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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3	WASHINGTON UTILITIES AND)	
	TRANSPORTATION COMMISSION)	
4)	
	Complainant,)	
5)	
	vs.)	DOCKET NO. UT-060962
6)	Volume I
	AT&T COMMUNICATIONS OF THE)	Pages 1 - 28
7	PACIFIC NORTHWEST, INC.,)	
)	
8	Respondent.)	

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10 A prehearing conference in the above matter
11 was held on June 22, 2007, at 1:31 p.m., at 1300 South
12 Evergreen Park Drive Southwest, Olympia, Washington,
13 before Administrative Law Judge DENNIS J. MOSS.

14

15 The parties were present as follows:

16 WASHINGTON UTILITIES AND TRANSPORTATION
17 COMMISSION, by MICHAEL A. FASSIO, Assistant Attorney
18 General, 1400 South Evergreen Park Drive Southwest,
19 Post Office Box 40128, Olympia, Washington 98504;
20 telephone, (360) 664-1192.

21 AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST,
22 INC., by GREGORY J. KOPTA, Attorney at Law, Davis
23 Wright Tremaine, 1201 Third Avenue, Suite 2200,
24 Seattle, Washington 98101-3045; telephone, (206)
25 757-8079.

26 AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST,
27 INC., by LETTY FRIESEN (via bridge line), Attorney at
28 Law, 2535 East 40th Avenue, Suite B-1201, Denver,
29 Colorado 80205; telephone, (303) 299-5708.

30 Kathryn T. Wilson, CCR
31 Court Reporter

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

2 JUDGE MOSS: Good afternoon, everyone. My
3 name is Dennis Moss. I'm an administrative law judge
4 for the Washington Utilities and Transportation
5 Commission. We are convened this afternoon in the
6 matter styled Washington Utilities and Transportation
7 Commission against AT&T Communications of the Pacific
8 Northwest, Inc., Docket UT-060962. This is a complaint
9 docket.

10 The first order of business will be to take
11 appearances. I suppose since the Commission is
12 complaining, we'll start with you, Mr. Fassio.

13 MR. FASSIO: Thank you. Michael Fassio,
14 assistant attorney general, on behalf of Commission
15 staff. My address is PO Box 40128, Olympia,
16 Washington, 98504-0128. My phone number is (360)
17 664-1192. Fax number is (360) 586-5522. E-mail
18 address is mfassio@wutc.wa.gov.

19 JUDGE MOSS: Mr. Kopta?

20 MR. KOPTA: Thank you, Your Honor. Gregory
21 J. Kopta of the law firm Davis, Wright, Tremaine, LLP,
22 on behalf of AT&T Communications of the Pacific
23 Northwest. My address is 1201 Third Avenue, Suite
24 2200, Seattle Washington, 98101-3045. Telephone is
25 (206) 757-8079; fax, (206) 757-7079; e-mail,

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1 gregkopta@dwt.com, and also on behalf of AT&T will be
2 Ms. Letty Friesen and Ms. Cindy Manheim. Only
3 Ms. Friesen will be entering an appearance.

4 JUDGE MOSS: Ms. Friesen?

5 MS. FRIESEN: Good afternoon, Your Honor.
6 Letty Friesen on behalf of AT&T. My address is 2535
7 East 40th Avenue, Suite B-1201, Denver, Colorado,
8 80205. My telephone number is (303) 299-5708. My fax
9 number is (281) 664-9858. My e-mail address is
10 lsfriesen@att.com.

11 JUDGE MOSS: Thank you. Is there anyone else
12 who wishes to enter an appearance? I'll just note for
13 the record that according to the master service list I
14 have been provided, we do have one interested person.
15 That's Mr. Brooks Harlow of Miller Nash, LLC. I'll
16 simply include him somehow with the indication he's an
17 interested person, although he's not a party, but we
18 will be furnishing him the notices and so forth. I
19 don't know who he represents.

20 MR. KOPTA: I believe he represents Global
21 Tel Link, and as I understand, he will not be entering
22 an appearance.

23 JUDGE MOSS: Thank you. Are we going to need
24 discovery in this docket, or have we had all the
25 discovery we need?

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1 MR. FASSIO: Staff anticipates there may be a
2 need for discovery.

3 JUDGE MOSS: To the extent there is a need
4 for discovery, then it will be conducted consistent
5 with the Commission's procedural rules governing
6 discovery, WAC 480-07-400. Protective order?

7 MR. KOPTA: Yes, Your Honor, I believe we
8 will need one.

9 JUDGE MOSS: Standard form?

10 MR. KOPTA: I believe that will be
11 sufficient.

12 JUDGE MOSS: No problem. Or is there a
13 problem?

14 MR. FASSIO: No problem with respect to the
15 standard form except for the issue of confidentiality
16 that we will be discussing.

17 JUDGE MOSS: The confidentiality issue as to
18 which we've had some paper filed, we will get back to
19 that in just a moment. Before we do that though, and I
20 don't think it will turn on any decision made there,
21 what sort of process -- I'll start with you Mr. Fassio.
22 What sort of process do you anticipate for this
23 proceeding?

24 MR. FASSIO: Well, a standard complaint
25 proceeding in which we would have possibly prefiled

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1 testimony and a hearing at some point. We are
2 interested in I think that having talked to the Company
3 in having some time built in for settlement discussions
4 to see if we can't resolve the issues of the complaint
5 in advance of that.

6 JUDGE MOSS: We will need to move beyond
7 possibly so I can establish a procedural schedule for
8 us, but your anticipation would be that the process we
9 would use would be the standard adjudicatory process,
10 the prefiled testimony and a brief hearing?

11 MR. FASSIO: Yes.

12 JUDGE MOSS: That sounds good. Are you okay
13 with that, Mr. Kopta?

14 MR. KOPTA: Yes. That's our anticipation as
15 well, and certainly to confirm, we definitely would
16 want to see if we could resolve this short of having to
17 go through that process but certainly understand if
18 that's not possible, then that's the process we would
19 set.

20 JUDGE MOSS: We will set some dates for
21 those, and I also will have the understanding, if you
22 will, that those will be tentative place holders, as it
23 were, and yes, I have read all the paper in the docket,
24 and my impression is that the case is one that's
25 susceptible to a settlement. There does not seem to be

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1 a great deal of factual dispute, perhaps, if any, so
2 that sets things off rather nicely for the two of you
3 to work things out with the consultation with your
4 clients.

5 So with that, let's go ahead and set a couple
6 of dates, and then I want to hear this confidentiality
7 argument, if there is any oral argument, and we'll get
8 that resolved as well. We will need a date for -- I
9 suppose Staff is the complaining party so you would
10 file first.

11 MR. FASSIO: Should we go off the record for
12 a moment?

13 JUDGE MOSS: Yes. We are off the record.

14 (Discussion off the record.)

15 JUDGE MOSS: The parties have had discussions
16 off the record with occasional side bar from the judge
17 a procedural schedule for this docket. We have worked
18 out that we will have prefiled direct testimony from
19 the Staff on August the 3rd, response testimony from
20 the Company on the 30th day of August, rebuttal
21 testimony from Staff on the 13th of September, and we
22 set September 27th as the date for an evidentiary
23 hearing if one is required.

24 The parties have agreed to set tentatively a
25 settlement conference on the 19th. If there is to be

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1 any posthearing briefing or argument, we will set dates
2 for that later. I will comment in light of my review
3 of the papers so far that there are additional options
4 that will be available to you as we proceed and you see
5 how things shape up. We can resolve a case like this
6 on a paper record unless there is some pressing need to
7 have a live hearing. Sometimes that comes from me and
8 sometimes it comes from you, that pressing need, that
9 is to say, but we can keep that in the back of our
10 minds as we go forward, and of course there is always
11 the prospect for motions for summary determination, so
12 there are alternatives to this standard process that
13 you can consider. But we will set this, and as I've
14 mentioned before, whether it was on the record or not
15 I'm not sure, this does not seem to be a fact-intensive
16 case, so I think we should aim for simplest
17 presentation and approach that we can necessary to
18 build a record for decision.

19 That takes care of our process and procedural
20 schedule, which brings us to the question of the
21 confidentiality of certain information that AT&T has
22 provided in this proceeding so far. I have read your
23 papers. I forget how they are variously styled here.
24 Mr. Kopta, you filed a brief on the confidential
25 information on June the 20th. I appreciate the fact

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1 that it is brief, and Staff also did a nice job in
2 terms of brevity in filing what it styles "comments
3 addressing Staff's opposition to confidential redacted
4 information." Do you all wish to add anything to this?
5 You're the one asserting confidentiality, Mr. Kopta, so
6 I'll ask you first. Do you want to argue it?

7 MR. KOPTA: Yes, Your Honor, I think we would
8 like to address some of the points in Staff's comments
9 since we only had one round of comments.

10 JUDGE MOSS: Sure.

11 MR. KOPTA: Just going through here and
12 keeping things brief, Staff has four different points
13 that they raise in opposition to maintaining the
14 confidentiality of this information. I won't repeat
15 what's in our papers, and I'm assuming that you are
16 familiar with what the information is, so we don't need
17 to go into any kind of background.

18 JUDGE MOSS: I have read the report and noted
19 the redacted information.

20 MR. KOPTA: Then let me go right to Staff's
21 points. The first one is they are concerned about the
22 public's right to know the number of alleged violations
23 and the overcharges, and they seem to be concerned that
24 keeping that confidential will somehow inhibit the
25 Commission's ability to provide the necessary

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1 information to the public, and we would just note that
2 the Commission has historically made findings of fact
3 based on confidential information. That's not
4 something that the Commission is foreclosed from doing,
5 and that there is some dispute in terms of, at least
6 from our perspective, about whether a single call
7 equals a single violation, and so there may not
8 necessarily need to be any disclosure of the number of
9 calls that are at issue here, and that's certainly one
10 of the issues that's going to be presented to the
11 Commission for resolution of it gets to that point. So
12 there is no necessary correlation between the number of
13 violations and the number of calls, so certainly to the
14 extent that there is a concern the number of calls need
15 to be made, probably because that's the number of
16 violations, we don't think that is, in fact, the case.

17 The second point the Staff makes is that the
18 aggregate information in their view is not Customer
19 Propriety Network Information, or CPNI, and we would
20 just point out that according to the definition that
21 Staff provides in Footnote 2 of their comments,
22 certainly as we interpret CPNI, this information is, in
23 fact, covered by the requirements of the
24 Telecommunications Act, FCC rules, and this
25 commission's rules.

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1 The aggregate information, quote/unquote,
2 does not aggregate information from the point of view
3 of the customer, which is the Department of
4 Corrections. There are two locations from their
5 perspective. That's essentially not aggregation when
6 you are talking about two locations. Looking at the
7 definition, the information does relate to the quantity
8 of calls, the type of calls, the location of the calls,
9 and the amount of use of telecommunications service.
10 All of those things are within the definition of
11 Customer Proprietary Network Information.

12 The definition of "aggregate information,"
13 which is exempt from that, refers to a group or
14 category of customers or service. In this case from
15 the point of view of the Department of Corrections, you
16 are talking about a single customer, not a group, and a
17 single type of call, not a type of different types of
18 services from which characteristics have been removed.
19 In this case, the characteristics are the number of
20 calls and the time frame within which these calls were
21 made, as short of a time frame as three days. So
22 again, this does not fall within aggregate information
23 from the point of view of the single customer with the
24 Department of Corrections.

25 JUDGE MOSS: Let me ask you about that. Is

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1 the Department a Corrections the customer here? Do
2 they lease this equipment from the company or someone
3 else, or how does that work?

4 MR. KOPTA: There is a contract between AT&T
5 and the Department of Corrections to maintain these
6 facilities on the Department of Corrections grounds,
7 and there is an arrangement with them to make those
8 phones available at certain locations and for certain
9 purposes so that inmates at the Department of
10 Corrections can make telephone calls from these
11 telephones.

12 So even though it's a rather unique
13 situation, it's almost as though you are talking about
14 IBM getting service so its employees can make telephone
15 calls. In this case, it's so the prisoners can make
16 telephone calls or visitors to the prisoners can make
17 telephone calls. So these phones are available within
18 these correctional facilities for those persons that
19 are having business or being incarcerated by the
20 Department of Corrections.

21 JUDGE MOSS: Does the Company pay for the
22 privilege of providing the service, or is the Company
23 compensated for providing the service independently of
24 the tariff charges that are levied?

25 MR. KOPTA: I'm not one hundred percent sure.

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1 Ms. Friesen may have some more information about that.
2 My understanding is that the Department of Corrections,
3 certainly one of the attachments to Staff's comments is
4 request for proposals, RP, so I'm assuming that there
5 is some type of compensation paid to the Department of
6 Corrections either in terms of a percentage of the
7 revenues generated from the calls or a flat fee. I
8 believe it is a percentage that are provided to the
9 Department of Corrections based on the number of calls
10 that are made from, or the revenues that are generated
11 from maintaining these telephones on the Department of
12 Corrections property. Is that correct, Ms. Friesen?

13 MS. FRIESEN: Yes, that is correct. They are
14 based on a percentage, a percentage of the revenue.

15 JUDGE MOSS: Who is paying whom?

16 MS. FRIESEN: The customers that receive the
17 collect calls pay AT&T, and then the Department of
18 Corrections receives a percentage of the revenue from
19 those calls. Now, that's true of the inmate calls. It
20 may not be true of -- we have pay phones on the
21 premises at the corrections facilities that are like
22 regular public pay phones.

23 JUDGE MOSS: So it's a pay phone situation.
24 That would be like if I went into a parking lot at a
25 7/11 and came upon a pay phone?

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1 MS. FRIESEN: That's correct. That is still
2 considered part of the contract with the Department,
3 but as to whether they get revenues on those particular
4 calls, I'm not sure.

5 JUDGE MOSS: Mr. Kopta, would 7/11 be a
6 customer of AT&T?

7 MR. KOPTA: If AT&T had a contract with 7/11
8 to provide a certain percentage of the revenues from
9 the calls from that phone, then yes, it would.

10 JUDGE MOSS: AT&T doesn't typically pay its
11 customers, does it?

12 MR. KOPTA: No.

13 JUDGE MOSS: If they do, I'm going to
14 subscribe.

15 MS. FRIESEN: Our contract is with the
16 Department of Corrections to provide this particular
17 service to their inmates and visitors.

18 JUDGE MOSS: I understand. Go ahead,
19 Mr. Kopta.

20 MR. KOPTA: Thank you. The third point that
21 Staff makes in their comments is basically that there
22 is no harm here to AT&T, in large part because AT&T is
23 no longer in the business of providing these telephone
24 services having sold this business to another entity,
25 and in response to that, we would just point out that

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1 our contract of sale with Global Tel Link, which is the
2 company we've sold the business to, we are obligated to
3 protect the information that we have in our possession
4 and also information that they provide to us.

5 Given that the records were provided to
6 Global Tel Link at the close of the sale, the records
7 that we actually provided to Staff came from Global Tel
8 Link. We had the obligation, obviously, to try and
9 provide this to the Commission, but Global Tel Link
10 actually has possession of the records, so we gave up,
11 and their understanding is that under the agreement, we
12 agreed to keep that information confidential to protect
13 the business. Whether we own it or they own it is
14 irrelevant because it is an ongoing business, and it's
15 our obligation as the party that produced the
16 information to continue to protect it even though it
17 may not be our specific information any longer.

18 JUDGE MOSS: I assume that Global Tel Link
19 understands that that's subject to this discussion we
20 are having today and that we may remove the cloak of
21 confidentiality that's been asserted under RCW
22 80.04.095.

23 MR. KOPTA: We have made them aware of that
24 and --

25 JUDGE MOSS: That they will have ten days if

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1 that should be the ruling, go to court and get an
2 order?

3 MR. KOPTA: That's what the statute provides.
4 They understand that we are carrying the flag at the
5 moment, and if they have a concern with that, then they
6 will have to make their recourse to the courts if they
7 feel that's appropriate, but from AT&T's perspective
8 specifically, we are concerned that this is information
9 that is gathered in the context of other services call
10 detail-type information. Business locations would be
11 exactly the sort of thing that AT&T would have, and
12 would want to make sure that that information is
13 protected from disclosure.

14 If there is a precedent from the Commission
15 that this is the type of information that's not
16 disclosed, we would have a major concern, because back
17 to my IBM example, collect calls made from IBM may be
18 aggregated and disclosed. That may be of concern to
19 our customers, and certainly, we have an obligation to
20 protect information from our customer, in that case
21 IBM, even though it's a single customer from a single
22 location and there are people making calls from that
23 location, and we are concerned that that sort of
24 information should be protected from disclosure and
25 would not want any ruling in this case to cast any

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1 negative light on our ability to protect that type of
2 information with respect to other customers.

3 JUDGE MOSS: The single customer point you
4 make brings back to mind a question I should have
5 asked. In terms of this contract, and maybe
6 Ms. Friesen will have to answer, is there a single
7 contract with DOC for all prison facilities within the
8 state of Washington?

9 MS. FRIESEN: The contract was entered
10 into -- I forget the exact date. It's either '92 or
11 '99, and it was amended over time, but yes, it was a
12 single contract with some subcontractors underneath it,
13 but the primary party responsible for the facilities to
14 provide service to the Department of Commerce was AT&T
15 Corps.

16 JUDGE MOSS: The Department of Corrections?

17 MS. FRIESEN: Yes.

18 JUDGE MOSS: And that would be for all the
19 prisons, single contract?

20 MS. FRIESEN: Right. One single contract for
21 all the prisons that the contract enveloped, and I
22 believe that was all of the correctional facilities in
23 the state at the time.

24 MR. KOPTA: One final point on that is that
25 to the extent that this information is CPNI, it was

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1 information that was gathered at the time that AT&T was
2 providing the business, and there is no time limit on
3 how long a carrier is supposed to maintain the
4 confidentiality of the CPNI, so to the extent it would
5 be considered CPNI, which we believe that it is, then
6 we are under an obligation to continue to protect that
7 information, and we had originally obtained as the
8 carrier of that customer, the Department of
9 Corrections, during that time frame.

10 The final point that Staff makes is
11 essentially their view that aggregate call volume
12 information has already been made public by the
13 Department of Corrections, and they have attached a
14 couple of exhibits to their comments, and we would just
15 point out that the information that the Department of
16 Corrections has provided is substantially different
17 than the information that Staff proposes to disclose
18 here.

19 First of all, the Department of Corrections
20 data is for all telephone calls that originate from
21 those corrections facilities, not just the collect
22 calls that are made from the inmates. The data is for
23 an entire year, not for the 30-day periods that the
24 Staff is proposing to disclose here. The data is also
25 for multiple carriers, AT&T and Qwest and/or Verizon,

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1 not just AT&T, so the level of aggregation of the
2 Department of Commerce information is much greater than
3 it is.

4 JUDGE MOSS: Corrections.

5 MR. KOPTA: Corrections. Ms. Friesen got me
6 all confused. That the Department of Corrections has
7 disclosed, it is far greater than that which would be
8 disclosed if the information in the Staff report were
9 publicly available. In fact, there may be an ability
10 to further disaggregate the Department of Corrections'
11 data if this specific data on a monthly call volumes
12 for collect calls were to be made publicly available.
13 It could be backed out of using the data that is
14 publicly available to further disaggregate the data
15 that is publicly available and provide additional
16 detail that certainly in our view continues to be CPNI
17 and/or information that is commercially valuable to the
18 owner of the business.

19 Those are the points that I would like to
20 make, unless Ms. Friesen has some additional points
21 that she has.

22 MS. FRIESEN: I have nothing else, thank you.

23 JUDGE MOSS: All right. Then let's hear from
24 Mr. Fassio if he wants to make any argument on this.

25 MR. FASSIO: Sure. I can piggyback a little

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1 bit on the last comment of Mr. Kopta on the information
2 that the Department of Corrections has made publicly
3 available. I point out that the call details do
4 actually cover the time period in question here in this
5 case, and actually are not only provided by the
6 Department of Corrections, which is potentially a
7 customer as we've heard here today, but is actually far
8 more detailed in the traffic volume that it actually
9 releases.

10 Unlike the information that is currently
11 redacted, it actually provides specific call traffic
12 information by DOC site. The redacted information
13 actually does aggregate among DOC sites. It doesn't
14 distinguish which information comes from one site,
15 which information comes from the other site. The
16 Department of Corrections has provided this detailed
17 call information to prospective bidders and prospective
18 competitors in this business as part of its public
19 bidding process.

20 So I would strongly argue that there is
21 really no harm here in releasing the very limited
22 amount of redacted data that's currently in the Staff
23 investigation report because the bell has already been
24 rung. The redacted data is actually just a calculation
25 of misbilled calls, in a sense. It's not overall

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1 traffic volume. This information here is actually far
2 more detailed and has already been provided to the
3 public.

4 And second, I would point out that AT&T has
5 talked about its interest here in the proceeding of
6 confidentiality, and I would argue that AT&T really
7 does lack a sense of standing to assert that it would
8 be commercially harmed or there would actually be a
9 business risk to releasing this information because it
10 did leave the prison collect-calling business and sell
11 it in July of 2005, which is coming up on two years
12 ago, and G-Tel, the company that now is in the business
13 of providing this, had notice of this proceeding and
14 had initially expressed an interest in appearing here
15 today but has chosen not to participate, and they would
16 be the real party in interest that may be harmed, if at
17 all, by the release of this information.

18 JUDGE MOSS: The party out there that might
19 be harmed then, we certainly have to consider that they
20 perhaps are placing their confidence in Mr. Kopta's
21 presentation today in terms of maintaining the
22 confidentiality, which he is entitled to assert as the
23 party that's had to file this information. Indeed, I
24 believe I wrote an order making him do that, so I don't
25 think we have a standing problem here today.

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1 There may be at a deeper level some sort of
2 standing problem, but no matter what I rule -- let's
3 assume for a moment that I rule that this data is not
4 entitled to a cloak of confidentiality. We would
5 certainly have to afford the Company, Global whatever
6 it is that purchased the business, an opportunity under
7 the statute to get a court order telling the Commission
8 that I got it wrong. So let's move on from that.

9 MR. FASSIO: One of the other arguments that
10 AT&T has made is that this is customer-specific usage,
11 a network configuration and design information. The
12 original data that was provided in an unaggregated form
13 they did designate as CPNI, or Customer Proprietary
14 Network Information, and I won't go into the references
15 of that. You have all that material, but the federal
16 statutes have provided a clearer, more detailed
17 definition that was in the RCW here and has actually
18 separated CPNI from aggregate information.

19 And what I would propose is that this
20 information that Staff has done has been aggregated
21 from any of the CPNI that was originally submitted.
22 There is no individually identifying details of the
23 customers who received calls and also aggregated the
24 locations, and so I would argue as we stated in here
25 that it has not made the definition of CPNI. We are

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1 talking about very limited information. The number of
2 misbilled calls, the number of violations that Staff
3 asserts resulted from that, and the number of
4 overcharges, and we would argue that none of this is
5 CPNI.

6 As a final note, and I won't bog you down
7 with too much more argument here, is that Staff really
8 feels that the public ought to know the number of
9 violations that have been alleged in the complaint, and
10 the complaint not only has stated that there are a
11 certain number of misbilled calls but that each call
12 represents a single violation of state law.

13 Now, that may be argued, but at least at this
14 juncture in the information that has been filed, to
15 redact the number of misbilled calls would require
16 redaction of the alleged number of violations in that
17 complaint, and Staff believes that the public has a
18 right to know the extent to which the Commission has
19 alleged violations of Commission or state law.

20 This is not a matter of aggregated traffic
21 volumes. This is a matter of Staff's aggregation of
22 information that it received and an analysis that is
23 not put forth in which Staff has asserted that there
24 are no violations of state law, not very artfully put.

25 JUDGE MOSS: It happens.

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1 MR. FASSIO: Basically, Staff believes that
2 to keep this information confidential, to keep the
3 specific data in here, would be a broadening of the
4 intentions of confidentiality. Parties must strictly
5 limit the amount of information they designate as
6 confidential and limit it to that information that
7 would compromise their ability to compete fairly or
8 otherwise impose a business risk. We don't believe
9 AT&T has met that standard, and we don't believe that
10 the information properly qualifies as CPNI, and we
11 believe that the information should not be designated
12 as confidential. Thank you.

13 JUDGE MOSS: Thank you. Any last word?

14 MR. KOPTA: No. I believe we've made our
15 points.

16 JUDGE MOSS: Those are capable arguments, as
17 always. I'm mindful of your concern, Mr. Kopta,
18 concerning my not drafting an order on this or saying
19 something here from the Bench today that might arguably
20 establish some principle or precedents; although I
21 hesitate to use either of those words, frankly, for
22 anything I ever say, but I'm mindful of that as I have
23 been in the context of other arguments of this nature
24 that I've heard over the years that I've been here, and
25 there are various ways to avoid that.

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1 One of those is to emerge victorious, which I
2 may have a comment on here in a moment, but another is
3 for you all to work something out that will accommodate
4 your client's concern over this data being disclosed
5 publicly, some form of waiver, if you will. We often
6 do that with aggregation of data. I believe there was
7 some sort of aggregation of data. You cited one of
8 those Global Telecommunications dockets that we've had
9 here ongoing for how many years, and I think in those
10 cases, there have been some accommodations made where
11 aggregations have seen the light of day, as it were.

12 Staff does have a legitimate concern with the
13 public's right to know. I notice that the state is now
14 disclosing to the third decimal the alcohol content in
15 people's blood when they are arrested, at least when
16 they are prosecutors in Thurston County.

17 MR. KOPTA: Not from personal experience, I
18 hope.

19 JUDGE MOSS: Not personal experience, I'm
20 glad to say. In any event, I think there is a pretty
21 strong interest here in public disclosure as a general
22 proposition of law in Washington state. I will comment
23 a little bit further here, and then I'm going to give
24 you all an opportunity off the record to consult with
25 your client privately before we close our business this

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1 afternoon.

2 I looked pretty carefully at this data and
3 the way Staff presented it in its report and so forth
4 and listened carefully to the arguments today, and
5 while there are a couple of points that frankly are not
6 entirely settled in my mind so that I would not be
7 prepared to rule from the Bench today, I am inclined to
8 remove the confidentiality claim and let you and your
9 other company, if you wish to, to take it to court, and
10 of course, we would have to abide by whatever the court
11 decided, but that's my inclination. I won't say that's
12 my ruling because there are a couple of points in here
13 concerning me.

14 Obviously, I'm struggling a little bit with
15 the question of who the customer is here, and I think
16 you all hashed that out for me very nicely. I'm also
17 struggling with this question in the proprietary
18 information of this typically clear definition that the
19 FCC has provided us and so forth, so I think that
20 probably gives you some information that will be
21 useful.

22 Would you like an opportunity to consult with
23 your client? You can tell me flat out that you want to
24 have my ruling and we can stop, or if you would like
25 some opportunity to perhaps talk with your client, talk

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1 with Staff and see if some accommodation can be
2 reached. By aggregating it as Staff has done by not
3 identifying the specific facilities but by pulling it
4 all together, it does seem to relieve a lot of concern
5 you might have in terms of the type of harm you've
6 asserted in the commercial sense. Taking that together
7 too with the request for proposals from the Department
8 of Corrections, the harm piece doesn't work too well
9 for me. That's not necessarily the decisive question,
10 but it enters the thinking as well.

11 MR. KOPTA: There are still only two
12 locations that we are talking about here.

13 JUDGE MOSS: I understand. That competitor
14 lurking around the corner wishing accounts on his
15 business doesn't know whether 90 percent is from one
16 facility and ten from the other, so you see what I mean
17 by the nature of aggregation. It does make it more
18 difficult for the alleged harm to be appreciated from
19 my perspective, at least. Shall I give you a little
20 time?

21 MR. KOPTA: I think we might as well take a
22 little time.

23 JUDGE MOSS: I'm going to go get a drink of
24 water, and I'll be in my office.

25 (Discussion off the record.)

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1 JUDGE MOSS: The parties have had an
2 opportunity to discuss matters off the record, and
3 Mr. Kopta, I believe, is going to report.

4 MR. KOPTA: Yes, Your Honor. We have
5 discussed things with Staff and internally each on our
6 own, and there is a proposal for a negotiated
7 resolution of this issue. AT&T doesn't want to act
8 unilaterally but wants to give Global Tel Link an
9 opportunity to weigh in if they want to, so we
10 represented to Staff that we will get back to them with
11 thumbs up or thumbs down on that proposal by close of
12 business on Wednesday of next week, and we would also
13 inform you at that time so you will know whether you
14 need to issue an order or whether you can hold off, and
15 we will obviously notify you more formally of what the
16 negotiated resolution is by the end of the week by
17 letter, if that would be acceptable to you.

18 JUDGE MOSS: That's sounds like a good result
19 and protects everyone's interest. Send me a letter and
20 I'll take it from there. Do we have any other business
21 today?

22 Unfortunately, I did not check the
23 distribution list, so I will include as part of the
24 prehearing order the requirements of the number of
25 documents that need to be filed and so on and so forth.

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1 I'll probably issue a single order, so I'll hold off on
2 that until we get this confidentiality thing final, one
3 way or the other. Thank you all very much. Appreciate
4 your help today.

5 (Prehearing adjourned at 2:56 p.m.)

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