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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 VERIZON SELECT SERVICES, INC.;)
MCIMETRO ACCESS TRANSMISSION)
4 SERVICES, LLC; MCI COMMUNICATIONS)
SERVICES, INC.; TELECONNECT LONG)
5 DISTANCE SERVICES AND SYSTEMS CO.)
d/b/a TELECOM USA; AND TTI)
6 NATIONAL, INC.,)

7 Complainants,)

8 vs.) DOCKET NO. UT-081393

) Volume I

9 UNITED TELEPHONE COMPANY OF) Pages 1 - 29

THE NORTHWEST, d/b/a EMBARQ,)

10)

)

11 Respondent.)

12 A prehearing conference in the above matter

13 was held on September 24, 2008, at 1:32 p.m., at 1300

14 South Evergreen Park Drive Southwest, Olympia,

15 Washington, before Administrative Law Judges ADAM TOREM

16 and ANN RENDAHL.

17 The parties were present as follows:

18 VERIZON SELECT SERVICES, INC., and all other
19 complainants, by GREGORY M. ROMANO, General Counsel,
1800 41st Street, Everett, Washington 98201;
20 telephone, (425) 261-5460.

21 VERIZON SELECT SERVICES, INC., and all other
complainants, by CHRISTOPHER D. OATWAY (via bridge
22 line), Assistant General Counsel, 1515 North Courthouse
Road, Suite 500, Arlington, Virginia 22201; telephone,
23 (703) 351-3037.

24 Kathryn T. Wilson, CCR

25 Court Reporter

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1 UNITED TELEPHONE COMPANY OF THE NORTHWEST, by
2 WILLIAM E. HENDRICKS, III, Attorney at Law, 902 Wasco
3 Street, Hood River, Oregon 97031; telephone, (541)
4 387-9439.

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6 AT&T SERVICES, INC., by LETTY S.D. FRIESEN
7 (via bridge line), General Attorney, 2535 East 40th
8 Avenue, Suite B-1201, Denver, Colorado 80205;
9 telephone, (303) 299-5708.

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11 AT&T SERVICES, INC., by CINDY MANHEIM (via
12 bridge line), Attorney at Law, 8645 154th Avenue
13 Northeast, Redmond, Washington 98052; PO Box 97061,
14 98073; telephone, (425) 580-8112.

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16 WASHINGTON UTILITIES AND TRANSPORTATION
17 COMMISSION, by JONATHAN THOMPSON, Assistant Attorney
18 General, 1400 South Evergreen Park Drive Southwest,
19 Post Office Box 40128, Olympia, Washington 98054;
20 telephone, (360) 664-1225.

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

2 JUDGE TOREM: Good afternoon. We are
3 convened today in Docket No. UT-081393. This is a
4 complaint filed by Verizon Select Services,
5 Incorporated; MCI Metro Access Transmission Services,
6 LLC; MCI Communications Services, Incorporated;
7 Teleconnect Long Distance Services and Systems Company,
8 doing business as Telecom USA, and TTI National,
9 Incorporated. They will all be known as Verizon
10 Access, or Complainants, to make that a little shorter,
11 and their complaint was filed against United Telephone
12 Company of the Northwest, known as Embarq.

13 My name is Adam Torem. I'm an administrative
14 law judge with the Washington Utilities and
15 Transportation Commission, and it's Wednesday,
16 September 24th, at 1:30 or so in the afternoon. What
17 we are going to do today is take appearances and then
18 see if there is anyone that wants to file a petition to
19 intervene, and then we have before us, not only this
20 being the initial prehearing conference in the matter,
21 a motion to dismiss the matter as well as a motion to
22 allow an Amicus brief.

23 So I'm going to take appearances from those
24 that are present, and ask those that are on the bridge
25 line to hang on, and if you can, put the phone a little

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1 bit back. We are getting someone's heavier breathing
2 over the line, and that will just interfere with the
3 court reporter's ability to hear you and the others
4 here in Olympia. Let me start with the Complainants,
5 Mr. Romano?

6 MR. ROMANO: Gregory M. Romano, general
7 counsel of Verizon representing Verizon Access. My
8 address is 1800 41st Street, Everett, Washington,
9 98201.

10 JUDGE TOREM: Can you state your phone, fax,
11 and e-mail for me?

12 MR. ROMANO: The phone number is (425)
13 621-5460. The fax is (425) 261-5262, and the e-mail
14 address is gregory.m.romano@verizon.com.

15 JUDGE TOREM: And you have Mr. Chris Oatway
16 appearing on the bridge line?

17 MR. ROMANO: Yes.

18 JUDGE TOREM: Mr. Oatway, are you going to
19 act as co-counsel?

20 MR. OATWAY: Yes, that's correct. It's
21 Christopher D. Oatway, assistant general counsel for
22 Verizon. Address is 1515 North Courthouse Road, Suite
23 500, Arlington, Virginia, 22201. Telephone number is
24 (703) 351-3037. Fax is (703) 351-3676.

25 JUDGE TOREM: Mr. Oatway, can you restate

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1 that telephone number one more time?

2 MR. OATWAY: (703) 351-3037.

3 JUDGE TOREM: Do you have an e-mail address?

4 MR. OATWAY: It's
5 christopher.d.oatway@verizon.com.

6 JUDGE TOREM: For the Respondents, for
7 Embarq, Mr. Hendricks?

8 MR. HENDRICKS: This is Tre Hendricks
9 appearing on behalf of the United Telephone Company of
10 the Northwest doing business as Embarq. My address is
11 902 Wasco Street, Hood River, Oregon, 97031. My phone
12 number is (541) 387-9439. My fax is (541) 387-9753,
13 and my e-mail address is tre.hendricks@embarq.com.

14 JUDGE TOREM: You have a couple of folks
15 listening in today but not making an appearance; is
16 that correct?

17 MR. HENDRICKS: Not at this time, no.

18 JUDGE TOREM: My notes indicate it's Becky
19 Sandercock and Sue Benedek. Moving on to Commission
20 staff, Mr. Thompson?

21 MR. THOMPSON: I'm Jonathan Thompson,
22 assistant attorney general, representing the Commission
23 staff. My street address is 1400 South Evergreen Park
24 Drive Southwest in Olympia, Washington, 98504-0128, and
25 my mailing address is PO Box 40128. My telephone

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1 number is (360) 664-1225. The fax is (360) 586-5522,
2 and my e-mail address is jthompso@wutc.wa.gov.

3 JUDGE TOREM: AT&T is making an appearance by
4 telephone today. Ms. Friesen or Ms. Manheim, who is
5 going to make the first appearance?

6 MS. FRIESEN: For AT&T, my name is Letty S.D.
7 Friesen, F-r-i-e-s-e-n. I am a general attorney at
8 AT&T Services Inc. My address is 2535 East 40th
9 Avenue, Suite B-1201, Denver, Colorado, 80205. My
10 phone number is (303) 299-5708. My fax number is (281)
11 664-9858. My e-mail address is lsfriesen@att.com.

12 JUDGE TOREM: Thank you. Ms. Manheim?

13 MS. MANHEIM: My name is Cindy Manheim, and
14 my street address is 8645 154th Avenue Northeast in
15 Redmond, Washington, 98052. My mailing address is PO
16 Box 97061, Redmond, Washington, 98073. My telephone
17 number is (425) 580-8112. My fax number is (425)
18 580-8333, and e-mail is cindy.manheim@att.com.

19 JUDGE TOREM: Are there any others present
20 wishing to make an appearance today? Let me ask if
21 there are any parties wishing to make a petition to
22 intervene in the proceeding? Ms. Friesen and
23 Ms. Manheim, you are making an appearance today.

24 MS. FRIESEN: Your Honor, we did hope to
25 intervene in this matter, and I would ask Ms. Manheim

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1 to discuss the petition to intervene. I believe that
2 we prefiled that petition.

3 MS. MANHEIM: Yes. We did file a petition to
4 intervene on Friday, September 19th, in this docket.

5 JUDGE TOREM: Well, it may not have made it
6 as far as the administrative law division. Mr. Romano,
7 did you get that?

8 MR. ROMANO: Yes, I did.

9 JUDGE TOREM: That's good enough for us. So
10 Ms. Manheim and Ms. Friesen, pardon our error here. We
11 will check with our records center to make sure that we
12 actually have it here at the Commission. Mr. Thompson,
13 have you seen it?

14 MR. THOMPSON: I believe I have, yes.

15 MS. FRIESEN: If necessary, we can go ahead
16 and make an oral motion to intervene if that's
17 convenient, more convenient than waiting.

18 JUDGE TOREM: Let me see how convenient it is
19 to simply ask Mr. Romano if he has any objection.

20 MR. ROMANO: No objection.

21 JUDGE TOREM: Then I imagine it's going to be
22 pretty convenient. Let me ask Mr. Hendricks what his
23 objections may or may not be.

24 MR. HENDRICKS: No objections.

25 JUDGE TOREM: I don't see any reason. The

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1 Commission staff is indicating they have no objections,
2 so it's granted. You are in.

3 MS. FRIESEN: Thank you, Your Honor.

4 JUDGE TOREM: We will find that, and perhaps
5 you can send a copy of it directly to me and Judge
6 Rendahl. Our e-mail address ends in @utc.wa.gov. Mine
7 is atorem, and Judge Rendahl's is arendahl. And I've
8 just been handed a copy of the petition I've granted,
9 so that's fine.

10 Moving right along, we have a motion to
11 dismiss that's been filed against the complainant, and
12 I've read that. We have a response in as well as a
13 motion for an Amicus brief to support the motion to
14 dismiss, and that was filed by WITA, the Washington
15 Independent Telephone Association, and they are not
16 here to represent themselves. I understand that their
17 counsel may be out of the country and unable to attend
18 today. So those are the matters we need to take up
19 before we decide how to handle this case procedurally.

20 Now certainly by reading the motions to
21 dismiss, the responses, and going through the Amicus
22 brief, the Commission is well aware of the Federal
23 Communications Commission's, or the FCC's pending or
24 expected ruling on or about November 5th, the day after
25 the election, so we understand that there may be some

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1 issues, and I would like to hear a little bit briefly
2 today on the motion to dismiss and the response and
3 then Commission staff's position, and if AT&T wishes to
4 comment at that time, we can take up this matter, but I
5 think I'm prepared to act on the motion to dismiss
6 verbally today and include whatever that's going to be
7 to see if the oral comments sway what I'm already
8 predisposed to do change that and then put that in
9 writing in a prehearing conference order, and then we
10 will decide what else we need to do today.

11 So on the motion to dismiss, Mr. Hendricks,
12 did you have any additional comments that weren't
13 contained there?

14 MR. HENDRICKS: I don't have any additional
15 comments. We did file yesterday an order from the
16 Georgia Commission that I think supports our position
17 in the case. I don't know if you had the opportunity
18 to see that. It was sent to the parties by e-mail, and
19 we would rest on our motion as filed.

20 JUDGE TOREM: We did receive that and through
21 our own services that we track what other state
22 commissions are doing had been aware but had not seen
23 the formal order, but we were aware what the Georgia
24 Commission had done in a similar instance.

25 Mr. Romano, anything else you want to add as

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1 opposed to what's in your written opposition to the
2 motion?

3 MR. ROMANO: We will stand with what's in our
4 written opposition. In response to the filing that
5 came in yesterday, that was an order that was issued
6 back in August, I believe, and if that's something that
7 the Commission is interested in, we would like an
8 opportunity to respond since we just received it
9 yesterday afternoon in this docket, because there are
10 obviously other cases and orders of other commissions,
11 as you just indicated, that we think would also be
12 relevant if the Commission is interested in how other
13 states are handling these things right now, and I guess
14 one thing I would add, if it's okay with Your Honor, I
15 would like to have Chris Oatway on the line... Chris,
16 would you like to add anything to our position as set
17 forth in our response to the motion to dismiss?

18 MR. OATWAY: I'm not sure that I have
19 anything to add to our position as set forth in the
20 motion to dismiss. Again, as Greg mentioned, we
21 certainly would be happy to respond either now verbally
22 to the submission that Embarq made yesterday or to
23 brief it in writing. I think the bottom line is it
24 actually more confirms Verizon's stance that it is
25 appropriate for state commissions to continue to move

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1 forward with proceeding involving interstate switched
2 access charges.

3 The order itself notes that the Georgia
4 legislature is moving forward with draft legislation
5 regarding interstate switched access rates at a time
6 while the FCC also happens to be dealing with
7 intercarrier compensation reform. A lot of state
8 commissions around the country are continuing to look
9 at interstate switch access rates. I think as we
10 speak, the Massachusetts Commission is in its second
11 day of hearing with respect to interstate switched
12 access form. One of our witnesses is probably on the
13 stand right now or just getting off the stand in
14 Massachusetts.

15 In Virginia where AT&T and other ISP's,
16 including Verizon, have asked the commission to look at
17 Embarq's interstate access rates. The Virginia
18 Commission has been going full steam with respect to
19 that proceeding for months now and is not slowing down
20 those efforts simply because the FCC is also taking up
21 intracarrier compensation reform in this matter this
22 fall. In fact, Verizon held back from submitting
23 additional authority to the Commission because it
24 wasn't really contemplated under any scheduling
25 order --

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1 MR. HENDRICKS: Your Honor, could I interject
2 an objection here to this?

3 JUDGE TOREM: Mr. Oatway, Mr. Hendricks
4 wanted to object that this was getting your argument
5 all in, but I'm more than willing to entertain it, and
6 I think you were coming to a close here.

7 MR. OATWAY: I was very much coming to a
8 close, which is the Virginia Commission is very much
9 moving forward against Embarq with respect to
10 interstate switched access charge issues that have been
11 raised by AT&T and by Verizon, and I would simply note
12 that the Staff in Virginia about two weeks ago issued
13 its comments based upon the factual record there, which
14 basically supported the petition that AT&T had filed
15 seeking an order that would reduce Embarq's switched
16 access rates, and the Staff frankly factually rejected
17 pretty much the same defenses that Embarq has raised
18 here.

19 So the point is simply if the Commission is
20 interested in what's going on in other states, there
21 certainly is a lot more out there, and we would be
22 happy to brief that if that's something that would be
23 of interest.

24 JUDGE TOREM: Mr. Oatway, I think the Georgia
25 ruling was brought in by Embarq just to demonstrate

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1 that waiting for the FCC seemed like a good idea to
2 them, and maybe they would persuade us if we didn't
3 grant the motion to simply fall back, as Mr. Hendricks
4 characterized, on Plan B if it doesn't go away all
5 together that we wait to see what happens in early
6 November.

7 Mr. Oatway, if you could tell me or
8 Mr. Romano here more on the home court that you are
9 aware of any legislative initiatives here in Washington
10 to do what Georgia is contemplating and what you've
11 described so well in Massachusetts and Virginia, then I
12 would find that very persuasive, but I haven't seen
13 anything in the briefing that said we have a bill
14 introduced from last session that's coming back.

15 MR. OATWAY: Just to clarify, in Virginia,
16 it's not a matter of a legislative initiative. It's a
17 matter of a complaint brought against Embargo and the
18 Commission moving forward with that complaint
19 proceeding in recent months and going forward this
20 fall.

21 JUDGE TOREM: Do you know when that complaint
22 was filed in Virginia?

23 MS. BENEDEK: Your Honor, this is Sue
24 Benedek. --

25 JUDGE TOREM: Ms. Benedek, hold on. I'm just

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1 trying to find out what the date of the filing was, and
2 I think Mr. Oatway appears to have enough information
3 to tell me that.

4 MR. OATWAY: I believe it was November 7th,
5 2007, that the filing was made in Virginia, and I may
6 have misspoke and said AT&T, and I believe it was
7 actually Sprint.

8 JUDGE TOREM: Mr. Romano, did you want to add
9 something here?

10 MR. ROMANO: In response to your question
11 about the legislature, my understanding is that it's a
12 new session beginning in '09, so I don't believe there
13 would be any carryover legislation, and I'm not aware
14 of any bills that have been prefiled or anything like
15 that.

16 JUDGE TOREM: I was asking more for this next
17 biennium in the legislature whether or not bills
18 introduced in the last one that didn't make it out of
19 committee or made progress were going to be introduced
20 to your knowledge.

21 MR. ROMANO: Not to my knowledge.

22 JUDGE TOREM: Let me check with Commission
23 staff, and then Ms. Benedek, did you still have
24 something you wanted to interject or add to what
25 Mr. Hendricks has said?

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1 MS. BENEDEK: Just briefly, Your Honor, if I
2 may.

3 JUDGE TOREM: I don't want to get too far
4 afield on this, because what's going on in other states
5 doesn't sound like it's directly relevant. I was
6 listening to hear if all these other states were going
7 to come back and tell me that Washington had something
8 on a similar track. I have yet to hear it, so if you
9 need to persuade me to disregard what Mr. Oatway said
10 is persuasive, you needn't speak up now.

11 MS. BENEDEK: Then I will not speak now.

12 JUDGE TOREM: Staff, your position on the
13 motion?

14 MR. THOMPSON: Well, just as a legal matter,
15 and this is not intended to foreshadow anything about
16 what Staff's position might be on the policies in the
17 case, but as a legal matter, it seems to me that it's
18 pretty hard to say that Verizon has failed to state a
19 claim for relief as a legal matter, given the
20 Commission precedent on the very similar complaint
21 brought against Verizon, and I think that Verizon's
22 response to the motion did a good job of pointing out
23 the similarities and the arguments on that point.

24 I think it's a separate issue whether the
25 Commission wants to use its discretion to delay a

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1 decision on this matter because of how it wants to use
2 its resources, given whether there is the likelihood of
3 an imminent decision from the FCC on intercarrier
4 compensation. So we don't have a special crystal ball
5 on that likelihood nor do we take a position on that
6 issue.

7 JUDGE TOREM: Ms. Friesen and Ms. Manheim,
8 you've had a chance to review the pleadings, obviously,
9 in this case. Did you want to as intervenors take a
10 position on the motion to dismiss?

11 MS. FRIESEN: Yes. AT&T concurs in the
12 responses of Verizon, and we would note for the record
13 that we don't know what DC is going to do. We don't
14 know how broad or narrow it's ultimate decision is
15 going to be on November 5th, and so we would encourage
16 you to go forward with this complaint case.

17 JUDGE TOREM: There is an Amicus brief, and
18 without WITA or any representative here, they made a
19 motion under the Washington rules of the appellate
20 procedure, because we don't have anything in our
21 Commission rules, so they referred to RAP, or RAP rule
22 10.6 which addresses these briefs, and I've looked at
23 that and tried to find any other authorities that tell
24 me we must or must not accept briefs, and speaking to
25 other judges in our office, it appears that it's fully

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1 discretionary, and that typically, as the court rule
2 says, a court may on motion grant permission to file a
3 brief only if all parties consent or if the filing of
4 the brief would assist the appellate court, in this
5 case the assistant Commission.

6 Mr. Romano, you've already filed an objection
7 to the brief, so we don't have an all-party consent
8 under that rule if I wished to use it as guidance, but
9 looking whether that brief would be of any assistance
10 to the Commission at this stage, I don't think so,
11 simply because I've read through it, and it did not add
12 much more to the motion to dismiss than was already in
13 the record by the filing parties.

14 What I don't want to do today is give the
15 impression to either Embargo or WITA that we don't want
16 the association to look at this case when its ripe to
17 participate when the issues are actually hammered out,
18 whether that's as a result of this prehearing
19 conference or one down the road, but I am going to deny
20 their motion to file the Amicus brief today ready to
21 make a decision on the motion at this time without the
22 assistance of the Amicus brief, so that motion will be
23 denied. The Amicus brief won't come in and be
24 considered.

25 In looking at the motion to dismiss, it

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1 appears to me that it's wisest in use of Commission
2 resources to rule not to grant the motion nor deny it
3 but to hold the motion in abeyance along with the rest
4 of the proceeding and determine at a later date whether
5 briefing on the motion will still be necessary, and if
6 the motion is going to be reinstated as indicating if
7 you want briefing, we can talk about that at a future
8 prehearing conference.

9 But in looking at what's pending from the
10 Federal Communications Commission, it appears that we
11 could start down this track today on September 24th,
12 have briefing on some additional issues, and by the
13 time the briefs are filed, have a decision from the FCC
14 that very well might rob us of our jurisdiction, so I
15 would have wasted your time, and by reading the briefs,
16 perhaps my time. I think waiting another five or six
17 weeks in which we can get together and then decide if
18 we still have jurisdiction, quite fine, and if we do
19 have any bills filed by the legislative session, those
20 would start coming in in mid November, late into
21 December.

22 So today what I want to do is set up another
23 date for a prehearing conference to resume, hold the
24 matter in abeyance, and note that in doing so, the
25 State's statute on complaints does have a time limit,

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1 and this time, there is nothing in the rules that
2 indicates that you can suspend that time limit, so I
3 want to make sure we recognize there is a limit, but
4 the Commission is going to have to essentially eat six
5 weeks on the time limit in which we have to act on the
6 complaint so that we can determine with federal
7 authorities whether or not we will still have any
8 authority to go forward on the case.

9 With that in mind and a decision from the FCC
10 pending on November the 5th, which is a Wednesday, the
11 calendar behind Mr. Thompson, which I can barely see
12 from here, but I believe it's the week of the 17th of
13 November would be the next best opportunity for all of
14 us to get together. That would give the FCC, if they
15 are timely on the 5th, to announce their decision and
16 give us all the rest of the week to digest it. We will
17 know very quickly if they are going to issue their
18 orders in writing or simply give a press conference and
19 let us know what they are going to do.

20 Apparently from those that are more
21 knowledgeable in the FCC than I tell me that they will
22 quickly announce decisions and sometimes take weeks to
23 issue written orders. The court order that is hovering
24 over the FCC does want a written appealable decision,
25 but whether or not they will go ahead and extend that

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1 courtesy to this particular issue, I'm unsure. So we
2 will wait and see what comes out on November 5th, 6th,
3 and 7th from the FCC.

4 I'm going to be out of the country that next
5 week returning on the 14th of November, so I'm
6 proposing that somewhere in the week of the 17th we
7 schedule another prehearing conference. We can choose
8 that time today, or you all can submit an e-mail after
9 you consult with a variety of folks and determine when
10 we can get together. So that we have a better
11 preservation of resources for some of you that have to
12 travel to get here, I don't think we need to have a
13 personal appearance for everyone. We could do this on
14 the bridge line for those that choose, and we won't be
15 making a whole lot of more substantive decisions unless
16 more motions come in, and if the motion itself is going
17 to be reiterated at that time, I've already got all
18 your arguments on the remaining issues that could be
19 decided in a motion to dismiss as to the failures to
20 state claims and all the other issues that were not
21 being addressed today, simply being held in abeyance.
22 Mr. Romano?

23 MR. ROMANO: Thank you, Your Honor. One
24 point of clarification is obviously, it wouldn't
25 utilize the Commission's resources at all if the

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1 parties were engaged in discovery during this period,
2 so one thing I wanted to request is that the standard
3 Commission protective order be issued in the docket so
4 that could be used in the discovery process that should
5 take place between now and the next prehearing
6 conference.

7 JUDGE TOREM: I've given that some thought
8 and anticipated that perhaps discovery would not be
9 appropriate to initiate in a proceeding is you filed
10 the complaint. I understand that may invoke the
11 ability to go ahead with discovery, and I don't want to
12 prejudice you as the complaining party to not be able
13 to start something, but we are waiting to see if the
14 FCC's action will result in a complete dismissal, and I
15 want to be respectful of the other parties, including
16 Commission staff and Embargo and AT&T, to not have them
17 responding to data requests which six weeks from now
18 might be moot. So tell me why we should start
19 discovery on a case the Commission is holding in
20 abeyance, but not just so we don't have to do anything.
21 I don't want to waste anybody's time.

22 MR. ROMANO: Thank you, Your Honor.
23 Mr. Oatway could probably address why it would not be a
24 waste of time. In fact, I think it would be productive
25 as we move ahead. Chris?

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1 MR. OATWAY: Your Honor, what I want to say
2 about discovery is that we are not really sure what to
3 expect in terms of the steps of the discovery process
4 and how much discovery we need from Embarq. It will
5 depend partly on sort of after an initial set of
6 pregeneral sort of contention-type interrogatories
7 whether or not Embarq continues down the line of
8 claiming that it has a cost justification for its
9 current rates, and if it goes in that direction, Your
10 Honor, this could end up being a case in which Embarq
11 may chose, and it's up to Embarq -- we think this could
12 be done in a much more streamlined fashion, but if
13 Embarq wants to go down that line, this could evolve
14 into a case that would essentially look like something
15 like a traditional cost case with cost studies being
16 submitted and experts dealing with revenue requirements
17 and those sorts of issues.

18 If that's the case, discovery could really be
19 quite expensive, and I'm not sure what the time line is
20 for when the whole proceeding would have to be wrapped
21 up, but typically, the receiving party, the
22 complainant, probably needs three months or so to
23 evaluate a cost study and to sort of deal with all of
24 the issues that come in at that stage in the
25 proceeding.

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1 So I'm not saying that that's the way
2 discovery will play out, but it's possible that it will
3 play out that way, and in fact, the Virginia proceeding
4 that I mentioned a few minutes ago is really quite
5 instructive on this point. The Staff's comments two
6 weeks ago took Embarq to task for -- I guess
7 initially, a cost study was not contemplated except for
8 perhaps a cost study that might look at the cost of the
9 switched access function itself that Embarq was
10 providing in Virginia, but Embarq ended up submitting a
11 study that was really much more involved, and it was
12 submitted fairly late in the discovery process --

13 MS. BENEDEK: I need to object. I didn't
14 realize we were coming to Washington to litigate --
15 Virginia record. For everything that Mr. Oatway has --

16 MR. OATWAY: My point is --

17 JUDGE TOREM: Mr. Oatway, if you will, that
18 was Sue Benedek for Embarq --

19 MS. BENEDEK: I have responsibilities for the
20 Virginia case. That's why I cannot listen to such
21 misrepresentation.

22 JUDGE TOREM: As here in Washington and not
23 in Virginia, let me state that again, I think
24 Mr. Hendricks is in the best position for Embarq to
25 tell me if they have any concerns with starting

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1 discovery now. That's all I want to know, and the only
2 question I'll ask you, Ms. Benedek, although you
3 haven't made an appearance here, I'll have
4 Mr. Hendricks on his behalf, I'm going to defer to you
5 to just tell me, is the Virginia proceeding a cost
6 proceeding in your view? If you tell me yes or no,
7 it's a cost proceeding or not, then I think that will
8 help Mr. Hendricks give me his response as to the
9 position on discovery as proposed by Mr. Romano.

10 MS. BENEDEK: Yes. Embargo has submitted a
11 cost study in that proceeding.

12 JUDGE TOREM: Mr. Hendricks, can you respond
13 to Mr. Romano's request to start discovery now?

14 MR. HENDRICKS: Yes. My very quick response
15 that given that, it would be a substantial burden on
16 the Company to go forward with discovery when we are
17 not really sure how this case is going to play out
18 given what we've seen in other states, so I think it
19 would be a waste of resources to do that.

20 JUDGE TOREM: Commission staff, any position
21 on this discovery issue?

22 MR. THOMPSON: I'm looking around for a copy
23 of the RCW's, because I can't recall -- I think there
24 is a statutory clock for private complaints.

25 JUDGE RENDAHL: There is a statutory deadline

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1 in RCW 80.04.110. For utility matters there is a
2 ten-month clock for the Commission to enter a final
3 decision, but the Commission can for just cause extend
4 that time, so it's not a strict ten-month deadline, for
5 what it's worth.

6 MR. THOMPSON: That being the case, I guess I
7 would be concerned that it could potentially be
8 Verizon's prejudice to be without the ability to do
9 discovery while there is a deadline at the back end,
10 but on the other hand, if Embarq were willing to agree
11 to extending that time line, that might mitigate that
12 problem.

13 JUDGE TOREM: I don't know that it's
14 Mr. Hendricks' deadline to extend. The way it's
15 stated, it's a Commission deadline of ten months, and
16 the way the statute is, if the Commission finds there
17 is just cause, certainly you want to hear from the
18 parties. But again, I'm making the decision now to
19 hold the case in abeyance for what essentially will
20 amount to six or seven weeks, and based on what I've
21 heard today, I understand, Mr. Romano, you are raring
22 to go. You filed the complaint. You want to get
23 started, but if the FCC comes down and tells us we have
24 no jurisdiction in the next six or seven weeks, you can
25 draft your discovery responses, and the next time we

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1 get together, file them the next day, but I'm not going
2 to have you do that now, because do believe there may
3 be discovery disputes in which I would be embroiled.
4 If I don't have to be involved yet, I won't.

5 So I'm not going to waste Embarq's time,
6 AT&T's time, or the Commission staff's, and certainly
7 not our division either. We have enough things to keep
8 us going through Thanksiving, and I don't need
9 discovery disputes on a case that might be mooted, so
10 that won't go on, and the protective order, therefore,
11 since there won't any exchange of information will also
12 be held until later.

13 Are there any other issues that we need to
14 take up besides selecting a date either the week of the
15 17th, or if it's more helpful to the parties, for Judge
16 Rendahl to cover it the week of November 10th. I just
17 want to make sure if the FCC acts that we have a little
18 bit of time to understand what they are doing if their
19 proposed date is November 5th. The soonest we could
20 get together would be the week of November 10th.
21 Tuesday is the Veteran's Day holiday, and the following
22 week of the 17th is my preference. Commission staff,
23 do you see anything that has you tied up that week? I
24 know the Avista rate case was to occur, but appears
25 that will be rescheduled with a settlement in that

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1 matter.

2 MR. THOMPSON: I don't believe so. I don't
3 have my calendar with me, but I will just say yes at my
4 own peril.

5 JUDGE TOREM: Mr. Romano, are you aware of
6 any scheduling issues that week?

7 MR. ROMANO: No, Your Honor.

8 JUDGE TOREM: Mr. Hendricks?

9 MR. HENDRICKS: No, Your Honor.

10 JUDGE TOREM: Ms. Friesen or Ms. Manheim?

11 MS. MANHEIM: I have none.

12 MS. FRIESEN: No.

13 JUDGE TOREM: Did you have anything the week
14 of November 17th, Mr. Oatway?

15 MR. OATWAY: No. That would be fine with me.

16 JUDGE TOREM: I can't decide if there is any
17 better day on our calendar. I'm going to consult with
18 our commissioners and find out what dates they
19 anticipate dropping off the calendar for the mentioned
20 rate case with the Avista hearing. I'll know in a
21 couple of days which of those they are going to retain,
22 if any, and choose one that doesn't have this hearing
23 room booked up. That way, we've got a good bridge
24 line.

25 I'm going to indicate that next prehearing

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1 conference. Feel free to make your appearances by
2 phone since we will probably just be working on a
3 procedural schedule. My request to the parties is to
4 pay attention to what the FCC does, as we will. If we
5 retain jurisdiction and there is any comments that
6 folks want to file in advance, just send them in. If
7 there is a possibility of working out an agreed
8 procedural schedule for additional briefing as
9 necessary on what the FCC says, because I think
10 reasonable minds probably will differ, then let's get
11 together ahead of time, and you guys can work together,
12 and you will have a service list, to communicate
13 amongst yourselves and determine a briefing schedule
14 and perhaps as needed a witness filing schedule and the
15 hearing on this matter.

16 So if you will work together somewhere in the
17 week of November 10th to sort out exactly what the FCC
18 has or hasn't done and let me know. If they haven't
19 acted, then at that time, Mr. Romano, if you want to
20 make a motion that let's get this case going because we
21 don't need to wait any longer, then we can take that up
22 at the prehearing conference as well.

23 MR. ROMANO: Thank you, Your Honor.

24 JUDGE TOREM: Anything else from Verizon
25 today?

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1 MR. ROMANO: No, Your Honor.

2 JUDGE TOREM: From Embargo?

3 MR. HENDRICKS: No, Your Honor.

4 JUDGE TOREM: AT&T?

5 MR. FRIESEN: No, Your Honor.

6 JUDGE TOREM: Staff?

7 MR. THOMPSON: No, Your Honor.

8 JUDGE TOREM: Then we are adjourned at 12

9 minutes after two. Thank you all.

10 (Prehearing conference adjourned at 2:12 p.m.)

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