

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Joint Application of
Commonwealth Telephone
Company, CTSI, LLC, and
CTE Telecom, LLC, d/b/a
Commonwealth Long
Distance Company

Docket No.: A-310800F0010
A-311095F0005
A-311225F0003

Prehearing conference

Pages 1 - 49

LOCATION:

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400 North Street
Hearing Room 2
Harrisburg PA

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DATE:

November 29, 2006
Commencing at 10:14

BEFORE:

Susan D. Colwell, Administrative Law Judge

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SECRETARY'S BUREAU

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WITNESS

DIRECT

CROSS

REDIRECT

RECROSS

NONE PRESENTED

P R O C E E D I N G S

JUDGE COLWELL:

It's shortly after 10:00 on Wednesday November 29th, 2006. This is the time and place set for a prehearing conference in the matter of a joint application of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom, LLC, doing business as Commonwealth Long Distance Company for all approvals under the Public Utility Code for the acquisition by Citizens Communications Company of all the stock of the joint applicant's corporate parent, Commonwealth Telephone Enterprises, Inc., at PUC Docket Numbers A-310800F0010, A-311095F0005 and A-311225F0003.

I'm Administrative Law Judge Susan Colwell appointed by the Commission to preside in this matter. And I note for the record the attendance of the following counsel on behalf of the Office of Small Business Advocate, Lauren Lepkoski, as well as Steven Gray. On behalf of the RCN Corp. and RCN Telecom Services Inc., John Poullaihs and Matthew A. Totino. On behalf of Sprint, Jennifer Duane. On behalf of the Communications Workers of America, Scott J. Rubin. On behalf of the Office of Consumer Advocates, Shaun Sparks and Jill Cheskis (phonetic). On behalf of the

1 Joint Applicants, Norm Kennard. On behalf of the
2 Broadband Cable Association of Pennsylvania and Blue
3 Ridge Digital Phone Company, Pamela Polacek. On
4 behalf of the Citizens Communications Company, Lillian
5 S. Harris. And on behalf of the OTS, Robert Eckonrod.

6 Did everyone sign the sheet? This case
7 began with the filing of the joint application on
8 September 29th, 2006. Since then I have the following
9 filings, so please listen and let me know if I miss
10 anything.

11 The preliminary objections and protests
12 of CWA, and subsequent withdrawal over preliminary
13 objections, in protest of OCA, in protest of OSBA.
14 The notice of appearance of OTS and the Petition to
15 Intervene of Citizens Communications Company. The
16 protest and Petition to Intervene by Sprint
17 Communications Company. Protest and Petition to
18 Intervene of RCN. Protest and Petition to Intervene
19 by Blue Ridge Digital Phone Company. The protest and
20 Petition to Intervene by the Broadband Cable
21 Association of Pennsylvania. I also have a motion for
22 admission brought by Jennifer Duane.

23 I have the joint applicant's preliminary
24 objections to CWA, and the joint applicant's
25 preliminary objections to Blue Ridge, Sprint, BCAP,

1 and RCN, as well as Answers to each of the five
2 parties and the direct testimony of the joint
3 applicant. Is that everything?

4 MS. LEPKOSKI:

5 Did you receive our notice of
6 intervention that we filed on previous ---?

7 JUDGE COLWELL:

8 I would have said that separate from the
9 protest, but, yes, that's not a problem. Anybody
10 else, did I miss something?

11 All right. So let's handle some of
12 these. Let's try the first one, the motion for
13 admission brought by Jennifer Duane. Are there any
14 objections to this motion? Hearing none, it's going
15 to be admitted for purposes of this particular
16 proceeding.

17 Also, the Petition to Intervene by
18 Citizens Communications Company. There should be no
19 objections to that. The time for filing objections
20 has passed. Okay. Which leaves us the preliminary
21 objections to the protest and Petition to Intervene of
22 Sprint, Blue Ridge Digital Phone Company, Broadband
23 Cable. And what was the fourth one? RCN. Correct?
24 NCWA.

25 Okay. Well, for reasons beyond my

1 filed on the 10th of November, those two facts are
2 conceded to by all parties, I believe, Your Honor.
3 It's a matter of prospective proposed schedule.

4 We set forth a schedule in our
5 prehearing conference memo. What we propose to do is
6 have hearings on February 1st and 2nd in this case.
7 We circulated that around the parties. Some were okay
8 with it, some weren't, so I can't report that we have
9 any unanimity on that proposed schedule.

10 What we're suggesting is that the
11 parties' testimony be due on the third of January,
12 which would be 53 days after our testimony was filed,
13 that we had some discussions right after that with the
14 parties in earnest. Hopefully we can have some
15 discussions before that, but to formally lay it out
16 was suggested in Your Honor's prehearing conference
17 Order.

18 We will then make our rebuttal testimony
19 and other parties' testimony as well available 12 days
20 after. So we're obviously compressing ourselves a lot
21 to get that done. And then to have hearings shortly
22 thereafter.

23 In our opinion this is a simple
24 transaction, Citizens is already successfully
25 operating five companies, they propose to acquire a

1 sixth company. They're in full compliance with all
2 Commission Orders. There's no known regulatory
3 issues. And this is simply insertion of a grandparent
4 of three regulating companies in Pennsylvania. Now,
5 when they have a parent, that parent would now then
6 have a --- have a parent ---. There's no change in
7 any of the regulating company financing. There's no
8 change in any regulatory requirements of those
9 companies.

10 We've tried to be upfront and candid in
11 the application, and then by the filing of our
12 testimony, to address all the issues as to the
13 benefits of a horizontal merger, the broader array of
14 services, et cetera, based on our Direct case, meeting
15 the York City Standards. And we've been diligently
16 getting our case out there. We've answered Discovery
17 to OSBA already, November 7th. The OCA has filed
18 three sets. We're in the process of answering those
19 and are willing to discuss acceleration of those
20 Answers in order to make this schedule work.

21 The downside of delay in this case is
22 severalfold. We have been forthright in our
23 testimony, describing what the potential employee
24 impacts are. And those impacts have been discussed
25 openly with employees, so there's a lot of employee

1 uncertainty. There's a certain amount of frustration.
2 We think, to resolve that is a driver for why this
3 case should be resolved expeditiously. But there's
4 also customer uncertainty out there, there will be a
5 delay of services. And we become concerned after a
6 while if this thing takes more than through the end of
7 the third quarter, that there's going to be adverse
8 perceptions in the investment's community as well.

9 This is a substantial transaction. The
10 consideration is 1.1, a little greater than 1.1
11 billion dollars, so it's a substantial transaction for
12 the parties involved. We think the regulatory issues
13 are relatively straightforward.

14 We think our proposed schedule is
15 reasonable. We wanted to work with the parties to get
16 Discovery answered. It's not unreasonable to ask them
17 to have their testimony to us 53 days after we have
18 filed our testimony.

19 The biggest hit on this schedule is ours,
20 we have to turn around in many party filed involved
21 testimony, we'd have to turn around within 12 days.
22 This schedule is consistent with that employed by Your
23 Honor in other proceedings, including the UGI
24 acquisition of PG Energy which was a lot more
25 complicated. There were gas cost changes being made.

1 There were several regulatory changes being undertaken
2 in that. There were issues about pension and so
3 forth, which don't exist in this case. And even with
4 all those issues, the parties filed their testimony 55
5 days later, rebuttal was 11 days later, the hearings
6 were 7 days after that. Very similar to the schedule
7 that we're proposing here.

8 The United Sprint case hearings were held
9 within 90 days after the application was submitted or
10 scheduled to, and then that case resolved by
11 settlement. So we think there are good reasons to
12 maintain June 1st and June 2nd. We think we can get
13 the hearings done within two days, --- or February,
14 I'm sorry.

15 JUDGE COLWELL:

16 June is out of the picture.

17 MR. KENNARD:

18 We think that schedule is reasonable,
19 Your Honor, and we'll work with the parties to make it
20 happen.

21 JUDGE COLWELL:

22 Mr. Rubin?

23 MR. RUBIN:

24 Thank you, Your Honor. The concern I
25 have with Mr. Kennard's presentation is that the

1 applicants have information that they're alleging to
2 be confidential. It has been provided, I believe, to
3 the statutory parties but not to anyone else. We have
4 been going back and forth with a proposed protective
5 agreement. As far as I can tell, most of the issues
6 are resolved, but we still don't have any of that
7 information in our hands. So even though testimony
8 was filed, I don't believe we have the complete
9 package of this file. And the same would be true to
10 some of the responses to Interrogatories.

11 I don't know where all that stands, but
12 I'm guessing we're not going to see all of that
13 information for probably at least another week or so,
14 which means we have part of the month of December to
15 try to issue Discovery on it and put our case
16 together, under Mr. Kennard's schedule. Some of the
17 other parties have gotten together ---. I believe Ms.
18 Polacek circulated a summary of what I think most of
19 us are going to live with, which pushes back the due
20 date for intervenor testimony by only two weeks, to
21 January 17th. It then provides for written rebuttal
22 and surrebuttal and rejoinder before the hearing, so
23 that the hearings become that much more efficient.
24 And then the hearings --- on this it says March 6th
25 through 8th. Are those the right dates? I noticed on

1 the schedule this morning.

2 MS. POLACEK:

3 Yeah. And that's based on --- although
4 our records would have been to do the hearings the
5 following week, the OCA's witness unavailable the week
6 of March 12th is my understanding. Your Honor, I did
7 not give you a copy of what I circulated this morning.
8 If you would like one, I can certainly provide it to
9 you to follow along as Mr. Rubin's summarizing it.

10 JUDGE COLWELL:

11 Do you have one?

12 MS. POLACEK:

13 Sure I do.

14 MR. RUBIN:

15 Your Honor, briefly, my concern is that
16 we don't have the same information today that
17 apparently some of the other parties already have or
18 had for a couple weeks. Until we get that, we haven't
19 prepared Discovery yet because we haven't seen what
20 the company has already been making available. And we
21 don't think providing us with basically part of the
22 month of December to prepare our case is reasonable.
23 So that extra two weeks in early January is very
24 important.

25 And, again, I think it's moving along as

1 expeditiously as we can, making the hearings as
2 efficient as we can by having a configured testimony
3 before we walk into the hearing room.

4 JUDGE COLWELL:

5 Ms. Polacek?

6 MS. POLACEK:

7 I'd like to comment a little bit further
8 on the schedule. I think that one of my clients for
9 Ridge Phone was the other party in the prehearing memo
10 that actually set forth a schedule that is longer than
11 the one that we've circulated today. And that
12 schedule was originally based on the schedule that is
13 being used, or the time frames being used in Blue
14 Ridge's own CLEG (phonetic) application that's
15 running, the litigation for which is running
16 concurrent with this case trying to get into
17 Commonwealth's territory ---.

18 From the business perspective and
19 competitive perspective, we thought it was fair for
20 the business plans of both companies to run on a
21 similar time frame in terms of any PUC approval.
22 However, given what we heard in terms of
23 unavailability of the OSBA's witness for the date that
24 was in our original schedule, the unavailability that
25 I mentioned earlier about the OCA's witness, we moved

1 the hearing days, again, to the March 6th to 8th time
2 frame.

3 My client probably would have been happy
4 moving them into April. We did keep the briefing
5 dates in that schedule consistent, again, with what is
6 being done in the Blue Ridge CLEG case. The hearings
7 from the Blue Ridge case are actually a week before
8 the proposed hearings under the schedule that we just
9 circulated. So it is something, again, that we'd be
10 willing to live with.

11 JUDGE COLWELL:

12 Mr. Poullaihs?

13 MR. POULLAIHS:

14 Your Honor, on behalf of RCN, I'd like to
15 say that I guess the bad thing this morning was there
16 was not consensus on the schedule. The good news is
17 that I think there is a large amount of consensus
18 among the intervenors that the schedule handed up by
19 Ms. Polacek is reasonable and certainly RCN supports
20 that.

21 It has a number of advantages, one of
22 which is that it gives the intervenors a little leeway
23 relative to the major holidays coming up as part of
24 the calendar year to get that testimony in. The joint
25 applicants proposed a curtailed Discovery time frame

1 for the Discovery that takes place once the --- and as
2 their case is in now, I'm not sure that's necessary
3 now, to allow us additional time. We can still do an
4 expedited Discovery schedule, but one that is not as
5 curtailed to the applicants because of the time frames
6 we now have. The time for the testimony is filed.

7 You will note that there is a provision
8 for rebuttal testimony, surrebuttal as well as a
9 rejoinder. With that pre-filed testimony there's a
10 strong likelihood that that appearance might be
11 curtailed and maybe even eliminated altogether. This
12 is a stipulation which is noted in the schedule.

13 The final point I want to make is that
14 similar to the situation of Blue Ridge, RCN has an
15 application for additional certification in
16 Pennsylvania. Commonwealth has protested to that
17 application. We've been conducting settlement
18 discussions on that case for a number of weeks now.
19 We're still hoping that that will be successful;
20 however, if it ultimately is not successful, there
21 will be another formal proceeding involving the
22 Commonwealth and RCN that would have to be shoehorned
23 into this same time frame.

24 We concur with Mr. Rubin's comment that
25 this is still an expedited schedule. We think that we

1 cannot really curtail beyond the intervenors other
2 proposed hearing because we may have a whole
3 additional case to fit in within this time frame.

4 JUDGE COLWELL:

5 Anyone else want to weigh in on this?
6 Ms. Lepkoski?

7 MS. LEPKOSKI:

8 Your Honor, I was just thinking that it
9 might make a difference when you decide who has
10 standing in this case, the schedule. That was just a
11 point.

12 JUDGE COLWELL:

13 It might. I hate to leave here today
14 without anybody knowing what to expect in terms of
15 when things are going to be due. Because half of you
16 know you're going to be in and four of you aren't sure
17 --- five of you, sorry. And I'm going to say it now,
18 preliminary objections are going to be rejected for
19 the terms of the ---.

20 UNIDENTIFIED SPEAKER:

21 And we have --- this is just for
22 clarification. We have objected to the union's
23 participation on union issues.

24 JUDGE COLWELL:

25 I know. What you want is limited

1 participation. I'm not going to do that at all. So
2 that one's good and gone, it's the other four that are
3 going to be an issue.

4 MR. ECKONROD:

5 Might I respond, Your Honor?

6 JUDGE COLWELL:

7 To ---?

8 MR. ECKONROD:

9 To what the other parties have said.

10 JUDGE COLWELL:

11 Yes.

12 MR. ECKONROD:

13 I have to say I'm a little disappointed
14 that the parties have come up with a schedule that
15 they've designed without us. We try to be forthright
16 sending our schedule to all parties. And without
17 consulting us, they have now set up a schedule and
18 presented it to Your Honor. Unfortunately, I wish
19 they had consulted with us for a lot of different
20 reasons, not the least of which is one of our
21 witnesses is not available during the week of March
22 5th. We can't possibly have hearings during that time
23 frame.

24 UNIDENTIFIED SPEAKER:

25 Your Honor, the schedule, with the

1 exception of the briefing dates, which were modified
2 by Ms. Polacek, I sent this schedule out to all
3 parties including the applicants two days ago.

4 MR. RUBIN:

5 We never got it.

6 JUDGE COLWELL:

7 Hold on here. Let's go off the record,
8 that way you can talk over each other without making
9 the court reporter crazy.

10 OFF RECORD DISCUSSION

11 JUDGE COLWELL:

12 Let's go back on the record. Mr. Sparks,
13 you had your hand up.

14 MR. SPARKS:

15 Well, I don't know if I did, but I do
16 have some thoughts on our schedule. First off, the
17 schedule as proposed by Mr. Rubin resolves all of our
18 OCA's scheduling conflicts. Now, apparently we had
19 some conflict with the week of 3/6 to 3/8 with the
20 applicant's witnesses. The week after that there's a
21 conflict for our witness. Somehow we need to go even
22 later, I'm not sure.

23 JUDGE COLWELL:

24 What about this, why don't we have one
25 day of hearings, one the next? I mean is there any

1 requirement that they be back to back? Would that be
2 of benefit of anybody, or everybody here with the
3 exception of Ms. Duane --- or Polacek. I apologize,
4 Ms. Duane.

5 MR. SPARKS:

6 Our witness is not a local witness.

7 JUDGE COLWELL:

8 Okay.

9 MR. SPARKS:

10 That may be an issue for some of the
11 other parties.

12 JUDGE COLWELL:

13 So you'd prefer it would be back to back
14 is what you're telling me?

15 MR. SPARKS:

16 From that standpoint, yes. And Mr.
17 Poullaihs is correct that there may be some
18 stipulation of testimony and that's not outside the
19 realm of possibility.

20 JUDGE COLWELL:

21 And as much as I appreciate that, I have
22 to warn you that any time at a proceeding where the
23 testimony is stipulated, I usually have questions of
24 my own. So you may not be saving yourself anything if
25 you try to close it out without a hearing it all. I

1 may have you come in anyway. That's why I intend to
2 not allow rejoinder in written form, because I want
3 you to come in. I want to see the people. I want to
4 ask questions of the witnesses. That works better for
5 me. So don't count on there not being any hearing is
6 what I'm telling you. Go ahead.

7 MR. SPARKS:

8 The applicant's scheduled to have Direct
9 testimony ---.

10 JUDGE COLWELL:

11 Can I ask you to speak up a little bit?

12 MR. SPARKS:

13 The applicant is to have testimony to you
14 immediately following the holidays just based on my
15 experience is kind of problematic. The OCA, we have
16 three sets of Discovery out. We are cooperating with
17 company and the company is cooperating with us. To
18 answer, OCA's discover I think at that time is very
19 difficult to deal with our witnesses, dealing with the
20 other counsel and particularly dealing with employees
21 at the involved companies because people just take
22 vacation at that time. Sometimes they're gone for
23 weeks at a time over the Christmas time frame, New
24 Year's time frame. So that's problematic with the
25 OCA. It would take a lot of effort to work around

1 that. It certainly does not appear that the other
2 parties are able to work around that.

3 It's also my understanding, and I may be
4 incorrect about this, but the applicant's proposal or
5 schedule rests on extreme truncation of Discovery
6 response times. Listening to Mr. Rubin it sounds like
7 that may be an issue with him, if it would go with a
8 compressed schedule. That's all. Thank you.

9 JUDGE COLWELL:

10 Anyone else have a comment to make here?
11 Mr. Gray?

12 ATTORNEY GRAY:

13 Just one, Your Honor. Thank you. What
14 we did in the UGI, PG Energy merger case, one of your
15 solutions was to --- because the company had a public
16 meeting date specifically in mind with the Commission,
17 we just had two rounds of testimony and everything was
18 compressed at the back of the case to give more time
19 upfront. And I was wondering if Mr. Kennard had a
20 public meeting date in mind. As he mentioned, the UGI
21 case, maybe we could go with a model like that to sort
22 of compromise. Because obviously you have limitations
23 in February; correct?

24 JUDGE COLWELL:

25 I do, as you know.

1 ATTORNEY GRAY:

2 So instead of Judge Colwell making a
3 decision from the bench that nobody's happy with, as
4 she talked about before, if there's a way of
5 compromising here to find out what the applicants need
6 from the backend and then to give all the parties more
7 time upfront.

8 JUDGE COLWELL:

9 Mr. Kennard?

10 MR. KENNARD:

11 Yes.

12 JUDGE COLWELL:

13 Is there some kind of a deadline that
14 you're working towards that you're trying not to tell
15 us that we need to know anyway?

16 MR. KENNARD:

17 It's been announced to the investment
18 community that this transaction would close by the end
19 of the second quarter, which would be close,
20 physically close. So obviously we need a Commission
21 decision in advance of that time. I don't know how
22 much time the Commission needs after reply exceptions
23 are filed. Usually that's --- historically that's
24 been a 60-day review process.

25 JUDGE COLWELL:

1 Yes. We work backwards from public
2 meeting ten days to when they get it. And then before
3 that you've got an exception period, applied exception
4 period. And then you've got my --- I need three to
5 four weeks to write something like this. That's when
6 your reply brief is due.

7 MR. KENNARD:

8 And that's a good suggestion, Your Honor.
9 Late May is when we need a Commission decision. I
10 don't have their schedule of when their public
11 meetings are.

12 JUDGE COLWELL:

13 It is set. I have it upstairs. I-
14 can ---.

15 MR. KENNARD:

16 It would be late May that we need a
17 Commission decision, without postponements off the
18 public meeting agenda with enough time for them as
19 they like to adjust it. So that would mean a
20 recommended decision in March, not hearings in March,
21 but a recommended decision sometime in March. That's
22 the bottom line of what we're up against trying to get
23 this thing scheduled.

24 In terms of what the other parties have
25 said, I would suggest, Your Honor, that there's --- no

1 proprietary testimony was filed. There was one
2 proprietary exhibit and that related to identification
3 of penetration rates of various services and Citizens'
4 footprint. With that Commonwealth footprint, I don't
5 think that's a reasonable wall to stop engaging in
6 Discovery. He's right. We have circulated a
7 proprietary agreement. Hopefully we get that
8 information to CWA shortly. But given the issues that
9 they've listed, first and foremost employment, we
10 forthrightly addressed that in the testimony.
11 Financial issues including coverage. We addressed
12 that in the testimony as well as well as service
13 quality. We're answering Discovery to the OCA right
14 now on those issues.

15 With respect to the CLEGs, they don't
16 have a witness yet. And they've not committed to
17 presenting a witness. They've all said in their
18 prehearing conference memos that they may, they may
19 not. So if they're permitted to participate, they
20 haven't committed to even having any concern about the
21 January 5th date in terms of --- it doesn't mean
22 anything to them, only that they'll be reviewing other
23 parties' testimony.

24 The CLEGs has not engaged in any
25 Discovery at this point, so I'm not sure why we're

1 letting them drive the schedule. If they want to
2 submit Discovery, again, we'll re-truncate it,
3 Discovery periods, to try to get this done.

4 JUDGE COLWELL:

5 Ms. Polacek?

6 MS. POLACEK:

7 Your Honor, I understand that
8 Commonwealth may have made representations to the
9 investment community about when they thought this was
10 closed. However there's no statutory deadline to my
11 knowledge to consider this case, and we really believe
12 it's inappropriate for the schedule to be driven by
13 what Commonwealth may have optimistically told the
14 investment community when there is a transaction here
15 that needs to be considered.

16 The joint application certainly makes
17 some very broad statements about new services and
18 competition and treatment of CLEGS that obviously my
19 clients want to be in a place to be able to explore.
20 The CLEGS have been discussing, over the last week,
21 the possibility of not only internal witnesses but a
22 joint witness. And that would require first of all
23 time to get the witness identified and get Discovery
24 out on that. And it's really, again, come back to the
25 --- there's no statutory deadline. We think that the

1 schedule that Mr. Kennard has set out in terms of
2 having the hearings in the beginning of February is
3 extremely ambitious. And I realize that's driven in
4 part by some of your constraints in February. We
5 tried to submit to you a schedule that put the
6 hearings in March and moved them up from where we
7 would have wanted to see them again. And I don't know
8 if the other CLEGs want to discuss witnesses or report
9 their concerns in terms of what it would take for
10 their clients to fully participate in the proceeding.

11 JUDGE COLWELL:

12 Mr. Gray?

13 MR. GRAY:

14 Can we go off the record for one moment,
15 Your Honor?

16 JUDGE COLWELL:

17 We may.

18 OFF RECORD DISCUSSION

19 JUDGE COLWELL:

20 While we were off the record, the
21 following schedule was hammered out. The other
22 parties prepared Direct testimony will be due January
23 18th, 2007. OSBA's Direct testimony will be due
24 January 23rd, 2007. All parties' rebuttal testimony
25 will be due February 15th, 2007. The parties'

1 surrebuttal testimony will be due February 23rd, 2007.
2 The evidentiary hearings will be scheduled February
3 28th and March 1st. Main briefs will be due March
4 26th. Reply briefs will be due on April 9th.
5 Rejoinder will be put in. Now, let's talk about
6 Discovery.

7 MR. KENNARD:

8 We would ask Your Honor pursuant to point
9 two, prehearing conference memo, proposed schedule, a
10 five-day turnaround beginning once the other parties
11 have submitted their testimony on the 18th of January.
12 That would be calendar days for the truncated
13 objection period.

14 JUDGE COLWELL:

15 Well, I would recommend that you make
16 those business days, simply because of the holidays
17 that are coming up, all in December and January and
18 February. And some of that may not be scheduled but
19 may be scheduled shortly.

20 MR. KENNARD:

21 Okay. So the dates changing here, too,
22 becomes this other item two ---

23 JUDGE COLWELL:

24 Yes.

25 MR. KENNARD:

1 --- to January 18th.

2 JUDGE COLWELL:

3 Does anybody object to a five business
4 day turnaround?

5 MR. POULLAIHS:

6 Just a second, Your Honor.

7 OFF RECORD DISCUSSION

8 MR. KENNARD:

9 We're talking about Discovery. This is
10 designed to address Discovery/intervenor's case, which
11 would be submitted on January 15th and 23rd.

12 MR. POULLAIHS:

13 18th and 23rd. And you need that
14 Discovery and your rebuttal testimony on February
15 15th.

16 MR. KENNARD:

17 Yes.

18 MR. POULLAIHS:

19 Which is about a month that we're going
20 to shorten an already expedited turnaround from ten
21 days to five. I'm not sure if that's necessary, Your
22 Honor. The company can take a few days of that
23 testimony, get out a set of questions and get their
24 answers all before their testimony is due under the
25 same Discovery ---.

1 JUDGE COLWELL:

2 I'm not sure what you're objecting to.

3 MR. POULLAIHS:

4 The five-day turnaround.

5 MR. KENNARD:

6 Mr. Poullaihs took the long way around to
7 get to a good point, which reaches at this five days
8 was designed when the schedule was more truncated, so
9 if we have five calendar days, we'll make it five
10 business days, then, for Answers.

11 MR. SPARKS:

12 Five business days, that's running ---
13 that's leading to the most Discovery to respond to.
14 So the five days is problematic.

15 JUDGE COLWELL:

16 Ms. Polacek.

17 MS. POLACEK:

18 Your Honor, I mean, our concern would be,
19 if we're accelerated, we want to make it clear that
20 that also applies to the Discovery at issue to the
21 joint applicants. We don't believe that there should
22 be a differentiating between our obligation to
23 expedite it and respond to Discovery.

24 JUDGE COLWELL:

25 So you're recommending removing the after

1 1/5/07 part of that phrase?

2 ATTORNEY POLACEK:

3 Right. And with a ten-day turnaround.
4 We would support a ten-day turnaround.

5 MR. KENNARD:

6 Ten calendar.

7 MS. POLACEK:

8 I can do ten calendar days.

9 JUDGE COLWELL:

10 We can all do ten calendar days all the
11 way through the proceeding.

12 MR. KENNDARD:

13 Let me just see if that works.

14 MS. POLACEK:

15 I mean, given the time frame between
16 rebuttal and surrebuttal, we'd hope that the joint
17 applicants would expedite any Discovery, with an
18 application ---. I don't believe there's any ten
19 calendar days in between those two events. So we'd
20 just ask for them to try to turn that over more
21 quickly, as quickly as possible.

22 MR. KENNARD:

23 I'm sorry. I was looking at the
24 schedule, the --- at least --- I can't respond to
25 Discovery that hasn't been issued yet. We've worked

1 out --- will work out with the OCA Discovery dates,
2 we'll be cooperative. But I think we've got to bend
3 up Discovery set --- there are sets coming from the
4 parties. And if we could hammer down --- it's going
5 to take a while to work through it. We'll do it as
6 quickly as possible. We'll agree to 20 days that are
7 in the Code. We could agree to 15 or 16 days for this
8 period of time up to the point where the parties have
9 their own testimony filed, then we've got a shorter
10 period of time. That's a month and a half from now,
11 when their testimony is due.

12 So I don't think 15 days instead of 20 is
13 unreasonable. I mean, to further shorten it again,
14 however, when we get to Discovery by the joint
15 applicants and Citizens upon them because we've got it
16 shorter, we don't have a month and a half. We've got
17 less than a month. So I'm willing to escalate this,
18 if that's acceptable to parties, 15 days, 15 calendar
19 days from Discovery submitted afterwards, ten days
20 Discovery submitted once the parties have filed their
21 Direct testimony. Does that make sense?

22 JUDGE COLWELL:

23 Apparently not to everyone.

24 ATTORNEY POUILLAIHS:

25 Ten calendar days all the way through

1 until the last testimony, which Ms. Polacek mentioned
2 is extremely compressed together. And we are
3 professional, all experienced counsel here. We can
4 work it out on a question-by-question basis where
5 additional time is needed for everyone. There may be
6 some questions. It very well could take 15 days as
7 Mr. Kennard pointed out. But certainly there are some
8 that can be done in less than ten. So I think in most
9 cases, one Discovery interval for the case. May I
10 suggest that maybe our case is a little too
11 compressed, and if that can't work. So ten calendar
12 days, less interval, further rounds of testimony.

13 MR. KENNARD:

14 Your Honor, we can't do that, ten days,
15 particularly over the holidays. We're dealing with
16 Discovery as it comes through. If we get hammered,
17 particularly get hammered over the holidays, there's
18 no way we can commit to do 10 days, so 15 days was
19 reasonable, offering a compromise. That's a month and
20 a half to get to before the parties' testimony is due.
21 What's wrong with the 15 and then ten after that?

22 MR. GRAY:

23 Your Honor?

24 JUDGE COLWELL:

25 Yes.

1 with ---.

2 MS. POLACEK:

3 I don't know. I don't know that we need
4 to put it outside 15 days on this. I don't know
5 anyone who has filed a motion to compel the day after
6 we've had Discovery responses due just because it
7 wasn't there.

8 JUDGE COLWELL:

9 That's a very good point, if something
10 like that came to me on the 11th day, I probably
11 wouldn't be looking on it very normally, and you all
12 know that. So I think putting the ten day best
13 efforts' clause in will be the best approach here.
14 And if you do run into any particular problems, and
15 you need to have it sorted out by me, then give us a
16 call. That's what we're here for.

17 MR. KENNARD:

18 That's ten business days?

19 UNIDENTIFIED SPEAKER:

20 Our testimony was submitted three weeks
21 ago. They don't have any witnesses. They don't have
22 the schedule yet. It's really problematic to organize
23 it in this case. If we could do 10 business days,
24 that's surely a truncation of the 20 days that the
25 Commission has.

1 MR. GRAY:

2 How are you right now? How is Discovery
3 going?

4 MR. KENNARD:

5 The Answer from OSBA came back November
6 7th. The OCA's came out within the last couple of
7 weeks. And we've got a slot two on the 8th, another
8 on the 15th, another on the 20th. And the OCA's are
9 extensively --- very thorough.

10 MR. GRAY:

11 Because, again, in the UGI case, we met
12 best efforts. If you get swamped, tell us, tell
13 everybody, and then people are going to have to
14 understand. That's part of this new practice of these
15 expedited schedules. Everybody has to be pretty
16 flexible.

17 JUDGE COLWELL:

18 I think that's reasonable and that's what
19 I'm going to put in.

20 MR. KENNARD:

21 All right. Can we get a seven business
22 day turnaround then, post their testimony, since we
23 have a month to respond? Can we truncate that down?

24 UNIDENTIFIED SPEAKER:

25 Do you mean by ten calendar days rather

1 than seven business days?

2 MR. KENNARD:

3 Seven. No, I'm sorry, I may have
4 misspoke. We've got ten calendar days now, right?

5 JUDGE COLWELL:

6 Right.

7 MR. KENNARD:

8 Can we do seven calendar days then?

9 JUDGE COLWELL:

10 After the 18th of January?

11 MR. KENNARD:

12 Yeah.

13 MR. POLACEK:

14 Your Honor, from a fair standpoint, it
15 should be the same, if we're going to shorten it for
16 everybody.

17 MR. KENNARD:

18 Again, Your Honor, as far as the CX goes,
19 if we don't have an issue develop by then other than
20 Commonwealth protesting their entry applications, we
21 don't even know if they're going to have a witness, I
22 don't know if it's going to be extensive. Seven days,
23 seven calendar days is not unreasonable.

24 JUDGE COLWELL:

25 Well, let me put it to you all this way

1 so that you understand it then. What this proceeding
2 is not is a way for you to litigate, again, the
3 protests in the other CLEG application. I will not
4 entertain that. I will not use the Commonwealth
5 protest in those cases as evidence of anything other
6 than them exercising their legal rights to file a
7 protest. It does not look anti-competitive from where
8 I sit and I won't take it as such. That's not an
9 issue. Okay. Does that help?

10 So if you have other issues, okay, but
11 that --- that's not a sign of anti-competitive
12 behavior. Do all parties agree to electronic service
13 followed by first class mail? Does anybody not agree
14 with that? Everyone agrees to it?

15 MR. KENNARD:

16 We agree.

17 JUDGE COLWELL:

18 Everyone agrees to it, excellent. Okay,
19 5:00 p.m. We went to 4:00 p.m. in the other case.
20 All right, we'll make it 5:00 p.m.

21 MR. KENNARD:

22 We want to add in a settlement week.
23 Your Honor, wanted to see ---.

24 JUDGE COLWELL:

25 Absolutely. I absolutely encourage you

1 to pursue settlement. Does anybody want to throw out
2 a date for settlement or a time frame I can put it in?

3 MR. GRAY:

4 What about the week of January 29th.
5 That would give the applicants a couple of weeks to
6 take a look at Direct testimony of the applicant's
7 intervening parties, and get away from that delayed
8 conference. But as far as the parties scheduling a
9 date right now ---.

10 JUDGE COLWELL:

11 I'm just looking for a time frame.

12 MR. GRAY:

13 January 29th?

14 MR. KENNARD:

15 Yes.

16 JUDGE COLWELL:

17 Everybody can make it?

18 OFF RECORD DISCUSSION

19 JUDGE COLWELL:

20 Why don't we give you a two-week period?
21 I don't have to be there. It doesn't matter if it
22 happens in February.

23 MR. KENNARD:

24 If we say January 30th and 31st. The
25 CLEG issues may resolve by then.

1 UNIDENTIFIED SPEAKER:

2 I think if we maybe just sort of carve
3 out that week and the following week and try to work
4 around peoples' schedules.

5 UNIDENTIFIED SPEAKER:

6 Your Honor, I would just as soon set
7 dates, because, you know, we'll start back and filling
8 the calendar up. So the 6th and 7th? Does that work
9 for people?

10 JUDGE COLWELL:

11 Mr. Rubin, do you have your calendar?

12 ATTORNEY RUBIN:

13 I'm hoping.

14 JUDGE COLWELL:

15 Okay. So write that down as the proposed
16 settlement dates. Everybody is okay with that right
17 now, February 6th and 7th. Mr. Kennard will inform me
18 after the settlement negotiations occurred so that I
19 know that you all diligently paid attention.

20 MR. SPARKS:

21 Is Mr. Kennard committing to ---?

22 MR. KENNARD:

23 Yes. He'll buy the pizza.

24 JUDGE COLWELL:

25 Yes.

1 MR. GRAY:

2 You can set up a conference call.

3 MR. KENNARD:

4 Yes.

5 ATTORNEY SPARKS:

6 I'll arrange the facilities for the
7 parties to meet at that time.

8 JUDGE COLWELL:

9 And if we get to the point we're going to
10 have hearings, because this one has not occurred, I'll
11 ask Mr. Kennard to provide me with a chart with the
12 order of the presentation of witnesses. That is all
13 that is on my list of things to be discussed today.
14 Oh, no it isn't. Public-input hearings. I'm sorry.
15 Mr. Poullaihs.

16 MR. POULLAIHS:

17 There was a comment earlier on a
18 pre-hearing conference that issues had been largely
19 worked out. That's not where I thought the issue was.
20 My understanding was that the joint applicants were
21 going to have to serve the drafted motion comments
22 about joint applicants on some concerns relative to
23 that. And that's where I thought it still stood.
24 We've not heard back from the joint applicants on what
25 they may have these concerns ---.

1 MR. KENNARD:

2 That's accurate.

3 MR. POUILLAIHS:

4 To have discovery notice would be hard on
5 that issue as quick as possible.

6 UNIDENTIFIED SPEAKER:

7 Give us some idea where you're at on that
8 issue.

9 MR. KENNARD:

10 Hopefully by Friday.

11 MR. PULLAIHS:

12 With response?

13 MR. KENNARD:

14 Yes.

15 JUDGE COLWELL:

16 Okay. You anticipate submitting to me a
17 draft that you've all agreed upon?

18 MR. KENNARD:

19 Next week.

20 JUDGE COLWELL:

21 Okay. Chances are if you cannot do that,
22 and you'll need a Protective Order, then you'll have
23 to let me know. And I will issue one. And once again
24 no one will be happy. I would be writing it instead
25 of you. So I encourage you to agree upon ---. All

1 right. Mr. Sparks.

2 MR. SPARKS:

3 Yes, ma'am.

4 JUDGE COLWELL:

5 I understand that you're going to
6 recommend that we have a public-input hearing or a
7 multiple. What are you proposing?

8 MR. SPARKS:

9 Yes.

10 JUDGE COLWELL:

11 Where?

12 MR. SPARKS:

13 The OCA would suggest that we establish a
14 date at this time in this service territory.

15 JUDGE COLWELL:

16 That's problematic because the service
17 territory is not exactly contiguous.

18 ATTORNEY SPARKS:

19 True. I guess what we're thinking of
20 service territory, we're thinking thereabouts, around
21 Dallas, PA. That is some of the issue here is our
22 trying to figure out the exact Discovery issue, the
23 exact region of this case, and all of the affected
24 interests, et cetera. That was the initial thought
25 was to be in the Dallas area.

1 Now, regarding the issue that the service
2 territory is not contiguous. In the Pennsylvania
3 American IBO case, we conducted a telephonic public-
4 input hearing. And while we may want to do a public-
5 input hearing actually in a particular area, we would
6 suggest that we do likewise here and then provide the
7 opportunity for the public to call in. It did require
8 some coordination, but it did work. And we got folks
9 from all around the state who wanted to call in.
10 There were not many. The folks did call in from
11 around the state. It was Judge Kucheras who helped to
12 facilitate that. PUC coordinated the witness list and
13 broke down the witnesses in terms of what they would
14 have to do, when they had to call in.

15 JUDGE COLWELL:

16 Would you be willing to do that again?

17 MR. SPARKS:

18 We'd like to do that here.

19 JUDGE COLWELL:

20 Okay. When do you think this should
21 happen?

22 MR. SPARKS:

23 Preferably before the hearing, that's for
24 sure. That puts us in ---. Again, that puts us in a
25 bit of a spot here because of which dates ---. And if

1 there are problems and whatnot. What we're aiming for
2 is the week of February 5.

3 JUDGE COLWELL:

4 Well, here's my question, if you're
5 proposing a telephonic public-input hearing, what
6 difference does it make where you are?

7 MR. SPARKS:

8 It doesn't. We can do it --- we can do a
9 telephonic input hearing. If we choose to go that
10 route, we can literally do it here in Harrisburg.

11 JUDGE COLWELL:

12 You're talking about January and
13 February. It's always a good idea to limit the
14 traffic.

15 MR. KENNARD:

16 What we've learned about a public-input
17 hearing is this ---. I just never heard about this
18 calling input hearing, where people don't testify
19 live, we don't know who they are.

20 JUDGE COLWELL:

21 It's brand new.

22 UNIDENTIFIED SPEAKER:

23 I'd like a chance to discuss with the
24 client ---. Maybe we can help address this, if public
25 input is something we could hold off on until the end

1 of the week to try to work it out amongst ourselves.

2 MR. SPARKS:

3 I would suggest some will have the same
4 motion. We can try to pick a range of dates that if
5 we're going to do one, this is when it would be. And
6 then, yes, certainly we can discuss it off the record
7 and then call the Judge and discuss how we're going to
8 conduct a public-input hearing.

9 JUDGE COLWELL:

10 I would ask you to avoid February.

11 MR. KENNARD:

12 We would like a chance to address
13 whatever was said.

14 JUDGE COLWELL:

15 Why don't we just give the parties an
16 opportunity to discuss that amongst yourselves. And
17 then if you come to a consensus then you can come back
18 to me. And if you don't, let me know and I'll
19 schedule a conference call if the parties are
20 understand in planning and participating.

21 Anything else? Have we covered
22 everything? All right. Then from me you will see a
23 scheduling order and you will also see an order
24 handling the preliminary objections unless you
25 withdraw them before I issue it. And I think

1 everything else is settled. Thank you very much for
2 your patience and for being so civil. And we are off
3 the record.

4 * * * * *

5 HEARING CONCLUDED AT 12:09 P.M.

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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 thereafter reduced to typewriting
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to the best of my ability.

Maria Brant
Court Reporter