

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

ORIGINAL

Investigation Regarding Rate Issues
Related to Disbursements from
Pennsylvania Universal Service Fund,
Investigation for consideration of
whether there should be further
intrastate access charge reductions
and intraLATA toll rate reductions in
the service territories of rural
incumbent local exchange carriers and
all rate changes that should or would
result in the event that disbursements
from the Pennsylvania Universal
Service Fund are reduced.

Docket No.
I-00040105

(Further In-Person
Pre-Hearing Conference)

Pages 16 through 91

Hearing Room 1
Commonwealth Keystone Building
Harrisburg, Pennsylvania

Thursday, April 21, 2005

Met, pursuant to notice, at 1:00 p.m.

BEFORE:

SUSAN D. COLWELL, Administrative Law Judge

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None

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FOR IDENTIFICATION IN EVIDENCE

None

FORM 2

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P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE SUSAN D. COLWELL:

1
2
3 It is Thursday, April 21st, 2005. This is the time and the
4 place set for the second pre-hearing conference in the
5 Investigation Regarding Intrastate Access Charges and
6 InterLATA Toll Rates of Rural Carriers in the Pennsylvania
7 Universal Service Fund at PUC docket I-00040105.

8 I note for the record the attendance of the
9 following counsel: Zsuzsanna Benedek for United Telephone
10 Company of Pa., doing business as Sprint; Phil McClelland
11 and Joel Cheskis for the Pennsylvania Office of Consumer
12 Advocate; Mark Stewart for AT&T; John Povilaitis for Quest;
13 Christopher Arfaa for Cellco Partnership, doing business as
14 Verizon Wireless; Thomas Sniscak for Verizon Pennsylvania,
15 Inc., and Verizon North, Inc.; Michelle Painter for MCI;
16 Patricia Armstrong and Gina Matz for the Rural Telephone
17 Company Coalition; Bradford Stern for Nextel and T-Mobile;
18 Robert Eckenrod for the Office of Trial Staff; and Steven
19 Gray for the Office of Small Business Advocate.

20 Did I miss anyone?

21 (No response.)

22 JUDGE COLWELL: We also have on the phone
23 Kristin Smith for Quest. She will not be participating, but
24 she will be listening in.

25 You're there, right, Ms. Smith?

1 MS. SMITH: Yes, I am.

2 JUDGE COLWELL: Just checking. I didn't want
3 to lose you.

4 I note that I received an entry of appearance
5 from Mr. Sniscak and that he asked that service should
6 continue to be made on Susan Paiva at Verizon. He's just
7 here today.

8 This is our second pre-hearing conference.
9 This time we have lots of pre-hearing memos to discuss; but,
10 before we even get to them, I was served with a motion of
11 the wireless carriers for a determination that the
12 Commission lacks jurisdiction to require CMRS providers to
13 contribute to the funding of the Pennsylvania Universal
14 Service Fund and for bifurcation or certification for
15 immediate Commission review. So why don't we deal with that
16 first.

17 As you can see, we have this beautiful little
18 podium set up so that one at a time you can come up and tell
19 me your stories. So why don't we start with Mr. Arfaa.

20 MR. ARFAA: Thank you, Your Honor. Good
21 afternoon.

22 JUDGE COLWELL: Good afternoon.

23 MR. ARFAA: Chris Arfaa for Verizon Wireless
24 today in support of the motion. It's a fairly
25 straightforward motion with two requests for relief as you

1 noted. There is the request for the declaration that the
2 law does not permit the PUC at this time to require wireless
3 carriers to contribute to a Universal Service Fund at the
4 state level. There is also a request for expedited final
5 determination of that issue.

6 Reviewing the responses that we received, I
7 just want to note that no one seems opposed to the second
8 request, the one for expedited determination; and, in fact,
9 even Sprint United has come out in favor of it. Also, with
10 very little opposition was the agreement among all parties
11 that the PUC under today's statutes and the state Public
12 Utility Code does not have authority to regulate commercial
13 and mobile radio service, CMRS, providers.

14 So you might wonder what is the read of the
15 briefs -- but one might wonder what the actual dispute is.
16 Principally, the Rural Carrier Coalition has posited several
17 alternative theories as to how this Commission somehow does
18 have authority. Despite the plain words of the statute, the
19 regulated wireless carriers require contribution to the
20 Pennsylvania Universal Service Fund, and those three
21 basically follow a policy basis which is shared by AT&T and
22 also the Office of Small Business Advocate, the state law
23 basis and the federal basis.

24 On the policy basis, I think we can all agree
25 that the matters -- policy matters -- whether a policy

1 matter is conferred to the authority of this Commission is
2 determined by the legislature, and the Supreme Court was
3 very clear about that in the Bethlehem Steel case. There
4 was some concern there that a private utility so to speak
5 was acting in a very public utility kind of way and that
6 this would somehow upset a scheme that was conferred to the
7 PUC's authority. The Supreme Court said that may be true,
8 but that concerns the legislature; and I would say same
9 here.

10 There may be valid reasons to include
11 wireless carriers among the class of contributing carriers.
12 We give no reasons not to based on the characteristics of
13 our industry of what we are already doing in the state.
14 However, that debate is for the legislature because, as we
15 have also outlined in our submission, the power of the PUC
16 is only that expressly given to them and clearly required by
17 the legislature and necessary power to implement those
18 mandates.

19 JUDGE COLWELL: But don't you think the
20 Commission has the responsibility for letting the
21 legislature know it doesn't have what it needs to do its
22 job?

23 MR. ARFAA: Absolutely, Your Honor. And
24 that's why, I think, that the determination today or
25 pursuant to this motion that PUC does not -- the order that

1 we request recognizing that we believe under the law that
2 the PUC today does not have the power to include CMRS
3 providers among the class of contributors would fulfill that
4 precise responsibility. You'd be telling the legislature we
5 don't have this power.

6 JUDGE COLWELL: But how are we going to tell
7 them that we think we need it if we can't back it up with
8 anything because you've gotten out of this proceeding before
9 you've given any information?

10 MR. ARFAA: I don't think that we will
11 necessarily be out of this proceeding completely. We would
12 certainly -- if you were -- this is a hypothetical -- if you
13 and the Commission were to decide that, yes, the wireless
14 carriers may not be included in this Fund today; however,
15 the scope of this information does include your
16 investigatory power and exploration, if you will, of whether
17 carriers should be included, that certainly is something we
18 think our clients would want to participate in and would
19 feel it important to give the Commission information.

20 JUDGE COLWELL: It seems to me that's what
21 the wording of the question is. It doesn't say determine
22 whether or not the Commission has the jurisdiction. It says
23 whether or not the carriers should be included.

24 MR. ARFAA: Yes, Your Honor, but whether they
25 should or not are two different kinds of -- there's really

1 two questions. One is, should the next Fund include these
2 carriers; and I submit that, when the law does not permit
3 the Commission to do so, it should not. The question, then,
4 is not whether the carriers should be included, but should
5 the law be amended so that the Commission may include them.
6 It's a slightly different question. I don't mean to split
7 hairs.

8 But, for us, what's the difference? The
9 difference is this. All the submissions in this proceeding
10 as to the size of the Fund, the need for funding, the kind
11 of revenues included, the various competitive aspects among
12 the carriers, and the rates that being compared are all
13 going to be influenced by which carriers are the ones that
14 have to contribute and participate. And so it's a
15 fundamental question -- many of the other questions that are
16 before you, and we feel that it's important.

17 My point is this, though. We still think
18 it's a prior question as to whether -- do all the other
19 questions of whether the Fund should exist, what size it
20 should be, what considerations should go into its structure,
21 how various competitive state charges should be reconciled
22 so what carriers or competitors are building up a competing
23 facility. All of those things depends in large part on who
24 participates, who's in the game, who is subject to PUC
25 regulation. So we think that, not only is it in order to

1 answer the Commission's question should wireless carriers be
2 included, you have to decide whether the Commission may
3 because it should not do anything that it does not have the
4 power to do as a matter of law.

5 But, also, as a practical matter, all of the
6 questions that are before you, we submit the decision of the
7 question of who's in and who's out today really will form a
8 lot of the portion of this proceeding; and I can say on
9 behalf of my client certainly it will affect our submission
10 in this proceeding. And I think that's the case with the
11 other carriers as well.

12 JUDGE COLWELL: I understand what you're
13 saying, but I'm still having trouble getting past the
14 problem of giving the Commission a well-reasoned and
15 thorough analysis without you being here to give me the
16 information that they require in that question.

17 MR. ARFAA: Your Honor, I don't understand
18 our motion to say that -- to ask you to dismiss us from the
19 case.

20 JUDGE COLWELL: Well, then, what do you see
21 as the result of it being?

22 MR. ARFAA: There ultimately is going to be a
23 certainty so that we can be rest assured that, at the end of
24 this proceeding, we will not be presented a bill by the
25 Public Utility Commission or its designee for a contribution

1 to the Fund.

2 JUDGE COLWELL: So, if in fact the motion is
3 granted, you will stay in here and give us information on
4 this section?

5 MR. ARFAA: That's a -- I have not reviewed
6 that with my client. That's a good question. I would
7 imagine speaking -- that caveat that one or more of the
8 carriers who would continue participating and be responsive
9 to -- would reserve the right to resist or to object to data
10 requests by the public staff or discovery requests by others
11 that would be inappropriate and intrusive. Subject to
12 check, if I may, I believe that the carriers will continue
13 to participate before the Commission as part of their
14 responsibility.

15 If I may, to move on to the -- if it's
16 appropriate, if I answered your question.

17 JUDGE COLWELL: Go ahead.

18 MR. ARFAA: I just wanted just to answer a
19 few points in the Rural Carrier Coalition's memo. A lot of
20 argument is there is something -- this doesn't prohibit the
21 Commission from doing it. That doesn't prohibit the
22 Commission from doing it. What we have to remember, of
23 course, is that it's not an absence or prohibition here.
24 It's an express grant of authority or, with one slight
25 qualification which I'll get to.

1 All the courts -- every court in this state
2 that has construed one or section 2 IV of the public utility
3 definition with the exception of Public Utility Commission
4 in the Code which accepts mobile radio service providers --
5 agrees that it completely invests the Commission of
6 jurisdiction. We are not a public utility. The Commission
7 itself has agreed.

8 Now, the rural carriers point out that, in
9 the Commonwealth Court decision dealing with Global Bell
10 Atlantic decision, the Commonwealth Court there said, well,
11 wait a minute -- the Bell Atlantic argued that there was no
12 express authority to build the Fund, an argument similar to
13 but not all the same here today. And the Commonwealth Court
14 said, no, but there's a policy and there's a residual grant
15 of authority in both 501 and also in recently replaced 3009
16 to do all things necessary to protect the consumer and to
17 carry out responsibilities.

18 But both of those provisions 501, as to
19 public utilities, and today 3019 of the Code, which was
20 cited by the rural carriers as providing the authority. All
21 relate to regulation in 501 of public utilities -- and we
22 know there there's an exception still for wireless carriers
23 -- and 3019 to telecommunications carriers. The Commission
24 retains the authority with respect to telecommunications
25 carriers and interexchange carriers.

1 Telecommunications carriers is defined by the
2 new Chapter 30 in Section 3012 -- and actually I have the
3 statute here if you like to look. I'd also like to say I
4 have a few more. I'll refer to the handwritten page numbers
5 in the lower right-hand corner. If you look at page 13, the
6 Section 3019B.3, that is what we're referring to. If you
7 look at B, it says, powers and duties retained -- and this
8 is the legislation that was adopted, at least as of last
9 December -- the Commission shall retain -- no parenthetical
10 but the Commonwealth Court interpreted language like that as
11 bolstering the creation of the Fund originally -- the
12 Commission shall retain the following powers relating to the
13 regulation of all telecommunications carriers, etc.

14 And then under E, subject to the provisions
15 of 3015E, etc., to establish such additional requirements as
16 are consistent with this chapter as the Commission
17 determines to be necessary to insure the protection of
18 customers.

19 Now, the PUC and the Commonwealth Court cited
20 similar language in the Bell Atlantic case supporting the
21 power to create a fund. And the rural carriers today also
22 cite this as supporting the authority to create a fund.
23 However, if you look at the definition of telecommunications
24 carrier, which is set forth on handwritten page number 12 --
25 which again was enacted in December along with the provision

1 I just read -- it defines telecommunications carrier as an
2 entity that provides telecommunications services subject to
3 the jurisdiction of the Commission.

4 As we know in telecommunications carriers --
5 CMRS providers are not subject to the jurisdiction of the
6 Commission. So this legislation does nothing. Even
7 assuming arguendo for the sake of this argument, that this
8 provides the ability to create a Universal Service Fund in
9 general, it does not do so with respect to CMRS providers in
10 terms of forcing them to participate. The state law basis
11 on which the RCC relies, in my opinion I submit, does not
12 support their argument

13 Now, finally, they cite Section 254F of the
14 Telecommunications Act, which, of course, is the state
15 Universal Service provision; and they raise several
16 arguments. That provision, of course, states first that
17 states not state commissions -- they're defined separately
18 in the Code -- pardon me, in the Act -- states may enact
19 regulations to promote Universal Service on a state basis.

20 This is not a grant of authority to this
21 Commission; and I would submit that this Commission is a
22 creature of state law, and the federal government can't by
23 itself create authority that it does not have pursuant to
24 the statute in Pennsylvania. And nothing in the statute
25 grants the PUC authority. Furthermore, there is a

1 suggestion in the -- there's, pardon me -- it is clearly
2 permissible -- so it's may not that states must do this --
3 it clearly relates to states.

4 Now, the rural carriers again say, in
5 Pennsylvania, the legislature has delegated this authority
6 granted by 254F through the statutes we just discussed, 501
7 and 3019. But, first of all, one, there is no authority
8 delegated. It just says may. It's a clear statement that
9 they're not preempted. And, two, as we've just seen, those
10 statutes do not delegate authority with respect to
11 non-jurisdictional utilities.

12 There's also -- and this is my last point --
13 there is also a mention in the rural carriers' brief of
14 preemption saying, well, it would be inconsistent with the
15 federal scheme not to include all telecommunications
16 carriers providing services. It would be inconsistent with
17 that scheme to exclude them; and, therefore, you must
18 construe the state law as consistent with the scheme because
19 a contrary construction would be preemptive.

20 Your Honor, that argument doesn't work for
21 the following reasons. First of all, preemption is the
22 taking away of authority not the granting of authority.
23 What we need to find here in order to give the Commission
24 the authority to force us to contribute is a grant
25 authority.

1 Second, both the Commonwealth Court and the
2 federal authority cited in that Bell Atlantic decision
3 recognized that the federal law makes it optional for states
4 to create a Universal Service Fund at all and also to
5 include wireless carriers. So, while state and federal
6 authority recognizes whether or not the wireless carriers
7 may be permissible under 254F -- or it is, actually, it is
8 an option. Furthermore, it's already been proved too much.

9 If a state Universal Service Fund does not
10 include wireless carriers as preempted, then Pennsylvania
11 has had authority -- if not preempted -- illegal Universal
12 Service Fund in violation of federal law since the year 2000
13 under the current Fund, of course, which wireless are not
14 included in the current Fund.

15 JUDGE COLWELL: Are you asking me to address
16 that question, whether or not we have the authority to even
17 have the USF that exists?

18 MR. ARFAA: That is not before you today. I
19 think that is a question that is very much part of this
20 proceeding. When we address the pre-hearing memoranda and
21 the issues that are being addressed by Mr. Stern, I think
22 he's going to have some more to say about that. If you feel
23 that's important for your decision and if you feel, like we
24 do, that the authority is also lacking, I certainly would
25 have no objection to that determination being included in

1 the determination of this motion.

2 I also say that -- Ms. Armstrong will correct
3 me if I'm wrong -- I believe that the Universal Service Fund
4 plan to which the rural carriers subscribed in the Global
5 proceeding which was then litigated in the Commonwealth
6 Court excluded wireless carriers; is that right?

7 MS. ARMSTRONG: The rates speak for
8 themselves. They do not include wireless carriers.

9 MR. ARFAA: It is rather odd for the rural
10 carriers today, having reaped the benefits of that plan
11 which was approved on the basis by the Commonwealth Court to
12 exclude wireless carriers, to all of a sudden say, no, that
13 plan was illegal. It's preempted. You can't have that kind
14 of plan. It doesn't include wireless carriers, which, if
15 you take their preemption argument today, it leads to the
16 logical conclusion that no plan can be legal under 254F
17 unless it includes all carriers. Then they have been
18 reaping the benefits of an illegal plan for the last five
19 years.

20 And I think, frankly, they're estopped from
21 making that argument having received the benefits of the
22 scheme that they're objecting to today.

23 If you have no further questions --

24 JUDGE COLWELL: Well, just one more. AT&T's
25 statement said that not including wireless carriers creates

1 competitive concerns and that the Commission should seek the
2 authority if it doesn't have it now. How do you respond to
3 that?

4 MR. ARFAA: Your Honor, that is a legitimate
5 question. Every carrier competes in this state. AT&T had
6 no problem having regulation of the local exchange carriers

7 --

8 JUDGE COLWELL: I don't want you to attack
9 the individual. I want you to address the issue.

10 MR. ARFAA: Pardon me. I'll give you an
11 example. The interexchange carriers are regulated
12 differently from the local carriers. Local carriers are
13 regulated different from CLECs to an extent. They're all
14 regulated differently from wireless.

15 Wireless carriers are built on a completely
16 different paradigm of regulation based on competition and
17 hands-off regulation uniformly nationally, and a whole host
18 of competing concerns at the federal level to which local
19 carriers historically have not been subject. So there's a
20 whole bunch of, yes, it is a question; but I would submit to
21 you there is a whole host of competitive considerations and
22 policy considerations at the federal level as well as the
23 state that would change the answer that AT&T seems to infer
24 when they ask that question.

25 Once again, that is a legislative question,

1 and under our scheme of government here in Pennsylvania as
2 the Supreme Court recognized, is one of the legislature not
3 the PUC to decide.

4 JUDGE COLWELL: Well, doesn't that go right
5 back to the beginning because the legislature doesn't work
6 in a vacuum? It addresses problems as they're brought to
7 their attention. Somebody is responsible for bringing --
8 probably for lack of a better word -- to their attention.
9 The state agencies are excepted to do that.

10 MR. ARFAA: Your Honor, I understand exactly
11 what you're saying and what you're asking, and let me
12 respond this way. The motion before you is not for
13 withdrawal or dismissal or any kind of termination of these
14 proceedings. It's a request for a interlocutory
15 determination of an important question. It will not, by
16 your granting the relief requested in the motion, you will
17 not be cutting the Commission off from any of that
18 information that you're referring to.

19 JUDGE COLWELL: Well, that is a big concern
20 of mine. This is an investigation. It's more far-reaching
21 than, say, a complaint would have been. We're allowed to
22 bring in a whole lot of information and sift through it, but
23 we have to get it.

24 MR. ARFAA: If I may I approach you later in
25 this hearing, I may have further information.

1 JUDGE COLWELL: I'll be here. Do you have
2 anything else?

3 MR. ARFAA: Thank you very much for your
4 attention, and thank you for the opportunity to present
5 today.

6 JUDGE COLWELL: Sure.

7 Mr. Stern, did you want to speak?

8 MR. STERN: Yes, thank you, Your Honor. I
9 speak for Nextel and T-Mobile.

10 I will reiterate Mr. Arfaa's statement. We
11 did not ask for leave to withdraw as a result of this
12 motion. We clearly understand the question says should. To
13 the extent that we're raising a policy matter, it's an
14 important question; and we've never indicated in our motion
15 that the policy question should not be addressed. Many
16 parties here raise the policy question, and it's up to us to
17 either respond, or we can raise a policy question. We never
18 suggested in the motion that, to the extent the Commission
19 is asking a policy question, that it not be before Your
20 Honor.

21 But what we do have is a situation where my
22 clients need to know whether their interests in the other
23 questions which are all related -- should access charges be
24 reduced, what should the size of the Fund be -- we need to
25 know whether our interest is pecuniary or merely academic at

1 this point. To the extent that we have no pecuniary
2 interest, then it becomes an academic exercise for us.
3 That's an important distinction for us, and it's also an
4 important distinction for the other parties.

5 I think there is certain legal framework
6 questions imbedded in this proceeding, one of them is
7 whether or not under the present state of the law the CMRS
8 providers have an obligation to contribute to any Universal
9 Service Fund that the Public Utility Commission may have the
10 authority to establish and administer. That is one; but, as
11 our pre-hearing memo suggests, there may be other legal
12 issues.

13 But that is an important threshold question
14 that we feel needs to be answered; and, at this point, we're
15 not getting a sense that anybody disagrees with us that the
16 question up front establishes an important tone, mode. The
17 interests of the parties in this proceeding as to what is
18 pecuniary or is it academic, our position is at this point
19 we need a clear answer to that so we know what our interests
20 are in this proceeding going forward, nowhere having
21 suggested that policy questions the Commission should be
22 looking at should not be raised and should not be addressed.

23 With respect to the specifics of the points
24 of law, I generally agree with Mr. Arfaa. In so many words,
25 the rural carriers have essentially tried what GTE tried to

1 do in the Commonwealth Court case, basically said wireless
2 carriers are required to contribute notwithstanding the fact
3 that they are not public utilities. And the Court there
4 basically said, we see nothing in federal law, they are not
5 public utilities, they're not state law jurisdiction, and we
6 see nothing in federal law that mandates wireless carriers
7 contribute to a USF.

8 And, in so many words, boiling it down,
9 that's basically what their argument is, and that's heard
10 and dealt with by the Commonwealth Court. And, I guess with
11 that I am generally agreeing with everything else Mr. Arfaa
12 has said.

13 JUDGE COLWELL: Okay. Are you prepared to
14 say on the record today that, if I grant this motion, you
15 will continue to participate in this case and you will give
16 the answers to the questions that the Commission has asked?
17 What I'm trying to avoid is having discovery requests both
18 out or anything else with you coming forward and saying,
19 well, you don't have jurisdiction over us. I don't have to
20 do that.

21 MR. STERN: To the extent that the discovery
22 -- to the extent that the issue goes to assumption of us as
23 being jurisdictional, I would say, Your Honor, that we would
24 not raise the position that goes to the Commission's
25 existing jurisdiction; and we would have a problem with

1 that. To the extent it does not, we're here. We didn't ask
2 for leave to intervene.

3 The legal framework -- within the legal
4 framework -- if the legal framework is established, yes, the
5 wireless carriers are not obligated under the present law to
6 contribute to a Universal Service Fund. To the extent any
7 questions underlying -- the premise of the question is, we
8 have an obligation to contribute, we would reserve the right
9 to object. To the extent that it's a policy question, we
10 have no basis for an objection.

11 JUDGE COLWELL: All right. Let's get a
12 little more specific then. What I want you to be able to
13 tell me is, if sometime in the future the Commission gains
14 jurisdiction over wireless carriers, how would they know
15 what to assess? Why or why would they not be included?
16 Will the Commission need to require wireless carriers to
17 register? What would wireless carriers' contributions be
18 based on? Do wireless companies split their revenue base by
19 intrastate and, if not, will this be a problem?

20 MR. STERN: If the questions posed are
21 hypothetical, that's one thing. If the question is posed as
22 pecuniary, that's another. If the questions are posed as
23 hypothetical and we're in the proceeding, we can answer a
24 hypothetical question. I think the parties need to know
25 whether that question is hypothetical or actually talking

1 about real dollars that are going into a real fund with a
2 real pot of money. That, after this proceeding, here is a
3 fund with X dollars and here's who contributes. I think it
4 puts a different -- that question in a different light.

5 JUDGE COLWELL: I understand that.

6 MR. STERN: And that's what we're saying,
7 Your Honor. We need to understand these questions in light
8 of the state of the existing law, and we can conduct
9 ourselves and the other parties can conduct themselves
10 accordingly in this proceeding.

11 JUDGE COLWELL: Okay. I think I understand
12 your argument. Do you have any other points you need to
13 make?

14 MR. STERN: No, Your Honor.

15 JUDGE COLWELL: All right. Thank you.

16 Ms. Benedek, you're the only other one who
17 said something that would put you in this ballpark on this
18 side of the court on the side of the wireless carriers.

19 MS. BENEDEK: We would procedurally agree
20 with everything that the wireless carriers have mentioned in
21 their motion. In answer to your questions -- I think you
22 raised some very good points -- on the issue of how to tell
23 them what we need -- the Commission needs without a record,
24 I think it gets back to the fundamental question what
25 authority this Commission has.

1 While they addressed that from a statutory
2 standpoint, I would only add that the Commission has an
3 adjudicatory function and it has a factfinding function. In
4 order to determine which one, you'd have to have a
5 legislative case to determine. And I think, fundamentally,
6 what the wireless carriers raise and the question you're
7 asking is, how do you get that authority if it's not -- if
8 it's not abundantly clear in the statutory scheme?

9 In answer to the AT&T point, I think you're
10 looking -- and the Commission is confronted with a lobbying
11 issue, and I'm not sure that it's strictly AT&T -- that's
12 not that sort of a question that you get to before you can
13 split it off into an adjudicatory or factfinding function.

14 From a logistical standpoint, how many
15 wireless carriers? We have several in the room here but not
16 all of them. There are some logistical questions. So, even
17 if you propose it from a hypothetical standpoint, you're
18 still going to have a record that is far from complete. We
19 can opine as to how the central issue should look like, but
20 do you really need that sort of hypothetical record to do
21 what I think you're suggesting and the Commission is
22 suggesting in question number 6 by saying, it's a lobbying
23 issue?

24 We concur substantively without getting into
25 each argument with a majority of the arguments raised by the

1 wireless carriers. So I think that the fundamental
2 technical issue is a timing issue. If they withdrew from
3 the case tomorrow and the question went forward, they would
4 be at risk. The record is going to be incomplete. You
5 don't have every wireless carrier here. I think it's a key
6 question which requires certification.

7 We don't agree with the bifurcation piece
8 simply because we don't want to be litigating something in
9 two forums. So, it's at least an economy issue. We don't
10 understand the bifurcation request. But, from a substantive
11 standpoint and a procedural standpoint, they're very
12 important questions that they've raised and they do merit
13 attention.

14 And, on the final point about the impact of
15 the scheduling, Sprint's only request in that regard is that
16 there be a reasonable delay of some sort, not saying months
17 and months, but some time for the Commission to review this
18 important question and to make a determination. We do
19 reiterate adjudicatory factfinding function in asking that
20 question.

21 In all due respect, do you have any
22 questions?

23 JUDGE COLWELL: I do not. Thank you.

24 Ms. Armstrong, before you start, I should ask
25 if anyone else wants to speak on behalf of that side of the

1 issue?

2 MR. SNISCAK: Your Honor, Verizon endorses
3 the wireless carriers' position.

4 JUDGE COLWELL: Mr. Gray.

5 MR. GRAY: Yes. I'll be happen to speak
6 after Ms. Armstrong.

7 JUDGE COLWELL: Which side are you arguing?

8 MR. GRAY: Well, I'd like to first clear up
9 some misstatements that have already been made this
10 afternoon and then to explain our position, which is I
11 believe that the motion is premature and should be
12 dismissed.

13 JUDGE COLWELL: Okay. We'll let Ms.
14 Armstrong go first.

15 MS. ARMSTRONG: Thank you, Your Honor.

16 The Commission has posed a question as to
17 whether or not, after a given date, the wireless carriers
18 should contribute to the Fund. The wireless carriers had
19 filed a motion. We have no objection to ruling on that
20 motion. We have, however, indicated that we believe the
21 Commission could, if they so desired, authorize a Universal
22 Service Fund contribution by the wireless carriers.

23 Mr. Arfaa addressed three different
24 perspectives. He addressed the policy, a state, and a
25 federal perspective. Clearly, on the policy perspective, we

1 have a policy in Title 66 for the promotion of Universal
2 Service. The federal statute clearly has a provision for
3 the promotion of Universal Service; and, in fact, states all
4 across the country have established -- the vast majority of
5 them -- Universal Service Funds for the very purpose of
6 assuring that high-class areas are able to have telephone
7 service at rates equivalent to that which we experience in
8 Harrisburg in other urban areas. So I think there's no
9 doubt there's a well-established policy for Universal
10 Service Funds generally and, in fact, the vast majority of
11 them have wireless contributors.

12 In terms of our state statute, Mr. Arfaa
13 referred to 501 and 3009; and, as he noted, 3009 is now
14 3019. Between those two sections and the policy statement,
15 we think the state does have the adequate basis in the
16 statute to authorize wireless contributions; and, in fact,
17 we would point out if you look at 3019 it very clearly makes
18 a distinction between public utilities and
19 telecommunications carriers. And we think, had the
20 legislature intended to exclude wireless carriers and to
21 limit telecommunications carriers from public utility, it
22 could have so stated. It didn't.

23 And, as we indicated in our answer in
24 paragraph 23 that, while the Commission cannot regulate CMRS
25 carriers as public utilities, they, in fact, are still

1 authorized to develop Universal Service Fund mechanisms and,
2 if they so desire, to determine who should contribute to it,
3 including wireless carriers.

4 And, finally, there is the federal statute
5 which we addressed at length in our answer to their motion,
6 which very clearly directs that states may, and we quoted
7 some cases where, in fact, we talk about state commissions
8 authorizing contributions by wireless carriers and that has,
9 in fact, been done in other states.

10 However, what we have said is that we have no
11 objection to the Commission ruling on it. We attached and
12 circulated a proposed schedule yesterday which would be
13 geared on the resolution of this issue because, in fact, we
14 do understand how it may impact certain practical aspects of
15 this proceeding going forward and the testimony the parties
16 would present. However, it goes back to one of our
17 positions all throughout this proceeding, and that is that
18 the Commission really at this point in time should be
19 waiting for the FCC to resolve its intercarrier problem.

20 The FCC is going to do whatever it is going
21 to do relative to wireless contributions; and, presumably,
22 since they contribute at the federal level already, they
23 would continue to contribute to a larger or combined
24 Universal Service Fund. And, therefore, we think that, when
25 you look at the practical ramifications of Pennsylvania

1 going forward with this proceeding while at the same time
2 the feds are going forward with intercarrier comp which may
3 well preempt the states all together, that this is evidence
4 of the fact of why it really is a nonjudicious expenditure
5 of time and effort to the Court on this proceeding
6 simultaneously with the FCC doing the same thing when, in
7 fact they have published their notice, have a deadline set
8 for comments and reply comments with the expectation to have
9 a decision out this year.

10 And I guess one of the other things that
11 concerns us is that we would expect many of the parties in
12 this room and probably the Commission itself will be filing
13 comments at the FCC. We find that a very difficult position
14 for the rural carriers to have the Commission actively
15 involved in telling the FCC how it should resolve
16 intercarrier comp when, in fact, this proceeding is ongoing
17 to determine in effect what state access reform would be
18 when it's very likely to be impacted by what the feds do.

19 And, as I said, we have indicated we think
20 there's justification for requiring wireless carriers. We
21 think it's an appropriate question to resolve, but we really
22 think that it -- our underlying premise is that this
23 proceeding should not go forward at this time. Thank you.

24 JUDGE COLWELL: Okay.

25 Mr. Gray, I think you're up.

1 MR. GRAY: Thank you, Your Honor.

2 I think you pointed out earlier this is an I
3 docket, is it not?

4 JUDGE COLWELL: It is.

5 MR. GRAY: So this is an investigation to
6 create a record for the Commission, and I believe the
7 Commission's order to you was the question about should the
8 wireless carriers be included and create a record on that
9 fact; is that a fair statement?

10 JUDGE COLWELL: Well, let's take a look.
11 That's the words they used, yes.

12 MR. GRAY: So, if it's an investigation --
13 obviously it's not a C docket -- the question is on this
14 motion what's the necessity of getting the wireless carriers
15 out now? We've heard the argument pecuniary versus
16 academic, okay. But what is the harm of keeping them in
17 here? You have a duty to create this record as the
18 Commission has asked for.

19 We've now heard lots of oral argument that
20 helps create that record, and that will be a useful amount
21 of information to have over the course of the entire
22 proceeding. But, if they stayed in, you answered their
23 motion today and said, no, in this proceeding, they talk
24 about the impact that they have to look at this from a
25 pecuniary standpoint.

1 Well, we have two sides of this case. We
2 have the calculation of possible access charge reductions
3 and USF Fund which may or may not pay for that. But Mr.
4 Eckenrod of the OTS has quite a few expert witnesses who are
5 perfectly capable of making a calculation and that
6 calculation is this. If it's determined that the rural
7 access charges have to be reduced by a certain amount of
8 money and that's going to cost a USF \$10 million, whether
9 the wireless carriers are in or out, is a simple calculation
10 that his experts can do in the bat of an eye.

11 So it seems to me there's no real hardship on
12 the wireless carriers to be here, contribute to the record,
13 and help you answer the Commission's question.

14 Now, all this other argument might be -- Mr.
15 Arfaa might be completely correct on everything he said, but
16 I argue for the purposes of this motion and this
17 investigation it's irrelevant at this point. You're trying
18 to create a record. We're here to help you.

19 That's all I have.

20 JUDGE COLWELL: I like that we're here to
21 help you part. All right. Thank you, Mr. Gray.

22 Mr. Kohler didn't come. You're here on his
23 behalf. Would you like to speak?

24 MR. STEWART: Well, thank you, Your Honor.
25 Mark Stewart on behalf of AT&T.

1 And primarily I will rely on the answer that
2 was filed already. I don't want to be redundant of what's
3 already been said. Certainly I think it's laid out in our
4 answer that we believe there's a policy basis for them to be
5 included and also that the Commission has the authority to
6 do so.

7 I guess I'll direct my comments at what seems
8 to me to be a new type of relief that they're requesting, at
9 least that's the way I read their motion and the comments we
10 heard this morning. It basically seems like the movants are
11 saying, we'll stay in this proceeding, we'll answer your
12 questions so long as the Commission says right now, up front
13 that they'll never include us in any Universal Service Fund;
14 and I believe that's premature.

15 I think it ties the hands of the Commission
16 should it determine that it does have the authority to
17 include them. They will be left with an inaccurate record.
18 And I just basically think that, at this point in time, as
19 Mr. Gray just said, it's clear that the Commission intended
20 them to be in this proceeding and fully participate; and we
21 ask that the motion be denied.

22 Thank you.

23 JUDGE COLWELL: Thank you.

24 Any other counsel wish to speak on this
25 point?

1 Mr. Stern.

2 MR. STERN: May I just reply to Mr. Gray?

3 JUDGE COLWELL: You may.

4 MR. STERN: I'm hearing a couple things. If
5 it's that simple to figure out what our contribution size
6 ought to be, why do you need us here for that question in
7 terms of the numbers? But it is important. Your Honor's
8 going to do an investigation. Your Honor is going to make a
9 recommendation. If Your Honor recommends that wireless
10 carriers do contribute and Commission has jurisdiction to
11 assess, then the Commission's final order says we will
12 assess wireless carriers and they will contribute. They may
13 adopt your recommendation.

14 But why go through the whole proceeding if
15 that's not the correct state of the law? Why don't we know
16 that up front so that Your Honor's recommendation has the
17 legal framework to establish up front. It is more than just
18 -- Mr. Gray is minimizing the extent of what we're asking
19 for here, Your Honor.

20 Thank you.

21 JUDGE COLWELL: Ms. Armstrong.

22 MS. ARMSTRONG: Your Honor, I only have one
23 point that I wanted to make; and that is that, when you look
24 at the question which brings the matter before you, there is
25 the lead into that question. It says, if the Fund continues

1 beyond December 31, 2006. To the extent that that in any
2 way impacts your perception of the question, I think that is
3 a red herring, a misstatement, a fallacious assumption or
4 presumption that there is any pumpkin date to the Universal
5 Service Fund.

6 I think the people in this room would agree
7 that, as the regulations stand now and as the parties agreed
8 in the last such proceeding -- those who were in that
9 proceeding -- the USF Fund and the underlying implementing
10 regulations will continue until further order and rulemaking
11 of this Commission, whenever that may be. The 2006 date was
12 merely a timeframe during which parties would not challenge,
13 if you will, the current structure of the Fund. It will not
14 disappear come December 31, 2006.

15 So, to the extent that that has any impact
16 upon your resolution of the rest of the question that goes
17 with it, that language is really meaningless.

18 MS. BENEDEK: I concur in Ms. Armstrong's
19 comments.

20 JUDGE COLWELL: Any other comments before we
21 finish this?

22 Mr. Arfaa.

23 MR. ARFAA: May I address a couple points?

24 JUDGE COLWELL: If you speak slowly.

25 MR. ARFAA: First of all, I wanted to address

1 one of the comments by AT&T. As I read AT&T's submission
2 asking for denial of our motion, rather, if it is denied, a
3 recommendation that the Commission also seek amendment to
4 the statute if they conclude the statute not does permit the
5 inclusion of the wireless carriers. I think that,
6 obviously, should be on the record.

7 Now, Ms. Armstrong made three points. First,
8 she said that states all across the country have a state
9 Universal Service Fund. I believe she said the vast
10 majority. I would refer you to a February, 2002 report of
11 the General Accounting Office on Telecommunications, Federal
12 and State Universal Service Fund Programs and Challenges to
13 Funding, GAO-02-187. In Appendix 3, you'll see a chart of
14 which states do have high cost of local telephone company
15 funds, and it's about half. Just so that's clear on the
16 record.

17 Now, Ms. Armstrong also posited that, between
18 the policy statement at 501 and 3019, there is authority.
19 But what she did not address was the -- pardon me. She did
20 address. She said, if the legislature intended to exclude
21 wireless, they would have said so. They did not.
22 Respectfully, that's incorrect. They defined
23 telecommunications carriers in 3012 as those carriers
24 providing telecommunications over which the Commission has
25 jurisdiction. As I said before, it doesn't include my

1 client or Mr. Stern's.

2 Finally, she referred to the number of state
3 decisions in their brief where they found that state
4 commissions did have authority to impose contribution
5 obligations on wireless carriers. Principally, it was a
6 Texas Commission decision involving the Texas Commission. I
7 just want to point out, in that case, the statute in that
8 case expressly required wireless carriers to contribute to
9 the Universal Service Fund. There is no such statute in
10 Pennsylvania.

11 This is actually recognized in 6-point type
12 in footnote 3, I think, of page 10 -- or footnote 10 on page
13 3 -- footnote 3 on page 10. Just for the record, that
14 statute is Section 56.02 -- sorry, 51.002 utility
15 definitions in the Texas Utilities Code; and it basically
16 requires all telecommunications providers to contribute to
17 the Fund, and it expressly defines telecommunications
18 provider as including a provider of commercial mobile
19 service.

20 Here we have the opposite. We have Chapter
21 30, if that provides authority for the Fund. It says
22 telecommunications carriers, which they claim is
23 jurisdictional, which goes back to the definition which
24 excludes them.

25 That's all I have. Thank you.

1 JUDGE COLWELL: Thank you.

2 All right. Last call. Does anybody have
3 anything?

4 MS. ARMSTRONG: May I briefly respond to Mr.
5 Arfaa?

6 JUDGE COLWELL: You may.

7 MS. ARMSTRONG: Thank you, Your Honor.

8 Mr. Arfaa missed two points that I want to
9 address. One very briefly is that 3019 does refer to
10 telecommunications carriers. And, when you go back to the
11 definition of telecommunications carriers, it does not say
12 public utility. It makes the distinction between -- what it
13 says is carriers over which the Commission has jurisdiction.
14 It could have said public utilities. It didn't. And I
15 think, given the history of the Commission, the history of
16 this issue, that the legislature intended there to be a
17 difference.

18 It didn't say public utilities, and it's the
19 broader definition of telecommunications carriers including
20 such facts as the Commission approves wireless
21 interconnection agreements. They have limited jurisdiction
22 over wireless carriers, not for purposes of rates, etc.

23 The other point that I would like to note is
24 that, if you look at the end of the local appeal, the
25 Pennsylvania Supreme Court decision we cited in our brief,

1 the Court really concludes that federal and state statutes
2 authorize USF. They do recognize the role that the federal
3 statute has in creating and authorizing the state to have a
4 Universal Service Fund, and I think that's an important
5 matter to recognize.

6 MR. GRAY: Your Honor, may I make one last
7 comment?

8 JUDGE COLWELL: You may.

9 MR. GRAY: Thank you.

10 You have quite a level of disagreement here.
11 You have excellent data provided by Mr. Arfaa. To me, in
12 some sense, his example begs the question. It should give
13 you an idea how much information is out there, how much --
14 that was 2002 data, three years old. You have a lot of
15 expert witnesses who are available here. There is a great
16 deal of information out there, data and legal disagreement.

17 And so, if you're conducting an I docket,
18 that's exactly the sort of thing that goes into the record.
19 So to me, the more we disagree, the more we find, look at
20 the same set of statistics, okay. Half of the states have
21 this program, half don't. That asks a lot of questions in
22 and of itself. So to me the more disagreement the more
23 arguments that they need to be here to provide us with this
24 information.

25 And, to clear up something that was said

1 earlier, the OSBA didn't agree with an expedited conclusion
2 of this. We would rather have them in the whole proceeding
3 and provide this information.

4 JUDGE COLWELL: I got that.

5 Anyone else?

6 (No response.)

7 JUDGE COLWELL: All right. Thank you very
8 much. I have a lot of information, a lot of good arguments.
9 I am not prepared to rule on that today, but I will give you
10 something in writing as soon as I can get it done.

11 We'll move on to the rest of case at this
12 point. Also, I got some very extensive pre-hearing memos
13 where I was surprised at how little agreement this is among
14 this group for anything. I suppose the first issue we
15 really need to discuss is the federal proceeding that may --
16 it's almost guaranteed to have some effect on what we're
17 doing here. I have everything from we shouldn't do anything
18 until they're done to we shouldn't let that slow us down
19 because of the way things are going.

20 I have to set a schedule so that this
21 particular proceeding doesn't get lost in the shuffle
22 because, if I don't give you some deadlines, you're going to
23 go back to your offices and work on cases that do have
24 deadlines. So I have several recommendations on what to do
25 here.

1 I don't want to do anything until I have
2 ruled on your motion, the wireless carriers' motion. I'm
3 having a hard time figuring out how long it's going to take
4 me to do that. I have another case right now that is quite
5 pressing, so I don't want to be giving myself the same
6 deadline as I have in that one. And that one, quite
7 honestly, my opinion in that one has to be ready on May
8 16th. So my decision on this motion will most likely be
9 after that.

10 MS. PAINTER: Your Honor, if I might.

11 JUDGE COLWELL: You might.

12 MS. PAINTER: No carrier has proposed that
13 initial testimony begin until mid to late July. I think
14 that gives you plenty of time, I hope, to resolve this
15 matter and then have the case start.

16 JUDGE COLWELL: Okay.

17 So, Ms. Armstrong, you've confused me with
18 numbers. You have 30 days and 60 days.

19 MS. ARMSTRONG: Your Honor, that was because
20 all of those dates are intended to be triggered off of the
21 final ruling on the wireless motion. So, if that were May
22 15th, the first one would be 30 days from May 15th. If it
23 was May 30th, it would be 30 days from May 30th. And then
24 the days are not cumulative. In other words, 60 days is not
25 30 days after 30 days, it's 60 days from that date. So,

1 whatever those dates are, it's the next number of days until
2 the next deadline.

3 JUDGE COLWELL: We'll have to work something
4 out.

5 Go ahead.

6 MR. STEWART: Excuse me, Your Honor, just a
7 point of clarification. It seems like it's from the final
8 PUC order on the motion not necessarily Your Honor's ruling.

9 MR. POVILAITIS: Your Honor, speaking for
10 Quest, we think that's a very fundamental point that Mr.
11 Stewart brought up. We think the wireless jurisdictional
12 issue has all the earmarkings of a matter that could reside
13 at the Commission level for some time. Quest would
14 certainly oppose any schedule that did not commence the
15 litigation that goes on in this case until at least we had
16 in hand a Commission ruling on that motion.

17 JUDGE COLWELL: As we all know, there's just
18 no way to predict when that is going to be no matter what I
19 do.

20 MR. ARFAA: Your Honor, I also wanted to
21 point out there are at least some nominal deadlines in
22 interlocutory review rules that might provide some structure
23 and impetus to a more rapid decision. My only point is that
24 that at least gives a breakpoint where we could, at least on
25 an aspirational basis, hope for a more rapid conclusion.

1 JUDGE COLWELL: I'll try to wrap this up with
2 a recommendation here. Do all of you have this
3 (indicating)? Have you all seen it? Does anybody have a
4 problem with it?

5 MS. PAINTER: MCI has two problems with it.
6 First, waiting until the Commission finally disposes of the
7 wireless motion because that's who knows when that could
8 happen. Second of all, I think the dates in here are quite
9 slow. I mean, if you do decide to wait, we have known about
10 this case now for several months.

11 There's no reason to take 60 days after --
12 well, really 90 days after we get the Commission order to
13 file testimony and another 50 days to file reply testimony.
14 Normally cases have maybe a week after the last round of
15 testimony between that and the hearings. I just don't think
16 it's necessary to have this much time between filings.

17 MCI was hoping to have at least a recommended
18 decision and hopefully finalized exceptions by the end of
19 the year so this case is before the Commission by the end of
20 the year, especially because we have no idea when the
21 Commission would issue a final decision on the wireless
22 motion.

23 JUDGE COLWELL: But how does that jive with
24 the federal schedule?

25 MS. PAINTER: That's another issue. The

1 question is, do we wait for the federal schedule; and MCI
2 would say no. The Commission knew about the fact that the
3 FCC was addressing this issue when they established this
4 case. Remember the Commission established this case by
5 themselves. They knew at the time that they established
6 this case -- the fact that we've been waiting for something
7 on the federal side is not new.

8 In fact, there is a case last summer that was
9 litigated in front of Judge Cocheres on local calling areas;
10 and many of the parties' positions in that case was, let's
11 wait for the FCC, they're just about to do something. That
12 was a year ago. I think we have no idea when the FCC is
13 going to finalize a decision. The Commission knew that the
14 FCC had this issue before it when they initiated this case
15 and requested that the case be litigated. So to delay it
16 would be contrary to what the Commission did in terms of
17 establishing this case in the first place.

18 JUDGE COLWELL: That's a very good point.

19 Go ahead, Mr. Povilaitis.

20 MR. POVILAITIS: Quest generally supports
21 MCI's comments here, Your Honor. The fact of the matter is,
22 there is no schedule for the FCC proceeding. It guarantees
23 a completed order by a certain amount of time. The FCC is
24 somewhat infamous for not hitting those kinds of deadlines.
25 I just harken back to the significant TRO order at issue.

1 The point I make in reference to the TRO is,
2 not only do you have to wait until there's an FCC decision,
3 in the case of a TRO there's about six months between the
4 making of the FCC decision and the actual issuance of the
5 order that gave us clear guidance on what these issues were.
6 So we strongly support MCI's position that we should not try
7 to tailor our schedule to when we think the FCC is going to
8 rule on something.

9 And certainly the IXCs have a proposed
10 schedule. It wasn't satisfactory to the other parties.
11 AT&T, MCI, and Quest agreed that and proposed that we have
12 the first round of testimony in this case mid to late July.
13 We have a second round the third week of August. We then go
14 to hearings in mid September, briefs in early October, reply
15 briefs the third week of October. And that, at least,
16 positions you with a schedule to possibly do something by
17 the end of the calendar year.

18 We think starting the first round of
19 testimony in mid to late July creates the window that we
20 need for the Commission to possibly act on the wireless
21 carriers. Certainly, if they're going to act, it should be
22 in hand by then. If they do not wish to state their
23 position on that issue in the near term, at least they will
24 have it and we need to move on.

25 JUDGE COLWELL: Ms. Benedek.

1 MS. BENEDEK: I was just going to note that
2 the Commission started -- I see Ms. Armstrong raising her
3 hand over there. The order instituting this investigation
4 was started as a result of a settlement that was approved,
5 and there were some hard deadlines in the settlement. One
6 noted was a January 1, 2006 stop point in review. So the
7 order started from a prior proceeding, and it has sort of
8 snowballed into this let's get this done quick, and that was
9 picked up by the IXCs.

10 It is Sprint's position in our pre-hearing
11 memo that there are these federal efforts underway. And,
12 also, the federal orders that were instituted, they came up
13 after the Commission instituted this investigation. The
14 federal order is a rulemaking docket; and reply comments in
15 that federal docket, I believe, are due June 22nd.

16 I'm not necessarily opposed to a mid July
17 schedule to start this; however, we think that the RTC
18 companies have presented a workable alternative and it
19 should be given some weight.

20 JUDGE COLWELL: Mr. Cheskis.

21 MR. CHESKIS: Your Honor, Joel Cheskis for
22 the OCA.

23 I did just want to note as we pointed out in
24 our pre-hearing memo that there had been a schedule
25 established for the, what I would consider to be, companion

1 to this, the Verizon access charge case. We did put those
2 dates in our pre-hearing memo and would ask you to consider
3 those as we establish a schedule for this proceeding.

4 Having said that, I think I was following
5 what Mr. Povilaitis was saying when he was articulating his
6 schedule. I think there would be some conflict with what he
7 said; but, to the extent that we can accommodate the Verizon
8 access case, I think that we're actually probably pretty
9 close to what Ms. Armstrong has proposed for the RTCC.

10 JUDGE COLWELL: Okay. You're assuming that
11 the starting date for her schedule is when?

12 MR. CHESKIS: Well, you had expressed a
13 concern about deciding the wireless motion before the middle
14 of May. To the extent that you can decide that shortly
15 thereafter, she expressed 90 days from then to have direct
16 testimony. So that would bring a direct testimony due date
17 sometime in August which, again, I think Mr. Povilaitis was
18 talking about direct testimony sometime in July. I don't
19 think we're that far off.

20 To the extent that we can consider the
21 Verizon access case, I think that would put us into the
22 realm of what the RTCC proposal is and not too far from what
23 I think Mr. Povilaitis is proposing.

24 MR. POVILAITIS: Just quickly, Your Honor,
25 the RTC proposal calls for none of this happening until

1 there's a final Commission order. So that's an ambiguity
2 that we think has an enormous impact.

3 JUDGE COLWELL: Okay.

4 MR. STEWART: Unless they're amending their
5 proposal to have it start from the date of Your Honor's
6 decision as opposed to entry of a PUC final order, I'm
7 asking a question I guess.

8 JUDGE COLWELL: Ms. Armstrong, how do you
9 feel about that?

10 MS. ARMSTRONG: Your Honor, if I might
11 respond to some of the other things, and I will answer that
12 before I conclude. We have no problem in trying to
13 accommodate other conflicting schedules. The Verizon
14 arbitration is one, and I know Ms. Painter raised the
15 Verizon remand. Obviously we're the same parties. We can't
16 be in two places at once. We have no problem in trying to
17 accommodate the fact that some have superimposed deadlines.
18 That part's fine.

19 As Ms. Benedek noted, the FCC matter came out
20 after the Commission order instituting this proceeding. She
21 indicated it wasn't because the Commission was out to move
22 along expeditiously an investigation that they wanted. It
23 was done as a result of a commitment from a prior order;
24 and, since that time, the FCC has set timeframes and has, in
25 fact, stated that they intend to resolve this case this

1 year. I know that is no guarantee, but that's what they've
2 publicly stated.

3 I don't know whether it was Mr. Povilaitis or
4 Mr. Arfaa, but someone indicated that the FCC could issue a
5 decision now or vote on a matter now, and it would take
6 months until a decision comes out. That's true; but, if
7 they came out and said we're going to preempt the states, it
8 would be pretty silly for us to go forward and try and ask
9 for something they have voted to preempt.

10 JUDGE COLWELL: If they don't say that, we'll
11 kick ourselves for not going forward with the case.

12 MS. ARMSTRONG: I understand that there are
13 some downside risks in that. That's one of the reasons why
14 we gave you the alternative schedule, which was developed
15 off of a disposition on the wireless motion because we feel
16 that has consequences as to how this proceeding is
17 conducted.

18 The other thing that I wanted to mention is
19 the concern that -- well, in other cases we filed testimony,
20 you know, within a few weeks of having filed main testimony,
21 and so we have hearings shortly thereafter. As Mr. Gray
22 pointed out, this is a very different proceeding. It is an
23 investigation. It's not where someone has come in and
24 stacked a rate case where you take 60 days to have a
25 pre-hearing and another 60 days to have rebuttal testimony.

1 We are talking about -- there's been no
2 prefiled testimony. There is a whole host of issues if you
3 look in the pre-hearing memos from the AT&T calling cards to
4 intrastate versus interstate arbitrage of how the calls are
5 classified. There's an endless list of issues; and that was
6 why we suggested that, once your ruling comes down and we
7 then decide exactly what those issues are going to be and
8 have 60 days to file testimony.

9 We don't think given the facts of this case,
10 the fact that there is no prefiled testimony, it's not the
11 black-and-white, cut-and-dry proceeding format that we
12 normally follow, so our proposal is reasonable. Are we
13 willing to amend it to say that it's after Your Honor's
14 disposition? I think we're probably willing to do that. To
15 be perfectly honest, I wasn't sure you were going to rule on
16 it. I thought they were going to take it to the Commission.
17 We can do it following yours, at least we will have some
18 insight and hopefully the Commission will then act on it
19 within the 90 days prior to testimony.

20 MS. BENEDEK: Your Honor, I would only add
21 one thing. If the wireless carriers win, then discovery has
22 to be depended on and vice versa. I don't think that this
23 is a cut-and-dry case as Ms. Armstrong has presented.

24 The other issue here is that Verizon has
25 indicated that Verizon is the largest payer to the Universal

1 Service Fund and indicated its support of the wireless
2 motion.

3 MR. STERN: Your Honor, may I respond? It's
4 hard for me to hear all of that but just a couple of points.

5 We support the rural carriers from the
6 standpoint that we think it's a legitimate and reasonable
7 question for the Commission whether this proceeding should
8 be deferred in light of the FCC's Notice of Proposed
9 Rulemaking, which came out after this Commission's order of
10 December 20th. As Ms. Benedek points out, it was a
11 follow-through of the July, '03 order to start a proceeding.

12 The FCC now has deadlines and timeframes for
13 the filing of comments and reply comments. We don't know
14 what the Law Bureau may or may not file on behalf of the
15 Commission in this case; but, the Commission should at least
16 have the opportunity to decide whether the positions they
17 take at the FCC have some bearing on what another part of
18 something the Commission is investigating internally. That
19 question has not been before the Commission because, if it
20 were, at the time the order came out, because there were no
21 comments filed. All the parties will be filing comments.

22 It just doesn't seem to make sense from a
23 judicial economy standpoint and from the resources of the
24 Commission and the parties to at least not ask the
25 Commission whether or not, in light of the FCC notice coming

1 out, where issues as to whether the FCC will assert
2 jurisdiction over intrastate Universal Service mechanisms
3 has been put on the table. Whether or not it's reasonable
4 to ask the Commission whether, in light of all that, they
5 would like this proceeding to continue or not pending the
6 FCC's determination.

7 For purposes of that, we did point out that
8 we agree that the current USF in place does not expire,
9 which is not to say we agree whether or not the Commission
10 has authority for USF; but, to the extent it is in place, it
11 does not expire. It can continue on beyond December 31st,
12 '06. There is no deadline that the Commission has to be
13 concerned about from that standpoint.

14 So, having said all those things, we would
15 support any movement to the Commission which to -- imposing
16 the question to the Commission whether this proceeding ought
17 to continue.

18 With respect to the schedule, assuming that
19 the proceeding continues on, we have recommended a phase
20 one, Your Honor, and that phase one essentially is somewhat
21 what we talked about with respect to our motion. There are
22 certain legal threshold questions that are the legal
23 framework for this factfinding. We have raised a couple of
24 legal questions that we think are important and significant
25 that needed to be established for this framework. Number

1 one, in light of new law, does the Commission, in fact,
2 still have an authority or did they ever have an authority
3 to establish a Universal Service Fund?

4 We have a new Chapter 30. It's not the old
5 Chapter 30. There are some issues there. I don't need to
6 get into all of them. I'm not here to argue them. We
7 suggest this be briefed. Chapter 30 apparently states that
8 the Commission has less authority over interexchange
9 carriers. Does that mean that, in the past what the
10 Commission has ordered as flow-through of access charge
11 reduction to customers, does that mean that it can no longer
12 be done? What is the jurisdiction of the Commission to
13 order interexchange carriers to flow through access charge
14 reductions? That seems to the wireless carriers that's a
15 question that needs to be decided up front.

16 The Office of Consumer Advocate has
17 referenced 3015G of the new law; and, although it's not
18 exactly clear, but it seems to be suggesting that the \$18
19 cap established in the prior order is immutable. It cannot
20 be increased. I don't know if that's their position or not,
21 but that is a legal question that is going to have some
22 bearing on the outcome of this case.

23 We have raised an issue, Your Honor, with
24 respect to the regulations. The regulations currently state
25 that the surcharges are prohibited. Well, the FCC just

1 issued a truth-in-billing decision, which says that, at
2 least with respect to wireless carriers, surcharge
3 prohibitions are unlawful. So that is a legal question.

4 All these questions establish a framework
5 which we believe that Your Honor should at least identify
6 some ground rules up front so that all of us know what we're
7 trying to do in the factfinding because we can proceed with
8 factfinding. We can go on and on; but, at the end of the
9 day, it has to fit into the legal framework. And our
10 position is at least some of these legal issues should be
11 decided up front so we all know the ground rules and the
12 framework and what the superstructure is to some extent,
13 what we're working with here.

14 So we would suggest a phase one. We did put
15 a schedule together that -- well, it's hard to tell where it
16 fits with this one. I don't know where it begins and ends,
17 although we would agree that we do want a final Commission
18 decision with respect to our wireless motion.

19 Having said that, if the question of the
20 deferral is put up, the Commission decides to defer the
21 proceeding, although, while we would want a final answer, I
22 guess it's somewhat moot whether the Commission gives a
23 final answer if this proceeding does not continue on. So --
24 but we do think the deferral question ought to be sent up.

25 As I indicated, we tried to accommodate Your

1 Honor's schedule to get something done reasonably close to
2 the end of the year but have a firm briefing for certain
3 legal issues. Any party is free to go ahead and bring up
4 any other legal issues they wish. At least those four were
5 those we either pulled out of our pre-hearing memo or other
6 parties' pre-hearing memoranda.

7 Thank you, Your Honor.

8 JUDGE COLWELL: Mr. Povilaitis.

9 MR. POVILAITIS: Your Honor, you've been
10 asked to take into account many, many considerations in
11 trying to do what is normally a relatively simple task of
12 setting a schedule in this case. The fact remains some
13 schedule has to be set and fairly soon. Quest would bring
14 two matters on that issue to your attention.

15 One, there has been a fair amount of argument
16 about what to make of the FCC proceeding, and it's been
17 suggested and implied that one reason to delay this is to
18 see whether or not there is some kind of broad FCC
19 preemption of access charge on USF jurisdiction at the state
20 level. We would suggest that that's a bit of a red herring
21 in that, even if that happens, I think you would hardly find
22 that all the parties in this case simply acknowledge that
23 declaration of preemption and say, we'll comply. That would
24 only be the start of probably a multiyear legal struggle to
25 resist that kind of broad preemption. And, if our case and

1 our issues were still pending until that were resolved, it
2 would be very unfortunate.

3 The second point I'll make is that, with
4 respect to the specifics of the RTCC time schedule, some of
5 these timeframes are simply generous. I just point out to
6 50 days to file responsive testimony to previously filed
7 testimony, that's somewhat unusual in its expanse. Forty
8 days before hearings start after all testimony's been
9 submitted, I think, is another example why these timeframes
10 are just too generous. I certainly can say for the record I
11 favor the IXCs' approach.

12 JUDGE COLWELL: Yes, ma'am.

13 MS. PAINTER: I have two points in response
14 to some of the matters that have been addressed. First of
15 all, to imply that the Commission somehow was not aware that
16 the FCC was acting on similar issues I think does not
17 recognize reality. The Commission -- as you know, there is
18 another access case that is going on, which is the Verizon
19 access case.

20 And, in that case which was established
21 around the same -- I don't remember the exact timeframe that
22 that case was established -- but we already have a hearing
23 scheduled in that case. The Commission has specifically
24 asked the parties to address the impact of the FCC action.
25 So the Commission did not terminate that case. They

1 actually asked for it to be incorporated, which I assume
2 will be the same thing that will be done here. All the
3 parties would incorporate that into their testimony.

4 Second of all, the request for a phase one
5 and phase two to address legal versus factual issues I think
6 that is somewhat unprecedented. Every case has legal and
7 factual issues that are before this Commission, and I just
8 don't think it would make much sense to separate those two
9 out. The parties can address those legal issues as part of
10 their briefs, and that would be part of your recommended
11 decision. I don't think it's necessary to have two
12 different phases.

13 JUDGE COLWELL: That's how I see it, too.

14 Anybody else?

15 Ms. Armstrong.

16 MS. ARMSTRONG: Three matters, Your Honor.
17 One, I would like to point out that the Verizon access
18 proceeding is a remand. It's not a new investigation; and,
19 while the parties in the proceeding have a great deal of
20 disagreement as to the focus of that proceeding, my sense is
21 that most of that proceeding should be a relatively narrow
22 proceeding where certain issues that were remanded by the
23 Commission are to be addressed. It's not an open access
24 investigation like this one at least is turning out to be in
25 the eyes of the parties.

1 JUDGE COLWELL: I understand that; but, since
2 they do have a schedule and the same parties are going to be
3 involved, we just don't want them to conflict.

4 MS. ARMSTRONG: I don't disagree with that.
5 I was responding to Ms. Painter's sense that, because in
6 that proceeding they were moving more quickly, that that had
7 to apply here. I'm saying that they're two very different
8 proceedings. Clearly, they should not conflict.

9 MS. PAINTER: That was not my implication.
10 My implication was that this case should not be suspended
11 merely because there is an FCC proceeding ongoing. The
12 Commission was aware of that FCC proceeding and did not
13 necessarily terminate another access charge case. They
14 simply said, incorporate the FCC issue into that case.

15 MS. ARMSTRONG: I understand. That's exactly
16 what I'm saying is that now, after receiving a more narrow
17 access issue where the Commission said, when you're
18 addressing the access issues we're remanding, take this into
19 account. Yes, by then they were aware of the existence of
20 the FCC proceeding. That's not to say that, in this case,
21 it's not appropriate to wait and see.

22 I heard Mr. Povilaitis say it would be a
23 travesty if we waited, and it would also be a travesty if we
24 put Pennsylvania ratepayers and Pennsylvania companies
25 behind the eight ball because we precipitously did something

1 that, contrary to opinion, in fact hurts Pennsylvania
2 because of what they do at the FCC.

3 And, I guess, maybe one of the questions I
4 would have, would it be appropriate, Your Honor, for those
5 of us that believe that the FCC matter is at least of some
6 controlling nature over this proceeding to ask -- I don't
7 think Your Honor can defer this proceeding, and I know the
8 Office of ALJ wants to keep things moving along. Would it
9 be acceptable if we sought some clarification from the
10 Commission as to the role of the FCC proceeding and this
11 one, particularly as was pointed out and Mr. Stern noted,
12 the Commission's taking an active role in that FCC
13 proceeding; and it puts us in an awkward position in that
14 light as well?

15 Would Your Honor have any objection if we
16 brought that to the attention of the Commission? Would that
17 be appropriate?

18 JUDGE COLWELL: What I can tell you is that I
19 have no intention of asking them myself. I have not
20 certified the question up. I cannot control what you do.

21 MS. ARMSTRONG: Thank you.

22 MR. STEWART: Just for the record AT&T
23 strongly supports the position of MCI and Quest. I can say
24 that; but, certainly as to the final order on the wireless
25 motion, this 30-day pre-hearing to finalize the issue could

1 be 30 days from today next year if we adopt this schedule.
2 It's just unworkable, and it's hard to say that a proceeding
3 that will end by the end of this year is somehow expedited
4 or being rushed if that was the implication of the case.

5 JUDGE COLWELL: Okay. Here's what we're
6 going to do. By June 15th, which is a day I've chosen for
7 no other reason than it seems like a good day, I will have
8 my decision on your motion. What you do with it is up to
9 you.

10 We're going to set a schedule now for the
11 rest of the proceeding; and, if something happens between
12 now and when we implement that to make us change anything,
13 we can all come back. So, from June 15th, that's the
14 starting point, we'll all know how the motion comes out at
15 that point, so now we'll get started.

16 What we don't want to do is have you doing
17 anything really important during the Verizon and Verizon
18 North cases. I don't want things to be too stressful on you
19 and your clients. You have to tell me if that's a problem.
20 You're going to have to tell me if I'm going to pick dates
21 that are a problem because I missed it. Don't assume that I
22 looked at the records and your pre-hearing memos and ignored
23 it. I could have forgotten, but please speak up.

24 Starting from June 15th, that's a Wednesday.
25 Your initial testimony I think should be due 30 days after

1 that. Anybody have a problem with 30 days after that?

2 JUDGE COLWELL: Ms. Benedek.

3 MS. BENEDEK: Doesn't that leave enough time
4 to do discovery, particularly if you order that the wireless
5 carriers stay in this case?

6 JUDGE COLWELL: I would recommend that you
7 start discovery immediately. They have not told me that
8 they were going to use any finding of lack of jurisdiction
9 to not participate in this case; and I am assuming by that
10 that they will respond to it, even if the Commission has no
11 jurisdiction to assess them or to include them in the
12 Universal Service Fund.

13 Mr. Cheskis.

14 MR. CHESKIS: Your Honor, I do have some
15 concerns about the direct testimony due date --

16 JUDGE COLWELL: Okay.

17 MR. CHESKIS: -- which I think would be July
18 15th, solely for the fact that that is right at the crux of
19 hearings, surrebuttal in the Verizon case has just been
20 served, and hearings will be two days the following week.

21 JUDGE COLWELL: So what do you recommend?

22 MR. CHESKIS: I would suggest an additional
23 30 days beyond that, maybe moving it back to August 15th.

24 JUDGE COLWELL: I'm sensing some discord
25 here.

1 MR. POVILAITIS: Actually, I think that date
2 was pretty good, Your Honor.

3 MS. PAINTER: I don't mind the week after
4 that, July 22nd. I remember we had originally talked about
5 July 15th, and somebody had a problem with that.

6 MS. ARMSTRONG: You did because of the
7 replies in the arbitration, and then the 19th and 20th is
8 the Verizon access charge, and the 25th is the remand
9 hearing.

10 MS. PAINTER: That's right.

11 MS. BENEDEK: The briefs in the TRO Verizon
12 arbitration are the 19th.

13 MS. PAINTER: When are the arbitration
14 hearings?

15 MS. BENEDEK: The hearings are July 24th and
16 25th.

17 JUDGE COLWELL: How does August 1st work for
18 you?

19 Everybody like August 1st?

20 MS. BENEDEK: The briefs on the factual
21 issues are due in the Verizon arbitration that day, but
22 we've probably got limited factual issues.

23 MS. PAINTER: Yeah, I'd be surprised if
24 they're --

25 MS. BENEDEK: I agree.

1 JUDGE COLWELL: Okay. The initial testimony
2 is due on August 1st.

3 Now, how much time do we need for rebuttal?
4 It seems 30 days ought to be enough.

5 MS. PAINTER: Your Honor, I agree.

6 MR. POVILAITIS: That's right.

7 MS. ARMSTRONG: With all due respect with
8 20-some RTCC companies responding to developing positions on
9 something that we have just seen 30 days before, have not
10 had a real opportunity to do discovery on. As we said, in
11 normal proceedings, everything is final up front; and the
12 issues are narrowed by the time you do that. Here it's
13 going to be our first chance to reply to whatever anybody
14 may be saying. We had originally proposed 60 days, which
15 you took it down to 50. I think that's as far as we're
16 prepared to go.

17 MR. CHESKIS: Your Honor, the OCA will
18 support that.

19 JUDGE COLWELL: That seems reasonable.

20 MR. SNISCAK: Your Honor, for Verizon we
21 would actually prefer somewhere more in the second full week
22 of September for the next round of testimony looking at
23 schedules and availability.

24 MR. GRAY: The week of the 12th?

25 MR. SNISCAK: That would work for us.

1 MR. GRAY: That's about six weeks, Your
2 Honor.

3 JUDGE COLWELL: Is six weeks enough?

4 MS. PAINTER: I think that's reasonable, Your
5 Honor.

6 MS. MATZ: Your Honor, we're bickering over a
7 week here. Really, this is not a traditional proceeding in
8 which you have a position that's known. When it's filed on
9 the record, we're going to be seeing positions for the first
10 time on August 1st.

11 JUDGE COLWELL: So that was a no?

12 MS. MATZ: What I'm saying is, we're
13 bickering over a week.

14 MS. PAINTER: We just extended the direct
15 testimony by two weeks, so now we're bickering over three
16 weeks.

17 MS. MATZ: But the extension on the direct is
18 really not pertinent to the extension on the rebuttal.

19 JUDGE COLWELL: What day are you asking for?

20 MS. MATZ: Fifty days is what Ms. Armstrong
21 said.

22 MR. GRAY: September 20th?

23 JUDGE COLWELL: September 20th.

24 MR. SNISCAK: Fine with Verizon.

25 JUDGE COLWELL: Okay.

1 You have asked for over a month between
2 rebuttal and hearings. Why?

3 MS. ARMSTRONG: Well, Your Honor, because of
4 all the parties and the host of issues. We believe that
5 there is a reasonable likelihood that we will get a lot of
6 testimony on rebuttal that is posturing new ideas, new
7 numbers, new concepts that would need to have discovery.

8 JUDGE COLWELL: That would not be a good
9 thing. Rebuttal is what it is. If they want to issue a lot
10 of new stuff on rebuttal, you can request to have it
11 stricken.

12 MS. ARMSTRONG: Except, Your Honor, where
13 it's an investigation, they're first putting out their
14 ideas. I may put out an idea that says, we're going to
15 increase rates. And the OCA comes in and says, no, you've
16 got to cut them in half. You're going to end up with
17 discovery on what's really a new issue that they would not
18 have raised in their case in chief because, at least as I
19 envisioned it, part of what we're looking for is not just
20 legal discussion as to whether or not the IXCs can have
21 surcharges, but what are the dollars, how are they going to
22 be moved, where are they going to be moved. And responding
23 to those kinds of proposals and looking at each thing on
24 them is going to take some time.

25 MR. STEWART: We would submit October 11th or

1 12th.

2 JUDGE COLWELL: October?

3 MR. GRAY: Your Honor, are you going to
4 require a third round of testimony?

5 JUDGE COLWELL: I had not planned to do that,
6 and I did not hear an uproar of objection. Okay, then. We
7 won't do that.

8 So October the what?

9 MS. ARMSTRONG: How about 18 and 19 as a
10 compromise?

11 MS. PAINTER: That's not a compromise.

12 MS. ARMSTRONG: We had 50 to 60 -- I'm sorry.

13 JUDGE COLWELL: You had 40 for that one.

14 MS. ARMSTRONG: We had 40 days.

15 MR. GRAY: The 11th is a Tuesday, and that's
16 three weeks from rebuttal.

17 MS. PAINTER: We think that's plenty.

18 MR. POVILAITIS: We think that's plenty.

19 JUDGE COLWELL: Okay. October 11th and 12th.
20 Will two days be enough?

21 MR. STERN: Your Honor, I believe the 12th is
22 a Jewish holiday or it starts.

23 JUDGE COLWELL: I am unaware of that. Tell
24 me and then we'll know.

25 MS. PAINTER: Yes, it is Yom Kippur.

1 JUDGE COLWELL: I certainly do not want to
2 make it a hardship on anyone.

3 All right, then, what's the following
4 Tuesday?

5 MR. GRAY: The following Tuesday is the 18th.

6 JUDGE COLWELL: We'll go with the 18th. You
7 win by default. 18th and 19th.

8 Does anybody foresee needing a third day of
9 hearings?

10 MS. ARMSTRONG: Your Honor, may I just ask
11 you a question?

12 JUDGE COLWELL: You may.

13 MS. ARMSTRONG: You stated that you would not
14 give a third round of testimony, that's fine. But I do
15 presume that, when we present our witnesses on the 18th,
16 they would have an opportunity to respond to what has been
17 filed?

18 JUDGE COLWELL: Absolutely.

19 MR. GRAY: Then, Your Honor, schedule three
20 days.

21 JUDGE COLWELL: Okay. Three days it is, the
22 18th, 19th, and 20th.

23 MS. BENEDEK: I think that's wise.

24 JUDGE COLWELL: With the hearings on the
25 18th, 19th, and 20th, then the briefing schedule puts us

1 right, snack in the middle of November. How long will you
2 need to write these comprehensive briefs that will teach me
3 what you're talking about?

4 MS. PAINTER: I would say three weeks would
5 be sufficient time. That would be November 10th, Your
6 Honor.

7 MR. GRAY: Is that a State holiday?

8 JUDGE COLWELL: No. The next day is. The
9 11th is a State holiday.

10 MR. POVILAITIS: That's fine.

11 JUDGE COLWELL: So, if you were planning on a
12 really long weekend, this would mess that up for you.

13 MS. BENEDEK: Can we have electronic
14 circulation between the parties?

15 JUDGE COLWELL: Yes. We'll get to that in a
16 minute.

17 November 10th main briefs. Reply briefs?

18 MS. ARMSTRONG: November 22nd.

19 MS. PAINTER: That's fine.

20 MS. BENEDEK: That's good.

21 JUDGE COLWELL: Okay. November 22nd reply
22 briefs. I'm sure I can just write that up over
23 Thanksgiving.

24 All right. So now we have a schedule that
25 we'll keep unless there's a problem. I'm sure that, if a

1 problem will arise, you will tell me about it as soon as
2 that happens.

3 Now, manner of service. Parties
4 traditionally have electronic service on the day that the
5 documents are due, with hard copies to follow in the mail
6 thereafter.

7 Is that agreeable to everyone?

8 MR. POVILAITIS: Yes, Your Honor.

9 MS. BENEDEK: Yes, Your Honor.

10 JUDGE COLWELL: Okay.

11 MS. MATZ: Your Honor, these are in-hand
12 dates electronically?

13 JUDGE COLWELL: That's correct.

14 Discovery rules. Does anybody want to change
15 the discovery rules, amend them in any way to suit your
16 purposes?

17 MS. ARMSTRONG: Your Honor, hopefully so far
18 we've been trying to work cooperatively. Given the size of
19 some of my companies and how few people they have working
20 there, we will do our best to work with the parties; but I
21 would hope that they just leave it there and if anybody has
22 a problem come back to me.

23 JUDGE COLWELL: Is that acceptable to
24 everyone?

25 MS. PAINTER: MCI has proposed to set ten

1 calendar days for responses to be due and objections within
2 seven days. I don't think parties have ever been inflexible
3 in terms of extending those times if a party needs it. But,
4 at least if we have a shorter timeframe, shorter goal, I
5 think that would help parties.

6 JUDGE COLWELL: Ten-day response, seven-day
7 objections.

8 MS. PAINTER: Right, not the calendar days.

9 JUDGE COLWELL: Anybody object to that?

10 MS. ARMSTRONG: Your Honor, knowing how many
11 companies we're dealing with and given their size, I just
12 know we're setting a date that is not realistic. That's why
13 I said hopefully we can continue to work with the parties
14 and, provided there's a problem, go to Your Honor. To get
15 them to the companies and their consultants and get feedback
16 and try to get answers in ten days, it's not going to
17 happen.

18 MS. PAINTER: I know my client in terms of
19 trying to get responses. If you tell them it's due in ten
20 days, maybe you'll get it in 15, instead of telling them
21 it's due in 20 days you'll get it in 30.

22 JUDGE COLWELL: So on a paper date and a
23 secret date.

24 MS. PAINTER: It just maybe lights a fire
25 under them hopefully to try to get their response back a

1 little more quickly, with the understanding that the parties
2 will be flexible.

3 MR. GRAY: And thanks for mentioning that on
4 the record.

5 MS. PAINTER: That's just trying to get
6 things internally.

7 JUDGE COLWELL: Does anyone else have any
8 reason to amend the discovery rules?

9 (No response.)

10 JUDGE COLWELL: Nobody else seems to worry
11 about it?

12 MR. POVILAITIS: We support her.

13 JUDGE COLWELL: Okay. You support her.

14 All right, a show of hands. Who supports the
15 amendment?

16 (Various counsel indicating.)

17 JUDGE COLWELL: Hands show evenly split then.

18 MR. GRAY: Your Honor, I would say 15 days
19 instead of 20.

20 JUDGE COLWELL: There's a compromise.

21 MS. ARMSTRONG: We'll live with the
22 compromise with the understanding that all parties will be
23 flexible.

24 JUDGE COLWELL: Okay. Fifteen-day response
25 period.

1 And objections within?

2 MR. POVILAITIS: I think seven is still fine.

3 MR. CHESKIS: Ten.

4 MS. ARMSTRONG: These are working days or
5 calendar days?

6 JUDGE COLWELL: Calendar days.

7 MS. BENEDEK: Did you say ten?

8 JUDGE COLWELL: Yes.

9 Any other discovery concerns?

10 (No response.)

11 JUDGE COLWELL: So we covered service. We
12 have a schedule. We have discovery. The only other thing
13 is I need to tell you all that your witnesses and everything
14 you give me should be extremely detailed and simple. I do
15 have not a solid understanding of telecom as a whole.
16 Nothing is too simple to be put in writing. Keep that in
17 mind. And Newton's Telecom Dictionary is what I use. So,
18 if you're using a term, look in there and see what it says
19 and make sure you understand that that's what I understand
20 that term to be.

21 MS. ARMSTRONG: Can we go off the record?

22 JUDGE COLWELL: Sure.

23 (Whereupon, a brief discussion was
24 held off the record.)

25 JUDGE COLWELL: All right then. Did we cover

1 everything?

2 (No response.)

3 JUDGE COLWELL: All right. The reason we are
4 here today making these decisions instead as of making them
5 two months ago is because I was told the parties needed time
6 to discuss things and work on settlement. How did that go?

7 MS. ARMSTRONG: We can discuss that off the
8 record.

9 (Whereupon, a discussion was held
10 off the record.)

11 JUDGE COLWELL: Are there any other matters
12 that I need to address while we're here on the record?

13 (No response.)

14 JUDGE COLWELL: We're all ready to go back in
15 the office and start preparing testimony. Excellent.

16 Thank you very much for your participation
17 today, for all the information you've given me, for your
18 arguments on the motion. You will hear from me in writing,
19 both a scheduling order will come out and an order which
20 deals with the motion that was argued.

21 If there's nothing else, we're off the
22 record.

23 (Whereupon, at 2:47 p.m., the
24 hearing was adjourned.)

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I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me and thereafter reduced to typewriting by me, or under my direction, and that this transcript is a true and accurate record to the best of my ability.

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