

00167

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 UNITED AND INFORMED CITIZEN)
 4 ADVOCATES NETWORK, a non-profit)
 Washington Corporation,)
 5)
 Complainant,)
 6)
 vs.) DOCKET NO. UT-960659
 7) Volume V
 PACIFIC NORTHWEST BELL TELEPHONE) Pages 167 - 197
 8 COMPANY, d/b/a U S WEST)
 COMMUNICATIONS, INC.,)
 9)
 Respondent.)

10 -----
 11 GTE NORTHWEST, INCORPORATED,)
)
 Complainant,)
 12)
 vs.) DOCKET NO. UT-970257
 13) Volume V
 UNITED AND INFORMED CITIZEN) Pages 167 - 197
 14 ADVOCATES NETWORK, a non-profit)
 Washington Corporation,)
 15)
 Respondent.)

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18 A prehearing conference in the above matter
 19 was held on September 10, 2001, at 1:30 p.m., at 1300
 20 South Evergreen Park Drive Southwest, Olympia,
 21 Washington, before Administrative Law Judge MARJORIE
 22 SCHAER.

23

24 Kathryn T. Wilson, CCR

25 Court Reporter

00168

1 The parties were present as follows:

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3 U S WEST COMMUNICATIONS, INCORPORATED, (QWEST
4 CORPORATION), by LISA A. ANDERL and ADAM L. SHERR,
5 Attorneys at Law, 1600 Seventh Avenue, Suite 3206,
6 Seattle, Washington 98191.

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8 GTE NORTHWEST, INCORPORATED, (VERIZON
9 NORTHWEST, INCORPORATED), by TIMOTHY J. O'CONNELL,
10 Attorney at Law, Stoel Rives, 600 University, Suite
11 3600, Seattle, Washington 98101.

12

13 UNITED AND INFORMED CITIZEN ADVOCATES
14 NETWORK, by J. BYRON HOLCOMB, Attorney at Law, 9596
15 Green Spot Place Northeast, Post Office Box 10069,
16 Bainbridge Island, Washington 98110.

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18 THE WASHINGTON UTILITIES AND TRANSPORTATION
19 COMMISSION, by SHANNON E. SMITH, Assistant Attorney
20 General, 1400 South Evergreen Park Drive Southwest,
21 Post Office Box 40128, Olympia, Washington 98504.

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P R O C E E D I N G S

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JUDGE SCHAER: This is a hearing in Docket No. UT-960659, which is a complaint brought by United and Informed Citizen Advocates Network against U S West. Also consolidated with this case is Docket No. UT-970257, which is a complaint by General Telephone, Incorporated, against U&I CAN claiming that U&I CAN has improperly avoided paying access charges when using long distance service on a GTE network.

This afternoon, we are here for some sense as a status conference. This matter had its schedule suspended some time ago to allow action by the parties in Superior Court to pursue certain discovery issues, and since that time, the Commission has not had any feedback from the parties on where the case is.

The Commission sent a letter to the parties on June 26th of 2001 to ask whether the parties intended to continue to pursue this or whether the Commission should dismiss this docket. We received letters on July 12th, 2001, from both Qwest and Verizon indicating that it's their intention to go forward.

Today is September 10th, 2001, and we are in the Commission's hearing room, Commission headquarters in Olympia, Washington, and I'm Marjorie Schaer. I'm the administrative law judge who is assigned by the

00170

1 Commission to this proceeding. I'd like to start this
2 afternoon by taking appearances, please, starting with
3 U&I CAN, Mr. Holcomb?

4 MR. HOLCOMB: My name is Byron Holcomb. I'm
5 appearing for United and Informed Citizen Advocates
6 Network in both of these numbers.

7 JUDGE SCHAER: Thank you, and then for the
8 Respondent, Complaints at this point, Ms. Anderl?

9 MS. ANDERL: Lisa Anderl appearing on behalf
10 of Qwest, the successor to U S West, who is originally
11 the respondent in the Docket 960659. My business
12 address is 1600 Seventh Avenue, Room 3206, Seattle,
13 98191. Do you need telephone and fax and e-mail?

14 JUDGE SCHAER: Have these changed since your
15 last appearance? If you're not sure, then go ahead and
16 provide them.

17 MS. ANDERL: The fax is (206) 343-4040. The
18 telephone is (206) 345-1574, and the e-mail is
19 landerl@qwest.com. Also with me today is Adam Sherr,
20 another in-house attorney with Qwest. Last name is
21 S-h-e-r-r, and the other information is the same except
22 for the phone number for Mr. Sherr, which is (206)
23 398-2507.

24 JUDGE SCHAER: Thank you. You, sir?

25 MR. O'CONNELL: Timothy J. O'Connell with the

00171

1 law firm of Stoel Rives appearing on behalf of GTE
2 Northwest, Incorporated in the Complaint. I would note
3 for the record that by virtue of a change of name, the
4 company is now Verizon Northwest, Inc. My business
5 address is 600 University Street, Suite 3600, Seattle,
6 Washington, 98101. Telephone, (206) 386-7562; fax,
7 (206) 386-7500; e-mail, tjoconnell@stoel.com. Note
8 there is no apostrophe.

9 JUDGE SCHAER: For Commission staff?

10 MS. SMITH: Shannon Smith, assistant attorney
11 general representing Commission staff. Address is 1400
12 South Evergreen Park Drive Southwest, P.O. Box 40128,
13 Olympia, Washington 98504-0128. My telephone number is
14 (360) 664-1192. I don't know my fax number, and the
15 e-mail address is; ssmith@wutc.wa.gov.

16 JUDGE SCHAER: I will note that there are
17 appearance forms on the table that were provided by the
18 court reporter, and please fill those out in full or
19 provide her with one of your business cards.

20 MR. HOLCOMB: Would you like my e-mail
21 address?

22 JUDGE SCHAER: Yes, please.

23 MR. HOLCOMB: Bylaw@aol.com.

24 JUDGE SCHAER: Thank you. As I previously
25 stated, we are here today in a status conference to

00172

1 find out how the parties plan to proceed, and I'm going
2 to start with you, Ms. Anderl, again, and let you tell
3 me what your client has in mind for how we can go
4 forward in this matter.

5 MS. ANDERL: Your Honor, we were
6 contemplating that the Commission would establish a
7 schedule as necessary for the resolution of any
8 disputed factual issues in this case. There is the
9 outstanding discovery issue that we will need to
10 continue to take up and the need for Qwest to obtain
11 additional factual information from United and Informed
12 Citizens Advocates Network in order for us to fully
13 pursue our claims.

14 We are anticipating filing direct testimony
15 after we obtain sufficient information from U&I CAN in
16 presenting our claim for back access charges. I would
17 imagine that Mr. Holcomb's clients would have the
18 opportunity then to file responsive testimony. We
19 would file rebuttal testimony, and if there was a need
20 for a hearing, we could proceed to hearing and the
21 resolution of the issues.

22 JUDGE SCHAER: What steps has your client
23 taken since our last hearing in this matter, which was
24 held in Seattle on November 9th, 1999, to pursue the
25 discovery issues, Ms. Anderl?

00173

1 MS. ANDERL: We have not. We have been
2 awaiting the outcome of some of the court actions that
3 were ancillary to this, and now that the Commission has
4 brought this back to an active schedule, we are
5 intending to move forward now.

6 JUDGE SCHAER: Have you given any thought as
7 to how we can build a schedule with this matter that
8 builds in resolution of the discovery matters that I
9 believe are still pending?

10 MS. ANDERL: Mr. O'Connell and I talked about
11 that briefly, and I think he may be in a better
12 position to talk about that, so if I might defer to him
13 on that particular issue.

14 JUDGE SCHAER: Mr. O'Connell, let me ask you
15 the same questions. What steps has your client taken
16 since November 9th, 1999?

17 MR. O'CONNELL: None, Your Honor. Frankly,
18 my client believed it was the more appropriate step to
19 allow the courts to complete the review of the
20 jurisdictional defenses that U&I CAN had been asserting
21 so vociferously, and that process having now worked its
22 way through, we would, as Ms. Anderl suggested, believe
23 that it's an appropriate time now to bring this matter
24 to a conclusion.

25 We think there is the outstanding discovery

00174

1 that remains to be answered in order for the parties to
2 pull together the direct testimony that they would need
3 to file at this juncture -- frankly, much of that
4 directed towards the damages issue -- but we need to
5 resolve that discovery issue first before that
6 testimony can be pulled together. So my client would
7 suggest that we pull together a schedule that is
8 predicated upon so many days after U&I CAN has timely
9 responded to appropriate discovery.

10 We know what the appropriate discovery is
11 because this Commission did, in fact, issue a subpoena,
12 which was never responded to by U&I CAN, and we believe
13 that once we have received timely and full and complete
14 responses to that information, the parties should be
15 able to pull together direct testimony perhaps 60 days
16 after that.

17 JUDGE SCHAER: Ms. Smith, I believe you were
18 the only counsel present at the November 9th, 1999,
19 hearing. What steps, if any, has your client taken
20 since that time to pursue discovery?

21 MS. SMITH: My client hasn't taken any steps
22 to pursue discovery, Your Honor. My client doesn't
23 have any outstanding discovery, and the discovery that
24 is outstanding was requested by Qwest and Verizon, and
25 the Commission staff took the position that it was not

00175

1 our responsibility to enforce that subpoena since it
2 wasn't the discovery that we had asked, and in the
3 meanwhile, the Commission has taken whatever steps
4 necessary to defend its orders in the classification
5 proceeding as those orders have brought their course
6 through the court system.

7 JUDGE SCHAER: Each of you have mentioned the
8 court proceedings, and I'm going to ask you,
9 Mr. Holcomb, first just about the schedule, if you have
10 comments on that, and then I'm going to want to hear
11 from the parties about the court proceedings that you
12 have mentioned in general terms and what influence they
13 have on this proceeding, so I'll let you go ahead first
14 and discuss scheduling if you would like to, sir.

15 MR. HOLCOMB: I don't know as I received any
16 schedule. I received your notice of prehearing
17 conference. There was no schedule attached to that. I
18 don't know what you are referring to.

19 JUDGE SCHAER: I'm asking if you have any
20 ideas about how we should put together the schedule to
21 go forward and back up the remaining issues in this
22 matter.

23 MR. HOLCOMB: I filed a response to your
24 notice setting forth objections, jurisdiction,
25 evidence, laches, standing, and recusal. I believe all

00176

1 of it should be resolved by appropriate briefing and
2 scheduling before we proceed any further.

3 Also, I don't know that that subpoena that
4 has been bandied around has ever been served. I don't
5 think so. To my knowledge, it has not, and thirdly,
6 that we have responded to discovery. We don't have
7 any, basically, and I don't know what else there is to
8 say. But all these issues need to be briefed and
9 brought in orderly fashion before you before we can
10 resolve any further issues on damages. None of them
11 have heretofore been material or relevant, and they now
12 are such.

13 JUDGE SCHAER: I have received a document
14 today, which is denoted "Response to Prehearing
15 Notice." Is that the document to which you refer?

16 MR. HOLCOMB: That is correct. You have an
17 original and one copy there, and I served a copy on
18 Ms. Anderl and Mr. O'Connell and Ms. Smith.

19 JUDGE SCHAER: I have not seen a response to
20 a notice of hearing that I can recall before, so I'm
21 wondering if you can say a little bit more about
22 whether you think the Commission should treat this as a
23 motion in this proceeding, or what is this kind of
24 pleading, please?

25 MR. HOLCOMB: As I understand the prehearing

00177

1 procedure that you have, you are trying to set forth
2 the parameters, perimeters if you will, of what the
3 next steps are going to be. As I view the next step,
4 it is to set down a schedule for briefing by U&I CAN as
5 to these issues followed by a response, followed by a
6 reply. Whether you treat it as a motion or response to
7 prehearing notice, separate and apart from a motion, I
8 care not, but these are the issues that need to be
9 raised.

10 JUDGE SCHAER: Have you read the Commission's
11 rules on motions, Mr. Holcomb?

12 MR. HOLCOMB: Yes.

13 JUDGE SCHAER: Can you tell me briefly why
14 this wasn't filed more in advance of today's hearing?

15 MR. HOLCOMB: Because I can file it as a
16 motion if you would like to do that, but I don't regard
17 this as necessary to file as a motion. You are asking
18 for notice of how we should proceed. I have given you
19 a response as to how we should proceed, and this isn't
20 in the nature of a motion. You are asking for my
21 suggestion. I put it in writing.

22 JUDGE SCHAER: My question was, why wasn't
23 this provided sooner? Do you have an answer to that?

24 MR. HOLCOMB: Because you didn't say you
25 wanted something provided by a given date before this

00178

1 hearing, and I thought it was sufficient to provide it
2 at this hearing so we could all of us have discussion
3 about it at the time.

4 JUDGE SCHAER: As I indicated, each of you
5 has mentioned other court proceedings that you thought
6 were relevant to what we were doing here today, and I
7 don't know, Ms. Anderl, if you would like to go first
8 on that or if you would like to defer to another
9 counsel, but I would like to hear what has happened and
10 how you think it's relevant to this proceeding, if you
11 would, please.

12 MS. ANDERL: Your Honor, I don't have the
13 citations with me, but it's my understanding that in
14 connection with the Commission's order determining that
15 U&I CAN is a telecommunications company that U&I CAN
16 appealed that and has received orders from the Superior
17 Court and the Court of Appeals upholding the
18 Commission's decision.

19 I don't know if it's past that point or not,
20 but certainly, those appeals were relevant from our
21 standpoint in terms of determining whether we would go
22 forward, because if U&I CAN is not a telecommunications
23 company, we would agree that our claim for access
24 charges would be not nearly as clear-cut. If they are
25 a telecommunications company, which the Commission has

00179

1 upheld and I believe the courts have upheld, then we
2 believe our claim for access charges is much simpler to
3 resolve, but Mr. Holcomb is probably closer to the
4 status of those --

5 MR. HOLCOMB: I can advise you if you like.

6 JUDGE SCHAER: I'm going to go through the
7 same order and ask to hear from each of you to see if
8 there is anything further you would like to add.
9 Mr. O'Connell?

10 MR. O'CONNELL: Nothing substantial. I
11 believe Ms. Anderl has correctly identified the Court
12 of Appeals recent decision to resolve the
13 jurisdictional issue. We would hope to move the case
14 forward at a certain level. This is now a proceeding
15 that's seeking recovery of sums that are owed to the
16 local telephone companies by U&I CAN and/or its
17 members, and it is a question of how one allocates
18 those resources.

19 We believe the appropriate thing now is to
20 bring this case to a conclusion. I didn't hear you to
21 be requesting comment on this notice, this response by
22 U&I CAN, so I'll save my fire for that until later, but
23 as I understand it, the matter is now being resolved by
24 the Court of Appeals, and that was the appeal of the
25 classification proceeding.

00180

1 JUDGE SCHAER: Does your client have
2 outstanding discovery in this proceeding?

3 MR. O'CONNELL: We were also seeking the same
4 discovery as was issued upon behalf of Qwest.

5 JUDGE SCHAER: I believe that I am familiar
6 with the subpoena that you had issued. Is that the
7 only outstanding discovery that you have, Ms. Anderl?

8 MS. ANDERL: At this point, it's the only
9 discovery that we feel we need responses to.

10 MR. O'CONNELL: Depending upon the answers we
11 get to this information, we may need to issue more. I
12 can elaborate on that if you like.

13 JUDGE SCHAER: I think that's sufficient at
14 this point, and I would like to hear from you on the
15 court cases, Ms. Smith, first, and then I believe
16 you've already indicated that your client does not have
17 outstanding discovery requests; is that correct?

18 MS. SMITH: That's correct, Your Honor. With
19 respect to the court cases, this commission, as you
20 know, issued an order classifying U&I CAN as a
21 telecommunications company. U&I CAN filed a petition
22 for judicial review in King County Superior Court that
23 was briefed and argued, and the Superior Court affirmed
24 the Commission's decision that U&I CAN is a
25 telecommunications company.

00181

1 U&I CAN then appealed to the Court of Appeals
2 Division One. That case was briefed and argued there,
3 and Division One just this past July, I think, issued a
4 published decision affirming the Commission. U&I CAN
5 filed a petition for reconsideration of that, which was
6 denied. U&I CAN filed a petition for review at the
7 State Supreme Court to which the Commission will file
8 an objection later this month.

9 JUDGE SCHAER: Mr. Holcomb, would you like to
10 say anything about the court proceedings at this point?

11 MR. HOLCOMB: Ms. Smith is correct. The
12 matter is pending with the Supreme Court right now at
13 the present time with no final decision.

14 JUDGE SCHAER: Has your client received
15 discovery requests from U S West/Qwest and United
16 Telephone/Verizon?

17 MR. HOLCOMB: I believe so.

18 JUDGE SCHAER: What is your intention
19 regarding answering those, sir?

20 MR. HOLCOMB: We are objecting to that as is
21 set forth in the issues that we've raised. In point of
22 fact, if you look at Page 2 at the top, we have no
23 access records as such. As far as we know, Qwest and
24 Verizon have all the information they need for access
25 charges. We just have no records, but we still object

00182

1 to it.

2 JUDGE SCHAER: I'd like to hear from the
3 parties other than Mr. Holcomb. Mr. Holcomb has filed
4 a document denoted, "Response to Prehearing Notice by
5 U&I CAN," and it looks to me like this is something
6 that should be viewed as a motion under the
7 Commission's rules, which means that you should have
8 this five days to review it and respond. So I'm
9 wondering if you want to respond today, or if you want
10 to have some time to respond in more detail, or how you
11 think we should proceed from this point to get to the
12 point where we can have a schedule and move forward.
13 Mr. O'Connell?

14 MR. O'CONNELL: Thank you, Judge Schaer. It
15 occurs to me as I review this document, and I was given
16 a copy about 10 minutes before this hearing commenced,
17 that many of the points that are raised in here could
18 appropriately be viewed as issues to be resolved in the
19 case rather, really, than as motions, per se. I
20 suppose if U&I CAN wishes to bring another motion that
21 this commission has no jurisdiction on these issues, of
22 course, no one can stop them, but many of these issues
23 could be addressed as issues to be covered in the
24 evidentiary and/or in prefiled testimony or in the
25 hearing, as necessary.

00183

1 However, as far as the suggestion that we
2 need to have a hearing before we can resolve how to go
3 forward on the discovery issues, I believe that is, in
4 fact, precisely backwards; that in the normal process
5 in our jurisprudence, we are entitled to conduct full
6 and fair discovery and then have a hearing on all of
7 the relevant evidence.

8 We would like the opportunity to gather that
9 relevant evidence, and so we would suggest, unless U&I
10 CAN wants to go through the issue of filing a formal
11 motion, that, in fact, we proceed as suggested in your
12 notice of this prehearing conference and come forward
13 with a schedule by which the case can be resolved,
14 which, we would submit, resolve the discovery issues
15 first and promptly. At this point, my client sees no
16 point in further delay just because of the filing of a
17 motion for discretionary review by the State Supreme
18 Court. We believe we should go forward and resolve the
19 discovery issues and bring the case to a close.

20 If counsel wants to make an argument about
21 laches, for example, that strikes me as a perfectly
22 appropriate thing to raise at the appropriate time,
23 which is in briefing when this case is to be resolved.
24 Not that I agree, of course, that the laches argument
25 has any merit, but that seems to me to be an

00184

1 appropriate way of moving the case to a conclusion
2 rather than again go through another round of motions
3 and another round of hearings that will again be
4 appealed. Let's bring the case to a close.

5 JUDGE SCHAER: Ms. Anderl?

6 MS. ANDERL: I agree with Mr. O'Connell, and
7 I think the only thing that I see in this document that
8 should perhaps be discussed today is under Roman
9 numeral 2-A, the claim that U&I CAN should not release
10 telephone access records since U&I CAN has no such
11 records.

12 That is the very heart of the discovery
13 question that Mr. O'Connell was just discussing. I do
14 think that we need it to be resolved. I do think that
15 the rest of the issues can be resolved during the
16 course of the proceeding. Some of them are issues that
17 require additional factual evidence before they can be
18 resolved. Some are simply legal issues that need to be
19 briefed, but I would not endorse a delay for additional
20 briefing at this time.

21 JUDGE SCHAER: Ms. Smith?

22 MS. SMITH: Your Honor, the Commission staff
23 generally agrees with the comments from Qwest and from
24 Verizon. Most of the issues that are raised in this
25 document, none of which are supported by any authority

00185

1 or argument, but most of them really do go more towards
2 the issues that can be resolved as this proceeding runs
3 its course rather than somehow or another impacting
4 whether the Commission should go forward with this
5 case. So there is nothing raised in this document that
6 would cause this Commission to delay this proceeding
7 from going forward and certainly to delay any discovery
8 that would go forward in this case.

9 JUDGE SCHAER: Any brief response,
10 Mr. Holcomb?

11 MR. HOLCOMB: In the first place, I'm looking
12 at Paragraph 7 of your notice, and it said, "Notice of
13 any other procedural phase will be given in writing or
14 on the record as the Commission may deem appropriate
15 during the course of this proceeding."

16 In good faith, I presented to you what I
17 think are the issues that have to be decided before we
18 can proceed to determine whether, if any, access
19 charges are made. Secondly, I have no objection if
20 they want to have five days to put their objection to
21 this in writing so I can study it too and make an
22 appropriate response to that. Thirdly, I fail to
23 understand the positions that either the Commission or
24 the parties as to why these issues are not material and
25 relevant and should not be decided beforehand. Seems

00186

1 to me they are all extremely material and relevant in
2 light of what this administrative judge has done in
3 light of her ruling.

4 We would manifestly request that we get a
5 chance. Ms. Smith takes me to task there is no
6 authority to all this. That's not why I presented this
7 document. The reason I presented this document is so
8 that we could present proper briefing with authority on
9 these issues and have you set it down in orderly
10 fashion so we could present a brief to you.

11 We have been wasting time presenting a brief
12 without getting your approval for that in the first
13 place and setting down a schedule. No good deed goes
14 unpunished; I know that, but I'm trying in response to
15 your notice, as I said earlier, that note of any
16 procedural phase be given in writing on the record. It
17 doesn't say anything about motions or anything else.
18 Let's set it down for argument, for briefing first and
19 then argument and then proceed after that.

20 Further, we've got the Supreme Court still at
21 issue in this case, which could and should reverse this
22 whole process, and we hope they will.

23 JUDGE SCHAER: At this point, I find
24 persuasive the argument by Mr. O'Connell that it makes
25 more sense to get facts gathered and then decide where

00187

1 we go with those than it does to have a briefing on
2 this document that you have presented to us today. The
3 Commission does have rules regarding filing motions for
4 summary determination --

5 MR. HOLCOMB: It is not a motion --

6 JUDGE SCHAER: Mr. Holcomb --

7 MR. HOLCOMB: It is a procedural response to
8 what you wanted.

9 JUDGE SCHAER: Do not interrupt me, sir.

10 MR. HOLCOMB: Let's cut through this motion
11 thing right now --

12 JUDGE SCHAER: Mr. Holcomb, you are out of
13 order --

14 MR. HOLCOMB: I'm trying to persuade you that
15 on the basis of your own order, I have done what I
16 think is appropriate.

17 JUDGE SCHAER: We are off the record. I will
18 return in at least five minutes after people have
19 cooled off.

20 (Recess.)

21 JUDGE SCHAER: We'll be back on the record
22 after a brief recess. I called the recess because
23 there was an attorney who had been ruled to be out of
24 order who was interrupting the Bench in the midst of
25 comments and would not wait for his turn to speak. I

00188

1 have now returned to the courtroom and note that the
2 attorney who had been conducting himself in this manner
3 has apparently left the hearing room, and so I am going
4 to in a moment continue with my ruling so the parties
5 know how to proceed. But at this point, I believe that
6 the parties have indicated that there may be some
7 information that they would like to have placed on the
8 record, and I'm going to allow that to happen first.
9 Go ahead, Mr. O'Connell.

10 MR. O'CONNELL: Thank you, Judge Schaer. I
11 would just recount for the record that during your
12 absence and while we were waiting here, Mr. Holcomb
13 observed that you had adjourned the hearing, to which
14 all counsel advised him that that was incorrect; that
15 the hearing had just taken a brief recess.

16 When he expressed his intention to leave, I
17 urged him not to do so because it was my belief that
18 the hearing examiner would continue on with this status
19 conference and would issue a set of procedural rulings
20 whether he was here or not, and since he had chosen to
21 leave, Mr. Holcomb nonetheless insisted that he was
22 going to leave, and he has left.

23 JUDGE SCHAER: Thank you.

24 MS. ANDERL: That's accurate, Your Honor, and
25 I will also add that Mr. O'Connell advised Mr. Holcomb

00189

1 that he would place on the record his advice to
2 Mr. Holcomb that it was his opinion that the procedure
3 was not adjourned but was merely in recess and that the
4 administrative law judge would be returning.

5 JUDGE SCHAER: Is there anything you wish to
6 add, Ms. Smith?

7 MS. SMITH: I don't have anything to add. I
8 concur in the comments made by Mr. O'Connell and
9 Ms. Anderl, and I too informed Mr. Holcomb that we were
10 not adjourned but were in a brief recess.

11 JUDGE SCHAER: My recollection is that I told
12 the parties before I left the hearing room that we were
13 going to take a recess for at least five minutes to
14 allow parties to calm themselves and be ready to follow
15 acceptable procedures, and I did leave the room and
16 have now returned, and before the break, I was
17 announcing the ruling, which I will continue with at
18 this point.

19 My ruling is this: We should proceed at this
20 point to establish schedules, discovery schedules, and
21 a schedule for the remainder of this proceeding. We
22 should at this point tell the parties that if anyone
23 would like to have any issues addressed on summary
24 determination that the appropriate way to frame that
25 would be to file a motion for summary determination,

00190

1 and the procedures for how to do that are included in
2 the Commission's procedural rules.

3 I would represent, as I intended to before I
4 was interrupted, that it is a concern to the Bench that
5 in a motion for summary determination, it needs to be
6 the case that there are not unresolved factual issues,
7 and that I agree with comments of Mr. O'Connell made
8 before the recess that it makes more sense in this
9 proceeding to get the facts before us and have those
10 facts as a background to the legal arguments that may
11 be made as we try to bring this proceeding to
12 resolution.

13 Are there any questions or comments at this
14 point? Then I'm going to ask the parties to share with
15 the Bench the discussions which you had about a
16 schedule, and let's get a schedule put together for the
17 remainder of the proceeding.

18 MR. O'CONNELL: Thank you, Judge Schaer. We
19 have had an opportunity to discuss the matter, and we
20 believe in light of the fact that the subpoena is now
21 not quite two years old, we believe that a brief period
22 should be permitted for us to formulate new discovery
23 responses to make them both more current and covering
24 the other issues that are outstanding.

25 We think that Verizon and Qwest can have

00191

1 those data requests issued within 10 days, and at that
2 point tying then a schedule to full and complete
3 responses to that discovery. That means that the
4 schedule may have some -- I don't want to say
5 open-ended, but definitely not be able to assign firm
6 calendar dates to them given the history of this case,
7 by which I mean we would issue data responses but only
8 to data requests within 10 days.

9 Before he left, what we did posit to
10 Mr. Holcomb was maybe we should just go to the point of
11 issuing the subpoena, and his response was no, he would
12 want to take a look at them, so we will do that, issue
13 the data requests within 10 days, give Mr. Holcomb the
14 appropriate period of time to respond to those data
15 requests, and then commence whatever enforcement
16 procedures are necessary to get that data so that we
17 may then move forward and file, we would suggest, our
18 direct testimony within 60 days of furnishing full and
19 complete responses by U&I CAN, response testimony 30
20 days thereafter, rebuttal testimony 30 days thereafter,
21 and then a hearing as may be needed appropriately
22 scheduled after that.

23 JUDGE SCHAER: In reviewing the discovery
24 tools available to you in this proceeding, I think
25 perhaps we should look at the prehearing conference

00192

1 order that began the case and see if there are
2 sufficient tools available should you decide that you
3 might need to do a subpoena duces tecum or do a
4 deposition in order to get information. So I'm going
5 to suggest that we all take a moment to locate that
6 order.

7 (Discussion off the record.)

8 JUDGE SCHAER: I'm looking at an order on
9 prehearing conference dated February 12th, 1997, and I
10 note in that order that at the request of United and
11 Informed Citizen Advocates Network the Commission
12 allowed discovery in this proceeding using all of the
13 discovery methods provided in WAC 480-09-480, and
14 therefore, not just data requests but all of the
15 different tools that are available from that rule will
16 be available to the parties as you pursue discovery in
17 order to wrap up this procedure.

18 MR. O'CONNELL: May I raise an issue on that
19 point?

20 JUDGE SCHAER: Go ahead, please.

21 MR. O'CONNELL: I raise the issue because if
22 it is possible in this order, the order that will
23 result from this prehearing conference, to head off an
24 issue. I think it may save the parties substantial
25 time, and that is specifically Mr. Holcomb's filing of

00193

1 this afternoon's response to prehearing notice by
2 U&I CAN at Page 3, he raises objections and issues as
3 to evidence. I specifically refer to the "C" part
4 there: "U&I CAN will not produce membership records by
5 reason of a right to freedom of association under
6 constitutional guarantees."

7 Your Honor may recall that we've talked about
8 this before that when the prehearing conference was
9 held, I believe, now two years ago, we specifically
10 addressed the heightened protection available to
11 U&I CAN's membership list and provided protection for
12 that in the protective order that was issued in the
13 case, and I just wanted to raise the issue with you
14 ahead of time because I fully anticipate Verizon, at
15 least, will be seeking U&I CAN's membership list, which
16 is highly relevant in light of the way they conduct
17 their operations.

18 The question I guess I would have for you,
19 therefore, is whether it is necessary to advise the
20 parties that the protective order that was previously
21 entered is still in place?

22 JUDGE SCHAER: It's my recollection,
23 Mr. O'Connell, that there was a protective order issued
24 in this proceeding, and I'm looking for a copy of that
25 order so we may make reference to that if we need to do

00194

1 so.

2 MS. SMITH: Your Honor, my copy of that order
3 bears a service date of June 21st, 1999, if that would
4 assist the parties in locating a copy of it.

5 JUDGE SCHAER: Thank you.

6 MS. ANDERL: We have it as well, Judge.

7 JUDGE SCHAER: It's my recollection that
8 there was an original protective order that after
9 Mr. O'Connell's client brought its case and the cases
10 were consolidated that there was something then served
11 that reflected the fact that the order provided to both
12 proceedings, so I was looking also for the earlier
13 order.

14 MS. ANDERL: Ms. Smith, what was the date of
15 the order?

16 MS. SMITH: The date of the order extending
17 the protective order was June 21, 1999. The date of
18 the original protective order was April 10th, 1997.

19 JUDGE SCHAER: So the order coming out of
20 this conference should reflect that both of those
21 orders are in the file and that both of those orders
22 continue to govern in this matter, and I will so
23 indicate.

24 Glancing at this document that was provided
25 today, it appears to me that there may be other issues

00195

1 that were already determined even by the Commission on
2 interlocutory review, and if Mr. Holcomb's client
3 pursues those issues, then it will be the intention of
4 the Bench to make sure that the parties have time to
5 review the motions and respond in an orderly manner,
6 and the Bench will have an opportunity to look at both
7 sides' submittals before making any further
8 determinations on these issues.

9 Is there anything else that we need to
10 discuss today? Based on what we have discussed today,
11 the parties will provide new data requests that will
12 replace any data requests currently outstanding in this
13 proceeding by September 20th, 2001, and then we will
14 pursue full and complete answers to those. I'm going
15 to provide a reporting date so that you may let me know
16 whether those have been received so that we do not go
17 into another long hiatus waiting for some kind of
18 feedback to know how to go forward.

19 So our normal turnaround time would be 14
20 days, and then there are, often in my experience,
21 follow-up requests that need to be made based on first
22 questions and responses. So we are looking
23 realistically, I think, at sometime in early December
24 to know whether we are close to being able to set the
25 rest of the schedule.

00196

1 What I would suggest that we do at this time
2 is to schedule another prehearing conference for early
3 December, and in doing so, let me indicate to the
4 parties that if there are issues that you would need to
5 bring to the Commission before that time, the
6 Commission is available by phone conference or by
7 conference on shortened time to meet with the parties
8 and seek to resolve discovery disputes or other
9 disputes, but at this point, I'm going to suggest that
10 we schedule something in the first week of December.
11 Let's go off the record for a moment to consult our
12 calendars for that purpose.

13 (Discussion off the record.)

14 JUDGE SCHAER: After a brief discussion of
15 scheduling, we decided we will have a check-back
16 conference in this proceeding on the afternoon of
17 Tuesday, November 13th, beginning at 1:30 in the
18 afternoon. The purpose of that conference will be to
19 review the progress on discovery and to set a schedule
20 for the remainder of the proceeding if we are able to
21 do so at that time.

22 We have agreed to a general outline of a
23 schedule that would give the parties present here 60
24 days to prepare direct testimony following receipt of
25 full and complete answers to discovery requests. 30

00197

1 days later, give U&I CAN an opportunity to file direct
2 testimony, and 30 days after that, allow Qwest,
3 Verizon, and the Commission staff to file any
4 responsive testimony, and then we hadn't discussed a
5 time for hearing after that, but I would assume that we
6 would have a hearing then sometime beginning two to
7 four weeks after the filing of the rebuttal testimony.
8 That's something we will set when we have more
9 information about the beginning point and about
10 everyone's schedules.

11 Is there anything further that we need to
12 discuss at this time? Hearing nothing, then we will be
13 off the record until November 13th. Thank you.

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15 (Prehearing conference concluded at 2:30 p.m.)

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