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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 In the Matter of the)
4 Development of Universal) Docket No. UT-011219
5 Terms and Conditions for)
6 Interconnection and Network) Volume I
7 Elements to be Provided by) Pages 1 to 53
8)
9 VERIZON NORTHWEST, INC.)
10)

11 A pre-hearing conference in the above matter
12 was held on August 6, 2002, from 9:30 a.m. to 11:50
13 a.m., at 1300 South Evergreen Park Drive Southwest, Room
14 206, Olympia, Washington, before Administrative Law
15 Judge THEODORA M. MACE.

16 The parties were present as follows:

17 THE COMMISSION, by MARY M. TENNYSON, Senior
18 Assistant Attorney General, 1400 South Evergreen Park
19 Drive Southwest, P.O. Box 40128, Olympia, Washington
20 98504-0128, (360) 664-1220, Fax (360) 586-5522, E-mail
21 mtennyso@wutc.wa.gov.

22 AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST,
23 INC., TCG SEATTLE and TCG OREGON, FOX COMMUNICATIONS
24 CORPORATION, TIME WARNER TELECOM OF WASHINGTON, LLC, and
25 XO WASHINGTON, INC., by GREGORY J. KOPTA, Attorney at
26 Law, Davis, Wright, Tremaine, LLP, 1501 Fourth Avenue,
27 Suite 2600, Seattle, Washington 98101, Telephone (206)
28 628-7692, Fax (206) 628-7699, E-mail gregkopta@dwt.com.

29 VERIZON NORTHWEST, INC., by JENNIFER
30 MCCLELLAN, Attorney at Law, Hunton & Williams, 951 East
31 Byrd Street, Richmond, Virginia 23219, (804) 788-8571,
32 Fax (804) 788-8218, E-mail jmccllellan@hunton.com.

33
34 Joan E. Kinn, CCR, RPR
35 Court Reporter

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1 WORLDCOM, INC., via bridge line by MICHEL
2 SINGER NELSON, Attorney at Law, 707 - 17th Street, Suite
3 4200, Denver, Colorado 80202, Telephone (303) 390-6106,
4 Fax (303) 390-6333, E-mail
5 michel.singer nelson@wcom.com.

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

2 JUDGE MACE: Let's go on the record in Docket
3 Number UT-011219 in the Matter of the Development of
4 Universal Terms and Conditions for Interconnection and
5 Network Elements to be Provided by Verizon Northwest,
6 Inc. My name is Theo Mace, and I'm the presiding
7 Administrative Law Judge in this proceeding. Today is
8 August 6, 2002, and we are convened in a hearing room at
9 the Commission's offices in Olympia, Washington.

10 Just to outline basically what I had in mind
11 for a hearing today, taking appearances first, petitions
12 to intervene, consideration of the issues that were
13 listed in the second supplemental order setting up this
14 pre-hearing, whether there's a need for protective
15 order, whether we need to invoke the discovery rule, and
16 any other business. Does anyone else have anything that
17 they might like to add to this agenda at this point?

18 Okay, then I would like to start out by
19 taking appearances from all parties. I ask that you
20 give the full form of an appearance, indicating your
21 name, spelling your last name, who you represent, your
22 street address and mailing address, telephone number,
23 facsimile number, and if you have one, an E-mail
24 address. Why don't you go ahead.

25 MS. MCCLELLAN: Okay. Jennifer McClellan

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1 representing Verizon. I'm with the law firm of Hunton &
2 Williams, Riverfront Plaza, East Tower, 951 East Byrd
3 Street, Richmond, Virginia 23219, telephone number is
4 (804) 788-8571, fax number is (804) 788-8218, E-mail is
5 jmccllellan@hunton.com.

6 MR. KOPTA: Gregory Kopta of the law firm
7 Davis Wright Tremaine, LLP, 2600 Century Square, 1501
8 Fourth Avenue, Seattle, Washington 98101-1688, telephone
9 (206) 628-7692, fax (206) 628-7699, E-mail
10 gregkopta@dwt.com, and I'm here representing AT&T
11 Communications of the Pacific Northwest, Inc., TCG
12 Seattle and TCG Oregon, Fox Communications Corporation,
13 Time Warner Telecom of Washington LLC, and XO
14 Washington, Inc.

15 JUDGE MACE: Thank you.

16 MS. TENNYSON: Thank you. I'm Mary M.
17 Tennyson, Senior Assistant Attorney General,
18 representing Commission Staff. My address is 1400 South
19 Evergreen Park Drive Southwest, Olympia, Washington
20 98504-0128. The mailing address is P.O. Box 40128,
21 Olympia, Washington 98504-0128. Telephone is (360)
22 664-1220, fax is (360) 586-5522, E-mail is
23 mtennyso@wutc.wa.gov.

24 JUDGE MACE: Thank you. I received a
25 petition to intervene from Eschelon, and I seem not to

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1 have that filing with me here right in front of me. Let
2 me see here, Mr. Dennis Ahlers, Mr. Ahlers is not here
3 to my knowledge. Is there anyone from Eschelon here
4 today?

5 Hearing no response, I will hold this
6 petition in abeyance. Does anyone know anything about
7 whether Mr. Ahlers intended to appear today?

8 MR. KOPTA: He generally calls in to the
9 bridge line.

10 JUDGE MACE: I haven't asked about that yet.
11 Is there anyone on the bridge line who wishes to enter
12 an appearance at this point?

13 MS. SINGER NELSON: Michel Singer Nelson on
14 behalf of WorldCom would like to enter an appearance.
15 It's Michel Singer Nelson, last name is S-I-N-G-E-R,
16 space, N-E-L-S-O-N, on behalf of WorldCom, Inc. My
17 street address is 707-17th Street, Suite 4200, Denver,
18 Colorado 80202. My phone is (303) 390-6106, my fax
19 (303) 390-6333, and my E-mail address is
20 michel.singer nelson@wcom.com.

21 JUDGE MACE: Thank you. Is there anybody
22 else on the bridge line who wishes to enter an
23 appearance today?

24 Anyone from Eschelon on the line?

25 I will wait on that petition, maybe

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1 Mr. Ahlers will yet come on the line.

2 I have received petitions to intervene from
3 the following entities: Fox Communications, AT&T, TCG,
4 and all of those parties that Mr. Kopta indicated in his
5 appearance, XO Washington and Time Warner and Fox and
6 Eschelon. I already indicated Fox, okay. With regard
7 to the petitions to intervene from Fox, AT&T, XO
8 Washington, and Time Warner, is there any objection to
9 granting those petitions to intervene?

10 MS. MCCLELLAN: No objection.

11 JUDGE MACE: I will grant those petitions to
12 intervene.

13 Ms. Singer, do you intend to request
14 intervenor status in this proceeding?

15 MS. SINGER NELSON: Yes, I would, Judge. I
16 would like to move for intervention on behalf of
17 WorldCom, Inc., its regulated subsidiaries in the state
18 of Washington, particularly its local exchange carrier
19 subsidiary. Those subsidiaries have an interest in this
20 proceeding since they're certified as local exchange
21 carriers in the area of Washington that is currently
22 served by Verizon and currently has interconnection
23 agreements with Verizon in the state of Washington.

24 JUDGE MACE: And what are the names of those
25 subsidiaries; are they under your name, under WorldCom?

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1 MS. SINGER NELSON: MCI Metro is one. There
2 is a series of entities since there were several
3 purchases by WorldCom of various CLECs over the last
4 several years, but MCI Metro is the primary CLEC for
5 WorldCom's subsidiaries in Washington. I could get a
6 list to you of all of those carriers. I don't have it
7 in front of me at this point.

8 Physically the way that we have been
9 participating is as WorldCom, Inc., the parent company
10 on behalf of its regulated subsidiaries in the state of
11 Washington.

12 JUDGE MACE: Very well. Is there any
13 objection to the granting of the petition to intervene
14 as represented by Ms. Singer just now?

15 Ms. Singer, nods of the head no, in case you
16 were wondering.

17 MS. SINGER NELSON: Okay, thank you.

18 JUDGE MACE: But what I would require of you
19 is a written indication of exactly which Washington
20 state entities WorldCom is purporting to represent in
21 this proceeding as intervenors, and I would like to have
22 that in writing by the end of next week and to the
23 parties.

24 MS. SINGER NELSON: I will do that, Judge,
25 thank you.

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1 JUDGE MACE: Thank you.

2 Will the parties wish to seek discovery in
3 this case?

4 MR. KOPTA: At this point, it's hard to know.
5 I will sort of jump in here. What we have to go by, of
6 course, is our experience in the Qwest SGAT proceeding
7 in conjunction with the Commission's review of their
8 application for authority under Section 271 of the
9 Telecommunications Act. There was some discovery that
10 was undertaken there, but a lot of it was directed at
11 the extent to which Qwest was currently complying with
12 its obligations in Washington. Generally there isn't a
13 whole lot of discovery in a contract negotiation, which
14 is kind of what this proceeding is sort of about. I
15 wouldn't at this point want to say that we wouldn't need
16 discovery, but I'm not -- I don't know at this point
17 that we do need discovery, so it may be that we want to
18 hold off on that issue and bring it to your attention
19 should a need arise or we feel a need arises.

20 JUDGE MACE: Anyone else want to address
21 that?

22 MS. MCCLELLAN: I would agree with that. Our
23 experience has been even in arbitrations that there has
24 been very little discovery, but it's usually prompted at
25 a testimony phase. And if we decide in this proceeding

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1 to file testimony, we probably would not know whether
2 discovery is needed until we reach that point, so I
3 would agree with Mr. Kopta.

4 MS. TENNYSON: Staff would agree with those
5 comments as well.

6 JUDGE MACE: Very well, then I will hold off
7 on that and expect that you will bring it to my
8 attention so that I can make whatever official
9 indication on the record is required in order for the
10 discovery rule to be invoked.

11 Protective order?

12 MR. KOPTA: I think the same comments would
13 apply to the protective order. At this point, I
14 wouldn't expect to be exchanging confidential
15 information.

16 JUDGE MACE: Very well, then I will hold off
17 on that issue as well and expect you to advise me as is
18 appropriate with regard to that.

19 Then we turn next to the discussion of the
20 issues that the Commission set forth in that second
21 supplemental order. We can do it either one of two
22 ways. I can go to each party and have them address all
23 of the issues at one time, or we can go one by one
24 through the issues. Does anyone have any preference for
25 how we handle that?

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1 MS. MCCLELLAN: I think I would prefer if we
2 went issue by issue.

3 JUDGE MACE: Very well, we can do that. Let
4 me just take a brief moment here to find out, is there
5 anyone else on the bridge line who seeks to enter an
6 appearance in this proceeding this morning? Mr. Ahlers?

7 No. Okay, then let's go ahead with issue
8 number one that starts off, what is the specific goal of
9 the process, and I will ask you each to address all of
10 the questions in that particular issue in turn, and then
11 we'll go to the next one.

12 Ms. McClellan, go ahead.

13 MS. MCCLELLAN: Okay. Verizon assumes that
14 the, because we did not initiate this proceeding, we
15 assumed that the goals of the proceeding would be to
16 develop a generic tariff or SGAT type document that any
17 CLEC who can not reach a negotiation or through
18 resources does not wish to negotiate every single term
19 and condition of providing service in Washington through
20 Verizon's network could go to this document, and there
21 would already be a set of sort of off the rack
22 pre-arbitrated, if you will, terms and conditions.
23 However, the parties would -- any CLEC would still be
24 able to negotiate, would have to negotiate some sort of
25 interconnection agreement, but that for the big ticket

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1 items that usually lead to arbitration, there would be
2 an alternate route rather than individually having to go
3 through their own arbitrations.

4 JUDGE MACE: So basically the answer to the
5 question is that there would be the development of an
6 SGAT type document?

7 MS. MCCLELLAN: Yes.

8 JUDGE MACE: Go ahead then, Mr. Kopta.

9 MR. KOPTA: That's sort of what our
10 understanding is as well.

11 JUDGE MACE: Same thing?

12 MR. KOPTA: I do think that there are some
13 legal niceties that we may have to deal with in terms of
14 what the form is and how it's maintained at the
15 Commission and whether it's a tariff under state law or
16 whether it's an interconnection agreement under federal
17 law. I mean one of the issues I think is, as
18 Ms. McClellan indicated, this isn't Verizon's proposal
19 to file an SGAT, as was the case with Qwest. And so
20 exactly what the form of the document will be we may
21 need to work out, but I think the general parameters
22 that she was outlining is what we expect, that
23 essentially it would be the terms and conditions that
24 would make up an interconnection agreement that a CLEC
25 can opt into with very little additional need to engage

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1 in negotiations if that's what the CLEC wants or
2 something that would form a basis for perhaps additional
3 negotiations if a CLEC is so inclined.

4 JUDGE MACE: Ms. Tennyson.

5 MS. TENNYSON: Thank you. I believe the best
6 statement of it is contained in the Commission's first
7 supplemental order in this case in paragraph 18 where
8 the Commission reiterated Staff's proposal that the
9 Commission exercise its State authority to establish
10 terms and conditions that would be available to any
11 party requesting interconnection with Verizon that could
12 be incorporated into interconnection agreements in the
13 absence of contrary agreements of the parties.

14 JUDGE MACE: Thank you.

15 Ms. Singer?

16 MS. SINGER NELSON: Judge, I don't have
17 anything to add to the comments that have already been
18 made by the other three parties.

19 JUDGE MACE: Thank you.

20 All right, let's go on to number two, what is
21 the scope of this undertaking. Some of this may -- some
22 of these questions may lead to repetitive answers, and
23 if you think you have already responded, you can
24 indicate that. I'm certainly hoping that you don't
25 contemplate a proceeding anywhere near the scope of the

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1 Qwest proceeding, but I'm hoping for the best. Go
2 ahead.

3 MS. MCCLELLAN: We do not. Verizon would
4 propose that we envision that there would still be a
5 need for interconnection agreements, because under 251
6 and 252 of the Act, an interconnection agreement is
7 required. And even the Ninth Circuit has said that
8 tariffs under state law can not circumvent the
9 interconnection agreement route.

10 So we believe that general terms and
11 conditions, things like that, would still be negotiated
12 between the parties, but we recognize that there are big
13 ticket items such as interconnection, unbundled network
14 elements, and resale that tend to be what the parties go
15 to arbitration on, so we would propose to address those
16 issues in this proceeding.

17 We are excluding collocation because Verizon
18 already has a collocation tariff on file here in
19 Washington with terms and conditions that has been
20 operating for at least a year and no party has ever
21 contested.

22 We would include OSS with the unbundled
23 network element terms and conditions.

24 We would also ask, consistent with the
25 Commission's decision in the 34th Supplemental Order in

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1 UT-003013, that line sharing and line splitting issues
2 not be addressed at this point in this proceeding. We
3 do have interconnection agreements already in place that
4 Verizon has committed to continue operating under
5 providing line sharing and line splitting, so we're not
6 saying kick those out all together. We are just saying
7 that it would be premature at this point given the
8 uncertainty surrounding the FCC's line sharing rules to
9 address that at this time in this docket.

10 JUDGE MACE: I was just looking at the cost,
11 the Part B cost order, and there was a section called
12 intrabuilding riser cables where the Commission referred
13 that issue to this proceeding. And before I forget, I
14 want to make sure that you include in your comments how
15 you intend to address any of those issues that have
16 somehow been referred to this proceeding.

17 MS. MCCLELLAN: Okay, yes. We would include
18 the intrabuilding riser cable terms and conditions. We
19 consider that under the unbundled network element list.
20 I guess what our proposal would be is that we would
21 address what has currently been identified by the FCC as
22 a UNE, things that are already being addressed in our
23 interconnection agreements now. That would include the
24 intrabuilding riser cable. And we would propose, you
25 know, as it happened with Qwest that any cost or pricing

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1 terms would continue to be addressed in the pricing
2 docket, and so this one would only be the non-cost
3 issues. I think that's it.

4 JUDGE MACE: Mr. Kopta.

5 MR. KOPTA: Thank you. I think we might view
6 the scope a little bit differently. As I indicated
7 before, in the Qwest 271/SGAT proceeding, there was a
8 substantial amount of time and effort devoted to the
9 subject of whether Qwest was complying with its
10 obligations as well as roughing out the contractual
11 provisions that would establish what Qwest would be
12 obligated to provide. I don't think that in this
13 proceeding we're dealing with whether Verizon is
14 complying with its obligations for 271 purposes, so I
15 think that it will be a more or I would expect it to be
16 a more contained proceeding that deals specifically with
17 coming up with contract language that embodies the legal
18 requirements that Verizon has under federal and as well
19 as state law with respect to providing access to an
20 interconnection with its network in Washington.

21 Beyond that, I'm not sure that it makes sense
22 from our perspective to limit the subject areas. I do
23 know that general terms and conditions often can be
24 contentious issues, and I'm not at this point willing to
25 say that those shouldn't be included in whatever the

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1 document is that we come up with at the end of the day.
2 And also with respect to collocation, while Verizon does
3 have a tariff in Washington for collocation, I don't
4 want to put that off limits, because that was something
5 that Verizon filed with the Commission without going
6 through any kind of process like we have had here. And
7 it may be that at the end of the day there's some minor
8 modifications that can be made that we don't really need
9 to get into it, just sort of getting into how we do
10 this, which I'm trying to refrain from doing, but I
11 don't want to say at this point that those kinds of
12 issues should be excluded. It may be it makes sense to
13 deal with them in this proceeding and make whatever
14 revisions may be necessary as a result of some parties'
15 concerns, if they have any, to that existing tariff in
16 Washington.

17 JUDGE MACE: How about line sharing and line
18 splitting?

19 MR. KOPTA: At this point, I don't know my
20 clients' interests in those issues. While I agree that
21 certainly the issue is in a state of flux with respect
22 to the FCC, depending on where we are in the process in
23 this docket, it may be that there would be sufficient
24 time to address it as part of this docket after the FCC
25 does whatever it's going to do. My understanding is

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1 that the FCC wants to try and complete its triennial
2 review by the end of this year, so it may be that line
3 sharing and line splitting would be an issue that the
4 FCC has resolved, at least until somebody appeals it,
5 which seems likely, initially before the end of this
6 year, and I suspect that we won't complete this docket
7 by that time. So again, it may be one of those issues
8 that we hold in abeyance in terms of whether we're going
9 to deal with it on an initial basis, but that it remains
10 a subject that could be raised later in the proceeding
11 depending on the parties' interests and developments at
12 the FCC.

13 JUDGE MACE: Thank you.

14 Ms. Tennyson.

15 MS. TENNYSON: Thank you. I do believe that
16 we should be looking at all of the unbundled network
17 elements and that we shouldn't be limiting it to just
18 the big ticket items. Because in part for an individual
19 carrier that may be seeking an interconnection agreement
20 with Verizon, it may be the smaller items that may have
21 some importance to those carriers, but they may lack the
22 resources to go to the wall on those, where it could be
23 very significant to them as an individual matter. But
24 it would be better to have them set out on a general
25 basis. So I wouldn't want to just say we're only going

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1 to look at what Ms. McClellan referred to as big ticket
2 items.

3 I may be getting a little bit into process,
4 but it may be that for issues like line sharing and line
5 splitting, if we do use a workshop format, that that
6 might be one we set out for a later workshop as opposed
7 to a first round to look at those. So we could avoid
8 some uncertainty and hopefully have a decision or some
9 resolution at the FCC level before we get into those.
10 But I would agree also with Mr. Kopta's comments that we
11 would be looking at coming up with contract language.

12 JUDGE MACE: Thank you.

13 Ms. Singer Nelson.

14 MS. SINGER NELSON: I would also agree with
15 the scope that's suggested by Mr. Kopta and
16 Ms. Tennyson. I think that if we are going to achieve
17 the purpose, which is to perhaps minimize the amount of
18 resources that CLECs would have to expend to get to an
19 interconnection agreement with Verizon, then we should
20 try to put together as complete an SGAT as possible.
21 And I think if we use the table of contents from the
22 Qwest SGAT as a guide, that really lays out based on,
23 you know, two years of litigation, it laid out all the
24 terms and conditions that CLECs found were necessary in
25 order to be able to fully provide services consistent

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1 with the Act and the FCC order. So I would like to see
2 the scope be as broad as it is in the Qwest SGAT based
3 on the table of contents in that SGAT.

4 I do agree that we don't need to address
5 Verizon's performance at this point. It's not the same
6 kind of 271 evaluation, so we don't need to address
7 performance in this docket, but it should be more geared
8 towards contract terms. I think general terms and
9 conditions should be included, because there were many
10 litigated issues, many disputed issues between the
11 parties in the Qwest SGAT proceeding on general terms
12 and conditions. I agree with Mr. Kopta that collocation
13 should be included, and perhaps we won't have to put a
14 lot of work into it, we can use Verizon's current tariff
15 as a guide, but I still think we need to address it to
16 be comprehensive in this proceeding, make sure we hit
17 all the issues in this proceeding.

18 And then as far as line sharing and line
19 splitting, I agree with the comments of Ms. Tennyson
20 that perhaps the best way to deal with that is to just
21 set it up for one of the later issues to be addressed by
22 the parties so that we can perhaps have some more
23 guidance by the FCC on those issues.

24 JUDGE MACE: Thank you.

25 Let's move on to item number three. Go

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1 ahead, Ms. McClellan.

2 MS. MCCLELLAN: Verizon has actually come
3 with a proposed schedule that takes a couple of things
4 into consideration, one that has already been raised by
5 Mr. Kopta. And that is that the FCC is currently
6 reviewing the list of UNEs to be addressed in the
7 triennial review and expects to have an order out by the
8 end of the year. Given that and the fact that the
9 Commission has two cost dockets underway that will use a
10 lot of the same personnel, we have proposed a schedule
11 that kicks off in January of 2003.

12 The second piece of that is Verizon does not
13 propose to do the workshop route that was used with
14 Qwest mainly for resource reasons. We believe, while we
15 were on the outside looking in, it appeared to us that
16 the workshop process with Qwest was a rather long and
17 drawn out process. We prefer to use something a little
18 more akin to an arbitration process, more a general or a
19 consolidated arbitration process, where Verizon would
20 file its proposed tariff or whatever we decide to call
21 it, give all the parties 60 days or however long they
22 think that they need to review it, give the parties time
23 to informally try to reach an agreement on many of the
24 issues. Then have the other parties file with the
25 Commission a list of disputed items that would then give

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1 us a little closer or a little more time to try and
2 negotiate those. Have the Commission come up with the
3 list of items that looks like they will continue to be
4 disputed, and then have the parties file testimony and
5 go to hearing on those disputed issues.

6 The schedule we would propose for that would
7 have Verizon filing its document on January 31st, have
8 the other parties review for 60 days and file comments
9 identifying what terms and conditions they dispute on
10 March 31st, and in the meantime have the parties
11 informally negotiate. Then have the Commission provide
12 -- there are two ways this could happen. We could have
13 the parties jointly develop a matrix identifying the
14 issues that are in dispute, or we could have the
15 Commission do it. I think that will depend on what
16 happens with the issue of Staff's role in this case.
17 But that would happen on April 30th. Then have all
18 parties file direct testimony on May 31st, all parties
19 file rebuttal testimony on June 30th, and then have
20 hearings beginning on July 31st. That would allow --

21 JUDGE MACE: July 31st, did you say?

22 MS. MCCLELLAN: Yes.

23 This would allow the parties to have time to
24 identify, you know, whether or not line sharing should
25 be included in the document, because hopefully by

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1 January 31st we'll have some guidance from the FCC. It
2 will also allow the parties enough time to informally
3 resolve whatever can be resolved and will limit the
4 amount of resources spent in formal workshops bringing
5 witnesses and attorneys here, which for Verizon, any
6 witness, any subject matter expert or anyone who would
7 be coming for a workshop would be traveling quite a ways
8 to get here. And these are the same folks that are
9 involved in arbitration hearings and 271 hearings all
10 over the country, so we are trying to minimize the
11 burdon on our witnesses and attorneys as much as
12 possible, and we think that a more -- a process more
13 akin to an arbitration hearing will do that than a
14 workshop process like Qwest experienced.

15 JUDGE MACE: Okay. It looks like you have
16 pretty comprehensively answered the questions in number
17 three.

18 Mr. Kopta, what are your thoughts on this?

19 MR. KOPTA: I would say that we would agree
20 with much of what Ms. McClellan was saying in terms of
21 for the general approach. Again, I think a workshop
22 format worked pretty well for what we were doing with
23 Qwest. We're not going to be quite doing the same thing
24 with Verizon, and certainly we don't want to reinvent
25 the wheel with respect to a lot of the issues that were

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1 raised and discussed in the workshops in the Qwest
2 proceeding. We certainly I don't think would have any
3 problem with proceeding along the lines that
4 Ms. McClellan indicated, I mean almost making it a
5 multiparty negotiation/mediation/arbitration I think
6 would probably work well and would minimize the
7 resources that are needed to be expended by all parties.
8 I think that's a concern that we all have. So we don't
9 have a problem with proceeding along those lines and
10 certainly would want the opportunity to try and
11 negotiate as much as we could some of the contract
12 language so that we really are only bringing to the
13 Commission and discussing the substantive and the
14 necessary language issues that we simply can not resolve
15 between the parties.

16 The only concern that I would have with what
17 Ms. McClellan has laid out is that it is somewhat longer
18 or doesn't start for a fairly significant amount of
19 time. I understand the reasons why Verizon is proposing
20 that, but I think we would like to get started a little
21 bit earlier. One of the concerns that we have is that
22 many of the interconnection agreements that my clients
23 have with Verizon right now are close to or will soon
24 expire, and the thought is that this would be a document
25 that could then replace the existing interconnection

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1 agreements. I don't know what Verizon's position is
2 with respect to maintaining existing agreements until
3 this process is over, but one of the concerns that we
4 obviously have is that we don't want to overlap between
5 having, you know, our individual negotiations and this
6 proceeding, which is supposed to take the burdon off of
7 some carriers that don't want to go through a soup to
8 nuts type of individual negotiation/arbitration. So
9 that may have an impact as well on the timing in terms
10 of wanting to get a schedule that gets things moving a
11 little bit sooner than the beginning of next year.

12 JUDGE MACE: Ms. McClellan, did Verizon have
13 any thoughts about that particular issue? I would like
14 to address that since you brought it up, and then we can
15 have Ms. Tennyson address it as well.

16 MS. MCCLELLAN: I have not had an opportunity
17 to talk to them about what their position is on that. I
18 can do so expeditiously. All I have to go on is sort of
19 what has historically happened, and in some cases they
20 have operated under existing agreements pending
21 negotiations. In other cases, one CLEC has opted into
22 another CLEC's interconnection agreement that had not
23 expired pending their own negotiation. I just need to
24 figure out or talk to them to figure out what their
25 official position is. I think they have more handled it

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1 on a case-by-case basis in the past.

2 JUDGE MACE: Thank you.

3 Anything else, Mr. Kopta?

4 MR. KOPTA: Just one additional item is that
5 while I understand that some issues are still sort of up
6 in the air in terms of what the FCC is going to do on
7 unbundled network elements, for example, there are other
8 aspects of an interconnection agreement that are pretty
9 well established at this point, interconnection being
10 one of them. And so it may be that we could, depending
11 on obviously resource concerns, I'm not sure that this
12 addresses that issue, but it is possible that we could
13 at least get started on some other aspects of some
14 contract language before January so that again we could
15 at least begin the negotiation process,
16 negotiation/mediation process, earlier and have a more
17 phased approach.

18 I know that in addition to appearing before
19 the Commission, I represent the various parties in
20 individual interconnection contract negotiations, and
21 that's often the way that we handle them given that
22 interconnection agreements tend to be rather large
23 documents, is breaking them into pieces and dealing with
24 subject matter, you know, sections of the agreements and
25 trying to work through those issues and then moving on

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1 to the next section. And so that's certainly something
2 that we could do on a more global basis that wouldn't
3 require waiting to do everything until January.

4 And it might, in fact, be more beneficial to
5 start with a serial type of process. I think generally
6 the subject matter experts or the folks that are
7 involved tend to be different between interconnection
8 and unbundled network elements, for example. And so it
9 may not be the same resource constraint, it may tend to
10 minimize things.

11 Again, we have not had the chance or we
12 didn't take the opportunity, let me put it more bluntly,
13 to discuss this issue before discussing it here, so I'm
14 just throwing out some suggestions and would hope that
15 we could work with Verizon and Commission Staff and
16 WorldCom and come up with a way that we could deal with
17 this. I don't think that we're going to be at
18 loggerheads over how to proceed on this.

19 MS. MCCLELLAN: What we are most concerned
20 about is building something in, enough time into the
21 process, so that whatever happens at the FCC on the
22 unbundled network element piece and the remand of the
23 UNE Remand Order, we would have the flexibility to
24 respond to it. And so we could handle that one of two
25 ways. We could, as Mr. Kopta suggested, break it into

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1 pieces and do UNEs later and start with EUCL and
2 interconnection agreements.

3 Or another option is if we file the whole
4 soup to nuts thing before January, but the point when we
5 definitively identify the disputed issues doesn't happen
6 until later in the process, you know, in the March,
7 April time frame. That would allow whatever we file --
8 if we were to file the whole thing sooner, and I'm not
9 sure what time frame you have in mind, but I will just
10 pull something out of the air and say October, if we
11 were to file in October and the parties begin to look at
12 it, and then in December an order comes out of the FCC
13 saying, okay, here is the new UNE list, and it's
14 different from the list that we filed our document
15 under, then we would want the opportunity to then go in
16 and say, okay, now that we have this order from the FCC,
17 here are the changes that we want to make to our
18 document. That gives us enough time to do that, gives
19 the CLECs enough time to look at our changes and respond
20 before we have then had to come to the Commission and
21 said, this is the definitive list of what we want to
22 litigate.

23 So those are the two options that I see.
24 Verizon is indifferent as to which way we go so long as
25 we have that flexibility built into our schedule.

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1 JUDGE MACE: Perhaps some of this can be
2 deferred to your own discussions about fine tuning the
3 schedule. I don't know how much of this it's good to
4 put on the record. I do want to get everyone's, as much
5 as possible, everyone's ideas about the topics the
6 Commission set forth here, but it sounds like the
7 discussion is heading in the direction of developing an
8 actual schedule. And that's good, I don't want to
9 discourage you from that, but it sounds like some of
10 that can be done off the record since you seem to be
11 heading in that direction.

12 Let me hear from Ms. Tennyson on this issue.

13 MS. TENNYSON: Generally Staff agrees with
14 the approach that Verizon has outlined, that, you know,
15 using negotiations certainly works very well in many
16 cases, and if we narrow it down to lists of issues that
17 are disputed, then that certainly creates a workable
18 process.

19 In terms of the timing of it, there is always
20 going to be some proceeding, some uncertainty, at the
21 state or and/or federal level, and to wait until
22 everything is -- I mean we would never have gone ahead
23 with the Qwest SGAT proceeding if we were waiting for
24 certainty in the arena of telecommunications, especially
25 at the federal level and the FCC rules. So I don't

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1 think we should be dependent on that, on resolution in a
2 concrete form at the federal level before we proceed.
3 As the discussion between Mr. Kopta and Ms. McClellan
4 indicates, I think there can be some flexibility, and we
5 can work those things out.

6 Obviously, as Ms. McClellan alluded to, the
7 issue of how Staff participates will be something we
8 want to address. And Staff, I mean whether -- I don't
9 know that -- whether that's a proper discussion matter
10 for a pre-hearing conference as opposed to the
11 Commission determining on its own what role it -- how it
12 wants to deploy its staff and use its staff in a
13 process.

14 JUDGE MACE: Well, certainly it's going to be
15 up to the Commission to determine that, but I think
16 since it is one of the items that has been suggested to
17 be addressed at this pre-hearing conference, I am going
18 to take remarks from the parties about it.

19 MS. TENNYSON: Okay.

20 But in general --

21 JUDGE MACE: Anything else from Staff about
22 this particular, the scheduling issue?

23 MS. TENNYSON: Not really, no.

24 JUDGE MACE: Okay.

25 Ms. Singer.

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1 MS. SINGER NELSON: I don't have much to add
2 other than I guess I would -- I would concur in the
3 comments that Mr. Kopta made about the time frame. It
4 would be helpful to get started sooner rather than later
5 because of some of the expirations of the
6 interconnection agreements. So if Verizon was willing
7 to put those in a status that they could -- that
8 carriers could continue to operate under those even if
9 they expired until the end of this proceeding, then that
10 would be -- that would be very helpful.

11 As far as the process itself, it seems to me
12 that because this is such a huge undertaking and such a
13 huge document, a phased approach would be one that I
14 would prefer. It seems more handleable. But I think we
15 can -- the parties are pretty close in their ideas on
16 how to deal with the process, so if we just talk off the
17 record, I'm sure we can come up with a proposal that we
18 could agree to.

19 JUDGE MACE: Thank you.

20 Let's turn to item number four, and I will
21 give you more time to return to this topic before we
22 close today. Let's turn to item number four, which is
23 how we should kick off this particular proceeding. I
24 think we have already talked about it a little bit, but
25 let's be more precise.

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1 Ms. McClellan.

2 MS. MCCLELLAN: Okay. Verizon, I must
3 confess, Verizon has no idea what the Commission was
4 referring to when it referenced a New York template
5 agreement. There is no such thing. And we thought
6 maybe they meant Verizon does have a tariff in New York,
7 but they also have interconnection agreements, and they
8 sort of interact in a particular way.

9 We believe that the best way to get this
10 started is to use Verizon's model interconnection
11 agreement that is used to kick off negotiations with the
12 CLECs around the country. Most of Verizon's, actually I
13 believe all of Verizon's interconnection agreements that
14 are currently in effect in Washington started from the
15 model agreement, and many of them were not changed
16 significantly, you know, other than there may have been
17 some parts that the parties didn't need, so they didn't
18 put them in. The model interconnection agreement is
19 also what Verizon used to begin the multiparty
20 arbitration that is going on at the FCC. We could
21 either just file it as an interconnection agreement or,
22 since the Commission appears to prefer tariffs, we could
23 -- actually are in the process of turning it into a
24 tariff, into tariff format that the Commission is more
25 used to seeing. So that's what we would propose to

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1 start with.

2 JUDGE MACE: Mr. Kopta.

3 MR. KOPTA: This was something that we looked
4 into at the time that the Commission initiated this
5 proceeding and ran into the same thing Ms. McClellan was
6 alluding to, which was that we weren't quite sure what
7 the Commission had in mind. And certainly it would be
8 great if Verizon had an SGAT someplace else that had
9 been through this process, but we're not aware that
10 Verizon has done that.

11 So, you know, we certainly have some concerns
12 in starting out with the model agreement that Verizon
13 provides to individuals to initiate individual
14 interconnection negotiations. I'm not sure that it
15 means a whole lot that there aren't very many changes to
16 the ones that have been filed here, because my clients
17 have agreements that tend to predate the Bell Atlantic
18 GTE merger, so the agreements are very different today
19 than the template agreement that Verizon sends out for
20 negotiations. And I'm concerned that it would take a
21 lot of work from our perspective to come up with an
22 agreement starting with that particular document, but
23 I'm not sure how else to do it, so I think we're kind of
24 stuck.

25 We had initially suggested starting with

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1 Qwest's SGAT as the starting point since that's kind of
2 been through the wars, but that was something that the
3 Commission decided not to go along with. And I know
4 that Verizon certainly would not probably find that to
5 be a palatable alternative, but just sort of talking off
6 the top of my head, we could start there. It would take
7 a little more work, but we could start there.

8 JUDGE MACE: Ms. Tennyson.

9 MS. TENNYSON: In reading the references to
10 Verizon's New York template, my thought is that probably
11 what the Commission was thinking about is in Part B
12 there was discussion about the line sharing and line
13 splitting collaborative in New York, and they may have
14 been considering that as a more -- I don't know the
15 scope of that proceeding, whether it was limited to that
16 or was a more comprehensive document that may have
17 anticipated coming out, because of kind of the timing of
18 that order we had been discussing and had referenced in
19 Part B proceedings, that proceeding.

20 That said, I think what we really need to be
21 looking at are maybe not a starting point but a
22 reference point, what do we look at to see what kinds of
23 agreements Verizon has reached with other CLECs
24 throughout the country. I believe there was a 271
25 proceeding in New York. But, you know, we might look at

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1 the results of that to see what kinds of things came out
2 of it in terms of the, similar to using the Qwest 271
3 proceeding here, as the outcomes and referring to those
4 to see where we might be looking to set terms and
5 conditions for Verizon.

6 JUDGE MACE: I guess I just want to, I'm
7 going to ask Ms. Singer to address this, but the concern
8 I have about that is it seems like we need to have a
9 starting point and that if the parties want to bring in
10 information from these other documents, they can do so,
11 but that we need a starting point in order to have a
12 point of reference. And so are you suggesting that we
13 use all of these documents as a starting point, or are
14 you suggesting that the parties should be able to bring
15 information in from these documents if they don't like a
16 provision in the model agreement?

17 MS. TENNYSON: I guess more the latter.

18 JUDGE MACE: Okay.

19 Anything else?

20 Ms. Singer?

21 MS. SINGER NELSON: I think that I would not
22 have an objection to starting with Verizon's model
23 interconnection agreement, but I would say that the two
24 documents that we could use as kind of guides would be
25 taking the Verizon's model agreement and then comparing

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1 that to the Qwest SGAT just to make sure again that we
2 cover all of the issues that the CLECs have said are
3 important to them in these interconnection agreements.
4 When I look -- I'm looking right now at MCI Metro's
5 interconnection agreement with GTE in Washington and
6 comparing just the table of contents with the Qwest
7 SGAT, and the Qwest SGAT is a lot more comprehensive and
8 detailed. I think one of the problems that parties have
9 seen in these interconnection agreements, the older
10 interconnection agreements, is that they didn't contain
11 the kind of detail that they have found is necessary in
12 order to operate as a CLEC. So I would like to use
13 those two documents as guides for the parties through
14 this process.

15 JUDGE MACE: Let me make sure I understand
16 what you're saying. You do not object to starting with
17 Verizon filing the model interconnection agreement that
18 Verizon has proposed to file, but that you would like to
19 bring into the proceeding provisions from the Qwest
20 SGAT, for example, that you think better suit the
21 purposes of the CLECs so that it could be incorporated
22 into whatever final document results from this
23 proceeding.

24 MS. SINGER NELSON: Yes, Judge.

25 JUDGE MACE: Ms. McClellan.

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1 MS. MCCLELLAN: Yes, I will try to -- I will
2 go in order starting with Mr. Kopta's comments, that may
3 address part of them. Actually, all of the parties'
4 comments do not take into account the recent arbitration
5 held between Verizon, AT&T, WorldCom, and Cox before the
6 FCC, that an order just came out in that arbitration in
7 July. Verizon filed an interconnection agreement with
8 the FCC based on its model agreement. So AT&T and
9 WorldCom at least have quite a bit of experience looking
10 at that.

11 That model agreement is very different from
12 the model agreements that were filed by the former GTE
13 when interconnection agreements first started, because
14 it does take into account the merger between Bell
15 Atlantic and GTE and whatever changes took place. It
16 also addresses recent orders or new lists I guess of
17 unbundled network elements or requirements that have
18 come out at the federal level. So that model agreement
19 is a lot more comprehensive than the MCI agreement that
20 Ms. Singer Nelson is probably looking at.

21 And that agreement, the model agreement,
22 takes into account Verizon's network. One thing that we
23 have learned in this state for the past five years is
24 that Qwest's network and the former GTE network here in
25 Washington are very different. The companies are

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1 different, the OSSs are different, and Qwest is more
2 akin to Bell Atlantic maybe and the New York model, but
3 that is even very different from the former GTE in
4 Washington. What our model agreement does is it takes
5 into account the merger with Bell Atlantic, but keeping
6 in mind the unique nature of the former GTE network and
7 systems that support that network in Washington. All
8 the parties have plenty of experience with the model
9 agreement, and they know what the differences are. So I
10 think using Qwest's SGAT in any way runs into dangers of
11 ignoring some of the significant differences between
12 Verizon and Qwest in this state, and I think that the
13 parties will not have to start from scratch if they use
14 the current model agreement.

15 JUDGE MACE: Which exactly model agreement
16 would Verizon be intending to file then?

17 MS. MCCLELLAN: It's got some number. I mean
18 like cost models it's like every time there's a revision
19 to it, it gets some, you know, point dot whatever. But
20 I do -- actually, I do know. The contract is generally
21 updated on a quarterly basis, and each quarter the
22 company looks at, okay, what new orders have come out
23 from the FCC or from state commissions that would
24 significantly impact us enough that they need to be
25 flowed through to the rest of our states.

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1 So, for example, and this more happens on the
2 Bell Atlantic side, but say if the New York Commission,
3 you know, New York is Verizon's biggest state, if the
4 New York Commission makes a decision that forces some
5 changes to the OSS systems that support the entire
6 former Bell Atlantic company, then that order would
7 probably flow through to all former Bell Atlantic
8 states.

9 Similarly on the Washington side, if there
10 are changes that are made that would impact how the OSS
11 worked that support the former GTE states, then on a
12 quarterly basis the company looks at any state decisions
13 or FCC decisions or even if they have through
14 negotiation with CLECs come up with something better
15 that might work better, then they will flow those
16 through into the model agreement.

17 So what we are proposing is the current, the
18 most current.

19 JUDGE MACE: At the time of your filing?

20 MS. MCCLELLAN: At the time of our filing
21 model agreement will be what we file here.

22 And before I forget, I do want to address
23 just to make the record clear what the line sharing and
24 line splitting collaborative was in New York. That
25 began with a generic line sharing docket where the

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1 commission thought that a collaborative process to
2 figure out what terms and conditions and rates should
3 apply to line sharing, and so that was more akin to one
4 of our generic dockets. And then since they already had
5 that process in place when the line sharing
6 reconsideration order came out, then the commission
7 said, well, while you're collaborating, figure out line
8 splitting. And there are other issues that they have,
9 sort of advanced services issues, that they have punted
10 to the collaborative process, but that is still within
11 the auspices of a generic docket, and not -- it does not
12 -- it's not part of an arbitration or a tariff
13 proceeding per se.

14 JUDGE MACE: Thank you.

15 Any response to what Ms. McClellan has said?

16 MR. KOPTA: Just briefly. Again, I don't
17 think that we really have a strong objection to using
18 whatever model agreement that they want, the latest and
19 greatest that they want to provide. It's really the
20 issue is from our perspective trying not to reinvent the
21 wheel. I mean that's why we had suggested initially
22 that starting with the Qwest SGAT which has been through
23 a lot of back and forth and contained language that the
24 Commission had thoroughly reviewed and approved would be
25 one way to cut down on repetition. But to the extent

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1 that Verizon would need to come back and make changes
2 because they don't reflect Verizon's system or would
3 want to readdress issues that Verizon didn't have a
4 chance to take part in in that other proceeding, I'm not
5 sure that it's worth it to start that route. Plus many
6 of my clients have agreements with Verizon in multiple
7 states, and there's some efficiency in having, you know,
8 Section 2.1 --

9 JUDGE MACE: Be the same.

10 MR. KOPTA: -- in Maryland be the same as
11 Section 2.1 in Washington. So I think that, as I say,
12 it will be a little bit more work just because we need
13 to start with what they propose and then, you know, come
14 up with language that or at least counter propose and
15 negotiate and, if necessary, arbitrate. But I don't at
16 this point see any other way around -- any way of making
17 it any more efficient or easier than starting as Verizon
18 has proposed.

19 JUDGE MACE: Ms. Tennyson, anything further?

20 MS. TENNYSON: No.

21 JUDGE MACE: Ms. Singer, anything further on
22 this point?

23 MS. SINGER NELSON: No, thank you.

24 MS. MCCLELLAN: Your Honor, I'm sorry, I do
25 know that what we are currently planning to use for the

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1 tariff, whatever it is, is the model agreement version
2 2.3. There have been three revisions so that they're
3 now up to 2.6, and we plan to, any significant changes
4 like terms and condition changes that are in 2.6 we will
5 file, but any sort of format and clerical changes we
6 will not file. So, for example, if something is
7 Section, you know, 11.1 in version 2.3, but it's, you
8 know, 12.1 in 2.6 but it says the exact same thing,
9 we're not going to make that change.

10 JUDGE MACE: Okay.

11 Depending on what results from this, I would
12 expect that Verizon will make clear exactly how they're
13 going to approach this.

14 MS. MCCLELLAN: Right.

15 JUDGE MACE: Thank you.

16 MS. MCCLELLAN: And what we envision doing is
17 that we would file, you know, our, you know, Washington
18 model agreement, and in sort of either a cover page or
19 at the beginning of it, we would sort of basically say,
20 you know, this is based on Verizon model agreement 2.3,
21 these are the changes that were made to it and why. And
22 then later if there are any disputed issues when we get
23 to the testimony phase, we would include in our
24 testimony, you know, we have changed this from the model
25 agreement for the following reasons and then let the

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1 parties litigate whether or not those changes are
2 appropriate.

3 JUDGE MACE: Very well.

4 Let's turn to item number five, this has to
5 do with Staff's participation in the proceeding. Maybe
6 Staff should address this first.

7 MS. TENNYSON: Well, the Staff in its initial
8 comments did indicate that the Staff thought the
9 appropriate process was for Staff to be advisor and not
10 take an advocacy role. The Commission stated otherwise
11 in its order, so I guess Staff doesn't really have a
12 position. We'll do what we're told in that sense. But
13 I think our preference still would be as expressed in
14 our initial comments.

15 JUDGE MACE: Thank you.

16 MS. TENNYSON: I mean in this case it's when
17 you have the adversaries, if you will, the people who
18 are the companies that are most concerned with the terms
19 and conditions, are able to represent their concerns I
20 think more adequately than Staff can take positions on
21 those things. So in that sense, to us it makes more
22 sense for us to act in an advisory role in making sure
23 the record is complete and those sorts of things rather
24 than advocating for one position or another.

25 JUDGE MACE: Thank you.

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1 Ms. McClellan.

2 MS. MCCLELLAN: Yeah, I guess Verizon's
3 concern is if Staff is in an advisory role only, we
4 don't have an opportunity to know what their position
5 is. And in the generic cost case, there have been times
6 where Staff has had a view that they present in their
7 testimony, and we are able, you know, after we see their
8 concerns to either change something to address their
9 concerns or where we disagree with it present our view
10 as to why we believe their concern is incorrect. What
11 we are worried about is if they are in an advisory role
12 talking solely to the Commission about what they think,
13 we have no idea what they're saying, and that just makes
14 us uncomfortable for due process reasons.

15 JUDGE MACE: Thank you.

16 Mr. Kopta.

17 MR. KOPTA: Well, my experience has been a
18 little bit different. Commission Staff in each of the
19 arbitrations that I'm familiar with and have
20 participated in between individual carriers and
21 incumbents has been an advisory position, and Staff was
22 in an advisory role in the Qwest SGAT and 271
23 proceeding, and I have not observed any problems from
24 either side with Staff being in that position. So it
25 seemed to have worked pretty well in my experience, and

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1 so we would have no objection to Staff acting in an
2 advisory role in this proceeding.

3 And it may be that it is more appropriate, as
4 Ms. Tennyson indicates, since this is going to be
5 establishing contract terms and conditions, and the
6 people that are most familiar with the needs and desires
7 I guess of the individual parties are going to be the
8 parties that have to live under the agreement. And
9 unlike a cost docket in which there seems to be more of
10 a role for Staff to play as an advocate, I think that
11 when developing terms and conditions, it may best suit
12 the Commission to have them have an advisory Staff as
13 opposed to an advocacy Staff. There will be enough
14 parties, I think, without having to worry about having
15 another one, or there is no need, I don't think, to have
16 another one.

17 And I don't know what the Commission's
18 resource situation is, it tends to be chronically
19 limited, and so I wouldn't want to deprive them of the
20 ability to have the resources that they need to evaluate
21 the parties' position by having Staff as an advocate as
22 opposed to an advisory role, but that's certainly
23 something that the Commission knows better than I do,
24 and I won't presume to know or provide any guidance on
25 that score, but simply raise that as one of the issues

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1 that I'm sure the Commission will consider in deciding
2 how it wants to use Staff in this proceeding.

3 JUDGE MACE: Thank you.

4 Ms. Singer.

5 MS. SINGER NELSON: WorldCom doesn't have a
6 view either way. Whichever way the Commission decides
7 to use Staff is fine with WorldCom. We don't have an
8 objection.

9 JUDGE MACE: Thank you.

10 Let's turn then to item number six. We have
11 already started to discuss this in some respects except
12 for these questions about, well, the burdon of coming
13 forward with evidence, it's clear that Verizon intends
14 to or would file, make a filing first, and the burden of
15 proof, it's because it's an -- if it ends up that it is
16 organized as a multiparty arbitration, as this appears
17 to be, that is the direction it appears to be going in,
18 it seems a little odd to be discussing that type of
19 thing. So I suppose it could be something that could be
20 addressed -- well, let me just let you address the
21 question. I don't need to resolve this.

22 You can go ahead and address the question,
23 Ms. McClellan.

24 MS. MCCLELLAN: Um --

25 JUDGE MACE: And bearing in mind that I am

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1 going to give you further time to proceed with the
2 discussions about scheduling that we started earlier in
3 another item.

4 MS. MCCLELLAN: Okay.

5 JUDGE MACE: You don't have to address -- you
6 don't need to address that if you don't want to, but
7 generally speaking go ahead and address number six.

8 MS. MCCLELLAN: Okay. I guess, you know, we
9 fully recognize that we would have the burdon of coming
10 forward with the evidence. I must confess the burden of
11 proof in these cases under the Telecom Act has always
12 been a little bit confusing. Obviously I guess we would
13 have the burdon to prove that our contract language is
14 reasonable and that CLECs could compete, and I think
15 they would have the burdon to prove that they can't
16 compete and with whatever terms and conditions they
17 don't agree with. So I think we sort of each have some
18 sort of burden of proof. Where that line is is a bit
19 unclear to me.

20 JUDGE MACE: Okay.

21 MS. MCCLELLAN: I mean I guess we would sort
22 of have a prima facie, have to make a prima facie case
23 that our terms and conditions are reasonable, and then
24 the CLECs would have to on an individual terms and
25 conditions basis prove that they would be, you know,

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1 impaired or whatever.

2 JUDGE MACE: Impaired, interesting term.

3 Go ahead, Mr. Kopta.

4 MR. KOPTA: I would say I agree largely with
5 what Ms. McClellan is saying. In this case when you're
6 developing contract terms and conditions, oftentimes
7 you're dealing with legal interpretation and public
8 policy concerns, which don't tend to lend themselves
9 very easily to burden of proof types of issues. There
10 certainly will be factual issues in terms of, you know,
11 gee, can we do this, or what happens if we do that. And
12 as Ms. McClellan said, I think that, you know, the
13 burdon may shift depending on what that particular issue
14 is. Anyone sort of in general needs to provide
15 sufficient evidence to support the factual elements of
16 whatever they propose.

17 I think the ultimate burdon we would
18 certainly say is primarily on Verizon with respect to
19 the reasonableness of the terms and conditions, but
20 there will be instances in which the burdon may shift.
21 For example, if we want to put in an entire new
22 provision, then it may be our burdon under those
23 circumstances. But again, we're talking about something
24 that is going to depend on the circumstances.

25 The FCC has discussed burden of proof type

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1 issues in its initial local competition order, but those
2 tended to be on cost type issues, which are not the
3 things that we're dealing with here. So I think we're
4 probably best off dealing with who has the burdon of
5 proof when we get to those kinds of factual issues as
6 opposed to trying to, you know, establish some carte
7 blanche rule at the very beginning of the proceeding.

8 JUDGE MACE: Thank you.

9 Ms. Tennyson.

10 MS. TENNYSON: I have nothing to add.

11 JUDGE MACE: Ms. Singer.

12 MS. SINGER NELSON: I have nothing to add
13 either.

14 JUDGE MACE: Thank you.

15 And thank you for your input on these items,
16 appreciate it. I think now unless somebody has some
17 other item that we should address first, we should go
18 back to that topic of scheduling. And what I would
19 propose is to allow the parties that are with us now to
20 try to flesh out some sort of a proposed schedule,
21 taking into account what you talked about in terms of
22 phases, if that's necessary. I would say I would prefer
23 to have this proceeding start off sooner than Verizon is
24 proposing, but I am certainly flexible, and I think I
25 wouldn't want to have it be a wasted effort to engage in

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1 the issues too early based on concerns about the FCC. I
2 am mindful that we're not going to wait forever for the
3 FCC to decide whatever it is it's going to decide, but I
4 know there are some issues that it will decide that may
5 have an impact.

6 So I would propose to give you some time, a
7 break for one thing, and some time to really bear down
8 on a proposed schedule. I do want to caution you that
9 it will be just a proposed schedule, and I will have to
10 consult with the Commission about it, and more than
11 likely in whatever order comes out as a result of this
12 proceeding, we will either set out -- we will either
13 agree with your schedule, set out a different schedule,
14 or set another pre-hearing conference to further discuss
15 scheduling, so. But I think it would be very helpful
16 for the Commission to see something more concrete and
17 show that the parties have actually given a lot of
18 thought to how such a proceeding should go forward.

19 Is there anything else we need to address
20 before I adjourn so that you can conduct this
21 discussion?

22 All right, I will give you until 11:30. Too
23 much time? You should take a break, you know, because
24 we have been at this for a while.

25 MS. MCCLELLAN: I think -- I have a feeling

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1 that the schedule that we can agree on might depend on
2 what Verizon's answer will be to what it will do for the
3 interconnection agreements that are expiring. I can
4 certainly try to get that answer right now. I am not
5 sure I will have an answer by 11:30, but we could handle
6 that by coming up with, you know, an alternative, saying
7 that if Verizon allows the agreements to stay in place,
8 we go route A, and if they don't, we go route B. I just
9 don't know how badly you want that answer before you
10 come up with a schedule.

11 JUDGE MACE: Why don't I let you engage in
12 some discussion about this, and if you need me before
13 11:30, you can come down to my office, I will be there,
14 and we can resume our record.

15 MS. MCCLELLAN: Okay.

16 JUDGE MACE: Thanks.

17 (Recess taken.)

18 JUDGE MACE: Let's be back on the record in
19 case UT-011219. The parties have discussed scheduling
20 amongst themselves, and they have also discussed aspects
21 of the schedule with me and have arrived at a proposed
22 schedule of proceedings to present to the Commission for
23 possible approval. That schedule calls for the Verizon
24 model agreement to be filed on September 25th. Then on
25 November 13th, a status conference would take place to

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1 inform the Commission what was the progress of
2 negotiations between the parties, amongst the parties,
3 in their effort to resolve issues that they had with the
4 model agreement. On March 25th, comments regarding
5 disputes that remain would be filed by the parties. On
6 April 29th, depending on the role that Staff plays in
7 the proceeding, Staff would develop an issues matrix of
8 the disputed issues for distribution to the parties.
9 And then on May 28th, all parties would file testimony
10 on the disputed issues. Rebuttal testimony would be
11 filed July 1st. The pre-hearing conference would be
12 July 21st, and hearings would commence on July 28th, and
13 I will reserve a block of two weeks.

14 So the basic premise of this filing and
15 hearing schedule is to allow the parties sufficient time
16 to negotiate and resolve disputes so that there is
17 crystallized in the most succinct sort of way the issues
18 that are left to be resolved by the Commission.

19 Anything else about the schedule that we
20 should place on the record at this point?

21 Just that it is a proposed schedule, and I
22 think I already addressed that.

23 Then let me just go through a few of the
24 housekeeping matters. With regard to filings that are
25 made, I did not consult with the records center about

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1 the numbers of copies needed for internal distribution
2 in terms of the filings that you make. I need to do
3 that, and prior to your making that model agreement
4 filing, Ms. McClellan, will you please call me, and I
5 will give you that number so that you don't file more
6 than you need to file.

7 MS. MCCLELLAN: Okay.

8 JUDGE MACE: In fact, at that point, I will
9 send something out to all the parties to let them know
10 how many copies they need to file.

11 Just to remind you, all filings must be made
12 through the Commission's secretary either by mail to the
13 Secretary at the Washington Utility and Transportation
14 Commission, P.O. Box 47250, 1300 South Evergreen Park
15 Drive Southwest, Olympia, Washington 98504-7250, or by
16 other means of delivery to the Commission's offices at
17 the street address I just mentioned.

18 We require that filings of substance include
19 an electronic copy on a 3.5 inch IBM formatted high
20 density disk in PDF Adobe Acrobat format reflecting the
21 pagination of your original. Also send us the text in
22 your choice of Word 97 or later or Word Perfect 6.0 or
23 later.

24 Service on all parties must be simultaneous
25 with filing. If the parties desire to file by fax,

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1 please call me ahead of time to obtain permission.

2 The Commission will enter an order as a
3 result of this pre-hearing conference. I don't need to
4 remind the parties that the Commission encourages
5 stipulations, I think that's built into the process,
6 negotiation of issues to resolve disputes. I expect
7 that the parties will advise me if they do wish to
8 invoke the discovery rule, and I will make whatever
9 order is appropriate with regard to that. Similarly, if
10 they need a protective order, please contact me, and I
11 will do the necessary work to issue a protective order.

12 Is there anything else that we need to
13 address?

14 Thank you very much, and, Ms. Singer, thank
15 you very much.

16 MS. SINGER NELSON: Thank you, Judge.

17 JUDGE MACE: And I will be -- hopefully there
18 will be an order coming out within a couple of weeks,
19 perhaps sooner, and thanks again.

20 (Hearing adjourned at 11:50 a.m.)

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