

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 AT&T COMMUNICATIONS OF THE)
4 PACIFIC NORTHWEST, INC.,) Docket No. UT-020406
5 Complainant,) Volume VII
6) Pages 177 to 273
7) vs.)
8) VERIZON NORTHWEST, INC.,)
9) Respondent.)
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9 A hearing in the above matter was held on
10 March 7, 2003, from 9:00 a.m to 12:00 p.m., at 1300
11 South Evergreen Park Drive Southwest, Room 206, Olympia,
12 Washington, before Administrative Law Judge MARJORIE R.
13 SCHAER and Chairwoman MARILYN SHOWALTER and Commissioner
14 RICHARD HEMSTAD and Commissioner PATRICK J. OSHIE.

15 The parties were present as follows:

16 THE COMMISSION, by SHANNON SMITH, Assistant
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20 586-5522, E-Mail ssmith@wutc.wa.gov.

21 AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST,
22 INC., by GREGORY J. KOPTA, Attorney at Law, Davis,
23 Wright, Tremaine, LLP, 1501 Fourth Avenue, Suite 2600,
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26 Joan E. Kinn, CCR, RPR
27 Court Reporter

0178

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2 CARRATHERS, 600 Hidden Ridge, Irving, Texas 75015,
3 Telephone (972) 718-2415, Facsimile (972) 718-0936,
4 E-Mail chuck.carrathers@verizon.com; and by JUDITH A.
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9
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11 Attorney General, 900 Fourth Avenue, Suite 2000,
12 Seattle, Washington 98164-1012, Telephone (206)
13 389-2055, Facsimile (206) 389-2058, E-Mail
14 simonf@atg.wa.gov; and via bridge line by ROBERT W.
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0179

1 -----

2 INDEX OF EXAMINATION

3 -----

4 WITNESS: PAGE:

5

6 DR. GLENN BLACKMON 187

7 DR. LEE L. SELWYN 187

8 CARL R. DANNER 187

9

10

11

12

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16

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21

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0180

1 -----

2 INDEX OF EXHIBITS

3 -----

4 EXHIBIT: MARKED: ADMITTED:

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0181

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

2 JUDGE SCHAER: Let's be on the record. This
3 is a hearing on presentation of a settlement proposal by
4 certain parties in Docket Number UT-020406, which is a
5 complaint case brought by AT&T versus Verizon. We're
6 meeting today in the Commission's hearing room in
7 Olympia, Washington on March 7th, 2003. I'm Marjorie
8 Schaer, I will be presiding today. To my right are the
9 three commissioners who will be conducting the hearing,
10 Chairwoman Marilyn Showalter, Commissioner Richard
11 Hemstad, and Commissioner Pat Oshie.

12 The Commission is aware that there is a lot
13 at issue here this morning and wants to communicate to
14 the parties that by proceeding to hear the witness
15 panel's presentation and to clarify that presentation,
16 the Commission is not indicating any result, procedural
17 or substantive, on any of the pending motions or offers
18 before it.

19 At this point, I think it would be
20 appropriate for the parties proposing the settlement to
21 call their witnesses, and then I believe you may have an
22 objection to interject, Mr. ffitch; is that correct?

23 MR. FFITCH: That's correct, Your Honor,
24 thank you.

25 JUDGE SCHAER: So would you like to go ahead,

0182

1 Mr. --

2 MS. SMITH: Your Honor.

3 JUDGE SCHAER: Yes, Ms. Smith.

4 MS. SMITH: Thank you, Your Honor, this is
5 Shannon Smith for Commission Staff, and I have two small
6 changes to make to the settlement stipulation and one of
7 the exhibits, and I would like to make those at this
8 time if that is agreeable to the Bench.

9 JUDGE SCHAER: Go ahead, please.

10 MS. SMITH: On page 4 of the settlement
11 stipulation --

12 CHAIRWOMAN SHOWALTER: Can you wait until we
13 get there.

14 MS. SMITH: Yes, certainly.

15 On page 4 at the very beginning, there is the
16 letter B, and at the end of that paragraph, there are
17 the numbers 2 to 1. Those should be deleted. That's a
18 typo.

19 And in the settlement stipulation, Exhibit C,
20 page 2, there's a block that's Roman Numeral VI,
21 business local rate increases, if you count down to the
22 fourth item, the proposed rate should be \$26.50 instead
23 of \$26.

24 And that's all we have at this point. Thank
25 you.

0183

1 JUDGE SCHAER: Okay, that brings to mind, do
2 the parties wish at this point to identify Exhibit 300
3 for identification or offer it, and as a matter even
4 before that, why don't we take quick appearances from
5 the parties starting with AT&T.

6 MR. KOPTA: Thank you, Your Honor, Gregory
7 Kopta of the law firm Davis, Wright, Tremaine, LLP, on
8 behalf of Complainant AT&T Communications of the Pacific
9 Northwest, Inc.

10 JUDGE SCHAER: Ms. Singer Nelson.

11 MS. SINGER NELSON: Good morning, Michel
12 Singer Nelson representing WorldCom.

13 JUDGE SCHAER: And Ms. Endejan and
14 Mr. Carrathers.

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

17 MR. CARRATHERS: Charles Carrathers, Vice
18 President and General Counsel at Verizon Northwest, Inc.

19 MS. SMITH: Shannon Smith for Commission
20 Staff.

21 MR. FFITCH: Simon ffitch Assistant Attorney
22 General for the Office of Public Counsel.

23 JUDGE SCHAER: Thank you.

24 MS. SMITH: And, Your Honor, I would like to
25 offer Exhibit 300, the settlement stipulation and

0184

1 accompanying exhibits.

2 JUDGE SCHAER: Okay, I'm going to mark for
3 identification as Exhibit 300 a document entitled
4 settlement stipulation, and that is followed by certain
5 attachments.

6 MR. FFITCH: And, Your Honor, Public Counsel
7 will be including this exhibit in the objections which
8 you have allowed us to make here shortly.

9 JUDGE SCHAER: And those would be Exhibits A
10 through C to the document. Thank you, Mr. ffitch.

11 Let's go off the record for just a moment.

12 (Discussion off the record.)

13 JUDGE SCHAER: So is it my understanding that
14 you have offered Exhibit 300, Ms. Smith?

15 MS. SMITH: Yes, Your Honor, thank you.

16 JUDGE SCHAER: And then perhaps this would be
17 an appropriate time then for you to make your short form
18 of objections, Mr. ffitch, that you may address more
19 fully at a later period in this morning's agenda.

20 MR. FFITCH: Thank you, Your Honor. The
21 objections which I'm going to make now for the record
22 are set forth in our pleading which was filed
23 electronically yesterday and in hard copy this morning.

24 First of all, Your Honor, Public Counsel
25 objects to the conduct of a hearing on Verizon's or on

0185

1 the proposed rate increases for Verizon this morning on
2 two basic grounds, the first ground being that the
3 Commission's Fifth Supplemental Order limited the scope
4 of the hearing in this matter to the access charge
5 issues raised in the complaint of AT&T. The second
6 basic reason is that we believe that the notice
7 requirements of the Administrative Procedures Act and
8 the Commission's rules have not been met with regard to
9 a hearing on general rate increases for Verizon in this
10 matter.

11 We also have motions to strike, Your Honor.
12 Those are laid out beginning at page 4 of our
13 memorandum. We object to the introduction of and we
14 move to strike the portions of the testimony of
15 witnesses who are testifying in support of the
16 settlement today, the testimony that was previously
17 stricken by the Commission's Fifth Supplemental Order.
18 We have, unfortunately this is a bit of a maze to
19 reconstruct, Your Honor, but we have attempted to, we
20 have provided an annotated exhibit list which attempts
21 to indicate for each of the proffered exhibits in
22 support of the settlement those portions that were
23 stricken by the Commission's Fifth Supplemental Order.
24 In addition to that, Your Honor -- and that's
25 essentially our first motion to strike.

0186

1 The second motion to strike goes to the
2 portions of Exhibits B and C to Exhibit 300 which has
3 just been offered which relate to rate rebalancing.
4 Those are the portions of the exhibit that describe the
5 rate increase parts of the settlement, and we are moving
6 to strike those consistent with our other motion
7 regarding the scope of the hearing.

8 Thirdly, Your Honor, we move to strike the
9 testimony of Verizon witness Nancy Heuring and her
10 Exhibits 2 through 4 again on the grounds that the
11 purpose of her testimony is to support the rate increase
12 settlement in this matter, and it's beyond the scope of
13 the hearing laid out in the Commission's order on our
14 motion in limine.

15 Our memorandum also states our general
16 opposition to the settlement, Your Honor, and I would
17 just reference that for the record and make that
18 opposition at this time. I think that -- and we can
19 also address that at greater length later on, but I
20 believe that is the -- completes the procedural motions
21 that we would like to make at this time for the record.
22 Thank you.

23 JUDGE SCHAEER: Thank you, Mr. ffitch, and
24 those objections are noted, and we will take argument on
25 those motions at a later time in this hearing, as I had

0187

1 indicated to you before we went on the record.

2 MR. FFITCH: Thank you.

3 JUDGE SCHAER: So at this point, I believe
4 that we would like the parties to proceed to call their
5 witnesses and present what they have prepared to present
6 this morning, which will be followed by clarifying
7 questions from the Commissioners.

8 So go ahead, Ms. Smith.

9 MS. SMITH: Thank you, Your Honor, the
10 Commission Staff calls Dr. Glenn Blackmon as the Staff's
11 witness on this panel.

12 MR. CARRATHERS: And Verizon calls Dr. Carl
13 Danner as Verizon's witness on the panel.

14 MR. KOPTA: And AT&T calls Dr. Lee Selwyn on
15 behalf of AT&T's participation in the panel.

16 JUDGE SCHAER: Gentlemen, will you make your
17 way to the witness table and take a moment to get
18 settled and then raise your right hand, please.

19

20 Whereupon,

21 GLENN BLACKMON, LEE L. SELWYN, and CARL R. DANNER,
22 having been first duly sworn, were called as witnesses
23 herein and were examined and testified as follows:

24

25 JUDGE SCHAER: Thank you.

0188

1 MR. FFITCH: Your Honor, at this time I would
2 like to make a continuing objection to any testimony
3 from any of the witnesses who have just been sworn with
4 regard to any aspect of the settlement or the support
5 for the settlement increasing Verizon's rates.

6 JUDGE SCHAEER: And that is noted, and if you
7 wish to continue to note that you are making a
8 continuing objection as we go along, I think that would
9 be sufficient to inform the record and the Bench,
10 Mr. ffitch, of your concerns.

11 MR. FFITCH: Thank you, Your Honor, I just
12 wanted to make it at this point so that I wouldn't
13 interrupt the questioning as it went along.

14 JUDGE SCHAEER: Thank you, I appreciate your
15 courtesy.

16 Go ahead, please.

17 MS. SMITH: Thank you, Your Honor. I believe
18 counsel and the witnesses have decided that perhaps the
19 most efficient way to go about doing this would be to
20 have each of the experts give a brief description of
21 their particular issue in this case and how the
22 settlement agreement addresses that issue as opposed to
23 question and answer from counsel, and then perhaps have
24 the Bench ask any questions of the panel that they may
25 have.

0189

1 JUDGE SCHAER: Go ahead, Ms. Smith.

2 MS. SMITH: Thank you. I guess I would ask
3 the witnesses in whatever order they want to begin to
4 begin with their presentations.

5 DR. BLACKMON: Thank you, good morning. I
6 drew the short straw and have been asked to go first in
7 this presentation. I would like to note that throughout
8 the negotiations we were never as close as we are at
9 this moment.

10 But I do want to emphasize that this was the
11 result of a negotiation by parties who worked very hard
12 to represent their interests, and the three parties come
13 together in support of this settlement as one that is
14 reasonable and fair to the customers of this state, and
15 I think we would ask that the Commission give
16 considerable weight to the fact that such diverse
17 parties have been able to reach a common position on
18 this.

19 Speaking on behalf of the Staff and the
20 interests that we have in making sure that rates are
21 fair, just, reasonable, and sufficient,
22 nondiscriminatory and not preferential, in other words a
23 position of balance, we believe that by far the most
24 important result of this settlement is that it
25 eliminates a serious concern that we have had about

0190

1 access charges. It's a general concern for which
2 Verizon was certainly, you know, one of the most
3 important companies on our list of concerns, because
4 they are second only to Qwest in terms of size, and they
5 operate until now with a relatively high level of
6 intrastate access charges. In our direct testimony, we
7 laid out why we believe that this was a cross-subsidy,
8 that it adversely affected customers all over the state,
9 not just Verizon customers, and this settlement
10 agreement achieves the result that we set out, which was
11 to bring access charges down to a level where there is
12 no longer the exporting of costs or the cross-subsidy
13 into the toll market itself.

14 In percentage terms, you know, so I'm not
15 counting -- adjusting for the fact that Qwest is so much
16 bigger than Verizon, I believe that this is the largest
17 reduction in access charges that this state has yet
18 experienced, and it removes several pennies from the
19 imputation floor that constrains the toll pricing of
20 Verizon. And so we think that it will ultimately bring
21 tangible benefits to the toll customers throughout the
22 state, but in particular of Verizon in terms of more
23 competition, perhaps in the form of lower prices, but
24 certainly more competition and more choices.

25 We also think that the settlement is

0191

1 reasonable because it balances the needs of Verizon
2 stockholders, its owners, and the customers that it
3 serves in this state in terms of earnings, rate of
4 return, things like that. The overall effect of this
5 settlement will be to reduce Verizon's earnings because
6 it reduces their revenues. It does not, you know,
7 wholesale eliminate all the revenue that access charge
8 reduction would have done, but it does produce some
9 decrease in their revenue levels. It's a balanced
10 approach that we think is reasonable.

11 In terms of the specific offsetting rate
12 increases that we have agreed to, when we went into that
13 as Staff, we looked primarily at what this Commission
14 had approved with respect to other companies in other
15 cases. A lot of it had to do with various examples from
16 US West or Qwest.

17 For instance, virtually every other company,
18 local exchange company, in the state has a late payment
19 charge. Verizon did not, so it seemed like a reasonable
20 thing to do to offset some of the decrease with the
21 addition of a late payment charge. That's a -- we think
22 the Commission has found that to be a reasonable thing
23 for a company to do. It helps the company keep the
24 revenues coming in on a timely basis, and, you know,
25 it's good for everybody when customers pay their bills

0192

1 on time.

2 The private line rate increases that are
3 built in here, again they move rates toward so that they
4 cover cost and also so they match the interstate rates
5 for services that are really the same whether they are
6 interstate or intrastate.

7 Directory assistance charges are also modeled
8 more on what other companies do. Verizon among the
9 large companies was providing two free to residential
10 customers, where Sprint and Qwest were only providing
11 one. On the business side, Verizon provided a free one
12 that Sprint and Qwest did not. So that seemed to be a
13 reasonable way to raise additional revenues.

14 Once we had gone through that list, we still
15 had a significant gap between the revenue decrease that
16 access charges would produce and the revenue increases
17 that we had identified, and so we turned then to the
18 basic local rates, and we were able to limit the
19 residential increase to \$2.

20 On the business side we have a \$2.50 increase
21 that -- those roughly match the level of rates that they
22 are paying today in terms of allocating the
23 responsibility between the two classes of customers.
24 Also though on the business side we were able to limit
25 the rate increase to the business rates that within the

0193

1 business class were lower than substitute services,
2 things like Centrex Service or PBX trunk lines. One of
3 the things this Commission has done with US West or
4 Qwest was to align the various business services better
5 so that substitute products were priced more correctly
6 in relation to one another. We were able to move in
7 that direction on the business side the way we
8 structured the business increase here.

9 The \$2 increase on residential service is one
10 that, you know, we certainly weren't, you know, we wish
11 that it were not necessary, but we do feel that it is
12 necessary in this context and that it's a reasonable
13 level and one that produces a rate at the end of the day
14 that will be fair, just, reasonable, and sufficient.
15 And based on that, Staff recommends that the Commission
16 accept this settlement of this case.

17 JUDGE SCHAER: Dr. Blackmon, at this point,
18 would you give your name and spell your last name to the
19 court reporter just so that we're certain that she knows
20 who you are in the record.

21 DR. BLACKMON: Yes, thank you.

22 Glenn Blackmon, B-L-A-C-K-M-O-N.

23 JUDGE SCHAER: And would other counsel please
24 ask that as an introductory question for your witness as
25 we go forward.

0194

1 MR. KOPTA: Yes, we certainly will.

2 JUDGE SCHAER: Thank you.

3 MR. KOPTA: And with that, I will, I believe,
4 introduce Dr. Selwyn.

5 I will ask, first of all, Dr. Selwyn, will
6 you state your name and business address and spell your
7 name for the record, please.

8 DR. SELWYN: Yes, good morning, my name is
9 Lee L. Selwyn, spelled S-E-L-W-Y-N. My business address
10 is Suite 400, Two Center Plaza, Boston, Massachusetts
11 02108.

12 MR. KOPTA: And, Dr. Selwyn, did you prepare
13 or have prepared under your direction and control
14 Exhibits T-1 and T-2C, which are listed in Exhibit A of
15 the settlement stipulation?

16 DR. SELWYN: Yes.

17 MR. KOPTA: And have you prepared a statement
18 today to reflect AT&T's position on the settlement
19 agreement and to explain to the Commission the
20 relationship between the direct testimony that you have
21 prepared and the stipulation that AT&T is supporting
22 today?

23 DR. SELWYN: Yes.

24 MR. KOPTA: Would you provide that now?

25 DR. SELWYN: Yes.

0195

1 Good morning Chairwoman Showalter,
2 Commissioners, Judge Schaer. This settlement I believe
3 addresses the specific concern raised by AT&T in its
4 complaint with respect to the price squeeze that was
5 being experienced between the access charges that were
6 being imposed upon AT&T by Verizon and the pricing of
7 toll services by Verizon.

8 First, I would like to personally thank the
9 Commission Staff for their herculean efforts at
10 facilitating this settlement, which I think has helped
11 to produce a win-win-win outcome for the parties
12 involved as well as for consumers in Washington, because
13 it will lead to increased competition and ultimately
14 lower prices for long distance services in Washington.

15 The settlement and the reduction in access
16 charges specifically, which is the subject of my direct
17 testimony, will accomplish several specific things. It
18 will help to prevent Verizon's long distance competitors
19 from being squeezed out of the market in Washington, it
20 will ensure that consumers have a continued choice of
21 long distance providers in the state, and it will guard
22 against and hopefully prevent erosion of competition in
23 the state that might otherwise have taken place.

24 The \$35.5 Million reduction in access charges
25 that is contemplated in the settlement agreement will

0196

1 bring access charges closer to economic cost. It will
2 not bring them all the way to economic cost, which of
3 course remains a concern. However, the reduction is a
4 definite step in the right direction and will work to
5 eliminate the or certainly to reduce the potential for a
6 price squeeze. I think in the future the Commission
7 will need to readdress the issue of bringing access
8 charges for all of the incumbent local exchange carriers
9 in Washington closer to cost.

10 I believe that the settlement is squarely in
11 the public interest. It will help to create a more
12 competitive market environment that will lead to
13 increased competition and lower prices for long distance
14 services in the state, and there is strong evidence at
15 the national level over the past two decades that
16 supports this conclusion. Since the breakup of the Bell
17 system in 1984, long distance rates nationally have been
18 reduced in real terms by well over 80% and perhaps even
19 more than that for certain consumer discount plans. In
20 fact, competition in the long distance market is
21 probably one of the preeminent success stories arising
22 from the Bell system breakup and the affirmative
23 determination by the FCC and later by the U.S. Congress
24 in the 1996 Act to adopt regulations that facilitate the
25 development of competition. Those lower prices have

0197

1 resulted through the combined effects of significantly
2 lower access charges at the interstate level and the
3 intense competition that those access charges have
4 spawned over the past two decades.

5 Bringing prices closer to cost is efficient
6 and produces efficient competition. It prevents the
7 incumbent from using its market power over bottleneck
8 essential facilities to increase its rivals' cost of
9 operation and thereby limit their ability to compete in
10 the market, and it creates the potential for continued
11 robust competition on an efficient level where
12 competitors invest in facilities that are capable of
13 being duplicated in the market and at the same time rely
14 on bottleneck facilities where it is most efficient for
15 them to do that.

16 Reducing rates to cost also helps to bring to
17 Washington consumers the benefits of the enormous
18 technological breakthroughs that have occurred in the
19 telecommunications industry over the past two decades,
20 particularly with respect to the costs of network usage.
21 Network usage costs today are just a small fraction of
22 what they were two decades ago when the access charge
23 regime first became effective. And we have seen at the
24 local level significant reductions in usage costs where
25 competition has been able to enter the market, and we're

0198

1 beginning to see even with respect to the long distance
2 services the introduction of flat rate services in the
3 wire line and wireless environments that provide
4 consumers either large blocks and in some cases even
5 unlimited long distance calling for a very low price.
6 And these plans and these capabilities are a direct
7 consequence of reductions in access charges, so the
8 reductions that this settlement would put into effect in
9 Washington are a move in bringing Washington into that
10 same direction that we're seeing at the national level
11 and at the interstate level.

12 As I indicated earlier, the settlement will
13 remedy the concern expressed in AT&T's complaint with
14 respect to price squeeze, but ultimately it does not
15 really go as far as AT&T might have preferred with
16 respect to achieving cost based rates. As long as the
17 incumbent local exchange carrier is permitted to compete
18 in the same market for long distance services as firms
19 that do not have the legacy of a local service monopoly,
20 their ability to establish access charges significantly
21 in excess of cost provides a formidable competitive
22 advantage and enables them to discriminate in their
23 pricing relative to the prices that would be charged by
24 the services that would be offered by a non-integrated
25 long distance carrier. Accordingly, I believe that the

0199

1 settlement is an important step in the right direction
2 and for that reason would strongly urge the Commission
3 to accept it. Thank you.

4 MR. CARRATHERS: Good morning, Mr. Danner,
5 would you please state your name and address for the
6 record.

7 DR. DANNER: Yes, my name is Carl R. Danner,
8 D-A-N-N-E-R. My business address is Suite 1650, 100
9 Bush Street, San Francisco, California 94104.

10 MR. CARRATHERS: Did you prepare a brief
11 summary for this morning?

12 DR. DANNER: Yes, I did.

13 MR. CARRATHERS: Please go ahead.

14 DR. DANNER: Thank you very much.

15 Good morning Commissioners, good morning Your
16 Honor, other parties. First off, I would like to echo
17 Dr. Selwyn in expressing Verizon's appreciation for the
18 efforts of Staff and the willingness of the Commission
19 to accommodate the settlement negotiations that we have
20 concluded. Verizon agrees that the settlement is in the
21 public interest and will represent a step forward for
22 consumers in Washington. I believe that one of the
23 beauties of the settlement is that it has found common
24 ground in a series of presentations by the various
25 parties that did not always agree on every point, but we

0200

1 can agree on the principles and outcome that this
2 settlement represents.

3 In terms of Verizon's position in coming to
4 this proceeding, I think the overarching concern from
5 the start has been its currently compromised financial
6 situation in terms of the earnings that Verizon is now
7 experiencing as reflected by its books. This ties, as
8 my direct testimony observed, into the necessity for any
9 telecommunications company to recover its total economic
10 costs of service, a predicate that Verizon is not now
11 satisfying in Washington, so the principal concern
12 coming into the proceeding for Verizon was not to
13 exacerbate that situation further.

14 At the same time, Verizon agrees in principle
15 and has supported as far as I know for many years, even
16 as the former GTE, pricing reform, which includes
17 bringing all costs, all prices, pardon me, of services
18 closer to their costs on a more cost based basis, and
19 reductions in access charges certainly fulfill that
20 criterion.

21 And so in my direct testimony I did support
22 reductions in access charges provided they could be
23 accomplished consistent with not harming Verizon's
24 situation further, recognizing the need to recover total
25 economic costs of the company. And indeed, as the other

0201

1 gentlemen sitting with me have affirmed, the settlement
2 does do that. It achieves a sharp reduction in access
3 charges. As a result, toll rates should fall in
4 Washington, which will create benefits for consumers.

5 As an offset, there are other rates that are
6 increased in the settlement. I think Dr. Blackmon
7 described fairly aptly in our view many of the
8 rationales for increasing the particular rates that were
9 increased. I think one further point we would add is
10 that it is Verizon's analysis, and I don't -- I'm not
11 going to debate the point, but we do consider that the
12 loop is a cost of basic service, and in that respect
13 from an economic standpoint the increases to basic
14 residential rates in particular are consistent with
15 achieving more cost based pricing, will bring those
16 residential rates closer to covering their costs, and
17 should on the local side reduce to some extent a current
18 impediment to local competition. So that's an
19 additional benefit to the settlement at least from
20 Verizon's standpoint that we would offer for your
21 consideration.

22 As a general characterization of the price
23 increases that will occur, Verizon would offer that they
24 do shift costs and markups more to where they belong.
25 They do make some market based increases, as

0202

1 Dr. Blackmon described, which are not riskless for the
2 company. There is some greater exposure to competition
3 as a result. But overall, Verizon believes that the
4 results are fair, just, and reasonable and represent a
5 significant pricing reform consistent with economic
6 principles and consistent, as it happens, with a
7 discussion that Dr. Blackmon and I conducted with this
8 very Commission I think about five years ago, myself on
9 behalf of GTE, to discuss possibilities for pricing
10 reform. So I think with this settlement, we have made a
11 step forward.

12 Finally, with respect to the revenue impact,
13 Dr. Blackmon did observe that there is a reduction in
14 this for Verizon, and I have noted the compromised
15 situation they're facing now. What Verizon would
16 suggest to that respect is that this is the result of a
17 settlement, and in the context of a settlement Verizon
18 is willing to live with the results on those bases.

19 I would also note, again without wanting to
20 belabor the point, Verizon has some different points of
21 view regarding other issues in the proceeding, whether
22 or not there is a current price squeeze, Verizon does
23 not believe so. Some of the other points that were in
24 dispute of course we have covered in pre-filed testimony
25 and I don't think we need to review today.

0203

1 Again, I would emphasize that I think the
2 settlement has done a good job at finding a common
3 ground between the parties and will benefit consumers
4 and competition in Washington. Thank you very much.

5 JUDGE SCHAER: Commissioners, did you have
6 questions?

7 Let's be off the record for just a moment.

8 (Discussion off the record.)

9 JUDGE SCHAER: While we were off the record,
10 the court reporter was able to perform some useful
11 function with her equipment.

12 Go ahead.

13 CHAIRWOMAN SHOWALTER: Good morning. I have
14 a clarifying question, and it is on page 4 of the
15 settlement, and it is in the sentence in the middle of
16 paragraph 3 or item number 3 where it says that:

17 For one year after the date Verizon
18 files tariffs implementing the
19 settlement stipulation, no participating
20 party nor the Commission --

21 And that's my focus, nor the Commission.
22 -- will initiate, request the Commission
23 to initiate, or support any third party
24 request for the Commission to initiate
25 any proceeding regarding the access

0204

1 charges, overall revenues, or earnings
2 of Verizon.

3 My question is, did you pick the word
4 Commission with care? Had it said Commission Staff, I
5 would have understood it one way. I understand it a
6 very different way that it says Commission. That's my
7 first question. And if this requires a later answer
8 after consultation, that's fine.

9 MR. CARRATHERS: Your Honor, Charles
10 Carrathers from Verizon, I believe that language was
11 lifted if not verbatim almost from the Commission's
12 order in the GTE-Bell Atlantic settlement.

13 CHAIRWOMAN SHOWALTER: Well, I guess what
14 that says to me is you didn't think about it this time,
15 you lifted the language from somewhere else.

16 MR. CARRATHERS: Oh, no, no, we thought about
17 it.

18 CHAIRWOMAN SHOWALTER: Okay.

19 MR. CARRATHERS: And wanted to express that
20 same intent that was in that merger order, that
21 basically it's a one year stay out provision.

22 CHAIRWOMAN SHOWALTER: Okay. If it means the
23 Commission, then it would seem to mean that the
24 Commission, if a third party, if some other party comes
25 in and complains against or would like to complain

0205

1 against access charges, overall revenues, or earnings of
2 Verizon, the Commission would bar, this Commission?

3 MR. CARRATHERS: That was the intent.

4 CHAIRWOMAN SHOWALTER: All right. The
5 question in my mind is whether that is a permissible
6 delegation of our authority, and it may be, but it's a
7 fairly significant one if it is the case. In other
8 situations, and I frankly don't remember whether I
9 raised this kind of question in the GTE merger, but I
10 have on other occasions resisted the notion that the
11 settlement can bind the Commission as opposed to the
12 parties. I realize we can bind ourselves and the
13 parties can attempt to bind us, but it's a fairly
14 serious restriction on our ability. And in some
15 situations, I'm not sure how it plays out on this one, I
16 think it might well violate other third party rights.
17 I'm not -- I'm just raising the question because I
18 haven't thought it through because I thought maybe you
19 would say, no, no, we meant to bind each other, the
20 parties, not the Commission.

21 MR. CARRATHERS: Well, let me clarify,
22 because let's assume an unaffiliated third party or,
23 well, obviously it would be unaffiliated, wouldn't it, a
24 third party, not a party to this proceeding, files a
25 complaint, initiates a complaint with the Commission,

0206

1 the Commission could act on it. What we're saying here
2 is that the Commission by deeming that this settlement
3 is just and reasonable is itself not going to initiate a
4 complaint. The parties to the settlement are not going
5 to initiate a complaint, nor will they support a third
6 party complaint. Therefore, if someone who is not here
7 today a month from now files a complaint with the
8 Commission and says Verizon is doing something bad with
9 toll or access charges, the Commission could act on it.
10 That's our understanding of the agreement. And again, I
11 think that was the understanding in the GTE-Bell
12 Atlantic merger order.

13 CHAIRWOMAN SHOWALTER: Okay, maybe it's the
14 sentence structure I'm not understanding. So you're
15 saying it's only that the Commission will not initiate.
16 You're not purporting to restrict the Commission from
17 supporting a third party request supposing it's
18 justified?

19 MR. CARRATHERS: Correct.

20 CHAIRWOMAN SHOWALTER: So this only goes to
21 initiating; is that correct?

22 MS. SMITH: Yes, Your Honor, that was my
23 reading of it as well.

24 MR. KOPTA: We would echo that. I understand
25 where your confusion comes in, and you're right, this

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1 could have been better drafted. But I mean it's sort of
2 if you break down the sentence, the Commission obviously
3 couldn't request the Commission to initiate, so the
4 intent was just to limit the Commission's participation
5 with respect to this sentence to the will initiate.

6 CHAIRWOMAN SHOWALTER: Okay. Well, then, hm,
7 when it says or support any third party request, who is
8 barred from supporting the third party request?

9 MS. SMITH: The participating parties, Your
10 Honor, I believe are bound by that.

11 CHAIRWOMAN SHOWALTER: It's not a very well
12 drafted sentence.

13 MR. KOPTA: No, we will acknowledge that.

14 MS. SMITH: No.

15 CHAIRWOMAN SHOWALTER: All right, with that
16 clarification, I think I understand the parties' intent.
17 I don't have any further questions.

18 COMMISSIONER HEMSTAD: Well, whether this is
19 clarifying or not, I think that's the elephant in the
20 room is why, how does this not become the roughly
21 substantial equivalent of a general rate case?

22 (Discussion on the Bench.)

23 COMMISSIONER HEMSTAD: I will withdraw the
24 question at this point.

25 CHAIRWOMAN SHOWALTER: I think what we're

0208

1 struggling with here is we do want to have a full
2 discussion on the procedural issues, and it's a question
3 of when to have those and how much to continue the
4 examination of witnesses. But we're not precluding
5 ourselves or others from asking more questions of the
6 witnesses depending on when we want to have this
7 procedural discussion.

8 COMMISSIONER HEMSTAD: Well, at this point, I
9 don't have any other questions. I think the settlement
10 itself and what it is doing seems to be reasonably
11 clear.

12 COMMISSIONER OSHIE: I will just ask
13 Mr. Blackmon, perhaps you can speak for the panel, and
14 the other panel members can step in, but referring to
15 the settlement stipulation on page 3 on what is marked
16 as paragraph 9, and you have Verizon, you stated in the
17 first sentence:

18 Verizon shall reduce its interstate
19 switched access charges by:

20 And the last sentence is:

21 The overall effect of these reductions
22 is to reduce Verizon's revenue by \$36.5
23 Million using the projected 2003 units.

24 I thought you might clarify for me at least
25 what you meant or what the parties meant by projected

0209

1 2003 units. What is a unit, as an example?

2 DR. BLACKMON: In this instance, the units
3 are all minutes, because all the rates that are being
4 affected by this paragraph are charged by the minute.
5 And, you know, the telecom world is changing quickly,
6 and the most recent year, most of the testimony, not all
7 of it, but most of the evidence in this case used 2001
8 data, financial data and operational data. The rates
9 that are agreed to are, I mean they speak for
10 themselves. They are the rates that will be charged.
11 In terms of quantifying the effect of that on Verizon's
12 revenues, one could do the math using the access charge
13 -- the access minutes that the company actually
14 experienced in 2001. That would have produced a
15 different number, a higher number than what those same
16 rates would produce in 2003 at least based on our
17 projection of what the 2003 results are. So it's our
18 estimate of what within this year the rate changes that
19 we have agreed to will do to the access revenues of
20 Verizon.

21 COMMISSIONER OSHIE: Are the access revenues
22 in general trending down because of the minutes of use
23 are also being reduced?

24 DR. BLACKMON: Yes.

25 COMMISSIONER OSHIE: Would you, perhaps

0210

1 Mr. Blackmon, you can also continue to be the
2 spokesperson here, but in that same paragraph 9 under
3 section 2, there's an establishment, a proposed
4 establishment of a late payment charge of 1.5%. Would
5 you please give some detail as to what, how the parties
6 reached that number of 1.5%.

7 DR. BLACKMON: Well, it was the product of
8 negotiation, and all parties ended up agreeing that that
9 was a reasonable level. And I'm speaking for Staff that
10 it's one reason why it seems reasonable is it's what
11 AT&T charges its customers. The Commission itself
12 charges 2% when companies are late in paying their
13 regulatory fees to us. There are other companies that
14 charge 1%. There may be some companies left that still
15 don't have a late payment charge. So within that
16 context, 1.5% seemed like a reasonable number consistent
17 with the practices of other companies out there.

18 COMMISSIONER OSHIE: Okay, thank you.

19 CHAIRWOMAN SHOWALTER: Just a clarifying
20 question. On Commissioner Oshie's earlier question, he
21 cited a figure of \$36.5 Million, and on my version it's
22 \$35.5 Million. I just wanted to make sure we all have
23 the same figures.

24 COMMISSIONER OSHIE: My mistake.

25 CHAIRWOMAN SHOWALTER: Okay.

0211

1 JUDGE SCHAER: Was there anything further for
2 the panel of witnesses?

3 CHAIRWOMAN SHOWALTER: Not at this time, but
4 my guess is they ought to stay there for the time being.

5 MR. FFITCH: Are you inquiring of counsel,
6 Your Honor?

7 JUDGE SCHAER: I was inquiring of
8 Commissioners or of counsel, although why don't you tell
9 me why you're asking, Mr. ffitch.

10 MR. FFITCH: I have one or two questions.

11 JUDGE SCHAER: Why don't you go ahead,
12 please.

13 MR. FFITCH: Thank you, Your Honor.

14 I guess I will direct this question to
15 Dr. Blackmon initially. Dr. Blackmon, does the
16 settlement agreement require AT&T or WorldCom to reduce
17 any of their toll rates?

18 DR. BLACKMON: No, it does not.

19 MR. FFITCH: Now I'm going to ask you this
20 question in your capacity as a non-lawyer, this next
21 question. In your capacity as an experienced regulatory
22 expert, does this Commission have authority to order
23 AT&T and MCI to reduce, excuse me, WorldCom to reduce
24 its toll rates?

25 MS. SMITH: I would object to this question.

0212

1 I really think it's a legal question even though it's
2 being asked to Dr. Blackmon as a non-lawyer. I think it
3 boils down to a legal opinion, and I don't think that's
4 a proper question to ask a witness.

5 MR. FFITCH: Well, Your Honor, I'm trying to
6 avoid asking it as a legal question. It's just his
7 understanding in his expert opinion as a regulatory
8 administrator, would that be something he believes the
9 Commission would have the authority to order.

10 JUDGE SCHAER: I'm going to allow the
11 question just based on your own experience as an expert
12 in this field. If you know an answer, would you provide
13 it, please, Dr. Blackmon.

14 DR. BLACKMON: My understanding is that even
15 though the toll rates of AT&T and MCI WorldCom are
16 classified as competitive that they remain subject to
17 the substantive standards in Title 80 that they be fair,
18 just, and reasonable and that the Commission can
19 complain against those rates. In addition, RCW
20 80.36.320 would allow the Commission to reverse the
21 competitive classification of those companies and
22 therefore the rates that they charge.

23 So I believe that the answer to your question
24 would depend on the circumstances or the reasons for a
25 Commission order that would lower their rates. In other

0213

1 words, if they were ordering them lower because they
2 found that effective competition no longer existed, I'm
3 quite comfortable that the Commission would have that
4 authority. If there was some way in which the rates
5 themselves were not fair, just, and reasonable, then
6 again I think the Commission would have the authority to
7 order a different rate when they met that statutory
8 standard.

9 But broadly, the way you have answered or the
10 way you have asked the question, I guess I would have to
11 point out and say that I don't know about a blanket
12 ability of the Commission to order the companies to
13 lower their rates.

14 MR. FFITCH: Thank you. This I will direct
15 to you also, Dr. Blackmon. Does the access charge rate
16 agreed to in this settlement include a contribution to
17 the cost of the local loop?

18 DR. BLACKMON: Yes.

19 MR. FFITCH: Thank you, those are all my
20 questions.

21 Thank you, Your Honor.

22 JUDGE SCHAER: Thank you, Mr. ffitch.

23 Anything further, Commissioners?

24 CHAIRWOMAN SHOWALTER: Not at this time.

25 JUDGE SCHAER: Okay.

0214

1 Anything from counsel?

2 MS. SMITH: No, but if we're going to get to
3 the point where counsel are going to argue Public
4 Counsel's motion while these witnesses are subject to
5 recall, I would ask that they be allowed to step down
6 and move someplace a little more comfortable.

7 JUDGE SCHAER: I think that would be a wise
8 thing to do.

9 You are not excused from the hearing,
10 gentlemen, but you may step down from the witness bench
11 and take it easy for a few moments while counsel respond
12 to questions from the Bench.

13 At this point, I believe the Commissioners do
14 have a number of procedural questions that they would
15 like to discuss with counsel who are proposing the
16 settlement on behalf of their clients.

17 And would you like to go first?

18 CHAIRWOMAN SHOWALTER: Well, what I would
19 like to -- we have already heard from Mr. ffitch, if you
20 want to restate it that's okay, although we have it in
21 writing and you stated it this morning, but I would like
22 to hear from the other counsel what their responses are
23 to Mr. ffitch's motion. Again, I don't think we're
24 necessarily precluding further briefing on the topic if
25 that's required, but we've got something from Verizon,

0215

1 I'm sorry, I haven't had a chance to read it. I think
2 what we're doing is we're getting back to Commissioner
3 Hemstad's question of does the settlement invoke our
4 statutes on general rate increases, the 3% test, et
5 cetera. And if so, what procedurally is necessary, what
6 procedurally is desirable, and what do you recommend.

7 MR. CARRATHERS: Your Honor, I guess I can
8 start, this is Charles Carrathers from Verizon, and then
9 allow my esteemed colleagues to chime in.

10 As an initial matter --

11 CHAIRWOMAN SHOWALTER: Well, I think
12 Mr. Ffitch more or less indicated he had already stated
13 his --

14 JUDGE SCHAEER: Did you have anything further
15 you wanted to state at this time now that we're getting
16 into this area now?

17 CHAIRWOMAN SHOWALTER: You're not on the
18 mike.

19 JUDGE SCHAEER: Mr. Ffitch, did you have
20 anything further you would like to start out with, a
21 more in-depth argument on your motions?

22 MR. FFITCH: I think, Your Honor, I'm willing
23 to go with the Chairwoman's suggestion that they have
24 our arguments in writing, I have summarized them this
25 morning, and just reserve the opportunity to respond

0216

1 after we have heard from other counsel.

2 JUDGE SCHAER: Thank you.

3 Go ahead, Mr. Carrathers.

4 MR. CARRATHERS: Thank you, Your Honor.

5 Very briefly, as Mr. ffitch stated in his
6 summary, he had two principal concerns. The first is
7 that we were relying on evidence that this Commission
8 had stricken in a previous order that is having to do
9 with rate rebalancing. And I realize you haven't had a
10 chance yet to review our response because it was just
11 filed this morning, but we believe that Public Counsel
12 is confusing litigation with settlement. Although the
13 Commission struck the parties' rate rebalancing
14 testimony for purposes of litigating a phase in this
15 case, the parties are not precluded from using such
16 testimony to support a settlement. And in our papers,
17 we cite the Commission's rule 480-09-466, which
18 expressly encourages voluntary settlements and expressly
19 permits parties to submit "the evidentiary proof that
20 they believe appropriate to support it", and this is
21 precisely what the parties have done here. Indeed, to
22 adopt Public Counsel's argument would lead I think to
23 the illogical conclusion that in preparing a settlement,
24 the parties are bound by exactly what they filed, and I
25 don't think that would have the effect of encouraging

0217

1 settlement.

2 The second principal point that Public
3 Counsel raised is that I believe his position is somehow
4 whenever you increase a basic rate, you need to have a
5 general rate case, and I would point the Commission to
6 the GTE-Bell Atlantic merger settlement. In that
7 settlement, rates were both increased and decreased.
8 Some residential rates were increased, some business
9 rates were increased, originating access was increased.
10 Indeed I understand, I don't have the document in my
11 hand, but I understand that one residential rate group
12 went from \$10 to \$13, certainly more than 3%. The
13 overall effect of that settlement was to reduce
14 Verizon's earnings. But my point is that there was a
15 settlement, that settlement settled a couple of, three
16 actually, very complicated dockets, there was no general
17 rate case, and yet an effective -- an increase of some
18 rates and decreases in others, which is again precisely
19 what we have here. And we believe the Commission acted
20 lawfully in approving the GTE-Bell Atlantic merger.

21 CHAIRWOMAN SHOWALTER: Well, in that case
22 though, first of all, was this issue raised to us, this
23 procedural issue? And I suspect the answer is no,
24 because I suspect that Public Counsel wasn't party to
25 that settlement. And so the fact of a settlement, does

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1 -- well, that's what you're saying is that's precedent,
2 or I wouldn't say precedent, it's a practice but it's
3 not a precedent of this Commission, because we weren't
4 presented with the issue.

5 MR. CARRATHERS: Well, I would --

6 CHAIRWOMAN SHOWALTER: Aside from the fact
7 that it has been done apparently once before, what is
8 the answer of that -- your first argument has to do with
9 and Mr. ffitch's first argument has to do with can the
10 scope of a settlement be larger than the scope of the
11 litigation. Let's set that aside for a minute.

12 The question I'm interested in is, if parties
13 are proposing ultimately tariffs that require increases
14 beyond this 3% threshold, I was searching for the
15 statute, I don't have it in front of me, but if you look
16 at the let's just say the size of the residential
17 increase is sufficient to meet the statute, you might
18 want to answer that question first, if it does, how do
19 we avoid complying with the terms of those statutes,
20 particularly because this is -- that very issue was not
21 part of this case to begin with. It might be different,
22 I suppose, if the breadth of this case had been that
23 broad and there had been settlement that broad, and I
24 might add settlement including Public Counsel. But if
25 you grant, and I'm not sure you do, if you grant that

0219

1 the settlement goes beyond the scope of the original
2 complaint, even though the parties to this settlement
3 may be entitled to settle among themselves, doesn't it
4 invoke the statute?

5 MS. SMITH: Perhaps, Chairwoman Showalter, I
6 could take the first stab at answering your question.

7 CHAIRWOMAN SHOWALTER: Sure.

8 MS. SMITH: With respect to the 3% rule, if
9 it is, I believe that that's a procedural rule of this
10 Commission, and the only source of that that I'm aware
11 of, and I could be mistaken, is Procedural Rule
12 480-09-310 that discusses the filing requirements for
13 various tariff filings, and that's when a company does
14 choose to file a general rate case. Those are the kinds
15 of things that the Commission wants to see in that
16 filing. This case, however, was not filed or pled as a
17 general rate case. This was a complaint proceeding
18 brought by one party against Verizon with respect to
19 access charges. That didn't invoke the general rate
20 case filing rule that contains that 3% criteria.

21 The other point too, with respect to the
22 rule, it's not -- the rule itself is not phrased in a
23 way that addresses a 3% increase in rates. It goes to
24 revenue. It goes to is this going to be an increase in
25 revenue. And with respect to the overall revenue, this

0220

1 case, that this settlement presents a reduction in
2 revenue. And I am not sure I can answer the question as
3 to whether one particular customer class will be
4 increased, the gross revenue provided by any customer
5 class would increase by 3% or more. That's something
6 that I'm not prepared to answer, and perhaps the panel
7 of experts could, I can't.

8 But at bottom, I don't believe that this rule
9 applies to this case, and I don't believe that there is
10 any statute in Title 80 that requires the Commission to
11 hold a hearing before allowing an increase to any rate.
12 The Commission certainly has that discretion. It has a
13 discretion to suspend a rate filing if it believes that
14 that's necessary. But while the Commission has that
15 discretion, it is not required by the statutes to hold a
16 hearing before increasing rates or decreasing rates.

17 CHAIRWOMAN SHOWALTER: All right. So first,
18 I stand corrected, we are talking about a rule, not a
19 statute.

20 MS. SMITH: As far as I know, Your Honor.

21 CHAIRWOMAN SHOWALTER: I do apologize for not
22 having this in front of me, but with regard to WAC
23 480-09-300(ff), if anyone does have it in front of him
24 or her, doesn't this have three tests? The first one is
25 the increase in revenues, but what is the second, I

0221

1 think it's B?

2 MS. SMITH: It's tariffs, B reads:

3 Tariffs are restructured such that the

4 gross revenue provided by any customer

5 class would increase by 3% or more.

6 CHAIRWOMAN SHOWALTER: Right.

7 MS. SMITH: And again, that goes to revenue,

8 not rates.

9 If I could defer to Dr. Blackmon.

10 COMMISSIONER HEMSTAD: I would just make the

11 general comment, it's beyond debate, isn't it, that the

12 increases to residential and business customers will

13 surely exceed 3% of revenues?

14 MS. SMITH: I don't know the answer to that

15 question. It may be, but I can't --

16 CHAIRWOMAN SHOWALTER: Maybe our experts can

17 answer that question.

18 MS. SMITH: -- vouch for that.

19 MS. ENDEJAN: Your Honor, could I take a

20 crack at that? I hate to interject, but it seems to me

21 if you look at the literal language of the rule we're

22 hung up on, it's 480-09-310(1)(b), it says:

23 Tariffs are restructured such that the

24 gross revenue provided by any customer

25 class would increase by 3% or more.

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1 Now the question there is, you have to take
2 into consideration customer class, we're not talking
3 about just simply an increase in residential rates,
4 we're talking about the impact from a customer class,
5 res and bus, and how that affects the company's overall
6 gross revenues. You have to take into account the
7 commensurate benefits that might come to that customer
8 class from offsetting reductions that they might pay for
9 interstate interexchange services.

10 CHAIRWOMAN SHOWALTER: Okay.

11 MS. ENDEJAN: The language of the statute or
12 the rule is not crystal clear, but I think Ms. Smith is
13 correct. What we're talking about here is we're not
14 altering, if anything we're reducing the company's
15 overall gross revenues. And it is when you are
16 attempting in a general rate case to increase the
17 overall company's gross revenues that we submit you
18 would be triggering the filing requirements of a general
19 rate case.

20 CHAIRWOMAN SHOWALTER: But that's A. I want
21 to stick on B. And setting aside the fact that this is
22 a settlement, I just want -- because what my interest is
23 is this. If the settlement is achieving something that
24 had it been done directly by tariff this rule would have
25 been invoked, that's what I would like to know. So I

0223

1 think my question now is, are the tariffs, the
2 compliance filing tariffs that would be required as a
3 result of this settlement, do they -- are they such that
4 the gross revenue, gross revenue, provided by the
5 residential class let's say first would increase by 3%?

6 MS. SMITH: Well, there are two classes.
7 There's a residential class and a business class.
8 Access itself is not a separate class, so the reductions
9 to access revenue would need to be counted along with
10 any increase to the general rates.

11 CHAIRWOMAN SHOWALTER: Why?

12 MS. SMITH: Because we're talking about
13 revenue. We're not talking about -- we're not talking
14 about rates. So when you talk about the company's
15 revenue, you have to include in that the reductions to
16 access charges.

17 CHAIRWOMAN SHOWALTER: And why? Because this
18 one is talking about gross revenue provided by any
19 customer class. It seems like we might have three
20 classes here, but isn't this residential and the
21 external people, and the external is going to get to
22 reduce their revenue, and the internal, i.e., business
23 and res, are going to increase their revenue --

24 MS. SMITH: But there --

25 CHAIRWOMAN SHOWALTER: -- to the company.

0224

1 MS. SMITH: But there are only two classes
2 though, and there's a WAC at 480-120-102 that only --
3 that defines only two classes, residential and business,
4 and there's not a third class.

5 CHAIRWOMAN SHOWALTER: Yeah, but that doesn't
6 mean that 100% of the revenue comes from those two
7 classes, does it? Isn't the access charges that are
8 paid by AT&T part of the revenue of the company?

9 MS. SMITH: They're part of the revenue of
10 the company, but they're not allocated to a separate
11 class. So there are only two classes, residential and
12 business.

13 CHAIRWOMAN SHOWALTER: Not --

14 MS. SMITH: Not access. So when you need --
15 when you look at the revenue of the company and you look
16 at it in terms of residential and business, you would
17 have to include access charges to that mix as well, but
18 not -- but they're not a separate class.

19 CHAIRWOMAN SHOWALTER: Well, I understand
20 that, but it seems like what we're just focusing on for
21 the moment is whether the gross revenue provided by the
22 business class increases by 3% or more and whether the
23 gross revenue provided by the residential class
24 increases by 3% or more.

25 MS. SMITH: And I may not be explaining this

0225

1 very well, and I apologize for that, but the residential
2 class will -- the revenue -- the residential class and
3 the business class are each responsible for also in some
4 degree the company's access revenue. Even though
5 they're paid by other companies, it's part of the whole
6 thing. So you have to look at the company's revenue and
7 take into account the reduction in access charges.

8 CHAIRWOMAN SHOWALTER: But if you drew a pie
9 chart of the company's gross revenues, wouldn't there be
10 a wedge for business, a wedge for residential, and there
11 would be a wedge for these access charges.

12 MS. SMITH: But in the context of the -- I
13 mean in the context of the company's revenue, that may
14 very well be correct, and there may be other, there may
15 be other pieces to that pie as well. This rule only
16 addresses the two customer classes that this Commission
17 by rule has defined, and that's the residential class
18 and the business class.

19 And the other thing too that's important to
20 note is that this rule doesn't apply to compliance
21 filings. It applies to tariffs to increase rates in a
22 general rate case. These tariffs would be compliance
23 filings, so this rule wouldn't apply to these tariffs by
24 definition.

25 CHAIRWOMAN SHOWALTER: All right, but let me

0226

1 get to the purpose of the rule or what one would think
2 is the purpose of the rule, which is essentially that if
3 a rate is big enough, it needs to be supported by some
4 evidence. And arguably, I don't know that this is this
5 rule or not, but arguably the people who are going to
6 have to pay it need an opportunity of some kind to
7 examine the charge that's about to be laid on them. And
8 maybe that's the most fundamental issue here is maybe it
9 isn't a matter of statute or rule, I'm not sure.
10 Fundamentally this is a significant increase of business
11 rates and residential rates, and yet the case and the
12 parties don't represent the business customers at all,
13 and then Public Counsel is not a party to the
14 settlement. I am not particularly suggesting it's an
15 insurmountable problem, but isn't there some process
16 that's due?

17 MS. SMITH: I think -- I have two comments on
18 that. One, the purpose of this rule is not to create
19 some sort of substantive right to a hearing whenever a
20 company comes in or whenever the Commission considers a
21 settlement that affects rates or affects revenues in a
22 way that's described by this rule. This rule is the
23 Commission's procedural rule with respect to general
24 rate filings. Its purpose is to give the Commission a
25 running start when a general rate case comes in.

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1 Because when a general rate case comes in, the ten month
2 clock is triggered when the Commission suspends that.
3 So to get all of this information with the rate filing
4 gives the Commission an opportunity to really get
5 started to decide that rate filing within the ten month
6 clock.

7 This rule isn't designed to preclude any
8 settlements such as the settlement that's before you
9 today where parties in a global sense are reaching a
10 compromise on one set of rates versus another set of
11 rates. This rule really has no application to this
12 proceeding. It doesn't create a substantive right to a
13 hearing on behalf of any particular customer class when
14 a company comes in or when the parties agree to a
15 situation like this one where there are changes to
16 particular rates.

17 CHAIRWOMAN SHOWALTER: Okay. Well, then this
18 rule aside, under the settlement we would provide 30
19 days notice.

20 MS. SMITH: Yes.

21 CHAIRWOMAN SHOWALTER: To the parties.
22 Supposing at that time either the business customers or
23 the residential customers or both, they get the notice,
24 they come in and say we want a hearing of some sort on
25 why \$2.50 and why \$2; what is the appropriate response?

0228

1 MS. SMITH: I think the appropriate response
2 is one that the Commission should consider pretty
3 carefully. Those customers themselves don't have a
4 right to a hearing on a rate change. There is no
5 constitutional right for customers to come in when this
6 Commission issues rate orders, approves compliance
7 filings that affect those customers' rates. Now the
8 Commission oftentimes and I would say in many cases
9 holds hearings. It holds hearings because a company
10 comes in for a rate increase, the Commission suspends
11 that, all of the interested parties intervene, and the
12 Commission has a rate case.

13 What the statute provides for customers is 30
14 days notice unless the Commission decides to approve a
15 rate filing on less than 30 days notice. The Commission
16 could do that for good cause shown, approve any change
17 to a rate on less than the 30 days notice. Oftentimes
18 the Commission doesn't do that, but the Commission
19 could. Nothing in the statute requires the Commission
20 to hold a hearing, and nothing in the statutes give
21 customers the right to a hearing before there is an
22 adjustment to a rate.

23 CHAIRWOMAN SHOWALTER: Okay. So your opinion
24 is that there's no statutory requirement, there's no
25 rule requirement that we provide anything other than --

0229

1 well, I don't even know about the notice, but that
2 there's no requirement that we have a hearing,
3 evidentiary or otherwise, for customers who face these
4 increases?

5 MS. SMITH: That's correct, Chairwoman, that
6 is our argument.

7 CHAIRWOMAN SHOWALTER: All right, then, and I
8 appreciate the legal argument, my next question is as a
9 matter of policy. Is it appropriate to give those
10 customers some opportunity, I'm not sure what it would
11 be and what it would look like, to either contest,
12 examine, oppose?

13 MS. SMITH: We believe it's appropriate to
14 have the customers who are affected by this, all of the
15 parties agree that it's appropriate for the customers
16 who are affected by this to come to a hearing and
17 express their opinion. Now what the customers may not
18 know is that customers may not know that the particular
19 rate increase that they see on their bill is accompanied
20 by these other changes, the access charge reduction that
21 could spur competition, could eventually perhaps lower
22 toll rates, and those other things, and those are things
23 that the Commission needs to keep in mind when it
24 listens to the public testimony. But all of us here
25 agree, all of the parties agree that it is appropriate

0230

1 for the customers to come in and make their point, as
2 this Commission hears public testimony in many cases.

3 CHAIRWOMAN SHOWALTER: Well, and aside from a
4 public hearing, what about supposing some attorneys,
5 either for the residential customers or business
6 customers or both, say we would like to have an
7 adjudication about these new rates, is it are they too
8 late because the right adjudication is the one we're in?

9 MS. SMITH: I wouldn't say that the
10 Commission couldn't disapprove of this settlement and
11 hold an evidentiary hearing. Whether or not to accept
12 this settlement is within the Commission's discretion.
13 If the Commission hears from parties who come in to a
14 public hearing and the Commission is convinced that this
15 settlement should not be approved, I believe the
16 Commission has the discretion not to approve it.

17 We would urge against that. We believe that
18 this settlement is in the public interest. We believe
19 that the corresponding revenue, overall revenue
20 reduction for Verizon should be taken into consideration
21 when the Commission looks at any particular complaint
22 about a rate that's changing. But I wouldn't suggest
23 the Commission's hands would be tied, that after hearing
24 the parties today, advocate for this settlement that the
25 Commission is now bound to accept it.

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1 CHAIRWOMAN SHOWALTER: I recognize that, and
2 I was wondering whether within perhaps not the express
3 terms of the settlement, which is limited to the 30 day
4 notice, there couldn't be additional process of some
5 kind, essentially some more, some kind of process on the
6 proposed settlement that may be more than a public
7 hearing. And these are -- it's not my particular
8 suggestion to do that, I'm just trying to understand the
9 legal but also the policy considerations around rate
10 increases for customers who weren't part of an original
11 proceeding.

12 MS. SMITH: Your Honor, ordinarily the
13 customers themselves aren't part -- well, I take that
14 back. Many times large customer groups are part of a
15 hearing. Public Counsel represents rate payers as a
16 whole. Public Counsel was a part of this proceeding.
17 But we believe that the customer notice and the customer
18 hearing requirement in this settlement is sufficient to
19 give the notice and to give an opportunity to opine
20 about the rate increase to all affected customers. We
21 believe that's sufficient, and that's why we have
22 provided for that in this settlement. Certainly I don't
23 believe it's legally required for this Commission to
24 hold a public hearing with respect to the terms of this
25 settlement. We believe it's a good idea as a matter of

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1 policy, and that's what we have provided for in the
2 settlement. There isn't a legal requirement for it, we
3 just think it's a good idea.

4 MR. KOPTA: And if I may just add a couple of
5 things to that discussion. To answer your question more
6 directly, Chairwoman Showalter, I'm not aware of
7 anything in the Commission's rules that would preclude
8 the Commission from taking additional procedural steps.
9 If the Commission felt it was necessary to have
10 additional evidentiary type hearings in response to a
11 request from someone who wasn't a party to this that is
12 affected by the settlement, I'm not aware that there's
13 anything that would preclude the Commission should it
14 decide to do that from taking that step. And indeed, if
15 one looks to the Superior Court practice, judges at the
16 Superior Court certainly can do that if presented with a
17 settlement, can have additional proceedings on the
18 settlement, including additional evidentiary
19 proceedings, so nothing would preclude that. I think we
20 agree, those that are the settling parties, that that
21 isn't necessary. So from an advocacy position, we
22 agree. But to answer your question more directly, there
23 is nothing that would preclude the Commission from
24 disagreeing with us and establishing some sort of
25 additional procedural steps if it believes that that's

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1 necessary before rendering a decision on the proposed
2 stipulation.

3 Just to take another step back, I know it's
4 kind of difficult to conceptualize the revenue versus
5 rate issue, and we certainly agree with Commission Staff
6 in terms of the applicability of the rule, but something
7 that might help you to visualize it that was kind of one
8 of the issues that was in the complaint or in the
9 testimony in support of or in opposition to the
10 complaint and although not part of the testimony that we
11 are stipulating into as to be admitted into the record
12 for supporting the settlement, Dr. Selwyn's rebuttal
13 testimony that was pre-filed has a chart on page 49 that
14 shows the different types of services, the costs of each
15 of those services, and the revenues from each of those
16 services in terms of what are the revenues that are
17 generated by the customer class of the residential
18 customers. And that might give you an idea of what
19 Ms. Smith was trying to explain in terms of how access
20 revenues are attributed to the customer class of
21 residential customers. So in terms of if that's an
22 issue that you are grappling with, you might want to
23 look at that as kind of a visual aid in terms of
24 understanding what Ms. Smith was arguing about.

25 CHAIRWOMAN SHOWALTER: Well, actually, I

0234

1 don't -- I would sort of like to hear from Mr. ffitich at
2 this point just to follow up on some of these, but go
3 ahead, I'm sure we'll get there.

4 COMMISSIONER HEMSTAD: Right. Well, pursuing
5 a bit further, maybe this conversation has answered this
6 question, but changing facts slightly with a
7 hypothetical, all right, you have a complaint brought
8 raising a single issue say like here, not an
9 insignificant issue, but a single issue. And then
10 assume the parties here, Staff, the Defendant, and the
11 Complainant, agree on a settlement that is, in fact, a
12 full blown rate case settlement, not a partial one, but
13 a complete settlement of the rate case. Would it be
14 your position apparently then that that would fall
15 within both the letter and the spirit of both our rules
16 and the statutes?

17 MS. SMITH: Commissioner Hemstad, I don't
18 believe that's the case.

19 COMMISSIONER HEMSTAD: No, but -- what is not
20 the case --

21 MS. SMITH: That --

22 COMMISSIONER HEMSTAD: -- to my hypothetical?

23 MS. SMITH: Maybe I will let another counsel
24 take the first stab at this, because I need to get that
25 hypothetical back in my mind.

0235

1 MR. CARRATHERS: All right, this is Chuck
2 Carrathers from Verizon. If the question is, let's
3 assume a complaint is filed on a single issue, and as a
4 result, a settlement does, in fact, result in something
5 that would be -- that would fall within the general rate
6 case definition of the rule, what happens. First, I
7 think as Ms. Smith pointed out earlier, the rule and its
8 purpose and intent applies when a general rate case is
9 filed where no one is filed here.

10 I think your question is broader perhaps as a
11 policy matter, you know, can you do indirectly that
12 which you can't do directly. And again following up on
13 Ms. Smith's comments, I think you've got to look at is
14 notice required, and what kind of notice is required,
15 and whether a public hearing is required. And I think
16 we come back to her explanation that under the law it is
17 not.

18 And when you take it a step further, and let
19 me come back again to the GTE-Bell Atlantic merger and
20 other potential merger settlements, to read this rule as
21 Public Counsel suggests, whenever you have a settlement
22 that would increase any class, however you define it,
23 customer class revenues by 3%, you would have to stop
24 and say, oops, that's a general rate case. And if you
25 didn't, it would be unlawful. And again, I suggest that

0236

1 that certainly wasn't the case in past settlements,
2 including the GTE-Bell Atlantic merger. And under, you
3 know, under that case, you know, a customer's or a
4 potential set of customers' rates went I believe from
5 \$10 to \$13, but the Commission looked at the overall
6 effect of it and had a, I understand, I wasn't here, but
7 had a hearing similar to the one that happened this
8 morning and approved it.

9 COMMISSIONER HEMSTAD: Well, but in a rate
10 case filing, the company is required to come in with its
11 costing data and then with its case arguing that it
12 needs a change in revenues. At least that data then
13 provides a basis for whether there's ultimately a
14 settlement or whether it's litigated to determine, for
15 example, on residential and business pricing whether
16 adjustments in those rates are appropriate under the
17 statute, fair, just, reasonable, and sufficient. And
18 all of that is put in front of the Commission to
19 evaluate either in an adjudication or in a settlement as
20 to whether it is defensible. Do we have that in front
21 of us now?

22 MS. SMITH: Your Honor, Commissioner Hemstad,
23 I believe that there is sufficient information before
24 the Commission now for the Commission to approve this
25 settlement. What's in the record now, what was offered

0237

1 with the expert panel, is more information than is
2 required by the WAC in a rate case. The Commission has
3 that information before it upon which to approve this
4 settlement. So I think it's here.

5 And if Verizon, in going back to your
6 hypothetical, and I apologize for not answering this in
7 the first instance, I believe that if Verizon were to
8 come in before this Commission with tariffs that reduce
9 its access charges and increase certain other rates,
10 including residential rates, the Commission, and
11 assuming Verizon supported that with documentation, the
12 Commission could approve that at an open meeting without
13 having to have a hearing.

14 So we have a similar situation here except
15 for this is in the context of a complaint where AT&T has
16 alleged that the access charges are excessive, and
17 Verizon has answered that in terms by saying, well, even
18 if they are, we have to be allowed to increase some
19 other rates, because we can't take this reduction in
20 revenue. And so we have had a litigation mode, we have
21 had a complaint mode as opposed to a tariff filing mode
22 at this point in time, but the result is the same. The
23 Commission can approve the settlement just as it could
24 accept the tariff filings that Verizon may have filed.

25 As I prefaced this, if Verizon came in and

0238

1 said we're reducing our access charges and we're
2 increasing other rates to make up for some of the lost
3 revenue and we would like you to approve this at an open
4 meeting, the Commission could do that without a hearing.
5 And from what I understand, the Commission has looked at
6 those kinds of issues with smaller companies at open
7 meetings and has approved those. So this is a bigger
8 company, and this is a larger amount of revenue in terms
9 of the access charges and in terms of some other rate
10 increases, but it's about the same -- it's the same
11 situation.

12 CHAIRWOMAN SHOWALTER: Okay, but I think the
13 question is notice. That is first let's take the
14 complaint angle. Forget about the rule. There's a
15 complaint comes in. It is about some kind of topic,
16 let's say access charges. Customers out there,
17 attorneys for customers, are aware of the complaint,
18 they make a decision, should I jump into this case,
19 should I not jump into this case, what is the case
20 about. And so the nature of the complaint informs a
21 person as to whether they ought to get involved. And if
22 -- I have a feeling if you were looking at this as
23 access charges and you were saying -- representing big
24 business customers, you might not think that this was
25 going to be your case.

0239

1 Now I think maybe you think you have cured
2 that by saying, well, now we'll give the notice, but the
3 notice is for the purpose of people coming and arguing
4 they want to either be in the case or they want
5 adjudication. Open meeting, same thing. We provide
6 everybody notice, here's what this issue is about, if
7 people show up at the open meeting, we listen to what
8 they want to do. If they want a hearing, an
9 adjudication, they have to convince us that there's
10 something worth having an adjudication about. But here,
11 the complaint didn't get at residential and business
12 rates, and a public hearing notice doesn't, to get back
13 to Mr. Kopta's suggestion that, well, all right, maybe
14 all we need is some more process here, we kind of know
15 what the settling parties would think, but there may be
16 a need to open the door to some more process.

17 MS. SMITH: I understand your point,
18 Chairwoman Showalter, and I would add something to that.
19 Not only are the issues -- not only is the public
20 informed by the complaint as to what the issues are, the
21 public is also informed by the response. And I believe
22 that, and counsel for Verizon can correct me if I'm
23 wrong, it's been a while since I have read the response,
24 but I believe Verizon when it responded to AT&T's
25 complaint said, well, we're going to need to increase

0240

1 other rates if you're going to increase our access
2 charges. That has been an element to this case since
3 Verizon filed its answer, and in some degree I think
4 Verizon's earlier motion to dismiss incorporated that
5 issue. So for those parties who were aware of the
6 complaint, they have notice with the complaint and the
7 answer and the motion to dismiss that Verizon may
8 actually be bringing its other rates into the scope of
9 this proceeding, and Verizon did.

10 CHAIRWOMAN SHOWALTER: So we issue an order
11 narrowing the scope and pointing out that if Verizon
12 needed a rate increase they could file one.

13 MS. SMITH: That is correct, Chairwoman
14 Showalter, and that order I believe is subject to some
15 motions for clarification and some other motions with
16 respect to that order. But even if you assume up until
17 that time, that order was issued on either February 7th
18 or February 14th, the complaint was filed last summer.
19 That's a lot of time, that's nine months of time for
20 folks to perhaps intervene in this proceeding and be
21 heard with respect to any other rate rebalancing or rate
22 increases that Verizon may wish to do.

23 So the fact that we -- and the notice
24 requirement, the statutory notice requirement is from
25 when the tariffs are filed, that increase of rate.

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1 They're not from any other time. So once Verizon files
2 its tariffs, under the statute that's when the notice
3 requirement kicks in. At this point in time, Verizon
4 hasn't filed tariffs. We're asking, I believe, that we
5 notify customers and have a hearing I think prior to
6 that time. But under the statutory scheme, it's upon a
7 filing of a tariff.

8 CHAIRWOMAN SHOWALTER: I would like to ask
9 Mr. ffitch a question. I'm sure he has lots of
10 responses here, but there is one thing I would like to
11 ask you, which is, if you are correct, what we know
12 substantively at this point is that the parties here,
13 the settling parties that is, think that access charges
14 need to be reduced, business and residential rates need
15 to be increased, and that they have examined it, and
16 they think that their settlement is a fair result. So
17 if you were to have more process of any kind, whether
18 it's to reject this settlement and there's a filing of a
19 general rate increase or whether we add additional
20 process into this proceeding, one way or another you
21 have a sense of what three significant parties think
22 about the substance.

23 So what I'm wondering is, what is it that you
24 would really like to get to? You interpose certain
25 legal objections, and we will address them on their

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1 merits. But when you look just functionally, you're
2 dealing with the company and the Commission Staff are
3 being -- are supportive of business increases and
4 residential increases. Who knows, if it went to full
5 blown litigation, there might be some different result,
6 but you could be fairly certain that their positions
7 would coalesce a little bit around those positions. I
8 may have overstated that point a bit, but.

9 MR. FFITCH: Well, I guess what I would say,
10 I think what you're asking is, you know, how would
11 things turn out differently if there was a general rate
12 case, or what other interests would be raised, what
13 other issues would be explored. I mean my first answer
14 to that is that's exactly the problem with this kind of
15 settlement. We haven't had the kind of full blown
16 review that you have in a general rate case, and we
17 haven't had either the participation or at least the
18 opportunity for participation of multiple voices. We
19 haven't had the chance to look at whether there are
20 other services that should have either rate increases or
21 decreases. We haven't had a full opportunity to look at
22 the company's earnings levels. This company and its
23 predecessor, GTE, have not been in front of this
24 Commission for a general rate review in so long that I
25 don't know how long it is. I believe it may be as much

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1 as ten years or more since there has been a full blown
2 rate case for GTE. So there would be significant
3 benefits, I think, to having a more careful review of
4 the company's status, particularly in light of the fact
5 that there has been a merger since the last general rate
6 case. So those kinds of things I don't think have
7 really been fully explored yet, and I don't think that
8 -- we actually can't necessarily imagine all issues that
9 might be identified by other participants, by business
10 customers, by low income customers, other folks who just
11 aren't here because, as you pointed out, this was an
12 access charge case.

13 MR. CARRATHERS: Your Honor, may we respond
14 to that briefly? Chuck Carrathers for Verizon. I think
15 we need to go back a little bit and see what we argued
16 in the case, what evidence was presented. As Ms. Smith
17 pointed out, we in our response to AT&T's complaint
18 brought up the rate rebalancing issue. We filed direct
19 testimony that supports the settlement, that shows what
20 our earnings are, shows what the rate design should be.
21 Indeed, we proposed a rate increase on residential
22 customers of more than \$4.50.

23 In response, AT&T said, well, you don't need
24 to do that, let me look at your earnings, let me attack
25 them. Staff did the same thing. They submitted

0244

1 voluminous, as you know, discovery on those issues.
2 Public Counsel filed nothing. Public Counsel asked no
3 questions. Public Counsel was content presumably to
4 rely on the efforts of AT&T and Staff.

5 Then what happened? What happened, Public
6 Counsel filed a motion to strike, and this Commission
7 struck the rate rebalancing testimony. However,
8 however, there are pending motions for clarification.
9 This, for example, the Commission did not strike Nancy
10 Heuring's testimony. The Commission did not strike --
11 which goes to our earnings issue. And there are pending
12 motions for clarification on our cost studies that show
13 the TSLRIC of basic service as well as the earnings
14 issue.

15 So from my perspective, Public Counsel in
16 essence let AT&T and Staff prove its case, and it did so
17 at its danger, and it should be prepared to address the
18 issues, since this was the time the hearing was
19 scheduled for, on our earnings and on -- because again,
20 that testimony was not stricken -- and on our cost
21 studies, again because that was a pending motion for
22 clarification. And, in fact, Verizon has every one of
23 those witnesses here today, and Public Counsel then
24 should be ready to cross-examine them, and he is more
25 than welcome to do so.

0245

1 JUDGE SCHAER: Mr. ffitch, did you have
2 anything further at this point?

3 MR. FFITCH: I do have some further
4 responses, and I will try to be brief. I think just to
5 quickly respond to the last statement, Verizon has had
6 the opportunity from the beginning to file a general
7 rate case at any time, and they still have the
8 opportunity to file a general rate case to engage in the
9 rate rebalancing that they're suggesting is necessary.

10 Public Counsel has approached this case from
11 the beginning as it was noticed in the initial complaint
12 as an access charge case. And it is correct that we
13 have believed that the issues would be in general
14 adequately addressed by the other parties on the access
15 charge issues, that there was a pretty good
16 representation of issues. But we have -- our posture in
17 this case has been to view this as an access charge case
18 and not as a general rate case, and we have taken that
19 position all the way along, and that's reflected in our
20 most recent motions.

21 I think that Mr. Carrathers' suggestion that
22 notwithstanding the Commission's narrowing of or
23 clarification of the scope of this hearing this week
24 that we're somehow or any other interested party
25 supposed to be in a position today to conduct

0246

1 essentially a full blown general rate case examination
2 on the time schedule of a small claims court I think is
3 just further illustration of the notice problems and the
4 adequacy of the procedure here that's being suggested
5 for this kind of significant rate increase.

6 So those are kind of immediate reactions to
7 Mr. Carrathers' statement. Let me just kind of walk
8 through here and see if I had any other points that I
9 wanted to raise.

10 With regard to the GTE-Bell Atlantic
11 settlement, I will just note that there was -- that that
12 settled three dockets. There was actually an ongoing
13 earnings review underway at that time, although it had
14 not been initiated into formal adjudicated proceedings.
15 And while I haven't had a chance to go back and look at
16 those pleadings, certainly the breadth of the pleadings
17 in the dockets before the Commission at that time,
18 including the issues raised by a merger case, I think
19 did a far better job of accomplishing notice to affected
20 persons of the types of issues that would be before the
21 Commission in the settlement. And it was a, as I
22 recall, an uncontested settlement in which we
23 participated.

24 We disagree with the reading of the filing
25 requirements rule, which says that there are only two

0247

1 classes, that the revenue reductions experienced by the
2 interexchange, or excuse me, the rate reductions
3 experienced by the interexchange carriers are to be
4 offset against the rate increases experienced by other
5 customer classes to determine if they have a 3% increase
6 or not, we disagree with that reading of the rule.

7 I guess I will note -- I will just note that
8 one of the problems here I think, and that's been
9 alluded to, is that we have no tariff filing by the
10 company. Some of the procedural, follow-up procedural
11 suggestions that have been made I think are kind of
12 murky at best as to how they might work. Ordinarily the
13 company files a proposed tariff, and then there's notice
14 to customers of that proposal. And I'm still not clear
15 in my own mind what the parties are proposing in their
16 settlement here. There's a 30 day notice proposed to
17 customers, but it appears to be before action by the
18 Commission.

19 So one question I have is, is there a
20 proposal that a tariff be filed prior to any Commission
21 order or any compliance tariff requirement that -- is
22 there to be a tariff filed by Verizon incorporating the
23 provisions of this settlement and then 30 days notice
24 given to customers, or is there just 30 days notice of
25 the proposed settlement followed by an order followed by

0248

1 a compliance tariff. It's unclear to me what the
2 proposal is. I'm not sure any of those, in fact,
3 sitting here today, I would have to say I don't think
4 any of those satisfy our concerns, but certainly rather
5 unclear about what the proposal is.

6 You know, I mentioned tariff, because that's
7 sort of the basic notice that customers get of what the
8 company is planning to do in terms of a proposed rate,
9 and we don't have that here yet. We don't have a
10 proposed tariff filing. So that's I think just a
11 feature or facet of the absence of notice that we have
12 here.

13 I think there's already been discussion of
14 the fact that the only hearing that is proposed in the
15 settlement is a public comment hearing, not a hearing
16 for expert witnesses or counsel or other parties to
17 participate, but simply a public comment hearing for the
18 general public to come in and comment on something. I'm
19 not sure what they would be commenting on. Perhaps it's
20 just the proposed settlement. But we hear the parties
21 arguing strenuously that that will suffice, that is all
22 that is required, and that that is not even required.
23 So we have the troubling scenario frankly of the parties
24 suggesting that this hearing today and nothing more is
25 required for imposition of a rate increase of this size

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1 on Verizon's customers.

2 I was going to comment that there were a
3 couple of other issues that weren't being discussed.
4 There was I think a pretty good discussion of the
5 general tariff filing requirements and the sort of the
6 3% rule, if you will. We're also I think concerned or
7 we also base our position on the ruling in the Fifth
8 Supplemental Order, which narrowed the scope of this
9 hearing today. So regardless of the other issues, the
10 fact that this Commission very recently said that this
11 hearing this week was going to be about the access
12 charge complaint we think precludes having the hearing
13 turned into a hearing on a general rate increase for
14 Verizon.

15 In addition to that, a second argument that
16 hadn't really been discussed at this point was the lack
17 of notice. And this is perhaps a lawyer's argument, but
18 I think an important and significant one. Given the
19 Commission's ruling in the Fifth Supplemental Order,
20 there has been no notice that there will be a hearing
21 today on the issue of a general rate increase for
22 Verizon in our view based upon the record in this
23 proceeding and the Commission's orders.

24 CHAIRWOMAN SHOWALTER: I have a question for
25 you. You seem to have no objection to the settlement as

0250

1 to access charges only. So if the reduction in access
2 charges were accepted and imposed and Verizon filed a
3 deferral petition or something that would preserve its
4 option, let's say they filed a new general rate
5 increase, a general rate increase case, which would
6 preserve as the date they filed a potential of getting
7 increases as of the date of deferral. In other words,
8 what I'm really suggesting here is supposing this
9 settlement is broken up into two pieces, the access
10 charge piece, which would go into effect because it's
11 agreed upon, but then the other side of the equation is
12 not agreed upon, so then there's a general rate case
13 kicking along. Is that what you would regard as a
14 desirable outcome? And I think it gets back to you, of
15 course, are going to be bearing in mind kind of where
16 the parties came out on this informally in their
17 settlement, where the settling parties came out on it.

18 MR. FFITCH: Yes, I think that is what we
19 would recommend and what we would have in mind, although
20 with a caveat. We would want to review any petition for
21 deferral, and I don't want to make a final commitment on
22 behalf of Public Counsel right now on a deferral
23 petition, but in general I agree with you. You are
24 correct, we don't oppose a settlement of the access
25 charge issue here. We wouldn't object to the settlement

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1 that has been arrived at today. Mr. Blackmon has on the
2 record satisfied a concern that I had, I just need to
3 have clarified about whether there was a contribution to
4 the cost of the local loop, which I think is a
5 requirement of this Commission in telecom pricing of
6 services. And so we wouldn't be objecting to the access
7 charge piece of this settlement, and we would recommend
8 and hope that the next step would, if Verizon believes
9 that it needs rate relief as a result of the access
10 charge reductions, that we then move on to make that
11 analysis. That its customers would receive advance
12 notice that the company is going to be proposing a
13 significant rate increase for them, and that we could
14 then proceed to examine at the normal course, and that
15 we could have an opportunity for all other interested
16 parties to come in and participate in that review and
17 make their recommendations to the Commission.

18 CHAIRWOMAN SHOWALTER: But in that scenario,
19 if that were what happened, wouldn't you expect rather
20 promptly in that case Staff and Verizon to come in with
21 a proposed settlement? I'm not trying to bind them, and
22 this is all hypothetical, but wouldn't we just get to
23 the point that we're close to today anyway? Okay,
24 here's the general rate case, here's the proposed
25 settlement, and presumably you would not be agreeing to

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1 that settlement, or maybe you would because it had more
2 process, I don't know, but.

3 MR. FFITCH: Well, it's not just process,
4 it's substance. We have not conducted a general rate
5 case in this access charge proceeding. We have not
6 retained expert witnesses. Other parties have not
7 participated and retained their experts. We have not
8 conducted an analysis of the company's books. And
9 notwithstanding the statements of the other parties, I
10 don't think we have had the scope of discovery and
11 examination of the issues for this company that has been
12 out for so long and has gone through a merger. I don't
13 think we have had that level of analysis in this
14 proceeding.

15 So it's true that the company could file a
16 GRC, Staff could stand pat and say we already know the
17 answer, and that could happen. Other parties would not
18 be standing pat. Other parties would be conducting
19 discovery, filing testimony, and the Staff may well take
20 a look at the discovery that other folks are doing and
21 think, you know, because I assume they wouldn't, you
22 know, if this settlement is not approved, they wouldn't
23 go in and say we're still bound, they would want to keep
24 their options open, and they might take a fresh look and
25 learn some things that they hadn't learned before and be

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1 persuaded that there perhaps is a different way to skin
2 the cat as to which services, if any, were best for rate
3 increases, how is the balance between res and bus best
4 established, all kinds of issues like that.

5 And so I just can't -- I can't predict, but
6 it may well, you know, it may well be that Staff itself
7 would avail itself of the opportunity to modify its
8 recommendations.

9 CHAIRWOMAN SHOWALTER: Okay, we need to take
10 a break because of a conference call, so we will be
11 recessed until 11:30.

12 COMMISSIONER HEMSTAD: Is it the intent of --
13 are we off the record.

14 JUDGE SCHAER: We're off the record.

15 (Discussion off the record.)

16 JUDGE SCHAER: While we were off the record,
17 there was a brief discussion of whether witnesses could
18 be excused from the remainder of today's hearing, and
19 the Commission has determined that the remainder of the
20 hearing will be regarding legal process issues and that
21 witnesses who are here may be excused.

22 Thank you for your testimony, and we're off
23 the record.

24 (Recess taken.)

25 JUDGE SCHAER: Let's be back on the record

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1 after our morning recess, and at this point,
2 Commissioner Hemstad has some remaining questions.

3 COMMISSIONER HEMSTAD: This is addressed to
4 the company. I'm curious, a bit puzzled, your testimony
5 is to the effect that you're not making or authorizing
6 your return, the settlement actually reduces your
7 revenues by what, another \$8 Million. Are you prepared
8 to provide us an indication if the settlement is
9 accepted, would you plan to file a rate case after one
10 year?

11 MR. CARRATHERS: Thank you, Your Honor, are
12 we on the record? Charles Carrathers for Verizon.

13 JUDGE SCHAEER: Yes, we are back on the
14 record, Mr. Carrathers.

15 MR. CARRATHERS: What the company will do at
16 the end of the one year stay out provision obviously is
17 not fully determined yet. You are right in that our
18 direct testimony that we explained our earning
19 situation. And like any other settlement, AT&T and
20 Staff had very different opinions based on a number of
21 adjustments, and so we, you know, compromised on that
22 issue and agreed to the rates set forth in the
23 settlement. And we do have a one year stay out
24 provision, so the company is prepared to, you know, do
25 which it agreed to do. And what happens at the end of

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1 that one year period, I can't say at this time. We may
2 very well file a rate case, but I can not commit one way
3 or the other now.

4 COMMISSIONER HEMSTAD: Well, as much musing
5 as anything, what if the Commission were to condition
6 the settlement on your filing such a case?

7 MR. CARRATHERS: Well, the settlement
8 explains that if the Commission does not accept it in
9 whole that any party can withdraw its consent, which
10 comes back to a hypothetical raised before the break
11 about, well, approving access reductions and going
12 forward with a general rate case, well, Verizon would
13 withdraw its support of a settlement, and we're back to
14 where we started.

15 COMMISSIONER HEMSTAD: I understand, but I'm
16 not requiring you to answer that question, but, of
17 course, you don't have to, but what if such a condition
18 were imposed?

19 MR. CARRATHERS: I'm sorry, let me be very --
20 condition imposed on what, if the Commission said --

21 COMMISSIONER HEMSTAD: We'll accept the
22 settlement on the condition that you file a rate case at
23 the end of the stay out period.

24 MR. CARRATHERS: I can not answer that
25 question at this time.

0256

1 COMMISSIONER HEMSTAD: All right.

2 Mr. ffitch, would that mollify you at all?

3 MR. FFITCH: I'm afraid not, Your Honor,
4 because Verizon customers would be paying that, the rate
5 increase, for the intervening year. As I understand
6 your hypothetical, the rates would go into effect
7 immediately, and the customers would -- in fact, it may
8 turn out that if that condition were imposed it wouldn't
9 be necessarily any different than what might happen
10 anyway. If the Commission were to accept the settlement
11 as is, Verizon might very well file a rate case in a
12 year and a day in any event. So from the customers'
13 point of view.

14 COMMISSIONER HEMSTAD: But you are arguing
15 that it's been a long time since there has been a full
16 blown review of the company's books. That would be
17 available in a general rate case. But even the company
18 itself was suggesting the solution where residential
19 rates would go up substantially more.

20 MR. FFITCH: Right. But I guess our point
21 and our concern and our position is that the rates
22 shouldn't go up before the rate case, and your
23 hypothetical has that occur, and that's our problem. We
24 would be happy to get to the rate case now if the
25 company feels like it needs rates. And that really is

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1 kind of a fundamental issue for us. Verizon feels like
2 it needs rate relief, let's get to it, let's have a
3 look, let's have them come in, let's have them go to
4 their customers and the public and say, okay, we need
5 rate relief, and we're going to open up our books, and
6 let's have a rate case. And, you know, they need to
7 make that decision, and I'm not sure if they would or
8 not. We don't know. You know, they're saying today
9 they're, you know, they would need the rate relief, but.

10 CHAIRWOMAN SHOWALTER: But if they -- I mean
11 I guess we never know exactly what a company would do,
12 but if there is, in fact, agreement on a very
13 significant reduction in access charges and that's as
14 far as things go, it would be the most likely event that
15 Verizon, as they stated they would, would come in and
16 ask for a general rate increase, at which point they
17 would be asking for more than they're settling for now,
18 they would be asking for rates that are greater than the
19 settlement is now, at least for residential customers.

20 MR. FFITCH: And they would have the burden
21 of proof that --

22 CHAIRWOMAN SHOWALTER: And they would have
23 the burden of proof.

24 MR. FFITCH: -- that they would need that
25 level of a rate increase in order to make a reasonable

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1 rate of return.

2 CHAIRWOMAN SHOWALTER: I don't want to
3 inquire into the process of the settlement too far, but
4 I do, if it's appropriate and tell me if it's not, I
5 would like to know how familiar you are with I guess the
6 basis for the settlement or the thinking behind the
7 settlement or the information that all the parties had
8 when they settled. It would seem that the more privy
9 you are to that information, the more informed your
10 decision is about this settlement and its reasonableness
11 aside from the legal and due process questions. And I
12 know you yourself were not the attorney here. I suppose
13 what I'm wondering is, is there benefit to your taking a
14 closer look at what is behind this settlement in terms
15 of maybe satisfying yourself?

16 MR. FFITCH: Well, Your Honor, with respect,
17 that's not exactly the issue about whether our office by
18 itself is comfortable with the substance of this
19 settlement. We just feel very strongly for policy and
20 legal reasons that it's not appropriate to transform
21 this access charge complaint case into what amounts to a
22 general rate case with a very significant impact on the
23 customers with the small group of parties that we have
24 here. And we have consistently from the beginning
25 indicated to the other parties that we did not believe

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1 it was appropriate to address general rate issues or to
2 settle them here.

3 We have been kept advised of discussions. I
4 can -- I would probably need to confer with Mr. Cromwell
5 to get more detail about the substance of the meetings
6 that he attended. I know we have attended some of the
7 meetings, but we certainly because of our position were
8 not at the table negotiating the size of the residential
9 rate increase. So our concerns are with the process,
10 and we're not, because of the failings in the process,
11 we're not convinced that this is the best outcome that
12 we can have.

13 MR. KOPTA: I need to interject something at
14 this point and provide a little bit of history and a
15 little bit of perspective, at least from AT&T's
16 perspective.

17 We filed our complaint almost a year ago, and
18 in its answer to our complaint Verizon said, we don't
19 think an access charge reduction is appropriate, and
20 even if it were, we would want to rebalance it with
21 increase in other rates. The company has consistently
22 maintained that position.

23 Public Counsel did not initially participate
24 in this proceeding, perhaps because they considered it
25 simply an access charge complaint. However, at the

0260

1 pre-hearing conference that was conducted after the
2 Commission denied Verizon's motion to dismiss, Public
3 Counsel appeared. At that pre-hearing conference, the
4 parties discussed a schedule. The suggestion was at
5 that time from Judge Schaer we should try and schedule
6 something with hearings in December. This was, I
7 believe, in August. That was something that AT&T was
8 prepared to do. Verizon on the other hand said, no, we
9 need to present additional evidence including cost
10 studies that support our position that we are not
11 overearning and, in fact, are underearning, and that we
12 are entitled to offset any reductions in access charges
13 with increases in other rates. The parties with that
14 understanding developed a schedule, the current schedule
15 that we're in today, with Public Counsel's
16 participation. If Public Counsel believed that it was
17 inappropriate in the context of this proceeding to deal
18 with any increases in other rates as an offset to a
19 reduction in access charges, we believe it was incumbent
20 on them to raise it at that time. They didn't.

21 AT&T and Staff filed opening testimony,
22 Public Counsel filed nothing. In December Verizon filed
23 its testimony, December 3rd. It included cost studies
24 and rate earnings information and testimony saying
25 exactly what Verizon had been saying all along, if there

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1 is any reduction in access charges, then we are entitled
2 to an increase in other rates, and they specified
3 residential service rates. Again, if Public Counsel
4 believed that that was inappropriate, they should have
5 moved to strike that testimony then and there. They
6 didn't.

7 The parties conducted settlement discussions
8 shortly after that testimony was filed in which the
9 discussion of let's lower access but raise some other
10 rates was discussed. Public Counsel was there. There
11 was an agreement that additional procedures would go on
12 in terms of settlement, and proposals from different
13 parties were circulated to all the other parties,
14 including Public Counsel. Nothing came of those
15 discussions.

16 We then filed our rebuttal testimony, AT&T
17 filed its rebuttal testimony on January 31st, which was
18 what the schedule contemplated that all parties should
19 file. Staff requested a continuance of a week to file
20 their testimony because one of their witnesses had some
21 personal problems in terms of getting the testimony
22 done, and that was granted. But again, Public Counsel
23 did not conduct any discovery on Verizon's testimony and
24 did not file its own testimony. Instead, after the date
25 on which the testimony would have been due, it filed its

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1 motion to request that any testimony on rate rebalancing
2 be stricken from the record.

3 AT&T's concern all along has been to try and
4 get our issues resolved as expeditiously as possible.
5 Now having settled with the other -- with Commission
6 Staff and with Verizon, now Public Counsel comes in and
7 says, no, no, no, no, you can't do that in the context
8 of this proceeding even though those issues have been a
9 part of this proceeding all along. I don't think that
10 Public Counsel at a minimum can claim that it lacked
11 notice that these were issues on the table in this
12 proceeding at least since August of last year. Now
13 maybe at least in terms of legal standing, I'm not sure
14 that they have a standing to raise anybody else's -- the
15 possibility that someone else may not have had due
16 notice, but Public Counsel certainly did. I don't think
17 there's any question that they did. And by sitting back
18 and waiting until right before the hearings to ask that
19 somehow this shouldn't be part of a proceeding and then
20 to oppose a settlement because it includes some of those
21 issues I don't think is something that this Commission
22 should believe is appropriate.

23 I mean there may be additional proceedings
24 that go on, and that's what's contemplated in the
25 settlement, to allow customers affected, not counsel,

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1 but customers affected to come in and say what they have
2 to say. Their counsel has had multiple opportunities to
3 say what they have had to say, to investigate the
4 evidence that they claim they haven't had time or the
5 opportunity or whatever to be able to do to investigate
6 these issues, also to have input in the process.

7 If they didn't believe that the rate
8 increases that we were talking about here and were part
9 of the settlement agreement were appropriate, they said
10 nothing in terms of any additional suggestions. So I
11 just don't think that at this point in the process it's
12 appropriate to throw a monkey wrench into the gears that
13 we all tried to work together to bring something to this
14 Commission that we think is in the public interest. And
15 to derail that now and ask that we have additional
16 proceedings in the form of a rate case, because I know
17 right now that if this Commission says, gee, we're okay
18 with the access reductions but we're not going to do
19 anything about the increases, Verizon is going to say,
20 heck, no, we're not going to go for that. And we're
21 going to be back to having hearings on our complaint.

22 And the possibility is that even if the
23 Commission finds that access charges are appropriate,
24 Verizon is going to come back and say, well, now we need
25 to talk about offsetting increases. And whether that's

0264

1 part of this proceeding or part of a rate case, we're
2 talking about not getting anything done for at least a
3 year, maybe two. And here we have a settlement where
4 the three parties have agreed to come up with something
5 that seems to be appropriate, and I think that it's too
6 late in the game for Public Counsel to come in and say,
7 wait a minute, I didn't know this was going to happen,
8 this is all news to me, we've got to have some more
9 process.

10 COMMISSIONER OSHIE: Mr. Kopta, do your
11 arguments apply to the business class as well as
12 residential?

13 MR. KOPTA: Yes, they do, because the rate
14 increases are that as I understand it have to do with
15 small business rates as opposed to the larger customers.
16 Perhaps Staff can correct me if I'm wrong, but the
17 Centrex and the PBX rates stay the same, and those are
18 your larger business customers. So my understanding is
19 that Public Counsel's constituency is residential and
20 small business, and that's who we're talking about here.

21 MS. SMITH: I agree.

22 MR. FFITCH: If I may just respond briefly, I
23 think perhaps Mr. Kopta has misunderstood my answer to
24 the Bench's question. We're not saying this is the
25 first we have heard of this. And, in fact, I believe

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1 what I said was we have communicated to the other
2 parties throughout that we don't believe that rate
3 rebalancing is appropriate in this case.

4 Now procedurally were there times, and
5 Mr. Kopta is suggesting motions should have been made or
6 other formal communication of that occur, I'm not sure.
7 And, you know, it even occurs to me maybe that,
8 Mr. Cromwell is on the line, he was obviously present
9 for most of these proceedings and can address this more
10 clearly, and, you know, if we need a recess so he and I
11 can talk about a response to your question, that maybe
12 he can tell me if that would be useful or if he just
13 wants to chime in.

14 But we're not saying we didn't know this was
15 happening and coming in at the last minute. That's not
16 what I'm saying. That's not the gist of our memorandum.
17 We're saying it shouldn't happen this way and that we --
18 that it's not fair or appropriate for these parties to
19 transform this into a general rate case and then
20 essentially require folks to, you know, to go down that
21 road. That's not how general rate cases and general
22 rate increases are brought forward. And our concerns
23 are just, you know, they're laid out in our memorandum.

24 CHAIRWOMAN SHOWALTER: Mr. Cromwell, you will
25 have a chance to talk to Mr. ffitch over the lunch hour,

0266

1 because I think what we anticipate doing is at least
2 coming back briefly after the lunch hour in case people
3 have thought of different ideas, but do you want to say
4 anything right now?

5 MR. CROMWELL: Your Honor, Robert Cromwell
6 for the record on the bridge line. I guess I'm willing
7 to address any questions you have. I'm not sure that
8 what Mr. Kopta raised is directly relevant to the matter
9 before you. I certainly don't contest that we are aware
10 and have been since Verizon filed its motion to dismiss
11 and answer last summer that the Commission ruled on that
12 their desire if access charges were reduced would be to
13 rebalance rates. I mean similarly I can not recall
14 whether it was on the record or off that I certainly
15 made our position clear at the pre-hearing conference
16 last summer. In fact, I made the suggestion, and I'm
17 pretty sure it was off the record during a general
18 scheduling discussion in the embryonic stage that one
19 solution would be to resolve access charges and bring a
20 rate case later, and the reaction was incredulous
21 laughter.

22 I won't address the contents of the
23 settlement discussion as far as statements or positions
24 of other parties, but in the telephonic --

25 JUDGE SCHAEER: Mr. Cromwell, you're going to

0267

1 need to speak up a little bit, please.

2 MR. CROMWELL: Okay, is this better?

3 CHAIRWOMAN SHOWALTER: Not really.

4 MR. FFITCH: It may just be the medication.

5 MR. CROMWELL: I made it clear --

6 JUDGE SCHAEER: Much better.

7 MR. CROMWELL: I made it clear at any time
8 asked what our office's position is regarding rate
9 rebalancing, and the motion that the Commission ruled on
10 in its Fifth Supplemental Order addressed that. I
11 believe that as a legal matter at this point, the
12 Commission's position regarding that issue is on the
13 record in that order. Clearly there are pending motions
14 for clarification of the positions that might address
15 that, but the Commission to this point has not changed
16 its position.

17 Did you have any other questions?

18 CHAIRWOMAN SHOWALTER: No.

19 MS. SMITH: If I may make a couple of points.
20 I don't know if you want to hear those before we're
21 breaking for lunch, but I would like to address Public
22 Counsel's concern about the process. Public Counsel in
23 its opposition to the settlement, in its motions to
24 strike, has called the parties' proposal for process in
25 this case a sham, and that is not at all accurate. We

0268

1 have proposed a settlement for the Commission's
2 consideration. The settlement is to decrease certain
3 rates and increase certain rates. Following this
4 presentation of this proposed settlement today, the
5 Commission will have 30 days after giving customer
6 notice of this to hear what else comes up, to hear if
7 anybody else objects to this, to listen to the public
8 and then make its decision. So the process that we have
9 proposed is fair, and it's not a sham, and there are
10 some possible outcomes, or there's some contingencies
11 within that 30 days.

12 For example, Public Counsel, not being a
13 party to the settlement, can if this -- if this
14 Commission were to approve the settlement, Public
15 Counsel could bring a complaint against Verizon's rates,
16 and Public Counsel could allege that the rate that the
17 Commission approved isn't fair. Public Counsel has
18 options other than just to throw this settlement out the
19 window. And the process that we have proposed is fair,
20 and the process that we have proposed is one that is a
21 matter of public notice, and we believe that it's not a
22 sham and that the Commission should approve the
23 settlement.

24 MR. CARRATHERS: And, Your Honor, Charles
25 Carrathers for Verizon, very briefly following up on

0269

1 Ms. Smith's comment. Public Counsel, one of its
2 principal claims is that, gee, Verizon hasn't had a
3 general rate case, we don't know what their earnings
4 are. I will point out that Public Counsel was a party
5 to the settlement in the GTE-Bell Atlantic merger where
6 Verizon's rates were found to be just, reasonable, and
7 sufficient. And under this settlement, as it's pointed
8 out, our revenues are not increasing, they're
9 decreasing. So I think what it really boils down to is
10 this, if Public Counsel believes that we are earning too
11 much, it can and has always had the ability to file a
12 complaint, as Ms. Smith suggested. To date, it has not
13 done so.

14 CHAIRWOMAN SHOWALTER: Would you remind me
15 when we approved the merger settlement, what month and
16 year?

17 MR. CARRATHERS: Approved in December 1999,
18 and that required rate changes to be phased in over a
19 couple of year period, and that's why in the settlement
20 there was a stay out provision until July 1st, 2000, I'm
21 getting my years confused, 2002.

22 JUDGE SCHAEER: Commissioners, do you have any
23 other questions?

24 Anything further, Mr. ffitch?

25 MR. FFITCH: Nothing, Your Honor.

0270

1 CHAIRWOMAN SHOWALTER: Well, a question,
2 we're closing in on the lunch hour, and I guess the
3 question I would ask the parties is this. Should we all
4 go away, we'll take everything under advisement, or
5 would there be a benefit to getting back together at
6 least at 1:30 in case there are additional things people
7 want to say, additional ideas people have, or is that
8 worthwhile?

9 MR. CARRATHERS: We have said it all.

10 MR. KOPTA: From the point of view of AT&T, I
11 think we have said what we feel like we need to say, and
12 if the Commissioners have additional questions, we
13 certainly would return, but I wouldn't anticipate
14 anything more from the parties.

15 MS. SMITH: That's Staff's position as well.

16 MR. CARRATHERS: That's Verizon's position as
17 well.

18 CHAIRWOMAN SHOWALTER: How about you,
19 Mr. ffitch?

20 MR. FFITCH: That is also Public Counsel's
21 position.

22 MR. CARRATHERS: We agree.

23 MS. ENDEJAN: We agree on something.

24 CHAIRWOMAN SHOWALTER: Does anyone have a
25 desire to add more in writing to the motions of --

0271

1 Mr. ffitch has put his in writing, Verizon has responded
2 in writing, is there any more process on that?

3 MS. SMITH: Not from the Commission Staff
4 perspective. However, if another party wants to raise
5 something, we would like the opportunity to respond.

6 MR. FFITCH: The only thing that occurs to
7 me, Your Honor, is if the Bench were to call for more
8 briefing on the point, we would be happy to assist in
9 that, but we're not requesting further briefing.

10 MS. SMITH: And one further point before we
11 go off the record, I think I could speak for all counsel
12 and move the admission of all of the exhibits that are
13 attached and the exhibit list to the settlement
14 stipulation, move those into the record.

15 MR. FFITCH: Your Honor, we would object to
16 the admission of the exhibits or portions of the
17 exhibits that were previously stricken pursuant to the
18 Fifth Supplemental Order and the other exhibits that we
19 have moved against in our pleading that was filed today
20 and any related evidence in the exhibits that goes to
21 the issue of rate increases.

22 JUDGE SCHAEER: Okay, at this point, we will
23 identify the exhibits as being those exhibits identified
24 by the attachment to Exhibit for identification 300,
25 which is the settlement agreement, and the Commission

0272

1 will take their information under advisement at this
2 point.

3 CHAIRWOMAN SHOWALTER: Another question. We
4 have in front of us a proposed settlement. We also have
5 pending various petitions for clarification and
6 reconsideration, et cetera. Does anybody have any
7 opinion as to whether the proposal for the settlement
8 agreement ought to preempt for the time being until we
9 decide on those questions our issuing an order on all of
10 those other motions?

11 MS. SMITH: Yes, Chairwoman Showalter, it's
12 Commission Staff's position that that does -- that the
13 pending settlement stipulation does preempt any need for
14 that procedural order. However, if the Commission were
15 to reject the settlement and we were going to have to go
16 forward, I think we would appreciate some rulings on
17 those pending motions.

18 JUDGE SCHAER: Do all parties agree?

19 MR. CARRATHERS: Verizon grease.

20 MR. KOPTA: AT&T agrees.

21 MS. SINGER NELSON: WorldCom agrees.

22 JUDGE SCHAER: Mr. ffitch.

23 MR. FFITCH: Well, Your Honor, I think with
24 the understanding that where that leaves us is that the
25 Fifth Supplemental Order is the law of the case at this

0273

1 point, we would also agree.

2 JUDGE SCHAER: Okay. Is there anything else
3 to come before the Commission today?

4 Thank you all for your arguments and the
5 testimony of your witnesses, and this proceeding is
6 adjourned.

7 (Hearing adjourned at 12:00 p.m.)

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