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1           JUDGE MACE:  Let's be on the record in Docket  
2  Number UT-023003.  This is the review of unbundled  
3  loop and switching rates and review of deaveraged  
4  zone rate structure.  This is the recurring cost, new  
5  generic cost docket.

6           My name is Theodora Mace.  I'm the  
7  Administrative Law Judge who's been assigned to hold  
8  hearings in this case.  Today's date is September  
9  25th, and we're convened at the Commission's offices  
10 in Olympia, Washington, in the offices of the  
11 Washington Utilities and Transportation Commission,  
12 to be exact, in Olympia, Washington.

13           We have a few people here in the hearing  
14 room and several people on the conference bridge.  
15 I'd like to ask first to have the people in the  
16 hearing room introduce themselves, and then I'll go  
17 to the folks that are on the conference bridge.

18           MS. RONIS:  Yes, thank you.

19           JUDGE MACE:  Is your microphone on?

20           MS. RONIS:  I believe it is.  Catherine Kane  
21 Ronis, Wilmer, Cutler & Pickering, on behalf of  
22 Verizon.

23           MS. STEELE:  Mary Steele, of Davis, Wright,  
24 Tremaine, on behalf of AT&T.

25           MR. FFITCH:  Simon ffitch, on behalf of

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1 Public Counsel.

2 JUDGE MACE: Hold on just a moment. We have  
3 one more appearance in the hearing room.

4 MS. SMITH: Shannon Smith, Assistant  
5 Attorney General, appearing for Commission Staff.

6 JUDGE MACE: Thank you. I'd like Qwest,  
7 Counsel for Qwest to introduce themselves now.

8 MS. ANDERL: Thanks, Your Honor. Lisa  
9 Anderl.

10 MR. SHERR: And this is Adam Sherr, Your  
11 Honor.

12 JUDGE MACE: And Counsel for WebTEC?

13 MR. BUTLER: This is Art Butler, appearing  
14 for WebTEC.

15 JUDGE MACE: Counsel for Covad. Counsel for  
16 Covad. Mr. Rice?

17 MR. RICE: Yes, this is David Rice, with  
18 Miller Nash, on behalf of Covad.

19 JUDGE MACE: Thank you. Counsel for  
20 Verizon, other than -- or those who are appearing for  
21 Verizon other than Ms. Ronis, who are on the  
22 conference bridge.

23 MR. HUTHER: This is Chris Huther, with  
24 Preston Gates Ellis & Rouvelas Meeds.

25 MR. KREEGER: This is David Kreeger, with

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1 Wilmer, Cutler & Pickering, on behalf of Verizon.

2 JUDGE MACE: MCI.

3 MS. SINGER NELSON: Michel Singer Nelson, on  
4 behalf of MCI.

5 JUDGE MACE: Is there anyone on the bridge  
6 from Public Counsel?

7 MR. FFITCH: Simon ffitch, for Public  
8 Counsel.

9 JUDGE MACE: Thank you. Are there any other  
10 counsel who want to enter their appearances at this  
11 point? Thank you. Today's hearing is -- I titled it  
12 a discovery scheduling conference. One of the  
13 purposes of the hearings is to address the motion to  
14 strike the Verizon cost model that's been filed by  
15 Commission Staff, AT&T, and MCI in this proceeding.

16 And my sense of the argument and the  
17 discussion that's going to be associated with that is  
18 that there will be some scheduling ramifications,  
19 depending on the outcome of the argument.

20 I want to also address the question of the  
21 impact of the Triennial Review on this proceeding and  
22 to inquire of Counsel whether any party will be  
23 filing a motion to continue these proceedings in  
24 light of comments that were filed pursuant to a  
25 notice that Judge Rendahl sent out about the

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1 Triennial Review.

2           And then, finally, to the extent counsel are  
3 able, there are a couple of questions that I have  
4 with regard to a petition for reconsideration that's  
5 been filed in this case. It has to do with the  
6 ruling that I made on a motion to compel discovery of  
7 AT&T and MCI.

8           I know that that was not a topic included in  
9 the notice, and so if Counsel are not prepared to  
10 address the questions I have, I'll understand, and  
11 we'll deal with it in another framework, but if I  
12 could ask those questions, get answers on the record  
13 today, that would be very helpful.

14           So does anyone have anything of a  
15 preliminary nature before we begin talking about the  
16 motion to strike the Verizon cost model? All right.

17           Having said that, then, I have read what's  
18 been filed, both the motion and the responses to the  
19 motion, and if you have additional argument, I'd be  
20 happy to hear it now. Otherwise, I'd like to -- I'll  
21 just turn to some questions that I have. Who's going  
22 to speak for Verizon today?

23           MS. RONIS: I am, Your Honor, on the motion  
24 to strike.

25           JUDGE MACE: Go ahead.

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1           MS. RONIS: I believe we did set forth in  
2 detail our response to AT&T's, Staff and MCI's  
3 motion, so I don't have anything to add at this  
4 point, except --

5           JUDGE MACE: Well, you know, actually, I'm  
6 taking this out of turn, and I should be asking AT&T  
7 and MCI and Staff, actually, if they have argument  
8 that they want to make right now, and I'll ask you.

9           MS. RONIS: Thank you.

10          JUDGE MACE: I will give you your turn.  
11 Sorry.

12          MS. STEELE: I do have just a few things I  
13 want to say. First of all, I want to indicate that,  
14 as a preliminary matter, there's a lot of argument in  
15 Verizon's response regarding what AT&T, MCI, and  
16 other parties have or haven't done in providing  
17 discovery to Verizon, also things that the HAI model  
18 does or doesn't do. I'm not going to respond to  
19 those unless, Judge, you have questions about them,  
20 because I don't view them as being relevant in this  
21 proceeding.

22           I do want to just touch briefly on concerns  
23 that we have regarding the Web-based cost model here,  
24 and that's the only issue that I want to address in  
25 addition to the arguments that we put forth in the

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1 motion.

2 In the past, cost models have always been on  
3 file with the Commission, and you could have the cost  
4 model and you could do whatever you wanted with it.

5 Verizon has chosen, for some reason, to go  
6 against that in this proceeding and has, not because  
7 anyone asked them to, but because they decided to,  
8 created this new Web-based system. Now, because that  
9 is with Verizon and nobody else, it's not on file in  
10 this proceeding, which creates a number of  
11 ramifications, not just on the attorney-client issue,  
12 but also on the record on appeal, for example, and  
13 also some other ramifications, practical ones for the  
14 hearing that I do want to touch on.

15 I think we've already put forth our concerns  
16 about the attorney-client privilege, but I want to  
17 touch on two other issues. And that is, first, we  
18 don't have this model in the record. One of the  
19 reasons that Verizon has put this Web-based model  
20 together, according to the presentation that we heard  
21 on July 8th, is so that they can continue to make  
22 modifications to the model. In fact, there have been  
23 a number of modifications that have occurred since  
24 the filing.

25 We don't have a static model that's in the



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1 record that is there for purposes of appeal.  
2 Instead, we've got a model that's going to be, you  
3 know, who knows how long an appeal in this proceeding  
4 would take and who knows what this model's going to  
5 look like in two years.

6 JUDGE MACE: Technically, nothing is in the  
7 record right now.

8 MS. STEELE: Right, I understand that.

9 JUDGE MACE: But go ahead.

10 MS. STEELE: But when there is a record,  
11 this won't be in it. And it also creates practical  
12 concerns for how we're going to conduct the hearing.  
13 It has been my practice and I found it very helpful  
14 in the past to, when I'm cross-examining, actually  
15 have the model running, have the witness looking at  
16 the model, have the witness manipulate the model.

17 With this Web-based model, when I've got it  
18 on my computer, I've got that under control. I can  
19 make sure it's running, I can make sure it's  
20 available, I can make sure everything works before we  
21 get started with the hearing. If it's on the Web, we  
22 all know the concerns and problems that that raises.  
23 Connections get interrupted, the model may go down,  
24 and this is outside the control of the parties during  
25 the hearing. And I just want to raise that as

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1 another practical concern that we need to deal with.

2 I think it would be helpful to Verizon,  
3 frankly, to have a ruling as to whether a Web-based  
4 model is appropriate in this proceeding before we go  
5 and have this proceeding so that if, in fact, the  
6 decision of the tribunal is that no, it's not  
7 appropriate to have a Web-based model that we can't  
8 have in the record, that we can't have available for  
9 appeal, that creates all kinds of attorney-client  
10 issues, work product issues, if we can have that  
11 ruling now, at least Verizon can deal with it and  
12 provide a model that the parties can manipulate, that  
13 can be in the record, and that is available without  
14 the concerns that we have raised regarding the way in  
15 which Verizon has structured its model currently.

16 JUDGE MACE: Thank you. Does Staff have  
17 anything to add to that?

18 MS. SMITH: Very, very briefly, Your Honor,  
19 and I won't repeat the comments made by Ms. Steele,  
20 and this is Shannon Smith for Commission Staff. I  
21 want to respond to a point made in Verizon's response  
22 to the motion to strike, and that is the idea that it  
23 takes a lot of time to work through cost models and  
24 it's hard work, and somehow or another Staff and the  
25 other parties are shunning away from this model

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1 because it's time consuming.

2           That is not why we are having problems with  
3 this cost model. It's not just time consuming; it is  
4 almost impossible to get through the model and do any  
5 analysis of the model. Just to do a -- just to load  
6 one of the programs -- or not one of the programs,  
7 but one of the modules in the model to do a simple  
8 review took two to three hours just to load the -- to  
9 load it up to prepare to do the analysis.

10           Staff isn't just analyzing Verizon's costs  
11 in this docket. We are also working on the Qwest  
12 issues, and it is just absolutely cumbersome to try  
13 to work through this model, if not impossible, and we  
14 believe we may not be able to do any meaningful  
15 analysis of Verizon's cost study, because we simply  
16 cannot work through the model.

17           JUDGE MACE: One thing I wanted to address  
18 and ask the parties on this side of the motion to  
19 strike, in the pleadings, you talk about how you  
20 didn't really get access to the model finally until  
21 August 11th, with all the confidential parts, and  
22 then even then there was an update, and it's August  
23 26th, and there's still problems, and that there were  
24 also problems because you had to sign some additional  
25 confidentiality agreement.

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1 I'm curious why the parties waited so long  
2 to raise these issues when it seems like it was  
3 clear, even on June 26th, that Verizon had not filed  
4 everything that needed to be filed. Can you address  
5 that? Let me turn back to Ms. Steele, and I'll let  
6 Staff, and then I'll also ask Ms. Singer Nelson to  
7 address this issue.

8 MS. STEELE: Well, and let me give you --  
9 just give you the history of how that happened. On  
10 July 23rd, Verizon told us that we could not have  
11 access to the model and a number of the confidential  
12 filings unless we signed this additional  
13 confidentiality agreement.

14 JUDGE MACE: July 23rd or June 23rd?

15 MS. STEELE: June 23rd, three days before  
16 the filing. At that point, frankly, we thought that  
17 working through the issue would be the most  
18 expeditious way to deal with it. So we tried to work  
19 through the issue with Verizon. It frankly surprised  
20 us that it took until August for Verizon to get that  
21 information, to make that information available to  
22 us. There were a number of phone calls, a number of  
23 when is this going to be available. It was always,  
24 Oh, next week, oh, next week, and so --

25 JUDGE MACE: I guess -- I think one of the

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1 issues that Verizon raises in their argument is that  
2 AT&T had, if my memory serves, had signed a similar  
3 confidentiality agreement in another jurisdiction. I  
4 thought it was California.

5 MS. STEELE: Right, it was California.

6 JUDGE MACE: So this would not have been an  
7 unfamiliar thing for AT&T.

8 MS. STEELE: Well, the issue is it was  
9 signed in California. We have different experts in  
10 this state than were in California. There, all the  
11 experts were principally outside of the company. We  
12 have some internal company people in this proceeding  
13 and some other folks who, when they reviewed -- the  
14 key problem here is the three-year restriction on  
15 anyone who signs the agreement from being employed in  
16 a number of areas.

17 JUDGE MACE: Right.

18 MS. STEELE: And that, as my experts told  
19 me, and these are different people than involved in  
20 California, the experts who had concerns said, I  
21 wouldn't sign this in a noncompete agreement for  
22 employment, why should I sign it here, so -- and that  
23 was the concern. This is a very broad, essentially a  
24 noncompete agreement that our experts were not  
25 comfortable signing, so we had to deal with that

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1 situation here.

2 JUDGE MACE: And you chose not to bring that  
3 issue to the Commission? You --

4 MS. STEELE: Well, we thought that the  
5 quickest way to deal with it was to just try and get  
6 it resolved, and so that's the step that we took. In  
7 hindsight, probably we should have just come and  
8 argued that it shouldn't be required, but, rather  
9 than do that, we were hopeful that it could get done  
10 relatively quickly, and it didn't, and that's why  
11 we're here today, in part.

12 JUDGE MACE: Okay. Ms. Smith.

13 MS. SMITH: Thank you, Your Honor. I just  
14 have a brief comment to that. The Commission Staff  
15 had access to VZ Cost much earlier than AT&T and MCI,  
16 although we did have to spend some time negotiating  
17 with Verizon to get Verizon to agree to allow Staff  
18 to have access to the model without signing the  
19 third-party confidentiality agreement.

20 And like AT&T, we approached this in terms  
21 of perhaps it's better and more expeditious for the  
22 parties to work this out amongst themselves than to  
23 involve the Commission in this, because we too were  
24 hopeful that we would be able to quickly resolve that  
25 issue. For Staff, we were able to, but we chose that

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1 path because oftentimes if parties can work something  
2 out better and leave the Commission out of something  
3 that doesn't necessarily need to be adversarial,  
4 that's a better result for everybody.

5 JUDGE MACE: One thing that Verizon raises  
6 in its argument is that Staff apparently called the  
7 help line and tried to get some assistance,  
8 apparently successfully, and Verizon expresses  
9 puzzlement at Staff's joining in this motion because  
10 Staff didn't seem to express much in the way of a  
11 problem.

12 MS. SMITH: Staff has had considerable  
13 problems, and Staff -- at least one Staff member, Tim  
14 Zawislak, has called the help line. Not always were  
15 his questions thoroughly resolved and not always was  
16 he able to go through and use the model.

17 From what I understand, Mr. Zawislak was  
18 provided with some assistance, but the assistance,  
19 at the end of the day, was not meaningful to Mr.  
20 Zawislak and his trip through VZ Cost, and Staff  
21 joined in this motion because we are very concerned,  
22 for the same reasons that AT&T and MCI are concerned,  
23 about this Web-based model. We don't have the same  
24 concerns that they have about the length of time it  
25 took to get the model, because we had access to it

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1 sooner, and we are extremely concerned about the  
2 privacy issues that are raised in the motion to  
3 strike, and we simply have not been able to use the  
4 model to do any meaningful analysis of Verizon's cost  
5 study, and that's why we are joining in this motion  
6 to strike.

7 JUDGE MACE: Thank you. Ms. Singer Nelson.

8 MS. SINGER NELSON: Yes, Judge. MCI has  
9 nothing to add, just joins in all the comments made  
10 by AT&T. We've been working closely together on this  
11 case, sharing expert witnesses. And so our  
12 experiences, as expressed by Ms. Steele, are really  
13 the experiences of both AT&T and MCI.

14 JUDGE MACE: Let me ask one more question of  
15 the parties on this side of the motion. Assuming for  
16 the moment that the Commission does not strike the  
17 model, but would rather try to give the parties more  
18 time within the current schedule to work with the  
19 model, what -- I have very little in the argument  
20 about a sort of suggested alternative schedule.

21 Someone in one of the arguments mentioned  
22 December 9th as a possible filing date for rebuttal,  
23 and the current schedule calls for a response filing  
24 on October 3rd and a rebuttal filing on November  
25 24th, and I wasn't really sure what that suggested



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1 proposed date actually meant in terms of the current  
2 schedule.

3           So having said that, do the parties on this  
4 side of the motion have some kind of proposal that  
5 they would make that would allow more time, assuming  
6 the model is not stricken, for them to examine the  
7 model and work with the model? I'll turn to AT&T  
8 first.

9           MS. STEELE: We don't think it can be done  
10 with respect to Verizon within the current schedule.  
11 We have six people who are working on this model and  
12 attempting to make some heads or tails of it. The  
13 primary person provided an affidavit indicating he  
14 believed it would take at least three months to  
15 adequately analyze this model.

16           Part of it is the difficulty in dealing with  
17 the model, part of it is just the shear volume of  
18 materials. I think Verizon itself has indicated  
19 10,000 pages, plus the model itself, plus, you know,  
20 a number, plus all the discovery that we've had on  
21 the model, which the first time we got confidential  
22 information, it was six banker's boxes full of  
23 materials. So that's where we are. I don't think it  
24 can be dealt with with respect to Verizon in the  
25 current schedule.

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1 JUDGE MACE: Ms. Smith.

2 MS. SMITH: We also are faced with similar  
3 concerns about doing any meaningful analysis of this  
4 model and filing testimony by October. We certainly  
5 would need more time. I don't know if we've actually  
6 quantified the amount of time that we would need in  
7 order to do any analysis of this. I mean, if we're  
8 going to file -- if we're going to file testimony in  
9 the current schedule, we simply won't be able to  
10 analyze Verizon's model. And you know, perhaps three  
11 months, we're just -- we're not sure. It's been so  
12 hard to get through this that Staff can't really say.

13 JUDGE MACE: And Ms. Singer Nelson.

14 MS. SINGER NELSON: I would concur with the  
15 comments of both AT&T and Staff.

16 MS. SMITH: And Your Honor, another point  
17 that was in the motion to strike that would be  
18 something that Staff would like to have would be a  
19 stand-alone version of the model. If we didn't have  
20 to rely on using the Web to access this model and if  
21 Commission Staff could load this model on a PC and  
22 run it that way, that would be much more expeditious  
23 and we would be able to do analysis of the model and  
24 do it much more quickly than if we had to go through  
25 this cumbersome Web-based model to do the analysis.

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1           JUDGE MACE: I think perhaps I should have  
2 asked you to assume, in addition to assuming that the  
3 Commission might not strike the model, that the  
4 Commission might rule that Verizon should provide a  
5 stand-alone version. In that instance, I feel like I  
6 need to get from the parties some reasonable estimate  
7 of a schedule that would work.

8           MS. SMITH: Commission Staff -- and I  
9 apologize for going first, a little bit out of order,  
10 but my Staff tells me that if we were to get a  
11 stand-alone version of VZ Cost, we could go through  
12 the analysis that needs to be done in three months,  
13 which I believe would make responsive testimony due  
14 sometime after the first of next year.

15           JUDGE MACE: And I'm going to turn to you in  
16 a moment. I -- the concern I have, of course, is  
17 that the Commissioners are presiding at this  
18 proceeding and we have a relatively carefully  
19 choreographed schedule set up, which calls for  
20 hearing in January, and then there's hearing on the  
21 nonrecurring cost portion, I believe it's late May  
22 and early June. And so whatever is the outcome here  
23 today, if there is a change in schedule, I would have  
24 to confer with the Commissioners to determine what  
25 the schedule actually would be able to be. And I may

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1 not be able to honor any -- I can't guarantee what a  
2 schedule would be depending on the outcome.

3 MS. SMITH: And I think all the parties  
4 understand that, Your Honor, but we are trying to  
5 give you the best estimate we can of when we could  
6 file testimony in response to a stand-alone cost  
7 model.

8 JUDGE MACE: Very well. Okay. Anyone else  
9 want to address this side of the motion? If not,  
10 then I'll turn to Ms. Ronis. And let me just say at  
11 the outset, there are a few questions that I have  
12 that you might want to incorporate in your response.  
13 One of them has to do with the possibility of  
14 providing a stand-alone version of the model. I  
15 guess that's the main one. Go ahead.

16 MS. RONIS: All right. I will start with  
17 that question. Thank you, Your Honor. It is not  
18 possible to create a stand-alone version of this  
19 model. And I do have to say that part of our problem  
20 has been the kind of vague assertions from the  
21 opposing parties on what exactly the problem has  
22 been.

23 To my knowledge, except for this privilege  
24 issue that's been raised, none of the difficulties  
25 have been because it's on the Web versus not on the

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1 Web. In fact, Verizon spent a considerable sum of  
2 money to develop this model specifically so parties  
3 didn't have to have all different types of software  
4 on their computers in order to run a bunch of models.  
5 In some of the old Verizon models, for example, it  
6 required Oracle software that's now outdated, and so  
7 that was an argument that, for example, AT&T was  
8 making in other states.

9 And Web-based technology that incorporates  
10 all the latest software is the wave of the future. I  
11 mean, this is Verizon's attempt to actually be  
12 responsive to the needs of parties and changing  
13 technology, and so that part puzzles me. And again,  
14 I'm not so sure the parties are saying, although I  
15 did hear Ms. Smith say, to some extent, not having it  
16 on the Web would make all the problems go away. So  
17 I'm a little puzzled by that.

18 But the bottom line is we cannot create a  
19 stand-alone version of this model.

20 JUDGE MACE: You technically cannot create  
21 such a version?

22 MS. RONIS: Yes, yes, I've asked that a  
23 couple different ways of our experts.

24 JUDGE MACE: And even if the Commission  
25 ordered you to do so --

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1 MS. RONIS: It would just be creating new  
2 models. It would not be a version of this model  
3 because of the software.

4 JUDGE MACE: Even if the Commission said you  
5 can't come back until you create such a version, how  
6 long would it take to create such a version?

7 MS. RONIS: I think you're asking us to  
8 create brand new cost models, and I don't have an  
9 estimate here.

10 JUDGE MACE: I'd like to get an estimate  
11 from you. You can send that to me in writing.

12 MS. RONIS: Okay.

13 JUDGE MACE: Thanks. Go ahead.

14 MS. RONIS: I will address next I guess the  
15 claim that there's just voluminous documentation to  
16 go through. We are talking about costing out the  
17 Verizon network, which is complicated, and we have  
18 undertaken an enormous effort to document everything,  
19 and so, yes, there is a lot of documentation, but  
20 that's a good thing. And I guess if we hadn't  
21 produced it, there'd be complaints that we didn't  
22 support our costs.

23 The user manual that accompanies the model  
24 is 700 pages, because it is a very thorough  
25 explanation of how you walk through our model

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1 step-by-step, with screens and the like. So I'm  
2 hoping that once the parties are able to go through  
3 that, they'll see it's not as difficult as they may  
4 think.

5           Also, Verizon has offered a help desk. I  
6 think that's an extraordinary gesture. And if the  
7 parties are finding that that help desk isn't  
8 helpful, there's always discovery, there's always  
9 calling up counsel. In fact, we've done that with  
10 other parties in other states that have said, Listen,  
11 can you just get on the phone and help me understand  
12 this, and we really haven't gotten those requests.

13           So you know, I think what has to happen here  
14 is for the parties to focus a little bit more on  
15 Verizon. And we'll certainly help them through it,  
16 because this is important to us. We have this new  
17 model we think is fantastic and we'll demonstrate  
18 that in our testimony.

19           The next point I guess I should address is  
20 the privileged issue. We did explain our very  
21 detailed security policy in our response to the  
22 motion to strike, and I hope that addresses some of  
23 the concerns raised by the parties, because I think  
24 that, you know, there shouldn't be a concern here  
25 that we're somehow going to see -- the litigation

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1 counsel or the witnesses in the case are going to see  
2 and understand what the other parties have been doing  
3 in the model.

4 I also want to address the point -- I guess  
5 more of a procedural point raised by AT&T about the  
6 model not being on file. I didn't see that point  
7 raised in the initial motion. I know, in connection  
8 with some other proceedings, I have looked into this  
9 issue of, in today's age, what constitutes evidence  
10 and what constitutes part of the record and whether  
11 Web sites, for example, and citations to Web sites  
12 can be considered part of a record, and have found  
13 plenty of support for the point that, yes, you know,  
14 in today's day, Web sites are evidence and can be  
15 part of a record.

16 I can provide those cites to Your Honor. I  
17 wasn't prepared today, because I didn't see that  
18 argument in AT&T's initial motion. So if there's any  
19 concern here that, from an evidentiary perspective  
20 and for purposes of establishing an appellate record,  
21 that having a Web-based system isn't true evidence, I  
22 think we can alleviate those concerns.

23 I think there was also a suggestion that --

24 JUDGE MACE: Well, I guess I'd like to have  
25 the cites. My understanding of what happens



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1 frequently in a proceeding is that hard copies are  
2 made of what appears on the screen for a Web site.

3 MS. RONIS: And it is possible for parties  
4 to print screens. That was going to bring me --

5 JUDGE MACE: That's not what you had in  
6 mind?

7 MS. RONIS: We haven't done that, and I  
8 can't tell you what that would take to do, but  
9 certainly everything that appears on your Web screen  
10 can then be printed, as well, which would also --

11 JUDGE MACE: Did you say you had some cites?

12 MS. RONIS: Yes, to the proposition that  
13 things on a Web can be considered part of a record in  
14 evidence. I don't have them right now. I wasn't  
15 prepared for this.

16 JUDGE MACE: Well, why don't you submit them  
17 to me, along with that letter that I asked you for  
18 about how long it would take to provide the  
19 stand-alone version if you were required to do so.  
20 And you want to supply that to the parties, so that  
21 they have the ability to take a look at those cites,  
22 too.

23 MS. RONIS: I will do that.

24 JUDGE MACE: Thank you.

25 MS. RONIS: A couple other points made. One

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1 was what are we going to do about the hearings. As I  
2 mentioned, if there's a particular page or part of a  
3 model that AT&T wants to cross a witness on, they can  
4 print it out and introduce it as an exhibit just like  
5 anything else.

6 In terms of running the model, we do  
7 understand that we are going to have to make  
8 arrangements for the hearing room to be able to run  
9 the model, and I don't think that issue should form  
10 the basis of striking the Verizon model at this  
11 point. I think that's something we can deal with  
12 later.

13 I also think there was a suggestion that  
14 Verizon has this Web-based system so it can  
15 surreptitiously continue to make changes to its  
16 model. The version that was filed was locked and  
17 loaded. It's in place. It can't be changed. It can  
18 be traced back. There isn't a concern that if a  
19 party wants to see what the model looked like as of  
20 the date of filing or as of a certain other date,  
21 they can't do that because somehow it's now been  
22 modified. That's not the case.

23 Now, there were some updates, not to  
24 assumptions or inputs, but to the ability of a  
25 certain small part of the model to run and not freeze

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1 up, but I see that as an entirely different issue.  
2 It's not as if we're going to start surreptitiously  
3 changing assumptions and algorithms. And I'm not  
4 sure if AT&T meant to suggest that, but I thought I  
5 heard some kind of suggestion on that front.

6 A more general point, and we did make this  
7 in our response to the motion to strike, Verizon's  
8 entitled, I think, to cross-examine at a hearing the  
9 witnesses for AT&T and Staff and others that claim  
10 they haven't been able to run the model. We're  
11 entitled to ask questions like what exactly -- what  
12 problems were you having, what did you do to correct  
13 them, how much time did you spend actually trying to  
14 load and run the model. These are all the very  
15 questions that we go through in the process of this  
16 litigation.

17 I mean, you've heard this in other cases.  
18 We each don't like each other's models and we  
19 criticize them, we file testimony. The other side  
20 responds and we have hearings and we cross-examine  
21 each other. So to cut off that debate now I think is  
22 improper. That is what the point of this proceeding  
23 is. And they can lay it out in testimony and we'll  
24 respond and conduct discovery and have hearings on  
25 it. So I just think --

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1           JUDGE MACE:  You know, and I hear that  
2  that's your argument, but just from the point of view  
3  of someone who has to sit through a hearing, it seems  
4  like the best use of the hearing time would not be  
5  cross-examination on how many times did you have to  
6  run the model in order to get a result, but rather  
7  focus on the result.  Do you see what I'm saying?

8           MS. RONIS:  Well, that's a fair point, but  
9  right now we have a few general allegations from a  
10 couple witnesses for AT&T on the record, very  
11 general.  Nothing on the record from Staff on the  
12 problems they've had.  And so right now, you know,  
13 how do we respond?  I mean, we're entitled to see  
14 testimony and to probe that.  Right now we're just  
15 hearing there's been some problems, and we have real  
16 questions about how much time has really been put  
17 into it.

18           I do note that, you know, we just got a  
19 request this week from AT&T saying they couldn't open  
20 a couple of the CDs we produced to them back in June.  
21 That was over three months ago.  So I'm very  
22 concerned about the notion that a party can simply  
23 make some general statements that they're having a  
24 hard time, and then claim that a model should be  
25 stricken on that basis.  I mean, that's what we have

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1 testimony and hearings for.

2 I also want to address the notion that we  
3 didn't file everything we were supposed to file.  
4 There was this problem with the third party  
5 confidentiality agreement. Let me note that, you  
6 know, our vendors are very sensitive when we're  
7 sharing prices with competitors. You can imagine  
8 that Lucent, for example, doesn't want the world to  
9 know the price they give Verizon, because it could  
10 undercut them with other competitors, so they are  
11 pretty insistent. These are routine. This  
12 Commission has recognized third party confidentiality  
13 agreements and, in fact, AT&T, as you noted, has  
14 signed it in other states.

15 So the fact that it took a little bit of  
16 time for them to get access to it I don't think goes  
17 to the issue of whether we filed, as we were supposed  
18 to, everything that was required. And you know, I do  
19 note that that's in contrast to AT&T's own model,  
20 where they have made changes to important  
21 assumptions, inputs and algorithms after the filing  
22 date.

23 I won't go into too much on the Hatfield  
24 model. I think we laid it all out in our response.  
25 Hello?

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1           JUDGE MACE: I think someone sneezed on the  
2 conference bridge.

3           MS. RONIS: Okay. Let me see. I think I've  
4 covered everything. I do have to say, if we're going  
5 to get into scheduling issues, we probably do need to  
6 address Verizon's issues with respect to the Hatfield  
7 model and the timing on that and how much time we  
8 would need to respond to the Hatfield model.

9           JUDGE MACE: Well, that was an interesting  
10 thing that I noted. After reading all of your  
11 arguments in opposition to the motion to strike,  
12 Verizon indicated that they didn't oppose an  
13 extension of time. So that's what led me, I think,  
14 to proceed with a scheduling aspect to the hearing  
15 today.

16           Does Verizon intend to file a motion to  
17 continue this proceeding based on their comments  
18 filed in the Triennial Review proceeding?

19           MS. RONIS: I know our position is that  
20 certain statements from the Triennial Review Order  
21 absolutely do impact this case. For example, there  
22 are statements on cost of capital, but at this point,  
23 that was not our intent, to move to continue this  
24 case.

25           JUDGE MACE: Thank you.

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1           MS. RONIS: I can give you the official  
2 Verizon position in the same letter, because I didn't  
3 ask my client that very question, but I believe the  
4 answer's no.

5           JUDGE MACE: Thank you. And I'd like to ask  
6 Qwest now whether they intend to file such a motion?

7           MS. ANDERL: Well, Your Honor, I don't know  
8 if we were planning to file a normal motion. We  
9 believe that the issue would be discussed today,  
10 perhaps as the conversation on this question evolves,  
11 we may well make an oral motion for a continuance.

12           We did want to see if the parties were  
13 perhaps going to reach some sort of a stipulation  
14 that there ought to be at least some extension  
15 because of the work that would otherwise need to be  
16 done in advance of the October 3rd filing date, which  
17 otherwise won't be changed. We also wanted to wait  
18 and try to balance considerations between the  
19 schedule here and what might be proposed and decided  
20 for the Triennial Review proceeding, and the  
21 prehearing conference on that is, of course, tomorrow  
22 morning at 9:30, so --

23           JUDGE MACE: Well, my understanding --

24           MS. ANDERL: Yes and no.

25           JUDGE MACE: My understanding of at least

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1 the nine-month proceeding is it has to be concluded  
2 by June 30th, and of course the three-month  
3 proceeding has to be concluded, I think, by December  
4 30th, if I remember.

5 MS. ANDERL: That's right. I think we think  
6 it's July 2nd, but it's obviously close enough.

7 JUDGE MACE: Thank you. Well, then, I would  
8 like to address this issue. It's been mentioned in a  
9 couple of sets of arguments that I recall, the  
10 question of whether or not AT&T and MCI are going to  
11 file a revised model.

12 MS. STEELE: We do plan to file based on the  
13 customer location information. I wish I could tell  
14 you exactly when. Unfortunately, it's being held up  
15 now by Verizon and Qwest, who are not helping us to  
16 get information that we need to file this as soon as  
17 we would like to. We had hoped to have it already.

18 And Mr. Landis, who is the person who runs  
19 the model, is going to be on vacation now, we  
20 understand, for the first two weeks of October, which  
21 I think would otherwise have been the time he would  
22 have been running it. So I think it's probably --  
23 we're looking at mid-October, a mid-October date for  
24 filing that information.

25 MS. ANDERL: Well, Your Honor, this is Lisa



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1 Anderl, for Qwest. I'd like to respond to that, if I  
2 might. We are working with AT&T to get them the  
3 information they need.

4 JUDGE MACE: Can you speak up just a little  
5 bit, Ms. Anderl?

6 MS. ANDERL: Oh, yes, sure. The only  
7 outstanding request I'm aware of is the data request  
8 from AT&T that we reconcile some line count data and  
9 service indicator data. We're working on that, but  
10 it is not due yet and we plan to provide that to them  
11 on or before the date it is due. Otherwise, I'm not  
12 aware of any request for help that AT&T or MCI has  
13 made that we're not responding to.

14 However, if that is a firm representation by  
15 AT&T that they're going to file a revised model, we  
16 definitely believe that the current schedule -- and  
17 that they won't do that on the next filing date, that  
18 they will do it sometime after the next testimony  
19 deadline, which is October 3rd, then we would  
20 definitely need a continuance in this case, because  
21 what we'll be seeing is essentially a new model run  
22 that we should have seen back in June, and we would  
23 need at least the amount of time that was originally  
24 allocated between the first round of testimony and  
25 the second round of testimony to prepare responsive

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1 testimony.

2 MS. RONIS: May I also respond?

3 JUDGE MACE: Go ahead.

4 MS. RONIS: Verizon agrees with that and  
5 wants to note that we just heard from AT&T 10 days  
6 ago that data we gave them back in May was not  
7 sufficient enough for them to run this new version of  
8 their model. And we are still looking at their  
9 request and we do have some concerns that they're  
10 asking us to create data that doesn't exist in the  
11 form that they requested, so we may have to have a  
12 debate about it. And we do agree that it makes no  
13 sense to file next week testimony on a model that is  
14 going to completely change. So that date, I think,  
15 in any event, needs to change.

16 Mr. Huther's on the phone specifically to  
17 address the time we would need once we get that  
18 model, and then we have the issue of TNS data on top  
19 of it, which is just yet another layer of problems,  
20 how much time we would need to respond, so I will let  
21 him quickly comment on that.

22 MS. ANDERL: Yes, Your Honor. This is Lisa  
23 Anderl. Before Mr. Huther talks, I just wanted to  
24 mention that I didn't go into the Qwest and Verizon  
25 motion to compel and the AT&T and MCI petition for

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1 interlocutory review, but that obviously adds another  
2 layer of complexity which -- so I would concur in Ms.  
3 Ronis's remarks on that.

4 MR. HUTHER: This is Chris Huther.

5 JUDGE MACE: Could you spell your last name,  
6 please?

7 MR. HUTHER: Surely. It's H-u-t-h-e-r.

8 JUDGE MACE: Thank you.

9 MR. HUTHER: You're welcome. I agree with  
10 Ms. Anderl that we would need a minimum of -- the  
11 same sort of period of time that's been allocated  
12 from the original filing in June to the scheduled  
13 filing of direct testimony on October 3rd, I believe,  
14 to analyze and prepare testimony addressing whatever  
15 new cost model AT&T and MCI choose to sponsor.

16 JUDGE MACE: Thank you.

17 MS. STEELE: May I briefly address that  
18 point? We're not filing a new model. There's one  
19 variable that's changing, which is the customer  
20 location data, which is information that both Qwest  
21 and Verizon gave to us. So the representation that  
22 there's some humongous amount of time that is needed  
23 to review this I find a bit disingenuous, but --

24 MR. HUTHER: It's hardly disingenuous --

25 JUDGE MACE: Just a moment.

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1           MR. HUTHER: Having just gone through this  
2 on behalf of a different client in a different state  
3 --

4           JUDGE MACE: Mr. Huther, Mr. Huther --

5           MR. HUTHER: -- I can assure you that --

6           JUDGE MACE: Who's speaking?

7           MS. RONIS: That's Mr. Huther.

8           JUDGE MACE: Mr. Huther, would you wait just  
9 a moment, please? I don't want to have just  
10 spontaneous argument if I can avoid it. I really  
11 think at this point arguing about that aspect of it  
12 may not be beneficial for the record.

13           What I'd like to do is ask the parties if  
14 they would be willing to discuss off the record some  
15 type of schedule that might meet all of your needs.  
16 Having -- bearing in mind, number one, I don't know  
17 whether the Commission will strike the Verizon cost  
18 model. I do not know whether the Commission will  
19 require Verizon to file a stand-alone version. It  
20 seems as though you're talking about needing more  
21 time if the model is not stricken, no matter what, so  
22 it seems like it would be beneficial to try to have  
23 you come up with a schedule. I can't guarantee that  
24 schedule, either, but at least I could have a  
25 proposal to present to the Commission. Would the

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1 parties be willing to try to come up with something  
2 like that?

3 MS. RONIS: Yes, Your Honor.

4 MS. ANDERL: Yes.

5 JUDGE MACE: All right. I think what I'll  
6 do is I'll just leave this open-ended. We'll adjourn  
7 for a while and I'd ask the parties to talk and then,  
8 when you've arrived at some sort of either impasse or  
9 agreement, then come down to my office and retrieve  
10 me. That way, I don't have to keep coming back to  
11 monitor what's going on. Ms. Ronis, did you have  
12 something additional?

13 MS. RONIS: No, I realize now we're going to  
14 come back and talk about the schedule, because I  
15 thought we were maybe going to do it offline and get  
16 back to you another day.

17 JUDGE MACE: Oh, no, we're going to do that  
18 right now.

19 MS. RONIS: I understand. Thank you.

20 JUDGE MACE: All right. We're adjourned,  
21 and I'd ask one of you to come down to my office when  
22 you're ready to go back on the record.

23 MS. RONIS: The bridge will stay up?

24 JUDGE MACE: The bridge will stay up, yes.  
25 Thank you.

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1 (Recess taken.)

2 JUDGE MACE: Let's be back on the record.

3 The parties have discussed scheduling and have  
4 recited to me a proposed schedule that they have as  
5 an alternative to the current schedule, and I -- let  
6 me indicate what that is, and then I'll go ahead with  
7 this other item that I was addressing.

8 The parties have proposed November 13th as a  
9 filing date for supplemental direct testimony, and  
10 that testimony would include AT&T, MCI's new version  
11 of the Hatfield model. Qwest may make some filing  
12 pertaining to the Triennial Review and other items,  
13 and Verizon is not certain at this point whether it  
14 will make a filing on that date.

15 The responsive filing would be due February  
16 9th of 2004; rebuttal, April 2nd; hearings, May 3rd  
17 through the 21st. And that's the schedule.

18 The question that I asked counsel for  
19 Verizon had to do with whether or not the reason  
20 Verizon could not provide a stand-alone version of  
21 the VZ Cost model was because it was in some way tied  
22 in with Verizon's mainframe computer, whether the  
23 Web-based version of it was tied in with the  
24 mainframe computer.

25 And I understand now that Mr. Kreeger is

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1 going to address that. Mr. Kreeger, you have not  
2 entered an appearance so far in this proceeding. And  
3 what I'd like to have you do, if you would, is give  
4 us your name, spell your last name, tell us your  
5 address, give us your phone number, your fax number,  
6 and your e-mail number -- or e-mail address.

7 MR. KREEGER: Okay. Thank you, Your Honor.  
8 This is David Kreeger. The last name is spelled  
9 K-r-e-e-g-e-r. I'm with Wilmer, Cutler & Pickering.  
10 The address is 2445 M, as in Mary, Street N.W.,  
11 Washington, D.C. 20037. My telephone number is area  
12 code 202-663-6407; my fax number is 202-663-6363; and  
13 my e-mail address is dkreeger@wilmer.com. Does that  
14 cover it?

15 JUDGE MACE: Thank you. Now, you were going  
16 to tell us a little bit about this Web-based model.

17 MR. KREEGER: Yes, Your Honor. Verizon's  
18 cost model was developed and relies on software that  
19 is designed to run on servers, not on personal  
20 computers. For example, a significant portion of the  
21 cost model --

22 JUDGE MACE: Slow down, slow down. The  
23 reporter -- we have a reporter here in the hearing  
24 room, and so there's two problems. One is the  
25 reception over the phone is a little difficult, and

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1 the second one is you're talking a little fast. So  
2 if you could just slow down a little bit.

3 MR. KREEGER: Sure. The Verizon cost model  
4 was developed using -- and was developed and relies  
5 on software platforms that were designed to run on  
6 server computers, not on desktop personal computers.  
7 And one example is that a significant portion of the  
8 Verizon cost model uses the Microsoft.net platform,  
9 and that is not a software platform that can run on a  
10 desktop personal computer.

11 JUDGE MACE: Thank you. So there's no  
12 tie-in to a mainframe computer?

13 MR. KREEGER: No, I -- maybe a better way to  
14 think about it is that there are, if you want to  
15 divide the world of computers into two, there are  
16 desktop personal computers and then there are server  
17 computers. Server computers are the kinds of  
18 computers that house applications that lots of other  
19 computers feed off of. And the cost model was  
20 designed to run on a server computer, and so it can't  
21 just be transferred to somebody else's desktop PC.  
22 It can be accessed from a desktop PC through the Web,  
23 but the guts of the model itself, in other words, the  
24 inner workings of the model can't be simply  
25 transferred onto somebody else's computer so that



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1 they run entirely on a stand-alone computer.

2 JUDGE MACE: All right. Thank you. That's  
3 helpful. There's another individual, Mr. Huther.  
4 I'd like to have -- you're an attorney; right?

5 MR. HUTHER: Yes, I am.

6 JUDGE MACE: Would you please give your long  
7 form appearance? I don't think we have an appearance  
8 from you on the record yet so far.

9 MR. HUTHER: I'd be happy to.

10 JUDGE MACE: Go ahead.

11 MR. HUTHER: Chris Huther, H-u-t-h-e-r. I'm  
12 with Preston Gates Ellis & Rouvelas Meeds. The  
13 address is 1735 New York Avenue, N.W., Washington,  
14 D.C, 20006. My phone number is 202-661-3850; my fax  
15 number is 202-331-1024; and my e-mail address is  
16 chuther@prestongates.com.

17 JUDGE MACE: Thank you.

18 MR. HUTHER: You're welcome.

19 JUDGE MACE: Is there anything else that the  
20 parties want to address with regard to the motion to  
21 strike the Verizon cost model?

22 MS. SMITH: Yes, Your Honor. Two things, if  
23 I may.

24 JUDGE MACE: Go ahead.

25 MS. SMITH: This is Shannon Smith, for

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1 Commission Staff. One thing, with respect to  
2 allowing Web sites or other web addresses in as  
3 evidence, that's one consideration. Another  
4 consideration is beyond the evidentiary record in  
5 this case that goes to this Commission's obligation  
6 to have a public record for all of the decisions that  
7 it makes, and it may be something the Commission may  
8 wish to consider, whether a Web-based model will  
9 satisfy this Commission's obligation to have a record  
10 available for public review of the decisions that it  
11 makes.

12 That's something that I haven't analyzed,  
13 but I think that is a factor that should be tossed  
14 out for consideration while we're discussing whether  
15 or not a Web-based model in and of itself is  
16 permissible.

17 The second question is -- or comment is more  
18 a question to Ms. Ronis, and I don't expect Verizon  
19 to have an answer today, and I would have brought it  
20 up earlier, except for my expert sitting next to me  
21 just whispered it in my ear, but there is -- perhaps  
22 there's a possibility that Verizon's model could be  
23 loaded onto another party's server, such as the  
24 Commission's server. I don't know if it's possible,  
25 I don't know if our server can accommodate that, but

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1 that might alleviate some of the problems with VZ  
2 Cost being accessed over the Web with personal  
3 computers. And I don't know if that's possible.  
4 It's something to maybe think about.

5 JUDGE MACE: Mr. Kreeger, do you have  
6 anything for us on that topic?

7 MR. KREEGER: Your Honor, my understanding  
8 is that that is either not possible or extremely  
9 difficult to do, because of the complexity of the  
10 programs, but we can certainly check with the experts  
11 at Verizon who are involved in the development of the  
12 model and find out whether it might be feasible to do  
13 that.

14 JUDGE MACE: I'd appreciate it if you would  
15 do that. And Ms. Ronis, I think you can include that  
16 information in the letter that I'm expecting from  
17 you, which will probably be quite voluminous at this  
18 point, because it's going to include a lot of items,  
19 but what I'm going to ask you to do is find that  
20 information out, make sure that you give me the  
21 citations that you have about the use of a Web site  
22 based model in a proceeding such as this, evidentiary  
23 parameters for that, and you'll be distributing it to  
24 the parties.

25 And I think at that point I would allow the

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1 parties to respond if they have any further arguments  
2 they want to make based on those citations about the  
3 use of a Web-based model in a proceeding like this.  
4 And so when I get your letter, I will allow -- I'll  
5 send out a notice to the parties that if they want to  
6 address the citations or if you make any argument  
7 about it in that letter, that they can address that.

8 MS. RONIS: Yes. So I have the Web -- this  
9 issue of creating a stand-alone model, this  
10 additional issue about putting it on this  
11 Commission's server or another third party server,  
12 the cites and any argument on that, I think that  
13 covers -- and how long it would take -- well, I  
14 covered that, how long it would take if we had to do  
15 something on a stand-alone basis.

16 JUDGE MACE: Right.

17 MS. RONIS: Okay. Yes, we'll do that and  
18 shoot for early next week, perhaps even Monday.

19 JUDGE MACE: That would be good if you could  
20 do that. Anything else at this point about the  
21 motion to strike the cost model, Verizon's cost  
22 model?

23 If not, I would like to turn briefly to the  
24 petition for reconsideration, and I'm wondering if I  
25 could ask some questions of the parties, if they

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1 would have the information at this point or could  
2 give me some guidance.

3 MS. ANDERL: Your Honor, this is Lisa  
4 Anderl. I think I'm prepared to discuss that issue,  
5 as well, today.

6 JUDGE MACE: And Ms. Ronis.

7 MS. RONIS: Mr. Huther will address it for  
8 Verizon.

9 JUDGE MACE: Very well. And I have AT&T,  
10 and MCI is on the conference bridge. If there's  
11 something you can't address, please let me know and  
12 I'll find a way for you to get the information to me.  
13 Much of the discussion in the petition for  
14 reconsideration revolves around TNS -- that's T, as  
15 in Tom, N, as in Nelly, S, as in Sam, TNS, and the  
16 fact that their information that's included in the  
17 HAI model is proprietary. There are several  
18 references to it being commercially available, and  
19 I'm not sure I understand why, if it's commercially  
20 available, AT&T and MCI can't find a way to supply  
21 the information to Qwest and Verizon.

22 MS. STEELE: Let me tell you what is -- some  
23 things are commercially available and some things are  
24 not. What is commercially available, as Qwest and  
25 Verizon have taken advantage of in the past, is the

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1 ability to have remote access from TNS to the  
2 databases, the customer location databases, so that  
3 those can be viewed and manipulated. It's  
4 commercially available in that you have to pay TNS  
5 for that access. You cannot get from TNS the  
6 databases, you can't purchase them, but you can have  
7 access to them so you can manipulate them.

8 JUDGE MACE: And how much does it cost for  
9 that?

10 MS. STEELE: The cost for any party to do  
11 that would be a \$5,000 setup fee, and I think that  
12 covers the first day of access, and TNS then charges  
13 \$4,000 per day for that remote access. What is not  
14 available from TNS, except -- and we haven't talked  
15 with them lately about what it would cost to buy from  
16 them their commercial -- their intellectual property,  
17 which would be the algorithms and their customer  
18 location algorithms and their software.

19 Verizon put in some evidence into the record  
20 that they quoted in one proceeding a \$2 million cost  
21 to purchase that intellectual property. So that is  
22 not something that we have pursued, given the  
23 excessive cost of doing that.

24 But the commercial -- the access is  
25 available to any party that wants to make

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1 arrangements with TNS to do that.

2 JUDGE MACE: And let me turn, then, to  
3 Verizon and Qwest. And oh, Ms. Singer Nelson, do you  
4 have anything to add to that?

5 MS. SINGER NELSON: No, thank you, Judge. I  
6 don't have anything to add.

7 JUDGE MACE: Let me turn next to Verizon and  
8 Qwest. Why is it that you can't pursue -- seems like  
9 you've done that in other proceedings, at least  
10 that's what I read in some of the argument, that you  
11 have obtained remote access. What's the barrier to  
12 doing that in this proceeding? And I'll turn to Ms.  
13 Ronis, if you --

14 MS. RONIS: Mr. Huther.

15 JUDGE MACE: Sorry, Mr. Huther.

16 MR. HUTHER: Sure. I'm not sure if there's  
17 a barrier in this proceeding. It wasn't until we  
18 received this most recent pleading from AT&T and MCI  
19 that the remote access was even offered. I can tell  
20 you that, on behalf of Verizon and other clients in  
21 the past, the remote access, as I think Ms. Steele  
22 described, allows us to view and manipulate some  
23 limited aspects of the data that we have requested,  
24 but it by no means provides anything remotely  
25 approaching the data that was the subject of our

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1 initial motion to compel and that which you have  
2 ordered them to produce.

3 In other words, the most critical components  
4 of the data that we need to evaluate and analyze the  
5 model cannot be obtained by virtue of this remote  
6 access. In other dockets, AT&T and MCI have financed  
7 a limited number of days so that Verizon or other  
8 carriers could look at that data, but as Verizon's  
9 experts have detailed in past proceedings, it's  
10 largely insufficient to conduct any meaningful review  
11 of the customer location data algorithms, assumptions  
12 and methodologies employed by TNS to produce the data  
13 set that goes into the Hatfield model.

14 JUDGE MACE: What do they provide when you  
15 get remote access?

16 MR. HUTHER: Well, it's access to certain of  
17 the programs that TNS has manipulated, but in other  
18 words, much of what we have sought here is not the  
19 output of the TNS clustering process, but rather the  
20 aspects -- the inputs, in other words, the Dun &  
21 Bradstreet, the Metromail databases that serve as the  
22 starting point, and also the source code and  
23 algorithms, the software and the methodologies that  
24 TNS has used to produce the inputs to the models. So  
25 there's an entire process that starts with certain



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1 data that TNS manipulates, and as a result of that  
2 process creates inputs to go into the Hatfield model.

3 In order for us to evaluate the inputs that  
4 go into the model, that is to say, the outputs of the  
5 TNS exercise, we need to seek both the starting  
6 points, the Dun & Bradstreet, the Metromail  
7 databases, as well as all of the manipulation of that  
8 data that TNS has performed on behalf of AT&T and  
9 MCI. And that's the point, some years ago, when we  
10 were told it was commercially available, we asked for  
11 the cost of that, and that's that two to \$2.5 million  
12 figure that Ms. Steele referenced.

13 Now, that amount may have changed in some  
14 respects since then, but I'd be surprised, because  
15 much of the data sets and other information that TNS  
16 is using to produce the inputs to the cost model are  
17 exactly the same as they were back in 1998 or '99,  
18 when they were first used and developed.

19 JUDGE MACE: Ms. Steele, does that comport  
20 with your understanding of what's available when  
21 remote access is given?

22 MS. STEELE: I haven't done it myself. My  
23 understanding is that the, yes, the locations, you  
24 can look up individual customer locations, you can  
25 plot them on a map, you can create maps of where they

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1 are, so that would allow you to test whether the  
2 amount of plant is sufficient. That's my  
3 understanding what's available.

4 JUDGE MACE: But you agree that the TNS  
5 would not be providing access to the Dun & Bradstreet  
6 data, the source codes or the algorithms?

7 MS. STEELE: Right. And let me separate out  
8 those two things, because some of this may be  
9 short-cut a little bit here, and that is the Dun &  
10 Bradstreet and Metromail, that's what's going to be  
11 replaced in the new version. The version will then  
12 rely on the Qwest and Verizon data, so we will no  
13 longer have to deal with the proprietary nature of  
14 the Dun & Bradstreet and Metromail data.

15 JUDGE MACE: But will you still be relying  
16 on some of the algorithms and the source codes that  
17 TNS uses?

18 MS. STEELE: Right. And the source codes --  
19 what TNS does is it takes the addresses and turns  
20 them into customer clusters, and that process, the  
21 algorithms, that's what would cost us the two to \$2.5  
22 million to purchase from --

23 JUDGE MACE: So that -- sorry.

24 MS. STEELE: Yes.

25 JUDGE MACE: So that even when you've used

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1 the information you've received from Verizon and  
2 Qwest, you're still going to be relying on what's  
3 proprietary information from TNS?

4 MS. STEELE: We would no longer have one set  
5 of proprietary information, but there would still be  
6 TNS's software. Its intellectual property would be  
7 involved in creating the clusters that go into the  
8 model, yes.

9 JUDGE MACE: So that this problem, in  
10 quotes, that Verizon and Qwest raise would also  
11 append itself to any new filing that you would make?

12 MS. STEELE: That particular aspect of it  
13 would remain, yes.

14 MR. HUTHER: And this is Chris Huther. If I  
15 might add, that is one of the most important aspects  
16 of the process, because whether the starting point is  
17 TNS -- I'm sorry, is Dun & Bradstreet or Metromail  
18 addresses from a mailing list or Verizon's customer  
19 location service addresses, there is still a very  
20 complicated process that TNS performs that results in  
21 the inputs to the cost model. And so while using  
22 Verizon's service addresses does eliminate some of  
23 the problem, it doesn't eliminate the most  
24 significant of the problems.

25 MS. STEELE: I assume that we will have an

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1 argument about how significant that problem is. I  
2 can relate that, in many jurisdictions, Qwest and  
3 Verizon have found no need to even ask for this  
4 information.

5 JUDGE MACE: I'm sorry, say it again.

6 MS. STEELE: Qwest and Verizon have found no  
7 need to even ask for this information.

8 JUDGE MACE: Let me just review some of my  
9 notes to make sure I've covered what I need to ask  
10 you. I think that's pretty much it. Does anyone  
11 else want to address anything else with regard to the  
12 petition for reconsideration?

13 MS. ANDERL: Your Honor, this is Lisa  
14 Anderl.

15 JUDGE MACE: Go ahead.

16 MS. ANDERL: I just wanted to state for the  
17 record that the Verizon explanation of what the  
18 issues are comports with what my understanding is,  
19 and Verizon's identification of the issues related to  
20 the source codes and the algorithms, even if the  
21 customer location information is no longer an issue,  
22 is exactly our problem, as well.

23 JUDGE MACE: I guess there are a couple of  
24 other items. AT&T and MCI represent that they have  
25 provided sufficient information to verify customer

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1 location, customer location as it influences the  
2 output of the model. I'm not sure I'm phrasing that  
3 exactly correctly, but -- and Qwest and Verizon seem  
4 to insist that that's not enough. I'd like to -- Ms.  
5 Steele, I'd like to have you address that, and then  
6 I'll turn to Qwest and Verizon.

7 MS. STEELE: Well, Your Honor, the issue in  
8 determining costs is to determine whether there's  
9 enough plant placed in the ground to serve the  
10 customers. The information that has been provided to  
11 Qwest and Verizon is sufficient to make that  
12 determination. We give them, for every cluster, the  
13 amount of plant that's assumed to be needed in that  
14 cluster, information about the customers in that  
15 cluster, information about the geography of the  
16 cluster, et cetera, so that they can find out where  
17 that cluster is on a map. They can put it on a map,  
18 they can see what they may think the customers are,  
19 what the geography is, what the plant needs will be,  
20 and compare the two.

21 Those are the -- that's the cost driver, is  
22 how much plant is needed to be in the ground. Now,  
23 where each individual customer is located, frankly,  
24 Qwest's model, until very recently, didn't even  
25 locate individual customers; it just said, you know,

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1 we, for every area, we assume that it's going to need  
2 this much plant. And that's the issue, how much  
3 plant is needed, and then we impose the cost based on  
4 how much plant is needed.

5           So that is an analysis that Verizon and  
6 Qwest can do with the information that they have  
7 already. Now, when they also have the location of  
8 each individual customer, there will be, again, even  
9 more ability to do that, to place the clusters on the  
10 map, to place the customers on the map, and to see  
11 whether there's enough plant included within the  
12 model.

13           What Qwest and Verizon have asked to look  
14 at, essentially, how does -- they want to know how  
15 TNS takes these addresses and turns them into  
16 clusters. So they want to know, okay, I've got a  
17 group of addresses, how does TNS put them into one  
18 location. Well, you could see where they are and you  
19 could see how much plant is used by the model to  
20 reach the customers, and that's what drives the cost.  
21 So there is no need to look at this intermediate  
22 stuff.

23           JUDGE MACE: Thank you. Ms. Singer Nelson,  
24 did you have anything to add to that?

25           MS. SINGER NELSON: No, I think Mary

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1 represented everything very well.

2 JUDGE MACE: Ms. Ronis or Ms. Anderl? Did  
3 you want to address this side of the issue?

4 MS. RONIS: Mr. Huther.

5 MR. HUTHER: I'm happy to go first, but I'd  
6 defer to Ms. Anderl if she'd like to take a stab at  
7 it.

8 MS. ANDERL: Sure, go ahead, Chris.

9 MR. HUTHER: Okay. I certainly appreciate  
10 AT&T and MCI's desire to dictate the nature and the  
11 form of the analysis that opposing parties take with  
12 respect to their cost model, but that is not what the  
13 discovery standard in the state of Washington or any  
14 other state is limited to, but it is something of a  
15 red herring to suggest that the only relevant  
16 question is whether there's enough outside plant  
17 placed by the model. That's the analysis that they  
18 would prefer that we perform with respect to their  
19 model, but that's not the analysis that we want to  
20 perform, and that is not the only relevant analysis  
21 that a party may wish to perform.

22 As a threshold matter, in order to conduct  
23 even inquiry that AT&T and MCI proposed, you first  
24 must understand where the customers are located in  
25 the first place, where they're located by the model,

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1 and whether proper engineering principles have been  
2 adhered to in developing how the network is designed.

3 JUDGE MACE: But if you had the customer  
4 location information, whether it's clustered or -- I  
5 mean, if you have it raw or in whatever way, then it  
6 seems like the engineering of the network would take  
7 place from that basis.

8 MR. HUTHER: But we only -- all they would  
9 like us to focus on and what your question presumes  
10 is that the output of the TNS exercise is sufficient.  
11 In other words, we take a modeled output of a  
12 customer location and then we try and determine, on  
13 the basis of that modeled output, what -- whether the  
14 model has not just designed sufficient plant or  
15 modeled sufficient plant, but rather whether that the  
16 design that the model employs conforms with  
17 engineering standards.

18 And it also implicitly demands that you have  
19 some understanding of how the original customer  
20 locations were converted to the modeled customer  
21 locations. And that's the piece that we have never  
22 been able to observe by virtue of the access, whether  
23 it's remote or otherwise, that AT&T and MCI have  
24 given us to their model. So --

25 JUDGE MACE: But Verizon doesn't use that



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1 kind of -- I mean, it doesn't use raw data in its own  
2 model; isn't that correct?

3 MR. HUTHER: Well, I'll let Ms. Ronis speak  
4 to the Verizon model, but when this input database,  
5 this clustering database and customer location  
6 database was developed some years ago, it was touted  
7 as a significant model advancement. And when they  
8 commissioned TNS to perform this task, it was  
9 supposed to change dramatically the nature in which  
10 their model estimated cost.

11 Be that as it may, in order for us to test  
12 the accuracy of those original claims, which are in  
13 fact repeated here in the opening testimony and in  
14 the cost model description, we have to have access to  
15 each component of the model.

16 And to suggest that AT&T gets to dictate what  
17 analysis we perform or what analysis is relevant is  
18 certainly not contemplated by the procedural rules.

19 JUDGE MACE: Ms. Anderl, do you have  
20 anything to add to that?

21 MS. ANDERL: Yes, Your Honor. And I think  
22 we've pointed this out in our answer, although that  
23 was only filed yesterday. I just wanted to  
24 emphasize, and I think this is very consistent with  
25 what Mr. Huther said, and that is that we do not

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1 believe it is appropriate for AT&T and MCI to dictate  
2 the type of analysis that we can do in order to  
3 explore the validity and viability and credibility of  
4 their model.

5           What we seek to be able to do is to test  
6 that -- about HAI is to replicate the creation of the  
7 costers. The only way we can do that is the customer  
8 location data, source codes and algorithms. You  
9 know, what Ms. Steele is saying -- or let's not make  
10 it personal. What AT&T is saying is, you know, if  
11 our plant models 20,000 miles of cable or if our  
12 model models 20,000 miles of cable, and Qwest, you  
13 think that's pretty close to right, then you should  
14 stop. You don't have to look at this anymore.

15           Well, our question is, is that a lucky  
16 guess, is it a coincidence, or is it because the  
17 model really does locate the customers correctly,  
18 cluster them correctly and build enough plant to each  
19 of them. And if it is indeed just a lucky guess or a  
20 coincidence, that calls into question the reliability  
21 of all of the rest of the model.

22           We have an opportunity to at least explore  
23 or ought to have an opportunity to at least explore  
24 that question, but the type of analysis that AT&T  
25 would limit us to does not enable us to do that.

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1           We think it's just critical that we have  
2 access to this information. The information is  
3 clearly relevant, clearly relied upon heavily,  
4 exclusively by AT&T and MCI, and it's continually  
5 unclear why some sort of a license or other  
6 arrangement with TNS can't be made by the model  
7 sponsors to produce this information that was clearly  
8 prepared at the behest of the model sponsors.

9           JUDGE MACE: Do you agree with Ms. Steele  
10 that there are proceedings similar to this in other  
11 jurisdictions where Verizon and Qwest have not asked  
12 for this information?

13           MS. ANDERL: I do not know if there are  
14 recent proceedings where we have not asked for it.  
15 My knowledge of history of recent cost dockets in  
16 Qwest's region is that we have asked for the  
17 information in all of the proceedings. We have not  
18 gotten it in all of the proceedings, but we have  
19 asked for it.

20           MR. HUTHER: This is Chris Huther. I'm not  
21 aware of a single Verizon proceeding in which Verizon  
22 has not sought this information, and I'm also not  
23 aware of a single proceeding in which we've sought  
24 the information that it's ever been provided.

25           JUDGE MACE: Ms. Steele.

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1           MS. STEELE:  If I could very briefly  
2  respond, the Utah proceeding just concluded recently,  
3  and my understanding is that Qwest did not request  
4  the information in that case.  The -- and I should  
5  back up on that.  It is possible that they made a  
6  request.  They never filed any kind of motion to  
7  compel, and we indicated that we would not provide  
8  that data in that case.

9           As far as the type of analysis, what I am  
10 hearing from Qwest and Verizon that they want to do,  
11 and again, I don't, because I wasn't prepared to  
12 respond to this today, I don't know exactly how many  
13 clusters we're talking about.  I believe it's about  
14 1,200 for at least one of the parties, but there are,  
15 you know, these 1,200 clusters.  Qwest and Verizon  
16 could test each individual cluster to see whether  
17 there's enough plant in that cluster.  To say that if  
18 it corresponds to the amount that Qwest and Verizon  
19 believes should be in the cluster, and it's a lucky  
20 guess, 1,200 times, that would seem to me to be  
21 stretching it.

22           There is an awful lot of work that Qwest and  
23 Verizon can do to validate this model and there just  
24 has been no showing that there is a need for this  
25 information.

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1           JUDGE MACE: Well, I don't want to get into  
2 the question of need versus relevancy. I think  
3 that's addressed adequately in your various  
4 arguments.

5           Is there anything else that anyone wants to  
6 bring up with regard to the petition for  
7 reconsideration at this time? All right. I need to  
8 ask you to stay on the line if you are on the line,  
9 because the reporter will need to ask you if you will  
10 be ordering copies of the transcript.

11           I don't know when an order will come out  
12 with regard to either the motion to strike or the  
13 petition for reconsideration, but it will be soon, as  
14 soon as it can be done, bearing in mind that the  
15 October 3rd filing date is not something you need to  
16 worry about at this point. So if there's nothing  
17 else, then thank you, and we're adjourned. Please  
18 stay on the line.

19           (Proceedings adjourned at 3:22 p.m.)

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