

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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DOCKET NO. 040156-TP

In the Matter of

PETITION FOR ARBITRATION OF AMENDMENT
TO INTERCONNECTION AGREEMENTS WITH
CERTAIN COMPETITIVE LOCAL EXCHANGE
CARRIERS AND COMMERCIAL MOBILE RADIO
SERVICE PROVIDERS IN FLORIDA BY
VERIZON FLORIDA INC.



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PROCEEDINGS: PREHEARING

BEFORE: COMMISSIONER CHARLES M. DAVIDSON
 PREHEARING OFFICER

DATE: Monday, April 18, 2005

TIME Commenced at 3:35 p.m.
 Concluded at 4:19 p.m.

PLACE: Betty Easley Conference Center
 Hearing Room 152
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR
 Official FPSC Hearings Reporter
 (850) 413-6734

1 APPEARANCES:

2 KIMBERLY CASWELL, ESQUIRE, and RICHARD CHAPKIS,
3 ESQUIRE, 201 North Franklin Street, Tampa, Florida 33602,
4 appearing on behalf of Verizon Florida Inc., participating
5 telephonically.

6 TRACY HATCH, ESQUIRE, 101 North Monroe Street, Suite
7 700, Tallahassee, Florida 32301-1549, appearing on behalf of
8 AT&T Communications of the Southern States, LLC.

9 MICHAEL J. HENRY, ESQUIRE, 101 North Monroe Street,
10 Suite 700, Tallahassee, Florida 32301-1549, appearing on behalf
11 of AT&T Communications of the Southern States, LLC,
12 participating telephonically.

13 NORMAN H. HORTON, JR., ESQUIRE, c/o Messer Law Firm,
14 Competitive Carrier Group, Post Office Box 1876, Tallahassee,
15 Florida 32302-1876, appearing on behalf of the Competitive
16 Carrier Group.

17 BRETT FREEDSON, ESQUIRE, and GENEVIEVE MORELLI,
18 ESQUIRE, Kelley, Drye & Warren, LLP, 1200 Nineteenth Street,
19 N.W., Suite 50, Washington, DC 20036, appearing on behalf of
20 the Competitive Carrier Group, participating telephonically.

21 HARRY DAVIDOW, ESQUIRE, Kelley, Drye & Warren, LLP,
22 101 Park Avenue, New York, New York 10178, appearing on behalf
23 of the Competitive Carrier Group.

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1 APPEARANCES CONTINUED:

2 DONNA C. MCNULTY, ESQUIRE, Messer Law Firm,
3 Tallahassee, Florida 32301-2960, appearing on behalf of MCI
4 WorldCom, MCImetro Access, MFS and Intermedia.

5 SUSAN MASTERTON, ESQUIRE, Sprint Communications
6 Company Limited Partnership, Post Office Box 2214, Tallahassee,
7 Florida 32316-2214, appearing on behalf of Sprint
8 Communications Company Limited Partnership.

9 MATTHEW FEIL, ESQUIRE, 2301 Lucien Way, Suite 200,
10 Maitland, Florida 32751, appearing on behalf of FDN
11 Communications.

12 LEE FORDHAM, ESQUIRE, and FELICIA BANKS, ESQUIRE,
13 FPSC General Counsel's Office, 2540 Shumard Oak Boulevard,
14 Tallahassee, Florida 32399-0850, appearing on behalf of the
15 Commission Staff.

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1 P R O C E E D I N G S

2 COMMISSIONER DAVIDSON: Call the prehearing to order
3 Staff, please read the notice.

4 MS. BANKS: Pursuant to the notice issued April 8,
5 2005, this time and place has been set for a prehearing
6 conference in Docket Number 040156-TP.

7 COMMISSIONER DAVIDSON: Let's take appearances
8 starting with Ms. Masterton.

9 MS. MASTERTON: Susan Masterton representing Sprint
10 Communications Company, Limited Partnership.

11 MR. FEIL: Matthew Feil with FDN Communications.

12 MS. McNULTY: Donna McNulty with MCI.

13 MR. HORTON: Norman H. Horton, Jr., and I'm
14 representing the parties that are set forth in the prehearing
15 order known as the Competitive Carrier Group. And I'd like to
16 enter an appearance also for Mr. Harry Davidow, Genevieve
17 Morelli and Brett Freedson of the law firm of Kelly.
18 Drye & Warren in Washington.

19 COMMISSIONER DAVIDSON: And if you could get cards
20 for the court reporter, that would help.

21 MR. HATCH: Tracy Hatch appearing on behalf of AT&T.

22 COMMISSIONER DAVIDSON: Go ahead on the telephone,
23 please.

24 MR. HENRY: I'm sorry. Mickey Henry with AT&T as
25 well.

1 MS. CASWELL: This is Kim Caswell with Verizon.

2 MS. MORELLI: And Genny Morelli and Brett Freedson
3 are on the phone for Kelly Drye, the Competitive Carrier Group.

4 COMMISSIONER DAVIDSON: Staff.

5 MS. BANKS: And Felicia Banks, also entering an
6 appearance on behalf of Lee Fordham.

7 COMMISSIONER DAVIDSON: And just -- let's go back to
8 ~~those appearing by telephone for a minute. I have Kim Caswell~~
9 and Richard Chapkis. Is that it?

10 MS. CASWELL: Yes. Richard is not on the line, but
11 he has made an appearance in this case.

12 COMMISSIONER DAVIDSON: All right. Who else -- were
13 there two people on the phone?

14 MR. HORTON: That was Ms. Morelli and Ms. Freedson
15 with Kelly Drye.

16 COMMISSIONER DAVIDSON: Okay.

17 MS. CASWELL: I thought I heard Mickey Henry with
18 AT&T.

19 COMMISSIONER DAVIDSON: You're going to have to speak
20 more slowly and more clearly. It's -- unfortunately we've got
21 a problem here on this end, so if you can just repeat what you
22 said, please.

23 MS. CASWELL: I said I thought I had heard Mickey
24 Henry with AT&T.

25 MR. HENRY: Yes. Commissioner Davidson, this is

1 Mickey Henry with AT&T.

2 COMMISSIONER DAVIDSON: Okay. Staff, any preliminary
3 matters?

4 MS. BANKS: Yes, Commissioner, there are a few
5 preliminary matters that staff wants to take up.

6 The first item is a letter filed by AT&T on April 8,
7 2005. In this letter AT&T states that Issues 21(b)(3) and
8 21(b)(4) are no longer needed and can be withdrawn. At this

9 time, staff is unaware of any objections to withdrawing these
10 issues, but would, I guess, for purposes of clarity regarding
11 the renumbering of the issue, staff would recommend these
12 issues remain in the prehearing order with the disposition note
13 that they have been withdrawn.

14 COMMISSIONER DAVIDSON: I agree with that suggestion.
15 It will keep us from having to renumber everything else.

16 Parties, are there any objections to the withdrawal
17 of Issues 21(b)(3) and 21(b)(4)?

18 MS. CASWELL: Can I just note one thing?

19 COMMISSIONER DAVIDSON: Hold on, please. Before you
20 speak identify yourself just for the record. It's -- the court
21 reporter has no idea who is, who is speaking. So if everybody
22 on the phone, if you speak, just identify yourself up-front,
23 that would be great.

24 MS. CASWELL: This is Kim Caswell with Verizon. I
25 don't object to withdrawal of the issue, but we do have

1 recertification language in our amendment. And I would expect
2 to retain the right to, to have that language in the amendment
3 if the issue is dropped. In other words, I think what dropping
4 the issue means is that no one has any objection to that
5 language.

6 MR. HENRY: This is Mickey Henry with AT&T.

7 No, Kim, I don't view dropping these issues as
~~8 somehow agreeing to your language on recertification. I mean~~
9 re, we have that issue teed up and, you know, we would litigate
10 it.

11 COMMISSIONER DAVIDSON: Who -- on the, on the AT&T
12 side, who is speaking to the proposal to withdraw Issues
13 21(b)(3) and (b)(4)? Is it Mr. Henry or Mr. Hatch?

14 MR. HENRY: Commissioner Davidson, this is Mickey
15 Henry. It would be me.

16 COMMISSIONER DAVIDSON: Okay. Well, if you can, if
17 you can just, I guess, articulate the rationale for having the
18 issues withdrawn while still objecting to the language.

19 MR. HENRY: Well, the issue on -- this is Mickey
20 Henry with AT&T. There is an issue that's already teed up,
21 which is 21(a), which indicates what information should a CLEC
22 be required to provide to Verizon as certification to satisfy
23 the eligibility, service eligibility criteria of the TRO order
24 in order to, number one, convert existing circuit services to
25 EELs or, number two, order new EELs.

1 MS. CASWELL: Oh, I see. This is Kim Caswell with
2 Verizon. I think Mickey is saying the language is redundant;
3 is that right?

4 MR. HENRY: Right. The Verizon proposal for
5 recertification, I would see us as basically litigating under
6 Issue 21(a).

7 MS. CASWELL: Okay. I agree with that. This is Kim
8 again.

9 COMMISSIONER DAVIDSON: So are we all on board with
10 the withdrawal of Issues 21(b)(3) and (b)(4)? Ms. McNulty?

11 MS. McNULTY: I agree, with that caveat.

12 COMMISSIONER DAVIDSON: Ms. Caswell?

13 MS. CASWELL: Yes, I agree.

14 COMMISSIONER DAVIDSON: Mr. Henry?

15 MR. HENRY: Yes.

16 MR. HORTON: And, Commissioner, we would agree to
17 that too.

18 COMMISSIONER DAVIDSON: Great. And Ms. Masterton?

19 MS. MASTERTON: We're in agreement.

20 COMMISSIONER DAVIDSON: Great. Let's go ahead and
21 withdraw Issues 21(b)(3) and (b)(4). We'll leave them in the
22 prehearing order as numbered so the numbering doesn't have to
23 get readjusted, and we will note in the prehearing order that
24 the issues have been withdrawn.

25 Next up, I believe we have MCI's motion to accept

1 supplemental direct testimony and exhibit of Witness Darnell
2 which was filed on March 9th, 2005. Ms. McNulty, that's your
3 notion?

4 MS. McNULTY: Yes, that's my motion.

5 COMMISSIONER DAVIDSON: And have any of the parties
6 objected, staff?

7 MS. BANKS: As noted in MCI's motion to accept this
8 ~~supplemental testimony, MCI indicates that Verizon has opposed~~
9 the motion.

10 MS. McNULTY: However, Verizon did not file a
11 response in opposition.

12 MS. CASWELL: Yeah. This is Kim Caswell with
13 Verizon. I initially objected, but I'm going to drop my
14 objection.

15 COMMISSIONER DAVIDSON: Great. Let's -- I take it
16 there were no other objections. Let's go ahead and grant that
17 notion.

18 MS. McNULTY: Thank you.

19 COMMISSIONER DAVIDSON: And, staff, if you can
20 prepare an order conforming to this verbal granting of the
21 notion and get that to the parties, that would be great.

22 MS. BANKS: We'll do it, Commissioner.

23 COMMISSIONER DAVIDSON: Next up, Ms. Masterton, it
24 looks like we've got -- I almost said Masterson. I apologize.
25 I've been very good at that for years.

1 Next up is Sprint's motion to accept the revised
2 prehearing statement filed April 11th, 2005. Are you aware of
3 any objections?

4 MS. MASTERTON: No, I'm not. Today is the last day
5 for filing anything and, as far as I'm aware, nobody has, so.

6 COMMISSIONER DAVIDSON: Any objections, parties here
7 or on the, appearing telephonically?

8 MR. HATCH: No objections from AT&T.

9 COMMISSIONER DAVIDSON: Great. Let's go ahead and
10 grant Sprint's motion and get an order out on that.

11 And, staff, what is the issue with regard to
12 Verizon's responses to the first set of interrogatories, Number
13 18, and first request for production of documents, Number 1?

14 MS. BANKS: As it relates to those issues,
15 Commissioner, staff considers that Verizon's response is
16 nonresponsive.

17 COMMISSIONER DAVIDSON: How so?

18 MS. BANKS: Interrogatory Number 18 asks the
19 question, referring to Alan Ciamporcero's direct testimony,
20 "Now that the TRRO has been released, that Verizon has had a
21 chance to review that order, how long does Verizon anticipate
22 it will take to prepare a Florida cost study?" And then Part
23 B, "When does Verizon plan to submit a cost case?"

24 And in its response Verizon indicates that it is
25 still evaluating its response to this question, will soon

1 update its response. To date staff has not received an update.

2 COMMISSIONER DAVIDSON: Ms. Caswell?

3 MS. CASWELL: Yeah. We have been trying to work out
4 a stipulation with the parties that involve that issue, but we
5 haven't done that yet. I'll provide an answer to that
6 interrogatory tomorrow, if you'd like.

7 COMMISSIONER DAVIDSON: Well, that would be great.

8 ~~And I understand with some of these rulings it's tough to~~
9 perhaps pin down specific time frames.

10 MS. CASWELL: Yes.

11 COMMISSIONER DAVIDSON: But, you know, give it sort
12 of your, your best educated guess, good-faith effort to
13 articulate a time frame. And, of course, that can be subject
14 to, to whatever you need it to. But it would be useful for all
15 the parties and for staff to have some idea of the parameters.

16 MS. CASWELL: Okay. And, Felicia, just so I'm clear
17 on what you need, it's a response to Interrogatory Number 18;
18 correct?

19 MS. BANKS: Yes. And the related response number,
20 POD Number 1, Production of Documents Number 1.

21 MS. CASWELL: Okay.

22 COMMISSIONER DAVIDSON: Are there any other
23 preliminary matters that you're aware of, Ms. Banks?

24 MS. BANKS: Commissioner, that's all that staff has
25 at this time.

1 COMMISSIONER DAVIDSON: Parties, before we go through
2 the draft prehearing order, any other preliminary matters?

3 MS. CASWELL: This is Kim Caswell, Commissioner. I
4 do have one. If we could get a clarification on the scope of
5 this phase of the proceeding, that would be helpful to me.

6 At the issues identification conference I understood
7 that the Commission would be deciding issues at this point
8 ~~rather than specific language for the amendment, and that the~~
9 parties would take the Commission's decisions and work out
10 conforming amendments at that point. And then the Commission
11 would either approve or reject language when the parties
12 submitted their conforming amendments. Is that still the case?

13 COMMISSIONER DAVIDSON: Well, if you -- repeat that,
14 please.

15 MS. CASWELL: Okay. At the issues identification
16 conference I had proposed issues that were framed in terms of
17 the language of the amendment, and we were told by staff that
18 the Commission would not be deciding language in the amendment
19 at this point, that it would be only resolving the issues that
20 have been identified, and that it would neither approve nor
21 reject any parties' amendment language at this point, but that
22 parties would come back and file conforming amendments in
23 accordance with the Commission's order. And I just wanted
24 clarification that that was correct, and I'll tell you why.

25 Some of the amendments were submitted at the rebuttal

1 stage. As everyone knows, the amendments are sort of moving
2 targets. And we've got everybody's current amendments now, but
3 we haven't had a chance to respond to the amendments that were
4 submitted in the rebuttal, and that's fine if the Commission is
5 only deciding issues. But if it intends to approve or reject
6 amendment language, I think then we've got a problem. But I
7 just wanted to make sure that everything had remained the same
8 as it was stated at the issues identification conference.

9 COMMISSIONER DAVIDSON: Well, as my understanding, it
10 was. I would like Ms. Banks to address that concern though.

11 MS. BANKS: I don't believe that there would be a
12 problem based upon what Ms. Caswell has indicated. I know
13 generally speaking in the context of an arbitration once
14 parties have reached an agreement, they file that agreement. I
15 believe it is permissible for the Commission, if they're
16 deciding on language, whether or not they consider it to be
17 included in the agreement. So I think theoretically it can be
18 rejected. I'm not sure if that's Ms. Caswell's concern or not
19 based on what she's indicated.

20 MS. CASWELL: Yeah. Felicia, what we were told at
21 the Issues ID is that the Commission typically does not decide
22 on language, it decides on issues and arbitrations, and then
23 the parties conform to the agreement. And then if they have
24 disputes about the language, they can bring them at that time.
25 And that is typically how it works. But I just wanted to make

1 sure because these amendments were submitted in rebuttal that
2 we didn't lose --

3 MS. BANKS: Right. I would -- just to interject, I
4 agree with you on that. And that's provided that the parties
5 agree. But to the extent that the parties do not agree, then
6 generally speaking the Commission would make that determination
7 what the appropriate language should be.

8 COMMISSIONER DAVIDSON: Well, I sort of, given the
9 multitude of parties here, that was -- my understanding was
10 what Ms. Caswell had articulated and that was my understanding
11 from staff. But I would like to sort of get input on that here
12 that what we're talking about from the parties are Commission
13 rulings on issues, and then the parties will negotiate to work
14 out the specific language.

15 Ms. Masterton?

16 MS. MASTERTON: That was my understanding.

17 COMMISSIONER DAVIDSON: Mr. Feil?

18 MR. FEIL: My understanding as well, except the
19 proviso I would make is that if you look at the amendments
20 themselves, the draft amendments, to some degree they contain
21 arguments of the parties as to how the issue should be
22 resolved.

23 COMMISSIONER DAVIDSON: That's shocking.

24 (Laughter.)

25 MS. McNULTY: I would concur in the comments that

1 Matt Feil made. But keep in mind that MCI did submit various
2 conditions of our proposal for that very reason, to provide
3 guidance to the Commissioners, and, of course, we hope it
4 provides lots of guidance to the Commissioners.

5 COMMISSIONER DAVIDSON: As you should hope.

6 MS. McNULTY: That's right.

7 MR. HORTON: It's my understanding as well.

8 MR. HATCH: That's AT&T's understanding as well.

9 COMMISSIONER DAVIDSON: Well, then let's, let's move
10 forward with the understanding that what the Commission will be
11 deciding will be the issues, taking note of the fact that there
12 is some specific language out there, but we're deciding issues,
13 we will be deciding issues, not specific language. And with
14 Commission decision on issues, then the parties can go back and
15 negotiate the specific language to conform with Commission
16 decisions.

17 Staff, does, do those preliminary matters, including
18 the one we just addressed, take care of sort of all the motions
19 on the table?

20 MS. BANKS: To my understanding, Commissioner, it
21 does.

22 COMMISSIONER DAVIDSON: Okay. Great. Let's turn to
23 the prehearing order.

24 MR. HENRY: Commissioner Davidson?

25 COMMISSIONER DAVIDSON: Yes, Mr. Henry.

1 MR. HENRY: This is Mickey Henry with AT&T. I didn't
2 want it to pass. You had asked whether any of the parties had
3 anything to propose, I guess.

4 We had had a discussion with Verizon and subsequently
5 with MCI and the CCG Group about limiting the number of issues
6 that would be heard in the live hearing. The concept was that
7 we would stipulate in the testimony and then cross-examine on
8 two issues that we had agreed to with Verizon, at least AT&T

9 had, and I believe Kim was trying -- as I had understood, CCG
10 and MCI were okay with that as well, and I think that's
11 everyone who has submitted testimony.

12 The issues, I believe, that we had agreed should go
13 live testimony were Issue Number 3, I believe, dealing with
14 what terms and conditions including change of law should be in
15 the amendment, and then issue number -- let me make sure that
16 Number 3 is correct.

17 MS. McNULTY: Mickey, I think you mean Number 2.

18 MR. HENRY: Number 2?

19 MS. CASWELL: Yeah. I think -- yeah. It's Number 2.

20 MR. HENRY: It's Number 2? Okay.

21 And then the other one, Kim, was issue what, the cost
22 study or the price list, Issue --

23 MS. McNULTY: 26.

24 MR. HENRY: -- 26.

25 MS. CASWELL: Yes.

1 MR. HENRY: And so, Commissioner, what we had
2 discussed was that we would only conduct cross-examination on
3 the witness's testimony as it relates to those two issues.

4 COMMISSIONER DAVIDSON: So you would -- the parties
5 would conduct cross as it relates to Issues 2 and 26, and then
6 the remaining issues would not be subject to cross, they would
7 just be briefed?

8 ~~MR. HENRY: That's correct. We would then submit the~~
9 other issues on legal briefs.

10 COMMISSIONER DAVIDSON: That sounds like a, a very
11 good plan. Parties?

12 MS. CASWELL: This is Kim with Verizon. That's fine
13 with me. In fact, I had hoped to come to some settlement on
14 the remaining issues as well. But I'm fine with the
15 stipulation as of today that, that Mickey stated. And I'd like
16 to add that Sprint has agreed as well. I think Susan is there.
17 I had talked to Susan about it as well.

18 COMMISSIONER DAVIDSON: Ms. Masterton?

19 MS. MASTERTON: I'm here, and that's correct. Sprint
20 is agreeable.

21 COMMISSIONER DAVIDSON: FDN?

22 MR. FEIL: I was just approached about the idea of
23 this stipulation earlier today, so I am not in a position to
24 say I'm okay with it. My understanding is there were some
25 details yet to be worked out. If those details are worked out,

1 when I don't anticipate a problem.

2 COMMISSIONER DAVIDSON: Excellent. Well, I hope the
3 details are worked out because this would be a good solution.
4 A lot of these issues are really legal issues, and it would be
5 great if the parties didn't have to take up their time and
6 expenses and Commission resources dealing with a lot of purely
7 legal issues in the context of a, a long hearing.

8 Florida Competitive Carriers Association (sic.)?

9 MR. HORTON: Commissioner, we have had some
10 discussions, but we're not, we're not at the point where we can
11 agree to that stipulation at this time, but we have had some
12 discussions.

13 COMMISSIONER DAVIDSON: When will you be at a point
14 to agree or disagree?

15 MR. HORTON: I would hope in the next couple of days.

16 MR. FEIL: We were actually going to propose a call
17 with Ms. Caswell to talk about that on Wednesday.

18 MR. HENRY: This is Mickey Henry. Let me make sure
19 that everyone understands that the stipulation as to the issues
20 that would be cross-examined in the hearing is different from
21 the other stipulation that I guess we don't want to say out
22 loud yet because of -- or the proposed stipulation regarding
23 Issues 26, and what was the other one, Kim?

24 MS. CASWELL: I think it's Issue 1.

25 MR. HENRY: 1 and 26. That's separate and apart

1 whether we can reach agreement there as to whether or not we
2 would agree to stipulate the testimony in and resolve all
3 issues by legal brief. I think the other stipulation we're
4 talking about potentially could remove issues.

5 MS. CASWELL: Correct.

6 MR. HENRY: And I don't think it has any impact on
7 this stipulation on the issues that would be cross-examined and
8 ~~the testimony that would be cross-examined.~~

9 COMMISSIONER DAVIDSON: Great. And let me, Ms.
10 McNulty, before you take the floor, if you all could perhaps
11 have this call sometime tomorrow to get this resolved one way
12 or another, that would be, that would be very helpful.

13 And just some, some guidance for Florida Competitive
14 Carriers Association (sic.), if you've got sort of major
15 members who are okay with the stip, I would hope that the
16 association would, would come up with a way to try and move
17 forward as well. And obviously if there are really legitimate
18 strong issues -- but we don't need to have a hearing for the
19 sake of having a hearing on a number of these issues. And it's
20 commendable that the parties with these diverse interests have
21 sort of come together and reached some consensus on some tough
22 areas.

23 Ms. McNulty.

24 MS. McNULTY: I just want to ask a clarifying
25 question of Mickey and Kim. For the stipulation as it relates

1 to Issues 2 and 26 that we're discussing, it's your position
2 that we would stipulate into the record all of the testimony
3 related to all of the other issues and then brief those; is
4 that correct?

5 MR. HENRY: That's, that's correct. We would, we
6 would stipulate all the testimony in and we would brief -- in
7 fact, we would brief Issues 2 and 26 as well. But we would
8 ~~only have cross-examination of the witnesses as their testimony~~
9 related to Issues 2 and 26. So the result would be the hearing
10 would be substantially limited.

11 MS. McNULTY: I understand and appreciate that
12 clarification. I just wanted to make sure that everybody
13 understood that we still have the testimony that is inserted
14 into the record on those other issues.

15 COMMISSIONER DAVIDSON: And that's a very useful
16 point of clarification. And I'll tell you as I sit here, I do
17 believe it's within the discretion of the prehearing officer to
18 just sort of order this type of procedural outcome to the
19 hearing. I would rather the parties come together. But if
20 parties are going to object sort of to this procedure, you're
21 really going to have to come up with some compelling points as
22 to why, if all the testimony is in the record, direct, cross,
23 rebuttal, why it is on many of these issues that are legal in
24 nature you would somehow be denied an opportunity to present
25 your case through that procedure. So just think about that. I

1 think I've made sort of where we would like to go with this
2 clear. Again, you're free to raise your objections and agree
3 or disagree. Hopefully it will be agree.

4 MR. FEIL: Well, Commissioner, if I may, I mentioned
5 the call Wednesday. It's because we have depositions and
6 Agenda tomorrow.

7 COMMISSIONER DAVIDSON: Okay.

8 ~~MR. FEIL: But if after the second deposition~~
9 tomorrow we want to have this call, that would work out.

10 COMMISSIONER DAVIDSON: Well, if you've got a call
11 already scheduled for Wednesday, by all means -- but sooner
12 rather than later so that we can move forward with this.

13 So, Ms. McNulty, with the articulation of your
14 understanding as to how this would work, testimony going into
15 the record, is AT&T -- I apologize -- is MCI fine with the
16 stipulation as proposed?

17 MS. McNULTY: I would say yes, subject to check one
18 more time with my client. But since we're not the only CLEC
19 that needs to check, I'd just like to check one more time. But
20 I would say tentatively yes with respect to 2 and 26.

21 COMMISSIONER DAVIDSON: So we've got Verizon and AT&T
22 are fine, Sprint is fine, MCI is subject to check, FDN has to
23 look into it, FCCA (sic.) has to look into it.

24 Does that cover all the parties, Ms. Banks?

25 MR. HENRY: Commissioner Davidson, this is Mickey

1 Henry once again.

2 COMMISSIONER DAVIDSON: And I appreciate you saying
3 your name a lot. I know the court reporter appreciates it. I
4 bet she'll have it by the end of the hearing though.

5 MR. HENRY: I have been down there before when the
6 voices came out of the ceiling and understand how odd it is.

7 COMMISSIONER DAVIDSON: Well, not with only two on.
I think we know that the female is Ms. Caswell and the male is

9 Mickey Henry.

10 MR. HENRY: Okay. The only thing I wanted to clarify
11 is that the party in this case is not the FCCA. It's a -- it's
12 the Competitive Carrier Group. It's not the association.

13 COMMISSIONER DAVIDSON: Oh, I apologize for that.

14 MR. HORTON: I was actually going to point that out
15 too, Commissioner, but --

16 COMMISSIONER DAVIDSON: Okay. Great. I appreciate
17 that, Mr. Henry.

18 MR. HENRY: Yes, sir.

19 MS. BANKS: Commissioner, answering your question, I
20 think we've covered all the parties involved in this proceeding
21 as it relates to getting the word back on the proposed
22 stipulation.

23 COMMISSIONER DAVIDSON: Great. Let's turn to the
24 prehearing order and we'll go through, through these sections
25 in batch.

1 Obviously, if you've got any changes or, or edits,
2 you can also just get those to staff. But let's cover the
3 sections in batch now and see if there's anything major that
4 comes up.

5 Any corrections or concerns regarding Sections I
6 through III?

7 We've covered motions. Anything else to cover with
regard to Section IV?

9 We've covered the proposed stipulation that addresses
10 live cross for Issues 2 and 26 and briefing of remaining issues
11 with all testimony coming into the record. Any other proposed
12 stipulations for Section V?

13 Section VI and VII, are there any pending
14 confidentiality matters?

15 Section VIII, opening statements. The draft
16 prehearing order currently has ten minutes per party. If we --
17 if the stipulation or the, if the stipulation is granted or a
18 procedure delineating, sort of separating out 2 and 26 from the
19 other issues is adopted in the case of a stipulation or made in
20 the case of a prehearing order, we're going to knock opening
21 statements down to seven minutes. And I'd like to ask this to
22 try and break it down because we do have a number of parties.
23 To what extent -- this is for staff first. To what extent can
24 Issues 2 and 26, based on your understanding, be broken down
25 into sides, meaning parties on Side A versus parties on Side B?

1 and then, staff, if you -- I'm sorry. Parties, if you all can
2 address that as well after staff.

3 MS. BANKS: Without having given it much
4 consideration, Commissioner, I think that we probably could
5 have on one side Verizon to present and then CCG. And in
6 looking at, I guess, the positions on this particular issue, it
7 appears that, I guess, CCG, FDN and MCI have similar positions.

8 Now AT&T, I think, has taken generally the same
9 position as the others with additional information as filed in
10 their prehearing statement. So it's possible that their
11 position might differ a little bit from CCG, MCI and FDN. And
12 Sprint has stated no position at this time on that issue as it
13 relates to Issue 26.

14 As it relates to Issue Number 2, I think it's fair to
15 say that -- I think the parties differ to some extent on these
16 issues. They probably could better give us guidance how they
17 differ on Issue 2 with their respective positions, but I think
18 it's fair to say at least for Issue 26 that we probably could
19 have probably one party represent CCG, FDN and MCI.

20 COMMISSIONER DAVIDSON: I'll tell you, parties, and
21 they, parties, if you can address -- what I'm trying to do is
22 not in any way, shape or form deny a party of a right to
23 present their arguments, but really try to delineate the case
24 into sides and perhaps have Verizon open for ten minutes and
25 the other side open for 15 minutes or 20 minutes. I mean,

1 something to boil it down so that each party isn't going for
2 ten minutes and we end up with 50 minutes anti-Verizon and 15
3 minutes pro, sort of, Verizon.

4 So the extent, as we did in the TRO, if some of these
5 issues can be boiled down to sides, that would be helpful. So
6 starting with Ms. Masterton.

7 MS. MASTERTON: I was just going to say that Sprint
~~will work with the other CLECs on, you know, their side in~~
9 presenting any opening statement that we might have.

10 MR. FEIL: For FDN, even though in the TRO we were
11 sort of between sides, I have no problem working with the rest
12 of the CLECs. I think it can be divided into sides on both
13 issues.

14 COMMISSIONER DAVIDSON: Okay.

15 MS. McNULTY: Agree.

16 MR. HORTON: I agree.

17 MR. HENRY: Commissioner Davidson, this is Mickey
18 Henry. It seems to me that since we're going to have the
19 hearing basically limited to cross-examination on two issues,
20 2 and 26, if we, if we reach that, that, you know, the parties
21 probably need to explain to the Commission kind of what's in
22 the record.

23 Now having said that, you know, I don't see each of
24 the anti-Verizon, if you will, CLECs having equal time. But it
25 seems to me that probably, you know, you should have about 20

1 minutes on both sides or 25 minutes for both sides to be able
2 to present a, kind of a comprehensive, hopefully cohesive
3 presentation on all the issues.

4 COMMISSIONER DAVIDSON: How about -- well, let me
5 just sort of -- let's run down the line. You've thrown out a
6 couple of time frames. What, what sort of makes sense: 20
7 minutes, 25 minutes, 30 minutes? Parties, what do you think
8 you need?

9 MS. CASWELL: I'm sorry. This is Kim. Was Mickey
10 suggesting that the opening statements should cover all of the
11 issues rather than just Issues 2 and 26?

12 MR. HENRY: Yes, Kim. This is Mickey Henry with
13 AT&T. Yes, I was.

14 MS. CASWELL: Yeah. I could go either way; cover all
15 the issues or just 2 and 26. If we do 2 and 26, I don't, I
16 don't need that much time.

17 MR. HENRY: This is Mickey Henry with AT&T. I don't
18 think we do either. Commissioner, what I was thinking is if
19 you could give both sides 30 minutes, I think we could divide
20 it up on the competitive side to deal comprehensively with all
21 the issues in the case, and then 30 minutes on Verizon's side,
22 and then we could kind of explain to you what's in the record.

23 COMMISSIONER DAVIDSON: Well, I can tell you an hour
24 opening as you sit there is long, but we're also consolidating
25 the hearing. It's just hard sometimes to, to listen to

1 presentations for that long.

2 Do you think you guys could get what needs to be done
3 done in 20 minutes per side?

4 MS. CASWELL: I can. This is Kim.

5 MR. HENRY: Kim, this is Mickey Henry with AT&T.
6 There are more cats over on our side to be herded.

7 COMMISSIONER DAVIDSON: Okay. How about 20 minutes
8 for Verizon, 25 for the competitive side?

9 MR. HENRY: That, that works for me. I mean, as long
10 as that's okay with Matt and Doc and Donna and others.

11 COMMISSIONER DAVIDSON: They are all sort of nodding
12 their head yes. All right. Let's go 20 and 25.

13 Witnesses, Section IX and X, just work with staff.
14 If you have any changes to the order of witnesses or the issues
15 to be addressed, just get all of those changes to staff. The
16 same with exhibits on Section XI.

17 MS. McNULTY: Commissioner Davidson, before you leave
18 that section, assuming that we have some live testimony, are we
19 going to combine all the cross for direct and rebuttal like we
20 typically do?

21 COMMISSIONER DAVIDSON: Yes. That should, that
22 should have been in there.

23 MS. McNULTY: It may have been.

24 COMMISSIONER DAVIDSON: It may not have been. Staff,
25 that --

1 MS. BANKS: Are you wanting us to make a notation
2 that direct and rebuttal be taken up together, Commissioner?

3 COMMISSIONER DAVIDSON: Well, that should be in
4 there. That's in my standard prehearing order, so I hope, I
5 hope it's in here.

6 MR. FEIL: It is.

7 COMMISSIONER DAVIDSON: Okay. It's in there, Mr.
8 Feil? You saw it? I'm scanning this.

9 All right. Great. Thanks.

10 MS. BANKS: Commissioner, if I could just make one
11 clarification since we have everyone's attention at this point.

12 On Page 6 of the draft prehearing order under the
13 section labeled "Rebuttal," about the fourth line entry where
14 there's an asterisk indicating Verizon panel --

15 COMMISSIONER DAVIDSON: Right.

16 MS. BANKS: -- that asterisk also has another
17 indication indicating that witnesses will be excused. And
18 staff just wanted to make the clarification, that's not to say
19 that the witnesses will be excused at this point. And so what
20 staff intends to do is to make a footnote with that
21 clarification that it relates to the Verizon panel.

22 COMMISSIONER DAVIDSON: You've confused me now.
23 What's -- the asterisk indicates that witnesses --

24 MS. BANKS: Can be excused generally. If you look on
25 Page 5 at the bottom, the last full paragraph, about the fourth

1 line. Generally the asterisks indicate the witness can be
2 excused from the hearing. And I was just saying that --

3 COMMISSIONER DAVIDSON: Meaning they're not going to
4 come to the hearing unless the Commissioner asks.

5 MS. BANKS: That is correct.

6 COMMISSIONER DAVIDSON: Well, can't we just remove
7 the asterisks for the Verizon panel in the final, in the final
8 draft?

9 MS. BANKS: Yes. That's what staff -- yes, sir.

10 COMMISSIONER DAVIDSON: Okay.

11 MS. CASWELL: Felicia? Felicia?

12 MS. BANKS: Yes.

13 MS. CASWELL: If we just have testimony on 2 and 26
14 though, those witnesses won't be necessary, correct, because
15 they're not testifying to those issues.

16 MS. BANKS: Conceivably so. But I guess we had not
17 gone to the point of deciding which witnesses would be excused.

18 MS. CASWELL: Right. But what I'm asking is that
19 they will be excused if we stipulate that only Issues 2 and 26
20 are having testimony; is that correct?

21 MS. BANKS: Conceivably so. But as I just mentioned,
22 we're not at that point. And I would assume that we would
23 probably take an inventory of other witnesses that would
24 possibly be excused also.

25 MS. CASWELL: I had just assumed anybody that wasn't

1 testifying to 2 and 26 would be excused.

2 COMMISSIONER DAVIDSON: Well, I think -- if
3 somebody -- let's be clear. If somebody is not testifying --
4 if ultimately the hearing, the hearing is limited in terms of
5 live cross to Issues 2 and 26, any witness not testifying on
6 2 and 26 would be excused.

7 MS. BANKS: I would agree, Commissioner. I guess I
8 ~~was just making a statement there would probably be others as~~
9 well.

10 COMMISSIONER DAVIDSON: Okay. You're not trying to
11 delineate who those would be at this time.

12 MS. BANKS: That's correct, Commissioner.

13 COMMISSIONER DAVIDSON: Okay. Mr. Feil?

14 MR. FEIL: No. I was going to say Mr. Ciamporcero
15 was deposed today and he didn't seem to know anything about the
16 rate schedules on Issue 26. And now may not be the proper time
17 to bring this up, but for clarification, he's not -- I don't
18 know that he's sponsoring those rate schedules, but he
19 testified today, as I was trying to walk him through some of
20 the charges on there, that he didn't know how they were
21 applied. So I don't know how he can be or how the panel could
22 be excused if Mr. Ciamporcero didn't know anything about Issue
23 26.

24 COMMISSIONER DAVIDSON: Well, I'm not saying the
25 panel should be excused. I have no idea as I sit here what --

1 well, I can look and see what witnesses are testifying on what
2 issues, but there's not really a, there's not really a
3 particular delineation for the panel, if the panel is separate
4 from the witnesses with the asterisks. So I would just, you
5 know, advise staff and the parties to all work together to make
6 sure that if there's, if there is a knowledgeable witness on a
7 particular issue that's needed to be there at the hearing to
8 ~~give live testimony, that person should be there.~~

9 MS. BANKS: And, Commissioner, staff will work with
10 the parties to determine what that list would be.

11 COMMISSIONER DAVIDSON: Okay. Great. Exhibits,
12 just, again, work with the -- parties, work with staff to, to
13 make any corrections or changes to the exhibit list. And,
14 staff, on this someone might want to coordinate with or just
15 check with Jennifer Brubaker or Ms. Keating for a model, and
16 you may already have this done, but just a composite exhibit
17 list of sort of everything, with the very first exhibit being
18 the composite exhibit list.

19 MS. BANKS: And we have done this in time past,
20 Commissioner. We've actually shared that hearing exhibit list
21 with the parties.

22 COMMISSIONER DAVIDSON: Perfect.

23 MS. BANKS: And to date we don't have any objections.

24 COMMISSIONER DAVIDSON: Perfect. Great.

25 MS. McNULTY: On that note, I just wanted to bring to

1 the Commissioner's attention that all the discovery has not
2 been produced yet, so.

3 COMMISSIONER DAVIDSON: What's the discovery
4 deadline?

5 MS. BANKS: The deadline is Friday, April 22nd.

6 COMMISSIONER DAVIDSON: Perfect. Sections XII and
7 XIII, positions. Are there any sort of major corrections that
8 the parties need to go through here live on the record? If so,

9 we can do that, we'll run down the line. If not, you can make
10 your changes and corrections known to staff and we'll get those
11 identified in the final prehearing order.

12 Ms. Masterton?

13 MS. MASTERTON: No. I mean, I'd just note that our
14 revised prehearing statement was accepted, so our positions
15 would be replaced with those positions.

16 COMMISSIONER DAVIDSON: FDN?

17 MR. FEIL: I have no major changes. Just on Issue 2
18 I would make it say, our position, "Agree with AT&T," and
19 that's all I had.

20 COMMISSIONER DAVIDSON: Okay. And just if you can
21 get that to staff, that would be great.

22 MR. FEIL: Okay.

23 COMMISSIONER DAVIDSON: MCI?

24 MS. McNULTY: None.

25 COMMISSIONER DAVIDSON: FCCG?

1 MR. HORTON: None.

2 COMMISSIONER DAVIDSON: AT&T?

3 MR. HATCH: We're looking at the draft, but I don't
4 anticipate from the earlier draft there is any issue, so it
5 should be fine.

6 COMMISSIONER DAVIDSON: Verizon?

7 MS. CASWELL: I don't have any. Thank you.

8 ~~COMMISSIONER DAVIDSON: Great. Section XIV,~~
9 posthearing procedures. Any changes, corrections, concerns?

10 Great. Any other matters?

11 MR. HORTON: Commissioner -- oh, I'm sorry.

12 COMMISSIONER DAVIDSON: Are you okay?

13 MR. HORTON: Are you still on XIV?

14 COMMISSIONER DAVIDSON: We can be.

15 MR. HORTON: No. I'm sorry. I was skipping ahead to
16 XV. I thought you were --

17 COMMISSIONER DAVIDSON: Okay. XV; any questions,
18 concerns, issues?

19 MR. HORTON: Commissioner, I think it had been
20 suggested that the posthearing brief, the page limit be
21 extended. It's 75 pages now, and I think there had been a
22 suggestion of possibly 150 pages for that.

23 MS. CASWELL: Yes. I suggested that.

24 MR. HORTON: And I don't think we disagreed with it.
25 And I think there were some others that had expressed some

1 support of that, so.

2 COMMISSIONER DAVIDSON: Well, would this be the brief
3 that would address the, all the remaining issues but 2 and 26
4 or would this be something different than that?

5 MS. McNULTY: Commissioner Davidson, I would expect
6 the posthearing brief is just one posthearing brief to address
7 all of the issues.

8 ~~COMMISSIONER DAVIDSON: So we would not have a, sort~~
9 of a hearing brief, so to speak, and then a posthearing brief.

10 MS. McNULTY: Right. Right. Just one brief.

11 COMMISSIONER DAVIDSON: Well, I'm fine. I think
12 expanding the page limit to 150 makes sense if everybody is
13 fine with that, given that you're going to be addressing a lot
14 of issues.

15 MR. HORTON: That was my understanding. That's why I
16 brought it up, Commissioner.

17 COMMISSIONER DAVIDSON: Okay. Thank you. I
18 appreciate that.

19 All right. Staff, we will extend the brief limit to
20 150 pages.

21 MS. BANKS: Yes, Commissioner.

22 COMMISSIONER DAVIDSON: Any other matters?

23 Staff, you said the discovery deadline is April 22nd
24 and we have the hearing, I note, scheduled for May 4th, 5th and
25 6th.

1 MS. BANKS: That's correct, Commissioner.

2 COMMISSIONER DAVIDSON: Great. Anything else?

3 Mr. Henry? Ms. Caswell?

4 MS. CASWELL: I have nothing. Thank you.

5 MR. HENRY: Nothing from here, Commissioner. Thank
6 you.

7 COMMISSIONER DAVIDSON: Great. We're adjourned.

8 MS. BANKS: Commissioner?

9 COMMISSIONER DAVIDSON: Thanks so much.

10 MS. BANKS: Commissioner, I'm sorry. Staff just had
11 one clarification. As it relates to the motions that we have
12 addressed today, are you anticipating those will be addressed
13 by separate order or reflected in the prehearing order as being
14 --

15 COMMISSIONER DAVIDSON: Let's go ahead and just
16 reflect those in the prehearing order. That's probably -- make
17 it -- actually what, what is the deadline for the prehearing
18 order?

19 MS. BANKS: April 25th, Monday.

20 COMMISSIONER DAVIDSON: We can go ahead and -- well,
21 let me ask you this. What's easier for staff, prehearing or
22 separate orders?

23 MS. BANKS: A prehearing order would be.

24 COMMISSIONER DAVIDSON: Let's go with the prehearing
25 order.

1 MS. BANKS: Thank you, Commissioner.

2 COMMISSIONER DAVIDSON: Thanks. All right We're
3 adjourned.

4 (Prehearing conference adjourned at 4:19 p.m.)
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CERTIFICATE OF REPORTER

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I, LINDA BOLES, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 20th DAY OF APRIL, 2005.

Linda Boles
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