

10 JUDGE SCHAER: Public counsel.

11 MR. CROMWELL: Robert Cromwell, assistant
12 attorney general, on behalf of Public Counsel.

13 JUDGE SCHAER: Ms. Endejan for Verizon.

14 MS. ENDEJAN: Judy Endejan with Graham and
15 Dunn representing Verizon Northwest, Inc.

16 MR. CARRATHERS: Charles Carrathers, vice
17 president and general counsel of Verizon Northwest.

18 JUDGE SCHAER: Thank you. Before we go off
19 the record to start marking exhibits, is there anyone
20 who would like to state anything on the record at this
21 point; Ms. Smith?

22 MS. SMITH: Thank you, Your Honor. This is
23 Shannon Smith, again, for Commission staff. This
24 morning, prior to the prehearing conference, I
25 distributed to the parties and to the Bench Commission

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1 staff petition for interlocutory review of the Fifth
2 Supplemental Order and about the final alternative
3 motion for summary determination.

4 I understand the parties haven't had an
5 opportunity to thoroughly review that petition nor has
6 the Bench, and I understand from a discussion off the
7 record that we will discuss further on how and when and
8 if to address that motion.

9 JUDGE SCHAER: That's my understanding,
10 Ms. Smith, that I will need to take this to my division
11 head to see how he wants review of an order that's
12 entered by the commissioners but which I was very much
13 involved with writing, whether that should be reviewed
14 by a different judge and how that should proceed. In
15 that conversation, I also discussed what opportunities
16 we should provide other parties to respond to that
17 motion. Is there anything else?

18 MR. CARRATHERS: Very briefly, Your Honor, a
19 couple of matters. First, under the Fifth Supplemental
20 Order, we are permitted to file surrebuttal testimony
21 today. As indicated prior to going on the record,
22 Verizon intends to file surrebuttal testimony
23 electronically before close of business today with hard
24 copies to be followed the next day.

25 Second, based on the fact that no party

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1 challenges the current authorized rate of return,
2 Verizon will withdraw the testimony of
3 James Vander Weide which we have prefiled, that went to
4 explaining that a higher return is appropriate. Third,
5 we recognize, of course, as Staff has just explained,
6 has filed a motion for clarification. Verizon will
7 also file a motion for clarification on a couple of
8 points, but very briefly, No. 1, we believe that the
9 evidence of our overall earnings is reasonable in
10 looking at the cost of our switched access, and we
11 believe the Fifth Supplemental Order permits it.

12 No. 2, the Fifth Supplemental order denied
13 our motion to compel AT&T's evidence on price squeeze
14 and the alleged harm it suffers, and therefore, we
15 believe that AT&T's testimony going to those issues
16 should also be stricken. Point No. 3, we believe the
17 Commission made quite clear that in this phase, it's
18 going to look at the cost of access issue and the
19 imputation issue and any other remedies, including the
20 potential access reductions or toll increases, will be
21 dealt with in a subsequent phase, if necessary, and so
22 we will be filing that motion. We expect to file it
23 early tomorrow. Thank you.

24 JUDGE SCHAER: Anything else at this point?
25 Mr. Kopta?

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1 MR. KOPTA: Nothing at this point.
2 Obviously, we have not seen Verizon's motion yet. I
3 will guarantee that we will disagree with them, so we
4 would certainly hope that among the things that are
5 done is setting a specific opportunity to respond to
6 any motions that are filed, including the motion that
7 Staff has handed out this morning as well as any motion
8 that Verizon intends to file.

9 JUDGE SCHAER: Let me indicate that my
10 expectation is that you will be able to reply and that
11 you will need to reply quickly, so if I were you, I
12 would go ahead and start writing. We've got hearings
13 starting next Monday, and I would like to have this
14 resolved as soon as possible so parties know how to
15 prepare, and we are dealing long-distance at this
16 point.

17 MS. SMITH: Your Honor, if I may, I
18 apologize. I had one other point I would like to
19 raise, and I didn't raise this off the record, but I
20 would like to raise it now. I know that the Fifth
21 Supplemental Order grants Public Counsel's motion to
22 strike. Public Counsel moved to strike the testimony
23 of David Tucek in its entirety; is that correct? And
24 that testimony goes almost exclusively to the cost of
25 Verizon's access charges, not to any rate rebalancing

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1 issues.

2 So I don't know if I should raise this point
3 now or if I should raise this point when we are
4 preparing for cross-examination estimates, but the
5 Commission staff has cross-examination for this witness
6 going to cost, not going to rate rebalancing, and we
7 want to be sure that he's available, even though the
8 testimony has been stricken. There is somewhat of an
9 oddball result of what the Commission says the issue is
10 and what testimony was stricken, and I don't know if
11 this is the proper time to raise this point or not.

12 JUDGE SCHAER: I'm going to ask that you and
13 Mr. Cromwell discuss this off the record, and Verizon,
14 of course, would need to be in the conversation since
15 its their witness, but see if it's something that can
16 be resolved informally and bring a resolution back
17 today. If it needs to be dealt with more formally, it
18 can, but it would be nice if we could reach some
19 understanding among the parties of what the issues are
20 presented by that testimony and why they are not
21 relevant at this stage of the proceeding.

22 MS. SMITH: Thank you, Your Honor, and with
23 your indulgence, if I may presume, at least when I give
24 my cross-examination time estimates, I would like to
25 include cross-examination time for that witness, and if

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1 it works out differently, perhaps we can handle it at
2 that time, but just to get an idea of what kind of time
3 we are looking at for the hearing, I would like to
4 include that understanding, of course, but you will
5 have the final ruling on that.

6 JUDGE SCHAER: I think we will go ahead off
7 the record and see how much we get done, and I'm
8 thinking that we might at the end of our informal
9 discussion take our morning recess, which would give an
10 opportunity for conversations to take place. So we'll
11 call that before we go off the record so that the court
12 reporter knows she needs to be back in the room.

13 So it's ten o'clock now, and I believe it's
14 an appropriate time for us to go off the record to deal
15 with exhibits and time estimates. I'm estimating
16 that's going to take us about half an hour. I may be
17 optimistic, but we have the room for the day so I know
18 we will get done. We are off the record.

19 (Discussion off the record.)

20 (Recess.)

21 JUDGE SCHAER: While we were off the record,
22 we accomplished a great deal. We marked for
23 identification exhibits starting with T-1 and running
24 up into the 200's. A list of those exhibits will be
25 provided to the court reporter, and she will include

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1 that list with those numbers as a part of the record of
2 this hearing. I am not going to read those back in at
3 this point in time unless any party would wish to have
4 me do so.

5 (See attached list of exhibits.)

6 The other matter we accomplished is that we
7 were able to identify the witnesses and get estimates
8 on times for cross-examination from each of the
9 parties. Those time estimates at this point add up to
10 about 20 hours, and that is, of course, not taking into
11 consideration questions by the commissioners or
12 questions on redirect, but it looks like we will easily
13 finish in the time set aside and possibly finish early.

14 There was a motion filed this morning by
15 Commission staff seeking interlocutory review of the
16 Fifth Supplemental Order in this matter, which was
17 entered last Friday, and Verizon has informed the
18 parties and the Bench that they will be filing a motion
19 by the end of the day to clarify or in some other
20 manner seek to better understand the motion and its
21 effects. Is there anything you want to say about that?
22 Have I described it adequately, Mr. Carrathers?

23 MR. CARRATHERS: Thank you, Your Honor. You
24 are correct. We will ask for clarification on a number
25 of issues we've discussed here today, such as whether

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1 earnings are relevant and whether certain portions of
2 AT&T's should be stricken, and to clarify, we will do
3 our best to file that by close of business today or by
4 nine o'clock tomorrow morning as we mentioned earlier.

5 JUDGE SCHAER: My understanding on the motion
6 is that it would be filed today. My understanding
7 about the extension to tomorrow morning was on your
8 surrebuttal testimony. Have I got something backwards?

9 MR. CARRATHERS: I thought when we discussed
10 it, we said we would file the motion either by close of
11 business today or by nine o'clock tomorrow morning,
12 because we've got to drive back to Seattle and complete
13 a draft and complete our motion but, if Your Honor --
14 well, that's what we had discussed, unless any of the
15 parties have a different recollection.

16 MS. SMITH: I actually have the same
17 recollection.

18 JUDGE SCHAER: That's why I asked. I am
19 checking my recollection. Is that also your
20 recollection, Mr. Kopta?

21 MR. KOPTA: It is.

22 JUDGE SCHAER: So the motion will be here by
23 five o'clock today or by nine a.m. tomorrow.

24 MR. CARRATHERS: Your Honor, if it helps at
25 the end of this off the record, I will be happy to go

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1 through with counsel the points we are going to raise
2 to give them a heads-up.

3 JUDGE SCHAER: I think you can talk that over
4 with other parties off the record. It might be useful,
5 because for the two motions I've just mentioned, we are
6 going to ask that anyone filing responses file those
7 responses no later than four o'clock in the afternoon
8 this coming Wednesday, and those may be filed
9 electronically with paper copies following after
10 Verizon's motion.

11 MS. SMITH: Commission staff also will by
12 close of business today file a motion for clarification
13 of the Fifth Supplemental Order, and we will be doing
14 that today, and we'll do it electronically as well.

15 JUDGE SCHAER: Thank you, Ms. Smith. The
16 other matter we discussed is that Verizon is going to
17 be filing surrebuttal testimony, which is due today,
18 and there has been some discussion of accommodating
19 them by allowing them to file by the end of the day
20 what they have available and then file tomorrow by nine
21 o'clock a copy with an errata sheet to show what
22 differences there are. Is that your understanding
23 also, Mr. Carrathers?

24 MR. CARRATHERS: Yes, Your Honor.

25 JUDGE SCHAER: Is there anything else we

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1 discussed off the record that should be put on the
2 record at this time? Thank you all for your work this
3 morning, and we are off the record and adjourned until
4 next Monday unless you hear otherwise.

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6 (Prehearing conference adjourned at 12:35 p.m.)

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