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TRANSCRIPTION OF DOCKET(S) A-021178 and TO-030288

Item D1, Docket A-021178 and D2, Docket TO-030288

Chairwoman Showalter: This is a continuation of the open meeting of the Washington Utilities and Transportation Commission.

Fred Ottavelli: (inaudible as tape was turned over) electric companies, water companies, and telephone companies, as well as the rules for registration, competitive classification, and price list of telecos 480-121, and Commission General Securities, Liens, Affiliated Interest, Chapter 146. It appears there is some confusion in terms of the various drafts that people are looking at. Attached to the agenda, rules dated July 28, 2004, and obviously, those are the rules that we are looking at today. And, part of the confusion stems from the short turnaround time that we had from the last round of comments and the consideration at this meeting of the CR-102's.

In mid 2002, the Commission commenced review of financial reporting rules in a variety of respects, and the consideration was driven by the corporate scandals that were taking place, that were paramount at that time. The financial viability concerns, negative impacts of failed diversification on behalf of utilities throughout the country, rating downgrades that utilities were experiencing, and of course, the "poster child" Enron and the acquisition of Portland General Electric.

At about the same time, the Federal government enacted the "Sarbanes-Oxley Act," on…and that was effective on July 30, and that was in recognition of

"a slew of corporate scandals." They are companies that are… indicated are…Enron, WorldCom, Global Crossing, which unfortunately, you know does include public utilities.

The "Sarbanes-Oxley Act" was concerned with accurate and accessible information. The Commission's efforts here in this rulemaking, are to provide for the Commission, accurate reporting in a timely fashion. There have been events in the state of Washington that have signaled a need for such rules; including lack of notice of transactions regarding subsidiaries, large transfers of cash from public utilities regulated by this Commission, to affiliates, parents, and others, and dependence upon a limited number of suppliers for utility services.

As I mentioned this all started back in 2002. It's of interest that is still a topic nationally. I am looking at the Standard and Poor Report…Research Report published on July 23 of this year, and I quote, "Nearly 40 percent of ratings in the sector of electric, water, and gas, have negative outlooks or are on credit watch with negative implications. This is indicative of still weak credit measures, primarily due to high debt levels associated with unsuccessful forays into unregulated business ventures."

Chairwoman Showalter: Can you pause for a minute? We are having technical difficulties. Alright, if you are on the bridge line, you have missed the introduction of this rulemaking by Mr. Ottavelli, but he has also provided a written memo to similar effect but continue please.

Fred Ottavelli: Thank you…

Commissioner Oshie: Excuse Madam Chairwoman. Mr. Ottavelli could you re-read the quote from the "S&P" either analysis or their…

Fred Ottavelli: …from their…they call it their "Research Industry Report Card and Commentary on Key Trends." And it reads, "Nearly 40 percent of ratings in the sector have negative outlooks or are on credit watch with negative

implications. This is indicative of still weak credit measures, primarily due to high debt levels, associated with unsuccessful forays into unregulated business ventures."

Recognizing this problem as I mentioned earlier in mid 2002, the Commission commenced a stakeholder meeting in June of 2002, to discuss the problems that were very obvious at that time, and to discuss the best approaches that the Commission could use to address those problems. And also, specifically, should the Commission seek legislation or would a rulemaking endeavor be adequate? The feedback that the Commission received at that meeting was overwhelmingly that the Commission should adopt a rule. The comments were to the effect, the Commission had adequate authority to do this, and they should commence a rulemaking to address these various problems. And I might add that, that stakeholder meeting was attended by the Commissione's, and there was very active participation by all involved.

As a result on October 2, 2002, the Commission filed with the Code Reviser a Preproposal Statement of Inquiry or CR-101 in Docket A-021178 to initiate a rulemaking to examine the need to reorganize, revise, repeal, and adopt financial reporting rules, and to consider establishing rules relating to reporting of transactions between regulated utility and transportation companies, and their affiliated interests and subsidiaries.

On March 13, 2003, the Commission filed a CR-101 that dealt only with hazardous liquid pipeline companies. And that particular rule has been joined in terms of a process with the financial reporting rules, because it does include considerable financial reporting…the same financial reporting requirements, and recognized the need for a new chapter applicable to the economic regulation of hazardous liquid pipeline companies regulated by the Commission.

Following the issuance of the CR-101, there have been several rounds of public comment. There have been two additional stakeholder meetings. Both again, which were attended by the Commissioners, and both were…then the full day, and involved substantial discussion of the "why's," the "what's," and where the Commission wanted to go.

I go into a little additional detail on the front-end because we are still receiving comments from stakeholders that they don't understand why this rule is being considered. And, I find that difficult to believe, in that there have been so many…this has been thoroughly researched, discussed. In addition, Commission staff has met with individual companies to go over their concerns, comments, and to again reflect the Commission's concerns on the rule.

The rules that are recommended will do a couple of things. One, they will shift the security and affiliated interest rules to each industry. The intent here was not to be devious in any way, to attempt to expand the security and affiliated interest rules, but rather to make the rules industry-specific so that the Commission could recognize differences between the industries. And also to make the rules easier to use by those who use the rules. If anyone is concerned about rules applicable to teleco…to telephone companies, and they want to know what the financial reporting requirements are, they don't have to "fish" around and go through a variety of rules.

So…so the recommendation is to eliminate the affiliated security rules and to fold them in, if you will, to the industry rules. The proposed rules will provide the Commission with information in terms of the intent to issue securities five days before the issue date…reports of planned, large cash transfers to your affiliates or subsidiaries five days before the transfer occurs, when a threshold is exceeded. It is to require annual report of transactions with subsidiaries so that the Commission will be aware of transactions that are

occurring between subsidiaries and operating companies, and finally, an annual report by energy companies of essential utility services contracts, when a threshold is exceeded.

There have been a number of substantive comments received on the last…the last rules that were provided, and some of those comments are reflected in the rules that you have before you today. In addition, comments were received a minute ago from Qwest, and I believe the Commissioners have those on the rules. And, this morning, comments were received from Public Counsel, saying essentially, they're strongly supportive of the rules being proposed and there is a need for new rules that will provide the Commission with more timely identification and disclosure of financial transactions that pose difficult regulatory issues.

Primary issues that were raised in the last round of comments include concern with the exemption from rules, where the Commission, in each of these rules is proposing an amendment. And, they have been characterized…the proposed has been characterized as confusing and unnecessary.

At this point, I want to read that particular rule, because there are some versions out there that have a word missing, and I just want to make sure everyone has the same language. The proposed rule reads…

Chairwoman Showalter: Where are we?

Fred Ottavelli: Okay…I'm looking at the solid waste rules, which are the first set of rules in the package on page 9.

Chairwoman Showalter: What sub part or part…

Fred Ottavelli: It is the 480-70-051.

Commissioner Hemstad: Let's see…I'm not in focus.

Chairwoman Showalter: But is it on page 9 in the middle of the page…the underlined language that you are looking at that begins, "…The Commission may grant…"?

Fred Ottavelli: Yes…

Chairwoman Showalter: Is everybody there?

Commissioner Hemstad: Right…

Fred Ottavelli: And the "sneaky" word is saying… It should read, "…The Commission may grant an exemption from the provisions of any rule in this chapter in the same manner and consistent with the standards and according to the procedures set forth in WAC 480-07-110." And I just…I do that because I want to make sure everybody has the proper language.

Staff is of the opinion that the cross-reference is appropriate and consistent with the standard that the Commission has always followed, and intends to continue to follow. And so, there is no recommendation to change the language in this section.

The next area of concern…the second major area of concern has to do with definition of "control" and "subsidiary." Here again, companies…some of the stakeholders are, in effect, saying that the use of…or any other direct or indirect means, renders a definition of control, vague, subjective, and unenforceable. The rule…the definition of "subsidiary" establishes a 5 percent threshold at which point, it is considered a subsidiary, unless the company is able to establish that control does not exist, in which case, that particular 5 percent requirement can be by-passed, if you will, not waived.

Again, in view of the latest round of comments, we "tweaked" the language in the definition of "control." The language that appears on the July 28 rule was taken from the SEC rule. We changed a few words, but essentially, it's

SEC language. The thinking being that, this language should be clear, that the company should be used to working with this language…

Commissioner Hemstad: And what WAC number?

Fred Ottavelli: Again, in solid waste…

Chairwoman Showalter: Page 4 or 5 of the "definition" section…the definition of "control" and the definition of…there's another definition isn't there?

Fred Ottavelli: "Subsidiary would be on page 6.

Chairwoman Showalter: 4 and 7…pages 4 and 7…

Fred Ottavelli: …7 yes… And so this is an example of where there is a slight language change from the language circulated in the last round of comments, if you will. It still includes the...the words that some found to be confusing, but the Commission is concerned that "control" can exist if there is less than majority control. At the same time, where the companies can establish that there is no control, this gives them an opportunity to…to so claim with the Commission.

The next area that drew substantial comment involved issuing securities. And to find that rule, you would have to go to page 7 of the gas company rules would be the…it appears in a number of places, but…

Commissioner Hemstad: Can you give us a page number?

Fred Ottavelli: Page 7, and it's 480-90-242.

Chairwoman Showalter: Page 7 of the gas company rules.

Fred Ottavelli: Here, the bottom line is…some of the commenter's take exception to the requirement to file certain general information, five days before the utility issues securities. There is also some concern with Sections 1(b) and 2 as being redundant. There is a difference, however, between 1(b) and 2. One asks for estimated terms and the other asks for the terms, and the piece, I might add, that asks for the terms, which would be 2, is from the statute…the statutory language.

For the most part, the language in this rule is statutory. The only exception being the definition of a prior to is "five days" prior to. And, here the Commission was of the opinion that if this requirement…this particular is to be meaningful, there has to be the requirement to file certain information in such time, as the…for the Commission to at least have a chance to take a look at it. And, there certainly seems that the legislature did intend the pre-filing requirement to be meaningful. There are no changes from the draft that was circulated in the proposed draft that you had before you here today.

The next rule that gives rise to concern is the transferring cash or assuming obligation rule…that would be on page 8 of the gas company rules. Here the comments dealt with language establishing a "second trigger" on the cash reporting. The intent of the rule, once a threshold has been reached, then cash transfers must be reported and it was recognized that we didn't want every dollar reported after that, but we did want significant amounts after the first threshold had been reached. So, we incorporated what we call a "second trigger." The language was found to be confusing by one of the commenters. That language has been clarified and, this is an instance where, the commenters and the staff are not in disagreement. It is simply a matter of getting it right so that the language is understandable to all who look at it.

The second comment had to do with the threshold being reduced from 5 percent with prior year gross operating revenue to 2 percent. We used different revenues for different industries, and in some of the industries we used 5 percent of the common stockholders equity, and some we used 2 percent of gross operating revenue, and the reduction from 5 percent to 2 percent was an error and has been corrected in the new draft.

There is also some confusion in terms of the cumulative trigger language, and again, that has been recognized and the language has been clarified.

The commenters still remain opposed…in principal…to this particular rule and questions the legal authority. The Commission feels they have the authority under RCW 80.04.080, to require reports from public service companies.

The affiliated interest and subsidiary transaction report rule drew comments. One telephone company still believes there is no demonstrated need for reporting requirements for subsidiaries of telecommunication companies. And further, if the rule is adopted, the rule should specifically exempt subsidiaries in our local exchange companies. I'm sorry, let me go to that…and that appears under gas companies on page 11, WAC 480-90-264.

As I mentioned earlier, the Commission does feel it's critical to be aware of transactions that occur between subsidiaries and parent…and their regulated parent, if you will, in the same fashion that it's required for or necessary for transactions with affiliated interest. Cross-subsidization can obviously occur, and it's important that the Commission be aware of these matters. In particular when it gets into a rate case and sometimes the Commission has found that it has to kind of…it's kind of like "hide and seek" trying to find out what…what, in fact, has transpired with subsidiaries. The rule will make it very clear with transactions that are occurring. As far as if the company is regulated or not...cross-subsidization can still occur. As a matter of fact, it can be more direct in its application…and I'm not suggesting that our companies would do this, but the opportunity does exist.

If books are kept in some unique fashion that the Commission has this information before it…in some other way…than the company could appropriately ask for an exception to the rule.

The last mailing to interested persons included a Small Business Impact Statement and asked for definitive remarks. Of all those sent out, only one

responded and that response could not predict what the cost might be to the company. No other responses were received. It appears an SBEIS is not required.

In conclusion, the draft rules reflect a balance of the Commission's need to be informed of the regulated companies' financial activities without unduly burdening the regulated companies. Therefore, staff recommends that the Commission direct the Secretary to file a Notice of Proposed Rulemaking (CR-102) with the Office of the Code Reviser in Docket A-021178 proposing revisions to Chapter(s): 480-70 WAC Solid Waste Collection Companies; 480-90 WAC Gas Companies; 480-92 WAC Low Level Radioactive Waste; 480-100 WAC Electric Companies; 480-110 WAC Water Companies; 480-120 WAC Telephone Companies; and 480-121 WAC Registration, Competitive Classification, and Price List of Telecommunications Companies; and, repeal of Chapter 480-145 WAC Commission General Securities, Liens, Affiliated Interest Refunding of Notes, Leases of Utility Facilities.

Staff also recommends that the Commission direct the Secretary to file a Notice of Proposed Rulemaking (CR-102) with the Office of the Code Reviser in Docket TO-030288, proposing establishing WAC 480-73 WAC Pipeline Companies. Staff is available for questions.

Chairwoman Showalter: Thank you for that summary of what has been a long and fairly elaborate process to get to this point. Just before I forget…so it doesn't get overlooked…on page 8 of the gas company rules. Apparently sort of a note to ourselves but I think the drafting could be made a little more explicit when you look at the threshold is 2 percent, then you have to look back 2 percent of what, then it says the threshold which is based on common shareholder's equity. It's a little bit indirect. I think we could probably "tighten up" saying it is 2 percent of…or change the words based on…anyway…it's a minor point.

It has been quite a process to get to this point, and this point of course is only, what rule we should propose. After which, there is a period of a formal comment period. So, we are very interested in your comments today, recognizing you've made comments all along, but your comments today of the current draft in front of us, and whether there are changes that we should consider now for the proposed rule. But, as you all know, there is another comment period, which is very important to be as thorough and complete in that later comment period, even if similar comments have been made in prior drafts. Because the prior drafts were just that, they were not proposed rules. Anyway, we haven't gotten to the proposed rule yet. So let me begin by calling on Adam Sherr.

And while you are getting yourself ready Mr. Sherr, it would help us very much if before you start commenting on a rule, you guide us to the right page, so that we're listening to you and have our eyes focused on the language before you start to talk about it.

Adam Sherr: Commissioners, good afternoon, I'm Adam Sherr, appearing today for Qwest. I very much appreciate the opportunity to speak to the rules and to have the opportunity to speak our "piece" another time. I have brought with me today, Pete Cummings. I think everyone in the room probably knows Pete. Pete is a Director at Qwest of Regulatory Finance, and knows much, much more than I do about many of the specifics, the mechanics, the practical aspects of issues relating to securities and financing. So, Pete is available to answer some questions and to help me out, and to help you out as well. So, to the extent you have any questions, we'll probably "tag team" a response to them.

As you know, Qwest has been a very involved party in this process and will continue to be so, much to everyone's chagrin perhaps. We really do appreciate staff's efforts, and this is something you probably don't see pouring

out of our comments. But, we do appreciate staff's efforts. They've worked very hard in this process. They've had many rounds of draft rules, and I want to make sure that I've use the correct words, cause they're not proposals, but draft rules, and they have met with us personally to hear us and to hear our concerns. They have really shown a willingness to listen to us, and we appreciate that, notwithstanding. The tone of our comments sometimes, we do appreciate that.

I'm going to try and be as brief as humanly possible today, because we have said the same things over and over again, and I don't know how much value there is for me repeating every word of our comments again.

I'm going to focus primarily on the legal aspects of the rules I'm going to speak to, and I want to try to separate and make sure that it's very clear that, the way I view these rules, there are two tracks of thought for rules like this. There is sort of a legal aspect, does the Commission have jurisdiction to do this? Is this proposal within the authority of this Commission to enact, and there's the other side which is the…okay, well if…if…if the Commission believes that it has that authority, and if a court agrees with them…or if it's not challenged, what are the practical aspects of them. And, of course, from Qwest's perspective, as we've expressed many times, for some of these rules in particular, we don't think that this Commission has jurisdiction, but we don't want to…we don't want to…forget or forego the opportunity to speak to the practical aspects as well, even if this goes forward against our…our expressed will. Please hear us on these practical issues. So…and I've had an opportunity to both in the comment and individually with the Commissioners, very recently, to speak to the practical issues, so I am not intending to repeat that today, although again if you have questions, that we'd be happy to try to respond.

I'd very much like to…not that I'm in the business of inviting you to do anything…but, invite you to interrupt me with questions and staff as well, with

not only questions as to what I mean by something, but also to hear the Commissioners' or staff's positions on some of these arguments we've made. I've expressed this, I think to each of you already, and to my friends at home, and that it, this process can be very frustrating, and that is sort of a one-way conversation. Draft rules come out…Qwest…and I compiled 30 pages of flamboyant comments, and then the next part of the process is another set of draft rules. And there's not…I see you sought…this isn't an adjudication where you have an opportunity to say, on page 2 of its brief, Qwest said this…this is why we disagree with Qwest. So, we don't…I…I…as I stand here today I don't know what the Commission's perspective is on a lot of the comments that we've made.

I heard Mr. Ottavelli mention a statute, and that was helpful. We talked about that a bit in our informal meetings, so that was helpful, 80.04.080, but again, I would very much like to hear the other side of the…the other side, if there is another side to my argument, and I'll do my best to respond today. But, again, not necessarily knowing what it is until it comes out of your mouth, it may be that I have to comment in…and serve separate supplemental comments sometime down the road.

Qwest commented on a number of the rules, although tried to focus its attention on the ones that it found most concerning. The two rules that I am going to talk to you about today are the securities rule, which is 480-120-365 and the cash transfer rule, which is 480-120-369. We did make comments on other rules and we…we stick by what we said, and we believe our position should be heard. I'm happy to respond to questions you may have about our positions on those things. I know there's been some flux…I didn't know until 1:25 p.m., today, that there was a new set of draft rules to be considered here today. So, um…although Mr. Ottavelli did show them to me…he did walk me through

what changed, and I appreciate that. But, I will do my best to respond, should you have any questions.

So the first of the two rules I want to chat about is 480-120-365, which is the securities rule. As Qwest has identified numerous times, the primary problem from our perspective, legal problem, is the attempt through this rulemaking to alter the statutory filing deadline from before issuance to five business days before issuance.

Chairwoman Showalter: I'm just going to interrupt you quickly, because I…I do want to pin down where the difference is and interpretation are, so you are saying that you believe the word "before" cannot be interpreted by us to be any particular time period before. That we can go no further than the word before?

Adam Sherr: I think that's Qwest's position, absolutely.

Commissioner Hemstad: And what does that mean? You mean one second before?

Adam Sherr: I believe that the way the statute is written, Qwest has the ability to file any time before. That is how the legislature laid it out. If they…if the legislature intended that Qwest do it at some greater period of time then anytime up to and including…well up to the moment that the securities were issued, that the legislature would have said that.

Commissioner Hemstad: What is the purpose of the term "before?" What is the statutory purpose of it?

Adam Sherr: That's a fair question and not one, as I stand here today, that I necessarily have an answer to. But, it's one that I want to think about and be able to respond to.

Commissioner Hemstad: Well…think about…you've have two years. The word has to have some contextual meaning doesn't it? I mean…is it so literal that you

think a court would say that "before" means "one second before?" So what does it…is it a purposeless requirement?

Adam Sherr: Well, the legislature may have believed that there was some purpose to securities issuances being filed with this Commission contemporaneous with the issuance.

Commissioner Hemstad: Well then, why wouldn't they have said that?

Adam Sherr: Well, I believe they did.

Commissioner Hemstad: Well you think…you think that "before" means contemporaneously with?

Adam Sherr: I think the word "before" means any time...from the perspective of the company that has to file…any time up to the moment before. And I think…I think that the legislature could have very simply stated if they wanted something in advance. If there was some purpose that in…and I'm not, as I stand here, don't know that I can tell you what year that the legislation was passed.

Commissioner Hemstad: About ten years ago.

Adam Sherr: Okay. I don't ten years ago what the purpose that the legislature was trying to serve.

Commissioner Hemstad: We're all lawyers here. Isn't one of the principal ways one reads the statute is to ask what is the purpose? I mean…are statutes to be ready so literally that the term becomes meaningless?

Adam Sherr: Um…I believe the way courts in this state interpret statutes is to first to look at the language of the statute, and if it is unclear…if it is…if the legislature has been ambiguous in some respect, then it looks it to the intent and it looks to the purpose. But first, it looks at the language. If the language is unclear, that's when you go beyond. But, I believe the courts of this state, like most states, look to whether the words have an ambiguous meaning.

Commissioner Hemstad: Whether the words have meaning.

Chairwoman Showalter: I think your point about ambiguity is correct. Only if there is an ambiguity do you then go and look at legislative history. But there's another issue, which is interpreting what a word means. Which is not the same as ambiguity, and I believe, there is a very recent case. I just recall getting a copy of it…from Ms. Johnston back there, about the ability of an agency to interpret a statute, which is a little bit different from saying there, is an ambiguity…then you clarify the ambiguity. I don't think there is particularly an ambiguity about the word "before." "Before" is "before." But, two days is before and so is five days before.

Did I interrupt your question, because I also wanted to go to another potential statutory authority which I…my guess is maybe you're going to get to too. But it is the tail end of RCW 80-04-080, and although its title is Annual Reports. As we all know the caption is not the same as the…the actual language of the law. And, the question, I think that underlies other aspects of this rulemaking as well, is whether the Commission has authority to call for various kinds of special reports…and here, it's in…this is such a long statute. It's in the last five lines or so of the statute, but it gives the authority to require the companies…and I'm starting to read…to file periodical or special or both periodical and special reports concerning any matter about which the Commission is authorized or required by this or any law to inquire into or to keep itself informed about. And, the issue here would be, our general responsibility is to oversee and regulate the regulated company, and what's the basic thing at issue here is, are there transactions that could affect the health of the regulated company and, therefore, the…the ratepayers, in terms of the service they receive or the amounts they have to pay.

So, a central issue…a central legal issue in this case I think is what…in this rulemaking…is what kinds of special reports for what purpose can we ask for

and isn't this one? In other…we are setting forth a rule saying, in essence, we want…we want you to report to us when this kind of transaction is happening and here is when we want to know about it, and it doesn't (inaudible as the tape was being turned over)….

Adam Sherr: Let me try to respond, and I'm going to do the best I can not to be scattered. Because, I have to be honest, when we met with the staff informally, they did mention 80.04.080, and, I don't know if it's the context in which we were discussing or of we were discussing the cash transfer rules. So, my thinking about 80.04.080 is really been in the context of that…of that proposed…that draft rule, has not been, to this moment, with regard to the securities rule. And, I really do really want to think about that and try to respond.

Let me try to respond to a couple of things you said. One is, you know, perhaps a difference of opinion as to what the general powers and duties of the Commission are. I agree that 80.01.040 speaks that the…that this Commission is authorized to and empowered to regulate in the public interest, but as the court of appeals has found, and as the statute plainly says, that's not unqualified. That's as provided by the public service laws. So…that qualifies and limits the scope of…even under this most general delegation of authority to this Commission…the delegation of authority. It is…it is as provided…what my view of that statute is that this Commission has broad authority to apply the provisions of Title 80, but it doesn't have the authority in the name of regulating in the public interest…in the name of regulating the behavior of utilities…to go beyond the authority specifically given to it by the legislature. And the court of appeals in the WITA vs. Tracer case, which is a 1994 Court of Appeals case we mentioned in our comments, speaks to that as well. It's not unqualified…

Chairwoman Showalter: But, while I agree with that, but were not relying here on the public interest statute that we're regulating in the public interest, therefore

we can ask for any report we want. I think the analogy would be, we have general public interest duties over regulated companies, and now here is a statute that authorizes us to require certain kinds of reporting. And so that's substantially more specific than a public interest authority. So then the question is, is this reporting…is this authority to require something called a special or periodic report or both sufficient to allow us to require you to report two days or five day in advance?

Adam Sherr: Well, that's a fair question, and I was responding to what I thought was part of your concern and your position was 80.01.010, is part of this analysis. But, I agree, that 80.08, is much more specific and should be considered more specifically. You know, I believe this is going to come down to…an interp…a battle of interpretations perhaps of what 80.08.040 means. I am using 80.08.040, being the statute that requires us to file.

Chairwoman Showater: …080, you mean?

Adam Sherr: 80.08.040, which is the prior to issuance filing requirement. You articulated that…that perhaps you view the statute as empowering the Commission to require us to file a report. I'll read this literally to simply require to file a report before issuance. This…and that's part of the argument that we made and comments, and that I was going to make again today, is that the legislature didn't open this up as a general topic for the Commission to follow up on and to promulgate additional rules about, and to expand the requirements for utilities as provided in 80.08.040. It simply says we have to file this with the Commission before issuance.

By comparison, in 80.08.090, the legislature was very clear, and this is in the context of where utilities, which they could do at their discretion, seeks an order that there issuance is consistent with the filing requirements…and that's under 80.08.040(4). Well, under 80.08.090, the legislature specifically and

explicitly authorized this Commission to establish such rules and regulations as it may deem reasonable and necessary to ensure the disposition of such proceeds…for the purpose or purposes specified in its order. And, that relates to the accounting and to situations where that order has been sought and granted by a utility. So, the legislature…again, the WITA case I think is really paramount for us all to go back and look at. The legislature…the courts have said that the legislature must specifically grant this Commission the authority to promulgate regulations in order to have that authority.

Chairwoman Showalter: Okay, so I want to pin you down again. Are you saying that it's your legal interpretation that if a particular section of law does not grant rulemaking authority within in it, that we don't have authority to, to adopt rules for that section or that, at a minimum, we have to find some other place that give us that authority?

Adam Sherr: Strictly speaking, yet? It may not be…if we are looking at 80.08.040, it doesn't necessarily have to be in 80.08.040. It could be in an introductory section or another section of 80.08 that specifically refers to the subject matter. But there isn't one in 80.08, as far as I've seen. If I'm wrong, please tell me, and I want to consider that.

In response to your question, I really don't have a very good answer, but it's one I am going to think about in terms of 80.04.080, and how that relates to the securities rules. I don't believe that the legislature intended by that statute to allow the Commission to enact a rule that is inconsistent with another statute.

Chairwoman Showalter: But why would it be inconsistent? It's…that is, there are, throughout RCW's…our RCW's…various requirements on companies and the Commissions. Just, for example, a rate case statute governs certain things about rates, but yet, we also get reports from the companies on their budgets or quarterly reports, that sort of thing, annual reports, which help us…help to

inform us about those more substantive statutory responsibilities. So, you could look at, one is, how we get the information we need, and there are statutes about that. And I think 80.04.080 is one of them. And there is what the companies need to do about what, and that's also…that's a more specific subject matter, but it doesn't mean it's the last word on anything to do with that subject matter. At least, I think that's what the issue is here.

Adam Sherr: I think it is too. And, that's why I said a couple times, I think this comes down to a disagreement in terms of how do you construe with 80.08.040 is telling us. Is it that the Commission is authorized to gather this information before issuance or is it that companies are required to file something before issuance? I think that…and I don't know if there's anything else that I can say today that is going to alter you…alter that opinion at this point. But, I'm going to think about it and I'm going to file more comments on it.

Commissioner Hemstad: Let me give you a hypothetical. It's in the electric side, and I realize you're a telecom attorney. In fact, I don't…what our statute says about least cost planning, but we have rules that require the companies to tell us what they are planning to do with regard to the acquisition of new resources. Is it your view that if there were not a specific statute authorizing that, we could not require that kind of advanced a description of their plans?

Adam Sherr: I have to beg your forgiveness. I am not at all aware of what this statute is. I'm not sure what the grant of authority is from the legislature about least cost planning, and so, I can't give you a meaningful response. But, that's again, something I can look to. It's part of the electricity statute…the electricity title.

Commissioner Hemstad: We do it for our electric utilities.

Adam Sherr: Well, I apologize, I simply can't respond to that. I think I probably covered a great deal of what I was going go say about this rule, but I'll try to

kind of skip through these points again, and again…I appreciate you interrupting me, and us having that discussion, and I'm sure it will continue.

There's, four principal reasons why from Qwest's perspective this five business day requirement is unlawful. The first is that, as I discussed this morning, it impermissibly expands the utilities obligation. The statute says before issuance. It doesn't say, before issuance at any time set by the Commission. It doesn't say five business days before issuance, it says before issuance.

The second reason, that we've also discussed, is that there is no express authorization by comparison, as opposed to the situation under 80.08.090, where the legislature has authorized this Commission to promulgate rules.

The third, and we've discussed this briefly in our individual meetings last week, is the question of federal securities law. I promised, in response to one of the questions from one of the Commissioners, to provide additional information about our position on securities while…and we will do that. And I will be filing additional comments. I unfortunately do not have them yet, but I am making our poor securities lawyers work very hard, because what I want to file…when I file with you is going…I want it to be thorough and fairly responsive to your questions.

Chairwoman Showalter: And, I just…I think it's…would be appropriate to put this conversation on the record. The issue was does…do the Federal securities laws, in particular the "Wader Sarbanes-Oxley" restrictions somehow prohibit the company from informing a state Commission about this otherwise confidential information before it informs the rest of the world. Or, are there, perhaps, some exemptions for what is "otherwise required by state law," and since Mr. Sherr and I had this conversation, I wanted to put it on the record, and neither one of us had the statute in front of us, so we didn't know what we were

talking about. So, that is why I asked to see whether there are prohibitions, express permission or silence on these questions in under federal law.

Adam Sherr: That's a very fair characterization, especially the part about me now knowing what I'm talking about. I know just about enough to be highly dangerous and to malpractice all over the place.

Just to add a little bit of flush to that, there were two types of securities, and I'm hoping that Pete's going to jump and hit me in the head when I say something wrong. But, there's a public offering of securities, there are private offerings of securities. In a public offering, what we are concerned about is that a filing with this Commission, prior to us making a publication of that under an SEC type of publication reporting, would be considered an offer. That same event that we're concerned about in the context of a private securities offering, is referred to as a solicitation, and the tension…what we are trying to avoid, is…and my understanding is that the SEC has very broad powers to determine what is an offer and what is a solicitation. It's not a black and white matter, and we certainly don't want to be in a situation where we have to choose which body of law we choose to abide by, and which body of law we choose to neglect or subject ourselves to.

Commissioner Hemstad: It is your view that, where the prior statute in effect here before 1994, I believe, which required pre-filing and pre-approval with the Commission for any securities issuance. If that were still in place today, that wouldn't be a violation of the Sarbanes-Oxley?

Adam Sherr: I would have to ask what the…what the "A" was the information? Was all of this done in public? I'll have to simply ask you the question, because I don't know what the legislation was ten years ago. If all of this was done in public, I would certainly have the same…the same question that I have today. I would note that the veracity with which the SEC is enforcing laws is, I think,

is…they are more active today, and as everyone knows, I'm not revealing any secrets. You know, they're certainly scrutinizing Qwest and other utilities that are closely. So, as I stand here today, I cannot tell you…and I am not telling you that your rule, absolutely, positively, would be a violation of securities law. I am simply trying to work to figure that out, which I think is the responsible thing to do, and to point out that there are…there are complications in that we do not want to be in a situation where we have to choose which law to ignore and which law to abide by. So, and that comes from, as the Chairwoman mentioned, that tension comes from the fact that, it is potentially the case that we would have to file something with this Commission prior to us making public announcement of a transaction that we are going to make or that we have, at that moment, just made. It's that tension, and it's the five business days aspect of the set number of days that causes, from the SEC prospective, causes that potential tension. Because, it could be the fact…it could be the case that we publicly announce on a Monday that we are about to do a securities transaction, and not actually close it for seven business days. That could be the case. And, there are differences between public transfers, public securities transactions, and private securities transactions, and different reasons that would go along with why that may be the case. So, in that case, the five business days doesn't subject us to that jeopardy, because we've already announced it publicly and…and admittedly, limited information that is being sought under the proposed…the draft rule, I don't think would be inconsistent with that, assuming it's the same information that we've publicly disclosed.

The problem is that in some of these cases, it may be the same day as we made the public announcement, because of the nature of that type of transaction. Or it may be three business days later. Well, we are left then with that two…if it's three business days, between the time that we publicly announce and when

the transaction closes or if it's the same day, there is the period four that puts in this potential jeopardy. So, I did want to make mention of that as well.

As I said at the beginning, my focus today is not…

Commissioner Hemstad: You said that you had four reasons. You mean you give three?

Adam Sherr: I did. Thank you, I skipped another reason. I appreciate you pointing that out to me. The fourth reason, that is, one that we mentioned in all of our sets of comments. Well, we mentioned in our first set of comments, and I have referred to since then, is that this rule appears to be an attempt to regulate the multiple state cash management operations of…of in Qwest's case "QC," Qwest Corporation and its family of companies. The U S Supreme Court and several other jurisdictions as we've noted in our comments, have said that that's not appropriate. That this Commission can't, despite it's best intentions, cannot put itself in the "shoes" of Qwest management or as a super board of directors. That, that's not, especially when there is not other authority that allows the Commission to do that. But, that's not an appropriate rule for the Commission to be taking.

Chairwoman Showalter: I guess I don't disagree with that characterization of things in terms that we shouldn't be inside the boardroom. But, here we're talking about receiving information, not directing the decision. Presumably, the information would be used to evaluate the regulated company for purposes of things we do have control over. Also, I think, an additional effect is that, if you know you have to tell your regulator before you do it, you think twice about, well what am I doing and why, and what am I going to say to the regulator, and so that has a very, basically a therapeutic effect of forcing the regulated company to remember what its duties and obligations are. But, neither one of those, I think, is getting into the boardroom.

Adam Sherr: Okay, well and I, obviously I don't think you intended this. I don't think when the Supreme Court was talking about that, they meant physically in the boardroom having a chair next to one of the members of the board of directors. But to, whether this Commission is attempting to manage or assisted managing the cash management operations. QC has a…operates in 14 states, and we have…but we have but one cash management operation that's centralized. If we didn't, I'm sure, you wouldn't like that very much if we had separate cash management operations for each state, it wouldn't be very economical.

I would agree with you that if…this rule…this draft rule would be much more offensive of that particular principle, if it were to say that…if it were to provide more authority to the Commission to take steps to…to stop the transaction or to interfere with the transaction. But, the "flip side" of that coin is, is one other point that I wasn't intending to make to day, but one that is in our comments, which is, then what's the purpose? And you spoke to a couple of the purposes that are possible. But to the extent…I think we're both perhaps playing on both sides of that. Because, if this is simply notification and the Commission doesn't intend to do anything with the information, then why subject us to these other concerns that we have. If the Commission does intend to take action potentially to interfere with the transaction, based on the limited…limited amount of information is sought. I would question how the Commission would do that based on the limited information it is seeking. But, even if it did, then it looks much more like regulation of cash management operations.

So, I think that there is an aspect of that involved here. It's certainly not my first…my first and main point. Because, I think that's a pretty complex matter, and I don't know where these proposed rules… the draft rules, are

hopefully going to end up. But, it is something that is worth mentioning from our prospective.

Chairwoman Showalter: Just, since this becoming a little bit longer conversation which you asked for…

Adam Sherr: I know I did.

Chairwoman Showalter: There are so many…there are different reasons why a company might transfer cash or take an action that needs to be reported under these draft rules. And so, it is difficult to say that all of those types of transactions could give a rise to some kind of action on our part, but surely, some of them could, and I can think of cases…I am thinking of a water company actually…where we allowed rates to be…revenues to be used for a particular purpose. That was the reason those revenues were there, and there…maybe this is a current case…so, let's say maybe there is an allegation, I'm not sure that the funds were used for another purpose. If that involved an affiliate…that could be the very kind of thing that…if we learned of it before hand, we might step in. But really, if we had to learn of it beforehand, it might never have happened. That really is the two aspects to this. But, bottom line is, the information is different from our authority to use it, and our authority to use it is going to depend on the content of the information.

Adam Sherr: I was prepared to say I understand your position. But I would say that your authority…but let me push back just a little bit…your authority as to what do with that information, I don't think does depend on the context, if I am understanding you right, how and what exactly the transaction is. Your authority as to what you can do with that information depends on what the legislature has granted you. In terms of the (inaudible)…

Chairwoman Showalter: Yes, but that's what I…

Adam Sherr: Maybe I don't know what you meant…

Chairwoman Showalter: No, that's what I'm presuming…that's if we had authority under our statutes to condition the use of some revenues from rates, and then we learn that a cash transfer is about to made to an affiliate, which violates that condition. That might be a situation where we could step in immediately, possibly to prevent that from happening. Now then, you might mention some other situation, where we wouldn't have authority to stop the transfer. But, we might have authority to do other things.

I think the thing we are starting to go round and round about, so I'll stop, is a general purpose of gathering information that could cover a great range of things as distinct from the types of specific actions we have other statutory authority to take, depending upon the context and the environment.

Adam Sherr: And I will say I understand…I understand and thank you.

Commissioner Hemstad: You understand, but…but you…probably you disagree with the Chair's description of that circumstance, that anything could be done?

Adam Sherr: Do I disagree that the Commission would be able to step in, in that situation?

Commissioner Hemstad: Yes.

Adam Sherr: I'm not sure. I'd have to say…I mean I apologize. I'm not trying to be evasive. I don't know what statute…under what statute that…

Commissioner Hemstad: Okay…

Chairwoman Showalter: Here's a good example…the Qwest merger.

Adam Sherr: Okay…

Chairwoman Showalter: There were conditions on that merger. Supposing one of the conditions on the merger had been some kind of a commitment as to how funds would be spent or maybe not spent. I don't know, but just supposing we then learned because of these reporting requirements that money earmarked or

designated for some purpose was going to another purpose. I mean…the actual requirements of a company or the actual…or the specific authority of this Commission really does vary with the situation. But gathering information about it, is…is not necessarily tied to our specific authority to use information in a particular way.

Adam Sherr: Well…I'm not trying to defend your hypothetical misdeed by Qwest, which you're not suggesting. But, it certainly seems to me that cash is fungible. So that if you know that were were supposed commit X number of dollars to a particular project, the information we give you that we're about to transfer X number of dollars, which may be the same amount, it may be more, it may be less, to an affiliate or a subsidiary. I don't think you'd view that information necessarily to help you decide whether we've complied with the condition of the merger. But, the point you raise is an interesting one, which is, if you do have the express authority to condition a merger, and that was a condition of a merger, then do you have the authority to gather that information? I think you do, but I don't know that, that possibility grants for all authority to require utilities to report all cash transfers…in all contexts.

Chairwoman Showalter: And I was…I was actually suggesting that it wasn't the merger conditions that allowed us to gather the information or maybe it would. It's that the general statute may allow us to gather information to be used in some specific way which, in this case, in that example, might have been articulated in the merger. Or supposing you were required to make certain investments by a certain date, and we learned that, just for example, since it's a real one, there was am $800 million dollar transfer of cash…perhaps that…leaves state regulated company without the means to meet a commitment. I mean…there are endless variations on this of course…

Adam Sherr: Sure…

Chairwoman Showalter: But, it's really that, the information may lead to other information that, one way or another, does affect directly the regulated company's ability to do its job or it invokes the Commission's authority to make sure it does its job. The background here really is, and Qwest is an example of it, where there are large transfers from the regulated company to the non-regulated side, and as a result, as we all know, from the cases we got in front of us, the company at the regulated side, as well as the whole side, the whole company was not in good shape.

Meanwhile, other companies that are "ring fenced" or whatever didn't run into these problems, even when their big owner "Enron" went bankrupt. So, it has a real effect. Our ability to…to protect the regulated company and its ratepayers is, to some degree, dependent on the information that we get, because the companies themselves, do get in a bind sometime. The tension there, of course, is their regulated side and their non-regulated side, and the need to "shore" up the non-regulated side if it's in bad shape, and maybe the reverse is also true on occasion. But that isn't as great a concern to the regulator.

Adam Sherr: Sure. My "gut" reaction what you are saying, and again, my brain is going in a lot of different directions. In terms of the transfers, transfers you are talking about specific to Qwest and Qwest's economic woes…which are not a secret…I don't know that there's a connection there. I can understand how you could get two pieces of information and draw a connection, but I don't know that there is a connection there. So, I feel compelled to say that, and there hasn't been a case that's been brought against us where we had to really dig in and try to prove that there is or is not a connection. But, I frankly, personally, don't think that there is a connection necessarily between those two events.

Chairwoman Showalter: Well…searching for an example, I was in your field, as opposed to some of the ones….(inaudible)

Adam Sherr: I appreciate that…I appreciate that. I'm not sure if there is anything further, as I stand here today. Let me consult with Mr. Cummings for one second.

Let me venture to move forward…

Commissioner Hemstad: Let me tell you another generic hypothetical, taking away from any specific. In view of your description of…from your perspective…our limited ability to get information in advance. Let's assume a utility in significant financial difficulty, with…with unregulated activities desperately needing money…cash infusions. So, now systematically, money…large amounts of money are transferred away from the regulated utility to the parent or to a subsidiary, with the result of the utility becoming increasingly, severely weakened. What would…what would you have…what do you think this Commission has the authority to do about that? Is it our overall weakness that, all we can say is, "golly gee?" There's nothing in our responsibility to oversee the utility. There's nothing we can do.

Adam Sherr: Um…albeit probably the…if possible, the least popular thing I've said today, I think the answer is, that there isn't.

Commissioner Hemstad: Okay, well that's an honest, candid answer.

Adam Sherr: It is, and I'm trying to be candid throughout…

Commissioner Hemstad: And then I hope, you're never in a position of being a regulator.

Chairwoman Showalter: Even if that is correct…I think the…it ignores really the culture of regulation. There…there are limits on our authority to take action or to step "into the boardroom" metaphorically, but then, as you know, many relationships, conversations, information are exchanged and that can have a very

beneficial effect on the company. To remember what it is, which is a regulated company serving the public, and sometimes it's hard to remember that…that responsibility when these other pressures on the non-regulated side are looming very large. So, if we do…if we have the authority simply to require information, that's not nothing…that's I think the point I'm making.

Adam Sherr: Okay…Again I keep pushing this case, the WITA vs. TRACER case. It's a very short case, but it speaks to exactly the perspective that I'm coming from today, and one of the points that I've found central to that case is, that there was no disagreement even among, this is a case between WITA on the one side and TRACER and U S WEST on the other, and that the court mentioned that TRACER didn't believe that the…the rule that was in question was particularly unreasonable. But, the court said, very clearly, we know however, that the appropriateness or reasonableness of the CCF, the rule…the aspect of the rule in question, is not at issue, only the statutory authorization for its enactment. You could have the most reasonable, most practically speaking, generally thinking, appropriate rule, but if you don't have the authorization from the legislature to promulgate that regulation, then you don't have the authorization.

The fact that…you know, I don't stand here today thinking that your concerns about these issues are contrived. I think they are very sincere and personally, since I work for one of these companies, I have them as well. But, the mere fact…the mere fact of the concern among an individual…among an individual Commissioner…among an individual staff member, does not bestow that authority on this Commission.

Chairwoman Showalter: Well, that's granted. I totally agree with you, getting back to, what authority do we have? You have to point to…to discuss really every potential statute that might grant us the authority, and you know, we've

got to determine on whether we do or don't. It only takes one statute to give us the authority.

Adam Sherr: Fair enough. Fair enough…and I am responding to Commissioner Hemstad's hypothetical, and that's…that's a tough answer to give, and it's a very blunt question…a very appropriate one, but I think that's…that's the blunt direct answer. So, I was simply trying to respond to his hypothetical.

Let me try to forward just a "tad" again. I said at the beginning, I didn't want to talk about practical implications, but the one…one aspect of that I did want to bring up in terms of the securities rule, is that now again, leaving aside all of our stunning legal arguments over here, the five business day aspect for securities…potentially for securities reasons, but more so, for reasons we discussed in comments and privately, the impact on the cost of financing of there being premature notice in earlier than general notice…notice, is the big practical concern as well. And so, um…following up on our meetings of last week, between depositions here…deposition sessions, we have proposed that the Commission consider some additional language and we filed that electronically this morning or this afternoon, and I brought copies along with me as well.

Commissioner Hemstad: And we have it in front of us.

Adam Sherr: Okay, thank you. Then again, this is about 480-120-365. Is there anyone…is interested, there may be some more copies in the back. If not, I have some more right here…and…I don't need to walk through this particularly. I can just simply point to you what I believe is the…is sort of the key piece of this. And that is, if you will note, I have suggested eliminating the five…at least five business days aspect of this, but adding a second qualifier, so this will be before…this is when the notice would be required to be filed. Before issuance and not later than the business day in which the company publicly announces the proposed issuance. So, this is an attempt to, sort of, "bridge" the…to

"bridge" the concerns that the Commissioners expressed, and have expressed again today, and the concerns that Qwest has from a practical perspective. So, I'm going to leave that for you to consider.

Chairwoman Showalter: One of the things that's implicit in this suggestion, whether it be two possibilities, one is that there is Sarbanes-Oxley prohibition against giving us information without giving it to everybody else, and you're going to look that up in the law. The other is, would be the assumption that if you give it to us, it somehow out there in public and would affect your financing. And that, seems to me…leads to the inquiry of whether it could be submitted to us confidentially? Whether that's a value to us, it's a different set of issues.

Adam Sherr: True, I'd be happy to address that, although I promised not to talk about the practical parts of it. Again, not wishing to, responding because I can't to the securities aspect of it, you are right. The key is, is the information going to get out to the public and, when we talked about this from a practical perspective, the mere existence of an impending financing is what we're concerned about. It doesn't have to be more specific than, Qwest is going to market. That, we are concerned, will cause…will cause harm in terms of hedge funds or speculators taking interest against our securities and therefore, when we get to the point where we are actually trying to price those securities in the market…Pete, stop me if I'm wrong…the price is more as a result, the price that we have to pay.

In our comments that we submitted in May, we pointed to a $20 million dollar example of that happening. Obviously, not in the context of having to not propose information or provide information to a Commission, but where there was a "leak" at a very high level that a securities transaction was going to occur, that a financing transaction that was going to occur, and there was a movement of roughly 20 basis points. And, a billion dollar transaction, that's $20 million dollars over ten years. And again, I know that you and Qwest are on the same

page, not wanting Qwest to have to pay more than it would otherwise have to for its financing. So, that's the concern.

So, getting back to your specific question, can it be kept confidential, potentially, I suppose it's possible that it could. Obviously, the draft rule, as it sits today, I believe even with this last draft that came out today, there's no provisions for any kind of special treatment. There is the general 480-07-160 opportunity to label something as confidential. There are several practical, possible problems with that. Again, the mere existence is a problem. So, if the Commission's web site indicates that if something is docketed, and the Commission's web site indicated that Qwest made a filing under 480-120-365, although it's not attached because it's confidential, that's the problem…you know that's the problem, and that particular "horse is out of the barn."

Chairwoman Showalter: Could you just…I know you did give the example, but tell me again why if somebody knows…let's say somebody gets "wind" that Qwest is going to market. And tell me again why that would drive the price up?

Adam Sherr: (inaudible)…with Mr. Cummings here. Pointing to our May comments…if you have our most recent comments…I think they were Exhibit A. The first attachment and its paragraph 25 on page 12…excuse me for just one second.

Chairwoman Showalter: Mr. Cummings…do you want…

Pete Cummings: (inaudible)…ask the competent one to explain…

Chairwoman Showalter: Alright…

Pete Cummings: This is…I'm Pete Cummings, and I was with Ron Porter to meet with you Commissioners last week, where we explained what happens in the market. And, basically, his comments were that a premature disclosure of, an intent to finance creates activity by the current market participants. There are hedge funds and arbitrages that take positions in the company's securities in

advance of the new issuance of securities. And the effect of that buying and selling of the current securities is to…is to widen the spreads of the…the spread over comparable treasury securities that the company has to pay for the new securities.

And that's why it coss more money. The 20 basis points example, what Mr. Porter was talking about last week…I don't think he was specific when he was out here talking about it…but it really did come from his experience with the Qwest Communications international financing that was done earlier this year. There was a premature announcement. The markets did move against that transaction, and it cost the company about 20 basis points more than…than they were anticipating.

Chairwoman Showalter: Thank you. Mr. Sherr, are you just about winding up here? I don't want to stop you, but we've been going quite awhile.

Adam Sherr: I'm aware of that. I really thought I was going to be here for ten minutes, so my naivete.

Let me move on quickly to the cash transfer rules, because you've heard me talk a lot about the securities rule. This is under the telecom 480-120-369. Again, Qwest would urge the Commission to simply reject this proposed rule for the simple reason that the legislature did not grant the Commission authority over cash transfers. There is no statutory scheme for cash transfer reporting, while there is a scheme for reporting affiliated interest transactions, securities transactions, and property transfer transactions, there is nothing for cash transfers. There is no statute…this rule also includes provisions that would require transfers from utilities to their subsidiaries to be reported. Again, I'm not aware of any statutory authority to regulate subsidiary transactions. The affiliated interest transaction statute, I think we all agree, doesn't reach subsidiary transactions. And so, that's another aspect of it.

Again, this is…and I said earlier today, this is the context in which I have been thinking about 80.04.080, and your characterization of what that statute says is correct, which is, if there…once you get beyond the page and half of talking about what an annual report is supposed to look like, it says at the very end, that if there is…paraphrasing…if there is an issue about which this Commission is authorized or required to keep "tabs" on to enforce, that…that it may require regular or special reports about that issue. In this case, I don't see how that authority stretches to cash transfers. Again, there is no statutory scheme or authorization for requiring the reporting of cash transfers.

Now, the exception…the only one that I found…is with regard to dividends…because that is reported…that is discussed in 80.04.080, at the beginning. But, this proposed rule, 480-120-369, is significantly broader than simply asking for an accounting of dividends. And I would note, and I appreciate staff's willingness to hear comments on this, that the proposed…that the draft rule…excuse me…carves a big exception for most dividends. So, again, I don't think connection between what this…what the legislature has otherwise authorized this Commission to gather information on…to regulate, is not covered, and I don't see how 80.04.080 provides that authority.

(inaudible…tape was being turned over)…for there to be a transaction, if it meets the other criteria between a subsidiary, if I'm reading this correctly…someone will stop me, I'm sure if I'm wrong…between a subsidiary of a public service company and its affiliated. So, there could be a subsidiary of Qwest Corporation that makes some sort of transfer between itself and its sister company, and that has to be reported to this Commission. I don't…I don't pretend to have any understanding of how that would be within anything that the legislature has…has granted to this Commission in terms of authority.

Chairwoman Showalter: Could you just…

Adam Sherr: Sure…

Chairwoman Showalter…point me specifically at, I think this is on page 8 or 9, where that language is?

Adam Sherr: Sure. Excuse me just one moment. In subsection one, "…at least five business days before a telecommunications company or the subsidiary of a telecommunications company transfers cash to any of its affiliated interest or subsidiaries…" So, (inaudible) that out, at least five business days before a subsidiary of a telecommunications company transfers cash to any of its affiliated interests or subsidiaries. That's part of the scheme under this draft rule. Is that clear?

Chairwoman Showalter: Yes.

Adam Sherr: Thank you. My last point is again, that the question of whether this is…constitutes engaging in the cash management of the multiple state operation. Let me start that again…whether this is an attempt to step into the utilities management shoes and to regulate the multiple state cash management operations of the utility. As I discussed before and much more thoroughly in our comments, we think that's unlawful.

In conclusion, Qwest again appreciates the opportunity to stand here and to respond to your questions and to express our concern. We urge you to reject this rule 480-120-369, and to reject the five business day aspect of the securities rule, 480-120-365. Thank you.

Chairwoman Showalter: Richard Potter. I'm guessing that you're glad that Mr. Sherr went first.

Richard Potter: If I'd gone first, I'd be gone by now… Richard Potter, appearing on behalf of Verizon Northwest Inc., in particular, and I want to just talk about the proposal to create a new obligation to file reports on subsidiary transactions.

We file very extensive reports on affiliate transactions of course, so this would be a new one.

As we said in our comments, which Mr. Ottavelli so delicately referred to without mentioning our name, we have a concern, as written the rule would apply to us. We would have to generate a report because we have a small subsidiary, and I'll describe that a little more in a moment.

Chairwoman Showalter: Can you make…can you point us to what rule you are talking about?

Richard Potter: Yes, it doesn't have…my comments still have to do with the specifics of the rule, but it is on page 11 in Attachment 6, the one that would apply to the telephone companies in any event. It's 480-120-395.

Chairwoman Showalter: Thank you.

Richard Potter: So back to what Mr. Ottavelli said to open his remarks. We agree that it's a good idea to have these types of rules be industry specific so that the Commission can recognize the differences between the industries. And, I certainly gather from Mr. Ottavelli's descriptions in his memo and orally, that some other industries have had particular problems with subsidiaries transactions. I'm not familiar that telephone companies subject to this Commission's regulations have had those problems. But, we were hoping that our comments would generate a little research on the part of the staff to determine how many subsidiaries actually exist of telephone companies that would be subject to this rule. We know we have one. Are we the only one…are there others? If there are others, then the rule might make sense, depending on the nature of those other subsidiaries, in which case, we would…we would come in and ask for a waiver.

But if we're the only one, then it wouldn't seem to make sense to have this new reporting requirement, and I'll explain that in a minute.

Commissioner Hemstad: I don't think you're the only one.

Richard Potter: Well, I was hoping we'd see a little information on that and then we could talk intelligently about it.

Glenn Blackmon: This is Glenn Blackmon with Commission staff. At least, up until recently, Qwest Corporation had a subsidiary, Qwest Wireless. So, that's just at least one example.

Richard Potter: Okay. Then it might be a matter of, if we knew the lay of the land then we could maybe talk about a rule that has some thresholds or something like that. Cause, it's our view that the literal application of the draft rule to us would create a promulgation for another report in perpetuity that wouldn't do either the company of the Commission any good, because of the particular nature of our subsidiary.

As the Commission knows, Verizon Northwest operates in Washington, Oregon, Idaho, and as you may know, we also operate in California through a subsidiary named Verizon West Coast Inc. And why that California operation has a separate incorporation, I don't know the reasons, probably lost in history. But, it's a small, approximately 15,000 line operation in the northwest corner of California that's adjacent to our Oregon operation on the south coast of Oregon. And, in layman's terms, it's operated just as a part of the whole four state operation, and being so small, I don't think anyone could seriously say there is any danger of cost shifting that would work to the detriment of Washington regulated ratepayers.

Chairwoman Showalter: Now, is it a fully regulated company in California?

Richard Potter: Yes it is. It's a long time rate-of-return regulated ILEC in California.

Chairwoman Showalter: So, I'm not saying this is appropriate, but it sounds like one possibility would be to exclude subsidiaries that are fully regulated by some

other state. If that…I have to think through what is the purpose of this statute. But, if the purpose were only to look to non-regulated transfers or transfers to those, and we are not as concerned about the regulated company, that could be a way to solve that, but that may not be the full purpose behind the rule.

Richard Potter: You…you are a better judge than I what the purpose is, but that's a solution, the "jist" of which we tried to suggest in our comments about the exemption for local exchange companies. So, we're just hoping that in this process, we can come out with a rule that doesn't require us to file an unnecessary report and if possible, that doesn't require us even to put both ourselves and the Commission to the work of dealing with a waiver petition.

Chairwoman Showalter: That was short. Now, just if that particular problem is taken care of, you don't have particular issues with the rest?

Richard Potter: With all the other financial transactions and so I wasn't going to duplicate comments. We've had some concerns and I think they've been largely addressed, although some of the recent things Qwest brought up, we have to bounce back off our people and see if they're in the same position. I think Verizon maybe does its financing a little bit differently than Qwest.

Chairwoman Showalter: Well, thank you. Mr. Sells…are you still awake back there? Oh, I see you said no, I'm sorry. Okay…I apologize, you did say no. That is all who have signed up. Is there any else who wants to comment or Mr. Ottavelli, did you want to make some comments. Oh, alright, I didn't know that. Mr. Cromwell, are you on the line?

Robert Cromwell: Yes your honor, I am.

Chairwoman Showalter: Okay, because actually I thought you…we did get your letter which indicated you weren't going to be here, so I didn't know that you also wanted to comment. But, go right ahead. You are going to have to speak kind of loud from your point of view.

Robert Cromwell: Thank you your honor, Robert Cromwell on behalf of the Public Counsel Section of the Attorney General's Office. Given the lateness of the hour, I will only state first that, we do support staff's recommendation in this rulemaking as conveyed in the letter sent this morning.

On a factual point, I wanted to bring to your attention a case that recently came out, the Association of Washington Business vs. the Department of Revenue. The citation is 90 Pacific Third 1128. It was issued by the Division to the Court of Appeals on May 25th of this year, and I can forward to Ms. Johnston the state web page link.

Chairwoman Showalter: It think, that's…I think that is the case that I was trying to think of earlier that Ms. Johnston has already forwarded to us.

Robert Cromwell: Okay, good…

Chairwoman Showalter: Just for general purposes, but thank you for giving us the cite again. Anything else?

Robert Cromwell: No, that will be all, your honor. Thank you.

Chairwoman Showalter: Is there anyone else on the bridge line who would like to make a comment? Apparently not. Is there anything else to come before the Commission? Well, this as you know, was just a public hearing on these rules and we do intend to come out in due course with a proposed rule.

I do want to respond to Mr. Sherr's comments. I know that it is sometimes frustrating to be putting comments in again and again and again. It's a curious consequence of our taking so long between the CR-101 and the CR-102 phase. And we are trying to be thorough and "whittle" the issues down and yet…I guess sometimes the consequences, it feels as if nobody is listening to you. Whereas, if we went more quickly to a proposed rule, that would be the proposed rule, and you could respond to it. But, I do feel, despite your frustrations, that our end product is probably better for having been several

rounds, even if there was no apparent response during those rounds. Of course, once we have a proposed rule, when we adopt our final rule, we do need to respond, and do in general, respond specifically to the various suggestions and comments that were made on the proposed rule, and we would do that.

I also don't want to discourage anyone from continuing to talk to us. There is no exparte rule here, although we do like to put the content out on the record. So, thank you very much and this meeting is adjourned.