

1 BEFORE THE WASHINGTON
2 UTILITIES AND TRANSPORTATION COMMISSION

3)	
4	In the Matter of the Petition of)	Docket UT-050778
5	DOUGLAS AND JESSICA RUPP, KATHIE)	Volume III
6	DUNN AND CHRIS HALL, MICHELLE)	Pages 44-66
7	LECHUGA; VERLIN JACOBS, ANTHONY)	
8	WILLIAMS, CHRISTINE AND SAMUEL)	
9	INMAN, ROBERT JACOBS, AND SAM)	
10	HAVERKEMP AND CHRIS PORTREY,)	
	Petitioners,)	
11	v.)	
12	VERIZON NORTHWEST, INC.,)	
13	Respondent.)	
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15 A hearing in the above-entitled matter

16 was held at 12:33 p.m. on Monday, April 3, 2006, at

17 1300 South Evergreen Park Drive, S.W., Olympia,

18 Washington, before Administrative Law Judge KAREN

19 CAILLE.

20 The parties present were as follows:

21 VERIZON NORTHWEST, INC., by David C.

22 Lundsgaard, Attorney at Law, Graham & Dunn, P.C.,

23 Pier 70, 2801 Alaskan Way, Suite 300, Seattle,

24 Washington 98121.

25 PETITIONERS, by Douglas Rupp,

 Petitioner, 54829 Garnet Way, P.O. Box 207, Index,

 Washington 98256.

 Barbara L. Nelson, CCR

 Court Reporter

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1 COMMISSION STAFF, by Sally Johnston,
2 Senior Assistant Attorney General, 1400 S. Evergreen
3 Park Drive, S.W., P.O. Box 40128, Olympia, Washington
4 98504-0128.

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1 JUDGE CAILLE: Good afternoon.

2 MR. LUNDSGAARD: Good afternoon.

3 JUDGE CAILLE: I have asked the parties to
4 appear at 12:30 today instead of our 1:00 scheduled
5 time for the hearing in order to take up the motion
6 for continuance filed by Mr. Rupp on March the 30th.
7 So that is the purpose for this early start, and I'd
8 like to announce the docket.

9 This is Docket UT-050778, entitled In The
10 Matter of the Petition of Douglas and Jessica Rupp,
11 et al., versus Verizon Northwest, Incorporated. The
12 nature of this proceeding is a petition by 11 persons
13 in seven households near Index, Washington,
14 requesting the Commission to direct Verizon to expand
15 its service territory to include Petitioners in their
16 service.

17 The appearances for the record, please,
18 beginning with you, Mr. Rupp. If you'll just state
19 your name and whom you represent?

20 MR. RUPP: Douglas Rupp, for the
21 Petitioners.

22 JUDGE CAILLE: And will you please pull the
23 microphone close to you so that you're really right
24 on top of the head of the microphone, so that
25 everybody can hear you.

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1 MR. RUPP: Douglas Rupp, for the
2 Petitioners.

3 JUDGE CAILLE: And for Verizon.

4 MR. LUNDSGAARD: David Lundsgaard, for
5 Verizon Northwest, Inc.

6 JUDGE CAILLE: And Commission Staff.

7 MS. JOHNSTON: Sally Johnston, Senior
8 Assistant Attorney General, on behalf of Commission
9 Staff.

10 JUDGE CAILLE: Thank you. Let the record
11 reflect there are no other appearances. As I said in
12 my introductory remarks, I called this hearing to
13 order early in order to take up the motion for
14 continuance that was filed by Mr. Rupp and the
15 Petitioners on March the 30th.

16 At this point, I would like to hear from the
17 Petitioners in support of their motion for
18 continuance. If you have anything else to add to
19 your written motion?

20 MR. RUPP: Yes, Your Honor, one other thing.
21 We move for the continuance additionally to give us a
22 chance, unless Verizon wants to accept this right
23 now, motion to dismiss Verizon from the petition. We
24 feel that the -- we raised this issue in our
25 supplemental response to Verizon's motion to dismiss

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1 that, in fact, this was a petition, not a complaint.
2 As a petition, it should not be an adversarial
3 proceeding. We were simply petitioning the
4 Commission to find the most appropriate telephone
5 company to provide service to us under USC 214(E)(3).
6 It should be the UTC that determines the most
7 appropriate telecom.

8 Verizon claimed in an earlier motion that
9 they did not receive funding, high-cost funding from
10 the universal service fund. If that is true, they've
11 alleged and they would have -- should have no problem
12 in going along with our motion to dismiss them from
13 the petition. And for that additional reason, we
14 request the motion for continuance, unless Verizon
15 wants to go along with the motion to dismiss at this
16 time. Thank you, Your Honor.

17 JUDGE CAILLE: Mr. Lundsgaard.

18 MR. LUNDSGAARD: Your Honor, if I may ask a
19 clarifying question. Mr. Rupp, are Petitioners
20 contemplating that Verizon would be dismissed from
21 the petition, but that the petition would go forward
22 with a continuance? Is that your idea?

23 MR. RUPP: Yes. And it would be up to the
24 Commission to determine the most appropriate telecom
25 to service.

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1 MR. LUNDSGAARD: Your Honor, I apologize.
2 I'm at a little bit of a loss, because it's sort of
3 an interesting idea. To some extent, it's kind of a
4 -- I mean, there has been some discussion of it, but
5 to some extent it's a new idea. I've been looking
6 around to see if one of my client reps would be here
7 to discuss it. With the ALJ's permission, I'd like
8 to take maybe a brief break and see if I can get in
9 touch with somebody to discuss that, because I think
10 it may be an important issue. And I'd like a couple
11 of minutes, at least, to think through the procedural
12 ramifications of what the Petitioners are suggesting.

13 JUDGE CAILLE: All right. Then let's -- how
14 much time do you think you'll need, Mr. Lundsgaard?

15 MR. LUNDSGAARD: Five minutes.

16 JUDGE CAILLE: Okay. Let's take five
17 minutes. If you come back at -- let's make it 12:45.

18 MR. LUNDSGAARD: Thank you.

19 JUDGE CAILLE: We're off the record.

20 (Recess taken.)

21 JUDGE CAILLE: We are back on the record
22 after a seven-minute recess, and Mr. Lundsgaard, do
23 you have anything to report?

24 MR. LUNDSGAARD: Yes. Well, I have a
25 question, Your Honor, and the question is for

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1 Petitioners. And that is, to what extent or in what
2 way would this kind of procedural technique sort of
3 alter the playing field or change the evidence or
4 change the record that would be submitted to the
5 Commission for its decision on the petition as it
6 presently stands? That's what I'm trying to
7 understand.

8 I mean, for example, would there be -- do
9 Petitioners have other carriers in mind that would
10 be, you know, investigated as a part of this?

11 MR. RUPP: Yes, we do have a couple in mind.
12 Would you like me to elaborate?

13 JUDGE CAILLE: Please do.

14 MR. RUPP: I received an e-mail this morning
15 from Chris McLean, former head of the RUS, now an
16 attorney in Washington, D.C.

17 JUDGE CAILLE: Excuse me. You'll have to
18 identify what RUS is for the --

19 MR. RUPP: It's Rural Utilities Service, I
20 believe.

21 JUDGE CAILLE: Thank you.

22 MR. RUPP: Who has a client in the Pacific
23 Northwest that is contemplating a proposal to provide
24 Petitioners service. And I've also been approached
25 by another small telecom, who had proposed to use a

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1 satellite-based service to provide low-cost or
2 equivalent service via satellite.

3 JUDGE CAILLE: If I may just interject here.
4 So Mr. Rupp, I am having difficulty understanding why
5 you would be dismissing Verizon from the petition,
6 rather than just withdrawing the petition and
7 refiling. Because you're still going to have to ask
8 for approval from the Commission.

9 MR. RUPP: Sure. There's --

10 JUDGE CAILLE: And you'll have then a
11 different party to the -- who -- well, I don't know
12 how it will proceed. Perhaps it will go to an open
13 meeting and the Commission will just approve it. But
14 you still have to get Commissioner approval, so --

15 MR. RUPP: Sure, but there's the record that
16 we have already. It seems more economical to use the
17 testimony and so forth that we've already provided.
18 As you know, 214(E)(3) requires we assert that we are
19 a community, and we've provided on this record that
20 we are a community.

21 JUDGE CAILLE: There would be no problem
22 with using your testimony, but there's also pre-filed
23 testimony by Verizon in this docket. So is that --
24 I'm just trying to understand your thought process
25 here. Is it that you were thinking that to dismiss

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1 -- with dismissing Verizon from the petition or from
2 this proceeding, that would then clear out the
3 Verizon testimony and you would proceed then with the
4 testimony of the alternate providers, plus the
5 testimony you have already provided on behalf of
6 Petitioners?

7 MR. RUPP: Well, I'm actually not sure.
8 Verizon has made various claims and provided
9 testimony that may or may not result in them being
10 eligible, I suppose is the word, for consideration
11 under a 214(E)(3) proceeding, and we might want to
12 preserve that part of the testimony. And an
13 alternate --

14 JUDGE CAILLE: Well, I don't see how we can
15 preserve the testimony of Verizon and dismiss them as
16 a party, you see. So maybe if you can just maybe
17 articulate your theory in going forward with this
18 proposal, maybe I can understand it and --

19 MR. RUPP: Yes. Well, as we raised in our
20 supplemental response to Verizon's motion to dismiss,
21 that we filed a petition --

22 JUDGE CAILLE: Excuse me, Mr. Rupp.

23 MR. RUPP: Am I not answering your question?

24 JUDGE CAILLE: I'm just trying to identify
25 which piece of -- which pleading you are referring

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1 to. Is that the motion to dismiss early on in the
2 proceeding?

3 MR. RUPP: Yes, Your Honor.

4 JUDGE CAILLE: Okay.

5 MR. RUPP: Our supplemental response to --

6 JUDGE CAILLE: Yes, okay.

7 MR. RUPP: -- Verizon's motion to dismiss,
8 the introduction set forth what we thought the
9 proceeding should look like and that a petition
10 should not be an adversarial process. We're simply
11 petitioning the Commission, under 214(E)(3), to find
12 a suitable provider for us.

13 Fortunately, this isn't really an excuse, I
14 suppose, but we were given -- there is no proceeding,
15 as I understand it, in place or that the Commission
16 has to handle a petition of this sort. Everything is
17 set up as an adversarial sort of complaint process.
18 We've been variously referred to in different filings
19 as complainants or petitioners, and we've
20 consistently said that we are petitioners, and we
21 believe this is an improper venue -- an adversarial
22 proceeding is an improper venue to decide our
23 petition.

24 We were given two choices when we filed, to
25 either -- by a UTC Consumer Affairs representative,

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1 to either name Verizon, in which case the Commission
2 would serve them, or we could name every other
3 telephone company, every telephone company in the
4 state, in which -- under which we would have to serve
5 them individually ourselves.

6 At the time, and of course things have
7 evolved since then, it seemed that Verizon was the
8 logical choice to name in the petition, when in fact
9 we now recognize our error and we should not have
10 named a telephone company in an adversarial manner in
11 our petition.

12 JUDGE CAILLE: So based on the information
13 you received this morning of the potential for
14 another carrier to provide service --

15 MR. RUPP: It's not -- it's not a done deal.
16 It's a possibility, you know, as is the other carrier
17 I mentioned is a possibility. We don't have any
18 agreement in place, but we think it's -- it may be
19 premature, for the reasons stated, to go forward at
20 this time.

21 And if Your Honor wishes that we were to
22 withdraw the petition and refile, that's something
23 we'd be willing to do. I just thought it would be
24 more economical to dismiss Verizon, but that's --

25 JUDGE CAILLE: Well, before we make any

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1 decisions, I'd like to hear from -- well, Verizon and
2 Commission Staff.

3 MR. LUNDSGAARD: Well, you know,
4 procedurally, we're still talking about a number of
5 alternatives. You know, on the one hand, if there is
6 a real prospect that another company is volunteering
7 or is interested to provide service to Petitioners,
8 that's all well to the good, and we would generally
9 support the notion of exploring that, rather than
10 requiring Verizon to provide the service for the
11 reasons that we've stated in our pleadings.

12 I do have a concern that we may go through
13 some procedural circling around and then, at the end
14 of the day, we end up right back where we started,
15 which is right here, having this particular hearing.

16 If we had some assurances that that wasn't
17 where this was going to end up, I'm sure we would
18 feel very differently about it, but I'm not sure that
19 anybody's in the position to provide those
20 assurances.

21 And if that were the case, I mean, I would
22 be concerned that we would just end up with a
23 continuance here and dragging out these proceedings,
24 and then having the same hearing that we would be
25 having anyway. I mean, ultimately, ultimately the

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1 scope of that hearing would be up to the Commission
2 regardless of whether there was a continuance in this
3 case to allow this or a dismissal and then refiling
4 of a petition.

5 JUDGE CAILLE: Ms. Johnston.

6 MS. JOHNSTON: I agree with Mr. Lundsgaard
7 that there's no way that the Commission can tender
8 its assurances to Verizon that Verizon will be
9 forever free from being assigned to handle service in
10 this case. I think that the record that has been
11 developed before the Commission in this docket will
12 prove valuable to the Commission as it decides the
13 issues in the case.

14 My suggestion is that the Petitioners be
15 granted their motion for continuance, that they move
16 to amend the petition to add the 14 additional
17 persons and also bring in the two potential companies
18 that may serve.

19 JUDGE CAILLE: Thank you. Is there anything
20 further from anyone before I make a ruling?

21 MR. LUNDSGAARD: Well, Your Honor, I mean, I
22 do have some concerns with a motion for a continuance
23 to add new petitioners, because I think that that
24 issue has already been resolved and I do have some
25 concern that, sort of through these procedural steps,

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1 we end up back in a place of essentially overturning
2 the earlier ruling with regard to a motion to amend
3 to add the new petitioners.

4 JUDGE CAILLE: Mr. Lundsgaard, that is
5 exactly my concern, too.

6 MR. RUPP: May I?

7 JUDGE CAILLE: Mr. Rupp.

8 MR. RUPP: Whether or not we win or lose
9 here in the current proceeding, if, in fact, we lose,
10 I suggest that it's likely the other -- the other 14
11 petitioners will be back after this is decided, will
12 be back and filing a 214(E)(3) petition for
13 themselves. And so there's -- I don't see a downside
14 here.

15 JUDGE CAILLE: Well, let me just back up,
16 because earlier I heard you say, Mr. Rupp, that you
17 would be willing to refile, to withdraw your petition
18 and refile. Is that still your position?

19 MR. RUPP: Yes, Your Honor. If your ruling
20 -- I don't know quite how to phrase this. If that is
21 the only alternative open to us, that's -- we would
22 take that. We would prefer the continuance and so
23 forth. If that is not Your Honor's ruling, then we
24 would prefer to withdraw and refile so that all the
25 facts and the customers could be before the

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1 Commission.

2 JUDGE CAILLE: All right. Now, what we need
3 to do is segue into the motion for continuance,
4 because that was what I was going to start off with
5 this afternoon before Mr. Rupp moved for the
6 dismissal of Verizon from this proceeding.

7 I believe I need to hear from Mr. Lundsgaard
8 about whether you would support a continuance. I
9 know in your e-mail you said you were opposed to it.

10 MR. LUNDSGAARD: That's right. And Your
11 Honor, just focusing on the motion for a continuance,
12 which, as I understood it, was a narrow motion to
13 continue this petition for the purpose of adding
14 additional petitioners and permitting additional
15 discovery to be taken and then refiling the
16 testimony, I mean, we continue to oppose that
17 continuance as framed, and for many of the reasons
18 that were already set forth in our briefing and we
19 think that were largely adopted in your ruling on the
20 motion to amend.

21 JUDGE CAILLE: And Ms. Johnston, Commission
22 Staff supports the continuance, the original
23 continuance, plus has -- just as you articulated
24 earlier, would include that to allow any other
25 providers?

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1 MS. JOHNSTON: Well, yes. As I stated
2 earlier, for reasons of judicial economy, it just
3 makes sense to keep this proceeding together and
4 going forward. There's nothing to prevent the
5 Petitioners from either moving to amend the petition
6 to make these changes or moving to withdraw and then
7 refiling. And I just want to avoid duplication of
8 effort.

9 I mean, this case has -- there's been
10 extensive discovery, testimony's been filed, and as I
11 said earlier, I think that this record will prove
12 valuable to the Commissioners as they make their
13 decision in the docket.

14 JUDGE CAILLE: Okay. I am going to deny the
15 motion for continuance. This is the motion that Mr.
16 Rupp filed on March the 30th, three days before this
17 hearing, and I will grant the motion or what I take
18 as Mr. Rupp's motion to withdraw this proceeding and
19 refile, and I will explain exactly why I am doing it
20 this way.

21 Besides being the Judge, who takes the
22 evidence and makes rulings and writes the order, I am
23 also the person who assures that the adjudicative
24 process is followed, and that is the basis for my
25 ruling.

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1 Since the beginning of this case, which was
2 nearly a year ago, the petition was filed on May the
3 20th, it has gone forward with 11 residents and I
4 believe it's seven households. And just recently,
5 two weeks ago, the Petitioners asked to add
6 petitioners to this proceeding, 14 additional
7 petitioners. I ruled -- and that motion was filed,
8 well, as I said, two weeks ago, on March 29th -- or
9 actually, that was the date of my ruling when I
10 denied that motion, and that order did speak for
11 itself.

12 Then, the next day, on March 30th,
13 Petitioners filed their motion for continuance, and
14 it was for a nine-week continuance. I have
15 considered the time, the expense and the preparation
16 of everyone involved in this proceeding, and I've
17 considered the timing of Petitioners' motion to add
18 petitioners and the motion for continuance. I've
19 also considered the age of this docket. And lastly,
20 I considered, and most importantly, the integrity of
21 our process.

22 Mr. Rupp, I understand you are not formally
23 represented by an attorney, but when you come before
24 us in a formal proceeding, you have to follow the
25 rules.

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1 So that is the basis for my ruling. The
2 fact that you will be withdrawing your petition does
3 not mean you cannot bring in all the evidence that
4 has been gathered in this proceeding, so we will not
5 lose any of that effort, and you can proceed to bring
6 in your other petitioners and you can proceed to
7 bring in other potential providers.

8 So that's my ruling. Anything further from
9 anyone? As you know, everyone is allowed ten days to
10 seek interlocutory review of my ruling.

11 MR. RUPP: Thank you, Your Honor.

12 MS. JOHNSTON: I have a clarifying question,
13 Your Honor. What does your ruling mean for Verizon
14 and for Verizon's evidence in this particular docket?

15 JUDGE CAILLE: I believe that Verizon should
16 remain -- I mean, all of the evidence and Verizon
17 should remain as a -- I'm not ruling on that motion
18 to dismiss. What I'm ruling on is the -- well, the
19 motion to dismiss is denied.

20 MS. JOHNSTON: Well, you mentioned that you
21 were granting the motion to withdraw.

22 JUDGE CAILLE: Well, he's withdrawing the
23 petition, and I assume -- are you going to eliminate
24 Verizon as a possible provider?

25 MR. RUPP: We believe that's up to the

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1 Commission to determine. We intend to file a new
2 petition with the newly-discovered potential
3 customers without naming any particular telephone
4 company, and we believe it's the Commission's
5 responsibility, under 214(E)(3), to find the most
6 appropriate provider for us. That's the plain
7 language of 214(E)(3), I believe.

8 JUDGE CAILLE: Well, I'm not exactly sure I
9 agree with you, Mr. Rupp.

10 MS. JOHNSTON: May I say something? Your
11 Honor, it's not the Commission's obligation to pull a
12 carrier out of a hat or conduct the investigation to
13 identify potential carriers.

14 JUDGE CAILLE: Thank you.

15 MS. JOHNSTON: So as a Petitioner, I believe
16 that Mr. Rupp and his colleagues would bear the
17 burden.

18 MR. LUNDSGAARD: And Your Honor, I guess I
19 would tend to agree with that and suggest that -- I
20 mean, my understanding was that Mr. Rupp was
21 proposing to withdraw the petition and then refile
22 the petition, and then it would be Petitioners'
23 decision as to which carriers to name or not name in
24 going forward with that petition.

25 And so if Mr. -- I mean, procedurally, if

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1 Mr. Rupp wished to identify those carriers that had
2 expressed some interest in providing this service and
3 that that was the context in which he was proceeding,
4 that that would be up to him, or up to the petitioner
5 group.

6 JUDGE CAILLE: Mr. Rupp.

7 MR. RUPP: We can identify these carriers,
8 but we don't wish to get drawn into an adversarial
9 proceeding again, where it is the Petitioners' burden
10 to prove a particular telephone company is obligated
11 to serve us. We're not equipped for that kind of
12 formal litigation.

13 JUDGE CAILLE: Well, Mr. Rupp, short of
14 finding someone who is going to volunteer to serve
15 you in the remote location where you are, I believe
16 you're going to be stuck with some sort of
17 adversarial proceeding. My -- what I would envision
18 for you is exactly for you to step back to square
19 one, where you were a year ago, evaluate the number
20 of people that are involved or that -- you know, in
21 your area, like you wanted to add those petitioners,
22 for example, and then name the providers that can
23 possibly provide the service. And if Verizon is one
24 of those providers, then the record so far will help
25 inform the Commission's decision, but, you know, the

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1 Commission just doesn't reach into a hat and pick out
2 a provider to serve you under 214(E)(3).

3 So with that understanding, I guess I need
4 to know that everyone is clear about where we're
5 going at this point. Do you -- well --

6 MR. LUNDSGAARD: I guess if I understand
7 sort of what's being contemplated here is that the
8 petition would be withdrawn, the former Petitioners
9 would be consulting with these other telecoms to
10 determine whether or not any of them were willing to
11 provide service, and if so, under which -- under what
12 terms, and then, if an agreement can be reached,
13 maybe that comes before the Commission for a
14 designation on a consent calendar or some other
15 procedure, and so it would be unnecessary to have an
16 adversarial proceeding.

17 And then, if those discussions were
18 unsuccessful, then I guess the Petitioners could
19 revisit their options at that point.

20 JUDGE CAILLE: And Mr. Rupp, just so you
21 know, Mr. Lundsgaard has outlined what -- the process
22 that would occur if you could reach some agreement
23 with a provider.

24 MR. RUPP: Of course, Your Honor. We would
25 much prefer to work cooperatively with a provider

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1 rather than ask the Commission to intervene on our
2 behalf, if that was a possibility, as it may be.

3 JUDGE CAILLE: All right. Perhaps what I --
4 I think, Mr. Rupp, I will need a written motion from
5 you in order to proceed with the withdrawal of your
6 petition. It would be entitled a motion to withdraw
7 without prejudice. So without prejudice means that
8 -- with leave to refile.

9 MR. RUPP: Understand.

10 JUDGE CAILLE: Okay. Do you have a date by
11 which you could file that motion? Say within a week?

12 MR. RUPP: That's fine, Your Honor.

13 JUDGE CAILLE: All right. Anything further
14 from anyone?

15 MR. LUNDSGAARD: Your Honor, I guess the
16 only thing I'd like to ask at this point, since some
17 of these issues are coming up now and we've kind of
18 been chewing on them for a while, there may be
19 additional thoughts we'd have, we'd like the
20 opportunity to respond to the motion after it's
21 filed. I wasn't sure if that was contemplated.

22 JUDGE CAILLE: That would be fine.

23 MR. LUNDSGAARD: Thank you.

24 JUDGE CAILLE: I understand this all came up
25 kind of -- snuck up on all of us. All right.

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1 Anything further? Then this hearing is concluded.

2 (Proceedings adjourned at 1:15 p.m.)

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