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14 FOCAL COMMUNICATIONS CORPORATION OF  
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15 1501 Fourth Avenue, Seattle, Washington, 98101.

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17 LEVEL3 COMMUNICATIONS, LLC, by Rogelio  
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18 LLC, 1375 Walnut, Suite 200, Boulder, Colorado 80302.

19 8X8, INC., by Christy C. Kunin,  
Attorney at Law, 1625 Massachusetts Avenue, N.W.,  
Suite 300, Washington, D.C., 20036.

20 NET2PHONE, by Elana Shapochnikov,  
Attorney at Law, 520 Broad Street, Newark, New  
21 Jersey, 07102 (via teleconference bridge.)

22 VONAGE, by Michael Sloan, Attorney at  
Law, Swidler Berlin Shereff Friedman, 3000 K Street,  
N.W., Suite 300, Washington, D.C., 20007 (via  
23 teleconference bridge.)

24 VOICE ON THE NET COALITION, by Susan  
Hafeli, Attorney at Law, Shaw Pittman, LLC, 2300 N  
Street, N.W., Washington, D.C., 20037 (via  
25 teleconference bridge.)

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1                   JUDGE MOSS: We'll be on the record. Good  
2 morning, everyone. For those of you who don't know  
3 me, my name is Dennis Moss. I'm an Administrative  
4 Law Judge with the Washington Utilities and  
5 Transportation Commission. The Commissioners are  
6 sitting today on the bench, Chairwoman Marilyn  
7 Showalter and Commissioner Patrick Oshie.  
8 Commissioner Hemstad had intended to be here, but was  
9 unavoidably conflicted, and so won't join us this  
10 morning.

11                   We're convened in the matter that is styled  
12 WECA v. LocalDial, Docket Number UT-031472, which is  
13 a matter that has come before the Commission on  
14 referral from the Federal District Court in the  
15 Western District of Washington, City of Tacoma. The  
16 judge in that proceeding did enter an order of  
17 referral outlining certain issues that, judging from  
18 the size of the group assembled and the fact that we  
19 have received 11 motions to intervene or expressions  
20 of interest in becoming an interested person in the  
21 proceeding, obviously suggested to the industry that  
22 this may be a matter of some broad interest.

23                   I will say that the scope of the proceeding  
24 at this juncture is unclear. Prior to today, I  
25 received from Mr. Butler and Mr. Kennedy, for

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1 LocalDial, a copy of the transcript of the  
2 proceedings that led to this referral, and we have  
3 all had an opportunity to read that.

4 We've also had the development, of course,  
5 in Minnesota, where a federal district court has  
6 addressed this issue with respect to that  
7 jurisdiction, which of course is not necessarily  
8 binding here, but nevertheless informs us all.

9 I'm going to reverse the usual order of  
10 things this morning a little bit in light of the  
11 circumstances. We will take appearances, of course,  
12 but then, instead of taking up the petitions, we'll  
13 talk about the scope of the proceeding. We want to  
14 discuss that with the parties. That will inform both  
15 the intervenors with respect to their interests, and  
16 also inform our process decisions in terms of how to  
17 handle this case.

18 Now, at this juncture, it is in the form of  
19 an adjudication. That's how it was referred to us,  
20 and so that's how we're treating it. So with that,  
21 let's take the appearances, and given the posture of  
22 the case as it stands today, we'll begin with WECA,  
23 as the plaintiff in the underlying cause.

24 MR. FINNIGAN: Thank you, Your Honor.  
25 Richard Finnigan, on behalf of the Washington

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1 Exchange Carrier Association and its affected  
2 members. My address is 2405 Evergreen Park Drive  
3 Southwest, Suite B-1, Olympia, Washington, 98502.  
4 The phone number is 360-753 -- excuse me, my phone  
5 number is 360-956-7001. The fax is 360-753-6862. My  
6 e-mail is rickfinn@ywave.com.

7 With me is Mr. Seth Bailey. The address and  
8 fax number are the same. The phone number is  
9 360-956-7211, and the e-mail, I believe, is  
10 sbailey@ywave.com.

11 JUDGE MOSS: All right. Now, those of you  
12 who have not appeared here before can take a cue from  
13 Mr. Finnigan, who has. He has given us all of the  
14 relevant information that we require on first  
15 appearance. In subsequent proceedings, we'll take a  
16 shortened form.

17 And I want to mention another thing. We  
18 have such a number of parties, and I'm not sure who  
19 all is here and who isn't. Some are here by  
20 teleconference bridge, as I understand it, and we'll  
21 get to them momentarily, as I'm going to do a roll  
22 call, essentially, based on the petitions to  
23 intervene, and that will keep things orderly with  
24 respect to those who are on the telephone. And then,  
25 if there are any others, we'll of course ask about

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1 that, as well. But before we get to the roll call,  
2 let's hear from LocalDial.

3 MR. BUTLER: Arthur A. Butler, of the law  
4 firm of Ater Wynne, LLP, appearing on behalf of  
5 LocalDial Corporation. My address is 601 Union  
6 Street, Suite 5450, Seattle, Washington, 98101-2327.  
7 Telephone number, 206-623-4711. E-mail address is  
8 aab@aterwynne.com. Fax is 206-46 -- did I say that?  
9 206-467-8406, if I didn't. I lost my place. With  
10 me, also, is Lisa Rackner.

11 MS. RACKNER: My address is 222 Southwest  
12 Columbia, Suite 1800, Portland, Oregon, 97201. My  
13 phone number is 503-226-8693. My fax is  
14 503-226-0079, and my e-mail address is  
15 lfr@aterwynne.com.

16 JUDGE MOSS: Thank you. All right. How  
17 about for Level 3 Communications.

18 MR. PENA: Good morning, Your Honor. My  
19 name's Rogelio Pena. I'm here on behalf of Level 3  
20 Communications, LLC. I'm with Pena & Associates,  
21 LLC. And my address is 1375 Walnut, Suite 200, it's  
22 Boulder, Colorado, 80302. My phone number is  
23 303-415-0409, my fax is 303-415-0433, and my e-mail  
24 address is repena@boulderattys.com.

25 JUDGE MOSS: For AT&T.

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1 MS. FRIESEN: Good morning, all. Letty  
2 Friesen, on behalf of AT&T Communications of the  
3 Pacific Northwest, Inc. and AT&T Local Services on  
4 behalf of TCG Seattle and TCG Oregon. My address is  
5 1875 Lawrence Street, Suite 1500, Denver, Colorado,  
6 80202. My telephone number is 303-298-6475, my fax  
7 number is 303-298-6301, my e-mail address is  
8 lsfriesen@att.com.

9 JUDGE MOSS: All right. Is anyone here for  
10 Javelin, Inc.? On the teleconference bridge line,  
11 anyone for Javelin, Inc.? Sprint.

12 MR. HENDRICKS: Tre Hendricks, on behalf of  
13 United Telephone Company of the Northwest, doing  
14 business as Sprint. Address is 902 Wasco Street,  
15 Hood River, Oregon, 97031. Phone is 541-387-9439,  
16 fax 541-387-9753, my e-mail address is  
17 tre.e.hendricks.iii@mail.sprint.com.

18 JUDGE MOSS: Thank you. For Net2Phone,  
19 Inc.? Nobody in the hearing room. Anyone on the  
20 teleconference line for Net2Phone, Inc.? All right.  
21 ICG Communications, Inc.

22 MR. DEL SESTO: For ICG Communications,  
23 Inc., this is Ron Del Sesto, from Swidler Berlin  
24 Shereff Friedman. My address is 3000 K Street  
25 Northwest, Suite 300, Washington, D.C., 20007-5116.

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1 Telephone is 202-945-6923, fax is 202-424-7643, and  
2 e-mail is rwdelsesto@swidlaw.com.

3 MS. SHAPOCHNIKOV: Your Honor?

4 JUDGE MOSS: Yes.

5 MS. SHAPOCHNIKOV: Elana Shapochnikov, for  
6 Net2Phone. Sorry, I missed your prior. Elana  
7 Shapochnikov, from Net2Phone.

8 JUDGE MOSS: Could you spell your last name,  
9 please?

10 MS. SHAPOCHNIKOV: Sure,  
11 S-h-a-p-o-c-h-n-i-k-o-v. My address is 520 Broad  
12 Street, Newark, New Jersey, 07102. Phone number is  
13 973-438-3686, fax is 973-438-3100, and my e-mail is  
14 eshapo@net2phone.com.

15 JUDGE MOSS: Tell me your phone number  
16 again.

17 MS. SHAPOCHNIKOV: 973-438-3686.

18 JUDGE MOSS: Thank you. Broadband  
19 Communications Association of Washington.

20 MR. HARLOW: Thank you, Your Honor. Good  
21 morning. Brooks Harlow, appearing for Broadband  
22 Communications Association of Washington, and also  
23 for possible intervenor Covad Communications. I'm  
24 with the Miller Nash, LLP Law Firm. My address is  
25 4400 Two Union Square, 601 Union Street, Seattle,



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1 Washington, 98101. Telephone is 206-622-8484, fax is  
2 206-622-7485, and my e-mail address is  
3 brooks.harlow@millernash.com.

4 JUDGE MOSS: Thank you. Vonage.

5 MR. SLOAN: This is Michael Sloan, for  
6 Vonage, with the Swidler Berlin Shereff Friedman Law  
7 Firm, 3000 K Street Northwest, Suite 300, Washington,  
8 D.C., 20007. Telephone number, 202-295-8458; fax  
9 202-424-7643; e-mail is mcsloan@swidlaw.com.

10 JUDGE MOSS: Thank you, Mr. Sloan. Anyone  
11 for Voice on the Net Coalition?

12 MS. HAFELI: Yes, Your Honor. Good morning.  
13 This is Susan Hafeli, H-a-f-e-l-i. I'm with the law  
14 firm of Shaw Pittman, P-i-t-t-m-a-n, LLP. Our  
15 address is 2300 N, as in Nancy, Street, Northwest,  
16 Washington, D.C., 20037-1128. My telephone number is  
17 202-663-8000, fax number is 202-663-8007, and my  
18 e-mail address is susan.hafeli@shawpittman.com.

19 JUDGE MOSS: Verizon Northwest, Inc.

20 MS. FISHER: Good morning. My name is  
21 Kendall Fisher, on behalf of Verizon Northwest, Inc.  
22 My address is Stoel Rives, LLP, 600 University Street  
23 Suite 3600, Seattle, Washington, 98101. My telephone  
24 number is 206-386-7526, fax number is 206-386-7500,  
25 and my e-mail address is kjfisher@stoel.com.

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1           Also appearing on behalf of Verizon, but who  
2 is not here today, is Timothy O'Connell, also from  
3 the same law firm. His e-mail address is  
4 tjoconnell@stoel.com. And his telephone number is  
5 206-386-7562.

6           JUDGE MOSS: Thank you. WorldCom, MCI.

7           MS. SINGER NELSON: Good morning. Michel  
8 Singer Nelson, on behalf of WorldCom, now known as  
9 MCI. My address is 707 17th Street, Suite 4200,  
10 Denver, Colorado 80202. My phone is 303-390-6106,  
11 fax is 303-390-6333, and my e-mail address is  
12 michel.singer\_nelson@mci.com.

13           JUDGE MOSS: Thank you. Now, that completes  
14 my list of those who have filed either a petition to  
15 intervene or a letter expressing an interest in  
16 becoming an interested person in the proceeding. So  
17 let me ask if there are others present in the hearing  
18 room who wish to enter an appearance on behalf of a  
19 client today? Go ahead.

20           MR. KOPTA: Gregory J. Kopta, of the Law  
21 Firm Davis, Wright, Tremaine, LLP, 2600 Century  
22 Square, 1501 Fourth Avenue, Seattle, Washington,  
23 98101-1688. Telephone, 206-628-7692; fax,  
24 206-628-7699; e-mail gregkopta@dwt.com, and I'm here  
25 appearing for Focal Communications Corporation of

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1 Washington and XO Washington, Inc.

2 JUDGE MOSS: Thank you. I saw another hand  
3 back there. Yes, ma'am. Why don't you come forward  
4 to the counsel table. And you can just pull up a  
5 chair there from the front row and use the  
6 microphone.

7 MS. KUNIN: Good morning. I'm Christy C.  
8 Kunin, for 8X8, inc., from the Law Firm of Gray Cary  
9 Ware and Freidenrich in Washington, D.C. I'm at 1625  
10 Massachusetts Avenue, Suite 300, Washington, D.C.,  
11 20036. My phone number is 202-238-7755; fax number  
12 is 202-238-7701; my e-mail is ckunin@graycary.com.

13 JUDGE MOSS: Is that G-r-e-y or G-r-a-y?

14 MS. KUNIN: G-r-a-y C-a-r-y.

15 CHAIRWOMAN SHOWALTER: Did you say who  
16 you're representing?

17 MS. KUNIN: 8X8, Inc.

18 CHAIRWOMAN SHOWALTER: Sorry. Is that --  
19 how is it spelled?

20 MS. KUNIN: It's 8X8, sorry.

21 JUDGE MOSS: We do have some interesting  
22 names in this industry. Anyone else in the hearing  
23 room? How about on the teleconference bridge line?

24 MS. ANDERL: Yes, Your Honor. Lisa Anderl,  
25 on behalf of Qwest. I would like to enter an

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1 appearance as an interested person in this  
2 proceeding, not as an intervenor. My business  
3 address is 1600 7th Avenue, Room 3206, Seattle,  
4 Washington, 98191. Telephone is 206-345-1574; my fax  
5 is 206-343-4040; and my e-mail is  
6 lisa.anderl@qwest.com.

7 And also for the interested person list will  
8 be the other attorney in my office, Adam Sherr,  
9 S-h-e-r-r, same address and fax, telephone  
10 206-398-2507, e-mail adam.sherr@qwest.com.

11 JUDGE MOSS: Thank you, Ms. Anderl. And we  
12 could hear you, but just barely, so if you have  
13 occasion to speak again, I'll ask you to raise the  
14 volume of your voice just a bit, if you would.

15 MS. ANDERL: Okay. Thank you.

16 JUDGE MOSS: Thank you. Anyone else on the  
17 teleconference bridge line who wishes to enter an  
18 appearance? All right. Then let's get back to the  
19 hearing room and turn to Public Counsel.

20 MR. CROMWELL: Good morning, Your Honor.  
21 Robert Cromwell, Assistant Attorney General, on  
22 behalf of the Public Counsel Section of the  
23 Washington State Attorney General's Office. My  
24 address is 900 Fourth Avenue, Suite 2000, Seattle,  
25 Washington, 98164-1012. My telephone number is

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1 206-464-6595, my fax number is 206-389-2058, and my  
2 e-mail address is robertcl@atg.wa.gov.

3 JUDGE MOSS: Thank you. And for Commission  
4 Staff.

5 MR. THOMPSON: Jonathan Thompson, Assistant  
6 Attorney General, appearing on behalf of Commission  
7 Staff. My address is 1400 South Evergreen Park Drive  
8 Southwest, P.O. Box 40128, Olympia, Washington,  
9 98504. My phone number is 360-664-1225, fax is  
10 586-5522, and my e-mail is jthompso@wutc.wa.gov.

11 JUDGE MOSS: Thank you. That completes our  
12 appearances, then. And I think we're ready to get  
13 into our discussion of the issues so that we can  
14 better analyze what the scope of this proceeding will  
15 be and what process will be appropriate to it.

16 I mentioned earlier that we had received and  
17 had an opportunity to review the transcript from the  
18 federal district court. We also received this  
19 morning, on behalf of LocalDial, a letter of about a  
20 page and a half giving us some history and  
21 operational detail according to LocalDial, and so we  
22 are informed by that information.

23 Based on the transcript, Mr. Finnigan, I  
24 want to turn to you first. I believe you posited the  
25 argument or made the argument to the court that this

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1 proceeding does not implicate the voice over Internet  
2 protocol, and I may be mischaracterizing your  
3 argument and you can correct me if I misstate. But,  
4 in any event, we'd like to understand your position,  
5 what the posture of it is as it arrives here at the  
6 Commission today in light of the arguments you made  
7 there.

8 MR. FINNIGAN: Certainly. First, from our  
9 perspective, WECA and its member companies filed a  
10 complaint specific to LocalDial and specific to  
11 intrastate access issues. We specifically included  
12 any -- excluded anything related to interstate access  
13 issues. That's not an issue that WECA, within its  
14 charter, addresses. It's created to address  
15 intrastate access issues.

16 At the time of the argument, based upon the  
17 depositions of the LocalDial officers, what was clear  
18 at that time was that LocalDial was using IP  
19 technology only within its limited local area  
20 network. The traffic came to them as voice, they  
21 packetized it for purposes of their servers and  
22 routers, and it left their equipment as voice. So  
23 that was the basis on which I said that. From at  
24 least that perspective, what at that time most people  
25 were offering didn't seem to fit within other

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1 offerings of voice over IP.

2           The letter that was delivered today  
3 indicates that LocalDial has perhaps changed some of  
4 its operations and we may need to find that out in a  
5 little greater depth.

6           What my perspective on this is is that we've  
7 done a lot of factual work specific to LocalDial and  
8 there was a fair amount of discovery that went on,  
9 depositions were taken, interrogatories were  
10 addressed and answered, so we have a fairly good  
11 record, fairly specific record. It may need some  
12 updating, but it can be something where we could  
13 focus on a particular offering and address that and,  
14 as the Judge said, ask the Commission to determine  
15 whether or not the tariffs of WECA and its -- the  
16 access tariffs of WECA and its member companies apply  
17 to the LocalDial offering.

18           There are, you know, broader issues. There  
19 were quite a variety of flavors, I guess you'd call  
20 it, of voice over IP offerings. There seems to be  
21 any number of ways in which it's configured. It  
22 might be something the Commission would want to  
23 consider if they want to look at it in a broader  
24 sense, although I'm somewhat mindful, also, of the  
25 Commission's order on the VNXX docket where they

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1 said, you know, that sort of general discussion  
2 sometimes doesn't produce a very good result and  
3 perhaps fact-specific issues are the way to go.

4           But nonetheless, it may be that you would  
5 want to bifurcate this proceeding, look at the  
6 LocalDial complaint, which is the factual issue  
7 that's been referred to you, and look at maybe a  
8 broader view of other flavors of voice over IP, as it  
9 were, on a separate track. So that's my proposal  
10 this morning, as well as trying to respond to Your  
11 Honor's question about the statement I made to the  
12 court.

13           JUDGE MOSS: Now, you argued to the court  
14 that the voice over Internet protocol issues, policy  
15 issues, in your view, were not present in your  
16 complaint case. Is that still your contention today?

17           MR. FINNIGAN: Well, based on the letter of  
18 October 17th, based -- they may or may not be. I  
19 would need to talk with LocalDial's counsel and get a  
20 better understanding of what it is that they're  
21 saying. Apparently they have -- are at least doing  
22 some intrastate transport on a packetized basis that  
23 they weren't doing before. I mean, that's the import  
24 I derive from this letter. I don't -- it would need  
25 more follow-up to find out what that means before I



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1 could answer your question directly. But based upon  
2 what I knew at the time we argued in the court, all  
3 the transport that was going on was done by voice, in  
4 my view, and so that's -- that was the basis for my  
5 argument to the court.

6 JUDGE MOSS: All right. Well, let's hear  
7 from LocalDial.

8 CHAIRWOMAN SHOWALTER: Just before we do, if  
9 you're on the conference bridge, can you please mute  
10 your phone, so that we don't hear your shuffling  
11 papers? Thank you.

12 MR. BUTLER: Very briefly, I think it was  
13 made clear by the federal district court judge that,  
14 in his view, the complaint that was before him  
15 involved a number of important public policy issues,  
16 issues that were better addressed by the Commission  
17 from a factual standpoint and would involve decisions  
18 that would affect the interest of other parties.

19 And so when he remanded or referred this  
20 issue to the Commission, it was clearly his thought  
21 that there would be a proceeding in which other  
22 parties that had an interest in the outcome would  
23 have an opportunity to participate. So from that  
24 standpoint, in our view, we believe that it's pretty  
25 clear that the scope of the proceeding that needs to

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1 be conducted is one in which other parties that could  
2 be affected by any decisions that would have  
3 precedential effect would have a full opportunity to  
4 participate.

5           We understand that there are a broad variety  
6 of voice over IP services and applications that are  
7 provided by various carriers in the marketplace.  
8 What we're really talking about here is what is often  
9 generically referred to as phone-to-phone voice over  
10 IP service. And so the extent to which the  
11 Commission wants to address issues, it would be  
12 certainly fine from the LocalDial perspective if that  
13 inquiry were confined to a phone-to-phone voice over  
14 IP application.

15           A cardinal principle followed by courts is  
16 never decide anything you don't have to, and that's  
17 probably good advice for this Commission here. These  
18 are -- as you can tell by the number of parties that  
19 have shown an interest, this is a very significant  
20 issue that affects a lot of people providing a lot of  
21 different services, so from that standpoint, I think  
22 we -- like I say, we would agree that it could be  
23 confined to a phone -- examination of phone-to-phone  
24 type service, but frankly, we don't see how the  
25 Commission can resolve the issues that were referred

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1 by the federal district court without making some  
2 determination about whether the Commission has  
3 jurisdiction, how phone-to-phone type voice over  
4 Internet protocol type services can be provided, how  
5 they should be regulated, and if regulated, what  
6 charges they should pay.

7 JUDGE MOSS: One question that's in my mind,  
8 Mr. Butler, in this connection, looking, again, back  
9 to the transcript from the federal district court  
10 proceeding where I believe Mr. Kennedy was  
11 representing LocalDial.

12 MR. BUTLER: Yes.

13 JUDGE MOSS: My recollection of the  
14 transcript is such that I understood Mr. Kennedy to  
15 say that this particular service in Washington that  
16 we're concerned about does not actually use the  
17 Internet per se, but relies on an intranet local area  
18 network type of a technology.

19 MR. BUTLER: That is correct.

20 JUDGE MOSS: Okay. All right. Well, I'll  
21 -- I'm pondering how best to open this up for other  
22 comment given the large number of persons in the  
23 room. I think I will turn first to Commission Staff  
24 and Public Counsel, that side of our hearing room,  
25 and hear from those parties, and then we'll perhaps

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1 just proceed around the room from Mr. Harlow in what  
2 is, from my perspective, a counterclockwise  
3 direction.

4 MR. THOMPSON: Thank you, Your Honor. Just  
5 to give our perspective on it, I think legally the  
6 question that's going to be before you is, at the  
7 very least, whether the services provided by  
8 LocalDial fall within the statutory definition of  
9 telecommunications under 80.04.010. And I don't know  
10 that there's necessarily a dispute over that.

11 What I -- what it sounds to me as if the  
12 question is is, having met that definition, is this a  
13 service of the type that the FCC has indicated in its  
14 computer inquiries would fit the definition of an  
15 enhanced service. And therefore, I think the  
16 argument would be that that would be preempted for  
17 the state to regulate.

18 This issue, of course, was addressed in that  
19 recent Minnesota decision, and interestingly, in that  
20 decision, the court, I think, was careful to indicate  
21 that the company before it at that time, Vonage, was  
22 not a phone-to-phone provider of the type that Mr.  
23 Butler represents LocalDial to be.

24 So there's -- I think fundamentally this can  
25 be looked at as a question of preemption, and there

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1 is some guidance out there from the FCC in the form  
2 of a report that it made to Congress in 1998, where  
3 it kind of offers an opinion about how the definition  
4 of enhanced services would be applied to new voice  
5 over Internet protocol technologies, and the --  
6 actually, the New York Public Service Commission has  
7 had a proceeding, and in that case limited the case  
8 to consideration of one particular company, holding  
9 it up against the definition of an enhanced service  
10 provider provided by the FCC in deciding whether it  
11 would be -- meet that definition or not.

12 I think Staff's preference at this point  
13 would be that the Commission approach it on a  
14 case-by-case basis, looking specifically at the  
15 services offered by LocalDial, developing a record  
16 based on what this company, in particular, is doing,  
17 and not necessarily try to decide across the board  
18 how -- what the state ought to do, Washington State  
19 ought to do with all flavors of voice over Internet  
20 provider.

21 JUDGE MOSS: Okay. Thank you, Mr. Thompson.  
22 Mr. Cromwell.

23 MR. CROMWELL: Thank you, Your Honor. I  
24 have very little to add. I think that the tenor of  
25 what Mr. Thompson and Mr. Butler have both said is --

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1 I generally concur with. I think this Commission  
2 needs to make a predicate decision regarding the  
3 scope of its jurisdiction, and then, based upon that  
4 decision, go forward with the degree to which its  
5 existing statutes and regulations apply to the  
6 service being offered.

7           And I think that, generally speaking, given  
8 that we have a specific matter now before the  
9 Commission, it is best, at least as an initial  
10 matter, to address that which has been referred to  
11 the Commission for resolution and then determine  
12 whether or not to engage in a broader scope  
13 proceeding that might address the very wide range of  
14 issues that are prompted by VoIP technology.

15           JUDGE MOSS: Thank you. Before turning to  
16 the intervenors or would-be intervenors and  
17 interested persons, let me say that the way things  
18 are shaping up here this morning, we have essentially  
19 the suggestion on the table that we either bifurcate  
20 or phase the proceeding in some fashion so as to  
21 consider the narrow issues concerning the two  
22 companies involved and particular service offering,  
23 which is the subject matter -- or that is the subject  
24 matter of the complaint, and then perhaps conduct a  
25 second phase or perhaps limit the proceeding entirely

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1 to that first phase.

2           And so as you -- those of you who have  
3 petitions to intervene, particularly, or think you  
4 might wish to intervene, as you speak, I'd like for  
5 you to let us know whether that process decision will  
6 affect your interest in participating.

7           MR. HARLOW: Certainly, Your Honor. Brooks  
8 Harlow, for the Broadband Communications Association.  
9 Covad doesn't have a position on these questions at  
10 this time, so I speak only on behalf of the Broadband  
11 Association.

12           I guess, from our perspective, and we're  
13 probably not alone in this, maybe everyone shares  
14 this view except for Mr. Finnigan, we would just as  
15 soon this process came later, like after we got some  
16 more federal guidance from both the courts and the  
17 FCC. And I'm not sure that we can -- that that can  
18 happen unless somehow the parties, the principal  
19 parties are able to settle.

20           But the Association, which primarily its  
21 members currently provide cable television and cable  
22 modem service, none of them are providing VoIP at  
23 this time, at least in this state, so far as we're  
24 aware. So we're dealing with a new service and it's  
25 not clear, even internally, even if you talk to a

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1 single company, potentially you wouldn't get a  
2 definitive answer as to how they think these issues  
3 ought to come out. It's a new service, it's under  
4 contemplation, but it's really just getting going.

5           So that's our first comment, that we don't  
6 know if anything can be done about it, but we think  
7 it's kind of premature to be dealing with the broader  
8 issues.

9           The problem is, and I'll answer your  
10 question first and then I'll explain it. We'd like,  
11 if there's going to be a decision, we'd like to see  
12 it be narrowly addressed to the issue of intrastate  
13 access charges on the fact-specific facts of this  
14 particular case, but we recognize that once a  
15 precedent is set, it's very difficult to put that  
16 aside in the next broader case.

17           And so from our perspective, I think we  
18 would go ahead and intervene in the docket and be an  
19 intervenor in both -- on both tracks. We might or  
20 might not be active, particularly active in the  
21 narrower track, but, again, because of the  
22 precedent-setting issues, unless they come out at the  
23 same time or the broader track comes out first, we'd  
24 probably feel like, to protect our interests, we have  
25 to participate in the initial case.



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1           Again, if it's going to be -- if it's going  
2 to be now, if it's going to be in this case, we'd  
3 like to see it narrow. But, again, our concern is  
4 can it really be narrow because any new area of law  
5 gets built up in -- typically, in little, tiny  
6 increments. You know, it's the old camel's nose  
7 under the tent, and once you decide that one flavor  
8 is telephony, that's going to necessarily impact the  
9 future proceedings. So we're not sure that it can be  
10 narrow.

11           JUDGE MOSS: Regulation by increment, as  
12 opposed to accident, as Mr. Powell observed the other  
13 day.

14           MR. HARLOW: Regulatory creep, Your Honor.

15           JUDGE MOSS: Mr. Kopta.

16           MR. KOPTA: I'm not sure that I have a whole  
17 lot to add, either. I think, to answer your question  
18 directly, the extent to which my clients would want  
19 to intervene and participate in this proceeding will  
20 be directly tied to the extent to which the scope is  
21 set broadly or narrowly.

22           We have the same concerns that Mr. Harlow  
23 expressed as to, even if it's narrow, there may be  
24 enough of an issue that it's something that they  
25 would want to participate in. But that's really

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1 unclear at this point. Certainly, if it's broad  
2 enough to have two phases, one being specific to the  
3 facts of this case and another sort of a general  
4 voice over Internet protocol inquiry, then they would  
5 be much more interested.

6           And I agree with those that have spoken up  
7 to now in saying that we don't think that that's  
8 appropriate. The Commission already opened a docket  
9 in which it was thinking about trying to do that and  
10 subsequently decided that maybe that wasn't such a  
11 good idea at this time, and we think the Commission  
12 was right when it made that determination and  
13 shouldn't use this complaint docket as a way of  
14 trying to once again look at a broader issue,  
15 particularly without guidance from the FCC, which one  
16 hopes will be forthcoming soon. But even if it's  
17 not, it is an issue that I think the Commission  
18 should tread lightly on.

19           Obviously, there is a complaint case before  
20 the Commission now on reference from the district  
21 court, and we certainly wouldn't recommend the  
22 Commission ignore that. So you do have something in  
23 front of you, but we agree that it should -- that you  
24 should try and stick to what's in front of you, to  
25 the extent possible, and keep whatever your

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1 determination is as narrow as possible.

2           And we would also ask for your indulgence  
3 at, having once made that determination, that I can  
4 consult with my clients and make a determination  
5 briefly after that as to whether they want to  
6 participate as an intervenor or an interested party,  
7 because I think that, given that there's no knowing  
8 what the scope is going to be or what the specific  
9 facts that the Commission is going to be looking at  
10 are going to be, that it would be better for all  
11 concerned if my clients are able to make a  
12 determination about intervention after knowing as  
13 much as they can, as opposed to trying to jump in and  
14 then finding out that they're uninterested or vice  
15 versa.

16           JUDGE MOSS: Thank you.

17           MR. HENDRICKS: Tre Hendricks, on behalf of  
18 Sprint. We keep talking about the scope of the  
19 proceeding, whether it be narrow, broad, and I just  
20 want to be clear that I think the way we view it is  
21 that there are two levels. One is the type of  
22 service, whether it's, you know, phone-to-phone or  
23 use of broadband, and the other is the extent that  
24 the Commission will address regulatory issues in  
25 addition to the application of a local carrier's

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1 intrastate access tariff.

2           It's not clear to me from the referral,  
3 having just read the paragraph that the court talks  
4 about it, that the Commission would be required to  
5 address the, you know, the full load of regulatory  
6 requirements, as the court calls them, which would  
7 include, you know, 911 and other retail type  
8 regulations.

9           And I'm -- I haven't seen the pleadings in  
10 that docket, in that case, so I'm not certain if  
11 those were issues that were raised by WECA in it,  
12 so you know, those are all -- seems like those are  
13 the issues and the levels of scope that we have to  
14 address.

15           And then I'll say on behalf of Sprint that,  
16 in all likelihood, we would remain interested in  
17 being an intervenor in the docket regardless -- and  
18 would prefer, I think, that the Commission would  
19 address at least the narrow type of service, the  
20 phone-to-phone Internet -- voice over Internet  
21 protocol service that is at issue with LocalDial.  
22 Thank you.

23           JUDGE MOSS: Ms. Kunin.

24           MS. KUNIN: Christy Kunin, for 8X8. I agree  
25 with the sentiments that have been expressed over

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1 here. We're here as an interested party because we  
2 specifically don't know what the scope that the  
3 Commission's going to be inquiring into is in this  
4 proceeding, and we are concerned about precedential  
5 effect that could come out of even a more narrow  
6 ruling by this Commission, but certainly, in a  
7 broader proceeding, we would be inclined to be  
8 involved in that proceeding on an interested party or  
9 intervenor basis.

10 On the more narrow question, it's really  
11 going to be an issue I need to take back to 8X8 to  
12 ask whether they're interested in participating on an  
13 intervenor basis, but they certainly would be an  
14 interested party going forward.

15 JUDGE MOSS: Thank you.

16 MS. FISHER: Kendall Fisher, for Verizon  
17 Northwest. Basically, we feel that, as to the narrow  
18 versus broad issues, Verizon would have an interest  
19 in participating in the proceedings in either event.

20 As to the narrow issues, one of the  
21 questions is whether the Commission has jurisdiction  
22 over companies like LocalDial. And Verizon works  
23 with enhanced service providers similar to the  
24 LocalDial here. So in that case, we would propose  
25 that -- we don't have any statement as to whether the

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1 case should be bifurcated or not, but if it is  
2 bifurcated, we would, you know, participate to the  
3 extent necessary that the facts, as they relate to  
4 Verizon, are pertinent to our access tariffs that we  
5 have with other companies.

6 JUDGE MOSS: Thank you. I think we jump  
7 over to you, Ms. Singer Nelson.

8 MS. SINGER NELSON: Thank you. MCI really  
9 has nothing to add and shares in the comments of the  
10 other parties. If the Commission does decide to keep  
11 the scope of this proceeding narrow, I think MCI  
12 would still like to participate. I would have to  
13 double check after the Commission does make a  
14 decision on that issue. But I still think, because,  
15 as everybody else has said, the precedential value,  
16 we would still be interested in participating in the  
17 docket.

18 JUDGE MOSS: Ms. Friesen.

19 MS. FRIESEN: AT&T, consistent with Mr.  
20 Butler and Mr. Thompson and Mr. Cromwell, agrees that  
21 this proceeding ought to be limited to that which was  
22 referred to the Commission and the phone-to-phone  
23 VoIP issue.

24 To expand it into the broader question  
25 before the FCC has had an opportunity to make

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1 determinations that may provide guidance to the  
2 Commission we think is folly. So we are hoping and  
3 advocating that the scope of this proceeding be that  
4 which the court referred back to this Commission.  
5 That said --

6 JUDGE MOSS: And by that, you mean limited  
7 to its facts?

8 MS. FRIESEN: Right.

9 JUDGE MOSS: Because the judge used fairly  
10 broad language in his issues.

11 MS. FRIESEN: Right, limited -- consistent  
12 with what Mr. Butler suggested, limited to the very  
13 type of VoIP presentation that LocalDial presents in  
14 this case, in this state, and nothing more, not to  
15 broaden it to all flavors of VoIP. We think it's  
16 unnecessary to decide all of those issues at this  
17 juncture and would be premature in advance of the FCC  
18 guidance that we're all anticipating will come.

19 That said, I also agree -- AT&T agrees that  
20 the fundamental question is jurisdiction and whether  
21 this Commission believes it does have jurisdiction  
22 over this type of enhanced service. So that would be  
23 one of the first questions we would ask that you  
24 decide. In other words, set out for briefing, do we  
25 have jurisdiction, and make that decision and then go

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1 forward on the limited facts of this case.

2 If it is done in that manner, AT&T certainly  
3 will continue to be an intervenor. If you do the  
4 dual track, as suggested by Mr. Finnigan, AT&T, of  
5 course, would be interested then, as well.

6 JUDGE MOSS: Mr. Pena.

7 MR. PENA: Your Honor, I don't believe I  
8 have much to add to what's already been said. I do  
9 believe that Level 3 would participate in both  
10 proceedings should it be bifurcated. I do want to  
11 make one comment, that I agree that it should be  
12 limited to the facts before the Commission, and I  
13 know that a couple of people have mentioned that the  
14 proceedings should be limited to phone-to-phone VoIP  
15 service, and I think it should be even more specific  
16 than that. I don't think it should be just  
17 generically phone-to-phone service, but the  
18 phone-to-phone voice service that's before the  
19 Commission in this complaint.

20 Because I think that voice over IP services  
21 come in different flavors, and I would say that even  
22 in dealing with phone-to-phone VoIP, you'd still end  
23 up having to look at the facts as to how that was  
24 being provided.

25 JUDGE MOSS: Thank you.



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1 MR. PENA: Thank you.

2 JUDGE MOSS: All right. Now, if I miss  
3 anyone, I'll apologize. I don't think I've missed  
4 anyone in the room. Mr. Del Sesto.

5 MR. DEL SESTO: Yes, I'm here.

6 JUDGE MOSS: Do you have any comment on  
7 behalf of ICG?

8 MR. DEL SESTO: I would say that we fall in  
9 line with most of what we've heard in terms of  
10 agreeing that it should be limited to the facts,  
11 LocalDial, that, as Mr. Pena suggested, that it even  
12 be limited further to the phone-to-phone IP services  
13 offered by that specific company, and that we'd have  
14 to reevaluate our participation based on how the  
15 scope is defined.

16 JUDGE MOSS: Thank you. And Mr. Sloan, I  
17 believe, for Vonage.

18 MR. SLOAN: Yes, this is Mike Sloan, for  
19 Vonage. I of course agree with all of the other  
20 lawyers here today that the proceedings should be  
21 narrowly tailored to consider the facts presented to  
22 the Commission.

23 I would also point out that Vonage's service  
24 differs markedly from the service described today.  
25 The extent of the company's participation would

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1 depend on how the scope was determined by the  
2 Commission.

3 JUDGE MOSS: Ms. Hafeli, for Voice on the  
4 Net Coalition.

5 MS. HAFELI: Yes, Your Honor. The VON  
6 Coalition concurs with the statements of the  
7 potential intervenors and interested parties that  
8 it's premature to take expansive action about any  
9 action that the Commission deems appropriate. In  
10 light of that, the court's deferral order should be  
11 limited to the specific facts.

12 JUDGE MOSS: Thank you. And Ms. Anderl, I  
13 think you said you were an IP at this juncture?

14 MS. ANDERL: That's right, Your Honor.

15 JUDGE MOSS: Did you wish to comment?

16 MS. ANDERL: No, thank you.

17 JUDGE MOSS: All right. Have I missed  
18 anyone?

19 MS. SHAPOCHNIKOV: Elana Shapochnikov, for  
20 Net2Phone.

21 JUDGE MOSS: All right. Go ahead.

22 MS. SHAPOCHNIKOV: I would echo the comments  
23 of the attorneys that seek to limit the proceedings  
24 to LocalDial's particular service, especially given  
25 that -- and especially given that even phone-to-phone

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1 services differ radically from provider to provider.  
2 So Net2Phone, of course, would be interested -- would  
3 participate as an interested party at this point, but  
4 if the scope is broadened, then Net2Phone may  
5 intervene. At this point, it's premature or too  
6 early for us to be able to state definitively the  
7 type of participation we would engage in.

8 JUDGE MOSS: Thank you. Anyone else? All  
9 right. Let me ask the principal parties whether the  
10 situation is such that we might proceed on the narrow  
11 issue that has been presented via the complaint and  
12 answer in the federal district court and referred to  
13 us in that sense on stipulated facts? Are there  
14 facts in dispute with respect to the issues?

15 MR. FINNIGAN: Your Honor, Rick Finnigan. I  
16 think we could get to stipulated facts fairly  
17 quickly. We would need to update the information  
18 we'd gathered in our discovery to date in court. Ms.  
19 Rackner and I had a brief opportunity to speak just  
20 prior to this prehearing conference convening and  
21 thought that -- they have some discovery they would  
22 like to get from my clients, and based on that, I  
23 think we could, in fairly short order, address --  
24 have an entire factual record put together that we  
25 could -- I think we could probably get stipulated

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1 facts from.

2 MR. BUTLER: Yeah, that's right.

3 MR. FINNIGAN: And then bring that before  
4 you for an argument as to whether or not that type of  
5 service, as described in those facts, is within the  
6 jurisdiction of the Commission to address and whether  
7 the tariffs of my clients apply or not.

8 JUDGE MOSS: And Mr. Butler, did I see you  
9 nod in affirmance?

10 MR. BUTLER: Yes, I believe we can reach a  
11 stipulated set of facts after an opportunity for some  
12 discovery. The issue about, you know, whether the  
13 WECA access tariffs would apply or whether something  
14 else should be done if the Commission should  
15 determine that these services are subject to  
16 regulation or not otherwise outside the Commission's  
17 jurisdiction maybe is a little different issue that  
18 might require some further exploration. But in terms  
19 of presenting a factual record, I believe that, like  
20 I say, with some discovery we can get there.

21 JUDGE MOSS: So one option that would appear  
22 to be available to us would be to take up the narrow  
23 aspect of the case on cross motions for summary  
24 determination. Is that the question?

25 MR. BUTLER: Yes, I think on -- maybe we

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1 could bring some jurisdictional motions to you. And  
2 we'd prefer to maybe do that mid-December, given the  
3 other things we were thinking about, the 22nd, if  
4 that would work.

5 CHAIRWOMAN SHOWALTER: Mr. Butler, is your  
6 microphone on?

7 MR. BUTLER: Oh, I'm sorry. Sorry.

8 MR. FINNIGAN: I think we can talk about  
9 schedule later, but I'm not sure I want to be filing  
10 something December 22nd. I'll just --

11 JUDGE MOSS: I'm not sure I'm wanting you  
12 to, either.

13 MR. FINNIGAN: Just a thought, but --

14 MR. BUTLER: Just given the press of other  
15 things, I was looking for something in that --

16 MR. FINNIGAN: Okay.

17 JUDGE MOSS: First day of winter. Nothing  
18 symbolic about that.

19 MR. BUTLER: Yeah.

20 MR. FINNIGAN: But, yeah, I think in order  
21 to bring a jurisdictional motion, we need to complete  
22 the little bit of discovery I think we have left so  
23 that the picture is laid out and we can go forward.

24 JUDGE MOSS: Okay.

25 CHAIRWOMAN SHOWALTER: I only have a comment

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1 to make, that the brain power in this room is really  
2 impressive, and I'm thinking what else could be  
3 accomplished, or at least with the money that you're  
4 all being paid.

5 JUDGE MOSS: Well, I would follow up on that  
6 and say that seldom do we see 11, 12, 13 lawyers all  
7 agreeing.

8 MS. SINGER NELSON: Yeah.

9 JUDGE MOSS: About anything.

10 MS. SINGER NELSON: That's right.

11 JUDGE MOSS: You'd get a lot of business in  
12 a small town.

13 MR. BUTLER: I might also note that, at  
14 least according to the trade press, both the FCC  
15 Chairman Powell and Commissioner Abernathy have both  
16 been quoted publicly as saying that the issue of the  
17 regulatory treatment of VoIP services is very high on  
18 their list and they hope to address that, I think  
19 they even said this fall, and also key staff people  
20 at the FCC have indicated that it's a priority issue,  
21 so we might actually have the benefit of this FCC  
22 advice by the time we move forward.

23 MR. FINNIGAN: And just to show there are  
24 some disagreements, I hope that's the case, but I'm  
25 not that optimistic, since what I saw the chairman

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1 state was his preferred method was to issue a notice  
2 of proposed rulemaking -- or excuse me, not even a  
3 notice of proposed rulemaking, but a notice of  
4 proposed inquiry, which in my experience at the FCC  
5 means you're a minimum of two years out, if in fact  
6 that's the course they follow. So I would like to  
7 hope we could get some guidance, but I kind of doubt  
8 it.

9 JUDGE MOSS: And that assumes no one takes  
10 it to the court of appeals, of course.

11 MR. FINNIGAN: Of course.

12 JUDGE MOSS: We've seen that happen  
13 repeatedly. All right. Do we need to hear anything  
14 else?

15 All right. Let's come back to order,  
16 please. Thank you. We've had an opportunity to  
17 confer based on the comments we've heard this  
18 morning, and the Commission determines that it should  
19 conduct this proceeding on a very narrow basis.

20 And so we will confine ourselves to  
21 consideration of the specific facts that relate to  
22 the specific service of which WECA has complained in  
23 the federal district court. Understand you'll need a  
24 period for discovery, but that there is a very strong  
25 probability that you will be able to arrive at

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1 stipulated facts, and we could then proceed on cross  
2 motions for summary determination.

3           Insofar as intervenor petitions and letters  
4 expressing interest, a desire to have interested  
5 person status, we also determined that the Commission  
6 should remain open-minded, if you will, to  
7 participation in the proceeding, and so we'll go  
8 ahead and act on those motions, and of course anyone  
9 who simply requests IP status gets it. So those of  
10 you who don't wish to elevate your status beyond  
11 interested person status, as I say, that's more or  
12 less automatic.

13           Those of you who have filed petitions to  
14 intervene may tell us today that you would prefer IP  
15 status for the time being, being mindful that we will  
16 consider later a request to change that status if  
17 something should happen in the proceeding that would  
18 suggest your heightened level of interest.

19           It strikes me as a practical matter that we  
20 probably would hear from the principal parties,  
21 perhaps from Staff, Public Counsel, maybe one or more  
22 interested persons or would-be intervenors might wish  
23 to file a brief, a short brief at the summary  
24 determination stage.

25           Now, of course, if there are cross motions



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1 for summary determination and those are -- one is  
2 granted, then the proceeding is over and it will go  
3 back to the federal district court that has entered a  
4 stay, as opposed to dismissing.

5           If the Commission does not see its way to  
6 grant any motion for summary determination, then  
7 we'll have to have another prehearing conference, and  
8 that would be the opportunity where I would expect we  
9 could reconsider the status of the various people who  
10 are here today who -- and further discuss where the  
11 proceeding will go.

12           So I hope I'm being sufficiently clear to  
13 give you some guidance about what you might want to  
14 do today in terms of your petition to intervene or IP  
15 letter.

16           I suppose we should go ahead and act on the  
17 petitions and so forth, and then talk about  
18 scheduling after that. So let me just go through the  
19 list and we'll determine what people wish to do.

20           Level 3, Mr. Pena -- there's no significance  
21 to the order in which I proceed, by the way. It's  
22 simply the order in which these things came to me, so  
23 --

24           MR. PENA: Your Honor, given what you just  
25 said, that interested parties would be given an

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1 opportunity to file a brief should there be motions  
2 for summary judgment, I'll have to get back to Level  
3 3, but I suspect that they'll want to just  
4 participate as an interested party. Obviously, if at  
5 some point in the future, if the Commission decides  
6 to not grant the motions and go forward with the  
7 hearing, Level 3 will reexamine that position, but I  
8 will file a letter with the Commission in the next  
9 couple of days.

10 JUDGE MOSS: Go ahead, Mr. Butler.

11 MR. BUTLER: Excuse me, Your Honor. Can I  
12 ask a point of clarification? The cross motions for  
13 summary judgment that you contemplate, did I  
14 understand correctly that those would be addressed to  
15 the jurisdictional issue only?

16 JUDGE MOSS: As opposed to?

17 MR. BUTLER: As opposed to dealing with  
18 other issues on the merits?

19 JUDGE MOSS: Well, the narrow issues I  
20 suppose we have to respond to for the benefit of the  
21 court include the Commission's jurisdiction and  
22 whether the access charge tariffs apply. Isn't that  
23 -- wouldn't we, at a minimum, have to decide those  
24 two things?

25 MR. FINNIGAN: Those are the questions that

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1 were referred in the Court's order.

2 JUDGE MOSS: So it seems to me we've got --  
3 the narrowest issues that we can address and satisfy  
4 the Court's fundamental need are those two. Now,  
5 beyond that, to the extent there are broader issues  
6 about voice over Internet protocol, I don't read what  
7 the judge said as establishing the necessity for the  
8 Commission to have that broad proceeding and address  
9 those broad issues, but only the narrow issues of  
10 whether what level -- I'm sorry, what LocalDial is  
11 providing, and this particular service that we're  
12 talking about, this intrastate service, whether it  
13 is, in fact, a jurisdictional service, jurisdictional  
14 to this Commission, and if so, whether the access  
15 charge tariffs apply.

16 MR. BUTLER: I guess what I'm suggesting is  
17 that we believe that there may be some disputes about  
18 that second question about which I think it's  
19 unlikely we'd be able to reach a stipulation.

20 JUDGE MOSS: This is a policy question,  
21 isn't it?

22 MR. BUTLER: I think there may be factual  
23 issues, as well.

24 JUDGE MOSS: Or legal. Well, to the extent  
25 that develops, I guess we'll have to remain

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1 open-minded about our process. But if we can achieve  
2 stipulated facts on all material facts, then, you  
3 know, we may have to have some sort of evidentiary  
4 proceeding to resolve anything that's in dispute.

5 But I'm going to remain optimistic for the  
6 moment that you will be able to stipulate as to the  
7 facts that will be relevant to that and the arguments  
8 that would be limited to the arguments of law and  
9 policy.

10 CHAIRWOMAN SHOWALTER: And the other thing  
11 that is left a little bit hanging or at least is a  
12 potential is the issues that Mr. Hendricks referred  
13 to. That is, if we have jurisdiction, there is not  
14 only the WECA issue, which I guess is the minimum  
15 that we would need to decide, but there may be  
16 necessarily implications of some other regulations.  
17 I don't really know, and I think this other dimension  
18 that Mr. Hendricks --

19 MR. FINNIGAN: Your Honor, just to clarify,  
20 truly there are many flavors of voice over IP.  
21 LocalDial is, in our view, acting as an interexchange  
22 carrier and is not purporting to offer local service.  
23 So 911 issues and things of that nature that might be  
24 present for a different type of voice over IP  
25 provider are not present for LocalDial.

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1           MR. THOMPSON:  If I could just add  
2 something, however.  On behalf of Staff, there -- we  
3 could -- we would see that there might be issues in  
4 this case as to following up on the jurisdictional  
5 question of possibly whether -- whether and to what  
6 extent the access charges should apply.  I guess -- I  
7 think I'm hearing Mr. Butler to be indicating that  
8 those issues might follow.

9           And also, under 80.36.310 and 320, which are  
10 the statutes for classification of competitive  
11 telecommunications companies, if in fact the  
12 Commission finds that LocalDial is subject to its  
13 jurisdiction, there are issues there as to which  
14 parts of the Commission's regulatory scheme should  
15 apply to a competitively classified company.  So  
16 those conceivably would need to be addressed at some  
17 point, as well.

18           MS. FRIESEN:  Could I ask --

19           JUDGE MOSS:  Yes, go ahead, Ms. Friesen.

20           MS. FRIESEN:  Just a point of clarification.

21 I think the first issue that the Commission might  
22 want to make in a summary judgment type format is  
23 whether or not it has jurisdiction.  It seems to me  
24 it's fundamental for you to find jurisdiction before  
25 we take the next step.  That is, before you go ahead

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1 and decide whether the access tariffs apply, before  
2 you go ahead and decide whether this particular  
3 flavor of VoIP is, in fact, a telecommunications  
4 service under your state law.

5           So it seems to me that perhaps we want to  
6 limit the summary judgment motions to the very  
7 question of whether or not you have jurisdiction.  
8 Once that's determined, then maybe on the merits you  
9 do additional summary judgments or something like  
10 that, but I don't think you want to get to the merits  
11 of the case prior to making the fundamental decision  
12 about whether or not you want to handle the case.

13           JUDGE MOSS: Well, speaking of that, we  
14 definitely do have jurisdiction to determine whether  
15 the service being provided is telecommunications  
16 service within the meaning of our state law. And  
17 that is one of the two questions that we need to take  
18 up, in my view.

19           MS. FRIESEN: One of the issues, I think,  
20 that is of interest is whether or not the FCC has  
21 preempted the field. I think arguments could be made  
22 on either side of that dispute as to whether or not  
23 it's preempted the field and VoIP of all flavors is,  
24 in fact, information service subject to the  
25 jurisdiction of the Commission or the Federal

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1 Communications Commission, as opposed to states.

2 But to your point, I think perhaps we want  
3 to make sure that you agree or disagree that you do  
4 have jurisdiction regardless of what's going on in  
5 the federal arena and you don't believe that they  
6 have, in fact, preempted the field. That was my  
7 question on jurisdiction.

8 JUDGE MOSS: Are you suggesting that we  
9 should take up the question of federal preemption at  
10 this early narrow state?

11 MS. FRIESEN: I do think you should in the  
12 very narrow proceeding, because that was one of the  
13 issues put before the federal district court, was  
14 federal preemption, if you look back at the complaint  
15 and answers. So I think the fundamental question for  
16 this Commission, before it invests a lot of energy  
17 and effort into this proceeding, is to make sure that  
18 it's comfortable that it has jurisdiction over what  
19 the scope of this case is.

20 MR. FINNIGAN: My position on it, Your  
21 Honor, is in order to make a knowledgeable decision  
22 on that issue, on federal preemption, you still have  
23 to have the factual record to know what it is you're  
24 dealing with.

25 JUDGE MOSS: Sure.

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1           MR. FINNIGAN:  So that, in essence, those  
2 two questions of is this a telecommunications service  
3 and is it federally preempted or not because it meets  
4 an enhanced service test or whatever would fall  
5 within the same motion and would be treated at one  
6 time.

7           JUDGE MOSS:  Yeah, both aspects of it need  
8 to be addressed.

9           MR. FINNIGAN:  Yes, Your Honor.

10          JUDGE MOSS:  Okay.  I think that's correct.  
11 Just see if I can cut this short.  Probably I'll  
12 fail.  I wonder, though, if others find themselves in  
13 the position Mr. Pena expressed, which is that he  
14 wants to go back and discuss with his clients, given  
15 the discussion we've had here today, whether in fact  
16 his client wishes to invest resources in  
17 participating in this proceeding as an intervenor or  
18 perhaps somewhat less resources and just following it  
19 as an interested person.  And I see a lot of heads  
20 nodding in affirmance, which suggests that I  
21 succeeded after all, because what I'm going to  
22 suggest we do is this.

23          I think what I would like to do is we'll  
24 take up any other questions that people have and have  
25 any other discussion the bench wishes to have with



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1 you, but we'll just -- we'll leave open a period of  
2 time here, let's say two weeks, during which those  
3 consultations can occur and parties can further  
4 inform the Commission of their interest in writing.  
5 And I'll set a date for that, although I notice I  
6 didn't bring a calendar with me this morning, but  
7 we'll work out a date for that. And we'll also work  
8 out some dates for the summary determination.

9           So the parties can further inform us, I was  
10 starting to say, and let me further try to further  
11 shorten things. Given the uncertain status coming in  
12 this morning, but perhaps a somewhat more certain  
13 status now, would there be any objection to any of  
14 the petitions to intervene? Had any anybody thought  
15 about that or considered whether they would object or  
16 whether we'll all sing Kumbaya?

17           MR. FINNIGAN: Depending upon the nature of  
18 the proceeding and the Court's ruling, I am  
19 considering whether or not to object to those parties  
20 who have more of a theoretical interest than an  
21 interest in the factual issues.

22           JUDGE MOSS: All right, then.

23           MR. FINNIGAN: And one additional objection,  
24 just to make Mr. Harlow aware of it, if his group  
25 wants to participate and the Commission would be

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1 inclined to grant it, I would ask him to identify the  
2 members of the association that he is representing.

3 JUDGE MOSS: Okay. Well, my point, and you  
4 answered that very quickly, is I would want to give  
5 you or anyone an opportunity, then, after we get the  
6 status update on people's would-be status, give you  
7 an opportunity or anyone else who wishes to have an  
8 opportunity to object or file a statement in support.  
9 So we'll set a date for that. We'll set a date for  
10 the summary judgment motions.

11 And let me ask -- again, the focus here is  
12 on the principal parties. Would you -- I've framed  
13 it in terms of cross motions for summary  
14 determination. Another possibility would be a motion  
15 for summary determination by one side and a response  
16 from the other, or perhaps just set a date for  
17 motions for summary determination and you all, of  
18 course, will decide what to do, and then a date for  
19 replies, responses. Would you want two rounds, is  
20 the fundamental question I'm posing, or do you want  
21 to just do simultaneous motions and be done with it?

22 MR. FINNIGAN: Well, I mean, I think you'd  
23 want to follow the formal process for briefing a  
24 motion, which would be, you know, opening and -- at  
25 least opening and response.

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1 JUDGE MOSS: Okay. Two rounds.

2 MR. BUTLER: Yeah, we would think that cross  
3 motions would make sense and having two rounds,  
4 opportunity to respond.

5 JUDGE MOSS: Yeah, I'm inclined to agree. I  
6 just wondered -- and let's see. I think in terms of  
7 setting some dates here, in terms of those of you who  
8 filed petitions to intervene or IP letters, let's set  
9 two weeks from today. I guess that will be the 3rd.  
10 Is that a weekday? I hope I got that right.

11 MS. SINGER NELSON: It's Monday.

12 JUDGE MOSS: That's the Monday, okay. I did  
13 do my math right. So we'll set November 3rd. Oh.

14 MR. HARLOW: Your Honor.

15 JUDGE MOSS: Yes, Mr. Harlow.

16 MR. HARLOW: I have just a couple of  
17 clarifications about interventions. First of all,  
18 will parties who were intending to intervene orally,  
19 here I have in mind Covad this morning, be able to  
20 file written petitions to intervene in two weeks?

21 JUDGE MOSS: Sure.

22 MR. HARLOW: Thank you.

23 JUDGE MOSS: We'll allow for that, as well.  
24 It's basically just extending the period for timely  
25 intervention.

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1           MR. HARLOW:  And then, secondly, on  
2  objections to intervention, typically petitions to  
3  intervene are pretty minimal, if you will, and any  
4  specific issues are hammered out in oral argument.  I  
5  guess, either for the sake of efficiency, perhaps we  
6  could argue those today, or potentially, since  
7  interventions are fairly minimal, replies could be  
8  filed to objections to intervention.  That would  
9  address the situation, as well.

10           JUDGE MOSS:  What was your second proposal?  
11  I'm sorry, my mind wandered somewhere.

12           MR. HARLOW:  That if any of the initial  
13  parties objects to an intervention, that the  
14  intervenor -- the petitioners would have an  
15  opportunity to file replies.

16           JUDGE MOSS:  Okay.  Yeah, we can set that  
17  up.

18           MR. HARLOW:  Thank you, Your Honor.

19           JUDGE MOSS:  I want to -- again, I'm trying  
20  to save a little time, so I don't really want to hear  
21  argument in the abstract today.  Okay.  So we'll have  
22  the petitioner status -- or we'll extend the time  
23  period for timely intervention until November the  
24  3rd.  Any objections, I would think a week would be  
25  adequate for that, any objections to be filed.

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1 MR. FINNIGAN: Your Honor, that's fine.

2 JUDGE MOSS: Okay. So that will be November  
3 10. And then any further response, another week will  
4 be sufficient for that, so we'll call that November  
5 17. And then we'll -- if necessary, we can always  
6 schedule a prehearing conference and have oral  
7 argument or whatever, but hopefully we can avoid the  
8 necessity for doing that.

9 Now, again, I want to focus on the principal  
10 parties in talking about dates for the cross motions  
11 and responses. What are you all thinking? You had  
12 suggested, Mr. Butler, December 22nd, and I think Mr.  
13 Finnigan said that might not be an ideal date.

14 MR. BUTLER: No sooner than.

15 MR. FINNIGAN: And Your Honor, maybe the  
16 quickest way to do it would be have Staff, Public  
17 Counsel, Ms. Rackner, Mr. Butler, and myself have a  
18 short conference and come back with some suggested  
19 dates.

20 JUDGE MOSS: I agree with you, Mr. Finnigan.  
21 What we'll do is we'll go into recess. I think we  
22 have probably gotten to the stage of this discussion  
23 where we can let the Commissioners go do some more  
24 important work that I'm sure they have on their table  
25 than setting dates. I can handle that. So we'll be

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1 in recess. I'll go ahead and give you 15 minutes so  
2 people can make some phone calls and take care of  
3 whatever they need to take care of. I'll be back at  
4 10 after.

5 (Recess taken.)

6 JUDGE MOSS: Let's come back to order,  
7 please. Before we set more dates, I've got a couple  
8 of housekeeping matters. One is with respect to the  
9 transcript. At this point, if there's anyone on the  
10 teleconference bridge line who would like to have a  
11 copy of the transcript, would you please tell the  
12 court reporter now that you would like to have that.

13 MR. DEL SESTO: This is Ron Del Sesto, from  
14 Swidler Berlin. I'd like a copy, please.

15 MS. SHAPOCHNIKOV: Elana Shapochnikov, from  
16 Net2Phone. We would like a copy.

17 JUDGE MOSS: Anyone else? Okay. And those  
18 here in the hearing room, of course, need to inform  
19 the court reporter whether they desire a copy of the  
20 transcript or not.

21 One other housekeeping matter I want to  
22 mention, for those of you who have not participated  
23 regularly before this Commission and as you consider  
24 your level of participation over the next week or so,  
25 we do have a web page that we maintain on a very

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1 up-to-the-moment basis, and that web page is found at  
2 the address wutc.wa.gov. That Web site is searchable  
3 by docket number, and all documents that are filed in  
4 the proceeding or that are entered by the Commission,  
5 including notices and so forth, are posted under the  
6 docket number. And so that's one way, one useful way  
7 you can keep up with the proceeding, whatever your  
8 status. Of course as an IP, you receive the notices  
9 anyway, but it's maintained very up-to-the-moment.

10 Now, that said, have the parties reached  
11 some agreed dates for the summary judgment motions?

12 MS. RACKNER: Yes, Your Honor, we have.  
13 We've agreed on the following dates. An opening  
14 round of concurrent briefs, January 30th, 2004,  
15 responses filed on February 27th, 2004, and then  
16 we've also agreed to a round of reply briefs limited  
17 simply to any new information introduced in the  
18 second round of briefs. We thought that perhaps some  
19 of the intervenors would wait to file their first  
20 briefs on the second round, so we wanted to give  
21 everyone an opportunity to file any limited reply  
22 that becomes necessary at that time.

23 JUDGE MOSS: And did you have a date in mind  
24 for that?

25 MS. RACKNER: Yes, March 17th. Oh, excuse

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1 me. Did we say March 12th, Rick?

2 MR. FINNIGAN: Either one works fine for me.

3 Either one.

4 MS. RACKNER: Let's say March 17th.

5 MR. FINNIGAN: Assuming that's a weekday.

6 JUDGE MOSS: That is, that's a Wednesday.

7 MR. FINNIGAN: And Your Honor, what I would  
8 think might work under this case is to give the  
9 parties that might be thinking about IP status sort  
10 of an advanced IP status. In other words, that I  
11 would commit to providing anybody who's on the IP  
12 list with a copy of our opening brief directly, so  
13 they'd get that and be able to respond to it without  
14 having to wait and check the Commission's Web site to  
15 get it.

16 I'd like to encourage as many parties as  
17 possible to consider IP status so that it cuts down  
18 on the paperwork. If they're not interested in the  
19 specific factual data and the data requests that we  
20 will be working on, it would certainly help  
21 streamline it if they wanted to participate in  
22 essence by filing an amicus brief as an IP status, I  
23 think that would -- I would find that procedure  
24 acceptable.

25 JUDGE MOSS: And to the extent, and I'm



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1 hopeful, again, optimistic, you can achieve a set of  
2 stipulated facts, those would be something that you  
3 would reduce to writing and file.

4 MR. FINNIGAN: Correct.

5 JUDGE MOSS: And that then would be  
6 available to interested persons either directly or  
7 through the Web site, as well. So they wouldn't miss  
8 out on anything in that regard. And I think you do  
9 raise a good point, Mr. Finnigan, and that is that,  
10 for the time being, at least, we will treat everyone  
11 as an interested person, so that everyone will remain  
12 informed as to any developments. There may be none  
13 in the next couple of weeks, but so just so you feel  
14 that level of comfort.

15 So all right. Well, I don't think we need  
16 to establish any other dates at this point. Mr.  
17 Hendricks.

18 MR. HENDRICKS: I just want to make one  
19 comment about the date for the first brief, January  
20 30th. I think that's the date for filing of reply  
21 case in the Triennial Review proceeding. So I don't  
22 know if everybody was aware of that, but that's the  
23 date that the CLECs are going to be responding to  
24 Qwest's case in chief.

25 MR. BUTLER: My calendar doesn't go out that

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1 far.

2 MS. RACKNER: I would suggest, if that's the  
3 case, I did not have that on my calendar, but if  
4 that's the case, I would certainly suggest that we  
5 move that date out another week.

6 JUDGE MOSS: So that would push it to  
7 February 6th.

8 MS. RACKNER: Yeah, and that would shorten  
9 the time for response, but we did have a fairly  
10 significant amount of time between the -- actually,  
11 you know what --

12 MR. FINNIGAN: I think what I would suggest,  
13 as long as those dates are receipt dates, in other  
14 words, we're exchanging electronic copies or  
15 something along those lines, then it would seem to me  
16 we could keep the rest of the schedule.

17 MS. RACKNER: Although, since -- yeah, I  
18 agree. That's fine.

19 JUDGE MOSS: We can do that, and I -- we  
20 haven't quite advanced to the point of doing  
21 everything electronically yet, but in proceedings  
22 such as this, where we have a fairly highly -- high  
23 technical capability by all the interested persons  
24 and parties, I think the exchange of documents  
25 electronically as a courtesy is something that

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1 certainly is a good idea.

2           Later we may address the fact that you can  
3 waive other forms of service and rely on the  
4 electronics. Our statutes currently don't permit us  
5 to just impose that protocol.

6           And the Commission also, whenever we enter  
7 an order or issue a notice, we do send a courtesy  
8 copy by e-mail. We establish a list of all the  
9 parties and do that. So we try to keep you a little  
10 ahead of the game, actually, because officially you  
11 get it when you get a signed copy, but -- and  
12 officially your documents are filed when they're  
13 received here on paper, but we can allow for the  
14 electronic exchange.

15           All right, then. So we'll -- just to  
16 reiterate, we're going to have the petition status on  
17 November 3rd, any objections to petitions to  
18 intervene by November 10th, responses November 17th.  
19 Motions for summary judgment February 6th, responses  
20 to motions for summary -- I think we actually call it  
21 summary determination here. Motions for summary  
22 determination responses are due February 27th, and  
23 reply briefs on those motions and responses March  
24 17th, the replies being limited to new subject matter  
25 raised at the response phase.

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1           I have a few closing comments, but I'll ask  
2 first if the parties have any other business they  
3 wish to bring to the bench's attention?

4           MR. FINNIGAN: Yes, Your Honor. I was  
5 reminded during the break, I think that, for this  
6 case, we will need a protective order and we will  
7 probably need to invoke the discovery rule, since we  
8 were talking about making sure that happens.

9           JUDGE MOSS: All right. Will the standard  
10 form of protective order be adequate?

11          MR. FINNIGAN: I think so, Your Honor.

12          MS. RACKNER: Yes.

13          JUDGE MOSS: Okay, all right. I'll see to  
14 the entrance of a protective order. The discovery  
15 rule is invoked. I'll include that in a prehearing  
16 conference order that will follow today. Anything  
17 else?

18          MR. PENA: Your Honor.

19          JUDGE MOSS: Yes, Mr. Pena.

20          MR. PENA: I was wondering if, for parties  
21 that decide to participate as interested parties, if  
22 the motions for summary judgment are not granted,  
23 either motion -- neither motion is granted and the  
24 Commission decides to go forward with a hearing,  
25 would parties at that point be allowed to possibly

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1 change their status from interested party to an  
2 intervenor --

3 JUDGE MOSS: Yes.

4 MR. PENA: -- status. Thank you.

5 JUDGE MOSS: Yes, we want to -- we recognize  
6 the nature of the proceeding is such that we have to  
7 maintain a higher than what might be standard level  
8 of flexibility with respect to such issues, and so we  
9 will essentially reopen the question if that should  
10 eventually --

11 MR. PENA: Thank you.

12 MS. FRIESEN: Could I ask a question?

13 JUDGE MOSS: Yes, Ms. Friesen. Use the  
14 microphone, please.

15 MS. FRIESEN: Mr. Finnigan just referenced a  
16 protective order, and I'm interested to find out  
17 whether or not interested parties would be allowed to  
18 see -- I don't know how they intend to file their  
19 stipulated facts, whether the stipulated facts are  
20 going to be confidential or whether they're going to  
21 be publicly available. So if one becomes an  
22 interested party, are you able to see confidential  
23 information, and how do you propose that be handled?

24 JUDGE MOSS: Well, just to be perfectly  
25 precise, we're talking about the difference between

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1 intervenors who are parties and interested persons  
2 who are not. And I would say I don't know that the  
3 question has specifically come up before, but my  
4 visceral reaction to it is that an interested person  
5 would not likely be eligible to see confidential  
6 information, not being a party, but I would ask to  
7 hear from Misters Finnigan and Butler or Ms. Rackner  
8 on that. What do you all think?

9 MR. FINNIGAN: Your Honor I think is correct  
10 in that the standard protective order is addressed to  
11 parties, and while I wouldn't want someone, a  
12 newspaper reporter or something like that who's on  
13 the interested party list to get confidential  
14 information, maybe we can try and find a middle  
15 ground where, if they're just interested in -- I'm  
16 trying to keep the logistics here as simple as  
17 possible, but if they're interested in submitting an  
18 amicus brief and want to be able to have access to  
19 the stipulated facts on that basis, maybe there's a  
20 way we can come up within the terms of the protective  
21 order to allow those, you know, an identified set of  
22 persons to have access if they sign the protective  
23 order.

24 JUDGE MOSS: And perhaps it will only be  
25 necessary for the parties to have some exchange of

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1 confidential information that then can be presented  
2 to the Commission in a form where it will not have to  
3 come in under a confidential designation, and that  
4 would avoid the problem entirely. Mr. Butler, Ms.  
5 Rackner, did you wish to speak to this?

6 MR. BUTLER: I was just going to say that I  
7 think since it's likely to be the situation that a  
8 lot of confidential information with LocalDial would  
9 be the subject of what gets disclosed here, they  
10 would certainly want to make sure that that  
11 information is not made available to anyone who has  
12 not signed the protective order and would agree to be  
13 bound by its terms.

14 JUDGE MOSS: Yeah, absolutely.

15 MR. BUTLER: Now, we can certainly try in  
16 our stipulation to keep the information as  
17 nonconfidential as possible, but not having, you  
18 know, actually addressed all the details of that, I  
19 don't think I could, in good faith, represent to Your  
20 Honor that the information could be all  
21 nonconfidential.

22 JUDGE MOSS: We're somewhat in the realm of  
23 speculation at this point. There may not be a  
24 problem. I think that certainly it is the case the  
25 protective order by its term requires that anyone who

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1 is eligible to see such information must sign the  
2 appropriate affidavits and be -- by which they are  
3 subject to the terms of the order, whether they are a  
4 party or not. And so that protocol would follow  
5 here.

6           Sitting here now, I don't see a barrier, if  
7 it becomes appropriate to do so, to creating two  
8 statuses for interested persons, those who are  
9 interested persons participating in the proceeding  
10 via amicus brief or what have you and those who fall  
11 into the not that category.

12           MR. CROMWELL: Your Honor, if I could make a  
13 suggestion?

14           JUDGE MOSS: Sure.

15           MR. CROMWELL: One thing we do in a number  
16 of cases, where we desire to track the proceeding but  
17 don't wish to be inundated with the paper, is we will  
18 actually file our appearance, since we're not  
19 technically an intervenor, but then we won't send the  
20 DR-1, asking for data request responses, and so then  
21 what we create is a tracking file that simply -- we  
22 get copies of the pleadings the parties serve on each  
23 other and the Commission, we get copies of, for  
24 example, stipulated facts, we don't see anything  
25 else. And then, if at any point in time it becomes



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1   apparent that our involvement needs to be more  
2   specific, then we would then issue the data requests  
3   that we would want to see the responses that have  
4   already been exchanged earlier. That's an option for  
5   the parties to consider.

6           JUDGE MOSS: Yeah, what I'm contemplating  
7   will unfold here is that these principal parties will  
8   have their exchange of discovery, that it won't  
9   involve others, and that even those who do decide and  
10  are granted intervenor status will not be directly  
11  involved in that process. It just doesn't seem to be  
12  necessary, from sitting from where I sit, given that  
13  we are going to look at this narrowly, based on the  
14  dispute as an underlying dispute.

15           And so, yeah, I wouldn't expect that DR-1.  
16  The parties who wish to file something in the nature  
17  of an amicus, for example, would rely on the  
18  stipulated facts, because that will be the only  
19  record before the Commission, and so they wouldn't be  
20  developing or proposing facts outside of that. And I  
21  would hope, I don't expect necessarily, but I would  
22  hope that the stipulated facts could be set forth in  
23  a way that would not require that we have  
24  confidential material. That's always a little more  
25  cumbersome to handle. And if it can be avoided, then

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1 I encourage you to do that. Did that sufficiently  
2 address your question, Ms. Friesen?

3 MS. FRIESEN: It did. Thanks.

4 JUDGE MOSS: Anything else? Any other  
5 questions before I go into my closing spiel? All  
6 right. Now, on paper filings, and of course you do  
7 have to follow up, if you make an electronic filing,  
8 with your papers, the Commission needs an original  
9 plus 16 copies in this case to handle its internal  
10 distribution. Please remember that all filings must  
11 be made through the Commission Secretary, either by  
12 mail to the secretary at WUTC, P.O. Box 47250, 1300  
13 South Evergreen Park Drive Southwest, Olympia,  
14 Washington, 98504-7250. And you need to use both the  
15 P.O. Box and the street address to ensure timely  
16 receipt, or by other means of delivery, courier, for  
17 example, to the Commission's offices at the street  
18 address I mentioned.

19 I want to stress that we require that  
20 filings of substance be supplemented by an electronic  
21 copy furnished either by e-mail attachment to the  
22 Records Center or on a three and a half-inch  
23 diskette. We'd prefer, if you can, that you submit  
24 the documents in a PDF format. You can supplement  
25 that or substitute, if you don't have the capability

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1 for the PDF, in MS Word, Microsoft Word. I don't  
2 even know what version we're up to anymore. We used  
3 to say 6.0 or later, so wherever we are. Probably up  
4 to 8.0 or something by now. Or even WordPerfect.  
5 Although we don't use WordPerfect here anymore, we  
6 still have the capability to read it.

7           Service on all parties must be simultaneous  
8 with filing. And the prehearing order that I will  
9 enter in the next day or two will have the service --  
10 a copy of the master service list with all of the  
11 address information, phone contact information and so  
12 forth that was exchanged today.

13           The prehearing order may include process  
14 requirements that we haven't discussed specifically  
15 today, such as requirements for, well, in this  
16 instance, we're looking for stipulated facts, a  
17 witness list will probably not happen, exhibit lists  
18 and so forth. Again, I'll probably do a more limited  
19 version this time, given the way we intend to  
20 proceed.

21           If we do end up having to have some sort of  
22 a hopefully brief hearing to resolve one or more  
23 contested facts, then we'll establish some process  
24 for a final prehearing conference before that occurs.

25           And if there is no other business that any

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1 party wishes to bring before the Commission at this  
2 time, and hearing nothing, we will be in recess.

3 Thank you very much.

4 (Proceedings adjourned at 11:29 a.m.)

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