

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

ORIGINAL

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 AT&T Communications of Pa., Inc. v. :
 Verizon North, Inc./Verizon Pa., Inc. :
 :
 Verizon's North's intrastate carrier : Docket No.
 access rates are unjust and unreasonable, :
 and seek an immediate reduction to no : C-20027195
 more than the rates charged by Verizon :
 Pennsylvania. :
 :
 Further telephonic prehearing :
 conference on remand. :
 ----- x

Pages 45 through 90 Hearing Room No. 2
 13th Floor, State Office Building
 Broad and Spring Garden Streets
 Philadelphia, Pennsylvania

DOCUMENT FOLDER

Monday, April 4, 2005

Met, pursuant to notice, at 10:05 a.m.

BEFORE:

CYNTHIA WILLIAMS FORDHAM, Administrative Law Judge

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C O N T E N T S

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FOR IDENTIFICATION

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(None.)

P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE CYNTHIA WILLIAMS

1
2
3 FORDHAM: I am Administrative Law Judge Cynthia Williams
4 Fordham.

5 This is the time and place for a further
6 prehearing conference in the matter of AT&T Communications
7 of Pennsylvania, Inc., versus Verizon North, Inc./Verizon
8 Pennsylvania, Inc. at Docket Number C-20027195.

9 Before we go forward, for the record would
10 each person enter their appearance, starting with
11 Ms. Paiva, who is here in the Philadelphia office.

12 MS. PAIVA: Suzan Paiva here on behalf of
13 Verizon-Pennsylvania Inc. and Verizon North, Inc.

14 JUDGE FORDHAM: Thank you.

15 In Harrisburg, could we start with
16 Mr. Kohler?

17 MR. KOHLER: Yes, Your Honor. It is Alan
18 Kohler from Wolf Block on behalf of AT&T Communications of
19 Pennsylvania LLC.

20 JUDGE FORDHAM: Thank you.

21 Just go down the line, please.

22 MR. McCLELLAND: Phil McClelland from the
23 Office of Consumer Advocate.

24 JUDGE FORDHAM: Thank you.

25 MR. POVILAITIS: John Povilaitis from the

1 Ryan Russell Ogden & Seltzer representing Qwest
2 Communications Corporation.

3 JUDGE FORDHAM: Thank you.

4 MR. GRAY: Good morning, Your Honor.
5 Steve Gray from the Office of Small Business Advocate.

6 JUDGE FORDHAM: Thank you.

7 MS. MATZ: Regina Matz from Thomas Thomas
8 Armstrong & Niesen on behalf of the Rural Telephone
9 Company Coalition.

10 JUDGE FORDHAM: Thank you.

11 MR. GRAY: Your Honor, we could not hear
12 Ms. Paiva very well.

13 JUDGE FORDHAM: Okay.

14 MS. PAIVA: I can move this table a little
15 closer.

16 Can you hear me better now?

17 MR. GRAY: Barely.

18 The OTS arrived, Your Honor.

19 JUDGE FORDHAM: Okay. Who is there from
20 OTS?

21 MR. ECKENROD: Robert Eckenrod on behalf
22 of OTS. Good morning, Your Honor.

23 JUDGE FORDHAM: Thank you.

24 And Ms. Painter?

25 MS. PAINTER: Michelle Painter on behalf

1 of MCI Metro Access Transmission Services LLC.

2 JUDGE FORDHAM: Thank you.

3 And Ms. Smith?

4 MS. SMITH: Kristin Smith on behalf of
5 Qwest Communications Corporation.

6 JUDGE FORDHAM: I would like to thank the
7 parties for participating and I would like to thank
8 Ms. Painter for setting up the bridge so more than the
9 people from Harrisburg and Philadelphia could participate.

10 At this time I will give a brief history
11 of the proceeding.

12 This is a proceeding on remand. On July
13 28, 2004, the Commission entered an opinion and order that
14 granted the joint petition for resolution of litigation.
15 The Commission reversed the ALJ's recommendation to close
16 the case. By order entered January 18, 2005, the
17 Commission granted the joint petition which had been filed
18 on November 22nd, 2004, by AT&T Communications of
19 Pennsylvania, MCI WorldCom Communications and Qwest
20 Communications Corporation. That was granted in part and
21 denied in part.

22 In its order the Commission noted that it
23 was concerned about the following:

24 Any impact that the proposed ICF proposal
25 if it was ultimately approved by the FCC might have

1 jurisdictionally on access charge regulations in
2 Pennsylvania, the ability to further reduce or restructure
3 intrastate access charges, whether any FCC may lead to a
4 double recovery by the LECs in Pennsylvania in light of
5 the remanded proceeding, and if the FCC permitted
6 interstate access charges to be offset by increases to the
7 federal SLC.

8 Consequently, the Commission directed the
9 presiding ALJ assigned to the case to expand the scope of
10 the proceeding with regard to any FCC activity concerning
11 the proposal submitted by the Intercarrier Compensation
12 Forum on October 5, 2004, and to address the impact that
13 any FCC action may have had on the Commission's
14 jurisdictional responsibilities as well as its
15 relationship to the final recommended decision on access
16 rates arising from this remanded proceeding to the extent
17 that the FCC issues a decision prior to the issuance of
18 the recommended decision on remand in this proceeding.

19 Prior to the first prehearing conference
20 in this matter prehearing memoranda were filed by Verizon,
21 AT&T, MCI, Qwest, OTS, OCA, OSBA and the Rural Telephone
22 Company Coalition. That prehearing conference was held on
23 Thursday, February 17, 2005, and each party who had filed
24 prehearing memoranda participated in the prehearing. We
25 discussed the issues, witnesses and the FCC proposal.

1 I would note that Sprint did not
2 participate in that prehearing conference and I indicated
3 in an earlier prehearing order that if they did not
4 participate in this prehearing that they would be
5 designated as an inactive party. Since Sprint has not
6 entered an appearance today they will be deemed inactive.

7 Prior to today's prehearing conference
8 supplemental prehearing memos were filed by Qwest, Verizon
9 and OCA. And AT&T filed a statement in support of Qwest's
10 supplemental prehearing memoranda.

11 Did anyone else file something? I had a
12 problem with my e-mail so I didn't get Qwest's prehearing
13 memoranda on time. But I thank Mr. Povilaitis for faxing
14 a copy over to me this morning.

15 MR. POVILAITIS: It was overnighted on
16 Thursday as well, Your Honor.

17 JUDGE FORDHAM: Yes. That is why I
18 assumed I would receive it. But I don't know what
19 happened. I have not gotten it yet. Thank you.

20 MR. GRAY: Your Honor, this is Steve Gray
21 from the OSBA.

22 Did you get Ms. Paiva's e-mail that she
23 sent Saturday morning at 8:51 a.m.?

24 JUDGE FORDHAM: Yes, I did.

25 MR. GRAY: Okay.

1 JUDGE FORDHAM: Did anyone else send
2 anything that I have not mentioned?

3 (No audible response.)

4 JUDGE FORDHAM: At this time I would ask
5 first, Ms. Paiva, and OCA and then I will let
6 Mr. Povilaitis and Mr. Kohler speak.

7 Ms. Paiva.

8 MS. PAIVA: Thank you, Your Honor.

9 I think that where we have arrived today
10 has been set forth in the two prehearing memoranda, the
11 two groups of prehearing memoranda --

12 MR. POVILAITIS: Your Honor --

13 JUDGE FORDHAM: Can you hear her?

14 MR. POVILAITIS: We can but faintly. If
15 there is any way to boost the volume we would appreciate
16 it. We have a relatively large group here and it's hard
17 for the sound to travel.

18 MS. PAIVA: Can you hear me better now?

19 MR. POVILAITIS: Much better.

20 MS. PAIVA: I will start over again.

21 I think that the point that we have arrived
22 at today is set forth in the two groups of prehearing
23 memoranda. One group is Verizon, OCA and OSBA -- and OTS
24 I believe would join in our position -- and we have set
25 forth the schedule that we believe should be adopted in

1 the case if you decide to adopt a schedule. But our
2 primary position is still, as we said at the prehearing
3 conference a few weeks ago, that we think we should
4 monitor the FCC proceeding for a few more weeks and
5 reconvene another prehearing conference in mid-summer on a
6 date that would be acceptable to you.

7 As set forth in our supplemental
8 prehearing memo and also my e-mail of Saturday morning,
9 the FCC has now entered its order in the intercarrier
10 compensation case and it has set a schedule for comment.
11 I put the schedule in that e-mail because I didn't have it
12 when I filed the prehearing memorandum, but it was direct
13 comments due on May 23rd, I believe, and reply comments
14 due I think it was June 20th or June 22nd. So we now know
15 when the comments will be filed in the federal case.

16 Primarily I think you should just schedule
17 another prehearing conference sometime around the time
18 that the reply comments in the federal case would have
19 been filed -- so that would be late June or maybe early
20 July -- and then at that point set a schedule.

21 If you decide that you would rather set a
22 schedule today then we have set forth a schedule in our
23 supplemental prehearing memorandum that was agreed to by
24 Verizon, OCA, OSBA and OTS. We did circulate it to the
25 other parties but we couldn't reach agreement with the

1 IXCs.

2 Our schedule would still allow you to get
3 that comment filing period in the FCC to be done and
4 addressed in testimony. The direct comments would be
5 filed with the FCC May 23rd and we would have our direct
6 testimony filed after that so that we could address the
7 direct comments in our direct testimony because we would
8 have our direct testimony filed June 20. And then we
9 would have our reply testimony here filed July 29. So we
10 would be able to address anything that came up in the
11 reply comments from the FCC.

12 Now, that would still get us to the point
13 that we wouldn't have an FCC order at the time the
14 schedule was set, which we think would be preferable, but
15 at least we would be able to address the comments. And
16 then we would have our hearings in September, main and
17 reply briefs after that. So perhaps the FCC order will
18 come out before we have our briefing but, of course, they
19 haven't set a date for themselves for the order so we
20 can't be certain about that.

21 But we believe our schedule is
22 sufficiently expedited to meet what the Commission
23 directed us to do in this proceeding. It gets the case
24 completed and up to the Commission this year, before the
25 end of the year, because if we have hearings in September

1 we can certainly get the briefing done in the fall so we
2 complete the case by the end of the year. I think
3 that more than meets what the Commission asked us to do
4 and also meets the Commission's request that we consider
5 what is going on in the FCC proceeding.

6 I think the worst thing that could happen
7 is that we adopt this totally expedited schedule that
8 Qwest has proposed so we get all our positions on paper
9 and then the FCC proceeding happens, the comments are
10 filed, perhaps the FCC comes out with an order and then
11 either you are left with writing a RD without our
12 positions on that or you may have already done your RD and
13 it all goes up to the Commission without a record
14 developed on that.

15 I really don't see any reason to go for a
16 schedule that gets us to hearings in six weeks from today
17 in mid-May without trying to account for that schedule now
18 that we know what it is.

19 That is basically Verizon's position.

20 JUDGE FORDHAM: One of the things -- and I
21 don't want to override Mr. Povilaitis -- but I note in the
22 prehearing memo that was filed the question was what type
23 of direct testimony are we talking about. What type of
24 testimony do we need.

25 MS. PAIVA: Well, picking up on how we had

1 discussed it at the last prehearing conference, the way I
2 described it in our prehearing memo was that we would
3 designate the portions of the record from phase one that
4 we wanted to use so that the parties wouldn't have to
5 repeat. I mean, Qwest might say we just want to use all
6 our testimony from phase one and maybe parts of the
7 transcript or whatever, so that we would direct you what
8 to look at. Because at least from Verizon's side there
9 are some things from phase one that are kind of irrelevant
10 now. Some of the stuff that we put in in support of the
11 rebalancing that was already adopted really you don't need
12 to look at again. But maybe some of the general policy
13 arguments you would still want to look at. So we would
14 designate the portions that are still relevant and then
15 put in whatever new testimony we think is needed to
16 account for things that have developed since the phase one
17 record was put together.

18 I mean, for the parties who think nothing
19 is needed they may put no testimony in. But for us, we
20 think we need to put in a little bit of supplemental
21 testimony. And then we would have the reply chance so if
22 we put in something new then on reply Qwest could put in
23 some new testimony to reply to us in addition to their
24 designations of what they used from phase one.

25 So we tried to accommodate both parties

1 positions in that.

2 JUDGE FORDHAM: Okay.

3 Mr. McClelland, do you have anything at
4 this time?

5 MR. McCLELLAND: Yes, Your Honor.

6 Can you hear me all right?

7 JUDGE FORDHAM: Yes, we can.

8 MR. McCLELLAND: Very good.

9 As you know, and as we explained in both
10 prehearing memos, we do support the schedule that Verizon
11 had proposed. I would also add and it has been discussed
12 somewhat we read the last Commission order as definitely
13 expanding the scope of this proceeding to take into
14 account what the FCC is doing on intercarrier
15 compensation. We also think that what the Commission was
16 saying was they wanted to be able to come to a decision,
17 have a record and a RD before them by the time that the
18 FCC was going to come out with an order on that case. And
19 we think our schedule at this point is timed fairly well
20 with that.

21 I would just note that I believe it was
22 last week that Commissioner Copp at the FCC was saying
23 that he thought the FCC should decide the ICC issue by the
24 end of this calendar year which, again, would tend to
25 coincide with that schedule. It is a little difficult to

1 predict but we think the Commission wanted us at this
2 point to take some time to develop these issues so that
3 these issues would be litigated, they would have
4 testimony, hearings and then the two decisions would
5 coincide by the end of the year.

6 Certainly we think the Qwest schedule
7 rushes us to a judgement at this point long in advantage
8 of anything that the FCC is going to do and, as Ms. Paiva
9 suggests, would probably sit there while our PUC waits to
10 see what the FCC is going to do. And we think, again,
11 that is very likely.

12 JUDGE FORDHAM: Thank you.

13 Mr. Povilaitis?

14 MR. POVILAITIS: Yes, Your Honor.

15 I guess Qwest couldn't disagree more with
16 Verizon and the Public Advocate in their proposed schedule
17 here. At the outset, Your Honor, we think that the
18 schedule proposed by Verizon is pretty much a direct
19 contradiction of the direction that the Commission has
20 given the ALJ and the parties in this case.

21 We have to keep in mind that the
22 Commission elected not to establish a new proceeding. It
23 wanted the parties to go back and for the ALJ to present
24 recommendations on issues that were the subject of
25 discovery, testimony, briefing but did not receive an ALJ

1 recommendation. That is the heart of what this proceeding
2 is all about.

3 In fact, the schedule which has been
4 criticized by Verizon and the Advocate that Qwest and the
5 IXC's have put forward is actually a generous proceeding in
6 terms of timeframe because it is not entirely clear
7 whether any significant new testimony has to be presented
8 in this case.

9 We are essentially ready to get
10 recommendations from the ALJ on specific issues that the
11 Commission in its July order earmarked that the ALJ should
12 address: Whether or not the carrier charge ought to be
13 continued; whether or not the AT&T two phase reduction of
14 access charge ought to be adopted; whether or not the
15 mirroring of interstate access charges ought to be adopted
16 by the Commission. All those issues are essentially teed
17 up and ready to roll. And in fact the exact the IXC
18 proposed schedule is generous and lenient relative to the
19 parties that would like more time because it does provide
20 for a filing of testimony and a filing of further briefs,
21 even though we think essentially the record has all the
22 essentials in it at this point.

23 As far as the FCC proceeding is concerned,
24 we think that it is extremely significant -- and no party
25 can seriously dispute this, we think -- that the

1 Commission's orders and their directions to the parties
2 were clear that if in the course of finalizing this
3 remanded case there were some FCC action it would like to
4 hear from the parties and the ALJ on that. There is no
5 indication that the Commission wanted this proceeding
6 delayed so that it could see what was going to emerge from
7 the FCC proceeding. There is just no indication of that.
8 It is quite clear.

9 In fact, the hope that we are going to
10 receive some significant FCC direction here I think is a
11 slender reed. If you look at that FCC order it comments
12 on seven major proposals. It advises the parties
13 interested in filing comments that one of the things they
14 can do is pick and choose in a menu fashion from the seven
15 major proposals that have been filed and generate even
16 more proposals. And to suggest that somehow the remand
17 issues are going to be illuminated by what emerges from
18 that case I think doesn't hold water. In fact, the whole
19 timing is, I think, very much up in the air as to when
20 that is going to conclude.

21 If anything, what the FCC order should
22 suggest to the ALJ and the parties in this case is that if
23 anything it should certainly conclude this remand
24 proceeding as expeditiously as possible because the FCC
25 certainly is going to be further out of sync with where

1 Pennsylvania is if Pennsylvania does not reach a
2 conclusion on these issues in this case that have, as I
3 have said, already have been the subject of discovery,
4 testimony, briefing and argument.

5 The two competing schedules are certainly
6 divergent. We have a difference of about two months on
7 when testimony would be filed. As you expand that out to
8 when hearings would be held there is a discrepancy of four
9 months between the schedules.

10 Certainly I think that the schedule
11 proposed by Verizon and the Advocates is indistinguishable
12 from the kind of schedule you would set in a case that we
13 are starting from scratch and it is completely
14 contradictory to the concent that this is a remand case.
15 We are over 30 weeks out from when the decision was
16 remanded. And the last six weeks, which was the amount of
17 time that the ALJ gave the parties to either reach a
18 settlement or get some further insights into what was
19 going to happen in the FCC case, essentially nothing has
20 happened. We are no more illuminated. We still have an
21 FCC proposal out there for comment. Comments still have
22 to be filed. There has been no settlement, as we
23 suspected. We are essentially where we were in
24 mid-February. We think we just can't continue on this
25 basis and we need to set the schedule proposed by the IXCs

1 and conclude this remand before Pennsylvania is further
2 out of sync with what the FCC may do.

3 JUDGE FORDHAM: Mr. Kohler?

4 MR. KOHLER: Yes, Judge Fordham. I just
5 want to briefly go over three points, one of which
6 Mr. Povilaitis did touch on.

7 The first one is there is nothing, as I
8 read the Commission's order there is nothing in the
9 Commission's order that suggest they wanted to wait for
10 the FCC. In contrast, they wanted to accommodate what the
11 FCC did during the pendency of the proceeding, if
12 anything, and certainly a recognition that nothing may
13 happen.

14 The second point is I have been following
15 FCC proceedings for a number of years now and with all
16 deference to Commissioner Copp in recent times I can't
17 think of a proceeding where they were anywhere near on
18 time with their projected schedule and in fact they
19 frequently are delayed beyond the projection by years from
20 what they originally thought, particularly in very
21 controversial issues like intercarrier compensation. So
22 to rely in any sense on the notion that the FCC proceeding
23 will be completed by the end of the calendar year I think
24 is somewhat fantasy. As I follow the FCC proceedings, it
25 unlikely to the point of almost being impossible that they

1 would complete the proceeding on time.

2 The final issue I just wanted to touch on
3 is we should not lose sight of the fact that one of the
4 contentious issues in the FCC's decision is whether
5 intrastate access can be addressed at all in that
6 proceeding. Now, I think that as the IXCs sit around the
7 table and the various proposals to the FCC, we would like
8 to see a consolidated approach. But as I read the
9 proposed rulemaking order issued by the FCC, and I focus
10 you on paragraph 35 and then in the discussions paragraphs
11 78 and 82, and I think this is somewhat troubling to the
12 IXCs, but certainly the tone of those paragraphs is, you
13 know, we received a lot of proposals on consolidated
14 reform, both intrastate and interstate, but we are not
15 convinced that we have any authority over intrastate, and
16 in fact the FCC's current position seems to be that we
17 don't think we do. They asked the parties in several
18 places to please point out where people think they have
19 the legal authority to do this.

20 So while we certainly hope to convince the
21 FCC that they do have such legal authority, and some of
22 other parties may take the opposite point of view, it
23 is far from clear and it is far from clear that the
24 pending FCC proceeding has any direct impact on intrastate
25 access, which is the subject of this proceeding.

1 So, again, consistent with the
2 Commission's discussion it makes no sense to sit and wait,
3 if you will. There is no reason we can't get the record
4 ripe in this proceeding for a decision and move forward.

5 Thank you.

6 JUDGE FORDHAM: Thank you.

7 Would anyone else want to weigh in on this
8 issue?

9 MS. PAINTER: Your Honor, this is Michelle
10 Painter on behalf of MCI.

11 We would agree with the position of Qwest
12 and AT&T.

13 JUDGE FORDHAM: Thank you.

14 MR. GRAY: Your Honor, Steve Gray for the
15 OSBA.

16 Your Honor, if you have the Verizon
17 supplemental prehearing memo in front of you --

18 JUDGE FORDHAM: Yes.

19 MR. GRAY: Verizon quoted the Commission
20 order and on the bottom of that first page they say in
21 their second sentence we are especially concerned about
22 any impact that the proposed IXC proposal may have
23 jurisdictionally on access charge regulation in
24 Pennsylvania. So I'm afraid I'm at a loss to understand
25 how Qwest can argue that the Commission was not

1 tremendously concerned about what was happening at the
2 FCC. They put it in their order.

3 The other comment I have is I would
4 understand the Qwest and AT&T and MCI position more if we
5 were not a little over eight weeks from significant access
6 charge reform in the Verizon service territory when their
7 most recent tariff went into effect. So it seems we are
8 in a great deal of hurry when there has already been
9 significant access charge reform.

10 And finally, it seems to me that the worst
11 conclusion in this case would be that we have a
12 proceeding, we have no input of any type from the FCC
13 process like the Commission has requested, you send up a
14 RD and the Commission would come back and say, well, we
15 told you we really wanted to find out what is happening
16 down in DC and we have no further developed record. So in
17 some ways I think that ultimately argues for what Verizon
18 and the OCA put in their supplemental prehearing memos.
19 It might even be too late at this point to even propose a
20 schedule.

21 Thank you.

22 JUDGE FORDHAM: You're welcome.

23 Does anyone from OTS want to speak?

24 MR. ECKENROD: Your Honor, I just would
25 echo the arguments made by Ms. Paiva and Mr. McClelland

1 and also Mr. Gray. I have nothing further to add to that.

2 JUDGE FORDHAM: Thank you.

3 At this point I do think that we need to
4 have a schedule. And I guess the question is how much
5 time should we spend waiting for the FCC. I do believe
6 that the language in the opinion, the order, did indicate
7 that the Commission wanted to make sure that any FCC
8 jurisdictional issues were addressed or at least mentioned
9 in the proceeding and also in the RD. We don't want to
10 duplicate what might happen at the FCC but by the same
11 token, as Mr. Kohler and others have indicated, sometimes
12 the FCC's proceedings last a long time. As Mr. Povilaitis
13 has indicated, this is a remand case.

14 So I do want to, one, set a schedule. The
15 question is which schedule to set.

16 When you look at the two schedules, I do
17 believe that the Qwest schedule is too quick. However,
18 the other schedule might not be quick enough. We might
19 have to try to reconcile the two and come up with
20 something with the hearings before September but not as
21 soon as May.

22 When the parties engaged in settlement I
23 assumed that you didn't have any middle ground you came
24 to. Is that correct?

25 MS. PAIVA: You mean about the schedule?

1 JUDGE FORDHAM: Yes.

2 MS. PAIVA: No, we did not. But I have to
3 say I was on vacation last week so we didn't really have a
4 chance to talk after we sent the prehearing memos to you.

5 JUDGE FORDHAM: Okay.

6 Mr. Povilaitis, are you and the IXC's
7 willing to go a little bit past the time that you have
8 already set up? Instead of having them in May maybe we
9 are talking about having it maybe the end of June, the
10 beginning of July?

11 (Pause.)

12 JUDGE FORDHAM: Mr. Povilaitis?

13 MR. POVILAITIS: Excuse me, Your Honor.

14 JUDGE FORDHAM: Yes. I was saying --

15 MR. POVILAITIS: Your Honor, I think as a
16 general matter we would be willing to move the timeframes
17 about a month so that we had hearings the end of June.

18 MS. PAIVA: Your Honor, may I say
19 something?

20 JUDGE FORDHAM: Yes.

21 MS. PAIVA: I still think it would be
22 helpful if we tried to get the testimony dates to go after
23 the comment dates at the FCC. The direct comments at the
24 FCC are due May 23rd. So try to get the direct testimony
25 at least a week or so after that so we can address it.

1 That may push the hearings into July.

2 MR. POVILAITIS: Your Honor, I don't think
3 there is any significance to that initial round. We are
4 going to know after the comments are filed that there are
5 not seven proposals that the FCC will be considering but
6 maybe there are 14 or 20.

7 MR. KOHLER: I agree. There is absolutely
8 no significance, legal or otherwise, to this proceeding as
9 to what parties put in their comments to the FCC, Your
10 Honor.

11 MS. PAIVA: Your Honor, I disagree. For
12 example, Mr. Kohler in his statement about the schedule
13 said that the IXCs were going to argue that the FCC should
14 be addressing intrastate access charges and I assume they
15 are also going to say what the FCC should be doing. I
16 think we want to know if they are saying the same things
17 to the PUC that they are saying to the FCC and also we
18 want to know, you know, if we are going to come out with
19 some outcome here before the FCC rules at least that we
20 are consistent with the proposals that the FCC is
21 considering. I think it is relevant and we intent to
22 address it in our testimony. And if we don't get it into
23 the record because our testimony is due before those
24 comments are filed we are going to have to then somehow
25 try to get it into the record later and it is going to be

1 more confusing. It just makes are sense.

2 MR. KOHLER: This is Alan Kohler.

3 Everybody knows where they lie on
4 jurisdiction now. We don't have to wait for May 23rd.

5 As Mr. Povilaitis said, there are going to
6 be lots of proposals put forth. They are going to be all
7 over the map. They are going to be jurisdictionally
8 diverse. All they are going to do is create a huge
9 playing field for the FCC to try to figure out what's
10 going on. They are certainly not going to give any
11 indication as to where the FCC is because the FCC does not
12 file comments before themselves.

13 If Ms. Paiva wants to get Verizon's
14 comments to the FCC into the record we don't object to
15 that. She can get them into the record whenever they are
16 filed.

17 MS. PAIVA: Well, it's not Verizon's
18 comments I'm interested in. It's your comments.

19 And I think there is a difference. I
20 mean, of course, we generally know what the groups are
21 thinking but I think there is a big difference in having
22 it filed on the record before the FCC and then getting
23 that on the record before this Commission.

24 MR. POVILAITIS: We have already done that
25 in the record of this case, Your Honor. In the hearing

1 phase there was some discussion about what a party said
2 before other jurisdictions and other states. We have
3 already been over that.

4 MS. PAIVA: But comments that have not
5 been filed yet before the FCC are not in the record here
6 already.

7 MR. POVILAITIS: They won't control the
8 outcome of this proceeding.

9 MS. PAIVA: No, but the Commission should
10 consider them.

11 MS. SMITH: Your Honor, this is
12 Kristin Smith with Qwest Communications.

13 I just would like to point out that the
14 comment cycle at the FCC will be completed on June 22. If
15 we were to have the hearings the last week of June that
16 would be -- that would provide an opportunity to Verizon
17 to point out any contradictions that they believe might
18 exist during the hearing and address it on briefing in
19 July.

20 MR. McCLELLAND: Your Honor, this is Phil
21 McClelland.

22 Briefly I just emphasize the Commission
23 was very concerned about the potential for double
24 recovery, which we think is quite obvious in some of the
25 proposals at the FCC. And I read into that the Commission

1 did not want to be part of double recovery of access
2 reductions.

3 On the scheduling issue, however, I would
4 note that I think it is possible as you were suggesting to
5 have direct testimony after the comments are filed.
6 However, we should still have two rounds after that. We
7 may be able to accelerate the schedule that we have but
8 that still doesn't not come close to the Qwest schedule.

9 JUDGE FORDHAM: Mr. McClelland, when you
10 said accelerate the schedule, what dates were you talking
11 about in terms of having the hearing?

12 MR. McCLELLAND: Your Honor, as you know,
13 we are negotiating and have not had the opportunity to go
14 over this with anyone else. We proposed hearings in late
15 September.

16 JUDGE FORDHAM: Right.

17 MR. McCLELLAND: We would not wish to do
18 this any earlier than, well, let's say late August at
19 least. And I would say certainly you get into a lot of
20 other conflicts as you try to do that. But, again, I
21 think it is possible to work around things and allow us to
22 provide direct testimony after the ICC comments.

23 MR. GRAY: Your Honor, this is Steve Gray
24 from the OSBA.

25 I agree wholeheartedly. Like the

1 Commission ordered us, we are supposed to consider the
2 FCC. I realize that AT&T and Qwest think that that is
3 obvious and irrelevant, but it is not obvious and
4 irrelevant to the rest of us. If we had the two rounds of
5 comments in front of the FCC at least we would have
6 something to work from. At least we would have something
7 to base direct testimony upon. And, yes, as Mr. Kohler
8 pointed out, the FCC certainly won't be concluding the
9 process this summer but at least we would have the scope
10 of what those comments were and something to work from.
11 If we are going to simply ignore them we are not going to
12 have much of a record to offer to the Commission.

13 So I would agree. If we could -- I was
14 going to say early September for hearings as opposed to
15 late September. That would be my answer. Because I
16 understand people have witness conflicts and
17 unavailability throughout August.

18 MR. POVILAITIS: Your Honor, this is
19 John Povilaitis for Qwest.

20 I don't think the IXCs need to repeat
21 themselves here, but we simply don't see that as being
22 consistent with the direction the Commission has given the
23 ALJ in this case. If the Commission wanted a new
24 proceeding, if it wanted to have a proceeding that
25 incorporated the results of the FCC process, it clearly

1 could have told the ALJ and parties to do that. It did
2 not. It indicated that if there is an FCC outcome while
3 this remand is being completed by all means take note of
4 it. It did not indicate that it wants to see what the
5 initial comments to the FCC were, what the reply comments
6 were.

7 MS. PAIVA: At the point that the
8 Commission made those statements it didn't know that the
9 FCC had a schedule for comments and it didn't have the
10 benefit of seeing that FCC order. I think it is implicit
11 in what they asked us to do that they would want to
12 consider those comments now that they know they are going
13 to be filed in the timeframe that we are setting our
14 schedule.

15 MR. POVILAITIS: Your Honor, you can't do
16 what the other parties are advocating and be consistent
17 with this being a remand, with the parties treating it
18 with expedition and with honoring the Commission's
19 direction that if there is an FCC decision you take note
20 of it. It just doesn't correlate.

21 JUDGE FORDHAM: I believe that we need to
22 move the hearings forward from what Verizon and the public
23 parties are proposing at least to the end of June or the
24 beginning of July.

25 Now, in terms of the witnesses, I know

1 that we are now talking about summertime and vacations. I
2 assume that we are talking about two days or less. Is
3 that the time period that you are thinking?

4 MS. PAIVA: I think that is correct.

5 MR. McCLELLAND: Your Honor, were you
6 saying hearings at the end of July?

7 JUDGE FORDHAM: The end of June or
8 sometime in July.

9 MS. PAIVA: May I make a suggestion, then?

10 I think we could account for the FCC
11 comments and schedule hearings if we look at the week of
12 July 11 or the week of July 18 for hearings. Both those
13 weeks look clear for Verizon. Then we could get our
14 testimony done in two rounds in June to try to get the
15 reply after the reply comments with the FCC. I think that
16 could be done. It would still give us a couple of weeks
17 between the reply testimony and the hearing dates.

18 So you want to look at the weeks of July
19 11th and July 18th?

20 JUDGE FORDHAM: Does everyone have their
21 calendars? Do the weeks of July 11 or 18 look bad for
22 anyone so far?

23 MR. POVILAITIS: No, Your Honor.

24 MS. SMITH: Your Honor, this is Kristin
25 Smith with Qwest.

1 The week of July 11th would be bad for our
2 witness.

3 JUDGE FORDHAM: Okay. How about the week
4 of July 18th?

5 MR. KOHLER: Fine by me, Your Honor.

6 JUDGE FORDHAM: Excuse me? Would you
7 repeat what you just said?

8 MR. KOHLER: I said it's fine -- this is
9 Alan Kohler, and it is fine with AT&T, Your Honor.

10 JUDGE FORDHAM: Thank you.

11 Why don't we tentatively schedule it for
12 the week of July 18 and I will let the parties check with
13 their witnesses to see whether there is any problem with
14 that. And then we can work back from that in terms of
15 filing the direct and rebuttal testimony.

16 Now, in Verizon's proposal there was
17 direct, rebuttal and surrebuttal and in Qwest's proposal
18 it was supplemental direct and rebuttal. If we wait until
19 after the comments are filed do we need to have the
20 surrebuttal testimony?

21 MR. POVILAITIS: I wouldn't think so, Your
22 Honor. I mean, with delaying this case until after we see
23 the various positions argued to the FCC, that should be a
24 matter of record. The parties can comment on that and
25 comment and each others testimony. I think two phases

1 would be sufficient.

2 JUDGE FORDHAM: Ms. Paiva?

3 MS. PAIVA: I think we would have time to
4 do the surrebuttal testimony based on that. We could do
5 the direct testimony on June 8, the reply on June 29 and I
6 assume surrebuttal, if any, is going to be fairly short.
7 We could do it, like, maybe July 8. That would still give
8 a week between the surrebuttal and the hearing.

9 MR. McCLELLAND: Suzan, could you just say
10 that again?

11 MS. PAIVA: I said June 8 and then June 29
12 and then July 8.

13 I mean, maybe nobody would want to have
14 surrebuttal but at least we would have a date on the
15 calendar and still have a week to review it before the
16 hearings. I think it is better to get everything out
17 before the hearings instead of spending hearing time
18 trying to put new evidence on the record.

19 MR. POVILAITIS: You are thinking of ten
20 days between direct and rebuttal?

21 MS. PAIVA: Three weeks. June 8 and the
22 29th.

23 It doesn't give much time between the
24 reply and the surrebuttal and it is the 4th of July
25 holiday. It would be okay with me to even move the

1 surrebuttal maybe to the 11th. That still gives you the
2 rest of that week to look at it.

3 MR. POVILAITIS: I think June 8 for direct
4 and June 29 for rebuttal would work.

5 MR. KOHLER: What about surrebuttal?

6 MR. POVILAITIS: July 8, if needed.

7 MS. PAIVA: Let's say July 8 or July 11 in
8 case people are going to be gone over the holiday weekend
9 and think they need more time. I mean, either one would
10 be okay with me.

11 MR. KOHLER: Maybe July 11 is a good idea
12 for that week. That proposal is fine with AT&T, Your
13 Honor, the 8th or the 11th. Probably the 11th is a better
14 idea.

15 JUDGE FORDHAM: Okay. So we are looking
16 at July 18, the week of July 18, then. And we are talking
17 about two days. What are the preferable days? Do you
18 want to start it on a Tuesday or --

19 MS. PAIVA: For Verizon I would suggest
20 doing the 19th and 20th, but we are free the whole week.
21 So if there is a problem we could do the other days.

22 JUDGE FORDHAM: Now, the other proceeding
23 was in Harrisburg. I assume that we are going to do this
24 in Harrisburg again?

25 MS. PAIVA: Well, Verizon would be

1 certainly willing to do it in Philadelphia.

2 MR. POVILAITIS: In July, not that your
3 air conditioning isn't fantastic in Philadelphia --

4 MS. PAIVA: And they renovated the
5 building. It's nicer now.

6 MR. POVILAITIS: Of course, the Harrisburg
7 parties would vote for Harrisburg for sure. And OTS is
8 nodding its head vigorously.

9 MR. ECKENROD: Absolutely.

10 MS. PAINTER: MCI Would much prefer
11 Harrisburg as well.

12 MS. PAIVA: Your Honor, we will do
13 whatever you prefer.

14 JUDGE FORDHAM: Okay. Well, I guess
15 Ms. Paiva and I will travel.

16 MR. POVILAITIS: Thank you, Your Honor.

17 JUDGE FORDHAM: So we are basically
18 looking at the 19th and the 20th. But what I would ask
19 the parties to do is let me know within the next couple of
20 days if they have any problems once you get to your
21 witnesses and everything, any problems with any days that
22 week. But concentrate on the 19th and the 20th.

23 Now, in terms of discovery, as
24 Mr. Povilaitis has pointed out, this is a remand. Is
25 there any discovery that needs to be done?

1 MS. PAIVA: Well, Qwest has already served
2 us with some discovery last week, which I confess I didn't
3 really have a chance to look at since I wasn't here. And
4 we intend to serve a little bit of discovery. But I think
5 we can get it done before the testimony.

6 JUDGE FORDHAM: Okay.

7 Are there any other issues that we need to
8 discuss at this point?

9 MR. POVILAITIS: Your Honor, this is
10 thinks John Povilaitis for Qwest.

11 It might be helpful to the parties just to
12 have a word or two from you concerning exactly what
13 happens in these rounds of testimony. It is our thought
14 that on June 8 the parties would be updating any of their
15 prior testimony as well as addressing the FCC proceeding.
16 And June 29 will be devoted to responding to that direct
17 testimony. And July 11 would only be needed if some party
18 found it necessary to respond to something that was raised
19 on June 29. Those essentially would be the parameters of
20 what we would file on those dates.

21 JUDGE FORDHAM: Yes. I agree with what
22 you stated. And in addition, if there is any testimony
23 that you want to look at from phase one, it would not have
24 to be duplicated. Just make a reference to that and we
25 will look at the prior testimony.

1 MR. McCLELLAND: Your Honor, this is
2 Phil McClelland from OCA.

3 Just generally we would agree that phases
4 of testimony have to be responsive to the prior testimony.
5 However, I would not want to -- I think the direct
6 testimony would necessarily state your position on the
7 access reform issue.

8 For example, the law has changed since we
9 filed the prior testimony. So we may not want to use the
10 prior testimony.

11 JUDGE FORDHAM: Okay.

12 MR. McCLELLAND: So we would want the
13 direct testimony to be fairly open as to access reform
14 proposals.

15 MR. POVILAITIS: But with respect to the
16 record as it stands now, Your Honor, can we fairly assume
17 that what is in the record is still in the record? I
18 think we should.

19 JUDGE FORDHAM: That is what I was
20 assuming, unless someone indicates otherwise.

21 MR. McCLELLAND: Well, with the
22 understanding, of course, that our positions may change.
23 And obviously we had a litigation position, we had a
24 settlement position in the prior litigation. And I think
25 our positions will now be different.

1 JUDGE FORDHAM: And to that extent you
2 would put in other testimony and indicate that your
3 position has changed on XYZ issue. That would be helpful.

4 Does anyone else have anything on that, on
5 the parameters for the testimony?

6 (No audible response.)

7 JUDGE FORDHAM: And the use of prior
8 testimony?

9 MR. POVILAITIS: I have a different
10 question for you, Your Honor.

11 JUDGE FORDHAM: Okay.

12 MR. POVILAITIS: On the other side of the
13 hearings, the briefing schedule, maybe it is a little too
14 early to set definite some dates but do you have a drop
15 dead date in mind that you want the reply briefs in your
16 hands?

17 JUDGE FORDHAM: I have not looked at that.
18 In terms of the schedules that were proposed, the briefs,
19 main briefs, look like they were due about 20 to 25 days
20 after the hearings and then the reply briefs about 15 days
21 later than that. So depending on exactly when we would do
22 the hearings we would be looking at the week of August 15
23 for main briefs and probably the last week in August for
24 reply briefs.

25 Does that pose a problem for anyone?

1 MR. McCLELLAND: Your Honor, I had a
2 little trouble hearing. That was August 15 and August 29?

3 JUDGE FORDHAM: Yes, those weeks. It
4 depends on exactly when we close the record. It might be
5 a little bit earlier. We are looking probably about 20 to
6 25 days after the close of record for the main briefs and
7 about 15 days later for reply.

8 MR. POVILAITIS: Your Honor, this is
9 John Povilaitis for Qwest.

10 We would recommend that we not set
11 briefing dates at this time because this is a case on
12 remand. Whether or not we actually have hearings on the
13 19th, certainly if we pick briefing dates and assume that
14 the hearings were actually held those dates then we would
15 have an inordinate amount of time before briefs are
16 submitted.

17 MR. McCLELLAND: Well, Your Honor, we are
18 trying to schedule lots of things and we've got some other
19 cases going on, including two rather large merger cases.
20 I would suggest it would be good now to set briefing dates
21 and they could, of course, be changed.

22 MR. POVILAITIS: Well, in that case we
23 would suggest about three weeks after hearings are
24 concluded and two weeks for reply.

25 JUDGE FORDHAM: Okay. So we are still

1 looking around the same time. If we finished on the 20th
2 of July then we are looking to the week of August 8, which
3 might be around August 10, for the main brief, and then
4 August 24th for the reply brief.

5 MR. McCLELLAND: Your Honor, I do have
6 some conflicts there. I am wondering if we go to
7 something more like -- and I thought this is what you were
8 suggesting -- let's say the 17th of August for a main
9 brief and following that one.

10 MR. POVILAITIS: The 31st for reply?

11 MR. McCLELLAND: That could be. We could
12 do that.

13 MR. POVILAITIS: Did you hear those two
14 dates, Your Honor?

15 JUDGE FORDHAM: Yes, I did. Ms. Paiva was
16 getting ready to say something.

17 MS. PAIVA: We might have a conflict with
18 the reply brief date because I know we had some people,
19 witnesses, being on vacation at that time. But as long as
20 it was understood that we could at the hearings change
21 these dates a little bit with everybody's agreement maybe
22 we could just tentatively schedule them now.

23 JUDGE FORDHAM: Okay. And we do have to
24 tentatively schedule it because we still have not
25 scheduled the actual hearing dates as the 19th and 20th.

1 So these are tentative dates right now. But if they are
2 dates that everybody can live with then we will try to
3 accommodate everyone and try to get this out as
4 expeditiously as possible.

5 Does anyone in Harrisburg or either
6 Ms. Painter or Ms. Smith have any problems with the dates
7 that have been suggested so far?

8 MS. PAINTER: This is Ms. Painter.
9 I do not have a problem with the dates.

10 JUDGE FORDHAM: Thank you.

11 MS. SMITH: This is Ms. Smith.
12 I don't either, Your Honor. Thank you.

13 JUDGE FORDHAM: Okay. Thank you.

14 So at this point what I will do is I will
15 wait a couple of days to hear if there are any conflicts
16 from any of the witnesses for July 19 or 20. I will let
17 the schedulers know that these are tentative dates. So I
18 will see if there are any conflicts with hearing rooms in
19 Harrisburg.

20 If I find that there are some conflicts I
21 will let you know as soon as possible. They have more
22 hearing rooms there than we have in Philadelphia so we
23 probably should not have a problem.

24 MR. McCLELLAND: Your Honor, this is
25 Phil McClelland again.

1 I think we can -- well, we can work with
2 the schedule and we are going to consult our witnesses.

3 One other matter which I was just speaking
4 here about. This shortened schedule from what we had
5 proposed, we would be interested since we have a standard
6 20 day interrogatory answer period, we were thinking at
7 least a 15 day period.

8 MR. POVILAITIS: Qwest would support that,
9 Your Honor.

10 MR. GRAY: OSBA agrees.

11 JUDGE FORDHAM: Okay.

12 MS. PAIVA: Fifteen calendar days?
13 Verizon would agree to that.

14 MR. McCLELLAND: Calendar days, yes.

15 JUDGE FORDHAM: Okay. Fifteen calendar
16 days.

17 MR. McCLELLAND: And again, it may not --
18 it may be insufficient as we take a good look at the later
19 schedule but at least we should start with that.

20 JUDGE FORDHAM: Okay.

21 Sometimes there are other discovery rules
22 that you would like to change in terms of motions and
23 objections to interrogatories. Do you also want to change
24 those?

25 MR. McCLELLAND: Well, frankly we had not

1 addressed those yet.

2 JUDGE FORDHAM: Okay.

3 MR. KOHLER: The other big one a lot of
4 times, the companies like the Friday rule where they deem
5 Friday interrogatory service as the following Monday.

6 MR. POVILAITIS: I think we can work that
7 out between the parties, Your Honor. Let's set 15 days.
8 We will work with that. If we need to adjust them we
9 should be able to agree between us.

10 JUDGE FORDHAM: Okay.

11 MS. PAIVA: And on the Qwest
12 interrogatories that we got last week, I will try to meet
13 the 15 days but, you know, because we got them last week
14 and I haven't looked at them yet I may need to discuss
15 that with Qwest. But we will try to abide by the 15 days
16 on that.

17 MR. POVILAITIS: Okay.

18 JUDGE FORDHAM: Is there anything else
19 that we need to discuss at this point?

20 (No audible response.)

21 JUDGE FORDHAM: Hearing nothing from the
22 parties by telephone and nothing from Ms. Paiva, I would
23 like to thank the parties.

24 I indicated that we are looking at July 19
25 and 20 and we will see whether there are any conflicts

1 with witnesses. If not, then we will go forward with
2 that. And the proposed date for the main brief is August
3 17 and reply on August 31. For the direct testimony, that
4 was June 8, rebuttal testimony June 29 and, if necessary,
5 surrebuttal on July 11.

6 And we did change the interrogatories to a
7 15 day period instead of 20 day period.

8 Hearing nothing further, thank you very
9 much for your participation. Have a good day.

10 MR. POVILAITIS: Thank you, Your Honor.

11 JUDGE FORDHAM: Thank you.

12 (Whereupon, at 11:00 a.m., the prehearing
13 conference was concluded.)

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C E R T I F I C A T E

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me and were thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

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