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STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

February 6, 2009 - 10:07 a.m.  
Concord, New Hampshire

NHPUC FEB25'09 AM 9:39

RE: DT 08-162  
COMCAST PHONE OF NEW HAMPSHIRE d/b/a  
COMCAST DIGITAL PHONE: Petition for  
Arbitration of Rates, Terms and  
Conditions of Interconnection with TDS.  
(Prehearing conference)

PRESENT: Chairman Thomas B. Getz, Presiding  
Commissioner Graham J. Morrison  
Commissioner Clifton C. Below

Diane Bateman, Clerk

APPEARANCES: Reptg. Comcast Phone of New Hampshire:  
Michael C. Sloan, Esq. (Davis, Wright...)  
Paul D. Abbott, Esq. (Mintz, Levin...)  
  
Reptg. the TDS Companies:  
Frederick J. Coolbroth, Esq. (Devine...)  
Patrick C. McHugh, Esq. (Devine, Millimet...)  
  
Reptg. Residential Ratepayers:  
Stephen Eckberg  
Office of Consumer Advocate  
  
Reptg. PUC Staff:  
Robert Hunt, Esq.  
Edward N. Damon, Esq.

Court Reporter: Steven E. Patnaude, LCR No. 52

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**STATEMENTS OF PRELIMINARY POSITION BY:**

Mr. Sloan	5, 21
Mr. Coolbroth	16, 23
Mr. Eckberg	20
Mr. Hunt	20

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

1  
2 CHAIRMAN GETZ: Okay. Good morning  
3 everyone. We'll open the prehearing conference in docket  
4 DT 08-162. On December 12, 2008, Comcast Phone of New  
5 Hampshire filed a petition for arbitration of rates, terms  
6 and conditions of interconnection with Kearsarge Telephone  
7 Company, Merrimack County Telephone Company, and Wilton  
8 Telephone Company, pursuant to Section 252(b) of the  
9 Communications Act of 1934. On January 9, 2009, the TDS  
10 companies filed an answer to the Comcast petition and  
11 propounded a first set of data requests. The order of  
12 notice was issued on January 28, setting the prehearing  
13 conference for this morning. And, the order of notice,  
14 among other things, noted that, in the event there is any  
15 dispute with respect to the initial discovery requests  
16 filed by TDS, we would appoint a hearings examiner to hear  
17 and resolve such disputes directly following the  
18 prehearing conference. And, we have appointed General  
19 Counsel Anne Ross to act as the hearings examiner for the  
20 purposes of resolving discovery disputes.

21 I note that we have a letter from the  
22 Consumer Advocate notifying that it would be participating  
23 in this proceeding. And, my understanding is, from the  
24 Clerk, is the affidavit of publication has been forwarded

1 to the Commission.

2 So, let's take appearances before we  
3 hear positions of the parties.

4 MR. ABBOTT: Paul Abbott, from Mintz  
5 Levin, on behalf of Comcast Phone.

6 CHAIRMAN GETZ: Good morning.

7 CMSR. MORRISON: Good morning.

8 CMSR. BELOW: Good morning.

9 MR. SLOAN: I'm Michael Sloan. I am  
10 with the Washington, D.C. office of Davis, Wright,  
11 Tremaine, also here on behalf of Comcast Phone.

12 CHAIRMAN GETZ: Good morning.

13 CMSR. MORRISON: Good morning.

14 CMSR. BELOW: Good morning.

15 MR. COOLBROTH: Mr. Chairman,  
16 Commissioners, Frederick Coolbroth, on behalf of the TDS  
17 companies, from Devine, Millimet & Branch. With me today  
18 is Patrick McHugh from our office. Also here from the  
19 Company are Michael Reed and Deborah Martone.

20 CHAIRMAN GETZ: Good morning.

21 CMSR. MORRISON: Good morning.

22 CMSR. BELOW: Good morning.

23 MR. ECKBERG: Good morning, Mr.

24 Chairman, Commissioners. Stephen Eckberg, for the Office

1 of Consumer Advocate.

2 CMSR. BELOW: Good morning.

3 CMSR. MORRISON: Good morning.

4 CHAIRMAN GETZ: Good morning.

5 MR. HUNT: Good morning, your Honor.

6 Good morning. My name is Rob Hunt. I'm a Staff attorney  
7 here representing the Staff. Along with me is Kate  
8 Bailey, who is the Director of the Telecommunications  
9 Division; Ed Damon, the Director of the Legal Division;  
10 and Josie Gagne, a utility analyst here.

11 CMSR. BELOW: Good morning.

12 CMSR. MORRISON: Good morning.

13 CHAIRMAN GETZ: Good morning. Okay.

14 Let's start with the positions of the parties. Is it  
15 going to be Mr. Abbott or who's going to proceed?

16 MR. SLOAN: Chairman Getz, I will take a  
17 shot at setting forth Comcast's position. And, thanks so  
18 much. Comcast seeks an interconnection agreement with the  
19 TDS captioned entities, as it is authorized to obtain  
20 under Section 251 of the Federal Communications Act and  
21 this Commission's practices and procedures. Comcast is  
22 seeking an interconnection agreement, just like the one it  
23 has with FairPoint in New Hampshire, and just like the one  
24 it has with TDS affiliates in Vermont, Tennessee, and

1 Indiana. Indeed, the agreement that Comcast seeks here  
2 today is similar to ones that Comcast affiliates operate  
3 in 37 other states around the country, have with more than  
4 150 other incumbent carriers for the purposes of  
5 exchanging traffic. Comcast exchanges millions of minutes  
6 of telecommunications services traffic with these  
7 carriers. It pays access -- It pays and receives access  
8 charges for the termination of toll traffic. It pays  
9 reciprocal compensation, receives reciprocal compensation  
10 for this traffic where appropriate. It pays into the  
11 universal funds, into 911 funds, it pays regulatory  
12 surcharges, and all other charges and complies with all  
13 other obligations of telecommunications carriers where  
14 they are applicable.

15 No entity, no carry, no customer has  
16 ever alleged, in any of the states or to the federal  
17 government, that Comcast does not comply with all of its  
18 obligations, both contractual and legal, with respect to  
19 its status as being a telecommunications carrier. The  
20 suggestion that "Comcast is not a telecommunications  
21 carrier entitled to interconnection" is therefore  
22 unsupported, as the decision of the Vermont Board, just a  
23 couple of days ago, attests. I have copies of that order  
24 with me today, I'd be happy to provide to the

1 Commissioners and to Staff, if that will be helpful.

2           Before I address the merits, however, I  
3 do think that it's worth pausing for a couple of seconds  
4 and acknowledging, at least to ourselves, what's really  
5 going on here, which I think is transparent. Every day  
6 that Comcast is denied an interconnection agreement and  
7 denied the opportunity to serve customers is another day  
8 that an incumbent carrier gets to maintain its monopoly,  
9 maintain its monopoly status and extract monopoly rents  
10 from captive customers. That's what this case is really  
11 about.

12           Comcast is entitled to interconnection,  
13 because it's a telecommunications carrier under federal  
14 law. Federal telecommunications carriers are entitled to  
15 interconnect under Section 251(a). Telecommunications  
16 carriers that also qualify as local exchange carriers are  
17 entitled to certain rights under Section 251(b). Under  
18 Section 3 of the Act, a "telecommunications carrier" means  
19 "any provider of telecommunications services". Something  
20 of a circular definition, but "telecommunications  
21 services" are, in turn, defined as the "offering of  
22 telecommunications to the public for a fee". These are  
23 statutory terms that were enacted in 1996, but they come  
24 from decades old court decisions.

1           There are two requirements for being a  
2           telecommunications carrier under the Act. First, the  
3           carrier must hold itself out to all possible customers of  
4           its services. And, then, second, it has to allow  
5           customers to transmit, transmit information over the  
6           services that it provides. This is the rule from the well  
7           known NARUC, National Association of Regulatory Utilities  
8           Commissioners, cases that I believe both parties,  
9           certainly Comcast, has cited to you in our papers. And,  
10          what the NARUC cases say, and NARUC didn't break new law  
11          in this area, is that "the carrier is defined by its  
12          business relationships with its customers." And, what  
13          this means, as the courts and the regulators that have  
14          enforced these definitions for so many years have held, is  
15          that carriers self-certify themselves as "common  
16          carriers". All that's required, Mike Sloan could become a  
17          common carrier tomorrow, if I declared by willingness to  
18          serve customers who ask me for services that I advertise  
19          my willingness to provide, and, of course, assuming that I  
20          received authorization from the appropriate regulatory  
21          authority to provide those services.

22                        So, how does a carrier do this? How  
23                        does a carrier self-certify? Well, first, as I just said,  
24                        it seeks authority from the regulator, which Comcast has

1 done. Comcast, of course, has authority to serve  
2 customers in New Hampshire in FairPoint territories.  
3 Second, it announces that they -- the availability of  
4 those services. And, how does it do that? Historically,  
5 carriers advertise the availability of their services by  
6 issuing tariffs. That was the most simple way. Tariffs  
7 are not available to competitive carriers in New  
8 Hampshire, but we have service guides, which are posted on  
9 our website, filed with the Commission, and they are the  
10 announcements of our willingness to serve and to offer  
11 certain services upon request.

12           Once a carrier makes those declarations,  
13 a host of rights and responsibilities accrue by virtue of  
14 that self-designated status. And, these aren't -- these  
15 aren't paper formalities. If a common carrier, a  
16 certified telecommunications carrier, refuses to provide  
17 service upon reasonable request, or if its services are  
18 unreasonable or if it discriminates among its customers,  
19 or if it fails to comply with its regulatory obligations,  
20 or if it breaches its contracts, there are a host of  
21 remedies that customers have in pursuing their rights  
22 against that common carrier, that they would not have in  
23 ordinary commercial business relationships. They could  
24 proceed actions -- proceed in actions before regulatory

1 authorities, such as yourselves, in courts, or at the FCC,  
2 a number of bodies are available to enforce the rights and  
3 enforce the responsibilities that are imposed on common  
4 carriers.

5 So, as I said, all that a  
6 telecommunications carrier has to do is provide the  
7 services that it offers upon request. The statute says it  
8 has to "offer services to the public". But what does that  
9 mean? Well, this has also been the subject of an  
10 intensive amount of litigation over many, many years.  
11 And, what it says, under -- for section purposes of  
12 Section 251, the federal requirement, is that "a carrier  
13 offer services indiscriminately", and I'm quoting from the  
14 NARUC case right now, so bear with me, I apologize. That  
15 it "serves indiscriminately the clientele that it is  
16 suited to serve and to whom it offers services." That  
17 means, for example, that, under federal law, a carrier can  
18 be an exclusively wholesale carrier, it can serve  
19 exclusively other carriers, and still qualify for the  
20 rights and responsibilities and obligations under  
21 Section 251. That's the black letter holding of the FCC's  
22 *Time Warner* decision, which I know that you are all  
23 familiar with.

24 All that's required is that a carrier

1 not make individualized decisions about who it will and  
2 will not serve, that's part of the discriminatory -- the  
3 nondiscriminatory service obligation. It doesn't mean,  
4 and again I'm quoting from NARUC, and this is a quote that  
5 comes from our papers, "It does not mean that the  
6 particular services offered must actually be available to  
7 the entire public", as we just discussed. Again, I'm  
8 quoting, "a specialized carrier, whose service is of  
9 possible use to only a fraction of the population may  
10 nonetheless be a common carrier, if that entity holds  
11 itself out to serve all -- indifferently all potential  
12 customers."

13 "Indeed, a service provider may be  
14 deemed a common carrier", and, again, this is a quote from  
15 a different case, "even where" -- "even where it is not  
16 yet actually supplying service to any customers in a  
17 particular area and can be deemed a common carrier even if  
18 it intends only to serve a single customer." And, when we  
19 think about how the Telecommunications Act of 1996  
20 operates, we know that this is the truth, because this  
21 Commission has authorized entities to get into the  
22 business of telecommunications, and it has approved  
23 interconnection agreements between requesting carriers and  
24 incumbents even before there was a single customer in

1 play. And, that's how it would have to be. How would a  
2 new entrant -- if a new entrant had to have customers in  
3 order to qualify as a telecommunications carrier, well,  
4 that would be a Catch-22, that would be insurmountable to  
5 hurdle.

6 So, the law is fairly clear. That  
7 Comcast's telecommunications carrier status can't be  
8 challenged because it has a small customer base or because  
9 its service offerings are particularly narrow or because  
10 they're only attractive to a very small group of potential  
11 customers. The law is clear on these issues. But that's  
12 exactly the position, your Honors, that TDS is taking in  
13 this arbitration. They're saying that Comcast is not a  
14 telecommunications carrier for exactly those reasons that  
15 the law says don't matter.

16 And, so, what are they saying? What are  
17 their particular arguments? And, I'm just going to  
18 briefly address those. First, their principal argument,  
19 they point out that, in April of 2008, Comcast discounted  
20 one of its retail service offerings, its retail service  
21 offerings, which is known as "Comcast Digital Phone", or  
22 "CDP", I hope you don't mind if I use that acronym, "CDP".  
23 TDS's argument is -- appears to be, I'm not quite sure  
24 exactly what the argument is, but it appears to be that

1 Comcast is not a telecommunications carrier because it  
2 discontinued CDP. Well, the obvious problem with that is  
3 that Comcast doesn't have to offer telecommunications  
4 services to qualify for interconnection, because it could  
5 offer new services in the future. That's one problem.

6 The second problem with it is it  
7 overlooks the other services that Comcast continues to  
8 offer. It overlooks the fact that Comcast offers a school  
9 -- a service which we call "School and Libraries", which  
10 is available to potential e-rate customers, and which is a  
11 networking service, and also offers inbound network  
12 calling to customers that request it. It overlooks the  
13 fact that Comcast offers a resold business line offering.  
14 It overlooks the fact that Comcast has an exchange access  
15 service offering, and that it has many exchange access  
16 customers in the state who route Comcast traffic and who  
17 pay Comcast for the privilege of terminating those calls.  
18 And, of course, that this argument overlooks the local  
19 interconnection service offering, which offers a variety  
20 of services to potential customers.

21 So, let's put aside for the moment that  
22 it overlooks services that Comcast -- this TDS argument  
23 overlooks services that Comcast continues to offer, and  
24 focus again on what TDS's argument is. It's kind of like,

1 you know, it's kind of like imagine if McDonald's  
2 discontinued, you know, its Quarter -- its Double Quarter  
3 Pounder, and then Burger King were to run an ad saying  
4 "Well, McDonald's is no longer a restaurant, because it  
5 doesn't offer the Double Quarter Pounder." Well, I think  
6 McDonald's would be flummoxed. They would say "What are  
7 you talking about? Of course, we're still a restaurant.  
8 We've got all these other services -- all these other  
9 offerings. We got Big Macs, we've got, you know, Filet  
10 O'Fish, we've got a lot of stuff that you can choose from.  
11 We don't offer the Double Quarter Pounder anymore."

12 I don't think there's any difference  
13 between that silly argument and the point that TDS is  
14 making here with respect to the discontinuance of CDP.  
15 Comcast remains a carrier after the discontinuance of CDP,  
16 both because it continues to provide services, it offers  
17 new services, and because, even if it didn't offer any of  
18 the services, it would still qualify for interconnection.

19 The next point that TDS makes is they  
20 don't like the terms of the local interconnection service  
21 offering. First, I want to point out an important flaw  
22 with this TDS argument. And, that's that they're not  
23 really entitled to make it in this context, because, one,  
24 this is not a proceeding about the reasonableness about --

1 of our list of local interconnection service offering,  
2 number one. And, secondly, they're not customers of that  
3 service. They have never asked for that service. They  
4 have never asked to enter into negotiations. They have no  
5 real perspective on the fairness of that offering. And,  
6 that's the point. This proceeding is not the forum to  
7 collaterally attack the justness or reasonableness of  
8 Comcast service offerings.

9 The Commission, as we discussed earlier,  
10 the Commission, the FCC, the courts, all have procedures  
11 for adjudicating such complaints. And, if TDS requests  
12 service under that service guide, and they're dissatisfied  
13 in one way or the other, they can avail themselves of the  
14 remedies that those institutions provide. But, let's face  
15 it, TDS's real complaint here is that Comcast serves  
16 interconnected VoIP service customers, providers, through  
17 its local interconnection service. But that's not a  
18 serious complaint either, your Honors. The FCC has  
19 approved carrier partner VoIP service provider  
20 arrangements now in more than half a dozen cases. That  
21 arrangement is legitimate, regardless of how the FCC  
22 ultimately chooses to classify interconnected VoIP  
23 services. That's the holding of the *Time Warner* case.  
24 And, that is the practical reality of how customers are

1 receiving services today. There are 20 million  
2 interconnected VoIP service customers in the United States  
3 today. And, all of them are served through arrangements  
4 just like the one that Comcast uses to provide service to  
5 its interconnected VoIP service providers.

6 Based on the logic of the FCC's *Time*  
7 *Warner* case, commissions and courts in New York, Texas,  
8 Illinois, Pennsylvania, Ohio, and Nebraska, now Vermont,  
9 have issued decisions affirming the rights of competitive  
10 carriers to obtain interconnection in order to serve  
11 interconnected VoIP service providers. We cite some of  
12 those cases in Page 14, Footnote 39, of our papers.

13 Of course, just on Tuesday, Vermont  
14 chimed in as well. And, in a case that is substantively  
15 identical to this one, it involves exactly the same  
16 arguments made by a rural carrier seeking to delay  
17 Comcast's entry into its markets, the Vermont Board  
18 rejected the obstructionist tactics of the carrier in that  
19 case and affirmed Comcast's right to interconnect.

20 That concludes my presentation. I'd be  
21 happy to answer any questions you have.

22 CHAIRMAN GETZ: Thank you. We'll turn  
23 to Mr. Coolbroth.

24 MR. COOLBROTH: Thank you, Mr. Chairman.

1 Comcast paints with a fairly broad brush, and then makes  
2 all the arguments about what it means to be a common  
3 carrier, what the rights are associated with being a  
4 common carrier, but also the burdens associated with being  
5 a common carrier. They don't draw the distinction that  
6 they have made by splitting up, so that they can have one  
7 entity, which gets the benefits of being a common carrier,  
8 and another entity that is entirely -- that provides the  
9 service to the public and is entirely free of all of the  
10 obligations that go with that. They have established  
11 Comcast Phone of New Hampshire, which used to be a  
12 telecommunications carrier, used to offer a  
13 telecommunications service, as Comcast Digital Phone  
14 Service, that they don't offer anymore. They got out of  
15 that business. They have another entity, called "Comcast  
16 IP phone", which provides what they claim is an  
17 information service, an interconnected VoIP service,  
18 entirely free from any jurisdiction of this Commission.  
19 What's left in Comcast Phone is a shell, that claims to  
20 offer four very limited, and they admit, services that are  
21 limited in terms of the entities that can avail themselves  
22 of those services. We say that those are not available to  
23 the public at all. We say that those are not services  
24 eligible to treat this entity as a common carrier.

1           They have hundreds or thousands, perhaps  
2 millions of retail phone customers. Those customers are  
3 not treated as -- or, that business is not treated as the  
4 common carrier business in their mind. What is treated as  
5 their common carrier business is their affiliate, Comcast  
6 Phone, which provides an interconnection service to its  
7 affiliate, and from what we can see, nobody else could  
8 use, and other services that we have raised the questions  
9 about in our papers, and that I won't repeat here.

10           We say that there are a number of  
11 factual issues associated with this, with this dichotomy  
12 that they have drawn, the creation that they have made of  
13 this intervening entity that they say is a common carrier,  
14 and we say is not. And, we'd like to address those issues  
15 through discovery and through an evidentiary hearing.

16           Based on our view of the business  
17 conducted by this company, it's not a telecommunications  
18 carrier, it's not eligible for interconnection under the  
19 Communications Act, and our response asks that the  
20 arbitration be dismissed on that basis.

21           We do believe that, in terms of  
22 procedurally before the Commission, it is an issue that  
23 the Commission has jurisdiction to hear, even if it is  
24 not, in our view, under 252, it's under the Commission's

1 general jurisdiction, that the Commission has jurisdiction  
2 to hear the question. That it requires a factual  
3 analysis. We filed some discovery requests with our  
4 response. We have gotten some answers. We seek more  
5 answers, and are prepared to work with the Staff in a  
6 technical session to develop a procedural schedule. For  
7 instance, we think that a round of follow-ups before  
8 proceeding specifically to dispute resolution probably  
9 would make some sense, and we will recommend that. We  
10 have had preliminary discussions with the folks from  
11 Comcast about scheduling, and have some ideas from it to  
12 present in the technical session.

13 CHAIRMAN GETZ: You said you "have had  
14 conversations", you "have not had"?

15 MR. COOLBROTH: We have.

16 CHAIRMAN GETZ: Okay.

17 MR. COOLBROTH: We have. And, we have  
18 some ideas about scheduling that we would like to work  
19 with Staff on in the technical session. In essence, I'm  
20 not going to present to the Commission this morning our  
21 response and our testimony, but we -- I think we have laid  
22 out our position adequately there. Just ask the  
23 Commission to not get caught up in this broad brush single  
24 word "Comcast", because, if it was a single Comcast entity

1 providing retail service to telephone customers, the  
2 regulatory questions that they are presented might be  
3 somewhat different. They have split it up into this  
4 entity that they claim to be entirely free from  
5 regulation, and this other captive entity that is in the  
6 middle that they claim is a telecommunications carrier  
7 that really just doesn't have any telecommunications  
8 business from what we can see, and ask for that entity to  
9 have the benefits of being a telecommunications carrier.  
10 That's our issue with this in a nutshell. And, we are  
11 prepared to work through on a schedule.

12 CHAIRMAN GETZ: Okay. Thank you. Mr.  
13 Eckberg.

14 MR. ECKBERG: Thank you, Mr. Chairman.  
15 Generally speaking, the Office of Consumer Advocate  
16 supports the entry of competitive telecommunications  
17 providers in service territories of incumbent providers,  
18 particularly those that seek to serve residential  
19 customers. The OCA takes no specific position on the  
20 issues today. We look forward to working through the  
21 docket with the parties to achieve the best results for  
22 residential customers.

23 CHAIRMAN GETZ: Thank you. Mr. Hunt.

24 MR. HUNT: Thank you. Briefly, Staff's

1 position is that Comcast is a telecommunications carrier.  
2 I won't get into the details of that right now, but that  
3 is the preliminary position. As far as the mention of  
4 whether there's a factual dispute, it does appear that  
5 there's probably not a factual dispute with regard to  
6 relevant facts. So, our position is also that a briefing  
7 by the parties and a declaratory ruling by the Commission  
8 would be the most effective method for resolving the  
9 matter.

10 CHAIRMAN GETZ: Thank you. We'll give  
11 the Petitioner a last chance. Is there -- I'm interested  
12 specifically if you have any points to make about  
13 procedures?

14 MR. SLOAN: Well, first, I would like to  
15 make one substantive point, and then I could get to  
16 procedures, if you don't mind. I would say that  
17 substantively that Comcast does not take the position,  
18 Comcast, the umbrella entity, which has operating  
19 affiliates underneath it, recognizes that the  
20 interconnected VoIP service that it offers to customers on  
21 a retail basis is not unregulated, it's never maintained  
22 that it's an unregulated service. It's subject to a host  
23 of obligations imposed on it by the Federal Communications  
24 Commission, pays Universal Service, is required to

1 participate in all state 911 programs, it has CPNI,  
2 Customer Protection Network Information, obligations, a  
3 most of other requirements. There's no contention by  
4 Comcast Phone IP, which is the entity that provides that  
5 service, that that service is unregulated, number one.

6           Procedurally, I think that -- I think we  
7 largely agree with Staff on this. We don't think that  
8 there are a lot of materially disputed issues in the case.  
9 We note that the Commission in Michigan has just issued,  
10 in an identical arbitration between Comcast and a TDS  
11 affiliate there, has issued a recommended decision based  
12 entirely on the papers that are almost identical to the  
13 papers before this Commission. So, I think -- I think the  
14 Commission actually could proceed to ruling, even without  
15 briefing, if it wanted to.

16           To the extent that there was a need for  
17 further factual development, Comcast agrees that there's  
18 an opportunity to narrow some of the factual disputes.  
19 And, relatedly, Comcast and TDS entities in other states  
20 are seeking to develop a stipulated statement of facts  
21 that both parties can agree to. And, that's proceeding on  
22 a separate track in a case separately from this one. I'm  
23 optimistic that that could be done in a couple of weeks  
24 and we might be able to present it to this Commission, and

1 that no further discovery would be necessary. But I think  
2 we could take that up -- we could take that up later or we  
3 could explore it further now, depending on how you'd like  
4 to discuss it.

5 CHAIRMAN GETZ: Mr. Coolbroth, did you  
6 want to respond on procedures?

7 MR. COOLBROTH: That's being negotiated,  
8 Mr. Chairman, in the State of Washington. I'm somewhat  
9 hesitant to usurp the negotiations that are going on there  
10 between Washington counsel I guess and Mr. Sloan, who is  
11 also handling the Washington proceeding. It may well be  
12 that that can progress. I don't know the answer to that.  
13 You know, just -- you know, the two drafts at the moment  
14 look quite different, but, you know, how one is going to  
15 close the gap, I guess I can't anticipate.

16 CHAIRMAN GETZ: Well, is there anything  
17 else that we need to address this morning, any other  
18 comment from any of the parties?

19 (No verbal response)

20 CHAIRMAN GETZ: Okay. Hearing nothing,  
21 then we will close the prehearing conference, await a  
22 recommendation from Ms. Ross, if there's discovery  
23 disputes that need to be resolved by us, and await a  
24 recommendation on procedures. So, thank you very much.

1 We'll close the prehearing conference.

2 (Whereupon the prehearing conference  
3 ended at 10:36 a.m. and the Staff and  
4 Parties conducted a technical session  
5 thereafter.)

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