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# Transcript of Hearing

**Date:** January 9, 2017

**Case:** Cellco Partnership d/b/a Verizon Wireless, In Re:

**Planet Depos**

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Transcript of Hearing  
Conducted on January 9, 2017

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5 CELLCO PARTNERSHIP : Case No. CU-T-17-01	5
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9 HEARING	9
10 Before Hearing Examiner Tammy Citaramanis	10
11 Rockville, Maryland	11
12 Monday, January 9, 2017	12
13 9:30 a.m.	13
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23 Job: 132278	23
24 Pages: 1 - 32	24
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1 A P P E A R A N C E S	1 P R O C E E D I N G S
2 ON BEHALF OF CELLCO PARTNERSHIP:	2 HEARING EXAMINER: I'm going to call the case of
3 CATHY BORTEN, ESQUIRE	3 Cellco Partnerships d/b/a Verizon Wireless for
4 LAW OFFICES OF M. GREGG DIAMOND P.C.	4 telecommunications conditional use, CU-T-17-01, and request
5 4416 East West Highway	5 of Eastgate Recreational Association for administering a
6 Suite 400	6 modification of its special exception, Case No. S-596. And
7 Bethesda, Maryland 20814	7 this was the date the hearing had been rescheduled to but
8 (301) 634-3181	8 because of a request to continue by applicant, I believe it
9	9 was Tuesday, we are here to actually postpone it once we
10	10 discuss the timeline. My name is Tammy Citaramanis. I am
11 ON BEHALF OF EASTGATE RECREATION:	11 the hearing examiner in this case. So with that, I'm going
12 TOM BARNARD, ESQUIRE	12 to ask counsel to identify themselves for the record. And
13 BAKER DONELSON	13 I notice that we have a number of people in the audience.
14 100 Light Street	14 Just so that everybody is clear, this is not the case --
15 Baltimore, Maryland 21202	15 the hearing on the merits. So you're happy to stay and
16 (410) 685-1120	16 watch but this won't be an opportunity for anybody to
17	17 speak. So it's just the attorneys, just so everybody
18	18 knows, even if you have that urge. So if counsel for the
19 ON BEHALF OF INDIVIDUALS:	19 applicant would identify themselves for the record, please?
20 WILLIAM J. CHEN, JR., ESQUIRE	20 MS. BORTEN: (Inaudible).
21 LAW OFFICE OF WILLIAM J. CHEN, JR., LLC	21 HEARING EXAMINER: You know, I don't know. I've never
22 200 A Monroe Street	22 been in this courtroom. I don't -- I can hear you.
23 Suite 300	23 MS. BORTEN: No, I just meant for the record.
24 Rockville, Maryland 20850	24 MR. CHEN: (Inaudible).
25 (301) 279-9500	25 MS. BORTEN: No, I know how to do it. (Inaudible).

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2 (5 to 8)

<p>5</p> <p>1 HEARING EXAMINER: Yes.</p> <p>2 MS. BORTEN: That's fine. Thank you.</p> <p>3 HEARING EXAMINER: Just so long as the court reporter</p> <p>4 can hear you.</p> <p>5 MS. BORTEN: I just was wondering for the record.</p> <p>6 Cathy Borten on behalf of Celco Partnership.</p> <p>7 HEARING EXAMINER: Okay.</p> <p>8 MR. BARNARD: And my name is Tom Barnard. I'm from</p> <p>9 Baker Donelson. I'm appearing on behalf of Eastgate</p> <p>10 Recreation. I have not previously entered by appearance.</p> <p>11 HEARING EXAMINER: Okay. So you're entering your</p> <p>12 appearance?</p> <p>13 MR. BARNARD: Can I enter my appearance now?</p> <p>14 HEARING EXAMINER: Yes.</p> <p>15 MR. BARNARD: And I'll mail out a formal notice.</p> <p>16 HEARING EXAMINER: And what is your name again?</p> <p>17 MR. BARNARD: Thomas Barnard.</p> <p>18 HEARING EXAMINER: So for Eastgate?</p> <p>19 MR. BARNARD: Yes.</p> <p>20 HEARING EXAMINER: Okay. So I guess we have to change</p> <p>21 that -- or be joint counsel for --</p> <p>22 MR. BARNARD: I'll be joint -- I'll be working with</p> <p>23 Ms. Borten.</p> <p>24 HEARING EXAMINER: Okay.</p> <p>25 MR. CHEN: Good morning, Madam Examiner. My name is</p>	<p>7</p> <p>1 original application.</p> <p>2 HEARING EXAMINER: So you weren't looking in your</p> <p>3 motion today to set a hearing? You were waiting --</p> <p>4 MS. BORTEN: No.</p> <p>5 HEARING EXAMINER: I interpreted that you were looking</p> <p>6 for the time because you weren't exactly sure -- you</p> <p>7 estimated 30 days to get it out --</p> <p>8 MS. BORTEN: Right.</p> <p>9 HEARING EXAMINER: -- but you said by agreement. By</p> <p>10 agreement with opposing counsel?</p> <p>11 MS. BORTEN: Right. If it works best -- first I'd</p> <p>12 like to thank opposing counsel. We appreciate the</p> <p>13 agreement to the continuance. We can set a hearing date,</p> <p>14 if it works best for your schedule, opposing counsel's</p> <p>15 schedule, if we go out far enough. We just want to make</p> <p>16 sure that we have the ability to provide the planning staff</p> <p>17 with what they're asking for and get the amended</p> <p>18 application filed which would then trigger the standard</p> <p>19 notice procedures and time frames for opposing counsel or</p> <p>20 any other members of the community to take a look at the</p> <p>21 amended application and comment.</p> <p>22 HEARING EXAMINER: Well, because we're dealing with</p> <p>23 the shot clock --</p> <p>24 MS. BORTEN: Right.</p> <p>25 HEARING EXAMINER: -- we would have to throw that on</p>
<p>6</p> <p>1 Bill Chen. I represent a series of individuals that are</p> <p>2 indicated in the record.</p> <p>3 HEARING EXAMINER: I think it's nine.</p> <p>4 MR. CHEN: Yes.</p> <p>5 HEARING EXAMINER: It's nine. Okay. All right. So</p> <p>6 first your request to postpone the hearing, of course, is</p> <p>7 granted. Of course there is a number of replies and</p> <p>8 responses for -- Ms. Borten, could you tell me -- clarify</p> <p>9 your request in terms of setting the hearing? What were</p> <p>10 you thinking? By agreement after I -- I understood it that</p> <p>11 you wanted to -- didn't set the hearing until after you</p> <p>12 have filed the amended information request if I --</p> <p>13 MS. BORTEN: Correct. What we'd like to be able to do</p> <p>14 -- we've read Mr. Estes report as wanting to see</p> <p>15 camouflage, redesign, landscaping, screening and if we were</p> <p>16 unable to do that then an explanation of why not. And so</p> <p>17 we want to be able to go back to him and say this is what</p> <p>18 you asked for, this is what we're proposing, and then after</p> <p>19 that file an amended application. And certainly we can be</p> <p>20 working on the amended application I think and sort of</p> <p>21 parallel with when we can get into see him to provide what</p> <p>22 he's asked for. And then after the amended application is</p> <p>23 filed, we'd just be subject to the standard BOZA kind of</p> <p>24 requirements and thinking it would then go back to Mr.</p> <p>25 Estes for a formal review just as it would have under an</p>	<p>8</p> <p>1 top of it --</p> <p>2 MS. BORTEN: Right.</p> <p>3 HEARING EXAMINER: -- with the standard, you know --</p> <p>4 MS. BORTEN: Right.</p> <p>5 HEARING EXAMINER: -- timeline because at this point</p> <p>6 we -- you know, any request is going to be that the shot</p> <p>7 clock has to cover up that --</p> <p>8 MS. BORTEN: Understood.</p> <p>9 HEARING EXAMINER: -- whole period because of the</p> <p>10 problems that have arisen. I don't think that we should,</p> <p>11 you know, stop it or restart it until everybody --</p> <p>12 MS. BORTEN: Right.</p> <p>13 HEARING EXAMINER: -- has had an opportunity to review</p> <p>14 and all that. But at the same time, I wanted to get</p> <p>15 clarification as to what your intent was. I mean, I don't</p> <p>16 -- so we can either interpret it as that it's indefinite</p> <p>17 until a time period where that you say, okay, once I've</p> <p>18 filed this or once staff has made its recommendation, it</p> <p>19 will be X number of days after 30 --</p> <p>20 MS. BORTEN: Right.</p> <p>21 HEARING EXAMINER: -- or 45 days or whatever because</p> <p>22 you still have to build in time for the notifications --</p> <p>23 MS. BORTEN: Right.</p> <p>24 HEARING EXAMINER: -- for any amendment and -- because</p> <p>25 it would be -- I don't want to set a hearing if in fact</p>

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<p style="text-align: right;">9</p> <p>1 that's not enough time and then it go through another --</p> <p>2 MS. BORTEN: Right.</p> <p>3 HEARING EXAMINER: -- but at the same time we can't</p> <p>4 let it languish. I mean, certainly it's your shot clock.</p> <p>5 MS. BORTEN: Sure. And the other thing I think we</p> <p>6 have, I know from our standpoint, I'm not sure about Mr.</p> <p>7 Chen's, but we have a lot of people that we're juggling and</p> <p>8 one concern I have is if we leave it indefinite and then a</p> <p>9 date is automatically set in, we're going to wind up where</p> <p>10 we were originally which was none of the experts were</p> <p>11 available. So --</p> <p>12 HEARING EXAMINER: Right. And I definitely think that</p> <p>13 --</p> <p>14 MS. BORTEN: And I have --</p> <p>15 HEARING EXAMINER: -- an agreement is --</p> <p>16 MS. BORTEN: Right.</p> <p>17 HEARING EXAMINER: -- preferable but I can't make you</p> <p>18 guys agree. I mean, if you guys can't agree, I will set</p> <p>19 it. If it's preferable for you guys to come to me and say</p> <p>20 we've got a date, our experts can make it and this is our</p> <p>21 agreement.</p> <p>22 MS. BORTEN: Sure.</p> <p>23 HEARING EXAMINER: That seems to be getting a little</p> <p>24 bit better with discussions --</p> <p>25 MS. BORTEN: Sure.</p>	<p style="text-align: right;">11</p> <p>1 MS. BORTEN: Fine.</p> <p>2 MR. CHEN: Well, if I may.</p> <p>3 HEARING EXAMINER: Just -- okay. So with that today,</p> <p>4 I'm sure you all don't have any agreement and it sounds</p> <p>5 like because you haven't even filed the amended</p> <p>6 application, it really would be futile to set it within the</p> <p>7 next month-and-a-half. Is that -- do you agree?</p> <p>8 MS. BORTEN: I would agree with that.</p> <p>9 HEARING EXAMINER: Okay. Do you agree?</p> <p>10 MR. BARNARD: Yes, ma'am.</p> <p>11 HEARING EXAMINER: Mr. Chen?</p> <p>12 MR. CHEN: I don't -- I'm not sure I do.</p> <p>13 HEARING EXAMINER: Okay. That's why we're here.</p> <p>14 MR. CHEN: You said that the shot clock would be</p> <p>15 suspended until the next hearing date.</p> <p>16 HEARING EXAMINER: Correct. Technically it's been</p> <p>17 suspended since November -- when was the original date,</p> <p>18 November 18th?</p> <p>19 MS. BORTEN: November 18th.</p> <p>20 HEARING EXAMINER: November 18th. So we are -- it's</p> <p>21 waived right now. It stopped on November 18th and it won't</p> <p>22 restart until the new hearing date.</p> <p>23 MR. CHEN: Here is my concern.</p> <p>24 HEARING EXAMINER: Okay.</p> <p>25 MR. CHEN: If I understand Ms. Borten correctly, what</p>
<p style="text-align: right;">10</p> <p>1 HEARING EXAMINER: -- back and forth. So if -- okay.</p> <p>2 MS. BORTEN: I think we can do that. And my client</p> <p>3 understands the need to do that. So if it's an issue of --</p> <p>4 I think we've already said that we would waive the shot</p> <p>5 clock to the new hearing date that's set. I don't know if</p> <p>6 that answers your question or not.</p> <p>7 HEARING EXAMINER: Well, it certainly -- it's</p> <p>8 clarifying the new date. So if we don't have a new date,</p> <p>9 the shot clock is still waived. Once we set that and once</p> <p>10 the hearing starts then the shot clock will start again.</p> <p>11 It's not going to start once you file. It's not going to</p> <p>12 start once staff -- it has to start -- it can only restart</p> <p>13 on the day that the hearing starts because of the time that</p> <p>14 we've already used up until now. All right?</p> <p>15 MS. BORTEN: The shot clock just -- it bends my brain</p> <p>16 cells.</p> <p>17 HEARING EXAMINER: Well --</p> <p>18 MS. BORTEN: I can't imagine it's any easier for you</p> <p>19 either. But --</p> <p>20 HEARING EXAMINER: Well, it's real easy. It's we</p> <p>21 can't restart it until the new hearing date --</p> <p>22 MS. BORTEN: Okay. That's --</p> <p>23 HEARING EXAMINER: -- is what I'm saying to you.</p> <p>24 MS. BORTEN: Right. Understood.</p> <p>25 HEARING EXAMINER: Okay.</p>	<p style="text-align: right;">12</p> <p>1 the applicants propose to do is prepare within some period</p> <p>2 of time, about 30 days as I understand the estimate, new</p> <p>3 designs for the (inaudible) and then submit them to the</p> <p>4 staff. My problem is that -- and I hope the Examiner</p> <p>5 appreciates this -- what the applicants propose to do is</p> <p>6 submit designs to the staff, the Department of Planning,</p> <p>7 meet with Department of Planning staff to iron out some</p> <p>8 type of proposal that the staff finds acceptable and then</p> <p>9 come back to the Examiner and say we are now about to file</p> <p>10 or will or am filing our amended complaint -- amended</p> <p>11 application. I don't think that is what is contemplated by</p> <p>12 the zoning ordinance. It's incumbent upon the applicant to</p> <p>13 submit an application. The process is not one where an</p> <p>14 applicant files with the planning authorities who give a</p> <p>15 recommendation, a proposal and say, hey, can you live with</p> <p>16 this? Can we change it to satisfy you? And once we iron</p> <p>17 out our deal with you, we will then file our application.</p> <p>18 I mean, that's kind of like calling -- greasing the skids.</p> <p>19 So we would object to any process that would allow the</p> <p>20 applicant to pre-file it, I guess may be a fair way to</p> <p>21 describe it, the proposed plans as modified to as the</p> <p>22 applicant understands respond to concerns of the staff. I</p> <p>23 think it is incumbent upon the applicant now to, in light</p> <p>24 of the guidance given by the staff as to the staff's</p> <p>25 concerns -- and I have no problems with the applicant now</p>

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4 (13 to 16)

<p>13</p> <p>1 even asking for clarification of matters and then upon 2 receiving that information from the staff, the applicant 3 appropriately amends the application and files it and then 4 proceed forward from that point in time. And that's my 5 client's position that you don't meet with the staff and 6 find out what the staff wants and what the staff will bless 7 and then amend your application. That it's incumbent upon, 8 as I say, the applicant to put together its best case for 9 an application and file it. And that is what the normal 10 process that should be followed. In this particular case, 11 quite candidly, my clients, upon consideration of the 12 motion for the postponement, they were cooperative, as Ms. 13 Borten has pointed out, that, look, if you need time to 14 file and you want to amend your application, that's a 15 courtesy that we'll give. But we do not agree that the 16 applicant should be able to meet with the staff ahead of 17 time, figure out what the staff wants, and then file an 18 amended application. With regard to the shot clock, the 19 shot clock is based upon an FCC declaratory ruling and it's 20 in the record, a copy of it, and it's not really a complex 21 document. In fact, only really the first half of the 22 document deals with the shot clock and it's really very, 23 very simple and I think the Examiner kind of picked up on 24 it and that is that the applicant has the right to suspend 25 the shot clock at any time for any period of time. Indeed,</p>	<p>15</p> <p>1 applicants to just talk about this is what we're thinking 2 of doing, this is the direction we're going. You know, it 3 can be a collegial process in that regard. We are not 4 going in with the intention of saying -- asking staff to 5 bless what we're doing. Staff has requested -- this is 6 what staff needs to see on this currently pending 7 application and all we want to do is have the opportunity 8 to provide staff what staff has requested. We don't know 9 that staff will look at us and say, oh, yeah, I'll approve 10 that, absolutely. And we're not going to be pushing for 11 that. We want to come in and say this is what we're 12 proposing. Does this head in the direction, you know, of 13 what you wanted to see? Hear what they have to say, file 14 the amended application. I don't think that conversation 15 binds the staff to anything in their ultimate report, but 16 my experience with working with staff has been different 17 than that. I don't think you have to come in cold with an 18 application that they've never heard of, they've never seen 19 anything about. And again, you know, it's not binding to 20 them. Mr. Estes has asked for it and the applicant would 21 like the opportunity to provide it. 22 MR. CHEN: Estes has not asked for (inaudible). The 23 staff has said that there are problems with the 24 (inaudible). If you go forward today, today is the stated 25 hearing date and on that application and those plans as</p>
<p>14</p> <p>1 one of the cases -- I believe it is cited in one of the 2 filings that I've made is a court decision that recognized 3 that in that particular case the applicant had extended or 4 suspended the shot clock I think 200 times so that it's 5 really not a gun to one's head. All it is is a requirement 6 that the government authorities had to process something 7 during an estimated period of time. Because even if it 8 goes beyond 150 days, a court can determine that government 9 was acting reasonably. So that really the only thing that 10 is necessary to occur vis-a-vis the shot clock for the 11 applicant, I'm taking off the shot clock right now because 12 I want to amend. And we don't have a problem with it. 13 That's logical. 14 MS. BORTEN: We've agreed to it. 15 MR. CHEN: But the objection that we would have is the 16 applicant -- and maybe I didn't make that clear in one of 17 my filings -- we disagree and we feel that the applicant 18 should not be able to meet ahead of time with the staff and 19 figure out what the staff will bless before it amends its 20 application. That's where we are. 21 MS. BORTEN: Can I comment? Can I make a comment? 22 HEARING EXAMINER: Certainly. 23 MS. BORTEN: Thank you. With all due respect, I'm 24 going to disagree with Mr. Chen's position. I think 25 planning staff is very open to meeting with even potential</p>	<p>16</p> <p>1 they are reflected at this time and the applicant would be 2 in a situation (inaudible) negative staff report, but the 3 applicant then would have the burden of establishing and 4 persuading you that notwithstanding the staff 5 recommendation or the staff comments that the staff was 6 erroneous. Quite candidly, the description of what Ms. 7 Borten is stating is not really accurate because staff does 8 give direction on it and staff will give comments and an 9 applicant does ask. And this, by the way, is not a 10 circumstance where it's an initial application where, hey, 11 look, we're thinking about filing an application for such 12 and such, what do you think? This is a situation where the 13 applicant has filed -- it's been pending now for, goodness, 14 four months, five months before the filing and the staff 15 had it and they met with the staff before that filing even. 16 And, you know, the staff just said, look, we think there 17 are problems with this. They've given direction. If the 18 applicant wants additional direction from the staff, I 19 think they can probably ask for it. But I don't think it's 20 appropriate for the staff in this process to be able to 21 meet with the staff on a proposed amendment before they 22 file it. 23 HEARING EXAMINER: So you're suggesting that I have 24 the power to tell them they can't (inaudible)? 25 MR. CHEN: I think you do have that power. Oh, yes,</p>

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<p>17</p> <p>1 absolutely. I think you have the power to say you have 2 until this time to file your application, your amended 3 application. 4 HEARING EXAMINER: Well, I mean, there is an amendment 5 process and so they are allowed to amend their application. 6 Staff has received the new information which is what is 7 generating this otherwise we would be in hearing today. 8 MR. CHEN: They have -- pardon me. I apologize. 9 HEARING EXAMINER: No, no, no. The reason that 10 generated this continuance is because staff may -- 11 responded to my questions but they also, even if I had not 12 asked any questions, they wanted to respond to the new SIMS 13 revised photos that were submitted that were different or 14 revised from the original ones that made them change their 15 opinion in the sense that they needed more information 16 before they could render a recommendation. Which staff has 17 the right to do that and parties have agreed to continue 18 it. So I'm not sure I agree with you that I have the 19 authority or that I'm going to say, you know, submit your 20 amendment but don't talk to staff. I mean, I'm sure 21 opposing counsel or anybody in this room can call staff and 22 ask some questions. So with regards to that, I mean, I 23 think it's just -- we are at the setting, when do we want 24 to set the hearing for? They will be allowed to answer 25 staff's request and then staff will make their final</p>	<p>19</p> <p>1 MS. BORTEN: It didn't -- 2 MR. CHEN: (Inaudible). 3 HEARING EXAMINER: All right. So we're going to -- 4 with regards to setting the hearing, we're going to wait 5 until after you've filed and maybe you all will come to an 6 agreement or we just -- 7 MR. CHEN: I have no problems. I mean, I'm going to 8 abide by the Examiner's ruling and if that's your ruling, 9 that's your ruling. I'm not here to --my clients do not 10 want to be (inaudible). We disagree with, you know, the 11 process that (inaudible). It seems to me that Ms. Borten 12 and I have a pretty good talking relationship. 13 HEARING EXAMINER: That's good to hear. 14 MR. CHEN: We may disagree on things but we have a 15 good -- 16 HEARING EXAMINER: I hope you continue that because it 17 certainly makes my job easier if you do that. 18 MS. BORTEN: Sure. 19 MR. CHEN: We've known each other for a long time. 20 MS. BORTEN: A long time. 21 MR. CHEN: So that if it is easier for the process to 22 have Ms. Borten and I at the appropriate time, you know, 23 try to figure something out, I'd be very surprised if we 24 couldn't, quite candidly. 25 HEARING EXAMINER: Okay.</p>
<p>18</p> <p>1 recommendation and we'll proceed forward. So -- 2 MR. CHEN: Well, just so my client's position is noted 3 on the record? 4 HEARING EXAMINER: Yes, it is. Yes, it is absolutely 5 noted on the record. But I did want to ask one question 6 with regards to the revised SIMS photos. How are they 7 created and why wasn't that information amended after it 8 was discovered which was -- 9 MS. BORTEN: Well, it was. What -- 10 HEARING EXAMINER: Oh, it was. Okay. (Inaudible). 11 MS. BORTEN: It was. It was a matter of -- it was a 12 matter of timing. When it was first brought to our 13 attention, we went back and they looked at everything, 14 figured out that something was inaccurate in terms of where 15 the trees were and they went ahead and revised the SIMS 16 and, frankly, the day they came in, we were in the midst of 17 preparing for the temporary restraining order which came up 18 -- that Mr. Chen filed in the circuit court. So it came up 19 very quickly and we were focusing our attentions on that. 20 When that was completed then we submitted the revisions. 21 HEARING EXAMINER: Okay. I was just curious -- 22 MS. BORTEN: Sure. 23 HEARING EXAMINER: -- as to how that -- okay. 24 MR. CHEN: Well, they were filed after we had filed 25 our photos.</p>	<p>20</p> <p>1 MS. BORTEN: And I've got all my experts, when they're 2 free and when they're not and I assume you could, as well. 3 MR. CHEN: Well, probably what we'll have to do is 4 just, you know, figure out experts and times and things 5 like that. I mean, she and I -- Ms. Borten and I have been 6 able to talk in the past and I can't imagine we can't 7 continue to talk. 8 HEARING EXAMINER: Okay. 9 MS. BORTEN: I would agree. I will abide by your 10 ruling as well. 11 HEARING EXAMINER: So it will be an indefinite 12 postponement but I will put on the record that I expect to 13 hear from counsel for both parties, hopefully a joint 14 request. You're anticipating 30 days filing your amendment 15 so that puts us -- 16 MS. BORTEN: I -- 17 HEARING EXAMINER: That puts you, like, in the first 18 week of February. And we can do 60 days hear from counsel 19 or sometime in February. I mean, I'm under the impression 20 that we have this hearing room in March and the first two 21 weeks in April. It's every Wednesday or Friday, is that 22 correct, Sara? 23 MR. CHEN: You just want to hear back from us. 24 HEARING EXAMINER: I just want to hear back from you 25 as to, okay, we can set the hearing and we've agreed on --</p>

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<p>21</p> <p>1 these are -- give me a number of dates. 2 MS. BORTEN: Okay. 3 MR. CHEN: Okay. 4 HEARING EXAMINER: And at that point I will set the 5 date. 6 MR. CHEN: Okay. 7 HEARING EXAMINER: Because you might come back to me 8 and say it's going to be another 30 days. I mean, still -- 9 remember, we have to build in notice time to send out the - 10 - 11 MS. BORTEN: And that's 30 days of notice or -- 12 HEARING EXAMINER: Actually, for an indefinite 13 postponement, I believe the rule says 15 days. 14 MS. BORTEN: 15 days. Okay. 15 HEARING EXAMINER: 15 days. I think that's what it -- 16 it's in the motion that I -- 17 MS. BORTEN: Okay. 18 HEARING EXAMINER: That order. 19 MS. BORTEN: And you said Wednesdays or Fridays; is 20 that right? 21 HEARING EXAMINER: Wednesdays or Fridays in March and 22 I think it's the first two weeks of April. Of course, I 23 will let anybody know if anything changes from my 24 perspective. Right now those dates are open but it is 25 January so --</p>	<p>23</p> <p>1 need to have what the notice requirement -- meet the notice 2 requirements and make sure we've got the hearing room and 3 I'm available, as well. So work on a few dates, not just 4 one. 5 MS. BORTEN: Okay. 6 HEARING EXAMINER: And on that, anything else? 7 Because I wanted to address -- I'm only speaking with the 8 attorneys. If you have a question and you want to ask, I 9 don't have -- I assume you have a position. I can't -- I'm 10 only going to hear from the attorneys. I can take a moment 11 -- 12 UNIDENTIFIED SPEAKER: And then outside of just 13 setting the hearing date, the attorney brought up an issue 14 of transparency of how the proceedings are handled -- 15 HEARING EXAMINER: Okay. 16 UNIDENTIFIED SPEAKER: -- which is more than just a 17 (inaudible). 18 HEARING EXAMINER: As I explained before, we are here 19 to change -- to postpone the case and I'm not taking any 20 questions or testimony or anything from the audience. 21 Certainly if it's a question that you could put in writing 22 and submit, that's perfectly fine too, to Mr. Chen. In 23 your reply response that I got I think like a few minutes 24 to 5:00 on Friday with regards to the (inaudible) 25 application.</p>
<p>22</p> <p>1 MS. BORTEN: Right. 2 HEARING EXAMINER: But I just want to hear back from 3 you guys so that if we set a time now, if I hear back from 4 you guys by this date then we can at least start planning 5 from there. Does that make sense? 6 MS. BORTEN: Uh-huh. 7 HEARING EXAMINER: Just so that we touch base and this 8 doesn't languish. Of course, it's your -- 9 MS. BORTEN: No, understood. That's fine. 10 HEARING EXAMINER: So we are on the 9th so if you 11 guys, you know -- by the end of February or tell me what -- 12 MS. BORTEN: End of February to tell you? 13 HEARING EXAMINER: To tell me, yes, please. 14 MS. BORTEN: Okay. Sure. Oh, yeah, that's -- I think 15 that's fine. 16 HEARING EXAMINER: So we'll -- by the end of February 17 -- does that work for Mr. Chen? 18 MR. CHEN: Yeah, are you saying -- we're talking about 19 the 28th, correct? 20 HEARING EXAMINER: Yes. 21 MR. CHEN: Okay. 22 HEARING EXAMINER: By the end of February. Just -- of 23 course, you can let me know any time before that if there's 24 an agreement. So I expect to hear a status from both of 25 you with regards to setting the hearing, recognizing we</p>	<p>24</p> <p>1 MR. CHEN: (Inaudible). 2 HEARING EXAMINER: Yes. 3 MR. CHEN: (Inaudible) only talks about -- and I've 4 kind of sensed that too, from your perspective -- 5 HEARING EXAMINER: Just tell me which notice you're 6 looking at. 7 MR. CHEN: I'm looking at your January 5 email where 8 it says the sole and limited purpose of this morning's 9 hearing, you know, that (inaudible) emphasize that. 10 Please, I am, but I don't represent all parties that are 11 going to be (inaudible) so I really -- I'm just saying that 12 your notice that you're going to deal with is mainly the 13 issue of postponing the hearing and, as I say, there's 14 other parties to the proceeding. So it's your call. It's 15 your proceeding and I'm not telling you what to do. 16 HEARING EXAMINER: No, no. I was just going to ask 17 you, in terms of your reply, I mean, you did put that 18 forward and that -- this proceeding is not for determining 19 that. I just was seeking clarification, was going to take 20 it under advisement and will file an order because 21 certainly they haven't responded. 22 MS. BORTEN: Right. 23 HEARING EXAMINER: I just got it so it was just as a 24 matter of, I guess, courtesy to find out if you wanted to 25 explain that or you can just -- I can wait until she</p>

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<p>25</p> <p>1 submits --</p> <p>2 MS. BORTEN: Why don't we just wait until I --</p> <p>3 HEARING EXAMINER: -- (inaudible).</p> <p>4 MS. BORTEN: It's okay with me.</p> <p>5 MR. CHEN: I'm just thinking of the record. But I</p> <p>6 will say this, I think you've got all the information you</p> <p>7 need on it because there's been at least two filings on</p> <p>8 both sides.</p> <p>9 HEARING EXAMINER: Yes. Well, but considering the</p> <p>10 timing, you know --</p> <p>11 MR. CHEN: Well, yes, I appreciate what you're saying</p> <p>12 because I think that that does play into part of my</p> <p>13 concern, yes. Yes.</p> <p>14 HEARING EXAMINER: And I think talking about</p> <p>15 postponing the hearing, we certainly have time -- because</p> <p>16 one of your concerns was how to prepare for the hearing.</p> <p>17 MR. CHEN: Right.</p> <p>18 MS. BORTEN: I would like the opportunity just to</p> <p>19 submit a brief reply. So --</p> <p>20 HEARING EXAMINER: Yes. If you could, that would be</p> <p>21 great. Okay. Oh, and there is one thing I do want -- and</p> <p>22 you've been doing it and you've been doing it most of the</p> <p>23 time. Whenever a filing -- the original has to be hand</p> <p>24 stamped. Everything that's coming via email is as a</p> <p>25 courtesy.</p>	<p>27</p> <p>1 people have submitted things. But it's long and I don't</p> <p>2 know if it's all necessary right now.</p> <p>3 MR. CHEN: I must say that I think Ms. Borten has got</p> <p>4 a point.</p> <p>5 HEARING EXAMINER: All right. I agree. I mean, I</p> <p>6 think the rules say who's entitled to what different</p> <p>7 notices. Is that what you're talking about, who should be</p> <p>8 on the certificate of filings?</p> <p>9 MS. BORTEN: Of all the filings, the different --</p> <p>10 MR. CHEN: Yes, and if you look at it conservatively,</p> <p>11 which I appreciate in theory, I think there is one</p> <p>12 interpretation that anybody who has submitted anything in</p> <p>13 writing becomes a party and therefore they're entitled to</p> <p>14 notice and I know -- I appreciate what Ms. Borten is saying</p> <p>15 because I have the same situation. I want to follow the</p> <p>16 rules and --</p> <p>17 MS. BORTEN: Right.</p> <p>18 MR. CHEN: -- I just need some clarification.</p> <p>19 HEARING EXAMINER: Well, and, I mean, parties of</p> <p>20 record and participants, the notice is a little different</p> <p>21 to both and I don't believe that you automatically become a</p> <p>22 part of the record if you've filed something. You know, I</p> <p>23 think you need to look at the (inaudible). Give me a</p> <p>24 second and I will -- but housekeeping with regards to that</p> <p>25 too is, I mean, keeping track of all of who is supposed to</p>
<p>26</p> <p>1 MS. BORTEN: Okay.</p> <p>2 HEARING EXAMINER: It's technically not considered</p> <p>3 part of the record until it goes to the office, they've</p> <p>4 stamped it and marked it in. And it's getting -- I think</p> <p>5 the most recent one --</p> <p>6 MS. BORTEN: And that was just the timing. That was</p> <p>7 the only issue.</p> <p>8 HEARING EXAMINER: And that was the timing. And I</p> <p>9 only bring that up because of the time but Mr. Chen has</p> <p>10 walked them in, you've walked them in, but this last one</p> <p>11 was not. It just --</p> <p>12 MS. BORTEN: Uh-huh.</p> <p>13 HEARING EXAMINER: I don't -- I want the record to be</p> <p>14 as clean and clear as possible so if you could just do</p> <p>15 that.</p> <p>16 MS. BORTEN: Understood. Thank you.</p> <p>17 MR. CHEN: On a housekeeping matter, if I may?</p> <p>18 HEARING EXAMINER: Yes.</p> <p>19 MR. CHEN: What is the appropriate certificate of</p> <p>20 service because I know Ms. Borten hasn't -- I don't -- and</p> <p>21 I'm not complaining about anybody, I'm just -- what is the</p> <p>22 appropriate certificate of service?</p> <p>23 MS. BORTEN: Right. I'm just -- what I've been doing,</p> <p>24 the additional people have been things that I've received.</p> <p>25 Correspondence into the record, you know, that I know these</p>	<p>28</p> <p>1 get notice and also who is supposed to check back every now</p> <p>2 and then to keep themselves abreast.</p> <p>3 MR. CHEN: And I just might add quite candidly, while</p> <p>4 I appreciate Ms. Borten's position because that puts me in</p> <p>5 the same position, I must say that while I've not talked</p> <p>6 with any of these individuals except I had a conversation</p> <p>7 with Ms. Wedder (phonetic), I can see the point of view of</p> <p>8 people saying I have submitted this whatever it may be and</p> <p>9 I intend to appear at the hearing and as far as I'm</p> <p>10 concerned, I am a party and I want to be copied on the</p> <p>11 filings. To me, I think that's a lot -- I can see people</p> <p>12 of that opinion, quite frankly, and I'm not trying to take</p> <p>13 up the cudgel for anybody, I'm just -- I just think we need</p> <p>14 some clarification.</p> <p>15 HEARING EXAMINER: Okay. Well, there is a rule. 3.0</p> <p>16 talks about the prehearing procedures and parties of</p> <p>17 record, participants and representation, who needs to see</p> <p>18 what. So I think you need to review that and it tells you</p> <p>19 who is entitled to notice, who is considered a party of</p> <p>20 record versus a participant because not everybody wants to</p> <p>21 be a part of the record. They just want to submit their</p> <p>22 written statement. From our standpoint, we will serve --</p> <p>23 we will submit our notices based on this information as to</p> <p>24 what we are required to send notices to.</p> <p>25 MR. CHEN: Okay. Do you have a list of who you are</p>



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<p>29</p> <p>1 sending your notices to?</p> <p>2 HEARING EXAMINER: I'm sure we do.</p> <p>3 MS. BEHANNA: Of course.</p> <p>4 HEARING EXAMINER: Yeah, we have a list.</p> <p>5 MR. CHEN: I figured you did.</p> <p>6 MS. BORTEN: But that would be all the adjoining</p> <p>7 (inaudible), right?</p> <p>8 HEARING EXAMINER: Right. Because --</p> <p>9 MS. BORTEN: So that would be just necessarily larger.</p> <p>10 HEARING EXAMINER: Right.</p> <p>11 MS. BEHANNA: Yes.</p> <p>12 HEARING EXAMINER: Correct.</p> <p>13 MS. BORTEN: And we wouldn't have to serve all of</p> <p>14 those people at that time.</p> <p>15 MR. BARNARD: The question is, is there a list of</p> <p>16 those people who have applied for or been approved as</p> <p>17 parties of record yet by the Commission?</p> <p>18 MS. BEHANNA: You have to formally ask to be a part of</p> <p>19 the record.</p> <p>20 MR. BARNARD: Right. It says people have to request</p> <p>21 to be --</p> <p>22 HEARING EXAMINER: Right.</p> <p>23 MR. BARNARD: -- and I'm just wondering, is there a</p> <p>24 list of those?</p> <p>25 HEARING EXAMINER: No, there isn't because what I have</p>	<p>31</p> <p>1 it works for everybody, and send out the appropriate</p> <p>2 notices and we'll set the hearing. Is that -- okay. So we</p> <p>3 are adjourned and --</p> <p>4 MS. BORTEN: Thank you.</p> <p>5 HEARING EXAMINER: -- we'll hear from you on the 28th</p> <p>6 or at least by the 28th and certainly if you need more</p> <p>7 time, you just need to let me know.</p> <p>8 MS. BORTEN: Okay.</p> <p>9 HEARING EXAMINER: Okay. Thank you.</p> <p>10 MS. BORTEN: Thank you.</p> <p>11 MR. CHEN: Thank you.</p> <p>12 (The proceedings were concluded.)</p>
<p>30</p> <p>1 seen so far --</p> <p>2 MR. BARNARD: Okay. That's what --</p> <p>3 HEARING EXAMINER: -- that hasn't been requested.</p> <p>4 We're going based on who have filed their letters and what</p> <p>5 counsel is intending to present as witnesses. Certainly</p> <p>6 just review that and --</p> <p>7 MR. CHEN: Well, I'm going to abide by the Examiner's</p> <p>8 ruling and procedures. I'm not so sure --</p> <p>9 HEARING EXAMINER: Well, I follow our rules and</p> <p>10 procedure --</p> <p>11 MR. CHEN: That's fine.</p> <p>12 MR. BARNARD: That's fine.</p> <p>13 HEARING EXAMINER: -- and so does the staff so -- and,</p> <p>14 you know, certainly you all submitting courtesy letters to</p> <p>15 people.</p> <p>16 MR. CHEN: You've given me direction for my clients</p> <p>17 and that's all I need.</p> <p>18 HEARING EXAMINER: Okay. Do we have anything else?</p> <p>19 Let me just double check my list to make sure while I have</p> <p>20 you all here. Okay. So the hearing is adjourned until --</p> <p>21 indefinitely. However, counsel -- both counsel for the</p> <p>22 parties will provide an update by February 28th hopefully</p> <p>23 with an agreement setting a hearing date offering a number</p> <p>24 of hearing dates that works for both sides and their</p> <p>25 experts and from there then I will pick a date, make sure</p>	<p>32</p> <p>1 CERTIFICATE OF TRANSCRIBER</p> <p>2 I, Debra McCostlin, do hereby certify that the</p> <p>3 foregoing transcript is a true and correct record of the</p> <p>4 recorded proceedings; that said proceedings were</p> <p>5 transcribed to the best of my ability from the audio</p> <p>6 recording as provided; and that I am neither counsel for,</p> <p>7 related to, nor employed by and of the parties to this case</p> <p>8 and have no interest, financial or otherwise, in its</p> <p>9 outcome.</p> <p>10</p> <p>11</p> <p>12 </p> <p>13 _____</p> <p>14 DEBRA MCCOSTLIN</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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