

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

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Buffalo Valley Telephone Company : P-00981428F1000
Conestoga Telephone & Telegraph Company : P-00981429F1000
Denver & Ephrata Telephone and Telegraph : P-00981430F1000
Company, 2006 Annual Price Stability :
Index-Service Price Index. :

Initial Pre-Hearing Conference

ORIGINAL

Pages 1 through 36

Hearing Room No. 5
Commonwealth Keystone Building
Harrisburg, Pennsylvania

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Tuesday, November 28, 2006

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

SUSAN D. COLWELL, Administrative Law Judge

APPEARANCES:

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WITNESS INDEX

WITNESSES

DIRECT CROSS REDIRECT RECROSS

(None .)

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FORM 2

EXHIBIT INDEX

NUMBER

FOR IDENTIFICATION IN EVIDENCE

(None.)

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FORM 2

1 2006, which have allowed the three telephone companies to
2 raise interstate access charges. Since the order directed
3 that a recommended decision be issued on or before February
4 28, 2006, this pre-hearing conference was scheduled quickly
5 with more emphasis on getting the proceeding moving than on
6 the niceties of pre-hearing memos and detailed information.
7 We are here to determine, and I quote from the order, "based
8 on the record, whether any rescission or amendment would be
9 warranted by the evidence consistent with our access charge
10 reform and Universal Service policies and lawful under the
11 companies' Chapter 30 plans." This appears on page 13 of
12 the November 9 order.

13 At this point I have the interventions of the OSBA
14 and OCA, I have OTS monitoring the case, and a whole slew of
15 Verizon Companies have petitioned to intervene.

16 Is there any objection to that petition?

17 MR. SWINDLER: Your Honor, the companies do oppose
18 the Verizon petition to intervene in this matter.

19 JUDGE COLWELL: Are you going to file something
20 formally or would you prefer to handle it orally here?

21 MR. SWINDLER: Your Honor, I'm prepared to respond
22 orally at this time.

23 JUDGE COLWELL: Would that suit you, Ms. Paiva?

24 MS. PAIVA: That's fine, Your Honor.

25 JUDGE COLWELL: Go ahead, Mr. Swindler.

1 MR. SWINDLER: Thank you, Your Honor. Your Honor, as
2 you know, the Commission's November 15 remand order elected
3 to review the June 23 orders in the companies' PSI filings.
4 The November 15 remand order is very clear in what we are
5 supposed to accomplish in this proceeding, specifically,
6 reconsideration of the June 23 orders, and, as stated in the
7 order on page 14, to hold further hearings under Section
8 703(g) to afford the parties due process.

9 A couple of things are important, Your Honor.
10 Verizon is just now at this point filing the petition to
11 intervene, so obviously they recognize that they are not a
12 party and have not been a party to the companies' PSI
13 filings. Under Section 703(g), the purpose of the
14 reconsideration and the affording the parties due process is
15 a reference to the parties of the actual P dockets of the
16 prior proceeding. This is not an opportunity for anyone who
17 has not been a party to this point to all of a sudden file a
18 petition to intervene and say that they have an interest.
19 Verizon was not a party below and they should not be
20 permitted to become a party now.

21 The due process, affording the parties an opportunity
22 to be heard, is a reference to the parties of the original
23 proceeding. If you look at the official Commission service
24 list at the time the June 23 orders were entered, the
25 parties that were a party to the proceeding were the

1 companies, the governmental advocates, and also served was
2 the Office of Administrative Law Judge. Verizon, as they
3 admit in their pre-hearing memo, as a customer, an access
4 customer to the D&E companies, received notice of the
5 companies' PSI filing. They also subsequently had the
6 opportunity, after the June 23 orders, to attempt to
7 intervene as a party. At no time did Verizon participate or
8 attempt to participate as a party to the proceeding, not
9 when the PSI filings were made, not when the June 23 orders
10 were entered, no time in between.

11 JUDGE COLWELL: Mr. Swindler, when you filed those
12 original PSI requests that resulted in the orders, were they
13 served on Verizon?

14 MR. SWINDLER: Your Honor, the service was -- as
15 Verizon notes in its pre-hearing memorandum, it is an access
16 customer. One of the requirements of the company when they
17 make their PSI filings is to provide notice to the
18 customers. In fact, because access charges were being
19 increased, as well as other rates, the company in fact did
20 two separate notices of the filing, one to its normal
21 customers that appeared as a bill message or bill insert in
22 the customer bills, and a separate notice to all access
23 customers explaining the access increase. So Verizon, as a
24 major access customer, received that notice of the PSI
25 filing, and Verizon took no action to attempt to participate

1 at that time.

2 Subsequently, Your Honor, the June 23 orders of the
3 Commission, although perhaps not served directly on Verizon,
4 were subsequently published in *The Pennsylvania Bulletin*.
5 Verizon did not take any action at that time to attempt to
6 intervene after the June 23 orders. The only thing Verizon
7 has done with reference to the P dockets is file an amicus
8 response to the D&E companies' petition for reconsideration
9 that was filed in July, subsequent to the June 23 orders.
10 Clearly, Verizon at that point realized that it was not a
11 party, it had no ability to file anything but an amicus
12 response, and, quite frankly, as the D&E companies then
13 subsequently argued in a motion to strike or dismiss that
14 amicus response, an amicus response is not anywhere an
15 acceptable pleading in the Commission's regulations. But,
16 nevertheless, Verizon obviously recognized that they were
17 not a party after that proceeding. So to this point the
18 only thing Verizon has done is attempted to file a friend-
19 of-the-Court document.

20 Now Verizon comes in and files a petition to
21 intervene in a matter that is very narrow in scope. The
22 Commission has said in its remand order: we are going to
23 reconsider whether we should have given D&E the option in
24 paragraph 6 of our June 23 orders to move forward with the
25 increase in access charges. It's affording due process to

1 the parties by allowing D&E to participate in an evidentiary
2 hearing where D&E can present testimony to say to the
3 Commission: here's why moving forward with an increased in
4 the access charges is not precluded by our Chapter 30 plan;
5 here's why it is okay to do that pursuant to the Global
6 Order; here's why it is not prohibited under any USF order.

7 The other governmental advocates are also
8 participating. They had the opportunity to participate
9 below and statutorily can participate, and that's not an
10 issue. But if you look at 703(g), Your Honor, the language
11 specifically says, for the recision, that "upon notice
12 thereof is given to the other parties to the proceeding."
13 They're talking about the existing parties to the
14 proceeding, not new parties. The due process is to the
15 original parties to the proceeding below.

16 There is case law, including a case Popowski versus
17 the Public Utility Commission, which is cited at 805 A.2nd
18 637. It's a 2002 case, Your Honor. I'd be glad to give you
19 a copy. It discusses a little bit about 703(g) and the
20 reconsideration. Specifically, what it notes there is that
21 the parties to the 703(g) due process proceeding are the
22 same parties as in the proceeding below. Clearly, Verizon
23 was not a party to the proceeding below, and so it is not
24 meant under 703(g) to have a petition to intervene of a
25 party, of a person who has not been a party below to

1 suddenly come in and participate.

2 As Your Honor is very aware, this is an expedited
3 proceeding. It's a very narrow scope. We are trying to go
4 back and reconsider whether the Commission potentially erred
5 in suggesting that the D&E companies could move forward with
6 their increase in the access rates. The hearing is for D&E
7 to explain why it is permitted to move forward with such
8 increases. Those are the issues that are to be addressed.
9 We're not supposed to go in and address issues about why
10 Verizon thinks it's unfair that D&E's rates are double their
11 rates or whatever other issues Verizon wants to raise. The
12 important thing, Your Honor, is that Verizon is a party to
13 the I docket, the USF-3 proceeding, the access charge reform
14 proceeding. If Verizon wants to raise generic arguments or
15 arguments about those issues, it can still do that as a
16 party to the I docket.

17 Moreover, Your Honor, the D&E companies cannot
18 preclude Verizon from filing an amicus brief in this case.
19 Pursuant to the new procedural regulations, 5.502(d) permits
20 anyone to come in who is not a party to the proceeding and
21 file an amicus brief. So I think that would fit very nicely
22 in this expedited proceeding. If Verizon wants to give
23 their comments, they can do that in an amicus brief fashion,
24 as the regulation provide, and doesn't have to be a party to
25 this proceeding. We don't have to muck up the proceeding

1 with all kinds of discovery that we have to challenge for
2 being issues that are outside of the narrow scope of this
3 remand, and we can go through without having unnecessary
4 cross-examination and everything else. We want this to be a
5 clean proceeding, we want to do what the Commission intended
6 to be doing in this narrow remand, and it would not be
7 appropriate for Verizon to be participating as a party.

8 Lastly, Your Honor, just with regard to 5.72, which
9 discusses in the regulations the eligibility to intervene,
10 Verizon does mention in its petition that it has a direct
11 interest. Again, of course they're going to say that
12 because 5.72 requires, for eligibility to intervene, you
13 have to have an interest of such a nature that intervention
14 is necessary. Well, Verizon intervention is not necessary
15 in this remand proceeding because Verizon has never been a
16 party. The Commission is asking a very simple question with
17 regard to its initial paragraph 6 in its June 23 order, and
18 that can be answered by D&E. It's a reconsideration and a
19 clarification, they want further information from D&E, and
20 D&E is going to provide that in an evidentiary hearing
21 fashion.

22 With regard to 5.72(a)(2), whether there is an
23 interest which may be directly affected, Verizon is not
24 going to be directly affected by this. Again, the narrow
25 scope does not involve Verizon directly in this remand. The

1 I docket might involve Verizon, Verizon is a party to the I
2 docket, and as that moves forward, Verizon can make any
3 comments and file any pleadings that it desires, but it is
4 not appropriate to do that in this remand.

5 JUDGE COLWELL: Ms. Paiva, why should we let you muck
6 up this proceeding?

7 MS. PAIVA: First of all, despite his attempt at the
8 end to argue that we don't even have an interest in this
9 proceeding, I don't think you could even argue that Verizon
10 does not qualify under the rules for intervention under 52
11 Pa. Code 5.72. Verizon is an access customer of the three
12 companies. Verizon pays the very rates that are at issue in
13 this case. I don't see how you could say that Verizon's
14 participation is not necessary, because based on who's here
15 today at the pre-hearing conference, Verizon is the only
16 customer that would participate in this case, so I guess
17 Mr. Swindler would rather have a case discussing these rates
18 and not hear from the companies' customers, but that's not
19 what the Commission's rules contemplate.

20 Verizon is also the largest payer into the Universal
21 Service Fund, and the impact on the Universal Service Fund
22 is also an issue in this case. So I don't think it could
23 even seriously be contested that Verizon qualifies under the
24 Commission's rules for intervention. I think the essence of
25 Mr. Swindler's argument really is, you know, Verizon may

1 technically qualify for intervention, but it should have
2 intervened back when we made this PSI filing, and now that
3 Verizon is coming to intervene after the Commission has
4 remanded the issue to you, it's too late for Verizon to
5 intervene.

6 JUDGE COLWELL: Why didn't you intervene at that
7 time?

8 MS. PAIVA: Well, we didn't intervene at that time,
9 first of all, because, as Mr. Swindler pointed out, the
10 notice goes not to the attorneys but to the people who pay
11 the access bills. These PSI proceedings are very fast. By
12 the time we found out about it, it was in a posture where
13 filing the amicus submission was really the most helpful
14 thing to do at that point. Then the Commission, in its
15 three June 23 orders, basically said: we're going to let
16 these rates go into effect, but we are still going to
17 consider the substantive issues of whether access rates
18 should be raised, whether these access rates, as raised, are
19 just and reasonable, but what we're going to do is consider
20 them in the I docket, the I-00040105, which is the rural
21 carrier investigation. Verizon was already a party to that
22 case, so for our purposes of having the right to address the
23 merits of the issues that we were interested in, the
24 Commission had put it into a case where we were a party, so
25 there really was no need at that point for Verizon to go

1 back and try to intervene in the P dockets, because the P
2 dockets were essentially closed. And since the Commission
3 had not foreclosed our opportunity to address the merits,
4 our interests were protected as well. But then we get to
5 the Commission's November 15 order. The Commission decides:
6 well, we're going to change, procedurally, how we're doing
7 this; we're going to send the merits of these issues back to
8 the P dockets and we're going to stay the proceeding at the
9 I docket. At that point being a party to the I docket is
10 not going to allow us to participate in the merits of this
11 anymore, because the Commission has sent it back to the P
12 dockets, so at that point our intervention in the P dockets
13 becomes necessary.

14 Mr. Swindler argues that the Commission would be fine
15 if Verizon didn't participate in this and we just had a
16 clean proceeding, but I would just refer you to page 15 of
17 the Commission's November 15 order, the paragraph that's at
18 the top of the page. The Commission talks about why it
19 decided to remand this proceeding, to decide under 703(g)
20 whether it should change its June 23 orders. The Commission
21 specifically refers to a record and evidence, so I don't
22 believe the Commission would understand that it's not to
23 have discovery and not to have testimony by other parties,
24 or cross-examination, because that's the essence of
25 developing a record and evidence.

1 The Commission also says that the reason it's
2 bifurcating these hearings and sending the hearings back to
3 the P docket is "because that should adequately address
4 Verizon's concerns regarding the instant motion." I think
5 the Commission would find it very strange if it opened this
6 proceeding to address Verizon's concerns and then Verizon
7 was not allowed to participate. In fact, I think that if
8 that were the case, and if Verizon is not allowed to take
9 discovery and to put on evidence and cross-examine the
10 witnesses, then Verizon's due process rights as a customer
11 of these companies, and as a contributor to the Universal
12 Service Fund, would be violated and the whole proceeding
13 would be for nothing, subject to attack and not to achieve
14 the purpose that the Commission sent it back to you for.

15 Now, Mr. Swindler discusses some old Commonwealth
16 Court authority on 703(g), but there is more recent
17 Commonwealth Court authority, and I didn't bring the cites
18 with me because I didn't realize we would be arguing this,
19 but the Commonwealth Court is very concerned with due
20 process rights being protected when the Commission decides
21 to change its orders under 703(g). That is the whole reason
22 why the Commission specifically referred to developing a
23 record and evidence.

24 For those reasons, (a) we satisfy the rule, we have a
25 direct and substantial interest, we would be bound by the

1 Commission's order in this case as ratepayers of these
2 companies; (b) because of the way the Commission sent it to
3 the I docket where we were already a party, we had no need
4 before to intervene in the other case, but now, because the
5 Commission sent it back our intervention has now become
6 necessary; and (c) if you don't allow us to participate in
7 this case, we submit that the record would be defective and
8 our due process rights would be violated.

9 MR. SWINDLER: Can I respond, Your Honor?

10 JUDGE COLWELL: Sure; go ahead.

11 MR. SWINDLER: Your Honor, it's interesting that
12 Verizon would argue that they had no need to intervene
13 before, but they have a need to intervene now, and the
14 reason is because they are an access customer and because
15 the rates that D&E is -- the access charges and the rates
16 that they are charging. It's the same issue now as it would
17 have been in April of 2006 when the D&E companies presented
18 notice of the PSI filing, and in May of 2006 when Verizon,
19 as an access rate customer, got the notice of this filing.
20 There's nothing now that is different from when the PSI
21 filing was made as far as Verizon feeling that they have a
22 direct interest to be a participant as a party in this
23 proceeding.

24 The interesting thing is that there's no filing of an
25 attempt of a nunc pro tunc filing as a party, petition to

1 intervene. If the notice doesn't go directly to the
2 attorneys, I don't think that would stop Verizon from filing
3 a nunc pro tunc petition to intervene or some type of
4 pleading if they really felt that they should be a party to
5 this proceeding. The important thing now, and the argument
6 about due process, yes, maybe the Commonwealth Court and
7 every court is obviously concerned about due process, but
8 the due process is for the companies, for the parties that
9 were participating below not to be precluded from
10 participating in any kind of a reconsideration. Verizon has
11 never been a party. Yes, there will be evidence of record.
12 The OSBA, the OCA, Trial Staff, all the statutory parties
13 are participating, as they should. The testimony will be
14 presented by D&E. There will be evidence, but the evidence
15 will be on the reconsideration of the narrow issue before
16 us, which is paragraph 6 of the initial June 23 orders, to
17 which Verizon has no interest whatsoever.

18 JUDGE COLWELL: Mr. Swindler, you make some very good
19 points. I think your analysis of the intervention is
20 accurate, and I would wholeheartedly support you, except
21 this isn't a normal case. This is a case where those three
22 P dockets and the order that brings us here today was issued
23 with an I docket, and because Verizon was already a party to
24 the I docket, and because the discussion section in that
25 order doesn't specify that the parties should only be the

1 parties to the P dockets, I can't buy the argument in this
2 situation.

3 MR. SWINDLER: Your Honor, they note in the order on
4 page 15, and Ms. Paiva cited this, that the bifurcation of
5 these hearings -- they're specifically stating that the P
6 dockets are going to be bifurcated from the I docket, so
7 they recognize Verizon is not a party to the P dockets, it's
8 a party to the I docket, we're going to bifurcate the P
9 dockets and remand back for the existing parties to be
10 involved in this reconsideration, and they say --

11 JUDGE COLWELL: It doesn't say existing parties, it
12 says parties, and I've got four dockets and parties for four
13 dockets.

14 MR. SWINDLER: Your Honor, the way I read the
15 sentence about the matter adequately addressing Verizon's
16 concerns, I take that sentence directly opposite from the
17 way Ms. Paiva reads that. To me the Commission is saying:
18 we're going to remand, we're going to bifurcate the P
19 dockets out, and the questions that we're asking in this
20 reconsideration are going to adequately take care of
21 Verizon's concerns. The Commission is saying Verizon
22 doesn't need to be a party to the P dockets because what
23 we're doing in this 703(g) proceeding will adequately
24 resolve Verizon's concerns. You have to go, Your Honor --

25 JUDGE COLWELL: Mr. Swindler, in your situation I

1 would read it exactly the same way, however, I have to look
2 at it from what the Commission intended, and --

3 MR. SWINDLER: Your Honor, the Commission intended
4 a --

5 JUDGE COLWELL: You don't know that, sir.

6 MR. SWINDLER: Your Honor, the Commission intended a
7 703(g) proceeding.

8 JUDGE COLWELL: Yes.

9 MR. SWINDLER: And if you look at Popowski, if you
10 look at the language of 703(g), if you look at the Armstrong
11 Telephone case, they tell you that -- and, Your Honor, let
12 me give you a copy of this. It says they have to issue an
13 order governing the same matter and involving the same
14 parties. The same parties to the P docket are the parties
15 that do not include Verizon.

16 JUDGE COLWELL: This is a fairly thorough discussion
17 and nowhere does it say that the parties to this remanded
18 proceeding are limited to the P docket. As a matter of
19 fact, when I sent the notice of this pre-hearing conference
20 out, I had to think twice and then I said to myself, I'd
21 better give notice to all the I docket people in case
22 there's something there that I probably am missing at this
23 point -- but I'll catch up -- and that's when all the other
24 parties got that notice. I believe that is why Ms. Paiva is
25 here. I'm surprised other parties aren't here. I cannot

1 find in here support for excluding anybody, especially an
2 access customer.

3 Now, I understand your arguments, and if this were a
4 straight remand from the three P dockets, I believe I would
5 buy your argument, but it isn't, it's a remand from an order
6 that has four dockets to it. The discussion mixes up the
7 argument, it mixes up the discussion of all four of those
8 dockets, it doesn't delineate them specifically, and these
9 are, as far as I can tell, they're intended to create an
10 opportunity to look at this issue fresh, for the Commission
11 to have a starting place to look at this issue from all the
12 other companies after it is thoroughly examined here. In
13 order to do that, I believe Verizon needs to be admitted to
14 this case, and the petition to intervene will be granted.

15 I will do that in an order that you can go ahead and
16 take up if you want to, which is why I'm going to wait until
17 I get the transcript, so that I can quote everybody
18 appropriately, so you won't get that for another week or
19 two. But we're going to proceed as if Verizon has full
20 party status.

21 MR. SWINDLER: Thank you, Your Honor.

22 MS. PAIVA: Thank you, Your Honor.

23 JUDGE COLWELL: Thank you for your arguments. I
24 thought they were very well presented.

25 MR. SWINDLER: Thank you.

1 JUDGE COLWELL: I notice that we have already
2 requested protective orders in these cases, but I couldn't
3 actually find the orders to know if they covered what
4 Verizon was asking. Can anybody tell me that?

5 MR. SWINDLER: When you say find the orders,
6 Your Honor?

7 JUDGE COLWELL: I have the official files here, and I
8 have your requests for protective orders, and then I have
9 orange files, so obviously somebody said, "By golly, some of
10 this stuff should be protected," but I don't have an actual
11 protective order that says what can be protected.

12 MR. SWINDLER: Your Honor, I believe Verizon
13 submitted a draft protective order, but we didn't see that
14 until 5:00 last night. We obviously would intend to submit
15 a petition for protective agreement and protective order to
16 Your Honor.

17 JUDGE COLWELL: Okay. Well, two things. The first
18 thing is, is there already one in place? Do you have a copy
19 of a Commission-issued protective order in any of these
20 three P dockets?

21 MR. SWINDLER: In the P dockets?

22 JUDGE COLWELL: Yes.

23 MR. SWINDLER: I don't believe so, Your Honor.

24 JUDGE COLWELL: It's entirely possible that you asked
25 for it before it was signed, and they were just given an

1 orange folder without issuing an order. Is that what
2 happened?

3 MR. SWINDLER: I believe we requested it and then
4 there was no action taken on it.

5 JUDGE COLWELL: Well, the Commission is acting as if
6 it were granted, because there are orange folders with stuff
7 in them, so you're okay up to this point.

8 You are right, Ms. Paiva had asked for a protective
9 order, and she has proposed one. I will give you time to
10 work those out between you. If you cannot come to a
11 conclusion why don't we say in ten days' time, then give it
12 to me and I will write it for you, and you will be so sorry.
13 This way, if you can come to an agreement on what you
14 actually want, then you'll get what you actually want. I'll
15 give you ten days to work that out. If at the end of those
16 ten days you have not worked it out, you can come back to me
17 and we'll issue something.

18 Today is the 28th. Ten days is December 8. I am
19 confident that you will be able to work out what you both
20 need between you.

21 I will put that in the scheduling order as well,
22 which will be separate from the petition to intervene order;
23 we'll keep those clean for you.

24 The next thing we're going to need to do is schedule
25 this case. Does anybody have any recommendations? I don't

1 recall seeing a schedule recommended in anybody's pre-
2 hearing memo.

3 MS. PAIVA: Actually, I think there were two
4 schedules, Verizon had a schedule and the companies had a
5 schedule. They're not that different. In ours, it's on the
6 last page, page 7.

7 JUDGE COLWELL: I have to tell you, Mr. Swindler, I
8 know that you e-mailed me a page 6 to yours. I don't know
9 what I did with it, so my copy of what you sent to me has no
10 page 6. Do you have a full one there you can give me?

11 MR. SWINDLER: I believe I do, Your Honor.

12 JUDGE COLWELL: Oh, you're right, I do see a
13 schedule. Sorry about that.

14 MS. PAIVA: Their schedule is on page 8.

15 JUDGE COLWELL: I see theirs. And where is yours,
16 Ms. Paiva?

17 MS. PAIVA: Page 7 of our pre-hearing memo.

18 MR. SWINDLER: Here's another copy of the companies'
19 pre-hearing memo, Your Honor.

20 (Document handed to Judge Colwell.)

21 JUDGE COLWELL: Thank you.

22 MR. SWINDLER: If any other party here today needs a
23 copy of the companies' pre-hearing memo, I do have extra
24 copies.

25 I would note, Your Honor, that on the schedule --

1 bear with me one moment.

2 (Pause.)

3 MR. SWINDLER: On the proposed schedule on page 8 of
4 the companies' pre-hearing memorandum, we do note a rebuttal
5 date of December 30. I recognize that that is, in fact, a
6 Saturday.

7 JUDGE COLWELL: That's wishful thinking on your part,
8 Mr. Swindler.

9 MR. SWINDLER: I intended to e-mail that to your home
10 address, Your Honor.

11 (Laughter.)

12 MR. SWINDLER: We are certainly willing to move that
13 forward to the following week, and I was going to suggest
14 January 5. As Ms. Paiva notes, our proposed schedules are
15 incredibly similar.

16 MS. PAIVA: Your Honor, I was wondering if it makes
17 sense to go off the record and see if we could work out the
18 schedule, because they are not that --

19 JUDGE COLWELL: It makes sense to me. Let's go off
20 the record.

21 (Discussion off the record.)

22 JUDGE COLWELL: Back on the record.

23 While we were off the record, the parties agreed to a
24 procedural schedule, which provides that the direct
25 testimony of the telephone companies and the Verizon

1 Companies will be due December 18, 2006; the rebuttal
2 testimony of all other parties is due January 5, 2007; the
3 surrebuttal testimony of all parties is due January 12,
4 2007; the evidentiary hearings we're aiming for are January
5 17 and 18. Oral rejoinder will be permitted. Main briefs
6 will be due January 26, 2007; reply briefs will be due
7 February 2, 2007; and my R.D. will be out on or before
8 February 28, 2007.

9 Service will be, as it generally is in cases like
10 this, electronic service on the day that it's due. The due
11 dates are in-hand dates. Electronic service, hard copies to
12 follow. Large attachments, hard copy only.

13 Do we need to discuss the discovery rules?

14 MS. PAIVA: Your Honor, we propose some shortening of
15 the discovery rules starting on page 6 of our pre-hearing
16 memo, the only reason being, because the case is so
17 shortened, the regular rules would not give us time to get
18 the discovery and time to put it in our testimony.

19 JUDGE COLWELL: Why don't you just put on the record
20 what you've recommended?

21 MS. PAIVA: First of all, all discovery to be served
22 electronically, with a confirming hard copy by overnight
23 mail. If the electronic copy is sent by 4:00, it will be
24 considered served that day. Then the answers to discovery
25 would be due seven calendar days from the date of the

1 electronic service. That would be shortening from, I think,
2 15 days in rate cases, since this is considered to be a rate
3 case.

4 JUDGE COLWELL: Any objection to that particular
5 provision, recommendation?

6 MR. SWINDLER: Your Honor, a couple of concerns, one
7 with regard to the issues. I want to make certain, and I
8 presume that Your Honor is going to do this anyway in your
9 order, that it's very clear to the parties that we've got a
10 very limited issue on remand here, and if we're going to be
11 dealing with discovery, certainly now with Verizon involved,
12 it's likely that D&E will receive discovery and has very
13 limited resources. We're over a holiday period. We would
14 certainly hope that -- to do a seven-day period, Your Honor,
15 talking about seven calendar days, we're certainly hoping
16 that Verizon can agree that that does not include holidays
17 in that period.

18 Your Honor, I would suggest, with the holidays and
19 with this schedule, that we should suggest that that be
20 seven business days as opposed to seven calendar days.

21 MS. PAIVA: I think we could do seven business days.
22 That's fine.

23 MR. SWINDLER: Your Honor, can we go off the record?

24 JUDGE COLWELL: Sure.

25 (Discussion off the record.)

1 JUDGE COLWELL: On the record, please.

2 MR. SWINDLER: Your Honor, we've been off the record
3 for a number of minutes. All the parties have been
4 discussing the discovery situation. We appreciate their
5 indulgence in working out something to accommodate the
6 companies and its witness, based on the fact that D&E is a
7 rural ILEC, a small company with limited resources, and
8 we're going to do whatever we can to respond in a timely
9 manner.

10 What we've worked out here, Your Honor, is to say
11 that any discovery that is served between now and December
12 14 will have a response time of seven business days. Any
13 discovery that is served after December 14 will have a
14 response due date of Friday, January 5, or seven business
15 days, whichever is longer. In other words, if the company
16 were to be served with discovery on January 2, obviously, we
17 would not have responses due on January 5, but we would get
18 the seven business days because that is longer. But we do
19 not, hopefully, anticipate that any party would be serving
20 discovery on D&E on New Year's Day.

21 Objections, Your Honor, we would agree, would be due
22 within four business days.

23 Your Honor, in addition to the formal due dates,
24 certainly the parties will endeavor to work together in an
25 informal manner. If there is discovery that is voluminous

1 or difficult or something that looks like it's going to take
2 more time, I certainly, on the companies' behalf, will
3 contact Verizon or whoever has served the discovery and
4 discuss informally, and we'll try to work things out as best
5 as we can to keep this matter expedited for Your Honor.

6 JUDGE COLWELL: Do the other parties agree to this?

7 Mr. Cheskis.

8 MR. CHESKIS: Your Honor, we certainly have no
9 objection to this proposal. I just did want to note that we
10 are working here in a unique case with a very tight time
11 constraint, and that all the parties are trying to be
12 flexible to accommodate the holidays, people's needs and
13 individual needs, and also to note the little bit of a
14 sticky situation that it puts us in with regards to having
15 discovery due on the day that rebuttal testimony would be
16 due. Again, we're trying to be flexible here with all the
17 parties, knowing that we don't even know what issues we may
18 have in rebuttal, if any, but just would appreciate the
19 parties' continued flexibility in the future to the extent
20 that we do have problems when those two dates coincide on
21 January 5. Meaning to the extent that we may have discovery
22 outstanding and need to raise an issue in our rebuttal, that
23 that won't be held against us at that time.

24 JUDGE COLWELL: I assure you, it will not.

25 MR. CHESKIS: Thank you.

1 JUDGE COLWELL: Mr. Gray.

2 MR. GRAY: Your Honor, thank you. For the record, I
3 would just like to point out that the OSBA is reluctantly
4 willing to go along with this because this was an expedited
5 schedule ordered by the Commission, not requested by the
6 parties. If this was an expedited schedule requested by the
7 parties, we would vehemently oppose this. I want to put
8 that on the record so this does not come back to haunt us in
9 another case where there's an expedited schedule. And I
10 will echo what Mr. Cheskis said: it is the OSBA's
11 understanding that the companies agree that when the
12 discovery responses which are due on January 5, the same day
13 as rebuttal is due, that the advocates, for example, may
14 have to put in their rebuttal testimony the place holder, if
15 you will, that they will be filing supplemental rebuttal
16 testimony once the discovery responses are in hand and
17 properly reviewed.

18 Thank you.

19 JUDGE COLWELL: I believe that is fair. The schedule
20 here does require all of you to be on your best behavior.
21 There isn't any kind of game playing that can be tolerated
22 in something that is this fast, so I do appreciate that
23 you're working things out now, and I hope to see this level
24 of cooperation throughout this very short proceeding.

25 Mr. Swindler.

1 MR. SWINDLER: Your Honor, just to help expedite
2 matters, and again, I think you intend to do this anyway,
3 but it might help in the discovery as well if you do clarify
4 or make clear in your order that this remand proceeding is
5 based on a very narrow scope, very narrow issue, and we
6 would certainly expect that the discovery would stay related
7 specifically to why we're here, and that's the remand of the
8 June 23 order and that one issue that's on reconsideration.

9 JUDGE COLWELL: That's fair. I haven't had any kind
10 of inkling that any party had a problem with that.

11 MS. PAIVA: Your Honor, I guess it's kind of a broad
12 statement. I think you won't be able to really make that
13 determination unless you have a specific discovery question
14 in front of you. At this point I'm not anticipating asking
15 something that's beyond the scope of what Mr. Swindler
16 thinks the case is about, but once we get the question on
17 paper we may find that we're disagreeing and we didn't
18 realize that we had different ideas of the scope of the
19 case. So I would just caution you not to pre-judge unless
20 you have a specific discovery dispute in front of you.

21 JUDGE COLWELL: I shall try not to. As a matter of
22 fact, if there are discovery disputes and you don't think
23 you have time to do it formally, or you just want to find
24 out informally what I would do with it, then you can call
25 me. Sometimes just putting it orally to another person

1 clarifies it in your own mind and you start to understand
2 that one party or the other isn't seeing what the other one
3 thought. I would be happy to field those telephonically.
4 Otherwise, you know what you have to do formally, and I
5 shall try to get your responses out as quickly as I possibly
6 can.

7 You look confused, Ms. Paiva.

8 MS. PAIVA: No. I just realized one other thing
9 about the discovery schedule that goes back to when you
10 talked about the protective order; you gave us until
11 December 8 to work it out.

12 JUDGE COLWELL: Yes. But you need it sooner?

13 MS. PAIVA: Well, because if we serve discovery on
14 them in the next couple of days, it may be due December 8,
15 and we may ask for proprietary material. It would be good
16 to have the order in place so they could answer it, so that
17 we could follow up before the 15th.

18 JUDGE COLWELL: Well, then working it out between the
19 parties before that would be an excellent idea.

20 MS. PAIVA: Right. I think we should try to work it
21 out between us.

22 Would December 5 -- that would give you a couple of
23 days to look at it and --

24 MR. SWINDLER: Your Honor, we don't need to change
25 any of your dates. We will work it out.

1 MS. PAIVA: So if we get it to you by December 5,
2 that would give you a couple days to look at it and enter it
3 before their discovery would be due.

4 JUDGE COLWELL: Okay. And if you spell that out for
5 me so that even I can understand it, then I'll try to get
6 that out as soon as possible.

7 Did we get everything we need on the record?

8 Yes?

9 MR. SWINDLER: I have just two housekeeping matters,
10 if I can go to that, Your Honor.

11 JUDGE COLWELL: Go ahead.

12 MR. SWINDLER: The pre-hearing memo submitted by the
13 companies listed Mark Thomas as co-counsel, and I --

14 (Pause.)

15 MR. SWINDLER: Never mind, Your Honor.

16 The other housekeeping matter, it appears that
17 currently the service list includes an individual by the
18 name of Cindy Bryan, B-r-y-a-n, of D&E, and so matters are
19 being served on this individual. I would just ask that
20 Cindy Bryan on this service list be replaced with
21 Mr. Leonard Beurer, and that is spelled B-e-u-r-e-r.
22 Mr. Beurer is the Vice President, Regulatory and External
23 Affairs, for D&E, and I would ask that he be on the service
24 list in place of Ms. Bryan.

25 JUDGE COLWELL: Same address?

1 MR. SWINDLER: Same address, Your Honor.

2 JUDGE COLWELL: Anything else?

3 MR. SWINDLER: That's all I have, Your Honor.

4 JUDGE COLWELL: Did we cover everything we need to?

5 MS. PAIVA: I think so.

6 JUDGE COLWELL: So then coming out of today we'll
7 have a separate order that permits the intervention of the
8 Verizon Companies, so that it's nice and clean if somebody
9 wants to spend time appealing that; we'll have a scheduling
10 order that covers everything else. I will wait for the
11 intervention order until I get the transcript, and I believe
12 we're on a five-day expedited schedule for that?

13 THE REPORTER: Yes.

14 JUDGE COLWELL: Yes, we are. Is that quick enough
15 for people?

16 (No response.)

17 JUDGE COLWELL: That's what the order is right now,
18 five days.

19 The scheduling order will come out soon. You should
20 have that fairly quickly.

21 Yes?

22 MR. SWINDLER: Your Honor, the transcript due date,
23 will it be any faster than that as far as after the hearing
24 for preparation of briefs? Is there faster than five days
25 for --

1 JUDGE COLWELL: We would have to order it. You can
2 go overnight, you can go three days. It depends on what you
3 want to pay for it.

4 MR. SWINDLER: Is that at the expense of the parties,
5 Your Honor?

6 JUDGE COLWELL: Is it what?

7 MR. SWINDLER: Is that at the expense of the parties?

8 JUDGE COLWELL: Yes.

9 MR. SWINDLER: Certainly, for the evidentiary hearing
10 and preparation of briefs, Your Honor, we would request a
11 three-day turn-around.

12 JUDGE COLWELL: Three-day. Do we need to order that?

13 THE REPORTER: I can tell the office.

14 JUDGE COLWELL: Would you do that? Thank you.

15 MR. SWINDLER: That would be for that transcript of
16 the hearing, Your Honor, not this one.

17 JUDGE COLWELL: Yes. I have no problem with that.

18 MR. SWINDLER: Thank you.

19 JUDGE COLWELL: I think we're finished here. I look
20 forward to seeing how well you will cooperate with each
21 other. I'm sure we'll be in touch. Thank you for your
22 cooperation at this point and we'll see you in January.

23 We're off the record.

24 (Whereupon, at 11:14 a.m., the pre-hearing conference
25 was adjourned.)

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.

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