

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

Petition of Core  
Communications, Inc.  
  
Pre-Arbitration  
Conference

Docket No.: A-310922F7004

Pages: 1 - 48

Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA

**DOCUMENT  
FOLDER**

January 26, 2007  
Commencing at 10:00

BEFORE:

DAVID A. SALAPA, Administrative Law Judge

APPEARANCES:

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REPORTER: DANIEL URIE

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JUDGE SALAPA:

This is the time and the place the Pennsylvania Public Utility Commission has set for a further pre-arbitration conference in the case captioned Petition of Core Communications Inc. for arbitration of international rates, terms and conditions with Alltel of Pennsylvania, Inc., at docket number A-310922F7004. I'm Administrative Law Judge Salapa. The Commission has assigned me to preside over this case and to render a decision for the Commission to consider. This morning appearing on behalf of Windstream Pennsylvania, Inc. is D. Mark Thomas and Mr. Charles E. Thomas, III. Good morning, gentlemen.

ATTORNEY D. MARK THOMAS:

Good morning, Your Honor.

JUDGE SALAPA:

And appearing on behalf of Core Communications Inc. is Mr. Michael Gruin and Mr. Chris Vandeverg. Good morning, gentlemen.

ATTORNEY GRUIN:

Good morning, Your Honor.

ATTORNEY VANDEVERG:

1 Good morning, Your Honor.

2 JUDGE SALAPA:

3 I have a few things that I'd like to  
4 address and then we'll open the floor for any comments  
5 from you. The first thing I have on my list is the  
6 status of the application proceeding regarding Core.  
7 And it's Windstream now?

8 ATTORNEY D. MARK THOMAS:

9 It's Windstream. Even I'll call it  
10 Alltel probably many times.

11 JUDGE SALAPA:

12 I will make every effort to try to  
13 correct myself as we go along, Windstream. I suppose  
14 as a preliminary housekeeping matter, the caption of  
15 this proceeding should probably be amended to  
16 substitute Windstream instead of Alltel so that we're  
17 correct.

18 ATTORNEY D. MARK THOMAS:

19 Yes, Your Honor. I believe Alltel of  
20 Pennsylvania, Inc. should be changed to Windstream  
21 Pennsylvania, Inc. in the caption.

22 JUDGE SALAPA:

23 All right. I'm getting back to my  
24 original question. What is the status of that  
25 application? I did not find any final order from the

1 Commission approving the application. I did note that  
2 there was a Commission order that was issued in the AM  
3 proceeding at A310922F002AMA.

4 ATTORNEY GRUIN:

5 That's right, Your Honor, and that same  
6 opinion also included an AMB portion as well in which  
7 the Commission rejected Windstream's attempt to  
8 incorporate the record and stay the AMB proceeding.  
9 The Commission denied that request. The AMB  
10 application is currently at Fixed Utility Services for  
11 a tariff review and it's my understanding that those  
12 tariffs have been approved by staff and the matter  
13 will be addressed by the Commission at the February  
14 8th public meeting.

15 ATTORNEY D. MARK THOMAS:

16 Your Honor, we don't agree with Mr. Gruin  
17 on the fact that the December 4th order resolved the  
18 application of Core to enter the Windstream service  
19 territory. The only matter addressed in that order  
20 applicable to the AMB docket was the motion of Alltel,  
21 which was to incorporate the record. And that was  
22 denied, but to my knowledge as of today, there's been  
23 no certificate of public convenience issued for the  
24 Windstream service territory.

25 JUDGE SALAPA:

1           Now, I think maybe my previous order  
2 staying this proceeding wasn't clear, but I do have  
3 concerns about proceeding on an arbitration on this  
4 case until the Commission actually issues an order  
5 approving the application of the AMB docket. Having  
6 said that, I find it hard to fathom how the Commission  
7 would do anything other than approve the application  
8 since it's unprotected. So I suppose it's almost a  
9 given that the Commission will approve the application  
10 at the February 8, 2007 public meeting. Assuming that  
11 that is true, and I'm certainly not going to say that  
12 the Commission can't and won't do something else,  
13 would it be your client's intent to appeal that order  
14 then?

15                           ATTORNEY D. MARK THOMAS:

16           I can't answer that, Your Honor, until  
17 the time comes.

18                           JUDGE SALAPA:

19           All right. Well, that's --- let's put  
20 that aside then. My next question then is regarding  
21 the order that was issued December 4, 2006 at the AMA  
22 proceeding, my understanding is that that has been  
23 appealed to Commonwealth Court and it's docketed at  
24 number 6-CD-2007 and number 7-CD-2007. I am not aware  
25 that there has been any stay of the Commission's

1 December 4, 2006 order. Is that correct, Mr. Gruin?

2 ATTORNEY GRUIN:

3 That is correct.

4 JUDGE SALAPA:

5 And there has been no stay issued by  
6 either the Commission or Commonwealth Court?

7 ATTORNEY GRUIN:

8 That's correct.

9 JUDGE SALAPA:

10 All right. Next, I have a question  
11 regarding a decision that I have, and if I could dig  
12 it out here in a second. It's a decision out of the  
13 United States Court of Appeals for the District of  
14 Columbia Circuit and it's at 455 F.3d, 267. It says  
15 it was decided on June 30, 2006 and it's captioned In  
16 Re: Core Communications Inc. And I'm not going to go  
17 into the holdings of the case. My concern is, has  
18 that order or that decision of the court of appeals  
19 been stayed in any way?

20 ATTORNEY GRUIN:

21 Your Honor, no. I believe we sought  
22 re-hearing but that was denied.

23 JUDGE SALAPA:

24 And it has not been appealed to the  
25 United States Supreme Court then either?



1           ATTORNEY GRUIN:

2           No. I believe that the cert petition,  
3 the period for filing had ---.

4           JUDGE SALAPA:

5           Could you use the microphone there,  
6 please?

7           ATTORNEY GRUIN:

8           Yes.

9           JUDGE SALAPA:

10          The acoustics in here are not very good.

11          ATTORNEY GRUIN:

12          I believe that period for even filing a  
13 cert petition had passed.

14          JUDGE SALAPA:

15          All right. And there have been no  
16 subsequent orders coming out of the Federal  
17 Communications Commission pursuant to that decision?

18          ATTORNEY GRUIN:

19          That's correct.

20          ATTORNEY D. MARK THOMAS:

21          Your Honor, I believe the issue is being  
22 addressed right now at the intercarrier compensation  
23 proceeding at the FCC, so the issue is before the FCC  
24 right now.

25          ATTORNEY GRUIN:

1 On a very slow track.

2 JUDGE SALAPA:

3 All right. So I think my point is that,  
4 at least at this time, the issues addressed in the  
5 Circuit Court of Appeals decision are the final word  
6 on those issues as of today.

7 ATTORNEY GRUIN:

8 Yes, sir.

9 ATTORNEY D. MARK THOMAS:

10 It's our understanding, yes, Your Honor.

11 JUDGE SALAPA:

12 All right. Now, having gone through all  
13 that, I'm just curious. I know that the issue  
14 Windstream is raising about the rural seems to be  
15 foremost in their mind. Assuming that --- and I'm  
16 going to make some major assumptions here, but  
17 assuming that number one, the Commission issues it's  
18 order in the AMB proceeding on February 8, 2007  
19 approving the application, and assuming that  
20 Windstream number one does not appeal that decision  
21 and number two does not obtain a stay from either the  
22 Commission or the Commonwealth Court, what issues  
23 exactly are we looking at? I understand the rural  
24 exemption thing and I will admit that my ignorance in  
25 this field is vast, but my understanding is that the

1 rural exemption is to apply to certain designated  
2 telephone carriers and that, if I understand it, the  
3 rural exemption may exempt them from certain  
4 obligations that are imposed on other carriers in  
5 terms of interconnection. And I believe there's  
6 something in that statute that talks about a  
7 determination having to be made, that's it's unduly  
8 burdensome or ---.

9 ATTORNEY D. MARK THOMAS:

10 Technically feasible and not adverse to  
11 universal service.

12 ATTORNEY GRUIN:

13 And Your Honor, we're really confused as  
14 well, we don't know what Windstream's position is on  
15 the rural exemption, and whatever it's been raised in  
16 this case. For looking through the previous pleadings  
17 it seems like they are trying to argue some points and  
18 then reserving the right to raise the rural exemption  
19 if they do not win those points. So ---

20 JUDGE SALAPA:

21 All right. Well, let's talk about that  
22 while we're on that. Mr. Thomas, what exactly is the  
23 position of Windstream on this rural exemption issue?

24 ATTORNEY D. MARK THOMAS:

25 At the present time Windstream has not

1 waived its rural exemption. I believe that as far as  
2 seeking a termination of the rural exemption from the  
3 standpoint of Section 251(c)(2) obligations,  
4 Windstream has not waived that exemption.

5 JUDGE SALAPA:

6 252(c)(2)?

7 ATTORNEY D. MARK THOMAS:

8 251(c)(2). And this proceeding evolves,  
9 Windstream will make a determination if it is willing  
10 to waive any portion of the rural exemption or not,  
11 but right now until further facts are developed or  
12 discovered Windstream is in no position to waive that  
13 rural exemption.

14 JUDGE SALAPA:

15 All right.

16 ATTORNEY D. MARK THOMAS:

17 Because, Your Honor, what the rural  
18 exemption really does is protects a rural carrier from  
19 the 252 pricing methodology and toll rate pricing on  
20 reciprocal compensation. We don't believe at this time  
21 that should apply, it would be economically  
22 burdensome. It would be a real burden that may impact  
23 universal service territory in Windstream service if  
24 such a pricing arrangement is ordered.

25 JUDGE SALAPA:

1           And that's part of the pricing  
2 arrangement; am I not correct, that the U.S. Court of  
3 Appeals addressed in its decision? Is that part of  
4 what we're talking about here?

5           ATTORNEY GRUIN:

6           Yes, I believe so. It's generally  
7 referred to as the intercarrier compensation rule,  
8 whereby a carrier is payable for travel to other  
9 numbers.

10          ATTORNEY D. MARK THOMAS:

11           And again, that is an issue pending in  
12 the FCC hearing, Your Honor.

13          JUDGE SALAPA:

14           Where the ---?

15          ATTORNEY D. MARK THOMAS:

16           It's too bad we're not a year later than  
17 where we are now. Maybe we would have a resolution of  
18 that.

19          ATTORNEY GRUIN:

20           It's been pending there since 2001. And  
21 also, Your Honor, just to clarify some of our  
22 confusion is that the 251(c)(2) exemption that Alltell  
23 Windstream is raising, the reason for the confusion is  
24 because then they also rely on that section for some  
25 of their subsequent argument with respect to

1 interconnectional architecture. So they're trying to  
2 have it both ways you see. If they want to raise the  
3 rural exemption, that's fine. We can deal with that  
4 and litigate it, but that needs to be pulled out of their  
5 subsequent argument with respect to interconnectional  
6 architecture.

7 ATTORNEY D. MARK THOMAS:

8 We're willing under 251(a) to meet at a  
9 technically feasible on the Windstream system and  
10 based upon the ability to keep a pricing arrangement.  
11 That's our position right now. Now, as the matter  
12 evolves here, as I said, we need further discovery and  
13 based upon the discovery, Alltel may modify this  
14 position, but as of today without the opportunity of  
15 the discovery, that's the position.

16 ATTORNEY GRUIN:

17 And I believe that our position would be  
18 if we are going to examine this suspension or  
19 termination of the rural exemption that's been raised  
20 by Windstream let's do it in the context of this  
21 overall arbitration. Let's make issue number one of  
22 the arbitration, should the exemption be terminated.  
23 That way we'll have one round of discovery --- or  
24 maybe several rounds of discovery and several rounds  
25 of testimony dealing with that as just one of the

1 twenty-some issues that are to be dealt with in the  
2 context of the arbitration.

3 ATTORNEY D. MARK THOMAS:

4 That issue also will address the  
5 compensation arrangement. It can't address the  
6 termination of the rural exemption without resolving  
7 the compensation.

8 JUDGE SALAPA:

9 How much time would you need for  
10 discovery in this issue?

11 ATTORNEY D. MARK THOMAS:

12 I would suggest 60 days for discovery to  
13 be completed, would be my recommendation.

14 ATTORNEY GRUIN:

15 Sixty (60) days would be fine with us.  
16 I'm just, again to clarify, we do not have a  
17 proceeding where we do discovery, testimony, argument  
18 exemption issue and have you issue a decision on that  
19 and then start all over again, discovery, testimony,  
20 argue and briefing the remainder of the remainder of  
21 the arbitration issues. I think it should be  
22 consolidated in one proceeding and just make the rural  
23 exemption issue one of the two dozen issues involved  
24 here.

25 ATTORNEY D. MARK THOMAS:

1           You can't really resolve interconnection  
2 between these parties without first resolving the  
3 rural exemption termination request. And that's how  
4 the Telecom Act of 196 is set up. I don't agree with  
5 the procedure used in this proceeding for the request  
6 to terminate the rural exemption. I think this whole  
7 case should have started off with that, but it hasn't  
8 developed that way, but I think that rural exemption  
9 issue has to be first settled in the proceeding.

10           JUDGE SALAPA:

11           Let me ask you then Mr. Gruin, I read  
12 your memorandum and I think somewhere in there you  
13 state that Windstream has raised the rural exemption.  
14 Is that your position? I mean, I understand that what  
15 Mr. Thomas seems to be talking about is that there is  
16 a factual issue as to whether or not the rural  
17 exemption should apply to Windstream. And what you're  
18 saying is that they've already waived that and we're  
19 beyond that. So you're talking about a legal  
20 argument, a legal waiver of ---?

21           ATTORNEY GRUIN:

22           Yeah, that's ---.

23           JUDGE SALAPA:

24           So where is that coming from?

25           ATTORNEY GRUIN:



1           That may be the issue in dispute. And if  
2 you look through some of the negotiation and  
3 correspondence between the parties ---. And keep in  
4 mind the parties had been negotiating interconnection  
5 agreement for 135 days before Core filed its petition  
6 for arbitration. And at no time did Alltel stand up  
7 and say wait a second, you can't interconnect with us.  
8 We are exempt. They never raised the issue of the  
9 rural exemption. And in fact, I believe we have some  
10 correspondence to indicate they explicitly waived the  
11 ---. Is that correct, Chris?

12                   ATTORNEY VANDEVERG:

13           One of the discussions that I personally  
14 had with the Alltel negotiator was about the relevance  
15 of Section 251(c)(2), which talks about where the  
16 point of interconnection should be and I asked them  
17 are you a rural carrier, and if you're a rural carrier  
18 are you raising the rural exemption. And if that's  
19 so, why are you making an argument under 251(c)? That  
20 provision wouldn't be applicable and the response from  
21 Alltel was generally we do not raise the defense of  
22 rural exemption in interconnection of negotiations.

23                   ATTORNEY D. MARK THOMAS:

24           Your Honor, that was in the negotiation  
25 process. If you look back at our motion that we filed

1 back in April of 2006, we certainly addressed the  
2 rural exemption there and set forth that there had  
3 been no waiver of the rural exemption. That was  
4 almost a year ago. We'd like --- you know, maybe we  
5 can resolve this, if we have the opportunity for  
6 discovery and see exactly what Core is intending.  
7 Maybe the rural exemption won't be an issue, but we  
8 don't know that.

9 ATTORNEY GRUIN:

10 And our point on that is that I think  
11 with all due respect this is just a tactical delay on  
12 their part. Alltel is involved in the application  
13 case with AMA through the evidentiary hearing. They  
14 participated in that. They received all --- the  
15 complete round of discovery. All the ultimate rounds  
16 of testimony. They were at the evidentiary hearing.  
17 So it's been fully explored, the basis of Core's  
18 ultimate issues, both through the recommended decision  
19 of ALJ Weismandel and the Commission's decision in the  
20 matter preceding this. So this issue of when are we  
21 really going to get into explore what the nature of  
22 Core's issues are, it doesn't hold water. That's been  
23 explored and thoroughly litigated.

24 ATTORNEY D. MARK THOMAS:

25 Your Honor, I want to interrupt there.

1 Windstream, it was Alltel then, stepped out of that  
2 proceeding and did not complete discovery, did not  
3 take part in the hearings, was not part of the  
4 hearings. And Mr. Gruin, I just think you should  
5 check your facts on that. When Alltel Pennsylvania  
6 withdrew its protest --- and it withdrew its protest  
7 at the time that it believed Core was actually going  
8 to construct facilities into its service territories.  
9 The negotiations were discussing locations and so  
10 forth. Alltel was of the opinion that Core was, based  
11 upon facts as it knew it then, was seeking actually  
12 facilities in the Alltel service territory. And on  
13 that basis Alltel withdrew its protest. But based  
14 upon where we are today and how the AMA application  
15 progressed, Windstream now believes it needs to pursue  
16 some further discovery and see just where the parties  
17 are.

18                   ATTORNEY GRUIN:

19                   And Your Honor, I do apologize, I was  
20 incorrect. Alltel withdrew its' protest on February  
21 24, 2006 and I believe the evidentiary hearing was  
22 February 27, 2006. So they did not attend the  
23 hearing, but they did participate all throughout  
24 discovery, which was extensive, and for the testimony.

25                   ATTORNEY VANDEVERG:

1           Your Honor, I'd point out just quickly,  
2           the rate testimony really set forth the  
3           substantive theories --- I believe Core  
4           wasn't a carrier themselves. And that  
5           discussion was in the rate of testimony.

6           ATTORNEY D. MARK THOMAS:

7           If you'd allow us to pursue some  
8           discovery here, maybe we could just get back on track.

9           ATTORNEY GRUIN:

10          If we ---.

11          ATTORNEY D. MARK THOMAS:

12          I don't want it to be a controversial,  
13          you know --- start off with a controversy, but let's  
14          get the facts on the table and see where we go with  
15          it.

16          JUDGE SALAPA:

17          I would prefer to have this move along.  
18          Now, I understand that we still don't have the  
19          information on the AMB application. As I said, I  
20          don't see that that's a really major --- I think the  
21          Commission's going to grant the application and then,  
22          Mr. Thomas, your client can do what they want to do  
23          with that. If they want to appeal it and obtain a  
24          stay, that's fine. And that would pretty much --- I  
25          would think, pretty much put a stop to this proceeding

1 if there's a stay from the Commonwealth Court. There  
2 doesn't seem to be any point in proceeding on this  
3 until that is resolved. However, I don't see any stay  
4 coming in the AMA proceeding that I'm aware of. I  
5 don't know. Mr. Gruin, has anyone filed a petition  
6 for a stay in the Commonwealth Court?

7 ATTORNEY GRUIN:

8 Not that I'm aware of, no.

9 JUDGE SALAPA:

10 So I would prefer to have this move  
11 forward. I'm wondering if, Mr. Thomas, in light of  
12 what Mr. Gruin has said regarding your client's  
13 participation in the AMA proceeding up until almost  
14 the hearing time, I'm wondering how much more  
15 discovery do you need to do. I mean, are we talking  
16 depositions or are we talking about the production of  
17 documents, Interrogatories. How much more are we  
18 talking about? I'm assuming that Windstream has a  
19 good deal of information on Core's operations based on  
20 what they have obtained from the AMA proceeding.

21 ATTORNEY D. MARK THOMAS:

22 Now, you have to realize that I'm working  
23 with a little problem myself. Windstream was spun off  
24 from Alltel and there's been quite a change in the  
25 management tree there, I'll say. There's new people

1 involved and so forth. I'll have to check to see  
2 exactly where they stand with this, but if you look at  
3 --- looking at the tentative schedule, what was  
4 revised here ---.

5 JUDGE SALAPA:

6 Let me interrupt, Mr. Thomas. Were you  
7 Counsel of Record for Windstream or Alltel in the AMA  
8 proceeding?

9 ATTORNEY D. MARK THOMAS:

10 No.

11 JUDGE SALAPA:

12 Thank you. I'm sorry I interrupted. You  
13 were speaking about the schedule Mr. Gruin has  
14 proposed.

15 ATTORNEY D. MARK THOMAS:

16 Right. And the proposal was close to  
17 discovery on June 1. I'm saying, I'm recommending  
18 that maybe we could have a 60-day window for  
19 discovery, see where we are at the completion of that  
20 60-day window and then get back to you and see if we  
21 can't set a schedule for resolution of the proceeding.  
22 And maybe following the discovery we may want to  
23 re-enter some negotiations with the parties here.

24 JUDGE SALAPA:

25 So you're suggesting discovery ---?

1           ATTORNEY D. MARK THOMAS:

2           See if maybe the end of March.

3           JUDGE SALAPA:

4           The end of March? And then you're saying  
5 a further ---

6           ATTORNEY D. MARK THOMAS:

7           A further pre-hearing at that time.

8           JUDGE SALAPA:

9           --- pre-hearing at that time?

10          ATTORNEY D. MARK THOMAS:

11          Just to set the schedule.

12          ATTORNEY GRUIN:

13                 Your Honor, what we had envisioned was. I  
14 believe, that at the time of the filing of the  
15 petition there were approximately 24 issues that the  
16 parties identified as being in dispute. And this  
17 Court believes that up to 10 of those issues can be  
18 disposed of based on the Commission's order in the AMA  
19 proceeding, which is as a matter of fact laws not  
20 controlled by federal law. We actually drafted a  
21 motion for judgment and we were prepared to file it  
22 today, which would have addressed many of those  
23 issues. And by doing that, what it would accomplish,  
24 it would narrow the scope of issues in dispute to a  
25 discreet number. Maybe it's 14 or 16 specific issues.

1 Then once we have those issues narrowed and defined  
2 then we can do discovery.

3 ATTORNEY D. MARK THOMAS:

4 Your Honor, and we propose to turn that  
5 around. We'd like to do discovery now and then we'll  
6 be able to focus on the issues and which issues should  
7 be addressed. If you look at the Core --- the  
8 December 4th order at AMA at the top of page five ---.

9 JUDGE SALAPA:

10 Let me make sure I have a copy of that.

11 ATTORNEY D. MARK THOMAS:

12 I'll read it. It's just a short  
13 provision. It reads, we also find that Alltel will  
14 not be harmed by the denial of this motion since it  
15 has other opportunities in the interconnection  
16 proceeding to address all relevant issues. So what  
17 the Commission was saying there is, all these issues  
18 that Alltel was concerned about in the AMA proceeding  
19 that it wanted consolidated with the application that  
20 was pending before the Bureau of Fixed Utility  
21 Services, all of those issues --- it said, Alltel,  
22 we'll make sure you're protected. You can address  
23 those issues in the interconnection proceeding.

24 In light of that order, we want to pursue  
25 some discovery specifically in connection with



1 Windstream. And then at the completion of discovery  
2 address these issues that Mr. Gruin's referring to and  
3 maybe we can resolve some of these issues, but to do  
4 it up front before we even had an opportunity to  
5 pursue discovery on the issues, the Commission said  
6 that we do have the opportunity to pursue, I think  
7 would be wrong.

8 ATTORNEY GRUIN:

9 I agree that they can raise these issues,  
10 and they have in response to the arbitration petition,  
11 but the law, both the Commission's law and federal  
12 law, saying that Alltel's position is untenable or not  
13 supportive. There's nothing in that Commission Order  
14 that says that you or the Commission couldn't toss  
15 some of those issues out of this proceeding. As a  
16 matter of law, their position doesn't hold water or  
17 it's already been litigated and decided by the  
18 Commission. The Commission isn't saying that Alltel  
19 can re-litigate these issues all over again and start  
20 from scratch. That's not what they intended. They  
21 basically said they can raise their issues about  
22 interconnection and exchange of traffic and carrier  
23 comp and all these other factors in the arbitration,  
24 but I don't think that the Commission meant that  
25 Alltel could re-examine issues with BNXX and what is a

1 local exchange carrier and the things that were  
2 thoroughly examined over a year and a half in the AMA  
3 proceeding. That's what they're trying to do.  
4 They're trying to re-litigate that case.

5 ATTORNEY D. MARK THOMAS:

6 We aren't trying to re-litigate the case,  
7 but the Commission did provide that we will have the  
8 opportunity to address all relevant issues. The BNXX  
9 issue is a relevant issue from the standpoint of its  
10 impact on Alltel --- on Windstream and it is relevant  
11 to this proceeding. Every issue is relevant to this  
12 proceeding, with the rural exemption now pending and  
13 what the ultimate impact will be on Windstream, will  
14 it be economically burdensome. That is an issue that  
15 is very, very important to this proceeding and we  
16 shouldn't be denied the opportunity to first have a  
17 chance to determine exactly what Core intends, how it  
18 intends to proceed in the Windstream service  
19 territory. In the Windstream service territory, not  
20 RNX or anything else, but in the Windstream service  
21 territory. That's what we want to find out.

22 ATTORNEY GRUIN:

23 One point, this is a key distinction that  
24 has become an issue, of terminating the rural  
25 exemption, if you look to see if the specific requests

1 are being made by the CLECS as unduly economically  
2 burdensome. Terminating the rural exemption is based  
3 upon the specific proposed interconnection terms, you  
4 look through those to see if those terms are unduly  
5 burdensome to the rural LEC. That should not be  
6 confused with a new examination of Core's overall  
7 operations in the territory. That is a certification  
8 you just went through, where you examine the overall  
9 nature of the operations. So that's a key distinction  
10 here. For rural exemption termination you look at the  
11 request, and is that unduly burdensome, and not the  
12 overall operations of Core in the territory.

13 ATTORNEY D. MARK THOMAS:

14 I don't disagree with that. It's the  
15 request they're making of Windstream here for  
16 interconnection and how they intend to interconnect  
17 with Windstream, what burdens they're going to place  
18 on Windstream in moving the traffic and so forth. We  
19 need that information. We want to know are you going  
20 to connect with us in Kittanning. Are you going to  
21 connect with us in Muncie? Just what your intentions  
22 are. We need a little time for discovery before we  
23 can address these issues, to even define the issues.

24 ATTORNEY GRUIN:

25 And it's our position again, that all

1 that information was provided in the AMA hearing.  
2 Alltel was a participating member of the RTCC in that  
3 proceeding, represented by Mr. Thomas's firm, Regina  
4 Matz and Patty Armstrong. They've seen it, they have  
5 been involved in this discovery, all this  
6 information's been submitted. I mean, it's just  
7 reinventing the wheel to do it again.

8 ATTORNEY D. MARK THOMAS:

9 We aren't going to reinvent the wheel,  
10 Your Honor. We don't have the information we need and  
11 we'd like to have the opportunity to pursue some  
12 discovery before we address the issues. That's all  
13 we're asking for.

14 JUDGE SALAPA:

15 So I think other than the discovery  
16 aspect of this, Mr. Thomas, does the time line that  
17 Mr. Gruin is proposing, is that acceptable to your  
18 client? In terms of what we're talking about, direct  
19 testimony, rebuttal or reply testimony, hearing dates,  
20 submitting briefs and all of that?

21 ATTORNEY D. MARK THOMAS:

22 I'd like to have an opportunity for a  
23 reply brief and a little more time between the  
24 arbitration sessions and when the main brief's due,  
25 some tweaking of it, and I'd like also the discovery

1 to take place ahead of any motions being filed and so  
2 forth.

3 ATTORNEY GRUIN:

4 Your Honor, our point is we're looking at  
5 two options here. Either discovery, then dispositive  
6 motions because, again, we think there's many issues  
7 being raised by Alltel that are just untenable as a  
8 matter of law. So it's either an option of discovery,  
9 then dispositive motions and then discovery. We think  
10 that based on just the pleadings, the dispositive  
11 motions arguments that are being raised by the parties  
12 that a number of the issues can be tossed out of this  
13 proceeding and it would be significantly narrowed,  
14 which would narrow the burden of discovery, the time  
15 needed for discovery ---.

16 JUDGE SALAPA:

17 Well, I guess I'm wondering --- and  
18 you'll have to forgive me because I tend to look at  
19 things in a very black and white way. What's the  
20 difference if you file your preliminary motions on  
21 February 1st just based on the pleadings and filing  
22 those dispositive motions two months after today?  
23 We're talking the end of March, when discovery would  
24 be completed and you would have the opportunity at  
25 that point to file either a motion for judgment on the

1 pleadings or a summary judgment motion. I mean, I  
2 understand you are saying that this is a matter of  
3 law, but I have had cases in the past where people  
4 have jumped too quickly on filing a motion for  
5 judgment on the pleadings and I've had to rule against  
6 them because all I'm allowed to look at when I'm  
7 deciding a motion for judgment on the pleadings are  
8 the pleadings themselves. I'm not allowed to look at  
9 any outside facts, any, you know, Interrogatories,  
10 nothing like that, so I mean, you're narrowing  
11 yourself. And if I say bang, no, I'm going to deny  
12 it, then we're going to move forward. And you may be  
13 right that as a matter of law some of these issues are  
14 going to disappear, but you may need to bring in some  
15 outside facts that are strictly outside the scope of  
16 the pleadings in order to accomplish that.

17                   So I'm not trying to tell you how to run  
18 your case, I'm just saying that this has happened in  
19 the past where I have had to deny a motion for  
20 judgment on the pleading simply because of the limited  
21 scope of what I can look at when deciding that, as  
22 opposed to if that person would have waited until  
23 discovery was completed and attached some additional  
24 facts, I might have been in a position to grant that.

25                   ATTORNEY GRUIN:

1 May I have a moment?

2 JUDGE SALAPA:

3 Yes.

4 OFF RECORD DISCUSSION

5 ATTORNEY GRUIN:

6 Your Honor, the issue we have with  
7 discovery, and I hear what you're saying and I tend to  
8 agree with you, but the problem with discovery is ---  
9 and forgive us if we have a little bit of a bad taste  
10 in our mouth from the last proceeding when the 31  
11 rural ILECS flooded us with discovery and basically,  
12 you know, ganged up on us, for lack of a better term  
13 ---. And that was a very protracted litigation and  
14 quite an experience. So what we're trying to avoid  
15 here is another situation where we get discovery that  
16 is all over the board on every conceivable issue on  
17 the nature of Core's operations. The kitchen sink  
18 theory of discovery in litigation. So with that in  
19 mind we would like to narrow the scope of discovery,  
20 to limit the number of requests that can be made and  
21 narrow the timeline, maybe 45 days. And with that in  
22 mind we'd be agreeable to doing a round of discovery,  
23 then dispositive motions after the conclusion of  
24 discovery. Rule on the dispositive motions. At that  
25 time the issues should be significantly narrowed. The

1 parties can submit their list of issues, we can begin  
2 testimony and move forward with the arbitration. But  
3 I believe discovery and dispositive motions must be  
4 taken care of before we get into the testimony phase  
5 of the arbitration.

6 ATTORNEY D. MARK THOMAS:

7 The trouble I have with that argument is  
8 if you look at the schedule they've given us, I'd have  
9 five months for discovery. Now, he wants to limit me  
10 to 45 days. That's quite a swing. And also we don't  
11 intend to abuse our discovery rights. If there's any  
12 indication of that Mr. Gruin can file a motion, but  
13 let us proceed. Let's get the discovery behind us and  
14 go from there. I don't think there needs to be any  
15 limitation on us in that. We want to find out what  
16 Core's going to do in the Windstream service  
17 territory, what they're planning here in this  
18 interconnection.

19 ATTORNEY GRUIN:

20 And Your Honor, I think it is somewhat  
21 unusual to have discovery before anything else  
22 happens. I think it is an accommodation to  
23 Windstream. At the same time, we're not trying to  
24 limit anyone's overall discovery, we're just saying  
25 generally discovery should take place in the context



1 of the case as it normally does. You have preliminary  
2 motions and then you would move on to discovery.  
3 Here, I think we're flip-flopping it a little bit. At  
4 the same time, I think 45 days or even a month would  
5 be a lot of time to get some of this information out.

6 JUDGE SALAPA:

7 I would tend to disagree. I mean, I  
8 don't know how much discovery Mr. Thomas intends to  
9 do, but 30 days to do discovery in my limited  
10 experience is usually not sufficient. What I  
11 would ---.

12 ATTORNEY D. MARK THOMAS:

13 Really we aren't harming the timing of  
14 the schedule other than to give a little more time for  
15 reply briefs and so forth. But you know, the time  
16 period they have involved here for the disposition of  
17 this matter, we aren't interfering with by our request  
18 here.

19 ATTORNEY GRUIN:

20 And I guess we could make the discovery  
21 focused on their legal argument, which is the rural  
22 exemption issue and the burden that's being imposed on  
23 them, but keep that as the parameter. I don't want to  
24 see discovery questions about, you know, potential  
25 Core violations, consumer complaint and all the other

1 things that were thrown into the initial proceeding.

2 I mean, that's what I'm expecting to see.

3 ATTORNEY D. MARK THOMAS:

4 Mr. Gruin, they aren't issues in this  
5 case. You have received your certification or you will  
6 have received your certification. That's behind us.

7 JUDGE SALAPA:

8 Okay. I was going to say, I think that  
9 your point's well taken, Mr. Gruin. I think that a  
10 lot of these issues that were brought up in the AMA  
11 thing were brought up because that was an application  
12 for authority. I think that those issues are all, at  
13 least in my mind, are off the table in this proceeding  
14 because I'm not dealing with an application for  
15 authority. That's something in Fixed Utilities. They  
16 are going to, I assume, issue an order and that makes  
17 the finding, I think, that Core is capable of  
18 providing the service and is going to provide that. I  
19 don't see where any of that is coming in. I think Mr.  
20 Thomas understands that that's off the table. We're  
21 not going to use this proceeding as a way to back door  
22 and try to litigate the issues that should have been  
23 raised in the AMB application proceeding. I think you  
24 understand that.

25 ATTORNEY D. MARK THOMAS:

1 I definitely understand that. This isn't  
2 an application proceeding.

3 JUDGE SALAPA:

4 This is not an application proceeding.  
5 We're not going to get into all that stuff and I think  
6 if I'm --- and that's why I asked you earlier, Mr.  
7 Thomas, and I don't know if I got a response, but  
8 exactly what discovery do you anticipate? Are we  
9 talking depositions, Interrogatories, production of  
10 documents ---?

11 ATTORNEY D. MARK THOMAS:

12 I would think it would be Interrogatories  
13 and production of documents. I don't see depositions  
14 at this point.

15 JUDGE SALAPA:

16 And I don't want to pin you down and I'm  
17 not going to hold you to it, but are we talking  
18 hundreds of Interrogatories?

19 ATTORNEY D. MARK THOMAS:

20 Your Honor, I can't answer that question.  
21 After we're all done here today, I'm going to have a  
22 conference with my client and then I'll relay to them  
23 exactly what was addressed here.

24 JUDGE SALAPA:

25 And you can relay to them that I really

1 don't want to delay this with a lot of extraneous  
2 material. I think that we are past the point where  
3 Core's ability to provide service has been decided. I  
4 think what we're talking about are strictly the terms  
5 and conditions of the interconnection.

6 ATTORNEY GRUIN:

7 Very well put, Your Honor.

8 JUDGE SALAPA:

9 And any of this other thing about their  
10 capabilities to provide the service or what they're  
11 providing is actually telecommunication service. I  
12 don't think I am in a position to entertain that. I  
13 think the Commission has decided that in the AMA  
14 application and until someone tells me that there is a  
15 stay of that appeal, I'm going to proceed on the  
16 assumption that that is an issue that the Commission  
17 will determine finally. So ---.

18 ATTORNEY GRUIN:

19 With all that said, Your Honor, I think  
20 if we do narrow discovery and focus on the nuts and  
21 bolts of what Core's requesting of Alltel ---.

22 JUDGE SALAPA:

23 Then this proceeding can move on.

24 ATTORNEY GRUIN:

25 I agree.

1                   JUDGE SALAPA:

2                   But by the same token, I think Mr.  
3 Thomas' point is well taken that until he has some  
4 specifics about physically how you intend to  
5 accomplish this, he's not going to know whether that  
6 is going to present an economic burden to his client  
7 such that he's going to want to raise the rural  
8 exemption.

9                   ATTORNEY GRUIN:

10                   And --- I'm sorry, Your Honor.

11                   JUDGE SALAPA:

12                   Go ahead.

13                   ATTORNEY GRUIN:

14                   And I think having said that, we would  
15 anticipate some discovery on Windstream as well. If  
16 they're going to raise this defense of economic burden  
17 and things like that, we need to gather some  
18 information to be able to prepare our argument to  
19 terminate the exemption.

20                   ATTORNEY D. MARK THOMAS:

21                   It's really going to be pretty hard for  
22 us to tell you our economic burden without knowing  
23 exactly what you intend to do.

24                   ATTORNEY GRUIN:

25                   Right. And there's a background at

1 Windstream, this particular company, and, you know,  
2 there's 34 rural ILECS in Pennsylvania. Windstream to  
3 my knowledge is one of the largest. We would want to  
4 know the economic context, how it might affect their  
5 overall financial picture.

6 ATTORNEY D. MARK THOMAS:

7 I would assume, Your Honor, that  
8 discovery will run at least up to the date of the  
9 first hearing, so if questions develop, you know, you  
10 can raise it on further discovery.

11 JUDGE SALAPA:

12 Well, I think, first of all, I do note  
13 that your point is well taken because I think going  
14 back to the original implementation order in September  
15 of '96, the Commission did ask Alltel and United to  
16 file information which established or would establish  
17 their status as a rural --- so even the Commission had  
18 some issues, I guess --- I presume based on Alltel's  
19 size compared to the other rural telephone company. I  
20 don't know the ins and outs ---.

21 ATTORNEY D. MARK THOMAS:

22 The issue back then was the definition of  
23 a rural telephone company under the Act and whether  
24 Alltel met the definition. That's what was addressed.

25 ATTORNEY GRUIN:

1 I think subsequently they then describe  
2 Alltel did qualify as a rural carrier, but also in  
3 that order, if I'm not mistaken, I think the burden is  
4 on the entrant to terminate the rural exemption. So  
5 that's really in favor of us having a little bit  
6 broader discovery than Alltel would. It's going to be  
7 our burden ultimately to show that it's not  
8 technically unfeasible or burdensome.

9 JUDGE SALAPA:

10 Would you agree with those?

11 ATTORNEY D. MARK THOMAS:

12 I definitely agree with that. They have  
13 the burden of proof on the termination.

14 JUDGE SALAPA:

15 Okay. Well, then I think you're right.  
16 If that's going to be an issue then, certainly you're  
17 going to have to know what the extent of the burden is  
18 and how that's going to affect Windstream's ability to  
19 operate and whether it's going to significantly impair  
20 them.

21 ATTORNEY GRUIN:

22 Right.

23 JUDGE SALAPA:

24 All right. I think we've kind of beaten  
25 this horse. Going back to the tentative schedule then

1 that Mr. Gruin has proposed, we are in agreement in  
2 terms of the hearing dates. correct?

3 ATTORNEY D. MARK THOMAS:

4 I wonder if we can do this, Your Honor?  
5 Looking at the schedule, Mr. Gruin has a pre-hearing  
6 conference June the 15th. I wonder, maybe if what we  
7 should do instead of setting the testimony dates and  
8 the hearing dates at this point, hold that date if  
9 we're going to have another pre-hearing conference ---  
10 pre-arbitration conference. And then based upon where  
11 we stand at that point, we should be in a much better  
12 position to know about testimony and hearings and so  
13 forth, and so if just set the schedule up to the  
14 pre-arbitration conference.

15 ATTORNEY GRUIN:

16 I'm fine with that. I will bring the  
17 dispositive motions if necessary, and then reconvene  
18 and do a timeline for discovery --- I'm sorry,  
19 testimony then hearing.

20 JUDGE SALAPA:

21 I'm not going to tell you guys how to run  
22 your case. If that's what you want to do, that's  
23 perfectly fine. I will only warn you that the way the  
24 scheduling works for the hearing rooms, it may become  
25 problematic at June 15th to reserve a hearing room for



1 mid to late July, depending on the Commission's  
2 caseload. You may have an issue of reserving the  
3 hearing rooms. If you want, what I can do is go back  
4 to the pre-hearing conference and tell scheduling  
5 staff to put a tentative reservation on a hearing room  
6 for a particular couple of dates. And that way the  
7 hearing room is taken off line in terms of being  
8 available.

9 ATTORNEY GRUIN:

10 I think that's a good idea.

11 ATTORNEY D. MARK THOMAS:

12 Yeah, that'd be good.

13 JUDGE SALAPA:

14 And if we don't need the hearing room,  
15 you can tell me that and we can just simply remove  
16 that reservation.

17 ATTORNEY GRUIN:

18 That sounds good.

19 JUDGE SALAPA:

20 Okay. Well, then would the 20th, 23rd  
21 and 24th of July still look good?

22 ATTORNEY D. MARK THOMAS:

23 That's a Monday and Tuesday. That should  
24 be okay.

25 JUDGE SALAPA:

1           Okay. Then that's what I will --- July  
2 23rd and 24th, hold hearing. All right. Now, let's  
3 turn back and look at this tentative schedule. Pre-  
4 arbitration conference, June 15th. Now, do you want  
5 60 to 90 days for discovery and to file your  
6 dispositive motion and any answer to it? Do you know  
7 if that's still in the cards?

8           ATTORNEY D. MARK THOMAS:

9           That'd be fine.

10          ATTORNEY GRUIN:

11          Sixty (60) days would be fine.

12          JUDGE SALAPA:

13          All right. So do you want to style that  
14 as close of discovery in 60 days or how do you want it  
15 to word ---?

16          ATTORNEY D. MARK THOMAS:

17          I would like the discovery still to be  
18 open throughout the course of the proceeding.

19          JUDGE SALAPA:

20          All right.

21          ATTORNEY D. MARK THOMAS:

22          So wherever we are in discovery, if the  
23 dispositive motions have to be filed on a certain  
24 date, you know, whatever the discovery is as of that  
25 date, that's what the parties will use.

1                   ATTORNEY GRUIN:

2                   Why don't we put an end to discovery at  
3 some point because all we need to do is supplement if  
4 new information comes to light, but at some point we  
5 have to turn the information over to our experts and  
6 witnesses. And we have to have a final date there.

7                   JUDGE SALAPA:

8                   All right. So do you want to keep the  
9 close of discovery date then as June 1st?

10                  ATTORNEY D. MARK THOMAS:

11                  That'd be fine.

12                  JUDGE SALAPA:

13                  So then really, Mr. Gruin, when do you  
14 want to file your dispositive motion?

15                  ATTORNEY GRUIN:

16                  I foresee us being able to that in 60  
17 days to give the parties plenty of time to exchange at  
18 least one round of discovery, so I'd say maybe by  
19 April 1st.

20                  JUDGE SALAPA:

21                  On dispositive motions, if any?

22                  ATTORNEY D. MARK THOMAS:

23                  That's a Sunday.

24                  ATTORNEY GRUIN:

25                  Okay. April 2nd.

1           JUDGE SALAPA:

2           You can file it on a Sunday. All right.  
3 Then how many days do you want to respond, Mr. Thomas?  
4 Will 20 be enough?

5           ATTORNEY D. MARK THOMAS:

6           Yes, 20. That'd be fine.

7           JUDGE SALAPA:

8           So April 22nd, which should be a weekday.

9           ATTORNEY D. MARK THOMAS:

10          No, I'm showing that as a Sunday, too.

11          ATTORNEY GRUIN:

12          It is a Sunday. We could go to the 23rd.

13          ATTORNEY D. MARK THOMAS:

14          How about the 23rd?

15          JUDGE SALAPA:

16          23rd, response. And then you're going to  
17 want an order on despositive motion then?

18          ATTORNEY GRUIN:

19          Well, I had approximately 60 days, 55  
20 days in my tentative schedule. I think it's going to  
21 be so clear-cut, Your Honor ---.

22          JUDGE SALAPA:

23          I've been promised things before by  
24 Counsel and it's never quite worked out that way.

25          ATTORNEY D. MARK THOMAS:

1 He has to remember, I may be filing one,  
2 too.

3 JUDGE SALAPA:

4 I mean, certainly, and when I say filing  
5 dispositive motions, I'm not foreclosing you, Mr.  
6 Thomas, from doing the same thing. So you're  
7 envisioning June 1. Does that give you enough time  
8 then? I'm assuming they will come out and we'll have  
9 the conference the 15th and by that time you should  
10 have an idea what they want to do with my order, which  
11 may be pertinent ---.

12 ATTORNEY D. MARK THOMAS:

13 And that's two weeks before the  
14 pre-hearing. That'll be fine.

15 ATTORNEY GRUIN:

16 Yeah. Then we have time to go back to  
17 our witnesses and determine that for our conference to  
18 let you know how much time we'll need for testimony.

19 JUDGE SALAPA:

20 All right. And then did we already say  
21 that June 1 would also be close of discovery?

22 ATTORNEY D. MARK THOMAS:

23 Same date.

24 JUDGE SALAPA:

25 Conference on the 15th. Litigation

1 scheduled if needed. And I would assume that the  
2 litigation schedule that you would be anticipating  
3 would be somewhat along the lines of what is set forth  
4 here because you're already committing to hearing  
5 dates at least.

6 ATTORNEY D. MARK THOMAS:

7 I think all of them should be agreeable.  
8 I think if we have all the testimony pre-filed and  
9 then we have a day of hearing or two days of hearings.

10 JUDGE SALAPA:

11 All right. So at the pre-hearing  
12 conference if we need to we can adjust the litigation  
13 schedule, but tentatively we're going to say that the  
14 times that are set forth here are probably going to be  
15 what we're going to go with. All right. Is there  
16 anything else we need to address at this point, Mr.  
17 Thomas?

18 ATTORNEY D. MARK THOMAS:

19 I have nothing.

20 JUDGE SALAPA:

21 Mr. Gruin?

22 ATTORNEY GRUIN:

23 I don't think so, Your Honor.

24 JUDGE SALAPA:

25 All right. I would just like to thank

1 Counsel for their cooperation. I think it always  
2 works better when we can resolve things amicably.  
3 Thank you for your cooperation and we are adjourned.

4 ATTORNEY GRUIN:

5 Thank you, Your Honor.

6 ATTORNEY D. MARK THOMAS:

7 Thanks, Your Honor.

8

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10 HEARING CONCLUDED AT 11:15 A.M.

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