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1 BEFORE THE WASHINGTON STATE
 UTILITIES AND TRANSPORTATION COMMISSION
 2 In the Matter of the Petition)
 for Arbitration of an)
 3 Interconnection Agreement)
 Between) DOCKET NO. UT-083055
 4)
 COMCAST PHONE OF WASHINGTON,)
 5 LLC,) Volume I
) Pages 1 to 16
 6 with)
)
 7 LEWIS RIVER TELEPHONE COMPANY,))
 D/B/A TDS TELECOM)
 8)
 Pursuant to 47 U.S.C.)
 9 Section 252(b).)
 _____)

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 A prehearing conference in the above matter
 11 was held on Monday, December 1, 2008, from 10:30 a.m to
 12 a.m., at 1300 South Evergreen Park Drive
 13 Southwest, Room 206, Olympia, Washington, before
 14 Administrative Law Judge ANN RENDAHL.
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16 The parties were present as follows:

16

 COMCAST PHONE OF WASHINGTON, LLC, by GREGORY
 17 J. KOPTA, Attorney at Law, Davis, Wright, Tremaine, LLP,
 1201 Third Avenue, Suite 2200, Seattle, Washington
 18 98101, Telephone (206) 757-8079, Fax (206) 757-7079,
 E-Mail gregkopta@dwt.com; and via bridge line by MICHAEL
 19 C. SLOAN, 1919 Pennsylvania Avenue Northwest, Suite 200,
 Washington D.C. 20006, Telephone (202) 973-4227, Fax
 20 (202) 973-4499, E-mail michael Sloan@dwt.com.

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Joan E. Kinn, CCR, RPR
 Court Reporter

0002

1 LEWIS RIVER TELEPHONE COMPANY d/b/a TDS
2 TELECOM, by RICHARD A. FINNIGAN, Attorney at Law, 2112
3 Black Lake Boulevard Southwest, Olympia, Washington
4 98512, Telephone (360) 956-7001, Fax (360) 753-6862,
5 E-Mail rickfinn@localaccess.com.

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

2 JUDGE RENDAHL: Good morning, I'm Ann
3 Rendahl, the Administrative Law Judge presiding over
4 this proceeding, and we're here before the Washington
5 Utilities and Transportation Commission this Monday,
6 December 1st, 2008, for a prehearing conference in
7 Docket Number UT-083055, which is captioned In the
8 Matter of the Petition for Arbitration of an
9 Interconnection Agreement Between Comcast Phone of
10 Washington, LLC, and Lewis River Telephone Company doing
11 business as TDS Telecom Pursuant to 47 U.S.C. Section
12 252.

13 Comcast filed its petition for arbitration
14 with the Commission on November 3rd stating that there's
15 one unresolved issue for the Commission to arbitrate.
16 The company asserts that Comcast and TDS have negotiated
17 a template agreement between the companies for six
18 states but that TDS recently refused to continue
19 discussions due to concerns over Comcast's status as a
20 telecommunications carrier under the Federal
21 Telecommunications Act of 1996 and whether Comcast is
22 entitled to interconnection under the Act.

23 And I note that the Washington Independent
24 Telephone Association or WITA and Lewis River doing
25 business as TDS, which is a member of WITA, filed with

0004

1 the Commission a Petition for Declaratory Ruling on
2 October 28th, 2008, posing this issue of Comcast's
3 status and its entitlement to interconnection. That
4 petition which is filed in Docket UT-083056 is the
5 subject of a prehearing conference that's scheduled for
6 this afternoon.

7 As I mentioned off the record to counsel, I
8 apologize for the order of the scheduling of these two
9 matters since they are somewhat related, but that's just
10 the way things happened in the scheduling, and then it
11 was too late to switch things around. So we will
12 address the effect of the petition in our conference
13 this morning, but we will discuss the merits of the
14 petition this afternoon.

15 So we are at this prehearing this morning
16 going to take appearances, address any petitions for
17 intervention, identify any issues, and discuss the
18 procedural schedule and any other issues the parties
19 wish to address. And so I will ask now before we go
20 forward, are there any other issues the parties think we
21 need to discuss this morning other than what I just
22 mentioned?

23 MR. KOPTA: No, Your Honor, not from our
24 perspective.

25 MR. FINNIGAN: Your Honor, I will just note

0005

1 that we did file our answer this morning just as I came
2 here for this hearing, and one of the items we dispute
3 is the summary that you gave about that the companies
4 had reached agreement on a multistate template.

5 JUDGE RENDAHL: Okay, well, then at the
6 appropriate time, Mr. Finnigan, I will have you address
7 the summary as your client sees it.

8 MR. FINNIGAN: Thank you.

9 JUDGE RENDAHL: Okay, so before we get any
10 farther, let's take appearances, and you will need to
11 make your full appearances, the name, party you
12 represent, address, telephone number, fax number, and
13 E-mail, and let's start with the petitioner, Comcast.

14 MR. KOPTA: Thank you, Your Honor. Gregory
15 J. Kopta of the law firm Davis Wright Tremaine, LLP, on
16 behalf of Comcast Phone of Washington, LLC, my address
17 is 1201 Third Avenue, Suite 2200, Seattle, Washington
18 98101-3045, phone is (206) 757-8079, fax (206) 757-7079,
19 E-mail gregkopta@dwt.com.

20 And also appearing with me is Michael Sloan,
21 he's in our D.C. office, and I will let him give the
22 address and contact information for himself.

23 JUDGE RENDAHL: Thank you.

24 MR. SLOAN: Thank you. Again it's Michael C.
25 Sloan, I'm at 1919 Pennsylvania Avenue Northwest,

0006

1 Washington D.C. 20006, that's Suite 200, my direct line
2 is (202) 973-4227, my fax is (202) 973-4499, my E-mail
3 is michael Sloan, one word, M-I-C-H-A-E-L-S-L-O-A-N,
4 @dwt.com.

5 JUDGE RENDAHL: Thank you, Mr. Sloan.

6 And is there anyone else, Mr. Kopta or
7 Mr. Sloan, that we should include on our courtesy
8 service list for E-mail?

9 MR. SLOAN: No.

10 MR. KOPTA: No, I think we're fine just the
11 two of us. We'll make sure that others of interest at
12 Comcast will get the information.

13 JUDGE RENDAHL: Okay, thank you.

14 And for Lewis River?

15 MR. FINNIGAN: Thank you, Your Honor, Richard
16 A. Finnigan appearing on behalf of Lewis River Telephone
17 Company doing business as TDS Telecom. My address is
18 2112 Black Lake Boulevard Southwest, Olympia, Washington
19 98512, telephone number is (360) 956-7001, fax number is
20 (360) 753-6862, and the E-mail address is
21 rickfinn@localaccess.com.

22 JUDGE RENDAHL: Thank you.

23 And, Mr. Finnigan, is there anyone for TDS
24 that you would like to have on our courtesy list for
25 E-mail?

0007

1 MR. FINNIGAN: Yes, Your Honor, I will need
2 to supply some of the information for him, but Joel
3 Dohmeier, D-O-H-M-E-I-E-R, should be on that list, his
4 E-mail address is Joel.Dohmeier@tdstelecom.com.

5 JUDGE RENDAHL: And could you spell Dohmeier
6 again.

7 MR. FINNIGAN: Yes, D-O-H-M-E-I-E-R.

8 JUDGE RENDAHL: So D-O-H-M-E-I-E-R?

9 MR. FINNIGAN: Yes.

10 JUDGE RENDAHL: Thank you.

11 MR. FINNIGAN: I will get the phone and
12 mailing address and send that to you.

13 JUDGE RENDAHL: Okay. Now is he supposed to
14 receive service for TDS officially, is he the company
15 representative to receive service, or is this for
16 courtesy E-mail?

17 MR. FINNIGAN: Let me clarify with him about
18 what status he wants to have. He is in-house counsel
19 for TDS, so I will clarify that.

20 JUDGE RENDAHL: Okay, that would help,
21 because we can put him on our master service list in
22 addition to the courtesy list.

23 MR. FINNIGAN: Yes, Your Honor, and I will
24 inform the parties and the Commission which way he
25 should be treated.

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1 JUDGE RENDAHL: Super.

2 And is there anyone either on the bridge line
3 or here in the hearing room who wishes to petition to
4 intervene in this proceeding?

5 Hearing nothing, the parties in this matter
6 are Comcast and TDS.

7 Let's go now to talk about the issues in this
8 case, because as Mr. Finnigan noted, he has just filed
9 TDS's answer in this matter, and so first let me ask
10 Mr. Kopta whether I appropriately summarized the
11 petition for arbitration.

12 MR. KOPTA: From our perspective, Your Honor,
13 yes, you did. There's only the single issue that we are
14 aware of, although obviously as Mr. Finnigan points out,
15 in answer TDS can raise any other issues that they
16 believe need to be resolved in the arbitration under the
17 provisions of the Act and the Commission's rules. So
18 this is purely from our perspective based on our
19 awareness and from the discussions that we've had with
20 TDS to date.

21 JUDGE RENDAHL: Okay, thank you.

22 Go ahead, Mr. Finnigan.

23 MR. FINNIGAN: Thank you, Your Honor. We
24 don't raise any additional issues in our answer. We
25 dispute some of the factual description about the status

0009

1 of the negotiations. But at the request of Comcast on
2 October 29th I believe the date is, TDS provided a
3 template version of its agreement that it thought would
4 be the basis for ongoing negotiations. Comcast
5 apparently felt satisfied with that form of agreement
6 and filed it with its answer saying that this was the
7 agreed form of agreement, which came as a surprise to
8 TDS. However, if that's the case, that means the only
9 issue really is the status of Comcast as a
10 telecommunications carrier.

11 JUDGE RENDAHL: All right.

12 Mr. Kopta, anything in response?

13 MR. KOPTA: No, Your Honor. Obviously we can
14 flesh out exactly what everyone thought was going on,
15 but from our perspective really and what we're asking
16 the Commission to resolve is that one issue, so that's
17 -- we would like to obviously keep things as narrow as
18 possible in terms of what the Commission needs to
19 decide.

20 JUDGE RENDAHL: Right. Okay, well, thank you
21 for the clarification, and I look forward to reading the
22 answer.

23 As I mentioned when we first got started, it
24 is unfortunate that the petition for declaratory ruling
25 prehearing conference will occur this afternoon, so we

0010

1 will forgo for now the what ifs and go ahead I think and
2 set a schedule for this case. And depending on what
3 happens this afternoon, we can revisit the schedule, but
4 I think it best to go forward and use our time wisely
5 this morning to just set a schedule. And I don't know
6 whether you all have spent any time thinking about a
7 schedule, but before I get ahead of myself, is there any
8 need for discovery or a protective order in this case?

9 MR. FINNIGAN: We actually have just very
10 recently in terms of business days issued discovery
11 pursuant to the Commission's rule on arbitration which
12 allows discovery and doesn't, at least in my
13 interpretation, require the invocation of the discovery
14 rule, and as part of our answer have submitted those
15 questions as required by the rule in case they need to
16 be issued by the arbitrator. And so hopefully we will
17 be able to cooperate on discovery issues and get the
18 facts as they need to be developed. I don't know if
19 Comcast feels that they would need a protective order or
20 not.

21 MR. KOPTA: At this point, yes, we certainly
22 have received the data requests and agree that, you
23 know, it's not something that the discovery rules need
24 to be invoked, and we certainly intend to object and
25 respond as if whatever rules are appropriate are in

0011

1 place. It always has seemed kind of strange to me that
2 we have to invoke discovery rules. But in any event, we
3 are certainly proceeding on the lines of responding and
4 objecting. Although the arbitration rule does call for
5 scheduling a discovery conference 10 days after the
6 answer is filed, and we think that's probably a good
7 idea, because we expect that there will be some
8 disagreement over the necessity to answer many of the
9 questions that TDS has posed, and so we might as well go
10 ahead and schedule something right now so that we can
11 keep this on track to be able to get a resolution by the
12 time that the statute calls for Commission decision.

13 JUDGE RENDAHL: And about a protective order,
14 do you believe it's necessary, either a standard or a
15 highly confidential protective order, in this matter?

16 MR. KOPTA: Well, it may depend on what kind
17 of information we may have to provide in terms of what
18 we think we should need to provide. I'm not sure that
19 we would need a protective order for that.

20 MR. SLOAN: I think it would be prudent to
21 have one in place. I'm not sure why we wouldn't. There
22 is information that we might be required to produce that
23 would be considered confidential. Is there a reason not
24 to have one in place?

25 MR. KOPTA: No, and what I was going to say

0012

1 is we could either go ahead and have one put in place
2 now or as a result of the discovery conference, but
3 either way I don't think it hurts to have a protective
4 order at least ready to go, if not issued prior to the
5 discovery conference.

6 JUDGE RENDAHL: Maybe what I would suggest is
7 that we enter a protective order using the standard
8 confidential protective order. And after the discovery
9 conference if you find that you need a highly
10 confidential protective order, we modify it. Or if
11 there are provisions of the protective order that need
12 to be modified after the parties have an opportunity to
13 see what you have, then we can do that.

14 MR. KOPTA: That seems reasonable to us.

15 JUDGE RENDAHL: Does that work for you,
16 Mr. Finnigan?

17 MR. FINNIGAN: Yes, it does.

18 JUDGE RENDAHL: And Mr. Sloan?

19 MR. SLOAN: Sure.

20 JUDGE RENDAHL: Okay.

21 And although we're not invoking the discovery
22 rules, I note it does sound that you both are following
23 them and cordially working with each other. But if
24 discussions do not remain cordial and you need
25 resolution, please don't hesitate to talk to us, and

0013

1 we'll schedule -- sounds like we will need to schedule a
2 discovery conference.

3 MR. SLOAN: I'm sure we'll remain cordial
4 even if we disagree.

5 JUDGE RENDAHL: Well, that's nice to hear, I
6 appreciate that.

7 MR. SLOAN: Although I would expect there to
8 be some significant disagreement.

9 JUDGE RENDAHL: I would expect that as well.
10 All right, so have the parties had some
11 discussions about scheduling?

12 MR. FINNIGAN: We have not.

13 MR. KOPTA: We have not.

14 JUDGE RENDAHL: Would you like to take a few
15 minutes off the record without me in the room talking
16 about scheduling, or would you prefer that I stay here
17 during those discussions?

18 MR. KOPTA: It might be beneficial to have
19 you stay.

20 JUDGE RENDAHL: Okay.

21 MR. KOPTA: Because I think one of the
22 issues, the threshold issue is whether we're going to
23 feel like we need a hearing or whether this is something
24 that could be done without a hearing. So I don't know,
25 I have not spoken with Mr. Finnigan in terms of what

0014

1 TDS's position is, but I think that's an issue that you
2 might want to be involved in that discussion.

3 JUDGE RENDAHL: Okay, well, why don't we go
4 off the record, we will be off the record while we have
5 scheduling discussions.

6 (Discussion off the record.)

7 JUDGE RENDAHL: While we were off the record,
8 we discussed a schedule including a schedule for going
9 to hearing as well as an alternative schedule if that's
10 not necessary. So on December the 10th, which is a
11 Wednesday, we will have a discovery conference here at
12 the Commission beginning at 9:30 in the morning. On
13 December 18th, Thursday, December 18th, the parties will
14 notify the Commission about which path they wish to
15 take, whether we are going to hearing or whether we will
16 have cross motions for summary determination.

17 If we are going to hearing, the parties will
18 file simultaneous initial testimony on Monday, January
19 the 5th and simultaneous responsive testimony on Friday,
20 January the 23rd. On Monday, February the 2nd, the
21 parties will file their cross-exhibits as well as notify
22 the Commission of their estimates for cross-examination
23 and their witness list. We will have a hearing
24 beginning on Wednesday, February 4th, continuing to
25 Thursday, February the 5th if necessary, with

0015

1 simultaneous briefs filed on Friday, February the 27th
2 of 2009, with an arbitrator's decision due on March
3 20th, 2009, which is the 9 month statutory deadline.

4 If the parties agree that we do not need to
5 go to hearing, the parties will file simultaneous
6 cross-motions for summary determination on Friday,
7 January 30th, 2009, with simultaneous answers to those
8 motions on Friday, February the 20th, again with an
9 arbitrator's decision on March 20th, 2009.

10 And I believe that covers what we discussed
11 off the record. Is there anything I have missed in my
12 recitation?

13 MR. FINNIGAN: That seems accurate from my
14 viewpoint, Your Honor.

15 MR. KOPTA: That's fine, thank you.

16 JUDGE RENDAHL: Okay. Is there anything else
17 we need to discuss this morning at our prehearing
18 conference?

19 MR. FINNIGAN: No.

20 MR. KOPTA: No, Your Honor.

21 JUDGE RENDAHL: Okay, then I will prepare a
22 prehearing conference order that includes all the
23 information we discussed this morning and prepare a
24 standard protective order, and then you all will let me
25 know one way or the other whether that meets your needs

0016

1 during the December 10 discovery conference. And we
2 will discuss the merits of the petition for declaratory
3 ruling this afternoon, and if there's any need to change
4 the schedule based on our discussions in the afternoon,
5 I will note that in the prehearing conference order,
6 because I believe both of you will be at the prehearing
7 this afternoon.

8 MR. KOPTA: You are correct.

9 MR. FINNIGAN: An accurate assumption.

10 JUDGE RENDAHL: All right, with that I
11 believe we are adjourned, thank you very much.

12 Let's be off the record.

13 (Hearing adjourned at 11:15 a.m.)

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