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BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

DOCKETED

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Harrisburg, Pennsylvania
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Public Utility Commission
SECRETARY'S BUREAU
Information Control Division

HOLBERT ASSOCIATES
VERONICA L. SHEARER
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Harrisburg, Pennsylvania 17110

CERTIFIED ORIGINAL

BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

- - - - -

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

- - - - -

Stenographic report of meeting held in
Hearing Room Number 3, North Office Building
Harrisburg, Pennsylvania

Tuesday,
December 29, 1992
at 10:07 o'clock a.m.

BEFORE

GEORGE M. KASHI, ADMINISTRATIVE LAW JUDGE

- - - - -

APPEARANCES:

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

5 I would like to explain on the record an error that
6 was caused by my office. The order, which is dated
7 December the 18th on the issues by myself, is one of those
8 fall behind the filing cabinet errors. The document was
9 prepared to be issued on September and I had sent it out
10 for corrections.

11 However, when I had signed it, the corrections had
12 taken place after that and it came back and I thought I
13 got a copy of it and put it in my file. And only after
14 the prehearing was set, when I went back, did I find out
15 that it had not actually been issued and I apologize for
16 the delay.

17 I have before me yet a motion which was filed by the
18 company yesterday and it was a petition of the
19 Commonwealth Telephone Company for reconsideration on my
20 part and perceptive as counsel was, they felt that I would
21 not rule differently upon reargument but requested
22 reconsideration of the issue and that the matter be
23 separated into two phases and that the rate proceeding
24 discovery rules not apply.

25 I've gone back through the record from the initial

1 order and proceedings of this Commission that were -- that
2 the rule to show cause developed from and I just cannot
3 find any support in my mind for this being a two-phased
4 operation.

5 In trying to assess the mind of the Commission, I
6 kind of believe that somewhere along the line when the
7 Commission decided that it wanted to take a look at the
8 return in this particular matter, that they didn't want us
9 to start taking a look at the return and say, well, okay,
10 it doesn't look too bad, this, that and the other and skip
11 over all the issues that are to be considered in that type
12 of case.

13 And I think rather than it being a two-phase
14 proceeding I think what the Commission has done, and, of
15 course, this is what my thought on it at the moment is,
16 that what they've asked us to do in taking a look at this
17 return is they've asked us to highlight those issues.

18 If the Commission wants us to take a look at the
19 return of this company and they want to make sure that
20 we're going to pay attention to these particular items and
21 if Trial Staff or OCA, you know, during the course of the
22 discovery find problems with return, they don't want us to
23 just go away and not take a look at these affiliated
24 interest proceedings.

25 And one of the reasons that I say this, and you may

1 think I'm grasping at straws, I have distributed to the
2 parties a memo from the chairman wherein he asked that
3 this record be developed in a particular matter.

4 If you take a look at his last question that he
5 wants answered is, does Commonwealth Telephone Company
6 incur country club costs? Now, if he's looking at it down
7 to country club costs, okay, it sure doesn't appear to me
8 to be a let's take a look at affiliated interests and if
9 there isn't anything there, we're going to go away.

10 And so to that end, okay, I'm going to deny the
11 request that the matter be separated into two phases. I
12 will, however, grant the relief regarding the discovery
13 and that rather than the rate case issue type of
14 discovery, we'll proceed under normal discovery.

15 All right. Having said all that, I would ask at
16 this time, are there any matters from counsel before we go
17 off the record to discuss scheduling of the matter? Mr.
18 Kennard.

19 MR. KENNARD: There is an issue, Your Honor, of the
20 burden of proof, which perhaps we should discuss before we
21 break to attempt to schedule. Mr. Quain can address
22 himself to that issue who has the burden of proof in this
23 proceeding.

24 MR. QUAIN: Good morning, Your Honor. Our reading
25 of the Commission orders, and we've reviewed them as well

1 over the last couple days following the entry of your
2 interim order, and feel very strongly that the sequence of
3 orders issued by the Commission in this proceeding have
4 defined as a fact finding proceeding and towards that end,
5 it's our view that the burden of proof does not rest
6 initially with one party or the other, but as more of an
7 investigation on Commission motion that we've seen in
8 other proceedings where the parties file and cross examine
9 simultaneously.

10 These are rates that are in effect. They are rates
11 that are not alleged in any Commission order to be unjust
12 and unreasonable as compared to the orders issued the same
13 day and the show cause proceedings where they were alleged
14 to be unjust and unreasonable for other companies.

15 And the Commission specifically defined Commonwealth
16 of that package and classified it as an investigation one
17 of fact finding rather than one of an alleged violation of
18 law.

19 Because of that reason and because that they are
20 rates that are currently in effect, we believe that the
21 parties ought to -- we ought to schedule proceedings in a
22 matter where the parties file simultaneously rather than
23 the company go first and the opposing parties follow.

24 JUDGE KASHI: Mr. Quain, in any investigation upon
25 Commission motion whether it be that particular type or

1 whether it be an order to show cause, while burden of
2 proof may shift from one party to another, does not the
3 ultimate burden at all times remain on the utility?

4 MR. QUAIN: Not necessarily, Your Honor. We've got
5 an investigation going on now being presided over by Judge
6 Coin where we had an interlata toll investigation where
7 the parties are filing simultaneously and there is not a
8 specific burden of proof placed on the utilities to
9 establish that the interlata toll rates themselves are
10 just unreasonable but rather in the nature of a fact
11 finding, develop the record, let's look at the whole
12 picture type of proceeding.

13 And we submit that this proceeding is more in a --
14 to that type of an investigation rather than one where the
15 rates were alleged to be unjust and unreasonable because
16 clearly they were not by the Commission's order.

17 And I think that's particularly pertinent because of
18 the orders that they issued the same day with regard to
19 other telephone companies that they clearly perceived to
20 be in different circumstances.

21 JUDGE KASHI: Could I not read that in my peculiar
22 interpretation of the Commission -- strike the peculiar --
23 in my particular understanding of the Commission's
24 previous orders, can't I take a look at -- I'm not sure
25 that I should be looking at any of it -- but given that

1 the show cause orders haven't been issued in this
2 particular context as the Commission is looking for more
3 here than they were looking at the mere show cause because
4 of, you know, they have -- they didn't have a problem with
5 affiliated interest in those other eight cases.

6 And here they said, wait a minute, wait a minute.
7 In addition to this show cause that we've gone through, we
8 have other problems with this company. Therefore, let's
9 pull it out of that batch and let's set it in and of
10 itself.

11 MR. QUAIN: I don't view that as being the
12 circumstance, Your Honor. I don't think the Commission
13 would have, if they believe to be a greater problem with
14 Commonwealth as compared to the others, hesitated for one
15 heartbeat to issue an order to show cause as to why rates
16 should not be reduced.

17 That is clearly the strongest hammer that the
18 Commission has over any utility is its control over its
19 rates and they didn't do that. They did something quite
20 different and I submit that that was something quite less
21 than what his full extent of power and authority could
22 have been had they viewed the situation of Commonwealth to
23 be worse than the other telephone companies or issue
24 orders to show cause.

25 MR. KENNARD: Judge, in the sequence of events, it

1 was the affiliated interest issues which were of concern
2 to the Commission. You know, in order entered April 8th,
3 which commenced this whole thing, they asked four
4 questions directed only at affiliated interest.

5 They then came out subsequently with an order that
6 said if we want to investigate these issues to which then
7 a motion was made by the Chairman, we said, well, while
8 we're looking at affiliated interest issues, let's
9 consider and we have discussed the phasing of that, let's
10 look at the other earning issues.

11 So it is not as portrayed that the Commission was
12 concerned about earnings and then said, hey, we're
13 particularly concerned about affiliated interests. They
14 said we are concerned about affiliated interests and while
15 we're at it, our argument is, if there's a problem with
16 affiliated interest, then let's look at the overall
17 earning interest.

18 JUDGE KASHI: I disagree with that interpretation.

19 MR. KENNARD: I respect that, Judge. I understand
20 that.

21 JUDGE KASHI: I have a real problem with that. Is
22 there anything further, Mr. Quain, on that particular
23 argument on the burden of proof that's --

24 MR. QUAIN: I think it's such a fundamental
25 argument, Your Honor, and it's so fundamental to the

1 context of the proceedings I think it's worth -- I'm
2 worthy of consideration on it and we'd be prepared to file
3 a memorandum of law in quick order to putting forth our
4 arguments and give the other parties a chance to respond.

5 MR. MCCLELLAND: Your Honor, I'm not sure whether
6 that's necessary to actually start filing pleadings on the
7 issue but -- and I also did not come specifically ready to
8 speak to burden of proof issues. But I think that the
9 Code does contain language in a couple different
10 sections.

11 One, that if the Commission initiates an
12 investigation and regardless of whether you want to call
13 this, well, fact finding or burden to show cause, we
14 believe it is a Commission initiated investigation.

15 Thereby, the burden of proof would be falling upon
16 the company and also there are some more specific
17 provisions in the affiliated interest sections of the code
18 where if the Commission initiates an inquiry into
19 affiliated transactions, there again, the burden falls
20 with the company.

21 We think the burden does fall with the company here
22 and in addition, regardless, that would apply regardless
23 of the sequence filing testimony which we think is an
24 entirely different issue but we think the burden of proof
25 should be met by the company here.

1 JUDGE KASHI: Ms. Melillo.

2 MS. MELILLO: Yes, Your Honor. The Office of Trial
3 Staff agrees with the Office of Consumer Advocate that the
4 burden of proof in this proceeding even though the
5 Commission is instituted with -- be with the utility to
6 prove the reasonableness of the rates and that they're not
7 earning excessive return in what the Commission has
8 allowed.

9 And we also agree in the affiliated interest area
10 there is even a stronger burden on the company because of
11 case law because of the affiliated interest involved to
12 prove the reasonableness of these.

13 JUDGE KASHI: Mr. Keffer, would you like to address
14 that?

15 MR. KEFFER: Well, two observations. One, I've
16 under thought that burden of proof meant a whole lot in
17 regulatory proceedings. It's clear to me that if AT&T and
18 OCA and OTS cannot demonstrate to you in this case that
19 there's some problem with Commonwealth's rates, then
20 you're not going to be inclined to change them.

21 So irrespective of who's required to go first and
22 who gets to go last, it seems pretty clear to me that I've
23 got to demonstrate to you that there's some problem with
24 Commonwealth's access charges, the area that I'm
25 interested in or you're not going to change them. That's

1 one observation.

2 The second observation is that in the area of
3 affiliated interest, it strikes me that given the level of
4 specificity of the inquiry that's been handed to you by
5 Chairman Rolka, it seems that Commonwealth certainly has
6 an obligation to go first and to put forward its
7 presentation of the facts on those issues.

8 I think that's more of a procedural observation than
9 an observation on who bears the burden of proof.

10 JUDGE KASHI: Thank you, Mr. Keffer.

11 MR. KEFFER: If I may, I mean, I'm not sure why
12 Commonwealth's making the argument. If it's to try to
13 figure out who has to file testimony first, I'm perfectly
14 happy to go first on the issue of access charges provided
15 that Commonwealth provides adequate responses to my
16 discovery.

17 JUDGE KASHI: I disagree with the company's position
18 on the burden of proof. And I think it is absolutely
19 clear from the statute as related to the Commission's
20 investigations that the burden of proof is and at all
21 times remains with the utility.

22 As to the burden of going forward as distinguished
23 from the burden of proof, I think that in the context of
24 the case, as I visualize it, I believe that the matter can
25 be more expeditiously done if, in fact, we allow the

1 company to go forward and present its case to begin with.

2 I don't have a particular problem with everybody
3 filing everything at the same time after a lengthy period
4 of discovery. And should that be the desire of the
5 parties, I'll consider it. Ms. Melillo.

6 MS. MELILLO: We've in the past had difficulty with
7 that due to the importance of cross-examination of the
8 utilities' witnesses. Sometimes cross-examination can be
9 more enlightening than discovery.

10 JUDGE KASHI: Mr. McClelland.

11 MR. MCCLELLAND: We would concur, Your Honor, to the
12 extent that be -- would rather not be briefing and
13 opposing on issues that may not actually be at issue in
14 the case and discovery is certainly helpful in finding
15 that out. Cross-examination ultimately is the best proof
16 of that.

17 We would like to be able to cross first. Although,
18 I don't think we'd require much time after that if there
19 is preceding discovery to follow our testimony.

20 JUDGE KASHI: Mr. Keffer.

21 MR. KEFFER: Can we go off the record for just a
22 moment on this?

23 JUDGE KASHI: Well, do you wish to address this
24 particular issue?

25 MR. KEFFER: I do wish to address this but I'm

1 incorporating my experience from other states.

2 JUDGE KASHI: All right.

3 MR. KEFFER: It's been my observation that in
4 Pennsylvania hearing room cross-examination has been used
5 in lieu of depositions to extract evidence and that's a
6 fairly expensive and time consuming way to conduct
7 discovery. Personally, it drives me a little crazy.

8 But I would just suggest that if parties need to ask
9 questions of witnesses to illicit testimony and develop
10 their cases, that they use the discovery vehicles that are
11 available to them such as depositions.

12 JUDGE KASHI: I wholeheartedly concur with that as
13 do the discovery rules also, I believe, pertain to that.

14 MS. MELILLO: Unfortunately, Your Honor, the Office
15 of Trial Staff does not necessarily have a budget for
16 their own depositions. So that's always been a problem
17 because when depositions are held, then the moving party
18 is to pay and that's always been problematic.

19 So we have not in the past been able to use the tool
20 of discovery except in very limited situations and have
21 gone to depositions that other parties have proposed.

22 JUDGE KASHI: Right. I understand. What I intend
23 to do is allow the company to go first with its filing.
24 Then having said that, does anybody -- is everyone here
25 familiar with the practice that used to happen in this

1 Commission of prefiled settlements?

2 MS. MELILLO: On settlements?

3 JUDGE KASHI: Yeah.

4 MR. MCCLELLAND: No, I have to say not.

5 JUDGE KASHI: If nobody's familiar with it, I'm not
6 going to bring it up. What I anticipate happening is
7 during the discovery process, that we proceed or should
8 proceed in an incremental kind of matter, with the company
9 putting forward what it thinks it has to put forward to
10 satisfy this Commission's inquiry.

11 And at the beginning of that, the parties discovery,
12 depending on what the company comes back with, certain
13 issues will be dropped as we continue to go along the way
14 until we end up with time -- hearing time, only on those
15 issues which have not been satisfactorily addressed
16 through the discovery process.

17 And if the discovery process is satisfactory, we can
18 take a look at this thing and we see the return and
19 everybody is happy with the return, fine. I'm -- going to
20 be happy with that and I'll send it to the Commission like
21 that and then we can move on and make sure that we have
22 all those affiliated interest agreements that have been
23 filed, if the companies have changed names of different
24 affiliates and all the rest of that kind of stuff.

25 We'll have that all taken care of. Am I clear on

1 that, Ms. Melillo? Does everyone understand what I'm
2 asking? Mr. McClelland.

3 MR. MCCLELLAND: If I understand your comments, Your
4 Honor, you're indicating you want us to proceed with
5 discovery incrementally to drop out any issues we can and
6 resolve conflicts outside of testimony.

7 JUDGE KASHI: Exactly.

8 MR. MCCLELLAND: In addition, you want us to make
9 sure that we specifically address the affiliated interest
10 issues which we also do plan to do.

11 JUDGE KASHI: Together with the chairman's issues.
12 Mr. Keffer, is that clear?

13 MR. KEFFER: Yes.

14 JUDGE KASHI: Mr. Kennard?

15 MR. KENNARD: Yes, sir.

16 MS. MELILLO: Your Honor, may I make a point? At
17 this time, we had just yesterday been served with
18 objections to the Office of Trial Staff's original set of
19 discovery and we'll be filing a response in due course in
20 the event that we are not able to work out this
21 agreement.

22 However, if it becomes a pattern, it is going to be
23 more difficult to resolve issues in the early stage. We
24 believe that our questions are quite relevant material and
25 the answers should be provided. And at that point, we

1 don't see the company showing cooperation but hopefully
2 that will change.

3 JUDGE KASHI: Well, I wouldn't characterize it as
4 the company not being cooperative, but I think the company
5 is reserving its right as far as they could hoping they
6 could change my mind on this thing.

7 MR. QUAIN: And to make the record clear, Your
8 Honor, in each one of those objections, it's clearly
9 stated the information requested will be provided. It's
10 the format in which it's being requested. It's an
11 entirely different matter in which this company keeps its
12 books. And that's the problem. It's not the information,
13 It's the vehicle.

14 JUDGE KASHI: And in that context, I'm sure that
15 both counsel can pick up the telephone and decide on a
16 mutually satisfactory way of presenting.

17 All right. Let's go off the record and see what we
18 can do here about scheduling.

19 (Discussion held off the record.)

20 JUDGE KASHI: Having discussed various matters with
21 parties, particularly the scheduling of the hearing, the
22 matter will be set down as follows. On May the 3rd of
23 1993, the company will file its direct case. Hearings on
24 that will take place on May 26, 27 and 28.

25 On June 15th, all other parties will file their

1 direct case. Hearings on cross-examination on their
2 direct case take place on July 21, 22, and 23. Rebuttal
3 testimony to be filed by the company on August the 20th.
4 Surrebuttal -- written surrebuttal is to be filed
5 September 3rd by all of the parties. Hearing on the
6 rebuttal, surrebuttal on the 20th and 21st of September.

7 Before I adjourn for the day, I would ask, are there
8 any other matters from the parties? Mr. Kennard?

9 MR. KENNARD: Just a few other items, Judge. With
10 respect to the schedule and the August 20th date, you had
11 nominated as the company's opportunity for rebuttal.
12 If -- would rebuttal be also --

13 JUDGE KASHI: You mean September 20?

14 MR. KENNARD: No, August 20.

15 MR. QUAIN: No, we talked about that when you were
16 back there. That's all rebuttal on the 20th.

17 MR. KENNARD: That's all parties' rebuttal?

18 MR. QUAIN: And all surrebuttal would then be on the
19 3rd.

20 JUDGE KASHI: Exactly. I'm sorry if I didn't make
21 it clear.

22 MR. KENNARD: Then just to be clear to the extent
23 that anyone needs to respond to another parties' direct
24 position or takes issue within, that would be
25 appropriately done in rebuttal?

1 JUDGE KASHI: That would be done.

2 MR. MCCLELLAND: Also, Your Honor, on -- thinking
3 about discovery issues again. And on the rebuttal date,
4 we've got a 15 day date so the company is given 2 rounds.
5 Can we have a 10 day date on the rebuttal so that we can
6 get one in if we need, if we need surrebuttal?

7 MR. KENNARD: I will agree to 10 days. Can you give
8 me 15 on both the first and second set after your direct
9 testimony?

10 MS. MELILLO: We already established --

11 MR. KENNARD: Can I have 15 and 15 so I can really
12 make sure that I get it squeezed in there?

13 JUDGE KASHI: 15 and 15.

14 MR. MCCLELLAND: I think I could go 15 and 15
15 there. I'd like to get the 10 days.

16 MR. KENNARD: And we have no objection to the 10,
17 Judge.

18 JUDGE KASHI: All right. 15 and 15 then.

19 MS. MELILLO: Your Honor, I have a matter as well.

20 JUDGE KASHI: Let me see if Mr. Kennard is finished.

21 MR. KENNARD: That's all the company has, Judge.

22 JUDGE KASHI: Ms. Melillo.

23 MS. MELILLO: Thank you, Your Honor. First of all,
24 I wanted to clarify for the record that the company would
25 be addressing the questions, Chairman Rolka, in their

1 direct testimony to be filed May the 3rd because this
2 would be information with no control.

3 Secondly, it was very recently brought to my
4 attention that Commonwealth filed an application with the
5 Commission for approval of a transfer of stock by its
6 parent affiliated interest. I don't know the status of
7 this.

8 It's my understanding that this could involve the
9 filing of all knew affiliated interests agreement if the
10 Commission were to approve this. I don't know the status
11 of this. I don't know if the company is pursuing it at
12 this point.

13 JUDGE KASHI: I couldn't appreciate this Commission
14 filing or approving some sort of transfer at this
15 particular point when it seems to me from reading this
16 that the heartburn the Commission has is over this
17 transfer of affiliates from one here and then next year
18 they change the names.

19 And if we go back five years, you know, as far as
20 looking into the records of this company, I think that's
21 what's causing the Commission a problem. And I just
22 couldn't anticipate that being pursued at this particular
23 time. If there's some sort of order you think that is
24 necessary for me to --

25 MS. MELILLO: I simply wanted to ascertain from the

1 company at this point what their intents were in regard to
2 pursuing it. I don't even know the status of it in terms
3 of the Commission, because I'm not on the service list.

4 JUDGE KASHI: Mr. Kennard.

5 MR. QUAIN: I can answer that, Your Honor, because I
6 handled the application. The application was made -- I'm
7 going to say April -- before all this came. It was
8 simply -- and it is an OSA and my understanding is that
9 OSA -- and not trying to speak for them --

10 JUDGE KASHI: Sure. I understand.

11 MR. QUAIN: But it's my understanding that OSA
12 intends to hold that or either give it to the chairman to
13 make a decision as to what he intends to do with it given
14 this proceeding going on the way.

15 The decision was made not to consolidate it in with
16 this proceeding to the best of my knowledge. But it is
17 not scheduled for approval. And all it is is a creation
18 of an intermediate parent with a stop transfer.

19 There will be no -- in other words, instead of
20 Commonwealth Telephone Company, whose stock is currently
21 hold by its parent, C-Tech Corporation, that stock will
22 now be held by an intermediate company whose stock will be
23 held by C-Tech Stock Cooperation.

24 So it is not the affiliated transaction with
25 business going back and forth amongst the companies as to

1 the concern of the Commission. But simply it's a holding
2 company of stock.

3 JUDGE KASHI: That's fine. That's been filed.

4 MR. QUAIN: That's been filed since last April.

5 JUDGE KASHI: Is there a docket number on it?

6 MR. QUAIN: There is. I don't have it with me.

7 JUDGE KASHI: Could you provide with us the docket
8 number?

9 MR. QUAIN: Certainly.

10 JUDGE KASHI: Ms. Melillo, anything further?

11 MR. QUAIN: I should add, Your Honor, that there
12 were no protests filed against that just for the parties
13 information

14 MS. MELILLO: Was there a publication?

15 MR. QUAIN: Yes, there was.

16 MS. MELILLO: I wasn't aware that they were going --
17 I was never served with this directly by the company.

18 MR. QUAIN: Well, there wasn't --

19 JUDGE KASHI: This proceeding didn't --

20 MR. QUAIN: There wasn't a proceeding to serve you,
21 Ms. Melillo.

22 MR. MCCLELLAND: Your Honor, if I may also address
23 the issue of Chairman Rolka's questions, of course, we
24 also would like the questions answered in the company's
25 testimony.

1 We would not like to wait until that date to get
2 some answers to the questions. They are relevant issues
3 that we might also inquire into. I might just suggest
4 that we would have some -- if we could treat them as
5 discovery and have the company file responses prior to
6 their testimony and, you know, set some appropriate time.

7 MR. KENNARD: We can do that, Judge, within the next
8 30 days, say we'll respond to those questions.

9 JUDGE KASHI: Could you also respond to the
10 questions on the order as Attachment A in your discovery?

11 MR. KENNARD: Those were responded to officially
12 with the Commission.

13 MR. MCCLELLAND: Have we also gotten copies?

14 MR. KENNARD: You asked for them in your discovery
15 so they'll be forthcoming.

16 JUDGE KASHI: Have they been filed as part of this
17 case?

18 MR. KENNARD: I believe the docket was the same
19 case.

20 MR. QUAIN: Yeah, it is the same docket but they
21 were filed with OSA because this proceeding hadn't gone to
22 that next phase.

23 JUDGE KASHI: I see.

24 MR. QUAIN: I think Bob Wilson has them.

25 MR. KENNARD: They're filed with the secretary.

1 JUDGE KASHI: They are not part of the record as I
2 have it before me at the present time. That's what I'm
3 saying. It just isn't part of the record for me.

4 MR. KENNARD: Officially admitted into the record, I
5 don't know.

6 JUDGE KASHI: Could we make those part of your
7 submissions in the discovery matters so that parties have
8 all answers to those questions?

9 MR. KENNARD: Yes. In fact, Judge, the OCA asked
10 for this document filed to the secretary which we will
11 provide to them.

12 JUDGE KASHI: And could you also provide trial
13 staff?

14 MR. KENNARD: When we respond to discovery to one
15 party, we serve it on all.

16 JUDGE KASHI: Good. Is that it? Mr. Keffer?

17 MR. KEFFER: Nothing further.

18 MR. KENNARD: We will seek to work out with the
19 parties a proprietary order covering any information that
20 the company deems sensitive in this increasingly
21 competitive world.

22 JUDGE KASHI: I really think that having looked at
23 this case and having looked at the past 16 years of the
24 company, I think a lot of this stuff can be worked out
25 during this discovery, during an incremental type of

1 discovery. I just don't see why that is not possible.

2 MR. KENNARD: I think it is, Judge. You had
3 mentioned previously three sets of discovery.

4 JUDGE KASHI: Well, you know, I'm not saying there
5 has to be three sets of. I'm just saying there was an
6 opportunity for at least three sets of discovery. We
7 should be able to incrementally be able to move this
8 forward as far as what it is that we actually have to
9 hear.

10 MR. KENNARD: What would be helpful is if there was
11 some acknowledgment from the other parties that this is
12 not an issue and that's how the matters could be dropped
13 down.

14 JUDGE KASHI: You know and I know that that's the
15 best way to do it, but I think if the parties at any
16 particular time during the discovery process want to sit
17 down with me and say, listen, we've arrived at, and I'm
18 sure this is okay because this, that and the other, I'll
19 sit down with you and we'll come to some kind of decision
20 at a further prehearing prior to the cross-examination
21 phase. I'll make myself available for it. Okay.
22 Anything further? If there's nothing further, we will
23 stand adjourned. Thank you very much.

24

25 (Whereupon, at 11:13 a.m., the hearing was
adjourned.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.

Veronica L. Shearer
VERONICA L. SHEARER
Court Reporter

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