UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In Re: CenturyLink Residential Consumer Billing Disputes Litigation	File No. 17-MD-2795 (MJD/KMM)
	Minneapolis, Minnesota
	April 5, 2018
	10:37 a.m.

BEFORE THE HONORABLE MICHAEL J. DAVIS
UNITED STATES DISTRICT COURT JUDGE
(STATUS CONFERENCE)

Court Reporter: STACI A. HEICHERT
RDR, CRR, CRC
1005 U.S. Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415

Proceedings recorded by mechanical stenography; transcript produced by computer.

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P R O C E E D I N G S

IN OPEN COURT

THE COURTROOM DEPUTY: In Re: CenturyLink Residential Consumer Billing Disputes Litigation; MDL docket No. 17-MD-2795. Counsel in the courtroom, will you please state your appearances for the record.

MS. ANDERSON: Good morning, Your Honor. Carolyn Anderson from Zimmerman Reed on behalf of plaintiffs.

THE COURT: Good morning.

MR. GUDMUNDSON: Good morning, Your Honor. Brian Gudmundson, Zimmerman Reed, on behalf of plaintiffs.

THE COURT: Good morning.

MR. O'MARA: Good morning. I'm Mark O'Mara on behalf of plaintiffs.

THE COURT: Good morning.

MS. FELDMAN: Good morning. Lori Feldman, Geragos & Geragos, on behalf of plaintiffs.

THE COURT: Good morning.

MS. REGAN: Good morning. Anne Regan from Hellmuth & Johnson on behalf of the consumer plaintiffs.

THE COURT: Good morning.

MR. HEDLUND: Good morning, Judge. Dan Hedlund, Gustafson Gluek, also on behalf of consumer plaintiffs.

THE COURT: Good morning.

MR. BLEICHNER: Good morning, Your Honor. Brian

Bleichner from Chesnut Cambronne on behalf of securities plaintiff KBC Asset Management.

THE COURT: Good morning.

MR. CAMBRONNE: Your Honor, I'm Karl Cambronne. I'm here also for KBC Asset Management.

THE COURT: Good to see you.

MR. CAMBRONNE: Good to see you.

MR. FISHBEIN: Good morning, Your Honor. Gregg Fishbien from Lockridge Grindal Nauen on behalf of the state of Oregon in the securities cases.

THE COURT: Good morning.

MS. LOOBY: Good morning, Your Honor. Michele Looby from Gustafson Gluek on behalf of the consumer plaintiffs.

THE COURT: Good morning.

MS. WANG: Good morning, Your Honor. Ling Wang of Gustafson Gluek on behalf of consumer plaintiffs.

THE COURT: Good morning.

MR. RIDDLE: Good morning, Your Honor. Bryce Riddle with the law firm of Zimmerman Reed on behalf of consumer plaintiffs.

THE COURT: Good morning.

MR. SANCHEZ: Alfred Sanchez on behalf of consumer plaintiffs.

THE COURT: Good morning.

MR. LOBEL: Good morning, Your Honor. Douglas Lobel on behalf of CenturyLink and the proposed affiliate interveners.

THE COURT: Good morning to our warm weather. I hear it's supposed to snow this afternoon so that may complicate your flights out of here. Go ahead.

MR. MCNAB: Good morning, Judge Davis. Bill McNab, Winthrop & Weinstine, on behalf of CenturyLink and the intervener.

THE COURT: It's always good to see you.

MR. MCNAB: Thank you, Judge.

MR. SCHENKER: Good morning, Your Honor. Martin Schenker of the warm weather California office of Cooley for defendants.

THE COURT: All right. Good morning.

MS. FAIRLESS: Good morning, Your Honor. It's Carolyn Fairless of Wheeler Trigg O'Donnell on behalf of CenturyLink and the intervener affiliates.

THE COURT: Good morning.

MR. VOGEL: Good morning. David Vogel on behalf of the defendant interveners.

THE COURT: We have people on the telephone. Is that right? Let's have them make their appearances.

MR. BLATCHLEY: Good morning, Your Honor. We have Michael Blatchley from Bernstein Litowitz Berger & Grossman

on behalf of lead plaintiff Oregon in the securities cases.

THE COURT: Good morning.

MR. FEDERMAN: Will Federman of Federman & Sherwood of behalf of InterMarketing Group, USA, the movants, lead counsel, and the senior notes bond securities litigation.

THE COURT: Good morning.

MR. LEVIN: Good morning, Your Honor. This is Gregg Levin. I'm here in Charleston, South Carolina, with Andrew Arnold. We're with Motley Rice, LLC, and we're here on behalf of lead plaintiff movant KBC Asset Management in the securities cases.

THE COURT: Good morning.

MR. LEVIN: Good morning.

THE COURT: How warm is it down in Charleston?

MR. LEVIN: It is a beautiful day here in Charleston. We're experiencing some very nice weather. I don't want to make anybody jealous up there, but it's going to be in the mid 60s here today.

THE COURT: All right. Well, we're not jealous.

MR. LEVIN: Thank you.

THE COURT: Anyone else on the telephone?

MS. LIGHTDALE: Good morning, Your Honor. This is Sarah Lightdale from Cooley in New York, and I am appearing on behalf of the defendants in the securities action.

THE COURT: Okay. Good morning.

MR. MUELLER: Good morning, Your Honor. This is Keil Mueller with Stoll Stoll Berne Lokting & Schlacther in Portland, Oregon, on behalf of lead plaintiff the State of Oregon and the securities actions.

THE COURT: All right. Good morning.

MR. MUELLER: Good morning.

MR. MCDONOUGH: This is Jim McDonough with Heninger Garrison Davis on behalf the consumer plaintiffs.

THE COURT: Good morning.

MR. MCDONOUGH: Good morning.

MS. FLOOD: Good morning, Your Honor. This is Alyssa Flood from the O'Mara Law Group on behalf of the consumer plaintiffs.

THE COURT: Good morning to you too.

MS. FRENKEL: Good morning, Your Honor. This is Caitlin Frenkel from the O'Mara Law Group on behalf of the consumer plaintiffs.

THE COURT: Good morning.

MS. LLOYD: Good morning, Your Honor. This is Channa Lloyd from the O'Mara Law Group on behalf of the consumer plaintiffs.

THE COURT: Okay. Good morning. Anyone else?

MR. SCHENKER: Good morning, Your Honor. Hart Robinovitch from Zimmerman Reed, also on behalf of the

consumer plaintiffs.

THE COURT: Good morning. How is the weather down in Scottsdale?

MR. SCHENKER: It's great, Your Honor. Again, not to make people up there jealous, but we're going to have a nice day here today.

THE COURT: Good. Anyone else on the phone?

MR. HAGSTROM: Good morning, Your Honor. Richard Hagstrom, Hellmuth & Johnson, for the consumer plaintiffs.

THE COURT: Good morning.

MR. FULLER: Good morning, Your Honor. Mike Fuller for consumer plaintiffs.

THE COURT: Good morning. All right. Is that it?

All right. We have a hearing on April 17th dealing with the antitrust cases. Is that correct?

MR. FISHBEIN: Yes, Your Honor.

THE COURT: All right. We're set to go on that date?

MR. FISHBEIN: Yes.

THE COURT: All right.

MR. BLATCHLEY: Your Honor, this is Mike Blatchley brom Bernstein Litowitz on behalf of Oregon, that's correct. It's the securities cases, Your Honor, the hearing is on April 17th.

THE COURT: All right. All right. Let's move for

this status conference. I just filed a order this morning. Did you all receive that?

MR. LOBEL: We did, Your Honor. Yes, thank you, Your Honor.

THE COURT: Your iPads, iPhones blew up this morning. Is that right? Any objections to those dates? I just want to start moving this case along.

MR. LOBEL: No objection from the defendant and the interveners, Your Honor.

MR. GUDMUNDSON: Your Honor, I wouldn't say that the plaintiffs -- shall I -- may I approach?

THE COURT: You may.

MR. GUDMUNDSON: Your Honor, I wouldn't say that the plaintiffs have an objection so much as a request. We had spoken to defendants prior to convening today about some proposed changes to the schedule that we had even submitted in the Rule 26(f) report based on the substance of those two motions that we just received which were quite a bit more fulsome than we had anticipated. And what I have to say is now is sort of our position, as we've developed it over the past 20 minutes or so, we, the plaintiffs, believe that the motion to intervene should run concurrently with the opposition to the motion to compel arbitration, and that is because there are some affiants and some other things raised in that motion that are going to require discovery that's

going to be done and taken during the course of the motion to compel arbitration.

The motion to stay can be heard on that timeline, we believe. With your permission, we would request a couple of more days of time to respond, possibly moving our response date from April 16th to either the 19th or the 20th.

THE COURT: Correct. That's -- that's easily done.

MR. GUDMUNDSON: Okay. And then, of course, there's the matter of the motion to intervene, and I'm not sure to what extent Your Honor has been able to review the substance of that or whether you deem it's necessary to do that. We would be happy to make a submission on that if it would be helpful to Your Honor.

THE COURT: Well, let me pull up my calendar here. Originally it was April 16th. Is the 23rd better for you? That gives you an extra week.

MR. GUDMUNDSON: Yes, Your Honor. That would be very helpful. Thank you.

THE COURT: All right. Thank you. We'll move it to the 23rd.

MR. GUDMUNDSON: And I'm afraid there's even more, Your Honor.

THE COURT: Hold on here. Let me get my notations

down.

MR. GUDMUNDSON: Okay. Sure.

THE COURT: Okay. Go ahead.

MR. GUDMUNDSON: Based on the substance of what we saw in the motion to intervene and the motion to stay discovery and a lot of the sort of arbitration theories that came up, it's clearer than ever to us that we're going to need discovery in aid of the motion to compel arbitration briefing. The amount of discovery I'm sure will be subject of some debate with the defendants, although I know they agree that some will be needed on behalf of plaintiffs.

We have approached the defendant, now that we've received this motion, to get more time for our opposition. We have not proposed a extension. We currently have 60 days to do all of that discovery and submit our opposition to the motion to compel arbitration and the motion to dismiss. What I would propose would be that we meet and confer with the defendants and submit a proposed new schedule within seven days or even shorter period of time to Your Honor for consideration. If we can't agree, then Your Honor is free to, you know, obviously pick whatever you think is appropriate. But this arbitration issue is quite a bit different than a lot of the ones we may see where there's just a common arbitration agreement that everybody has to click through in order to get the tickets or get the

whatever they have to do. Here we've got just a wide variety of different things that are supposed to be applying to a wide variety of people where we believe it's just vastly unclear, at best, whether anybody agreed to it. 38 plaintiffs, multiple timeframes and things that require some additional time, and that's just our sort of initial analysis of it, even without seeing their brief. So that would be our proposal that we meet and confer and get back to you for a new schedule on that.

Of some importance, the proposed schedule that we submitted to Your Honor should not be altered if we change those dates because everything else keys off the beginning the formal discovery, so that would be the only change.

THE COURT: Okay.

MR. GUDMUNDSON: Thank you, Your Honor.

THE COURT: Counsel.

MR. MCNAB: Good morning again, Your Honor. Bill McNab, Winthrop & Weinstine, on behalf of defendant CenturyLink and the interveners. As we have been -- and we just literally received this proposal --

THE COURT: Right.

MR. MCNAB: -- minutes ago.

THE COURT: Right.

MR. MCNAB: But as we understand it, plaintiffs are okay with going forward with the motion to temporarily

stay discovery, as Your Honor has just rescheduled it to be heard early May. We're happy about that. We're grateful to the Court. We understand the Court's very busy in May, but we're pleased with that and happy to go forward. But that they would like to hitch the motion to intervene brought by the affiliates to the motion to compel arbitration which is to be currently briefed toward the end of April and heard sometime further down the road.

We are not in favor of that, Your Honor, for a couple of reasons. Number one, it is sort of inconsistent with the purpose of the intervention. The stated purpose of the intervention is for the interveners to join in the motion to stay discovery and to join in the motion to compel arbitration. They have to be parties before they can join.

Our view is that they should be allowed to bring their motion to intervene and the Court should consider that, and if they are permitted to intervene, they will be parties and they will be subject to whatever arbitration limited discovery is appropriate. That makes sense to us. We've asserted that they are real parties in interest to those arbitration agreements. That's why they're intervening, to enforce them.

So without getting into the weeds on how much discovery is necessary for arbitration, we understand that plaintiffs have reserved the right in the 26(f) to seek some

appropriate level of arbitration related discovery to aid themselves and the Court in determining the arbitrability and the enforceability of these agreements, So we understand that. But we think that these interveners belong in the case as part of that, rather than outsiders to the case up until the arbitration issue has been decided. So we think that the two motions that are currently scheduled for May 2nd should go forward on May 2nd.

THE COURT: Well, I would be in agreement with the plaintiffs. Let's -- let's do some very limited discovery and we can move that date, we had it for June, didn't we, Kristine?

THE COURTROOM DEPUTY: Yes, June 7th.

THE COURT: Is that enough time for you to get the discovery done, the limited discovery that you need?

MR. GUDMUNDSON: We believe so, yes, Your Honor.

THE COURT: All right. Let's -- let's -- you meet and confer. And I want limited discovery, let's get to the point, and then we'll have that hearing on June --

THE COURTROOM DEPUTY: -- 7th.

THE COURT: June 7th at 10:30. All right. Is that satisfactory to both sides?

MR. MCNAB: There will be just some I think maybe a little bit of clarification, if I may, request. Obviously these are not parties as of now.

THE COURT: Right.

MR. MCNABB: This discovery is to be directed to the affiliates in the form of subpoenas or?

MR. GUDMUNDSON: If I may. We're happy to go the Rule 45 route. We're -- it wouldn't be that much more effort. If that's what -- if that's what's required, we're happy to do that.

THE COURT: Is that --

MR. MCNAB: Certainly Rule 45 does speak for itself, and we're fine with complying with the rules. We just are looking for a little clarification because these folks are trying to get into the case but they're not yet in the case.

THE COURT: Right.

MR. MCNAB: And so they need to understand those rights.

THE COURT: Exactly. I understand. Let's use 45.

MR. GUNMUNDSON: Yes. We certainly will. And just another point for clarification, are we moving both the motion to stay and the motion to intervene to June 7th or are we going to keep motion to stay on as you scheduled this morning?

THE COURT: As is.

MR. GUDMUNDSON: As is.

THE COURT: Yes. I want to keep this moving. And

I'm letting everyone know that yes, my schedule is extremely busy in May, but because of the late delay in getting this case moving, I've got to get this moving.

MR. GUDMUNDSON: Yes.

THE COURT: And this is top priority for me.

MR. GUDMUNDSON: Yes.

THE COURT: I want you to know that. And so we can compress the dates and get this -- get this litigation moving. It's just a little slower than I wanted to.

MR. GUDMUNDSON: Okay. And as far as a response date on the motion to intervene, if we've got a hearing June 7th, can we get --

THE COURT: When do you need? Give me a date.

MR. GUDMUNDSON: Two weeks prior?

THE COURT: Yes. You can consult and send a date in to us.

MR. GUDMUNDSON: We sure will. Thank you.

MR. MCNABB: Thank you very much, Your Honor.

THE COURT: All right. Thank you.

Okay. Let's we have some other issues that we have deal with, 30(b)(6) deposition topic limitations. How do you want to argue? Go ahead. You tell me.

MS. ANDERSON: Well, I was --

THE COURT: I'll follow your script.

MS. ANDERSON: Okay. That's great. Thank you,

Your Honor. Now, we're pleased to be here today and to provide the first update since our first status conference, and we believe we've made some good progress and we want to make sure that we keep the Court apprised of some of those developments, the commitments we made at that first conference, and how we are keeping those commitments.

I also wanted to mention, we, depending on how the Court wants to receive the information, our thought was we want to make sure we had the point people on the team that we'd be providing some updates. Mr. O'Mara has been point person on the discovery and he'll be providing an update there. Mr. Gudmundson will be addressing the 26(f), some of the additional issues on what we just raised with the Court. And then Ms. Feldman is prepared to respond to the other issues. I think everyone is aware there's been kind of a flurry of motions and letters recently, so if that's necessary to respond, Ms. Feldman is prepared to respond to that.

THE COURT: Okay. Thank you.

MS. ANDERSON: But I wanted to give two highlights that I thought that the Court should be aware of.

First, when we had our initial conference talking about this case, we said we were aware that the Arizona attorney general had a case that was involving the same allegations against the same customers and a consent decree

had been entered there, but the attorney general in state of Minnesota, General Lori Swenson, had filed an action and also had consent agreement. We committed to Your Honor and that we would stay appraised of those actions, that we would gain an understanding of the progress in that litigation, and we have.

Specifically, we've stayed in touch with the deputy attorney general, Mr. James Canaday, and the assistant attorney general Alec Baldwin who are leading that case on behalf of General Swanson. We can apprise the Court, too, we got in touch with them the past couple of days and just said we wanted to make sure that we could report to the Court the progress.

They have had, and defendants would be able to provide this information obviously as well, but they've had a number of depositions of the customers already and currently next week they're heading to Denver to take depositions of the employees. There's going to be a on week, off week process. They'll have a week off and then they're heading to Monroe, Louisiana, where CenturtyLink is located, and take additional depositions of the employees.

So we've kept open communications there and getting status and progress. When we make a filing, we make sure that they're aware of that as well because it only iners to benefit of everyone and the courts involved if the

parties are able to communicate like that.

THE COURT: Now, that's Minnesota. What about Arizona?

MS. ANDERSON: That's Minnesota. Additionally, in Minnesota, in February, there was a change of the judge, Judge Meslow had been assigned to that case, and Judge Dan O'Fallon is now presiding over that case.

So we want to -- and also we have been made aware that other states are investigating CenturyLink for the same conduct against the customers, and we've made it clear to those states that we will stay open to communicating with them. We have familiarity in working with cases where there's MDL class actions that are working as well with other states. We've been on both sides of that. We've represented states when there's been parallel litigation. And we're committed to them that if those do arise, that we will stay in communication with them to make sure that no one gets in each other's way and they're all working together efficiently and to keep Your Honor apprised of that.

So the second issue, and it was the biggest highlight for all of us, was we did get the consolidated complaint filed, but the most important distinction of that, so we had 15 underlying complaints from 14 different states and they were consolidated on two primary issues, again, one

is overbilling agreed to prices, that the price charged exceeded that, and the second is for improper billing, charging for services never requested or never received are in that category.

And but the most significant change in the consolidated complaint from the underlying 15 complaints is that CenturyLink here is the only named defendant. We didn't do that flippantly. We started out this case listening to what CenturyLink told us about who engaged in this wrongful conduct or who engaged in -- where the contracts were, where the services where. They told us there were a lot of other entitles involved. We looked into that. We considered other defendants. We even had it in drafts of the allegations, although I'm not saying -- putting that forward about what we're going to talk about here today. We were exercising due diligence in that.

So what we heard, even at the status conference, was that CenturyLink is a public company that issues stock, it has no employees, it has no services, and it's improperly named. So what we did is we looked, we talked to our customers and said, wait, who is it that you talked to? What advertisements did you see? What websites did you go to? When you had complaints, who did you talk to? When you had phone calls, who answered the phone? And every time it was CenturyLink. When you receive your bill, it was

CenturyLink. When you needed repairs, I mean, yesterday as I was driving to work, white van with green little circle on with CenturyLink emblazoned across it, that's who they thought they were doing business with.

And so, you know, we thought, well, wait, if they don't have customers and they don't have employees and they don't have any services, we knew they had stadiums, we knew they had these vans, but they do have a website, they do have telephone services, they do have a billing that comes from CenturyLink.

And we looked even a bit deeper. We went to the company's website to say what does the company say about it itself, and it says it has employees, it says it has services, it makes promises.

But even further than that, we looked in to the SCC files. We looked at the 10Ks, the 10Qs, the 8Ks, we looked at the annual reports, trying to figure out what does this company say about itself, outside of the courtroom, and we believe, based on that very thorough analysis, that our clients only did business with CenturyLink, that that's who made the promises, that's who promoted itself. It created the reputation that our customers relied on.

And so as a result of that, we narrowed it just to CenturyLink, which has now initiated some motion practice, and we understood that would happen. But it wasn't done

flippantly. It was after very deep research from our clients, the various putative class members, and from the research that we did.

So we're looking forward to this. We know that it's going to bring up even more arguments, but we believe these are very important issues. It's very important legal issues, and it's very important factual context.

When a company does business and holds itself out to the world and says come with us because you can trust us, we're this major organization, you can trust our quality, call us at anytime, go to our website, here's our caller, here's a person on the web chat saying hi, I'm Sylvia from CenturyLink, our clients have a right to rely on the fact that they're doing business with CenturyLink. And so we look forward to these briefs that are going to be coming up.

I would like, though -- so that's our primary update on what the two biggest developments that we believe have gone forward for us, but I'd like to focus then on what's been happening on discovery. I know the Court would be very interested in that. And Mr. O'Mara will be leading up with that.

THE COURT: Thank you.

MS. ANDERSON: Thank you, Your Honor.

MR. O'MARA: If I might, Your Honor.

THE COURT: Good morning.

MR. O'MARA: Mike Mark O'Mara on --

THE COURT: Why don't you come to the microphone so everyone can hear you that's on the phone.

MR. O'MARA: Yes. Again, Mark O'Mara on behalf of the consumer plaintiffs. Again, good morning, Your Honor.

THE COURT: Good morning.

MR. O'MARA: A bit difficult to give a great progress report on a topic that's defined as being informal, but reviewing the transcript of the last hearing, I know that the Court was very concerned about trying to move this forward for a couple of reasons. One, that we wanted to make sure that we did not go off into a celestial concern, a black hole I think was the Court's concern, and I think the other thing that you said to Mr. Lobel in response to his concern that it's not as easy as pushing a button I think were his words in the transcript that they are, in fact, the ones with the records. And I think your last words were you will do it, and he said we will, Your Honor.

So today, we are three months forward, a month, approximately a month, five weeks' worth of some production from CenturyLink, and the best way to say it is to compare it to what actually was provided, about 900 megabytes. It used to be something where you said that would fit on head of a pin but actually 900 megabytes does fit on a head of a pin because it's all electronic information and it's stored

very easily for CenturyLink to come together and to forward.

They said, the last hearing, it was a cobbled together company, it's very difficult to get all of this information. But as a measure for what I'm about to tell you, there is this report there's going to be arguments about its admissibility, the O'Melveny report. Regardless of its eventual admissibility, whether it's all, whether it portions, whether it's just the underlying data and documents that were given to O'Melvany, nonetheless, using that as a metric, 9.7 million documents were given to O'Melveny, and they were able to accomplish that with -- the beginnings of it within a couple of months of at least their position which is that they found about a concern, they wanted, their definition, independent commission to review it. But within a couple of months of that decision, they were able to come up with 9.7 million documents for their review.

They also say in their press release that came out with the results of it, again, quoted by Mr. Lobel to this Court a few months ago, that they gave them 32 billion billing records. Can't imagine anyone looking or considering 32 billion billing records, that literally would be a stack of paper 63 miles high, but presuming the billing records are off to the side and just focussing on the 9.7 documents, what we've received is 1,400 documents in the

past six weeks. The majority of those are billing records from my -- from our very own named plaintiffs.

Probably the most significant relevance of that is the CenturyLink name and no other name on the bill itself. There's all of those bills came from one entity and that's CenturyLink. Presumably, however, that it was forwarded pursuant to this Court's demand that we involve ourselves in formal discovery, not just to show who the bill came from but some substance, and what it really shows us is our clients were billed monies, there is some relevance, it showed us a lot of different billings over time, which, by the way, is the sum and substance of one of our complaints, that clients have no idea what they're billed for and it seems to completely change, but of those 1,400 documents, about 55, 60 percent are bills, 775 documents, so more than half and just quite honestly of limited relevance.

About 400 of those documents are what I phrase blue zone mainframe documents, and the reason why I say that is we sort of determined that was a category of them. They are created by a proprietary software under CenturyLink that we really can't interpret. We just identified that to the defense. I'm sure they'll give us the legend or the key or, you know, the key to figuring it out, but 400 documents of very limited value presently and I think even later are very limited documents.

The only thing that we got, quite honestly, that I think this Court should focus on, and I'm asking the Court to tell CenturyLink to give us many more of these documents, are the chat logs or e-mails that actually are communications between the customers and CenturyLink about their complaints. The reason why that is relevant, Your Honor, is now that we know they have them because they gave them 40 of them-- actually they gave them 32 and then eight audio files, so we now know they have audio files of not only our clients but all class, potential class member clients, that's the substance that we need. That's the information that's going to move this forward.

I ask you to order them to give us at least all of the underlying documents that were given to O'Melveny. I think we should get the report as well because they -- not set for today but certainly an augment they waive privilege when they do a press release on it. But at the very least, the underlying documents in native format is something that if we have, we can take on the responsibility and task of identifying them and figuring it out. Because less than that, we're stuck.

I sort of feel like Oliver Twist, please, sir, I want some more. We're not doing very much presently with 900 megabytes of information. It just doesn't get us moving forward to trying to get this thing resolved as well in any

form or substance. So that is what we've gotten so far. It has come to us in drips, I'd consider, about six of them over the past seven weeks. So it's moving forward but at such a snail's pace that if we were to wait, at this rate, to get the 9.7 million documents, even just those from O'Melveny, it would take us 150 years.

THE COURT: Well, I haven't heard the term megabytes in such a long time in any kind of litigation. It's gigabytes and terabytes so.

MR. O'MARA: Well, I didn't get to gigabytes because it is less than one gigabyte. Now, they gave --

THE COURT: Well, I know that. Go ahead.

MR. O'MARA: I was just going to say the 9.7 million documents that they gave to O'Melveny were well into gigabytes and then the 32 billion billings records that they said that they reviewed I think that is well into the gigabyte range. And, you know, it use -- the days used to be when they would just give you a truckload of documents, right, and then they would smile on their way out. Now that we have smart ways to look at those documents, rather than getting a truckload --

THE COURT: I may be from Minnesota. We do use computers up here.

MR. O'MARA: Which is great.

THE COURT: I know about gigabytes and terabytes

and --

MR. O'MARA: Yes, Your Honor.

THE COURT: -- that everything is transferred electronically, so you don't have to educate me on those issues.

MR. O'MARA: Sorry, Your Honor. I was just a bit concerned of the sort of the dripping of information to us after the Court's request that or order that we involve ourselves in good, robust discovery to move this matter forward.

THE COURT: Okay.

MR. O'MARA: Thank you.

MS. FELDMAN: Good morning, Your Honor.

THE COURT: Good morning.

MS. FELDMAN: Lori Feldman. I will be very brief and address the motions and the concept of arbitration that the defendants are putting in front of the Court and hope to refocus the story here. Two points. Notwithstanding the defendant's attempts to try and knock this case out of court and take this MDL out of Your Honor's bailiwick, we hope to show, and we believe that we will show, that there is no cohesive standard arbitration agreement, that CenturyLink will fail to prove that knowledge and consent by our clients to arbitrate was ever given, especially because CenturyLink customers were signed up by door-to-door sales people,

telephone, the internet and the like, and we are looking forward to opposing and defeating CenturyLink's motions.

THE COURT: Okay. Thank you. Good morning.

MR. LOBEL: Good morning, Your Honor. Your Honor, again, good morning. Douglas Lobel on behalf of CenturyLink and the proposed affiliate intervenors. Your Honor, let me also give you an update from the defense side. Let me start out by saying we heard you loud and clear in December. We have acted according to your wishes and your instructions since December. We have done a lot, which I will tell you about, we are continuing to do a lot, and we want to move this case forward aggressively and promptly which is, in fact, Your Honor, why we stand here today having filed those motions on Monday. We didn't want to tell you we were intending to file them. We wanted to file them and have you see them, and perhaps your clerk has seen them or you've seen them at this point, certainly the plaintiffs have seen them, because we're serious about moving this case forward and vindicating our rights which we believe we have in connection with these customer relationships.

THE COURT: And I think I've responded quickly and to your filing of those motions, so I -- and I hope it's loud and clear that I want to keep it moving.

MR. LOBEL: Absolutely, Your Honor, and we appreciate you responding as you did, and we are on the same

page on this because we do want to have these hearings go forward. We're not asking for more time. We're, in fact, opposing more time because we think there are significant rights at issue here.

Now, let me address the issue of the what we call the informal production. I was very surprised by Mr. O'Mara's e-mail, which I received yesterday, for the first time complaining about I guess what he referred to as the slow drip of discovery. I can tell you that in the five or six weeks since we got the information Mr. O'Mara was required to give us to start the discovery, I have not heard that from him. But let me tell you, we have a fundamental dispute on what is owed here and what's appropriate.

Mr. O'Mara sent me an e-mail on January 11th in which he made his request for informal discovery. There were three categories of material that he asked us to produce, one of them he calls the complete customer files. The information that he's received so far is the complete customer files, with the exception of a last production of roughly 500 pages that we expect to get out to him within two weeks or so. When he made that request to us for complete customer files, I wrote him back promptly and said agreed. And we have complied with that and over the last five or six weeks we have provided the complete customer files for these 38 named plaintiffs with, again, with the

exception of the final production that is coming that we've committed to making. So we're one for one on that request.

Then he asked us to produce records of communications with government agencies or the Better Business Bureau relating to the named plaintiffs and the account numbers he provided. We did, in fact, provide that information. He's got that in his possession. That's part of the megabytes that he referenced to you.

The third thing that he asked for in his January request were the O'Melveny documents related to the special committee investigation as well as documents given to government agencies. We responded, no, unfortunately, we can't provide that to you, that is a privileged work product investigation protected by legions of case law and U.S. Supreme Court on down that that's an issue that likely has to be resolved by the Court and we're not in a position to provide that in informal discovery. And they've understood that, and they've asked for it repeatedly, and we've told them we need to get a document request from you pursuant to the discovery rules. We need to make our objections. If you wish to file a motion, we will litigate that issue. We feel strongly that that is protected. It would be -- it's inappropriate to request it, and it would be improper to provide it.

So what Mr. O'Mara is really talking about is

class-wide discovery, Your Honor. We have a fundamental disconnect here. We have 38 out of 38 class action waivers by these named plaintiffs. We have filed a motion for arbitration related to 37 of these 38 plaintiffs who contractually agreed to have this proceeding heard in a different forum, not this court. And so we have taken the position, which we think is supported by the case law that we cited and previewed for you, of course, we haven't filed that motion yet, that they are not entitled to class-wide discovery, that they contractually agreed not to seek class-wide discovery, and that for us to provide class-wide discovery would fundamentally impair our rights in those contracts, would deprive the arbitrator of the right to manage discovery, which, under the case law, if we are right, again, this all presumes we're right, we may be wrong, presumes that the arbitrator is entitled to manage that process.

And, finally, Your Honor, and it can't go without concern that this is a massive undertaking that would be ultimately a waste of effort and resources if ultimately Your Honor concludes some time in the late summer that these arbitration agreements are enforceable, that these class action waivers mean what they say and that they're not entitled to proceed on a class basis.

So what Mr. O'Mara has failed to create the line

over is individual customer records for 38 consumers. He's got everything he asked for, subject to the completion of the production. Class-wide discovery for 9.7 million documents relating to CenturyLink's 5.6 million customers, high-speed internet service, no, he doesn't have that. We don't believe he should ever have that. We don't believe that they have a right to that and we believe they've waived those rights to that. So that's the disconnect here.

Now, Your Honor, again, because we'd like you to understand the context in the record, we told --

THE COURT: It's not a disconnect. That's where the fight is going to be.

MR. LOBEL: Well, that's another way of putting it, Your Honor. That is the fight. And the fight is now, you know, the -- the sizer lining up, and that's where --

THE COURT: That's what informal discovery is all about is to size up everything so you can have --

MR. LOBEL: Yes.

THE COURT: -- the formal motions to file.

MR. LOBEL: Right.

THE COURT: So I understand that.

MR. LOBEL: Your Honor, just --

THE COURT: And in no way, either side, that I've seen anything that shows that either side has not taken the Court's orders seriously, and you're such high quality

attorneys, I know that you are ethical and are doing everything possible and you're protecting your clients. And so don't -- you don't have to worry about that. And I understand you have to make your record.

MR. LOBEL: I appreciate that very much, Your Honor.

THE COURT: But I just want to make sure that you understand that I understand what you're doing.

MR. LOBEL: I very much appreciate the comments, Your Honor, and sometimes you feel that you need to respond --

THE COURT: Of course you do.

MR. LOBEL: -- to the attacks and --

THE COURT: Of course you have to, and I'm giving you the time. I allowed the plaintiffs to make their statements, their opening --

MR. LOBEL: Yes.

THE COURT: -- statements, and you have to make yours, and I am waiting to hear the hearings and --

MR. LOBEL: Yes.

THE COURT: -- in May and June so that's the fun part of my job.

MR. LOBEL: Much appreciated, Your Honor. Let me --

THE COURT: Because when you have top lawyers,

it's, it makes my day, let me tell you. It does. And I just love to have you here.

MR. LOBEL: Thank you, Your Honor.

THE COURT: And I'm engaged.

MR. LOBEL: Appreciate it, and we'll hope to keep you that way and not misuse your time in anyway.

Just to complete our side, our record on the informal production, we, as you recall, we got a consolidated complaint on February 15th which radically changed the contours of the case and brought in 28 new plaintiffs so we effectively had to start from scratch February 15th. We told the plaintiffs we need two things to start the production informally, protective order in place, because there's sensitive customer information, and account numbers. Mr. O'Mara provided the protective order, was completed on the 22nd of February.

On the 23rd of February, Mr. O'Mara provided me for the first time with the account numbers. I had been asking him for months. We received the account numbers on February 23rd. Three days later, on February 26th, we made the first production of customer related files. We thereafter made seven productions over the next five weeks. We've produced a total of 7,200 documents -- pages, rather, 1,400 documents. We'll complete the rest in two weeks.

Now, Your Honor, if you think about it, Mr. O'Mara

is not impressed with the volume, but if you think about it, if you're a customer that orders high-speed internet from CenturyLink, it's not necessarily a complicated paper trail. You sign up for the service, you get a contract, you may have some communications with customer service, you may not. The volume of materials related to 38 consumers is not vast. Mr. O'Mara has almost all of it. That's what there is. So we will complete that as we promised and we'll move on and we'll fight another day about all the other materials that their clients have waived their right to ever receive.

Now, Your Honor, just continuing in sort of a status, I do feel quite good about the fact that we made very good headway on the 26(f). We have very few disagreements. We have the one major one, obviously, a couple of minor ones. We did -- we started motions practice.

And let me just address the issue of CenturyLink, Inc. because that was raised by my colleagues. The -- first of all, just to clarify, our intervention motion seeks to add eight operating companies. It does not seek and we have not requested yet that they dismiss CenturyLink, Inc. We -- you know, Your Honor, from our last status that we believe there are significant issues with CenturyLink, Inc., of personal jurisdiction, significant issues that relate to dismissal of that entity because of the role that they play

and the lack of contact with the plaintiffs in this case, but we're simply seeking to get the record fleshed out, get the proper parties before the Court so the Court can have in front of it all the available information it needs to resolve the class action and arbitration issues.

Now, it is the case, regardless of what consumers think, regardless of potential confusion, it is the case that CenturyLink, Inc., is a parent holding company that does not provide any services, does not have any employees that provide services, does not ever send a bill, does not ever receive money from consumers. The companies that did all of those things to these 38 plaintiffs are the operating companies, the ones that we're seeking to intervene in the case.

So for and what we've told the plaintiffs repeatedly, and we sent them lists showing this, is that your customers entered into a contract, of course you can't get utility service without some kind of agreement, those -- that the operating companies provided the services about which you're complaining, all the gripes that you have are about the services of those operating companies, then they sent your clients a bill, then they sent -- then your clients sent those companies money, and that money went to those companies. And we said to them, why would you not include those companies in the lawsuit? Clearly their

conduct is at issue. It's all that's at issue. The parent holding company, which employs the CEO, didn't do anything to your clients. And they refused. And then we sent them a chart, and we said to them, here are the companies that contracted with your clients, provided service to your clients, billed your clients, please include them in the complaint. And they refused again, under the guise that you haven't given us enough facts.

Your Honor, there's no facts that we could give them that would ever convince them that they could -- should add into the case the actual companies at interest that are accused of all this wrongdoing. And we have theories that we rolled out in the motions about why they refuse to. The arbitration agreements are held by those operating companies, not by CenturyLink, Inc., there are other class reasons potentially, but we were mystified, but per your instructions in December, we didn't stand back, we want to get those companies into the case, we want to adjudicate their rights, we want to assert the arbitration, class action waivers, and that's why we've moved to intervene.

So this notion that it's all about that the legal relationships and rights and obligations are governed by what consumers perceive when they see a football game or a van pass by them just doesn't hold water to me as a lawyer litigating these issues in front of Your Honor. So we will

litigate these issues, as I said, and we will, you know, we will see what Your Honor thinks. But we -- we certainly will be moving to dismiss CenturyLink, Inc., for lack of personal jurisdiction and on other bases at the proper time.

Your Honor, you raised the issue of deposition topic limits.

THE COURT: Yes.

MR. LOBEL: Now, we proposed 20 deposition topics limited by 30 hours. The plaintiffs rejected that proposal. I don't know that that's exactly the right number. It could be 25. It could be 18. There's -- there's some number that it should be, because I don't believe in a case of this size and magnitude it's appropriate to not have some limits imposed. If we -- we take our responsibilities seriously, and an hour or two of a 30(b)(6) deposition could take up to 15 or 20 hours of preparation to do the research, to find the proper persons, to prepare them, to review the documents, and so what we worry about is the notion that we're going to be receiving 50 or 60 30(b)(6) deposition topics and we will be drowned in the effort to prepare for that deposition.

So I'm not necessarily wedded to the numbers that we proposed, but I do think, consistent with the parties having agreed to limits or guidelines on almost everything else in discovery, that we should have some limits on that

issue.

Your Honor, I think that maybe this is a little bit of the elephant in the room. As you know, we feel passionate that we do not have a right to provide this class-wide discovery and we are very concerned about the burden and the cost, not just to my client, by the way, because Your Honor will be quickly embroiled in significant disputes, motions to compel, other things on the O'Melveny documents and other things so we will be seeing each other a lot if the class-wide discovery is allowed to go forward, and I know you'll be addressing that in the motions.

But a point of clarification. Am I correct to assume that there shall not be any class-wide discovery formally going forward until you adjudicate the motion to dismiss, the temporary -- I'm sorry, the motion to temporarily stay discovery?

THE COURT: Counsel.

MR. GUDMUNDSON: Your Honor, I'll address that because I've got some remarks to make about the --

THE COURT: Come to the microphone so everyone can hear you.

MR. GUDMUNDSON: I'll stand beside my colleague if it's okay with him.

MR. LOBEL: Happy to.

MR. GUDMUNDSON: We think that the O'Melveny Myers

report should be produced immediately and there's no two ways about it. I do personally a lot of data breach cases. There's a report in those cases called the PFI report. We have a similar fight in those. We get the report. The O'Melveny & Myers report was held out to be an independent investigation which they publicized the specific findings of in line item in a press release to try to exonerate themselves. The Sixth Circuit just ruled on this issue I think in January and said you might try to say this thing is secret, you might try to say it's an internal document or done at the behest of counsel, but if it is independent and if you start using it to exonerate yourself in public, you have waived it and it must be produced.

9.6 million documents is a lot of documents. I don't think that we ought to get 9.6 million documents right now. I'm not sure we want 9.6 million documents, but we do want the O'Melveny and Myers report and we want the materials that were relied on to go into that.

And the reason is simple. The reason is simple. So far in formal discovery is focussed on the defense, the individual issues of this case. We've not been able to move why we're here forward at all. It creates sort of an extensional crisis. We've got all of these complaints and business -- a business model and common conduct, which Mr. Lobel stated very clearly to the MDL panel in trying to

create this MDL, but we may be months or years before we ever see any evidence that's class-wide or common proof to help us start to move those things forward. And it may move forward to a resolution against the plaintiffs.

But we're here to -- we're here because of their common conduct. That's what we've alleged. That's why the MDL was created. And so we think it's time to start not giving us millions and millions of pages but stuff that's easy to get, stuff that's common, let's us start to analyze and move some of those class-wide and MDL issues forward while we're examining some of the other very important issues.

We are briefing a motion to stay. We think that we're going to prevail on that. I don't know if we will or not. But we think that in the meantime, some of this stuff, the stuff that is produced to government authorities, we got that in Target, the Target case from Judge Magnuson, we got the PFI report from other judges. We think these are the kinds of things that are going help us move things forward in the interim.

THE COURT: Okay. Thank you.

MR. LOBEL: Your Honor, what my colleague fails to recognize, at least our position is, these may be only individual claims. They may never be class claims. We think their clients have agreed that they will never be

class claims. And so for them to boldly say start producing internal investigation reports, to the extent that they even exist, or start producing 9.7 million documents just completely jumps over the notion that we are at a threshold in this litigation where we're saying we're in the wrong forum and we're proceeding on the wrong basis. And so we think that the prudent thing for the Court to do is to hold off until those issues are adjudicated and are resolved.

Because really, Your Honor, here's the big problem. When you look at the prejudice, our prejudice can't be undone. If that material gets released and we're right and we go to the Triple A and there's no class, that material is out and that prejudice can't be undone. Their prejudice, on the flip side, is waiting a few months for Your Honor to adjudicate the issue. If you rule against us, absolutely, we're into class-wide discovery, no question about it, Your Honor. But if you rule for us, we will never see class-wide discovery, and that's the problem. And so I suggest what they're proposing is reckless, actually, because, you know, we want to move forward, as Your Honor said, but we don't want to move forward in an imprudent way that tramples on rights potentially, and that's what their proposal would do.

Now, putting aside the fact they've never even put a document request together, so the notion that we just

serve all this stuff up, we're at our 16(b) conference, so certainly any discovery that would proceed should be done under the Federal Rules of Civil Procedure. But what I'm suggesting, and I raise the issue with Your Honor because I don't know where you're coming out on this, is are we effectively under a no formal discovery rule until Your Honor rules on the motion for a temporary stay of discovery based on the arbitration issues? Because if not, I think it starts getting very messy and we can't put the toothpaste back in the tube if we're right.

THE COURT: Well, let me think about that. And someone is coming on or going off.

Let me think about that, and I'll -- -- I see your point, but I still, some of this material, especially the report, I've seen the reports in other cases be handed out, so I think that's just delaying the process, but I want to take a close look at the cases on that.

Counsel, do you want to say anything further on that?

MR. GUDMUNDSON: Not on discovery. I was just going to be prepared to address the Rule 26(f) issues if Your Honor was interested.

THE COURT: Okay.

MR. LOBEL: Your Honor, may I -- may I address -- I haven't responded to Mr. Gudmundson's comments about

O'Melveny.

THE COURT: Go ahead.

MR. LOBEL: First of all, Your Honor, there are times that those reports get produced. There are also many, many, many cases where those reports are not produced. Now, we have researched this extensively. I don't believe -- first of all, I don't know that there's a report. People keep saying that. The O'Melveny information, materials we believe was protected by *Upjohn, the Upjohn* case, and all the legions of cases after that that it is work product that is privileged, and the fact -- and we are prepared to cite cases to you that the fact that a high-level, top-level results and conclusions of the investigation was released publically does not waive the privilage. So from the outset, it's work product protected and privileged and we believe there was no waiver.

If Your Honor is even remotely entertaining addressing that issue now rather than waiting to the temporary stay is resolved, Your Honor, I, again, I feel so strongly they need to propound a document request so we see exactly what they seek. We are entitled to make objections. They need to file a motion to compel. We need to brief this. There are lots of cases and I'm sure Your Honor would want to consider all of those cases. So their attitude is so cavalier about something that is so sensitive and so I

would just ask if we, you know, proceed under the federal rules in the right way.

THE COURT: Okay.

MR. GUDMUNDSON: Sorry, Your Honor, I do have a remark in response to that. We're happy, by operation of the federal rules, discovery may well be open right now, we'd be happy to propound a request and engage in informal or formal briefing of any kind on it. Last time Mr. Lobel was in court, he talked about O'Melvany Myers report and he said, and I quote, And they issued a public statement recently indicating that there is no, they found no evidence of fraud or wrongdoing in the company after six months of full-time work and consideration of almost 10 million documents and to almost 200 interviews, end quote.

I can't imagine for the life of me what prejudice would come from producing that, those materials if there -- they represented to be by Mr. Lobel. So my point is we'd be very happy to propound a very limited set of interim document requests setting forth exactly some of the things that I have stated to Your Honor today. The cases are what the cases are. The decision will be made by somebody who is not Mr. Lobel and not me, but it would allow the sort of black hole to open up a little bit while we do that. And it's important to know, I mean, we've looked at the informal discovery, we've looked at everything, we're

not seeing anything that ties our plaintiffs to any waiver of class discovery or any arbitration. And that's, again, going to be an issue that is not decided by Mr. Lobel or me, but there's going to be a lot more to be said about that.

THE COURT: Okay. Why don't you go ahead and do that, file your requests and we can move forward.

MR. GUDMUNDSON: Yes, Your Honor. And Mr. Lobel may want to raise some more of the 26(f) issues and I can respond.

MR. LOBEL: Well, Your Honor, I would just say for the record, we believe it's just inconsistent with the rights that we have under the operative agreements which we have in fact previewed extensively in the motion because we wanted Your Honor to understand this is not us just saying oh, we've got arbitration agreement. We set out the language, we set out the language in the class action waiver, and we've represented that we can tie these customers to that language, and once we do that, they have no right to get anything beyond what they've already gotten. And so, again, if I'm objecting for the record or asking you to reconsider, Your Honor, I --

THE COURT: You're objecting for the record.

MR. LOBEL: Okay. Well, Your Honor, you know our position on that, then. I'm sorry, are we --

MR. GUDMUNDSON: We have some of the more

minor -- well, they're not minor, but there's some issues with the Rule 26(f) report and just I would like to echo what Mr. Lobel said about the very cooperative process that we had in getting this thing prepared. There were very few areas of dispute.

One is the limit of -- the limit that they want of Rule 30(b)(6) depositions. There's no limit in the rules that I can think of. We're professionals. We don't abuse it. If we did, they would ask for a protective order. I don't want to be in here and nobody on our team wants to be in here facing Your Honor with allegations that we've been abusing them through processes that we know to be wrong.

The thing is, it's a really big class case, you know, and just for an example, we just did the Target data breach case and we took many 30(b)(6) depositions. They were immensely helpful I think for both sides. We weren't limited by it. We didn't abuse it. We had the same deposition limit there that we have here, 300 hours. We didn't use all of it. Judge Magnuson saw fit to give us that. We used it appropriately. Nobody made any complaints. We're professionals.

I just, you know, if we want to set the limit at something like 100 hours or 100 topics or something that we would feel comfortable with, we could, I suppose, but there's really no limits and we don't intend to abuse it. I

know Mr. McNab or Mr. Lobel will call on me or somebody on my team and tell us we're abusing it, and that's not our intention by asking for it to be limitless.

The other deposition limit thing is a bit more sensitive and that is third-party depositions. This case threatens to have a lot more third-party depositions than usual and they're of a very specific nature and that would be former employees, former call center employees, former managers, former -- these are working people with families and presumably jobs that they need to attend to.

You know, I hear the argument that we want equal time on third parties and I hear the argument that we don't want to have a race to third parties, but it's not going to be a race, because, you know, we sort of know who they are because they've been ringing the phone off the hook trying to tell their story, just like Mr. -- Ms. Hauser did down in Arizona. So we want to notice these depositions. And there are others. There are some other third parties, as there always are.

But to state that these working people are going to have to sit for a mandatory two days, first of all, Rule 45 doesn't even allow it, doesn't even allow it, or that we're going to be limited to one day but the plaintiffs, who have the burden in this case, both on class certification and on the merits, are going to have to give up half of

their deposition time for all of these very important witnesses doesn't seem to be right.

So what we've proposed is simply that we get five hours, they get two, whoever notices it first, not just us, if they notice the person first or the entity first, they get five and we get two presumably. If they look at it and say, you know, gee whiz, this is really important person, we need more time, we'll meet and confer, if we can't agree, we'll have a very informal discovery dispute process hopefully that will allow that to be resolved. And if we need more time for a witness, we can contact the person or contact their lawyer and ask for more time. But to have a presumption of equal time or that, if need be, to not prejudice the plaintiffs that we add another day, we don't think that's going to be workable. We frankly think it's an attempt to chill these witnesses from participating because a lot of the witnesses are in call centers in areas where they know each other and they're smaller towns and stuff like that and word gets around. So we think our proposal is eminently reasonable.

THE COURT: Thank you.

MR. LOBEL: Your Honor, my colleague, Mr. Schenker, will address this issue, with the Court's permission.

THE COURT: Good morning.

MR. SCHENKER: Good morning, Your Honor. I'm Martin Schenker, again, from Cooley. And I do agree with Mr. Gudmundson's comment. We covered a lot of ground and made tremendous amount of progress through multiple 26(f) conferences. One area where we did not reach agreement was the last issue that Mr. Gudmundson just described of third-party depositions, and as we explained in those conferences, there are really two kinds of third-party deponents: there are those who will cooperate with us and whom we would expect to represent in deposition. For those parties, we're perfectly happy to go with the allocation the plaintiffs propose of five hours and two hours. But there's the second category of former employee, call center representatives, or other third party who will not cooperate with us, in fact, who we believe may be more likely to cooperate with the plaintiffs. And they identified one such employee in multiple paragraphs of their consolidated class action complaint, Ms. Hauser, and Mr. Gudmundson just mentioned that his phone is apparently ringing with other such individuals, third parties. It's likely in those cases that plaintiffs will have more information about such person's testimony than do the defendants, and they can conduct a brief trial exam, because most of these people presumably will be out of the jurisdiction of the various transfer or courts, and we may have to do a combination of a

discovery deposition and a trial deposition.

So we proposed a process and we continue to propose a process where if we believe we need a substantial amount of time for a third-party deponent that we give notice that they are a mutual third-party deponent and that the default rule for such individuals will be a split of time equally, three and a half hours and three and a half hours. We are not proposing that we have an automatic right to go beyond one day provided by Rule 30. We provide -- proposed that the default is an even split.

And in our 26(f) conference when we first discussed this, the plaintiffs actually agreed to the concept of equal time for such mutual third-party deponents. They no longer agree to that, obviously. But they did agree to the concept. And they also acknowledged the perverse incentive of a race to issue a subpoena to try to get in front of the line. So for those employees, we propose that there be a default of three and a half hours each, with no right to go beyond that, the parties would meet and confer if either of them believed that the allocation should be different or that the total amount of time for such deposition should extend beyond seven hours, and absent an agreement, we would go to the court, presumably the court in the jurisdiction where the witness is to be deposed, and seek relief.

So the only circumstance where we would be able to take more than seven hours of that deponent's time would be an agreement between the parties that's consented to by the third party or a court in the applicable jurisdiction deciding that the parties need more time. And, of course, we cite Rule 30(d)(1) in our 26(f) report which provides that a court must, it's actually in mandatory language, provide additional time if needed for -- to fairly examine the witness. But, again, it's only with the consent of the party or the approval of a court that we would be permitted to go beyond seven hours.

So we believe our procedure is equitable. We believe that for third-party deponents who are not cooperating with us and who may be more likely to cooperate with the plaintiffs that an even split is appropriate. As I said, we believe that it actually may favor them, but we think as a default rule it is appropriate. And that's supported by the one case we cited from the Northern District of California where Judge Illston ruled that each party would get equal time where the former employee had substantial knowledge of practices at the company, which is exactly the circumstance we're talking about here.

THE COURT: Okay. Counsel. Judge Illston is one of my favorite judges.

MR. SCHENKER: She's an excellent Judge, Your

Honor.

THE COURT: I know she is.

MS. GUDMUNDSON: We've been before Judge Illston. She's absolutely marvelous. It goes back to the burden in the case. It is our burden to prove our case. We shouldn't be limited to a trial exam. Just because somebody may be angry at the way -- what they saw when they worked at CenturyLink doesn't mean that they're pro plaintiffs or pro defendants. We should have a fair opportunity to hear them.

And the process that I'm requesting is really pretty straightforward. It's exactly what we used in Target. And that is, there's a presumption, it's not a hard and fast rule, it's a presumption of five and two. We work with the witness. We work with each other to see if we can get more. If there's a dispute, it can be resolved through informal processes relatively quickly, on the phone even, and that may well resolve every single dispute there is. But to say that we only get 3.5 hours with every single second -- I'm sorry, every single third party or nonparty just doesn't seem workable to us.

THE COURT: Okay. What about four-three?

MR. GUNMUNDSON: You know, that's still pretty close. You know, it -- this has come up --

THE COURT: But then there's a mechanism to get more time.

MR. GUNMUNDSON: If Your Honor believes that four-three is a reasonable split, we're more than happy to live with that and work within that sort of structure of what we're proposing.

THE COURT: All right. Because there is a mechanism to get more time.

MR. GUNMUNDSON: Certainly, Your Honor.

THE COURT: It's not like do or die.

MR. SCHENKER: You're right, Your Honor. Under our approach, under their approach, there's still an opportunity under the rules, under Rule 30(d)(1) to seek more time. And I just do want to reiterate that for any witness --

THE COURT: And it keeps everybody focussed.

MR. SCHENKER: Pardon?

THE COURT: It keeps everybody focussed, you know, so we don't, you know, once I deny the extra time, then you'll see that you'll have to be really focussed on your examinations.

MR. SCHENKER: Right. And if a witness cooperates with us, we're not even going to invoke this procedure and the five-two would apply. Those are only for those witnesses and, again, I think those witnesses may be cooperating with the plaintiff. So we would still prefer 50/50. But certainly four-three is better than five-two as

the default.

THE COURT: Four-three.

MR. SCHENKER: Thank you, Your Honor.

THE COURT: All right. What's next?

MR. GUNMUNDSON: Just some very minor cleanup, Your Honor. We would propose for our response, the motion to intervene that's set to be heard June 7th, that we file that opposition May 24th.

THE COURT: Is that -- I think that's agreeable. That's fine.

MR. GUNMUNDSON: Okay.

THE COURT: Wait a minute. Let me check. What day, May 24th?

MR. GUNMUNDSON: Yes, Your Honor.

THE COURT: Yeah, that's fine.

MR. GUNMUNDSON: Okay. And just to --

THE COURT: Because that gives me two weeks so.

MR. GUNMUNDSON: Yes. And just to, some very minor clean-up. There's an ESI protocol being negotiated. It's -- we may have a dispute or two, but it's well on its way. We're negotiating a discovery protocol. Some of the rulings on the Rule 26(f) are going to inform the completion of that.

And then just a final note on informal discovery dispute resolution, we use it in almost every case. We

submitted a Rule 26(f) report to Your Honor that said we didn't agree.

THE COURT: Right.

MR. GUDMUNDSON: To whether it should be used. Plaintiffs think it should be used. We used a number of different methods with Judge Nelson and some of the other judges. We're open to anything. But we do think that it's incredibly helpful, whether it's with Your Honor or with the magistrate judge, to have that.

THE COURT: Please come up. I think it is because it allows the communication between both sides to get to me and you can get my informal rulings as quickly as possible so.

MR. MCNAB: And, Your Honor, our reticence was not with having an informal process but rather with uncertainty about what that process might be, only because we have worked with all of the Article III judges in this district, as well as most of the magistrate judges, and we weren't quite certain what, you know, this is the standard form and it just generically refers to a reference prior to a formal motion. I have worked with almost all the magistrates, more than the Article III judges, obviously, on discovery issues, and in this instance, we were doubly confounded only because Your Honor had indicated that you're going to take charge of everything for a period of time. So it was more about what

exactly is the process that is going to be invoked, will it be binding, if there's an informal discussion, will there still be an opportunity. We certainly feel for the run of the mill discovery issues that crop up informal resolution is almost always the best way.

In our Rule 26(f) discussions with the plaintiffs, one of our concerns was that even this very large motion to stay discovery temporarily pending the motion to compel would fall in to some informal, just as my colleague, Mr. Lobel, is very concerned that if there's going to be an attempt to discover what we believe to be a privileged body of information from an internal investigation by outside counsel, we don't feel that's something that should be handled informally; that's the sort of thing that deserves briefing, argument, a record, and so on. So we just -- we were a little bit hesitant because we just wanted to make sure we knew what we were stepping into.

THE COURT: Let's revisit -- counsel, do you have anything else to say? What I'm going to say is just let's revisit it after we have these two motions and I've ruled and you'll see my direction and then I can put together some proposals for informal use, because I don't need to be talking to you every day. I enjoy your company but not every day.

MR. MCNAB: That's very helpful to us. Thank you,

Your Honor.

MR. GUNMUNDSON: Thank you, Your Honor.

THE COURT: All right. Anything else?

MR. LOBEL: Yes, Your Honor. There is one other item. If I may have a moment. Your Honor, in reviewing the Rule 26(f) report after it was filed, we noticed that there was an error that we feel needs to be corrected on Section B relating to the pleadings. The statement says, All actions comprising this MDL which were consolidated and/or transferred here pursuant to an order from the JPML have been served. That's actually not a true statement. That's a misstatement. We failed to notice it. I don't know if the plaintiffs agree or not.

But upon review of that, two days ago we sent Mr. O'Mara a letter outlining the four -- the five different actions in which we contend there was not proper service. And so we feel that we need to file an amended 26(f) on this topic. The plaintiffs have not gotten back to us on this. I think they were trying to confirm the status of service, certainly don't fault them given the shortness of time, but that's an open issue. We do intend to file Rule 12 motions on these actions because we don't believe there's been, in some cases, no service and, in some cases, improper service.

THE COURT: Please.

MR. GUNMUNDSON: Your Honor, we did just get that

letter. We've looked into it. Some of their assertions are accurate and some of them are not accurate. This is an MDL clean-up matter. It's handled very easily with a stipulation in the CMO, as Judge Thrash just entered I believe two days ago in the Equifax litigation down in Atlanta. We'd be happy to propose a CMO and stipulation that says all prior and all current actions are deemed served. Your Honor issued an order last October that said all deadlines are suspended in the underlying actions. We understood that to mean all deadlines were suspended in the underlying actions. But, again, this is a clean-up that we can fix with a simple CMO.

THE COURT: All right. Let's hope so, all right? Is that satisfactory, counsel?

MR. LOBEL: Well, Your Honor, I'm not sure I'm completely understanding. We believe some of these lawsuits have never been served. We believe they're improper and they're subject to dismissal.

THE COURT: Well, once -- go ahead.

MR. GUNMUNDSON: Okay. That's the very difficult point of view to assert, and I guess I'll say again that this is a very common occurrence in MDL proceedings. I'm not even sure that 75 percent of the actions in the Equifax litigation were served prior to the transfer to the MDL. All of the deadlines applicable to these actions, whether by

operation of the federal rules or by operation of some court order below, were suspended by Your Honor last October. We don't think that any deadline to serve has lapsed and that it can be cleaned up with a simple CMO. And if Mr. Lobel wishes to persist, it's certainly his right, but we'd be happy to propose that CMO to Your Honor for consideration and entry if you see fit.

THE COURT: Please. Please. That's the normal procedure. So and if you feel that it's incorrect, then you can file your appropriate motions.

MR. LOBEL: Yes, Your Honor. And, I mean, just clarification, Your Honor, these were long before Your Honor ever got involved in these matters. These were months and months before the JPML even convened. So and we're not talking about 5,000 lawsuits. We're talking about 15 suits in total and five of them were improperly served or not served. So we'll certainly consider it, Your Honor, and we'll consider your comments, but just wanted that to be clear for the record.

THE COURT: Appreciate it. Anything else that we have to deal with today?

MS. ANDERSON: Nothing else for plaintiffs, Your Honor.

MR. LOBEL: No, Your Honor.

THE COURT: All right. And then I'll see everyone

else on the 17th.

MR. CAMBRONNE: Correct.

THE COURT: Have a good spring day.

(Proceedings concluded at 11:57 a.m.)

* * *

I, Staci A. Heichert, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Certified by: *s/ Staci A. Heichert*

Staci A. Heichert,
RDR, CRR, CRC