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BEFORE

ORIGINAL

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

In re: I-00920020 Pennsylvania Public Utility Commission v. Commonwealth Telephone Company. Assessment of the impact of significant in certain operating expenses on the equity return rate. Prehearing conference.

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PA.P.U.C. INFO. CONTROL DIV.

Harrisburg, Pennsylvania  
May 27, 1993

Pages 1 to 28, inclusive

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JUN 24 1993

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DOCUMENT  
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CERTIFIED  
ORIGINAL



1 APPEARANCES: (Cont'd.)

2           NORMAN JAMES KENNARD, ESQUIRE  
3           116 Pine Street  
4           Harrisburg, Pennsylvania 17101  
5                    Appearing on behalf of Commonwealth Telephone  
6                    Company

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<u>COMMONWEALTH/OCA:</u>	<u>IDENTIFIED</u>	<u>ADMITTED</u>
Ex. 1 - Stipulation ✓✓	23	23

1 JUDGE KASHI: This is the time and place set for the  
2 further prehearing in the matter of the Pennsylvania  
3 Public Utility Commission versus Commonwealth Telephone  
4 Company which has been docketed to I-00920020.

5 We had earlier scheduled yesterday, today and  
6 tomorrow for hearings on this matter. However, we had a  
7 conference that was initiated by the Office of Consumer  
8 Advocate which were present, the Company of Consumer  
9 Advocate and Trial Staff at which time it was agreed that  
10 we would cancel the hearing set for the 26th through the  
11 28th and have a further prehearing conference on the 27th  
12 for the purposes of evaluating the certain supplemental  
13 testimony which was to be filed by the Company and to  
14 entertain any possibilities of changing the hearing  
15 schedule.

16 At that conference, we had contemplated having the  
17 hearings on April 21st -- Strike that -- June 21st and  
18 22nd in lieu of those from the 26th through the 28th of  
19 May with no other changes in the schedule. Off the  
20 record.

21 (Discussion off the record.)

22 JUDGE KASHI: Mr. McClelland, would you like to  
23 address the record?

24 MR. MCCLELLAND: Yes, Your Honor. Your Honor, as we  
25 have indicated in our prehearing memo, we have had

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1 discovery difficulties and have now filed a number of  
2 motions to compel.

3         And we are concerned that we need this particular  
4 information from these three motions to compel  
5 specifically. It is correct as well that we did not file  
6 the last motion till yesterday.

7         Our difficulty is that in many instances, we get  
8 answers to questions not objected to that are just not  
9 responsive. And we have moved to compel now in this most  
10 recent set in those issues as well.

11         And we think those issues goes to the heart of this  
12 Commission's investigation. And we are very desirous of  
13 getting that information out. As well and partially  
14 related to that, this gives us scheduling difficulties.

15         And we have proposed an alternative schedule in  
16 response to that difficulty and also in response to some  
17 scheduling conflicts that we, ourselves, had and also  
18 specifically to make room up front for some informal  
19 discovery. Again, hoping to move this process forward.

20         But I would emphasize, informal discovery works best  
21 if we have something in our hands to work from as we go  
22 there.

23         Lastly, we have also addressed the witnesses we will  
24 call. We have some new witnesses particularly on  
25 appreciation. And we put that in our prehearing memo as

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1 well. So I would say at this point, our primary concern  
2 is discovery.

3 JUDGE KASHI: Would you like to respond, Mr.  
4 Kennard, to anything that Mr. McClelland said?

5 MR. KENNARD: Judge, only to note that the Company  
6 has objected to certain interrogatories and the process  
7 has been filed in those matters and are pending before  
8 Your Honor.

9 With respect to those that were filed yesterday, the  
10 Company believes its responses were adequate to the  
11 interrogatory that was supposed posed and will respond to  
12 the motion to compel within the time frames established in  
13 the Commission's regulations.

14 And then Your Honor decides with respect to whether  
15 the Company should be compelled or not. The Company is  
16 willing to enter into a continuance of the schedule along  
17 the lines established by the Office of Consumer Advocate  
18 in the prehearing conference memorandum because the  
19 Company and the Consumer Advocate have or are going to  
20 read into the record a stipulation relative to the impact  
21 of 1309B on this proceeding.

22 The Company has encouraged informal discovery all  
23 along and it will work with the OCA in informal discovery,  
24 I will note that there are over 200 interrogatories to  
25 which the answers due on Friday.

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1           So in addition to all the supplemental information  
2 that was provided last week, as well as the responses to  
3 the 200 interrogatories plus what's already been  
4 introduced thus far, there should be an excellent base for  
5 the Consumer Advocate to operate its informal discovery  
6 from.

7           The only thing I requested of the Advocate, and my  
8 understanding they have agreed, is that they provide me  
9 with a list of documents that they desire to review; that  
10 they identify those individuals with whom they seek the  
11 interview and a list of the topic matters that they intend  
12 to discuss so I can prepare the Company to have the  
13 information available to be responsive to the Consumer  
14 Advocate -- to the informal discovery session scheduled  
15 with the Office of Consumer Advocate.

16           MR. MCCLELLAND: Your Honor, would you like to  
17 address the motion to compel today or in any event hold  
18 that for decision?

19           JUDGE KASHI: I think I could hold it until I can  
20 read it.

21           MR. MCCLELLAND: We have two proceedings of motions  
22 to compel.

23           JUDGE KASHI: We'll wait on that. Miss  
24 Melillo.

25           MS. MELILLO: Yes, Your Honor, Your Honor, we, the

1 Office of Trial Staff, served interrogatories upon  
2 Commonwealth Telephone Company on the 10th of May 1993.

3 These interrogatories were necessary due to the lack  
4 of detail and information which was not contained in the  
5 Company's filing of testimony on the 3rd of May 1993.

6 One of the interrogatories, specifically OTS RE 24,  
7 requested that the Company provide the information  
8 required under the filing requirement of 52 Pa Code 53.53.

9 We did not receive any objections to the  
10 interrogatories which we served on the 10th of May 1993.  
11 On or about the 17th of May 1993, I had some conversation  
12 with the Company attorney which led me to believe that the  
13 Company was not going to provide a response to OTS RE 24.

14 After that point, I ascertained from our technical  
15 staff which of the filing requirements specified the  
16 Section 53.53 whatever is absolutely necessary to the  
17 Office of Trial Staff's analysis of the Company's filing  
18 and did receive a response and served upon the Company the  
19 20th of May a modified discovery request concerning the  
20 filing requirements.

21 Again, I heard nothing in response to that. On the  
22 25th of May, the Company filed its non-answer to OTS RE  
23 24. I have prepared and ready to file a motion to compel  
24 concerning that interrogatory.

25 But on the 26th of May, yesterday, the attorney for

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1 the Company did indicate to me that the Company would be  
2 responding in full to our modified discovery request  
3 concerning OTS RE 24.

4 In addition, I was informed that the Company's  
5 response to RE 23 was not completely responsive and it did  
6 not include the requested information concerning taxes and  
7 depreciation.

8 I believe the Company has today stated that they do  
9 intend to comply with that request as well. The Company  
10 has stated that with respect to our modified discovery  
11 request on OTS RE 24 that the Company would comply on or  
12 before June 7th, 1993.

13 I have not yet heard from the Company explicitly  
14 what date they would intend to provide the information  
15 required in OTS RE 23.

16 JUDGE KASHI: Do you have motions available for both  
17 24 and 23?

18 MS. MELILLO: I do, Your Honor. I have them  
19 available for service today. I thought that, perhaps, if  
20 the Company would absolutely agree to provide the  
21 information and would state so on the record that,  
22 perhaps, Your Honor's consideration of that motion might  
23 be obviated but in the event --

24 JUDGE KASHI: The way things are going, I want you to  
25 file. I thought we could do this informally. I had

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1 mentioned that on the telephone. But with the constant  
2 non-answers going on around here, it really upsets me.  
3 And I want you to file that motion, and I'll address that  
4 motion and the Consumer Advocate's by the 2nd of June.  
5 Mr. Keffer.

6 MR. KEFFER: Judge, may I respond?

7 JUDGE KASHI: Yes.

8 MR. KEFFER: Ms. Melillo asked me if the Company was  
9 going to file the Commission's requirements under 52 Pa  
10 Code 53.53.

11 And as I expressed off the record earlier, as the  
12 parties will know, that is a stack of specialized studies  
13 and, in particular, formats that stands approximately  
14 2 1/2 foot tall and is required only when a utility  
15 company is seeking a rate increase in excess of a million  
16 dollars.

17 Prior to that time, there was no indication from any  
18 party that 53.53 was to be filed in any way, shape or form  
19 and it certainly did not apply.

20 The Office of Trial Staff served the interrogatories  
21 that we want you to do it in that format. The Company  
22 obviously had not done it in that format and responded by  
23 saying that the analysis in the formats required in the  
24 53.53 were not available and that further 53.53 did not  
25 apply.

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1           Now, I had told counsel for Trial Staff that  
2 verbatim. I didn't give her an indication that we weren't  
3 going to. I told her we weren't going to.

4           And in response, we got a letter dated May 20th from  
5 the Trial Staff saying here are the items that we are  
6 interested in -- especially interested in to provide.

7           And I told Miss Melillo yesterday. That came at the  
8 time on May 20th when we were in the process of putting  
9 together Mr. McCauley's supplemental testimony.

10           The parties seem to think that the Company a huge  
11 well and reservoir of information of talent that stands  
12 ready to answer each and every interrogatory that comes  
13 along. That, in fact, is not the case.

14           This company is lean. It does not have a lot of  
15 personnel. And those who are involved in this, are trying  
16 to be as responsive as they can be.

17           I talked with the Company on Monday. We put  
18 together a -- we had to go through and research the filing  
19 requirements, first of all, because they weren't set up by  
20 staff.

21           We had to sit down and determine what was provided,  
22 and a substantial majority is already provided in  
23 interrogatories. Identify those that required additional  
24 information not previously called for. I talked to Miss  
25 Melillo yesterday and told her, and I just said off the

1 record and I will say again now on the record, the Company  
2 will provide the information identified in Miss Melillo's  
3 letter of May 20th, on or before June 7th, 1993 which  
4 provides either under the current schedule or that  
5 proposed by the OCA more than ample time for the staff to  
6 review that information in preparation for hearing.

7 Judge, I do not view that scenario as being foot  
8 dragging by the Company or non-answers by the Company.

9 I rather think, Judge, it is abuse of process that  
10 the Company provide the information requested in a  
11 regulation that has nothing to do with this proceeding and  
12 give the Company 15 days to do it.

13 If the Trial Staff -- the Company cannot deal with  
14 these kinds of request. As discovery should be targeted,  
15 then the Company can provide those responses as we're  
16 doing now in response to Miss Melillo's letter of May  
17 20th. Thank you.

18 JUDGE KASHI: Thank you. Mr. Keffer.

19 MR. KEFFER: Your Honor, Mr. Kennard complains that  
20 the pile of paper he's accumulating for discovery  
21 responses is getting quite large. But that's much his own  
22 doing.

23 I like a good gain of discovery as much as anyone  
24 else. But if we're going to adhere to the schedules being  
25 proposed, it's time for the Company to provide answers to

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1 some of the questions that are pending.

2 Now, for AT&T, the discovery problems essentially  
3 groups themselves into two areas. First, the Commission's  
4 orders setting up this proceeding raise some issues about  
5 the relationship between Commonwealth and its affiliates,  
6 particularly Commonwealth Long Distance.

7 I've asked a number of discovery requests about that  
8 relationship and about the way that Commonwealth Long  
9 Distance operates vis-a-vis Commonwealth Telephone  
10 Company.

11 And the response that Mr. Kennard filed is that  
12 that's none of my business. I didn't raise that issue in  
13 my original complaint.

14 My perspective on that is that I didn't need to  
15 raise that issue. The Commission had already made those  
16 issues a part of this proceeding. It would have been  
17 redundant for me to do that.

18 If, however, my original pleading was somehow  
19 deficient, as I said in one of my motions to compel, I'll  
20 move for leave to amend my complaint to add the very same  
21 issues about the relationship between Commonwealth and  
22 Commonwealth Long Distance. I'll move that those issues  
23 be made part of my complaint. That's one problem.

24 The second problem, and this is unique to this case,  
25 I've done an awful lot of access charge proceedings. If I

1 haven't done more than anybody else in the country, I'm  
2 for sure in the top five. And I have never seen this  
3 objection before.

4       When I've asked Commonwealth Telephone Company for  
5 information about access volumes and access costs, the  
6 responses I've received give me AT&T data or tell me that  
7 AT&T has its own data and go on to say that I'm not going  
8 to be provided total industry data because that is  
9 proprietary.

10       Now, I have offered several times to sign a  
11 protective agreement limiting the review of any  
12 proprietary data to a very small number of individuals.

13       I've agreed to pledge that the people who see that  
14 data are not involved in the development of AT&T services  
15 or in the establishment of AT&T prices so that there's  
16 absolutely no risk of competitive harm to Commonwealth or  
17 Commonwealth Long Distance or any other inter-exchange  
18 carrier. I still haven't seen that data.

19       Now, a third problem I'll raise is, and it's  
20 admittedly piggybacking on the issues raised by prior  
21 counsel, is I'm getting answers that tell me to see  
22 another response to somebody else's discovery.

23       I go look at that response, and it says that the  
24 answers are proprietary. And AT&T is not going to be  
25 given that data or look at the response and it has nothing

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1 to do with the question that I've asked. And it's getting  
2 to be a little frustrating.

3 Now, the last thing I'll raise -- and this sort of  
4 illustrates for me the problems that I'm experiencing in  
5 this case. One of the last questions I asked requested a  
6 copy of three telephone directories from Commonwealth's  
7 territory.

8 And the response I got was is that it would be  
9 extraordinarily burdensome and costly for Commonwealth to  
10 provide me with three telephone books. If that's the  
11 case, how can they give them to all the customers?

12

13 MR. KENNARD: Might I respond?

14 JUDGE KASHI: Are you finished?

15 MR. KEFFER: Just that I've got two motions to  
16 compel. One of which has been pending since sometime in  
17 February. And if we're going to proceed according to this  
18 schedule that has been proposed, I need some fairly prompt  
19 action on that and some fairly prompt answers from the  
20 company.

21 Now, having said all that -- I sound like being  
22 pretty heavy-handed here -- I'm certainly willing to work  
23 with the Company and pair down my request as much as  
24 possible.

25 But we have to get over this hurdle that says I

1 can't see proprietary data and I can't ask any questions  
2 about the relationship between Commonwealth and  
3 Commonwealth Long Distance. If we get over those hurdles,  
4 I'm willing to be reasonable.

5 JUDGE KASHI: Okay.

6 MR. KENNARD: Judge, Mr. Keffer is confused. We did  
7 not provide non-responsive answers. And I want to make  
8 that clear because Your Honor hears from three parties  
9 that say that Company is providing non-responsive answers.

10 What the company did was objected. We didn't  
11 provide answers. We objected to the provision  
12 forthrightly and said, CLD is not the subject of this  
13 investigation.

14 It is not the subject of AT&T's complaint. It's  
15 outside the scope of this investigation. And the  
16 information will be used by AT&T to a competitive  
17 advantage. The Company did not respond with  
18 non-responsive answers.

19 The Company objected and filed that with the  
20 Commission and Your Honor. The same is true with respect  
21 to the telephone books. The company has objected. We  
22 haven't provided non-responsive answers and played a game,  
23 Judge. We have objected.

24 And the frustration that Mr. Keffer has is that the  
25 motions to compel and the responses thereto have not been

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1 acted upon.

2 But I'm not playing a game with Mr. Keffer in  
3 discovery. I'm objecting. And what he's stating is that  
4 he would like the rulings to be forthcoming and the  
5 Company would like that as well to get some resolution.

6 But all the issues that are addressed by him, CLD,  
7 proprietary data, are all pending before Your Honor. And  
8 the Company has objected and not played a discovery game  
9 and provided non-responsive answers.

10 JUDGE KASHI: To a large extent, it seems that  
11 I've been negligent in addressing at least three of the  
12 motions that are outstanding. And I'll make sure that  
13 that's taken care of prior to the 2nd of June that I'll be  
14 able to get something out to you people out on that If  
15 that's what our main stumbling block is and get going from  
16 there. Can we agree to this schedule then?

17 MR. KENNARD: Your Honor, we can if the Consumer  
18 Advocate -- if we can get into the record the proposed  
19 stipulation between the Company and the Consumer Advocate.

20 JUDGE KASHI: Before we put that in the record, I'd  
21 like to see it.

22 MR. MCCLELLAND: I'm sorry. We have some language we  
23 have shown to each other, and we've continued to  
24 negotiate. And I don't think we have in one document  
25 entirely set forth what language we are willing to reach.

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1 However, I am willing to state our position today on the  
2 issue.

3 JUDGE KASHI: I think that's what Mr. Kennard is  
4 looking for.

5 MR. KENNARD: Can we get a copy and distribute it to  
6 the parties?

7 MR. MCCLELLAND: I didn't realize that one of my  
8 previous offers was taken.

9 JUDGE KASHI: Let's take a 10-minute recess. 10:50.  
10 (Whereupon, a brief recess was taken.)

11 MR. MCCLELLAND: If we could briefly go through what  
12 we discussed, Your Honor. At our last conference, dealing  
13 with supplemental testimony, the Company raised the issue  
14 of the application of 1309 (b) in this case.

15 That was our first indication that it might somehow  
16 apply. And I understand the Company's concern was -- 1309  
17 (b) has a provision which indicates that upon the  
18 initiation of a 1309 A-type proceeding and if certain  
19 other requirements are met, and I'll get to those, the  
20 case has to be decided within nine months.

21 And subsequent to the nine months, the rate  
22 adjustment would be retroactive to the end of the  
23 nine-month period. And we have considered that and in  
24 this case, do not believe that presently we are under  
25 Section 1309 (b).

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1           And I want to make clear that 1309 A and 1309 (b)  
2 have very different effects. 1309 A is very general and  
3 it's been in the code a long time.

4           1309 (b) has a specific provision on doing a  
5 complaint case or a Commission motion case in nine months  
6 and also with a retroactive provision.

7           Now, also as Your Honor has earlier indicated in his  
8 order, there is ample authority for this Commission to  
9 proceed. I don't think it's critical that we even reach  
10 the issue of 1309 A certainly not to address whether 1309  
11 (b) applies.

12           You may have a 1309 A case and never have a B case.  
13 In this particular instance, and is also reflected in  
14 proposed stipulation language, because the necessary  
15 request for rate reductions -- and it's very specific as  
16 to the size of that request -- was not made, we do not  
17 believe that this case is presently a 1309 (b) case.

18           Now, I want to be careful that there is other  
19 opportunities for parties to later initiate other forms of  
20 retroactivity.

21           And I would highlight 1310 which is mentioned in  
22 1309 (b). We didn't do it. No one has done, but it might  
23 happen.

24           1309 (b), in our opinion, is not now applicable to  
25 this case. And to the extent that gives the Company some

1 assurance as regard to schedule, we think that's  
2 appropriate. And so we have proposed this stipulation  
3 language.

4 JUDGE KASHI: Have all parties had an opportunity to  
5 produce the stipulation? Does anybody have a problem with  
6 it?

7 MS. MELILLO: Your Honor, I have a problem with the  
8 very end of that stipulation. I would note that the last  
9 sentence, Any final Commission determination in this  
10 proceeding, which sets different rates and revenues for  
11 Commonwealth Telephone Company shall not be deemed  
12 retroactive to the expiration of such nine-month period  
13 beginning with the initiation of this action pursuant to  
14 Section 1309 (b).

15 But the parties signing this stipulation in no way  
16 limits the Commission. We can't limit the Commission's  
17 authority to determine --

18 JUDGE KASHI: My whole on-the-record-position is  
19 1309 does not apply to this proceeding. This is not a  
20 1309 proceeding. I think I've said that from the  
21 beginning. And I'm really surprised from the first time I  
22 heard 1309 from Mr. Kennard at the conference on last  
23 Wednesday.

24 You know, I understand what your concerns are, and  
25 I'm not saying that you don't have to be concerned about

1 it. It's just that I have absolutely -- in fact, on an  
2 internal question as to how we take our staff as to when  
3 they have to be ready for this and the question was  
4 brought up is this 1309. I said, no, this isn't a 1309.

5 MR. KENNARD: Well, Judge --

6 JUDGE KASHI: I don't think it was ever contemplated  
7 by the Commission that this was a 1309. But, you know, if  
8 you guys want to go ahead and stipulate these things, go  
9 ahead.

10 MR. KENNARD: The Company may be being overly  
11 cautious. And I may be a overly cautious legal counsel in  
12 this case. But it was of concern to me. The Consumer  
13 Advocate and I forthrightly discussed it, came to this  
14 resolution where the DCA.

15 And the Company agreed that 1309 (b) does not  
16 currently apply to the proceeding. And that gives the  
17 Company at least partial assurance as to the intentions of  
18 one of the parties to this case sufficient to not oppose a  
19 change in the scheduling.

20 The Company's position was previously that this  
21 entire proceeding is, in fact, an investigation and not a  
22 show cause order. The Company resisted getting involved  
23 in the whole issue of rates altogether.

24 It resisted being settled with the burden of proof  
25 in this case. And those positions do not change. And the

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1 company intends to preserve those issues as we move  
2 forward.

3 The Company takes a position that the entire  
4 proceeding is illegal both under case law Lyonnaise, for  
5 example, and this proceeding in the statutory --

6 JUDGE KASHI: For the record, this is first time  
7 that Mr. Kennard ever mentioned anything about Lyonnaise.  
8 And I'm absolutely shocked, Mr. Kennard. I want you to  
9 know that.

10 You intend to preserve the position and take the  
11 matter on appeal. Sir, I say to you had that been the  
12 case, I suggest that you should have taken the  
13 interrogatory appeal from my order which stated exactly  
14 what this proceeding was. And now you're going to raise  
15 that the proceeding is illegal.

16 MR. KENNARD: That is the Company's position. What  
17 I'm trying to do is address that part of the stipulation  
18 which says, Due to the fact that the Commission order,  
19 which commenced this proceed, did request a reduction in  
20 rates and include the requisite language, the Company's  
21 position is broader than that.

22 But it is this narrow issue that the OCA and the  
23 Company has been able to agree upon. And that's what the  
24 stipulation reflects not the total position of the Company  
25 but that limited area within which the Company and the OCA

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1 can agree.

2 JUDGE KASHI: Someone want to put that stipulation  
3 into the record?

4 MS. MELILLO: We are not joining in the stipulation.

5 MR. MCCLELLAND: We have offered that we are willing  
6 to submit the proposed stipulation to the record, and I  
7 can provide two copies for the Court Reporter.

8 JUDGE KASHI: All right. Let's have it marked as --

9 MR. MCCLELLAND: -- Commonwealth/OCA Stipulation. I  
10 want to be clear it's the Commonwealth/OCA Stipulation.

11 JUDGE KASHI: Okay. Fine.

12 (Commonwealth/OCA Stipulation Exhibit Number 1 was  
13 produced and marked for identification and admitted  
14 in evidence.)

14

15 JUDGE KASHI: Anything further from the parties?

16 MR. KEFFER: We've agreed on the schedule but I  
17 don't think --

18 JUDGE KASHI: I'm going to put it in for the record.

19 MS. MELILLO: Your Honor, I have one additional point  
20 and; that is, as Your Honor recognizes, we filed a motion  
21 to compel today and have served the parties with the  
22 motion to compel consuming that the inadequacy of the  
23 response to OTS RE 23 and 24.

24 The Company has, on the record, agreed to provide an  
25 answer by June 7th to RE 24. They have not stated with

1 anything with respect to RE 23.

2 I want to state our concern that we believe that  
3 that information is absolutely crucial to our analysis of  
4 the Company's filing and would need that information by  
5 June 7th in order to adequately prepare for cross  
6 examination of the Company as per the schedule agreed to  
7 this proceeding.

8 JUDGE KASHI: Thank you, Miss Melillo. The Company's  
9 schedule that has been agreed to by the parties in which  
10 we accept for the rest of this proceeding is to raise a  
11 prehearing May 27th, 1993. Informal discovery will take  
12 place at Commonwealth's offices on June 21 and 22.

13 The hearing days originally scheduled for that at  
14 the last conference are cancelled. The cross examination  
15 of Commonwealth witnesses will begin on July 1st at 9:30  
16 a.m. and continue through July 2nd, 1993.

17 The Office of Consumer Advocate and other party's  
18 testimony will be filed on July 16th, 1993. Cross  
19 examination of the OCA and other parties will take place  
20 on August the 19th and 20th.

21 Cross examination of -- Go back and strike that and  
22 let me rephrase that. Cross examination of all other  
23 parties other than AT&T will take place on August 19th and  
24 20th.

25 Cross examination of AT&T witnesses will take place

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1 on August 23rd. Rebuttal testimony will be filed on  
2 September the 8th, 1993.

3           Witness surre rebuttal will be filed on September  
4 23rd, 1993. Hearings on rebuttal and surre rebuttal will  
5 take place on October 7th and 8th. If there's nothing  
6 further this morning, we will stand adjourned.

7           MR. KENNARD: Judge, I would only restate for the  
8 record what was earlier indicated with respect to the  
9 informal discovery session for June 21 and 22.

10           The Company requests that in order to make efficient  
11 use of the process that the OCA provide -- and any other  
12 party that intends to participate provide a list of those  
13 documents they wish made available, a list of the  
14 individuals, the witnesses the Company would like to be  
15 there in attendance and the subject matter in the areas  
16 specifically that they intend to address with these  
17 witnesses.

18           JUDGE KASHI: Anybody have a problem with that?

19           MR. MCCLELLAND: I think we can do that, and we look  
20 forward to a productive discovery conference from the  
21 Company.

22           MR. KENNARD: As does the Company, Judge.

23           JUDGE KASHI: Mr. Kennard, I really think that  
24 should you -- Well, you may be beyond the point right now.  
25 If you intend to take that position; that is, encumber on

1 these positions appearing to the Commission's attention in  
2 some form or another at least in attempting an  
3 interrogatory appeal at my order which set out what the  
4 parameter of the proceeding were, sir.

5         Otherwise, I think we're just going on, you know. I  
6 don't know when we'll then spring it on me in the middle  
7 of the hearings or something like that. And if that is  
8 your position, I think it's your responsibilities to bring  
9 that position forward.

10         MR. KENNARD: I have considered that, Judge. And in  
11 my opinion, the elements of Lyonnaise are not entirely in  
12 residence yet. It requires a prosecution and  
13 adjudication. And until that adjudication takes place and  
14 there is harm to Commonwealth Telephone, that the elements  
15 of Lyonnaise are not yet in residence.

16         And we continue to be hopeful that the show cause or  
17 this proceeding -- not the show cause but this proceeding  
18 -- will be dissolved at some future point and adjudication  
19 and will not occur. And therefore, Lyonnaise will not be  
20 relative.

21         But I understand what Your Honor is saying. And let  
22 me take it back and rethink the ruling in that case again.

23         JUDGE KASHI: Please do that. If you want to use  
24 Lyonnaise as a basis as an appeal as opposed to coming up  
25 front and saying the proceeding is illegal --

1 MR. KENNARD: Your Honor, I --

2 JUDGE KASHI: The State Board of Madison, that's  
3 going to do away with all of us. Not all of us. It's  
4 going to complicate all of us. We're not going to have to  
5 have a legislative body that does regulations for the PUC  
6 and another body that does prosecutory work and  
7 adjudicatory work and all the rest. Sometime in the next  
8 20 years that will happen.

9 MR. KEFFER: One final matter. You indicated a date  
10 earlier when you're going to rule on motions to compel. I  
11 thought you said June 6th. That is a Sunday.

12 JUDGE KASHI: June 2nd. I'm on a plane to Atlanta at  
13 5:00 tonight to Georgia. Anything further? Nothing  
14 further, we stand adjourned. Thank you very much,  
15 counsel.

16 (Whereupon, at 11:28 a.m., the hearing was  
17 adjourned.)  
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1  
2 I hereby certify that the proceedings and  
3 evidence are contained fully and accurately in the notes  
4 taken by me during the hearing of the within cause, and  
5 that this is a true and correct transcript of the same.

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8   
9 JANET E. SMITH  
10 Court Reporter

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15 The foregoing certification does not apply to any  
16 reproduction of the same by any means unless under the  
17 direct control and/or supervision of the certifying  
18 reporter.

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