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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 WASHINGTON UTILITIES AND)
4 TRANSPORTATION COMMISSION)
5 Complainant,)
6 vs.) DOCKET NO. UT-040788
7 VERIZON NORTHWEST, INC.,) Volume No. 9
8 Respondent.) Pages 772 - 794
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10 An oral argument in the above matter was held
11 on October 12, 2004, at 9:32 a.m., at 1300 South
12 Evergreen Park Drive Southwest, Olympia, Washington,
13 before Administrative Law Judge C. ROBERT WALLIS.

14 The parties were present as follows:

15 THE WASHINGTON UTILITIES AND TRANSPORTATION
16 COMMISSION, by DONALD T. TROTTER and CHRISTOPHER G.
17 SWANSON, Assistant Attorneys General, 1400 South
18 Evergreen Park Drive Southwest, Post Office Box 40128,
19 Olympia, Washington 98504; telephone, (360) 664-1189.

20 VERIZON NORTHWEST, INC., by JUDITH A. ENDEJAN
21 (via bridge), Attorney at Law, Graham & Dunn, 2801
22 Alaskan Way, Suite 300, Seattle, Washington 98121;
23 telephone, (206) 340-9694.

24 PUBLIC COUNSEL, by SIMON J. FFITCH, Assistant
25 Attorney General, 900 Fourth Avenue, Suite 2000,
26 Seattle, Washington 98164; telephone, (206) 389-2055.

27
28 Kathryn T. Wilson, CCR
29 Court Reporter

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1 PROCEEDINGS

2 JUDGE WALLIS: This is argument on a motion
3 to compel responses to data requests. It's being held
4 on October 12 of the year 2004 in Olympia, Washington
5 before Administrative Law Judge C. Robert Wallis. The
6 parties are present in the hearing room or by
7 telephone. I will ask the parties to identify
8 themselves now beginning with the movant in this
9 matter, Public Counsel.

10 MR. FFITCH: Simon ffitich, assistant attorney
11 general for the Public Counsel section.

12 JUDGE WALLIS: For Commission staff?

13 MR. TROTTER: Donald T. Trotter and
14 Christopher G. Swanson, assistant attorneys general,
15 for the Commission staff.

16 JUDGE WALLIS: For the Company?

17 MS. ENDEJAN: Judy Endejan for Verizon
18 Northwest, and Mr. Diamond is here as my technical
19 consultant. He's the rate case manager for Verizon
20 Northwest, but I don't believe he needs to make any
21 specific appearance.

22 JUDGE WALLIS: Are we ready to proceed?

23 MR. FFITCH: Yes. Good morning. This is a
24 motion by Public Counsel, AARP, and WeBTEC to compel
25 production of material requested in data requests --

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1 JUDGE WALLIS: Let's be off the record,
2 please.

3 (Discussion off the record.)

4 JUDGE WALLIS: I will acknowledge the
5 presence on the bridge line of Mr. Roseman, and
6 Mr. ffitch is representing Public Counsel, AARP, which
7 is Mr. Roseman's client, and WeBTEC in this matter.
8 Mr. ffitch, would you please proceed?

9 MR. FFITCH: Thank you, Your Honor. The
10 motion that we filed -- "we" being Public Counsel,
11 AARP, and WeBTEC -- does include some confidential
12 material, and my intention today is to argue without
13 getting into the confidential material. I think it's
14 possible for us to do that.

15 The Commission rules allow for discovery of
16 relevant and discoverable information, which includes
17 information leading to the discovery of admissible
18 evidence. One of the key issues in this case is the
19 imputation of directory publishing revenue for Verizon
20 Northwest, and these data requests that are the subject
21 of this motion all relate to directory publishing for
22 the Washington operation in one way or another.

23 I would like to start by and essentially
24 follow the order that we've used in the motion by
25 starting with Data Request 156. Data Request 156 asked

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1 two questions. Essentially, the first question was, is
2 it possible to create a carve-out or a reasonable
3 estimate of directory revenues and direct and indirect
4 expenses for Washington. The second part of the
5 question was, can you provide that information for the
6 years 2002 and 2003.

7 Verizon's responsive pleading acknowledges
8 that, quote, "It is possible to prepare state-specific
9 income statements," end quote, but represents that they
10 don't do this as a practice, that they don't maintain
11 this information on a state level, that they could do
12 it but it would take staff time and expense. They also
13 acknowledge that they have undertaken this exercise in
14 Hawaii. The Commission rule 480-07-400(IC)(iii) does
15 permit data requests which ask for an analysis of
16 information.

17 I think the key here, Your Honor, is that as
18 I've noted, directory imputation is one of the major
19 revenue requirement issues in this case. It is an
20 issue that potentially implicates tens of millions of
21 dollars per year and affects ratepayers' interests on
22 that scale, and resolving that issue will ultimately
23 require an analysis of Verizon Washington directory
24 operations revenues and expenses.

25 Verizon has the burden of proof on that

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1 issue. Verizon also has the information in its
2 possession and the ability to provide that information
3 to this commission which will ultimately create a
4 record for a decision on that issue. We don't believe
5 that it's appropriate for Verizon, therefore, to
6 withhold that information or to dispense it at its own
7 pleasure, such as in a rebuttal case, after other
8 parties have been forced to estimate or guesstimate
9 imputation revenue information without adequate
10 information at their disposal or after a Bench request
11 during the hearing.

12 So for those reasons, Your Honor, we believe
13 this is relevant information. We believe the Company
14 has acknowledged they can produce it. We don't believe
15 the reasons they've given for not wishing to produce it
16 or provide it are adequate, so we ask that the Company
17 be ordered to provide the information requested in Data
18 Request No. 156.

19 I guess just one sort of final practical
20 point is that the Company indicates that this would
21 require allocations based on assumption and
22 methodologies that have yet to be developed, and we
23 would suggest that we would be comfortable if the
24 Company would simply employ the same methodologies that
25 were employed in the Hawaii situation to develop the

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1 carve-out financial statements there for the instate
2 directory operations. That would at least be a
3 starting point.

4 I would like to move next to Data Request
5 108. Your Honor, this was a request for disaggregated
6 income statements disaggregated by affiliated entity.
7 Initially, we received consolidated information
8 statement for Verizon Information Services, a subpart
9 of Verizon Communications, Incorporated, but still an
10 aggregation of affiliated entities within the overall
11 company.

12 In our supplemental request, we again asked
13 for a breakdown of that information, and what we
14 received was essentially a lesser but intermediate
15 aggregation of Verizon Directories Corporation, still,
16 in our understanding, a roll-up of subsidiary entities.
17 What we are asking for as we did in the initial data
18 request is stand-alone income statements and balance
19 sheets for each of the affiliated entities, and we
20 would like the Company to produce the requested
21 financial statements for the component parts of Verizon
22 Data Directories Corporation. We are not able to tell
23 what we have when we simply have that aggregation
24 called Verizon Directories Corporation, and so that's
25 the nature of our request in 108. There is no

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1 indication that that's not available.

2 JUDGE WALLIS: Why is it that you need that
3 information, Mr. ffitich? What would you do with it?

4 MR. FFITCH: Again, Your Honor, this has to
5 do with attempting to identify the financial
6 information about Verizon directory operations for
7 Washington State, and the Verizon Directories
8 Corporation is an aggregate. We believe that may
9 include information about affiliates or other entities
10 that really don't have a bearing on the specific issues
11 for the Washington operations, so if we can see the
12 component piece parts of that puzzle, we will have a
13 better understanding of which affiliate is important to
14 take into account.

15 With regard to Data Request No. 155, Your
16 Honor, in that instance, the Company has agreed to
17 produce some information. We have not yet received
18 that information, but we are hopeful it will
19 responsive, and we will take a look at that, and
20 hopefully, it won't be necessary to come back again, so
21 155 we are not arguing about today.

22 We are, however, continuing to urge our
23 motion to compel on Data Request No. 157. This is a
24 very straightforward request, Your Honor. We have
25 asked for journal entries and supporting calculations

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1 with respect to the accounting change adopted by
2 Verizon in January 2002 impacting the revenue
3 recognition methodology applicable to directory
4 publishing.

5 We did not receive this initially. We went
6 to a conference with counsel and again asked for that
7 specific information. As you can see in the
8 supplemental request, we asked for journal entries and
9 supporting calculations for the effects of the
10 accounting change. This information was not provided
11 to us, and if you look at the Company's response, the
12 response is, Well, we've given you a complete summary.
13 We've given you a description. We've given you an
14 explanation. So the implication is we should,
15 therefore, be satisfied.

16 We have still not received the actual journal
17 entries or the actual supporting calculations, the
18 actual backup work papers that describe these
19 accounting changes, so that's what we are asking for
20 here, Your Honor. We are not asking for summaries or
21 explanations or narratives or other kinds of secondary
22 information. We are asking for the actual journal
23 entries and the actual supporting calculations.

24 The remaining two data requests, Your Honor,
25 160 and 162, we believe are not at issue today. The

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1 Company has agreed, in the response to the motion,
2 they've agreed to provide information that is
3 responsive to those two requests. We'd asked for
4 directory-specific information about revenues and
5 expenses for individual directories, and the Company
6 has now indicated they are going to provide that
7 information on this point. We are looking forward to
8 seeing that, and we don't yet know if we are going to
9 have any further dispute about that.

10 I will express some frustration with regard
11 to these requests, Your Honor. It appears that the
12 Company here has asserted some confusion or
13 misunderstanding about these data requests, and now
14 finally on a motion to compel has said, Well, we didn't
15 know what you meant specifically here, but if this is
16 what you mean, we have that and we will give it to you.

17 What's of concern to us, Your Honor, it took
18 an initial data request. It took a conference with
19 counsel and their analysts. It took further
20 production. It took a motion to compel before the
21 Company said, Okay, we will provide you with our per
22 directory advertising revenue. It would have been
23 quite simple for counsel to call up initially or for
24 the Company to say in the discovery conference, Oh,
25 that's what you want, or, We think this is what you are

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1 asking for. We don't have that, but we do have this.
2 Would that satisfy you?

3 JUDGE WALLIS: Are you arguing there has been
4 a violation of rule?

5 MR. FFITCH: Your Honor, I think I'm just
6 describing to you what happened here and suggesting
7 that a request for clarification by the Company could
8 have avoided the motion to compel on these two data
9 requests. That completes my argument, Your Honor.

10 JUDGE WALLIS: Thank you. Mr. Trotter?

11 MR. TROTTER: Thank you, Your Honor. We have
12 very little to add to what counsel has said.
13 Commission staff supports the motion. Just focusing on
14 one example, Data Request 157 very clearly asked for
15 the journal entries. They didn't respond. The
16 supplemental request asked for the journal entries.
17 They responded with a summary, and now we are here
18 before you with a motion to compel when all the Company
19 had to do was go to the journal entries, take that
20 sheet or sheets out of their records, Xerox it, and
21 send it forward.

22 They still haven't done that, and reading
23 their response, they've given no reason why they can't
24 do that or won't do that. They just haven't done it.
25 This is not the exception. We've had to go back and

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1 back and back again to get what we asked for the first
2 time. Sometimes things get worked through because we
3 don't ask for it exactly right, but other times, we ask
4 for it exactly right and we don't get it.

5 We do think there has been a rule violation,
6 a failure to respond properly the first time, but we do
7 think all of the information requested is relevant.
8 The Company has not indicated there is a burden. They
9 simply haven't done it, and an order compelling
10 production is justified. Thank you.

11 JUDGE WALLIS: Thank you. Ms. Endejan?

12 MS. ENDEJAN: Thank you, Your Honor. Well,
13 first of all, let me address DR 156. Actually, let me
14 make a preliminary remark here, and I really appreciate
15 your comment prior to the hearing with respect to
16 sticking to the facts and not making accusations, but I
17 would like to put in context what Verizon has been
18 dealing with.

19 We have had from Staff alone over 400 data
20 requests, many with many subparts. We have
21 approximately 200 data requests from Public Counsel,
22 and I want the Commission to be apprised of the fact
23 that the Company truly has been responsive overall with
24 respect to data request responses and has acted in good
25 faith at all times, and if there is confusion over what

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1 was asked or what was provided, perhaps we could have
2 had more frequent communications between counsel, but
3 last week, everyone was involved quite heavily in the
4 depositions of Verizon's witnesses, and frankly, a lot
5 of times, things fall through the cracks.

6 Be that as it may, I think the big issue with
7 respect to Public Counsel's motion is whether or not
8 the Company is required to create documents that it
9 does not ordinarily keep in its regular business
10 dealings. With respect to the financial information,
11 it is accurate that Verizon does not keep
12 state-specific information, and the preparation of the
13 Hawaii-specific financial statements was a special
14 project, part of an unusual and unique event, the sale
15 of all of the Hawaii operations of Verizon
16 Communications, Inc., and it was done for a very
17 specific purpose.

18 This sort of analysis does not exist today,
19 and the Company would submit that data requests seek
20 documents and analysis, compilations or summary of
21 documents, etcetera. That means documents that already
22 exist within the Company's possession that the Company
23 is required to provide. We do not interpret that rule
24 to require the Company to do the analysis for the
25 requesting party; in other words, to create something

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1 that does for the exist.

2 That has been a very difficult issue in this
3 case because during the interim rate case proceedings,
4 Verizon was asked to do something by the commissioners,
5 to create something that did not exist. In deference
6 to the commissioners, the Company felt it had no choice
7 but to comply. Now we are here before the Commission
8 with a similar issue that relates to whether and to
9 what extent the Company has to complete an analysis or
10 undertake an analysis that is very time-consuming that
11 does not exist, that would take several weeks, if not
12 longer, to do this sort of specific breakdown, and they
13 would have to -- it's not as easy as I think Counsel
14 would submit to have the Company use the same
15 assumption and methodologies that they used in Hawaii
16 because Washington's operations are not Hawaii's
17 operations. They are entirely distinct.

18 So with respect to 156, we think that the
19 appropriate ruling would the Company has an obligation
20 to provide extant or existing documents with respect to
21 Verizon Directories, and it has done so in response to
22 numerous data requests from both Public Counsel and
23 Staff, and it should not have to, would be unduly
24 burdensome, to require the Company to undertake an
25 analysis that it wouldn't ordinarily do.

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1 With respect to PC-108, I think I'm still a
2 little confused about the alleged deficiency that
3 Public Counsel is alleging. When we had our discovery
4 conference, we understood Public Counsel to be asking
5 for the financial income statements, etcetera, with
6 respect to Verizon Directories Corporation, which is
7 part of Verizon Information Services, and that's what
8 we gave them. We gave that information to Public
9 Counsel. I don't know, and maybe Mr. Diamond can
10 factually shed some additional light with respect to
11 whether or not there are further breakdowns of the
12 financial information relevant to Verizon Directories
13 Corporation. Mr. ffitch seems to think there are other
14 affiliates or other information that could be further
15 granulated. So with your permission, Your Honor, I
16 would ask Mr. Diamond if he knows if any such documents
17 exist.

18 MR. DIAMOND: I'm not aware of any other
19 documents that would exist.

20 MS. ENDEJAN: So with respect to the
21 financial statements for the domestic operations of
22 VDC, so if we were compelled to produce information, I
23 don't know what we would be able to produce is the
24 problem.

25 Now, with respect to, and that same sort of

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1 analysis would apply to Data Request No. PC-157, and
2 again, Verizon thought we had provided a fully
3 responsive answer to this request, and again, I think
4 Public Counsel surmises that there is perhaps
5 information that we have not provided, and when we got
6 Public Counsel's motion, we did go back and try to
7 ascertain whether or not this information exists, and
8 again, with leave of Your Honor, Mr. Diamond could
9 perhaps explain if there is any additional or
10 supplemental information with respect to our response
11 to PC-157.

12 JUDGE WALLIS: Mr. Diamond?

13 MR. DIAMOND: 157, it appears that we have
14 provided a summary of the journal entries, and I would
15 have to check. There may be some more information that
16 we could provide on that as far as where the summary
17 came from and the supporting documentation that
18 would -- journal entries.

19 JUDGE WALLIS: Do I understand you have not
20 provided the journal entries themselves or the work
21 papers associated with them?

22 MR. DIAMOND: I'm not sure if there is a
23 confidential attachment 157 to is the actual journal
24 entries. I thought they were, but I would have to
25 check to make sure.

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1 MS. ENDEJAN: So I guess the bottom line is
2 then Verizon, to the extent there is any backup data
3 that responds to No. 157, the Company will provide
4 that. I don't think there were any other data requests
5 at issue. The only one that is of significant concern
6 to the Company is No. 156. So I guess that's the
7 Company's position with respect to all of these data
8 requests here. I don't think I've missed any data
9 requests.

10 JUDGE WALLIS: Very well. Mr. ffitch?

11 MR. FFITCH: Thank you, Your Honor. Just a
12 concise response or two. First of all, we believe that
13 a 75 percent residential rate increase is an unusual
14 and unique event which would warrant the expenditure of
15 some staff time and expense in analyzing a component of
16 the Company's revenue requirement. The Company's
17 revenue has been placed at issue by Verizon. They
18 assert the ability to prove a need in Washington State
19 alone for additional revenue in the amount of over 200
20 million dollars.

21 A big piece of that is directory revenue,
22 potentially. If Verizon will not contest Public
23 Counsel testimony regarding the correct amount of
24 directory revenue, then perhaps we don't need to see
25 this information. We can make an estimate and submit

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1 that uncontested to the Commission for its use in the
2 this case. I suspect that Verizon doesn't want to go
3 down that road. I suspect they are going to want to
4 provide factual information about the financial status
5 of their directory revenues in Washington to this
6 commission at some point, and we are simply asking that
7 that be provided in the ordinary course of discovery so
8 that everybody is on the same page going into the
9 filing of testimony in advance of the hearing.

10 With regard to 108 and the further breakdowns
11 on Verizon Directory Corporation, it's our
12 understanding that there are other affiliate and
13 subordinate entities contained within this group, and I
14 notice that Mr. Diamond did not say there are no other
15 affiliates or that Verizon Directory Corporation is not
16 composed of a group of affiliates. He simply said,
17 made a general statement about what wasn't available,
18 and it's our understanding that that is an intermediate
19 aggregation of other corporate entities. So that's why
20 we are asking for the complete breakdown down to the
21 granular level.

22 On 157, I think the Company's apparently
23 acknowledged there may be some more information there,
24 and just looking at the confidential response to 157
25 that you have there, Your Honor, and Mr. Diamond

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1 mentioned it, the title of Page 2 of the confidential
2 material is summary of journal entries, which was the
3 point we made in our motion.

4 I'm aware, Your Honor, of your admonition
5 before this argument regarding characterizing parties'
6 behavior. I will note that Ms. Endejan has actually
7 made a statement about the Company's behavior with
8 regard to discovery in this case, and I will simply
9 say, and we do not say this lightly in Commission
10 proceedings, that we do not agree with that, and we
11 have had some concerns about the Company's
12 cooperativeness with respect to discovery.

13 JUDGE WALLIS: Mr. Trotter?

14 MR. TROTTER: Just a quick point, Your Honor.
15 We believe that Data Request 156 asking for the
16 carve-out is an analysis of extant documents. In order
17 to do a carve-out, we analyze extant documents and
18 prepare an analysis based on that showing the
19 Washington impact, and if you think about it, or if we
20 think about it, many, many adjustments in this case are
21 based on total company data that are allocated and
22 separated and all sorts of things happen to it before
23 it gets to the Washington intrastate level. It's
24 different in type but not different in kind.

25 It's clear the journal entries have not been

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1 provided, and there may be useful information on the
2 actual document, and it is certainly a document that
3 can be easily provided. So we believe Public Counsel's
4 arguments are well taken and within the scope of the
5 rule and that the Company should respond to them.

6 JUDGE WALLIS: Ms. Endejan, do you have any
7 concluding comments?

8 MS. ENDEJAN: I would like to state factually
9 that there is not an existing Washington State-specific
10 breakdown for directories. It would have to be
11 created, and that is a fact, Your Honor, and that would
12 take some time. We don't interpret the rules as
13 requiring that sort of analysis.

14 JUDGE WALLIS: Can you quantify the time and
15 the effort that would be required to undertake that
16 project?

17 MS. ENDEJAN: This would have to come from
18 Verizon Directories, which is not within our control of
19 the local exchange company, Verizon Northwest. They
20 would designate that request as a special project, and
21 as I understand it from the Hawaii situation, it would
22 take at least three to four weeks for Verizon
23 Directories to do this sort of analysis. That's all I
24 can tell you.

25 JUDGE WALLIS: Very well. I am prepared to

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1 rule from the Bench, and I will follow this up with an
2 order that I will do my best to see is entered today.

3 I think that Verizon has an incorrect
4 understanding of the Commission's discovery process.
5 This is unlike civil litigation in the regard that, as
6 Mr. ffitch pointed out earlier, the Company does have
7 the burden in a general rate case to come forward with
8 evidence that supports its position. The Commission
9 rules now and consistently in the past have not stopped
10 with the requirement that companies provide existing
11 information, but have specified in the past, as they do
12 now, that the company is reasonable analysis of
13 existing information as appears to be requested here.

14 So I think it is clear under the rule that
15 the test in this case, at least as to No. 156, is
16 whether the burden outweighs the potential benefit.
17 Based on the information that counsel provides, which
18 is a time frame rather than a measure of the actual
19 effort that would be required, the FTE's, the support,
20 I rule that the Company must provide that information.

21 As to No. 108, it appears that there is no
22 contest as to the Company's obligation to provide that
23 information; that there is only a question about
24 whether the Company has done so, and it appears that
25 that is resolved to the extent that there is any

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1 question the Company does have the obligation, I
2 believe, to provide that.

3 And I think that the same is true as to 157.
4 I'm sorry. I was speaking earlier of 157 and not 108.
5 The analysis, I think, that underlay my observations on
6 156 apply also to 108 in that the Company is
7 responsible, and quite a bit of time and energy has
8 been devoted to the concept that the Company is
9 responsible for presenting a picture of its intrastate
10 operations, and unless it is possible to analyze the
11 records of its affiliates as they relate to Washington
12 intrastate operations, it is a less than complete
13 picture. As Mr. ffitch notes in the absence of that
14 information, then the Commission is put to a decision
15 as to how to respond, how to view the information
16 that's presented. So are there any questions?

17 MS. ENDEJAN: Yes, Your Honor. With respect
18 to No. 108, I'm not exactly clear on -- I would like to
19 seek clarification of your ruling. What are you
20 requiring the Company to do or not do?

21 JUDGE WALLIS: To the extent that there are
22 affiliate and subordinate entities within the directory
23 corporation -- and I think there may be agreement about
24 that. At least it's not clear from comments today --
25 then the disaggregated income statements demonstrating

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1 the relationship with Washington must be provided.
2 Mr. Ffitch, is that what you are asking for?

3 MR. FFITCH: Yes, in general, Your Honor. I
4 think we would rest on the specific wording in the data
5 request, but that's generally correct.

6 MS. ENDEJAN: Okay. Again, Your Honor, if
7 there aren't documents then -- well, we will make the
8 investigation and try to work it out with counsel.

9 JUDGE WALLIS: Thank you very much, and I
10 would note that it is often frustrating in the context
11 of a general rate case, which is on an incredibly fast
12 schedule when you compare the litigation with civil
13 litigation of comparable dollar value, it is often the
14 case that there are multiple data requests and that it
15 is difficult to keep track of them and to manage them.

16 That's one of the challenges that companies
17 must come forward to manage. We appreciate the fact
18 that there is agreement on many of the requests and
19 encourage the parties to continue discussions and to
20 continue the process of agreements so that the data
21 that's necessary for an informed judgment is available
22 in ample time for the preparation of testimony and for
23 production and evidence as appropriate during the
24 hearing. Is there anything further?

25 MR. FFITCH: Not from Public Counsel.

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1 MS. ENDEJAN: No, Your Honor. Thank you.

2 JUDGE WALLIS: Thank you all very much.

3 (Oral argument concluded at 10:10 a.m.)

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