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1                           BEFORE THE WASHINGTON STATE  
2                           UTILITIES AND TRANSPORTATION COMMISSION

3 In the Matter of the Joint        )  
4 Petition of                        )  
5                                        ) DOCKET NO. UT-041127  
6                                        ) ADVANCED TELCOM, INC., AT&T        )  
7 COMMUNICATIONS OF THE PACIFIC ) Volume I  
8 NORTHWEST, INC. AND AT&T        ) Pages 1 to 55  
9 LOCAL SERVICES, MCIMETRO        )  
10 ACCESS TRANSMISSION SERVICES, )  
11 LLC, AND UNITED                    )  
12 COMMUNICATIONS, INC., d/b/a        )  
13 UNICOM                                )  
14                                        )  
15 For Enforcement of                 )  
16 Interconnection Agreements        )  
17 With Verizon Northwest, Inc.        )  
18 (a/k/a GTE)                         )  
19 \_\_\_\_\_ )

20                           A hearing in the above matter was held on  
21 October 11, 2004, from 1:30 p.m to 3:00 p.m., at 1300  
22 South Evergreen Park Drive Southwest, Room 108, Olympia,  
23 Washington, before Administrative Law Judge ANN RENDAHL.

24                           The parties were present as follows:

25                           THE COMMISSION, by JONATHAN THOMPSON,  
26 Assistant Attorney General, 1400 South Evergreen Park  
27 Drive Southwest, Olympia, Washington 98504-0128,  
28 Telephone (360) 664-1225, Fax (360) 586-5522, E-Mail  
29 jthomпсо@wutc.wa.gov.

30                           ADVANCED TELCOM, INC. AND UNICOM, via bridge  
31 line by BROOKS E. HARLOW, Attorney at Law, Miller Nash  
32 LLP, 601 Union Street, Suite 4400, Seattle, Washington  
33 98101, Telephone (206) 777-7406, Fax (206) 622-7485,  
34 E-Mail brooks.harlow@millernash.com.

35 Joan E. Kinn, CCR, RPR

36 Court Reporter

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1 VERIZON NORTHWEST, INC., by TIMOTHY J.  
2 O'CONNELL, Attorney at Law, Stoel Rives, LLP, 600  
3 University Street, Suite 3600, Seattle, Washington  
4 98101, Telephone (206) 386-7562, Fax (206) 386-7500,  
5 E-Mail tjococonnell@stoel.com; and via bridge line by JOHN  
6 RIDGE, Attorney at Law, Stoel Rives, LLP, 600 University  
7 Street, Suite 3600, Seattle, Washington 98101, Telephone  
8 (206) 386-7575, Fax (206) 386-7500, E-Mail  
9 jhridge@stoel.com; and via bridge line by CHARLES  
10 CARRATHERS, Attorney at Law, Verizon Northwest, 600  
11 Hidden Ridge, Mail Code HQE02H45, Post Office Box  
12 152092, Irving, Texas 75015-2092, Telephone (972)  
13 718-2415, Fax (972) 718-0936, E-mail  
14 chuck.carrathers@verizon.com.

15 AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST,  
16 INC. AND AT&T LOCAL SERVICES, via bridge line by LETTY  
17 FRIESEN, Attorney at Law, 1875 Lawrence Street, Suite  
18 1500, Denver, Colorado 80202, Telephone (303) 298-6475,  
19 Fax (303) 298-6301, E-Mail lsfriesen@att.com.

20 MCIMETRO ACCESS TRANSMISSION SERVICES, LLC,  
21 via bridge line by MICHEL SINGER NELSON, Attorney at  
22 Law, 707 - 17th Street, Suite 4200, Denver, Colorado  
23 80202, Telephone (303) 390-6106, Fax (303) 390-6333,  
24 E-Mail michel.singer\_nelson@mci.com.

25 TEL WEST COMMUNICATIONS, LLC, via bridge line  
by DAVID MITTLE, Attorney at Law, 208 Maynard, Santa Fe,  
New Mexico 87501, Telephone (505) 982-4021, Fax (505)  
988-7419, E-mail dmittle@att.net.

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

2 JUDGE RENDAHL: Good afternoon, my name is  
3 Ann Rendahl, I am the Administrative Law Judge presiding  
4 over this proceeding. We're here before the Washington  
5 Utilities and Transportation Commission this afternoon,  
6 Monday, October 11, 2004, for a prehearing conference in  
7 Docket Number UT-041127 which is captioned in the matter  
8 of the Joint Petition for Enforcement of Interconnection  
9 Agreements with Verizon Northwest Incorporated, also  
10 known as GTE.

11 This proceeding was initiated by Advanced  
12 Telcom Incorporated, AT&T, MCI, and United  
13 Communications Incorporated doing business as UNICOM,  
14 U-N-I-C-O-M, on September 17th, 2004. On September  
15 23rd, the Commission received a petition for  
16 intervention on behalf of Tel West Communications as  
17 well as later a notice of appearance from Mr. Mittle,  
18 M-I-T-T-L-E, representing Tel West. And on September  
19 28th, the Commission received Verizon's Motion for  
20 Judgment on the Pleadings, Answer to the Joint Petition  
21 for Enforcement, as well as a Motion to Strike.

22 The purpose of our prehearing this afternoon  
23 is to take appearances of the parties, hear petitions  
24 for intervention, determine whether the issues in this  
25 proceeding can be addressed on the pleadings or whether

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1 we need to schedule a hearing to address the matters,  
2 and whether there are any other issues the parties need  
3 to address today.

4 So before we go any farther, let's take  
5 appearances from the parties beginning with the  
6 petitioners and beginning with Advanced Telcom.

7 MR. HARLOW: Good afternoon, Your Honor, this  
8 is Brooks Harlow, attorney for Advanced Telcom and also  
9 with UNICOM, and we're joined on the line today with  
10 company representative Steve -- can you still hear me  
11 all right?

12 JUDGE RENDAHL: You phased out there.

13 MR. HARLOW: Okay, there was some kind of a  
14 little interference going.

15 We're joined on the line today by party  
16 representative Steve Copsinis.

17 JUDGE RENDAHL: And can you spell that for  
18 the record, Mr. Harlow.

19 MR. HARLOW: I will try, C-O-P-S-I-N-I-S.

20 Is that correct, Steve?

21 He may be on mute.

22 JUDGE RENDAHL: That's what I understood the  
23 spelling while we were off the record. And because this  
24 is the first appearance in this docket, Mr. Harlow, can  
25 you state your full address, telephone number, fax

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1 number, and E-mail, please.

2 MR. HARLOW: Certainly, Miller Nash, LLP, Law  
3 Firm, 601 Union Street, Suite 4400, Seattle, Washington  
4 98101, fax number is (206) 622-7485, E-mail address  
5 brooks.harlow@millernash.com, direct dial telephone is  
6 (206) 777-7406.

7 JUDGE RENDAHL: All right, thank you, Mr.  
8 Harlow.

9 For AT&T.

10 MS. FRIESEN: Good afternoon, this is Letty  
11 Friesen on behalf of AT&T. My business address is 1875  
12 Lawrence Street, Suite 1500, Denver, Colorado, my  
13 telephone number is (303) 298-6475, my fax number is  
14 (303) 298-6301, and my E-mail is lsfriesen@att.com.

15 JUDGE RENDAHL: All right.

16 And for MCI.

17 MS. SINGER NELSON: Yes, thank you, Your  
18 Honor, this is Michel Singer Nelson on behalf of MCI, my  
19 address is 707 - 17th Street, Suite 4200, Denver,  
20 Colorado 80202. My phone number is (303) 390-6106, my  
21 fax is (303) 390-6333, and my E-mail address is  
22 michel.singer nelson@mci.com.

23 JUDGE RENDAHL: Thank you, Ms. Singer-Nelson.

24 And for UNICOM, Mr. Harlow, the same  
25 information would be that you gave before?

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1                   MR. HARLOW: Yes, and party representative  
2 from UNICOM is Michael Daughtry, D-A-U-G-H-T-R-Y.

3                   JUDGE RENDAHL: Okay, thank you.

4                   And for Verizon.

5                   MR. O'CONNELL: Timothy J. O'Connell, law  
6 firm of Stoel Rives LLP, 600 University Street, Suite  
7 3600, Seattle, 98101, telephone is (206) 386-7562, fax  
8 is (206) 386-7500, E-mail is tjococonnell@stoel.com.

9                   JUDGE RENDAHL: Thank you.

10                  MR. O'CONNELL: With me here today from  
11 Verizon is Richard Potter. Also on the line and if we  
12 could get on the service list, please, Mr. John Ridge of  
13 the Stoel Rives firm.

14                  And, John, if you could indicate your  
15 telephone number, please, and E-mail address as well.

16                  MR. RIDGE: Telephone is (206) 386-7575,  
17 E-mail is jhridge@stoel.com.

18                  JUDGE RENDAHL: And, Mr. Carrathers, are you  
19 there as well?

20                  MR. CARRATHERS: Yes, Your Honor, thank you,  
21 Charles Carrathers, C-A-R-R-A-T-H-E-R-S, Verizon  
22 Northwest, mailing address is 600 Hidden Ridge, Mail  
23 Code HQE02H45, Post Office Box 152092, Irving, Texas,  
24 I-R-V-I-N-G, Texas 75015-2092, phone number (972)  
25 718-2415, fax (972) 718-0936, E-mail

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1 chuck.carrathers@verizon.com.

2 JUDGE RENDAHL: And, Mr. Potter, did you wish  
3 to state a formal appearance?

4 MR. POTTER: No, Your Honor.

5 JUDGE RENDAHL: Okay, thank you.

6 And for Tel West.

7 MR. MITTLE: Good afternoon, my name is David  
8 Mittle, M-I-T-T-L-E, it's a pleasure to be here. This  
9 is the first time I have ever been in front of this  
10 Commission.

11 JUDGE RENDAHL: Welcome.

12 MR. MITTLE: Thank you. So my mailing  
13 address is 208 Maynard, M-A-Y-N-A-R-D, Santa Fe, New  
14 Mexico, 87501. I have a telephone provided by Qwest, we  
15 do things a little differently in Mexico, (505)  
16 982-4021, if you have to fax it's (505) 988-7419, and  
17 for E-mail it's dmittle@att.net.

18 JUDGE RENDAHL: All right. And just so that  
19 you know, the reason why we get all of this information  
20 is so that we can mail anything to you as well as we  
21 provide a courtesy E-mail whenever the Commission serves  
22 an order or notice so that you will get it immediately  
23 and then follow up with a paper copy. And if for any  
24 reason we do need to fax, then we use fax as kind of the  
25 last resort.

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1 MR. MITTLE: I see.

2 JUDGE RENDAHL: So you won't get a fax  
3 routinely, because you will get it in the mail and you  
4 get it by E-mail, so that should be sufficient.

5 Is there anyone else on the line who we have  
6 not taken an appearance from?

7 All right, and at this time, Mr. Mittle did  
8 file a petition for intervention, is there any person  
9 who is opposed to the petition for intervention?

10 MR. O'CONNELL: Your Honor, without waiving  
11 any disagreement as to some of the factual statements  
12 made in the petition, Verizon has no objection.

13 JUDGE RENDAHL: And when you say without  
14 waiving any objections --

15 MR. O'CONNELL: I believe there are  
16 statements made in the petition about the Tel West  
17 position as to the propriety of negotiations, we do not  
18 necessarily agree with the representations made therein,  
19 but we don't object to their intervention.

20 JUDGE RENDAHL: All right. With that, the  
21 Tel West petition for intervention is granted, and I  
22 suppose any objections can be addressed later on in the  
23 proceeding if --

24 MR. O'CONNELL: If needed.

25 JUDGE RENDAHL: -- if needed.



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1           The rules for the Commission's review of  
2 petitions for enforcement are located in WAC, which is  
3 the Washington Administrative Code, 480-07-650, and the  
4 process stated in that is first the Commission would  
5 have a prehearing conference noticed within five days  
6 after the petition is filed. That notice was sent out,  
7 and this prehearing conference was scheduled in that  
8 notice. And the procedural determination for the  
9 prehearing primarily is whether in fact the hearing is  
10 necessary or whether the matter can be addressed on  
11 pleadings. At this point, the petition has been filed,  
12 and Verizon has answered with a motion for judgment on  
13 the pleadings and a motion to strike. Given my  
14 procedural schedule in terms of hearings myself, I have  
15 not issued any sort of a notice as to response dates for  
16 those motions, thinking that we had this prehearing  
17 scheduled and we could address that here.

18           Is there any party I guess first and foremost  
19 that believes that we need to have a hearing in this  
20 matter, or is it -- I guess I will take it at that first  
21 beginning with the petitioners, Mr. Harlow, do you  
22 believe that there's a hearing necessary in this matter?

23           MR. HARLOW: Well, that may remain to be seen  
24 depending on the outcome on Verizon's motions, but I  
25 haven't really -- I haven't really decided for certain.

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1 I do think there are some factual issues that Verizon's  
2 motion fails to address. And depending on how Verizon  
3 responds on that, we may be able to narrow it down, but  
4 there may be factual disputes. And I guess in  
5 particular I have in mind the question of what is the  
6 definition of packet switching that the FCC had in mind,  
7 which may be a legal question primarily, but also then  
8 juxtapose that with the switching capabilities and  
9 function of Verizon's Mount Vernon switch, and we  
10 haven't really heard much from Verizon on that second  
11 question.

12 JUDGE RENDAHL: Are you asserting that the  
13 factual issues raised by the petition or the factual  
14 issues on the switching capabilities and issue of the  
15 definition raised in Verizon's answer and motion?

16 MR. HARLOW: The latter.

17 JUDGE RENDAHL: All right. So what  
18 procedural format are you recommending, Mr. Harlow?

19 MR. HARLOW: At this point I would like to  
20 defer to MCI and AT&T, because I know -- I think they  
21 have a proposal in mind for how to approach this based  
22 on their experience in California, which we're not  
23 involved with.

24 JUDGE RENDAHL: All right.

25 Ms. Friesen or Ms. Singer Nelson.

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1 MS. SINGER NELSON: Letty, do you want to go  
2 ahead first?

3 MS. FRIESEN: AT&T --

4 JUDGE RENDAHL: Ms. Friesen, you're going to  
5 need to speak up either directly into the handset or  
6 somehow change how you're speaking.

7 MS. FRIESEN: Can you hear me now?

8 JUDGE RENDAHL: Yes, much better.

9 MS. FRIESEN: AT&T, I hear somebody  
10 whispering, AT&T as you know has filed a similar case in  
11 California, and in that proceeding we have already  
12 developed I guess a schedule, and the schedule takes  
13 into consideration whether or not the hearing is  
14 actually necessary. Now I will admit that AT&T's  
15 posture in California is a little bit different because  
16 we do have customers in the central offices at issue  
17 there, and we don't in Washington, but let me just brief  
18 you if I might what that schedule in California is and  
19 suggest that perhaps we could follow that here.

20 The dates set up in California are as  
21 follows. On November 8th, summary judgment motions were  
22 filed by AT&T and other complainants, so we already have  
23 Verizon's summary judgment motion.

24 MR. O'CONNELL: November 8th?

25 MS. FRIESEN: November 8th would accommodate,

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1 you know, our own summary judgment motions from the  
2 petitioners as well as probably responses. December  
3 10th --

4 JUDGE RENDAHL: Ms. Friesen, can you explain  
5 the November 8th date? I think counsel for Tel West and  
6 Verizon were --

7 MS. FRIESEN: Confused?

8 JUDGE RENDAHL: -- a bit confused by that  
9 date.

10 MS. FRIESEN: I apologize.

11 JUDGE RENDAHL: Now is this the schedule in  
12 California?

13 MS. FRIESEN: This is the schedule in  
14 California. AT&T is proposing today that we follow the  
15 same or a similar schedule here in Washington.

16 JUDGE RENDAHL: Okay, why don't you go  
17 through, and then we'll address any issues once you're  
18 done.

19 MS. FRIESEN: Okay. November 8th, as I  
20 mentioned before, is the summary judgment deadline in  
21 California. In contrast to California, Verizon has  
22 already filed one here in Washington. With that said,  
23 November 8th in this instance would be an opportunity  
24 for summary judgment motions filed by the petitioners as  
25 opposed to Verizon. December 10th is the Verizon

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1 response to summary judgment motions by petitions in or  
2 by the petitioner in California. December 15th would be  
3 the identity of any issues of fact that may require  
4 testimony by the parties. December 30th would be AT&T's  
5 reply or in this case the petitioners' reply. And on  
6 January 21st would be the hearing if it were necessary.  
7 AT&T proposes the same or a similar schedule here in  
8 Washington to allow the parties to not only file  
9 competing summary judgment motions but also to distill  
10 out of those motions any facts that need to be flushed  
11 out and to determine between the parties whether or not  
12 hearing on those facts really needs to be had. So  
13 that's the schedule that AT&T is basically proposing.

14 JUDGE RENDAHL: All right. Before I hear  
15 from Verizon, Ms. Singer Nelson, are you in agreement  
16 with this general proposal?

17 MS. SINGER NELSON: Yes, Your Honor, MCI is  
18 in agreement with the schedule proposed by AT&T.

19 JUDGE RENDAHL: All right.  
20 Commission Staff.

21 MR. THOMPSON: Well, we're prepared to go  
22 along with what the primary parties would think is  
23 appropriate.

24 I would note that I hadn't actually made an  
25 appearance earlier.

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1 JUDGE RENDAHL: I'm sorry.

2 MR. THOMPSON: You had asked if there was  
3 anyone on the line that needed to but --

4 JUDGE RENDAHL: I'm sorry, why don't you make  
5 your formal appearance.

6 MR. THOMPSON: I'll do that. It's Jonathan  
7 Thompson, Assistant Attorney General, I'm representing  
8 Commission Staff, and my mailing address is 1400 South  
9 Evergreen Park Drive Southwest, Olympia, Washington  
10 98504, my telephone number is (360) 664-1225, fax is  
11 586-5522, and my E-mail is jthompso@wutc.wa.gov.

12 JUDGE RENDAHL: And my apologies, Mr.  
13 Thompson.

14 MR. THOMPSON: No problem.

15 JUDGE RENDAHL: So at this point you would be  
16 willing to go along with what AT&T and MCI have  
17 proposed?

18 MR. THOMPSON: Or whatever results from the  
19 -- we don't have a position on scheduling in other  
20 words.

21 JUDGE RENDAHL: All right.

22 MR. THOMPSON: Whatever the process produces  
23 here.

24 JUDGE RENDAHL: All right.

25 And, Mr. Mittle, I know you may have some

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1 questions.

2 MR. MITTLE: Well, I have two questions that  
3 maybe I could address to AT&T and MCI.

4 Because MCI has issued discovery in this  
5 matter, were you expecting responses to discovery before  
6 filing your motion for summary judgment?

7 MS. SINGER NELSON: Yes, Your Honor, that's  
8 another --

9 MR. O'CONNELL: Well, Judge, that's one of  
10 the issues I wanted to --

11 MS. SINGER NELSON: -- issue I wanted to  
12 address if you want to put that on the agenda is the  
13 matter of discovery. But yes, I did want to have the  
14 responses to discovery prior to our filing our summary  
15 judgment motion or our response to Verizon.

16 MR. MITTLE: Can I ask a quick question of  
17 Verizon?

18 Do you consider your response kind of like a  
19 motion for summary judgment?

20 MR. O'CONNELL: It's entitled a Motion for  
21 Pleadings, a Motion for Judgment on the Pleadings, which  
22 is pursuant to 12(c), which under our Civil Rules,  
23 similar to Federal Rules if you're familiar with that,  
24 so we're going to have substantial disagreements about  
25 the schedule when it's my turn.

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1 MR. MITTLE: Okay.

2 JUDGE RENDAHL: And if you can, Mr. Mittle,  
3 if you can avoid talking over each other for the benefit  
4 of the court reporter, that would be great.

5 MR. MITTLE: I'm sorry.

6 JUDGE RENDAHL: So your concern is how the  
7 discovery coincides and also how Verizon's motion is  
8 framed and how that fits into the proposed schedule?

9 MR. MITTLE: As I understand the proposed  
10 schedule, the December 10th was the Verizon response,  
11 and it sounds like after November 8th we're basically  
12 going to have cross motions for summary judgment on the  
13 table if I'm understanding the proceeding. But given  
14 that, I mean whether Verizon files on December 10th or  
15 not, Tel West has no objection to the schedule as  
16 proposed.

17 JUDGE RENDAHL: All right, thank you.

18 And now it's your turn, Mr. O'Connell.

19 MR. O'CONNELL: Thank you, Judge. As I think  
20 I previewed in response to Mr. Mittle's question to me,  
21 we do disagree with the schedule as proposed, we think  
22 it's improper. For one thing, this was denominated in  
23 your prehearing order as a matter that should be handled  
24 on an expedited basis. We have filed a proper motion  
25 under the Commission's dispositive rules, dispositive



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1 motions rule, excuse me, a motion for judgment on the  
2 pleadings, which under our procedural rules is to be  
3 handled in the same manner as a similar motion would be  
4 under the Superior Court Rules.

5 Point being if we are to comply with your  
6 directive that this be handled on an expedited basis, as  
7 we believe is fully appropriate, we should at the very  
8 least comply with the standing Commission responses for  
9 when -- the standing Commission rules for when responses  
10 should be due.

11 Verizon filed a motion to strike, which is a  
12 nondispositive motion. Responses to that motion should  
13 have been filed on Friday, and I would ask that the  
14 motion be deemed submitted.

15 We filed a dispositive motion on the  
16 pleadings. Frankly, I think under 650 this case could  
17 be submitted just on the pleadings that are before you.  
18 I say that, but I certainly don't suggest that opposing  
19 parties should be denied the opportunity to respond to  
20 the motion. But that motion for judgment on the  
21 pleadings would under the ordinary course be answered in  
22 20 days, which is a week from today, and I think that  
23 would be the appropriate time for petitioners to respond  
24 to the motion pursuant to the Commission's regular  
25 rules.

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1                   I will remind the Judge that Verizon has been  
2 dealing with this issue because of motions filed by  
3 these same parties on a shortened basis for two months  
4 now, and so I think that it's wholly appropriate that  
5 petitioners be required to respond to the motion for  
6 judgment on the pleadings in the time frame proposed by  
7 the Commission's rules, which would be a week from  
8 today.

9                   We would request leave to file a reply, again  
10 pursuant to the regular proceedings on a similar 12(c)  
11 motion, which we would be happy to file by the --  
12 assuming that petitioners file their response in a  
13 timely fashion by Monday, we would be happy to get our  
14 reply filed by Friday of that week. And at that  
15 juncture, a motion for judgment on the pleadings would  
16 be fully submitted to you, and we respectfully suggest  
17 that the best use of your resources and the parties' is  
18 to have that motion heard.

19                   Petitioners have been telling the Commission  
20 for at least two rounds of briefing that I'm aware of  
21 that this question raises legal issues. It was raised  
22 in the first attempt regarding Order Number 5 that  
23 resulted in Order Number 10, it is raised by MCI's  
24 petition for review of Order Number 10. All of those  
25 pleadings position this issue as a legal question, which

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1 I think that is the most straightforward way of  
2 addressing this question would be for it to be handled  
3 in the proper way that a 12(c) motion would be handled,  
4 and that is to be taken up before we get into questions  
5 of discovery and summary judgment motions.

6 I will note for the record that the  
7 Commission's Rule on Petitions for Enforcement 650 has a  
8 very explicit procedure to make discovery available, it  
9 requires the petitioner to submit a statement with its  
10 petition indicating that discovery is necessary, and I'm  
11 referring specifically to 480-07-650(4), and under (4)  
12 discovery is limited to those facts that are essential  
13 to the petitioner's case. That's an extremely narrow  
14 standard, it is not the normal standard for which  
15 discovery is available, and we respectfully submit that  
16 given the posture that the parties have taken repeatedly  
17 that this case raises predominantly if not exclusively  
18 legal issues, we think that it would not be essential  
19 for any party's case to take up discovery, and instead  
20 we believe the parties should better spend their  
21 resources focusing on resolving this legal question  
22 about the availability of packet switches on an  
23 unbundled basis and get a ruling on that controlling  
24 legal question before we spend substantial time and  
25 resources and money pursuing discovery that frankly is

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1 not all that relevant, much less essential.

2           You know, to the degree that there are  
3 questions raised about the functionality of a switch, I  
4 mean I just don't know that it's necessary to get into  
5 it given the FCC's pronouncements about the availability  
6 of packet switching on an unbundled basis. If it is,  
7 it's something that could be properly addressed after  
8 the Commission has had the opportunity to rule on the  
9 pending motion before it for judgment on the pleadings.

10           JUDGE RENDAHL: Ms. Singer Nelson or  
11 Ms. Friesen.

12           MS. SINGER NELSON: Which part of that do you  
13 want us to address first?

14           JUDGE RENDAHL: Doesn't matter.

15           MS. SINGER NELSON: As far as the time frame  
16 responding to the two petitions, it was my assumption,  
17 as was yours, Judge Rendahl, at the beginning of the  
18 prehearing conference that part of what the purpose of  
19 today's conference was to schedule responses to the  
20 pending motions. And so I would disagree with Verizon's  
21 proposal to simply take the Commission's -- the schedule  
22 set forth in the Commission's rules relating to the  
23 motions as the schedule that we should adopt in this  
24 case.

25           The motion for judgment on the pleadings is a

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1 motion that really goes to the merits of this issue, and  
2 the petitioners should have a full and fair opportunity  
3 to explore the issue and litigate the case with all of  
4 the rights that go along with litigating a case,  
5 including sufficient time to consider the arguments,  
6 discovery, and an evaluation, the option of having the  
7 Commission evaluate the case the way the Commission  
8 typically evaluates an adjudicative proceeding, so that  
9 would include, if appropriate, would include prefiled  
10 testimony and a hearing, so that's kind of the backdrop  
11 to it.

12           A general response to some of the things  
13 stated by Mr. O'Connell, I would ask that the Commission  
14 adopt the schedule or a schedule similar to that that's  
15 been adopted in California to address the exact same  
16 issues. And once we have the petitioners' response to  
17 the motion for judgment on the pleadings, as well as if  
18 we decide to file our own motion for judgment on the  
19 pleadings, and then Verizon's response to that motion,  
20 we can sit back, look at the pleadings, and determine  
21 whether there truly are factual issues in this case.

22           You know, when I first read Verizon's motion  
23 for judgment on the pleadings, what jumped out at me was  
24 the factual assertions laid out in that motion for  
25 judgment on the pleadings that were unsupported by

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1 affidavits and then Verizon's argument that there were  
2 no facts at issue in this case. Their very pleading  
3 raises factual issues to me.

4 MS. FRIESEN: Your Honor, may I chime in here  
5 too?

6 JUDGE RENDAHL: Ms. Friesen.

7 MS. FRIESEN: Thank you. First off, AT&T  
8 concurs in what MCI has just stated, but a couple things  
9 I would like to point out. The legal issue presently  
10 before the Commission is not the issue as framed by  
11 Verizon, that is whether or not you have the authority  
12 to unbundle packet switching, but whether or not they  
13 have violated, that is Verizon has violated our  
14 interconnection agreement by ceasing to offer unbundled  
15 switching under our contract, that's the issue.

16 Also, with respect to what Ms. Singer Nelson  
17 has just said, it is not the case that there are  
18 undisputed material facts. In fact, most of the  
19 material facts are in dispute at present, so it doesn't  
20 make sense to file a summary judgment motion or in  
21 essence a motion on the pleadings when in fact there are  
22 disputed issues of material fact before you.

23 Now if you're going to sort of narrow the  
24 legal issue to does Verizon have an obligation to  
25 provide unbundled switching in conjunction with our

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1 interconnection agreement, then maybe that can be  
2 decided on the paper alone, but that's not the issue  
3 that Verizon keeps trying to present to you. Rather  
4 they're trying to present to you a different issue, an  
5 issue different than what essentially the petitioners  
6 have brought to you.

7           So from AT&T's perspective, two things are  
8 problematic about Verizon's approach to this. Number  
9 one, we do think that there may be material issues of  
10 fact in dispute that has yet to be investigated. And  
11 number two, the issue as framed is the issue that's in  
12 the petition, not as Verizon would reframe it or would  
13 have you reframe it.

14           That's all I have, thank you.

15           JUDGE RENDAHL: All right.

16           Did you have anything else, Ms. Singer  
17 Nelson?

18           MS. SINGER NELSON: Your Honor, yes, just  
19 specifically on the issue of discovery, I have actually  
20 already put together discovery and have served it on  
21 Verizon, although I did want to raise the issue here at  
22 the prehearing conference and ask the Commission  
23 permission to actually start the discovery process. I  
24 was thinking about how in the TRO arbitration proceeding  
25 the prehearing order had already permitted discovery, so

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1 I was thinking along the lines of that prehearing order  
2 when I issued the discovery in this proceeding. So to  
3 the extent -- if the Commission does grant our request  
4 to have discovery in this proceeding, I would ask that  
5 the discovery that I have already served on Verizon be  
6 dated today instead of the date that I actually served  
7 it.

8           But I think there is some valid discovery  
9 that needs to be propounded in this case that relates to  
10 some description of the switch that Verizon actually  
11 installed in Mount Vernon, the issues that were raised  
12 during the September 9th hearing in the TRO arbitration  
13 case addressing OSS, operational support systems, that  
14 Verizon uses in connection with this switch, and  
15 Verizon's capabilities both in the switch and with  
16 regard to those OSS systems that are directly related to  
17 the issues involved in this case. And as I spend more  
18 time reading and thinking about and talking about the  
19 issues raised by the parties' pleadings in this case, I  
20 find that there are more factual issues that come to  
21 mind, and I think that it's very important in order for  
22 the Commission to get a full picture of what's going on  
23 here that the parties be able to propound discovery,  
24 evaluate the responses, and see how that fits into this  
25 very important issue that's going to be in front of the



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1 Commission in this case.

2           As the Court may or may not know, packet  
3 switching seems to be a wave of the future, and it's  
4 extremely important to CLECs to have a full and fair  
5 hearing on whether or not they can continue to provide  
6 UNE-P to the mass market customers using any switch that  
7 Verizon or other ILECs put in operation to serve their  
8 own customers that contains the capability to provide  
9 traditional narrow band telecommunications services. So  
10 I think in light of the importance of the issue to the  
11 CLECs and in light of the complexity of the issues  
12 before the Commission, it would be very helpful and  
13 important for the Commission to allow the parties to do  
14 discovery in this proceeding.

15           JUDGE RENDAHL: Mr. Harlow, do you have  
16 anything to add to that?

17           MR. HARLOW: No, Your Honor.

18           JUDGE RENDAHL: And Mr. Mittle?

19           MR. MITTLE: No, Your Honor.

20           JUDGE RENDAHL: Mr. Thompson.

21           MR. THOMPSON: No.

22           JUDGE RENDAHL: All right.

23           A response, Mr. O'Connell.

24           MR. O'CONNELL: And I will be brief, Judge.

25 This matter has been handled on an expedited basis since

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1 it was initiated by the CLECs on an emergency basis in  
2 the arbitration docket. Verizon has repeatedly  
3 responded on less notice than is ordinary under  
4 Commission procedures on this docket, and all we are  
5 asking at this juncture is that we have responses in the  
6 normal time frame set forth by the Commission Rules.

7           Verizon has served and filed a proper motion  
8 for judgment on the pleadings that we think will dispose  
9 of this case on legal arguments. I respectfully submit  
10 that the appropriate response is to have petitioners  
11 respond to that pleading in the appropriate established  
12 time frame. And if that raises factual questions, well,  
13 you know, that's the appropriate response in response to  
14 a 12(c) motion. That's what 12(c) motions do is  
15 articulate whether there are in fact factual differences  
16 between the parties.

17           But this matter has, as you indicated in the  
18 prehearing order, is something that should be done on an  
19 expedited basis, and at this juncture, we think it  
20 should be handled at the very least according to the  
21 regular procedures rather than strung out another three  
22 months by a schedule that does not have a resolution  
23 until January. I respectfully submit that if  
24 petitioners can respond in the normal time frame, the  
25 matter would be put before you by the end of next week

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1 for a decision that, you know, accords with whatever  
2 your schedule is, Judge, and can be moved forward at  
3 that time frame.

4 JUDGE RENDAHL: Okay. And anything further  
5 on the discovery issue?

6 MR. O'CONNELL: On the discovery issue, with  
7 all respect for Ms. Singer Nelson, the standards that  
8 are predicated in a case such as this is whether the  
9 discovery is essential. I submit to you that it is not  
10 essential at this time when the present issue is whether  
11 this case can be resolved on a legal question. If it is  
12 not, again that's just a reason to 12(c) motion, it is  
13 not a reason to implicate discovery.

14 I have Ms. Singer Nelson's discovery in front  
15 of me. It goes into a variety of issues. There's 13  
16 questions, some of which will be I suspect fairly  
17 burdensome for my client to answer. Some of them are  
18 very straightforward because in fact you have already  
19 heard testimony from some of our witnesses about some of  
20 these issues. And frankly, I would be more than happy  
21 to explore stipulations with MCI as to the core issues.  
22 For example, Ms. Singer Nelson mentioned the fact that  
23 Verizon will be continuing to provide I think her term  
24 was narrow band service to customers using that packet  
25 switch, I think that's not really particularly disputed,

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1 that was something that I think Verizon's witness  
2 testified to before you last month. So I don't think we  
3 should burden the record in this case with extensive  
4 discovery when in fact there's just legal issues  
5 presented to you.

6 JUDGE RENDAHL: If you do explore  
7 stipulations with the petitioning parties, I don't want  
8 to create a problem for the petitioning parties in  
9 responding if the stipulations are reasonably, you know,  
10 if the timing doesn't work --

11 MR. O'CONNELL: Agreed, I mean, you know --

12 JUDGE RENDAHL: -- in response to --

13 MR. O'CONNELL: -- I'm in my office all day  
14 tomorrow, I'm in my office all day Wednesday, I mean if  
15 they've got some proposals to make, we would be happy to  
16 go over it with them, but I do think that the  
17 petitioners should be responding in the normal time  
18 frame, and we would be happy to work through that with  
19 them.

20 JUDGE RENDAHL: Mr. Mittle.

21 MR. MITTLE: Tel West's intervention wasn't  
22 granted until today, so when Mr. O'Connell speaks about  
23 the normal time frame, there was no reason to believe or  
24 not believe that the clock would be started. In fact,  
25 coming from Mr. O'Connell, I had no reason to believe

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1 that he would or would not oppose the intervention  
2 today. Therefore, Tel West would be at a substantial  
3 disadvantage if it had to file a response by Monday.

4           It would also be at a substantial  
5 disadvantage if no discovery was allowed. Even  
6 according to his petition on the pleading on the  
7 judgment, he talks in Paragraph 4 about the upgrades to  
8 the OSS system would render the entire deployment of  
9 packet switches uneconomic. I know for a fact that 56  
10 out of 67 switches or thereabouts in New Mexico are  
11 packet switches, and I know that they also offer  
12 unbundling elements under those packet switches. So to  
13 hear today that this OSS upgrade is going to be some  
14 great onerous burden on Verizon I think is a fact that  
15 needs to be further investigated along the lines of  
16 MCI's discovery.

17           So for those reasons and the fact that the  
18 Rules of Washington do allow for you to take certain  
19 leniencies with the entire discovery process and the  
20 entire procedure and proceeding here, I think it would  
21 only be fair that the parties have this opportunity for  
22 discovery, that Tel West has at least 20 days to respond  
23 to any motion or pleading on the petition for on the  
24 pleadings at this time.

25           JUDGE RENDAHL: Mr. O'Connell.

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1                   MR. O'CONNELL: Judge Rendahl, I'm going to  
2 interpose an objection. I think one of the normal  
3 anticipated requirements on intervenors is that they not  
4 broaden the issues in the record. Verizon does not  
5 conduct operations in New Mexico that I'm aware of,  
6 certainly Verizon Northwest does not, and I don't think  
7 any other Verizon entity does. And whatever the  
8 structure of the network for Qwest, I think that's who  
9 Mr. Mittle said provides him service, is simply not  
10 before you in this instance, and I just would ask that  
11 it be disregarded. You know, Tel West is an intervenor  
12 and takes the record as it finds it, and I would request  
13 that we move forward under the ordinary rules.

14                   MS. FRIESEN: I don't mean to interrupt, but  
15 I can't hear Mr. O'Connell.

16                   MR. O'CONNELL: I'm sorry, counsel. I said  
17 that I think Tel West takes the record as it finds it,  
18 and I think that we should move forward under the  
19 ordinary operation of the rules.

20                   MR. MITTLE: Even according to Verizon's  
21 motion for judgment on the pleadings, he states that the  
22 decision here today is going to greatly directly  
23 influence Verizon's plans for capital upgrades and  
24 offerings of new services and applications not only in  
25 Washington but in other areas of the country as well.

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1 So to say that we're limited to Mount Vernon I think is  
2 disingenuous with what has already been filed by  
3 Verizon, and we should understand the implications of  
4 this case, and we should not rush to a judgment in this  
5 case.

6 JUDGE RENDAHL: All right, is there anything  
7 else anyone wishes to add at this point?

8 All right, I did intend to establish  
9 responses based upon our prehearing today, and while I  
10 understand the need to resolve this quickly, and I do  
11 intend to do so, my schedule and other matters including  
12 the Verizon arbitration proceeding would pretty much  
13 preclude me from rendering any decision on this until  
14 after November the 15th anyway. I need to resolve a  
15 Covad arbitration proceeding by the end of the month  
16 following my hearing in other matters this week and then  
17 need to turn my attention to the Verizon arbitration  
18 change in law with motion for withdrawal issue.

19 So given that, I couldn't really even turn my  
20 attention to it until November 15th anyway. So I am  
21 inclined to allow the petitioners more time to respond  
22 to Verizon's petition, Verizon's motion for judgment on  
23 the pleadings and motion to strike at any rate and then  
24 would allow Verizon an opportunity to respond to that.  
25 And my intent would be to make a decision once

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1 everything is in upon the pleadings, I would render a  
2 decision upon Verizon's motion having reviewed the  
3 responses.

4           So for that matter, I don't believe that the  
5 schedule for California exactly works for what's  
6 happening here in Washington. I would set a deadline  
7 for two weeks from today for answers to Verizon's  
8 motions for judgment on the pleadings and the motion to  
9 strike. And I'm going to encourage the parties to try  
10 to reach any stipulations on discovery by the end of  
11 this week, and if there are significant disagreements  
12 between the parties that continue by Friday, please let  
13 me know, and I will be able to schedule something by  
14 phone early the week of the 18th. I will be out of town  
15 on the 18th but can arrange something on the 19th and  
16 20th over the phone. If we need to, we can extend out  
17 the date of the 25th if it appears to be something  
18 that's not workable. Then --

19           MS. SINGER NELSON: Your Honor, this is  
20 Michel Singer Nelson, I just have a clarification, a  
21 question for clarification on that.

22           JUDGE RENDAHL: Yes.

23           MS. SINGER NELSON: You mean by discovery  
24 stipulations, do you mean stipulations as to the process  
25 of discovery or something else?



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1                   JUDGE RENDAHL: Well, I understand  
2 Mr. O'Connell to be making an offer to try to resolve  
3 the dispute over discovery by reaching stipulations as  
4 to fact.

5                   MR. O'CONNELL: That was exactly what I  
6 intended to suggest, Your Honor.

7                   JUDGE RENDAHL: So what I am suggesting is  
8 that in good faith the parties work together to try to  
9 reach some stipulations of fact. And if it becomes  
10 clear by this Friday that those stipulations of fact can  
11 not be fully reached, I need to know, and then on the  
12 19th or 20th I will schedule a conference call so that I  
13 can resolve the issue and if need be will allow  
14 discovery and extend out the response date for the 25th.  
15 All right, so I encourage you all to work together as to  
16 the discovery issue.

17                   The responses, the answers to Verizon's  
18 petition, I'm sorry, the answers to Verizon's motion,  
19 two motions, are due by the end of the day  
20 electronically on the 25th with paper copies to be filed  
21 on Tuesday the 26th.

22                   And, Mr. O'Connell, what is your thought as  
23 to an appropriate time for Verizon's response?

24                   MR. O'CONNELL: Well, Your Honor, if you're  
25 going to be unavailable until the 15th, we could have a

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1 response to you by the 12th.

2 JUDGE RENDAHL: All right.

3 MR. MITTLE: Maybe we should get an extra  
4 week, because you said it would only take you a week to  
5 respond.

6 MR. O'CONNELL: Counsel, you have --

7 JUDGE RENDAHL: Well, I think at this  
8 point --

9 MR. MITTLE: Just thought I would ask.

10 MR. O'CONNELL: Just --

11 JUDGE RENDAHL: Let's see what happens with  
12 the discovery, and if we need to extend out the dates,  
13 we will do so.

14 With that date of the 12th and given the  
15 Thanksgiving holidays in between, I will endeavor to  
16 issue a decision by November 30th, so that if there is a  
17 need for a hearing, it would be, and that there are  
18 factual issues that are in dispute in addition to the  
19 legal issues that are in dispute, the decision on the  
20 30th would identify that, at which point what would the  
21 parties, if there are issues of fact in dispute, what  
22 would the parties' preference be? And I will start with  
23 you, Ms. Singer Nelson.

24 MS. SINGER NELSON: Your Honor, I would  
25 request a hearing by you.

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1 JUDGE RENDAHL: And would anything be  
2 necessary prior to the hearing, what sort of process  
3 would be necessary prior to a hearing?

4 MS. SINGER NELSON: Oh, I would think that  
5 prefiled testimony would help to expedite the hearing  
6 itself, so prefiled testimony, an opening round, a  
7 responsive round, and then if necessary a reply round,  
8 and then a brief hearing. I wouldn't think we would  
9 need even a week, I would say a two to three day hearing  
10 would probably take care of it and then briefing based  
11 on the testimony at the hearing.

12 JUDGE RENDAHL: All right.

13 Ms. Friesen.

14 MS. FRIESEN: We concur in MCI's remarks.

15 JUDGE RENDAHL: Okay, thank you.

16 Mr. Harlow.

17 MR. HARLOW: We concur with MCI.

18 JUDGE RENDAHL: Mr. Mittle.

19 MR. MITTLE: Nothing further, thank you.

20 JUDGE RENDAHL: All right.

21 Mr. Thompson.

22 No comment?

23 MR. THOMPSON: No comment. It seems like two  
24 or three days for a hearing would probably be excessive  
25 given the I think predominantly legal issues and

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1 probably not that many factual issues.

2 JUDGE RENDAHL: Well, if we schedule two days  
3 in case we spilled over from one day, it's safer to  
4 schedule two days especially if people are traveling  
5 than one. It may not come to that, it may, but at any  
6 rate I think two days if we do have a hearing is  
7 appropriate.

8 Mr. O'Connell, any response to that  
9 suggestion by Ms. Singer Nelson if, in fact, there are  
10 factual issues that need to be delved into?

11 MR. O'CONNELL: I want it noted for the  
12 record since it happens so rarely that I agree with  
13 Mr. Thompson on the issues. No, in all seriousness I  
14 hear exactly what you're saying, Judge, that scheduling  
15 two days does make sense since you don't need too many  
16 witnesses at all to chew through a day. Frankly, I  
17 think three rounds of prefiled testimony is also a bit  
18 excessive given the issues that are raised by this. You  
19 know, let's not forget this is a case designed for  
20 enforcement of an interconnection agreement, 650 is  
21 designed for this to be a speedy process, not the normal  
22 Commission proceeding. I think three rounds is more  
23 than enough. At most I would suggest just an opening  
24 and response and at most a two day hearing. And, you  
25 know, we can schedule it now if that makes sense, or

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1 alternatively what occurred to me is depending upon your  
2 ruling on the 30th, we anticipate a prehearing  
3 conference sometime soon thereafter, at that juncture we  
4 would know both what the issues are and whether we  
5 really need this kind of full three rounds of briefing,  
6 three days of hearing as suggested by MCI.

7 JUDGE RENDAHL: Ms. Singer Nelson, any  
8 response?

9 MS. SINGER NELSON: Well, I suggested three  
10 rounds of prefiled testimony if necessary, and I  
11 suggested three days of hearing if necessary, so I don't  
12 have a problem with potentially two rounds of testimony  
13 and two days of hearing if that's what seems appropriate  
14 at the time. So I agree that after your decision on  
15 November 30th, a prehearing conference would be a great  
16 way to figure out what to do after that. And then too I  
17 would ask that we do structure it the way we have been  
18 discussing with the prefiled testimony, hearing, and  
19 post hearing briefs.

20 JUDGE RENDAHL: If we do get to this point,  
21 would you be opposed to two rounds of simultaneous  
22 prefiled testimony?

23 MS. SINGER NELSON: I really can't answer  
24 that right now, Judge, I'm sorry.

25 JUDGE RENDAHL: That's all right.

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1                   I think it is a bit premature to schedule a  
2 hearing at this point and so we'll schedule a prehearing  
3 conference following November 30th. My schedule at  
4 least for hearing purposes up through the third week of  
5 January is pretty booked, but if we get to that point  
6 I'm more free after that point. So at this point, let's  
7 just schedule a prehearing conference. The week of  
8 December 6th is open in my calendar. Does anyone have a  
9 conflict for that week?

10                   MR. MITTLE: Your Honor, I do starting  
11 December 8th.

12                   JUDGE RENDAHL: December 8th, okay. And you  
13 are welcome to call next time instead of appearing from  
14 New Mexico. We very much appreciate your being here.

15                   MR. MITTLE: Well, it was raining in  
16 Albuquerque, so I thought.

17                   JUDGE RENDAHL: Well, it is beautiful here  
18 today.

19                   MR. O'CONNELL: And, Judge, I also have a  
20 conflict on the 8th and 9th, but the Monday of that week  
21 or the Tuesday of that week I'm wide open and at your  
22 disposal.

23                   JUDGE RENDAHL: Would anyone have a conflict  
24 with having a Tuesday morning prehearing conference via  
25 the telephone?

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1                   MR. HARLOW: This is Mr. Harlow, that works  
2 for me, Your Honor.

3                   MS. FRIESEN: Is that December 7th, Your  
4 Honor?

5                   JUDGE RENDAHL: Oh, how about the 6th?

6                   MS. FRIESEN: 6th.

7                   JUDGE RENDAHL: Pearl Harbor Day.

8                   MR. O'CONNELL: Is that a holiday?

9                   JUDGE RENDAHL: No, that's an ominous day.

10                  MR. O'CONNELL: That seems completely  
11 appropriate to me.

12                  JUDGE RENDAHL: I'm open either way.

13                  MR. O'CONNELL: And frankly, Judge, with no  
14 disrespect for our men and women in uniform, I would  
15 prefer the 7th just because the 6th is always -- Mondays  
16 are always bad.

17                  JUDGE RENDAHL: All right, I'm just joking  
18 about the 7th, but I have no issue with the 7th, is that  
19 a problem for anyone?

20                  MS. FRIESEN: Your Honor, this is Letty  
21 Friesen, as long as we do it in the morning before noon  
22 I don't have a problem.

23                  JUDGE RENDAHL: Before noon your time?

24                  MS. FRIESEN: Correct.

25                  JUDGE RENDAHL: Would it be best then to

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1 schedule it at 9:00 as opposed to 9:30?

2 MS. FRIESEN: Yes, that would be better.

3 JUDGE RENDAHL: And --

4 MR. O'CONNELL: If we're going to do this by  
5 telephone, yes, that's fine.

6 JUDGE RENDAHL: Yes, so you don't have to  
7 drive down from Seattle, Mr. O'Connell, if you do not  
8 choose to.

9 All right, so why don't we set a 9:00 a.m.  
10 start for a prehearing conference on December 7th  
11 following the decision on the 30th. That will give you  
12 all some time to review it, and I think that works.

13 Is there anything else that we need to  
14 discuss this afternoon?

15 MS. SINGER NELSON: Your Honor, this is  
16 Michel Singer Nelson, I just want to set my  
17 expectations.

18 Mr. O'Connell, are your proposed stipulations  
19 of fact going to cover all of the areas or all of the  
20 discovery questions that MCI propounded to you?

21 MR. O'CONNELL: I can't answer that at this  
22 time, Ms. Singer Nelson. A couple of your questions  
23 regarding the OSS changes, if I'm understanding your  
24 questions correctly, the OSS changes that predate the  
25 installation of the Mount Vernon switch, I don't know if



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1 that -- I just don't know the answer to those both as to  
2 the availability of the information as well as the  
3 relevance, but I mean that's certainly something I need  
4 to explore with my client first as well as with you.

5 MS. SINGER NELSON: And then my second  
6 question is do you -- did you intend to object to any of  
7 those questions other than your procedural objections?

8 MR. O'CONNELL: Same response.

9 MS. SINGER NELSON: You don't know yet?

10 MR. O'CONNELL: Correct.

11 JUDGE RENDAHL: And I guess at this point I  
12 would weigh in based on the discussion between  
13 Mr. Mittle and Mr. O'Connell about the area, whether  
14 it's in Washington or elsewhere. I think regardless of  
15 where a packet switch is located, if it's the same  
16 switch by the same company with the same capabilities,  
17 it should not matter. And so to that extent I'm not  
18 going to limit discovery to just the packet switch that  
19 is located in Mount Vernon if in fact there are  
20 similarities to other switches in the country with the  
21 same capabilities, and I think that is appropriate.

22 MR. O'CONNELL: Yeah, and that was not the  
23 nature of my dispute, Judge.

24 JUDGE RENDAHL: All right.

25 MR. O'CONNELL: The nature of my problem was

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1 Mr. Mittle's characterization of somebody else's network  
2 in some other state that is not Verizon's network,  
3 literally not our company.

4 JUDGE RENDAHL: I understand that.

5 MR. O'CONNELL: That's something different.  
6 To the degree that we're talking about an OSS system,  
7 you know, that's the answer.

8 JUDGE RENDAHL: Well, if, for example, Qwest  
9 uses the same packet switch that Verizon does, and I do  
10 not know, and it has the same capabilities in New Mexico  
11 as the packet switch in Mount Vernon, Washington, and I  
12 do not know that and I don't know that anyone knows that  
13 here, but if that were the case, then the fact that it's  
14 in Qwest territory versus Verizon territory, I still  
15 think it's appropriate. If it's the same switch made by  
16 the same company with the same capabilities, that's  
17 really I think that's appropriate.

18 MR. O'CONNELL: Yeah, it's the question  
19 that's been presented here is not so much the  
20 functionality of the switch as the OSS system that  
21 Verizon has developed for that. That's a Verizon  
22 product, that is not a Qwest system. And frankly,  
23 that's a system that, you know, Verizon personnel have  
24 developed, and so it would be unique to Verizon. So  
25 Qwest's network is just not particularly, you know, not

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1 only is it not particularly relevant, you know, we don't  
2 know.

3 JUDGE RENDAHL: Well, again, to the extent  
4 that there are OSS systems developed by Qwest versus OSS  
5 systems by Verizon, that is a different issue. But if  
6 we're talking about the functionality of the switch  
7 itself and it's the same in either territory, then I  
8 think that is appropriate. And I will just, so that you  
9 all when you're making your stipulations and arguing  
10 over your stipulations, you have my perspective on that  
11 ahead of time just on that one issue.

12 MR. CARRATHERS: Your Honor, this is Chuck  
13 Carrathers from Verizon, may I just seek clarification  
14 on that one question?

15 JUDGE RENDAHL: Please.

16 MR. CARRATHERS: All this discussion presumes  
17 that the petitioners have the duty to explain how their  
18 discovery requests are relevant, and let me use OSS as  
19 an example. It was my understanding reading the  
20 petition that the CLECs really don't care whether  
21 Verizon's OSS can do A, B, or C or not. Their position  
22 is that under the parties' interconnection agreement,  
23 the plain language in the agreement, Verizon has an  
24 obligation to unbundle the packet switch. And so if  
25 that's their argument, then the extent of Verizon's OSS

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1 and what it can do or what it can't do, while one can  
2 argue it may have had some relevancy in a motion for  
3 emergency injunctive relief, is not relevant to the  
4 CLECs' claim set forth in their petition, and so I just  
5 want to be sure as Ms. Nelson is that we all have  
6 similar expectations on elements on evidence that may or  
7 may not be relevant to the CLECs' claim.

8 JUDGE RENDAHL: Well, I think again we're  
9 entering into an issue of how each party is framing the  
10 question, and I'm not going to make a decision on that  
11 today. I understand that Verizon is framing the issue  
12 one way and the CLECs are framing the issue another way.  
13 So I would like to see if you all can reach some basic  
14 stipulations of fact that can move this along, and if  
15 not, I will know on Friday.

16 MS. SINGER NELSON: Okay, because, Your  
17 Honor, this is going to be typical of the conversation I  
18 -- I predict that it's going to be typical of the  
19 conversation that we have about what is appropriate  
20 discovery and what is not. And if so, I am afraid that  
21 it's just going to delay the discovery process, which I  
22 would like to get going on.

23 So with regard to the OSS issue, I think  
24 Mr. Mittle raised a good point. It goes back to the  
25 point that I raised that Verizon's motion for judgment

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1 on the pleadings actually contains actual assertions  
2 within it that aren't supported by affidavit, and one of  
3 those factual assertions relates to the development of  
4 necessary wholesale operation support systems by Verizon  
5 and how burdensome that responsibility is for Verizon.  
6 So that just I guess highlights some of the discovery  
7 disputes that I'm sure we're going to get into in this  
8 docket, so I would ask that you permit discovery so that  
9 we can at least start asking the questions and then go  
10 from there.

11 JUDGE RENDAHL: Well, to the extent under the  
12 rule that it's essential for the petitioners to resolve  
13 the factual assertions made by Verizon, then I believe  
14 discovery is appropriate.

15 MS. SINGER NELSON: Thank you.

16 MR. O'CONNELL: And, Your Honor, we have had  
17 no showing that any of this is essential. I mean they  
18 have a legal issue teed up under their petition, and  
19 that's what our motion on judgment on the pleadings is  
20 addressed to is a legal question that they have  
21 presented with their petition. The motion for judgment  
22 on the pleadings is an attempt to resolve that legal  
23 question. There's been no showing that any of this is  
24 essential for them to proceed with the case.

25 JUDGE RENDAHL: But to the extent that the

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1 motion raises factual assertions in response, then it's  
2 appropriate for the CLECs to respond to be able to delve  
3 into those issues.

4 MR. O'CONNELL: And that's what a motion for  
5 judgment on the pleadings would do would be to ascertain  
6 whether there are any of those factual disputes. I mean  
7 the standards for a motion for judgment on the pleadings  
8 is whether the petitioner can identify a set of facts  
9 which would permit them relief. Factual, you know,  
10 that's why I didn't particularly respond to  
11 Ms. Friesen's comment about it not being supported by  
12 affidavits, that's improper on a 12(c) motion. A 12(c)  
13 motion assumes facts which would entitle the petitioner  
14 for relief. If petitioner can, in fact, identify a set  
15 of facts which would entitle petitioner to relief, then  
16 the 12(c) motion is denied and we move forward with the  
17 case. We don't need to do factual investigation in  
18 order to respond to a motion for judgment on the  
19 pleadings. This motion presents a legal question and  
20 the context of facts as identified in the petition.

21 If they want to assert that there are facts  
22 that are entitling them to relief under their petition,  
23 they can assert those in their response. That's the  
24 standard for a 12(c) motion. It is not a question, you  
25 know, counsel have been throwing around the summary

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1 judgment standards, which is whether there are material  
2 facts in dispute, that's not a 12(c) standard, that's a  
3 summary judgment standard, and that's not the motion  
4 that Verizon has before you. The motion that Verizon  
5 has before you is to identify the legal question  
6 presented here under a judgment on the pleadings.

7 JUDGE RENDAHL: Ms. Singer Nelson.

8 MS. SINGER NELSON: Well, Your Honor, I just  
9 go back to the same point which you made that I see that  
10 you understood my point, and the point is simply that  
11 Verizon's motion for judgment on the pleadings raises  
12 facts that are not developed anywhere, and I think that  
13 the petitioners have the right to ask Verizon questions  
14 that go to the facts that are raised by its motion. And  
15 the petitioners have not filed a motion for judgment on  
16 the pleadings, the petitioners just filed a petition for  
17 enforcement. So we haven't fashioned the case as a case  
18 that should be decided on the basis of motions, of a  
19 motion for judgment on the pleadings. We at this point  
20 are in the position of having to respond to a motion  
21 that Verizon filed. So the scope of discovery should be  
22 set by the petition and any facts that are raised by  
23 Verizon's answer to that petition, which I guess is  
24 combined with Verizon's motion for judgment on the  
25 pleadings. The discovery that I have propounded fits

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1 within the scope of the petition and Verizon's answer to  
2 the petition.

3 JUDGE RENDAHL: Okay, I'm going to take a  
4 five minute recess, so we will be off the record, I will  
5 be back at about 10 to 3:00, and at that point I'm going  
6 to resolve this discovery issue one way or the other.  
7 So be back on the record in five minutes, we will be off  
8 the record.

9 (Recess taken.)

10 JUDGE RENDAHL: Having reviewed the parties'  
11 arguments on the issue of discovery and having reviewed  
12 the Court Rules, without having reviewed the case law  
13 relating to the Court Rules, and having reviewed the  
14 Commission Rules, the Commission's Rule WAC 480-07-650  
15 on petitions for enforcement provides that in answering  
16 a petition that any, this is in (2)(a), any facts relied  
17 upon must be supported by affidavits, declarations, or  
18 other sworn statements by persons having personal  
19 knowledge of the facts. The Commission's Rule on  
20 dispositive motions indicates that if affidavits or  
21 other materials are attached, the Commission will  
22 consider it as a summary judgment motion. So I can  
23 understand for that reason why Verizon may not have  
24 attached affidavits relating to any facts that it relied  
25 on in its motions.



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1                   But given that, we reach sort of a quandary.  
2   The Court Rule 12(c) provides that after the pleadings  
3   are closed, but within such time as to not delay trial,  
4   any party may move for judgment on the pleadings. I  
5   guess the question is whether the pleadings or closed in  
6   this situation. There is an answer filed, there's no  
7   opportunity for reply necessarily under the Commission's  
8   Rule for petitions of enforcement.

9                   I think there's enough of an issue here under  
10  the Commission's Rule that requires the party answering,  
11  the respondent answering the petition, to identify the  
12  facts by affidavit or declarations. I don't think in  
13  this situation I would require -- I would change the  
14  nature of the motion that's been filed, but in that  
15  respect I'm going to allow discovery. Because in this  
16  sense, if there are facts that Verizon relies upon in  
17  its motion and those facts are essential in order for  
18  the petitioners to respond, I'm going to allow the  
19  discovery.

20                   But I'm going to encourage the parties to  
21  reach a stipulation. I mean the whole focus of this is  
22  let's work past the factual issues, and if there's a  
23  legal question, let's get to the legal question, and  
24  that's my focus on this motion to dismiss. And I would  
25  hope that the parties would move beyond this issue, and

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1 if there are factual issues, then we'll get to them.

2 But if it's a legal issue, we will get to them on the  
3 pleadings.

4 MR. O'CONNELL: And, Judge, I couldn't agree  
5 with you more, and that's exactly what -- if I did not  
6 articulate it well enough, I apologize. If, in fact, in  
7 their response to the motion the CLECs believe that  
8 there is some factual assertion in Verizon's motion that  
9 is either not supported or they believe, you know, they  
10 will contradict it, you know, it can be disregarded for  
11 the purposes of the motion.

12 The paragraph that Ms. Singer Nelson was  
13 repeatedly referring to, the expense involved in  
14 developing new OSS, I think that's the one that she was  
15 referring to, if that's something that the CLECs believe  
16 that they're going to contradict come a hearing and that  
17 it is a factual assertion on Verizon's part that is not  
18 supported, have them disregard it, have them brief the  
19 issues assuming that fact, you know, I don't know what  
20 MCI would claim in that regard, how easy it is to  
21 develop new OSS, but, you know, for the purposes of this  
22 motion, those facts can, you know, in effect, you know,  
23 strike that factual assertion to the degree that there  
24 is one, disregard it.

25 A 12(c) motion is a way of teeing up the

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1 legal issues and legal issues sufficiently. All the  
2 CLECs as the petitioning parties need to do is  
3 articulate, not prove, just articulate facts that would  
4 entitle them to relief. If they can do so in their  
5 response to the petition, well, then the motion for  
6 judgment on the pleadings would be denied.

7 JUDGE RENDAHL: Well, I guess I'm a bit  
8 frustrated. On the one hand you're suggesting we need  
9 an expedited response to this. On the other hand,  
10 you're balking at the issue of responding to discovery  
11 in a way that might expedite things measurably. And so  
12 at this point I'm going to order the discovery, suggest  
13 that you all try to work together, and I will be  
14 focusing on the 12(c) motion that is made and the  
15 responses to the 12(c) motion. If in fact these facts  
16 do appear to be an issue and the issue is not resolved  
17 on the legal issues, then we are primed to move forward  
18 quickly, the discovery has been done. So that is part  
19 of my incentive, and this process the Commission has set  
20 forward is intended to be expedited, as you have so  
21 clearly stated, Mr. O'Connell, and so I am trying to  
22 make sure that we don't reach the point on November 30th  
23 where do we now need to engage in discovery, and I don't  
24 know if that will occur, and then we would have an even  
25 lengthier process.

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1                   So I'm trying to expedite matters, so there  
2 is a twofold issue here. One is just the Commission's  
3 process for petitions for enforcement don't neatly  
4 dovetail into ordinary motions for judgment on the  
5 pleadings because of the issue for the expedited nature  
6 of the process. So I'm going to encourage you all to  
7 work through any stipulations of fact. If you're  
8 reaching issues that you can't resolve, please let me  
9 know on Friday. But I am going to allow the discovery,  
10 and if there are issues, I'm sure I will hear from the  
11 parties about it. But I would like to try to get this  
12 moving forward.

13                   MR. O'CONNELL: Judge, in making that ruling,  
14 have you actually had the opportunity to review the  
15 discovery proposed by MCI?

16                   JUDGE RENDAHL: No, I have not. I wasn't  
17 aware of it until the hearing today, and I understood  
18 you did make an offer to try to reach stipulations of  
19 fact, and to the extent that that can minimize the  
20 burden of the discovery that was propounded, I suggest,  
21 Ms. Singer Nelson and Mr. O'Connell, you try, and  
22 Ms. Friesen if you were involved in this process as well  
23 or any other parties that are involved, to work together  
24 to reach whatever facts are necessary at this point in  
25 the proceeding to gain. And my purpose is to make sure

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1 that we keep an expedited process moving but also that  
2 we focus on the issue at hand, which is the motion for  
3 judgment on the pleadings.

4 MR. O'CONNELL: Is that what the discovery is  
5 directed at at this juncture?

6 JUDGE RENDAHL: Yes, and if there's  
7 additional discovery that's needed later if we need to  
8 go to hearing, then that's fair game as well, but at  
9 this point let's be efficient in the discovery process.

10 All right, with that, is there anything  
11 further from any party?

12 I had one question for you, Mr. O'Connell,  
13 when we were discussing the process, you had suggested  
14 after the reply that the Commission would then have the  
15 issues in front of it, and I thought I heard you say  
16 something about it would be in front of us for hearing.  
17 Did you intend some sort of oral argument other than  
18 what we have had today on the judgments on the  
19 pleadings?

20 MR. O'CONNELL: I had not, Judge. I'm trying  
21 to think what I said in that regard. I think my -- oh,  
22 I think that was in the context -- my suggestion was  
23 that after Verizon files a reply on its motion for  
24 judgment on the pleadings, to the degree that there are  
25 factual issues raised that -- I was thinking of a

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1 prehearing conference would be the appropriate venue to  
2 decide where we go from there.

3 JUDGE RENDAHL: Okay, I just wanted to make  
4 sure that you weren't intending to have oral argument on  
5 the written motions.

6 MR. O'CONNELL: I had not requested it, and I  
7 don't believe it's necessary.

8 JUDGE RENDAHL: Okay, just wanted to make  
9 sure we didn't lose that.

10 So I'm going to recap our schedule at this  
11 point for the record. I would encourage again the  
12 stipulations of fact between the parties. If there are  
13 discovery issues that need to be addressed by me related  
14 to the discovery that MCI has propounded and the focus  
15 on responding to Verizon's motion at this point, then I  
16 would like to hear about them by the 15th, and I will  
17 schedule something for the 19th or 20th to resolve those  
18 discovery questions. Answers to Verizon's two motions  
19 in this docket are due on Monday the 25th. Verizon's  
20 reply is due on November the 12th. And I will endeavor  
21 to enter a decision on the motions by November the 30th.  
22 And at that point, we will have a prehearing conference  
23 scheduled for 9:00 a.m. on December the 7th here at the  
24 Commission, and a notice of that prehearing conference  
25 and the schedule we have discussed will be in a

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1 prehearing conference order that will most likely be  
2 entered early next week as well.

3 Is there anything I have left off my  
4 recitation?

5 MR. MITTLE: I have one question, you  
6 mentioned Verizon's discovery, there's a couple of  
7 discovery questions I have, are those -- can I also  
8 raise those if I can't reach a stipulation with Verizon  
9 next week?

10 JUDGE RENDAHL: Yes, I would like to try to  
11 see if you can reach a stipulation, and if not, I guess  
12 I will be hearing any disputes on that early next week.  
13 But I do need to know if there is a dispute by the end  
14 of the day on Friday, so that I can schedule something  
15 for the 19th. So I encourage you to bring those  
16 discovery questions to Verizon very quickly so that if  
17 there is a dispute we will know about it by Friday.

18 MR. MITTLE: Okay, thank you.

19 JUDGE RENDAHL: Is there any party on the  
20 bridge line who wishes to order a copy of today's  
21 transcript?

22 Hearing nothing on that regard, this hearing  
23 is adjourned and we will be off the record. Thank you  
24 very much.

25