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BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
ILLINOIS COMMERCE COMMISSION )  
ON ITS OWN MOTION )  
Implementation of the Federal )  
Communications Commission's )  
Triennial Review Order with )  
respect to a Batch Cut )  
Migration Process. )

No. 03-0593

Chicago, Illinois  
October 8, 2003

Met pursuant to notice at 10:00 a.m.

BEFORE:

MS. EVE MORAN, Administrative Law Judge.

APPEARANCES:

MR. MATTHEW L. HARVEY  
MR. CARMEN L. FOSCO  
MR. SEAN R. BRADY and  
MS. BRANDY D.B. BROWN  
160 North LaSalle Street, Suite C-800  
Chicago, Illinois 60601  
Appearing for Staff;

MS. CHERYL HAMILL  
222 West Adams Street, Suite 1500  
Chicago, Illinois 60606  
Appearing for AT&T Communications  
of Illinois, Inc.;

1 APPEARANCES (CONT'D):

2 MR. MARK ORTLIEB  
225 West Randolph, Suite 25D  
3 Chicago, Illinois 60606

-and-

4 MAYER BROWN ROWE & MAW, LLP, by  
MR. DENNIS G. FRIEDMAN  
5 190 South LaSalle Street  
Chicago, Illinois 60603  
6 Appearing for Illinois Bell Telephone;

7 ROWLAND & MOORE, by  
MR. STEPHEN J. MOORE  
8 77 West Wacker Drive, Suite 4600  
Chicago, Illinois 60601  
9 Appearing for Global Com, Inc.,  
Forte Communications, and  
10 CIMCO Communications;

11 SCHIFF HARDIN & WAITE, by  
MR. OWEN E. MacBRIDE  
12 6600 Sears Tower  
Chicago, Illinois 60606  
13 Appearing for McLeod USA Telecommunications  
Services, Inc., RCN Telecom Services of  
14 Illinois, LLC., TDS Metrocom, LLC., and  
Illinois Consolidated Telephone Company;

15  
KELLEY DRYE & WARREN, LLP, by  
16 MR. HENRY T. KELLY and  
MR. JOSEPH DONOVAN  
17 333 West Wacker Drive, Suite 2600  
Chicago, Illinois 60606  
18 Appearing for Sage Telecom, Talk America  
Z-Tel Communications, and  
19 Covad Communications;

20

21

22

1 APPEARANCES (CONT'D):

2 SONNENSCHNEN NATH & ROSENTHAL, LLP, by  
3 MR. MICHAEL GUERRA  
4 8000 Sears Tower  
5 Chicago, Illinois 60606  
6 Appearing for Verizon North Inc.  
7 and Verizon South Inc.;

8 OFFICE OF THE ATTORNEY GENERAL, by  
9 MR. RANDOLPH R. CLARKE and  
10 MS. SUSAN L. SATTER  
11 100 West Randolph Street, 11th Floor  
12 Chicago, Illinois 60601  
13 Appearing for the People of the  
14 State of Illinois;

15 DEPARTMENT OF THE ARMY,  
16 REGULATORY LAW OFFICE, by  
17 MR. PETER Q. NYCE  
18 901 Stuart Street, Suite 713  
19 Arlington, Virginia 22203  
20 Appearing for the Department of Defense  
21 and the Federal Executive Agencies  
22 (Telephonically);

MR. DARRELL TOWNSLEY  
205 North Michigan Avenue, 11th Floor  
Chicago, Illinois 60601  
Appearing for MCI WorldCom  
(Telephonically);

MR. DENNIS K. MUNCY  
306 West Church Street  
Champaign, Illinois 61820  
Appearing for the Illinois Independent  
Telephone Association  
(Telephonically);

21  
22

1 APPEARANCES (CONT'D):

2 MR. DAVID O. RUDD  
3 352 South Second Street, Suite 103-D  
4 Springfield, Illinois 62704  
5 Appearing for Gallatin River  
6 Communications  
7 (Telephonically.)  
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21 SULLIVAN REPORTING COMPANY, by  
22 Christine L. Kowalski, RPR

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Witnesses: Direct Cross direct cross Examiner

(None.)

E X H I B I T S

Number For Identification In Evidence

(None so marked.)

1 JUDGE MORAN: Pursuant to the direction of the  
2 Illinois Commerce Commission, I call Docket 03-0593.  
3 This is the Illinois Commerce Commission On Its Own  
4 Motion, Implementation of the Federal Communications  
5 Commission's Triennial Review Order with respect to  
6 a Batch Cut Migration Process.

7 May I have the appearances for the  
8 record, please.

9 MR. FOSCO: Appearing on behalf of Staff of the  
10 Illinois Commerce Commission, Carmen L. Fosco,  
11 Matthew L. Harvey, Michael J. Lannon, Sean R. Brady,  
12 and Brandy D.B. Brown, 160 North LaSalle Street,  
13 Suite C-800, Chicago, Illinois 60601.

14 MR. GUERRA: On behalf of Verizon North Inc. and  
15 Verizon South Inc., Michael Guerra of the law firm  
16 of Sonnenschein, Nath & Rosenthal, 8000 Sears Tower,  
17 Chicago, Illinois 60606.

18 MR. CLARKE: On behalf of the People of the State  
19 of Illinois, Randolph Clarke, 100 West Randolph  
20 Street, Chicago, Illinois 60601.

21 MR. MOORE: On behalf of Global Com, Inc., Forte  
22 Communications, and CIMCO Communications, Steven

1 Moore, Rowland & Moore, 77 West Wacker Drive, Suite  
2 4600, Chicago, Illinois 60601.

3 MR. MacBRIDE: Appearing on behalf of McLeod USA  
4 Telecommunications Services, Inc.; RCN Telecom  
5 Services of Illinois, LLC; TDS Metrocom, LLC; and  
6 Illinois Consolidated Telephone Company, Owen  
7 MacBride, 6600 Sears Tower, Chicago, Illinois 60606.

8 MS. HAMILL: Appearing on behalf of AT&T  
9 Communications of Illinois, Inc., Cheryl Hamill,  
10 222 West Adams, Suite 1500, Chicago, Illinois 60606.

11 MR. ORTLIEB: Appearing on behalf of Illinois  
12 Bell Telephone Company, Mark Ortlieb, 225 West  
13 Randolph, Suite 25-A, Chicago, Illinois 60606.

14 MR. FRIEDMAN: Also on behalf of Illinois Bell,  
15 Dennis Friedman, Mayer, Brown, Rowe & Maw, 19 South  
16 LaSalle Street, Chicago 60603.

17 MR. KELLY: Hank Kelly and Joseph Donovan with  
18 Kelley Drye & Warren, 333 West Wacker Chicago,  
19 Illinois 60606, appearing on behalf of Sage Telecom,  
20 Z-Tel Communications, Talk America, and Covad  
21 Communications.

22 JUDGE MORAN: Are there any other appearances in

1 the room?

2 (No response.)

3 JUDGE MORAN: Hearing none, we're going to go to  
4 the telephone.

5 MR. NYCE: Appearing on behalf of the Department  
6 of Defense and the Federal Executive Agencies, Peter  
7 Q. Nyce -- spelled with a "Y", N-y-c-e -- Junior,  
8 Regulatory Law Office, US Army Litigation Center,  
9 901 North Stuart -- S-t-u-a-r-t -- Street,  
10 Suite 713, Arlington, Virginia 22203.

11 MR. TOWNSLEY: Appearing on behalf of WorldCom,  
12 Inc. doing business as MCI, Darrell Townsley, 205  
13 North Michigan Avenue, Suite 1100, Chicago, Illinois  
14 60601.

15 MR. MUNCY: Dennis K. Muncy, 306 West Church  
16 Street, Champaign, Illinois 61820, appearing for the  
17 Illinois Independent Telephone Association.

18 MR. RUDD: Appearing on behalf of Gallatin River  
19 Communications, LLC, David Rudd -- R-u-d-d -- 625  
20 South Second Street, Springfield, Illinois 62704.

21 JUDGE MORAN: Mr. Rudd, can you spell Gallatin  
22 for the court reporter?

1 MR. RUDD: Yeah. I'm afraid yesterday I even  
2 spelled it wrong after all those hearings. It's  
3 G-a-l-l-a-t-i-n.

4 THE REPORTER: Thank you.

5 JUDGE MORAN: Thank you so much.

6 Okay. Let the record reflect that  
7 those are all the appearances at today's hearing.

8 Okay. Perhaps we can start with  
9 the first matter, and that is the matter of the  
10 rural ILECs. At the close of yesterday's session,  
11 which was not very long at all, I had presented a  
12 draft copy of a proposed ALJ ruling to Staff to sort  
13 of fill in the blanks, setting out basically its  
14 position in this case.

15 Number one, I believe that we have  
16 to act very quickly in this matter, and number two,  
17 there's no time to wait for a transcript, and we had  
18 nothing prepared in writing to work from. Staff has  
19 now worked on this draft ruling, put in its  
20 positions. I think Staff has done an excellent job,  
21 I might add. I have had -- Staff was kind enough  
22 actually to have copies available for all the

1 parties in the room.

2                   Mr. Harvey was kind enough also  
3 now to go and e-mail to all the parties that are  
4 appearing by telephone. So maybe we'll postpone  
5 this matter until the end of the session so that  
6 everybody has a chance to read it. However, we have  
7 to return to it before the close of today's status.

8                   Staff's language changes on the  
9 draft -- ALJ -- will serve as a statement of its  
10 position. And the ALJ will hear from other parties  
11 on any disputes or any proposed amendments to that  
12 draft ruling. I may also add a sentence to that  
13 ruling that in fact this ruling was reviewed --  
14 available and reviewed by all the parties at today's  
15 hearing for the Commission's benefit.

16       MR. MacBRIDE: And, Judge, Staff has added --  
17 included in this document some language I supplied  
18 with respect to Illinois Consolidated Telephone  
19 Company.

20       JUDGE MORAN: Okay. And that's --

21       MR. HARVEY: That's fine with us. I've put it in  
22 the draft assuming that Mr. Muncy doesn't have a

1 problem with it and nobody else does. I think that  
2 would be -- you know, I think Mr. MacBride should  
3 probably follow up with some kind of a petition  
4 seeking dismissal.

5 MR. MacBRIDE: Which is what we say here.

6 MR. HARVEY: Yeah.

7 JUDGE MORAN: This is in the draft -- oh, in  
8 today's draft?

9 MR. HARVEY: Yeah.

10 JUDGE MORAN: So this is different than the one I  
11 have?

12 MR. HARVEY: I think -- yeah. As I said, I think  
13 you may want to look at paragraph -- I think it's  
14 number 6.

15 MR. FRIEDMAN: 6, at the end of which there's a  
16 reference to the ALJ funding something, so you might  
17 want to take special care with that.

18 MR. HARVEY: This was done in some haste this  
19 morning, and so --

20 JUDGE MORAN: Where is that? What are you  
21 getting me into, Matt?

22 MR. HARVEY: Well, I guess the confession of

1 judgment language may have to come out.

2 JUDGE MORAN: Okay. I myself will take a look at  
3 this.

4 Okay. What do you all want to  
5 talk about next, discovery or scheduling?

6 MR. FRIEDMAN: Scheduling.

7 MR. HARVEY: It seems to me that scheduling would  
8 be a good place to start.

9 JUDGE MORAN: Okay. Does anybody have any  
10 schedule proposals?

11 MR. KELLY: Your Honor?

12 JUDGE MORAN: Yes.

13 MR. KELLY: This is Hank Kelly. What I'd like to  
14 start off with is just a comment about the  
15 Commission going forward at this early stage in the  
16 process with establishing fixed dates or firm dates  
17 on the batch cut process. There is a -- as  
18 everyone's aware, there is a workshop or a  
19 conference being held here at the Commission next  
20 Thursday and Friday where the five Ameritech Region  
21 States' Commissions are coming to discuss ways to  
22 coordinate their efforts in this triennial review

1 series of investigations.

2                   One of the big cases that's going  
3 to be discussed at that -- or one of the big issues  
4 that's going to be discussed at that conference is a  
5 way to develop a collaborative among the five state  
6 commissions to address the batch cut process. And  
7 that collaborative is even reflected in the  
8 Commission's order that initiated this docket.

9                   It would be our recommendation  
10 that before we start putting dates down to schedule  
11 testimony and to schedule hearings in this case that  
12 the Commission and your Honor give that  
13 collaborative process at least an opportunity to  
14 have some discussions to find out ways that the  
15 state commissions can coordinate their efforts, and  
16 that we then come back the following Monday after  
17 that docket and then sit down and try to do the task  
18 of what we're doing today which is to set a  
19 schedule; but that we hold off on setting this  
20 schedule until after the state commissions have had  
21 an opportunity to discuss among themselves a way to  
22 develop this batch cut process which I think

1 everybody would recognize involves significant  
2 engineering issues and implementation issues and OSS  
3 issues.

4 MR. FRIEDMAN: Just very quickly, you know, to  
5 cut through this, I think the idea is a non-starter.  
6 We have to have a schedule. We spent among  
7 ourselves 20 minutes or a half an hour talking about  
8 this yesterday. The initiating order takes the  
9 collaborative into account --

10 JUDGE MORAN: It does.

11 MR. FRIEDMAN: -- and allows for a 60-day period  
12 which we should observe. So I respectfully suggest  
13 that we not get tied up spending another half an  
14 hour talking about this and proceed to set a  
15 schedule with the 60 days in it.

16 And I'll further suggest that in  
17 both of the other dockets where we had hearings  
18 yesterday, we were able to arrive at an agreed  
19 schedule. In the first instance, it might have  
20 taken about two hours; in the second instance, it  
21 maybe took about a half an hour. And so the  
22 suggestion would be -- and we don't have -- as there

1 were yesterday in those other proceedings, there are  
2 some drafts floating around. And I think it worked  
3 productively yesterday for us to break and talk  
4 among ourselves and hopefully within 15, 20 minutes  
5 we can report that we've agreed on a schedule.

6 JUDGE MORAN: Okay.

7 MR. HARVEY: I think Staff concurs on the idea  
8 that we just have to set a schedule regardless of  
9 what some other state commissions may or may not do.  
10 I mean, this whole thing seems -- the collaboratives  
11 have not yet begun. I think it's not gotten  
12 anywhere near subject matter experts. And I don't  
13 think there's any reason to believe at this point  
14 that we won't have to litigate a fair number of  
15 issues in this proceeding.

16 JUDGE MORAN: Okay. In response Mr. Kelly, I've  
17 considered certainly the initiating order, and I  
18 know that it establishes that collaboratives will  
19 take place at the regional level, at the  
20 Illinois-specific level; but it also says that any  
21 schedule that's adopted cannot go beyond 60 days of  
22 that collaborative.

1                   In other words, you can hold  
2 something in abeyance for 60 day if the parties  
3 choose and if that's the way you want to work on  
4 this schedule, but you do have to set a schedule  
5 beyond that. And it would be silly not to have a  
6 fallback position. Granted everything may go well;  
7 but nevertheless, we need to have something in place  
8 that parties will know is there as a support system  
9 or a backup system.

10                   So I am of the opinion that we  
11 should set a schedule. And as I mentioned  
12 yesterday, we need two schedules in this matter; one  
13 for the -- a no-dispute schedule based on the  
14 initiating order's envisioning of a certain  
15 scenario, and an issues schedule for those matters  
16 where there will be disputes.

17                   Now, would you all like to talk  
18 amongst yourselves?

19       MR. HARVEY: That might be prudent, Judge.

20       JUDGE MORAN: Okay. Then let me leave the room.

21       MR. FOSCO: Your Honor, maybe this --

22       JUDGE MORAN: Yes.

1 MR. FOSCO: Some helping with the back end of the  
2 schedule --

3 JUDGE MORAN: Sure.

4 MR. FOSCO: -- again, we -- I think we might have  
5 mentioned a 30-day --

6 MR. HARVEY: Oh, yeah. Yeah.

7 MR. FOSCO: -- time period between the PEPO. And  
8 given the other hearings and the other --

9 JUDGE MORAN: Yeah, tell me what happened. I  
10 have no idea what happened in your other dockets.

11 MR. FOSCO: Well, in the loop transport docket,  
12 there is a 30-day period between the PEPO and the  
13 FCC deadline for Commission action. In the mass  
14 market docket, there is 22 days between the PEPO and  
15 the deadline for Commission action.

16 MR. HARVEY: Which was acceptable to the judge in  
17 that proceeding.

18 MR. MacBRIDE: In both of them.

19 MR. FOSCO: And those dockets have hearings --  
20 one in the loop transport taking place between  
21 February 23rd and 27th. And in the mass market, we  
22 have hearings taking place between March 5th and

1 March 8th. And unless we agree to something else,  
2 we were thinking that this docket would have  
3 hearings between March 1st and March 5th when you  
4 said you would be available.

5 JUDGE MORAN: Right.

6 MR. FOSCO: But that sort of impacts the briefing  
7 and kind of --

8 JUDGE MORAN: Okay. Where does it throw the  
9 PEPO?

10 MR. FOSCO: Well, in the draft that we  
11 circulated, we got the PEPO 23 days before the  
12 deadline, June 9th. That would give you 12 days for  
13 the PEPO with RBOEs on May 28th. And we haven't  
14 talked about that, but we're looking for your time  
15 frames or parameters, if that's acceptable or  
16 unacceptable.

17 JUDGE MORAN: I can do anything as long as  
18 everybody does their part well. So I'm not  
19 concerned -- I think that the Commission would  
20 certainly be aware that this is a docket that is  
21 going to maybe take more time than some of the  
22 others. I mean, is that how you guys see it?

1 MR. FOSCO: Well, given that we're going to wait  
2 to try to accomplish the collaboratives --  
3 JUDGE MORAN: Right, exactly.  
4 MR. FOSCO: -- it pushes it back --  
5 JUDGE MORAN: Exactly.  
6 MR. FOSCO: -- further.  
7 JUDGE MORAN: So I think that if we can give them  
8 two meetings -- you know, two of the bench  
9 sessions --  
10 MR. FOSCO: Which should occur within three  
11 weeks, Judge.  
12 JUDGE MORAN: -- then I think we'll be okay on  
13 that.  
14 MR. FOSCO: Okay.  
15 JUDGE MORAN: So I don't mind you guys taking  
16 more time.  
17 MR. FOSCO: Okay. With that, I think we can work  
18 on trying to come up with an agreed schedule.  
19 MS. HAMILL: Do you know how much time the Judge  
20 wants?  
21 JUDGE MORAN: And really we don't want PEPOs all  
22 going out on the same day because let's face it,

1 computer glitches happen, you know, the secretaries  
2 can be overwhelmed, I can be overwhelmed with stuff.

3 MR. FOSCO: In the other schedules, we had been  
4 planning in a 21-day period for the HEPO -- between  
5 the end of reply briefs and the HEPO. Is that --

6 JUDGE MORAN: How many days?

7 MR. FOSCO: 21 days.

8 JUDGE MORAN: Between?

9 MR. FOSCO: The reply briefs and the date of an  
10 anticipated HEPO.

11 JUDGE MORAN: I don't have a problem with that.

12 MR. FOSCO: Okay.

13 JUDGE MORAN: Okay. Have fun. I have a hearing  
14 at 11:30, just so you know. So you won't find me in  
15 my office, you'll find me in a room.

16 (Recess taken.)

17 JUDGE MORAN: Back on the record. And how are  
18 the discussions going?

19 MS. HAMILL: Good.

20 MR. HARVEY: We believe we have reached an  
21 agreement on the scheduling issues. And I will, if  
22 surly pressed -- or maybe Mr. Fosco --

1 MR. FOSCO: Mr. Harvey, you look well-suited to  
2 do this today.

3 MR. HARVEY: I will read the schedules into the  
4 record. There are, per your instructions, two; one  
5 assuming that the case is contested and another  
6 assuming it is not.

7 JUDGE MORAN: Right.

8 MR. HARVEY: I shall read the contested one  
9 first.

10 JUDGE MORAN: Okay.

11 MR. HARVEY: October 17th, 2003, ILEC rebuttal  
12 notice or batch cut notice. October 31st, non-ILEC  
13 batch cut notices. December 1, batch cut  
14 collaborative cutoff. December 19th, 2003 ILECs  
15 file -- or that's incorrect. January 2, 2003 --

16 MS. HAMILL: 4.

17 MR. HARVEY: 4. Thank you, Cheryl. ILECs and  
18 CLECs file direct testimony.

19 JUDGE MORAN: Okay. Okay. Hold on. So ILEC and  
20 CLEC initial direct --

21 MR. HARVEY: Well, you know what? Here, Judge,  
22 this may be helpful.

1 JUDGE MORAN: Oh, this is a copy you've been  
2 sitting on?

3 MR. HARVEY: Mr. Fosco was sitting on it.

4 Okay. 23 January 2004, Staff and  
5 the AG to the extent that the AG chooses to file  
6 testimony files direct testimony. 13 February,  
7 ILECs and CLECs file rebuttal. 23 February, Staff  
8 and AG file rebuttal. 27 February ILECs and CLECs  
9 file surrebuttal testimony. And a status hearing is  
10 convened at a time convenient for the judge.

11 March 1 through March 5 2004 are  
12 evidentiary hearings. Simultaneous initial briefs,  
13 March 29. Simultaneous replies, April 16. HEPO,  
14 May 7. Simultaneous BOEs, May 21. Simultaneous  
15 RBOEs, May 28. Post exceptions proposed order,  
16 June 9. And action by the Commission, on or prior  
17 to July 2.

18 Is that consistent with  
19 everybody's understanding?

20 MS. HAMILL: Yes.

21 MR. KELLY: Yes, your Honor. And if I could just  
22 note for the record that our clients continue to

1 have -- we just have a standing objection to the  
2 setting of a procedural schedule at this point  
3 without taking into consideration the collaborative  
4 efforts.

5 MR. ORTLIEB: For SBC, I have to note one issue  
6 here that had escaped my --

7 MR. HARVEY: Okay.

8 MR. ORTLIEB: Because I believe it is a recent  
9 change. We don't believe the AG should file at the  
10 same time as Staff.

11 MR. FOSCO: But you have surrebuttal after that.

12 MR. ORTLIEB: Right, but the footnote on your  
13 schedule, Carmen, had limited that to --

14 MR. HARVEY: Oh, okay.

15 MR. ORTLIEB: -- only the loop transport case,  
16 and I think that has now changed with this latest  
17 version that came out.

18 MR. HARVEY: Okay.

19 MR. ORTLIEB: I mean, consistent with our  
20 discussion yesterday, we view the AG as more of a  
21 party a la CLECs and ILECs, and less of -- you know,  
22 not similar to Staff as Staff is, you know, part of

1 the Commission, and, you know, you speak with that  
2 unique voice. And so we -- for that reason, we  
3 don't think that the AG should be lumped in with  
4 Staff on this particular batch cut proceeding.

5 JUDGE MORAN: Why were they lumped in? Why did  
6 you put --

7 MR. FOSCO: Well, we did it on one of the other  
8 dockets. I'll tell you why I did it on the changed  
9 schedule since I created it. I mean, they're not a  
10 party with an interest in the batch cut process  
11 themselves. I view them as in line with us. We  
12 added a surrebuttal round of testimony following  
13 Staff and the AG, and that was the main reason I  
14 thought that would be okay in this schedule.

15 MR. CLARKE: We haven't -- this is Randy Clarke  
16 for the AG. We haven't fully evaluated which cases  
17 the AG is going to intervene in and participate in,  
18 but we have intervened in the batch cut case and we  
19 intend to participate. Our interests will be, you  
20 know, on behalf of the People where we find consumer  
21 issues and we find -- or issues that relate directly  
22 to the customers. And that may depend on what other

1 issues are contingent on issues in this case.

2                   We just have to see how it  
3 develops, and so I'm not prepared to say whether  
4 we'll be aligned with Staff or have a different  
5 position. In terms of when we -- in terms of when  
6 we file, I don't think it's necessary that we be,  
7 you know, lumped with Staff. But I'm not sure I  
8 understand why it is you want to have us split out.

9       MR. ORTLIEB: Well, my concern was that the -- I  
10 will confess that, Matt, to your point I have less  
11 concern here because ILECs and CLECs get to go after  
12 the AG. I think this whole thing started in some  
13 other schedules where the AG was going last without  
14 our opportunity to rebut.

15       MR. HARVEY: Okay.

16       MR. ORTLIEB: And what I wanted to make clear was  
17 that, you know --

18       MR. HARVEY: I understand.

19       MR. ORTLIEB: -- the AG is different from Staff.  
20 And I think Staff was reserving for itself some  
21 exclusive right to go last, and I thought it should  
22 only apply to Staff.

1 MR. FOSCO: And we had sort of given that up in  
2 this docket anyway. I mean, to the extent of  
3 whatever four days get you.

4 MR. CLARKE: Well, the AG doesn't need to or  
5 isn't attempting to try to reserve any right to go  
6 last. So if --

7 MR. ORTLIEB: All right. You know what? We can  
8 go with this.

9 MR. HARVEY: Okay. Thank you, Mark, and Dennis.

10 JUDGE MORAN: All right. So this is in fact the  
11 agreed schedule now?

12 MR. HARVEY: Yes, I was somewhat premature on  
13 asserting that it was in fact the agreed schedule.  
14 However, I hope that we can correctly assert that  
15 the uncontested process is agreed to.

16 And I will start again with  
17 rebuttal notices filed by ILECs --

18 MR. FOSCO: Or actually batch cut.

19 MR. HARVEY: Yeah, batch cut notices,  
20 October 17th. Non-ILEC batch cut notices,  
21 October 31st. ILECs, CLECs, Staff, and AG to all  
22 file any testimony necessary on December 5th.

1 Rebuttal by all parties, if any, on December 15th.  
2 A status hearing to be convened on December 18th,  
3 and any evidence taken in the record that you view  
4 necessary to formally introduce on that date.

5 Proposed order January 9th, 2004.  
6 Briefs on exceptions, January 16th. Replies to  
7 briefs on exceptions, January 20th. These are all  
8 assuming anybody wants to file. Post exceptions  
9 proposed order, February 10th. And final Commission  
10 action, July 2nd.

11 JUDGE MORAN: Okay. This is the --

12 MR. HARVEY: Uncontested.

13 JUDGE MORAN: -- uncontested schedule? Okay.

14 MR. FOSCO: And we didn't see a need for actual  
15 hearings other than introducing, you know, --

16 JUDGE MORAN: Right.

17 MR. HARVEY: Any evidence that was sort of  
18 lingering and not on the record.

19 JUDGE MORAN: Right, okay.

20 MR. FOSCO: Nor briefs until we see the order  
21 just in case there's any corrections I think is what  
22 we all discussed.

1 JUDGE MORAN: Okay. Is everybody agreed on that  
2 schedule?

3 MR. ORTLIEB: Yes, we are.

4 MS. HAMILL: Yes.

5 JUDGE MORAN: Okay. I'm looking through these  
6 dates. Do you have a copy of that uncontested  
7 schedule?

8 MR. FOSCO: Second column.

9 JUDGE MORAN: Oh, okay.

10 MR. HARVEY: Mr. Fosco's accomplishments with  
11 Excel are getting virtually annoying.

12 JUDGE MORAN: I was thinking that myself, Matt.  
13 Let's really confuse the ALJ.

14 Okay. So this is a no brief  
15 schedule or is there brief -- it's a no brief  
16 schedule which, yeah, I don't think you need --

17 MR. FOSCO: Because it's uncontested.

18 MR. HARVEY: I mean, I suppose --

19 MR. FOSCO: It's a question of whether the  
20 evidence, you know, was there.

21 JUDGE MORAN: Right, right.

22 MR. FOSCO: And it should be.

1 JUDGE MORAN: And I think that that would  
2 probably have to be reviewed by me at some point and  
3 indicate whether there is sufficient evidence to  
4 make those findings or whether there has to be a  
5 further record developed.

6 MR. HARVEY: And I suppose you could ask for  
7 draft orders, too, if you wanted to --

8 JUDGE MORAN: Yeah, I could do that, too.

9 MR. HARVEY: -- from those parties that believe  
10 that --

11 JUDGE MORAN: They would fall in this category.

12 MR. HARVEY: Yeah.

13 JUDGE MORAN: Okay. I'm looking at these dates,  
14 and they all seem fine to me. So the schedule as  
15 indicated here by Staff's Counsel Matt Harvey and  
16 as -- I guess it has been circulated, all the  
17 parties have this?

18 MS. HAMILL: Yes, your Honor.

19 JUDGE MORAN: Okay. It will be adopted as the  
20 schedule for this proceeding. And I will probably  
21 set out these dates, although probably in a little  
22 different form in a ruling -- not in a ruling, but

1 in a notice.

2 MS. HAMILL: Thank you.

3 JUDGE MORAN: Okay?

4 MR. HARVEY: Thanks, Judge. I guess we still  
5 have lingering issues associated with discovery  
6 and --

7 JUDGE MORAN: Okay.

8 MR. HARVEY: -- the ALJ's ruling. I don't -- I  
9 assume that the discovery issues are going to be  
10 pretty much the same as they have been in prior  
11 cases and --

12 MR. ORTLIEB: I would only offer that this --  
13 your Honor, in other -- in the loop transport and  
14 the mass market cases, we agreed on a 14-day  
15 turnaround for discovery.

16 JUDGE MORAN: Okay.

17 MR. ORTLIEB: In this instance, since we have a  
18 hiatus while the collaborative takes place -- and  
19 I'm not sure discovery is -- I don't have in mind,  
20 at least from SBC, the extent of discovery that we  
21 have for the mass market and the switching case. We  
22 wouldn't insist on a 14-day turnaround here. We're

1 certainly okay with that if that's what the parties  
2 want, but if it would make sense to build in a  
3 little more time, this might --

4 MR. TOWNSLEY: Hey, Mark, can you speak into the  
5 mic because I can't hear what you're saying.

6 JUDGE MORAN: Mark, can you stand maybe? There  
7 is no mic.

8 MR. ORTLIEB: Darrell, all I suggested was that  
9 this case differs just a little bit from the other  
10 cases we've addressed so far, so SBC is not  
11 insisting on a 14-day turnaround for discovery here.

12 MR. TOWNSLEY: Okay.

13 MR. HARVEY: Yeah, it does seem as if -- go  
14 ahead.

15 MR. FOSCO: I mean, the only thing I would say is  
16 that, you know, once we see the parties' direct  
17 testimony, Staff may have a need for a short  
18 turnaround time.

19 MR. MacBRIDE: It needs to fit into the -- sort  
20 of schedule thing -- around the testimony.

21 MR. FOSCO: I guess we would like to see a 14-day  
22 turnaround time, not that there would be any

1 discovery until the collaboratives are resolved.  
2 But so that once we get to that point in the  
3 schedule where parties have short turnaround times  
4 for testimony, we can have discovery fit in with  
5 that schedule.

6 MR. HARVEY: I would --

7 MR. FOSCO: Because Staff has, I think, 28 or 21  
8 days to file --

9 MR. HARVEY: Yeah, we need to have --

10 MR. FOSCO: -- following the CLECs' and ILECs'  
11 filing.

12 MS. HAMILL: Yeah, I would agree with that. I  
13 think that it's -- Mark is right that it's premature  
14 at this stage of the game to kind of know what  
15 discovery we're going to be doing until we see how  
16 the collaborative -- how that ends up. So I think  
17 given the number of days everybody has, we probably  
18 ought to try to stick to 14 days across the board.

19 MR. ORTLIEB: That's acceptable to SBC.

20 MR. HARVEY: Thank you, Mark.

21 MS. HAMILL: Thank you, Mark.

22 MR. ORTLIEB: Sure.

1 MS. HAMILL: And Dennis.

2 MR. FOSCO: Assuming that's okay with the ALJ.

3 JUDGE MORAN: That's fine with me. I'm trying to  
4 think. Do you envision needing a status from the  
5 time of the collaboratives until -- or following the  
6 collaboratives?

7 MS. HAMILL: I think if we need one, we can ask  
8 for one.

9 MR. HARVEY: Yeah, that seems prudent --

10 JUDGE MORAN: Okay. Cool.

11 MS. HAMILL: If that's okay.

12 JUDGE MORAN: Cool.

13 MR. HARVEY: We'll just motion it up or  
14 something.

15 JUDGE MORAN: Fine. Fine.

16 MR. MacBRIDE: That's why we gave you all our  
17 e-mail addresses, so you can send us an e-mail at  
18 noon saying there's a status at 4:00.

19 JUDGE MORAN: I'm good at that, aren't I?

20 MR. FOSCO: I don't know, but I assume the  
21 parties were going to enter the same protective  
22 order in this proceeding?

1 MR. ORTLIEB: Yeah, that would be my hope.

2 MS. HAMILL: What we did in the other dockets,  
3 your Honor, we're trying to have one protective  
4 order that --

5 JUDGE MORAN: Okay.

6 MS. HAMILL: -- works for all the cases. And we  
7 have agreed to notify Judge Gilbert in the loop  
8 transport case and Judge Wallace in the mass market  
9 switching case by Tuesday, close of business,  
10 October 14th, if we haven't reached an agreement on  
11 a protective order. So presumably we'll all go back  
12 to our offices this afternoon now that we're going  
13 to be out of here for a while and, you know, work on  
14 that and hopefully come up with something acceptable  
15 and let everybody know by the 14th.

16 JUDGE MORAN: Okay. That would be great. It  
17 could be one protective order for all the dockets?

18 MR. MacBRIDE: You'd probably have to enter this.  
19 Each judge would have to enter --

20 JUDGE MORAN: Well, sure. Sure. But it would be  
21 the same, so that would be good.

22 Okay. So the parties' agreements

1 thus far on discovery are acceptable to the ALJ.

2 Any other matters on discovery other than that?

3 (No response.)

4 JUDGE MORAN: Fine. I'm happy to see all this  
5 cooperation. Now we get to the ruling. Have the  
6 parties on the telephone been able to read through  
7 that ruling, that proposed --

8 MR. RUDD: Dave Rudd with Gallatin. Yes, and we  
9 have no objection.

10 JUDGE MORAN: Okay.

11 MR. TOWNSLEY: Your Honor, I have not been able  
12 to access it. I did get the e-mail but it comes in  
13 in a format which I can't pull it up. I would say  
14 that my interests are certainly aligned with  
15 Mr. Kelly's. And if he's okay with it, he can have  
16 my proxy.

17 MR. KELLY: We have no objection. Neither does  
18 Darrell. Darrell has no objection. We'll stay  
19 silent.

20 JUDGE MORAN: Okay. And everybody in the room  
21 has had a chance to look at this?

22 MR. MacBRIDE: Judge, I don't have any

1 substantive issue. This is my fault actually, but  
2 the paragraph on Illinois Consolidated is probably  
3 in the wrong place here.

4 JUDGE MORAN: Okay. Hold on. Well -- okay.  
5 There's no substantive objection. You're going to  
6 stay after school and clean that up.

7 MR. MacBRIDE: And the erasers, too.

8 JUDGE MORAN: Okay. Then I'm going to issue this  
9 ruling possibly today; at the latest, tomorrow  
10 morning. No, actually it will go out today. And  
11 then I will put this matter up on the next bench  
12 session and inform the Commission what the ruling is  
13 and see if in fact they'd possibly prepare an  
14 amendatory order. I think that's the cleanest and  
15 best way to do this.

16 MR. HARVEY: Okay.

17 JUDGE MORAN: Do you guys agree with me on that?

18 MR. HARVEY: That sounds prudent, yes, Judge.

19 JUDGE MORAN: Okay.

20 MR. MUNCY: Judge, this is Dennis Muncy.

21 JUDGE MORAN: Yes.

22 MR. MUNCY: Will you serve your order by e-mail

1 this afternoon?

2 JUDGE MORAN: Oh, I wouldn't serve it, the  
3 Clerk's Office would.

4 MR. MUNCY: Okay.

5 JUDGE MORAN: I will tell them that it's a rush.  
6 And I think that's how they serve. Don't they serve  
7 everything by e-mail now?

8 MR. HARVEY: Yeah.

9 MS. HAMILL: Yeah.

10 JUDGE MORAN: Yeah, I think they will, Mr. Muncy.

11 MR. MUNCY: Thank you very much, your Honor.

12 JUDGE MORAN: But I will stress upon them the  
13 urgency of this. Okay.

14 MR. HARVEY: Nothing further from Staff, Judge.

15 JUDGE MORAN: Nothing further from any of the  
16 parties?

17 MR. ORTLIEB: Nothing.

18 JUDGE MORAN: Okay.

19 MR. TOWNSLEY: Your Honor, this is Darrell  
20 Townsley. I'm not sure whether you had ruled on the  
21 petitions to intervene that were before you  
22 yesterday.

1 JUDGE MORAN: Oh, geez, I haven't. Who has filed  
2 a petition to intervene? Because I know some people  
3 haven't served me with paper copies, and I haven't  
4 had a chance to pull them all off the e-Docket.

5 MR. TOWNSLEY: Your Honor, MCI has filed.

6 JUDGE MORAN: Okay.

7 MS. HAMILL: AT&T has filed, your Honor.

8 JUDGE MORAN: Okay. MCI, AT&T.

9 MR. MacBRIDE: McLeod, RCN, and TDS have all  
10 filed petitions to intervene.

11 JUDGE MORAN: McLeod, RCN, TDS. And you only did  
12 a special appearance for --

13 MR. MacBRIDE: Well, they were already a party.

14 JUDGE MORAN: But you still entered just a  
15 special appearance on behalf of that party, and  
16 that's big to the order.

17 MR. CLARKE: The Attorney General.

18 JUDGE MORAN: Yes, I do have your paper copy.

19 MR. KELLY: Your Honor --

20 MR. MUNCY: Judge, this is Dennis Muncy. I filed  
21 for the Illinois Independent Telephone Association.

22 JUDGE MORAN: Right, I do have your copy. Yes?

1 MR. KELLY: Sage Telecom, Z-Tel.

2 JUDGE MORAN: Sage, S-a-g-e?

3 MR. KELLY: S-a-g-e.

4 JUDGE MORAN: Telecom. Yes?

5 MR. KELLY: Z-Tel Communications.

6 JUDGE MORAN: Z-Tel.

7 MR. KELLY: Talk America.

8 JUDGE MORAN: Talk America.

9 MR. KELLY: And Covad Communications.

10 JUDGE MORAN: And Covad have all filed

11 appearances -- I mean petitions. Anyone else?

12 (No response.)

13 JUDGE MORAN: Anyone else by telephone that has

14 filed petition to intervene in this matter?

15 (No response.)

16 JUDGE MORAN: Okay. Are there any objections to

17 any of these petitions being granted?

18 MR. HARVEY: No.

19 JUDGE MORAN: Okay. Hearing none, the petitions

20 to intervene of MCI, AT&T, McLeod, RCN, TDS, the

21 Attorney General, the Illinois Independent Telephone

22 Association, Sage Telecom, Z-Tel, Talk America, and

1 Covad are hereby granted.

2 MS. HAMILL: Thank you.

3 JUDGE MORAN: Okay. Do we have anything else?

4 And when is the next status here on this schedule?

5 Is it --

6 MR. HARVEY: On the uncontested side,

7 December 18th.

8 JUDGE MORAN: Okay.

9 MR. HARVEY: And on the contested side,

10 February 27th.

11 JUDGE MORAN: Okay. So what did you say the

12 contested --

13 MR. HARVEY: February 27th on the contested side.

14 JUDGE MORAN: Okay. February 27 on the

15 uncontested. And what on the --

16 MR. HARVEY: No. December 18, 2003, on the

17 uncontested side.

18 JUDGE MORAN: Okay.

19 MR. HARVEY: February 27, 2004, on the contested

20 side.

21 MR. FOSCO: I guess we need times for those.

22 JUDGE MORAN: What's the uncontested again?

1 MR. HARVEY: Uncontested is December 18.

2 JUDGE MORAN: December 18th. Okay. And we do  
3 have a status for that?

4 MR. FRIEDMAN: That's not actually a status.

5 MS. HAMILL: Yeah, it's a --

6 MR. HARVEY: It's a hearing to put the evidence  
7 in, if any, but it's also kind of, I guess, by way  
8 of a status.

9 JUDGE MORAN: Okay. Fine. Then this matter is  
10 continued --

11 MR. MacBRIDE: Judge, Judge, before you --

12 JUDGE MORAN: Yeah.

13 MR. MacBRIDE: Maybe Mr. Harvey said this and I  
14 wasn't paying attention. Were we going to have --  
15 on the contested schedule, the surrebuttal testimony  
16 on the 27th, are we going to have that served by  
17 noon so we'd have it before the status hearing?

18 MR. HARVEY: I guess we should, yeah.

19 MR. ORTLIEB: Yeah.

20 JUDGE MORAN: Okay. So you are clarifying the  
21 schedule --

22 MR. HARVEY: Yes.

1 JUDGE MORAN: -- to have the ILECs and CLECs file  
2 surrebuttal testimony still on February 27th, but at  
3 or before 12:00 noon.

4 MR. HARVEY: Correct.

5 JUDGE MORAN: That change is noted and accepted.

6 Anything else we want to talk  
7 about?

8 MR. HARVEY: I think we probably need a time for  
9 the 18th.

10 JUDGE MORAN: Right. What's the parties'  
11 pleasure?

12 MR. MacBRIDE: 10:00 a.m.?

13 MR. HARVEY: 10:00 a.m. is fine.

14 JUDGE MORAN: 10:00?

15 MS. HAMILL: Yes, that's good.

16 JUDGE MORAN: Okay. So we're continuing this  
17 matter to December 18, 2003, at 10:00 a.m. Thank  
18 you very much.

19 (Whereupon, further proceedings  
20 in the above-entitled matter  
21 were continued until  
22 December 18, 2003 at 10:00 a.m.)