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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION
3 In the Matter of the Petition)
 for Arbitration of AT&T)
4 COMMUNICATIONS OF THE PACIFIC) Docket No. UT-033035
 NORTHWEST AND TCG SEATTLE,)
5 with QWEST CORPORATION,) Volume I
 pursuant to 47 U.S.C. Section) Pages 1 to 17
6 252(b),)
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8 A pre-arbitration conference in the above
9 matter was held on September 3, 2003, from 1:30 p.m. to
10 1:50 p.m., at 1300 South Evergreen Park Drive Southwest,
11 Room 206, Olympia, Washington, before Administrative Law
12 Judge DENNIS MOSS.

13 The parties were present as follows:

14 QWEST CORPORATION, by MARY ROSE HUGHES,
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 Street Northwest, Washington, D.C. 20005-2011, Telephone
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17 AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST
18 AND TCG SEATTLE, by LETTY FRIESEN, Attorney at Law, 1875
 Lawrence Street, Suite 1500, Denver, Colorado 80111,
19 Telephone (303) 298-6475, E-mail lsfriesen@att.com.

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25 Joan E. Kinn, CCR, RPR
 Court Reporter

0002

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

2 JUDGE MOSS: Good afternoon, everyone. We
3 are assembled for our first pre-arbitration conference
4 in the matter of the Petition for Arbitration of AT&T
5 Communications of the Pacific Northwest and TCG Seattle
6 with Qwest Corporation, pursuant to 47 U.S.C. Section
7 252(b), Docket Number UT-033035.

8 Let's begin with appearances, and we'll start
9 with the Petitioner, Ms. Friesen. Have I been saying it
10 correctly as we have been speaking off the record?

11 MS. FRIESEN: That's correct, Your Honor.
12 Lettie Friesen here on behalf of AT&T Communications of
13 the Pacific Northwest and the TCG affiliates.

14 JUDGE MOSS: And for Qwest.

15 MS. HUGHES: Mary Rose Hughes, Perkins Coie,
16 outside counsel to Qwest.

17 JUDGE MOSS: All right, well, I have looked
18 through the petition, and I received the response today,
19 and I haven't I confess read through it entirely,
20 although I did go through it to the extent that it
21 appears that you all have resolved 2 more issues out of
22 15, did I count right, are we down to 13?

23 You haven't counted them. We're down to
24 approximately 13 issues. Are you all continuing to
25 negotiate?

0003

1 MS. FRIESEN: Yes, we are, Your Honor.

2 JUDGE MOSS: Okay. Is there any reasonable
3 anticipation that the list of issues is going to narrow
4 between now and some date at which we have an
5 arbitration hearing?

6 MS. HUGHES: Your Honor, I would expect if
7 our experience in other states continues, because the
8 parties are continuing to talk, that at a minimum I
9 think there would be a narrowing of positions, if not a
10 closure of some issues. That's been our experience in
11 other states, and hopefully that will be our experience
12 here.

13 JUDGE MOSS: Are there intractable issues in
14 this matter so that we can expect we will definitely go
15 to hearing, or does hope spring eternal in the breasts
16 of those involved?

17 MS. FRIESEN: No, Your Honor, I think we can
18 assume that there are intractable issues that you will
19 need to hear and resolve.

20 JUDGE MOSS: There are usually at least three
21 or four of those. Okay, well, that's just fine.

22 What we need to talk about then is what sort
23 of process you all need and what sort of procedural
24 schedule will work. As I recall, we have a November
25 30th deadline on this for me, so I think we said and had

0004

1 the Commission say in its pre-arbitration conference
2 order or whatever they call it that everything would
3 need to be concluded by November 4th. Have you all
4 worked on a schedule, an agreed schedule, with those
5 dates in mind?

6 MS. HUGHES: Your Honor, because we have
7 arbitrations ongoing in three other states, Ms. Friesen
8 and I have discussed Washington state and how best to
9 get through this, and we have determined that the
10 deadline, the statutory deadline, may be slipped by
11 several weeks in order to accommodate a schedule that we
12 think will make sense for everybody concerned,
13 especially in light of the intervening Thanksgiving
14 holiday. And Ms. Friesen and I have taken the liberty
15 of consulting beforehand to see what we think might work
16 for us sort of ad referendum to orders that we have
17 received in other states, so we have a schedule to
18 propose to Your Honor.

19 JUDGE MOSS: All right.

20 MS. HUGHES: And we thought maybe we could
21 propose that and see if it's something that Your Honor
22 could live with or may have some alterations to, but
23 that's where we thought we might start in order to
24 facilitate this.

25 JUDGE MOSS: Do you have that in writing?

0005

1 MS. HUGHES: I do.

2 JUDGE MOSS: If you could hand that up.

3 MS. HUGHES: Oh, sorry, I --

4 JUDGE MOSS: You don't have multiple copies,
5 all right. Well, just go ahead and tell it, it doesn't
6 look like there are many dates on it, tell it to me.

7 MS. HUGHES: No, and Ms. Friesen will correct
8 me if I've gotten any of this wrong. We propose to have
9 direct pre-filed testimony to Your Honor on September
10 25th, and that would be simultaneous pre-filed direct
11 testimony.

12 JUDGE MOSS: Mm-hm.

13 MS. HUGHES: We propose to file simultaneous
14 rebuttal testimony on October 10th. We would propose a
15 discovery cutoff of October 17th. We would propose a
16 hearing of October 29th and 30th. And on that point, I
17 would say that we think two days should be ample based
18 on prior experience. However, that two days is
19 predicated on a view that some of the issues we may wish
20 to submit to Your Honor on the basis of the pre-filed
21 testimony and the posthearing briefing and not have
22 witnesses appear live for cross-examination. So with
23 that caveat, we think two days would suffice for the
24 hearing. We would propose posthearing briefs on
25 November 12th, and we would propose then an initial

0006

1 order by December 15th. So that would give Your Honor
2 approximately a little more than a month. Is that
3 correct?

4 MS. FRIESEN: Yeah, I think it's not the
5 initial order, it's the final decision by 12-15. The
6 initial order might have to come out slightly in advance
7 of that for Commission consideration.

8 JUDGE MOSS: Well, I do an arbitrator's
9 report, and in this Commission at least, we consider
10 that to satisfy the statutory deadline.

11 MS. FRIESEN: Okay.

12 JUDGE MOSS: And so scheduling, I don't have
13 the commissioners' schedules with me today, we typically
14 do try to have these things get to the Commission pretty
15 promptly after I finish, but the date we want to talk
16 about is the date on which you will have an arbitrator's
17 report.

18 MS. FRIESEN: Okay.

19 JUDGE MOSS: So it could be another two weeks
20 or so after that before the Commission -- my experience
21 in these is somewhat limited, I have only done a couple
22 of these arbitrations. The Commission itself, of
23 course, has done many, many of them. My recollection
24 based on the two that I was directly involved in was
25 that the parties wanted to have their say before the

0007

1 commissioners on the opportunity for that review step no
2 matter what I said. And isn't there a time frame for
3 that in terms of under our rules for when you need to
4 file your -- it's the equivalent to a petition for
5 review?

6 MS. FRIESEN: Yes.

7 JUDGE MOSS: And what is that time frame?

8 MS. FRIESEN: I think it was ten days.

9 JUDGE MOSS: Ten days, so then we would
10 expect the commissioners could act pretty promptly after
11 that. Is that going to be satisfactory to you if we set
12 December 15th as my day? You know, my typical practice
13 is to turn these things around pretty quickly, but I
14 don't want to overcommit myself in the sense that I have
15 other proceedings during that same time frame. In fact,
16 I may have a major hearing in that time frame. And so
17 if that's agreeable to you, I can work with it.

18 MS. FRIESEN: You can work with it, then,
19 yes.

20 JUDGE MOSS: If it's my date, I can work with
21 it. If I have to beat it by two weeks, I would feel a
22 little --

23 MS. FRIESEN: Okay.

24 JUDGE MOSS: That that was a little time.

25 MS. FRIESEN: Okay.

0008

1 JUDGE MOSS: All right, well, I think I can
2 work with the schedule. I may have to -- well, the only
3 date really that -- dates that matter for me
4 schedulewise are the hearing dates and really just the
5 interval between the briefs and the order writing or
6 report, I guess they call it a report.

7 As to the hearing dates, I think those dates
8 will work for me. Would it matter to you if I had to
9 move it a day or two in one direction or the other to
10 accommodate some other proceeding?

11 MS. FRIESEN: The 31st I don't have some
12 witnesses, so any day that week except the 31st, which
13 is a Friday, would be fine with AT&T.

14 MS. HUGHES: And any day that week is fine
15 with Qwest. I do have to say that because I wasn't sure
16 whether any of these dates would be agreeable to Your
17 Honor, I have not cleared these dates with Qwest
18 witnesses, although I have no reason to believe any of
19 them will be unavailable.

20 JUDGE MOSS: Okay. Could you let me know by
21 e-mail and also let Ms. Friesen know if there is any
22 need. I will wait a day or two to put out a, I always
23 want to call it a pre-hearing conference, I suppose I
24 need to stick to the vernacular and call it a
25 pre-arbitration conference. I will wait a few days to

0009

1 enter my order that will capture the substance of what
2 we accomplish today, and we can handle the scheduling
3 issues informally. And so to the extent there is not a
4 conflict either on your calendars or mine, I'm happy
5 with this.

6 MS. FRIESEN: Okay.

7 JUDGE MOSS: It works for me.

8 MS. FRIESEN: How would you like to handle us
9 notifying you, as Mary Rose mentioned or Ms. Hughes
10 mentioned, we have agreed to do some issues what we
11 coined as on the paper, that is strictly through the
12 written testimony and in briefing.

13 JUDGE MOSS: Sure.

14 MS. FRIESEN: Would you like notification of
15 what those issues are, what's stipulated to?

16 JUDGE MOSS: Yes.

17 MS. FRIESEN: In general, it's been general
18 terms and conditions types things, but how would you
19 like us to handle that?

20 JUDGE MOSS: As we get closer to the hearing
21 date, we will want to memorialize that in some way,
22 either in just a letter, or we may have a final
23 pre-hearing conference just before the arbitration.
24 Particularly if there's a lot of documentation, that can
25 be a real time saver is to get together for an hour or

0010

1 so the day before the hearing and get all that marked
2 and set to go into the record. We might even be able to
3 accomplish that long distance. That's the next
4 evolutionary step in the process we have been working on
5 here for some years. And we've gotten it down pretty
6 good now in terms of getting everything ready to go a
7 day or two before the hearing. This might be a good
8 opportunity to see about this next step and see if we
9 can actually do it without having everybody have to come
10 together.

11 MS. FRIESEN: Okay.

12 JUDGE MOSS: So I'm willing to experiment if
13 you all are.

14 MS. FRIESEN: Certainly, I think that would
15 be helpful.

16 JUDGE MOSS: In these days of overnight
17 couriers, electronic transmission, so forth, a lot is
18 possible that was not previously possible, so we'll try
19 to do that. We want to make it as efficient for
20 everyone as possible in terms of the dedication of
21 resources and travel and all of that sort of thing.

22 Now where are we in the lineup so to speak,
23 you've got Texas and here and where else?

24 MS. FRIESEN: We have ongoing arbitrations in
25 Minnesota, which we will be wrapping up next week.

0011

1 JUDGE MOSS: I guess Texas is SBC, isn't it,
2 so it's not this one.

3 MS. FRIESEN: Right.

4 JUDGE MOSS: I read about it in the trade --

5 MS. FRIESEN: Right, Colorado and Arizona are
6 the currently pending arbitrations. I believe that we
7 will have some coming up in Utah and other states as
8 well while this is in progress.

9 JUDGE MOSS: Okay. Now are they all ahead of
10 us on hearing?

11 MS. HUGHES: Colorado is ahead.

12 MS. FRIESEN: Colorado is ahead, and
13 Minnesota is already done. We're going to oral argument
14 next week.

15 JUDGE MOSS: In Minnesota?

16 MS. FRIESEN: Right.

17 JUDGE MOSS: And I noticed one of your
18 further agreements since the petition was filed is based
19 on something you I guess agreed to in Minnesota; is that
20 right?

21 MS. FRIESEN: That's correct.

22 JUDGE MOSS: So there's some prospect that
23 things will be resolved in one of the other states
24 before you actually get to hearing, and that may give us
25 some guidance or give you some guidance really as to

0012

1 where we go.

2 MS. FRIESEN: That's correct. Also, Your
3 Honor, I would like to bring up the issue of service.
4 In other states we have served each other, one another,
5 by electronic means rather than paper, and the service
6 has been on the day, on the due date. So that is to say
7 that we would serve you and the Commission on the day
8 the particular thing was due by E-mail and then send
9 however many hard copies you wanted. As between the
10 parties, we serve just by E-mail, and I was hopeful that
11 we could adopt a similar approach here in Washington.

12 JUDGE MOSS: We can do that. What I will
13 have to ask you to do is to file with the Commission a
14 brief letter stating that you waive other forms of
15 service in favor of electronic so that we meet our
16 statutory requirements.

17 As far as service at the Commission is
18 concerned, we will establish the due dates according to
19 the calendar that you have proposed, assuming no
20 conflicts, and that will be the date we can expect this
21 electronic service to occur both on the Commission and
22 as between yourselves. We will make the official filing
23 date a day later, and that way you can meet our further
24 statutory requirements that require signature on
25 filings. And so you will need to follow that electronic

0013

1 service up with an overnight courier delivery with a
2 signed copy of whatever it is you're filing or under
3 cover of a signed letter depending on the nature of the
4 thing.

5 As far as the direct testimony and the
6 rebuttal testimony, we will also need copies, we need
7 original and 10 copies of all that. And we also like to
8 have that electronically too. So you can even exchange
9 that material electronically. We can follow the same
10 convention there, and that will satisfy the Commission's
11 preference for having an electronic version of all
12 documents that are filed. But we do have to have the
13 original and 10 for statutory reasons and for internal
14 distribution, that's why we need the 10 copies. The
15 default is 19, but I checked and all we need is 10 for
16 this proceeding.

17 You all no doubt have our address and know
18 you need to direct filings to the Commission's secretary
19 and all of that, so I won't go through the details.

20 In terms of your electronic filings, if you
21 have the capacity to do so, we actually prefer to
22 receive documents that are is the right word originated
23 in PDF format, and that way that facilitates posting to
24 the web and the sorts of thing that we now do. If you
25 can also include it in whatever, MS Word or whatever,

0014

1 that's helpful to me too, but PDF, that's the preferred
2 file format.

3 I do think it's a good idea for you all both,
4 of course, to continue your negotiations and see what
5 issues you can resolve, but also to reduce to a
6 reasonable number those on which we might need to hear
7 testimony. Again, my experience is somewhat limited
8 directly, I have observed a number of these and again
9 just participated in a couple as arbitrator, but my
10 experience has been that much of the testimony is really
11 policy and argument. That's fine, I think it's very
12 interesting, I enjoy hearing it, but to the extent there
13 are not truly facts in dispute, we really can limit the
14 testimony, and so I would encourage you to think in
15 those terms and do keep the hearing down. Certainly as
16 to facts, if there are facts in dispute, then we will
17 need a witness or two I suppose on those, but we don't
18 need to go on and on about the policy aspects, just be
19 brief. And you're going to argue that in your briefs
20 anyway, that's also my experience in other of these
21 proceedings is that the briefs are pretty much written
22 by the time you get to us, you have done it two or three
23 times already.

24 Oh, I need -- when we took your appearances,
25 I don't have your e-mails, can you go ahead and give me

0015

1 your e-mails, let's start with either one of you.

2 MS. FRIESEN: My e-mail address is
3 lsfriesen@att.com.

4 JUDGE MOSS: Okay.

5 MS. HUGHES: And mine is
6 m.hughes@perkinscoie.com.

7 JUDGE MOSS: One word?

8 MS. HUGHES: One word.

9 JUDGE MOSS: All right. I have asked you all
10 to look over the protective order and let me know in the
11 next day or two at the same time you let me know about
12 any potential scheduling conflicts and whether there are
13 any aspects of that you would like to see changed. Talk
14 between yourselves first, and if we can make agreed
15 changes, that's always easier. Then I don't have to
16 insist on having things in writing, waiting for response
17 periods, and all that sort of thing.

18 I don't believe I have anything else for you.
19 Do you have anything else for me?

20 MS. HUGHES: The only thing I would raise is
21 we have worked off of what we're calling a joint issues
22 matrix or a disputed issues matrix. I'm not sure how we
23 characterized it here in our petition or our response.
24 And because that document has tended to change from the
25 time the petition has been filed to the time of the

0016

1 hearing, we have tended not to update it. I think one
2 commission has asked us to update it as an interim
3 measure. But if it would be helpful to Your Honor, and
4 you may not know until we're much closer to the hearing,
5 I think we could update. That's just kind of a quick
6 reference guide to the issues which are identified by
7 number. It shows the juxtaposed language that the
8 parties are offering each other, and it's a very brief,
9 shows a very brief description of why it is the parties
10 believe that their language is more appropriate.

11 JUDGE MOSS: Well, I would say to the extent
12 Exhibit D changes in a way that would be useful to have
13 it updated, that's fine. Now in terms of simply we have
14 resolved issue numbers 1, 7, and 19, well, heck, I can
15 scratch through things with a pen as well as anybody.
16 But if you're going to actually, maybe you come closer,
17 maybe some pieces get resolved that were previously
18 unresolved, that would be useful to have shortly before
19 the hearing, so I would encourage you to do that. But
20 if it's just this issue is resolved, as I say, we can
21 all scratch through that, you won't need to do it. On
22 the other hand, if some other jurisdiction requires you
23 to do it and you've got it handy, we may as well have
24 it. So I won't impose it as a requirement, but I would
25 say that the rule of common sense should apply.

0017

1 Anything else?

2 MS. HUGHES: Nothing from Qwest, Your Honor.

3 MS. FRIESEN: Nothing from AT&T, thank you.

4 JUDGE MOSS: Well, thank you for visiting us
5 in the lovely Pacific Northwest, and I look forward to
6 working with you on this case and seeing if we can bring
7 it to a satisfactory conclusion.

8 MS. FRIESEN: Thank you, Your Honor.

9 MS. HUGHES: Thank you, Your Honor.

10 JUDGE MOSS: Thank you, we're off the record.

11 (Pre-arbitration conference adjourned at 1:50
12 p.m.)

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