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1       BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
2                                       COMMISSION  
3       WASHINGTON EXCHANGE                        )  
4       CARRIER ASSOCIATION, et al.,            )  
5    ) DOCKET NO. UT-041244  
6    ) Volume I  
7    ) Pages 1 - 24  
8    )  
9    )  
10       vs.   )  
11       MARATHON COMMUNICATIONS                   )  
12       INCORPORATED d/b/a MARATHON               )  
13       COMMUNICATIONS OF WASHINGTON,             )  
14    )  
15    )  
16       Respondent.                                 )  
17       -----

10                                       A prehearing conference in the above matter  
11       was held on August 13, 2004, at 10:04 a.m., at 1300  
12       South Evergreen Park Drive Southwest, Olympia,  
13       Washington, before Administrative Law Judge DENNIS  
14       MOSS.

15                                       The parties were present as follows:  
16   WASHINGTON EXCHANGE CARRIER ASSOCIATION, by  
17       RICHARD A. FINNIGAN, Attorney at Law, 2405 Evergreen  
18       Park Drive Southwest, Suite B-1, Olympia, Washington  
19       98502; telephone, (360) 956-7001.  
20   MARATHON COMMUNICATIONS INCORPORATED, by  
21       HENRY K. HAMILTON and JEFFREY M. GRIEFF, Attorneys at  
22       Law, Grieff & Hamilton, 520 Pike Street, Suite 1440,  
23       Seattle, Washington 98101; telephone, (206) 625-1383.  
24   WASHINGTON UTILITIES AND TRANSPORTATION  
25       COMMISSION, by JONATHAN THOMPSON, Assistant Attorney  
      General, 1400 South Evergreen Park Drive Southwest,  
      Post Office Box 40128, Olympia, Washington 98504;  
      telephone, (360) 664-1225.  
      Kathryn T. Wilson, CCR - Court Reporter

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

2 JUDGE MOSS: Good morning, again, to  
3 everyone. We had the same group in a prehearing  
4 conference we held in another matter just earlier this  
5 morning. We are now convened in the matter styled  
6 Washington Exchange Carrier Association and others, the  
7 others being certain named members of the association,  
8 which we will refer to as WECA, complainants, against  
9 Marathon Communications Incorporated doing business as  
10 Marathon Communications of Washington, a Delaware  
11 corporation, Respondent, in Docket No. UT-041244.

12 Let's take our appearances and then we will  
13 get back to a brief discussion of the matter as I  
14 understand it, and we will segue into that to discuss  
15 procedure, process, what we need to do to get this case  
16 under way and brought to conclusion, so we will begin  
17 in this instance with the Complainant, Mr. Finnigan.

18 MR. FINNIGAN: Thank you, Your Honor, Richard  
19 A. Finnigan, 2405 Evergreen Park Drive Southwest, Suite  
20 B-1, Olympia, Washington, 98502. Phone is (360)  
21 956-7001. Fax is (360) 753-6862. E-mail is  
22 rickfinn@ywave.com.

23 JUDGE MOSS: For the Respondent, Marathon?

24 MR. HAMILTON: Good morning. My name is  
25 Henry K. Hamilton. With me is Jeffrey M. Grieff. We

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1 are both with Grieff and Hamilton, PLLC. Our address  
2 is 520 Pike Street, Suite 1440, Seattle, Washington,  
3 98101. Telephone number is area code (206) 467-6969.  
4 Fax number is (206) 467-6738. My e-mail is  
5 hamilton@jmg-law.com.

6 JUDGE MOSS: Staff?

7 MR. THOMPSON: I'm Jonathan Thompson,  
8 assistant attorney general for Commission staff, 1400  
9 South Evergreen Park Drive Southwest, Post Office Box  
10 40128, Olympia, Washington, 98504. My telephone number  
11 is (360) 664-1225, and the fax is 586-5522. My e-mail  
12 is jthompso@wutc.wa.gov.

13 JUDGE MOSS: Thank you. I'm going to talk in  
14 a moment about my understanding of the case and have  
15 you all confirm it or straighten me out as needed.  
16 First, however, I want to take up a question that was  
17 raised by Mr. Finnigan, your motion for protective  
18 order. As I understand it, this relates to an  
19 agreement that is between Local Dial Corporation and  
20 Marathon, and I guess that was filed in a federal  
21 district court action?

22 MR. FINNIGAN: It was produced pursuant to  
23 discovery in a federal court action, and the federal  
24 court placed a protective order on it. It was for my  
25 eyes only at the time.

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1           I have filed a motion in federal court asking  
2 the court to release the contract from that protective  
3 order. I assume that Marathon would want it subject to  
4 a state protective order for this proceeding, so I have  
5 filed that, and I have asked in a court pleading for  
6 them to release it, or in the alternative, release it  
7 subject to a protective order in this proceeding, in  
8 this state proceeding.

9           JUDGE MOSS: That's pending in the federal  
10 court?

11           MR. FINNIGAN: Yes, and it's due for -- the  
12 way the federal court works is they set a date by which  
13 the motion comes ripe for decision. It doesn't mean  
14 it's decided on that date, but that's the date it  
15 becomes ripe, and that's fast approaching, but I can't  
16 remember the date as I sit here today.

17           JUDGE MOSS: Marathon, what is your position  
18 on this protective order matter? Basically, the  
19 production of this document for purposes of our record?

20           MR. HAMILTON: Our position is that one, the  
21 protective order needs to stay in place in the federal  
22 court, and it's a little bit -- I'm searching for the  
23 right word. Let me say this. Mr. Finnigan has seen  
24 the document. He spent a considerable amount of time,  
25 I assume, reading it. It's not a long document. He

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1 knows the exact terms of it. To suggest that it needs  
2 to be published, disseminated, is rather silly, to be  
3 perfectly honest.

4 JUDGE MOSS: He's actually suggesting it be  
5 produced here subject to a protective order.

6 MR. HAMILTON: My point there is he knows the  
7 exact terms of the document. He knows exactly what it  
8 is. He knows that it has nothing to do with his  
9 allegations.

10 JUDGE MOSS: He thinks it does. He wants me  
11 to make that determination, I think.

12 MR. HAMILTON: First and foremost, we are  
13 opposing any further dissemination of the document.  
14 It's confidential. The document establishes a  
15 relationship between Marathon and Local Dial, and in  
16 the federal court, we will be opposing any production  
17 of the protective order.

18 Insofar as this hearing goes, we believe that  
19 it's not needed, but that if you want to see it, a  
20 similar protective order needs to be in place, one that  
21 does not allow Mr. Finnigan's clients access to the  
22 information under any set of circumstances. It has to  
23 be extremely tight-worded to protect the interests of  
24 Marathon Communications.

25 MR. FINNIGAN: Your Honor, I've reviewed it.

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1 I see very little, if anything, that needs to be  
2 confidential about the document, so that's one of the  
3 reasons I'm proceeding this way. I also think it has  
4 some bearing on the issues, so I wouldn't have  
5 proceeded if I thought otherwise. So I guess we will  
6 have to wait and see how the federal court goes, or as  
7 far as I know, the state has the authority --  
8 independent of what the federal court does.

9 JUDGE MOSS: I believe we do, but the  
10 question before me at this point is whether you are  
11 required to produce it, you want it to be done under a  
12 protective order, and if so, then I need to seek the  
13 entry of a protective order in this proceeding.

14 MR. HAMILTON: I agree. To the extent that  
15 it is going to be produced in this forum, there needs  
16 to be a protective order, one that I believe cannot be  
17 your standard vanilla protective order that would allow  
18 --

19 JUDGE MOSS: Have you seen our standard form  
20 of protective order?

21 MR. HAMILTON: I've seen a protective order  
22 from the WUTC. I'm not sure whether it's the standard  
23 protective order.

24 JUDGE MOSS: We use what we call a standard  
25 form of protective order. We do sometimes modify it

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1 given the needs of an individual case. Off the top of  
2 my head, my recollection is that it depends on the  
3 category of confidentiality that's asserted as to who  
4 is privileged to see it. My recollection is that we  
5 limit the dissemination of such documents to outside  
6 counsel and experts.

7 MR. HAMILTON: My concern, quite frankly, is  
8 under the guise of experts that WECA experts not be  
9 provided that document. It's a major loophole that  
10 I've had problems in other areas with, and I'm not  
11 casting aspersions on Mr. Finnigan, but it's an issue  
12 that we believe is germane here, and that is that there  
13 nothing in there that needs particularly to be  
14 disseminated to his clients in any way, shape, or form,  
15 and quite frankly, it would do harm to Marathon to have  
16 this disseminated out to the general public, period.

17 MR. FINNIGAN: Your Honor, I think counsel  
18 misunderstands the protective order process, and that  
19 under the protective order, if we designate someone who  
20 has ability to see a document that is labeled as  
21 confidential, they have the right to object to that  
22 person, and then under the circumstances, it's up to  
23 Your Honor to resolve the question of whether that  
24 person can or cannot see. Those people have to sign an  
25 agreement that says they will not disseminate it, that

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1 they will not share the information that they observe  
2 confidential pursuant to the order. It frankly is a  
3 fairly stringent set of requirements.

4 JUDGE MOSS: It is, and our commission is  
5 sensitive to the need to protect information that is  
6 truly confidential that poses some risk of business  
7 harm if it's disseminated, and if I might say, I think  
8 is quite adept at protecting such material through its  
9 protective order process, so I think it is a reasonable  
10 way to proceed.

11 I think, perhaps, the best thing to do in  
12 this instance will be for me to provide Marathon with a  
13 copy of what we call our standard form of protective  
14 order and have you review that. If you have any  
15 suggestions for specific amendments, you might try to  
16 work those out with Staff and WECA and then present  
17 those to me, or they can be presented separately by  
18 motion. I want all this to occur fairly promptly, say,  
19 by the end of next week, and then we will enter a  
20 protective order, and that will provide for the  
21 production of whatever information is requested through  
22 discovery or otherwise that might be properly  
23 classified as confidential.

24 The burden to show confidentiality is on the  
25 producing party if it's challenged, and WECA could



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1 challenge it or Staff could challenge it or I could  
2 even challenge it. So if it's not truly confidential,  
3 you should not be asserting that. If it is, you are  
4 certainly entitled to seek these protections. We are  
5 quite accustomed to dealing with confidential and even  
6 highly confidential information here.

7           So that's the process I think we will follow  
8 with respect to that, and I do want to remark on its  
9 face that it appears to me whatever agreement exists  
10 between Local Dial and Marathon is sort of at the heart  
11 of this matter.

12           As I understand the allegations in the  
13 complaint, they are that Local Dial, following the  
14 Commission's determination in a recent proceeding that  
15 Local Dial was doing telecommunications business in  
16 Washington State, Local Dial elected to cease doing  
17 business and transferred its customers to Marathon  
18 pursuant to some sort of agreement.

19           That's the communication I have from Local  
20 Dial. In any event, maybe Marathon didn't take over  
21 any of the Local Dial. I don't know. We will find  
22 out. The allegation of the complaint are essentially  
23 that the Local Dial customers were transferred to  
24 Marathon. So as I understand it, Mr. Finnigan, the  
25 compliant is that Marathon continued providing service

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1 to these customers in a fashion identical to what Local  
2 Dial had done.

3 MR. FINNIGAN: Not identical, but very  
4 similar.

5 JUDGE MOSS: Similar enough that you still  
6 feel it falls within the telecommunications service  
7 category.

8 MR. FINNIGAN: Yes, sir.

9 JUDGE MOSS: That's the complaint. Marathon  
10 has filed an answer and is disputing the allegations of  
11 the complaint and also those interposed in affirmative  
12 defense -- actually, several -- and a counterclaim, and  
13 the allegations of the counterclaim, as I understand  
14 it, are that some WECA members, at least, have, shall I  
15 say, in some way interfered -- well, I'm not sure.  
16 Tell me the nature of the counterclaim.

17 MR. HAMILTON: They blocked calls, prevented  
18 service to customers.

19 JUDGE MOSS: You will need an opportunity to  
20 respond to that.

21 MR. FINNIGAN: Your Honor, I was just going  
22 to rely on the Commission's rules that if you don't  
23 answer, it's deemed denied.

24 JUDGE MOSS: You might want to review those  
25 rules again, Mr. Finnigan. We did change the rules on

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1 complaints so that we now require answers.

2 MR. FINNIGAN: My mistake.

3 JUDGE MOSS: It's interesting. This is the  
4 first time it's come up in the context of a  
5 counterclaim, in my experience, since our new rules,  
6 but I'm thinking that probably requires an answer.

7 MR. FINNIGAN: I'll check those.

8 JUDGE MOSS: The final aspect of Marathon's  
9 pleading is a request for emergency adjudication, and  
10 we do have statute and rules that concern that matter.  
11 The essential allegation, as I understand it, is that  
12 there is an immediate danger to the public safety and  
13 welfare because citizens of Washington may be unable to  
14 contact friends, family members, medical providers, and  
15 other persons in an emergency situation.

16 To be blunt, I'm having a hard time with that  
17 allegation. Why would that be the case? These people  
18 still have phone service, don't they? These customers  
19 are without phone service? They can't call 911?

20 MR. GRIEFF: They can possibly call 911 if  
21 it's a local call.

22 JUDGE MOSS: All 911 service is a local call,  
23 isn't it?

24 MR. GRIEFF: I don't know in the rural areas  
25 of WECA territory.

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1           MR. HAMILTON: Beyond that, the ability to  
2 call family and others, doctors. I need to get my  
3 prescription refilled. I've got chest pains and what  
4 do I do, that kind of thing. It's beyond 911. It's an  
5 inability to communicate with a third party.

6           MR. FINNIGAN: Your Honor, the reason that  
7 there was a problem with Local Dial and the same with  
8 Marathon is that they don't offer service directly in  
9 the independent company territory -- one of the very  
10 reasons that those extended area of service routes are  
11 created is so that people have the access to schools  
12 and doctors and all of that. That's historically why  
13 those routes are created.

14           All of those calls into those EAS areas are  
15 local calls. It has nothing to do with long-distance  
16 calling. There are allegations contained in the  
17 complaint that the customers are no-picked so they  
18 can't make a one-plus call. We believe that allegation  
19 to be factually incorrect. They've produced no  
20 declaration, no support for that allegation. That  
21 would lead one to believe that these customers are  
22 somehow isolated.

23           Even assuming that that is true for some of  
24 those customers, they still have unlimited local  
25 calling within the extended area of service.

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1                   JUDGE MOSS: Does Staff have any concerns  
2 with an emergency situation here?

3                   MR. THOMPSON: To be honest, there is a  
4 little confusion in our mind as to whether when one  
5 dials a one-plus number, having gotten rid of their  
6 presubscribed interexchange carrier, whether they  
7 actually are still able to make a call by being  
8 designated to another long-distance carrier. In  
9 talking with Mr. Finnigan about this, he informs me  
10 that's not necessarily the case.

11                   But as he points out, it is possible for  
12 people to use a dial-around service to make a  
13 long-distance call, in our understanding, and also, one  
14 would presume that over a period of time, having  
15 figured out that their long-distance service no longer  
16 works, people would have obtained different  
17 arrangements for long-distance service. In the  
18 Commission's Local Dial cease and desist, it certainly  
19 would have contemplated the possibility that people  
20 would have possibly been without long-distance service  
21 at some point.

22                   JUDGE MOSS: Or that they would have been  
23 given adequate notice so that they could make  
24 arrangements.

25                   MR. THOMPSON: Right. That is the Commission

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1 rule for cessation of service.

2 JUDGE MOSS: That's one of the reasons, I'm  
3 sure, the Commission ordered some period of time  
4 between the entry of this order and the cessation of  
5 service.

6 MR. FINNIGAN: Your Honor, Mr. Thompson is  
7 correct. Even if someone is a no-pick, and we don't  
8 believe that the allegation is correct that 2,600  
9 customers are no-picked, that customer can still access  
10 800 numbers for long-distance calling.

11 A lot of long-distance companies -- in fact,  
12 that's part of the way Marathon has configured its  
13 service, and customers can call an 800 number and  
14 connect, or they can use the 10-10-220 type of service.  
15 Those calls will go through even if the customer is  
16 otherwise no-picked where they refuse to identify a  
17 preferred carrier.

18 JUDGE MOSS: Anything further on this  
19 question of emergency adjudication? I'm disinclined to  
20 take the Commission down that path. One, I'm not  
21 satisfied with the level of support for the assertion  
22 that an emergency exists. Two, I'm satisfied that the  
23 customers in Washington are adequately protected by the  
24 alternatives available to them, so I just don't see  
25 that an immediate danger to the public safety and

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1 welfare has been established based on what we have  
2 before us today. So we will proceed in a normal  
3 fashion, if you will, in a nonemergency fashion and  
4 process this complaint in accordance with the  
5 procedural rules for APA-type adjudication.

6           So we do have our complaint and answer. I  
7 guess my next question is what we need to do in terms  
8 of developing our record. The first question is,  
9 typically, are we going to need discovery? We really  
10 sort of crossed that bridge getting into the protective  
11 order round and seek to have this document produced and  
12 so forth, so I'll invoke the discovery rule. Do we  
13 want to have prefiled testimony, or do we want to  
14 proceed with a live hearing? Do we want to seek  
15 stipulated facts? How do we want to proceed,  
16 Mr. Finnigan?

17           MR. FINNIGAN: It may be helpful if we had a  
18 short period of time to develop stipulated facts. I  
19 don't know whether or not that will occur, but if we  
20 can't, then I would prefer prefile testimony.

21           JUDGE MOSS: Sort of a standard procedure in  
22 Commission proceedings is one whereby the complaining  
23 party in this type of proceeding will file brief  
24 prefiled testimony by one or more witnesses. You will  
25 have an opportunity then to prefile response testimony,

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1 and we may or may not have a rebuttal round. It really  
2 depends on the needs of the case. We can be flexible  
3 on that and set dates for all of that.

4           You can avoid all of that if the parties can  
5 come together on a common set of facts, or you always  
6 have the option of motion for summary determination  
7 supported by appropriate affidavits and responses, so  
8 there are a number of alternatives available to us.

9           MR. HAMILTON: What about discovery outside  
10 of just the witness statements, depositions, etcetera?

11           JUDGE MOSS: Actually, depositions are not  
12 the most common form of discovery in Commission  
13 proceedings. We do have them and we allow for them,  
14 and frankly, I think they are a good idea. Given that,  
15 they remain rare. Typically, discovery in Commission  
16 proceedings is conducted largely on the basis of what  
17 we call data requests, what civil courts call  
18 interrogatories. We also allow for request for  
19 admission, that sort of thing, so the standard forms of  
20 discovery are available.

21           MR. HAMILTON: I just want to make sure we  
22 are not precluded.

23           JUDGE MOSS: Oh, no. Once the rule is  
24 invoked, all the parties have a right to discovery.  
25 The usual limitations apply. It's need to be relevant



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1 or reasonably calculated to lead to the discovery of  
2 admissible evidence.

3 MR. HAMILTON: It's a very broad loophole, as  
4 you know.

5 JUDGE MOSS: It can be, but on the other  
6 hand, if we have discovery disputes that have to be  
7 brought to me, you may find I'm somewhat less liberal  
8 than the rules might imply. So I do want parties to  
9 conduct themselves in the appropriate fashion and not  
10 use discovery as a club. I don't like that.

11 Is Staff taking an interest in this case,  
12 Mr. Thompson, other than as a monitoring basis? Are  
13 you going to put on a witness?

14 MR. THOMPSON: It's possible we might put on  
15 a witness or at least file some sort of a brief, an  
16 analysis of the legal issues involved.

17 JUDGE MOSS: And I may be reading something  
18 into the answer here. I don't know, so don't give too  
19 much credence to my remark, but I have read the answer.  
20 One sense I gained from it, as to while there may have  
21 been a brief transition period when the allegations in  
22 the complaint might have been true at least in part  
23 that that's no longer the case.

24 My reading of the answer in that fashion  
25 suggests to me the opportunity for the parties to get

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1 together informally and see if this is much ado about  
2 nothing presently and on a going-forward basis, in  
3 which case this case might be solved quickly and  
4 amicably and without a whole lot more intervention by  
5 me, which is a desirable thing.

6 MR. HAMILTON: I would agree with that. One  
7 of the issues, quite frankly, is Marathon a registered  
8 licensed telecommunications company, and WECA has never  
9 submitted a bill to it to be paid. If they believe  
10 they are owed money, send us a bill, take a look at it,  
11 and we will pay it. That's Marathon's position. This  
12 is really a tempest in a teapot from our standpoint.  
13 Send us a bill, take a look at it, and pay it.

14 MR. FINNIGAN: Your Honor, the problem is  
15 that they use two-way PRI's between EAS areas that our  
16 clients have access to, customers have access to. They  
17 do not directly connect with us. Therefore, there is  
18 no basis on which we can prepare a bill because they  
19 are bypassing our access services.

20 To say, "Send me a bill," is to make a  
21 statement that is impossible to comply with because of  
22 the way in which they have configured their service,  
23 and that's the heart of the complaint.

24 JUDGE MOSS: When I was in private practice,  
25 I wish I had clients that said, "Send me a bill." I

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1 would have come up with something, but in any event...

2 MR. GRIEFF: It's Marathon's position that we  
3 will pay any reasonable and lawful bill we receive.

4 JUDGE MOSS: I understand. There is no point  
5 in us pursuing all this here this morning. We are  
6 largely here for procedural reasons, and you all can  
7 work all these things out either among yourselves or  
8 before me or before the commissioners, as the case may  
9 be.

10 Again, at this juncture, it's unclear to me  
11 whether the commissioners will delegate the  
12 responsibility for any hearing to me or will choose to  
13 personally sit in this matter. I'm ever optimistic at  
14 the outset of the proceeding that parties who are  
15 reasonable will be able to work things out among  
16 themselves, and I encourage you to pursue that avenue  
17 in this case because it does suggest to me the  
18 possibility for that sort of resolution. If not, that  
19 is one of the reasons we are here.

20 Let's go ahead and set a procedural schedule  
21 then that allows a reasonable period of time for  
22 discovery and the pre-filing of an initial and response  
23 round and a rebuttal round date as will, but I also  
24 want to build in a little bit of time for you all to  
25 have the opportunity for some informal discussions.

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1                   So let's look at our calendar. Mr. Finnigan,  
2 the first round will be yours, and possibly Staff would  
3 be filing in that round, so I ask the two of you, six  
4 weeks, eight weeks?

5                   MR. FINNIGAN: Your Honor, that is the time  
6 frame I was thinking of, if maybe the 8th of October.

7                   JUDGE MOSS: For initial round? Would that  
8 work for you, Mr. Thompson?

9                   MR. THOMPSON: I think it would.

10                  JUDGE MOSS: We will set October 8 as the  
11 date for Complainant's prefiled testimony and any  
12 supporting testimony from Staff. You will have an  
13 opportunity then to file response testimony. How much  
14 time would you like?

15                  MR. GRIEFF: Can we ask you what is the  
16 standard response time that's usual?

17                  JUDGE MOSS: It depends upon the complexity  
18 of the case. This case doesn't seem very complex to  
19 me. I think three weeks would be adequate.

20                  MR. GRIEFF: What about the counterclaim?

21                  JUDGE MOSS: If you need additional  
22 discovery --

23                  MR. GRIEFF: We are going to enter discovery  
24 about the counterclaim.

25                  JUDGE MOSS: You can do that now. I'm

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1 thinking discovery following the initial filing. Maybe  
2 we had better allow four weeks in there, and we can  
3 always have an agreed continuance or even a continuance  
4 by motion, if necessary, but why don't we go ahead and  
5 set November the 5th. Let's go ahead and set rebuttal  
6 for the 19th of November, and if there are any  
7 problems, speak up. I was trying to leave Thanksgiving  
8 week open.

9 MR. FINNIGAN: I appreciate that, Your Honor.  
10 This is not to cast aspersions on counsel, but my  
11 experience is when we are dealing with someone who is  
12 not used to Commission processes, the testimony  
13 sometimes requires discovery just because they don't  
14 understand the issues to focus on as well as someone  
15 who has been before the Commission a number of times.

16 JUDGE MOSS: Do you want to push it into  
17 December?

18 MR. FINNIGAN: Please.

19 JUDGE MOSS: Works for me. December 3rd. I  
20 had a hearing scheduled the week of December 20th  
21 that's been moved. I take it back. It was the  
22 December 27th week that was moved. If I schedule a  
23 hearing that week -- terrible idea. Let's push it back  
24 into January. I'm finishing a hearing in another  
25 proceeding on January 7th, so I would be happy to go

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1 ahead the week of the 10th, but we can do it another  
2 time if that's not convenient for the parties.

3 MR. HAMILTON: Your Honor, I start a trial on  
4 the 24th of January and will be vigorously involved  
5 with getting ready for that at that time.

6 JUDGE MOSS: So you would rather push it off  
7 until after that?

8 MR. HAMILTON: Yes.

9 JUDGE MOSS: So you would want to push it off  
10 into early February?

11 MR. HAMILTON: I would appreciate that.

12 JUDGE MOSS: I can do it the first week of  
13 February, and that's pretty much it.

14 MR. FINNIGAN: The week of January 31st then?

15 JUDGE MOSS: Exactly.

16 MR. HAMILTON: Can I get some separation from  
17 my trial?

18 JUDGE MOSS: We don't have to do it on the  
19 31st. We are beginning to push it off into March  
20 because of other matters on the calendar.

21 MR. FINNIGAN: That starts to cause --

22 JUDGE MOSS: That's beginning to get a little  
23 long. I do understand your concern though,  
24 Mr. Hamilton.

25 MR. FINNIGAN: If we schedule it for the 3rd

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1 and 4th -- I don't see this taking the whole week.

2 JUDGE MOSS: I can't see it taking more than  
3 a day. Will that work for you? I would expect this to  
4 be a three witnesses tops.

5 MR. HAMILTON: That will work.

6 JUDGE MOSS: Let's go ahead and set February  
7 3rd. If as we get closer, things become impossible, we  
8 can always make adjustments, but let's go ahead and set  
9 this today, and I'll reserve the 3rd and the 4th.

10 It sometimes happens that we move things up.  
11 Occasionally the parties will make a settlement and we  
12 will have a settlement hearing very quickly, get the  
13 case over, get it resolved, or we may have motions for  
14 summary determination, get the case solved that way.  
15 So nothing is graven in stone here. There are other  
16 procedural options that may eventuate, but we will set  
17 these dates as our preliminary schedule and hope we  
18 stick to it. I think we will wait until closer in time  
19 to set a briefing schedule, and that way, we can  
20 accommodate any special needs at that point in time.

21 Is there any other business we need to  
22 conduct today? All right. I will get a prehearing  
23 conference order out in the next day or two, so it will  
24 be early next week. Again, in this proceeding, as in  
25 the one we had earlier today, if you have any

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1 procedural questions, you are free to contact me.

2 Substantive matters, of course, are subject to the ex

3 parte rule and are therefore out of bounds. So if

4 there is nothing further, we will be off the record.

5 Thank you all for being here and agreeing to go forward

6 earlier than the appointed hour.

7 (Prehearing conference concluded at 10:44 a.m.)

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