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1 COMCAST PHONE OF WASHINGTON, LLC, by ARTHUR  
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3 Street, Suite 1501, Seattle, Washington 98101;  
4 telephone, (206) 623-4711.

5 INTERNATIONAL BROTHERHOOD OF ELECTRICAL  
6 WORKERS, LOCAL 89, by SCOTT J. RUBIN (via bridge),  
7 Attorney at Law, 333 Oak Lane, Bloomsburg, Pennsylvania  
8 17815; telephone, (570) 387-1893.

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

2 JUDGE MOSS: Counsel appear to be ready.

3 Good afternoon, everyone. My name is Dennis Moss. I'm  
4 an administrative law judge at the Washington Utilities  
5 and Transportation Commission. We are convened this  
6 afternoon in the matter styled, In the Matter of the  
7 Joint Application of Embarq Corporation and CenturyTel,  
8 Inc., for Approval of Transfer of Control of United  
9 Telephone Company of the Northwest, doing business as  
10 Embarq and Embarq Communications, Inc., and our docket  
11 is UT-082119.

12 The first order of business will be to take  
13 appearances, and Mr. Hendricks, I'll start with you.

14 MR. HENDRICKS: William E. Hendricks on  
15 behalf of Embarq. I'm at 902 Wasco Street, Hood River,  
16 Oregon, 97031. My phone number is (541) 387-9439. My  
17 fax is (541) 387-9753, and my e-mail is  
18 tre.hendricks@embarq.com.

19 JUDGE MOSS: Mr. Best?

20 MR. BEST: Thank you, Your Honor, Charles  
21 Best for CenturyTel. My address is 1631 Northeast  
22 Broadway, Suite 538, Portland, Oregon, 97232-1425. My  
23 telephone number is (503) 287-7160. My fax is actually  
24 the same. My e-mail is chuck@charleslbest.com.

25 JUDGE MOSS: Mr. Butler?

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1                   MR. BUTLER: Arthur A. Butler of the law firm  
2 Ater Wynne, LLP, appearing on behalf of Comcast Phone  
3 of Washington, LLC. My address is 601 Union Street,  
4 Suite 1501, Seattle, Washington, 98101-3981. My  
5 telephone number is (206) 623-4711; fax, (206)  
6 467-8406. E-mail is aab@aterwynne.com.

7                   JUDGE MOSS: Let's go ahead and take care of  
8 everyone in the room and then determine whether there  
9 are some on the telephone who wish to make appearances,  
10 so I'll turn to you, Ms. Shifley.

11                   MS. SHIFLEY: Sarah Shifley on behalf of  
12 Public Counsel, 800 Fifth Avenue, Suite 2000, TB-14,  
13 Seattle, Washington, 98104-3188. My direct telephone  
14 is (206) 464-6595. My fax number is (206) 464-6451,  
15 and my e-mail is sarah.shifley@atg.wa.gov.

16                   JUDGE MOSS: Is it just sarah now? I have  
17 sarah5.

18                   MS. SHIFLEY: It's just Sarah, my e-mail  
19 address has changed, Your Honor, but it's just  
20 sarah.shifley, but if you use the previous e-mail  
21 address, I'll still receive it.

22                   JUDGE MOSS: Will Mr. ffitch be appearing in  
23 this?

24                   MS. SHIFLEY: No, he will not.

25                   JUDGE MOSS: For Commission staff?

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1           MR. THOMPSON: Jonathan Thompson, assistant  
2 attorney general representing the Commission staff. My  
3 address is 1400 South Evergreen Park Drive Southwest,  
4 Olympia, Washington, 98504. My telephone is (360)  
5 664-1225. The fax is (360) 586-5522, and my e-mail  
6 address is jthomps@wutc.wa.gov.

7           JUDGE MOSS: I have a petition to intervene  
8 from Level 3, is there are representative present or on  
9 the conference bridge line? No one appearing for Level  
10 3, and I also have a petition to intervene from the  
11 International Brotherhood of Electrical Workers, Local  
12 89. Anyone present to represent their interest?

13           MR. RUBIN: Yes, Your Honor, this is Scott  
14 Rubin. I just e-mailed a notice of appearance within  
15 the last hour.

16           JUDGE MOSS: I have that.

17           MR. RUBIN: My business address is 333 Oak  
18 Lane, Bloomsburg, Pennsylvania, 17815. Telephone is  
19 (570) 387-1893. Fax is (570) 387-1894, and my e-mail  
20 address is scott.j.rubin@gmail.com.

21           JUDGE MOSS: Thank you. Now, I've mentioned  
22 that I have the petitions from Level 3 and IBEW and  
23 also from Comcast represented here today by Mr. Butler.  
24 Is there any other party who is going to seek  
25 intervention today? Apparently not, so that will be

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1 our next order of business will be to take up these  
2 three petitions to intervene. Let me just ask  
3 Mr. Hendricks and Mr. Best whether there is any  
4 objection to any of these?

5 MR. BEST: Your Honor, I understand the  
6 Commission's desire to have the proceeding open to a  
7 variety of parties. I guess we have a rather technical  
8 objection.

9 If you've read our petition, essentially  
10 what's happening in this case is CenturyTel is going to  
11 attempt to come in as the grandparent corporation, if  
12 you will, over Embarq, the existing entity. There will  
13 be no real change to Embarq, and when we read the  
14 petitions to intervene, the topics raised are  
15 interconnection and other things that involve a  
16 presumed change in the way Embarq does business, and  
17 the truth is that's not going to happen. All  
18 interconnection agreements will remain the same.

19 It's our view that the issues that have been  
20 raised are really not issues, and the intervention of  
21 the parties will unduly broaden the issues, so we have  
22 a technical objection, and our goal would also be if  
23 you allow them to come in as parties to limit the  
24 issues to issues that are truly issues.

25 JUDGE MOSS: Issues sometimes being in the

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1 eyes of the beholder. Mr. Hendricks?

2 MR. HENDRICKS: Embarq concurs with the  
3 objection as stated by CenturyTel. Because of the  
4 nature of the transaction, the Company likewise  
5 believes that the issues that the intervenors have  
6 stated explicitly in their petitions are really moot to  
7 the extent that Embarq's operations and the  
8 interconnection agreements between Embarq and those  
9 parties will not change.

10 So Embarq agrees that the issues should not  
11 be broadened by the interventions and that the  
12 intervenors should be limited further to those issues  
13 that they have raised if they are permitted to enter  
14 into the proceeding.

15 MR. BEST: Your Honor, I apologize. I did  
16 not specifically address the IBEW intervention. It  
17 also raises issue about requiring companies provide DSL  
18 and also local business office where customers can come  
19 in. We believe those really aren't issues that should  
20 be dealt with in this kind of a proceeding. Some of  
21 those are business issues and some of those,  
22 specifically DSL, are actually federal issues, so I  
23 wanted to make sure I didn't lump everyone together.

24 JUDGE MOSS: Before I hear from the  
25 petitioners, I want you all to be aware that I have

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1 read everything that's been filed so far in this  
2 docket, and I am interested in hearing more about the  
3 intervenors' interest in the proceeding in terms of  
4 their obligation to establish a substantial interest in  
5 the proceeding or that their interests would be in the  
6 public interest to have their participation.

7 My concerns are somewhat different as between  
8 Level 3 and Comcast, who I understand are  
9 interconnected with one company or both and who also  
10 are players in the competitive marketplace, which is  
11 also a concern in this industry, so their interest  
12 might be somewhat different and separate from the IBEW,  
13 and as I understand it, the only stated interest is  
14 that members of the IBEW are customers of either Embarq  
15 or CenturyTel, so I will need to hear more about that.  
16 I will start with you, Mr. Butler, since you are here  
17 with us.

18 MR. BUTLER: Thank you, Your Honor. As  
19 you've indicated, Comcast Phone is a competitor to both  
20 of the entities which are subject to regulation by the  
21 Commission and which will be affected by this merger,  
22 and our interest is concerned about the potential  
23 negative impact on competition of this merger,  
24 including the potential negative impact on  
25 interconnection rights.



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1           We notice in the prefiled testimony which we  
2 received on Friday indications that an acknowledgment  
3 that the resulting entities will ultimately now be  
4 controlled by CenturyTel and also notice  
5 representations that the wholesale operations will be  
6 merged. I think these raise significant questions in  
7 our mind by just how those policies are going to be  
8 implemented and what their impact on competition will  
9 be, and we also recognize, as we said in our petition  
10 to intervene, with the increased incentives to hinder  
11 competition that would naturally come out of the  
12 combining of these forces, we have interest in insuring  
13 there is an appropriate assessment of what impacts  
14 there may be on competition and entities wanting to  
15 interconnect in the future as well as those who have  
16 presently interconnected with these companies and  
17 whether appropriate conditions would need to be adopted  
18 in order to insure that this proposed merger is in the  
19 public interest.

20           JUDGE MOSS: Thank you. I'll ask again if  
21 anyone is present for Level 3? I want to be clear, is  
22 there a specific objection to Level 3 or simply the  
23 more general objection that you have?

24           MR. BEST: It's the more general objection.

25           JUDGE MOSS: Same with you, Mr. Hendricks?

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1 MR. HENDRICKS: Yes.

2 JUDGE MOSS: Mr. Rubin for IBEW?

3 MR. RUBIN: Yes, Your Honor. IBEW has raised  
4 two general categories of issues. One is the financial  
5 business of the resulting company as well as financial  
6 impacts of the transaction on the local operating  
7 companies. Included within that are any impacts on the  
8 safety and quality of service.

9 The Companies have stated that they  
10 anticipate roughly 300 million dollars of savings in  
11 operating expenses on a company-wide basis as well as  
12 additional savings that would show up on the capital  
13 expenditure side. IBEW is concerned about the impacts  
14 that that will have on the Washington operating  
15 companies, those companies' employees, including those  
16 employees of CenturyTel who are represented by IBEW,  
17 and customers in the state of Washington, including  
18 those who are members of IBEW.

19 If you need additional information about the  
20 specific areas of the state where IBEW is representing  
21 people, and Mr. Egelhoff, the business manager of the  
22 union, is also on the call with us today, and I'm sure  
23 he can provide that information.

24 JUDGE MOSS: I'm not sure what we might need  
25 in that regard, but my concern is this: I have yet to

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1 understand there is any nexus between IBEW as an  
2 organization and any interest that is of concern to us  
3 in this type of a proceeding.

4           The petition states that the interest rests  
5 on the fact that there are IBEW members who are  
6 customers of the Company. The customers of the Company  
7 are well represented in a proceeding such as this by  
8 the presence of Public Counsel and by our Commission  
9 staff who represents the public interest itself. So  
10 that's what I'm listening for is what nexus --

11           We do not involve ourselves in these  
12 proceedings in relationships between labor unions and  
13 the companies. That is something we have discussed  
14 expressly in prior cases, and so I need to understand  
15 if there is something more than simply the fact that  
16 some of your members are also customers of one or both  
17 of these companies.

18           MR. RUBIN: First, we absolutely understand  
19 the limits of the Commission's jurisdiction. Just  
20 speaking personally, I've been involved in regulatory  
21 proceedings like this on behalf of labor unions in  
22 several different states, and we very carefully  
23 understand what the Commission can and cannot do. We  
24 will not raise collective bargaining issues. That's  
25 not the purpose of the intervention.

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1           We are very concerned about the impacts of  
2 the transaction on the local operating companies and on  
3 their financial health. We believe that employees of  
4 the utility are directly impacted by a transaction like  
5 this. If you have concerns about that, I can certainly  
6 provide you with a memorandum that cites cases in a  
7 number of different states that recognize the interests  
8 that employees and their representatives have in this  
9 type of transaction, and again, with the understanding  
10 that we will not raise issues that are beyond the scope  
11 of the Commission's jurisdiction. We will concern  
12 ourselves with financial and service types of impacts.

13           JUDGE MOSS: Okay. Did Public Counsel have  
14 anything it wishes to say on this subject?

15           MS. SHIFLEY: No, Your Honor. Public Counsel  
16 doesn't oppose the intervention of the parties filing  
17 petitions.

18           JUDGE MOSS: How about the Staff?

19           MR. THOMPSON: Staff does not oppose the  
20 proposed interventions as long as the parties confine  
21 themselves to the issues which they've identified,  
22 which all seem to be within the scope of a merger or  
23 transfer application such as this.

24           JUDGE MOSS: All right. I think in light of  
25 the circumstances whereby the companies do not have

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1 express objections but more general objections, and  
2 what I've heard in terms of the parties' understanding  
3 that they will need to limit their participation in  
4 this proceeding to the issues that are appropriate to  
5 it, which is to say specifically with respect to IBEW,  
6 we do not want to see -- somebody has got music on. If  
7 you would turn that off on the bridge line. We can  
8 hear that in the room.

9           As I was saying, we need to understand to be  
10 careful that those of you who are allowed to intervene  
11 today do not seek to interject into the proceeding  
12 issues that are not appropriate to it. Of course, I'm  
13 here to police that if it should occur in the view of  
14 the applicants, and I'm sure they will bring it to my  
15 attention, and we will take whatever measures we need  
16 to take in terms of some sort of motion in limine or  
17 what have you to keep the inappropriate discovery from  
18 happening or inappropriate issues from being raised.

19           So with that, I will grant the petitions as  
20 filed and allow these parties to intervene, subject to  
21 further action if it becomes appropriate later in the  
22 proceeding. Have the parties initiated discovery?

23           MR. BEST: Not yet, Your Honor.

24           JUDGE MOSS: The Commission's discovery rules  
25 will govern that process. You are all either familiar

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1 with those or will shortly become familiar with those  
2 in WAC 480-07-400 and series. Do the parties perceive  
3 the need for a protective order?

4 MR. BEST: Your Honor, we suspect that that  
5 protective order will be necessary. I have no way to  
6 predict the questions that might be asked, but we ask  
7 that one be issued.

8 JUDGE MOSS: Mr. Best, I don't know how much  
9 background work you've done, but we do have at this  
10 commission what we call a standard form of protective  
11 order, and actually, it has two forms. One includes  
12 the designation of information as confidential, and the  
13 other includes additional provisions for the  
14 designation of information as highly confidential.  
15 Have the parties considered what might be appropriate  
16 to this circumstance, Mr. Hendricks, Mr. Best?

17 MR. HENDRICKS: I suspect given the nature of  
18 the issues raised by the intervenors that there could  
19 potentially be discovery that elicits highly  
20 confidential information, so unless there is an  
21 objection from the parties whether there will be any  
22 harm in entering an order that contains those  
23 provisions...

24 JUDGE MOSS: The financial data sometimes  
25 does get a bit sensitive, and do the parties have

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1 anything to say about this? I'm just contemplating the  
2 standard protective order.

3 MR. BUTLER: No objection.

4 JUDGE MOSS: Parties can always come back to  
5 me on this subject if something comes up that's  
6 troubling in the discovery process. I'll enter the  
7 standard form of protective order with both  
8 confidential and highly confidential.

9 I do want to encourage you though to  
10 carefully limit the information that you designate as  
11 confidential or highly confidential. It does pose  
12 difficulties for me and probably poses difficulties for  
13 other people, but at this stage, I care most about me,  
14 so try not to do that. If it can be avoided, then it's  
15 best to avoid it. If there is any hearing, it's  
16 particularly problematic there.

17 Now, the matter of process and procedural  
18 schedule comes up. I'll note that the Applicants did  
19 file testimony on December the 2nd.

20 MR. BEST: Excuse me, Your Honor. It's  
21 January 2nd.

22 JUDGE MOSS: I'm sorry. I'm probably be  
23 saying 2008 for awhile too. I've read the testimony,  
24 and one thing that struck me as I did so was that it's  
25 not -- well, let we say there is not a lot of

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1 documentary support for the testimony. For example,  
2 there is testimony concerning the potential impact on  
3 credit ratings that this transaction may have. Yet I  
4 don't recall seeing anything in there in way of  
5 exhibits that would substantiate that suggestion, that  
6 sort of thing.

7           So the question that I'm getting to in a  
8 rather long and perhaps convoluted way is does the  
9 Company have any interest or desire to file  
10 supplemental testimony, because we will need to take  
11 that into account if so as we consider dates for  
12 response testimony, and I'm not saying that you have to  
13 do that. It's your case, but I'm just wanting to know  
14 if you do that we need to build in extra time.

15           MR. BEST: At this point, I don't think that  
16 will be necessary. I think we will see how the  
17 discovery process goes. I think we also have a chance  
18 to submit some of that in rebuttal if we need to do  
19 that. So I guess at this point, I don't see it as  
20 necessary. I would also defer to Mr. Hendricks.

21           JUDGE MOSS: I see Mr. Hendricks nodding his  
22 head.

23           MR. HENDRICKS: Embarq concurs.

24           JUDGE MOSS: That's fine. I caution too we  
25 don't want to see a whole new case coming in on



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1 rebuttal because that slows the process even further,  
2 because then someone is going to want surrebuttal and  
3 sursurrebuttal and we will here be until -- well,  
4 anyway.

5           What I would like to do is give the parties  
6 an opportunity to talk among themselves and see if they  
7 can arrive at a procedural schedule that will work for  
8 everyone. Has anybody got a proposal they want to put  
9 on the table?

10           MR. HENDRICKS: The Companies do have a  
11 proposal.

12           JUDGE MOSS: Have you shared that with your  
13 fellow counsel?

14           MR. HENDRICKS: I'm not sure that IBEW has  
15 seen the proposal.

16           JUDGE MOSS: Perhaps we should go off the  
17 record. It is four minutes before two. Some of you  
18 know where to find my office, and you can just let me  
19 know when you are ready for me, unless I become  
20 impatient and inject myself into the process and hurry  
21 you on. With that, we are off the record.

22           (Recess.)

23           JUDGE MOSS: Having given the parties an  
24 opportunity to discuss among themselves a procedural  
25 schedule to which they can all agree, they have

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1 provided me with a set of process steps with  
2 accompanying dates, and I will read that into the  
3 record, and of course, these will become part of the  
4 order. My main purpose in reading them now is to make  
5 sure I'm getting this right.

6           The Applicants, as previously noted, filed  
7 their direct testimony on January the 2nd. The  
8 anticipation is that the parties will have an initial  
9 settlement conference on February the 17th, and on that  
10 same date, Public Counsel will -- I'm not sure what  
11 "report back on customer notice" means, but Public  
12 Counsel will do that on February 17th. There will  
13 apparently be a customer notice in the billings that go  
14 out in the March billing cycle.

15           In terms of more formal process, the interest  
16 to us here, the Staff, Public Counsel, and Intervenor  
17 response testimony, if any, will be filed on March 4th,  
18 and the Applicant's joint rebuttal on March 18th, and  
19 while there is no reference to it here, I will say that  
20 that would also be the date for any cross-answering  
21 testimony.

22           MR. HENDRICKS: Your Honor, it may not  
23 technically be joint rebuttal. The Applicants will  
24 likely file separately, so just for clarity.

25           JUDGE MOSS: In any event, yes, I understand

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1 you probably will file separate sets. The hearing  
2 April 15th and 16th, that is open on my calendar so  
3 that will work. Simultaneous briefs on May 8th. There  
4 is an indication here the order on 6/1, which I will  
5 note is an aspirational date since I never tie myself  
6 to that sort of think. Did I get it right? Apparently  
7 so.

8 MS. SHIFLEY: Your Honor, this is not  
9 something the parties agreed to, but Public Counsel  
10 also requests that the Commission hold a public comment  
11 hearing. We've identified two locations, Toppenish and  
12 Poulsbo, which are both in Embarq's service  
13 territories, and we would propose a date of April 7th,  
14 8th, or 9th at 6:30 p.m. in the evening.

15 JUDGE MOSS: Is there any evidence that there  
16 is going to be substantial public interest in this so  
17 that it would be worth the expense of convening one or  
18 more of these hearings?

19 MS. SHIFLEY: I think the opportunity for  
20 Embarq's customers to comment on the transaction is  
21 important, and I can't say that we've identified  
22 specific issues from the materials that the Companies  
23 have filed thus far, so I don't think we can say at  
24 this point what particular issues customers might be  
25 concerned with.

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1           JUDGE MOSS: I'm going to take your request  
2 under advisement, and it will not be part of our order,  
3 but I will make a determination at a later date. If  
4 there is some evidence that there is substantial enough  
5 public interest in this matter to warrant the  
6 considerable expense of doing this, then we certainly  
7 will do it. On the other hand, if there is no such  
8 evidence of public interest, then we may very well not.  
9 I'm particularly considering the budgetary constraints  
10 under which we are all operating, and we will all very  
11 familiar that we have to be more acutely sensitive to  
12 this than we would be in other circumstances.

13           MS. SHIFLEY: Thank you, Your Honor.

14           JUDGE MOSS: I forgot to mention one thing,  
15 and that is apparently upon the filing of rebuttal  
16 testimony, there will be a shortened response period  
17 for discovery to five business days?

18           MR. BEST: That's correct, Your Honor.

19           MS. SHIFLEY: That's correct.

20           JUDGE MOSS: One thing I neglected to  
21 mention, or maybe I haven't gotten to it in my agenda  
22 yet, we have followed the process in many cases over  
23 the past several years, and most parties are requesting  
24 it these days, that they be allowed to make any  
25 electronic submission on the indicated due date for a

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1 particular filing such as testimony, and then that the  
2 official filing of that will actually be the next day  
3 following, because the latest statutes and rules are  
4 set up that it's not official until we receive the  
5 paper. Do you all want to follow that convention in  
6 this case as well, the electronic service followed by  
7 the paper filing?

8 MR. BEST: Yes, Your Honor.

9 MR. HENDRICKS: Yes.

10 MS. SHIFLEY: Yes.

11 MR. THOMPSON: Yes.

12 JUDGE MOSS: We will need an original and 12  
13 copies of your filings in this case to meet the  
14 Commission's internal distribution needs. If your  
15 filing includes information that's designated as  
16 confidential or highly confidential, file the original  
17 and 12 copies of the fully unredacted version, and as  
18 to the redacted version or versions, you need only  
19 file, I'll say an original and one copy of each.

20 Most if not all of the people to whom these  
21 materials are distributed at the Commission are  
22 entitled to see highly confidential. That's why we do  
23 it that way. It will save you some paper and save us  
24 handling some paper, and of course you are all familiar  
25 with the process by which you file through the records

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1 center to the Commission's secretary.

2 I also ask that you give me a courtesy copy  
3 of your filings to my direct e-mail, dmoss@utc.wa.gov,  
4 and if you are producing documents for filing in a PDF  
5 format, please furnish them to me in an MS Word format  
6 if they are available in that way. Is there any other  
7 business that we need to take care of today;  
8 Mr. Butler?

9 MR. BUTLER: Yes. If I could request that on  
10 the service list if Andrew Fisher and Michael Pryor at  
11 the contact information I listed in the intervention to  
12 petition could receive electronic copies.

13 JUDGE MOSS: Let me do this, and that  
14 certainly can be done. As I have done in several  
15 recent cases, I will ask that the parties all in the  
16 next day or two send me an e-mail telling me who they  
17 want to be on that electronic service list so I can  
18 prepare that and distribute that to all the parties,  
19 and of course, you'll designate your leads, whether  
20 there is more than one counsel involved.

21 JUDGE MOSS: So if you could all get that to  
22 me by Wednesday, then I will be able to get the order  
23 out promptly. Anything else? Thank you all for being  
24 here today. I appreciate your cooperation in coming up  
25 with a procedural schedule and other matters. I look

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1 forward to working with you in resolving this case in a  
2 satisfactory way.

3 (Prehearing conference adjourned at 2:57 p.m.)

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