

THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE COMPLAINT FILED BY
WWC LICENSE, LLC, AGAINST GOLDEN WEST
TELECOMMUNICATIONS COOPERATIVE, INC.,
VIVIAN TELEPHONE COMPANY, SIOUX VALLEY
TELEPHONE COMPANY, ARMOUR INDEPENDENT
TELEPHONE COMPANY, BRIDGEWATER CANISTOTA
INDEPENDENT TELEPHONE COMPANY, AND
KADOKA TELEPHONE COMPANY REGARDING
INTERCARRIER BILLINGS

ORIGINAL

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Transcript of Proceedings
August 19, 2005

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BEFORE THE PUBLIC UTILITIES COMMISSION,
GARY HANSON, CHAIRMAN
BOB SAHR, VICE CHAIRMAN
DUSTY JOHNSON, COMMISSIONER

COMMISSION STAFF

Rolayne Ailts Wiest
John Smith
Karen Cremer
Sara Greff
Greg Rislov
Harlan Best
Keith Senger
Dave Jacobson
Michele Farris
Tina Douglas
Heather Forney
Pam Bonrud

APPEARANCES

Talbot Wieczorek (by telephone), WWC License, LLC
Darla Pollman Rogers (by telephone), Golden West
Robert Riter, Golden West

Reported By Cheri McComsey Wittler, RPR, CRR

PRECISION REPORTING
L I M I T E D

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1 TRANSCRIPT OF PROCEEDINGS, held in the
2 above-entitled matter, at the South Dakota State
3 Capitol, Room 412, 500 East Capitol Avenue, Pierre,
4 South Dakota, on the 19th day of August 2005,
5 commencing at 9 o'clock a.m.
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1 VICE CHAIRMAN SAHR: It is Friday,
2 August 19, 2005 at approximately 9 a.m. We are
3 here at the State Capitol Building, Room 412. This
4 is the time and place for the South Dakota Public
5 Utilities Commission Ad Hoc Meeting on CT05-001.
6 My name is Bob Sahr. I'm a Commissioner for
7 the South Dakota Public Utilities Commission. And
8 joining me telephonically are Commissioners Dusty
9 Johnson and Gary Hanson, the Chairman of the Public
10 Utilities Commission.
11 We have a couple of things slated here. We
12 have the Commission hearing oral arguments on all
13 of the pending motions, including Western
14 Wireless's Motion to Bifurcate the Complaint and
15 Counterclaim, and at this point in time I am going
16 to turn it over to John Smith to handle the
17 procedural aspects.
18 MR. SMITH: Okay. As you all know,
19 this has been kind of a rush here to get ready for
20 this, and I'm going to have to exercise some degree
21 of liberality, I guess, in handling this because of
22 the number of items.
23 And maybe I'll start with this, with either
24 Bob Riter who's in the room, or Ms. Rogers or
25 Mr. Wieczorek. We have -- I guess what I would

1 propose is that Golden West begin because you were
2 the first movants here and then that we follow up
3 with Mr. Wieczorek's responses on those Motions and
4 then also present its own Motion at that time.
5 Is that a satisfactory way to go about this?
6 MS. ROGERS: That's satisfactory
7 with Golden West.
8 MR. SMITH: Talbot?
9 MR. WIECZOREK: That's fine by me.
10 MR. SMITH: And I'll run through
11 what I think we have pending here, and maybe you
12 can correct me if we're misunderstanding all of
13 what we're dealing with here today.
14 First we have Golden West's Motion to
15 Strike -- or Dismiss, which pertains to
16 Paragraph 13 of the Original Complaint. Then we
17 have Golden West's Motion to Prohibit Western
18 Wireless from Contesting the Accuracy of Data
19 Provided, and Motion to Strike Late-filed Claim,
20 Golden West's Motion to Compel, Golden West's
21 Motion to Permit Additional Discovery, and
22 Golden West's Motion to Postpone Hearing.
23 From Western Wireless we have one Motion,
24 which is the Motion to Bifurcate.
25 Have I captured everything we're talking about

1 today?
 2 MS. ROGERS: Yes, Mr. Smith. I
 3 believe you have.
 4 MR. WIECZOREK: This is Talbot. I
 5 think your reference to the Complaint should be
 6 Paragraph 14 on their Motion to Strike, just as a
 7 clarification.
 8 MR. SMITH: Is that what it is? Is
 9 it -- is that what it is, Darla? Is it
 10 Paragraph 14?
 11 MS. ROGERS: I need to look at it.
 12 VICE CHAIRMAN SAHR: I'm trying to
 13 pull it up here.
 14 MR. SMITH: I mean, we know what
 15 it's about. The Motion says 13, but we might as
 16 well know what we're really talking about.
 17 COMMISSIONER JOHNSON: This is
 18 Commissioner Johnson. Paragraph 13 addresses
 19 affiliated companies are liable to Western Wireless
 20 for twice the amount of damages. Paragraph 14 does
 21 make an allusion -- does note statutory authority
 22 within --
 23 (Discussion off the record)
 24 COMMISSIONER JOHNSON: Entitling WW
 25 to double its damages as provided for under

1 The statute talks about a court being able to
 2 award these damages on appeal. After reviewing the
 3 statute and the Motion, I agree that it talks about
 4 court and suit, but it would appear that -- I can
 5 potentially preserve this question for appeal, but
 6 it does appear upon my review that it's not
 7 really -- the Commission is not deemed a court, as
 8 I can interpret it.
 9 So we'd be willing with that clarification
 10 that if the Commission would adopt the -- the
 11 Commission could grant the Order, reserving that
 12 should this matter go on appeal that the Appellate
 13 Court may have some jurisdiction to review whether
 14 additional damages are available.
 15 MR. SMITH: Does Golden West have a
 16 response to Mr. Wieczorek's offer?
 17 MR. RITER: Darla, do you want me to
 18 respond?
 19 MS. ROGERS: Yes, you can, if you
 20 want.
 21 MR. RITER: I don't agree with that.
 22 I mean, either the Commission has the authority or
 23 doesn't have the authority, or there's nothing
 24 necessarily that says because Mr. Wieczorek's
 25 client would like that to be preserved for the

1 SDCL 49-13-14.1.
 2 MR. SMITH: So either Ms. Rogers or
 3 Mr. Riter, ought your Motion reference both of
 4 those paragraphs?
 5 MS. ROGERS: Yes. We would amend
 6 our Motion.
 7 MR. SMITH: Does somebody have a dog
 8 in the room?
 9 MR. WIECZOREK: That was me
 10 objecting.
 11 MR. SMITH: I think that wasn't
 12 scurrilous material.
 13 MS. ROGERS: We would amend our
 14 Motion to include Paragraph 13 and 14, the intent
 15 of the Motion to Strike any claim for double
 16 damages and attorneys fees so we would amend it to
 17 include Paragraph 14.
 18 MR. SMITH: Is there an objection to
 19 the Motion to Amend?
 20 MR. WIECZOREK: This is Talbot. I
 21 don't have an objection. And, in fact, given how
 22 everybody's got on the line for this, I'll tell you
 23 I've looked at this, and on behalf of -- I have
 24 looked back at the statute. I've done some
 25 additional outside research on it.

1 court if this is on appeal to somehow consider that
 2 is not with the Motion, as the Motion is just to
 3 dismiss those claims. I think it ought to be
 4 granted. I don't think there's the authority under
 5 statute.
 6 MR. SMITH: Does counsel for staff
 7 want to weigh in on this?
 8 MS. AILTS WIEST: Staff's position
 9 is that the Motion shouldn't be granted. I don't
 10 think we do have any authority under that statute.
 11 And I'm not sure we need to take any action if it
 12 goes on appeal -- if it goes on appeal, I think
 13 Mr. Wieczorek can make that argument there.
 14 MR. SMITH: I think what you're
 15 wanting to say, Tal, is you don't really want to
 16 argue about it today, but you're not conceding the
 17 point. Is that a fair --
 18 MR. WIECZOREK: Yeah. I think I can
 19 raise it on appeal based on some of the language in
 20 the statute, but I'm not going to argue about it
 21 today.
 22 VICE CHAIRMAN SAHR: This is
 23 Commissioner Sahr in Pierre. I would move that we
 24 dismiss that particular -- I want to get the right
 25 terminology. Paragraphs 13 and 14 of the

1 Complaint.
 2 MR. SMITH: And I might also -- may
 3 we want to include in the Motion the associated
 4 prayer for relief?
 5 COMMISSIONER JOHNSON: What was
 6 that, John?
 7 MR. SMITH: The accompanying prayer
 8 for relief.
 9 COMMISSIONER JOHNSON: Oh, yeah.
 10 VICE CHAIRMAN SAHR: I will
 11 incorporate that into my Motion.
 12 MR. SMITH: Commissioners, there's a
 13 Motion.
 14 COMMISSIONER JOHNSON: I'm just
 15 quickly reviewing everything in Paragraphs 13 and
 16 14 to make sure that --
 17 CHAIRMAN HANSON: Would you repeat
 18 the Motion? I'm reading it as well.
 19 VICE CHAIRMAN SAHR: Well, and I'm
 20 going to try to incorporate my thoughts plus John's
 21 addition, but the Motion was to dismiss Paragraphs
 22 13 and 14 of the Complaint and the associated
 23 prayers for relief.
 24 CHAIRMAN HANSON: I'd second that.
 25 COMMISSIONER JOHNSON: And I would

1 obligations of those parties under that
 2 Interconnection Agreement.
 3 An important part of the agreement was the
 4 inter MTA factor. And we've set out in our Motions
 5 language from the agreement that reflected how the
 6 parties at that time agreed they would handle the
 7 decision on what the factor should be.
 8 This is a charge owing from Western Wireless
 9 to Golden West. So it's obviously a very important
 10 element for us, for our client as part of our
 11 Counterclaim. And under that the parties agreed
 12 that there was a baseline of 3 percent, and then
 13 the parties said that each of the parties to this
 14 agreement is obligated to proceed in good faith
 15 toward the development of a method of traffic study
 16 that will provide a reasonable measurement of
 17 terminated inter MTA traffic.
 18 Well, of course, we began this effort shortly
 19 after that agreement. Larry Thompson, who's with
 20 Vantage Point on our behalf started making efforts
 21 to contact Golden West and to negotiate a method of
 22 determining what the measurement should be and how
 23 it should be utilized and what type of traffic
 24 study could be utilized.
 25 Mr. Thompson after he contacted Golden West

1 concur. Commissioner Johnson concurring.
 2 MR. SMITH: With that, either
 3 Mr. Riter or Ms. Rogers, would you please proceed
 4 with your other five Motions.
 5 MS. ROGERS: Yes. Commissioners, my
 6 name is Darla Pollman Rogers and our law firm
 7 represents Golden West Companies in this case and
 8 for the purposes of the argument this morning and
 9 since Mr. Riter is there in person, as you know, I
 10 am going to turn this over to him to present oral
 11 arguments on the balance of our Motion.
 12 MR. SMITH: Please proceed.
 13 MR. RITER: Thank you. And I would
 14 ask that we reserve a moment or two when I'm
 15 completed if Ms. Rogers has comments relative to
 16 issues that I've neglected to raise, I would
 17 appreciate that, having that opportunity.
 18 MR. SMITH: That's fine.
 19 MR. RITER: Thank you. Good
 20 morning, Commissioner Sahr and Commissioners Hanson
 21 and Johnson who are on the telephone. The Motions
 22 are very straight forward. What this litigation
 23 involves or what this proceeding involves is an
 24 Interconnection Agreement between the parties and
 25 the PUC's interpretation of the rights and

1 Companies -- or, excuse me, after he contacted
 2 Western Wireless companies they acknowledged at
 3 that time that when they put the materials together
 4 that the calls that were routed for termination via
 5 an interexchange carrier would be excluded. And
 6 this was last fall, and there was no question that
 7 the information and what Western Wireless was going
 8 to try to put together was going to exclude these
 9 calls that were terminated via an IXC.
 10 After Golden West, or more particularly
 11 Mr. Thompson, received a call detail records from
 12 Western Wireless which they put together, we
 13 contacted -- we confirmed with Western Wireless
 14 that those interexchange carrier calls had been
 15 excluded. In other words, they were terminated by
 16 an IXC, were excluded. And they confirmed that.
 17 And Western Wireless when they confirmed this
 18 information the results that we got from them were
 19 similar in nature to the results that we tried to
 20 put together on our own.
 21 So we had three different situations. We had
 22 it last year when Western Wireless put together the
 23 procedure they were going to employ to utilize on
 24 the traffic study, as indicated in our Motion they
 25 said calls originating on Western's network and

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1 routed for termination via interexchange carriers
 2 will be excluded. Number one, they said it's
 3 excluded.
 4 The second time we contact them, Thompson's in
 5 contact with representatives from Western Wireless,
 6 they say this information is here, it's excluded.
 7 And then we get the Interrogatory Answers from
 8 Western Wireless, and I think it was June 30.
 9 We've had no -- prior to this time we've had no
 10 claims or suggestions that these were included.
 11 And when they gave us the Interrogatory Answers on
 12 June 30 again they stated that this was excluding
 13 traffic terminating via an interexchange carrier.
 14 So we've had at least three confirmations of
 15 this. And our expert, Mr. Thompson, is preparing
 16 his report, preparing his computations in a similar
 17 nature, frankly, that Golden -- or the Western
 18 Wireless expert had been preparing his.
 19 Then on August 5 we get an Interrogatory
 20 Answer that says, wait a second, the information we
 21 provided previously is not accurate and you can't
 22 rely upon that. And on I think it's the 9th or the
 23 10th there's additional issues raised by
 24 Mr. Wiczorek in his letter. So, of course, this
 25 is a cause of great consternation to us. Because

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1 preparing our Counterclaim we've relied upon this
 2 information which they've represented in
 3 Interrogatory Answers and in correspondence that
 4 was accurate and that we could rely upon it.
 5 And the concept was both of the parties were
 6 working in good faith toward putting together this
 7 traffic study. And we are relying upon the call
 8 detail records of Western Wireless to assist us in
 9 this regard. And we -- they agreed to do it, and
 10 they agreed to provide this information to us and,
 11 of course, knew we were going to rely upon it.
 12 And then this month we suddenly learn from
 13 Western Wireless that its study that it did is
 14 flawed and that it included calls terminated by the
 15 IXC. And from a legal standpoint what they're
 16 almost doing is impeaching their own evidence. I
 17 mean, suddenly they're saying this is all true and
 18 now, well, we've suddenly decided that there's
 19 problems with what we've provided to you, you can't
 20 rely upon it, and if you rely upon it, then, in
 21 fact, what you're doing is you're trying to make --
 22 you're double-dipping and you're trying to make
 23 claim for something that you're not entitled to if
 24 you rely upon the information that we've provided.
 25 So, you know, under the agreement it was

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1 Western Wireless's obligation to help develop the
 2 study. They ultimately did so after they had
 3 earlier confirmed that it would exclude calls
 4 terminated by IXCs. When they provided it to
 5 Golden West their representative had indicated it
 6 excluded those calls. The information was
 7 consistent with our analysis. It was something we
 8 could use for our other company. The Interrogatory
 9 Answer, the first anyway, also excluded it.
 10 Our expert computed the moneys that we were
 11 entitled to based upon that. And it seems to us,
 12 as I indicated, that in a way we're almost kind of
 13 getting whipsawed here. Here it is, you can use
 14 it, and after we rely upon it to build our case
 15 they say now it contains significant flaws, their
 16 own data contains significant flaws.
 17 The discovery deadline is passed. We've -- at
 18 least at this point in time for the hearing on the
 19 date it's scheduled, if we proceeded to trial on
 20 this, they -- it would appear that the data they
 21 provided to us -- at least they'd make the argument
 22 that we can't use that data, even though they were
 23 in good faith required to develop it. Or if we did
 24 use it, then they'd fault us for using it.
 25 So we're in a box, and through no fault of our

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1 own, through nothing we've done other than relying
 2 in good faith upon the information that they've put
 3 together.
 4 We'd argue that, you know, what are the
 5 alternatives for this Commission and under such
 6 circumstances? Well, there is an alternative, and
 7 the first alternative is more harsh than other
 8 alternatives. And one alternative that's available
 9 and at least it's available under South Dakota
 10 Statute 15-6-37(b), small b, says if the parties
 11 fail to follow a discovery order, that the court in
 12 that case may take the facts as otherwise
 13 established, in other words, just say to Western
 14 Wireless you can't now come in and claim that the
 15 information you put together and you developed
 16 can't be utilized by the other side against you
 17 because you're the ones that put it together. It's
 18 almost like an estoppel argument.
 19 The second one is it would refuse to allow
 20 Western Wireless to use or support their defense to
 21 our Counterclaim with objections claiming that
 22 somehow this computation is faulty because it
 23 includes rather than excludes these calls
 24 terminated with IXCs. That's the first alternative
 25 that's before you. That's what we've asked for.

17

1 We've also indicated that another alternative
 2 for you would be to continue the hearing on this
 3 matter. Frankly, that's not preferred by us. I've
 4 been working with Ms. Rogers, Ms. Northrup, trying
 5 to get ready for this matter. Our client's anxious
 6 to get this resolved as you might imagine. But how
 7 can we go forward -- how should this matter go
 8 forward by the Commission interpreting all of the
 9 issues involved in this agreement when there's
 10 inaccurate data that was created by Western
 11 Wireless or at least provided by it and suddenly we
 12 are in a position that we must try to go forward if
 13 we had to in a week or 10 days with information
 14 that they're going to come in and claim isn't
 15 accurate. I mean, it just -- it puts us in a
 16 Catch-22 certainly at a very minimum.

17 So the first part of my Motion -- and I don't
 18 know, Mr. Smith, how you want to handle it. The
 19 first part of the Motion deals with either granting
 20 the what I call the Rule 37 kind of sanctions or
 21 alternatively granting a continuance.

22 I can proceed with the other Motions if you'd
 23 like or if you'd rather just stop. Whatever your
 24 preference is.

25 MR. SMITH: I believe that is -- I

18

1 mean, I'm assuming that you've dealt now with all
 2 of the Motions. The only one I don't think you
 3 addressed that I see is the Motion to Strike
 4 Late-filed Claim. That's a little different kettle
 5 of fish from the others but --

6 MR. RITER: Well, I can -- why don't
 7 I just proceed with the rest of them because my
 8 comments are, frankly, brief on that, and then I'd
 9 just ask Ms. Rogers if she had any additional
 10 comments.

11 But the other issue involves our request for
 12 additional information from Western Wireless. And
 13 we would suggest that when there's a duty required
 14 under the agreement they have some responsibility
 15 to either provide the information they had agreed
 16 to provide or else an obligation to provide that
 17 raw data to us so we can put the information
 18 together.

19 And if the Commission orders that they provide
 20 that information, then we'd ask for there to be
 21 some date certain, and we'd ask that it be affirmed
 22 that it is accurate and that we can rely upon it or
 23 alternatively if Western Wireless says they can't
 24 determine what they need to determine from their
 25 data, then provide us the raw data.

19

1 And we've talked to Mr. Thompson who's on the
 2 phone today. If we had that raw data, we could at
 3 least work toward coming up with information that
 4 ultimately we could present to the Commission in
 5 support of our Counterclaim. And, of course, part
 6 of that issue would be that we may well need
 7 additional time, not only if the matter was
 8 continued -- if the matter was continued, we would
 9 need additional time to get that information from
 10 Western Wireless or to -- either by way of raw data
 11 or otherwise and then have our opportunity to
 12 analyze it and plug it in with what we have
 13 available to ourselves.

14 And then they've asserted a new claim or
 15 attempted to anyway. The statute in
 16 SDCL 15-6-15(a) and (b) speaks of the fact that
 17 amendments can be granted from time to time, but
 18 when amendments are granted that a continuance is
 19 reasonable to allow the party responding to this
 20 new claim to meet that new evidence. And I would
 21 cite just generally 56 A.L.R. 2d 650 and then
 22 15-6-15(b) where the statute specifically talks
 23 about a continuance in that section, but that
 24 treatise that I cited also talks about it as being
 25 a proper response to newly pled issues if that is

20

1 what Western Wireless wants to do.

2 You know, it seems that lacking this -- and I
 3 guess it probably goes more to their Motion for
 4 bifurcation. I mean, it seems more reasonable to
 5 put the issues together that need to be together
 6 rather than having one issue resolved at one
 7 hearing or all of the Commission and the staff has
 8 to be present then another issue resolved at a
 9 second hearing when the same thing is true and then
 10 the third hearing on this newly-raised issue from
 11 Western Wireless would require a third hearing.

12 So it seems to us the judicial economies for
 13 this Commission even more so than for the parties
 14 and the expense would indicate that there ought to
 15 be a continuance, and that continuance ought to be
 16 involving issues before the Commission.

17 Thank you.

18 MR. SMITH: Do the Commissioners
 19 wish to go through the -- all of the attorneys'
 20 arguments relative to the Motions first before
 21 asking questions, or do you want to do that as we
 22 go along?

23 VICE CHAIRMAN SAHR: My inclination
 24 would be to hear from the attorneys on the
 25 arguments and then come back to some of the

21

1 questions.

2 CHAIRMAN HANSON: This is Gary. I'd

3 prefer to hear from both sides before asking

4 questions.

5 COMMISSIONER JOHNSON: That's fine

6 by me as well.

7 MR. SMITH: Okay. With that,

8 Mr. Wieczorek, would you like to proceed?

9 MR. WIECZOREK: Yes, I would. First

10 of all, the -- I appreciate the Commission holding

11 this, and I apologize that I -- it took me until

12 yesterday about 1 o'clock your time to get you a

13 response to the Motion filed on Monday. But I

14 didn't get the exhibits until Wednesday that

15 accompanied the Motion so I didn't want to try to

16 respond before I had the exhibits in front of me.

17 I don't want to repeat everything I put in my

18 response but simply put it at this. You know, this

19 argument that we behaved in bad faith is very

20 factually intensive. And I think when all the

21 testimony is taken you'll see how complicated this

22 was and how hard Western Wireless worked on the

23 inter MTA stuff to try to get it figured out.

24 What the Interconnection Agreement calls for

25 is a default rate and then for the sides to get

22

1 together and in good faith try to work out a

2 methodology to determine inter MTA. Now what has

3 happened in the history of this is that they --

4 Western Wireless sat down, tried to work with

5 Larry Thompson. Now Larry Thompson needs to be

6 remembered wasn't representing just Golden West

7 Companies. There was a discussion where he was

8 representing a majority of the ILECs in the state.

9 Western Wireless's position was this was very

10 expensive, the methodology we were coming up, we

11 were starting to come up, and we don't want to do

12 it for every company because we don't want to spend

13 this kind of money to try to figure this

14 information out. This is not something that you

15 can simply go to the switch and dump the data and

16 have your answer. The fields -- the necessary

17 information don't exist.

18 So what they agreed to with a short time

19 period to collect data going to Golden West

20 Companies -- well, actually just to Golden West and

21 four other companies that aren't part of this suit.

22 And Western Wireless's position was from those

23 companies you would have a sampling to negotiate

24 everybody else. So but what that took on Western

25 Wireless's part was coordination across a number of

23

1 departments to have in place a system to collect

2 that information over a two-week period last

3 October.

4 And then it took several months of trying to

5 clean that information up. Now what we're saying

6 about the CDR information they got and if you look

7 at Mike Wilson's Affidavit, he says he told --

8 after the test was over -- we agree we're supposed

9 to try to clear out the IXC traffic. But what he

10 told Thompson after the test was it was suspect.

11 We think they got most of the calls, but they

12 couldn't get them all because some of the long

13 distance carriers they went to either didn't have

14 the information anymore because they dumped it

15 so -- they turned that information around so

16 quickly they don't keep the call information that

17 long, or they couldn't get the information to match

18 up in the computers so they couldn't -- they

19 couldn't eliminate calls.

20 I mean, we're talking, I believe, just the

21 SS7 data over a two-week period that Golden West

22 produced was in excess of 68,000 calls just to

23 Golden West. I mean, this is not information that,

24 you know, is like a spreadsheet that you can just

25 punch in a couple of numbers and it coughs up. So

24

1 as I said in my response is, look, we don't think

2 these are the best tests. We think there's

3 problems with these tests, and it needs to be

4 accounted for.

5 Is Western Wireless saying that you can't

6 submit this information, you can't argue about how

7 big of a factor it is? I think that's what

8 testimony is for, is to discuss the basis of the

9 test and how it would impact the final inter MTA

10 factor.

11 This argument that -- you know, they can make

12 these arguments, but, like I said, as Mike Wilson

13 said in his Affidavit, he told Larry Thompson they

14 thought they got most of the calls, most of the

15 long distance calls but it was suspect because they

16 couldn't get it all.

17 Now I don't see it as such a big surprise.

18 We're not saying given the position and given what

19 you have to go through, nobody's going to have

20 perfect information in this thing. So from that

21 standpoint, I think we should be allowed to testify

22 to it. I think there should be questions as to how

23 big of a factor or how big of an impact they

24 believe that to be and give you some range of idea.

25 The other concern I've got on how this is

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1 being postured, and this deals kind of with the
 2 Motion to Compel, is it's being postured as if
 3 Western Wireless agreed to some perfect methodology
 4 for every company and we've agreed to do it for
 5 every company. And, like I said, it's incredibly
 6 expensive, incredibly difficult, and incredibly
 7 time-consuming to get all of this information.
 8 We collected it from five representative
 9 companies to try to negotiate the remaining
 10 companies from there. What they're doing on their
 11 Motion to Compel is trying to back you in to
 12 forcing us to do this massive test. And I'm a
 13 little frustrated with the Motion to Compel because
 14 they don't really cite to an Interrogatory where
 15 they're trying to compel this information.
 16 You will note that on June 30 they asked for
 17 Groff CDR information -- actually they asked for
 18 this earlier, and our response on June 30 was,
 19 look, we can't provide that information, that's
 20 overly burdensome and unduly necessary because they
 21 asked for like 16 months of that data. And, as I
 22 represented, the Golden West data alone for two
 23 weeks was over 65,000 entries. Western
 24 Wireless -- just so you understand, when I talk
 25 about 65,000 entries I believe that's only the

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1 calls delivered that would be subject to inter MTA.
 2 It's not all traffic exchange. That's with the
 3 information slightly purged.
 4 So the only Interrogatory they have out there
 5 asks for a 16-month period. They know we don't
 6 keep that information in that long. And now I'm
 7 facing a Motion to Compel where I don't even know
 8 exactly what they're asking for. So I don't see
 9 how their Motion to Compel can be even granted.
 10 And, you know, I get a little frustrated with
 11 this argument that it's a last second deal, it's
 12 Western Wireless's fault, when I told them I was
 13 going to give them that information on June 30.
 14 Why didn't they come to us then? And now here we
 15 are 10 days from the hearing and it's an emergency.
 16 You know, I think you do have alternatives on
 17 that CDR information, and the alternatives is to
 18 have -- I'm going to have Ron Williams and
 19 Mike Wilson there to ask them how it was done and
 20 how much of the IXC traffic they thought they
 21 missed.
 22 The hype made over my August 9 letter was a
 23 question where it's our position that if there's
 24 some IXC traffic taken from the numbers at face
 25 value, it could be a double-dipping aspect and so

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1 we're going to provide testimony about -- to the
 2 extent we think that that information couldn't be
 3 purged or cleaned up. I mean, I was just doing --
 4 that letter was written, so the Commission
 5 understands, to try to clarify some issues for this
 6 hearing, and it was something discussed by counsel,
 7 including Commission counsel, that I'd write a
 8 letter trying to clarify some of these issues so we
 9 all could get these issues clarified and know
 10 exactly what we're trying in 10 days.
 11 I think the alternative is you hold the
 12 hearing and you take the testimony then.
 13 As to the statute cited by Mr. Riter, I
 14 believe those statutes deal with if I'm violating a
 15 discovery order where you've told me to produce
 16 something I haven't. Well, that's not the
 17 situation, and if we would have wanted to have
 18 dealt with this CDR -- protection at least of raw
 19 data and CDR information, we could have dealt with
 20 that last month because they knew on June 30 our
 21 position on going through and doing these massive
 22 data dumps and putting Western Wireless personnel
 23 through hours -- hundreds of hours of trying to
 24 clean the data up.
 25 I want to talk about the raw dumps for a

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1 while. Mike Wilson's Affidavit that I supplied is
 2 fairly clear saying, look, you know, we don't
 3 collect the kind of data that you can make an inter
 4 MTA calculation with. That's why you had to come
 5 up with the methodology. You know, I don't know
 6 and because of the short time I don't know how long
 7 it will take to do a raw dump. I don't know if
 8 they want it for 16 months or whether they want --
 9 and I don't believe we have it for 16 months, or
 10 whether they want it for a two-week sample period.
 11 But it's going to cost something, and it's
 12 going -- it could be fairly expensive depending on
 13 how much and what they want. And should this
 14 Commission continue the hearing and order raw data
 15 dump, then I think that has to be with the
 16 contingency that we're entitled to collect our
 17 costs to go through and get that information for
 18 them because it's something not done in the regular
 19 course of business. It's going to take -- even if
 20 it's a two-week period, it's going to take
 21 substantial amounts of time of some personnel of
 22 Western Wireless.
 23 The transiting claim appears to be this new --
 24 is the new claim that seems to be bouncing around
 25 out there. And if you read their Motion, it

1 appears the first time this comes up is just last
 2 week or the week before. Well, the transiting
 3 issue, as soon as -- what happens on these is
 4 because of the Counterclaim, we went back and did
 5 an analysis of all the bills. Golden West Company
 6 alone, just Golden West, not its affiliated
 7 companies, was charging transiting. It's our
 8 position under the interconnection agreement they
 9 weren't entitled to do that and there is no
 10 agreement to pay transiting.

11 So I in a letter to Ms. Rogers on July 15 and
 12 to staff raise the issue and say, you know, because
 13 we're talking about the bills, this is -- this
 14 issue is out there. It's interesting in my letter
 15 which I attached as an exhibit to my response that
 16 I state in the last paragraph, "If you have an
 17 objection to dealing with this transiting issue
 18 during this proceeding, please let me know
 19 immediately so I can make a determination of
 20 whether I should move to amend the Complaint or
 21 file a separate Complaint."

22 And now all the sudden three and a half weeks
 23 later this is a terrible issue. Well, I'm
 24 frustrated from the standpoint is the week after
 25 that why didn't they call me and say, look, we

1 don't think we can deal with it on this or if we're
 2 going to have to try to deal with it in this
 3 hearing, we need additional time. I could have
 4 dealt with it then. Now I'm stuck as being painted
 5 as the Darth Vader of the world for bringing this
 6 issue up at the last minute.

7 You know, I wasn't trying to play hide the
 8 ball. As soon as the issue came up, as soon as I
 9 heard from Western Wireless, hey, we discovered
 10 this issue, it's on billing, we don't necessarily
 11 think it's related to inter MTA but do we need to
 12 bring it up to this hearing, frankly, I don't think
 13 it's a necessary component of this hearing because
 14 it only deals with Golden West because it deals
 15 with an issue -- whether transiting to do or not
 16 has nothing to do with the calculations on inter
 17 MTA or refund with the exception of refunding
 18 transiting. And we can hear it in the Complaint.
 19 I offered it up at that time to try to streamline
 20 things, and now I'm getting it shoved down my
 21 throat.

22 It's a -- if these are issues, they come up.
 23 I think the -- Golden West throws the term around
 24 bad faith pretty readily, but if there's bad faith
 25 on dealing with some of these issues on these

1 Motions, it rests as much with Golden West as
 2 anybody because they've known about these issues
 3 and all the sudden now it's an emergency. And
 4 those are the reasons that I don't think the
 5 continuance is necessary.

6 Now one of the things on it -- and I think the
 7 Commission realizes, I generally readily don't
 8 object to continuances as long as they're a
 9 reasonable request. However, this has been very
 10 frustrating on behalf of my client. In the
 11 Golden West Companies' Responses to the First Set
 12 of Interrogatories on June 30 Golden West admits
 13 they're holding over \$220,000 of money even under
 14 the Golden West calculations of Western Wireless's
 15 money. And they're just holding it.

16 I mean, the longer we continue this, they're
 17 just using our money. And I think that sets a bad
 18 precedent that if somebody's gotten overpayments,
 19 they can just delay something until they can just
 20 claim, oh, we've credited it against. I think they
 21 should be made to pay it back on a more expedited
 22 basis.

23 I apologize, I'm bouncing around a little bit
 24 looking at my notes.

25 Well, I tell you, I'll just -- if there's any

1 questions, I'll answer those. If there's any
 2 questions on the information I submitted yesterday,
 3 I would be more than happy to answer those.

4 MR. SMITH: One thing I would
 5 appreciate, Mr. Wieczorek, is if you would -- I
 6 don't think you addressed the Motion to Bifurcate.
 7 Would you like to?

8 MR. WIECZOREK: Do you want to do it
 9 at this time? That primarily arises out of if
 10 there's going to be a continuance -- I will tell
 11 you this. The inter MTA issues and how we can try
 12 to gauge that inter MTA is going to be by far and
 13 away the highest time-consuming part of this
 14 proceeding.

15 Now our original Complaint was, look, we want
 16 to be paid back what we -- what's overpaid and, in
 17 fact, at that time when we filed it the Golden West
 18 Companies admitted they were holding over a half
 19 million dollars of our money.

20 That part of the Complaint I think should
 21 be -- I think the Complaint can be bifurcated from
 22 the inter MTA issues. I see the Complaint as being
 23 maybe a half day -- the Complaint issues as maybe
 24 being a half day while the inter MTA being a day
 25 for sure just to explain the history, especially

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1 with the allegations of alleged bad faith and go
 2 through all the facts and how it was negotiated and
 3 everything we attempted to do to try to figure out
 4 inter MTA in good faith.
 5 So I thought that given that they're holding
 6 money of Western Wireless's that could be held, as
 7 I have said and made clear in my Motion to
 8 Bifurcate, I am not endorsing any continuance, but
 9 if the Commission should decide, I think we can
 10 bifurcate it. Now the only -- on that bifurcation,
 11 I want to be clear is that our calculations and our
 12 refund in -- as happens in any -- almost any case,
 13 especially where there's a contract case where you
 14 assert, okay, I believe you owe me money, when
 15 you're going back to the bills your calculations
 16 may change.
 17 One of the things that we discovered in going
 18 back to the bills is that it appears there's --
 19 there is a difference between that refund in that
 20 Golden West Companies are charging this intrastate
 21 charges to up their charges to us and using those
 22 as a setoff and intrastate versus interstate would
 23 be an issue in our Complaint aspect. So I wanted
 24 to be clear on that, that is not solely an inter
 25 MTA issue as to whether they can charge intra

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1 versus interstate on our calls.
 2 I believe that covers it, unless you have
 3 additional questions.
 4 MR. SMITH: Mr. Riter, do you have
 5 any response now, and then I'm going to -- I think
 6 next we're going to turn to determine if staff has
 7 any questions of either of the attorneys. And,
 8 Darla, I know you're out there. I don't know. You
 9 may want to chime in here too. I haven't heard
 10 from you. I know Bob Riter here invited you to
 11 talk, and I'm not sure that we gave you that
 12 opportunity.
 13 Do you have anything to add, Darla, at this
 14 point?
 15 MS. ROGERS: I would like to add
 16 just a few points, if I might, and thank you for
 17 the opportunity.
 18 First of all, I would like to point out to the
 19 Commission, and this is maybe partially in response
 20 to Mr. Wieczorek's comments, but I think we need to
 21 remember here that all of the obligations contained
 22 in the agreement were negotiated between the
 23 parties and agreed to by Western Wireless in
 24 separate agreements with each company.
 25 So now to come back before the Commission at

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1 this late date and continue to complain and whine
 2 about the requirements of that agreement in
 3 negotiating a traffic study methodology is not
 4 appropriate.
 5 Western Wireless agreed to do that under the
 6 agreements. We are now three years down the
 7 road -- or two years, two and a half years down the
 8 road. The inter MTA default factor when we entered
 9 into the agreement was 3 percent. At this point in
 10 time when we're nearing the end of the agreement
 11 the inter MTA factor is still 3 percent. The proof
 12 is in the pudding. That clearly demonstrates that
 13 there has been no movement and no effort on the
 14 part of Western Wireless to negotiate an
 15 appropriate inter MTA factor.
 16 Second of all, I would point out that in the
 17 Affidavit submitted by Mike Wilson, he states that
 18 he told Larry Thompson that the data was suspect.
 19 Well, first of all, we don't agree with that.
 20 There's no evidence that they presented to support
 21 that. And they did not now raise this until two to
 22 three weeks before the hearing.
 23 Mr. Wieczorek said that they should be allowed
 24 to testify about range, but it seems to me that by
 25 raising that issue at this late date Western

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1 Wireless has also gone another step and basically
 2 raised a new issue in their defense.
 3 If you look at their response or specifically
 4 in Paragraph 12, they want to raise the issue of
 5 double-dipping. That issue only comes into place
 6 because they've now called into question their own
 7 data, which they repeatedly represented was
 8 accurate and excluded IXC traffic. But they even
 9 go beyond that in their response and they say that
 10 Golden West is asking this Commission for the
 11 authority to collect both inter MTA and access
 12 charges.
 13 So they're saying that we are asking the
 14 Commission to double-dip. And I submit that that
 15 is not correct. We have never ever requested that
 16 and are not requesting that now from the
 17 Commission. And that issue clearly goes beyond the
 18 Complaint that Western Wireless filed against us
 19 and rises to the level of a new claim.
 20 Finally, I would also point out that the raw
 21 dumps that Mr. Wieczorek talked about -- and,
 22 again, I would point out that we have had over two
 23 years to collect this data and to try to get
 24 something worked out. And it hasn't happened.
 25 With regard to the transiting issue, that also

1 is a new issue. And as Mr. Wieczorek just pointed
 2 out in his comments with regard to the bifurcation,
 3 the intrastate versus interstate issue was not
 4 raised in the Complaint filed by Mr. Wieczorek and
 5 by Western Wireless.
 6 In response to the comments concerning bad
 7 faith and holding -- Golden West holding WWC's
 8 money, that is no less true from Golden West's
 9 perspective. By refusing to even come to the table
 10 and negotiate on the inter MTA factor, WWC is
 11 holding Golden West's money. It's no less true one
 12 way than the other. And Golden West is in the
 13 meantime crediting back or paying that money back.
 14 WWC is doing nothing, and we still have exactly the
 15 same default factor on the inter MTA that we did
 16 when we started.
 17 We disagree with the Motion to Bifurcate, and
 18 Mr. Riter may have more to say on that. The fact
 19 that one claim is more time-consuming perhaps than
 20 the other is not a sufficient legal reason for
 21 bifurcation. We believe that that would not serve
 22 the purpose of the economies of justice. If you
 23 bifurcate, in this case we're not talking about one
 24 hearing or even two hearings but potentially three,
 25 potentially more depending upon how many more

1 issues come to the table.
 2 We have agonized over this as well in bringing
 3 these Motions and trying to determine what's the
 4 right course in this case. Quite frankly, we felt
 5 as if Western Wireless has changed the rules of the
 6 game the bottom half of the 9th, I think. And we
 7 either need a chance to have additional innings to
 8 respond to the change in the rules, or else they
 9 need to be precluded from changing the rules. And
 10 to come in and attack the credibility of our own
 11 data contrary to representations all along has
 12 placed us in a position that is extremely
 13 untenable.
 14 They have created these additional
 15 controversies by their own actions, and we would
 16 ask that you would look at all of these facts in
 17 considering our Motion.
 18 Thank you.
 19 MR. SMITH: Mr. Riter, do you have
 20 additional argument?
 21 MR. RITER: Yes. And I'll limit
 22 myself rather than rebutting Mr. Wieczorek. I
 23 think Ms. Rogers did that effectively. I'll just
 24 limit myself to the Motion to Bifurcate.
 25 We resist that obviously. Bifurcation is the

1 exception rather than the rule, and the burden
 2 obviously is on the party that's seeking
 3 bifurcation to show the bases for it. I'm familiar
 4 with other occasions, and I know Mr. Wieczorek is
 5 too, where bifurcation occurs. But most generally
 6 it's in a situation where maybe they'll bifurcate
 7 the liability part of the lawsuit from the damages
 8 part so that if liability is not found, they don't
 9 have to spend two or three days going into damages.
 10 Or they might bifurcate a contract claim in a
 11 lawsuit from a tort claim or -- more particularly a
 12 equitable claim from a legal claim because one of
 13 them is handled by a jury and one is handled by the
 14 court.
 15 Those are situations where you see most
 16 generally bifurcation is approved. And bifurcation
 17 isn't -- when you're looking at that it's within
 18 the discretion of the body obviously, but you look
 19 to the economy, to the trial entity, and most
 20 commonly they talk about the trial court. Will the
 21 resolution of one claim resolve others?
 22 In this case clearly it won't. This is going
 23 forward regardless of whether it's bifurcation or
 24 not.
 25 Then you look for judicial economy. Usually

1 judicial economy tends to urge the combination of
 2 claims so you don't have three separate trials.
 3 Judicial economy usually says let's get these
 4 things together, let's have one time, one occasion,
 5 if it takes two days, fine, where we sit down, we
 6 hear everything that's relevant and we make a
 7 decision based upon everything that we hear.
 8 If we hadn't filed this Counterclaim, likely
 9 Western Wireless could have argued, well, it was a
 10 compulsory Counterclaim, you didn't file it, and
 11 it's part and partial of the agreement, and,
 12 therefore, you waived it by not filing it. So, of
 13 course, we want it resolved in this particular
 14 proceeding.
 15 They look at different witnesses or different
 16 evidence. The evidence in this case all evolves
 17 from this agreement. And the question presented to
 18 the Commission is what are the obligations and the
 19 rights of the parties under the agreement? That's
 20 the one issue that you resolve. And that issue has
 21 to resolve not only the issue that Western Wireless
 22 has brought forward and the additional one they now
 23 seek to bring forward, but it also has to resolve
 24 the issue that we have brought forward. And so,
 25 therefore, it's only proper that they be heard in

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1 one particular proceeding.
 2 And the question -- Ms. Rogers mentioned it to
 3 some extent, but they look at does bifurcation
 4 eliminate a prejudice to a party? Well, in this
 5 particular case Western Wireless is saying we ought
 6 to interpret the agreement so that certain moneys
 7 are owing from Golden West to Western Wireless and
 8 now bifurcate it so we can get that now. It's not
 9 unlike the request they made on their Motion for
 10 Summary Judgment, which you denied, where they
 11 wanted to come in and have summary judgment upon
 12 their Complaint.
 13 I'm surmising some of the reasons that you
 14 made that decision, but I'm assuming in part that
 15 the reason you made that decision was because you
 16 thought it best to have these all resolved
 17 together.
 18 And so, you know -- and remember when you talk
 19 about prejudice the basis and the need for the
 20 continuance had nothing, absolutely nothing, to do
 21 with actions of Golden West. Mr. Wieczorek talked
 22 about the Interrogatories that they responded to on
 23 June 30 where they say that the traffic terminated
 24 via an interexchange carrier was excluded. I mean,
 25 we relied upon that. I don't know when they found

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1 out in their opinion that it wasn't going to be
 2 excluded, it was going to be included, but we
 3 didn't get anything until they filed their next set
 4 of Answers to Interrogatories on the 5th of August.
 5 So bifurcation should avoid prejudice. It
 6 shouldn't create it. It should be to the benefit
 7 of principally the tribunal, not to one party.
 8 This is a single agreement. It's the
 9 responsibility of each party under it is what the
 10 PUC needs to interpret.
 11 Lastly, well, it seems like the better
 12 procedure is to determine the rights and the
 13 obligations of the parties in its entirety or in
 14 their entirety rather than in bits and pieces a
 15 little bit at one hearing and a little bit at
 16 another hearing. If we've got all of these issues
 17 before you, we want them resolved, Western Wireless
 18 wants them resolved, let's put them all together at
 19 a proper occasion and present them to you and have
 20 you resolve them as you believe appropriate.
 21 The Motion -- we suggest the Motion for
 22 Bifurcation should be denied, and they have not
 23 sustained their burden. Thank you.
 24 MR. SMITH: Mr. Wieczorek, do you
 25 have any additional argument before we turn to

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1 staff and open it up for staff questions first and
 2 then questions from us?
 3 MR. WIECZOREK: The only additional
 4 comments I would have, first, in response to
 5 Ms. Rogers, you know, I'm not here saying we're
 6 trying to get out of negotiating inter MTA rate in
 7 good faith. What I'm saying is we've attempted to
 8 do that up until -- even after this action was
 9 filed I let representatives of my client meet with
 10 Mr. Thompson and Ms. Rogers to try to continue to
 11 negotiate it.
 12 So, you know, going back to that history of
 13 how the analysis was done was to enlighten the
 14 Commission as to the background on these issues.
 15 It was not to imply that we somehow don't believe
 16 we have to negotiate interconnection -- inter MTA
 17 in good faith. I think I was illustrating the fact
 18 we've attempted to do it, and we continue to
 19 attempt to do it.
 20 As to -- I will have to say as to Mr. Riter's
 21 claim that we said that there was no IXC traffic in
 22 our first round of discovery, I'm not exactly sure
 23 what Interrogatory he's relying upon. I know we
 24 said that that methodology is supposed to eliminate
 25 that, but, as I said previously, Mike Wilson had

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1 told Larry Thompson that there was some of that
 2 still in there, and so to that extent I don't think
 3 that was a bad faith or inappropriate -- or that we
 4 were trying to play hide the ball on that either.
 5 Finally, the -- Ms. Rogers said a couple of
 6 times about I didn't put something in my Complaint.
 7 It has to be remembered that some of the things
 8 she's complaining about that I didn't put in my
 9 Complaint are things that have arisen in response
 10 to the Counterclaim. I did not anticipate having
 11 to go through inter MTA litigation in collecting an
 12 overpayment. So I don't see how I could have put
 13 it in my Complaint.
 14 So with those few comments, I would let you
 15 move on to staff.
 16 MR. SMITH: Ms. Wiest.
 17 MS. AILTS WIEST: Well, maybe I just
 18 had a couple of questions. I was just wondering,
 19 Mr. Wieczorek, when did Western Wireless actually
 20 discover the study didn't adequately remove IXC
 21 traffic? Is there a date?
 22 MR. WIECZOREK: I would have to ask
 23 Mike Wilson. He went back through his e-mails when
 24 this issue came up and said he knew that he told --
 25 he said to Larry that they didn't get it all. Now

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1 and it's my understanding some of the IXC traffic
 2 they could identify, but there was at least one or
 3 two carriers where they couldn't make matches
 4 because of the way those carriers kept their data.
 5 MS. AILTS WIEST: And then I don't
 6 know if anybody would be able to answer this, but
 7 is it possible that if a higher inter MTA factor is
 8 ordered by the Commission, would that in any way
 9 impact the amount of recip. comp minutes that WWC
 10 is seeking the refund for?
 11 MR. WIECZOREK: It would impact -- I
 12 guess it would depend on -- this is Talbot
 13 Wieczorek, for the court reporter. To me it's
 14 going to impact -- depending on when the rate would
 15 start, it could impact the amount. As to the
 16 minutes, I would have to defer to somebody who is
 17 more technical on that to give you an actual
 18 whether it would impact the minutes of use.
 19 MS. AILTS WIEST: Okay. That's all
 20 the questions I had.
 21 MR. SMITH: I have some questions
 22 too. Maybe the Commissioners, do you have
 23 questions before I --
 24 COMMISSIONER JOHNSON: Mr. Smith,
 25 this is Commissioner Johnson. I don't have many,

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1 but I do have a couple first for Mr. Riter or
 2 Ms. Rogers.
 3 There have been some allegations or allusions
 4 to bad faith. Let's just assume for a moment that
 5 that was true. I'm still puzzled a little bit by
 6 the Motion to Prohibit Western Wireless from
 7 Contesting the Accuracy of the Data.
 8 I appreciate Mr. Riter's letting me know the
 9 sort of statutory authority for that. And, yet,
 10 would the public interest really be served if we
 11 know that the data isn't what we want, moving
 12 forward with the inaccurate or incorrect set of
 13 data?
 14 MR. RITER: Darla, do you want me to
 15 respond, or do you want to?
 16 MS. ROGERS: Sure. Go ahead.
 17 MR. RITER: Well, Commissioner
 18 Johnson, frankly that's why we in our Motions
 19 didn't necessarily state it in the alternative but
 20 gave different procedures that the Commission might
 21 utilize to remedy the issue that it finds itself
 22 facing.
 23 And one of the issues that courts do from time
 24 to time is that they forbid a party from contesting
 25 issues or from presenting evidence inconsistent

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1 with the position that they've previously espoused.
 2 I mean, it's kind of like deposition testimony
 3 where a deponent testifies at a deposition and then
 4 comes in or even at another trial and comes in and
 5 tries to say, you know, that testimony is not
 6 accurate. Or another witness says the testimony
 7 from a witness for the same client's not accurate.
 8 Then there's a dispute. And sometimes the entity
 9 can be almost like estopped or prevented from
 10 contesting the position that they've taken before.
 11 So is public interest served? You know, I
 12 suspect that if you're looking at the public
 13 interest as a general statement, the public
 14 interest is best served if all the issues are
 15 resolved with as much information as possible. As
 16 I read something the other day, the responsibility
 17 of the lawyers is to make sure the corners are
 18 swept clean and that the information is there
 19 available for the finder of fact to resolve, not to
 20 necessarily prevent that from occurring.
 21 COMMISSIONER JOHNSON: Thank you,
 22 Mr. Riter. Moving now to the Motion to Compel, you
 23 know, Mr. Wieczorek and Western Wireless sort of
 24 state they don't know exactly what information you
 25 would be asking for and that they're -- you know,

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1 not the appropriate discovery is outstanding for
 2 this Motion to really be in order.
 3 Do either you or Ms. Rogers have a response to
 4 that?
 5 MR. RITER: Darla, do you want to
 6 respond to that one?
 7 MS. ROGERS: Yes. Thank you,
 8 Mr. Johnson. Included in our Motion was a
 9 reference to production request number 2, and that
 10 was also an exhibit to our Motion. And it also
 11 refers to Paragraph 27 of the Interrogatories. And
 12 so I think that -- and those -- neither Western
 13 Wireless did not respond either to Interrogatory 27
 14 or to production for -- request for production of
 15 documents number 2. So I believe that there are
 16 outstanding discovery questions out there that were
 17 not properly responded to.
 18 Now if Western Wireless's contention is that
 19 those are too broad of a period and they do not
 20 have data for that long because they purged their
 21 data, they only purge it for 60 days, you know, we
 22 would take the data for, you know, two-week,
 23 three-week period out of the 60 days that they
 24 have. But they believe that they're -- we don't
 25 agree with the position that there are not

1 outstanding discovery requests out there. And
 2 we've included those in the documents we've filed.
 3 COMMISSIONER JOHNSON: Ms. Wiest,
 4 you know, asked Mr. Wieczorek a question about, I
 5 mean, essentially with regard to the Motion to
 6 Bifurcate, how closely related are these two
 7 issues, and I was hoping to get a response from
 8 Mr. Riter or Ms. Rogers on that.
 9 MR. RITER: Well, Commissioner, this
 10 is Bob Riter. I think that there may well be some
 11 evidence presented relative to Plaintiff's claim or
 12 Western Wireless's claim that might not be relevant
 13 to our Counterclaim. And there may be some
 14 evidence that we would present in our Counterclaim
 15 that would not be specifically relevant to their
 16 claim.
 17 But the point that I think is most important
 18 is that what the Commission is asked to do is to
 19 interpret the agreement and determine the rights
 20 and obligations of the parties under that
 21 agreement. And so we think that what will occur is
 22 that there ought to be the interrelationship of
 23 that agreement and there's various parts of it.
 24 I mean, you've heard about three parts right
 25 now or three issues that the parties are in

1 disagreement about. You know, it would seem to us
 2 that the economies of having the Commission act at
 3 one time on all of these issues would benefit not
 4 only it and its staff but would also benefit our
 5 clients. And I think that from the Golden West
 6 standpoint they're not interested in having to
 7 participate in three separate hearings when we
 8 could have one hearing where their attorneys and
 9 their staff, whoever they need to have present at
 10 the time, can show up for the hearing and the
 11 matters can be resolved. And that's what we're
 12 anxious to have occur.
 13 And I realize that Western Wireless is anxious
 14 to have that occur as well, but now they're seeking
 15 to have it just occur on part of it. And it seems
 16 to me that their request flows from the fact that
 17 the information that we received from them they
 18 later modified. I mean, that's the basis for it,
 19 and that's what gives rise to this. And that's
 20 another reason that I think it ought to just be
 21 heard together.
 22 COMMISSIONER JOHNSON: All right.
 23 Commissioner Sahr and Mr. Smith, that's all I have
 24 right now. Thank you.
 25 MR. SMITH: Thank you. Commissioner

1 Hanson, do you have any questions?
 2 CHAIRMAN HANSON: No. Go right
 3 ahead.
 4 MR. SMITH: Chairman Sahr. Vice
 5 Chairman Sahr.
 6 VICE CHAIRMAN SAHR: Why don't you
 7 go ahead. I do have some questions, but I want to
 8 hear what you have to say first.
 9 MR. SMITH: Okay. I think maybe
 10 this is for Mr. Riter and Ms. Rogers first
 11 following up again on Commissioner Johnson and
 12 Ms. Wiest's question about the relationship between
 13 the Counterclaim and the Claim.
 14 Do either Mr. Riter or Ms. Rogers have
 15 anything to add in terms of whether or not the
 16 errors in the data might actually impact the
 17 damages calculation in the original Complaint
 18 related to overcharges for those particular
 19 minutes?
 20 In other words, is the minute calculation
 21 affected by that? If you don't know --
 22 MR. RITER: Darla, I'd leave that to
 23 you to try to respond to since you're more deeply
 24 involved in the specifics of this matter.
 25 MS. ROGERS: I'm not sure that I can

1 answer that accurately. I am not -- I mean, maybe
 2 we would have to rely on our experts to determine
 3 that. I'm getting a little echo here.
 4 Can you hear me all right?
 5 MR. SMITH: We can hear you. There
 6 is some echo. I'm wondering if you're on a speaker
 7 if you also have a hand set off the hook.
 8 MS. ROGERS: No, I don't. I'm
 9 sorry.
 10 MR. SMITH: All right. We can hear
 11 you. There is an echo, but we can hear you.
 12 MS. ROGERS: I'll turn it down a
 13 little and see if that helps. I don't know that I
 14 can answer that for you, Mr. Smith. And if we want
 15 to defer that question to our experts that are on
 16 the line, we can do that, or however you want to
 17 handle it.
 18 MR. SMITH: Well, I guess does any
 19 one of -- there's only one expert on the line as I
 20 see it. Is Ron Williams on the line, Tal?
 21 MR. WIECZOREK: No, he isn't.
 22 MR. SMITH: I don't know, Tal.
 23 It's -- this is oral argument. I know
 24 Larry Thompson's on the phone. Would you object,
 25 Tal, to having him offer an opinion here, or would

1 you guys rather supplement the information you've
2 provided to us with something, an affidavit or
3 something to address I think maybe both of
4 Ms. Wiest's questions, one about the date and the
5 other one about whether or not the minute
6 calculation under the original Complaint is
7 affected by any of this?

8 MR. WIECZOREK: If I understand the
9 question, the question to Larry would simply be if
10 the inter MTA number is different than the
11 3 percent default, does that change the minutes of
12 use.

13 MR. SMITH: That may be, and it may
14 be a question you'd want to address too, Tal, as to
15 whether that's relevant or not. I guess with that,
16 it presupposes in my mind the fact that the
17 Commission if -- let's say they did determine there
18 was a breach of the covenant to negotiate in good
19 faith. To me it would go to whether -- you know,
20 the damages award I guess is somehow related to the
21 calculation of that inter MTA amount, and then
22 again whether those two -- whether the minutes of
23 use pertaining to the original Complaint are
24 somehow affected by what you ultimately decide
25 related to that or what we ultimately decide. I

1 just don't know the answer to that.
2 Would you -- could Larry be heard on that, or
3 would you rather do it via supplemental filings
4 from each party?

5 MR. WIECZOREK: Well, if it's a
6 direct question -- I just don't want to get into a
7 testimony situation. If it's a question of whether
8 the minutes of use will change if --

9 MR. SMITH: Yeah. The minutes of
10 use under your original claim regarding the
11 overcharges for transport and termination.

12 MR. WIECZOREK: Limited to that
13 question, if he wants -- if he feels he can state
14 it in 20 words or less, I have no objection.

15 MR. SMITH: Larry, are you on there?
16 Did you hear all of that?

17 MR. THOMPSON: Yes, I am, Mr. Smith.
18 They are definitely interrelated. What you do is
19 you take the total minutes terminated and you take
20 the percentage of inter MTA off of that, and the
21 balance then of the minutes is what you calculate
22 your recip. comp on. But if the inter MTA
23 percentage grows, the amount that you apply your
24 recip. comp on shrinks. These are definitely
25 interrelated.

1 MR. SMITH: Thank you. You know, to
2 be fair, Tal, if Ron Williams would have a
3 different opinion on that, I certainly believe we
4 should leave the record open here and permit him to
5 offer his dissenting opinion on that, if he has
6 one.

7 MR. WIECZOREK: I will talk to him
8 after the hearing is over about it as soon as
9 possible.

10 MR. SMITH: Okay. Also could you
11 provide us with something, some kind of a filing,
12 however brief, trying to address Rolayne's question
13 about the date on which the data errors were
14 discovered, Tal?

15 MR. WIECZOREK: I can try.

16 MR. SMITH: Okay.

17 MR. WIECZOREK: I know from what
18 Wilson's told me is it was a phone conference, as
19 he remembers it, and as his Affidavit says is that
20 they thought they caught most of it but it was
21 suspect because they didn't catch it all.

22 MR. SMITH: Okay. With respect to
23 the -- like we said, hovering in the background,
24 the transit claim, do either of the parties have
25 any opinion at this point in time on whether that

1 is the type of claim that would be required to be
2 included in this proceeding, the original
3 proceeding under claimed preclusion principles or
4 not?

5 Is it sufficiently part of the same set of
6 transactions or sets of transactions to require
7 joinder under res judicata principles?

8 Maybe I'll let Mr. Wieczorek since you're the
9 one that's kind of talked about that, maybe you can
10 address that first.

11 MR. WIECZOREK: Here's how -- since
12 the recip. comp is only specific to Golden West
13 where there's multiple Respondents here, if the
14 claims as to overpayment and the claims as to inter
15 MTA, why the overpayments are different and the
16 inter MTA rates might be different as to each
17 company, I think those claims are enough related
18 that it makes sense to have the group-in.

19 To the extent as I interpret the statutes and
20 the law as I see recip. comp is what they would
21 call a potentially permissive joinder issue in that
22 we could certainly hear it at this time or I could
23 certainly bring it as another action. And that's
24 why my letter of July 15 addresses those
25 alternatives.

1 MR. SMITH: Thank you. Does
 2 Golden West have a response on that particular
 3 issue?
 4 MR. RITER: Darla, do you have a
 5 response on that?
 6 MS. ROGERS: I think my response is
 7 that under -- it is an issue that arises under the
 8 exact same agreement as all of the other issues
 9 before the Commission, and what we are here -- both
 10 parties are here asking the Commission, let's
 11 determine the rights and obligations of the parties
 12 under this recip. comp agreement.
 13 And the fact that we now have another claim
 14 out there, I think the appropriate way to handle it
 15 is to allow the parties to amend their Pleadings
 16 and get all of these issues before the Commission
 17 at the same time. Because they are interrelated,
 18 and they sort of -- as Mr. Wieczorek said, they've
 19 all come up in the course of the discovery and
 20 everything else that's taken place in this action.
 21 So I think the appropriate way to do this is
 22 to allow the party to amend Pleadings to bring
 23 everything in and to proceed to adjudicate all the
 24 issues between the parties relating to this
 25 agreement at the same time.

1 MR. SMITH: On that issue of that,
 2 of the agreement, though, I have a copy of the
 3 agreement here in front of me. And on page 1
 4 there's no numbering or anything for it, but it's
 5 the first paragraph after the "now therefore"
 6 clause in the agreement.
 7 The agreement says, "This agreement is not
 8 intended to establish any terms, conditions, or
 9 pricing applicable to the provisioning of any
 10 transiting service." Maybe the parties could
 11 address how that does or doesn't affect whether we
 12 ought to require joinder or not of that issue
 13 that's out there.
 14 MS. ROGERS: I think that that is
 15 the very basis of Talbot's claim is that the
 16 Commission look at that particular provision under
 17 the contract and determine whether or not Golden
 18 West Companies -- or Golden West was in violation
 19 of it. I believe that's the essence of his claim,
 20 and it's all squarely under that provision of the
 21 contract.
 22 But, again, due to the fact that we have not
 23 necessarily explored that issue completely, you
 24 know, I don't know the source of their claim, but I
 25 assume it is under that section of the agreement

1 that Mr. Smith just referred to.
 2 MR. SMITH: Mr. Wieczorek, would you
 3 care to respond to that?
 4 MR. WIECZOREK: Well, as I said just
 5 a moment ago, I see this as joinder, meaning I
 6 don't see them as required to be heard together. I
 7 mean, the problem that you get with Ms. Rogers's
 8 interpretation as I read -- as I hear it is that
 9 it's required to be heard all together is then is
 10 every billing -- if we go through the bills and
 11 find a bill as to something else, you know, do we
 12 waive any billing mistakes historically by this
 13 action? I don't think so.
 14 So here's the practicality for the Commission
 15 as I see it. If it's going -- that action can
 16 certainly be brought as a separate action in my
 17 analysis on the recip. comp. If there's going to
 18 be a continuance, it makes sense to hear it all at
 19 the same time. And that's -- I mean, that's just a
 20 practical way that I look at it.
 21 I don't want a continuance, and I believe I
 22 can bring that recip. comp as a separate Complaint,
 23 and I will do that so they have -- so Golden West
 24 is the only company involved with Western and we
 25 can -- and go through just that one issue and none

1 of the other affiliate companies are involved. But
 2 if there's going to be a continuance, it would
 3 certainly make sense to hear it all.
 4 MR. SMITH: In terms of the
 5 transiting claim as I understand it, as I read that
 6 agreement, it excludes charges from transiting from
 7 the breach of the agreement period, right? So that
 8 particular claim would not arise under the
 9 Interconnection Agreement.
 10 MR. WIECZOREK: That is correct.
 11 MR. SMITH: With respect to -- and,
 12 okay, in terms of the transiting claim then, what
 13 does it arise under, Mr. Wieczorek? Is that
 14 related -- are we talking a transiting charges for
 15 originating traffic here?
 16 MR. WIECZOREK: My understanding
 17 from Mr. Williams is that this transiting appears
 18 to be Golden West transiting traffic originating
 19 from Western Wireless to primarily Vivian.
 20 MR. SMITH: Oh, okay. And the basis
 21 of those charges are what? Or maybe you don't
 22 know. Are those tariff?
 23 MR. WIECZOREK: No. I believe those
 24 charges, as I understand it, it's that Golden
 25 West -- there had been a transiting agreement at

1 one point that had expired, and there was no
2 additional -- there was -- expired about the same
3 time they redid the Interconnection Agreement and
4 agreed no transiting charges on the first page of
5 the Interconnection Agreement.

6 And those -- what happened was Golden West
7 just kept charging the transiting charges. And it
8 came up because when we were going back through and
9 doing an analysis of bills, we noticed those
10 charges kept coming when they should have stopped.

11 MR. SMITH: Okay. With respect to
12 the Motion to Compel, if I'm understanding what
13 I've heard here today then is what you want us to
14 compel is for Western Wireless to respond to
15 Exhibit H, that particular production request? Is
16 that exactly what we're being asked to do here?

17 MS. ROGERS: Yes. That's what we're
18 asking. And, again, if it's Western Wireless's
19 position that that is too onerous or broad of a
20 time period, you know, we can amend the request and
21 give them a lesser time frame, but, yes, that's
22 what we want.

23 MR. SMITH: Maybe I'm not seeing it
24 all. I mean, part of it is I don't know that we
25 have the time frame here. I'm assuming that might

1 be in some -- that in a different -- see, the
2 Commissioners don't ever see Interrogatories so we
3 don't know what's in them, other than this one.

4 MR. WIECZOREK: Mr. Smith, this is
5 Talbot Wieczorek. The request incorporates in
6 Interrogatory 27. And I've set that out, that
7 Interrogatory in full, so you could see that
8 expansive nature in my reply on the top --

9 MR. SMITH: Oh, okay.

10 MR. WIECZOREK: On the bottom of
11 page 5 and the top of page 6. And I set that out
12 because they don't specifically say they're moving
13 to compel on that request. They're just saying we
14 didn't provide it and I thought there was some
15 confusion on that issue.

16 MR. SMITH: Mr. Wieczorek, I thought
17 I heard Ms. Rogers make an offer recently to
18 restrict the scope of that significantly and get it
19 down to a level where it was reasonable for you --
20 for your people maybe to respond to it, might you.

21 As I understood what you said, Darla, you said
22 that Mr. Thompson might be able to get by with a
23 couple of weeks worth of data instead of 13 months
24 or whatever the original request was. Is that what
25 you said, Darla?

1 MS. ROGERS: Yes. I believe in the
2 original study that the parties agreed to I think
3 the time period was 15 days. Maybe Larry can
4 correct me if I'm wrong. So if we're looking at
5 that time frame or whatever Mr. Thompson needs
6 worth of data, yes, I believe we would be willing
7 to restrict him.

8 MR. SMITH: And, Mr. Wieczorek,
9 would you address it in that context, please.

10 MR. WIECZOREK: Yeah. I'm -- here's
11 the -- I'm a little at a disadvantage because I
12 don't know what kind of burden and how long it
13 would take to obtain that data. It's my
14 understanding from talking to Western Wireless when
15 they obtained that 15 days of data they had to do a
16 bunch of preliminary work before they could obtain
17 the data. Now if it's -- the data, of course, was
18 data that they were trying to accumulate in the
19 format under that methodology.

20 As raw data dumps, I don't know what kind of
21 lead time they need and whether that's, you know,
22 particularly difficult. I mean, that's one of
23 the -- given the short time frame of this, the fact
24 that they have that information since June 30, it's
25 not something I've been able to get a good feeling

1 from the client.

2 You know, of course, any -- if they say we
3 want the first two weeks of September or something
4 along those lines, that's something that's -- I
5 could certainly go to the client and see if that's
6 what they'd have to go through to accomplish that.
7 Frankly, it's not something I can agree to here on
8 the phone.

9 MR. SMITH: Okay. And I guess I --
10 that's another question I had written down here,
11 and I forgot to ask it earlier, I guess.

12 Why did Golden West wait well over a month
13 after it got this response back before doing
14 anything, before coming in for a Motion to Compel?
15 Either Mr. Riter or Ms. Rogers.

16 MS. ROGERS: I can respond to that,
17 I believe. The way we were going to develop our
18 evidence as far as to our Counterclaim was to
19 demonstrate that.

20 MR. SMITH: For some reason you're
21 really feeding back out there, Darla.

22 MS. ROGERS: Is this any better?

23 MR. SMITH: Oh, it's tremendously
24 better.

25 MS. ROGERS: Okay. When we first

<p style="text-align: right;">65</p> <p>1 received the responses to the Interrogatories -- 2 and, again, with the first set we were once again 3 assured that the data supplied with regard to 4 Golden West was accurate -- we were then able to 5 compare that with our own data study, which 6 incidentally excluded IXC traffic to demonstrate 7 that our own traffic study and the data provided by 8 WWC on Golden West was extremely close. There was 9 not any variance. 10 That being the case, we felt that it was 11 reasonable to present our claim on an adjustment to 12 the inter MTA factor based upon our own traffic 13 study because it was demonstrated in the case of 14 Golden West how close those two studies were with 15 regard to an appropriate adjustment. 16 So we didn't become aware then until the 17 second round of discovery responses came in that 18 now WWC is claiming, oh, well, never mind, our data 19 that we provided is not accurate because it 20 includes IXC traffic. And so that basically then 21 renews why we were asking for that data, the CDRs 22 for all of the companies. So it's like we're back 23 to the drawing board here as a result of their 24 response to the second Interrogatory. 25 So I think my response to your question is the</p>	<p style="text-align: right;">67</p> <p>1 was planned to be used and we went through the 2 whole methodology. 3 So I don't -- I take exception to this assured 4 and guaranteed language. I mean, they got the best 5 data we have for Golden West for those 15 days that 6 we did pull it. 7 MS. ROGERS: Mr. Smith, if I could 8 refer the Commission to Exhibit C of our Motion, 9 which is the response to Interrogatory 15, which is 10 in the second set of Interrogatories, if you look 11 at the third paragraph of that Answer, it says, 12 "The specialized traffic study was to identify 13 inter MTA traffic as a percentage of all traffic 14 terminated from Western's network to each 15 South Dakota ILEC, excluding traffic terminated via 16 an interexchange carrier." 17 That is the third assurance or representation 18 that we had from Western Wireless that the IXC 19 traffic was excluded. It's also contained in an 20 Interrogatory -- or an e-mail from Mike Wilson to 21 Larry Thompson dated September 28 of 2004, and it 22 says, "Study exclusion, calls originating on 23 Western's network and routed for termination via 24 interexchange carriers." 25 So I think the representations are pretty</p>
<p style="text-align: right;">66</p> <p>1 significance of their failure to respond initially 2 really did not become apparent until the second 3 round of discovery responses. 4 MR. SMITH: Thank you. 5 MR. WIECZOREK: Mr. Smith, can I 6 just interject for a moment? 7 MR. SMITH: Please. 8 MR. WIECZOREK: Just to clarify, 9 they're seeking data dumps for all companies now, 10 and that was the question they did in June was 11 that's too time-consuming, et cetera, the only CDR 12 they've ever had were from Golden West, at least 13 the Respondents involved in this case. So I just 14 want to make that clear, that this is -- it sounds 15 like what they're asking for, they asked for in 16 their request, is for all companies. It sounds 17 like that's what they want now. 18 But my June 30 answer was -- or Western 19 Wireless was clear, look, we thought that was 20 overly broad and unduly burdensome, and we weren't 21 going to do it. And the final thing I have to keep 22 coming back to is I don't know what Interrogatory 23 they were pointing to where they were assured these 24 numbers were perfect. The only Interrogatory they 25 even attached was the one saying what methodology</p>	<p style="text-align: right;">68</p> <p>1 clear. I don't know that I have ever -- or that 2 what Golden West has ever referred to, to perfect 3 data or guarantees, but it would seem that we could 4 reasonably rely upon the specific representations 5 made to our expert by their expert. 6 MR. WIECZOREK: Mr. Smith, I don't 7 want to beat this horse, but all I'm trying to 8 point out is she keeps pointing to what we said we 9 were going to try to do on the study and saying 10 that that was the same thing, saying these numbers 11 that we were able to accomplish it all. And we 12 attempted to do that in good faith. 13 Mike Wilson's Affidavit makes it clear we 14 couldn't get rid of all the IXC stuff and that he 15 told Larry that. So, I mean, the fact that we 16 wanted to do that, I agree that's what we wanted to 17 try to do. The fact is, though, it could not be 18 done. 19 MR. SMITH: Thank you. And back 20 exactly on the Motion to Compel then just so that I 21 know what you're asking us to do, is that 22 self-explanatory with respect to the Exhibit H? Is 23 that it, or am I hearing some differences here? 24 I'm still -- I'm kind of confused, and maybe I'm 25 just losing my concentration here.</p>

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1 MS. ROGERS: We would like the
 2 Commission to compel Western Wireless to provide us
 3 with CDRs for the other Golden West Companies in
 4 this action, and if the Interrogatory, the
 5 production request number 2 as it relates back to
 6 Interrogatory 27 is too broad, we are certainly
 7 willing to pare that down to whatever time frame
 8 our expert deems appropriate.
 9 In addition, since we are now -- and this goes
 10 more to our Motion to allow additional discovery,
 11 since we have now since the discovery deadline
 12 learned that perhaps the information that was
 13 provided to us for Golden West is not accurate, we
 14 would like this Commission to compel both Western
 15 Wireless to give us accurate data on Golden West
 16 and, in fact, on all the companies, and that's why
 17 in our request we -- in our Motion to Compel we've
 18 asked that the Commission require Western Wireless
 19 to certify as to the accuracy of their data.
 20 And, you know, I'm not saying 100 percent. I
 21 mean, whatever is reasonable in industry standards.
 22 But we need to know that what we're given is
 23 accurate.
 24 MR. SMITH: Do you have a response,
 25 Tal, to that?

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1 MR. WIECZOREK: Well, yeah. This is
 2 getting to be kind of a chipping sands on me a
 3 little bit because, you know, first of all, it's my
 4 understanding there is no industry standard for
 5 collecting inter MTA. Second, if the CDR -- and
 6 I'll go back to the information we collected last
 7 fall for Golden West and four other companies not
 8 part of this action, that was -- took months of
 9 work, literally months of work.
 10 And you had to contact outside vendors. You
 11 had to prearrange with people how you collected
 12 that data because the data -- you had to collect
 13 data not usually collected. Now that's a big
 14 difference from what I understand to be the
 15 discussion here just a couple of minutes ago as to
 16 whether to give raw data. Those are extreme --
 17 those are extreme differences, and if -- what we're
 18 going to have to do is go through a whole nother
 19 analysis for these companies. It is not going to
 20 be something where you can dump any kind of data.
 21 It takes a lot of going through numbers line by
 22 line to eliminate some of the calls.
 23 So in that situation I know Western's going to
 24 take the position that to do it for every company
 25 is overly broad and unduly burdensome, and if the

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1 Commission orders it, we will seek to -- we'll seek
 2 a protection order to try to get reimbursed for all
 3 the time and effort to get it done.
 4 MR. SMITH: Do the Commissioners
 5 have additional questions?
 6 VICE CHAIRMAN SAHR: I do, but I
 7 want to just briefly consult with you before I ask
 8 the question. I'm going to just ask John a
 9 question. Thanks.
 10 (Vice Chairman Sahr confers with Mr. Smith)
 11 VICE CHAIRMAN SAHR: The question I
 12 have relates more to the effect of some of the
 13 issues that we talked about today than maybe the
 14 issues themselves, and I think we've done a pretty
 15 good job of fleshing out information that at least
 16 I would need to roll in the Motions. But part of
 17 the ongoing discussions here are highlighting that
 18 we may have some inaccurate information, and I
 19 don't want to get into fault or who said this, who
 20 said that.
 21 But we've got an upcoming hearing in just a
 22 matter of days, and I'm a little bit concerned that
 23 if we proceed with it -- and I don't want to grant
 24 unnecessary, you know, extensions or postponements,
 25 but I'm a little bit concerned if we go forward

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1 with the hearing, that we may not be giving people
 2 adequate time to get the information they need, to
 3 analyze it, and to really go in there and resolve
 4 these issues and to do so effectively.
 5 And especially in light of hearings that are
 6 coming up in I think about 10 days or less. And I
 7 wanted to get the perspective -- and maybe this is
 8 also a Larry Thompson type of question but just the
 9 perspective of maybe the attorneys and maybe the
 10 people who are crunching the numbers. I mean, are
 11 we going to be able to go to hearing as scheduled
 12 with the question marks we have hanging over this?
 13 Because, as I mentioned, I don't really want
 14 to grant an extension for extension's sake. At the
 15 same time if we wait a few more weeks, give you the
 16 opportunity to deal with the numbers and then come
 17 back and have a hearing that everyone's better
 18 prepared for, I think we're probably served well in
 19 the long-term by going that route, you know.
 20 Plus in earlier proceedings in this case, you
 21 know, I made it clear that whoever it is if
 22 someone's found, you know, holding onto somebody
 23 else's money, certainly there are interest
 24 provisions and other things that can kick in to
 25 deal with that issue. So I certainly don't want to

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1 ignore the fact that those sort of allegations are
 2 out there. I'm just curious to hear from some of
 3 the parties and maybe some of the technical people
 4 about their abilities to deal with the information
 5 they have and maybe some future information we need
 6 and to do so within a matter of less than a week
 7 and a half.
 8 Mr. Riter.
 9 MR. RITER: If I would respond, I
 10 would say that I don't know how we could prepare
 11 properly for the hearing if it were to be held on
 12 the 30th and 31st with the change now of the
 13 information that we thought was reliable and now
 14 it's by the maker of it deemed unreliable. We're
 15 in a box.
 16 VICE CHAIRMAN SAHR: Thank you.
 17 Mr. Wieczorek.
 18 MR. WIECZOREK: Well, I want the
 19 Commission to understand that as to that data, and
 20 it's only data to Golden West, that's all the data
 21 we're talking about, not for any other companies
 22 and didn't seem to be any problem going forward on
 23 all the other companies without that data.
 24 Number 2, that data, you're not going to
 25 get -- as far as I can tell from talking to my

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1 people, you're not going to get better data from us
 2 because we simply cannot coordinate with some of
 3 the long distance carriers. You just can't match
 4 their data up to get it done.
 5 I mean, I'll go right back to what my reply
 6 was, and that is, you know, this is not a be-all
 7 end-all. We know it's high in those calls. And I
 8 think the best the Commission's ever going to get
 9 is probably an estimate of what the difference is.
 10 MR. SMITH: Isn't kind of a follow
 11 on that, though, if I understand what they were
 12 asking us for, either via -- Tal, right, either via
 13 us to order a Motion to Compel to allow some
 14 additional discovery so we can just go through the
 15 normal process is alternatively asking for raw data
 16 from switches so that Larry can run the analysis
 17 himself.
 18 MR. WIECZOREK: And I don't know
 19 what that means, frankly, Mr. Smith, I mean, to say
 20 raw data. Because they say raw data and how do
 21 they phrase that? They include a couple of
 22 provisos in there so I'm not exactly sure what
 23 they're looking at.
 24 But I think that -- I still think there's
 25 going to be -- no matter who runs it, I think

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1 there's going to be some, well, yeah, I'm not sure
 2 I've got everything in this. I mean, you're never
 3 going to get to a position that the switches will
 4 show exactly what these numbers are.
 5 And that's why the Interconnection Agreement
 6 talks about a method of study.
 7 COMMISSIONER JOHNSON:
 8 Mr. Wieczorek, Commissioner Johnson here. Is it
 9 your client's contention then they've made all
 10 reasonable requests to provide the data requested?
 11 MR. WIECZOREK: Well, it's my
 12 client's position as to the Golden West stuff is
 13 that those are as good of numbers as they could
 14 come up with under the study as to Golden West
 15 Companies.
 16 Now it was never -- when those studies were
 17 done they did five companies to get a benchmark.
 18 Those actual -- that information and all the
 19 collection and the contact, the vendors was never
 20 done for these other companies. But it's
 21 incredibly time-consuming and expensive to do that.
 22 COMMISSIONER JOHNSON: And in our
 23 response am I right in remembering that you
 24 indicated that raw data dump still wouldn't give
 25 you the inter MTA data that is being requested,

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1 that field is not routinely collected? It's not in
 2 there?
 3 MR. WIECZOREK: That is what I'm
 4 told by the Western Wireless people, that a
 5 straight raw data dump isn't going to give you that
 6 information anyway.
 7 COMMISSIONER JOHNSON: Sorry to
 8 interject, Mr. Smith.
 9 MR. SMITH: That's fine. Are there
 10 additional Commissioner questions?
 11 Does staff have any recommendations at this
 12 time to provide to the Commission?
 13 MS. AILTS WIEST: Sure. This is
 14 Rolayne Wiest. I'm going to start with the Motion
 15 to Allow Additional Discovery because actually that
 16 impacts the recommendations on all the other
 17 Motions.
 18 Staff's going to recommend that the Commission
 19 allow additional discovery, primarily to allow
 20 discovery related to inter MTA traffic study. I
 21 know we can get into a discussion about guarantees
 22 and assertions and stuff, but I think if you read
 23 through the Interrogatories and some of the other
 24 data that's been provided, I think you could have
 25 reasonably relied that -- on the June 30 that the

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1 IXC traffic, it did appear that it was excluded and
 2 then on the August 5 answers it certainly was
 3 stated that it was -- the study was, in fact,
 4 significantly flawed.
 5 And the other troubling part was that I think
 6 it was the fact that Western Wireless says it's
 7 significantly flawed that kind of relates to its
 8 claim that, you know, they're double-dipping now.
 9 And I think all of those issues that staff and the
 10 Golden West Companies should be allowed additional
 11 discovery on.
 12 And then going to the Motion to Compel, I
 13 think that the discussion this morning really
 14 highlights the fact that the Commission should
 15 certainly deny the Motion to Compel. I think that
 16 it's unclear as to what Golden West is asking for.
 17 I mean, I think they've changed their position
 18 somewhat. And they were asking for more than just
 19 responses to Exhibit H. They were asking for raw
 20 data. Prior to it appeared they weren't asking for
 21 raw data. So that isn't perhaps even a proper part
 22 of a Motion to Compel.
 23 Staff recognizes -- and I think all of this
 24 can be handled by allowing additional discovery.
 25 Western Wireless will still be allowed to object to

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1 specific discovery requests, but for now I think
 2 what the Commission should do is they need to
 3 encourage the parties to get together and
 4 discuss -- their experts get together and discuss
 5 these issues. It makes no sense for us to -- for
 6 them to just say give us this, give us that, if, in
 7 fact, this information can't be provided. They
 8 need to get together. They need to discuss it and
 9 try to come up with a reasonable way to look at
 10 this.
 11 Then going to the Motion to Strike or Prohibit
 12 Western Wireless from Contesting the Accuracy of
 13 the Data, again, the Commission should deny this
 14 Motion. As Mr. Wiczorek states, this is a
 15 fact-intensive issue. I also agree with
 16 Mr. Wiczorek that 15-6-37(b) does not appear to be
 17 especially applicable. I don't think there's a
 18 question about them not failing to follow a
 19 discovery order here.
 20 And going to the issue of the transiting
 21 traffic, I would note that the Motion to Allow
 22 Additional Discovery I believe was within that
 23 Motion, they also moved that the Commission require
 24 Western Wireless to file an Amended Complaint. I
 25 think if the Commission allows the Motion to Allow

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1 Additional Discovery, then it would be up to
 2 Western Wireless as to whether they want to amend
 3 the Complaint, especially for with respect to the
 4 transiting issue.
 5 And which gets me to the point of postponement
 6 and bifurcation. Given the recommendation on the
 7 Motion to Allow Additional Discovery, I would
 8 recommend that the Commission grant Golden West's
 9 Motion to Postpone. After that recommendation, the
 10 issue becomes whether the Commission should
 11 postpone the entire hearing or grant the Motion to
 12 Bifurcate.
 13 Although initially I was thinking that the
 14 Commission maybe could bifurcate this, and I
 15 understand Western Wireless's concern with respect
 16 to this issue, after reading through the
 17 Complaint -- or the Counterclaim and the Answer in
 18 the Counterclaim and listening to the discussion
 19 this morning, I just don't think at this point that
 20 the Commission can really be sure that there are
 21 not overlapping factual issues here.
 22 And it just doesn't -- and if there are common
 23 issues of fact, I don't see that -- I don't think
 24 it would be in the best interest to bifurcate any
 25 of these issues.

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1 And, you know, after looking through the
 2 Answer in the Counterclaim, and they didn't bring
 3 this up, but there do appear to be possible legal
 4 issues that do affect both issues. For example, in
 5 their Counterclaim Respondents allege that Western
 6 Wireless failed to negotiate in good faith which
 7 caused a breach of agreement. They're also
 8 alleging that 49-31-110 applies, which conceivably
 9 I'm not saying that any of these arguments have
 10 merit, but I'm just saying conceivably that could
 11 affect the amount of recip. comp due, depending on
 12 how the Commission interprets that statute and the
 13 agreement. I just don't see where bifurcation
 14 could get us very far in this case.
 15 I would also note with the Motion to Postpone
 16 that Golden West requested sanctions in the event
 17 the hearing is delayed. I certainly recommend that
 18 this request be denied. Again, I don't believe
 19 that the Commission has sufficient facts before it
 20 to determine whether any sanctions are warranted.
 21 And I think I covered all the Motions.
 22 MR. SMITH: Thank you. Do the
 23 Commissioners have any questions?
 24 VICE CHAIRMAN SAHR: I don't.
 25 COMMISSIONER JOHNSON: Nor do I.

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1 CHAIRMAN HANSON: I don't have any
2 questions either. This is Commissioner Hanson. I
3 appreciate Rolayne's explanation. I agree with her
4 comments.
5 MR. SMITH: Thank you, Ms. Wiest.
6 You know, this is probably out of line maybe, but
7 I'm going to bring it up anyway. Are we -- when
8 we're talking about the damages related to -- at
9 this point with the numbers that you have related
10 to the inter MTA factor, right, I mean, what kind
11 of number are we talking about there by comparison
12 with the Western Wireless overpayment number?
13 I mean, is this a -- are we getting close to
14 balancing out, or are you still looking at Golden
15 West having a significant outstanding balance due
16 and payable?
17 MR. RITER: I know that Darla has
18 spoken with our client about that general question,
19 and she probably is better able to respond to that
20 than I am.
21 MR. SMITH: Do you have anything to
22 say on that, Darla?
23 MS. ROGERS: Yes. Can you hear me?
24 MR. SMITH: Yes.
25 MS. ROGERS: According to our

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1 calculations, we believe that if the inter MTA
2 factor were appropriately adjusted, Western
3 Wireless owed Golden West significant dollars
4 above -- (Inaudible).
5 MR. SMITH: Now you're cutting --
6 you've been cutting out for a while. I'm sorry,
7 Darla. Could you pick up and repeat.
8 MS. ROGERS: Okay. According to our
9 initial calculations, we believe that if the inter
10 MTA factor was appropriately adjusted, that Western
11 Wireless would owe Golden West moneys above and
12 beyond what they claim we owe them.
13 MR. SMITH: Okay. You've answered
14 my question. What is the pleasure of the
15 Commission? Does the Commission wish to vote at
16 this time, or do you want to recess or --
17 COMMISSIONER JOHNSON: Mr. Smith,
18 this is Commissioner Johnson. I would maybe -- I
19 would move that we recess until Monday maybe
20 1 o'clock, if that fits the pleasure of the other
21 Commissioners, because I would like to review a
22 couple of facts before ruling.
23 MR. SMITH: Okay.
24 CHAIRMAN HANSON: This is
25 Commissioner Hanson. I'll second that.

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1 VICE CHAIRMAN SAHR: And this is
2 Commissioner Sahr. I have our Deputy Executive
3 Director approaching the mike, and she may point
4 out a flaw in our reasoning.
5 (Vice Chairman Sahr confers with Ms. Forney)
6 VICE CHAIRMAN SAHR: We do have the
7 SDTA meetings, but I think we can go ahead and
8 schedule this for 1. We do have to check on
9 certain issues of availability of telephone lines
10 and certain -- I imagine we could go into our
11 conference room. Subject to working out some of
12 the details, I would concur on the Motion.
13 Do we run -- but I'm going to ask John Smith a
14 question. Do we run into any sort of procedural
15 thing? I mean, we're adjourning until 1 o'clock?
16 I suppose --
17 MR. SMITH: I don't think we do
18 because it's an adjournment. If we were scheduling
19 the whole new proceeding, yes, we'd have the
20 24-hour notice, which we could still meet. But I
21 think we have the right to adjourn, as long as
22 we're adjourning and reconvening.
23 VICE CHAIRMAN SAHR: If we came back
24 in and had to move the time Monday morning.
25 COMMISSIONER JOHNSON: Mr. Smith, a

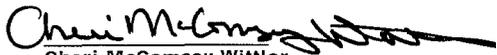
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1 I right it would have to be a time certain?
2 MR. SMITH: I think we should
3 provide notice right here on the record if we can.
4 But everybody here in the room, all the attorneys
5 and everything, know we're going to be in recess
6 for a period of time and, I mean, we need to get
7 this done on a practical level.
8 VICE CHAIRMAN SAHR: Yeah. And we
9 have the Motion, we have the second, we have the
10 concurrence. We're all set to go at 1 o'clock on
11 Monday. And I'll ask staff to work as diligently
12 as we possibly can and make arrangements with the
13 attorneys. But obviously we've got that hearing
14 scheduled for the next week so we need to be making
15 some decisions here as quick as possible. But I
16 agree with Mr. Johnson's thoughts and it will give
17 us an opportunity to dissect some of the
18 information today.
19 (Discussion off the record)
20 COMMISSIONER JOHNSON: Mr. Vice
21 Chairman, if it would be more convenient, I would
22 certainly withdraw my Motion and to offer a
23 substitute Motion rather to adjourn -- recess
24 at 10 o'clock Monday morning.
25 THE COURT REPORTER: I also have

1 something Monday morning.
 2 VICE CHAIRMAN SAHR: It sounds like
 3 for now 1 o'clock is going to be our best shot.
 4 MR. SMITH: What's everybody look
 5 like later this afternoon, or do you feel we need
 6 more time?
 7 COMMISSIONER JOHNSON: This
 8 afternoon would be fine for me.
 9 MR. SMITH: I want to ask one other
 10 question relevant to that. With respect to the two
 11 questions that Rolayne asked and we allowed Larry
 12 to speak to, would the Commissioners feel it's
 13 appropriate to allow Western Wireless to make a
 14 record on that in case they have a divergent view?
 15 And that was related to the interrelationship
 16 between minutes.
 17 COMMISSIONER JOHNSON: Certainly, if
 18 there's a disagreement over what Mr. Thompson says,
 19 then I do think it's appropriate. How long are you
 20 recommending we pause on ruling?
 21 MR. SMITH: Well, that's one reason
 22 I asked about this afternoon. We could probably
 23 get together, but if we -- I don't know, Tal. If
 24 you want to submit something, we want to give you
 25 ample time to do that. Or -- go ahead.

1 MR. WIECZOREK: Well, I'll try to
 2 talk to Mr. Williams to see -- I tried to make
 3 notes as to what Mr. Thompson said and discuss it
 4 with Mr. Williams and try to get some kind of
 5 response as soon as possible.
 6 VICE CHAIRMAN SAHR: You know, we
 7 had a suggestion here in Pierre that may be a good
 8 one. I'm going to look at Cheri and ask her.
 9 (Discussion off the record)
 10 COMMISSIONER JOHNSON: I'd be happy
 11 to do that, but just a question. Would it make
 12 more sense to try to get it done this afternoon and
 13 then if Tal had some important new information, we
 14 could recess then until Monday?
 15 VICE CHAIRMAN SAHR: I think
 16 probably -- I mean, my thought to be on the safe
 17 side and we're also dealing with some phone line
 18 issues and those type of things, I think we're just
 19 better off waiting until Monday. And I really
 20 don't see that everyone's going to be particularly
 21 prejudiced by giving really what amounts to be
 22 staff a little more time to be working on some of
 23 the details.
 24 So I think while I appreciate the suggestion
 25 on Friday, my feeling is go Monday at 12:30 and

1 resolve it. That will give Tal the opportunity to
 2 do what he needs to do, at least to check with his
 3 client and gives our PUC staff the opportunity to
 4 try to get some facilities and phone lines lined
 5 up.
 6 COMMISSIONER JOHNSON: We were off
 7 the record. I couldn't quite hear, Cheri, that
 8 works a little better than anything Monday?
 9 (Discussion off the record)
 10 COMMISSIONER JOHNSON: Then I would
 11 certainly make a Motion to recess until 12:30 as
 12 opposed to 1 o'clock on Monday.
 13 VICE CHAIRMAN SAHR: And I will
 14 second.
 15 CHAIRMAN HANSON: And I concur.
 16 VICE CHAIRMAN SAHR: With that, we
 17 will see everyone at 12:30 on Monday. Thanks.
 18 (The hearing concluded at 11 o'clock a.m.)
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1 STATE OF SOUTH DAKOTA)
 2 :SS CERTIFICATE
 3 COUNTY OF HUGHES)
 4
 5 I, **CHERI MCCOMSEY WITTLER**, a Registered
 6 Professional Reporter and Notary Public in and for the
 7 State of South Dakota:
 8 DO HEREBY CERTIFY that as the duly-appointed
 9 shorthand reporter, I took in shorthand the proceedings
 10 had in the above-entitled matter on the 19th day of
 11 August 2005, and that the attached is a true and
 12 correct transcription of the proceedings so taken.
 13 Dated at Pierre, South Dakota this 29th day
 14 of August 2005.
 15
 16
 17 
 18 Cheri McComsey Wittler,
 19 Notary Public and
 20 Registered Professional Reporter
 21
 22
 23
 24
 25

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