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

2 JUDGE CAILLE: This is Docket No. UT-050778  
3 entitled, In the Matter of the Petition of Douglas and  
4 Jessica Rupp, et al., Petitioners, versus Verizon  
5 Northwest, Inc., Respondent. We are convened in a  
6 hearing room in Olympia, Washington. Today is January  
7 the 31st, 2006. It's approximately 1:30 p.m. My name  
8 is Karen Caille, and I'm the administrative law judge  
9 assigned to this proceeding.

10 We are here today in order to reestablish a  
11 schedule in this proceeding. It was suspended in light  
12 of the Verizon case, and a potential settlement term  
13 would have taken care of this case, I believe. That  
14 settlement term did not go forward, and so here we are,  
15 and I would like to get things back to a schedule.

16 So that's one of the things we will be  
17 talking about today, in addition to ruling on a motion  
18 to remove a petitioner and anything else that the  
19 parties wish to discuss.

20 At this point, I would like to take  
21 appearances, and let's begin with Mr. Rupp.

22 MR. RUPP: Douglas Rupp appearing pro se on  
23 behalf of the petitioners.

24 JUDGE CAILLE: Ms. Inman, do you want to go  
25 ahead and introduce yourself?

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1 MS. INMAN: I'm Melinda Inman. I'm here with  
2 Rupp.

3 JUDGE CAILLE: Mr. Lundsgaard?

4 MR. LUNDSGAARD: Good afternoon, everyone.  
5 Appearing for Verizon Northwest, David Lundsgaard with  
6 the law firm of Graham and Dunn, PC. Our address is  
7 Pier 70, 2801 Alaskan Way, Suite 300, Seattle,  
8 Washington, 98121. My phone number is (206) 340-9691.  
9 Fax is (206) 340-9599, and my e-mail address is  
10 dlundsgaard@grahamdunn.com.

11 JUDGE CAILLE: Thank you. And for Commission  
12 staff?

13 MS. JOHNSTON: Sally G. Johnston, senior  
14 assistant attorney general. My street address is 1400  
15 South Evergreen Park Drive Southwest, Olympia,  
16 Washington, 98504. My telephone number is (360)  
17 664-1193. My e-mail address is sjohnston@wutc.wa.gov.  
18 My fax number is area code (360) 586-5522.

19 JUDGE CAILLE: Thank you very much. Let the  
20 record reflect there are no other appearances. As I  
21 mentioned earlier, one of the matters to take up today  
22 was an outstanding motion filed on behalf of the  
23 petitioners to remove Petitioner Robert Jacobs from the  
24 petition, and the reason given for the removal is that  
25 he has moved from his residence in the Skyko 2 area.

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1 Is there any objection to my granting this petition?

2 MS. JOHNSTON: No, Your Honor.

3 MR. LUNDSGAARD: No, Your Honor.

4 JUDGE CAILLE: Then it is granted. Let's

5 move on to establishing the procedural schedule.

6 Mr. Rupp and the petitioners have filed their prefiled  
7 testimony, so the next matter that needs to be  
8 scheduled will be Verizon's responsive prefiled  
9 testimony. Have you discussed any scheduling before  
10 going on the record? I should have asked that.

11 MR. LUNDSGAARD: We have had some  
12 discussions, Your Honor. What Verizon did was sort of  
13 take the old schedule, determine a date for Verizon's  
14 responsive filed testimony and then sort of built a  
15 number of dates based on that, and then I proposed the  
16 schedule to Mr. Rupp.

17 He didn't have a chance to consult with all  
18 of the petitioners to get a response back, but just to  
19 fill you in, what we had suggested was that Verizon's  
20 responsive testimony be due March 1st; that the  
21 petitioner's rebuttal testimony be due March 17th, and  
22 then an evidentiary hearing on April 3rd and 4th,  
23 obviously dependent on Your Honor's schedule, and the  
24 same sort of basic time frames that we were looking at  
25 in the old order is what we were looking at there.

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1 JUDGE CAILLE: Mr. Rupp, does that work with  
2 your schedule?

3 MR. RUPP: Petitioners object to that amount  
4 of generosity.

5 JUDGE CAILLE: Which way?

6 MR. RUPP: To review, the petition was  
7 suspended on November 10th. Verizon's testimony was  
8 due on November 14th. That's a difference of four days  
9 left on their allotted time, so we propose that they be  
10 given four days to respond.

11 JUDGE CAILLE: So you mean four days from  
12 today?

13 MR. RUPP: Yes, Your Honor.

14 MR. LUNDSGAARD: Your Honor, to some extent  
15 I'm responding because I wasn't involved in the merger,  
16 the Verizon/MCI merger discussions, but my  
17 understanding is the way the process played out was the  
18 petitioners had filed their testimony, and soon after  
19 the settlement discussions began, which resulted in the  
20 Verizon/MCI settlement, which also included a  
21 settlement of this docket, and that was reflected in  
22 the November 10th suspension order, but I believe that  
23 the parties had effectively suspended work on this  
24 docket earlier than that, and one of the reasons that  
25 we had suggested this particular schedule is, as the

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1 parties' are probably aware, Verizon did not propound  
2 data requests based on petitioners' prefiled testimony  
3 primarily because the settlement discussions were being  
4 so effective at that time, and we would still like to  
5 do that and we plan to do that, which I indicated to  
6 Mr. Rupp, and I wanted to build into the schedule  
7 enough time for us to get those things to Mr. Rupp,  
8 have them distributed, and I understand this is  
9 probably going to be one of those cases where the  
10 parties are going to take a little bit more time in  
11 terms of distribution and the distance between the  
12 petitioners to get back to us, so I wanted to build  
13 some time into the schedule to permit that to happen  
14 before we filed our responsive testimony, so that's why  
15 I had suggested some of those dates.

16 JUDGE CAILLE: Do you want to respond to  
17 that, Mr. Rupp?

18 MR. RUPP: Yes, Your Honor. If Verizon did  
19 not propound their data requests in the 26 days before  
20 the proceeding was suspended, that's not petitioners'  
21 fault. The UTC and Your Honor set the schedule and the  
22 time allotments between the various events, and we feel  
23 that that schedule should be kept to, and every day  
24 that goes by extra before we are granted a hearing is  
25 harmful to the petitioners in that we don't have

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1 telephone service.

2 JUDGE CAILLE: Did you want to weigh in on  
3 this?

4 MS. JOHNSTON: I think it's important to  
5 maintain the interval set for the original procedural  
6 schedule; by that, I mean the distance between an  
7 event.

8 MR. RUPP: If I may, I would like to point  
9 out that Mr. Lundsgaard became counsel on or about  
10 December 28th or thereabouts, I believe, and has had  
11 the entire month of January also.

12 JUDGE CAILLE: I am going to overrule your  
13 objection, Mr. Rupp, and go with the schedule  
14 propounded by Verizon for the following reasons: In  
15 order for me to gather record for the Commission to  
16 make a decision on this case, I need facts in the  
17 record, and one of the things on my agenda today is to  
18 issue a Bench request.

19 My responsibility here is to gather facts,  
20 and in light of the Verizon case, which really  
21 suspended this proceeding -- that's what it did -- and  
22 as far as I'm concerned, it's suspended until I begin  
23 it again. I think it's reasonable to allow not even  
24 the 32 days that are in between the prefiled testimony  
25 and Verizon's responsive testimony.

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1           I'm sure everyone was hopeful that this would  
2 settle, and I don't think attorneys work on cases and  
3 start building their clients while something is  
4 settling. They are hopeful it will settle. So I think  
5 it's reasonable to follow the schedule that  
6 Mr. Lundsgaard has set forth.

7           So that would be Verizon's responsive  
8 testimony due on March 1st; March 17 for petitioners'  
9 rebuttal testimony, and then it looks to me from what I  
10 can tell from the schedule here, the 3rd and the 4th  
11 are open at the Commission. In all other respects, the  
12 prehearing conference order would remain in force, so  
13 that would mean we would begin at ten o'clock on the  
14 third.

15           MR. RUPP: If I may, Your Honor, regarding  
16 the start time, since petitioners have quite a distance  
17 to travel, approximately three hours, given no traffic,  
18 from Index, I was wondering if we could have a slightly  
19 later start time.

20           JUDGE CAILLE: I would be willing to do that.  
21 Are you planning on staying overnight in between the  
22 two?

23           MR. RUPP: I am personally, yes. I don't  
24 know about the other petitioners. It's quite expensive  
25 for us all to stay here.



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1                   JUDGE CAILLE: Yes, but if you have witnesses  
2 that you are going to present, those people need to be  
3 here.

4                   MR. RUPP: I will be here the whole time.  
5 This is purely for the convenience of my witnesses.

6                   JUDGE CAILLE: What time would you suggest?

7                   MR. RUPP: Well, I suppose we want to get  
8 something done before lunch, so eleven a.m., an hour  
9 later?

10                  JUDGE CAILLE: How many witnesses do you  
11 have, Mr. Rupp?

12                  MR. RUPP: I think around five witnesses. I  
13 don't know how many of them are going to be  
14 cross-examined though. One is a law enforcement  
15 officer and fireman.

16                  JUDGE CAILLE: And yourself.

17                  MR. RUPP: I think five or six.

18                  JUDGE CAILLE: Does anyone here object to  
19 that, and would we be able to perhaps go later so that  
20 we could accommodate all those witnesses?

21                  MS. JOHNSTON: My preference would be to  
22 start at one instead of starting at eleven and then  
23 taking a break, and then go later if necessary.

24                  MR. RUPP: That would be even better.

25                  MR. LUNDSGAARD: We would be willing to do

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1 that as an accommodation.

2 JUDGE CAILLE: So April 3rd is a Tuesday.

3 That will work for me.

4 The Bench request. In thinking about this  
5 matter and reviewing the case so far, one of the things  
6 that I think would be helpful to the Commission is for  
7 the Commission to know what permits might be needed to  
8 provide the proposed service; for instance, if a permit  
9 to cross the national forest land is required. What I  
10 think I will do is -- this is kind of a heads-up -- I  
11 will issue a formal Bench request because normally,  
12 that is how we do it, and it will be Bench Request  
13 No. 1. I'm giving you this request now because I think  
14 you could possibly address it in testimony, or you can  
15 just provide that information as we do normally with a  
16 Bench request, but usually it comes in through...

17 MS. JOHNSTON: A formal response.

18 JUDGE CAILLE: Right. I'm willing to discuss  
19 with you how you want to do this, but I would like that  
20 type of information, and in addition, when the  
21 Commission looks at this, of course, it considers the  
22 waiver of obligation under the section, and I'm  
23 referring to WAC 480-120-071, and under Section  
24 7(b)(2), and there is an "a" through "g," there are  
25 those matters that the Commission may consider in

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1 determining whether this service should be extended  
2 beyond the boundaries.

3 The other thing I would like for the parties  
4 to consider is whether the provision of this service is  
5 consistent with other state public policies, which I  
6 think would fall under the public interest, and I'm  
7 thinking of maybe environmental impacts, natural  
8 resource impacts, and a growth management impacts  
9 provision.

10 MS. JOHNSTON: Your Honor, may I say  
11 something? Will you be more specific, because this is  
12 pretty broad.

13 JUDGE CAILLE: I will try to be more  
14 specific.

15 MS. JOHNSTON: Thank you.

16 JUDGE CAILLE: I'll probably send that out  
17 around the same time I do the prehearing conference  
18 order, which will put forth everything we've discussed  
19 today and the new schedule, your appearance,  
20 Mr. Lundsgaard, Ms. Johnston.

21 MR. RUPP: May I ask a procedural question?  
22 Petitioners' resources are somewhat limited. Who is  
23 responsible for providing the information you will  
24 request in your Bench request?

25 JUDGE CAILLE: It's going to be directed to

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1 all the parties, so it will directed to everyone.

2 MR. RUPP: It's not just us then?

3 JUDGE CAILLE: No. It's directed to  
4 everyone.

5 MS. JOHNSTON: But nonetheless, for example,  
6 Commission staff is not going to be prepared to make  
7 any pronouncements about what permit requirements are  
8 for the utility.

9 JUDGE CAILLE: Right.

10 MS. JOHNSTON: Commission staff will not  
11 weigh in on everything you have identified.

12 JUDGE CAILLE: I also recall, Ms. Johnston, I  
13 thought Commission staff was pretty much following this  
14 on the jurisdictional issue.

15 MS. JOHNSTON: Right, but we also at the  
16 outset mentioned that we may weigh in on a policy  
17 matter. You've identified certain state policy, and so  
18 I'll have to confer with my client to see whether or  
19 not it has an interest.

20 JUDGE CAILLE: Okay.

21 MS. JOHNSTON: But you are quite correct. We  
22 are largely monitoring this case.

23 JUDGE CAILLE: Maybe I can be more specific  
24 at directing. Maybe it will be more than one Bench  
25 request. I just kind of came up with these right

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1 before I came in.

2 MR. LUNDSGAARD: It does sound like there are  
3 some different topics that might be more usefully  
4 handled in a number of different Bench requests rather  
5 than tied together.

6 JUDGE CAILLE: Right. Is there anything else  
7 from anyone?

8 MR. LUNDSGAARD: No, Your Honor.

9 JUDGE CAILLE: I think we've accomplished  
10 what we needed to accomplish today. The next deadline  
11 then is Verizon's, and that will be on March the 1st,  
12 and I will get a prehearing conference order out and  
13 the Bench requests, and that should be it. Thank you  
14 for coming, Mr. Rupp, and thank you all.

15 (Prehearing conference adjourned at 1:50 p.m.)

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