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1                                   BEFORE THE WASHINGTON STATE  
                                   UTILITIES AND TRANSPORTATION COMMISSION  
 2 In the Matter of the Petition )  
                                   of )  
 3 )  
 4 WASHINGTON INDEPENDENT ) DOCKET NO. UT-083056  
   TELECOMMUNICATIONS )  
   ASSOCIATION and LEWIS RIVER )  
 5 TELEPHONE COMPANY, D/B/A TDS )  
   TELECOM, ) Volume I  
 6 ) Pages 1 to 19  
 7 For Declaratory Ruling )  
 \_\_\_\_\_ )

8                                   A prehearing conference in the above matter  
 9 was held on Monday, December 1, 2008, from 1:30 p.m to  
 10 p.m., at 1300 South Evergreen Park Drive  
 11 Southwest, Room 206, Olympia, Washington, before  
 12 Administrative Law Judge ANN RENDAHL.

13                                   The parties were present as follows:

14                                   WASHINGTON INDEPENDENT TELECOMMUNICATIONS  
 15 ASSOCIATION AND LEWIS RIVER TELEPHONE COMPANY, D/B/A TDS  
 16 TELECOM, by RICHARD A. FINNIGAN, Attorney at Law, 2112  
 Black Lake Boulevard Southwest, Olympia, Washington  
 98512, Telephone (360) 956-7001, Fax (360) 753-6862,  
 E-Mail rickfinn@localaccess.com.

17                                   COMCAST PHONE OF WASHINGTON, LLC, by GREGORY  
 18 J. KOPTA, Attorney at Law, Davis, Wright, Tremaine, LLP,  
 1201 Third Avenue, Suite 2200, Seattle, Washington  
 98101, Telephone (206) 757-8079, Fax (206) 757-7079,  
 19 E-Mail gregkopta@dwt.com.

20                                   THE COMMISSION, by JONATHAN THOMPSON,  
 21 Assistant Attorney General, 1400 South Evergreen Park  
 Drive Southwest, Olympia, Washington 98504-0128,  
 Telephone (360) 664-1225, Fax (360) 586-5522, E-Mail  
 22 jthompso@wutc.wa.gov.

23

24 Joan E. Kinn, CCR, RPR

25 Court Reporter

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1 VERIZON NORTHWEST, INC., MCI COMMUNICATION  
SERVICES, INC. D/B/A VERIZON BUSINESS SERVICES, and BELL  
2 ATLANTIC COMMUNICATIONS, INC. D/B/A VERIZON LONG  
DISTANCE, by GREGORY M. ROMANO, Attorney at Law, 1800 -  
3 41st Street, Everett, Washington 98201, Telephone (425)  
261-5460, Fax (425) 252-4913, E-mail  
4 Gregory.m.Romano@verizon.com.

5 WEBTEC, by ARTHUR A. BUTLER, Attorney at Law,  
Ater Wynne LLP, 601 Union Street, Suite 1501, Seattle,  
6 Washington 98101, Telephone (206) 623-4711, Fax (206)  
467-8406, E-Mail aab@aterwynne.com.

7  
8 BROADBAND COMMUNICATIONS ASSOCIATION OF  
WASHINGTON, via bridge line by DAVID L. RICE, Attorney  
at Law, Miller Nash LLP, 601 Union Street, Suite 4400,  
9 Seattle, Washington 98101, Telephone (206) 777-7424, Fax  
(206) 622-7485, E-Mail David.Rice@millernash.com.

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

2 JUDGE RENDAHL: Good afternoon, 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 UT-083056, which is captioned In the Matter of  
8 the Petition of the Washington Independent  
9 Telecommunications Association, actually that should be  
10 Telephone Association, excuse me, and Lewis River  
11 Telephone Company.

12 MR. FINNIGAN: Actually the name is  
13 Telecommunications Association.

14 JUDGE RENDAHL: It is, okay.

15 MR. FINNIGAN: It was changed almost a year  
16 ago today, so.

17 JUDGE RENDAHL: Okay.

18 And Lewis River Telephone Company doing  
19 business as TDS Telecom for a Declaratory Ruling.

20 WITA filed this petition for declaratory  
21 ruling in this docket on October 28th, 2008, asking the  
22 Commission to determine whether TDS is required to  
23 negotiate terms of interconnection with Comcast Phone of  
24 Washington, LLC, for the provision of fixed Voice Over  
25 Internet Protocol or VOIP service, and whether Comcast

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1 is acting as a telecommunications carrier offering a  
2 telecommunications service in providing fixed VOIP  
3 service.

4 Comcast filed an answer to the petition on  
5 November 17 stating that it is a necessary party and  
6 does not consent to the determination of the issues in  
7 the petition by declaratory order. Comcast made the  
8 statement under RCW 34.05.240(7) which provides:

9 An agency may not enter a declaratory  
10 order that would substantially prejudice  
11 the rights of a person who would be a  
12 necessary party and who does not consent  
13 in writing to the determination of the  
14 matter by a declaratory order  
15 proceeding.

16 So we're holding our prehearing conference  
17 this afternoon concerning WITA's petition. The notice  
18 of the prehearing conference stated that the Commission  
19 would consider requests for intervention, resolve any  
20 scheduling matters, identify the issues, and determine  
21 other matters to assist the Commission in resolving the  
22 issue. So the purpose of our conference today is to  
23 discuss who qualifies as a necessary party, whether the  
24 necessary parties are participating in the proceeding,  
25 and if so whether they consent to a determination of

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1 this matter by a declaratory order. And we should also  
2 talk about how to proceed and if we think there's a need  
3 for additional time to comment on that issue before the  
4 Commission makes a decision. So those are the issues  
5 we'll talk about this afternoon.

6 For those of you who were not here this  
7 morning, we had a prehearing conference in Docket  
8 UT-083055, which is Comcast's petition for arbitration  
9 with TDS Telecom. We set a schedule in that matter this  
10 morning, and recognizing that these matters are probably  
11 being held in reverse order today, just if you weren't  
12 here this morning, that's what we did.

13 So before we go any farther, let's take  
14 appearances, full appearances from the parties,  
15 beginning with WITA.

16 MR. FINNIGAN: Your Honor, this is Richard A.  
17 Finnigan appearing on behalf of the Washington  
18 Independent Telecommunications Association. My address  
19 is 2511 Log Cabin Road -- no, that's my home.

20 JUDGE RENDAHL: I was going to say, I think  
21 that's a little different.

22 MR. FINNIGAN: Long day and it's so early.

23 It's 2112 Black Lake Boulevard Southwest,  
24 Olympia, Washington 98512, my office phone is (360)  
25 956-7001, fax is (360) 753-6862, E-mail is

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1 Rickfinn@localaccess.com.

2 JUDGE RENDAHL: And you also represent TDS  
3 Telecom?

4 MR. FINNIGAN: And I also represent, yes,  
5 Lewis River Telephone Company d/b/a TDS Telecom.

6 JUDGE RENDAHL: Thank you.  
7 You were just trying to see if we were still  
8 awake.

9 MR. FINNIGAN: I was hoping to get it out as  
10 quickly as I could, see what happened.

11 JUDGE RENDAHL: Is there anyone you want to  
12 have listed on our courtesy E-mail list?

13 MR. FINNIGAN: Yes, as with this morning's  
14 proceeding, we would like to list Joel, J-O-E-L,  
15 Dohmeier, D-O-H-M-E-I-E-R, his E-mail address is  
16 Joel.Dohmeier@tdstelecom, which is T-D-S-T-E-L-E-C-O-M.  
17 And as with this morning, I will let the Commission and  
18 the parties know whether he should be listed for service  
19 or just as a courtesy.

20 JUDGE RENDAHL: Okay, thank you very much.

21 And for Comcast.

22 MR. KOPTA: Thank you, Your Honor. Gregory  
23 J. Kopta of the law firm Davis Wright Tremaine LLP on  
24 behalf of Comcast Phone of Washington, LLC. My address  
25 is 1201 Third Avenue, Suite 2200, Seattle, Washington

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1 98101-3045, phone (206) 757-8079, fax (206) 757-7079,  
2 E-mail gregkopta@dwt.com. And with me who will I think  
3 also appreciate being on the service list is Michael  
4 Sloan, his E-mail address is michael Sloan@dwt.com.

5 JUDGE RENDAHL: And should he simply receive  
6 courtesy E-mail on this in this matter, or is he also  
7 listed as co-counsel, does he need to have paper service  
8 as well?

9 MR. KOPTA: I think we can just have him  
10 receive courtesy E-mail service. I can make sure we get  
11 copies to him if he needs hard copies.

12 JUDGE RENDAHL: And is there anyone else who  
13 needs to be on the courtesy list for Comcast?

14 MR. KOPTA: No, I think that's fine, thank  
15 you.

16 JUDGE RENDAHL: Okay, thank you.

17 And we've received three notices of  
18 intervention, petitions for intervention, first from  
19 Verizon.

20 MR. ROMANO: Thank you, Your Honor, Gregory  
21 M. Romano on behalf of Verizon Northwest, Inc., MCI  
22 Communication Services, Inc. d/b/a Verizon Business  
23 Services, and Bell Atlantic Communications, Inc. d/b/a  
24 Verizon Long Distance. My address at Verizon is 1800 -  
25 41st Street, Everett, Washington 98201, phone number

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1 (425) 261-5460, fax (425) 252-4913, and E-mail address  
2 Gregory.m.Romano@verizon.com.

3 JUDGE RENDAHL: And is there anyone you would  
4 like to have included on behalf of any of your clients  
5 for the courtesy list?

6 MR. ROMANO: No, thank you, Your Honor.

7 JUDGE RENDAHL: Okay, thank you.

8 For WEBTEC here in the hearing room.

9 MR. BUTLER: Arthur A. Butler appearing on  
10 behalf of WEBTEC. My address is 601 Union Street, Suite  
11 1501, Seattle, Washington 98101-2341, Telephone (206)  
12 623-4711, Fax (206) 467-8406, and E-mail is  
13 aab@aterwynne.com.

14 JUDGE RENDAHL: Thank you. And is there  
15 anyone you would like to have listed for WEBTEC on the  
16 courtesy E-mail list?

17 MR. BUTLER: No.

18 JUDGE RENDAHL: Okay, thank you.

19 And on the bridge line for The Broadband  
20 Communications Association of Washington.

21 MR. RICE: Yes, this is --

22 JUDGE RENDAHL: Mr. Rice, you're going to  
23 have to speak up because none of us can hear you.

24 MR. RICE: Okay, can you hear me now?

25 JUDGE RENDAHL: Yes, we can.



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1 MR. RICE: Okay, this is Dave Rice appearing  
2 for the association, I'm with Miller Nash, LLP, my  
3 address is 4400 Two Union Square --

4 JUDGE RENDAHL: You're going to have to speak  
5 up again.

6 MR. RICE: 4400 Two Union Square, 601 Union  
7 Street, Seattle 98101, my phone number is (206)  
8 777-7424, fax is (206) 622-7485, E-mail is  
9 David.Rice@millernash.com.

10 JUDGE RENDAHL: And is there anyone you would  
11 like to have included on the courtesy list for Broadband  
12 Communications Association of Washington?

13 MR. RICE: No. Can I have someone from my  
14 firm included on the courtesy E-mail list?

15 JUDGE RENDAHL: Yes, you may.

16 MR. RICE: Carol Munnerlyn, her E-mail  
17 address is Carol.Munnerlyn@millernash.com.

18 JUDGE RENDAHL: Thank you. And do you want  
19 Mr. Harlow's E-mail address to be included as well?

20 MR. RICE: That's not necessary.

21 JUDGE RENDAHL: Okay, thank you.

22 MR. RICE: Thank you.

23 JUDGE RENDAHL: Now that we have appearances,  
24 is there anyone else in the hearing room or on the  
25 bridge line who wishes to make an appearance in this

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1 proceeding?

2 All right, well, let's go forward to the  
3 question of petitions to intervene. We have three  
4 petitions to intervene from the Broadband Communications  
5 Association of Washington, for WEBTEC, and for Verizon.  
6 I have not included Comcast in that set simply because  
7 Comcast filed an answer and was mentioned in the  
8 petition for declaratory ruling, but we can address that  
9 as well.

10 Mr. Finnigan, does WITA or TBS object to any  
11 of the petitions to intervene or to Comcast's  
12 involvement?

13 MR. FINNIGAN: We don't object to Comcast's  
14 involvement. I doubt seriously that there will be any  
15 objection to any of the three, but I would like to hear  
16 a short statement on the record as to what their  
17 interest in this proceeding is.

18 JUDGE RENDAHL: Okay, and is the light on  
19 your microphone on?

20 MR. FINNIGAN: It is.

21 JUDGE RENDAHL: All right, let's start first  
22 with Mr. Romano.

23 MR. ROMANO: Thank you, Your Honor. Verizon  
24 has a substantial interest in this proceeding for a  
25 number of reasons. First of all, two of the three

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1 Verizon entities provide VOIP services, so we are  
2 interested in and concerned with any proceeding that  
3 would consider regulating VOIP services. And also the  
4 Verizon Northwest, Inc. entity is an ILEC which enters  
5 into interconnection agreements and has one with Comcast  
6 Phone, so Verizon Northwest, Inc. is impacted by any  
7 proceeding that would speak to interconnection agreement  
8 obligations in terms of negotiation and arbitration.

9 Thank you.

10 JUDGE RENDAHL: Okay, thank you.

11 Before we go on, Mr. Finnigan, any questions  
12 for Mr. Romano?

13 MR. FINNIGAN: No, thank you.

14 JUDGE RENDAHL: Okay.

15 And, Mr. Butler.

16 MR. BUTLER: I filed a written petition to  
17 intervene which has a statement of interest, and I  
18 believe I served a copy on Mr. Finnigan. I don't know  
19 whether he needs anything in addition to what's in that  
20 written petition.

21 JUDGE RENDAHL: Mr. Finnigan.

22 MR. FINNIGAN: I did read it, and from my  
23 perspective it was very general in nature, and I was  
24 wondering if there were specific issues that WEBTEC had  
25 in mind as a basis for its intervention. I couldn't

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1 determine that from reading the petition to intervene.

2 MR. BUTLER: Well, the statement of interest  
3 is basically that WEBTEC members are large end users of  
4 telecommunications services, they have facilities  
5 located in numerous locations throughout the state, they  
6 are current customers of VOIP services and may well  
7 continue to be customers of those services and expand  
8 their use of VOIP services in the future. And as  
9 customers, I believe that we could be impacted by any  
10 order which has precedential value that would affect the  
11 ability of any provider of VOIP services to interconnect  
12 with the local exchange company as well as we could be  
13 impacted by any decision of precedential value that VOIP  
14 services might be subject to regulation by the  
15 Commission. Since the Commission's responsibility is to  
16 regulate in the public interest and users are by  
17 definition members of the public, these interests need  
18 to be taken into consideration. We believe that we have  
19 a direct as well as an indirect stake in the outcome of  
20 this proceeding should it go forward.

21 MR. FINNIGAN: If I might follow up, then  
22 there's no allegation that any of WEBTEC's members are  
23 themselves providers of Voice Over Internet Protocol  
24 services?

25 MR. BUTLER: No, we are not providers.

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1 MR. FINNIGAN: Thank you.

2 MR. BUTLER: We are customers.

3 MR. FINNIGAN: Thank you.

4 JUDGE RENDAHL: And, Mr. Rice, and again if  
5 you could speak up, please.

6 MR. RICE: Yes, the Association has a number  
7 of companies that provide VOIP services that may or may  
8 not be similar to what Comcast provides. I guess that's  
9 something that would be --

10 JUDGE RENDAHL: I'm sorry, you just cut out  
11 there a minute, they may or may not provide?

12 MR. RICE: They provide VOIP services that  
13 may be similar to what Comcast provides, and  
14 consequently there is -- the Association members might  
15 be substantially affected by the outcome of this  
16 proceeding. As Art mentioned, there are interconnection  
17 and regulatory outcomes and they are -- result from this  
18 proceeding. Also the Association filed a petition to  
19 intervene, a written petition, and there is additional  
20 information about our interests in this proceeding  
21 contained in that intervention.

22 JUDGE RENDAHL: Okay, thank you, Mr. Rice.

23 Any questions for Mr. Rice, Mr. Finnigan?

24 MR. FINNIGAN: No, Your Honor.

25 JUDGE RENDAHL: Okay.

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1                   And a representative of Staff has just  
2 appeared, Mr. Thompson, do you wish to make an  
3 appearance in this matter?

4                   MR. THOMPSON: Yes, I do. I apologize for  
5 coming in late, I did just want to put in an appearance.  
6 I think Staff is just sort of in a holding pattern and  
7 wants to see how the threshold issues play out. And  
8 then if the Commission does proceed to decide the  
9 substantive issues, then we would probably weigh in at  
10 that time.

11                  JUDGE RENDAHL: Okay, well, why don't you  
12 make your appearance. I can tell you right now that  
13 Mr. Finnigan representing WITA and TDS, and Mr. Kopta  
14 representing Comcast, Mr. Romano representing a number  
15 of Verizon companies, Mr. Butler representing WEBTEC,  
16 and we have Mr. Rice on the line representing the  
17 Broadband Communications Association of Washington.

18                  MR. THOMPSON: Thank you.

19                  JUDGE RENDAHL: And if you could make your  
20 full appearance, that would complete the round.

21                  MR. THOMPSON: Jonathan Thompson, Assistant  
22 Attorney General representing the Commission Staff, my  
23 address is 1400 South Evergreen Park Drive Southwest,  
24 Olympia, Washington 98504, my telephone number is (360)  
25 664-1225, and my E-mail is jthomps@wutc.wa.gov.

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1 JUDGE RENDAHL: Thank you very much.

2 So we've just heard statements of interest by  
3 the Verizon Companies, WEBTEC, and the Broadband  
4 Communications Association of Washington. Mr. Finnigan,  
5 do you have any objections to those interventions?

6 MR. FINNIGAN: Your Honor, we don't. In  
7 making that statement, I do want to note a couple of  
8 things. It does appear to me that WEBTEC's interest at  
9 least on the front end is fairly tangential, but we  
10 won't be objecting. On the Broadband Communications  
11 Association, I think Mr. Rice is correct in his  
12 statement that their members may or may not be affected  
13 depending on what happens. From my experience, I am  
14 aware of how some of the members of the Broadband  
15 Association interact with the CLEC that they work with  
16 for interconnection purposes, and it seems to be  
17 somewhat different than what I know of what Comcast is  
18 doing, at least what I know today, so it may or may not  
19 have some impact on their members, and certainly at this  
20 time it wouldn't be appropriate to foreclose their  
21 intervention, so we would not object to that as well.

22 JUDGE RENDAHL: Okay, thank you.

23 So the petitions to intervene of the Verizon  
24 Companies, WEBTEC, and Broadband Communications of  
25 Washington are granted based on the discussion

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1 Mr. Finnigan just had. I would tend to agree with what  
2 Mr. Finnigan just said, but for now those petitions are  
3 granted.

4 So ordinarily we would move on to a  
5 discussion of do we need to invoke the discovery rule  
6 and do we need a protective order and talk scheduling,  
7 but I think the threshold issue here is what I mentioned  
8 early on is whether there are any necessary parties who  
9 do not consent in writing to proceeding with the  
10 declaratory order. Comcast has already stated that it  
11 believes it is a necessary party and does not consent in  
12 writing to the petition. Now the notice of prehearing  
13 conference did not identify that as a threshold issue,  
14 and so I would like to ask the parties about whether we  
15 need to schedule a time for and send out a notice asking  
16 for any comments on the petition before we address not  
17 only Comcast but any other comments on that issue.

18 MR. FINNIGAN: Your Honor, if I might.

19 JUDGE RENDAHL: Please go ahead.

20 MR. FINNIGAN: I do want to call to the  
21 Commission's attention that there are really two parts  
22 to the issue. And the one part is whether someone is a  
23 necessary party, but the second part is whether there  
24 will be substantial prejudice to the rights of that  
25 necessary party if the proceeding goes forward. And



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1 while Comcast could be classified as a necessary party  
2 that objects, unless there's a showing that there would  
3 be substantial prejudice to its rights, that's not a  
4 basis for precluding moving forward. And we provided a  
5 very, very, very brief statement on that issue when we  
6 filed the petition for declaratory ruling, and certainly  
7 we would be open to schedule a further proceeding on  
8 that question.

9 JUDGE RENDAHL: I'm thinking more along the  
10 lines of not necessarily a hearing but written comments  
11 and then decision, is that acceptable?

12 MR. FINNIGAN: That would be fine.

13 JUDGE RENDAHL: Okay.

14 And would that process work for the other  
15 parties, beginning with Comcast?

16 MR. KOPTA: Yes, Your Honor, that would be  
17 fine. I mean there's no point in proceeding until that  
18 issue is resolved, and I would expect that the  
19 petitioner should have the opportunity to respond to our  
20 answer on that issue.

21 JUDGE RENDAHL: Okay.

22 The other interveners.

23 MR. ROMANO: Verizon does not have any  
24 objection to that type of process.

25 JUDGE RENDAHL: Okay.

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1 MR. BUTLER: Nor does WEBTEC.

2 MR. RICE: No objection.

3 JUDGE RENDAHL: And, Mr. Rice, I hear you  
4 have no objection, coming across very faint.

5 MR. RICE: That's correct, no objection.

6 JUDGE RENDAHL: What I would like to do is  
7 then set a time for comments and then a response by WITA  
8 to any comments that come in, and then the Commission  
9 would make a decision on that threshold issue before we  
10 move on to any other issues in the case. So any  
11 suggestions for times to comment? I could get a notice  
12 out within the next day or two to expedite the process.

13 MR. FINNIGAN: Do you want to go off the  
14 record for this?

15 JUDGE RENDAHL: Sure, why don't we go off the  
16 record and talk scheduling, and then we'll come back on  
17 the record.

18 We'll be off the record.

19 (Discussion off the record.)

20 JUDGE RENDAHL: While we were off the record,  
21 we set two dates, the first being comments by any  
22 interested person about whether they are a necessary  
23 party, and addressing the threshold issue of necessary  
24 parties who object to a declaratory order in this  
25 matter. And then a response by WITA on the 29th of

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1 December to those comments, both to the answer that  
2 Comcast has already filed and any comments that may come  
3 in on the 19th. And then after that point, the  
4 Commission will enter a decision on this threshold  
5 issue, and depending on the outcome, we will proceed.

6 MR. KOPTA: And you meant the 12th, not the  
7 19th, correct?

8 JUDGE RENDAHL: I did, and somehow I circled  
9 the 19th, but yes, thank you for correcting me. The  
10 12th of December is a Friday, and Monday December 29th  
11 for WITA's response.

12 Are there any other scheduling matters we  
13 need to address today?

14 Any other issues we need to address today  
15 before we adjourn?

16 Hearing nothing, we are adjourned, thank you  
17 very much for coming down, and we will hear from all of  
18 you soon.

19 Okay, we'll be off the record.

20 (Hearing adjourned at 2:00 p.m.)

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