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1                   BEFORE THE WASHINGTON UTILITIES AND  
2                   TRANSPORTATION COMMISSION

3       In the Matter of the Petition    )  
4       for Arbitration of an            )  
5       Interconnection Agreement        )  
6       Between:                            )  
7       LEVEL 3 COMMUNICATIONS, LLC,     )  
  and                                    )Docket No. UT 023043  
8       CENTURYTEL of WASHINGTON, INC.,)Volume I  
9       Pursuant to 47 USC, Section 252)Pages 1-27

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10                   A prehearing conference in the above matter was  
11                   held on September 24, 2002, at 10:30 a.m., at 1300 South  
12                   Evergreen Park Drive Southwest, Room 206, Olympia,  
13                   Washington, before Administrative Law Judge DENNIS MOSS.

14                   The parties were present as follows:

15                   CENTURYTEL CORPORATION, by CALVIN SIMSHAW,  
16                   Attorney at Law, 805 Broadway, Vancouver,  
17                   Washington, 98660, Telephone (360) 905-5958, Fax  
18                   (360) 905-5953, E-mail,  
19                   calvin.simshaw@centurytel.com.

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24                   Deborah L. Cook

25                   Court Reporter

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1                   WASHINGTON INDEPENDENT TELEPHONE  
2       ASSOCIATION, by RICHARD FINNIGAN, Attorney at Law,  
3       2405 Evergreen Park Drive, Southwest, Suite B-1,  
4       Olympia, Washington 98501, Telephone,  
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8  
9                   LEVEL 3 COMMUNICATIONS, LLC, by ROGELIO E.  
10      PENA, Attorney at Law, Pena & Associates, 1919 14th  
11      Street, Suite 330, Boulder, Colorado 80302,  
12      Telephone, (303) 415-0409, Fax, (303) 415-0433,  
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1 PROCEEDINGS

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3 JUDGE MOSS: Let's go on the record. This  
4 will be a separate transcript volume. So this being  
5 our first session, I would like to have the full  
6 appearance, name, affiliation, who you represent,  
7 the address, e-mail, the phone and the fax. And we  
8 will start with you, Mr. Pena.

9 MR. PENA: Thank you, Your Honor. Rogelio  
10 Pena, Pena & Associates, LLC. I am appearing on  
11 behalf of Level 3 Communications, the plaintiff in  
12 this proceeding. My address is 1919 14th Street,  
13 Suite 330, Boulder, Colorado 80302. My telephone  
14 number is (303) 415-0409. My fax number is  
15 (303) 415-0433. And my e-mail address is  
16 r-e-p-e-n-a at boulder attorneys,  
17 b-o-u-l-d-e-r-a-t-t-y-s, dot com.

18 JUDGE MOSS: Thank you. Mr. "Simshaw,"  
19 isn't it?

20 MR. SIMSHAW: Yes, thank you. It's Calvin  
21 Simshaw, S-i-m-s-h-a-w. I am an in-house corporate  
22 counsel for CenturyTel today representing CenturyTel  
23 of Washington, Inc. They responded in this matter.  
24 My address is 805 Broadway. That's in Vancouver,  
25 Washington 98660. My voice line is area code

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1 (360) 905-5958. Fax line is area code

2 (360) 905-5953. E-mail address is Calvin dot

3 Simshaw at CenturyTel, one word, dot com.

4 JUDGE MOSS: CenturyTel, as the corporate  
5 name, is one word, isn't it?

6 MR. SIMSHAW: Yes.

7 JUDGE MOSS: Mr. Finnigan?

8 MR. FINNIGAN: Richard Finnigan appearing  
9 on behalf of the Washington Independent Telephone  
10 Association, 2405 Evergreen Park Drive, Southwest,  
11 Suite B-1, Olympia, Washington 98501 -- excuse me,  
12 502. My voice line is (360) 956-7001. Fax is  
13 (360) 753-6862, and e-mail is rickfinn,  
14 r-i-c-k-f-i-n-n, at ywave, y-w-a-v-e, dot com.

15 JUDGE MOSS: That's a new one to me. All  
16 right.

17 Why don't we first take up the Washington  
18 Independent Telephone Association's petition to  
19 intervene.

20 Mr. Finnigan, I have read your petition,  
21 which appears to be rather thorough. I will give  
22 you the opportunity, however, if there's anything  
23 you wish to add. There's no need to summarize or  
24 repeat what is in there. I have read it -- I should  
25 ask first, I assume everyone has received a copy of

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1 the petition?

2 MR. PENA: Yes, Level 3 has.

3 MR. SIMSHAW: Yes.

4 JUDGE MOSS: If you have anything to add, I  
5 would give you the opportunity to do so now.

6 MR. FINNIGAN: The only thing I would add  
7 is it does appear the NXX issues, virtual NXX issues  
8 seem to be sort of the critical linchpin issue in  
9 this arbitration. So it does appear to be a very  
10 important issue.

11 JUDGE MOSS: Thank you very much. Does  
12 anyone else want to be heard on the petition?

13 MR. SIMSHAW: Yes, Your Honor. From  
14 CenturyTel's perspective, I would point out, given  
15 the nature of virtual NXX traffic, and the traffic  
16 that Level 3 hopes to be able to exchange under this  
17 interchange agreement, it's entirely possible that  
18 to the extent that other companies have EAS calls to  
19 a CenturyTel exchange, that Level 3's association of  
20 a virtual NXX with a CenturyTel end office could  
21 result in WITA member independent traffic flowing to  
22 Level 3. And therefore, we would support the need  
23 to have the WITA representation within this docket.

24 JUDGE MOSS: And I am not sure if your  
25 microphone is on, because you are close enough. The

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1 button should be up. I can't always tell, but I  
2 couldn't hear the resonance of the system.

3 And should pause here before I ask if  
4 anything further needs to be heard on this. And  
5 check, yet again -- because I am informed that the  
6 conference bridge line is operational -- whether we  
7 have any party representatives on the teleconference  
8 bridge line who wish to enter an appearance.  
9 Apparently not. So that's fine.

10 Let's go to Mr. Pena. Did you want to be  
11 heard on this?

12 MR. PENA: Yes, Your Honor. Level 3 would  
13 like an opportunity to file a written response to  
14 WITA's motion, but I can tell you right now that  
15 Level 3 would object to their intervention.

16 The Commission, as pointed out in the WITA  
17 motion, typically does not allow intervention in  
18 arbitration proceedings brought under the Federal  
19 act, and this is no different.

20 At the end of the day what the Commission  
21 is going to do is it's going to approve an  
22 interconnection agreement that is going to impact  
23 Level 3 and CenturyTel. And we want to keep the  
24 proceeding limited to Level 3 and CenturyTel simply  
25 because of the time constraints that the Commission

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1 has in dealing with these types of proceedings.

2 Regarding Mr. Simshaw's comments, the  
3 agreement has transit traffic provisions. And as a  
4 matter of fact, I know that's one of the issues  
5 brought up in the Level 3 arbitration. Off the top  
6 of my head I don't know if that's been resolved or  
7 not. I know we're working with CenturyTel to get as  
8 many issues off the table as possible.

9 And Level 3 definitely wants a transit  
10 traffic provision in the agreement, and we are not  
11 seeking interconnection with any other independent  
12 telephone company. And if at some point, through  
13 our interconnection with CenturyTel, it's to the  
14 point where Level 3 is receiving significant traffic  
15 pursuant to those EAS arrangements, then, of course,  
16 Level 3 will seek interconnection with those  
17 carriers at that time.

18 JUDGE MOSS: I don't think we need to have  
19 extended argument at this time. If you want to file  
20 a written response, I will give you the opportunity  
21 to do that in short time, and I will carry the  
22 petitions for now.

23 Mr. Finnigan, and I am also mindful of the  
24 fact that going on in parallel, in a sense, is this  
25 question concerning the Commission initiating some

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1 other form of proceeding to take up this issue, and  
2 I have seen some documents on that.

3 So I think it probably would be prudent to  
4 give Level 3 the opportunity to file a written  
5 response here in short order, and we will have that  
6 as well as the Commission's opportunity to consider  
7 the filings that have been made on this other track.  
8 And then we will make a ruling, and inform you of  
9 that quickly.

10 What sort of time, Mr. Pena? I would think  
11 something fairly quick.

12 MR. PENA: Your Honor, if we could have --  
13 I am looking at sometime next week.

14 JUDGE MOSS: Let's say next Monday, the  
15 30th.

16 MR. PENA: Would it be possible, Your  
17 Honor, to move it to the 1st, just because of other  
18 filings and obligations that I have?

19 JUDGE MOSS: All right. 10/1.

20 MR. PENA: Thank you.

21 MR. SIMSHAW: Your Honor, would CenturyTel  
22 also have the opportunity to comment upon the  
23 motion?

24 JUDGE MOSS: I don't think -- I don't see  
25 any reason. I think Mr. Finnigan did quite a



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1       thorough job on his motion, and we don't need to get  
2       everyone else involved unless you want to oppose it,  
3       which I don't understand to be your position.

4               MR. SIMSHAW:     No.

5               JUDGE MOSS:    So Mr. Finnigan, you probably  
6       wish to remain with us for the balance of the  
7       morning, which we are hoping will not be over long.

8               We need to talk a little bit about the  
9       status of the proceeding before we move onto  
10      establishing some sort of procedural schedule and  
11      track for proceeding in this matter.  I do have, of  
12      course, the petition by Level 3.  I have the  
13      response by CenturyTel.  I also asked for some  
14      preliminary briefs related to the subject of the  
15      rural exemption question, and the parties did  
16      provide those according to the schedule established.

17              It appears to me from the response that was  
18      filed that CenturyTel has, indeed, queued up what I  
19      would consider to be a threshold issue; that is to  
20      say, the question of whether the Commission has  
21      jurisdiction to even conduct this arbitration.

22              Considering the issues at hand, it strikes  
23      me that that is something that we would want to  
24      dispose of early in the proceeding, rather than  
25      later.  And I would like to give the parties an

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1 opportunity to thoroughly address that through  
2 written submissions. And I don't conceive of that  
3 as something that will impact on our procedural  
4 schedule. Otherwise, we will establish a schedule  
5 this morning and we will proceed as if there is  
6 jurisdiction on that track.

7 But in the meantime, I would like to queue  
8 up this issue, and I will hear from the parties.  
9 One thing that has occurred to me, however, is that  
10 we might take this much in the fashion that a court  
11 might certify a question to a court of ultimate  
12 authority. We might take this issue directly to the  
13 Commissioners. And, of course, I would want, then,  
14 thorough written submission, to present to them in  
15 that connection.

16 So being mindful that there will be other  
17 activities going on in this docket, what sort of  
18 time frame would the parties require to brief this  
19 jurisdiction question? Do we want to go off the  
20 record and discuss that?

21 MR. SIMSHAW: Sure.

22 JUDGE MOSS: We will be off the record.

23 (Discussion off the record.)

24 JUDGE MOSS: We're back on the record. We  
25 have discussed briefly off the record the subject

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1 matter of timing on briefs for the jurisdictional  
2 issue. And during the course of that discussion, I  
3 addressed Mr. Finnigan that WITA might wish to file  
4 something about -- in the nature of an Amicus brief  
5 on the threshold issue.

6 And as I understand your comment,  
7 Mr. Finnigan, WITA would have an interest in arguing  
8 the question on whether the rural exemption aspect  
9 of the Telecommunications Act of 1996 might be a  
10 jurisdictional issue. Whereas as I understand it  
11 the way the jurisdictional issue has been queued up  
12 between the principal parties to the arbitration,  
13 the question is simply one of whether the nature of  
14 the business that Level 3 wishes to conduct through  
15 an interconnection with CenturyTel is itself  
16 jurisdictional, because of its nature, I will say.

17 So those are, I think, separate issues.  
18 And, of course, I did, as I mentioned earlier, ask  
19 for briefs on the question of potential significance  
20 of the rural exemption matter. And my concern,  
21 frankly, in doing that was that it might have some  
22 implications in terms of jurisdiction. And we might  
23 want to talk about that.

24 I might want to hear from the parties a  
25 little bit about that. I am not sure if that issue

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1       has been queued up in Washington before in terms of  
2       these arbitration proceedings, but I will tell you  
3       that when I read Section 251 and 252 of the Act, as  
4       I was preparing for today, I became concerned that  
5       the 251-C and the entire process of negotiation, the  
6       possibility of mediation, and then the conduct of  
7       arbitration might be implicated by the rural  
8       exemption -- what is it, section F, 251-F.

9               And then, of course, if you get over into  
10       252 and you start reading about the procedures there  
11       for arbitration, a lot of that relates back to the  
12       concept of negotiation, which the rural exemption, I  
13       think, pretty clearly takes out the responsibility  
14       to negotiate in good faith. Under 251-C, if the  
15       rural exemption applies, I guess that sort of begs  
16       the question of whether it also kicks out the  
17       obligation to arbitrate -- or the Commission's  
18       obligation to arbitrate.

19               So I think it's probably an issue that  
20       needs to be addressed. I don't know if this has  
21       been addressed in other jurisdictions. Has it been  
22       addressed previously in this jurisdiction? I don't  
23       know. Mr. Finnigan?

24               MR. FINNIGAN: Yes, Your Honor. There is  
25       an arbitration decision in Washington on the issue.

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1     It was under one of the early arbitrations involving  
2     at that time GTE Northwest. They exerted the rural  
3     exemption as it applies to their ConTel Service  
4     area. The Commission did find that the rural  
5     exemption would preclude the Commission's authority  
6     to arbitrate, but that in that particular case, GTE  
7     Northwest had waived its right to assert the  
8     exemption in that particular case.

9             There is a similar decision in Oregon, and  
10    it's also involving GTE Northwest and its ConTel  
11    Service area, where the Commission in Oregon  
12    reached -- I don't remember the waiver part of it.  
13    But they did reach a conclusion that the rural  
14    exemption does preclude the Commission from hearing  
15    an arbitration.

16            So there are some other -- there are some  
17    states that have addressed the issue.

18            JUDGE MOSS: It has previously been  
19    addressed in this state as well as other states?

20            MR. PENA: Your Honor, just for  
21    clarification, I believe we were off the record when  
22    I mentioned that the parties had briefed the issue,  
23    the jurisdictional issue, in a similar proceeding in  
24    Texas.

25            And the issue presented in Texas was in

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1       essence, issue one, and in Level 3's petition for  
2       arbitration is ISP bound traffic subject to  
3       different interconnection requirements than local  
4       traffic under Federal law, such that it should be  
5       handled by separate agreements.

6               Now, I have not seen CenturyTel's brief  
7       that was filed in that proceeding, or the briefs  
8       that were just filed yesterday. I do know that  
9       Level 3 did thoroughly discuss 251, 252, and the  
10      obligations to negotiate, to mediate, to arbitrate.  
11      So I suspect that it wouldn't be that difficult for  
12      Level 3 to add a discussion on the rural exemption  
13      issue that you would like discussed. I think that  
14      could be done.

15             JUDGE MOSS: I think we should take up all  
16      the potentially significant jurisdictional  
17      questions, because jurisdiction is fundamental. If  
18      we don't have it, we don't have it. And if we do,  
19      we do. And that does color what we're going to do  
20      going forward.

21             So would you want a couple of extra days  
22      beyond what you initially contemplated in order to  
23      add this issue that apparently was not briefed in  
24      the Texas proceeding?

25             MR. PENA: Would that be possible to --

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1       instead of filing the briefs on the 2nd, to file  
2       them on the 7th, the following Monday?

3               JUDGE MOSS:   That would give you another  
4       weekend to work.

5               MR. PENA:    Would that be okay with you?

6               JUDGE MOSS:   Would that work for you,  
7       Mr. Simshaw?

8               MR. SIMSHAW:   That makes sense, Your Honor.

9               JUDGE MOSS:   Well, let's set the 7th, then,  
10       and have simultaneous briefs.

11               MR. PENA:    Would you like rebuttal briefs?  
12       It's certainly entirely up to the Court.

13               JUDGE MOSS:   Let's --

14               MR. PENA:    Your Honor, if I may, as I  
15       think through the request here, by that time --  
16       well, it will only be the Friday before, but parties  
17       will have filed rebuttal briefs in Texas.  So they  
18       will have seen each other's arguments.

19               So possibly if we can move the 7th, then  
20       obviously the parties will have seen what has been  
21       filed in Texas, and there won't be any need for  
22       rebuttal briefs here, or -- maybe that's clear as  
23       mud?

24               MR. SIMSHAW:   Are you suggesting that the  
25       initial simultaneous brief be after the Texas reply?

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1 JUDGE MOSS: It will be anyway. The Texas  
2 reply is on the 4th.

3 MR. PENA: What I am saying is move the 7th  
4 a couple of days so both parties get to see what  
5 they said on the 4th, so you won't need two rounds  
6 of briefing.

7 JUDGE MOSS: I don't have a strong  
8 preference on whether it's one round or two rounds.  
9 You have been litigating after a fashion with one  
10 another in other jurisdictions. So perhaps I should  
11 defer to your thinking on whether reply briefs would  
12 be something we would want to have. I don't mind  
13 doing that.

14 MR. PENA: Well, to be on the safe side,  
15 let's go ahead and agree to it.

16 JUDGE MOSS: Okay. And if there's not a  
17 great deal, or nothing to be said, then the filing  
18 is a deadline and it's not mandatory. And no one  
19 loses rights by not filing a reply brief if one is  
20 not needed.

21 So if we're filing -- it looks like about a  
22 week is what you did in Texas, so let's do something  
23 here similar and say if we're going to have the  
24 initial briefs on the 7th, we will set the 14th.  
25 Does that agree with everyone's schedules, with



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1 other matters you have on your calendars?

2 MR. PENA: Well, there's a hearing in  
3 Wisconsin on the 14th between the parties, but Level  
4 3 can comply with that time line, Your Honor.

5 MR. FINNIGAN: Could we make it the 15th,  
6 please?

7 JUDGE MOSS: I don't have a problem with  
8 that. Does that work for everybody?

9 MR. SIMSHAW: That's fine.

10 JUDGE MOSS: So we will have simultaneous  
11 initial briefs on October 7, and reply briefs on  
12 October 15. I will take up with the Commissioners  
13 whether they would prefer to rule directly over  
14 their signatures on this jurisdictional question, or  
15 whether they would rather have me do that. And  
16 then, of course, if I do that, it would be subject  
17 to some sort of -- I would think if not  
18 interlocutory review, certainly review at the end.

19 And I might note in that regard in looking  
20 at the hearings calendar for the next few months,  
21 it's pretty busy. So based on the exchange of  
22 papers we have had so far, it appears that the  
23 parties agree that the issues that were queued up as  
24 numbers 11 and 12 in the petition are gone. But I  
25 want to confirm that before we go any further.

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1               MR. PENA: Your Honor, I believe so. If I  
2 might add, the parties are continuing to discuss the  
3 issues that are presented in Level 3's arbitration.  
4 I believe when it's all said and done, I wouldn't be  
5 surprised if more than half of them are agreed to  
6 and moved off the table.

7               MR. SIMSHAW: I noted, Your Honor, in the  
8 petition itself, two would fall out as a result of  
9 the existence of the rural exemption. But I believe  
10 in the Level 3 response to this Commission's request  
11 for prehearing briefs, that they identify two  
12 additional issues, I think 9 and 10 --

13              JUDGE MOSS: 9 and 10, as I read the brief,  
14 would fall out, at least in part, but not  
15 completely. So 11 and 12, it appeared, would be off  
16 the table essentially by consent. 9 and 10 would be  
17 off the table, except with respect to some special  
18 application.

19              That still leaves a fairly significant  
20 number of issues, and I am encouraged to hear that  
21 the parties are continuing to have discussions  
22 between themselves with respect to resolving some of  
23 these outstanding issues.

24              It has been my experience in this line of  
25 work for 20 some work years now, that parties are

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1 better able to fashion results that meet their  
2 mutual needs than are courts or regulatory  
3 authorities sitting in an adjudicative or  
4 quasi-adjudicative setting.

5 And so I want to encourage you to continue  
6 talking and negotiating on these various issues, and  
7 see if cannot fashion something that will completely  
8 satisfy your needs, and then you will have an  
9 agreement that will work for you in terms of the  
10 business that you wish to conduct.

11 There is far more risk, I think, in the  
12 litigation type format that both of you will end up  
13 with something in the result that will make it less  
14 than ideal for you, from a business perspective.

15 Considering that we do have, however, at  
16 this juncture, perhaps as many as 13 issues between  
17 you, or perhaps I should say 12, in addition to the  
18 fundamental jurisdictional issue, let me ask with  
19 respect to those issues, are there factual disputes,  
20 or is it the case that the disputes are essentially  
21 legal? In other words, are we going to need a fact  
22 record that might involve testimony, and that sort  
23 of thing, or are we going to be able to proceed,  
24 perhaps, on a paper record?

25 MR. PENA: Your Honor, Level 3 would like

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1 the opportunity to file testimony, and Level 3 does  
2 plan to propound discovery. As a matter of fact,  
3 that's being developed as we speak.

4 And I do know that CenturyTel has submitted  
5 discovery to Level 3 in other proceedings, and I  
6 suspect it would be the same in this proceeding. I  
7 can't speak for them, but they have done it  
8 elsewhere. That may very well be the case here.

9 JUDGE MOSS: Mr. Simshaw, are you  
10 anticipating discovery?

11 MR. SIMSHAW: We did propound discovery in  
12 Texas. And my task list is to look that over, and I  
13 suspect, Your Honor, that some or all of that would  
14 probably also be issued here in Washington.

15 JUDGE MOSS: So it looks like we need to  
16 set a process and some dates with the anticipation  
17 that we will have some discovery, and some  
18 testimony. I suppose it is customary, even in the  
19 context of these fairly brief proceedings, and I say  
20 brief in the sense that there are some statutory  
21 dead lines that we're working against, to have  
22 prefiled testimony. Is that the preference?

23 MR. PENA: Yes, Your Honor. That would be  
24 Level 3's preference.

25 JUDGE MOSS: CenturyTel?

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1                   MR. SIMSHAW: Certainly on the direct.  
2           Time-wise, I guess, if we can squeeze in the reply,  
3           that's the environment we're used to working in, but  
4           this is a tighter schedule than normal, as well.

5                   JUDGE MOSS: Well, why don't we go off the  
6           record in a moment, and I will give you an  
7           opportunity to discuss between yourselves what sort  
8           of schedule you might like, being mindful of the  
9           Commission's order on arbitration procedures that  
10          set November 4 as the date by which any arbitration  
11          hearing and briefing should be completed.

12                   So keep that date in mind. I think it's an  
13          important date, because the deadline falls sometime  
14          later in November. November is a busy month. It is  
15          a holiday month. I have been summoned to jury duty  
16          commencing the 25th of November in the Federal  
17          District Court for the Western District of  
18          Washington. So it is my fervent hope that we can  
19          wrap this up in advance of that, and I will get  
20          called and sit on some jury in an exciting capital  
21          murder case.

22                   So we want to keep those dates in mind as  
23          we go off the record, but I think somebody has a  
24          comment they want to make on the record?

25                   MR. PENA: No, Your Honor.

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1 JUDGE MOSS: Let's be off the record.

2 (Discussion off the record.)

3 JUDGE MOSS: Let's be back on the record.

4 We have had some discussion off the record  
5 concerning the process and procedural schedule, and  
6 I am going to summarize that for the record, subject  
7 to comment or correction from the parties.

8 As previously discussed, we're going to  
9 have some early briefing on the jurisdictional issue  
10 with simultaneous initial briefs on October 7, and  
11 reply briefs on October 15.

12 In terms of the substantive case, the  
13 parties do intend to engage in some mutual  
14 discovery, and that will be allowed. We don't see  
15 any need at this juncture to modify the standard  
16 procedures for discovery that are observed in this  
17 Commission.

18 I will, as an aside, comment that if there  
19 are any disputes that arise during the course of the  
20 discovery, the parties may bring those to my  
21 attention for resolution, and we can handle that by  
22 telephone conference in most instances. And that's  
23 what we will try to do. I usually try to make  
24 myself available on very short notice, particularly  
25 when there are only a couple of parties involved,

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1       and we will handle it that way. And, of course, one  
2       of our requirements is that you try to work out  
3       informally any disputes.

4               We will have initial testimony by the  
5       parties presenting their direct cases. And, of  
6       course, that would be accompanied by prefiled  
7       exhibits on October 18. Rebuttal testimony, again,  
8       simultaneous and accompanied by any appropriate  
9       exhibits, on November 1.

10              We're going to reserve November 7 and 8 for  
11      our hearing. And while I am confident, based on the  
12      hearings calendar I have before me, that we will be  
13      able to find appropriate accommodations for that on  
14      those dates, I will just caution that sometimes we  
15      do have resource conflicts. And if so, I may have  
16      to adjust those dates slightly, but I don't  
17      anticipate that.

18              The briefs, we agreed, would be filed on  
19      December 6. And I am of the view that a single  
20      round of briefs will be adequate. Having said that,  
21      of course, we will remain flexible to the needs of  
22      the case with briefs on December 6.

23              And taking consideration of the holiday  
24      period in December and early January, the parties  
25      have agreed that the arbitrator's report date should

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1 be January 10. And that is what we will do under  
2 the current schedule, as otherwise established on  
3 the record.

4 And I will memorialize this in a -- I  
5 suppose we call it a pre-arbitration hearing  
6 conference order, and I will probably do that in the  
7 next day or two so you will have that for your  
8 files.

9 I may also include in such an order some  
10 additional process in terms of witness lists, and  
11 that sort of thing. I will take a look at what we  
12 typically do in these proceedings, and probably  
13 follow the practice, but nothing that will surprise  
14 you or cause you any undue burden, I am sure.

15 I have a few comments on filings and so  
16 forth, but let me ask if there's any other business  
17 that we need to take up before I give you some  
18 closing comments on filing requirements and that  
19 sort of thing?

20 MR. PENA: The only other item I would  
21 mention, Your Honor, and looking at the list we have  
22 just finished discussing, is the need for a  
23 protective order.

24 JUDGE MOSS: Oh, yes, thank you. I will  
25 prepare what we call the standard form of protective



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1     order, which is designed to promote the discovery  
2     process by allowing for the free exchange of  
3     information that one party or another asserts  
4     includes confidential information; encourage the  
5     parties to minimize those assertions. And, of  
6     course, such assertions are subject to challenge by  
7     other parties, or the Commission itself, and I will  
8     ask you to remain mindful of that.

9             Anything else?

10            MR. SIMSHAW: Your Honor, just for the  
11     record, CenturyTel does acknowledge that the January  
12     10 date for the ALJ's report is beyond the  
13     nine-month statutory period, but we would state for  
14     the record that CenturyTel will not oppose any such  
15     ruling on the basis of the nine-month standard.

16            MR. PENA: That is Level 3's position  
17     as well.

18            JUDGE MOSS: And I think -- I am not  
19     positive about this, but I think in prior  
20     proceedings where this has occurred that the  
21     Commission has required some sort of written  
22     submission to confirm that. And if you will -- are  
23     you all familiar with that from prior proceedings?

24            Mr. Finnigan, you have been in a number of  
25     these.

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1 MR. FINNIGAN: (Shakes head.)

2 JUDGE MOSS: I will check on that and let  
3 you know if we need something in writing in addition  
4 to the record which, of course, I would be prepared  
5 to rely on. But if the Commission has been in the  
6 habit of getting the writing, we will ask for that.  
7 I'll probably send you an e-mail and let you know.

8 Okay. I did check with the Records Center  
9 in terms of filing documents that are filed in the  
10 proceeding. We need the original plus eight copies  
11 for internal distribution, and all filings should be  
12 made, and must be made, through the Commission's  
13 secretary by mail or courier delivery.

14 Our address is Washington Utilities &  
15 Transportation Commission, PO Box 47250, 1300 South  
16 Evergreen Park Drive, Southwest, Olympia, Washington  
17 98504-7250.

18 And we will remind the parties that you  
19 need to use both the PO box and the street address  
20 to ensure efficient delivery.

21 I want to stress that we require that  
22 filings of substance, that is to say, testimony,  
23 briefs, motions, and answers, include an electronic  
24 copy to the Commission. And that can be  
25 accomplished either by e-mail attachment to the

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1       Records Center, or by submitting a  
2       three-and-a-half-inch properly formatted diskette.  
3       IBM format is most convenient. If you can produce  
4       your documents in the electronic format using either  
5       MS Word 6.0 or later, WordPerfect 5.0 or later, or  
6       PDF format, with that order of preference, I might  
7       say. So we try to be flexible, but these days  
8       everybody seems to be capable of at least the first  
9       two, and perhaps the third.

10               Service on parties needs to be simultaneous  
11       with filing. And I mentioned that we will enter a  
12       pre-arbitration conference order to memorialize the  
13       essentials that we discussed today.

14               And if there's no further business --  
15       apparently there is not. I thank you all for being  
16       here, and look forward to working with you as we  
17       move forward with this proceeding.

18               MR. PENA: Thank you, Your Honor.

19               MR. SIMSHAW: Thank you.

20               MR. FINNIGAN: Thank you, Your Honor.

21               JUDGE MOSS: We're off the record.

22                       ENDING TIME: 11:30 A.M.

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