

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

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 :
Investigation Regarding Intrastate Access :
Charges and IntraLATA Toll Rates of : Docket No.
Rural Carriers and The Pennsylvania : I-00040105, et al.
Universal Service Fund :
 :
2006 Annual Price Stability Index/Service : Docket No.
Price Index Filing of Denver & Ephrata : P-00981430F1000
Telephone and Telegraph Company : R-00061377
 :
2006 Annual Price Stability Index/Service : Docket No.
Price Index Filing of Buffalo Valley : P-00981428F1000
Telephone Company : R-00061375
 :
2006 Annual Price Stability Index/Service : Docket No.
Price Index Filing of Conestoga : P-00981429F1000
Telephone & Telegraph Company : R-00061376
 :
 (Further Prehearing Conference) :
 : **ORIGINAL**
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Hearing Room 1
Commonwealth Keystone Building
Harrisburg, Pennsylvania

Wednesday, June 18, 2008


Met, pursuant to notice, at 10:08 a.m.

BEFORE:

SUSAN D. COLWELL, Administrative Law Judge

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WITNESSES

DIRECT CROSS REDIRECT RECROSS

None

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EXHIBIT INDEX

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FOR IDENTIFICATION IN EVIDENCE

None

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P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE SUSAN D. COLWELL:

1 This is the time and the place set for the additional prehearing
2 conference in the case captioned Investigation Regarding
3 Intrastate Access Charges and IntraLATA Toll Rates of Rural
4 Carriers and the Pennsylvania Universal Service Fund at
5 Commission docket number I-00040105. There are also several
6 other dockets attached to this; but, unless I'm wrong, I don't
7 think there are any specific issues assigned to our case that
8 come from those dockets.
9

10
11 Is that correct?

12 Ms. Paiva.

13 MS. PAIVA: Yes, Your Honor, Suzan Paiva for
14 Verizon. I agree with you that it is only the first docket that
15 you read.

16 JUDGE COLWELL: Okay. So, in terms of what we're
17 doing here, I'm planning to put the first docket number on
18 everything I issue, but not necessarily all four of them because
19 only part of the case has been sent back for our determination
20 anyway. So, unless anybody has an objection, that's the way we
21 will proceed.

22 (No response.)

23 JUDGE COLWELL: I am Administrative Law Judge
24 Susan Colwell, assigned to preside in this matter. I note for
25 the record the attendance of the following counsel: on behalf of

1 the Office of Small Business Advocate, Steven Gray; on behalf of
2 Comcast, John Dodge; on behalf of the Pennsylvania Telephone
3 Association and the Rural Telephone Coalition, Norm Kennard and
4 Jennifer Sultzaberger; on behalf of United Telephone of
5 Pennsylvania LLC, doing business as Embarq Pennsylvania,
6 Zsuzsanna Benedek; on behalf of Verizon, Suzan Paiva; on behalf
7 of the Broadband Cable Association of Pennsylvania, Shelby
8 Linton-Keddie and Pamela Polacek; on behalf T Mobile, Bradford M.
9 Stern; on behalf of Sprint, Ben Aron; on behalf of AT&T
10 Communications, TCG New Jersey and TCG Pittsburgh, Michelle
11 Painter; on behalf of Verizon Wireless, Chris Arfa; and on behalf
12 of the Office of Consumer Advocate, Joel Cheskis, Barrett
13 Sheridan, and Christy Appleby.

14 Is that everyone? Has anybody not signed the
15 green sheet who showed up?

16 (No response.)

17 JUDGE COLWELL: All right. Thank you.

18 This case was reactivated by the Commission at
19 its Public Meeting of April 24th, 2008, and assigned to the
20 Office of Administrative Law Judge for proceedings consistent
21 with the Order that was passed on that day. This proceeding is
22 limited to a specific list of topics, and matters within the
23 docket beyond those listed in the April 24th, 2008 Order have not
24 been reactivated for discussion in this case.

25 Because of the passage of time since the matter

1 was stayed, I had my Prehearing Order served on all of the
2 entities who were served with the Commission's Order of April
3 24th, 2008, requiring those who wish to participate in this case
4 to file an entry of appearance. Those who filed an entry of
5 appearance would comprise the service list that we will use from
6 here on in, and those will be served with the prehearing memos of
7 each participating party.

8 I have received prehearing memos from the
9 following: Sprint Communications Company, LP; United Telephone
10 Pennsylvania LLC, doing business as Embarq Pennsylvania; Office
11 of Consumer Advocate; Office of Small Business Advocate; Comcast
12 Phone Pennsylvania LLC, doing business as Comcast Digital Phone
13 and Comcast Business Communications LLC; the Broadband Cable
14 Association of Pennsylvania; the Pennsylvania Telephone
15 Association/Rural Telephone Company Coalition; AT&T
16 Communications of Pennsylvania LLC, TCG Pittsburgh, Inc., and TCG
17 New Jersey; Verizon Pennsylvania, Inc., Verizon North, and
18 MCImetro Access Transmission Services LLC, doing business as
19 Verizon Access Transmission Services; Cellco Partnership, doing
20 business as Verizon Wireless; Omnipoint Communications, doing
21 business as T Mobile, Omnipoint Communications Enterprises LLC,
22 doing business as T Mobile, and VoiceStream Pittsburgh LP, doing
23 business as T Mobile.

24 Did I forget anybody?

25 (No response.)

1 JUDGE COLWELL: Let's move to the outstanding
2 issues we have before us. First on my list is a Petition to
3 Intervene of the Broadband Cable Association of Pennsylvania.
4 This was filed on June 6th, 2008; therefore, the answer period
5 has not yet run.

6 Does anybody party intend to file an answer or an
7 objection?

8 MR. KENNARD: No, Your Honor.

9 JUDGE COLWELL: If you do not indicate you're
10 going to do that, I will assume are you not and I will grant it
11 in my scheduling order. If you indicate that you intend to file
12 something, then I will put that decision off until I receive what
13 you have filed. As I have heard no response to my question, I am
14 assuming that there is no objection to the Petition to Intervene
15 of the Broadband Cable Association of Pennsylvania; and,
16 therefore, that Petition will be granted.

17 Okay. Next on my list I have the Petition to
18 Intervene of Comcast. Now, Comcast filed this some time ago.

19 Mr. Dodge, I think you have something else to do
20 first.

21 MR. DODGE: I have just the person to do it, Your
22 Honor.

23 JUDGE COLWELL: Excellent.

24 Ms. O'Dell, you have very recently filed a Motion
25 for Admission Pro Hac Vice for Mr. Dodge.

1 MS. O'DELL: Correct.

2 JUDGE COLWELL: Will there be any objection to
3 this motion?

4 (No response.)

5 JUDGE COLWELL: No party has objected; therefore,
6 Mr. Dodge is admitted for the purposes of this proceeding.

7 Thank you very much.

8 MS. O'DELL: Thank you.

9 JUDGE COLWELL: Mr. Dodge, tell me about your
10 Petition, when you filed it.

11 MR. DODGE: I believe the date was March 10th of
12 this year, 2008, Your Honor.

13 JUDGE COLWELL: Obviously the answer period has
14 run for that. Were there any answers or responses filed?

15 MR. DODGE: Not since yesterday, Your Honor.

16 JUDGE COLWELL: All right, then. Seeing that the
17 time has run, then that Petition to Intervene is also granted.

18 MR. DODGE: Thank you, Your Honor.

19 JUDGE COLWELL: That will be memorialized in the
20 scheduling order as well.

21 I have a Petition for a Motion for Admission Pro
22 Hac Vice for Joseph R. Stewart from Embarq.

23 MS. BENEDEK: Yes, Your Honor.

24 JUDGE COLWELL: This was also filed yesterday.

25 MS. BENEDEK: Correct, Your Honor.

1 JUDGE COLWELL: Will there be any objection to
2 this?

3 (No response.)

4 JUDGE COLWELL: I'm hearing no response;
5 therefore, I assume there is no objection to the Motion for
6 Admission Pro Hac Vice of Joseph R. Stewart and that will be
7 granted also.

8 All right. Mr. Kennard, the next thing on my
9 list is your Motion to Substitute an Organization.

10 MR. KENNARD: Yes, Your Honor.

11 JUDGE COLWELL: I'm a little confused about this.
12 Can you tell me exactly what's going on here?

13 MR. KENNARD: The participation by the Rural
14 Telephone Companies, most of them with the exception of Embarq,
15 historically has been through an ad hoc group called the Rural
16 Telephone Company Coalition. At various times it's been called
17 other names, but basically it's the group organized for the
18 purpose of intervention in these proceedings.

19 On the other side, this same group of companies
20 is represented in a formal organization known as the Pennsylvania
21 Telephone Association which is incorporated and has represented
22 the interest of the Rural Telephone Companies for 900 years now.
23 PTA -- the member companies desire that PTA be the entity
24 representing them on an associational basis on a going-forward
25 basis and under the RTC, hence our motion which is in the nature

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1 of a substitution change. You can look at it as a substitution,
2 or you can look at it as a name change. In any event, the
3 underlying RLECs are still in this docket, so the Association
4 will represent the Coalition but it has been modified somewhat.

5 JUDGE COLWELL: Okay. So it's really a matter of
6 housekeeping more than anything else?

7 MR. KENNARD: We think so, Your Honor.

8 JUDGE COLWELL: Does any party object to this
9 motion?

10 (No response.)

11 JUDGE COLWELL: No response, therefore that
12 motion will also be granted.

13 MR. ARFA: Clarification, Your Honor?

14 JUDGE COLWELL: Pardon.

15 MR. ARFA: Point of clarification if I may on
16 that motion?

17 JUDGE COLWELL: You'll have to speak closer to
18 the microphone. I can't hear you.

19 MR. ARFA: I'm sorry. Is this better?

20 JUDGE COLWELL: Yes.

21 MR. ARFA: Chris Arfa for Verizon Wireless. I
22 understand the motion is housekeeping, but the individual
23 companies will act as parties with respect to discovery and those
24 sorts of things; is that correct?

25 JUDGE COLWELL: Mr. Kennard, is that correct?

1 MR. KENNARD: I'm not sure where we're going on
2 this, but the individual companies are parties to this case. If
3 there was one of them objected to discovery and the other ones
4 didn't, I suppose they would be filing their own objections
5 outside the PTA. That's a balancing act that the PTA has got to
6 go through.

7 MR. ARFA: But if discovery is served on the PTA,
8 it will be treated as discovery served on all the parties?

9 MR. KENNARD: I see what you're saying, yes, if
10 PTA will accept the discovery on behalf of all the member
11 companies. For example, on Monday Mr. Cheskis filed one set of
12 discovery on the 31 companies and directed it at the PTA; and
13 that's fine with us. We agree to help organize the 31 companies
14 to keep this docket moving.

15 MR. ARFA: Thank you.

16 JUDGE COLWELL: Okay. The fact that that looks
17 like more work for you than me makes me very happy.

18 MR. KENNARD: That's a good thing, Judge.

19 JUDGE COLWELL: All right, then. Let's move on
20 to the scheduling portion of today's activities. Apparently
21 there is no objection except to the briefs and reply briefs
22 coming due on a weekend. Apparently I was looking at the wrong
23 calendar when I picked those dates. I can tell you that I did it
24 to test you, but then I'd be lying. So there's no objection to
25 any of the dates that were given, correct? Enough time for

1 everybody to do everything? Any objection? Now is the time to
2 speak.

3 (No response.)

4 JUDGE COLWELL: No one is speaking up, okay.
5 Then that's the schedule that will be adopted, direct testimony
6 September 26th, rebuttal October 24th, surrebuttal November 14th.
7 Hearings in December. That's the question, how many days of
8 hearing.

9 Can anybody guess how many days of hearing we're
10 going to need?

11 MR. KENNARD: We thought scheduling the four was
12 probably overly more than we needed but better to do that than
13 not have enough.

14 MS. PAIVA: Your Honor, that's what I was going
15 to say. I think it's prudent to schedule the four and maybe just
16 cancel them if it turns out we don't need them.

17 JUDGE COLWELL: Okay. Nobody thinks we'll need
18 more than four?

19 MS. BENEDEK: Well, actually the current schedule
20 in your Prehearing Order was in your Order as December 15th
21 through the 18th. The 18th is a Saturday. Is that your intent?
22 If the intention is to do four days, we'll have to do the 14th
23 through the 17th. That's better.

24 MS. PAINTER: The 15th is a Monday.

25 MS. BENEDEK: I was mistaken. The 18th is a

1 Thursday. I was looking at the wrong month.

2 JUDGE COLWELL: Okay. My calendar shows the 15th
3 of December in 2008 to be a Monday. So we'll go with Monday,
4 Tuesday, Wednesday, and Thursday is the day we'll cancel if we
5 need to, okay? So then the main briefs are due February 9th,
6 reply briefs February 28th.

7 Discovery modifications. Two of the prehearing
8 memos sought some discovery modifications. Verizon asked that
9 electronic service be by 4:00 p.m. or deemed to be served the
10 following day, that answers to discovery be due in ten days, and
11 objections to discovery be within five calendar days. AT&T said
12 that the objections should be within seven calendar days and
13 answers within ten calendar days.

14 Anybody have any objection to shortening the
15 discovery period?

16 MR. KENNARD: Objections.

17 JUDGE COLWELL: Go ahead.

18 MR. KENNARD: Yes, Your Honor. We have a
19 Commission Order. There is a limited investigation here. There
20 is a long list of subissues, but there are only really two
21 issues. We've already gotten discovery from the Consumer
22 Advocate's Office which addressed -- or seeking information on a
23 number of the subissues if you will.

24 I think we're looking at one prism. We're just
25 looking at the different colors of light. A lot of the

1 information which is to be sought as best as I can anticipate
2 will be filed with the Commission will be tariffs, will be filed
3 with the FCC, will be filed with the Federal Universal Service
4 Administrator.

5 Under the schedule you just adopted, we don't
6 have testimony due until the end of September. I don't
7 understand why 20 days isn't sufficient for purposes of
8 addressing the limited issues presented in this case.
9 Furthermore, I can't do anything within ten days, not because I'm
10 an attorney but because I've got 31 clients underlying this.
11 We've agreed to step forward and accept discovery, corral all the
12 answers from all the individual member companies; but I need a
13 little bit of room in terms of time to be able to do that.

14 I would suggest that the issues aren't that
15 complicated. We could accomplish the same within 20 days. I
16 just don't see us having more than three rounds of discovery
17 tops. I mean, less than 20 days, that only takes 60 days of the
18 four months we have until testimony is due. So I oppose it
19 mostly because it's unrealistic. I simply can't meet that
20 deadline with 31 individual companies.

21 JUDGE COLWELL: Okay.

22 Ms. Paiva.

23 MS. PAIVA: Your Honor, first of all, shortening
24 the discovery period does seem to be pretty routine in these
25 cases; and the parties have been able to meet the ten-day

1 discovery period in other cases. They're not that extremely
2 short. Also this case, this investigation, the entire body of
3 information is within -- the substance of this information is
4 within the control of the PTA companies.

5 So, in order for the other parties to be able to
6 be in a position to formulate their arguments and prepare their
7 testimony by the middle -- end of September, we need to have the
8 information as provided --

9 THE REPORTER: I'm sorry, Ms. Paiva. You've got
10 to slow down. I'm having trouble understanding what you're
11 saying.

12 JUDGE COLWELL: Through the microphone you have
13 to speak a little more slowly. It is a little hard to understand
14 you.

15 MS. PAIVA: You can't hear me?

16 JUDGE COLWELL: I can hear you.

17 MS. PAIVA: So, with the ten-day discovery
18 turnaround period, we'll be able to gather all the information we
19 need for the investigation. In addition to that, when we get to
20 the hearing portion of the case, we have a fairly short time
21 between the rounds of testimony. We have direct testimony which
22 may very well require us to take discovery on whatever they put
23 in their testimony. If it's a 20-day turnaround period at that
24 point, we're really not going to be able to get much discovery to
25 use in rebuttal testimony.

1 So I would suggest that we go with a ten-day
2 period, and it's just information that they should be able to
3 give us within ten days. It's information readily available to
4 the companies. If we ask for something unusual that would
5 require a great deal of work, we would consider discussing
6 extension. It wouldn't be unreasonable. On the other hand, we
7 don't want 20-day periods to be used to hold up turning over
8 information that is readily available.

9 JUDGE COLWELL: Ms. Benedek.

10 MS. BENEDEK: I would like to speak to this, Your
11 Honor.

12 JUDGE COLWELL: Go ahead.

13 MS. BENEDEK: We also object in addition to the
14 arguments made by Mr. Kennard. We object on two reasons. First,
15 there is an elongated period between now and direct testimony
16 that's due. So, relative to that period, a 20-day objection
17 period certainly seems reasonable. The second reason I would
18 object is, unlike some of the other cases or arbitrations, it
19 isn't that information is in the hands to the extent available
20 with the ILECs. So the 20-day period is a very reasonable
21 objection period for discovery for that period between now and
22 direct testimony.

23 I would certainly entertain some sort of
24 compromise and suggest perhaps we schedule as it was proposed for
25 direct testimony, rebuttal, and surrebuttal. Perhaps we should

1 talk about that being separate and distinct from the period we
2 now reflect as possibly a way to get around this issue. So I
3 propose 15 days for a responsive period without truncating the
4 objections. If we can go off the record, I'm sure we can resolve
5 this in terms of the periods between direct testimony and
6 rebuttal testimony.

7 JUDGE COLWELL: Well, why don't we leave the
8 discovery periods where they are for now; and, at the time of the
9 filing of direct testimony if you find that those periods are
10 insufficient, you can ask that they be modified for the remainder
11 of the time?

12 MS. PAIVA: Your Honor, we would ask that, if we
13 would ask questions and the information is readily available,
14 that the PTA parties make an effort to answer the questions early
15 so we can move the investigation along.

16 JUDGE COLWELL: If at any time you find that
17 another party is being difficult, you can certainly bring that to
18 my attention; and we can haul everybody in and give them a good
19 talking to then. I assume that there will be no need for that
20 because we're all experienced attorneys and we know how to
21 behave, okay?

22 MS. BENEDEK: Did you say February 28th for reply
23 brief?

24 JUDGE COLWELL: February 28th, yes. Did I get
25 that one wrong, too?

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1 MS. BENEDEK: Unless you want us to produce it on
2 a Saturday.

3 JUDGE COLWELL: It's all the same to me. My
4 calendar doesn't go that far.

5 MS. BENEDEK: We would suggest March 2nd, which
6 is the Monday right after.

7 JUDGE COLWELL: All right. We're jumping back in
8 time back to the schedule. Apparently the February 28th date is
9 on a weekend, and Ms. Benedek would like to go forward instead of
10 backwards.

11 So that's March 2nd did you say?

12 MS. BENEDEK: Yes, that's what we proposed.

13 JUDGE COLWELL: All right. The reply briefs will
14 be due March 2nd.

15 MR. CHESKIS: Your Honor, this is Joel Cheskis of
16 the OCA. I had two other issues with regards to discovery.

17 JUDGE COLWELL: Okay.

18 MR. CHESKIS: One of the issues is the concept
19 that not necessarily just in the telephone cases, but we've
20 experienced in other cases where questions are partially objected
21 to and partially answered. We have difficulty at times
22 understanding whether or not -- what exactly that means, whether
23 the question is being answered completely and being objected to
24 or whether or not the question is being partially answered to and
25 objected to the part not being answered. We've experienced that

1 situation in other cases, and I wanted to bring that to your
2 attention now.

3 The second issue that we've already experienced
4 here is this concept of some relevant information that we're
5 seeking in discovery being actually in the hands of the
6 Commission and not necessarily in the hands of the respective
7 companies that are involved in this case.

8 Before we sent out our first set of discovery on
9 Monday, we engaged in informal discovery conversations with the
10 companies; and that was basically the answer we were given, that
11 they didn't have the information, that that information was
12 available at the Commission. And, quite frankly, I don't know
13 how you serve discovery on the Commission for information that's
14 relevant to this case. So I was looking for resolution to that.

15 JUDGE COLWELL: Okay. We'll do these in order.

16 First of all, I think that I already handled the
17 first one in my Prehearing Order. There is a paragraph in there
18 that says objections shall be filed in lieu of answers and that
19 the Rules of Discovery are modified to provide that. So I don't
20 want to see anything like that. I've seen it before. I don't
21 like it. If you're going to object, you object. If you're going
22 to answer, you answer them. You don't try to tie up opposing
23 counsel by saying, well, I'm going to answer in part but then
24 we're going to wait until the last day so you can't file your
25 motion in time.

1 We're not playing those games. Be honest and up
2 front about it. Objections are in lieu of answers, and that's
3 all there is to it, okay?

4 MR. CHESKIS: Thanks.

5 JUDGE COLWELL: Second part, I don't know what
6 kind of information you're looking for from the Commission. Can
7 you give me an example?

8 MR. CHESKIS: One of our interrogatories pertains
9 to the individual amount of funds that are received by each of
10 the companies from the Universal Service Fund, the Pennsylvania
11 Universal Service Fund; and we were told that the companies are
12 not aware of that information, that that is available at the
13 Commission.

14 JUDGE COLWELL: Companies don't know how much
15 money they get?

16 MR. CHESKIS: That was the answer I was given.

17 JUDGE COLWELL: Okay. This is something totally
18 beyond my comprehension, and I hope someone will explain this to
19 me throughout the course of this proceeding. In the meantime --

20 Yes, Mr. Kennard.

21 MR. KENNARD: Let me just clarify this. The
22 interrogatory asked for how much is received and how much is paid
23 in. There is a netting process that goes on. What everybody
24 gets is part of -- I forget the Administrator's name -- Solex
25 (ph.) sends out a statement of what it's going to look like for

1 the next 12 months but there's never any true-up by the USF
2 Administrator for any of the companies at the end of the 12-month
3 period.

4 What I was saying to Joel was, I'm not sure we
5 know -- we know what the net payment is, but we don't know what
6 the contribution of receipt is. So what I suggested to Joel was
7 that the Commission would have a lot of this information. Their
8 Administrator is repository for all of that. To get it for all
9 31 companies in one fell swoop -- we agreed to approach the Law
10 Bureau to talk to them about how we would get the information
11 from the Fund Administrator so that we have true information from
12 the Commission as determined by the Administrator. That's what
13 we're talking about.

14 Is that fair, Joel?

15 MR. CHESKIS: I think that's fair. I just raise
16 that now because we're trying to get our investigation started.
17 This is a very relevant fact for the issues as articulated by the
18 Commission that we're looking for answers to.

19 JUDGE COLWELL: Okay. Let's go off the record
20 for a minute.

21 (Whereupon, a discussion was held
22 off the record.)

23 JUDGE COLWELL: There will be some followup
24 regarding the Commission's actual operation of the Pennsylvania
25 Universal Service Fund. I'll have to be in contact with you

1 about that after something is resolved. I won't be acting ex
2 parte, but I will be looking at procedures and talking with
3 Commission personnel about how we can best get somebody to talk
4 to this particular group. Does this group want to meet again and
5 be educated?

6 (Hands raised.)

7 JUDGE COLWELL: Yes, I see yeses.

8 MS. BENEDEK: Well, that's what we were just
9 discussing. That would seem to be the best option.

10 JUDGE COLWELL: If we do that as part of this
11 investigation, perhaps the best way to do it would be to have a
12 hearing just for that purpose.

13 Mr. Kennard, you're looking like you have
14 something to say.

15 MR. KENNARD: I don't know. Maybe as part of the
16 hearing but at this point we're just talking about discovery.

17 JUDGE COLWELL: Right. Well, I mean, you'd have
18 to have it soon, like, way before you get into the rest of the
19 case.

20 MR. KENNARD: I thought the way I left it with
21 the OCA was, we would talk to the Law Bureau, this particular
22 individual in the Law Bureau who is responsible for this that we
23 would -- I talked to the clients, too; and we don't feel at this
24 point that this is information that shouldn't be disclosed with
25 the confidentiality agreement in place which is something we need

1 to get to.

2 JUDGE COLWELL: Okay.

3 MR. KENNARD: But to get -- glean the information
4 from the Commission that we need for discovery purposes -- now,
5 whether or not that subsequently is going to require a hearing, a
6 separate hearing, it seems to be kind of simple questions that's
7 been asked so far which is how much do you get and how much do
8 you receive. It's specific to the companies.

9 MS. BENEDEK: I think what he's saying is, if
10 there is some time to go back to Law Bureau to see if there's a
11 way to work through this and get the answers for response to the
12 OCA questions, that might address the issue.

13 JUDGE COLWELL: Anybody else weighing in on this?

14 Yes, sir.

15 MR. DODGE: Your Honor, would the other elements
16 of the Commission consent to some sort of technical workshop
17 under your jurisdiction in this case, not necessarily sworn
18 testimony but explanatory conference for all of us to attend?
19 Utilities sometimes sponsor those for operations under their
20 control, and I think the government can do the same.

21 JUDGE COLWELL: I won't be able to give you a
22 definitive answer today because obviously other people's
23 cooperation does not depend on me, but we will explore this and
24 see what happens.

25 MR. CHESKIS: I will note, Your Honor, that we

1 did issue a formal discovery request on this particular issue on
2 Monday; and, you know, I guess maybe there's some merit to Mr.
3 Kennard and Ms. Benedek's suggestion to see how that process
4 runs. Maybe the schedule does allow for that opportunity, but I
5 wouldn't want to push off too far this education that it seems
6 like several of us are interested in.

7 JUDGE COLWELL: Okay. So you're concerned that
8 something that we would set up would take too long to set up?

9 MR. CHESKIS: No. What I'm suggesting is that
10 whatever our -- whenever the answer to our discovery is due, we
11 get them back and it doesn't for whatever reason address what
12 we're looking for or whatever other issues might arise, at that
13 point we then try to get together and set up a technical
14 conference that that's just going to push us farther into summer;
15 and, again, I think we're looking at some basic issues here that
16 are already embedded in this investigation.

17 JUDGE COLWELL: Okay. Well, this isn't something
18 I'm going to be able to settle today. We're going to have to
19 talk about this more. Let's go off the record again.

20 (Whereupon, a discussion was held
21 off the record.)

22 JUDGE COLWELL: Okay. During an off-the-record
23 discussion, the parties have indicated that what will happen is,
24 Mr. Kennard and Mr. Cheskis will explore the Universal Service
25 Fund and the availability of information regarding the same and

1 report back in a week's time; and that will determine whether or
2 not there's any additional action that needs to be taken on that
3 issue.

4 All right. I believe you mentioned you had
5 another issue.

6 MR. KENNARD: Well, protective order, Your Honor.

7 MS. PAIVA: Before we leave the matter of the
8 discovery schedule, I need some clarification.

9 JUDGE COLWELL: All right.

10 MS. PAIVA: The 20-day period will start with
11 electronic service of the discovery before the close of business
12 as we proposed in our prehearing memo? I just wanted to make
13 sure that's what it is. It's 20 days instead of ten days?

14 JUDGE COLWELL: I believe so.

15 MR. KENNARD: If you want to expand it out, we
16 could accept electronic service for briefs, for testimony, for
17 all that.

18 MS. BENEDEK: For all discovery.

19 MR. KENNARD: For all discovery. Let's just
20 agree to accept electronic service in this case.

21 JUDGE COLWELL: All right.

22 Does every party agree to accept electronic
23 service?

24 MS. BENEDEK: With hard copy followup, correct?

25 JUDGE COLWELL: With hard copy followup, yes.

1 Does anybody not agree to it?

2 (No response.)

3 JUDGE COLWELL: Okay. No party has indicated
4 such.

5 MR. GRAY: Your Honor, Steve Gray for OSBA.
6 Since we're finishing up with discovery, since Mr. Kennard has
7 given his opinion that this is a relatively straightforward case
8 with relatively straightforward issues and no one else spoke up,
9 I would like to not leave you with that impression. I disagree
10 wholeheartedly with Mr. Kennard on that issue. I do not believe
11 this is going to be a very simple case with very simple
12 straightforward issues. The discussion we just had was on one
13 issue of your fairly lengthy list, and there's no agreement on
14 that. So I just want to give a counterweight to what Mr. Kennard
15 said.

16 I would support the ten-day discovery. I
17 understand how you ruled. I will simply observe there are 21
18 days between rebuttal and surrebuttal, and 20 days of discovery
19 certainly won't work in that timeframe. So I just wanted to
20 weigh in and say I don't think you're going to find this the
21 easiest case, Your Honor.

22 JUDGE COLWELL: I'm not really surprised to hear
23 that.

24 Ms. Painter.

25 MS. PAINTER: If I could just follow up on that,

1 at what point were you looking for parties to come forward and
2 ask for reduced discovery between testimony? I think the
3 discussion today, there's going to be some disagreement; and I'm
4 fairly certain AT&T will be asking for a reduced discovery time
5 period, certainly at least reduction on the objection time period
6 so that we will know whether we can pursue a motion to compel at
7 that point. And 21 days is not going to give us sufficient time
8 to get the information for our testimony.

9 So, I'm just wondering at what point you're
10 expecting us to be asking for that?

11 JUDGE COLWELL: Okay. I was assuming that, by
12 the time the direct testimony was filed, you would know whether
13 or not you would need a shortened discovery period after that
14 time. If you would like, I have no problem with making it short
15 as of the date of the direct testimony.

16 MS. PAINTER: That would be AT&T's request, Your
17 Honor.

18 MS. PAIVA: Well, that way nobody's happy.

19 JUDGE COLWELL: Okay.

20 Ms. Benedek.

21 MS. BENEDEK: Your Honor, just to make sure I'm
22 clear, what you're proposing in lieu of this order that results
23 from the prehearing, you will set forth that truncated schedule?

24 JUDGE COLWELL: Yes, I will. And, if you read it
25 and you think I did it wrong, let me know because then I can fix

1 it. There's nothing I can do in the meantime that I can't fix.
2 So always bring it to my attention.

3 MS. BENEDEK: And I would reiterate, Your Honor,
4 our proposal to do the 15 days, for whatever that's worth.

5 JUDGE COLWELL: For after the direct?

6 MS. BENEDEK: Correct. After direct, yes.

7 JUDGE COLWELL: I think I'll leave it at ten
8 there.

9 MR. KENNARD: Protective order, Your Honor?

10 JUDGE COLWELL: Protective order already in
11 place, Mr. Kennard.

12 Does anybody need a copy of that? I can have one
13 made and sent to you.

14 (Hands raised.)

15 JUDGE COLWELL: Do you need a copy? All right.
16 Let's see who needs a copy. I'll just send it to everybody.

17 MR. KENNARD: Just a reminder that, if we have
18 new witnesses, they need to sign the Appendix A.

19 JUDGE COLWELL: Yes. Absolutely.

20 And I think all of you are experienced enough to
21 know that your testimony that has to be protected needs to be
22 marked as such. And that, by the way, should not be scanned into
23 Info Map, even later. That's the other thing. Don't file any
24 testimony. You serve testimony. You don't file it. Testimony
25 is admitted here, during the hearing, given to the court reporter

1 who then gives it to the Secretary's Bureau. Anything that is
2 confidential is not supposed to go into our electronic system as
3 of right now. So, if you see something there, bring it to the
4 Secretary's attention immediately because it should be withdrawn.

5 Okay. Any other issues that you have for us to
6 discuss?

7 (No response.)

8 JUDGE COLWELL: All right. I have one additional
9 issue and that is the organization of your briefs. Because I
10 have a month to write my decision, I will be requiring that you
11 all follow the same outline. Now, I do not have an outline for
12 you to follow at this time. I think all of you sitting here are
13 far more qualified than I to come up with that. I'm going to
14 give you until -- I don't know. How about I give you until the
15 direct testimony is due to come up with your proposed outline?
16 At that point you will either have agreed on an outline amongst
17 yourselves or you will submit to me your recommendation and I
18 will issue one that I think is something I can live with. So
19 that's what we're going to do there.

20 MS. PAIVA: Your Honor.

21 JUDGE COLWELL: Yes.

22 MS. PAIVA: Would it be more efficient for us to
23 wait until the surrebuttal testimony simply because there may be
24 issues raised on rebuttal that were not anticipated when we did
25 our outline on the direct testimony case?

1 JUDGE COLWELL: Okay. We aren't going to lock it
2 in. That's a very good point. There can be changes made to it,
3 but the one thing I want to avoid is missing the issues for
4 presentation of evidence. More often than I would like to see,
5 the parties come in at the end and think that they have proven a
6 point when there is no evidence on it. And really, if you
7 outline your brief first, you can see what points you need to
8 make and then you can give me the evidence on it to support it.
9 Otherwise, it's frustrating from your point of view. It's
10 frustrating from my point of view because I don't have what I
11 need to rule in your favor. This way you'll have some guideline.

12 If there's something else that comes up that
13 needs to be put in and it doesn't fit neatly within the existing
14 outline, we can certainly adopt it. But what I absolutely need
15 at the end of this proceeding are 11 briefs that follow the same
16 outline so I can get my decision done and complete my mission.
17 So you'll be given until September 26 to come up with your
18 recommendation, either one joint recommendation, several joint
19 recommendations, or 11 separate recommendations for an outline of
20 the brief, whatever. And I'll work with them from there.

21 Anybody have any comments or suggestions on that?

22 MS. BENEDEK: No. The only thing I would say in
23 light of that statement, is a party given the opportunity to
24 amend their outline when that testimony comes in and certainly
25 before surrebuttal testimony? It would be really appreciated if

1 there's some flexibility from the bench with regard to that.

2 JUDGE COLWELL: There's absolute flexibility. I
3 don't want you to see the outline as a limitation for what you
4 can give me. I don't want that. I want it to be a guideline.
5 You can always add to it. You can do whatever you need to it,
6 but it's a start. That's all it's meant to be. It won't be
7 locked in until the hearings, and then it will be locked in. So
8 make your recommendations and your amendments by then.

9 MS. BENEDEK: Thank you.

10 JUDGE COLWELL: Okay.

11 Does anybody have any other issue that needs to
12 be raised at this time?

13 MR. STERN: A matter of housekeeping, Your Honor.
14 This is Brad Stern. Can we make sure we have all the proper
15 people for electronic service and e-mails?

16 JUDGE COLWELL: Okay.

17 MR. STERN: In my particular case, my partner is
18 getting the e-mails and that should be me. We have some new
19 folks today that probably should be on.

20 JUDGE COLWELL: All right. That's an excellent
21 idea. Why don't you take a piece of paper right now and write
22 Electronic Service List on the top of it and pass it around?
23 Nobody leaves until you give me your correct e-mail address.
24 Everybody can get a copy of that.

25 MR. STERN: Thank you, Your Honor.

1 JUDGE COLWELL: Sure. That's the one we use from
2 here on in. So make sure you put down the name and the e-mail
3 address of the person you want to get service.

4 Anybody else have something you want to bring up?
5 Here's your chance. Nothing else?

6 (No response.)

7 JUDGE COLWELL: Okay. Then I will wait to hear
8 from Mr. Kennard and Mr. Cheskis. That's the next thing that
9 happens. You're going to get my scheduling order before that,
10 and the scheduling order will not address what they are doing
11 because that will come out separately. My scheduling order will
12 be out in a matter of a few days or whatever. It will encompass
13 everything we talked about today.

14 The next thing I want to hear from you then is
15 your direct testimony because I know there will be no discovery
16 disputes, but if there are --

17 All right. Thank you all for your participation
18 today, and we are off the record.

19 (Whereupon, at 10:57 a.m., the hearing
20 was adjourned.)

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I hereby certify, as the stenographic reporter,
that the foregoing proceedings were taken stenographically by me
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