

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 In the Matter of the Continued)
4 Costing and Pricing of) Docket No. UT-003013
5 Unbundled Network Elements and) Volume 15
6 Transport and Termination.) Pages 1734 to 1784
7 _____)

8 A prehearing conference in the above matter
9 was held on February 15, 2001, at 10:00 a.m., at 1300
10 South Evergreen Park Drive Southwest, Room 206, Olympia,
11 Washington, before Administrative Law Judge LAWRENCE
12 BERG.

13 The parties were present as follows:

14 COVAD COMMUNICATIONS COMPANY AND METRONET
15 SERVICES CORPORATION, via bridge line, by BROOKS E.
16 HARLOW, Attorney at Law, 601 Union Street, Suite 4400,
17 Seattle, Washington 98101.

18 THE WASHINGTON UTILITIES AND TRANSPORTATION
19 COMMISSION, by GREGORY J. TRAUTMAN and MARY TENNYSON,
20 Assistant Attorneys General, 1400 South Evergreen Park
21 Drive Southwest, Post Office Box 40128, Olympia,
22 Washington, 98504-0128.

23 QWEST CORPORATION, by LISA ANDERL, Attorney
24 at Law, 1600 Seventh Avenue, Suite 3206, Seattle,
25 Washington 98191.

26 TELIGENT SERVICES, INC., via bridge line, by
27 VICTORIA SCHLESINGER, Attorney at Law, 8065 Leesburg
28 Pike, Suite 400, Vienna, Virginia 22182.

29 PUBLIC COUNSEL, via bridge line, by SIMON
30 FFITCH, Assistant Attorney General, 900 Fourth Avenue,
31 Suite 2000, Seattle, Washington 98164.

32 Joan E. Kinn, CCR, RPR
33 Court Reporter

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1 VERIZON NORTHWEST, INC., via bridge line, by
2 JENNIFER L. MCCLELLAN and JEFFERY EDWARDS, Attorneys at
3 Law, Hunton and Williams, 951 East Byrd Street,
4 Richmond, Virginia 23219.

5 RHYTHMS LINKS, INC., TRACER, AND TELIGENT
6 SERVICES, INC., via bridge line, by ARTHUR A. BUTLER,
7 Attorney at Law, Ater Wynne, LLP, 601 Union Street,
8 Suite 5450, Seattle, Washington 98101.

9 ELECTRIC LIGHTWAVE INC.; ADVANCED TELECOM
10 GROUP, INC.; AT&T COMMUNICATIONS OF THE PACIFIC
11 NORTHWEST, INC.; MCLEOD USA TELECOMMUNICATIONS SERVICES
12 INC.; FOCAL COMMUNICATIONS CORPORATION OF WASHINGTON;
13 AND XO WASHINGTON, INC.; by MARY E. STEELE, Attorney at
14 Law, Davis, Wright, Tremaine, LLP, 1501 Fourth Avenue,
15 Suite 2600, Seattle, Washington 98101.

16 WORLDCOM, INC., via bridge line, by ANN
17 HOPFENBECK, Attorney at Law, 707 - 17th Street, Suite
18 3600, Denver, Colorado 80202.

19 WINSTAR WIRELESS, INC., via bridge line, by
20 PAUL HUDSON, Attorney at Law, 3000 King Street
21 Northwest, Suite 300, Washington, D.C. 20007.

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

2 JUDGE BERG: This is a prehearing conference
3 in the case captioned In The Matter of the Continued
4 Costing and Pricing of Unbundled Network Elements and
5 Transport and Termination, Docket Number UT-003013.
6 Notice of today's prehearing conference was served on
7 parties on February 5, 2001. Today's date is February
8 15, 2001. This conference is being conducted partially
9 by teleconference with parties. The parties are also
10 present. And the conference is being held in the
11 Commission's hearing room at its headquarters in
12 Olympia, Washington. I'm Administrative Law Judge
13 Lawrence Berg, and I have been appointed by the
14 commissioners to preside with them in this case.

15 At this point in time, we will proceed to
16 take appearances of parties, and let me start on my
17 left, and we will work to the right, after which time I
18 will prompt parties who are on the teleconference bridge
19 line to also enter appearances.

20 MS. ANDERL: Thank you, Your Honor, Lisa
21 Anderl, in-house counsel representing Qwest Corporation,
22 and I have previously entered an appearance.

23 MS. STEELE: Mary Steele of Davis Wright
24 Tremaine. I'm associated with Greg Kopta, who has
25 entered an appearance, representing AT&T Communications

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1 of the Pacific Northwest, XO Communications, Electric
2 Lightwave, Inc., Advanced Telecom Group, McLeod, and
3 Focal.

4 MS. TENNYSON: Thank you, my name is Mary
5 Tennyson. I have previously entered a written
6 appearance but have not appeared on the record in this
7 case. I am a Senior Assistant Attorney General. My
8 address is the same as that of Greg Trautman, who will
9 be our primary contact person for this case. My
10 telephone number direct line is (360) 664-1220. My
11 E-mail is mtennyso@wutc.wa.gov. My fax number is (360)
12 586-5522.

13 MR. TRAUTMAN: My name is Gregory J Trautman,
14 Assistant Attorney General. I have previously entered a
15 written appearance. My address is 1400 South Evergreen
16 Park Drive Southwest, Post Office Box 40128, Olympia,
17 98504. My telephone number is (360) 664-1187. E-mail
18 address is gtrautma@wutc.wa.gov. My fax number is (360)
19 586-5522.

20 JUDGE BERG: Mr. Butler.

21 MR. BUTLER: Yes, Arthur A. Butler of the law
22 firm of Ater Wynne, LLP, appearing today on behalf of
23 Rhythms Links, Inc., and Tracer. While I remain outside
24 counsel for Teligent Services, Inc., Victoria
25 Schlesinger will be appearing and speaking for Teligent

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1 today.

2 JUDGE BERG: Ms. Schlesinger.

3 MS. SCHLESINGER: This is Victoria

4 Schlesinger appearing on behalf of Teligent Services,
5 Inc. For purposes of this hearing today, I have not
6 previously entered an appearance. My address is 8065
7 Leesberg Pike, Suite 400, Vienna, Virginia 22182. My
8 telephone number is (703) 762-5183 [762-5510], and my
9 fax number is (703) 762-5584. Although I will be the
10 primary contact for Teligent Services, Inc., in this
11 proceeding, Art Butler at Ater Wynne will continue to
12 remain our outside counsel and may represent us in some
13 proceedings in this portion of the docket. I may also
14 appear at some point in the hearing for this proceeding.

15 JUDGE BERG: And I understand it's Teligent's
16 intent that Mr. Butler remain the primary contact; is
17 that correct, Ms. Schlesinger?

18 MS. SCHLESINGER: Yes, that's fine, thank
19 you.

20 JUDGE BERG: Mr. Harlow.

21 MR. HARLOW: Thank you, Your Honor, Brooks
22 Harlow on behalf of Covad Communications and Metronet
23 Services Corporation. We're also representing WorldCom
24 in this docket, however, Ms. Hopfenbeck remains primary
25 service contact for WorldCom. The address is Suite

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1 4400, 601 Union Street, Seattle, Washington 98101.
2 E-mail is harlow@millernash.com. Telephone is (206)
3 622-8484. Fax is (206) 622-7485.

4 JUDGE BERG: Ms. Hopfenbeck.

5 MS. HOPFENBECK: This is Ann Hopfenbeck
6 representing WorldCom, Inc., and since I have previously
7 entered my appearance, I won't go through the details of
8 my locations and addresses.

9 JUDGE BERG: Thank you.

10 Ms. McClellan.

11 MS. MCCLELLAN: This is Jennifer McClellan
12 and Jeff Edwards, outside counsel for Verizon at Hunton
13 and Williams, and we have both entered appearances also
14 for the contact information.

15 JUDGE BERG: Mr. ffitch.

16 MR. FFITCH: Simon ffitch, Assistant Attorney
17 General for Public Counsel. My information is on file.

18 JUDGE BERG: And Mr. Hudson.

19 MR. HUDSON: This is Paul Hudson. I'm making
20 a first appearance for WinStar Wireless, Inc. My
21 address is 3000 King Street Northwest, Suite 300,
22 Washington, D.C. 20007. Telephone number (202)
23 945-6940. My fax number is (202) 424-7645. And my
24 E-mail address pbhudson@swidlaw.com.

25 JUDGE BERG: Mr. Hudson, I'm going to have

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1 you repeat your E-mail address and ask you if you're on
2 speaker phone to speak closer to the microphone or else
3 use your handset.

4 MR. HUDSON: Okay, I'm not on speaker phone,
5 but I'm calling from a pay phone at the Kansas
6 Commission.

7 JUDGE BERG: Well, we know that, you know,
8 you're on the East Coast, and we probably lose a few
9 electrons along the way.

10 MR. HUDSON: I will have to talk to
11 Southwestern Bell about it, but do you want the whole
12 thing or just the E-mail?

13 JUDGE BERG: Just repeat your E-mail address,
14 please.

15 MR. HUDSON: Okay, is this louder now?

16 JUDGE BERG: Yes, sir.

17 MR. HUDSON: It is pb as in boy
18 hudson@swidlaw, that's S-W-I-D as in David L-A-W .com.

19 JUDGE BERG: All right, thanks very much, and
20 we do have a copy of a cover letter and petition to
21 intervene on behalf of WinStar, which we will discuss,
22 and it has been brought to my attention that your
23 contact information is on your letterhead.

24 MR. HUDSON: That's correct, on the statement
25 that I provided to you.

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1 JUDGE BERG: All right.

2 First item on my agenda is to take note that
3 there are two petitions for reconsideration and/or
4 clarification that have been filed with the Commission,
5 first by Qwest Company and the second by Public Counsel.
6 It is the Commission's preference that parties be given
7 an opportunity to answer those petitions, and I just
8 want to check with parties to see what would be a
9 reasonable time to allow.

10 MS. ANDERL: Your Honor, on behalf of Qwest,
11 we could file an answer to Public Counsel's petition by
12 a week from tomorrow.

13 JUDGE BERG: Let me take a quick look at my
14 calendar. That would be the 23rd of February. Let's
15 just take that and check with parties who would be
16 responding to the Qwest petition and see if other
17 parties would need more time than the 23rd to respond to
18 the Qwest petition.

19 MS. TENNYSON: Yes, Your Honor, Staff would
20 prefer that we be allowed to the end of the month to
21 respond because of we have both Public Counsel petition
22 and Qwest petition, and the staff who we will need to
23 consult with on that, many of them are out of the office
24 the majority of next week. They're out this week and
25 next week, so we don't have access to our staff to

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1 discuss it with them until late next week.

2 JUDGE BERG: So, Ms. Tennyson, your proposal
3 would be?

4 MS. TENNYSON: The 28th.

5 JUDGE BERG: The 28th?

6 MS. TENNYSON: Yes.

7 JUDGE BERG: All right.

8 Are there any other parties who feel that the
9 28th would be insufficient time?

10 MR. HARLOW: Yes, Your Honor, this is Brooks
11 Harlow for Covad. We could probably file an answer in a
12 week if we knew what our answer was for sure, but this
13 is really something we need to take some time and make a
14 policy determination. And so we would like three weeks,
15 perhaps the 8th or the 9th of March, to ensure that we
16 will be able to develop an answer and then get it
17 prepared.

18 MS. ANDERL: We'll take that long, Your
19 Honor, but we don't need that much time.

20 JUDGE BERG: I understand, let me just --

21 MR. HARLOW: I don't think there's anything
22 pressing on getting an answer on this.

23 MS. ANDERL: Well, Your Honor, I mean I think
24 that the pressingness is that it delays the
25 effectiveness of rates, and so while we certainly don't

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1 begrudge people enough time, we think that it isn't a
2 non-issue how much time you take.

3 JUDGE BERG: My concern is that the closer we
4 get to the start of the hearings, the less likely it is
5 that there will be any response from the Commission
6 until the middle of April. Because once my plate gets
7 full, I'm going to need to focus all of my time and
8 energy, as will the commissioners, on the Part B
9 proceeding, and there will be little time to review and
10 give a good decision on the petitions for
11 reconsideration.

12 Dr. Gable, do you have any perspective on
13 this?

14 DR. GABLE: No, but just one thing, and that
15 is will there be responses to the responses, or are we
16 just filing an initial response?

17 JUDGE BERG: I think my expectation would be
18 that would be a decision that would be made after we see
19 the responses themselves. I think the Commission will
20 certainly call for additional call it rebuttals or
21 further responses if the Commission feels it will help
22 make a fully informed decision, but I don't know that I
23 want to build that in to the process yet.

24 DR. GABLE: Well, I just raised it for the
25 obvious reason that the farther out you get from the

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1 initial comments, the harder it is to get done before
2 the late March area.

3 JUDGE BERG: I think if we're going to allow
4 responses to the answers, I doubt very much that there
5 will be sufficient time, although we may be able to work
6 on it as well during the hearing itself. We do have
7 that week off from April 9 through April 13.

8 MR. HARLOW: Judge Berg.

9 JUDGE BERG: Yes, sir.

10 MR. HARLOW: This is Brooks Harlow again. If
11 it would help, the motion on which we need the time is
12 the Public Counsel motion. We wouldn't need an
13 extraordinary amount of time on Qwest's motion. We may
14 not even respond to Qwest's motion.

15 JUDGE BERG: All right, here's --

16 MR. HARLOW: So if it would help to split
17 them up, that would work for us.

18 JUDGE BERG: Here's what I would like to do,
19 Mr. Harlow and other parties, we're going to set
20 Wednesday, February the 28th as the due date for
21 answers. And, Mr. Harlow, if your clients or if any
22 other parties feel that they need more time, then I
23 would like to have a written request filed on the 23rd
24 by the end of business, so 2-28 means filing of answers.

25 MS. HOPFENBECK: Judge Berg.

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1 JUDGE BERG: Yes, Ms. Hopfenbeck.

2 MS. HOPFENBECK: Could I ask you to push both
3 of those dates by one. I am out of the office all week
4 next week and would not be able to make a written
5 request on the 23rd. I mean I'm willing to live with an
6 earlier deadline on that than Covad requested, but it
7 may be, because this also involves -- I have to run
8 these things up the ladder within WorldCom also to make
9 a policy decision. Could I have until the 26th to make
10 that request, if necessary?

11 JUDGE BERG: Yes, we will hold on to the 28th
12 as the due date, but requests for extension of time
13 should be filed on the 26th. And for the filing on the
14 26th, the Commission will accept a faxed filing to be
15 followed by hard copy the next day. But for the filing
16 of answers, we would like the hard copy filed with the
17 Commission on Wednesday the 28th. Any questions?

18 All right, let's go to number two, which is
19 the Part A or it's in reference to the Part A order,
20 paragraphs 377 through 379, where the Commission
21 indicated that parties were to provide evidence of
22 differing costs of any associated with microwave roof
23 top collocation in the Part B proceeding. And I want to
24 check first with Qwest and Verizon as to what kind of
25 burdon that creates for making some kind of direct

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1 filing.

2 MS. ANDERL: Yes, Your Honor, thank you, Lisa
3 Anderl on behalf of Qwest. We would like to ask, as we
4 did in our petition for reconsideration, for additional
5 time to file. I'm not exactly sure or don't recall when
6 that filing is due or whether a due date was
7 established, but we have a real difficulty with filing
8 anything this month or even in March. I have been
9 advised that April 7 would be a realistic date for us to
10 provide a direct filing.

11 We have a very limited number of people in
12 the company, one I think, who is very familiar with
13 microwave collocation installations and the costing of
14 those on an ICB basis, and we need his expertise to help
15 us develop a standardized tariff. He is out of the
16 office this week, and I therefore can't give you any
17 more details about how much time it would take or
18 whether that April 7th due date could be moved up.

19 But realistically thinking that March 26 is
20 close upon us, even if we filed next week, I don't know
21 that that gives the parties a realistic opportunity to
22 engage in a couple of rounds of testimony and comments
23 as well as due hearing prep to roll it all into Part B,
24 so that's where we are.

25 JUDGE BERG: First I will acknowledge that

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1 the Commission did not set a time for it to be filed,
2 only for that to be established during this prehearing
3 conference, and I'm also going to confess to the parties
4 that I don't have a clear idea in my head of what the
5 filing itself would entail.

6 Let's hear from Verizon, and then what I
7 would want to do is just check with the other parties to
8 see from their perspective, I know it's hard to say
9 without seeing a direct filing, but how much time
10 minimally they would need or anticipate needing to
11 respond, and it may be that we're headed to a Part C
12 follow up, so Ms. McClellan.

13 MS. MCCLELLAN: Thank you, Your Honor.
14 Verizon also would find that we would be very hard
15 pressed to file something and have a round of testimony
16 in time to be considered in the current schedule of
17 hearings. For us, the same people that would be working
18 on the microwave collocation tariff and any testimony
19 accompanying that are also working on the line
20 splitting, cost and rates, and the NRC's for the filing
21 that is currently or the -- our direct case that's
22 currently already being worked on.

23 I have been told that the earliest that we
24 could have an underlying cost study for the tariff would
25 be around the third week of April, which as you know is

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1 right in the middle of the hearing. So we would prefer
2 that a filing be made after the hearings or at least at
3 the earliest in the end of the week in April when we are
4 off to be addressed as Phase C.

5 JUDGE BERG: And I will let all parties know
6 that the Part A order was in draft form for a lengthy
7 time because the Commission wanted to produce a quality
8 order. And I recognize that in consideration of the
9 date that the order was finally served to the parties,
10 it complicates the Commission's decision that this would
11 be considered in Part B.

12 Let me hear from the other parties, and then,
13 Dr. Gable, I want to give you a chance to ask some
14 questions. I know that you may have to leave shortly
15 for another teleconference, so let's hear from the other
16 parties first.

17 MS. TENNYSON: Well, in terms of Commission
18 Staff responding, not knowing what the filing is going
19 to entail, we would probably want a month to respond to
20 any filings. We had considered the suggestion of
21 putting this into a Phase C, and that might be something
22 we should discuss since it, from what I'm hearing from
23 the parties who need to do the filings, we may not have
24 the actual filings until after we're substantially into
25 the hearings on this case.

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1 JUDGE BERG: Ms. Steele, do you have anything
2 you would like to add?

3 MS. STEELE: I think any time that we have a
4 cost study filing, there typically needs to be some
5 discovery before we can respond to it, because we need
6 to get the underlying details, which I think would
7 extend it beyond a month. We're probably looking at at
8 least six weeks.

9 JUDGE BERG: Let me ask then from the
10 parties' point of view, are there any objections to this
11 matter being dealt with in a Part C proceeding to be
12 scheduled as soon after the completion of Part B as is
13 reasonable in light of the parties' needs to prepare and
14 file direct and responsive testimony?

15 MS. ANDERL: No objection, Your Honor. I
16 think though that we may want to revisit that issue in
17 terms of once we develop the microwave collocation
18 tariff and maybe let the parties look at it, it may be
19 that there are -- it's simply recompilation of a lot of
20 existing elements and only one or two new elements, and
21 so there's not a need for a full blown Part C, maybe
22 there's just a need for a round of comments like the
23 Commission has done in the past on compliance filings,
24 and maybe one or two technical conferences or something
25 like that. I don't mean to suggest that that's what it

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1 is going to be. I just want to maybe leave the option
2 open that it could be something that could be handled in
3 something less than a full blown hearing process.

4 JUDGE BERG: Anybody on the bridge line want
5 to comment?

6 MS. SCHLESINGER: Yes, Your Honor, this is
7 Ms. Schlesinger on behalf of Teligent, and I don't think
8 that this necessarily requires to be dealt with in an
9 additional Part C. As we pointed out in Part A of the
10 proceeding, a lot of these elements for the microwave
11 rooftop collocation are based upon existing rate
12 elements, and therefore I don't anticipate this taking
13 them as much time as maybe they had initially indicated.

14 JUDGE BERG: My main concern is that just
15 given the Commission's calendar that if I don't schedule
16 something to begin with, that at some later date if it
17 appears necessary that it may be difficult to arrange on
18 short notice. What I think I'm hearing from the parties
19 is that it may make sense to go ahead set up some dates
20 for cost studies or other direct evidence to be filed
21 with the Commission for responses to be made and to
22 reserve a tentative Part C hearing date or two days.
23 And then as the issue develops, the Commission would
24 entertain suggestions for alternative process. And
25 minimally that's something we could discuss before the

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1 conclusion of the Part B hearing. Would any party
2 object to going forward on that basis?

3 MS. STEELE: No objection.

4 MS. ANDERL: No objection.

5 MS. MCCLELLAN: No objection.

6 MS. TENNYSON: No objection.

7 MR. HARLOW: No objection.

8 JUDGE BERG: All right, everyone, let me
9 think about this for a moment.

10 Ms. McClellan, it would sure be helpful if
11 the parties could get a look at some kind of direct
12 filing before the conclusion of Part B. Do you think
13 that Verizon could make a filing by Friday, April the
14 13th?

15 MS. MCCLELLAN: I believe so.

16 JUDGE BERG: All right, then let's shoot for
17 that date, and if --

18 MS. MCCLELLAN: Your Honor.

19 JUDGE BERG: Yes.

20 MS. MCCLELLAN: Could I make one suggestion?

21 JUDGE BERG: Yes.

22 MS. MCCLELLAN: Part of what our difficulty
23 is would be it takes a lot less time to do the actual
24 cost studies and rates than to write testimony, because
25 a lot of the same witnesses would be the same. May I

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1 make a suggestion that we do for this Phase C like we
2 did with the other cost studies that we filed where we
3 file the cost studies on one day, and then maybe a week,
4 week and a half later file direct testimony. At least
5 then the other parties would have an opportunity to look
6 at the cost study and begin whatever discovery they
7 would need just based on the cost study. Because my
8 understanding is looking at the cost study takes longer
9 than actually looking at the testimony. And that would
10 give us the extra time that we need to draft the
11 testimony to go along with it.

12 JUDGE BERG: Any comments?

13 MS. TENNYSON: From Staff's perspective, I
14 think if we had the cost study accompanied by testimony
15 it's easier to understand the cost study rather than to
16 have the cost study followed by testimony. If we need
17 to set the dates so both could be filed simultaneously,
18 that would be Staff's preference.

19 MR. HUDSON: Paul Hudson, I had a question
20 for Verizon. Would the filing of the cost study include
21 both tariff language and rates, or are you talking about
22 just the underlying cost study?

23 MS. MCCLELLAN: Well, the tariff and the
24 rates. And actually, I had one other question related
25 to that. So far in this case, the Commission has not

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1 wanted to address tariff terms and conditions, and I
2 think with collocation partly because it was a separate
3 rule making and we had a separate tariff addressing
4 terms and conditions, so I would like to ask for
5 clarification whether the Commission intends the
6 microwave collocation tariff to only be rates or if it
7 would include terms and conditions.

8 JUDGE BERG: Dr. Gable, chime in if you have
9 a different perspective, but I think the Commission
10 consistently has tried to hold the line on any
11 consideration of terms and conditions in this proceeding
12 and has been focused on cost and pricing elements and
13 issues.

14 DR. GABLE: That is also my impression.

15 MS. MCCLELLAN: With that clarification, I am
16 pretty confident that we could make a filing on the
17 13th.

18 JUDGE BERG: And would that be supported by
19 testimony, Ms. McClellan?

20 MS. MCCLELLAN: I honestly will have to check
21 with the witness. We can do our best, and I can get
22 back to the parties and the Commission in writing
23 tomorrow morning.

24 JUDGE BERG: Well, let's do this,
25 Ms. McClellan, let's go ahead and set up April the 13th

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1 as the date for filing both cost studies with rate and
2 tariff language and supporting testimony. We will be
3 together the entire week before that of the 2nd through
4 the 6th, and at that point in time, we can discuss
5 Verizon's progress. I'm confident based upon the
6 working relationship we have all had in Part A that
7 Verizon will make every possible effort to produce both
8 testimony and cost study on the 13th, but we will have
9 time the week before to assess where Verizon is at. And
10 at a minimum, the Commission would look for the filing
11 of the cost study with rate and tariff language on the
12 13th.

13 MS. MCCLELLAN: Okay, and we will be able to
14 let you all know well in advance, because the witness,
15 consistent with what Ms. Anderl said earlier, we had an
16 informal agreement that Verizon's witnesses would go the
17 first week in April, and the witness that will be
18 working on this testimony will be there. So I will know
19 by the time he gets to Washington what shape we're in
20 and whether we can file testimony by the 13th.

21 JUDGE BERG: Well, I probably won't make any
22 decision on that until the week of April the 2nd.

23 MS. MCCLELLAN: Okay.

24 JUDGE BERG: And even if you were to let me
25 know next week that your primary witness thinks it's an

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1 impossibility, I would still be checking back with you
2 on April the 2nd in case there was some ray of light
3 that broke through the clouds.

4 MS. MCCLELLAN: Okay.

5 JUDGE BERG: As is our hope here in
6 Washington on most days.

7 All right, and then I have some calendar
8 dates with me or some calendar months with me, but I
9 don't have my calendar for the month of May.

10 Ms. Tennyson, would you look out ahead into May
11 approximately 30 days to that week of May the 13th, and
12 what would be a Friday after May 13th?

13 MS. TENNYSON: May 13th is a Sunday, so the
14 Friday following that would be the 18th.

15 JUDGE BERG: All right. And so then
16 tentatively we're going to set up for responsive
17 testimony on May 18th.

18 MS. ANDERL: Your Honor.

19 JUDGE BERG: Ms. Anderl.

20 MS. ANDERL: I'm sorry, Your Honor.

21 Ms. Tennyson, do you also have the briefing
22 dates in this docket?

23 MS. TENNYSON: The 25th of May would be the
24 date the brief is due.

25 MS. ANDERL: Thanks.

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1 JUDGE BERG: All right, and so I will set the
2 18th of May up as a response testimony date.

3 Ms. Anderl, do you think that it's necessary
4 to set a date for rebuttal at this time?

5 MS. ANDERL: Yes.

6 JUDGE BERG: All right.

7 MS. ANDERL: Likely.

8 JUDGE BERG: All right, so let's go out two
9 weeks.

10 MS. MCCLELLAN: Your Honor.

11 JUDGE BERG: Yes, Ms. McClellan.

12 MS. MCCLELLAN: It's been our experience that
13 by the time we get copies of the testimony, review it,
14 and then draft our response, two weeks is very difficult
15 to meet, and with our Phase B brief due on the 25th, we
16 would request that we have three weeks to respond to
17 that and have it due on Friday, June 1st.

18 MS. ANDERL: I would agree with that at a
19 minimum, or no, Friday, June 1st, is two weeks.

20 MS. TENNYSON: Right, June 8th would be --

21 MR. TRAUTMAN: Yeah, June 8th, and that would
22 be a week before the reply brief.

23 JUDGE BERG: We're still on the record, even
24 though I probably should have taken some mercy on the
25 reporter and gone off the record for this discussion,

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1 but let's stay on the record momentarily and one party
2 speak at a time.

3 Does anybody object to a June 8th date for
4 the filing of rebuttal testimony?

5 MR. HUDSON: This is Paul Hudson, I suggest
6 that the testimony could be delivered electronically to
7 enable Verizon and Qwest to receive that.

8 MS. ANDERL: Mr. Hudson, this is Lisa Anderl.
9 The problem with that is that not all parties deliver
10 the confidential portions of testimony electronically,
11 and so we're often delayed three or four days before we
12 receive what is a complete copy. I don't know if that
13 will be a variable that comes into play in this case,
14 but I know it has in the past.

15 JUDGE BERG: Let's go off the record just for
16 a moment.

17 (Discussion off the record.)

18 JUDGE BERG: There was a brief discussion off
19 the record regarding a date for rebuttal testimony to be
20 filed with regard to the microwave rooftop collocation
21 cost study issue, and that date shall be Monday, June
22 the 4th. Parties will continue to explore alternative
23 process. As always, if parties need additional time,
24 they should make requests for an extension as soon as
25 they know that that date will be a conflict or difficult

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1 to meet.

2 Likewise, the Commission will also notify
3 parties of prospective hearing dates. We will reserve
4 two days at the Commission for hearings on that issue.
5 Does any party think that two days on that issue would
6 be insufficient?

7 All right, then parties should look for that
8 in the prehearing conference order, and we will probably
9 look for two days in mid June, no later than late June,
10 for that schedule.

11 With regards to issue number three, in the
12 Part A order, the Commission did take note of the FCC's
13 order on reconsideration of its line sharing order. The
14 Commission's perspective is that any impact that order
15 has on the line splitting issues to be addressed in Part
16 B can be addressed through cross-examination of the
17 witnesses based on testimony that has already been filed
18 or can be presented as legal arguments in the parties'
19 briefs, but we certainly wanted to hear from the parties
20 on that point of view.

21 Ms. Anderl.

22 MS. ANDERL: Your Honor, I tend to agree with
23 that, although I do think that there is an additional
24 round of testimony coming up on the 28th of February in
25 which we are permitted to address some line splitting

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1 issues responsive to the, I don't know, February 7th
2 testimony I guess, and I think we are planning on
3 including some discussion in that testimony as well.

4 JUDGE BERG: Would it make sense then for all
5 parties to file additional testimony on the 28th
6 regarding the possible impact of the FCC's order on
7 reconsideration with regards to line splitting issues?

8 MS. TENNYSON: Your Honor, Staff's position
9 on that is we had a round of testimony we were able to
10 file on February 7th, and we did have that order, and we
11 considered that in our filing. And then the response
12 then from the other parties on February 28th should be
13 sufficient, and we can address any additional issues
14 through cross-examination and briefing.

15 JUDGE BERG: And is that the same for all
16 parties who filed on the 7th?

17 MS. HOPFENBECK: WorldCom would agree with
18 Staff's view. WorldCom did address the FCC's recent
19 order in its testimony that was filed on February 7th.

20 JUDGE BERG: And, Ms. Steele, I know you --

21 MS. STEELE: That's the case, yes.

22 JUDGE BERG: All right then, it sounds like
23 we're covered going into the hearing on those references
24 in paragraph 198 of the Part A order. Any further
25 comment before we move on?

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1 All right, Mr. Hudson, we now turn to the
2 WinStar petition for intervention, and please give me
3 just a brief overview of your client's interest and any
4 other participation of WinStar in these proceedings.

5 MR. HUDSON: Yes, WinStar is interested in
6 the rates and any other issues related to microwave
7 collocation to be addressed in this docket. At this
8 time, I would anticipate that WinStar would be narrowly
9 focused on only those issues, and for that reason they
10 had not previously participated in this docket. And now
11 that the rates for microwave collocation are going to be
12 addressed, WinStar is very interested in participating.
13 They utilize microwave collocation in a number of
14 states, and they have explored that in Washington and
15 expect to be doing more of that in the future, and are
16 an interested company in participating in this
17 proceeding.

18 JUDGE BERG: There was some breaking up of
19 your voice at different points in time, Mr. Hudson. The
20 transcript may not be 100% accurate, but I think all
21 parties heard and understood your comments. As
22 difficult as it may be, if you make further comments, I
23 will ask you just to speak up a little louder.

24 Ms. Anderl, let me just ask for confirmation
25 from your point of view or -- well, no, let me turn back

01761

1 to Mr. Hudson.

2 Is it WinStar's understanding at this point
3 that all issues that it would be concerned about are the
4 issues that are now being considered for the Part C
5 phase, or are there other issues in the Part B phase
6 that WinStar is also interested in?

7 MR. HUDSON: If microwave collocation was
8 moved from Part B, would that be only line splitting
9 issues for Part B?

10 JUDGE BERG: I'm not certain, so let me open
11 that up for comment by --

12 MR. HUDSON: WinStar would not anticipate
13 participating on line splitting issues.

14 MS. TENNYSON: Line splitting, reciprocal
15 compensation, and some cost study issues.

16 JUDGE BERG: Non-recurring charges, and there
17 may be one or two sub issues or related issues?

18 MS. ANDERL: Yes, there are other issues such
19 as building cable, the cost and prices for building
20 cable, and access to incumbent owned wire within
21 multi-tenant environments. There are also issues of
22 the monthly recurring costs for high capacity transport
23 services.

24 MS. MCCLELLAN: And monthly recurring costs
25 on the other UNE remand issue.

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1 MS. ANDERL: Correct.

2 JUDGE BERG: Based on that, Mr. Hudson, does
3 your client have an interest in participating in those
4 Part B issues?

5 MR. HUDSON: I need to review the documents
6 and confer with my client on that, but I suspect that
7 the result would be that WinStar would not participate
8 in that Part B as characterized.

9 JUDGE BERG: All right, when do you think you
10 would have an opportunity to review that with your
11 client?

12 MR. HUDSON: Would Monday be acceptable?

13 JUDGE BERG: Certainly. If you could make a
14 follow-up filing with the Commission on Tuesday, March
15 20th.

16 MS. ANDERL: February.

17 JUDGE BERG: Oh, excuse me, yes, let me back
18 up, wrong calendar. Tuesday, February the 20th, based
19 upon your understanding of the Part C phase that has
20 been established and the other Part B issues which have
21 been laid out in other supplemental orders and to
22 indicate whether your client's interests are exclusive
23 to Part C or whether there are other Part B issues that
24 your client wishes to participate in, that would be most
25 appropriate.

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1 And then I would look for other parties to
2 make written objections, if any, to WinStar's amended
3 petition to intervene on or before Tuesday, February
4 27th.

5 Does that seem adequate, Ms. Anderl,
6 Ms. McClellan?

7 MS. ANDERL: That seems fine to me. I guess
8 we should determine though whether this is in fact a
9 late petition for intervention or petition for late
10 intervention or a timely one, because I would like to
11 address the issue of whether there is good cause for
12 beginning to participate in the docket at this point in
13 time.

14 JUDGE BERG: I will let the parties know that
15 it's the Commission's perspective that this is a
16 petition for late intervention.

17 And, Mr. Hudson, you may want to pay
18 particular attention to the requirement of establishing
19 good cause pursuant to 480-09-430. And I would just
20 request that as part of your good cause showing that you
21 also inform the Commission of exactly the extent to
22 which WinStar wants to participate. That would mean
23 whether WinStar is seeking to file testimony in the
24 case, to conduct cross-examination, to file briefs, or
25 any other level of participation that your client is

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1 either willing to accept as a limitation or would
2 request from the Commission.

3 And also it would be very helpful if your
4 client would identify, if possible, where it may have
5 some common ground or common positions with other
6 parties to the proceeding. I know that there may be
7 some commonality between WinStar's position and between
8 Teligent and Covad's position in this case. It would be
9 helpful if you could assess that as part of your filing.
10 There have been occasions where interventions have been
11 conditioned on joint presentations by parties, and it
12 would be relevant the extent to which WinStar's
13 interests are already being represented in this
14 proceeding. Any questions about that, Mr. Hudson?

15 MR. HUDSON: No, I think that's fair. So
16 this amended filing would replace the filings you have
17 today; is that correct?

18 JUDGE BERG: It would supplement it.

19 MR. HUDSON: Okay, supplement.

20 MS. SCHLESINGER: Your Honor.

21 JUDGE BERG: Who is speaking, please?

22 MS. SCHLESINGER: This is Ms. Schlesinger
23 speaking.

24 JUDGE BERG: Yes, Ms. Schlesinger.

25 MS. SCHLESINGER: I just have a quick

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1 question. Would the Commission be willing to accept
2 comments in support of that petition or just interested
3 in objections?

4 JUDGE BERG: Thank you for making that point.
5 The Commission will accept both comments in support of
6 as well as objections on the Tuesday, February 27th,
7 filing date.

8 MS. SCHLESINGER: Thank you, Your Honor.

9 JUDGE BERG: Any comments or questions from
10 other parties at this time?

11 All right, we will move off 4(a) and turn to
12 4(b).

13 And, Ms. Steele, would you please, again I
14 will confess that I haven't kept up with all the filings
15 that have been made by the parties, although I have been
16 able to clear off my desk, and I will be doing nothing
17 but working on this case until the hearing date, would
18 you please provide me with a little background on the
19 new cost study and the inside wiring issue?

20 MS. STEELE: Yes, and I'm not as familiar
21 with it as I might like to be, but initially Qwest
22 proposed in their first round of testimony last year
23 that the inside wire should be on an ICB basis.

24 MS. SCHLESINGER: Excuse me, Mary, can you
25 speak into the microphone.

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1 MS. STEELE: Sure.

2 MS. SCHLESINGER: Thanks.

3 MS. STEELE: Qwest initially proposed in its
4 testimony last year that inside wire should be on an ICB
5 basis but now has made a filing with a cost study on
6 that issue, which presents us with a difficulty of not
7 having a round of testimony to respond to that cost
8 study, and we would like the opportunity to respond.

9 JUDGE BERG: And what date was that filed?

10 MS. STEELE: I believe it was filed on
11 February 7th.

12 MS. TENNYSON: That's correct.

13 JUDGE BERG: Ms. Anderl.

14 MS. ANDERL: Yes, thank you, Your Honor. We
15 agree with AT&T or Ms. Steele's other clients, whoever
16 wants to respond. We think that is proper. We didn't
17 in fact know that there was a desire for this element to
18 be priced separately when we filed our initial
19 testimony. We learned that there was when we saw AT&T's
20 responsive round of testimony, and we in turn responded
21 with a proposal. We therefore think that our timing on
22 it was proper, but we also think it's appropriate for
23 them to be allowed to respond.

24 I guess on top of that though, it would be
25 appropriate for us to do rebuttal if necessary. And

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1 depending on how much time they need, we can talk about
2 whether we should do that orally or try to slide
3 consideration of this issue into the third week of
4 hearing or something like that in order to give us
5 enough time.

6 JUDGE BERG: All right, Ms. Steele, I hope
7 your clients were already working on this. How much
8 time would you be requesting?

9 MS. STEELE: I think they need three weeks
10 given that they have told me they do want to do a little
11 discovery on the issue.

12 JUDGE BERG: So pick a date. Keep in mind
13 that we may need to provide some time then for
14 additional response.

15 MS. STEELE: Well, I think if we made it
16 March 9th that that would be sufficient time. I don't
17 know if other parties were also planning to respond.

18 JUDGE BERG: And, Ms. Anderl, if it was March
19 9th, would your client be able to respond on the 16th?

20 MS. ANDERL: Probably not, maybe the 23rd. I
21 realize that the date -- or, well, maybe we could bring
22 some responsive testimony. When is the prehearing
23 conference?

24 MR. TRAUTMAN: The 21st.

25 MS. ANDERL: We could shoot for that, Your

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1 Honor. It just depends on what we see on the 9th.

2 JUDGE BERG: What if the filing by other
3 parties was made on Wednesday the 7th, would that better
4 enable your client to file on the 16th?

5 MS. ANDERL: 16 minus 7 is 9.

6 JUDGE BERG: I understand.

7 MS. ANDERL: It would be tough, not knowing
8 what the witness and the cost analyst are doing that
9 week, I can't make that commitment, although we would
10 certainly strive to do something if that's what you
11 order, Your Honor.

12 JUDGE BERG: Let's set that up, and if a
13 weekend makes a difference, the Commission will consider
14 that closer to the date, but we will set up Wednesday,
15 March the 7th for the filing of -- are we talking more
16 rebuttal; how shall we characterize this?

17 MS. ANDERL: Let's call it responsive.

18 JUDGE BERG: Okay, we will call this response
19 to the cost study on inside wiring filed on 2-7.

20 MS. ANDERL: Your Honor, this whole issue of
21 what we call it is going to be an issue. Could we call
22 it building cable or building wiring right now.

23 JUDGE BERG: All right.

24 MS. ANDERL: Because inside wire, while the
25 FCC has used that in I think kind of a sloppy way, it

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1 does in our tariffs have a specific meaning, which is
2 the customer owns it, and that's actually the opposite
3 of what we're talking about here. So maybe if we could
4 just call it building cable or building wire for now
5 until we narrow it on the issue.

6 JUDGE BERG: All right, I see heads nodding,
7 so we will refer to this as the cost study on building
8 cable or building wire, and on Wednesday, March the 7th,
9 parties shall file a response to U S West, excuse me,
10 we're now talking Qwest, legacy brain, response to
11 Qwest's cost study on building cable and building wire,
12 and parties shall be entitled to file rebuttal to that
13 response testimony on Friday, March 16th.

14 Anything further on this agenda item?

15 MS. ANDERL: No, Your Honor.

16 JUDGE BERG: All right, we're getting the big
17 ones out of the way. Well, we've got the last big one
18 here to take care of, and that will be the scheduling of
19 witnesses and just an overview of where we are and
20 whether we have -- what generally our ability is to meet
21 our goal of covering all testimony within the allotted
22 time period, and for that discussion, we will go off the
23 record.

24 (Discussion off the record.)

25 JUDGE BERG: I will just take note for the

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1 record that Mr. Hudson, WinStar's counsel, has a
2 conflict and has had to leave the prehearing conference.

3 A discussion occurred off the record
4 regarding the scheduling of witnesses during the
5 evidentiary phase of part B. The witness schedule as
6 it's presently known will be that we will begin with
7 testimony from Qwest witnesses on Monday, March 26th,
8 and continue through the end of that week except for
9 Qwest witness Taylor. Qwest witness Taylor will appear
10 and be cross-examined on Friday, April the 6th.

11 Verizon witnesses are tentatively scheduled
12 to begin presentation and cross-examination on Monday,
13 April the 2nd, and will continue through that week.
14 It's our early intention that during the afternoon
15 session of Thursday, April the 5th, that Verizon's
16 witnesses on reciprocal compensation will begin to take
17 the stand continuing to the Friday April 6 session, and
18 all witnesses on reciprocal compensation should appear
19 and be cross-examined on Friday, April the 6th.

20 Beginning on Tuesday, April the 17th, it's
21 our goal that witnesses for the parties other than Qwest
22 and Verizon will be cross-examined. There's still
23 considerable fine tuning that will need to be done based
24 upon estimates of cross-examination that may not be
25 known until just before the next prehearing conference

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1 scheduled for Wednesday, March 21.

2 Anything else the parties want to add to that
3 summary of the discussion?

4 All right, in that case, we will move on to
5 my item six, and I will just indicate that based upon
6 the filings that I have received, parties should take
7 note that if Ms. Lisa Rackner was on a service list as a
8 party representative before now, she should be removed.

9 Likewise, although Ms. Schlesinger has
10 entered an appearance and she will appear in the party
11 representative block, Mr. Butler will continue to be the
12 primary representative for Teligent for service. And I
13 will leave it to Mr. Butler and Ms. Schlesinger to work
14 out how documents need to be distributed among outside
15 counsel and in-house counsel.

16 Are there any other changes to the service
17 list that the parties may be aware of or any comments to
18 that characterization?

19 MR. HARLOW: Your Honor, this is Brooks
20 Harlow.

21 JUDGE BERG: Yes, sir.

22 MR. HARLOW: I think it might be helpful to
23 people if I explain the situation of Covad.

24 JUDGE BERG: All right.

25 MR. HARLOW: The one thing that hasn't

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1 changed at least recently is I'm still the primary
2 service contact for Covad. In addition, Covad has new
3 in-house counsel, Megan Doberneck, and we sent out a
4 notice requesting that she be added to the service list
5 as a secondary. She will be -- Ms. Izon will be
6 transitioning her responsibilities to Ms. Doberneck, and
7 when that transition is complete, we will send out a
8 notice so the parties can remove Ms. Izon.

9 JUDGE BERG: All right, Ms. Doberneck
10 certainly can be on the Commission's service list just
11 like any other interested party, and I presume that's
12 what has been accomplished by her filing. Is it your
13 expectation at some point she will become the primary
14 representative for service by other parties to the
15 proceeding?

16 MR. HARLOW: No, but if that should change,
17 we will notify the parties.

18 JUDGE BERG: Okay.

19 Any questions about that or anything else?

20 MS. TENNYSON: Your Honor, this is Mary
21 Tennyson, I did have from January 15th a request to
22 remove Richard Lipman of McLeod USA from the service
23 list and replace it with Marianne Holifield. I don't
24 know whether that's -- I don't have them on an active
25 list at this point, but if anyone knows, I would like

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1 some clarification, are they participating actively in
2 these stages?

3 JUDGE BERG: Ms. Steele, are you familiar
4 with --

5 MS. STEELE: I haven't seen that document,
6 but I will track that down and try to figure it out.

7 MS. ANDERL: Your Honor.

8 JUDGE BERG: Ms. Anderl.

9 MS. ANDERL: Yes, Your Honor, it's been very
10 confusing, because parties send out requests that
11 attorneys be substituted on the service list, and it's
12 never clear whether that means they're now the primary
13 contact or the original outside counsel remains the
14 primary contact. We had been sending things to
15 Mr. Kopta for McLeod, and then we got this notice that
16 said, please make Marianne Holifield the contact. Now
17 does that mean if we want to do so as a courtesy or that
18 Mr. Kopta is no longer the attorney? That's never
19 clear, and I think that the parties just don't
20 understand how exactly you have ordered it be done in
21 the past, so some clarification would probably be good.

22 JUDGE BERG: And I think I need to take some
23 responsibility for that. Certainly this is a situation
24 that's evolved, which is one of the reasons why I wanted
25 to bring it up as part of today's agenda. I will make

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1 clear in the prehearing conference order that parties
2 are only obligated to make service to the primary
3 representative that's listed on the attached parties'
4 representative list that will be provided.

5 I may list other counsel so that, for
6 example, for party representatives I may show
7 Ms. Schlesinger on the list, but I will make sure that
8 there's a clear designation that the party
9 representative to be served is Mr. Harlow. And there
10 will be only one person that needs to be served for any
11 party in this proceeding. Other parties are certainly
12 welcome to make any other agreements they may want to
13 for courtesy copies to be served on other people, but
14 that will be outside of the requirements for service in
15 this proceeding.

16 And then additional parties that want to be
17 on the Commission's service list for documents that the
18 Commission serves to other parties are free to make that
19 desire known to the record center, as they have, and the
20 Commission will continue to keep them on the
21 Commission's service list, not as parties to this
22 proceeding, but as interested persons.

23 MS. MCCLELLAN: Your Honor.

24 JUDGE BERG: Yes.

25 MS. MCCLELLAN: This is Ms. McClellan. One

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1 other area of clarification is will the service list
2 that you include with the prehearing conference order be
3 for both Phase A and Phase B? I know in some instances,
4 parties have different attorneys designated for each
5 phase, and in other instances the parties don't specify.
6 And it's been our assumption that if they don't specify,
7 then they should be served both Phase A and Phase B, but
8 that has never been clear that that's what we were
9 supposed to do.

10 JUDGE BERG: It will be just for Part B, and
11 I will make clear right now, maybe we should -- I will
12 try and be more careful with my terminology as well.

13 MS. MCCLELLAN: Okay.

14 JUDGE BERG: And that is we will refer to the
15 party representative list as the list of parties that
16 must be served as opposed to a service list, which may
17 include other parties based on agreements between the
18 parties or the Commission's service list.

19 With regards to Part A, if the parties need
20 some clarification as to who the Part A service list is,
21 I will help facilitate that, but it should be the same.
22 Not having heard any objection from anybody that they're
23 not being properly served, I think the best way to
24 proceed is parties should continue to maintain their
25 Part A service list just as they did in their Part A

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1 briefs. If, in fact, parties think that there are more
2 than two parties or two party representatives that were
3 on that service list, I will leave it to them to bring
4 that to my attention for further clarification.

5 Does that suffice, Ms. McClellan?

6 MS. MCCLELLAN: Yes, thank you.

7 JUDGE BERG: All right.

8 MR. BUTLER: Your Honor, this is Art Butler,
9 I can express a somewhat contrary preference. I would
10 prefer that the service list that you are developing for
11 Part B be the one that is followed for Part A as well in
12 the absence of some concrete expression from the parties
13 to the contrary, because I think some of the name
14 changes that you are seeing on the Part B list reflect
15 job changes, et cetera, and it will be the most current
16 list of contacts for representatives for the various
17 parties.

18 JUDGE BERG: Well, you know, my main concern
19 was the Attorney General's office, which clearly has a
20 Part A team and a Part B team, but maybe that would make
21 sense then, and what I could do is make the new list the
22 parties' representatives list for both parts and just
23 make an exception for the Commission Staff.

24 MS. TENNYSON: No, at this point, Your Honor,
25 this is Mary Tennyson, and Shannon Smith who did handle

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1 the Part A proceedings is going to be transferring to
2 another section of the office for a six month time
3 period. Therefore, Mr. Trautman and I will be
4 responding to anything and following up on any Part A
5 things, so we can work -- although, you know, until a
6 week ago it was different, right now we are the two
7 attorneys on it. So I would concur in Mr. Butler's
8 suggestion that we keep the list the same unless parties
9 notify us differently.

10 JUDGE BERG: All right.

11 MS. TENNYSON: That they want a different
12 contact for Part A.

13 JUDGE BERG: All right, thank you,
14 Ms. Tennyson. I will make that clear in the order, and
15 hopefully there's not that much left to be done in Part
16 A, ignoring history.

17 MR. HARLOW: Your Honor, this is Brooks
18 Harlow, just to remind the parties, this is old news,
19 but a number of service lists still contain
20 Mr. Deanhardt on it. He's no longer with Covad.

21 JUDGE BERG: Thank you, that is one of the
22 things I will want to correct. I will try and get my
23 order out in short notice so that parties can begin to
24 rely on that document.

25 Anything else on that?

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1 All right, that takes care of both my items
2 six and seven. My number eight, all I want to say is to
3 let parties know that when they file electronic
4 versions, I think it's to the parties' benefit that they
5 produce a document in PDF format, but under any
6 circumstances, the Commission also needs to have a
7 version in Word or Word Perfect. There was one recent
8 filing where the PDF version was produced, but the Word
9 version was not. Once it was brought to the party's
10 attention, the Word versions appeared immediately, but
11 we would appreciate parties continuing to help the
12 Commission by providing documents pre-filed in both
13 versions at the same time.

14 Any comments from any parties on that?

15 MR. BUTLER: I'm sorry, Your Honor, this is
16 Art Butler again, could you clarify again in which
17 format electronic filings are to be made?

18 JUDGE BERG: The filings should be made in
19 either Word or Word Perfect, and we're also requesting
20 that a version in PDF also be made. The PDF version is
21 helpful because it preserves all of the formatting that
22 is selected by the party making the filing, where very
23 often Word documents or Word Perfect documents will
24 change as it's being posted to the Commission's web
25 site, on-line library, or printed out. And hopefully

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1 the day will come where it's very easy for everybody to
2 use the same format and preserve all of those issues in
3 the way a document looks and is electronically
4 delivered, but we're not there yet.

5 MR. BUTLER: Thank you.

6 JUDGE BERG: You're welcome.

7 Let's be off the record at this time.

8 (Discussion off the record.)

9 JUDGE BERG: There have been several
10 housekeeping issues that have been discussed that do not
11 require a notation on the record itself, however, we now
12 come to item ten on the agenda. As I mentioned to the
13 parties at one point off the record, we have two
14 commissioners sitting at this time. These commissioners
15 may have conflicts that arise during the hearing
16 schedule. The commissioners are communicating between
17 themselves about potential conflicts. The purpose of
18 that communication is to ensure that there is always at
19 least one commissioner on the Bench during the hearing.

20 The commissioners have represented that if
21 either are not present during any part of the
22 evidentiary phase of the proceeding that they will spend
23 whatever time necessary in reviewing the hearing
24 transcript and other documents to be fully informed of
25 the testimony that is received and other issues that are

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1 discussed to make a fully informed decision as part of
2 the final Part B order. But they do want to express to
3 the parties in advance that they will not be off the
4 Bench any more than is necessary during the hearing.

5 At this time, do any parties object to either
6 of the commissioners being off the Bench by necessity
7 during the course of the hearing?

8 MS. ANDERL: Your Honor, Qwest does not
9 object to conducting the hearing in the manner in which
10 you have described it.

11 JUDGE BERG: The intent is that there will
12 always be at least one commissioner, and if for some
13 reason there were to be no commissioners on the Bench,
14 there would be further discussion with the parties about
15 that. So we're only looking at talking about a
16 situation where there would be only one of two sitting
17 commissioners.

18 It's not necessary for any other parties to
19 express their acceptance. I'm only looking for a
20 statement of objection at this time. And let me just
21 check once more, do any parties have other questions or
22 objections?

23 MR. HARLOW: Your Honor, I'm not clear what
24 you meant by your last statement. This is Brooks Harlow
25 for Covad.

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1 JUDGE BERG: Well, Ms. Anderl spoke up on
2 behalf of her client to affirm that Qwest does not
3 object to the circumstances that I described, and I just
4 wanted to let the other parties know that it's not
5 necessary to go down the list and talk with each party
6 if they understand and accept the situation. I'm only
7 looking to make a record if any party has an objection.

8 MR. HARLOW: All right, so silence would not
9 be a waiver, Your Honor?

10 JUDGE BERG: Silence would be a waiver,
11 Mr. Harlow.

12 MR. HARLOW: Oh, well, this is a significant,
13 I think, procedural issue under the APA since if you
14 only have -- if you don't have two out of the three
15 commissioners available, the Commission is obligated to
16 follow different procedures. And I'm certainly not in a
17 position to waive those rights without consulting with
18 my client, which I haven't had a chance to do since this
19 is the first I have been aware of the problem.

20 JUDGE BERG: All right, then with the --

21 MR. HARLOW: Or the potential problem.

22 JUDGE BERG: All right, thank you.

23 MR. HARLOW: I think --

24 JUDGE BERG: And, Mr. Harlow, you don't need
25 to say anything further.

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1 MR. HARLOW: I do have a question, Your
2 Honor.

3 JUDGE BERG: All right.

4 MR. HARLOW: If I may.

5 JUDGE BERG: Pop the question.

6 MR. HARLOW: In approaching my client, which
7 I'm certainly willing to do, it would be helpful to have
8 a better feel for whether we're talking about an hour or
9 two or a half day here or there or are we talking about
10 potentially several days of absence?

11 JUDGE BERG: I can't limit the commissioners
12 on that point. There are other potential emergency
13 situations that exist that the commissioners are also
14 responsible for participating or being involved in. All
15 I can say is that whatever emergency might arise, the
16 commissioners are only looking to deal with
17 circumstances where one of the two commissioners would
18 not be on the Bench. And I'm not making any
19 representation as to what the Washington APA does or
20 does not allow for. I'm just merely looking for a
21 statement of objection.

22 And I think under the circumstances, and I
23 respect your concerns, Mr. Harlow, let's set up a date
24 for parties to file written objections to proceeding in
25 this case where only one of two current sitting

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1 commissioners may be available. And here we are at
2 let's say by February the 23rd, I would like to see
3 written objections from parties to the possibility of
4 going forward where only one of two sitting
5 commissioners are available at hearing.

6 And please understand that the circumstances
7 that are being presented are that any commissioner who
8 is not present who would later participate in a decision
9 would do whatever necessary to be fully informed of all
10 proceedings that occurred during his or her absence.

11 And we will look for that on February the
12 23rd and then decide what other response may be
13 necessary, and that ought to give counsel an opportunity
14 to do whatever legal research they need to do and to
15 present whatever position their clients may have.

16 Is that acceptable to -- let me put it this
17 way, do any parties object to that proposal?

18 Okay, that's how that issue stands.

19 Then the last item that I have is to indicate
20 to parties that on February the 14th, yesterday, the
21 Commission served on the parties of record notice
22 extending time for Verizon to file OSS and line sharing
23 compliance filings. That now shall run on the same
24 track as Verizon's filing of collocation compliance
25 filings, which the notice also indicates that responses

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1 to those items filed by Verizon made by other parties
2 shall be made, when you do the math, two weeks
3 afterwards. And I believe that the Commission accepted
4 Verizon's calculation of dates so that all compliance
5 filings will be made on March 7, 2001, which means that
6 responses will be due on March 21st.

7 So this is just a heads up to parties that
8 there's a lot happening during that time period, and
9 after those filings are made, if other parties need to
10 seek additional time to file responses, the Commission
11 encourages you to file those requests as soon as it
12 becomes evident that additional time is necessary.

13 Any questions about the Commission's granting
14 Verizon's request or other issues relating to compliance
15 filings in response to the Part A order?

16 All right, then I will tell the parties that
17 takes care of everything on my list. Is there anything
18 else that any party wants to raise at this time?

19 Hearing nothing, the prehearing conference is
20 adjourned.

21 (Hearing adjourned at 12:30 p.m.)

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