

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

IN RE: PETITION OF US LEC OF
PENNSYLVANIA, INC. FOR
ARBITRATION WITH
VERIZON-PENNSYLVANIA, INC.
PURSUANT TO SECTION 252(b)
OF THE TELECOMMUNICATIONS
ACT OF 1996

Initial
Prehearing Conference

Docket No.:
A-310814F7000

RECEIVED

JUN 05 2002

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Commonwealth Keystone
Building
400 North Street
Harrisburg, PA

Friday, May 17, 2002
Commencing at 10:15 a.m.

ORIGINAL

BEFORE:

LOUIS G. COCHERES, Administrative Law Judge

ALSO BEFORE:

ROBERT A. CHRISTIANSON, Chief Administrative Law
Judge

DOCKETED

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REPORTER: DANIELLE M. ZAMIAS

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WITNESS

DIRECT

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NONE PRESENT

P R O C E E D I N G S

JUDGE COCHERES:

1
2 -----
3
4 Good morning, ladies and gentlemen. By
5 now you know my name is Louis Cocheres and I am the
6 Administrative Law Judge assigned to hear the matter
7 of the Petition of US LEC of Pennsylvania,
8 Incorporated for arbitration with Verizon-
9 Pennsylvania, Incorporated pursuant to Section 252(b)
10 of the Telecommunications Act of 1996 at Commission
11 Docket number A-310814F7000.

12 We're here today by telephone generally.
13 We have all of the major parties represented by a
14 multitude of counsel. And I have here in the
15 conference room with me, as you already know, the
16 Chief Administrative Law Judge, Robert Christianson.

17 We're here today for our first
18 prehearing conference in this matter and we have --- I
19 have my own agenda to go through. But before we do
20 that, I need to introduce for the record and for the
21 benefit of the court reporter the various parties who
22 are here. And I will caution you that since the court
23 reporter is unlikely to know you by your voice to
24 speak up and start with telling us your name so that
25 she may properly record it. And I'm going to go

1 through what I think should be a list of attendees
2 here. I will try to separate you by parties.

3 Representing US LEC, I have Linda Smith
4 in Harrisburg. And with her are Mr. Rindler, Ms. Cohn
5 and Mr. Shor in Washington D.C. And representing
6 Verizon, I have Ms. Conover, Mr. Gay in Philadelphia
7 and Mr. Panner in Washington D.C. Is there anyone
8 whose name I omitted? Fine.

9 I'm going to assume that Mr. Gay is the
10 lead Counsel this morning for Verizon, unless someone
11 can tell me differently, and Ms. Smith, are you going
12 to be lead Counsel this morning for your attorneys?

13 ATTORNEY SMITH:

14 Your Honor, I believe Mr. Shor will be
15 doing the speaking on behalf of US LEC.

16 JUDGE COCHERES:

17 Thank you. All right, fine. Now, I want
18 you folks to know that I have reviewed the petition,
19 I've reviewed your prehearing memoranda and I have
20 received by e-mail this morning, two Petitions for
21 Admission pro hac vice on behalf of Verizon to admit
22 Mr. Panner and Mr., forgive me, Mr. Angstreich.

23 ATTORNEY PANNER:

24 It's Mr. Angstreich.

25 JUDGE COCHERES:

1 Mr. Angstreich, right, thank you. And I
2 assume that was Mr. Panner who responded?

3 ATTORNEY PANNER:

4 That's right, I'm sorry.

5 JUDGE COCHERES:

6 That's all right. Okay. Let's deal with
7 those first because they are the easiest ones to deal
8 with. If there is no objection to the admission of
9 Mr. Panner and to Mr. Angstreich, those petitions are
10 granted. I subscribe to Judge Weismandel's theory of
11 pro hac vice, which is that Mr. Gay, who will remain
12 responsible generally for this case, although we
13 recognize that Mr. Panner and Mr. Angstreich will be
14 participating, perhaps even in a lead counsel format,
15 for Verizon.

16 Now, I have looked and I appreciate the
17 cooperation that the parties have already shown, not
18 only at the list of issues but my favorite topic is
19 the schedule, the hearing schedule, the purposed
20 litigation schedule that both of you have brought to
21 the table. And I don't recall seeing that you have
22 any major differences in your schedule. It will take
23 me a moment of paper shuffling to find both of them.

24 ATTORNEY SHOR:

25 Your Honor, this is Michael Shor on

1 behalf of US LEC. First, on the schedule, there's
2 only one item that US LEC included in its purposed
3 schedule that we had not discussed with Verizon and
4 that is simply a date by which parties should exchange
5 objections to Discovery if there are any, recognizing
6 that sometimes in these matters, there are some
7 questions that arise and we thought it would be
8 appropriate just to enter and impose a --- since
9 we're going to do this somewhat expeditiously, a
10 deadline for filing objections and that would give the
11 parties time to resolve those in advance to Discovery
12 being due.

13 ATTORNEY GAY:

14 Your Honor, we don't have a problem with
15 that. I think the ---.

16 JUDGE COCHERES:

17 Just a moment, who's speaking?

18 ATTORNEY GAY:

19 This is Anthony Gay, Your Honor, I
20 apologize. Where I'm from with that date, I think we
21 want to address the second issue that I think Mr. Shor
22 is going to refer to.

23 ATTORNEY SHOR:

24 No. Actually, the second issue is US
25 LEC, I believe it also filed motions for pro hac vice.

1 I think.

2 JUDGE COCHERES:

3 Is that Mr. Shor again?

4 ATTORNEY SHOR:

5 Yes, I'm sorry. I know that we had
6 executed some items in connection with that. Linda, I
7 believe those were filed?

8 ATTORNEY SMITH:

9 Yes. Your Honor, those motions were
10 filed prior to the prehearing conference. They were
11 filed simultaneously with the petition.

12 JUDGE CHRISTIANSON:

13 With the actual inch of paper, more or
14 less?

15 JUDGE COCHERES:

16 Just a moment, let me shuffle some papers
17 here and look in my file.

18 ATTORNEY SMITH:

19 It was filed at the same time as the
20 petition, but it was a separate document. It was not
21 included within.

22 JUDGE CHRISTIANSON:

23 I vaguely remember them, yes. Well,
24 we'll shuffle some more papers. This is Bob
25 Christianson. Meanwhile, I just wanted to --- if we

1 can be off the record for a moment, if the Judge is
2 content with that.

3 OFF RECORD DISCUSSION

4 JUDGE COCHERES:

5 Let's go back on the record. I apologize
6 for the delay and I appreciate the help from my
7 colleague and my boss. I now have the motion for pro
8 hac vice on behalf of Mr. Rindler, Ms. Cohn and Mr.
9 Shor, sponsored, of course, by Ms. Smith. And hearing
10 no objection, that motion is also granted and I
11 apologize that it took me so long to find it in such a
12 relatively small file.

13 All right. Now, we were talking about
14 schedules before I was reminded that there was more
15 than one motion outstanding. And Mr. Shor had made
16 the point that US LEC had included an opportunity to
17 make objections and certainly, I don't have a problem
18 with that. Is there a Verizon response?

19 ATTORNEY GAY:

20 Your Honor, we have no problem with the
21 ---.

22 JUDGE COCHERES:

23 Is that Mr. Gay?

24 ATTORNEY GAY:

25 Yes. Correct, Your Honor, this is Mr.

1 Gay. And we have no problem with the June 12
2 objection date.

3 JUDGE COCHERES:

4 Fine. I had one item that I noticed was
5 missing from both of your proposed schedules and that
6 is a date for submitting final and best offers. Does
7 anyone have any strong feelings on when that should be
8 plugged into the schedule?

9 Hearing none, it's been a while since
10 I've done one of these cases and ---.

11 ATTORNEY GAY:

12 Your Honor, this is Anthony Gay for
13 Verizon. You know, to put out a proposal, we can have
14 that at the same time as the reply testimony.

15 ATTORNEY SHOR:

16 This is Michael Shor for US LEC. If I
17 may be guided in this instance by my local Counsel as
18 to whether those are most appropriately filed prior to
19 the hearing or at some point thereafter.

20 ATTORNEY GAY:

21 I will profess having a senior moment
22 right now and I don't recall when that is typically
23 done in Pennsylvania.

24 ATTORNEY SMITH:

25 Well, I would think that you would need

1 to do it prior to the briefing, but any time that you
2 feel that it would be appropriate to do prior to the
3 briefing would be ---.

4 JUDGE COCHERES:

5 Ms. Conover, you're perhaps the most
6 experienced among us all. It's been a couple years
7 since I did the next link arbitration. I remember
8 that we had a final and best offer on the table from
9 each side at that point and it occurs to me that it
10 would have to come in before briefs and my only
11 question is whether it's before or after hearing.

12 ATTORNEY CONOVER:

13 Your Honor, this is Ms. Conover.
14 Actually, it's been done both ways and I did just
15 check on the most recent arbitration, the Yanks
16 arbitration. It was actually done after the hearing,
17 really concurrently with the main brief. So if that's
18 acceptable to you, that might make the most sense.

19 ATTORNEY SHOR:

20 This is Michael Shor for US LEC. I think
21 it makes a great deal of sense to do it after the
22 hearing. And if we do it at the same time,
23 concurrently with the filing of the briefing, I think
24 that would probably work out to everyone's advantage.

25 JUDGE CHRISTIANSON:

1 This is Christianson. Just as a thought,
2 if a major break occurs in the case, it causes you to
3 tell the Judge about it, but to schedule it now, it
4 seems at the most sense after the hearing.

5 JUDGE COCHERES:

6 Yes, I'm inclined to agree about after
7 the hearing. My concern is that each party see the
8 final and best offer before they do the brief because
9 it gives the opportunity for each party to include
10 whatever argument they want about the final and best
11 offer in their brief.

12 ATTORNEY SHOR:

13 Your Honor, Michael Shor for US LEC. In
14 that regard, we've suggested that the post hearing
15 brief should be filed two weeks on the receipt of
16 expedited transcript. Perhaps we could do the final
17 and best offer one week after the receipt of the
18 transcript.

19 JUDGE COCHERES:

20 I like that idea. Is there anyone who
21 has a problem with that?

22 ATTORNEY GAY:

23 It's Anthony Gay for Verizon, Your Honor.
24 We don't have a problem with that. Once we resolve
25 this issue, there is one other issue I'd like to

1 raise.

2 JUDGE COCHERES:

3 Well, I'm sure there's at least one. I
4 will put out a procedural order on this and I will
5 include the final and best offer as due one week after
6 the hearing --- after receipt of the transcript and
7 incidentally, to the best of my knowledge, we're using
8 expedited transcripts, I think on a one-day turnover.
9 So it shouldn't take too long to get it.

10 Okay. That was my main concern about the
11 scheduling. I do note that the parties do not
12 entirely agree as to whether there should be two
13 rounds of briefing or one. And Mr. Gay, you are the
14 proponent of two rounds of briefing, why don't I hear
15 from you first.

16 ATTORNEY GAY:

17 Yes, Your Honor. This is Anthony Gay.
18 It's our position that the post hearing briefs or the
19 reply briefs --- post hearing reply briefs, excuse me,
20 are necessary. Often, parties raise issues in their
21 main briefs, which require a response or a
22 clarification and that's why we think they're
23 necessary. And, you know, it's my understanding that
24 there was a concern on Mr. Shor's part, and I haven't
25 spoken to him directly so I just want to put that out,

1 but it's my understanding that they were concerned
2 about new issues being raised. That is not the
3 purpose of post hearing reply briefs and that's not
4 something we intend to do. The key thought is that
5 main brief --- and while I don't have as much
6 experience as Ms. Conover, I have experience knowing
7 that issues are raised in main briefs that often need
8 clarification for the benefit of both the
9 administrative law judge and the record.

10 JUDGE COCHERES:

11 Mr. Shor, do you have any comments?

12 ATTORNEY SHOR:

13 Yes, thank you, Your Honor. US LEC's
14 feeling on this is that these are not new issues,
15 they're not new issues for Verizon, they're not new
16 issues for US LEC and frankly, they're not necessarily
17 new issues for the Commission. And it does not
18 require the parties to ultimately go through four
19 rounds of briefings, two rounds of post hearing
20 briefing and then two rounds of briefing after a
21 proposed decision has been rendered to state our
22 positions. Verizon knows exactly what US LEC is going
23 to contend and what it's going to argue in the briefs.

24 If the parties feel, after they've looked
25 at the main briefs, that there is, in fact, something

1 that requires clarification, they can always ask for
2 leave to do that. But I think that since these are
3 not new issues, the parties can stay, can include
4 everything in their main briefs that they need to
5 include.

6 The comment that we had made, if there
7 was a reply brief, is that we have unfortunately
8 sometimes been involved in situations where a party
9 does not in their main brief fully set forth the
10 factual and legal basis for their position and they
11 wait until their reply brief to do so, giving the
12 other party no real opportunity, in fact, to reply.

13 And that is really one of the other
14 concerns, that we've seen that too many times. I'm
15 not going to accuse Mr. Gay or Ms. Conover of that,
16 but it has been something that we've experienced and
17 we feel that if there's just one round of briefing,
18 you put everything you've got into that brief and
19 that's it.

20 JUDGE CHRISTIANSON:

21 Well, this is Bob Christianson again. I
22 can speak because Mr. Cocheres I go back to the old
23 rate case days. I think we called it sandbagging back
24 then or something like that.

25 JUDGE COCHERES:

1 Yes, we did.

2 JUDGE CHRISTIANSON:

3 I just ran and got a rules of practice.
4 It doesn't cover that in the rules of practice, but
5 were very strong about what goes into the reply brief,
6 it had to relate to the main brief obviously.

7 ATTORNEY GAY:

8 Yeah, Your Honor ---.

9 JUDGE COCHERES:

10 That's Mr. Gay.

11 ATTORNEY GAY:

12 Both Chief Judge Christianson and Judge
13 Cocheres, you know, it's not our practice to sandbag
14 and I think, you know, Mr. Shor and I came together a
15 while back, you may not remember, but I think, you
16 know, I'm relatively comfortable that he won't sandbag
17 us, you know. I think he can be comfortable that I
18 won't sandbag him or we won't sandbag him.

19 But there are procedures to deal with
20 that and I think it's important to have the schedule
21 set up now because as you get farther down the road
22 and then you have to make some kind of motion for
23 leave to file reply briefs --- I mean, that's all
24 hypothetical.

25 Again, we just think that reply briefs

1 are traditionally accepted in arbitrations, they're
2 done in other proceedings before the PUC and, you know
3 --- Mr. Shor, he's referring to the fact that these
4 --- he alluded to the fact that this proceeding or
5 arbitration is being done in other jurisdictions, but
6 for Pennsylvania, I think we need to have some reply
7 brief so we can deal with the issues raised here.

8 JUDGE COCHERES:

9 Well, Mr. Gay, I think what I'm going to
10 do here is I'm just going to put this issue on a back
11 burner for a moment because there's another way I want
12 to come to it, somewhat more indirectly and I was
13 premature perhaps in raising it now.

14 There is an issue that I think is more
15 important than the problem of reply briefs and that is
16 as I reviewed the prehearing memoranda, there was an
17 interesting dichotomy that I noticed and that is that
18 US LEC retained the flexibility in their memoranda to
19 indicate that there were disputed issues of material
20 fact and Verizon did not. They basically said, Your
21 Honor, this case is all about law and policy.

22 And frankly, it was an issue that I had
23 highlighted when I read the petition for arbitration
24 because I'm having trouble seeing what facts are in
25 dispute. The way the issues are framed, it seems to

1 me that the absolute vast majority of them are issues
2 of law and policy. There may be one or two, and I
3 don't have a specific example on mine, there may be
4 one or two that might have some issues of fact in it,
5 but I couldn't tell. I was willing to give US LEC the
6 benefit of the doubt, but I think I need some more
7 clarity on the record right now.

8 I noticed that you both have identified
9 witnesses. Certainly if this is a problem that
10 involves law and policy, I probably don't need any
11 witnesses.

12 ATTORNEY GAY:

13 Well, Your Honor, I would need ---.

14 JUDGE COCHERES:

15 Who is this?

16 ATTORNEY GAY:

17 This is Anthony Gay, Your Honor. I would
18 --- first, I'd like to defer to Mr. Panner on this
19 because he's had direct discussions with Mr. Shor, but
20 I do think this is something that is more of a law and
21 policy matter as opposed to a factual issue. You
22 know, I'll defer to Mr. Panner just because he's
23 probably had more close discussions with Mr. Shor.

24 JUDGE COCHERES:

25 Actually, I think I want to start with US

1 LEC. What issues did you see in the list that you
2 provided to me and was pretty much confirmed by
3 Verizon that were factual?

4 ATTORNEY SHOR:

5 Thank you, Your Honor. This is Michael
6 Shor for US LEC. I think that if you look at issue
7 one, issue two and issue six right off the top of the
8 bat, those issues, probably more than any other, will
9 involve issues of fact. To the extent that in issue
10 one and issue two, Verizon is contending that it
11 incurs costs in connection with the interconnection
12 framework that the parties agree on, then those ---
13 not the rates, but the actual costs themselves as they
14 are applied in the specific situation would become an
15 issue of fact. To the extent that Verizon is arguing
16 that it is not obtaining the revenue that it believes
17 it might be entitled to under an issue --- under issue
18 six, then that would also be an issue of fact.

19 I would agree with you that the other
20 issues primarily are issues of law and policy. There
21 may be some facts that would impact those, but they're
22 certainly not major. But those three issues jump out
23 at US LEC as ones where there could conceivably be
24 fact questions that would need to be taken into
25 consideration by the ALJ and the Commission in

1 reaching its determination.

2 JUDGE COCHERES:

3 As accepting your premise that issues
4 one, two and six are factual based, given the
5 opportunity to do Discovery and given the knowledge we
6 have that Pennsylvania's not unique here, we're not
7 inventing the wheel for US LEC and Verizon, it's my
8 understanding that you're litigating these issues on
9 the Verizon footprint, perhaps not in every state, but
10 in some of them at least. Do you think it would be
11 possible for the parties to stipulate to the factual
12 background here for these two --- three issues?

13 ATTORNEY SHOR:

14 This is Michael Shor. I mean, we've
15 indicated a willingness to try to do that, but it may
16 turn out after we've completed Discovery that that
17 just simply isn't possible.

18 ATTORNEY PANNER:

19 Your Honor, if I may, this is Aaron
20 Panner. In my experience with these proceedings, it
21 is true that often the facts are not disputed. As you
22 know, probably better than I, you know, a lot of the
23 facts that are disputed don't come down to who did
24 what when, but come down more to issues of, you know,
25 what are the background facts in the industry and

1 concerning things like power costs incurred in the
2 network and so forth that are technical facts that an
3 expert can do a good job of bringing onto the record.
4 Often, there may not be a dispute about a material
5 fact and I think what we tried to reflect in our
6 issues is that there may not be.

7 For instance, there could be a dispute
8 about a material fact that would arise if a certain
9 claim were made about a network configuration or
10 number assignment practices and one of the parties
11 challenged that and that, you know, came into ---
12 became a material issue in the proceedings, then there
13 could actually be a dispute over who has done what,
14 you know, what are the facts on the ground.

15 But I think that it's consistent with the
16 idea that we may not have too many disputes about
17 material fact, the need for Discovery of facts we
18 think would be quite restricted, and yet nonetheless
19 find it useful to hear from an expert witness who
20 understands how things work in the network who could
21 help to explain it on the record of the proceeding.

22 JUDGE COCHERES:

23 Mr. Panner, do you agree with Mr. Shor's
24 evaluation that issues one, two and six are mostly
25 likely to be the fact-based issues?

1 ATTORNEY PANNER:

2 Well, I guess I tend not to agree that
3 there are a lot of --- as I say, as a kind of who has
4 done what, what are the actual facts in the world kind
5 of disputes that would lend themselves to discovery.
6 I do agree that those are the issues where the general
7 factual background and where expert testimony would
8 probably be most important and most useful to the
9 Commission.

10 ATTORNEY SHOR:

11 This is Michael Shor for US LEC. I don't
12 --- if Verizon wants to introduce the testimony of an
13 expert, I'm sure they have the right to do that. I
14 don't necessarily see that as being the essential need
15 --- I don't see that as being a real need for that.
16 The facts are what they are, the costs are what they
17 are. And I don't know that the Commission needs an
18 expert to analyze that, but that's their entitlement
19 and its their right to present their case as they
20 please.

21 ATTORNEY PANNER:

22 I guess, Your Honor, let me correct
23 myself. I've been a little bit loose in referring to
24 them as experts. I guess I mean them as subject
25 matter experts, people who understand the way that the

1 network is set up and works and the history of the way
2 that some of these compensation arrangements and
3 network architecture arrangements have been
4 established. Those are facts that I --- I didn't mean
5 it in the sense of an outside expert who is doing, you
6 know --- who is testifying as an outside expert, but
7 fact witnesses who are subject matter experts. I
8 needed to clarify that. Thank you, Michael, for
9 pointing that out.

10 JUDGE COCHERES:

11 Thank you. Gentlemen, let me approach
12 this a little differently then. Tell me, Mr. Shor,
13 how many jurisdictions is US LEC seeking to arbitrate
14 with Verizon in right now?

15 ATTORNEY SHOR:

16 We will be --- the total number of
17 jurisdictions that we will be litigating issues will
18 be seven. We have filed five petitions to date, there
19 are two more remaining to be filed.

20 JUDGE COCHERES:

21 All right. Would you tell me the first
22 five then?

23 ATTORNEY SHOR:

24 Pennsylvania, Maryland, North Carolina,
25 the District of Columbia, Florida.

1 JUDGE COCHERES:

2 All right. Now, in terms of the time
3 frame that's going on here, are any of those petitions
4 filed procedurally going ahead of this case?

5 ATTORNEY SHOR:

6 Not at this moment, although that may
7 ultimately prove to be the case.

8 ATTORNEY PANNER:

9 And the other thing, Your Honor, that I
10 think they're pointing out is that in North Carolina,
11 they follow a somewhat different procedure in which
12 pre-filed testimony is filed at the time of the filing
13 of the petition and the answer. And so the parties
14 have, in North Carolina, already filed some testimony
15 on these issues.

16 JUDGE COCHERES:

17 All right. What I was trying to get to
18 is again, in the interest of not reinventing the wheel
19 that if we're going to have hearings that you all may
20 have been over the ground sufficiently prior to that
21 time in another jurisdiction that you could again
22 either stipulate to the facts or adopt wholesale
23 portions of the record from other proceedings into
24 this one.

25 ATTORNEY SHOR:

1 If I may, Your Honor, this is Michael
2 Shor for US LEC. We certainly have thought of that as
3 a possibility. It is somewhat complicated by the fact
4 that the Maryland and Pennsylvania arbitrations are
5 between US LEC and the former Bell Atlantic, whereas
6 the North Carolina and Florida are between US LEC and
7 the former GTE.

8 So there are different network
9 configurations and frankly, they would be different
10 costs in each jurisdiction. Although I agree with you
11 that if it is possible to stipulate in portions of
12 records from other proceedings, then that would be in
13 the interest of the economy and we would try to do
14 that.

15 JUDGE COCHERES:

16 And where is the Maryland proceeding in
17 relationship to this one?

18 ATTORNEY SHOR:

19 We have a prehearing conference scheduled
20 for the end of May in that proceeding.

21 JUDGE COCHERES:

22 So are you trying to tell me that I'm out
23 here not only on the cutting edge, but the bleeding
24 edge?

25 ATTORNEY SHOR:

1 You are out on the limb, Your Honor.

2 JUDGE COCHERES:

3 Well, thank you. All right. Then I'll
4 deal with it in that manner. Okay. Let's go back to
5 the need for hearings then. Can I safely assume that
6 one day should do this?

7 ATTORNEY SHOR:

8 Your Honor, this is Michael Shor for US
9 LEC. If this thing goes beyond one day, then we would
10 all need to be --- reconsider. I think one day would
11 be more than sufficient.

12 JUDGE COCHERES:

13 Good. Don't wish for more, it may come
14 true. All right. Do I have any problem out of the
15 Verizon camp on setting it for one day?

16 ATTORNEY PANNER:

17 I think one day would make sense, Your
18 Honor.

19 JUDGE COCHERES:

20 And that was who?

21 ATTORNEY PANNER:

22 I'm sorry, Aaron Panner.

23 JUDGE COCHERES:

24 Okay. Thank you, Mr. Panner. All right.
25 Let's all look at our calendars. You all suggested

1 that we move the hearings into July, which fits nicely
2 with my schedule. You were only one week apart, as I
3 recall. No, I'm sorry. You were both in the week of
4 July 15th. Currently, the only day on my calendar in
5 the week of July 15th that is filled is July 15th. So
6 you tell me, folks, when is a good day for all of you
7 to come to Harrisburg, Pennsylvania?

8 ATTORNEY SHOR:

9 I think Wednesday or Thursday would be
10 the best two days.

11 JUDGE COCHERES:

12 And who was that?

13 ATTORNEY SHOR:

14 I'm sorry. That was Michael Shor for US
15 LEC, Your Honor.

16 JUDGE COCHERES:

17 All right. And the Verizon camp?

18 ATTORNEY GAY:

19 Your Honor, this is Anthony Gay. Either
20 one of those days work fine for me, so we just would
21 need to know what works with Mr. Panner's schedule
22 actually.

23 JUDGE COCHERES:

24 Mr. Panner?

25 ATTORNEY PANNER:

1 I guess I have a small preference for
2 Wednesday, but whatever's more convenient for everyone
3 is fine for me as well.

4 JUDGE COCHERES:

5 Well, Mr. Panner, your small preference
6 and mine coincide, so it will be July 17th. Does
7 anyone have a problem with that date? All right.
8 That will sort of be written in stone. For final and
9 best offers, that makes it the 24th.

10 ATTORNEY SHOR:

11 Well, with the --- excuse me, Your Honor.
12 This is Michael Shor for US LEC. Would the transcript
13 be out the 18th?

14 JUDGE COCHERES:

15 It would be my expectation that it would
16 be. Our court reporters are normally very good about
17 that sort of thing and bring multiple reporters to
18 hearings that may justify a full day's transcript and
19 do it in shifts.

20 ATTORNEY SHOR:

21 Would that then make the one week be the
22 25th instead of the 24th?

23 JUDGE COCHERES:

24 All right. I'll buy into that math. And
25 that will be final and best offers on the 25th. All

1 right.

2 ATTORNEY SMITH:

3 Your Honor, are you going to start the
4 hearing at 10:00 on Wednesday, the 17th or 9:00?

5 JUDGE COCHERES:

6 I can accommodate the parties. I only
7 need to know that you folks want to start earlier.
8 Normally, hearings start at ten o'clock in the morning
9 in this building, but we do make exceptions regularly
10 for people who think they may need an earlier start
11 time. You tell me, 9:00 or 9:30 a better time for
12 you?

13 ATTORNEY SMITH:

14 As a lot of people will be traveling up
15 to Harrisburg, I don't know if we'll be coming in the
16 night before or the morning of. Michael, do you have
17 any preference?

18 ATTORNEY SHOR:

19 I think ten o'clock is fine.

20 JUDGE COCHERES:

21 All right. Verizon?

22 ATTORNEY GAY:

23 Anthony Gay for Verizon. I think 10:00
24 is fine also, taking into account the potential
25 traveling for those of us who are not Pennsylvanians.

1 JUDGE COCHERES:

2 Okay. Fine, ten o'clock it will be. All
3 right.

4 JUDGE CHRISTIANSON:

5 The reply briefs?

6 JUDGE COCHERES:

7 Yes. I come from a background of --- I'm
8 going to move back to the subject of reply briefs.
9 Well, wait a minute. Let me structure the testimony
10 for you. We find it easier and a more structured
11 record if we retain the matrix of issues and their
12 numbers that have been proposed in the petition and I
13 want you to structure your testimony in the same way.

14 Let me tell you what the format that I
15 used for the prior arbitrations that I've been
16 involved in and I think it was fairly successful and
17 it is a good outline form for the hearing as well as
18 your briefs. And that's simply I don't care how many
19 witnesses you're planning to bring, but we will hear
20 the testimony in the order of the issues, not in the
21 order of the witnesses. So if witness number one
22 testifies on issues one, two, seven and eight, that's
23 fine. I'll put them on the stand for issues one and
24 two and when we get to issue number three, we'll just
25 switch to another witness.

1 That creates a record that enables you
2 folks to write your briefs and for me to write my
3 decision in a fairly orderly fashion. It completes
4 each issue as a package and then moves on to the next
5 issue in line. So when you're structuring your
6 witnesses' testimony, that's the way I want to see it,
7 clear delineation between issues. And I appreciate
8 that there may be some overlap between issues, but I
9 want you to accommodate this format as much as you
10 can. And the same would be true of briefs. Does
11 anybody have a problem with that or need to make a
12 comment?

13 ATTORNEY SHOR:

14 Your Honor, this is Michael Shor for US
15 LEC. Let me just interject at this moment. We
16 advised the Commission in our prehearing memo that we
17 have settled two issues.

18 JUDGE COCHERES:

19 Right.

20 ATTORNEY SHOR:

21 And to the extent that you would require
22 a motion for US LEC to withdraw those two issues from
23 the petition, I'd like to make that motion orally at
24 this time. What I understand you to be saying is that
25 even though those issues have been removed, we are not

1 going to renumber the issues to eliminate them, we
2 will go issue six and issue eight and there just will
3 be no issue seven.

4 JUDGE COCHERES:

5 Right. We can just make a brief
6 reference on the record that it's settled.

7 ATTORNEY SHOR:

8 Okay.

9 JUDGE COCHERES:

10 And I will accept your motion and it is
11 granted.

12 ATTORNEY SHOR:

13 Thank you, Your Honor.

14 JUDGE COCHERES:

15 And, you know, that way we keep ---
16 because let's face it, folks, you're going to be
17 litigating in multiple jurisdictions and you probably
18 are going to have similar witnesses on similar
19 subjects everywhere and it will keep your life in a
20 little more order, at least in Pennsylvania. Do I
21 hear any other comments on that subject? Good.

22 Hearing none, let's deal with the issue
23 of reply briefs. I will --- I'm going to accept the
24 suggestion of Verizon and permit reply briefs.
25 Verizon is correct and as the Chief Administrative Law

1 Judge has already pointed out, we have very strict
2 rules around here about what's to be contained in
3 reply briefs and sandbagging is of course not to be
4 permitted. I have no experience with the litigants in
5 front of me that isn't good and I always give the
6 litigants the benefit of the doubt when I'm dealing
7 with them. I will deal most unkindly with the
8 litigant who puts something in their reply brief that
9 is not appropriate, including, and I've had this
10 happen in the past, modifications to final and best
11 offers.

12 So with that in mind, I think I'm almost
13 completed with my part of the agenda, except to ask
14 Mr. Panner and Mr. Gay how soon I can expect the
15 Verizon answer.

16 ATTORNEY PANNER:

17 Your Honor, the answer will be filed on
18 Tuesday, you know, the 25 days statutory deadline.

19 JUDGE COCHERES:

20 Is that Mr. Panner?

21 ATTORNEY PANNER:

22 That was Mr. Panner.

23 JUDGE COCHERES:

24 All right. Fine. I will look forward to
25 receiving that. Now, do you think that there is any

1 need for, and I'm certainly not encouraging this, but
2 I want you to understand that it is available, for us
3 to meet informally either on or off the record between
4 now and the hearing date?

5 ATTORNEY GAY:

6 This is Mr. Gay for Verizon, Your Honor.
7 At the present time, I don't think so. I mean, if
8 something comes up, I'm sure we could work it out.

9 ATTORNEY SHOR:

10 Your Honor, this is Michael Shor for US
11 LEC. I would hope that there will not be any
12 Discovery disputes, but at this point, that's the only
13 substantive item that I can think of that would
14 potentially require your attention. But we're not
15 there yet.

16 JUDGE COCHERES:

17 Okay. I urge you not to have Discovery
18 disputes. Most judges don't like them, I fall into
19 that category of most judges. My format for handling
20 those, if I must, is to set some time frame up that's
21 convenient on short notice to the parties for a
22 conference call and to dispose of those things as
23 quickly and expeditiously as possible because
24 otherwise we're simply impeding the forward progress
25 of this case.

1 The other thought that I had is that in
2 formulating your final and best offers, do you think
3 it would be appropriate or helpful for me to comment
4 after I have seen either your answer from Verizon or
5 all of your pre-filed testimony or after the hearing,
6 perhaps near the conclusion of the hearing, on the
7 parties' positions? In other words, do a very brief
8 evaluation without the benefit of briefs.

9 ATTORNEY PANNER:

10 Your Honor, this is Aaron Panner. I
11 mean, for my part, I think it's always useful to know
12 what the issues are and what the key issues are. I
13 think it will help guide our briefing and make it
14 more, you know, our presentation more useful. You
15 know, certainly late on the date of the hearing, if
16 you were to say, you know, this is kind of how I see
17 things, I think that we would --- certainly Verizon
18 would find that very useful.

19 ATTORNEY SHOR:

20 Your Honor, this is Michael Shor for US
21 LEC. I have to agree it's always helpful to get a
22 sense from the finder of fact how that entity is
23 viewing the parties' cases. I think it would help us
24 in preparing our final and best offer and may narrow
25 substantially the area that you need to deal with

1 formally in a proposed decision.

2 JUDGE COCHERES:

3 Yes. How shall I put this? I'm of two
4 minds on that subject and I don't always bring it up.
5 I will tell you right now that if I decide to offer
6 those comments, and I probably will, that I don't
7 consider them binding. In other words, if I'm able to
8 produce movement and settlement of issues instead of
9 briefs, wonderful, but if I end up having briefs, it
10 may be that in reading your briefs, I may change my
11 mind on an issue and I want to make that perfectly
12 clear up front.

13 But on the other hand, I think that
14 sometimes a view from the top, and I've done this in
15 other cases, helps some parties occasionally with a
16 reality check that they need to understand. And I
17 think I've written enough on telco issues that it
18 shouldn't be too hard to predict where some of my
19 viewpoints are going to come from.

20 But with that idea in mind, I will try,
21 you know, to be prepared to do that at the end of the
22 hearing on July 17th.

23 Now, I believe that completes my agenda.
24 Is there anyone else who has an issue that they need
25 to deal with? I'll start with the Petitioner.

1 ATTORNEY SHOR:

2 Thank you, Your Honor. This is Michael
3 Shor for US LEC. I think that you have identified all
4 of the items that we had raised in our prehearing
5 memorandum and we are comfortable with where we are,
6 where we have wound up on these items.

7 JUDGE COCHERES:

8 Fine. For Verizon?

9 ATTORNEY GAY:

10 This is Anthony Gay, Your Honor.
11 Presently, we're comfortable where things stand.

12 JUDGE COCHERES:

13 All right. I will --- off the record.

14 OFF RECORD DISCUSSION

15 JUDGE COCHERES:

16 At any rate, gentlemen and ladies, I try
17 to be accessible. This will be the highest priority
18 case on my case list, notwithstanding that I actually
19 have another Verizon matter that will be tried the
20 preceding week. But I urge you that if you have some
21 need to talk to me to call my direct dial number,
22 which is (717) 787-9816. And if something arises, and
23 I'm certainly not encouraging it, but if something
24 arises that you think needs my immediate attention and
25 we need to set up a conference call, I'm confident

1 that the Chief Administrative Law Judge will allow me
2 to move things around on my calendar to accommodate
3 this case. It's our desire to get it done as
4 expeditiously as possible. Which brings me to the
5 question, does the Chief have any additional comments
6 for us?

7 JUDGE CHRISTIANSON:

8 No, I think you've covered the ground. I
9 think Yanks was the only one recently that's gone on
10 to the statutory limit, we might call it. We've
11 slipped a little bit, but I think it's good to
12 expedite these to the degree we can and I will move
13 things around as necessary to help out, at least
14 reasonably so. I don't give the Judge all of his
15 druthers, but we try to manage.

16 JUDGE COCHERES:

17 He's a good guy to work for. Ladies and
18 gentlemen, I will also very shortly send out a test
19 e-mail message to all of you just to make sure that I
20 have correctly entered your e-mail addresses. Kindly
21 respond so that when we need to use e-mail to contact
22 each other, that will work. As far as I'm concerned,
23 e-mail is fine as long as the hardcopy follows the
24 next day. Does anyone else have any comments or
25 questions?

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ATTORNEY SHOR:

No, Your Honor, for US LEC.

JUDGE COCHERES:

And that was Mr. Panner?

ATTORNEY SHOR:

That was Mr. Shor.

JUDGE COCHERES:

Thank you, I'm sorry.

ATTORNEY GAY:

No, Your Honor, for Verizon and this is
Mr. Gay.

JUDGE COCHERES:

Thank you. Well, that being said, I
thank you all for coming and the cooperation that
you've shown so far and looking forward to meeting you
all on July 17th.

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HEARING CONCLUDED AT 10:58 A.M.

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C E R T I F I C A T E

I HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS
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