

1 VERIZON, by Mr. Christopher S. Huther (via
2 teleconference bridge), Attorney at Law, Preston Gates Ellis &
3 Rouvelas Meeds, LLP, 1735 New York Avenue N.W., Suite 500,
4 Washington, D.C. 20006, and Mr. William Richardson
5 (via teleconference bridge), Attorney at Law, Wilmer Cutler
6 Pickering, 2445 "M" Street N.W., Washington, D.C. 20037-1420;

7 COVAD COMMUNICATIONS, by Ms. Karen Frame
8 (via teleconference bridge), Attorney at Law, Miller Nash,
9 601 Union Street, Suite 4400, Seattle, WA 98101-2352;

10 MCI/WorldCom, Inc., by Ms. Michel Singer Nelson
11 (via teleconference bridge), Attorney at Law, 707 17th Street,
12 Suite 4200, Denver, CO 80202;

13 WeBTEC, by Mr. Arthur A. Butler (via teleconference
14 bridge), Attorney at Law, Ater Wynne, 601 Union Street,
15 Suite 5450, Seattle, WA 98101;

16 Also present, Mr. Thomas Spinks.

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

Tuesday, 9:30 p.m.

JUDGE MACE: Let's be on the record in two dockets. In the matter of the review of unbundled loop and switching rates, and the review of the deaveraged zone rate structure, this is docket number UT-023003. And in the matter of the review of unbundled loop and switching rates, the deaveraged zone rate structure and unbundled network elements, transport and termination (nonrecurring costs), docket number UT-033034. This is the date that we have established for a prehearing conference in these two dockets. It's November 18th, 2003. We're convened at the offices of the Washington Utilities and Transportation Commission in Olympia, Washington.

The purpose of the prehearing conference today is to address briefly a joint motion to compel - pardon me, a joint motion to remove Qwest cost issues from the proceeding. We also need to address scheduling, depending on the outcome of that motion. And then there is also a Verizon motion to compel discovery responses from AT&T and MCI. I'd like to have the oral appearances of counsel now, and I'd like to begin with counsel who are on the conference bridge.

For all counsel I want to caution you that our reporter

1 today is a valiant fill-in for a reporter who got caught in
2 bad weather in Seattle, and she has not, to my knowledge,
3 reported at the commission before, so some of this will be
4 new to her, particularly the language, but of course also
5 your names and your voices. So it's important for people on
6 the conference bridge to speak clearly and loudly, and let's
7 try to make an effort to assist the reporter so that she can
8 make a good transcript of this hearing.

9 I think I indicated earlier, if I didn't, my name is
10 Theo Mace. I'm the administrative law judge who's been
11 assigned to hold hearings in this case. And I'd like to have
12 now the appearances from Verizon on the conference bridge.

13 MR. RICHARDSON: William Richardson.

14 MR. HUTHER: And Chris Huther. Spelled
15 H-U-T-H-E-R.

16 JUDGE MACE: Thank you. For Covad?

17 MS. FRAME: Yes, Your Honor, Karen, K-A-R-E-N,
18 Frame, like picture frame, F-R-A-M-E.

19 JUDGE MACE: Thank you. For MCI?

20 MS. SINGER NELSON: Good morning, Michel Singer
21 Nelson, on behalf of MCI. Michel is spelled M-I-C-H-E-L,
22 Singer Nelson. Thanks.

23 JUDGE MACE: For WeBTEC?

24 MR. BUTLER: Arthur A. Butler, B-U-T-L-E-R.

25 JUDGE MACE: Thank you. And now, are there any

1 other counsel on the conference bridge? (No response.)

2 All right. In the hearing room, let's begin with Qwest.

3 MS. ANDERL: Thank you, Your Honor. Lisa Anderl,
4 representing Qwest.

5 MR. KOPTA: Gregory Kopta of the law firm David
6 Wright Tremaine, LLP, on behalf of AT&T and XO.

7 MS. SMITH: Shannon Smith on behalf of commission
8 staff.

9 JUDGE MACE: Thank you. All right. When I
10 introduced the case caption I went through a listing of the
11 items that I think we should discuss today, and I believe
12 that I've notified the parties we'll discuss today. And I
13 would like to approach them in the order in which I mentioned
14 them. I would like to have the Verizon motion to compel last
15 because I think that may be a little lengthy in terms of
16 addressing the many questions that are pending there, and so
17 I don't want to put everyone who may not be interested in the
18 answers or in the discussion through that sort of level of
19 excruciating detail.

20 Does anyone have anything else they want to address on
21 the record, another item they'd like to add to the agenda
22 today? (No response) All right. Apparently not.

23 MR. HUTHER: Judge Mace, this is Chris Huther on
24 behalf of Verizon. I don't think it is appropriate for
25 discussion today in this hearing, but I wanted to alert you

1 and the other parties that yesterday Verizon filed a motion
2 to strike AT&T, MCI and staffs' cost file on this case,
3 HM5.3. And that filing may in fact implicate the discussion
4 on Verizon's second motion to compel, which of course sought
5 information pertaining to Verizon's ongoing analysis of
6 HM5.3.

7 JUDGE MACE: Well, there may or may not be some
8 impact. I guess I prefer just to deal with what we have
9 before us and address the motion to strike later on, you
10 know, give the parties an opportunity to respond and then
11 address it at that point.

12 Anybody have anything else they want to add about
13 whether that would have an impact on our discussion today?
14 (No response.) All right.

15 Okay. Let's turn first to the joint motion to remove
16 Qwest issues from the cost dockets. The commission has
17 received the motion and the responses of the parties and has
18 deliberated on the motion. It has some questions about the
19 nature of the deaveraging proposal that staff brings to the
20 proceeding, and some uncertainty about what the impact of
21 that proposal would be with regard to removing Qwest issues
22 from the proceeding. So I'm wondering, Ms. Smith, if you can
23 address that for us.

24 MS. SMITH: Yes, Your Honor, this is Shannon Smith
25 for commission staff. I certainly can address that. I don't

1 know if I can address it in the detail that the commissioners
2 might like at this point in time. But the commission staff,
3 with respect to the deaveraging proposal, would have to
4 modify the proposal that it's filed already to reflect
5 Qwest's current loop rates. So there would have to be some
6 adjustment with respect to that. And any deaveraging would
7 involve Qwest's current rates as opposed to any new rates
8 that staff would have proposed in this case, if Qwest's rates
9 and costs were considered in this docket.

10 JUDGE MACE: I think the concern is, is there some
11 way in which, even if you apply or modify your proposal to
12 effect current rates, is there some way in which Qwest would
13 still need to remain active in the case because of your
14 proposal.

15 MS. SMITH: Well, I would think that Qwest would
16 remain active in the case with respect to staff's proposal,
17 but that would not require Qwest - I don't believe it would
18 require Qwest to file any new cost information. It would
19 just be a proposal that staff would have to deaverage based
20 on Qwest's current loop rates.

21 JUDGE MACE: Okay. And Qwest didn't really
22 respond, as I recall, to this motion at all, and I wondered
23 if you have a position with regard to this deaveraging
24 proposal.

25 MS. ANDERL: Well, Qwest was a party to the joint

1 motion to remove the Qwest rates, and it's --

2 JUDGE MACE: Oh, okay. I'm sorry, I missed that.
3 That was pretty big, I'm sorry.

4 MS. ANDERL: We support that motion.

5 JUDGE MACE: I thought you probably would but I
6 don't recall you responding with regard to the deaveraging
7 proposals per se.

8 MS. ANDERL: Well, we didn't, and we're kind of in
9 a little bit of an awkward situation in that I don't want to
10 be seen here to be going against any sort of an agreement we
11 reached with staff. In other words, staff agreed not to push
12 an analysis of Qwest's costs in this docket, and agreed not
13 to propose the joint motion so long as they were allowed to
14 have their deaveraging proposal considered. And on that we
15 were simply silent. So to the extent that there was any quid
16 pro quo there, I don't want to say that I am opposed to staff
17 moving forward with their deaveraging proposal, although I
18 will say that on the merits we are opposed to the deaveraging
19 proposal. And, you know, if we were asked directly, we would
20 say that we would just as soon be out of the dockets
21 entirely. But we basically at this point, I guess,
22 determined that that was not a contested motion that we
23 wanted to bring, to have all of our issues excluded and to,
24 you know, fight with staff about that from a procedural
25 standpoint. We thought we would just battle it on the

1 merits, as it were. So that's where we are.

2 We did seek informally to clarify some things with staff
3 about how exactly this would work, and if you don't mind,
4 Your Honor, I guess I do have kind of a clarifying question.

5 JUDGE MACE: Go ahead.

6 MS. ANDERL: What Ms. Smith said is that staff
7 would have to modify its proposal to reflect Qwest's current
8 loop rates and then base its proposal on that. And so I
9 guess I wanted to kind of seek to clarify or nail down or
10 narrow the issue here on deaveraging, and that is the
11 question of whether it is limited to staff's core and fringe
12 proposal. And that would be the issue that we would
13 litigate. Because in staff's direct case, there is actually
14 a fairly significant restructure of the wire centers that go
15 into the five zones, the five current deaveraged zones. And
16 we're curious about the extent to which staff's deaveraging
17 proposal would still attempt to do that. And if so, how they
18 could do that if they were still going to use Qwest's current
19 loop rates. So, we have the same concern that was expressed
20 in the notice of additional issue, and that is, is this in
21 fact de facto going to be looking at our loop rates or not.

22 JUDGE MACE: Ms. Smith, can you offer some
23 clarification?

24 MS. SMITH: I can try, and to the extent I fail I'm
25 going to ask Mr. Spinks to speak to it directly, if that

1 would be okay with the bench.

2 JUDGE MACE: It's fine with me. Is it all right
3 with other counsel?

4 MS. ANDERL: Sure.

5 MR. KOPTA: (Nods head.)

6 MS. SMITH: I don't believe that our deaveraging
7 proposal will be limited to the core and fringe proposal.
8 And I think there may be some changes I think at some of the
9 loop rates, but the statewide average loop rate would remain
10 the same. That's pretty much it in a nutshell. And again, I
11 don't think we're prepared at this point to give a lot of
12 specifics as to what we would propose to do, we would have to
13 take this back and look at it and work through the details.

14 MS. ANDERL: Well, and I guess, Your Honor, the
15 thing that remains unclear for us is, does that mean that
16 staff will be proposing the new version of the Hatfield
17 model, a new cost model essentially to calculate Qwest's
18 costs. And even if they use that new cost calculation to
19 apply some sort of a factor or a ratio to the old rates, are
20 we in essence here going to be litigating a cost model in a
21 cost docket where perhaps we, by all rights, should be
22 offering our own model.

23 MS. SMITH: The answer to that question is no, we
24 won't be bringing in a new model, we won't be litigating a
25 new model, we would be using the same cost estimates that

1 were in staff's earlier testimony.

2 MS. ANDERL: That's what I mean, that's a new
3 model, though, the five dot - it's a new model in that it's -
4 staff is not going to base their advocacy off of the loop
5 rates and the cost models that were established in the old
6 960369 docket.

7 MS. SMITH: Your Honor, I'm going to have
8 Tom Spinks address Ms. Anderl directly. This is getting too
9 fine for me.

10 MR. SPINKS: Yes, my name is Thomas Spinks, I'm
11 with the commission staff.

12 I think there's a couple of different approaches, and
13 this is why I'm not able to give my attorney the kind of
14 detail that you're looking for. One approach is to use the
15 estimates that I've already put in, filed in my direct
16 testimony, and simply scale those up or down so that the
17 statewide average cost produced by those estimates equals the
18 current statewide average cost of Qwest today.

19 Another approach to doing it would be to use the
20 existing wire center assignments and costs inherent in - that
21 Qwest currently has in place and to work off of those, and
22 then reparate, if you will, the core and fringe within
23 those assignments. I don't know at this point which one we
24 would pursue.

25 MS. ANDERL: I think that is as much of a sneak

1 preview of their direct case as we're probably going to get.
2 Thank you, Your Honor, for letting me pursue that.

3 JUDGE MACE: I guess I would say if - well, you
4 have some remedies available to you. If the commission - and
5 I - the commission is intending to remove Qwest cost issues
6 from the proceeding, that's the nature of the deliberation
7 that's gone on so far and I believe that's going to be the -
8 there will be an order that will come out perhaps later in
9 the week, the commission just had some questions about this
10 particular aspect of it.

11 And certainly you have your remedies. If the staff
12 filing does not comport with what you thought it would or
13 makes things such that you're actually - your cost issues are
14 not removed, you can bring that up and the commission can
15 resolve it.

16 MS. ANDERL: Thanks, Your Honor, and we understand
17 that. We just wanted to make sure that it was at least
18 preliminarily aired.

19 JUDGE MACE: Very well. Just so I'm clear, I want
20 to make sure that Verizon is aware that the commission is
21 going to remove Qwest's cost issues from this proceeding, but
22 that Verizon will remain in the proceeding, and there will be
23 a written order that will be entered, I'm hoping within the
24 next few days, that will flush that out.

25 The next thing I'd like to do is address scheduling. In

1 view of the fact that Verizon will be the party whose costs
2 will be investigated, there may be the possibility of somehow
3 streamlining the schedule. I don't know if that's possible,
4 but I would like to address the scheduling issue and maybe
5 give the parties an opportunity to discuss it amongst
6 themselves. Let me just indicate that what I have for the
7 schedule right now for 023003 calls for or called for a
8 responsive filing of testimony, I think it was November 18th,
9 and that's been suspended; a filing of response testimony on
10 February 9th, next year; a rebuttal filing on April 2nd; a
11 prehearing conference on April 22nd; and a hearing scheduled
12 for April 26th through May 14th.

13 In the non-recurring cost docket, 033034, the filing of
14 direct testimony was scheduled for January 23rd, response
15 filing on March 26th, rebuttal filing on May 7th, prehearing
16 conference on May 19th, hearings on May 24th through
17 June 4th.

18 Since the commissioners are presiding, the actual dates
19 of the hearings need to correspond with their schedules, and
20 I - I mean, at present it seems like for the recurring cost
21 portion, if we could stay with the hearing dates that we have
22 right now, that would be helpful. But I'll leave it to the
23 parties to discuss how they want to approach this.

24 Mr. Kopta?

25 MR. KOPTA: Yes, thank you, Your Honor. There is a

1 scheduling issue that we're going to need some guidance from
2 the commission on. One of the reasons is, you will recall
3 that we established a supplemental direct filing testimony
4 deadline, was to enable AT&T and MCI to update the customer
5 location data in the model, an HAI model, to reflect customer
6 location data obtained from Verizon as well as from Qwest.
7 I'm going to sort of ignore Qwest from now on, given the
8 likelihood that they will not be a part of this case, or at
9 least not a large part of the case.

10 And subsequently then the commission ordered AT&T and
11 MCI to provide data from TNS, which is the entity that
12 processes the customer location data, data to which AT&T and
13 MCI do not have access and still do not have access. And it
14 had been AT&T's intention to take the Verizon customer
15 location data, have TNS process that, and then substitute it
16 for the customer location data that was basically surrogated
17 data that was in the model when the testimony was filed in
18 June.

19 In light of the commission's decision, however, that
20 would not seem to be a fruitful effort if the commission - if
21 we're still not able to provide information from TNS. And as
22 we understand the commission's direction, that they would
23 give little, if any, weight to that information if we're not
24 able to provide that information from TNS.

25 We have been in contact with TNS, and if we use them to

1 process the customer location data that Verizon provided,
2 they are willing to provide all of their backup information
3 to the parties with the exception of the source code and the
4 algorithms that are used. That information, the TNS would be
5 willing to provide directly to the commission and to
6 commission staff, but not to any of the parties, including
7 AT&T and MCI.

8 JUDGE MACE: They would provide the source code and
9 the algorithms to the staff --

10 MR. KOPTA: Yes.

11 JUDGE MACE: -- and the commission?

12 MR. KOPTA: Yes. But not to any other parties,
13 including AT&T and MCI.

14 JUDGE MACE: How about public counsel?

15 MR. KOPTA: If public counsel wants that we can
16 approach them. I think that that's consistent with what they
17 were willing to do, to provide it to essentially the
18 governmental entities but not to private parties, again
19 because of the highly commercial proprietary nature of the
20 information.

21 If that would satisfy the commission's order, that it
22 would be our intention to have TNS process the customer
23 location data, provide that in the model, and that would take
24 approximately four weeks.

25 If that does not satisfy the commission's requirements,

1 because that is an expensive undertaking, if it's not going
2 to do any good we don't see that that makes sense to have
3 them do that and we would need to investigate some other way
4 of providing customer location data that would satisfy the
5 commission's requirements. And that likewise, is my
6 understanding, would take approximately four weeks.

7 So, in establishing a schedule we would need to
8 establish a supplemental direct filing that would take into
9 account those time frames, but we would like to have the
10 guidance from the commission first so we could know which of
11 those alternatives we should pursue so that we can be most
12 efficient.

13 JUDGE MACE: Well, I should turn next to Verizon,
14 but I guess the question in my mind, if Verizon has filed a
15 motion to strike the AT&T, MCI cost model, if it's on the
16 basis that the TNS information has not been provided, perhaps
17 you can incorporate what you've said today in your response
18 to that motion, and then the commission could address it. I
19 can't make a decision on that on the record today.

20 MR. KOPTA: Oh, and I didn't expect that you would.
21 I simply, because this is a scheduling issue, wanted to raise
22 it while we're talking about schedule. And then you sort of
23 stole my fire by suggesting a way to bring it to the
24 commission's attention, because I was going to volunteer to
25 say we can put that in the form of a motion or some other

1 pleading so that we can present the issue to the commission
2 for its consideration, and obviously to allow Verizon an
3 opportunity to respond.

4 JUDGE MACE: Mr. Richardson or Mr. Huther, I'm not
5 sure who would respond to Mr. Kopta's remarks.

6 MR. RICHARDSON: I think this is something
7 Mr. Huther has been working on more directly. And we could
8 also discuss the implications for scheduling, but...

9 MR. HUTHER: This is Chris Huther. It seems to me
10 that what Mr. Kopta proffers doesn't advance the ball in any
11 measure towards allowing us the opportunity to review and
12 analyze the information underlying the cost estimates
13 produced by their model. The fact that some small portion of
14 that information may now be made available to the commission,
15 its staff, or even the public counsel raises I think some
16 very serious due process and other procedural concerns. I'm
17 not certain that the commission could make a decision based
18 on information that it and other governmental agencies had
19 access to but that the parties did not. The source code and
20 the algorithms that Mr. Kopta referred to are central to our
21 analysis of the model and were the subject of the
22 commission's order earlier. So, in short, I would not accept
23 that proffer as in any measure addressing our concerns and
24 would submit that it's not at all in compliance with the
25 commission's or Your Honor's prior orders on the subject.

1 JUDGE MACE: I'm assuming that Verizon's motion to
2 strike the cost model is based in part on this issue of the
3 TNS data?

4 MR. HUTHER: Yes, Your Honor, that's correct. It's
5 based on their continued refusal to produce data information
6 that you and the commission have ordered be produced.

7 JUDGE MACE: Thank you. Staff seems to be
8 implicated a little bit in this in that it would be staff
9 that would be reviewing the information. Does, Ms. Smith,
10 the staff have any comment on Mr. Kopta's argument or
11 representation?

12 MS. SMITH: No, Your Honor, not at this time. We
13 may be able to provide a response to the commission if we had
14 a little bit more time, but we just really heard a lot of
15 these issues and we have not yet seen Verizon's motion to
16 strike, so we really can't comment.

17 JUDGE MACE: Let me ask, Mr. Richardson - or pardon
18 me, Mr. Huther, did you file that motion today, did you say?

19 MR. HUTHER: It was sent out last night by
20 overnight mail. We did, I believe, send a courtesy copy to
21 AT&T and MCI by electronic mail. It was sort of late in the
22 day so it may not have appeared on your computers in time.
23 But I think it will actually be served today.

24 JUDGE MACE: Then let me indicate for those of you
25 who are either on the bridge or in the room, that I will ask

1 for responses to that motion by the 21st. That's Friday.
2 It's a little bit shorter than usual, but it would be helpful
3 to be able to look at them.

4 MR. KOPTA: We will provide them on the 21st.

5 MR. HUTHER: Your Honor, this is Chris Huther. To
6 the extent that Mr. Kopta or MCI respond to this motion by
7 raising the issues that he's raised here today, I would
8 request leave to reply to those arguments. And I'm not sure
9 the procedural rules would otherwise entitle me to do that.

10 JUDGE MACE: Well, let's face that when we see
11 that. I'm not opposed to having you respond briefly
12 depending on what the parties raise in response, but we can
13 deal with that when we see the responses. Is that okay?

14 MR. HUTHER: That's fine.

15 JUDGE MACE: If I do give you an opportunity to
16 respond, you won't have much time, but, you know, let's see
17 what happens.

18 MR. HUTHER: Thank you.

19 JUDGE MACE: Okay. Back to the issue of
20 scheduling. Do you have enough information to go ahead and
21 try to work out a schedule at this point?

22 MR. RICHARDSON: Your Honor, this is
23 Mr. Richardson. It would seem to me that the scheduling
24 issues really will turn on the extent to which the resolution
25 of the motion to strike; that is, the next step in the

1 schedule for the recurring case is the filing of supplemental
2 testimony about the AJI model, and to the extent Verizon has
3 additional supplemental testimony, that too. If the motion
4 were granted, then that would substantially alter the
5 schedule.

6 JUDGE MACE: Okay. Let me say that if there are
7 responses filed on the 21st, I think it's possible that there
8 could be a resolution by the 5th of December, based on what I
9 see on the calendar right now. If you're suggesting that we
10 delay talking about scheduling until after there's some
11 resolution of that motion, I'm not in favor of that because,
12 based on what I see the motion doing, I'm not - well, I can't
13 speak for the commission. I'm not optimistic that it would
14 eliminate the cost model. I have to tell you that. I don't
15 know for sure. I can't tell you what the commission would
16 decide, but it seems like that would be pretty draconian. In
17 any event, I don't want to delay scheduling until after
18 there's some decision on that, because then it ends up
19 causing further delay. If Verizon remains in the case and
20 the cost model stays, we have a case, and I want to have a
21 schedule for it. If it turns out that the motion is decided
22 in a way that I don't expect, you know, I can always send out
23 a notice saying the schedule doesn't apply anymore. Okay?

24 So, why don't I give you 15 minutes or so and have you
25 talk further about scheduling. And I'm assuming that you're

1 also going to address the schedule for the non-recurring cost
2 case in the event you want to move that down further so that
3 we're not in hearing for five or six weeks in a row.

4 MR. KOPTA: That would be good, yes.

5 (Recess.)

6 JUDGE MACE: Let's be back on the record.

7 The parties have engaged in discussion about scheduling
8 of this case, and when I say "this case," I'm talking now
9 primarily about the recurring cost case. And they have
10 agreed that a good schedule for continuing the recurring cost
11 case would be for the recurring cost case to take over the
12 schedule of the non-recurring cost case, as it stands right
13 now. Which means that there would be a supplemental direct
14 filing on January 23rd, and then that staff would make a
15 filing regarding its deaveraging proposal for Qwest on
16 February 9th. There would be a Qwest response due to that on
17 April 16th. Now let me not jump the gun. On February 9th
18 staff would make its deaveraging proposal. There would be a
19 responsive filing to the supplemental direct due on March
20 26th. On April 16th Qwest would have an opportunity to
21 respond to the staff filing about deaveraging. May 7th would
22 be the rebuttal filing, prehearing conference on May 19th,
23 hearing May 24th through June 4th. And the parties have also
24 requested that the schedule for the non-recurring cost case
25 be suspended at this point and/or vacated, and that a

1 prehearing conference take place on June 8th to discuss
2 scheduling for the non-recurring cost portion of the case.

3 Have I recited that correctly?

4 MR. KOPTA: Yes, Your Honor.

5 JUDGE MACE: Thank you. That covers the scheduling
6 item that I had on the agenda. And I believe that now we
7 could move to the Verizon motion to compel. Those parties
8 who have no interest in hearing this discussion, you're
9 welcome at this point to either leave the conference bridge
10 or leave the hearing room.

11 MS. ANDERL: Thank you, Your Honor, with your
12 consent, we will depart.

13 JUDGE MACE: Very well. Thank you.

14 MS. ANDERL: Yes, thank you, Your Honor.

15 JUDGE MACE: Thank you. Who will be remaining on
16 the conference bridge?

17 MR. RICHARDSON: Mr. Richardson.

18 MS. SINGER NELSON: Michel Singer Nelson will
19 remain.

20 JUDGE MACE: All right. And I'm assuming
21 Mr. Huther and Mr. Richardson will be remaining?

22 MS. RICHARDSON: That's correct.

23 JUDGE MACE: How about Mr. Butler?

24 MR. BUTLER: I may stick around for a few minutes.

25 JUDGE MACE: All right. Okay. Thank you.

1 MS. ANDERL: Your Honor, before I leave, this is
2 Lisa Anderl, I want to clarify for the court reporter that I
3 will be ordering a copy of this transcript. I think I have a
4 standing order for all transcripts on this docket, but just
5 so you know.

6 (Discussion off the record.)

7 JUDGE MACE: All right. What I'd like to do with
8 regard to the motion to compel is not hear argument on the
9 motion. I've already reviewed the motion and the responses.
10 I have some questions and I would like to be able to ask
11 those questions and then be able to go through the items, and
12 what I propose to do is go through the items in the order in
13 which they appear in the responses, because that's sort of
14 the way I've made my notes on these. Does anybody have a
15 problem with that? (No response.) Apparently not.

16 Okay. The first thing I want to ask is, because I'm not
17 clear about it, Verizon did not seem to be requesting
18 responses to data requests 1-11 through 3-14 from MCI,
19 because they didn't include any of MCI's responses with
20 regard to that. And I believe the same may be true for the -
21 forgive me for a moment while I refer to my notes - may be
22 true for the responses to items 5-10, 5-25, 5-26, 5-30 and
23 6-80.

24 I'd like to hear from Verizon, which part of your motion
25 to compel does not pertain to MCI? Are you following me?

1 MR. HUTHER: I'm trying to, Your Honor.

2 JUDGE MACE: Is this Mr. Richardson or Mr. Huther?

3 MR. HUTHER: I'm sorry, Your Honor, it's
4 Mr. Huther.

5 JUDGE MACE: Mr. Huther, do you understand what I'm
6 getting at? In other words, you included in your second
7 motion to compel data requests to AT&T and MCI. Some of the
8 data requests relating - well, some of the data requests you
9 only seem to be directing towards AT&T, because you did not
10 include the corresponding data requests for MCI. In other
11 words, all of your fourth set you've duplicated for AT&T and
12 MCI, and I'm not clear then whether it means that only the
13 fourth set pertains to MCI.

14 MR. HUTHER: No, Your Honor, they pertain to both
15 companies, and I think some of the argument may be obviated
16 by their supplemental responses, which are, I believe,
17 appended to AT&T's response to our motion, but they are
18 supplemental joint responses of both companies. So, for
19 instance, I think you started off by addressing data request
20 1-11, for example.

21 JUDGE MACE: Yes.

22 MR. HUTHER: AT&T and MCI have filed a joint
23 supplemental response to that data request, as they have for
24 a number of the others outside of set four. And I'm happy to
25 walk through those with you because --

1 JUDGE MACE: No, no, I'd rather not go walking
2 through quite yet.

3 MR. HUTHER: I'm sorry, what I meant to say was I
4 believe that some of their supplemental responses are in fact
5 now responsive to the request, and we don't need to discuss
6 them, we're satisfied with their response.

7 JUDGE MACE: Okay. All right. Which ones are you
8 satisfied with the responses on, if you could just tell me
9 that?

10 MR. HUTHER: We're satisfied with the response,
11 supplemental response to 1-11.

12 JUDGE MACE: And this is for both Verizon - okay.
13 Never mind. Strike that.

14 1-11, okay.

15 MR. HUTHER: 1-34, it's the same as they've given
16 elsewhere. And 3-9 --

17 JUDGE MACE: Yes.

18 MR. HUTHER: -- AT&T believes that their response
19 is sufficient, they've said, but I don't believe that they've
20 actually - no, they believe it's sufficient but they're
21 willing to provide a more detailed explanation. But I don't
22 believe that's actually set forth in their supplemental
23 responses, and so I can't address that one without knowing
24 what the supplemental response is going to be and when it's
25 going to be produced.

1 JUDGE MACE: Mr. Kopta?

2 MR. KOPTA: Yes, we were not able to pull that
3 together by the time we filed our response, but I have gotten
4 some additional information from AT&T on that and as soon as
5 I'm back in my office I can put together a supplemental
6 response.

7 JUDGE MACE: And when will you file that?

8 MR. KOPTA: I can provide it tomorrow or the next
9 day. Before the end of the week certainly.

10 JUDGE MACE: We'll set Friday as the deadline for
11 your response.

12 MR. KOPTA: We will do that.

13 JUDGE MACE: All right.

14 MR. HUTHER: 3-14, the response of AT&T and, well,
15 I guess MCI, also alleged that they have produced a
16 substantial number of documents in response to data request
17 1-10. I guess they thought that that would also be
18 responsive to our request at 3-14. I don't believe I've seen
19 any documents responsive to request 3-14. What I do know has
20 been produced are a couple of maps. And just to be clear,
21 3-14 seeks studies, documents and maps relating to any
22 external validation testing performed along 5.3's cluster
23 database. I do have two incomplete maps that have been
24 produced that appear that they may have been responsive to
25 this request but indeed they're not, because they don't

1 pertain to version 5.3 of the model filed in Washington. So,
2 to the extent that AT&T and MCI think they've provided
3 something in addition to those two maps, something
4 substantial that they've referenced in response, I just can't
5 identify what that is.

6 JUDGE MACE: Mr. Kopta?

7 MR. KOPTA: What I hear from my client is that what
8 was provided in response to 1-10 is the same thing that would
9 be provided in response to 3-14. I mean, to the extent that
10 Verizon believes that that's not responsive or that it's
11 documentation that is insufficient, then I'm not sure what
12 else to say but that that's what there is.

13 MR. HUTHER: And without some - I mean, I have to
14 go back and try and pour through this, Your Honor. I mean,
15 historically AT&T and MCI have conceded that they have not
16 performed any external validation testing of the cluster
17 database, and that's fine if that's what the answer is. But
18 this is the first I've heard that they have anything that is
19 responsive to that, and without going back and having our
20 experts pour over what was filed in response to 1-10 I'm just
21 not in a position today to tell you whether any of that is
22 responsive. My sense is that it isn't.

23 JUDGE MACE: Well, my understanding of the question
24 is, it says "provide all studies, documents and maps
25 concerning, referring or relating to any external validation

1 testing of HM5.3's cluster database." The response that's
2 initially provided, "to the extent that such documents exist,
3 they will be produced." Has there been a search for these
4 documents?

5 MR. KOPTA: It's my understanding that there has,
6 yes.

7 JUDGE MACE: When did that take place?

8 MR. KOPTA: That took place in response to
9 discussions that have been ongoing between AT&T and MCI and
10 Verizon with respect to these data requests. As soon as we
11 got them we started - we initiated a search for those
12 documents and, as I say, I'm informed by my client that any
13 documentation that would be responsive to this question was
14 provided as a response to 1-10.

15 JUDGE MACE: All right. I'm going to ask you,
16 Mr. Kopta, to require your clients to make an additional and
17 comprehensive search for documents that would respond to this
18 particular question, and to supply those documents to Verizon
19 by November 21st.

20 MR. KOPTA: We will do that.

21 MR. HUTHER: The next set - I'm just flipping
22 through AT&T's response - pertains to 5-10, 5-25, 5-26 and
23 5-30.

24 MS. SINGER NELSON: Your Honor, before we move on,
25 this is Michel Singer Nelson, may I ask for a clarification

1 on your last request of AT&T and MCI?

2 JUDGE MACE: Yes. Go ahead.

3 MS. SINGER NELSON: When you said that you're
4 asking to make a comprehensive search for documents in
5 response to 3-14 and to produce them, are you asking us to
6 reproduce the documents that we have produced in response to
7 1-10?

8 JUDGE MACE: No.

9 MS. SINGER NELSON: Okay. So to the extent that we
10 have already produced them in response to 1-10, we do not
11 have to provide those documents again?

12 JUDGE MACE: No. My understanding is there may be
13 some additional documents. AT&T says in this opposition to
14 Verizon's motion, it "has not discovered any additional
15 documents but will provide additional responsive documents if
16 AT&T discovers or obtains any such documents." And in order
17 to put some finality to this, I am asking you to search and
18 make sure there are no additional documents, and if there are
19 any, file them by November 21st. But it's additional
20 documents.

21 MS. SINGER NELSON: Okay. Thank you, Your Honor.

22 MR. HUTHER: Your Honor, this is Mr. Huther. Could
23 I ask to the extent that they believe the documents
24 responsive to 1-10 were also responsive to 3-14, they just
25 identify that document by its title or some other description

1 so that we can identify them. And as I say, I think it's
2 just these two incomplete maps that don't pertain to version
3 5.3 filed in Washington. That's all that I've been able to
4 locate.

5 JUDGE MACE: Well, I would ask counsel to cooperate
6 in this and make sure that the response to 1-10 corresponds
7 to what Verizon seems to think 1-10 is, or the response to
8 1-10 is. It seems like you should be able to talk about that
9 amongst yourselves and verify what has been responded to
10 already.

11 All right. Next.

12 MR. HUTHER: The next is I believe request 5-10.
13 We don't believe that their supplemental response is
14 sufficient.

15 JUDGE MACE: Well, the problem I have here is, I'm
16 concerned because I don't want to go through an argument on
17 each one of these. You have already responded. I'd like to
18 know the ones where you think there has been a response, in
19 this particular set, if you could indicate to me which one
20 you think AT&T and MCI have responded to.

21 MR. HUTHER: I think that that covers the ones that
22 we believe that their responses are sufficient.

23 JUDGE MACE: I'm not sure I understand what you're
24 talking about. I'm referring to, it's page four of AT&T's
25 opposition 5-10, 5-25, 5-26 and 5-30.

1 MR. HUTHER: Correct. I don't --

2 JUDGE MACE: Go ahead.

3 MR. HUTHER: I'm sorry, I don't believe that any of
4 those in set five are sufficient. The responses, I don't
5 believe the responses are sufficient.

6 JUDGE MACE: All right.

7 MR. HUTHER: That takes us to 6-80 --

8 JUDGE MACE: Well, hold on for just a second. I
9 told you this was going to be excruciating, and it looks like
10 I'm making good on my promise. (Perusing.) Okay. With
11 regard to 5-10, it appears that AT&T is looking for some
12 clarification about the use of terminology. Unfortunately
13 it's true, AT&T's response is a little on the vague side.
14 "Two of these data requests use terminology that is not used
15 in the model, while the other two requests are so broad as to
16 be unreasonable." I'm not sure which one of the ones is too
17 broad, and maybe AT&T could give me a little guidance there.

18 MR. KOPTA: Well, I think if you look at our
19 supplemental response to 5-10, while the terminology that
20 Verizon uses in that particular response is not the same as
21 in the model, we point them to the places in the model that
22 would be covering the facilities that we believe would be
23 comparable to what those terms are that Verizon is using.
24 And short of making photocopies of the documentation that
25 we've already filed and provided to Verizon, we're not sure

1 what else Verizon wants.

2 MR. HUTHER: Well, this is Mr. Huther. What we're
3 looking for here is just what we requested, which is an
4 explanation, a detailed explanation of how the model
5 calculates investment, not a reference to a cell or worksheet
6 in the model where a calculation may be performed. I think
7 that we all - it doesn't take an expert to know what a
8 point-to-point ring is or a tandem switch. And these are
9 terms that I think the experts are intimately familiar with.
10 So to the extent that Mr. Kopta thinks that this question is
11 addressed in the model itself with a reference to a worksheet
12 and a cell, I'd just like in fact the detailed description,
13 because there is no such detailed description found in cells
14 AB2 and BG2 in the model, just numbers.

15 JUDGE MACE: Here's what I'm going to have you do.
16 With regard to 5-10 through 5-26, Verizon, I need to have you
17 redraft these to make them more specific, along the lines of
18 what you just indicated. With regard to 5-30 it appears to
19 me that it is sufficiently specific. And I'm going to
20 require AT&T to respond in certainly more detail than it has.
21 It's not enough to say that it's vague and ambiguous. It
22 appears to be sufficiently specific to allow for a response.

23 All right. So - go ahead.

24 MR. KOPTA: Have you reviewed the supplemental
25 response that --

1 JUDGE MACE: Let me check it. Maybe I haven't.
2 (Perusing.) Or if I have, I've forgotten. Where does it
3 appear in your...

4 MR. KOPTA: It's at the very end. We have appended
5 supplemental responses at the end of our response to
6 Verizon's motion.

7 JUDGE MACE: Mr. Huther?

8 MR. HUTHER: Yes, Your Honor.

9 JUDGE MACE: So then your position is that the
10 supplemental response to 5-10 is insufficient?

11 MR. HUTHER: Yes, for the reasons I've just
12 described, and I have similar reasons with respect to the
13 other request; there wasn't an objection that the phrasing
14 was vague and ambiguous with respect to 25 or 26, just that
15 the request was broad. And again --

16 MR. KOPTA: Well, I'm specifically --

17 JUDGE MACE: I'm referring to 5-10 now, if you
18 would look at the supplemental response that AT&T filed.

19 MR. HUTHER: Yes, I have. And for the reasons I've
20 described, there is no description in cells AB2 or BG2 that
21 explain how the calculations are made in the model, and
22 that's what I asked for in the request, not a cell reference.

23 JUDGE MACE: All right. I am going to require
24 further response to 5-10. I continue to believe that the -
25 make sure I've got my references right here - that the

1 questions in 5-25 and 5-26 are too broad, and Verizon needs
2 to narrow them.

3 MR. HUTHER: Your Honor, I'm not...

4 JUDGE MACE: What I'd like to have you do is talk
5 with Mr. Kopta and try to find a way so that you can narrow
6 your question so that AT&T could answer it in a more specific
7 way. As far as 5-10 and 5-30, I'm going to require AT&T to
8 respond in more detail than it has with regard to 5-10, and
9 since there's no detail on 5-30 --

10 MR. KOPTA: Well, there is actually a supplemental
11 response - excuse me for interrupting - to 5-30.

12 JUDGE MACE: Okay. I did review the supplemental
13 responses. It's just that I'm trying to coordinate
14 everything and...

15 MR. KOPTA: No, and I understand, and that's why I
16 want to try and be clear since we need to comply with your
17 directions. But it asked for the type of Sonet equipment
18 used, and we've identified the type of Sonet equipment used,
19 and I'm not sure what more they want --

20 JUDGE MACE: Okay. Mr. Huther?

21 MR. HUTHER: With respect to 5-30, Your Honor,
22 again, the phrasing was specific, "identify the type of
23 equipment." And what I have is a supplemental answer that -
24 "add drop multiplexers are used and regenerators," but I have
25 no specific description of the specific equipment.

1 JUDGE MACE: How specific do you want it to be?
2 I'm not sure I understand. How specific would you want it to
3 be?

4 MR. HUTHER: Well, if I ask them, identify the type
5 of car - or equipment that you use to transport yourself from
6 point A to B and he comes back and tells me I've got a
7 vehicle. I mean, is it a Ford, is it a Pontiac, what is it?
8 I need to know the specific type of equipment that's assumed
9 in the model. Because obviously costs for various equipment
10 vary from the nature of the capabilities of the equipment.

11 MS. SINGER NELSON: So you're talking about brand
12 names, you want the name of the manufacturer of the
13 equipment?

14 MR. HUTHER: In addition to what you've given me,
15 yes, that you have add drop multiplexers and various
16 regenerators. But since you're pricing out the network in a
17 very specific way, I need to know what capabilities the Sonet
18 network equipment carries, and then I can determine whether
19 the equipment is sufficient and properly costed out by the
20 model.

21 JUDGE MACE: I'm going to require that you provide
22 that information, Mr. Kopta and Ms. Singer Nelson.

23 All right. So we're clear about this particular
24 section, AT&T and MCI have to respond in more detail to 5-10
25 and 5-30. I'm asking Verizon to recraft its questions 5-25

1 and 5-26 or to speak with counsel and try to arrive at a
2 narrower question that would be appropriate for answer.

3 All right. Let's turn to 6-80.

4 MR. HUTHER: Just a moment, Your Honor, I'm trying
5 to catch up. Yes, I'm with you.

6 JUDGE MACE: Okay. With regard to 6-80, I have one
7 question, and then after that I'll just indicate where I come
8 down on that particular item. It says in the I believe
9 second sentence, "AT&T and MCI will likely propose or support
10 another party's cost estimate." I'm just curious which other
11 party that would be.

12 MR. KOPTA: It may be commission staff. At this
13 point we don't know, given the uncertainties with respect to
14 the TNS data, what we can and can't do with our own model.
15 So until that's resolved and until we can devise some way for
16 the model to work without the customer location data it has
17 right now we can't know.

18 JUDGE MACE: Okay. With regard to that item, I'm
19 going to deny your motion with regard to that, Mr. Huther. I
20 believe that's premature. It's information that's not
21 available to AT&T and MCI at this point. So AT&T and MCI do
22 not need to answer request 6-80.

23 All right. Let's turn to the fourth set of requests.
24 I'd like to know from Verizon with regard to 4-1 what you
25 have in mind by "local exchange projects."

1 MR. HUTHER: That is the projects that AT&T or MCI
2 undertake in support of the local exchange network that
3 they're building for the service local exchange customers.

4 JUDGE MACE: And for Mr. Kopta, does the cost of
5 capital vary by local exchange project?

6 MR. KOPTA: I don't know.

7 JUDGE MACE: And Ms. Singer Nelson, for MCI?

8 MS. SINGER NELSON: I don't know what the answer to
9 that is. And I don't know that any information actually
10 exists.

11 JUDGE MACE: All right. Well, if no information
12 exists, certainly that could be your response. I would be I
13 think scratching my head if you had no cost of capital for
14 any local exchange project that you built.

15 I'd like to know from Verizon, you know, it's a question
16 that at least in my mind triggers whether you want an average
17 cost of capital, you know, what cost of capital is so
18 generic, I just would like to have some definition of what
19 cost of capital you're looking for?

20 MR. HUTHER: Well, to respond, they are in
21 possession of a cost of capital, and the reason I know this
22 is because AT&T has produced this to me in several other
23 jurisdictions. They've also produced it --

24 JUDGE MACE: But what cost of capital are you
25 talking about?

1 MR. HUTHER: The cost of capital that they use in
2 order to consider making various investments into the local
3 exchange network. In other words, companies just don't go
4 build networks without having an eye towards what it is going
5 to cost them to get the money necessary to make the
6 investment. This is a standard question that we've asked in
7 a multitude of jurisdictions, and AT&T and MCI have either
8 voluntarily produced it or they have produced it in response
9 to similar data requests. So there's no mystery what the
10 number is. I could quote it to you but I can't because it
11 was all produced according to protective agreements. That's
12 why I find this whole dialog here so curious.

13 MS. SINGER NELSON: Your Honor, maybe this is
14 something that we could talk directly with Verizon's counsel
15 about off line if we don't want to waste your time on it, and
16 we can get some more --

17 JUDGE MACE: No, I'd like to resolve it rather than
18 - it sounds like you've had many opportunities to talk about
19 this. I am going to require a response here. I'm just
20 concerned about getting a response that's meaningful for the
21 record. I was sort of looking for help from Verizon about
22 the cost of capital for what kinds of local projects, for
23 what time period, you know, just to give some definition to
24 this so that there could be something meaningful on the
25 record, or at least in discovery if not on the record.

1 MR. HUTHER: Well, I thought I answered that, maybe
2 I didn't. I'll try again. Let me - first let me pull the
3 request here so that I can look at the exact phrasing.

4 "What cost of capital does AT&T use to evaluate local
5 exchange projects. Specify whether these costs of capital
6 are after tax or before tax. And describe the cost of equity
7 models AT&T uses to develop the cost of capital, and specify
8 all model assumptions and inputs." This is the same question
9 that we've asked and they've answered elsewhere.

10 JUDGE MACE: And do you have a specific time frame
11 for them to judge what would be the appropriate cost of
12 capital?

13 MR. HUTHER: Well, the cost of capital, you know,
14 sort of varies from time to time --

15 JUDGE MACE: Right.

16 MR. HUTHER: -- but I would - I'd be perfectly
17 happy with the last two years. I can tell you that the
18 number hasn't changed very much from proceeding to
19 proceeding, where I've seen them produce this number in other
20 instances. So, there hasn't been a big bogey, it's just...

21 JUDGE MACE: I'm going to require AT&T and MCI to
22 respond to this request with information that pertains to the
23 last two years. And that would be the last two calendar
24 years.

25 All right. Let's return to request numbers 42 and 43.

1 I am going to require AT&T and MCI to respond to those two,
2 except as they pertain to long distance network
3 configurations. I've reviewed AT&T's argument that it does
4 most of its construction through IRUs, and still, you know,
5 there has to be some cost there, and so I'm going to - or
6 there has to be some parameter for the construction, and I'm
7 going to require a response on that basis.

8 MR. KOPTA: Your Honor, if I might ask for a
9 clarification.

10 JUDGE MACE: Sure.

11 MR. KOPTA: My understanding is that we do not
12 calculate that. And again, my understanding of a
13 route-to-air ratio is that it is the difference between the
14 airline miles between two points and the actual route of the
15 transport that goes between those two points.

16 JUDGE MACE: Mm-hmm.

17 MR. KOPTA: And so requiring AT&T to provide a
18 response means that we would have to go out and measure.

19 JUDGE MACE: Do you have anything comparable?

20 MR. KOPTA: At this point what I'm told is no, that
21 we don't do that. And so we would have to go out and either
22 look at blueprints or contact the IRU provider and obtain
23 sufficient information so that we could calculate it. This
24 is data that we would have to create, it's not something that
25 AT&T has.

1 JUDGE MACE: And how about MCI? The response I
2 read for these two from MCI does not indicate that MCI does
3 not make some type of calculation of that type. Is that
4 correct, Ms. Singer Nelson?

5 MS. SINGER NELSON: I don't know what the answer to
6 that is, Your Honor. I'll have to double-check.

7 JUDGE MACE: All right. To the extent AT&T and MCI
8 calculate route-to-air miles, they have to provide that data
9 to Verizon with - for everything except long distance network
10 configuration.

11 MR. HUTHER: Your Honor, might I respond briefly
12 because I'm a little bit confused by what Mr. Kopta has just
13 stated.

14 JUDGE MACE: My understanding of what he stated is
15 that AT&T doesn't calculate route-to-air miles.

16 MR. HUTHER: Right. But the calculation itself is
17 a very simple exercise. If you have the raw data, which is
18 what's the route distance between two points and what actual
19 distance you have in place, then it's elementary mathematics
20 to develop the difference. So to the extent that they don't
21 on their own, for purposes of their day-to-day business, make
22 that calculation, a fact which would astound me, they do have
23 the underlying data, I'm certain, and to the extent they have
24 that I'd like that the underlying data be produced and we'll
25 make the calculation if they don't want to.

1 MR. KOPTA: Well, it's a question of all they get
2 is - from the IRU provider, is we want to get from point A to
3 point B. There's not a necessity to know exactly in all
4 instances where that route goes because AT&T itself does not
5 construct the route. That's why the raw data is something
6 that would have to go out and be obtained either by measuring
7 the actual facilities or checking with the IRU provider to
8 see what the exact route is. AT&T has no basis for being
9 required to do that because it simply buys the capacity from
10 point A to point B.

11 MR. HUTHER: But do you concede that the underlying
12 data is available at least to the IRU provider? I mean,
13 companies just don't go out and build networks without an eye
14 towards what the cost is.

15 JUDGE MACE: Let me just jump in here. My
16 understanding is that the - you don't keep route-to-air mile
17 calculations, but that somewhere someone has some type of
18 route distances, whether it's the IRU or you; is that
19 correct?

20 MR. KOPTA: I assume that the entity that built the
21 route would have that information. In this case it doesn't
22 happen to be AT&T, it happens to be somebody else.

23 JUDGE MACE: Okay. The premise for my thinking on
24 this was that I wasn't going to require you to make a
25 calculation if you didn't keep the route-to-air calculation

1 in the normal course of business. I am going to require you
2 to provide the underlying information, though.

3 MR. KOPTA: So we have to contact the third
4 party --

5 JUDGE MACE: Yes, you do.

6 MR. KOPTA: -- to obtain the information?

7 JUDGE MACE: Yes, you do.

8 All right. Let's go to request numbers 4-4, 4-15
9 through 4-18, 4-20 through 4-23, 4-25 through 4-27, and 4-39.
10 For all of these I am going to require AT&T to respond, and
11 MCI to respond to Verizon's requests.

12 All right, turning to 4-5, 4-6, and 4-24, I am going to
13 require AT&T to respond. My reading of the response that MCI
14 provided seems to indicate that MCI has uncovered responsive
15 information and I'm wondering if MCI has actually provided a
16 response at this point?

17 MS. SINGER NELSON: No, we have not yet provided a
18 response, but we can provide the response. We can copy the
19 responsive documents and get them over to Verizon. They're
20 pretty voluminous and they're unusually shaped and that kind
21 of thing, so copying would have been expensive, so I was
22 waiting until after a decision was made on whether or not the
23 entire cost case was going to get delayed before I actually
24 sent that stuff over to Verizon.

25 JUDGE MACE: Okay. Well, the cost case more than

1 likely will be delayed. But in any event, I'd like to know a
2 date when you can have that information to Verizon.

3 MS. SINGER NELSON: I can get it to Verizon within
4 a week.

5 JUDGE MACE: So, a specific date would be, let's
6 say, November 25th?

7 MS. SINGER NELSON: Yes.

8 JUDGE MACE: Okay. Thanks.

9 All right. And 4-7 through 4-10, 4-28 and 4-29, Verizon
10 indicates it has no investment in these items in Washington
11 and I will not require AT&T to respond any further. With
12 regard to MCI, MCI indicates that this information has been
13 previously produced in response to a Qwest motion to compel.
14 And I will ask MCI please to identify to Verizon the exact
15 responses it made to Qwest's motion so that Verizon can
16 identify where the responses are.

17 All right. Let's go then to 4-11, 4-12, 4-40 through
18 4-42.

19 MR. HUTHER: Your Honor, I'm sorry, this is
20 Mr. Huther. I'm just trying to sort through it, and I was
21 curious about AT&T's response that they don't have any
22 investment in the various items that were referenced in 4-7
23 through 10, 28 and 29. Given their - and maybe I
24 misunderstand, but given their previous response and
25 acknowledgement in other data requests that the network that

1 they're building is, whether it be long distance or local, is
2 being done by IRUs and otherwise, I just - if we need to have
3 a separate discussion of the local long distance part with
4 respect to these specific requests, I'd like to have the
5 opportunity to do that, because a manhole or a telephone pole
6 would cost the same regardless of whether it's used for a
7 local network or a long distance network. So I just wanted
8 to understand that the seeming disconnect between their
9 acknowledgement that they are building a network in
10 Washington and then their statement here that they're not
11 incurring any investment on the most basic elements of the
12 network.

13 JUDGE MACE: Mr. Kopta?

14 MR. KOPTA: As we've discussed earlier, when AT&T
15 constructs its local network it does it through IRUs, in
16 which case the IRU provider is the one that has the
17 investments in poles, ducts, conduits, rights-of-way. AT&T
18 merely obtains fiber capacity, and therefore there are no
19 investments that AT&T makes in any of these enumerated items
20 that Verizon has listed. It was the same thing that we said
21 in response to Qwest's data request: We don't have them.

22 JUDGE MACE: I'm not going to allow further
23 argument on this. AT&T has responded with regard to their
24 investment in the state of Washington and I'm going to leave
25 it at that.

1 All right. Let's move on to 4-11. I think I already -
2 did I already recite those numbers? With regard to these
3 items, I am going to require AT&T and MCI to respond, except
4 for long distance network costs. The reference to Bellcore
5 standards that has been made in the responses that AT&T and
6 MCI have provided is not sufficient, there has to be more
7 detail. The statement that it meets or exceeds Bellcore
8 standards, it's not enough. And I'm going to give you an
9 example. Suppose that the Bellcore standard is that no more
10 than one percent of busy hour calls be blocked due to
11 congestion. Does AT&T, or whoever, engineer its networks so
12 that no more than one percent of calls are blocked or 0.1
13 percent? So, you know, just to give you a flavor of the kind
14 of considerations that are involved with regard to the
15 Bellcore standards.

16 MS. SINGER NELSON: Your Honor?

17 JUDGE MACE: Yes.

18 MS. SINGER NELSON: I responded to the motion
19 stating that we had produced the outside plant manual and no
20 other documents exist. I just wanted to raise that.

21 JUDGE MACE: Mr. Huther, have you had a chance to
22 look at the outside plant manual?

23 MR. HUTHER: I have not, Your Honor, not since it
24 was produced in this case.

25 JUDGE MACE: All right. Without knowing what the

1 outside plant manual does in terms of answering these
2 questions, it's hard to really make a ruling, but I just want
3 to say that to the extent MCI's response is basically to say
4 the outside plant manual answers this question, it's not
5 sufficient. There has to be some reference to the outside
6 plant manual with some specificity, you know, and there has
7 to be some discussion of parameters for how these things are
8 dealt with in terms of engineering.

9 All right. Let's go to 4-13 and 4-14. I will not
10 require AT&T and MCI to respond to those. I don't believe
11 any of that information is pertinent to the costing issues in
12 this proceeding, although I do have a question about an AT&T
13 affidavit that was mentioned I believe in an earlier
14 response, in the actual - maybe the initial response, and I
15 was wondering what that was about. I think if you go to the
16 initial response that Verizon showed, under 4-14 it says
17 "Notwithstanding these objections, attachment 4-14A is an
18 affidavit filed with the Federal Communications Commission."
19 And there was no affidavit, and I wondered what had happened
20 with that.

21 Mr. Kopta?

22 MR. KOPTA: I don't know, Your Honor. My
23 understanding was that we provided that, and if for some
24 reason that was not done then I will certainly make sure that
25 it is done.

1 JUDGE MACE: I'll ask you to provide that at least.

2 MR. KOPTA: We will do that.

3 JUDGE MACE: All right. Turning to 4-19. Well,
4 MCI answers it has uncovered no responsive information, and
5 AT&T responds that it doesn't construct its own local outside
6 plant network. Let me make sure I've got the right number
7 here. I think that this is similar in nature to the series
8 of questions that started out with 4-11, and insofar as in
9 order to construct the network some information about fill
10 factors would be required, and so whether or not you do it or
11 someone else does it, I am going to require you to provide an
12 answer to that question. When I say "you," I mean Mr. Kopta.
13 Similarly, I'm going to require MCI to respond. But again,
14 if MCI has no responsive information, that's their response.

15 All right. Let's turn to 4-30. There's a whole series
16 of questions here, and I believe the response, among others,
17 is that these are duplicative questions. I personally don't
18 want to sort out which ones are duplicative and which ones
19 are not. What I ask is that AT&T and MCI identify exactly
20 where they have already responded to these questions, and to
21 the extent they have not responded, they must respond.

22 MR. HUTHER: Thank you, Your Honor. This is
23 Mr. Huther. I just wonder if we could please go back to
24 4-19, because I think my data request was more broadly
25 phrased than the way this issue has been characterized. 4-19

1 asks whether AT&T, and similarly MCI, uses the same fill
2 factors as 5.3, and if not, why not, and explain the fill
3 factors that they experience in their own network planning.

4 JUDGE MACE: Yes, and they have to answer that
5 question.

6 MR. HUTHER: I just wanted to make sure it went
7 beyond simply identifying what the fill factor is, a full and
8 complete response --

9 JUDGE MACE: They have to provide a full and
10 complete response to 4-19. I'm sorry if I abbreviated it in
11 some way that put you on alert, but they have to provide a
12 full and complete response to 4-19.

13 MR. HUTHER: Thank you.

14 MR. KOPTA: Your Honor, if I may return back to
15 4-30. At least with respect to sub part A, that is a
16 long-distance network component --

17 JUDGE MACE: If it's a long-distance-related
18 question, you don't have to answer it. That pertains to
19 anything in these discovery requests.

20 MR. KOPTA: Thank you.

21 JUDGE MACE: All right. Then let's go to 4-31
22 through 4-34. I will require responses - well, insofar as
23 these questions pertain to sort of a future network costing
24 piece of information, they're valuable because that's the
25 nature of the TELRIC costing system. So I am going to

1 require responses to 4-31 and 4-32 and 4-34. I am not going
2 to require a response to 4-33. Let me briefly look again at
3 what that says. (Perusing.) Right, I am not going to
4 require a response to 4-33.

5 All right. With regard to 4-35, similar to that
6 question that asked for an identification of the UNEs that
7 AT&T and MCI were going to provide cost estimates for, I'm
8 not going to require an answer to this question.

9 And then turning to 4-36 and 4-37, because of the
10 configuration of AT&T and MCI's networks, I'm not going to
11 require a response to those questions either.

12 With regard to 4-38, I will not require a response to
13 that question either.

14 Similarly, with regard to 4-43, I will not require a
15 response to that question. And I'm persuaded by the security
16 concerns that AT&T and Verizon have raised with regard to
17 that item.

18 I believe that that completes our review of these items
19 in the motion to compel. Is there anything else we need to
20 address at this point? (No response.) If not, then we're
21 adjourned. Thank you.

22 MR. KOPTA: Thank you, Your Honor.

23 JUDGE MACE: Hold on for just a moment, there is
24 something. And that is, I want to clarify when these
25 responses will be provided, to the extent I've required

1 responses. I don't want to just leave this hanging. I
2 recognize there's been an extension of the schedule but I
3 still want to have some date certain by which responses will
4 be provided. I know that MCI will be providing responses to
5 some of these by Friday next week. Is that a reasonable time
6 frame to expect responses to all of these?

7 MR. KOPTA: Not to all of them, Your Honor. In
8 some cases we're going to have to be obtaining the data from
9 third parties and have no control over when we can get that.
10 In some cases we have contractual obligations to notify our
11 vendors that we've been required to produce prices and they
12 have a certain amount of time if they want to challenge that.
13 And so without knowing more in terms of those - those are
14 just basic issues. And so we will certainly --

15 JUDGE MACE: So give me a ballpark date.

16 MR. KOPTA: Given that Thanksgiving is next week, I
17 would say we can probably have responses to most or at least
18 be able to let Verizon know when we will be able to have
19 responses by the end of the following week, which would be
20 December 5th.

21 JUDGE MACE: December 5th. All right. December
22 5th. Thank you.

23 MR. KOPTA: Thank you.

24 JUDGE MACE: And that applies to MCI as well. I
25 haven't heard anything from you, Ms. Singer Nelson, but I'm

1 assuming December 5th will work for you as well?

2 MS. SINGER NELSON: Yes.

3 JUDGE MACE: All right. Thank you.

4 (Proceedings adjourned at 11:32 a.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF WASHINGTON)

(ss.

COUNTY OF THURSTON)

I, PAMELA J. KLESSIG, a Court Reporter and Notary Public of the State of Washington, do hereby certify that the foregoing proceedings were reported by me on November 18, 2003 and thereafter transcribed by me by means of computer-aided transcription.

I further certify that the said transcript of proceedings, as above transcribed, is a full, true and correct transcript of the aforementioned matter.

DATED and SIGNED December 2, 2003.

Notary Public in and for
the State of Washington,
residing at Olympia.
CCR: License No. 2948