

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

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|---|----------------------------|---|----------------------|
| 3 | AT&T COMMUNICATIONS OF THE |) | |
| 4 | PACIFIC NORTHWEST, INC., |) | Docket No. UT-020406 |
| | |) | |
| | Complainant, |) | Volume VIII |
| 5 | |) | Pages 274 to 329 |
| | vs. |) | |
| 6 | |) | |
| | VERIZON NORTHWEST, INC., |) | |
| 7 | |) | |
| | Respondent. |) | |
| 8 | _____ |) | |

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10 A hearing in the above matter was held on

11 April 3, 2003, from 9:35 a.m to 12:15 p.m., at 1300

12 South Evergreen Park Drive Southwest, Room 206, Olympia,

13 Washington, before Administrative Law Judge MARJORIE R.

14 SCHAER.

15 The parties were present as follows:

16 THE COMMISSION, by SHANNON SMITH, Assistant

17 Attorney General, 1400 South Evergreen Park Drive

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19 98504-0128, Telephone (360) 664-1192, Facsimile (360)

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21 AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST,

22 INC., by GREGORY J. KOPTA, Attorney at Law, Davis,

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24 Seattle, Washington 98101, Telephone (206) 628-7692,

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 WEBTEC, by ARTHUR A. BUTLER, Attorney at Law,

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Joan E. Kinn, CCR, RPR

Court Reporter

1 VERIZON NORTHWEST, INC., by CHARLES H.
2 CARRATHERS, 600 Hidden Ridge, Irving, Texas 75015,
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14 WORLDCOM, INC., via bridge line by MICHEL
15 SINGER NELSON, Attorney at Law, 707 - 17th Street, Suite
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19 THE CITIZENS UTILITY ALLIANCE OF WASHINGTON,
20 SPOKANE NEIGHBORHOOD ACTION PROGRAMS, by JOHN O'ROURKE,
21 Attorney at Law, 212 West Second Avenue, Spokane,
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1 P R O C E E D I N G S

2 JUDGE SCHAER: We're here this morning in a
3 pre-hearing conference in Docket Number UT-020406, which
4 is a proceeding, complaint proceeding, in which AT&T and
5 WorldCom seek to lower the access charges that they must
6 pay to Verizon. And as I stated off the record, we're
7 here in a pre-hearing conference to make plans for going
8 forward in the proceeding. I would like to start this
9 morning by taking appearances starting with you, please,
10 Mr. Kopta.

11 MR. KOPTA: Thank you, Your Honor. Gregory
12 J. Kopta of the law firm Davis, Wright, Tremaine, LLP,
13 on behalf of Complainant AT&T Communications of the
14 Pacific Northwest, Inc.

15 JUDGE SCHAER: And, Ms. Singer Nelson, are
16 you with us this morning?

17 MS. SINGER NELSON: Yes, I am, Judge.

18 JUDGE SCHAER: Would you like to put in your
19 appearance here, please.

20 MS. SINGER NELSON: Michel Singer Nelson
21 appearing on behalf of WorldCom.

22 JUDGE SCHAER: Thank you.

23 And then for Verizon.

24 MS. ENDEJAN: Judith Endejan, Graham and
25 Dunn, for Verizon.

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1 MR. CARRATHERS: Good morning, Charles
2 Carrathers, general counsel of Verizon for Verizon.

3 JUDGE SCHAER: And then for Public Counsel,
4 please.

5 MR. CROMWELL: Robert Cromwell, Assistant
6 Attorney General, on behalf of Public Counsel.

7 JUDGE SCHAER: And on behalf of Commission
8 Staff.

9 MS. SMITH: Shannon Smith, Assistant Attorney
10 General, on behalf of Commission Staff.

11 JUDGE SCHAER: And then I believe that
12 Mr. O'Rourke is in the room and is seeking to intervene.
13 Would you give us a full appearance, sir, which would
14 include both your name, your address, and then all your
15 contact information, including E-Mail address and fax
16 address.

17 MR. O'ROURKE: Yes, John O'Rourke, the
18 Citizens Utility Alliance of Washington, Spokane
19 Neighborhood Action Programs, address of 212 West Second
20 Avenue, Spokane, Washington 99201, phone number (509)
21 744-3370, fax (509) 744-3374, E-Mail orourke@snapwa.org.

22 JUDGE SCHAER: Thank you.

23 And are there any other parties in the
24 hearing room that would like to seek to intervene?

25 Go ahead, Mr. Butler.

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1 MR. BUTLER: Arthur A. Butler from the Ater
2 Wynne Law Firm appearing on behalf of the Washington
3 Electronic Business and Telecommunications Coalition
4 known as WEBTEC, formerly known as Tracer. Our address
5 is 601 Union Street, Suite 5450, Seattle, 98101,
6 telephone number (206) 623-4711, fax number (206)
7 467-8406, E-Mail address aab@aterwynne.com.

8 JUDGE SCHAER: Thank you. And since we're at
9 a pre-hearing and we aren't going to have any witnesses,
10 why don't you go ahead and join us at the table at the
11 end if you would like.

12 Is there anyone else in the room that's going
13 to seek to intervene this morning?

14 Then at this point, Mr. O'Rourke, would you
15 like to speak to your motion to intervene, please.

16 MR. O'ROURKE: Yes, Your Honor. The Citizens
17 Utility Alliance has filed a petition to intervene in
18 this matter. Our petition, everything is laid out in
19 our petition, and I won't go over that again. I will
20 just add that as soon as we received notice that this
21 had turned into a rate increase type of proceeding, that
22 is when we decided to intervene, petition to intervene.

23 JUDGE SCHAER: Is there anyone who objects to
24 intervention?

25 Hearing no one, I have reviewed --

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1 MS. SMITH: Your Honor, perhaps in aid of
2 objecting, the Commission Staff would note that the
3 tariff filings filed by Verizon in response to the
4 settlement, and while we have filed an objection to
5 certain portions of that, we would note that Verizon has
6 a low income rate in its tariff. That rate has not been
7 changed by the -- has not been affected by the proposed
8 settlement. And in addition, to the extent that the
9 settlement will result in lower toll rates, that could
10 actually benefit low income consumers. And so we're
11 just I guess I wouldn't say we necessarily object, but
12 we don't really see what the issue is with respect to
13 this intervention.

14 MR. CROMWELL: Your Honor.

15 JUDGE SCHAER: Go ahead, Mr. Cromwell.

16 MR. CROMWELL: May I respond to something
17 Ms. Smith said. And perhaps you could enlighten me
18 where in the settlement it indicates that the toll rate
19 of AT&T or WorldCom would be lowered?

20 JUDGE SCHAER: Did you have a specific
21 reference, Ms. Smith?

22 MS. SMITH: No, there is no specific
23 reference. The tariff filing in this case is with
24 respect to Verizon's rates. It doesn't affect AT&T's
25 rates or WorldCom's rates. But as we have discussed

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1 throughout the settlement proceeding and the whole
2 nature of this case with respect to the allegations of a
3 price squeeze and whatnot, we would anticipate that
4 there would be lower toll rates with respect to lower
5 access rates.

6 MR. O'ROURKE: Your Honor, our alliance
7 doesn't --

8 JUDGE SCHAER: Mr. O'Rourke, let me please go
9 through and see if anyone else has anything else to say,
10 and then, of course, you will have an opportunity to
11 respond.

12 Anything from AT&T?

13 MR. KOPTA: No. As far as we're concerned,
14 as long as there's no expansion of the issues in this
15 proceeding or any other delays caused by the
16 intervention, then we don't have an objection.

17 JUDGE SCHAER: Are there any objections from
18 WorldCom?

19 MS. SINGER NELSON: No, Your Honor. I would
20 join in with what Mr. Kopta said on behalf of AT&T.

21 JUDGE SCHAER: And from Verizon.

22 MR. CARRATHERS: Thank you, Your Honor.
23 Charles Carrathers for Verizon. Perhaps the best way to
24 phrase it is Verizon has a conditional objection, and
25 that is conditioned upon exactly what the intervenor is

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1 seeking to do. The intervenor made a statement about
2 this becoming a rate case. If the intent is to claim
3 that one needs to go through a rate case process, we
4 submit that that argument has already been made and
5 rejected by the Commission in its 6th Supplemental
6 Order. To the extent that the Commission proceeds with
7 public hearings, then the intervenor would have the
8 right to participate in those proceedings just as any
9 other member of the public would. So we make that, and
10 I call it a conditional objection, because we're really
11 not sure what will happen procedurally. Indeed, that's
12 one of the issues that you all had scheduled to discuss
13 today.

14 JUDGE SCHAER: Mr. Carrathers, let me ask you
15 a couple of questions, because I think this may become
16 an important issue as to how we're going to go forward.
17 Have you reviewed the Commission's rule on multiparty
18 settlement?

19 MR. CARRATHERS: Yes.

20 JUDGE SCHAER: And as I look at that rule, it
21 appears to provide that parties may -- one not party to
22 a settlement may offer both evidentiary proof, and it
23 really doesn't mention the public hearing, but that's
24 already something the Commission has determined. Is it
25 your understanding or your position that this party

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1 could or could not provide evidentiary proof at this
2 stage of the proceeding?

3 MR. CARRATHERS: My position is one of the
4 purposes I understand of this hearing is to determine
5 what procedures will take place.

6 JUDGE SCHAER: Yes.

7 MR. CARRATHERS: And if the procedure is to
8 establish a public hearing, for example, then I would
9 suspect that the intervenor could show up at the public
10 hearing and proffer whatever testimony it wants to in
11 support or in opposition to the settlement. So it would
12 have the right to do so at that time.

13 JUDGE SCHAER: What about the language in the
14 rule about presenting evidentiary proof; how do you see
15 that being done?

16 MR. CARRATHERS: Well, it would show up at
17 the public hearing as any member of the public would and
18 testify and present whatever evidence it wants to in the
19 form of testimony or otherwise supporting or rejecting
20 the settlement.

21 JUDGE SCHAER: Mr. O'Rourke, did you wish to
22 respond to any of the parties' arguments?

23 MR. O'ROURKE: Yes, Your Honor. First of
24 all, we do not represent exclusively low income people.
25 Our alliance represents the Washington citizens. At

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1 this point, our membership is majority low income
2 people, but we are seeking to expand that.

3 We are here, my understanding from the notice
4 was that it's still to be determined whether the
5 Commission is going to accept this settlement, and so we
6 are seeking to intervene first to argue that this
7 Commission should reject the settlement. And then if
8 the settlement is rejected, we would like to be involved
9 in every aspect of any determination of whether
10 Verizon's rates should be increased or not.

11 JUDGE SCHAER: Is there anything further from
12 any of the parties?

13 MR. CROMWELL: Your Honor, Robert Cromwell.
14 Just for the record, we support the Citizens Utility
15 Alliance's intervention.

16 JUDGE SCHAER: Well, I'm going to take this
17 under advisement at this point, but I think as we go
18 through our discussions today we are going to need to
19 build those discussions around a possibility that the
20 intervenors are allowed to intervene, and depending on
21 what they have to say, that the intervenors may have a
22 right to present evidentiary testimony and exhibits to
23 this record.

24 And that brings us to you, Mr. Butler. I
25 don't have a written petition for intervention, which of

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1 course isn't allowed, but did you file one that I did
2 not see?

3 MR. BUTLER: No, I did not file a written
4 petition. I'm just making one orally today.

5 JUDGE SCHAEER: Okay. So you're going to have
6 to perhaps give us a little bit more information as you
7 describe your motion, please.

8 MR. BUTLER: WEBTEC is an association of
9 large users of telecommunications services. In the
10 context of this proceeding, it represents some of the
11 large customers of Verizon. And as large customers, we
12 are interested in aspects of the proposal that could
13 affect rates for services that we purchase. At this
14 point, we are still in the process of assessing what the
15 impact, if any, is on us and therefore have no position
16 about the merits of the proposed settlement. And we are
17 here to intervene primarily out of concern, one, to
18 protect any interest if we should determine that there
19 is a significant impact, and two, if the procedures
20 ultimately adopted in this case involve opening up
21 issues of whether other rates might be changed as the
22 result of the settlement or the reduction of Verizon's
23 access charges, we would have an interest in being able
24 to protect our interest with respect to those changes.
25 And it is on the basis of that concern that we move to

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1 intervene.

2 JUDGE SCHAER: And is there any objection to
3 intervention by WEBTEC?

4 MR. KOPTA: We would have the same position
5 with respect to WEBTEC, that as long as there are no
6 additional issues or procedural delays as a result of
7 their intervention, then we would have no objection.

8 MS. SMITH: Your Honor, if I may inquire of
9 both Mr. O'Rourke and Mr. Butler whether their
10 respective parties intend to file additional evidence or
11 present testimony in this proceeding whether it goes
12 forward as a settlement or if the Commission were to
13 reject the settlement if it were to go forward to
14 hearing on the merits.

15 JUDGE SCHAER: Well, you certainly can ask
16 Mr. Butler now and find out what he knows about what
17 their plans would be.

18 MS. SMITH: I also have the same question for
19 Mr. O'Rourke as well.

20 JUDGE SCHAER: I want to finish dealing
21 with --

22 MS. SMITH: Thank you, Your Honor.

23 JUDGE SCHAER: -- this motion, and I will
24 then go back and --

25 MS. SMITH: Thank you, Your Honor.

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1 JUDGE SCHAER: Go ahead, Mr. Butler.

2 MR. BUTLER: At this point, as I indicated,
3 we are still in the process of trying to assess what, if
4 any, impact the proposed rate changes in the settlement
5 would have upon our members, and so I am not able today
6 to say whether we would present any testimony with
7 respect to the particular proposal. It may well be that
8 we conclude that any impact is not significant enough to
9 be of concern, and therefore we would have no position
10 on the settlement and in that case would not submit
11 anything. If we were to conclude on the other hand that
12 that would have a significant impact, we may well desire
13 to introduce evidence or arguments about the specific
14 proposal. At this point, I can't make a commitment one
15 way or another. Our primary concern really is if the
16 procedures to be adopted here throw open the question of
17 what other rate changes might be made in lieu of the
18 ones proposed here, then we would certainly have an
19 interest in participating.

20 JUDGE SCHAER: Okay.

21 Does Verizon have any objection?

22 MR. CARRATHERS: Your Honor, to be
23 consistent, Verizon makes the same, for lack of a more
24 elegant way of putting it, conditional objection.
25 Because again, and I understand WEBTEC's position, but

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1 if it's in any way, shape, or form an attempt to, for
2 example, revisit the rate case issue that the Commission
3 already decided, we would object. But again, it's
4 difficult to say, because as WEBTEC's representative
5 just acknowledged, they don't know whether they've got
6 an issue with this at all.

7 JUDGE SCHAER: Okay.

8 Ms. Singer Nelson, did you have anything to
9 add to this discussion?

10 MS. SINGER NELSON: I have nothing to add.
11 WorldCom does not have an objection so long as, as AT&T
12 has said, that the proceeding isn't broadened by their
13 participation and there's no additional delay as a
14 result of it.

15 JUDGE SCHAER: Mr. Cromwell.

16 MR. CROMWELL: Public Counsel would support
17 the intervention of WEBTEC.

18 JUDGE SCHAER: Again, I'm going to take this
19 under advisement, but as we go through our other issues
20 today, I am going to want to consider scheduling
21 evidentiary portions of the hearing to allow
22 intervenors, if intervention is granted, to participate
23 in the evidentiary portion of this hearing.

24 As I indicated before we went on the record,
25 the Commission has received a number of motions, a

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1 number of letters, a number of other inquiries from the
2 parties, some of them coming in before the 6th
3 Supplemental Order was decided but too late to be
4 determined in that order and possibly having their
5 information or their assumptions changed by that order,
6 and then there have been letters about other issues. So
7 I indicated I would poll the parties to see what issues
8 you see presented, and then we will try to organize
9 those and go through them in some logical manner.

10 And I think I would like to go ahead and
11 start with you, Mr. Kopta, if we could.

12 MR. KOPTA: Thank you, Your Honor. As far as
13 AT&T is concerned, I think that the notice of
14 pre-hearing conference, the most recent notice of
15 pre-hearing conference outlines the issues that need to
16 be addressed from AT&T's perspective.

17 AT&T does have an outstanding motion to
18 strike portions of the surrebuttal testimony that
19 Verizon pre-filed. However, because we are dealing at
20 this point with the settlement agreement, we see no need
21 for the Commission to rule on the motion at this time.
22 If the Commission were to reject the settlement and we
23 were to have evidentiary hearings on AT&T's complaint,
24 at that time then we certainly would want a ruling on
25 our pending motion. But for now at this pre-hearing

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1 conference, we would simply ask that the Commission
2 continue to hold that motion in abeyance pending the
3 necessity to address it given future circumstances.

4 JUDGE SCHAER: Thank you.

5 Ms. Singer Nelson, did you have anything
6 further?

7 MS. SINGER NELSON: No, WorldCom does not
8 have any particular issues it wants to be addressed
9 today other than the ones already set out in the
10 pre-hearing conference order.

11 JUDGE SCHAER: I jotted down a few notes, but
12 I think you said, let me check back with you and see if
13 I got it right, if I'm right, my notes would indicate
14 that AT&T thinks that the notice of hearing sets out the
15 issues about which they are concerned at this point, but
16 they have a pending motion to strike on some Verizon
17 surrebuttal and they see no need for the Commission to
18 rule on that motion unless and until the Commission
19 might reject the settlement that's been presented by the
20 participating parties; is that correct?

21 MR. KOPTA: That's correct.

22 JUDGE SCHAER: Is there anything I missed
23 that I should add?

24 MR. KOPTA: No, I think that pretty well
25 captures what AT&T's position is.

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1 JUDGE SCHAER: All right.

2 So let's go next to Verizon, if I might,
3 Mr. Carrathers.

4 MR. CARRATHERS: Thank you, Your Honor. Just
5 to be sure we're all on the same page, we really see
6 three groups of issues, the first being the various
7 motions that were filed before the stipulation when we
8 were in litigation phase, some of them motions to
9 strike, some of them motions for clarification. As I
10 recall, we addressed this issue at the last conference,
11 and I think we all concluded, Verizon certainly did and
12 agrees with AT&T's and WorldCom's position, that those
13 motions need not be decided if a settlement goes
14 forward.

15 The second group is really one motion, and
16 that is Staff's opposition to Verizon's tariff filing
17 which Staff filed the other day. Verizon strongly
18 disagrees with Staff's pleading and will file its
19 response either later today or by tomorrow depending on
20 when this hearing ends.

21 And then the third issue is I think Mr.
22 Kopta --

23 JUDGE SCHAER: Can you give me just a moment
24 to get number two jotted down.

25 MR. CARRATHERS: Yes, Your Honor.

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1 JUDGE SCHAER: Thank you.

2 Okay, and then the third set of issues,
3 please.

4 MR. CARRATHERS: Thank you, Your Honor. The
5 third set of issues would be the customer notice and
6 what procedure should be followed to examine the
7 settlement, which I think as counsel for AT&T pointed
8 out was the subject of the notice of this particular
9 pre-hearing conference.

10 And from Verizon's position, again, the
11 pre-stipulation motions, that first group, need not be
12 decided unless there is no settlement or the Commission
13 rejects it. Again, the second motion, Staff's
14 objection, Verizon will file its response. And then, of
15 course, the third bucket, just to summarize, is the
16 customer notice and the procedure for looking at any
17 settlement.

18 JUDGE SCHAER: So to check back with you, the
19 first areas, your three groups of motions would be the
20 litigation stage motions that were pending at the time
21 of the 6th Supplemental Order and decided that they need
22 not be determined now. The second issue is between
23 Staff and Verizon on a tariff filing that was made with
24 the Commission and expect to respond in writing today or
25 tomorrow. And then the third is issues of how we should

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1 proceed with the processes that will allow us to
2 consider the proposed settlement in an appropriate
3 manner.

4 MR. CARRATHERS: Exactly, Your Honor. And to
5 be clear, again, Verizon will file its response to
6 Staff's objection. We firmly believe that our tariff
7 filing reflects the settlement. And it may be that the
8 Commission decides, well, we're going to just proceed on
9 the merits in the case. And if the Commission makes
10 that determination, then, of course, the pre-stipulation
11 motions that are pending before the 6th Supplemental
12 Order is issued would have to be decided, but that's an
13 issue for another day.

14 JUDGE SCHAER: Okay. And then let me ask you
15 the same question, Mr. Cromwell, what do you see before
16 us right now?

17 MR. CROMWELL: Thank you, Your Honor. For
18 the record, Public Counsel does oppose the proposed
19 procedural process contemplated by the 6th Supplemental
20 Order and does again renew its request that the
21 settlement proposal be rejected. Public Counsel
22 believes the question of access charges raised by AT&T
23 in its complaint can be decided either on its merits or
24 by settlement but that rate rebalancing should not be
25 part of any settlement here and that a general rate case

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1 is really the proper venue for consideration of the
2 requested general rate increases.

3 As for specific issues that I have
4 identified, I've got one carryover issue from the
5 hearing that I did not attend when Mr. ffitch was
6 present, and that is a question that I believe was taken
7 under advisement at that time of what evidence is
8 admitted into the record at this time. My review of the
9 transcript indicates that the settlement document was
10 marked as Exhibit 300 and that there were a series of
11 documents identified attached thereto but that I don't
12 believe a ruling has been made since that time by the
13 Commission on what is in the record, specifically which
14 exhibits have been admitted, so I would identify that as
15 an issue for your consideration.

16 I think perhaps to the heart of it, the
17 second point that Mr. Carrathers raised does raise the
18 question of whether there is truly a meeting of the
19 minds between the parties here, in essence if there is a
20 settlement or if there is agreement as to what its
21 contents is. Clearly we oppose it, but that is an issue
22 I think you need to address.

23 I believe there are other interested parties
24 present in the room today, and I know that there are
25 other parties who have considered intervention but have

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1 not appeared. I just want to make you aware of that.

2 I would take issue with a statement by
3 Mr. Carrathers, I do not believe that the 6th
4 Supplemental Order ruled on the question of general rate
5 reviews but rather determined that the Commission would
6 consider the settlement on its merits. And I believe
7 you have identified in the letter you sent subsequent to
8 the issuance of that order that there are a range of
9 issues yet to be determined, including whether there
10 would be evidentiary hearings in addition to public
11 hearings.

12 I would also disagree with Mr. Carrathers'
13 earlier statement. I believe that it is the practice of
14 the Commission that public hearings are held for the
15 purpose of obtaining the testimony of members of the
16 public and not at least primarily for the purpose of
17 allowing parties to a proceeding to utilize that venue
18 for the admission of evidence or submission of
19 testimony. At least it has not been my experience that
20 any kind of cross examination, for example, is available
21 to parties at that type of proceeding. So I would
22 disagree with Mr. Carrathers and would urge that if the
23 Commission were to continue to consider this settlement
24 proposal that evidentiary hearings on any evidence that
25 may be moved for admission or such as testimony or

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1 documentary exhibits, I believe as a matter of due
2 process the Commission would then be required to provide
3 other parties the opportunity to either submit evidence
4 in rebuttal to that or cross examine witnesses proffered
5 in opposition.

6 I think those are the issues I've got
7 identified.

8 JUDGE SCHAER: Give me just a moment, please.

9 Just to review briefly again, Public Counsel
10 has noted that they oppose the settlement and that they
11 believe that the issue of access charges is properly
12 considered here but that the issue of rate resettlement
13 should not be considered in this proceeding. There's a
14 question about what evidence is admitted into the record
15 at this time, about whether parties have reached a
16 meeting of the minds in terms of the participating
17 parties and the proposed settlement. And you have
18 indicated to me that there are others parties from whom
19 you have heard that are considering intervening in this
20 matter beyond the two parties who came forward today.
21 You noted that you believe a public hearing differs from
22 an evidentiary hearing in usual Commission practice and
23 that the evidentiary hearing, that if at some time there
24 is evidence put in this record that goes with the
25 settlement proposal, that you would expect that

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1 non-participating parties should have an ability to
2 cross examine that testimony and possibly offer rebuttal
3 to that testimony. Is that a good summary of what you
4 had to say, or did I miss something?

5 MR. CROMWELL: I think that is a fair recap,
6 just two points to clarify. First that I believe there
7 are other parties who are present in the hearing room
8 today who are interested in this matter, perhaps not
9 prepared to intervene, but may wish to communicate with
10 the Commission either formally through a letter to be
11 filed in the docket or may wish to participate at any
12 public hearing opportunity that the Commission may
13 establish. And as to the distinction between
14 evidentiary and public hearings, I was actually thinking
15 about it in the inverse of how you phrased it, which is
16 namely that either Public Counsel or other intervenors
17 may wish to submit evidence pursuant to WAC
18 480-09-466(2)(c) in opposition to the settlement, and
19 that due process should afford the settling parties who
20 may wish for due process purposes the opportunity to
21 either file rebuttal evidence or to cross examine any
22 testimony of witnesses that may be offered. But I think
23 you're right in that it does -- it is an issue that
24 flows both ways.

25 JUDGE SCHAER: I'm thinking maybe we should

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1 start with some of what is called around here low
2 hanging fruit, something that we might -- I'm sorry, go
3 ahead, Ms. Smith.

4 MS. SMITH: Yes, Your Honor. Commission
5 Staff has some issues that it would like to have
6 addressed in this morning's pre-hearing conference. But
7 first, I would echo the comments made by Mr. Kopta for
8 AT&T and Mr. Carrathers for Verizon, that there are
9 outstanding motions that were filed before the
10 settlement stipulation was filed and that like those
11 parties Staff understands that those motions are tabled
12 at this point in time. But if this matter were to
13 proceed to the merits, then we would like to have those
14 motions addressed.

15 Secondly, with respect to Staff's opposition
16 to the tariff filings that Verizon made with respect to
17 the settlement, we believe that that should be an issue
18 that should be addressed at today's pre-hearing
19 conference. And although Verizon has indicated that it
20 will file a written response to that either today or
21 tomorrow depending on how soon we get out of this
22 hearing, Commission Staff believes that Verizon should
23 be prepared to address that in some fashion during
24 today's pre-hearing conference and state what its
25 position is with respect to Staff's opposition.

1 Third, there is the issue of the customer
2 notice and the process to follow. Both Public Counsel
3 and the parties to the settlement have filed proposed
4 customer notices. Given Verizon's tariff filings, those
5 notices would need to be changed to reflect what Verizon
6 has filed, just assuming that we were all to agree on
7 that in any respect. So at this point, we have an issue
8 of what the public notice should say, because the notice
9 reflects rates that -- or doesn't reflect some rates
10 that were in Verizon's tariff filing.

11 And we would also like to discuss what
12 potential hearing dates might be available should the
13 Commission reject the settlement and decide to hear this
14 case on the merits.

15 And with respect to Public Counsel's comments
16 that other parties have a due process right to file
17 evidence in opposition to the settlement, we would like
18 to state that any filings or testimony in opposition to
19 the settlement could be made by those parties who have
20 petitioned to intervene and have been granted
21 intervention. That opportunity, however, is not
22 available to Public Counsel. Public Counsel has waived
23 the opportunity to file any evidence or testimony in
24 opposition to this settlement, because Public Counsel
25 had that opportunity when this matter was heard before

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1 the Commission and the panel of experts were here.
2 Public Counsel asked some questions and had that
3 opportunity, so Public Counsel has waived any
4 opportunity to file any evidence or testimony in
5 opposition to the settlement.

6 JUDGE SCHAER: You talk faster than some of
7 the others. Let me see if I got this down right. The
8 first issue you brought up was the outstanding motions,
9 and you agree with other parties that the substantive
10 motions should be tabled now and then reviewed and, if
11 pertinent, addressed if at some time the settlement is
12 rejected; is that correct?

13 MS. SMITH: That's correct, Your Honor.

14 JUDGE SCHAER: And then you would like to
15 have the issue of the tariffs that were filed by Verizon
16 addressed today, and you would like to relate that issue
17 to the issue of what the notices of the public hearing
18 should say.

19 MS. SMITH: That's correct.

20 JUDGE SCHAER: Because you believe that the
21 examples you have seen thus far do not reflect the
22 tariffs that were filed by Verizon.

23 MS. SMITH: Correct.

24 JUDGE SCHAER: And then you would like to
25 discuss potential hearing dates and filing dates if

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1 there should be further evidentiary hearings. And I'm
2 unclear on this. Are you talking about if there are
3 potential hearing dates because intervenors or Public
4 Counsel are allowed to file testimony and to have
5 evidentiary hearings before the end of the consideration
6 of whether the settlement should be approved, or were
7 you talking about that the parties should be -- that we
8 should schedule now hearing dates that the parties would
9 use if the Commission should at some point in time
10 reject the settlement, or were you talking about both?

11 MS. SMITH: I was only talking about the
12 latter, but now that you mention it, we might want to
13 discuss other dates, as you said, so I would say both,
14 please.

15 JUDGE SCHAER: Okay. And then you want to
16 raise an issue of whether if there is such filing of
17 whether Public Counsel would be allowed to file
18 testimony or whether there has been some waiver of their
19 ability to do so.

20 MS. SMITH: Yes, Your Honor, and we would be
21 happy to file written briefings on that point, if
22 necessary.

23 JUDGE SCHAER: Thank you.

24 MS. SMITH: Thank you, Your Honor.

25 JUDGE SCHAER: I was going to suggest at this

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1 point that we take a morning recess and let the parties
2 look at the public notice versions that have been
3 prepared by I believe by Verizon and by Public Counsel,
4 and it's also my understanding that Commission Staff who
5 work in that area have brought in another suggestion
6 that might work with those or might not be something you
7 would want to consider.

8 MS. SMITH: I apologize, Your Honor, I don't
9 know what you mean by something that Commission Staff
10 has brought in addition to that. Are you talking about
11 the concern that I raised with respect to those rates
12 that are in the notice?

13 JUDGE SCHAER: No, I'm talking about the
14 public affairs personnel of the Commission who are not
15 part of the Staff that I believe you're representing
16 formally here, but who work frequently and are mentioned
17 in our rules as being experts on notices and willing to
18 work with the parties in trying to --

19 MS. SMITH: Thank you, Your Honor.

20 JUDGE SCHAER: The second issue you raise
21 perhaps will need to be addressed before that
22 conversation could take place. I would think so. It
23 looks, I'm thinking aloud here, but it looks to me like
24 perhaps we might first want to discuss what the meaning
25 is of the document that Verizon filed as called

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1 compliance tariffs, which I believe the 6th Supplemental
2 Order identified more as a representative tariff or an
3 example of how this would work. I don't have -- and
4 determine perhaps when that issue really needs to be
5 thought out, whether it's an issue that needs to be
6 addressed now or whether it's an issue that would need
7 to be addressed only if the settlement were adopted at
8 some point and there were a true compliance filing
9 coming in. But I do see the problems with having a
10 public notice go out that in your opinion would have
11 information different than what you think the settlement
12 says. So I'm going to let you, Ms. Smith, address that
13 for a few moments and then hear what Verizon has to say,
14 see if any other parties have input on that, and see if
15 perhaps we can decide that or come to some understanding
16 before we take a break.

17 MS. SMITH: Thank you, Your Honor. I'm sure
18 I'm going to stumble through this a little bit, but with
19 respect to the public notice, there was a version filed
20 on behalf of Commission Staff, Verizon, AT&T, and
21 WorldCom that we filed as directed by the Commission's
22 procedural orders in this case. That notice contains
23 the rate elements that Commission Staff believes were
24 set forth in the settlement stipulation.

25 There have been some rate changes that

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1 Verizon filed in its compliance filing, for lack of a
2 better word, that are not included in this notice
3 because they were not, in our opinion, included within
4 the settlement stipulation. So whatever rates are going
5 to be changed as a result of this proceeding need to be
6 in the public -- increased in -- whatever rates that are
7 going to be increased need to be in the public notice.

8 So I guess it's -- I mean I don't really know
9 what to say with respect to the public notice except it
10 needs to accurately reflect those rates that are going
11 to be increased. And at the time this notice was
12 prepared and filed, not all of those increases were
13 included. So I guess I would say that the notices that
14 have been filed to date in this docket would need to be
15 retooled in a way anyway. I don't know if that answers
16 your question or not.

17 JUDGE SCHAEER: Well, I understand that, if
18 I'm hearing you correctly, that the participating
19 parties, the four parties, filed a proposed notice and
20 that the information about rate increases in that notice
21 matched Staff's understanding of the rate increases
22 included in the settlement but that the informational
23 tariffs that were filed at the Commission's direction
24 along with the settlement and other supporting
25 materials, that the tariffs themselves contained

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1 increases that in Staff's opinion were not included in
2 the settlement. Is that a correct understanding?

3 MS. SMITH: That's correct, Your Honor, one
4 of those being a 120% increase in originating per
5 minutes of use on tandem switching.

6 JUDGE SCHAER: And Mr. Carrathers.

7 MR. CARRATHERS: On that point, Your Honor,
8 if I may, I'm a little confused, because perhaps Staff
9 can point to the public notice that was filed jointly
10 and point out what rate specifically in that notice does
11 not conform with the settlement agreement.

12 JUDGE SCHAER: As I understood her argument
13 and as I summarized it, I believe what was being said,
14 and Ms. Smith can speak for herself, but I believe she
15 was saying that she thought the notice accurately
16 reflected the settlement but that the tariffs filed by
17 Verizon did not.

18 MR. CARRATHERS: Well, then if Staff could
19 point to the tariff that we filed that differs from the
20 rates in the notice.

21 JUDGE SCHAER: Is that something that you are
22 prepared to do, Ms. Smith, or would you like some time?

23 MS. SMITH: Your Honor, and I just gave one
24 example before Mr. Carrathers asked the question, the
25 charges in Advice Number -- Verizon's Advice Number 3077

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1 filed on March 24th, 2003, are not included in the
2 customer notice, because the tariff filing that Verizon
3 filed in Advice Number 3077 has increases to rates that
4 were not reflected in the settlement, and they're not
5 reflected in the customer notice. And I believe they're
6 highlighted. They're the rates that are highlighted and
7 attached to Staff's objection to the tariff filing.
8 Those rates aren't in the customer notice.

9 MR. CARRATHERS: Your Honor, I think the
10 confusion is the customer notice sets forth the rates
11 that customers will be charged, retail customers. It
12 doesn't include, for example, access charges that -- the
13 new rates for access charges that even Staff agrees
14 with. So I think we're mixing apples and oranges here.
15 I think that the public notice that sets forth the rates
16 being charged to retail customers there's no dispute on.
17 Rather it is Staff's position that Verizon's tariff that
18 implemented the access rate changes that were included
19 in the settlement and indeed are not -- none of them are
20 mentioned in the public notice, it is that which Staff
21 claims is an error. Do I have that --

22 MS. SMITH: That's correct, Mr. Carrathers,
23 and I will refine your restatement of our position a
24 little more finely if I can. The public notice needs to
25 state all of the rates that are being increased, and so

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1 it's got the business rates and the residential rates,
2 but what is not included in the customer notice are the
3 access rates that are increased in this tariff filing.
4 The public notice isn't going to include the rate
5 decreases and the access charge decreases that we agreed
6 upon, but it must include the access charge increases.

7 MR. CARRATHERS: So on that point then,
8 Staff's position is, and we don't disagree with Staff,
9 it probably makes little sense to discuss the public
10 notice and resolve that issue until we address the
11 threshold issue presented in Staff's opposition.

12 MS. SMITH: I believe that's correct, but I
13 think we also need to have the issue of the notice at
14 least out in the open. But I agree, in a practical
15 sense it would be difficult to put the cart before the
16 horse.

17 JUDGE SCHAER: Let me throw one more question
18 into the pot, and then I will let others speak, and I
19 know you appear to be quite interested, Mr. Cromwell,
20 and that's noted. But is this an issue between the
21 participating parties that the participating parties
22 need to resolve as a joint understanding of what their
23 settlement proposal is or is not, or is this an issue
24 that the Commission should be resolving? And I would
25 like you to think about that a moment and then let me

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1 know what your thoughts are when you have a multiparty
2 settlement and you have participating parties who bring
3 forward a settlement but appear not to agree on how to
4 represent what that settlement means. I think the other
5 notice issues are probably going to be pretty easy
6 compared to figuring out how you folks figure out what
7 your proposal is.

8 So, Ms. Smith, did you have anything to say
9 at this point?

10 MS. SMITH: Not at this point, Your Honor. I
11 thought perhaps you were going to give us a few moments
12 before we say anything on this point.

13 JUDGE SCHAER: Well, I am thinking that it
14 might be a good time to take our morning recess. First
15 I would like to poll counsel and see if anyone else has
16 anything they would like to say at this point so that it
17 can be part of the thought process during the recess.

18 Did any other counsel wish to speak at this
19 time?

20 MR. CROMWELL: Yes, Your Honor.

21 JUDGE SCHAER: Go ahead, Mr. Cromwell.

22 MR. CROMWELL: I think you're exactly right.
23 I think there's a factual question about first whether
24 the settling parties have had a meeting of the minds and
25 the settlement encompasses what they each understand it

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1 to encompass. If that is so, then clearly there seems
2 to be a dichotomy between what was filed by Verizon as I
3 believe the Commission's 6th Supplemental Order in
4 Paragraph 24 identified them as settlement tariffs, and
5 there's the question of whether those filings accurately
6 reflect the settlement stipulation that was agreed to by
7 the settling parties.

8 Second, if it does not, then the question is
9 has Verizon in those tariffs also filed for rate
10 increases apart from the settlement but in those
11 settlement tariff filings.

12 And intertwined but I think a distinct legal
13 question is how this Commission intends to treat what it
14 identified as settlement tariffs pursuant to its
15 statutory authority and its own rules. And that is
16 something that I think after this pre-hearing conference
17 I would appreciate receiving clarity from the Commission
18 by order on. Without recounting all the arguments that
19 Mr. ffitch presented a few weeks ago, I think it really
20 -- it does go back to the question of how the process
21 proposed by the settling parties fits within the legal
22 framework that the Commission operates within.

23 JUDGE SCHAEER: And just to see if I'm
24 understanding your question, in the factual arena that
25 we are in right now, if there should be portions of

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1 tariffs filed by Verizon that seek rate increases that
2 are not rate increases that are identified in the
3 settlement, then should those be treated as an initial
4 tariff filing, or should those be treated as an
5 interesting anomaly because they are part of the
6 settlement tariff, which I believe as described is not a
7 formal tariff filing, but is an informational filing to
8 allow members of the public and the Commission to
9 understand what the parties are proposing, or is it
10 something else entirely? Am I capturing what your
11 issues are, Mr. Cromwell?

12 MR. CROMWELL: Yes, I think you're restating
13 the issues accurately. I think there's sort of the
14 predicate factual questions of what the intent of the
15 parties is and whether what the intent of Verizon
16 specifically was with those tariff filings. And then I
17 think there are the legal questions that the Commission
18 must then answer that you have just recounted.

19 JUDGE SCHAER: Anything else before we take
20 our morning recess?

21 Well, then it's 10:35, let's be back --

22 MR. O'ROURKE: Your Honor.

23 JUDGE SCHAER: Mr. O'Rourke, thank you.

24 MR. O'ROURKE: This is the first hearing of
25 this sort that I have attended, but is this the

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1 appropriate time for a short statement for our position
2 on this matter?

3 JUDGE SCHAER: Not really, no.

4 MR. O'ROURKE: Okay.

5 JUDGE SCHAER: You put some of that in your
6 motion to intervene.

7 MR. O'ROURKE: I just would like to go on the
8 record at some point, much the same way that
9 Mr. Cromwell did.

10 JUDGE SCHAER: Well, let's think about that
11 over our recess and see if we can think of a logical way
12 to do that.

13 MR. O'ROURKE: Thanks.

14 JUDGE SCHAER: Thank you.

15 So it's time for our morning recess. By the
16 clock in this room it's 10:35, let's be back at 10:50.

17 (Recess taken.)

18 JUDGE SCHAER: Let's be back on the record
19 after our morning recess. As a first point of business,
20 we have determined that the petitions for intervention
21 will be granted, so both Mr. O'Rourke's and Mr. Butler's
22 clients are now parties in the proceeding.

23 Which brings us to the next question I have
24 for you, which I think is an important one, and that
25 question is, do the participating parties agree on what

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1 the settlement they filed entails?

2 MR. CARRATHERS: This is Charles Carrathers
3 from Verizon, I guess I will be the first to say no, we
4 don't agree on what the settlement entails.

5 Specifically Staff and Verizon have a disagreement over
6 one component of the settlement that in the context of
7 the settlement is relatively small, yet still important
8 to each of those parties, and so there is a dispute
9 between Staff and Verizon.

10 JUDGE SCHAER: And, Ms. Smith, did you have
11 anything to add?

12 MS. SMITH: Yes, Your Honor, I will approach
13 it a bit differently though than Mr. Carrathers has
14 approached it on behalf of Verizon and go a bit beyond
15 that, so I would imagine that Mr. Carrathers would want
16 further comment when I'm done with my comments.

17 The Commission Staff filed its objection to
18 Verizon's Advice because we don't believe that the
19 tariff filings comport with the terms of the settlement,
20 and we are asking that the Commission enforce the
21 provision of the 6th Supplemental Order that requires
22 Verizon to file tariffs to implement the settlement
23 agreement. Verizon has yet to do that. Verizon filed
24 tariff pages that don't implement the settlement
25 agreement, that go beyond what the parties agreed to

0312

1 when they signed the stipulation.

2 For example, in the settlement stipulation at
3 page 3, paragraph 9, Verizon agrees to reduce its
4 intrastate switched access charges by, and in subsection
5 B it says, reducing the originating access charge to the
6 level of Qwest Corporation's intrastate switched access
7 charge. Verizon in its tariff filing filed rates that
8 don't reduce the originating access but, in fact,
9 increase that.

10 We believe that Verizon's tariff filing
11 doesn't comport with the settlement, and we would like
12 the Commission to require Verizon to file tariffs that
13 do.

14 JUDGE SCHAER: Does any other party wish to
15 speak to this?

16 Mr. Kopta, your client is a participating
17 party.

18 MR. KOPTA: We are a participating party to
19 the settlement. We certainly continue to support the
20 settlement. At this point, AT&T's participation has
21 largely been in terms of the general terms outlined in
22 the settlement agreement itself as opposed to how those
23 terms are reduced to individual rate elements. We
24 didn't participate in that discussion when the amounts
25 identified in the settlement document were established,

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1 and we haven't really participated in the discussions
2 that have gone on between Verizon and Commission Staff.
3 So at this point, we don't take any particular position
4 on the current disagreement between Verizon and
5 Commission Staff. We simply continue to support the
6 settlement document as executed by AT&T and filed with
7 this Commission.

8 JUDGE SCHAER: And do you believe that the
9 participating parties agree on what the settlement
10 entails?

11 MR. KOPTA: Well, it's hard for me to say
12 because I am neither Verizon nor Commission Staff in
13 terms of what they believe the document states. All we
14 can do is say that we certainly support the document as
15 it's been filed and have not taken a position on the
16 actual implementation of it to the extent of whether
17 Verizon's illustrative tariff filing implements the
18 settlement agreement or not.

19 JUDGE SCHAER: Ms. Singer Nelson, did you
20 have anything to add?

21 MS. SINGER NELSON: No, Your Honor, I have
22 nothing to add.

23 JUDGE SCHAER: Mr. Cromwell.

24 MR. CROMWELL: Well, I think, Your Honor,
25 this gets back to one of my original points, which is

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1 whether there is a meeting of the minds. And it does
2 raise a question for me what the Commission's legal
3 authority would be to order what would otherwise be a
4 voluntary filing. And I suppose it's something of a
5 technical question, but if a settlement is presumed to
6 be a matter that is consensual and is being filed by in
7 this case a subset of parties, it's not a document that
8 is required by any rule or statute of the Commission
9 that it be filed. The Commission has rules that govern
10 the process of how something is presented, but it seems
11 inherently consensual to me, and so I'm not clear quite
12 on that point.

13 And there was one matter that came up before
14 the break I did want to make a record of, and I
15 apologize for interjecting this, but I did want to make
16 it clear that Public Counsel does not agree with
17 Commission Staff's perspective regarding what they
18 allege to be a waiver of our right to present
19 substantive evidence subsequent to the last hearing held
20 by the Commission regarding the settlement. And I just
21 wanted to note that, thank you.

22 JUDGE SCHAER: Thank you.

23 Mr. O'Rourke, did you have anything you
24 wished to add?

25 MR. O'ROURKE: No, Your Honor.

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1 JUDGE SCHAER: Mr. Butler?

2 MR. BUTLER: (Shaking head.)

3 JUDGE SCHAER: Well, this dispute raises some
4 big concerns, because if we don't know, if the
5 participating parties don't agree on what the settlement
6 they filed entails, then the Commission is really not
7 sure what it is dealing with, and we would like to know
8 from the parties what you think the next step should be.
9 Should this case be placed in limbo until some agreement
10 is reached? Should the settlement be rejected because
11 the parties don't agree on what the settlement says?
12 Give me your thoughts on that, if you would, please.

13 MS. SMITH: If I may go first, Your Honor.

14 JUDGE SCHAER: Yes.

15 MS. SMITH: If that's fine with
16 Mr. Carrathers.

17 The Commission Staff would like the next step
18 in this to be a Commission order requiring Verizon to
19 file tariffs that implement the terms of the settlement
20 as those terms are stated in the four corners of the
21 settlement documents. The Commission has authority
22 within the settlement process to require that the
23 parties to a settlement go forward and do what they have
24 agreed to do. And in this case, we believe that Verizon
25 has not done that and that the Commission retains

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1 authority to govern the settlement process. And we ask
2 that the Commission look at the settlement agreement,
3 the stipulation that was signed by all of the parties,
4 look at that, look at Verizon's tariff filing, and then
5 we ask that the Commission order Verizon to file tariffs
6 that do comply with the provisions in the four corners
7 of the settlement stipulation.

8 JUDGE SCHAER: And where would I find that
9 legal authority, Ms. Smith?

10 MS. SMITH: This Commission has authority to
11 govern the settlement process. This Commission can take
12 a settlement signed by the parties and require parties
13 to take action that they have agreed to take in their
14 settlement stipulation. This is the practice that the
15 Commission has taken in other settlements.

16 JUDGE SCHAER: So you think that the
17 Commission can enforce a settlement that it has not
18 approved and that is only entered into by part of the
19 parties?

20 MS. SMITH: The Commission can enforce the
21 settlement process. The Commission can look at what the
22 parties have agreed to do and require those parties to
23 do it. And as Mr. Blackmon has reminded me, the
24 Commission did that in the 6th Supplemental Order. The
25 Commission in the 6th Supplemental Order looked at the

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1 stipulation and issued a provision in that order
2 requiring Verizon to file tariffs that implement the
3 settlement agreement. From Staff's position, Verizon
4 has failed to do so. We are asking that the Commission
5 enforce that provision of the 6th Supplemental Order.

6 JUDGE SCHAER: Mr. Carrathers, did you wish
7 to respond?

8 MR. CARRATHERS: Thank you, Your Honor, yes.
9 As I mentioned earlier, we will, if necessary, file a
10 written response to Staff opposition either later today
11 or tomorrow, but let me first briefly respond to Staff's
12 example on originating access charges.

13 The settlement agreement provides that
14 Verizon shall reduce its originating access charges to
15 "the level of Qwest Corporation's intrastate charges".
16 The 6th Supplemental Order mimics that language. That
17 is precisely what Verizon did. It filed a tariff that
18 if you compare Verizon's originating access charges to
19 Qwest's, they're going to be the same. Now what Staff's
20 position is, they say, well, wait a minute, Qwest had
21 some transport elements for originating that you never
22 had, and gee, you shouldn't include those because you're
23 going to be charging for them. That's, as I understand
24 it, Staff's position. But under Staff's position taken
25 to its logical or illogical conclusion, Verizon's

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1 originating access charges would be lower than Qwest.
2 They would not equal, they would be lower.

3 And I would also point out that in Staff's
4 opposition, it claims that the other parties to the
5 settlement did not agree and it's wholly improper for
6 Verizon to include them, but as AT&T just stated, to
7 date neither AT&T nor WorldCom, and these are the
8 parties that would pay the charges, these are the
9 parties that have to pay the alleged additional
10 transport elements that Staff claims we didn't agree to,
11 are not taking a position on that, and I think that
12 speaks somewhat as to what the parties did or did not
13 agree to.

14 But the bottom line is, as we see it, you
15 know, Staff has mentioned earlier and I think Public
16 Counsel and others, given this dispute, Verizon proposes
17 that let's set dates for hearings on the merits of
18 AT&T's complaint. And if between now and that time the
19 parties can reach a settlement and can agree rather than
20 ask the Commission to litigate it, then so be it. We
21 can approach the Commission then and offer a settlement
22 if that's the route Staff wants to go.

23 In any event, we will file a written
24 response, and we will explain our position in much
25 greater detail.

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1 JUDGE SCHAEER: Does any other party wish to
2 speak to this?

3 Mr. Cromwell.

4 MR. CROMWELL: Thank you, Your Honor. As I
5 asserted earlier this morning, it's our position that
6 the Commission should reject the settlement. I think
7 that the testimony you have received today makes it
8 clear that there is not a meeting of the minds as to
9 what the settling parties were agreeing to. And I
10 suppose it is perhaps for the best that that came out
11 sooner rather than later.

12 But I believe it is true that this Commission
13 has not yet approved this settlement. The 6th
14 Supplemental Order simply said that the Commission would
15 consider it. And so I do present the question to you
16 and I believe it's appropriate for the Commission to
17 determine whether it does, in fact, have a settlement
18 before it. If there is no meeting of the minds, then
19 perhaps what you have is a settlement between a subset
20 of parties that do agree on certain terms and other
21 parties that think they agree on certain parts but not
22 other parts, but I think that must be determined.

23 I don't offer any opportunity or suggestion
24 as to how best to resolve that other than simply
25 rejecting the settlement and, as Mr. Carrathers perhaps

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1 suggested a moment ago, simply setting evidentiary
2 hearings and putting us back to status quo ante and
3 resuming with the case in the matter that AT&T
4 originally presented to the Commission.

5 But I do think it is important to note, and I
6 will respond to a comment Ms. Smith said, I think Staff
7 in essence is seeking to enforce a provision of the
8 settlement that has not yet been adopted or approved by
9 this Commission, and I again present to you the question
10 of what the Commission's legal authority would be for
11 doing so at this point in the proceeding.

12 Thank you.

13 JUDGE SCHAER: Thank you.

14 Mr. O'Rourke, you had asked earlier if you
15 could give kind of a statement of why you were here, and
16 I think this might be a better time to include that and
17 to include your thoughts on how, if you have an opinion,
18 the Commission should proceed at this point.

19 MR. O'ROURKE: Thank you, Your Honor. The
20 reason we're here is we received public notice of this
21 hearing, and to quote paragraph 4, it said the ultimate
22 issue in this phase of the proceeding is whether the
23 Commission should accept or reject the multiparty
24 settlement proposal, and we were here asking that the
25 Commission reject it.

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1 We think that the public should have been
2 involved at the beginning of this process and not at
3 what seems like the end. At the very least this
4 settlement gives the appearance that Washington citizens
5 have no role in determining their phone service rates
6 other than to comment on rates already agreed to by all
7 the parties to this settlement, including Commission
8 Staff. We think the public should be a part of this
9 process from the very beginning and would provide
10 valuable insights to this process. So we're asking that
11 the Commission reject the settlement and require a
12 formal rate case if Verizon wants to increase its
13 telephone rates.

14 And as far as the settlement proceeding, I
15 would just endorse Mr. Cromwell's comments on that.

16 JUDGE SCHAER: Okay, thank you.

17 Ms. Singer Nelson, did you wish to comment?

18 MS. SINGER NELSON: No, thank you, Your
19 Honor.

20 JUDGE SCHAER: Okay.

21 Mr. Butler?

22 MR. BUTLER: No, Your Honor.

23 JUDGE SCHAER: Okay.

24 MR. KOPTA: Your Honor, if I might.

25 JUDGE SCHAER: Go ahead, please.

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1 MR. KOPTA: I don't know that I have anything
2 to add in terms of a suggestion for how the Commission
3 proceeds since we are in I think everyone acknowledges
4 somewhat unusual circumstances. But I will express
5 AT&T's concern that we are approaching if we're not
6 sitting here on the first anniversary of the date on
7 which we filed our complaint. I know the Commission
8 likes to resolve complaints expeditiously, and there are
9 any number of reasons why that hasn't been the case
10 here. But we would simply urge the Commission that
11 whatever route it chooses to resolve this current
12 disagreement that it does so expeditiously so that we
13 either will have a settlement agreement that the
14 Commission will consider, or if we don't have a
15 settlement agreement, then we will have evidentiary
16 hearings that are promptly scheduled and undertaken so
17 that we can resolve the issues that AT&T raised a year
18 ago as quickly and as efficiently as possible.

19 JUDGE SCHAER: Okay.

20 MR. KOPTA: Thank you.

21 JUDGE SCHAER: Thank you, Mr. Kopta.

22 I think that we would do well at this point
23 to start scheduling some evidentiary hearings, because
24 it appears to me that whether the settlement proceeds,
25 consideration of the settlement proceeds or whether we

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1 go back to litigated hearings, that we have two new
2 parties who should have the ability to do discovery if
3 they desire to according to the rules made in this
4 proceeding previously and to prepare for
5 cross-examination and testimony.

6 I'm going to rule now that Public Counsel
7 should be allowed also to participate. I believe that
8 under our partial settlement rule, Public Counsel does
9 have a right to present evidentiary information after
10 the settlement is proposed, and I do not believe that
11 the kind of notice given before the settlement hearing
12 held in December was sufficient to allow them to
13 prepare. I would disagree that 24 hours notice in a
14 very spotty format is sufficient to allow a party to
15 proceed to produce evidence regarding a settlement.

16 And then I think we're going to have to --
17 we're going to have to have a public hearing in either
18 case, if this either proceeds through litigation or if
19 the settlement continues to be pursued.

20 If the parties are able to resolve what they
21 think that should say in terms of what the rates should
22 say and to come to the Commission with a meeting of the
23 minds so that we know what the parties' settlement is,
24 then it's more likely that we could look at the schedule
25 we have prepared today and move forward with our

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1 consideration of the proposed settlement. If the
2 parties are not able to resolve that issue, then it
3 appears at this point that the parties do not have a
4 meeting of the mind, and I agree with a comment made I
5 believe by Mr. Cromwell that although we could act
6 procedurally in the 6th Supplemental Order to say that
7 the Commission would consider this and would require
8 certain kinds of notice and certain informational
9 filings so that when it was renoticed to the public the
10 information was available to share of what had gone on
11 to that point, that we really can not be enforcing the
12 terms of a settlement that the Commission has not yet
13 approved in terms of deciding what certain provisions
14 about rate changes might mean.

15 So I think we should take about a five minute
16 break for everyone to find your calendar, and then we
17 should sit down and talk dates. Is there anyone that
18 would like to say anything at this point before we
19 proceed in that manner?

20 Thank you, then we will be off the record
21 until 11:30.

22 (Recess taken.)

23 (Discussion off the record.)

24 JUDGE SCHAEER: It's of great concern to the
25 Commission to figure out what it is we're dealing with,

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1 and so we are going to ask the parties by tomorrow at
2 1:00 p.m. to either present a settlement tariff that
3 meets the requirements of the 6th Supplemental Order and
4 which all of the participating parties agree is correct,
5 or then if that can't be done, then I think we're going
6 to need to resolve that we will have to go forward in
7 the litigation mode.

8 In terms of going forward, depending on how
9 this matter proceeds, it may be, Mr. Butler and
10 Mr. O'Rourke, a matter of timing rather than a matter of
11 issues about whether there will be a phase of this
12 proceeding that addresses the rates that you have
13 expressed concern about when you intervened. And I
14 won't advise you on that, but I would suggest that you
15 read the orders and talk to some other counsel before
16 you make any decision on how you would need to go
17 forward.

18 MR. BUTLER: If we get a ruling from the
19 Commission that you're going to go forward with the
20 litigation and the issues that will be heard during the
21 litigation do not involve changes to any retail rates,
22 we will not participate in the hearing. It will not be
23 necessary for us to participate in the hearing.

24 JUDGE SCHAEER: I would encourage you to read
25 the 5th Supplemental Order and see what it has to say

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1 about possible phases of the hearing and a possible
2 later phase that addresses those issues before you make
3 a decision.

4 MR. BUTLER: But we would be interested in
5 participating in later phases if they involve those
6 issues.

7 JUDGE SCHAER: It appears that either way we
8 go we're going to need to have some hearings, which is
9 why I thought it would be a good idea to see what we
10 could schedule and get some time tied down. If we are
11 going to be in settlement mode or in either mode, if the
12 intervenors remain involved, we are going to need to
13 have some idea about what discovery you might anticipate
14 doing and what discovery windows can be built in before
15 the hearing dates so that you are able to do the
16 discovery you would want to do in the time provided, and
17 that might be another factor in which early or later
18 hearing dates were chosen.

19 So in building a schedule from here going
20 forward, I would like parties to be thinking about how
21 much time they might need to provide pre-filed testimony
22 if they plan to do that, how much time they might need
23 to do discovery, whether they would be seeking a chance
24 to rebut anything. And I don't know how familiar you
25 are with the Commission's discovery rule, which is WAC

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1 480-09-480. It has been previously triggered in this
2 proceeding, but we have not to this point set discovery
3 windows, and so I think that is going to need to be
4 considered in looking at the choice of hearing dates as
5 well.

6 So I'm going to suggest that the parties do a
7 little bit of thinking about the timing of what they
8 would want to do going forward and think about what
9 pre-filing dates, what discovery dates would work so
10 that you would have a reasonable opportunity to get to
11 hearings in a way that would allow you to be prepared
12 for what we're doing.

13 MR. CROMWELL: Your Honor.

14 JUDGE SCHAER: Yes, Mr. Cromwell.

15 MR. CROMWELL: Robert Cromwell. Because it's
16 contingent on what the subject matter of the hearings
17 would be, do you want us to develop one for a hearing
18 consistent with the supplemental order and another that
19 would be presumably addressing the settlement?

20 JUDGE SCHAER: I think it might be well for
21 you to do that. Could you provide that by 1:00 tomorrow
22 so we have that at the same time we had the information
23 from the participating parties about the settlement.

24 MR. CROMWELL: May we file electronically?

25 JUDGE SCHAER: Yes, you may.

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1 MS. ENDEJAN: Excuse me, Your Honor, could
2 you state again the weeks that you're looking at for
3 potential evidentiary hearings.

4 JUDGE SCHAER: The weeks that had been
5 identified are in July, the week of the 7th or the 14th,
6 in August the weeks of the 4th, 11th, 18th, or 25th.

7 MS. ENDEJAN: Okay, thank you.

8 JUDGE SCHAER: Thank you.

9 Is there anything further to come before the
10 Commission this morning?

11 Then the Commission will be looking for
12 filings by 1:00 p.m. tomorrow regarding scheduling
13 issues and determination of whether the settlement is a
14 settlement to all of the parties and what it means. I'm
15 going to encourage the parties if they do come up with
16 numbers to work with Staff on putting together hearing
17 notices so that I think you could probably get that done
18 now with everything but the numbers plugged in perhaps,
19 though you may need to wait until after we know actually
20 what we're going forward with. So in any case, I would
21 encourage the parties to try to work that out as some
22 kind of an agreed process, if you could. And there will
23 be a pre-hearing conference order issued that will
24 resolve the issues that we are leaving open today.

25 If there's nothing further, then this hearing

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1 will be adjourned.

2 We're off the record.

3 (Hearing adjourned at 12:15 p.m.)

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