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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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3 WASHINGTON UTILITIES AND )  
4 TRANSPORTATION COMMISSION, ) DOCKET NO. UT-941135  
5 Complainant, ) VOLUME 1  
6 vs. ) PAGES 1 - 13  
7 INTERWEST TELECOM SERVICE, )  
8 Respondent. )  
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8 A pre-hearing conference in the above  
9 matter was held on October 27, 1994, at 9:30 a.m. at  
10 1300 South Evergreen Park Drive Southwest before  
11 Administrative Law Judge ELMER CANFIELD.

12 The parties were present as follows:

13 INTERWEST TELECOM SERVICE, by RICHARD A.  
14 MAGNUSSEN, Pro Se, 1505 McKittrick Street, Wenatchee,  
15 Washington 98801.

16 WASHINGTON UTILITIES AND TRANSPORTATION  
17 COMMISSION STAFF, by ANN RENDAHL, Assistant Attorney  
18 General, 1400 South Evergreen Park Drive Southwest,  
19 Olympia, Washington 98504.

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Cheryl Macdonald

Court Reporter

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

2 JUDGE CANFIELD: This pre-hearing  
3 conference will please come to order. We're convened  
4 in the matter of Washington Utilities and  
5 Transportation Commission, complainant, vs. Interwest  
6 Telecom Service, respondent, Docket No.  
7 UT-941135. The matter is being held at Olympia,  
8 Washington on Thursday, October 27, 1994. Elmer  
9 Canfield, administrative law judge with the Office of  
10 Administrative Hearings is conducting the hearing.

11 At today's session we're going to be taking  
12 appearances, taking interventions, adopting a  
13 schedule, dealing with discovery and other  
14 preliminary-type matters such as that. We would like  
15 to start out the session by taking appearances  
16 beginning with the respondent, please. Can I have  
17 your name and mailing address for the record.

18 MR. MAGNUSSEN: Richard A. Magnussen.

19 JUDGE CANFIELD: Could I get the spelling  
20 of your last name?

21 MR. MAGNUSSEN: M A G N U S S E N.

22 JUDGE CANFIELD: Richard A. Magnussen.

23 MR. MAGNUSSEN: Yes.

24 JUDGE CANFIELD: And your position with  
25 Interwest Telecom.

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1                   MR. MAGNUSSEN: I'm the president of  
2 Interwest.

3                   JUDGE CANFIELD: And we would have a  
4 mailing address at 229 South Wenatchee Avenue,  
5 Wenatchee, Washington 98801?

6                   MR. MAGNUSSEN: That's correct.

7                   JUDGE CANFIELD: Next, please.

8                   MS. RENDAHL: Ann Rendahl, assistant  
9 attorney general representing the Washington Utilities  
10 and Transportation Commission. My address is 1400  
11 South Evergreen Park Drive Southwest, Olympia,  
12 Washington 98504.

13                   JUDGE CANFIELD: Thank you. Are there any  
14 other appearances being made at this time?

15                   Let the record reflect that there are no  
16 additional appearances, and at this point I would be  
17 asking if there would be any motions or petitions for  
18 intervention made, and I didn't see any in the  
19 Commission's file and there's no one present today  
20 making an oral motion to intervene, so I guess that  
21 speaks for itself.

22                   Public counsel is not present today and  
23 it's been indicated in other matters that they would  
24 not be appearing and participating. Specifically,  
25 another matter was being scheduled and a copy of the

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1 letter was sent to public counsel and our office  
2 received a note that public counsel would not be  
3 appearing in that case or other AOS cases and that was  
4 from Rob Manifold. I haven't heard specifically from  
5 him concerning today's case. Has either of the  
6 parties been specifically contacted one way or the  
7 other from public counsel concerning this matter?

8 MS. RENDAHL: No, Your Honor, I have not.

9 MR. MAGNUSSEN: No.

10 JUDGE CANFIELD: Well, with that we'll  
11 assume that they're not planning to appear. As I  
12 outlined earlier, we do have a few matters to attend  
13 to today, and the parties may have some things to  
14 discuss that I may not have mentioned, but we'll come  
15 to that. Anything, Ms. Rendahl, that you want to add  
16 to the matters that I briefly indicated we would be  
17 covering today?

18 MS. RENDAHL: The only thing -- I have not  
19 discussed this with Mr. Magnussen except for a brief  
20 conversation prior to today -- whether or not a  
21 protective order is necessary in this matter.

22 JUDGE CANFIELD: I don't know whether one  
23 is going to be requested or not. What's your view on  
24 that?

25 MS. RENDAHL: It's at the request of the

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1 company if they request it. I would have no objection  
2 to that.

3 JUDGE CANFIELD: Maybe we can ask Mr.  
4 Magnussen whether he has any preference one way or the  
5 other as far as a protective order. They are  
6 routinely entered in these types of matters upon  
7 request, and I don't know if you would be requesting a  
8 protective order being issued.

9 MR. MAGNUSSEN: Yes, I would.

10 JUDGE CANFIELD: Okay. And with that Ms.  
11 Rendahl indicates she's got no objection to that, so I  
12 will order that a protective order is to be entered by  
13 the Commission as soon as possible, so we'll get that  
14 out to the parties in the due course of mail then.  
15 Any other matters, Ms. Rendahl?

16 MS. RENDAHL: No, Your Honor.

17 JUDGE CANFIELD: Other than what we've  
18 already mentioned, okay. I did check with the records  
19 center downstairs to see if there's any possibility of  
20 having a lesser number of prefiled exhibits sent in,  
21 and they indicated that that would not be possible.  
22 They had all of the 19 copies accounted for, so the  
23 prefilings exhibits will be original plus 19, so I  
24 could not get that reduced any. And was there any  
25 thoughts given to invoking the discovery rule, Ms.

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1 Rendahl?

2 MS. RENDAHL: Yes. And in fact I believe  
3 the staff invoked or at least the Commission invoked  
4 the discovery rule in the complaint order/notice of  
5 hearing. So I believe it's already been invoked but  
6 it's helpful to discuss it today.

7 JUDGE CANFIELD: I might have missed that  
8 reading through it. Well, in any event, it's staff's  
9 position that it either has been or should be invoked  
10 then.

11 MS. RENDAHL: Correct.

12 JUDGE CANFIELD: Any comments or discussion  
13 on that, Mr. Magnussen?

14 MR. MAGNUSSEN: I don't believe so.

15 JUDGE CANFIELD: I will rule that if the  
16 discovery rule has already not been invoked then we  
17 will invoke it and have that available in this  
18 proceeding.

19 MS. RENDAHL: Your Honor, on page 4 of the  
20 complaint and notice of hearing at the bottom of the  
21 next to last paragraph states "The Commission declares  
22 that the provision of WAC 480-09-480 will apply."

23 JUDGE CANFIELD: Okay.

24 MS. RENDAHL: So I believe it's in the  
25 complaint and notice of hearing.

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1                   JUDGE CANFIELD: Yeah. I had neglected to  
2 catch that when I read through it. So that was  
3 covered in the complaint and notice of hearing that  
4 was issued, so we'll adhere to that then. I know  
5 before going on the record there was a proposed  
6 schedule worked out between the parties and we could  
7 certainly take that up at this point. Have both sides  
8 agreed to the dates listed on this proposed schedule  
9 that was submitted?

10                   MS. RENDAHL: Yes, Your Honor.

11                   MR. MAGNUSSEN: Yes, Your Honor.

12                   JUDGE CANFIELD: Let me just read it into  
13 the record then, and I will note that I did check  
14 downstairs with the person who does the room  
15 scheduling and room 250 is available on each of these  
16 hearings dates and has been reserved. The date for  
17 staff prefiling is May 17, 1995; cross of staff on  
18 June 27, 1995, and earlier I guess two dates had been  
19 reserved June 26 and 27, but it's indicated that only  
20 one of those two dates will be needed, that being the  
21 June 27 date, June 26 has been cancelled. The  
22 prefiling date for company and public counsel and  
23 intervenors, should they have been involved, would  
24 have also fallen here. That's on August 8, 1995 with  
25 the cross of company and public counsel, intervenors,

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1 had they been involved, set on September 19, 1995; and  
2 then the prefiling date for staff rebuttal set at  
3 October 17, 1995 with the cross of staff rebuttal set  
4 at November 7, 1995. And I'm assuming all of those  
5 hearing dates are in Olympia and room 250 is available  
6 for each of those dates, and was there going to be a  
7 specific session designated for public testimony? I  
8 know that was mentioned in the complaint and notice of  
9 hearing. I don't see it specifically mentioned in  
10 this proposed schedule.

11 MS. RENDAHL: No, it's not in the schedule,  
12 Your Honor. I don't believe it will be necessary  
13 given the lack of intervenors at this point and the  
14 fact that public counsel is not present, so I don't  
15 believe a day of public testimony will be necessary.

16 JUDGE CANFIELD: Okay. Should at some  
17 point that change and there become a need, I guess we  
18 could look at that at some point later, but as it  
19 stands now we won't be setting a specific session for  
20 that purpose, then. Then beyond that, we've got the  
21 briefing dates, the staff brief to be filed December  
22 5, 1995 and the company brief filed January 9, 1996  
23 with a staff reply brief to be filed January 23, 1996.  
24 With that, go ahead, Ms. Rendahl.

25 MS. RENDAHL: Your Honor, I've just been

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1 informed by staff that in fact the September 19th day  
2 will not work and I am requesting whether we can just  
3 change that to September 27th. I've just been advised  
4 so I apologize for the change. No other dates would  
5 need to be changed.

6 JUDGE CANFIELD: No other dates?

7 MS. RENDAHL: No.

8 JUDGE CANFIELD: I would have to  
9 double-check to see that the room was available.  
10 You're suggesting September 27?

11 MS. RENDAHL: Correct, for the cross of  
12 company's prefiled testimony.

13 JUDGE CANFIELD: Okay. And would that  
14 change and those other dates be agreeable with you,  
15 Mr. Magnussen?

16 MR. MAGNUSSEN: Yes, they would, Your  
17 Honor.

18 JUDGE CANFIELD: I can check during a break  
19 to see if that room -- if the room is available for  
20 that September 27 date. Any other changes or is the  
21 schedule otherwise agreeable to both sides?

22 MS. RENDAHL: I believe that's all the  
23 changes at this point.

24 JUDGE CANFIELD: We'll double-check on that  
25 September 27 date, but otherwise, from this

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1 perspective, I would adopt that proposed hearing  
2 schedule, including the change of the company cross  
3 date to September 27. And maybe we could touch upon  
4 what type of notice would be forthcoming concerning  
5 any dates. I know in some instances a notice of  
6 hearing isn't necessary to be issued and an agreed  
7 schedule and an announcement by the administrative law  
8 judge in a pre-hearing conference order has sufficed.  
9 I don't know if any thoughts have been given to that  
10 one way or the other. Maybe I can open that up. Ms.  
11 Rendahl.

12 MS. RENDAHL: I believe that an agreed  
13 schedule and a pre-hearing conference order would be  
14 sufficient notice in this proceeding, Your Honor.

15 JUDGE CANFIELD: Mr. Magnussen, I do plan  
16 to set forth the matters that we dealt with at this  
17 session today, including the adopted schedule, and  
18 it's been suggested, then, that that would be  
19 sufficient as far as any further notice of the  
20 prefiling dates, hearing dates and briefing dates and  
21 that there wouldn't be a need for a separate notice of  
22 hearing having to be issued for those separate phases.  
23 Would that be agreeable with you?

24 MR. MAGNUSSEN: Yes, it would be, Your  
25 Honor.

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1                   JUDGE CANFIELD: I'm running out of things  
2 on my list. Maybe I can open it up to see if there's  
3 anything further. I note that the discovery rule has  
4 been invoked. I don't know if there's any request or  
5 need for a formal discovery schedule to be set or  
6 whether the parties would prefer to work out matters  
7 more informally among themselves.

8                   MS. RENDAHL: Your Honor, I believe the  
9 staff and the company have so far been working very  
10 well together informally. There have been formal data  
11 requests issued but there's been no problem in terms  
12 of responding to those at this point, so I don't  
13 believe there's a need for a schedule. Should there  
14 be the need for a schedule later on, we would come  
15 back and request such a schedule, but I don't believe  
16 it would be necessary.

17                   JUDGE CANFIELD: And Mr. Magnussen, would  
18 you concur or agree with that assessment then that we  
19 wouldn't have to be more specific as far as discovery  
20 schedules and that the parties would essentially  
21 try to work cooperatively and informally between  
22 themselves?

23                   MR. MAGNUSSEN: Yes. I would agree with  
24 that, Your Honor.

25                   JUDGE CANFIELD: Okay. Anything further

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1 that we may not have covered thus far? I think that's  
2 essentially the matters that I had noted that I wanted  
3 to make sure we covered at the session today. Ms.  
4 Rendahl, anything further that you would want to add?

5 MS. RENDAHL: No, Your Honor. I would want  
6 to double-check on that September 27 date.

7 JUDGE CANFIELD: Anything further, Mr.  
8 Magnussen?

9 MR. MAGNUSSEN: No, Your Honor.

10 JUDGE CANFIELD: I could take a short break  
11 and go down and double-check the room and maybe you  
12 could double-check your lists to see if there's  
13 anything we might have left off and I will just take a  
14 short recess to check the room, so we'll recess.

15 (Recess.)

16 JUDGE CANFIELD: We're back on the record  
17 now after a short recess during which time I did check  
18 room availability and learned that the 27th of  
19 September 1995 was a day of an open meeting here at  
20 the Commission, so room 250 is not available but the  
21 Commission's hearing room 140 was available. That's  
22 on the first floor of the Commission's offices here,  
23 so with that change then we would be able to adopt  
24 September 27 and that would take place in room 140 at  
25 the Commission's building. With that the schedule is

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1 adopted. Anything further, Ms. Rendahl, that you want  
2 to add or clarify or you want to cover at today's  
3 session?

4 MS. RENDAHL: No. I believe we've covered  
5 all the topics.

6 JUDGE CANFIELD: And anything further, Mr.  
7 Magnussen?

8 MR. MAGNUSSEN: No, Your Honor.

9 JUDGE CANFIELD: As I indicated, I will  
10 have a protective order issued by the Commission in  
11 the matter, and likewise I will be issuing a  
12 pre-hearing conference order setting forth the matters  
13 we discussed, adopting the schedule and that will  
14 serve as further notice of all of those prefiling  
15 hearing and briefing dates, and with that I will  
16 adjourn today's session and thank you all for coming  
17 in.

18 MR. MAGNUSSEN: Thank you, Your Honor.

19 JUDGE CANFIELD: This hearing is adjourned.

20 (Hearing adjourned at 10:00 a.m.)

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