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

2 JUDGE RENDAHL: Good morning, I'm Ann
3 Rendahl, the Administrative Law Judge presiding over
4 this proceeding. We're here before the Washington
5 Utilities and Transportation Commission this morning,
6 Tuesday, September the 21st, 2004, for a prehearing
7 conference in Docket Number UT-033011, which is
8 captioned Washington Utilities and Transportation
9 Commission versus Advanced Telecom Group, et al.

10 As I stated off the record, the primary
11 purpose of this prehearing conference is to update the
12 procedural schedule now that the hearings have been
13 rescheduled. After taking appearances I would like to
14 discuss the status of the proceeding, identify issues
15 for discussion this morning, and finalize the procedural
16 schedule for the proceeding.

17 So before we go any farther, let's take
18 appearances from the parties. If you have already
19 stated an appearance, please just state your name and
20 the party you represent, and let's begin with Staff.

21 MR. SWANSON: Chris Swanson, Assistant
22 Attorney General, for Commission Staff.

23 JUDGE RENDAHL: Thank you.

24 And for AT&T.

25 MR. WAGGONER: Dan Waggoner for AT&T along

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1 with Gary Witt.

2 JUDGE RENDAHL: Thank you.

3 Now, Mr. Witt, have you stated an appearance
4 in this proceeding before?

5 MR. WITT: No, Your Honor, I believe this is
6 the first time I have entered an appearance here.

7 JUDGE RENDAHL: Okay, could you please state
8 your full name, address --

9 MR. WITT: Certainly.

10 JUDGE RENDAHL: -- telephone number, fax
11 number, E-mail.

12 MR. WITT: Absolutely. My name is Gary,
13 middle initial B, last name Witt, W-I-T-T, my address,
14 mailing address, is the AT&T Law Department, 1875
15 Lawrence Street, Room 1575, Denver, Colorado 80202, my
16 telephone number is (303) 298-6163, my fax number is
17 (303) 298-6488, and my E-mail address is gwitt@att.com.

18 JUDGE RENDAHL: All right, thank you.

19 MR. WITT: Thank you.

20 JUDGE RENDAHL: Let's see, for Eschelon.

21 MR. AHLERS: Dennis Ahlers on behalf of
22 Eschelon.

23 JUDGE RENDAHL: And Mr. Butler.

24 MR. BUTLER: Yes, Arthur A. Butler, Ater
25 Wynne, LLP, on behalf of Time Warner Telecom.

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1 JUDGE RENDAHL: And, Mr. Cromwell, are you
2 there?

3 MR. CROMWELL: I am, Your Honor, Robert
4 Cromwell, Assistant Attorney General on behalf of Public
5 Counsel.

6 JUDGE RENDAHL: And is there anyone else on
7 the bridge line who wishes to enter an appearance this
8 morning?

9 MR. SHERR: Yes, Your Honor, Adam Sherr for
10 Qwest.

11 JUDGE RENDAHL: I'm sorry, Mr. Sherr, thank
12 you.

13 Okay, so my understanding of where we are in
14 this proceeding is as follows, that direct testimony and
15 responsive testimony have been filed, there is a pending
16 motion by Qwest to strike testimony. As I stated off
17 the record, a notice requesting answers to the motion
18 will go out this morning that will call for answers by
19 Friday, September 24th, and parties are able to file
20 that electronically and follow up with a paper copy on
21 Monday. And it will tentatively at this point set a
22 date for hearing for Friday, October 1st, in the
23 afternoon at 1:30. I'm still trying to coordinate with
24 parties in another proceeding to free up that date.

25 MR. SWANSON: Your Honor, may I ask a quick

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1 question?

2 JUDGE RENDAHL: Yes, go ahead, Mr. Swanson.

3 MR. SWANSON: May parties appear by phone for
4 that October 1st oral argument date, tentative date?

5 JUDGE RENDAHL: Yes, they may.

6 MR. SWANSON: Thank you, Your Honor.

7 JUDGE RENDAHL: So it seems to me what we
8 need to do this morning is to fill in the procedural
9 schedule in this case, because at this point we have the
10 reply testimony due November 8th and then hearings
11 scheduled but nothing else in between or after. And so
12 it appears to me that we need the prehearing conference
13 prior to the January hearings, and we need a date prior
14 to the prehearing conference for filing of the
15 cross-exhibits, time estimates for cross, regular
16 exhibit lists, and I'm trying to think what else we
17 usually ask for but at this point I can't think of
18 anything, and then we need to set post hearing briefing
19 dates. And I think the only other issue is a discovery
20 cutoff date that was raised in some earlier submissions
21 by Qwest and Staff following the November 8th reply
22 testimony. Are there any other dates that we need to
23 add to this list?

24 MR. SHERR: No, Your Honor.

25 JUDGE RENDAHL: Okay. And I would also like

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1 to talk about the hearing dates in January. We have a
2 need to convene an arbitration hearing in the
3 Covad-Qwest arbitration, and time is of an essence under
4 the arbitration schedule, and at this point the
5 Commission has an open meeting scheduled for Wednesday,
6 whatever the Wednesday is in the middle of that week of
7 hearing, Wednesday, January the 12th. And there's been
8 some discussion about having the arbitration hearing
9 that afternoon, so it's a possibility that we may lose
10 that day on Wednesday and may need to schedule an
11 additional day of hearing, so that's another issue to
12 add to the table.

13 Is there anything else besides scheduling
14 issues that you all believe we should address this
15 morning?

16 Okay, well, let's start first with probably
17 the most contentious issue, which is the discovery
18 cutoff date. My understanding is that Staff seeks a
19 discovery cutoff date and Qwest disputes that issue.
20 So, Mr. Swanson, why don't you start, and we'll move
21 from there.

22 MR. SWANSON: Mr. Sherr I believe in some of
23 his filings raised the issue of making sure we're not
24 inconsistent with the holidays, and I believe that a
25 November 15th cutoff date would accomplish that purpose.

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1 Additionally, this matter has been continually delayed,
2 and Staff has had or whether Qwest has had an
3 opportunity to conduct discovery and to extend the
4 discovery period out a long period of time potentially
5 could result in long drawn out discovery. Staff simply
6 seeks a discovery cutoff date. We would prefer November
7 15th but would be agreeable to another date close to
8 that date to assure that no party is prejudiced. Thank
9 you, Your Honor.

10 JUDGE RENDAHL: All right.

11 Mr. Sherr.

12 MR. SHERR: Thank you. Qwest continues to
13 oppose the imposition of the discovery cutoff date at
14 all.

15 JUDGE RENDAHL: Mr. Sherr, can you speak up
16 just a bit.

17 MR. SHERR: You bet, can you hear me better
18 now?

19 JUDGE RENDAHL: Yes.

20 MR. SHERR: Okay. Qwest continues to oppose
21 the imposition of a discovery cutoff date at all in this
22 case. I know November 15th was suggested by Staff and
23 there may be some flexibility from Staff's perspective,
24 but I would say for three, well, for a number of
25 reasons. First, there is an enormous -- there is an

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1 enormous amount at stake in this case. Taken literally
2 Staff's opening, if you take Staff's opening testimony
3 literally, there could be well over \$100 Million of
4 penalties at stake in this case, and Qwest needs the
5 opportunity to fully seek discovery and to test the
6 testimony that Staff and other parties file. Staff is
7 going to be filing I assume testimony on November 8th,
8 and one week to conduct all discovery is simply not
9 enough. Qwest, you know, could conceivably get
10 discovery requests out and probably will in a very short
11 period of time after it receives the reply testimony,
12 but often discovery leads to other discovery, whether in
13 the form of a deposition or in the form of follow-up
14 written discovery, and so imposing any kind of discovery
15 cutoff is really likely to prejudice Qwest in this case.

16 Also, I don't believe that it serves a
17 purpose to artificially impose discovery cutoff in this
18 case. There are many, almost all Commission dockets
19 that I have been involved in my time with the company
20 here that there has not been a cutoff and that discovery
21 often goes up right to the hearing. I can think of cost
22 dockets and cases like 271 in particular come to mind
23 that discovery was ongoing it seemed to me consistently.

24 If a party believes that another party is
25 abusing its right to conduct discovery and is being

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1 overly burdensome and is asking unreasonable questions
2 or unreasonable amounts of questions, they certainly
3 have the right to come to you, Judge, and ask for
4 relief. So to impose a discovery cutoff just makes no
5 sense, and it would be very harmful to Qwest. I would
6 be happy to respond to any questions you may have.

7 JUDGE RENDAHL: Let's hear from Staff in
8 reply.

9 MR. SWANSON: Staff again would indicate that
10 this case has already been drawn out a long period of
11 time, and there's no reason to provide an undue length
12 of time for Qwest to engage in discovery. Again, I
13 would emphasize that Mr. Sherr certainly relied on the
14 issue of the holidays when he was asking for delaying
15 the hearing date, that is how he was concerned that any
16 hearing date in November would conflict with the
17 holidays. Now it appears that Mr. Sherr is comfortable
18 with having conflict with the holidays as long as that
19 conflict involves discovery process. Staff believes
20 that in light of the schedule and the continual delays
21 in this case, it wouldn't be appropriate to have
22 discovery go on all the way up until the January hearing
23 dates. Perhaps a date that would create some
24 flexibility to make sure that there weren't any
25 conflicts with the holidays coming up would be

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1 appropriate in this case and would also prevent any
2 party from attempting to abuse the discovery process to
3 their advantage.

4 JUDGE RENDAHL: Okay, we have not shortened
5 the discovery turn around time in this case, have we?

6 MR. SWANSON: No, I do not believe that we
7 have.

8 MR. SHERR: I'm sorry for speaking over
9 Mr. Swanson, this is Adam Sherr, no, we have not.

10 JUDGE RENDAHL: All right, so there is a ten
11 day turn around time from the time the discovery is
12 propounded until it is due, correct?

13 MR. SWANSON: Yes.

14 MR. SHERR: Correct.

15 JUDGE RENDAHL: And in most cases there is
16 not a two month period between the date the reply
17 testimony is due and the date the hearing is due.
18 Usually they're much more -- they're much closer
19 together, and so in many situations the Commission
20 doesn't set a discovery cutoff because the hearing
21 provides the natural discovery cutoff process.

22 I do think a two month discovery process
23 following reply testimony is -- I mean a two month
24 period between reply testimony and hearing and providing
25 an unlimited opportunity for discovery in that period of

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1 time isn't appropriate. You know, once the reply
2 testimony is in, really the issue is just what's in the
3 reply testimony, not what's in the direct testimony.

4 So I think a discovery cutoff is merited, but
5 given, as Mr. Sherr notes, what is at stake for Qwest in
6 this proceeding, I don't think it's appropriate to set a
7 cutoff date at the 15th providing Qwest only one week to
8 propound discovery. So at this point I'm tempted to
9 extend discovery until the 30th of November and will
10 entertain issues raised by the parties concerning, you
11 know, whether the discovery is burdensome, as Mr. Sherr
12 stated. And if there are timing issues, I'm sure the
13 parties can work together around the Thanksgiving
14 holidays to ensure that there's nothing due immediately
15 before or immediately following the holiday and to allow
16 the parties some time to work around that schedule.

17 MR. SHERR: Your Honor, this is Adam Sherr,
18 may I ask you a question?

19 JUDGE RENDAHL: Yes, you may.

20 MR. SHERR: Thank you. When we're talking
21 about discovery cutoff in this case, are you speaking of
22 our ability, Qwest's ability or any parties' ability to
23 ask questions, not necessarily when the responses have
24 to be in by, I assume?

25 JUDGE RENDAHL: I'm not sure I followed what

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1 you just asked.

2 MR. SHERR: If Qwest were to issue discovery
3 requests on November 29th, they wouldn't -- the
4 responses wouldn't be due for ten business days.

5 JUDGE RENDAHL: Correct.

6 MR. SHERR: And those I assume would comply
7 with the discovery cutoff that you're discussing?

8 JUDGE RENDAHL: Yes. Now if there's, you
9 know, if Staff or other parties assert an objection and
10 those issues need to be resolved, then we'll have to
11 deal with that following the, you know, whatever the
12 timing is for stating objections and dealing with that.
13 If Qwest feels the need to propound discovery upon that
14 discovery, then I guess we would have to deal with that.
15 But, you know, we don't need to protract this
16 unnecessarily, and I think by giving Qwest an
17 opportunity to propound some initial discovery even by
18 the 15th, let's see, is it ten business days, it's ten
19 business days, isn't it?

20 MR. SHERR: Right, so that's two full
21 calendar weeks.

22 JUDGE RENDAHL: Well, if Qwest were to
23 propound discovery by the 12th, well, it would be
24 December 1st that you would get responses from Staff.
25 How about if we shorten it to a seven day response

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1 period. I know that places a burden on Staff, but I
2 would like to be able to give Qwest the opportunity to,
3 you know, if Qwest is to propound discovery by the 12th,
4 you know, working around the holiday, then you would
5 receive responses from Staff. And if there was any need
6 to respond to that, then that would give Qwest the
7 ability to do that. I'm just talking off the top of my
8 head here, because I'm trying to make sure that, you
9 know, we don't overburden Staff, but on the other hand
10 we don't limit Qwest's ability to ask questions it needs
11 to ask.

12 MR. SHERR: Your Honor, this is Adam Sherr
13 again, and I appreciate your sensitivity to that. A
14 second question I have, however, is does that discovery
15 cutoff then cut off our ability to take any required
16 depositions? And so that if a deposition is required
17 after we receive the written, the responses to written
18 discovery, that we need to schedule that deposition
19 prior to the discovery cutoff as well? Again, that's a
20 concern that I have, because we're not going to have the
21 responses even under a shortened time frame until the
22 end of November, the last -- the week of the 22nd is
23 likely to be unavailable to all because of the week of
24 Thanksgiving. I'm wondering if that -- if you
25 contemplate that that must be any depositions also be

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1 taken prior to the discovery cutoff? And if the answer
2 to that is yes, I would ask or suggest that if you're
3 going to impose a discovery cutoff that it be moved to
4 the 15th of December to leave a full month before the
5 hearing essentially.

6 JUDGE RENDAHL: I don't think that's
7 reasonable, frankly.

8 MR. SWANSON: Your Honor, for Commission
9 Staff, I do want to mention, you know, Staff I think is
10 concerned about a seven day response time only because
11 in the past we have received DR's in the amount of over
12 100 DR requests and is concerned about being able to
13 make that seven day turn around time. If Mr. Sherr
14 would be willing to work with us on that, we might be
15 able to accommodate depending on the size of the
16 requests and the kind of information that's sought.

17 MR. SHERR: Judge, Adam Sherr, I am unsure
18 what Mr. Swanson means by work with Staff. You know,
19 from Qwest's perspective, a seven versus ten day
20 response period is probably less important than having
21 enough time. If the discovery cutoff were later, then
22 perhaps a ten day period would be, ten business day
23 period, would be more appropriate. I can't at all
24 predict, I have no idea what the testimony that's filed
25 in the third round is going to be, and so I don't have

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1 any way to predict nor do I feel comfortable limiting
2 any discovery Qwest may want to ask of Staff or any
3 other party who files testimony in the third round of
4 testimony.

5 MR. SWANSON: May I respond, Judge?

6 JUDGE RENDAHL: Please do.

7 MR. SWANSON: Just to clarify Mr. Sherr's
8 question, I believe Mr. Sherr was asking what Staff
9 meant by working with Staff, and I believe that Staff
10 was just referring to some of the issues that the
11 presiding officer was referring to in terms of working
12 with the holidays. And in addition to that, again
13 depending on the size of the request, if the DR request
14 required a lot of information or was in the nature of
15 again over 100 DR requests, it might take substantial
16 time, Staff may very well need a ten day turn around
17 time. That's the issue that Staff is raising here and
18 wants to make sure is addressed.

19 MR. WAGGONER: Judge Rendahl, this is
20 Mr. Waggoner, I'm terribly sorry to interrupt, but I
21 unfortunately have another matter I have to go for. I
22 had anticipated a half hour for this, and since Mr. Witt
23 is on for AT&T, I'm assuming he can cover any issues, so
24 I apologize.

25 JUDGE RENDAHL: No problem, thank you for

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1 appearing this morning.

2 Keeping in mind the needs of the parties and
3 I think the unprecedented length of time between the
4 time reply testimony is due and the hearing, I still
5 believe a discovery cutoff is appropriate, and I would
6 like to see Qwest propound any data requests it has to
7 Staff by November the 30th, assuming a ten day response
8 period. And I will not include deposition within that
9 time period, would like depositions to be concluded by
10 December 15th. And I realize that's probably not making
11 anybody happy, but I don't think it's reasonable to be
12 conducting any further discovery or depositions past
13 December 15th in this case. That gives the parties
14 essentially five weeks to conduct this, allow the
15 parties time around the holidays, and time to prepare
16 for the hearing when they are not burdened by discovery.
17 So I trust that Staff and Qwest will work within those
18 deadlines. I'm not limiting the turn around to a seven
19 day period, but I will I'm sure become aware of any
20 issues between Staff and Qwest in trying to complete
21 those deadlines.

22 Okay, so given that discovery cutoff, the
23 next issue is the prehearing conference and the time for
24 cross-exhibits and exhibits to be filed and time
25 estimates for cross. The hearing is scheduled to start

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1 on the 10th of January. My preference at this point
2 would be to have by the end of the day or actually by
3 noon on Monday the 3rd to have those exhibit lists
4 filed. I'm going to be in an arbitration hearing on
5 January 4th and 5th, and there is a hearing both in this
6 room and in Room 108 on the 6th and 7th, so we have a
7 bit of a problem.

8 MR. SHERR: Your Honor, this is Adam Sherr,
9 sorry to interrupt, did you say there's a hearing in the
10 second floor hearing room and in the first floor hearing
11 room?

12 JUDGE RENDAHL: Yes.

13 MR. SHERR: Oh, okay.

14 JUDGE RENDAHL: There's a water hearing on
15 the first floor and a rate case hearing on the second
16 floor. The rate case is going all week, and at this
17 point I'm scheduled to be in an arbitration hearing on
18 the 4th and 5th, so we may need to have to file before
19 during the week of the 27th and have a prehearing on
20 Monday the 3rd. I know that's not optimal, that's over
21 the holiday period. Is there anyone who is not going to
22 be available who is away from the office during those
23 times?

24 MR. SHERR: Your Honor, Adam Sherr for Qwest,
25 no in answer to your question, sadly I don't anticipate

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1 being away from the office too much in December, but I
2 do -- I would like to make a request if you believe it's
3 appropriate, and that would be that documents actually
4 be exchanged, I believe that the way it used to be done
5 is that the lists would be exchanged electronically, the
6 documents would be exchanged in person at the prehearing
7 conference. Recently I have experienced that in cases
8 we have actually electronically exchanged documents in
9 advance that what I have found is that that venture
10 seems to be very difficult. And I'm not sure why, I
11 think it mostly has to do with the size of people's
12 E-mail boxes, but it seems to be very problematic to
13 have to exchange electronic copies of all the exhibits,
14 and in this case where there may be many, that, you
15 know, it might be exacerbated.

16 JUDGE RENDAHL: I tend to agree, so I guess
17 at this point I would suggest that the filing date, I
18 mean the electronic circulation date be either Monday
19 the 27th or Tuesday the 28th, I don't really have a
20 preference. And then I could schedule a prehearing
21 conference for the afternoon on Monday or the morning if
22 you all prefer the morning, and we can have circulated
23 by that time the hard copies by mail or in person and do
24 that all on the 3rd.

25 MR. SHERR: Your Honor, Adam Sherr, I would

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1 prefer the later, the latest date possible in the last
2 week of December. I would anticipate that most of the
3 company won't be working the 24th of December, probably
4 the 23rd, and to do it the 27th I think would be very
5 difficult.

6 JUDGE RENDAHL: Well, we wouldn't want to do
7 that.

8 MR. SHERR: Right, so the 28th or the 29th, I
9 think the later in the week probably the better.

10 MR. SWANSON: Staff would agree with that as
11 well.

12 MR. SHERR: Whether, Judge, you would prefer
13 that we mail out the documents so that they are received
14 late in the week of the 28th or the 27th or we provide
15 them hard copies at the prehearing conference, that's up
16 to you, either way is fine.

17 JUDGE RENDAHL: Why don't we say that the
18 E-mailed version be circulated on the 29th by the end of
19 the day.

20 MR. SHERR: And that's E-mail copies of the
21 lists?

22 JUDGE RENDAHL: E-mail copies of lists, time
23 estimates, et cetera by the end of the day.

24 MR. BUTLER: Was that the 29th you said?

25 JUDGE RENDAHL: 29th by 5:00 p.m.

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1 electronically. And I guess we can distribute them on
2 Monday, because we do have a week prior to the hearing,
3 and that would give me time to get the Commissioners
4 prepared for the hearing. So do you prefer morning or
5 afternoon prehearing on the 3rd?

6 MR. SHERR: Qwest would prefer the afternoon,
7 Your Honor.

8 MR. SWANSON: Staff would concur.

9 JUDGE RENDAHL: All right, so we'll do a 1:30
10 prehearing, it will be in Room 108, you will bring your
11 documents with you, and we'll mark -- well, I will
12 attempt to circulate prior to that time a compilation
13 not only of the exhibits and cross-exhibits that you all
14 have identified as well as a compilation of the time
15 estimates so we can circulate documents, make sure we
16 have all of the exhibits in hand based on my list to
17 make sure the list is correct, make sure the time
18 estimates are correct, and identify any other issues
19 prior to the hearing.

20 MR. SHERR: Thank you.

21 JUDGE RENDAHL: All right. So then after the
22 hearing -- so then we've got the hearing dates. We've
23 got the 10th and 11th definitely and the 13th and the
24 14th definitely. There is an open meeting on the
25 morning of the 12th, and I'm not aware at this point how

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1 extensive the calendar is.

2 Mr. Sherr, as you're aware, we're working to
3 find a date for the Covad arbitration hearing, and at
4 this point we had identified January the 12th, so that's
5 the only real conflict in the afternoon is the conflict
6 between these two cases. And at this point I have
7 tentatively scheduled on the Commissioners' calendars
8 the arbitration hearing, but we can use that time for
9 this hearing. It's, you know, I guess it's really an
10 issue that I need to address with Covad and Qwest at
11 this time, because I believe given what I have heard so
12 far, we may need all five days in this proceeding.

13 MR. SHERR: Your Honor, from Qwest's
14 perspective, I think you're right, we may -- and I
15 unfortunately can't speak for Qwest with regard to the
16 arbitration, although I can get back to you very quickly
17 on that.

18 JUDGE RENDAHL: Okay, you know, it may be
19 that we will need to schedule an additional day of
20 hearing in this proceeding, and that may, you know,
21 we'll take a break on the 12th, and then we'll find an
22 additional day. Do the parties have any conflicts the
23 19th, 20th, or 21st?

24 MR. SWANSON: None for Commission Staff.

25 MR. SHERR: No, Your Honor, Adam Sherr for

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1 Qwest.

2 JUDGE RENDAHL: Any other parties who plan to
3 participate, are there conflicts on those dates?

4 MR. BUTLER: Depending upon when our witness
5 appears, I will need to check with him.

6 JUDGE RENDAHL: Okay, well, I will check with
7 the Commissioners' calendars and see if we can lock up
8 an additional day, and that may resolve the issue. I
9 hate to break up the hearing this way, but unfortunately
10 the calendar is such that we may need to do that.

11 And, Mr. Sherr, if you can find out about the
12 Covad arbitration, whether we can bump that to the next
13 open meeting on the 26th or schedule a separate
14 arbitration hearing, that would be helpful.

15 MR. SHERR: I will check. Your Honor, the
16 personnel both from Covad and Qwest working on that
17 arbitration may actually be in hearing in another state.

18 JUDGE RENDAHL: Yes, I believe they're in
19 Minnesota right now.

20 MR. SHERR: So I'm not sure, I will get back
21 to you as soon as I hear back from counsel.

22 JUDGE RENDAHL: Thank you.

23 MR. CROMWELL: Your Honor, Robert Cromwell,
24 this might be an opportune time to just informally let
25 you know that I -- there is a fairly strong probability

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1 that I will not be able to represent Public Counsel at
2 this hearing given it's safe to say the estimated
3 arrival of my first child.

4 JUDGE RENDAHL: Right. Well, we all
5 understand about those issues, and if you are here we'll
6 put up with the pager that you need to have.

7 MR. CROMWELL: Thank you.

8 JUDGE RENDAHL: Okay, so the next issue is
9 the briefs. Assuming that we may need another day the
10 week of the 19th, 20th, and 21st, when do the parties
11 believe briefs -- and I'm assuming what we had before
12 will work, which is simultaneous initial and
13 simultaneous responsive briefs.

14 MR. SHERR: That's fine from Qwest's
15 perspective.

16 MR. SWANSON: Yeah, that's fine for
17 Commission Staff, and I believe, I could be wrong, but I
18 believe we had about a three or four week gap in the
19 previous schedule between the hearings and the initial
20 briefs, and that would be fine again.

21 JUDGE RENDAHL: I have to find that
22 prehearing conference order.

23 MR. SHERR: We had about a month.

24 JUDGE RENDAHL: Yeah, it was about a month.
25 I'm looking at Order Number 6, and 28 days from the

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1 hearing is when we had the simultaneous initial briefs
2 and then two weeks following that for responsive briefs,
3 so it looks like we're looking at around the 18th of
4 February.

5 MR. SHERR: Your Honor, is that assuming that
6 we use an additional day?

7 JUDGE RENDAHL: Yes.

8 MR. SHERR: Okay.

9 JUDGE RENDAHL: And the holiday is Monday,
10 the President's Day holiday, so I'm assuming that the
11 18th is preferable to after the holiday. Any objection
12 to the 18th?

13 MR. SHERR: No, Your Honor.

14 MR. SWANSON: No, Your Honor.

15 MR. BUTLER: None from Time Warner.

16 JUDGE RENDAHL: Okay, thank you, Mr. Butler.

17 And then two weeks from there I'm seeing as
18 March 4th would be the simultaneous responsive briefs.

19 MR. SHERR: That's fine from Qwest's
20 perspective, Your Honor.

21 MR. SWANSON: That's fine for Commission
22 Staff.

23 MR. BUTLER: That's fine.

24 JUDGE RENDAHL: So that handles the
25 procedural schedule, we have talked about the discovery

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1 cutoff issue, we have talked about the problems with the
2 hearing dates, are there any other issues we need to
3 talk about this morning?

4 MR. WITT: Excuse me, this is Gary Witt with
5 AT&T, and I'm not exactly sure, I think this is a
6 substantive matter and may not be appropriate for me to
7 raise at this point. If that's the case, please just
8 let me know. But one of the issues that AT&T is
9 concerned with is the issue of remediation, and I'm
10 assuming that in the, let me see here, that that issue
11 may either be raised in the reply testimony that is due
12 on November 8th or in the post hearing briefs. Is that
13 an appropriate question to ask at this point?

14 JUDGE RENDAHL: I'm assuming that issues that
15 the parties believe need to be raised in this case are
16 going to be raised in testimony and that we won't be
17 entertaining any new issues, although if you're
18 responding in brief to remediation arguments or
19 proposals made by parties in their testimony, then
20 that's appropriate. But I think the parties need to
21 address any proposals for remediation in their
22 testimony.

23 MR. WITT: And that would be appropriate then
24 for the reply testimony due on the 8th of November?

25 JUDGE RENDAHL: Yes.

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1 MR. SHERR: Your Honor, this is Adam Sherr
2 for Qwest, this is certainly sort of a new issue, and
3 AT&T's counsel may be correct that it's an issue to take
4 up at another time, but it's my understanding that the
5 only parties remaining to this case are Qwest, Time
6 Warner, Eschelon, McLeod, and Staff, and so it's unclear
7 to me how another party, AT&T or anyone else, could file
8 testimony at this point.

9 JUDGE RENDAHL: Mr. Witt.

10 MR. WITT: If I may, it seems to me that the
11 settlement for AT&T merely addressed allegations that
12 AT&T had a unfiled or two unfiled agreements, and at
13 this point the question of whether AT&T might be
14 entitled to some kind of remediation as the result of
15 other parties' unfiled agreements has not been
16 addressed, and we should certainly not be precluded from
17 raising that issue merely by the fact that we have
18 settled out accusations against us.

19 JUDGE RENDAHL: Mr. Sherr.

20 MR. SHERR: Again, Your Honor, and I don't
21 have a copy unfortunately of the AT&T settlement
22 agreement in front of me, but I believe AT&T was
23 dismissed as a party in this case. I'm not at all
24 certain how a non-party can file testimony, in fact, I
25 believe Eschelon and McLeod were specifically left in

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1 the settlement agreement as parties for the purposes of
2 filing testimony, seeing as how they're no longer
3 respondents to any claims against us, nor do they have
4 any affirmative claims against any other party in this
5 case.

6 JUDGE RENDAHL: Well, I don't believe the
7 Order Number 13 dismisses AT&T.

8 MR. WITT: That's my understanding as well,
9 Your Honor.

10 JUDGE RENDAHL: But it does state that the,
11 which is repeated from the settlement agreement, that
12 it's a complete resolution of the issues pending against
13 AT&T, so I think that's an issue that probably will end
14 up being argued in either if AT&T files responsive
15 testimony and Qwest may move to strike based on its
16 belief that AT&T is no longer a party or can be argued
17 in brief, but at this point I don't believe AT&T has
18 been dismissed from the proceeding.

19 MR. WITT: Thank you, Your Honor, that
20 clarifies it to a large degree. So in other words, it
21 would not be necessary for AT&T to file a motion for
22 leave to file testimony, we could simply file the
23 testimony on the 8th?

24 JUDGE RENDAHL: Well, I'm going to take that

25 issue under advisement, and I will address it in my

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1 prehearing conference order.

2 MR. WITT: Thank you, Your Honor.

3 MR. SHERR: Your Honor, this is Adam Sherr,
4 would it be possible to have a moment? I want to try to
5 make sure that the record is clear on this point, and to
6 do that I need to grab a copy of the AT&T settlement
7 agreement, because I believe the order adopts the
8 settlement or approves the settlement agreement.

9 JUDGE RENDAHL: We will be off the record for
10 a moment.

11 MR. SHERR: Thank you, Your Honor.

12 (Discussion off the record.)

13 JUDGE RENDAHL: While we were off the record,
14 I reiterated for Mr. Witt the schedule, procedural
15 schedule, which I will also restate on the record, and
16 Mr. Sherr indicated that because I was taking the matter
17 under advisement, he didn't need to address the issues
18 in the AT&T settlement at this time.

19 So as a recap of the dates, there is a
20 discovery cutoff for written discovery for data requests
21 propounded by November the 30th and a cutoff of December
22 15th for the depositions to occur. That's not the
23 notice of depositions, that's the depositions actually
24 taking place. And on December the 29th by 5:00 p.m.

25 parties need to send to the Commission and to me and to
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1 the other parties electronically copies of their
2 cross-examination exhibit lists, their lists of exhibits
3 already pre-filed, the estimates of cross-examination
4 time for other witnesses, and their preferred order of
5 witnesses.

6 We will have a prehearing conference here at
7 the Commission probably in Room 108 but I will have to
8 schedule that with my assistants at 1:30 p.m. again on
9 January the 3rd, and parties will need to bring copies
10 of the cross-examination exhibits for myself, the three
11 Commissioners, other parties involved, as well as file a
12 copy with the records center so that there's an official
13 copy at the records center.

14 I will inquire as to additional hearing dates
15 on January 19th, 20th, and 21st, and I understand
16 Mr. Sherr will be looking into the issue of the
17 Wednesday the 12th in the afternoon, so we may need to
18 address that following the issuance of my prehearing
19 conference order. There will be simultaneous initial
20 briefs due on February the 18th and simultaneous
21 responsive briefs due on March 4th.

22 Is that what everybody else has on their
23 notes?

24 MR. SHERR: Yes, Your Honor.

25 MR. BUTLER: Yes.

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1 MR. SWANSON: Yes.

2 JUDGE RENDAHL: Okay, is there anything else
3 we need to address this morning?

4 Is there any party that wishes to order a
5 copy of the transcript from this morning's proceeding,
6 particularly those on the bridge line?

7 Hearing nothing, this prehearing conference
8 is adjourned, thank you very much for attending this
9 morning.

10 (Hearing adjourned at 10:30 a.m.)

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