

1 CROSS-EXAMINATION

2 BY MS. FRAME:

3 Q. Good afternoon, Mr. McDaniel.

4 A. Good afternoon.

5 Q. Were you involved at all in negotiating
6 the agreement being negotiated which is referred to as
7 Exhibit No. 18?

8 A. No, not in its initial stages.

9 Q. And have you been involved in any of the
10 telephone calls regarding that negotiation recently?

11 A. Not between Covad and Qwest.

12 Q. What happens or will happen to copper
13 cable once fiber is placed?14 A. Well, I think Mr. Norman addressed that;
15 but in some cases, to the extent we can, when it's
16 technically feasible -- to the extent we're replacing a
17 feeder copper route, if we're replacing it with
18 fiber -- to the extent we are capable, we will leave
19 the copper in place. However, to the extent that the
20 maintenance cost would become too large, we would no
21 longer maintain that copper. We would leave it in
22 place, but it may no longer be suitable to be used.23 Q. Would Covad have access to that feeder
24 fiber -- fiber feeder, excuse me?

25 A. To the feeder fiber?

1 Q. Yes.

2 A. If they wanted to offer voice service,
3 yes.

4 Q. But if they don't offer voice service;
5 then, no, correct?

6 A. Under the TRO, we don't have to unbundle
7 that for broadband purposes.

8 Q. Let's -- let's talk about cost a little
9 bit. In your direct testimony you testify -- and
10 rebuttal, you testify that Qwest's primary concern is
11 cost, that maintaining copper is expensive; so let's
12 talk about this a little bit more in detail. It
13 appears as though a vast majority of the fiber, as you
14 have earlier testified, is in an overlay scenario
15 situation; is this correct?

16 A. Well, I don't know that -- I don't recall
17 directly testifying that; but in many scenarios we
18 overlay copper over fiber.

19 Q. So you would have copper available at
20 least for some period for Covad to access, correct?

21 A. Again, it would depend on why you were
22 replacing the fiber. And I think Mr. Norman probably
23 addressed those issues a little more than I did; but it
24 would depend on the condition of the copper and whether
25 it was capable of, you know, providing -- in Covad's

1 case DSL service it. Would also depend on what the
2 costs were for maintaining it; because generally when
3 we replace, we're going -- again, as Mr. Norman said --
4 we will leave it in the ground and we'll try to let
5 Covad use it or any other carrier use it.

6 But again, when it reaches the point
7 we're not going to make a contractual guarantee that
8 that copper is going to be maintained so they can use
9 it. The TRO simply doesn't require that.

10 Q. Have you done any sort of cost analysis
11 in providing access to Covad?

12 A. No, my testimony really is only
13 addressing cost in the qualitative sense, to the extent
14 that you impose contractual requirements over and
15 above, say, what the TRO requires; in other words, we
16 have to leave the copper in the ground and you have to
17 maintain it and you have to maintain it ready for their
18 use, that will simply impose costs on any economic
19 decision --

20 Q. But --

21 A. -- to replace --

22 Q. I'm sorry.

23 But you haven't actually run any cost
24 analyses; is that correct?

25 A. That's correct. Again, it's a

1 qualitative description of the cost.

2 Q. So you have not --

3 A. No.

4 Q. -- defined quantitative --

5 A. No.

6 Q. Okay. So other than the cost of the
7 fiber -- and you say that you are trying to figure out
8 what the -- so you haven't defined specifically what it
9 would cost to maintain the copper; is that correct?

10 A. No, I have not.

11 Q. In your testimony you testify that --
12 well, you testify about alternative services. Did you
13 ever ask in discovery about alternative services to
14 Covad?

15 A. No, because my testimony -- I did not.
16 My reference to alternative service was Covad's
17 contractual language. I didn't discuss alternative
18 services, you know, directly; it was in reference to
19 their contractual language.

20 Q. Did you -- so you never asked in
21 discovery question or in negotiations what these
22 alternative services may have been or what could be
23 possibly an alternative service?

24 A. I did not ask in discovery. And as we
25 discussed earlier, I did not participate in the direct

1 negotiations between Covad and Qwest.

2 Q. I believe that you testify in your
3 rebuttal that it costs too much to provide or to --
4 excuse me, to maintain copper; but you have just
5 testified here today that you haven't quantified that
6 cost, correct?

7 MR. DEVANEY: Your Honor, may I ask, if
8 there is a question about Mr. McDaniel's rebuttal,
9 could we have a page number and cite so we could refer
10 to his testimony?

11 A.L.J. JENNINGS-FADER: Generally
12 speaking, unless the witness asks for that, I'm not
13 going to require it; but it's also helpful to all of us
14 to understand what's going on if the question includes
15 that information.

16 MS. FRAME: I will find the specific
17 pages. But I believe because Issue No. 3 has basically
18 been stricken from Mr. McDaniel's testimony, that
19 pretty much the rest of Mr. McDaniel's rebuttal
20 testimony addresses these issues.

21 (Pause.)

22 BY MS. FRAME:

23 Q. I'll call your attention to page 5, line
24 15 -- or lines 15 through -- and on, where you testify
25 that if Qwest is faced with the cost of either

1 continuing to maintain copper facilities or providing
2 an alternative service over compatible facilities, each
3 time it considers whether to -- and so on.

4 Can you tell me where, in Ms. Doberneck's
5 testimony, Ms. Doberneck is requesting that Qwest
6 maintain copper?

7 A. I don't recall. I mean, basically she's
8 talking about that we would -- in their contract
9 language, she's discussing the fact that we would have
10 to provide an alternative service over comparable
11 facilities. She goes on to explain that, you know,
12 there is reasons to remove fiber; I do recall that.
13 And she does state that maintaining copper is more
14 expensive than fiber, so she could understand why we
15 would want to replace it; but I think she goes way
16 beyond the TRO to suggest that somehow we have to
17 provide an alternative service, maintain a comparable
18 facility such that the cost of changing remains the
19 same to Covad for their customers and that's simply far
20 beyond the requirements of the TRO.

21 Q. But you can't point to any specific
22 section in Ms. Doberneck's testimony where she suggests
23 that Qwest maintain copper, correct?

24 A. Implicitly she gives me an alternative, I
25 think, maintain copper or put in an alternative

1 facility that gives her the equivalent type service.
2 So although I don't remember a direct quote, but
3 certainly that request would require me -- one option I
4 would have is to maintain the copper.

5 Q. Let's talk about alternative services a
6 little bit then. And specifically this relates to your
7 responses to Data Requests 4 and 5. Are you familiar
8 with those responses?

9 A. I recall them, yes. I don't know if I --
10 the specific questions. I recall I had three or four
11 discovery requests I had to answer.

12 Q. And those were the discovery requests
13 that you actually helped answer for Qwest, correct?

14 A. That's correct.

15 Q. Are you familiar with Qwest's VISP
16 offering and can you define VISP. Are you familiar
17 with that offering?

18 A. No, I'm not familiar with that offering.

19 A.L.J. JENNINGS-FADER: I am sorry, B as
20 in boy.

21 MS. FRAME: No, V as in Victor, I as in
22 integral -- I don't know where I came up with that -- S
23 as in service, P as in process.

24 A.L.J. JENNINGS-FADER: Thank you.

25 MS. FRAME: Offering.

1 BY MS. FRAME:

2 Q. Are you familiar that their terms and
3 conditions are the same as the terms and conditions in
4 FCC tariff No. 1?

5 MR. DEVANEY: Your Honor, I think
6 Mr. McDaniel just testified he didn't know the offering
7 or know about the offering. So I don't think there is
8 a foundation for that question.

9 A.L.J. JENNINGS-FADER: I think that's
10 right.

11 BY MS. FRAME:

12 Q. So you are not familiar that the offering
13 requires a CLEC to provide DSL service where there is
14 fiber feeder, correct?

15 MR. DEVANEY: Same objection, Your Honor.

16 MS. FRAME: Correct?

17 MR. DEVANEY: Same objection.

18 A.L.J. JENNINGS-FADER: I think it's fair
19 to say if he is not familiar with the tariff -- the
20 offering, no matter how you parse it, he's not familiar
21 with the offering.

22 MS. FRAME: Okay, so he is not familiar
23 with alternative services to that, correct?

24 THE WITNESS: Not in the context you are
25 talking about that, correct.

1 BY MS. FRAME:

2 Q. Couldn't Covad -- again, let's talk about
3 some alternative services. Couldn't Covad just resell
4 Qwest's services at rates Covad purchases at wholesale
5 from Qwest until those customers turn off the network?

6 A. It is possible for Covad -- and we do
7 make an offering under -- of a resale offering of our
8 retail DSL products and some of those are available out
9 there today to CLECs on a resale basis.

10 Q. So that wouldn't really cost Qwest any
11 extra money, correct?

12 A. No -- I mean, those offerings are out
13 there today.

14 Q. And you state in your direct testimony
15 that the FCC rejected proposals like Covad's,
16 specifically, that you were saying earlier that Covad
17 maintains copper -- or that Covad requests that Qwest
18 maintain copper, correct?

19 A. The FCC rejected the argument that we had
20 to unbundle the broadband portion of the loop and
21 impose any restrictions other than notice requirements
22 on the retirement of copper loops.

23 Q. Was that Covad's proposal?

24 A. That was the FCC's result. That was
25 their conclusion.

1 Q. So you are not familiar with the
2 proposals that were presented to the FCC on this
3 particular issue, correct?

4 A. By Covad?

5 Q. Correct.

6 A. That's correct. I don't recall them
7 being specifically in the footnote references I was
8 thinking about.

9 Q. In your testimony, it appears that you
10 are testifying that ILECs can retire copper without
11 regulatory approval; does that mean that ILECs may
12 disregard any state law with respect to copper
13 retirement?

14 A. No. The FCC was -- said that to the
15 extent there was any current state requirements, that
16 the ILECs would have to comply with those as well. I'm
17 not familiar with any in Colorado, but --

18 Q. It sounds like in your testimony that it
19 isn't important to Qwest that a small amount of
20 customers are being affected by Qwest's retirement of
21 copper and that the customers will be forced to go
22 elsewhere. At what point does the number become more
23 significant to Qwest?

24 A. Well, I think my testimony -- I think
25 what I'm really saying is I think we agree with the

1 FCC's conclusion that as they looked at balancing the
2 policies used across, whether or not you unbundle fiber
3 to provide broadband facilities, you are comparing that
4 against the incentive to provide broadband facilities
5 to a whole large group of customers; you are looking at
6 the incentives for CLECs to invest, you are looking at
7 the alternatives out there today in the market. So to
8 look for a particular customer breakpoint, no, I don't
9 have one in mind; but in general, we serve a fairly
10 large part of the market. The cable industry is
11 clearly the dominant broadband provider to particularly
12 the mass market.

13 And I think the FCC was looking at how
14 that competitive market was working, and so they
15 weren't really looking at a -- they were looking at
16 what I would say was the greater social welfare, so
17 there isn't a particular number count I can give you.

18 Q. I think you have already answered my
19 question, thank you.

20 Mr. McDaniel -- or Mr. Norman was asked
21 this question so we're going to ask this question of
22 you, too: So you are -- I assume that you are aware
23 that Qwest's stated policy is not to proactively retire
24 copper plant in the event that it places parallel fiber
25 feeder.

1 A. Yes. And I think we've said that we --
2 our contract language says where it's technically
3 feasible, we'll try to leave those facilities in place.
4 Again, that's different than a contractual obligation
5 to maintain them. So I think we have to distinguish
6 between what we're willing to do as opposed to what
7 we're contractually obligated to do.

8 Q. For fiber to the home loops, correct?

9 A. Yes.

10 Q. So if you are willing to do something
11 why -- what difference would it make to be obligated
12 contractually to do what you are willing to do?

13 A. I think there is a huge difference.
14 There are going to be scenarios wherein it may not be
15 feasible to maintain that copper if the cable may be of
16 such condition that we're not going to try to maintain
17 it. Again, we said that's what our general practice is
18 well try to do that wherever it's technically feasible.
19 What we're willing to do, to me, is very different.
20 I'm willing to try to do something; that doesn't mean I
21 will contractually obligate myself to do it such that
22 I'm forced in all scenarios to maintain that copper.

23 MS. FRAME: May I have a moment?

24 A.L.J. JENNINGS-FADER: Certainly.

25 (Discussion off the record.)

1 MS. FRAME: Sorry, Your Honor.

2 BY MS. FRAME:

3 Q. Let's talk real briefly about the hybrid
4 situation. Would Qwest provide Covad with access in
5 that situation to the home?

6 A. Are you talking about -- go ahead.

7 MR. DEVANEY: Your Honor, may we have
8 clarification on the hybrid situation, what that means?

9 A.L.J. JENNINGS-FADER: If you could, put
10 it a little more in context.

11 MS. FRAME: Okay.

12 A.L.J. JENNINGS-FADER: Thank you.

13 MS. FRAME: Thank you.

14 BY MS. FRAME:

15 Q. In your testimony you discuss the hybrid
16 situation. Would Qwest -- again, we're talking about
17 alternative services and -- which you have testified to
18 here today and also in prefiled testimony; would Qwest
19 provide Covad in that situation, in a hybrid situation,
20 if Qwest has the sole loop to the customer premises,
21 with access to that loop?

22 A. So access to which loop?

23 Q. That loop.

24 A. Yes. Again, for voice services, we have
25 to.

1 Q. But not for broadband?

2 A. Well, we would also give them access to
3 the copper sub-loop going in from the distribution area
4 interface into the house, into the NID.

5 Q. But you would not provide them with
6 access to the hybrid situation, correct?

7 A. Not for the purposes of broadband
8 services.

9 Q. Thank you.

10 MS. FRAME: We are finished with Issue
11 No. 8, but procedurally I'm wondering if we should go
12 on to TRO 1 and TRO 2.

13 A.L.J. JENNINGS-FADER: I would like to
14 do that. And I appreciate your noting the break point
15 so that -- or to try to follow along in the transcript
16 later. I understand we're moving on to another issue,
17 but I understand he's available for cross-examination
18 and therefore we can move on to the other two issues.

19 MS. FRAME: I didn't know if we wanted to
20 at this point have you, Judge, ask questions and have
21 all of TRO -- excuse me, Issue 8 on the record, and
22 then go to 1 and 2 and then have Ms. Doberneck
23 available as well.

24 A.L.J. JENNINGS-FADER: I think probably
25 for purposes of consistency across the issues, that's

1 not a bad idea.

2

EXAMINATION

3 BY A.L.J. JENNINGS-FADER:

4 Q. Let me just tell you I have,
5 Mr. McDaniel, only one question.

6 You have repeatedly in your written
7 testimony, particularly in your direct testimony and
8 also today, said that where it is technically feasible
9 to do so Qwest will leave copper loops and sub-loops in
10 service. What is technical feasibility?

11 A. From our perspective?

12 Q. From your perspective.

13 A. If we can leave it, generally -- as we
14 said, to the extent it's in the ground, buried as
15 opposed to aerial, we will leave it in the ground; and
16 to the extent that we can relatively easily maintain
17 that, then we will -- we will do that. And that's what
18 we said in the footnote that was referenced in the TRO.

19 Q. Okay.

20 A. But to the extent we can do it, we will
21 do it; what we don't want to do is have a contractual
22 obligation that says --

23 Q. I understand the argument. I wanted to
24 understand the parameters of technical feasibility as
25 used in your testimony.

1 Q. There is no question pending on that,
2 Ms. Doberneck. I understand your eagerness to say
3 that, but there is no need to say that.

4 A.L.J. JENNINGS-FADER: Ms. Doberneck, I
5 need to understand something about this language -- and
6 I apologize Mr. Devaney. The first sentence, where it
7 talks about such requirement is implemented -- the
8 first sense of 9.2.1.2.3.1.

9 THE WITNESS: Right.

10 A.L.J. JENNINGS-FADER: Does that include
11 the situation discussed by Mr. McDaniel of Qwest
12 overlaying and Covad continuing to provide service on
13 the copper -- do you understand my question?

14 THE WITNESS: Yes, I understand your
15 question.

16 A.L.J. JENNINGS-FADER: The copper has
17 been retired, but it's available for Covad to use;
18 could Covad continue to add customers to that copper?
19 And then would this language apply to those additional
20 customers?

21 THE WITNESS: Sure.

22 A.L.J. JENNINGS-FADER: Even though the
23 copper is technically retired.

24 THE WITNESS: Well, my understanding is
25 there's copper in the ground. Qwest says we actually

1 want to deploy fiber, we're going to deploy fiber, to
2 the extent that it's truly an overlay situation; so you
3 actually, as I understand it, still have a functioning
4 copper network -- side by side with that copper
5 network. Our proposal would not apply because we have
6 that copper that we can continue to provide service.
7 It's only where the copper is taken out of service and
8 is not available, essentially, that our proposal would
9 apply.

10 A.L.J. JENNINGS-FADER: Okay.

11 THE WITNESS: I think otherwise we would
12 have that copper and we would be fine with that.

13 A.L.J. JENNINGS-FADER: Thank you.

14 Sorry.

15 MR. DEVANEY: No problem.

16 BY MR. DEVANEY:

17 Q. Ms. Doberneck, please refer to your
18 direct, again, Exhibit 11, page 7.

19 A. I'm sorry?

20 Q. Page 7 --

21 A. Yes.

22 Q. -- at lines 13 and 14, you refer to the
23 pair feeder cable sizes over which these DSL loops are
24 often carried and you point to, for example, a 3600
25 pair feeder or 4200 pair feeder; do you see that?

1 BY MR. NEWELL:

2 Q. Good afternoon, Mr. McDaniel.

3 A. Good afternoon, Mr. Newell.

4 Q. If you can please turn to page 5, lines 7
5 to 9 of your direct testimony; you state that Covad's
6 language with respect to commingling requires Qwest to
7 commingle elements provided under Section 271 with
8 wholesale services; is that correct?

9 A. That's correct.

10 Q. Can you direct me to the provisions that
11 Covad's proposed that suggest that 271 elements may or
12 must be commingled with wholesale services?

13 A. Well, I think what I'm -- what I mean
14 there is wholesale interconnection services, and the
15 TRO does not require us to commingle 271 services with
16 UNEs.

17 Q. Okay. So your argument is that elements
18 provided under 271 cannot be commingled with elements
19 provided under Section 251(c) (3)?

20 A. That's correct.

21 Q. So you don't dispute that Covad's
22 language wouldn't force Qwest to treat Section 271
23 elements as Section 251(c) (3) elements?

24 A. I'm sorry, could you repeat that.

25 Q. Would you agree Covad's language wouldn't

1 force Qwest to treat Section 271 elements the same as
2 elements provided under Section 251(c) (3) of the Act?

3 A. I don't think that was our concern. Our
4 concern was Covad's language permitted the commingling
5 of 271 elements with 251(c) (3) elements.

6 Q. Right. And your position is Qwest isn't
7 obligated to commingle Section 271 elements with
8 anything.

9 A. That's correct.

10 Q. If you could turn to page 45, line 24, of
11 your direct -- I believe I'll be paraphrasing a little
12 bit -- when you state that Covad's concern regarding
13 the rates Qwest will charge for portions of the
14 commingled circuit are unfounded because Qwest clearly
15 provides for the building of mixed use circuits at
16 TELRIC rates; is that correct?

17 A. That's correct.

18 Q. And I want to propose a hypothetical and
19 try to determine how that would work. Suppose Covad
20 ordered a commingling arrangement in which it asked
21 Qwest to multiplex several circuits each providing a
22 qualifying service as defined in the TRO and
23 multiplexing those circuits on to a single UDIT, would
24 the multiplexer be provided as a UNE?

25 A. If every circuit coming into that

1 multiplexer is providing qualifying service, yes, it
2 would.

3 Q. Okay. And the transport facilities, the
4 UDIT facilities -- the transport facility would be
5 eligible for ordering as a UDIT?

6 A. That's correct.

7 Q. I'm wondering if you could explain how
8 that's consistent with the second ratcheting principle
9 you provide on page 45, line 5, of your testimony --

10 A. 45, line --

11 Q. -- which states -- are you there? I'm
12 sorry.

13 A. 45, line 5?

14 Q. Yeah. It states, "-- mixed-use circuits
15 or facilities will not be ordered or billed as UNEs."

16 A. Mixed use circuit would be a scenario
17 where, under what you just described as that
18 multiplexer -- or let's call it a DS3 UDIT transport
19 facility, there was at least one, two -- several DS1s
20 coming in providing exclusively non-qualifying
21 services; at that point you have a mixed-use circuit
22 and we will build that and not charge UNE rates on
23 that.

24 Q. When you use the term mixed-use, you are
25 only talking about an aggregation of circuits that

1 provide qualifying service with circuits that provide
2 exclusively non-qualifying service?

3 A. Yes.

4 Q. So the fact that a given circuit provides
5 both qualifying and non-qualifying service would not
6 make that circuit a mixed-use facility?

7 A. Yes. To be clear, in your example, let's
8 say you had 24 DS1s multiplexed onto that DS3 facility,
9 all of that would go at UNE rates if every one of those
10 DS1s coming in provided qualifying services -- every
11 one of the DS1s coming in. If you had 24 of those DS1s
12 coming in providing non-qualifying services, that DS3
13 facility -- or the multiplexer -- they would not be
14 billed at UNE rates. They would be a mixed-use
15 facility, billed at tariffed rates.

16 Q. Okay, thank you.

17 MR. NEWELL: Nothing further.

18 EXAMINATION

19 BY A.L.J. JENNINGS-FADER:

20 Q. Mr. McDaniel, if I understand Qwest's
21 concern in Issue TRO 1 it is that notwithstanding the
22 fact that Covad doesn't intend to order services, it
23 won't put in language -- or won't agree to language in
24 the agreement being negotiated that is addresses
25 services it doesn't intend to order; am I correct?

1 A. I'm sorry, no --

2 Q. I don't understand -- I do not understand
3 fundamentally the TRO issue No. 1.

4 A. Which is the commingling issue?

5 Q. Which is commingling.

6 A. Okay.

7 Q. So can you explain to me briefly your
8 understanding of what the issue is. My -- from reading
9 the testimony -- and I can't give you the citations --
10 it is my impression that Covad does not intend to order
11 most services to which this commingling issue might
12 apply; is that your understanding?

13 A. No, that's not my understanding.

14 Q. Okay.

15 A. I think, in the first issue you may be
16 talking about, the EELs issue, where we want
17 eligibility incorporated under EELs.

18 Q. Yes.

19 A. That's more of a combining issue,
20 although combining and commingling depends on how you
21 define things; but with the service eligibility issue,
22 our kind of concern there is, although Covad said we're
23 not going to provide EELs.

24 Q. And we'll negotiate it later -- the
25 provisions later, if we decide to order EELs; isn't

1 that their position?

2 A. Right.

3 Q. And Qwest says, no, you must negotiate
4 those provisions now, notwithstanding the fact you
5 don't intend to order EELs; is that Qwest's position?

6 A. That's correct. And we have a reason for
7 that.

8 Q. I'm sure you do.

9 Before we get to the reason, isn't it
10 true that for resale -- for interconnection, for
11 ancillary services for access to telephone numbers, for
12 local dialing parity, for Qwest Dex, and for referral
13 announcements there is a provision in the agreement
14 being negotiated that says Covad isn't going to order
15 this service; and if Covad decides to order the
16 service, we'll put in the appropriate -- we'll
17 negotiate the provisions later?

18 A. And I haven't checked all those, but I'll
19 accept that.

20 Q. Okay.

21 A. And again there was no reason to be
22 concerned in that scenario, there is a reason to be
23 concerned in the prior scenario.

24 Q. I'm trying to get there.

25 So now I would like you to explain it me,

1 please -- to the Commission, why the issue with EELs is
2 enough different in Qwest's view that it cannot agree
3 to the proposal to negotiate those terms relating to
4 EELs at some future time.

5 A. Our primary concern was related --
6 actually principally to opt-ins, but it could pertain
7 to Covad; but if you look at the definition of UNE
8 combination in whatever the definitional section is --

9 Q. So Section IV?

10 A. If you look at the definition of UNE
11 combination you are going to see something in there --
12 not verbatim -- but it will say something to the
13 effect --

14 Q. Why don't we add it verbatim since we
15 happen to have the agreement being negotiated there on
16 the table which, I believe is Exhibit 17.

17 MR. DEVANEY: Your Honor, I'm not sure we
18 ever introduced the agreement.

19 A.L.J. JENNINGS-FADER: I think we can
20 get to that. I have a note at the end to kind of wrap
21 up some little loose details, right.

22 THE WITNESS: It's actually on page 33 of
23 this exhibit. And the UNE combination definition
24 states -- it means a combination of two or more
25 unbundled network elements that were or were not

1 previously combined or connected in Qwest's network as
2 required by the FCC, the Commission, or this agreement.
3 Now, we also have in this agreement DS1 loops, DS3 UDIT
4 transport; you combine those two, you get an EEL.

5 Under this definition, we are required to
6 provide combinations that go beyond this agreement,
7 such as those as may be required by the FCC. And the
8 FCC clearly, as a standalone matter, provides EELs --
9 requires us to provide EELs. So our concern is
10 particularly in an opt-in situation, someone could say,
11 here, the definition provides a loop -- DS1 loop with
12 DS3 transport; we don't need to talk about EELs or
13 service eligibility, just combine those two as required
14 under this agreement which says you will follow FCC
15 combination rules. So that's what we were concerned
16 about is really looking back at what does the
17 definition of UNE combination require.

18 Q. Is the definition of UNEs that you just
19 read from the agreement being negotiated different from
20 the definition of UNE that appears in any other
21 interconnection agreement?

22 A. Probably not.

23 Q. Okay. So I'm still back to my question:
24 Why this is a concern if it's the same definition
25 throughout the -- all interconnection agreements that

1 you have -- and presumably those you will continue to
2 negotiation -- why is it -- what is it about this Covad
3 agreement that raises the problem?

4 A. Well, it wouldn't be just the fact that
5 it's a Covad agreement. In most of our agreements,
6 whether it's our SGATs -- I mean, we probably put this
7 definition in like this -- I assume it's probably the
8 same. I haven't checked. But we've got EELs also in
9 those SGATs.

10 And we also lay out, probably, in today's
11 SGAT whatever the service -- the local restrictions
12 that were required on EELs before that. But -- so
13 those SGATs or agreements already explicitly lay out
14 the requirements, and all we're saying here is to the
15 extent this agreement could be read as going beyond
16 what you are saying in this agreement, i.e. the FCC
17 requires combinations of transport and loops; and we
18 would say, Yes, that's true. And then, You also offer
19 loops in this Covad agreement --

20 A.L.J. JENNINGS-FADER: Uh-huh.

21 THE WITNESS: -- I'm opting into, you
22 also offer transport; we want you to combine those.
23 And if we do that, we would have nothing in the
24 agreement that allowed us to provide -- to apply the
25 EEL eligibility requirements. So that's what drove our

1 concern is really we wanted to put that in there to
2 ensure that we could apply those requirements even in
3 the absence of a section on EELs.

4 Q. Could you address Qwest's concern by
5 changing the definition of UNE to expressly -- to
6 expressly to exclude EELs?

7 A. Yes, I think you could do it that way.

8 Q. And would such an amendment --

9 A. Or --

10 Q. -- take care of Qwest's issue with
11 respect to the need to incorporate eligibility
12 requirements in the Covad agreement?

13 A. Well, thinking off the top of my head, I
14 would wanted to --

15 Q. Well, you don't --

16 A. I think it would, but I would want to
17 explicitly exclude the combining of loops and transport
18 under this agreement. See, the problem is not so much
19 EELs, just a definition of two combinations.

20 Q. Uh-huh.

21 A. You would want to exclude those things.
22 You would have to write it in such a way to exclude the
23 two things that could be combined under this
24 definition.

25 Q. Okay, thank you. Thank you,

1 Mr. McDaniel.

2 A.L.J. JENNINGS-FADER: Mr. Newell, any
3 questions based on what I asked Mr. McDaniel?

4 MR. NEWELL: One moment, Your Honor.
5 (Pause.)

6 MR. NEWELL: Your Honor, we have no
7 questions.

8 We would point out, however, that at
9 least to our recollection -- to our recollection, the
10 proposed solution that Your Honor has put forth is a
11 novel one and has not been discussed between the
12 parties. And Covad would happily agree to the
13 restriction suggested by Your Honor in the definition
14 of UNE combination to specifically exclude -- exclude
15 EELs, if that would close the issue for Qwest.

16 A.L.J. JENNINGS-FADER: Well, rather than
17 negotiate this on the record, perhaps the parties could
18 get together and have a discussion when it's not at the
19 end of a long day.

20 But thank you for Covad's offer. I'm
21 sure that whatever the parties work out, the Commission
22 will be happy to be informed at some later time.

23 Any redirect?

24 MR. DEVANEY: Very briefly.

25 REDIRECT EXAMINATION