

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

AT&T Communications of
PA, Inc.,
vs.
Verizon North, Inc./
Verizon Pennsylvania, Inc.

Pre-Hearing Telephonic
Conference

Docket No.:
C-2002 7195

**DOCUMENT
FOLDER**

Pages: 1 - 45

State Office Building
Broad and Spring
Garden Streets
Philadelphia, PA

DOCKETED
MAR 29 2005

Thursday, February 17, 2005
Commencing at 2:01 P.M.

BEFORE:

Cynthia W. Fordham, Administrative Law Judge

APPEARANCES:

Mark Keffer, Esquire
Robert C. Barber, Esquire
3033 Chain Bridge Road
Oakton, VA 22185
For the Complainant
(Via Telephone)

ORIGINAL

Daniel Clearfield, Esquire
Alan Kohler, Esquire
Wolf, Block, Schorr & Solis-Cohen
212 Locust Street
Suite 300
Harrisburg, PA 17101-1236
For the Complainant
(Via Telephone)

FILED

MAR 5 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

REPORTER: Edward J. Gilson

85

Any reproduction of this transcript is prohibited
without authorization by the certifying agency.

APPEARANCES (CONT.)

Julia A. Conover, Esquire
Susan Debusk Paiva, Esquire
1717 Arch Street 32 Northwest
Philadelphia, PA 19103
For the Respondent

Michelle Painter, Esquire
22001 Loudon County Parkway
Ashburn, VA 20147
For MCI WorldCom, Inc.
(Via Telephone)

John F. Povilaitis, Esquire
Matthew A. Totino, Esquire
Ryan, Russell, Ogden & Seltzer, LLP
800 North Third Street
Suite 101
Harrisburg, PA 17102-2025
For Qwest Communications Corporation
(Via Telephone)

Kristin L. Smith, Esquire
1801 California Street
Suite 4900
Denver, CO 80202
For Qwest Communications Corporation
(Via Telephone)

Steven C. Gray, Esquire
Suite 1102 Commerce Building
300 North Second Street
Harrisburg, PA 17101
For Office of Small Business Advocate
(Via Telephone)

Robert V. Eckenrod, Esquire
P.O. Box 3265
Harrisburg, PA 17105-3265
For PA Public Utility Commission,
Office of Trial Staff
(Via Telephone)

APPEARANCES (CONT.)

Philip R. McClelland, Esquire
Joel H. Cheskis, Esquire
555 Walnut Street
Fifth Floor
Forum Place
Harrisburg, PA 17101-1923
For Office of Consumer Advocate
(Via Telephone)

Patricia Armstrong, Esquire
Thomas T. Niesen, Esquire
Regina L. Matz, Esquire
Thomas, Thomas, Armstrong & Niesen
212 Locust Street
Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500
For Rural Telephone Company Coalition
(Via Telephone)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

INDEX TO WITNESSES

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
----------------	---------------	--------------	-----------------	----------------

None				
------	--	--	--	--

P R O C E E D I N G S

1
2 -----
3 JUDGE CYNTHIA W. FORDHAM:

4 This is the pre-hearing conference on
5 remand in the matter of AT&T Communications of PA.
6 Inc. versus Verizon North, Inc./ Verizon Pennsylvania,
7 Inc. at Docket Number C-2002 7195. I'm Administrative
8 Law Judge Cynthia Williams Fordham. I'm in the
9 Philadelphia State Office Building. There's a court
10 reporter here with me. And Ms. Paiva, would you enter
11 your appearance.

12 ATTORNEY PAIVA:

13 Yes. Susan Paiva, appearing on behalf of
14 Verizon Pennsylvania, Inc., and Verizon North, Inc.

15 JUDGE:

16 Mr. Povilaitis, would you start with the
17 people in Harrisburg.

18 ATTORNEY POVILAITIS:

19 Certainly, Your Honor. This is John
20 Povilaitis representing Qwest Communications
21 Corporation.

22 JUDGE:

23 Thank you.

24 ATTORNEY KOHLER:

25 Alan Kohler representing AT&T, Your

1 Honor.

2 JUDGE:

3 Thank you.

4 ATTORNEY ECKENROD:

5 Robert Eckenrod on behalf of the Office
6 of Trial Staff.

7 JUDGE:

8 Thank you.

9 ATTORNEY CHESKIS:

10 Joel Cheskis for the Office of Consumer
11 Advocate.

12 JUDGE:

13 Thank you.

14 ATTORNEY GRAY:

15 Good afternoon, Your Honor. Steve Gray
16 from the Office of Small Business Advocate.

17 ATTORNEY ARMSTRONG:

18 Finally, Your Honor, Patricia Armstrong
19 on behalf of the Rural Telephone Company Coalition.

20 JUDGE:

21 Thank you. Is there anyone else in
22 Harrisburg? Ms. Smith?

23 ATTORNEY SMITH:

24 Kristin Smith on behalf of Qwest
25 Communications Corporation.

1 JUDGE:

2 Mr. Keffer?

3 ATTORNEY KEFFER:

4 This is Mark Keffer and Robert Barber for
5 AT&T.

6 JUDGE:

7 Thank you. And Ms. Painter.

8 ATTORNEY PAINTER:

9 Michelle Painter on behalf of MCI Metro
10 Access Transmission Service.

11 ATTORNEY SPARKS:

12 Shawn Sparks from the OCA.

13 JUDGE:

14 We just started the hearing and everyone
15 that is present entered their appearance so we'll list
16 you also for OCA. Let me give a brief history of the
17 proceedings. There was a hearing held in this matter
18 in Harrisburg on August 25th and 26th. There were
19 witnesses for Verizon, AT&T, MCI, Qwest, OCS, OCA and
20 OSBA who were cross examined. Written testimony and
21 exhibits were entered into the record. The
22 recommended decision was issued on November 18th of
23 2003. Exceptions were filed by AT&T, MCI, OSBA and
24 Qwest. Reply exceptions were filed by OCA, OSBA, OTS
25 and Verizon.

1 On February 26th of 2004, Verizon PA,
2 Verizon North, OSBA and OCA filed a joint petition for
3 resolution of litigation. On July 28th of 2004, the
4 Commission entered an Opinion and Order that granted
5 the joint petition for resolution of litigation. The
6 July 28th Order permitted Verizon to reduce and
7 restructure its access charges by allowing them to
8 file a revenue neutral rate rebalancing filing, in
9 which the net revenue reductions from access charge
10 increases, and decreases will be offset with revenue
11 increases from increases in multi-dial tone line rates
12 for residential and business local exchange customers.

13 The Commission did not specify a certain
14 date on which Verizon would complete the rate
15 rebalancing. However, the Commission did require
16 Verizon to provide notice to all customers at least 30
17 days prior to the date of any rate change and to file
18 revised tariffs or tariff supplements to become
19 effective on one day's notice.

20 With regard to the remaining unresolved
21 matters in this proceeding, the Commission remanded
22 those to the Office of Administrative Law Judge. The
23 Commission stated that those policy issues and other
24 access charge concerns that were raised by the IXEs in
25 their exceptions, but were not specifically resolved

1 by recommendation from the ALJ, were remanded for the
2 further development of the record and issuance of a
3 recommended decision.

4 Subsequently, Verizon filed a petition
5 for reconsideration. By Order entered November 23rd
6 of 2004 the Commission denied the petition to
7 reconsider and remanded the case to the ALJ.

8 On November 22nd --- strike that.

9 By Order entered January 18th, 2005, the
10 Commission granted the joint petition that was filed
11 by AT&T, MCI and Qwest Communications in part and
12 denied it in part. The Commission granted the joint
13 petitioners' request that established February 1st,
14 2005 as the compliance filing deadline date,
15 notwithstanding any regulatory delays that would occur
16 in the compliance review process.

17 The Commission also granted the joint
18 petitioners' request that the remand proceeding be
19 conducted in an expedited manner only to the extent
20 that the Office of Administrative Law Judge is able to
21 do so. There were a number of other requests that
22 were denied.

23 Subsequently, this prehearing was
24 scheduled for today at 2:00 p.m. I did ask the
25 parties to submit prehearing memoranda, and all of the

1 parties with the exception of Sprint have submitted
2 prehearing memoranda. Most of the parties outlined
3 the same issues.

4 Before we go into the other things like
5 the plan of schedule, discovery and settlement, let's
6 review the service list because I noted that there
7 were a number of people who have either changed
8 because they have another position or some have been
9 added to our service list, and I just want to be sure
10 that everybody is getting the information that they
11 want to get, and those that do not want to get the
12 information are not getting that.

13 With respect to Verizon we have Julia
14 Conover and Susan Debusk Paiva; is that correct?

15 ATTORNEY CONOVER:

16 Yes, that continues to be correct.

17 JUDGE:

18 And with respect to AT&T, we have Mr. ---
19 is your name Keffer or Keifer ---

20 ATTORNEY KEFFER:

21 Keffer.

22 JUDGE:

23 --- Keffer added to AT&T and then from
24 Wolf, Block, Schorr and Solis-Cohen we still have
25 Daniel Clearfield and Alan Kohler; is that correct?

1 ATTORNEY CLEARFIELD:

2 Correct, Your Honor.

3 JUDGE:

4 Then we haven't had any communication
5 from Ms. Benedek from Sprint. With respect to MCI,
6 Ms. Paiva, is Ms. Gingrich still involved?

7 ATTORNEY PAIVA:

8 No, you can remove her from the service
9 list.

10 JUDGE:

11 Thank you. And Mr. Povilaitis, with
12 respect to Qwest, you have added Matthew A. Totino?

13 ATTORNEY POVILAITIS:

14 Yes. Matthew Totino and myself from
15 Ryan, Russell, Ogden and Seltzer, Your Honor, and
16 Kristin Smith continues as Counsel for Qwest as well.

17 JUDGE:

18 Thank you. Mr. Gray, you're taking over
19 for Angela Jones, and we are to remove Mr. Lloyd's
20 name from the list; is that correct?

21 ATTORNEY GRAY:

22 Yes, that's correct, Your Honor. Ms.
23 Jones has some different occupation now, but yes, I'm
24 taking over.

25 JUDGE:

1 And Mr. Eckenrod, you're taking over for
2 Mr. Mickens and your name is the only name that should
3 be used?

4 ATTORNEY ECKENROD:

5 Yes, Your Honor.

6 JUDGE:

7 Mr. Cheskis, now on the list, we had your
8 name and Mr. McClelland's name. Should we continue to
9 have Mr. Sparks and Mr. Sheridan's name on the list?

10 ATTORNEY CHESKIS:

11 Either way is fine. It doesn't matter.

12 JUDGE:

13 And I would note that Mr. Sparks is on
14 the call. And Ms. Armstrong, you had your name and
15 Ms. Matz's name before and we're adding Thomas T.
16 Niesen; is that correct?

17 ATTORNEY ARMSTRONG:

18 If you would, Your Honor, thank you.

19 JUDGE:

20 And I think those are the corrections
21 that we need. I'd note that this wasn't specifically
22 on the agenda, but the FCC proceeding is something
23 that I think we need to discuss. And it was discussed
24 in a couple of the prehearing memoranda. At this
25 time, Ms. Paiva, do you have something that you would

1 like to say about the FCC proceeding and how it
2 affects this proceeding?

3 ATTORNEY PAIVA:

4 Well, I think we covered it in our
5 prehearing memo. I pointed out that since the time
6 that the Commission had issued its order asking us to
7 expand the scope of this proceeding to look at the FCC
8 proceeding, the FCC had actually issued a notice for
9 that. They issued a press release saying that they
10 had voted on a notice of proposed rulemaking, and they
11 were going to ask for comments on various proposals
12 for intracarrier compensation reform at the FCC. We
13 understand that there will be a written order from the
14 FCC, it hasn't come out yet, unless it came out today.
15 I haven't seen it yet. But they put out a press
16 release announcing that they had done that.

17 As a result of that progress and that
18 federal litigation, we proposed the schedule that we
19 proposed, which was to allow for a period of time for
20 the parties to monitor what's going on in the Federal
21 case. And in the meantime so as to not lose too much
22 time in our case, we could engage in settlement
23 discussion and some informal discovery to the extent
24 the parties need updated information from Verizon
25 about its access rates, the implementation of the

1 rates from the last proceeding, et cetera.

2 And that way we believe that you could
3 best carry out what the Commission had asked you to do
4 in the latest Order, which was to address how that
5 Federal proceeding might impact what we're able to do
6 here or whether we should do anything at all.

7 We really didn't want to jump the gun and
8 start doing something really quickly here just to have
9 that Federal proceeding some where down the road and
10 in our case change everything making our efforts
11 wasted. So that's why we proposed the schedule that
12 we did.

13 JUDGE:

14 I'm not sure that the other parties have
15 had an opportunity to talk to Verizon about this. I
16 know that --- I think OCA also mentioned it in their
17 prehearing order. Mr. Cheskis, do you have an opinion
18 on this?

19 ATTORNEY CHESKIS:

20 Your Honor, this is Joel Cheskis from the
21 Office of Consumer Advocate. I do agree with Ms.
22 Paiva's comments that we do have some concern about
23 intrastate access charges also being addressed by the
24 FCC, and a possible double-charging of consumers in
25 response to that. And we have noted in our prehearing

1 memorandum, as well the need for some time to consider
2 exactly how that may play out at the FCC. And again,
3 I agree with Ms. Paiva's comments.

4 ATTORNEY POVILAITIS:

5 Your Honor?

6 JUDGE:

7 Yes.

8 ATTORNEY POVILAITIS:

9 This is John Povilaitis for Qwest. We
10 have just received the prehearing memos with the
11 schedule proposals this week. We haven't had the
12 opportunity to talk to Verizon or MCI about this
13 matter. But Qwest's perspective on this scheduling
14 issue is that the Commission in its Order in this case
15 has been pretty clear that an FCC determination on the
16 access charge issue is something you should certainly
17 take into account.

18 But we think that's quite different from
19 a directive to Your Honor that this case eventually be
20 held in abeyance, as Verizon has proposed, until
21 something, perhaps nothing, occurs at the FCC level.
22 What we think the Commission was saying in its Orders
23 on this point was that while the case was pending
24 before you, if the FCC actually issued the final
25 order, making some conclusion on this, certainly the

1 parties should take that into account in this
2 proceeding. But the IXE's request that this case be
3 expedited, an officially expedited proceeding, that
4 was not granted. But nevertheless, the Commission did
5 say that the Office of ALJ should proceed
6 expeditiously. And we really don't think that we
7 should hold essentially all forward movement on this
8 litigation, which is a remand, after all, until
9 something comes out of the FCC.

10 JUDGE:

11 Thank you. Ms. Painter?

12 ATTORNEY PAINTER:

13 Thank you. I would echo the comments of
14 Mr. Povilaitis. Trying to judge when the FCC is going
15 to actually rule on something I think is an exercise
16 in futility. And I don't think we should hold this
17 case indefinitely or even for the length of time that
18 Verizon suggested, while we wait for the FCC.

19 JUDGE:

20 Mr. Kohler?

21 ATTORNEY KOHLER:

22 Your Honor, I think we share that
23 sentiment. I don't think we --- and I'll defer to Mr.
24 Keffer and Mr. Barber, I don't think we object to some
25 time for some --- to pursue settlement, but what we

1 have to keep in mind is that this was an announcement,
2 a press release, announcing that they had reached a
3 vote on the start of a proceeding, not the end of a
4 proceeding. And those of us who watch what the FCC
5 does, you know, one observation is that proceeding
6 itself could extend for a very long period of time,
7 far longer than this Commission intends that this case
8 last.

9 So, you know, waiting for an order that's
10 just starting the proceeding or in the alternative,
11 waiting for an order that may or may not be issued in
12 a period of years doesn't seem to me to be what the
13 Commission was looking for.

14 JUDGE:

15 Does anyone else have any opinion on this
16 matter?

17 ATTORNEY CHESKIS:

18 Your Honor, this is Joel Cheskis again
19 with the Office of Consumer Advocate. I did want to
20 just respond briefly that it's not our proposal to
21 wait until any FCC proceeding is over. I don't think
22 FCC proceedings ever end, they just take on a
23 different form. But I do think that we're at a point
24 now where the FCC is starting to put together what its
25 approach is going to be on this issue and that it

1 would be wise of us to avoid administrative expenses
2 and try and see at least what type of approach the FCC
3 is going to be taking. We are expecting a notice out
4 soon. There will be a comment, a reply comment period
5 coming up shortly after that. And it might bode well
6 for us to delay the start of this, the formal start of
7 this proceeding until the summertime at the earliest,
8 to see what those major documents look like so that
9 again, we're not wasting our time or otherwise
10 incurring double charges for consumers.

11 ATTORNEY GRAY:

12 Your Honor, Steve Gray from the OSBA.
13 The OSBA completely supports and agrees with the OCA
14 opinion on this matter.

15 JUDGE:

16 Ms. Paiva?

17 ATTORNEY PAIVA:

18 Yes, Your Honor. I would just like to
19 echo what Mr. Cheskis was saying. The reason why we
20 didn't propose to just wait until the end of the FCC
21 proceeding was because we also perceive that to be a
22 little too open-ended. That's why we put a date on
23 the end of our period where we would all get together
24 again and have a prehearing conference and revisit
25 everything.

1 Because well, two things. One, there's a
2 quote in our prehearing memo from one of the FCC
3 Commissioner's statements that he issued when that
4 press release came out where he said that they were
5 trying to do this quickly. And he wanted at least to
6 get it done within this year. So I think that there's
7 at least reason to believe the FCC might move more
8 quickly in this docket. But the other thing is even
9 if they don't come to a final order, and I don't
10 expect they'd actually conclude the proceeding by the
11 summertime, hopefully, at least, there would be the
12 schedule for people to file comments on the plan that
13 are already out there.

14 The various plans for people to comment
15 on are already on the FCC's website. And if the
16 members of the industry put their positions out there
17 on which plan they're backing, it might at least give
18 us an idea of where the FCC is going, what options
19 really remain viable. And even if we get to the point
20 of having to address them here, I think we would be
21 able to do it in a better way to fulfill the
22 Commission's desire that we at least form a record on
23 the impact of the FCC proceeding on this case.

24 So I agree with OCA and OSCA, it's
25 reasonable to wait until the summertime and we won't

1 be wasting our time because we can still, you know, do
2 some informal discovery and settlement discussions and
3 see if anything could happen. It might even eliminate
4 the need to have the case.

5 JUDGE:

6 Mr. Povilaitis, I think you indicated
7 that you believed that we really did need to have
8 hearings in this matter. Could you expound on that?

9 ATTORNEY POVILAITIS:

10 No, Your Honor. Actually, to the
11 contrary, we're not sure that any additional hearings
12 are needed. Qwest's suggestion is that Your Honor set
13 a fairly near-term date for the parties to update
14 their testimony in this case so the parties have an
15 opportunity to respond to any updating. And then
16 we'll consider whether or not hearings are really
17 necessary and it ought to be incumbent on any parties
18 that feel they need the right to cross examine the
19 witnesses to make a case for that and then schedule
20 them.

21 Our suggestion is that, you know, we take
22 the Commission at its word as to what it seems to want
23 in this proceeding, which we think is to freshen up
24 the record or at least give parties an opportunity to
25 freshen up the record. Say in about a month, that

1 there be a responsive round of testimony. Three to
2 four weeks later then we determine if we need hearings
3 at all. At best, waiting to see what happens in the
4 FCC docket is going to inform us somewhat better about
5 competing proposals. That is at best what we would
6 learn from waiting and delay. We have the parties
7 right here in this proceeding. We can get their
8 proposals at any time.

9 And certainly, part of the reason Qwest
10 is in this proceeding is that the state PUC and the
11 State of Pennsylvania has not been in sync with FCC
12 policy on access charges. So to suggest that that
13 determination is somehow going to resolve matters here
14 I think is somewhat futile. We have not had parity
15 with the FCC approach to the access charges. So it's
16 hardly going to be determinative here.

17 ATTORNEY GRAY:

18 Your Honor, this is Steve Gray from the
19 OSBA. Can we go off the record for a moment?

20 JUDGE:

21 Yes. We're off the record.

22 OFF RECORD DISCUSSION

23 JUDGE:

24 We're back on the record. We had an
25 off-the-record comment from Mr. Gray and he was just

1 talking about his witness and what his witness' ---
2 what he thinks his witness' opinion is regarding the
3 matter that Mr. Povilaitis just mentioned. Does
4 anyone --- any other party agree with Mr. Povilaitis
5 on that issue?

6 ATTORNEY PAINTER:

7 Yes, Your Honor. MCI agrees with Mr.
8 Povilaitis.

9 ATTORNEY KEFFER:

10 As does AT&T, Your Honor.

11 JUDGE:

12 Ms. Paiva?

13 ATTORNEY PAIVA:

14 Your Honor, Verizon does not agree with
15 Mr. Povilaitis. Because I don't believe you would be
16 able to fulfill what the Commission asks you to do on
17 remand if you didn't take more evidence into the
18 record. If the Commission wanted to just make the
19 decision based on the briefs and testimony that are
20 already in the record, there really wouldn't have been
21 a need to remand it to you because that was already in
22 the record and before them when they had the case up
23 on the other orders.

24 And specifically, they want you to
25 address the FCC proceeding, there's nothing in the

1 record on that. The industry has changed. I mean,
2 the record is somewhat stale at this point. It's been
3 a while since we put in that testimony. There are
4 other things that have happened in the industry that
5 may be relevant. I don't think that we would object
6 if people wanted to bring in some of the old material
7 so that they didn't have to say the same thing over
8 again. But we would want the right to put in new
9 evidence to the extent it's necessary to form a full
10 record upon which to decide these issues.

11 And one example is, Qwest, they're the
12 ones who are saying that this can all be done on the
13 old record. But Qwest is asking --- the relief that
14 they asked for in the old record was to have our
15 intrastate access rates mirror our interstate access
16 rates. Well, if the FCC is totally going to revamp
17 the interstate system of intercarrier compensation,
18 that's not going to make any sense anymore because
19 whatever we --- if we get ahead of them, I guess we
20 can mirror something that goes away. Or if we don't
21 finish the proceeding before they change it, then
22 halfway down the road the thing we're trying to mirror
23 is going to go away. So I just think to make a full
24 decision on this you're going to need to take more
25 evidence. But we can try to be efficient about it and

1 use what we can from the old evidence.

2 ATTORNEY POVILAITIS:

3 Your Honor, this is John Povilaitis from
4 Qwest. Let me clarify our position. We are not
5 suggesting that we not provide the parties with an
6 opportunity to update the testimony. In fact, our
7 position is precisely that. We think that there ought
8 to be a window of opportunity here for anybody that
9 wishes to update their testimony, to do so. And in
10 fact, we are still at the same docket. This is not a
11 brand new proceeding. I know Verizon's position on
12 reconsideration would let the Commission establish a
13 new proceeding but I've rejected that argument. And
14 we are still at the same docket, we still have the
15 same record that we compiled leading up to your prior
16 decision. And we think a freshening-up opportunity is
17 fair, but that is as far as we should go in terms of
18 stringing out the remainder of this remand proceeding.

19 JUDGE:

20 Would you identify yourself, please?

21 ATTORNEY POVILAITIS:

22 Pardon?

23 JUDGE:

24 Is this someone else talking?

25 ATTORNEY POVILAITIS:

1 No.

2 JUDGE:

3 Oh, I'm sorry.

4 ATTORNEY POVILAITIS:

5 Your Honor, you know, Qwest will present
6 its position in this matter taking into account
7 whatever is known about the FCC's direction or
8 position. We will do that. But to suggest that
9 because we are years and years behind in access charge
10 reform, that we should hold further reform in abeyance
11 until we hear something from the FCC, I'd suggest is
12 poor public policy and we don't think it squares at
13 all with what the Commission has been saying in its
14 orders in this docket.

15 ATTORNEY CHESKIS:

16 Your Honor, this is Joel Cheskis from the
17 Office of Consumer Advocate. If I can just raise a
18 different yet related issue, we did note in our
19 prehearing memo, and I think one of the parties has
20 alluded to this already today, that the changes that
21 are going on in this industry now would also support a
22 reasonable delay in the formal commencement of this
23 proceeding. As everyone is aware, there are parties
24 that have entered into this case that may be --- are
25 in the process of merging with other parties. And I

1 think that that is a serious consideration and that we
2 need to take a step back and see how that's going to
3 impact this case. Again, we're not saying that this
4 case should be held off indefinitely, but I think that
5 that would support our position and I believe
6 Verizon's position that this case be delayed formally
7 at least until the beginning of summer.

8 ATTORNEY POVILAITIS:

9 Your Honor, John Povilaitis again for
10 Qwest. If anything, the structural changes in the
11 industry suggest that we should move more
12 expeditiously rather than delay. The status of these
13 parties that are the subject of mergers and
14 acquisition will only become more murky as we proceed
15 through the calendar year. So we think, if anything,
16 it's a strong suggestion that we should move ahead
17 quickly.

18 ATTORNEY PAIVA:

19 Your Honor, this is Ms. Paiva. Going
20 back to the issue of what record is necessary, I'm not
21 sure we're in disagreement or not with Mr. Povilaitis,
22 but I read his prehearing memo to say that only
23 Verizon should refresh the record and only to the
24 extent of rerunning the numbers to make them more
25 current. Well, we disagree with that. We believe

1 that anything that is of relevance to this case, and
2 including discussion of the FCC proceeding and changes
3 in the industry, anybody should have an opportunity to
4 bring that in. It shouldn't be limited to only
5 Verizon refreshing the numbers.

6 So that's like new testimony and new
7 development of a record, including hearings and the
8 opportunity for cross examination. If Mr. Povilaitis
9 agrees with that, maybe there really isn't a dispute.
10 But I wasn't exactly clear on what he was proposing.

11 ATTORNEY POVILAITIS:

12 No. Your Honor, this is John Povilaitis.
13 We are suggesting that there be a single deadline for
14 all parties to update their previously filed
15 testimony. Then three to four weeks later we'd have
16 the opportunity for responding to that new material.
17 And then we would make a decision as to whether or not
18 we need hearings. We have already had hearings on a
19 substantial amount of information in the record. It's
20 not clear exactly what the parties will freshen up
21 their testimony with. I think we ought to look at
22 that before we commit to the necessity for hearings.

23 ATTORNEY PAIVA:

24 I can tell you that our testimony is
25 going to be more than just a freshening up of the old

1 testimony because the old testimony went largely to
2 why you should accept the rebalancing, that was
3 accepted and approved by the Commission before. So
4 all of that is old news. So it's not going to be like
5 we just submit, you know, a revised version of the old
6 testimony. It's going to be more than that.

7 So I think there's going to be the need
8 for rounds of direct and rebuttal and surrebuttal.
9 Perhaps people could just attach the portions of their
10 old testimony that are still relevant or if it's going
11 to be very little change, they could just submit the
12 old testimony. But I don't see Verizon doing that.

13 ATTORNEY POVILAITIS:

14 Your Honor, this is John Povilaitis. We
15 don't think we need to refile the testimony that's
16 already in the record.

17 JUDGE:

18 I do agree with that. I believe that you
19 could just refer to it and we can look at that. Are
20 there other parties that believe that their testimony
21 would not be that different? With respect to the FCC
22 information, that is something that would be different
23 but the parties might be able to agree on that. It's
24 not the same as some of the other things that we
25 discussed where parties had a certain position.

1 We might be able to put in information
2 about what is going on with the FCC. And I assume
3 that there would be no disagreement about exactly what
4 the FCC has before it or what has happened at the FCC
5 so that would just be information. In terms of
6 whether you agree with it or whether you file
7 positions with the FCC, that might be distinctive to
8 each party.

9 But are there other parties that believe
10 that they would have extensive testimony that would be
11 different than what's already in the record? OCA?

12 ATTORNEY CHESKIS:

13 Your Honor, this is Joel Cheskis with the
14 Office of Consumer Advocate. I think that's a great
15 question, actually, and one thing I was taking a note
16 on here is this case is specifically remanded to
17 address issues that are raised by the IXE. I think it
18 would be very helpful to at least our office and maybe
19 other parties as well, if we had a specific
20 clarification or articulation of what those issues
21 are.

22 I don't know if we'd be able to update
23 our testimony based on the issue that we think the
24 IXEs might want us to address. And obviously, if we
25 had a better sense of what the issues were that the

1 IXEs wanted to address in this remanded proceeding,
2 we'd be able to respond more effectively without
3 raising extraneous issues or issues that may be
4 extraneous.

5 We did provide a list of issues in our
6 prehearing memo that we think are relevant to this
7 proceeding. But again, I think that that's mostly
8 going to be in response to any of the issues that the
9 IXEs may or may not be raising.

10 JUDGE:

11 Mr. Povilaitis?

12 ATTORNEY POVILAITIS:

13 Your Honor, we've laid out our issues in
14 our prehearing memo and they are very similar to the
15 issues we have raised, testified to and briefed in a
16 proceeding already before you. I'm not sure I
17 understand what Mr. Cheskis is driving at here. I
18 think everybody has their testimony on file.
19 Everybody has taken a position in litigation, not
20 simply in purported settlement as Ms. Paiva indicated
21 is the case for Verizon. I'm not sure that I
22 certainly agree with that description of Verizon's
23 position here.

24 But our issues are out there and it's no
25 secret. And we think given that we are supposed to

1 move with some expedition, rather than have a lengthy
2 cycle of testimony deadlines which we've got to sort
3 out, I guess the suggestion is on issue by issue and
4 who has the burden of proof on a given issue, that
5 seems really unwieldy and unworkable. And I would
6 suggest that everybody have a simultaneous filing
7 opportunity. If you see something you don't like, you
8 can rebut it.

9 ATTORNEY ECKENROD:

10 Your Honor, this is Robert Eckenrod on
11 behalf of the OTS. Just going back to the issue of
12 our testimony, based upon some of the things that
13 occurred in the previous Order, our testimony would
14 basically be a wholesale revision, to tell you the
15 truth, at this point. It would be more than a
16 freshening up. It'd be just a wholesale new testimony
17 being put in. So that's ---.

18 JUDGE:

19 Okay. Ms. Paiva?

20 ATTORNEY PAIVA:

21 Yes, Your Honor. I just wanted to say
22 I'm still not exactly sure what Mr. Povilaitis is
23 suggesting, but to keep in mind that these are
24 Verizon's access rates that are at issue here and
25 Verizon's entitled to due process before anything is

1 changed. Before there's a rate rebalancing we're
2 entitled to respond to whatever testimony the other
3 parties put in and we're entitled to Cross
4 Examination. So if it's some simultaneous submission
5 where we don't get the chance to respond it's not
6 going to comport with the ---.

7 JUDGE:

8 I think he did say that everyone would
9 file at the same time and that everyone would have the
10 chance to respond. But you're saying that you would
11 like to have Verizon submit their testimony first and
12 then people respond to that, and then you'd have a
13 chance to respond to the other parties?

14 ATTORNEY PAIVA:

15 Well, I guess it depends on who is
16 seeking what. Perhaps they could go first and then we
17 could respond, but we would have to have the right to
18 respond separately to the new issues that are raised.

19 ATTORNEY POVILAITIS:

20 I'm not sure --- it would usually go one
21 way or the other, Your Honor. I mean, it would be
22 hard for Qwest to go forward initially and then also
23 agree to the proposition that Verizon has the right
24 for the final word on that issue. It just confuses
25 the issue of burden of proof with updating this

1 record, which we think is a fairly simple
2 straightforward issue. And we suggest that since
3 everybody has their testimony on file, everyone update
4 it on a certain date and then everybody has an
5 opportunity to respond to whatever is in those initial
6 filings. And if Verizon has a notion as to what its
7 access charges should be going forward, which I
8 presume it does, then put that on record.

9 JUDGE:

10 Mr. Gray, do you have anything on that
11 issue?

12 ATTORNEY GRAY:

13 Thank you, Your Honor. I'm sitting here
14 pondering mechanically how this can be done and not
15 losing sight of what's happening in front of the FCC.
16 So I suspect the OSBA could update our testimony
17 without a great deal of difficulty, particularly after
18 there's some initial period for either informal
19 settlement discussions or an informal discovery
20 conference or a discovery period. And maybe that's
21 going to be nothing more than some information, like
22 you say, Verizon updates some numbers and getting
23 views from the parties about where they're headed on
24 this.

25 So I'm sure the OSBA could do that sooner

1 rather than later. The question is, where does that
2 get us ultimately since, you know, to get us on the
3 consumer advocate side of things, our customers have
4 to pay for these reductions in access charges having
5 just gone through the process with the recent filing
6 from Verizon. Now, even in spite of the PCO money
7 it's still a concern that they're contemplating a
8 further possible price increase. So we've still got
9 that issue out there. When is enough going to be
10 enough. And I'm trying to figure out how we
11 incorporate that into this remanded proceeding.

12 JUDGE:

13 Well, it doesn't seem like we can set a
14 schedule at this point. First of all, it's unclear
15 whether we need hearings or the amount of time that we
16 need for the hearings. There are a number of
17 proposals on the table. One is to wait to see what
18 the FCC is going to do by a certain time. The second
19 is to go forward, but not with a long period for
20 testimony and rebuttal and surrebuttal, but to do
21 simultaneous filings.

22 I believe that we need to have the
23 parties have informal settlement discussions. I'm not
24 sure exactly when the order is going to come out from
25 the FCC, but maybe taking a look at that order, not

1 going forward and waiting for all the proposals to be
2 set, but at least taking a look at that order might be
3 instructive. Would the parties be able to get
4 together within the next 30 days? Because what I'd
5 like to do is have another prehearing conference. And
6 at that time, everyone would have the chance to have
7 looked at their prior testimonies to see what type of
8 testimony it would need to add.

9 If there is something going on with the
10 FCC that we need to look at at that time we could do
11 that, but I do believe that the Commission does want
12 us to go forward. Even though it says monitor the
13 FCC, I do believe that we need to go forward prior to
14 the beginning of the summer.

15 So if the parties could get together
16 within the next 30 days, then we would have another
17 prehearing conference and see where we are, I believe
18 we could expedite this matter. Ms. Paiva?

19 ATTORNEY PAIVA:

20 Your Honor, yesterday in the rural
21 carrier's access case we had a prehearing conference
22 and there was a similar proposal. And Judge Colwell
23 set another prehearing conference for April. She
24 basically gave a two-month period for the parties to
25 discuss. And during that time, the carriers were

1 going to run the numbers and provide updated numbers.
2 If it would be reasonable to set our prehearing
3 conference for April as well, then Verizon could
4 refresh its numbers and provide that to everybody, and
5 we could also try to get together and just agree upon
6 a schedule to present to you, rather than maybe
7 hashing it out in front of you.

8 ATTORNEY SMITH:

9 Your Honor, this is Kristin Smith for
10 Qwest. It was Qwest's understanding this prehearing
11 conference was actually set for March 21st, not April.

12 ATTORNEY POVILAITIS:

13 This is John Povilaitis, Your Honor. My
14 recollection is March 21st, I think, as the ---.

15 ATTORNEY PAINTER:

16 No, this is Michelle Painter. I
17 think ---.

18 ATTORNEY POVILAITIS:

19 So that's the window for the settlement
20 conference, that's correct.

21 ATTORNEY PAIVA:

22 Wasn't it April 16th? I thought it was
23 April 16th.

24 ATTORNEY POVILAITIS:

25 Nevertheless, I mean, in response to Ms.

1 Paiva's, what I guess is a request for more than 30
2 days to negotiate, I'll point out that the rural
3 access charge case is a brand new proceeding and it's
4 in the format of an investigation that the Commission
5 has opened. We are on remand. We are supposed to
6 resolve the issues that were not dealt with in the
7 prior recommended Decision. We already have a
8 substantial record, if not a fair comparison, to the
9 rural case. And we think 30 days --- well, you know
10 our Qwest position, which was to move immediately to
11 filing testimony, but we certainly think your
12 suggestion of 30 days for negotiation should be
13 expanded on.

14 JUDGE:

15 Does anyone else have an opinion on that?

16 ATTORNEY GRAY:

17 Your Honor, Steve Gray from the OSBA.

18 How soon could Verizon provide the parties with
19 updated numbers?

20 ATTORNEY PAIVA:

21 Well, I would have to go back and check
22 on that. I don't think it's going to be as involved
23 as it is for the rural carriers. I don't think it
24 will take a huge amount of time, but I can't give you
25 an exact date.

1 ATTORNEY KEFFER:

2 What numbers would be updated?

3 ATTORNEY PAIVA:

4 Well, wouldn't you want to know, you
5 know, the spreadsheets that were attached to our
6 testimony that tell what our access rates are, what
7 our effective per-minute rates are? The same that we
8 had in the old proceeding. Now, we could update it
9 based on the rebalancing that occurred as a result of
10 the old proceeding.

11 ATTORNEY KEFFER:

12 Part of my point is basically volume
13 information should be readily available.

14 ATTORNEY PAIVA:

15 Right. I don't think it's going to be
16 like really difficult to get, I just can't give you
17 the exact date.

18 JUDGE:

19 Does anyone else have any opinion on the
20 30 days? Ms. Painter?

21 ATTORNEY PAINTER:

22 MCI would support the 30-day delay, Your
23 Honor. Not longer than that.

24 JUDGE:

25 Mr. Eckenrod?

1 ATTORNEY ECKENROD:

2 I would say within the 30 days. I
3 wouldn't want to expand upon that as well.

4 JUDGE:

5 Ms. Armstrong, do you have anything on
6 this?

7 ATTORNEY ARMSTRONG:

8 We have no position, Your Honor.

9 ATTORNEY CHESKIS:

10 Your Honor, this is Joel Cheskis with the
11 Office of Consumer Advocate. Just to make sure I
12 understand what we're talking about, that's 30 days to
13 have another prehearing conference and assess the
14 situation at that point?

15 JUDGE:

16 Yes. And prior to that time, the parties
17 would engage in settlement discussions and informal
18 discovery so we would have more of an idea of what
19 we're talking about. There are some parties who
20 believe that they could update their testimony and it
21 would not take that long. There are other parties who
22 believe that they need more extensive testimony to
23 deal with the issues that were unresolved. So at that
24 point, we would know exactly what we're talking about
25 and we could go forward at that time.

1 Now, the issues were outlined in most of
2 the prehearing memoranda and we have discussed some of
3 the issues that came up. I believe there were a
4 couple that were mentioned by one party that weren't
5 mentioned by any others. And I think with OTS you
6 dealt with more of the allocation of the cost of the
7 access charge reduction and I'm not sure that some of
8 the other parties dealt with that. Mr. Eckenrod,
9 would you like to expand on that?

10 ATTORNEY ECKENROD:

11 Actually, at this time, Your Honor, those
12 were some of the things that I think we're looking at
13 in the larger perspective based upon some of the
14 things we discussed in the earlier proceeding. I
15 really don't have anything specific at this point to
16 discuss on it.

17 JUDGE:

18 Okay. Does anyone else have anything
19 specific to discuss on the issues so we'll be clear?
20 If not, I'll have to contact the scheduling officer to
21 schedule the next prehearing conference. But during
22 that time, if you could update me if there are any
23 times that you're unavailable or anything like that or
24 the best times and I'll check with the scheduler to
25 set up the conference. Would the telephonic

1 conference through the bridge like we did today be
2 acceptable to everyone?

3 ATTORNEY POVILAITIS:

4 Yes, Your Honor. I think that would be
5 fine.

6 JUDGE:

7 Okay.

8 ATTORNEY POVILAITIS:

9 I suppose you're looking --- if you said
10 30, you're looking at the week of March 14th?

11 JUDGE:

12 Probably. I'll have to check to see what
13 the schedule looks like in terms of hearings and
14 everything, but I will check with them. Does anyone
15 else have anything further before we conclude today's
16 prehearing conference? Ms. Paiva?

17 ATTORNEY PAIVA:

18 This probably doesn't need to be on the
19 record. It was just a question of scheduling.
20 Yesterday we scheduled a call in the rural carrier's
21 access case for the morning of the 17th, which would
22 be a month from today. So I think we set that for
23 10:00. And I also have a conflict on the 18th. But
24 otherwise, that week and the next week we are clear.

25 JUDGE:

1 Does anyone else have any conflicts
2 within those two weeks, the week that contains the
3 17th, that's the week of March 14th, or the next week?

4 ATTORNEY GRAY:

5 Your Honor, Steve Gray from the OSBA.
6 The 23rd is not particularly good, just that
7 Wednesday.

8 JUDGE:

9 Okay.

10 ATTORNEY PAIVA:

11 I think the afternoon of the 17th is
12 still good because I don't anticipate that call would
13 be all day.

14 JUDGE:

15 Okay.

16 ATTORNEY SMITH:

17 Kristen. I have a conflict on Monday the
18 14th. But otherwise, I'm open.

19 JUDGE:

20 Okay. Thank you. And what I'll do is
21 once I get the information, what I'll do is circulate
22 an email to everyone so if you go back and look at
23 your calendars and see that there is a problem, we can
24 do that before we formally set it up.

25 I'd like to thank the parties for their

1 participation in getting the prehearing memoranda out
2 in a quick manner. I know that this case has been
3 going on for a while so as everybody has indicated,
4 there have been some changes over the last year ---
5 well, even since we started the proceeding. So I know
6 that we have to --- the telephone industry is
7 continuing to change so we will just have to deal with
8 those changes as we go along. And I thank you so much
9 for your participation and your cooperation.

10 ATTORNEY POVILAITIS:

11 Thank you, Your Honor.

12
13 * * * * *

14 HEARING CONCLUDED AT 2:48 P.M.

15 * * * * *
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 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.



Court Reporter

RECEIVED

MAR 9 2005

PA PUBLIC UTILITY COMMISSION
CERTIFICATE OF PUBLIC UTILITY