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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 In the Matter of the Continued )  
Costing and Pricing of ) Docket No. UT-003013  
4 Unbundled Network Elements and ) Volume XXXI  
Transport and Termination. ) Pages 3917 - 3964

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6 In the Matter of the )  
Investigation into )  
7 U S WEST COMMUNICATIONS, INC,'s ) Docket No. UT-003022  
Volume XXXI  
8 Compliance with Section 271 of ) Pages 3917 - 3964  
the Telecommunications Act of )  
9 1996 )

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11 In the Matter of )  
U S WEST COMMUNICATIONS, INC.'s ) Docket No. UT-003040  
Volume XXXI  
12 Statement of Generally ) Pages 3917 - 3964  
Available Terms Pursuant to )  
13 Section 252(f) of the )  
Telecommunications Act of 1996 )

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16 A hearing in the above matter was held on  
17 May 16, 2001, at 1:40 p.m., at 1300 South Evergreen  
18 Park Drive Southwest, Olympia, Washington, before  
19 Administrative Law Judges ROBERT WALLIS and LAWRENCE  
20 BERG, Chairwoman MARILYN SHOWALTER, Commissioner  
21 RICHARD HEMSTAD.

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23 The parties were present as follows:

24 QWEST CORPORATION, by LISA A. ANDERL, Senior  
Attorney, 1600 Seventh Avenue, Suite 3206, Seattle,  
25 Washington 98191.

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1 THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION, by GREGORY J. TRAUTMAN and MARY M.  
2 TENNYSON, Assistant Attorneys General, 1400 South  
Evergreen Park Drive Southwest, Post Office Box 40128,  
3 Olympia, Washington 98504-0128.

4 VERIZON NORTHWEST, INC., by JENNIFER L.  
McCLELLAN (via bridge), Attorney at Law, Hunton and  
5 Williams, 951 East Byrd Street, Richmond, Virginia  
23219.

6 COVAD COMMUNICATIONS COMPANY, by BROOKS E.  
7 HARLOW, Attorney at Law, Miller Nash, 601 Union Street,  
Suite 4400, Seattle, Washington 98101.

8 XO WASHINGTON, INC., ELECTRIC LIGHTWAVE, INC.,  
9 AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., by  
GREGORY J. KOPTA, Attorney at Law, Davis, Wright,  
10 Tremaine, LLP, 1501 Fourth Avenue, Suite 2600, Seattle,  
Washington 98101.

11 RHYTHMS LINKS, INC., TELIGENT SERVICES, INC.,  
12 TRACER, by ARTHUR A. BUTLER (via bridge), Attorney at  
Law, Ater Wynne, 601 Union Street, Suite 5450, Seattle,  
13 Washington 98101-2327.

14 WINSTAR WIRELESS, by PAUL HUDSON (via  
bridge), Attorney at Law, Swidler, Berlin, Shereff,  
15 Friedman, 3000 K Street Northwest, Suite 300,  
Washington D.C. 20007.

16 SPRINT COMMUNICATIONS COMPANY, LP, by ERIC S.  
17 HEATH, Attorney at Law, 100 Spear Street, Suite 930,  
San Francisco, California 94105.

18 WORLDCOM, INC., by ANN E. HOPFENBECK, Senior  
19 Attorney, 707 17th Street, Suite 3600, Denver, Colorado  
80202.

20 PUBLIC COUNSEL, by ROBERT W. CROMWELL, JR.,  
21 Assistant Attorney General, 900 Fourth Avenue, Suite  
2000, Seattle, Washington 98164

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23  
24 Kathryn T. Wilson, CCR

25 Court Reporter

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1 P R O C E E D I N G S

2 JUDGE WALLIS: This is a prehearing  
3 conference held jointly in two proceedings in three  
4 dockets. That is Docket Nos. UT-003013, and the  
5 consolidated Dockets UT-003022 and UT-003040.

6 This conference is being held in Olympia,  
7 Washington before Administrative Law Judges Bob Wallis  
8 and Lawrence Berg for purposes as set out in the notice  
9 of prehearing conference of May 3, 2001, to discuss  
10 matters that may be arising within one or more of the  
11 dockets before us in order to hear what the parties say  
12 as to their preferences on how to assure that all such  
13 matters are resolved via an appropriate procedure.

14 Let's begin by noting that we are proceeding  
15 also with Chairwoman Marilyn Showalter in attendance  
16 and take appearances of the parties.

17 MS. ANDERL: Lisa Anderl appearing on behalf  
18 of Qwest Corporation.

19 MR. HEATH: Eric Heath appearing on behalf of  
20 Sprint.

21 MR. KOPTA: Gregory J. Kopta of the law firm  
22 Davis, Wright, Tremaine, LLP, on behalf of AT&T, ELI,  
23 and XO.

24 MR. HARLOW: Brooks Harlow on behalf of Covad  
25 Communications.

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1 MS. HOPFENBECK: Ann Hopfenbeck on behalf of  
2 WorldCom, Inc.

3 MR. CROMWELL: Robert Cromwell on behalf of  
4 Public Counsel.

5 MR. TRAUTMAN: Greg Trautman, assistant  
6 attorney general, on behalf of Commission staff in  
7 Docket UT-003013.

8 JUDGE WALLIS: We also have parties appearing  
9 by the bridge line; for Verizon.

10 MS. MCCLELLAN: Jennifer McClellan.

11 MR. HUDSON: Paul Hudson with Swidler,  
12 Berlin, Shereff, Friedman for Winstar Wireless, Inc.

13 MR. BUTLER: Art Butler from Ater Wynne for  
14 Teligent Services, Inc., Rhythms Links, Inc., and  
15 TRACER.

16 JUDGE WALLIS: Let me acknowledge the  
17 arrival of Commissioner Hemstad, and let's proceed,  
18 please. We received comments in response to the  
19 inquiry and notice of prehearing conference from both  
20 Qwest and Verizon, so I would suggest that we start  
21 with Ms. Anderl on behalf of Qwest.

22 MS. ANDERL: Yes, Your Honor. Would you like  
23 me to summarize my comments for the record?

24 JUDGE WALLIS: If you wish to summarize or  
25 add anything, you may do so.

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1 MS. ANDERL: Sure. I understand the concerns  
2 that the Commission has, at least as I understand them,  
3 and we can correct this if I'm wrong, but essentially,  
4 the way I've characterized this in my mind is the  
5 concern that there are potential, quote, actual gaps in  
6 the process in the coordination of the two dockets  
7 where the 271 and SGAT proceeding is moving forward and  
8 yet is linked to the cost docket and, of course,  
9 Qwest's 271 proceeding for ultimate approval by the FCC  
10 for reentry into the long distance business is going to  
11 depend on both terms and conditions contained in the  
12 SGAT and interconnection agreements that comply with  
13 the Act and prices for resale and interconnection and  
14 UNE's that comply with the Act. So to extent that the  
15 cost and pricing issues are being decided in the cost  
16 docket and not the 271 docket, I think there is a  
17 concern that all of the issues get covered and that the  
18 timing be synced up as nearly as possible so that when  
19 we are done and ready, we are really done and ready,  
20 and then there is a concern separate and apart from  
21 that, which is when we are done and ready, how do we  
22 deal with changes subsequent to the moment in time when  
23 we decide that Qwest has complied with the requirements  
24 of 271, and to the extent there are new or different  
25 elements or requirements and proposed changes in

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1 prices, either by Qwest or by others, how do we  
2 accomplish those.

3           And I think that the gist of our comments  
4 were that we see the issues fairly neatly segregated  
5 into either terms and conditions issues or pricing  
6 issues. Just earlier this morning in the oral  
7 argument, Mr. Kopta and I identified an issue that he  
8 argued could be decided in either place, and that is  
9 the issue of compensation for interconnection  
10 facilities. I agree with him that if there was ever an  
11 issue that had characteristics of being appropriate for  
12 both dockets, that's certainly a good example of it,  
13 but we still believe it's a cost and pricing issue, and  
14 therefore, appropriately deferred to the cost docket.  
15 That's what we said this morning, and that's what we'll  
16 say again here. Other than that, there have not been a  
17 lot of those kinds of issues, and that's what we said  
18 in our comment.

19           In terms of issues being ready for decision  
20 so they can get done at the right time, the only issue  
21 that we identified as potentially susceptible of not  
22 being ready for decision that was, in fact, an issue  
23 that was scheduled for decision in the cost docket is  
24 the issue of the provision of line sharing over  
25 fiber-fed digital loop carrier loops, and I think it

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1 was clear that Qwest stated on the record in the cost  
2 docket that it did not have a costing and pricing  
3 proposal ready for that yet in terms of offering it in  
4 the cost docket but nevertheless was prepared to offer  
5 the interconnection and collocation and UNE's necessary  
6 to accomplish that to CLECs and that Qwest had proposed  
7 rates which could, of course, then be addressed in a  
8 subsequent proceeding of the cost docket or through  
9 negotiation, if necessary.

10         So we are reasonably confident that things  
11 are on track and synced up. We did not receive  
12 comments from other parties saying otherwise but  
13 understand that other parties will want to speak today,  
14 and to the extent that those types of issues are  
15 raised, I hope we are able to address them. With  
16 regard to the changes for the costs and prices on an  
17 ongoing and future basis, I think the gist of our  
18 comments were that we ought to use existing processes  
19 wherever possible and that those existing processes  
20 ought to be conducted in such a way as to allow rates  
21 and terms and conditions to become effective kind of  
22 with all due haste. Not unduly hastily, but without  
23 unnecessary delay, and there are provisions for the  
24 SGAT change process that we talked about, again,  
25 earlier this morning. There are the individual

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1 negotiations and arbitrations and the pick and choose  
2 provisions of the Act that allow carriers to change  
3 their terms and conditions, and there is the existing  
4 tariff process for proposing new rates and changing  
5 existing rates that we believe, now that the wholesale  
6 rates are tariffed in that manner, provides a very good  
7 framework for how to move forward.

8 CHAIRWOMAN SHOWALTER: On the timing, for  
9 anything that is in the cost docket and will be  
10 determined in the cost docket, are you satisfied that  
11 in all likelihood, we will be concluded with that  
12 proceeding before the 271 process is finished?

13 MS. ANDERL: Recent history suggests that  
14 they could be synchronized without -- kind of the way  
15 it's been done in the past, just for example, the Part  
16 A order came out 90 days after the last briefs were  
17 filed. So if a Part B order came out about 90 days  
18 after the last briefs were filed, that would be  
19 September 19th from June 19th, and I think that's when  
20 we are anticipating we will, at least, be completed  
21 with workshops for all of the 271 issues.

22 I'm not exactly sure where we are going to be  
23 on briefs. We may already have filed briefs by that  
24 time as well, so yes, I think so. I think it could be,  
25 and even if it's not, I don't think that's a necessary



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1 barrier to the filing of a 271 application. I think  
2 the FCC is going to look at whether the state has  
3 processes in place and whether those are engaged, not  
4 necessarily whether those are complete.

5 CHAIRWOMAN SHOWALTER: If we do complete the  
6 cost proceeding and have an order out before the 271  
7 proceeding is finished, then you don't have any  
8 concerns for whatever is covered by that cost docket.

9 MS. ANDERL: Exactly.

10 CHAIRWOMAN SHOWALTER: So you leave out from  
11 kind of special attention the line-sharing issue just  
12 because it's not as far along in the cost proceeding as  
13 the other issues.

14 MS. ANDERL: Right, it's not. That doesn't  
15 mean we don't think our proposed rates, even if they  
16 aren't approved by the Commission, wouldn't be  
17 consistent with the TELRIC and meet the requirements of  
18 the Act, but it just may not be the subject of a final  
19 Commission order by then.

20 CHAIRWOMAN SHOWALTER: So on that subject,  
21 you propose an interim solution until the cost  
22 proceeding on that is completed?

23 MS. ANDERL: If the Commission determines or  
24 the other parties ask the Commission to determine those  
25 issues through a cost proceeding, then yes.

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1 JUDGE WALLIS: Ms. McClellan, you are the  
2 other party that filed a statement. Is there a matter  
3 in addition to what you filed that you would like to  
4 express, or would you like to emphasize briefly the  
5 points that you've made?

6 MS. MCCLELLAN: I don't think there is  
7 anything in addition to what we filed in our comments.  
8 Again, to summarize, the major thing that Verizon is  
9 concerned about is the extent to which, if any,  
10 decisions that are made in the Qwest 271 or SGAT  
11 dockets are binding upon Verizon and what due process  
12 applications that would be caught up in that issue.

13 In general, I think there has also been some  
14 confusion for Verizon as to where terms and conditions  
15 should be addressed, and our position on that would be  
16 consistent with what the Commission's original view was  
17 in the UT-960369 docket, which was at terms and  
18 conditions to be addressed through the interconnection  
19 agreement negotiation and arbitration process, and that  
20 costs and prices to the extent they need to be  
21 addressed in a generic or more streamlined process than  
22 negotiations, they would continue to be addressed in  
23 this generic cost docket.

24 JUDGE WALLIS: Thank you, Ms. McClellan.

25 CHAIRWOMAN SHOWALTER: Ms. McClellan, this is

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1 Chairwoman Showalter. I understand your principle that  
2 you are espousing you don't want 271 to preempt your  
3 ability to argue your own case on pricing issues, but  
4 is there anything that we are doing in 271 that seems  
5 to be veering in that direction, in other words, that  
6 you have any specific concerns?

7 MS. MCCLELLAN: No. It's just the general  
8 concern when we saw the questions raised in the  
9 prehearing conference notice, it just waved a red flag  
10 to us that we are not sure whether the Commission  
11 intends for any decision in that document to be binding  
12 upon us or not.

13 JUDGE WALLIS: Thank you, Ms. McClellan.  
14 Let's move to others within the hearing room.  
15 Mr. Heath?

16 MR. HEATH: Sprint has no comments. Thank  
17 you, Your Honor.

18 JUDGE WALLIS: Mr. Kopta?

19 MR. KOPTA: Thank you, Your Honor. I think  
20 we view things a little bit differently than Qwest,  
21 because as we've experienced this process, just looking  
22 historically in Washington, when we sat down last  
23 August or maybe July to list all of the elements that  
24 needed to be costed and priced in a cost docket, we had  
25 not yet really begun the workshop process, and as a

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1 result of the workshop process, there have been some  
2 additions to the SGAT that include elements that needed  
3 to be costed and priced. I have not made any attempt  
4 to make any kind of an exhaustive list, but an example  
5 that immediately comes to mind would be CLEC  
6 self-verification of field verification for conduit  
7 occupancy, CLEC-to-CLEC connections in the Qwest  
8 central office. There are several miscellaneous  
9 charges that Qwest has specifically identified now in  
10 the SGAT. Those sorts of things that have come up in  
11 the process of working through issues providing greater  
12 definition, and in some cases, new services or  
13 facilities raises the issue of how are those going to  
14 be costed and priced. They are in the SGAT now, and  
15 yet there is nothing on the Commission's agenda with  
16 respect to the cost docket about costing and pricing.

17 I agree with Ms. Anderl that once this  
18 process is over, there will be occasions when new  
19 services arise or that rates may change, and I think we  
20 probably diverge a little bit from Qwest on that issue  
21 as well. The Commission has required Qwest and Verizon  
22 to file tariffs that include just the rates that have  
23 been established in the cost docket. I would have a  
24 little trouble with Qwest simply having the unilateral  
25 ability to make a filing of a change in the rates that

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1 this Commission has established after a lengthy cost  
2 docket and then giving parties or the Commission 30  
3 days to take some further action on it.

4 I agree that we lawyers often like to stick  
5 to what we know, but by the same token, this is a  
6 little bit different circumstance, and it's further  
7 complicated because with the SGAT, there is a whole  
8 schedule or attachment to the SGAT that has prices in  
9 it, so to the extent that there may be prices that  
10 Qwest would propose to accompany the SGAT, would that  
11 be a tariff filing or would that be an SGAT filing? I  
12 think that's something we ought to try and determine  
13 going forward as opposed to leaving that open and vague  
14 as to how additional prices need to be established as  
15 well as changes in existing prices need to be  
16 established.

17 So I think it's a little bit more  
18 complicated, and certainly, we have some concerns with  
19 the existing tariff change process in that if it's a  
20 new product, for example, generally there isn't an  
21 opportunity to suspend that, and to the extent that  
22 Qwest is proposing a new service to be provided to  
23 CLECs, I'm not sure that we think that's the  
24 appropriate thing to do, to not have the opportunity to  
25 suspend that. Now, that sort of begs the question of

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1 under the SGAT filing procedures whether the Commission  
2 would allow that to essentially take effect as it has  
3 the original SGAT filing subject to further  
4 proceedings, but I would agree with Ms. Anderl that we  
5 would want a prompt resolution of the issues involved,  
6 both from the terms and conditions standpoint and from  
7 the pricing standpoint.

8           At this point, I would think that this is  
9 kind of the first opportunity we've had to really think  
10 about these issues, and it may be something that the  
11 Commission wants to have additional written comments on  
12 and perhaps have another interpretive and policy  
13 statement establishing guidelines for how these,  
14 particularly going forward once these proceedings have  
15 concluded, how changes or additions would be made to  
16 the SGAT and to any prices that have been established  
17 in the cost docket.

18           CHAIRWOMAN SHOWALTER: Ms. McClellan,  
19 Mr. Kopta mentioned some areas that he said were  
20 developing in the 271 that were not really being  
21 covered in the cost docket, and I think he mentioned  
22 CLEC verification and CLEC-to-CLEC connections or  
23 costs.

24           MR. KOPTA: Connections between the  
25 collocated CLECs at the same wire center.

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1           CHAIRWOMAN SHOWALTER: Right. Is that an  
2 area, Ms. McClellan, that if it is developed with a  
3 focus on Qwest in the 271 proceeding that is a problem  
4 for Verizon? Obviously, it wouldn't be directly  
5 binding on Verizon. It would be an issue developed  
6 with respect to Qwest, but is that the kind of thing  
7 you might be worried about or not?

8           MS. MCCLELLAN: I'm not sure if that  
9 particular issue would be, because if I remember  
10 correctly, we might have addressed CLEC-to-CLEC  
11 cross-connects in the collocation filing. I guess in  
12 general what we would be concerned about is if there  
13 are -- to what extent Commission's decisions on terms  
14 and conditions under which Qwest must offer UNE's or  
15 services that are made in the 271 or SGAT proceeding,  
16 to what extent those decisions would also bind Verizon  
17 on an issue that we weren't addressing.

18           For example, I'll take for now that since we  
19 have identified it as an issue that's not quite right  
20 in the cost docket, the issue in mod sharing over the  
21 loop, that is an area where Qwest is a lot farther down  
22 the road in developing a product than Verizon is. So  
23 we would expect or not be surprised to see terms and  
24 conditions on that issue addressed in either the SGAT  
25 or 271 proceeding. Then suppose there is a decision on

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1 that. Then suppose Verizon does have a product. Would  
2 our product or the terms and conditions under which we  
3 offer it be expected to conform with what Qwest's  
4 product is, or if there is a particular thing that the  
5 CLECs wants to litigate in the 271 proceeding to get an  
6 order on, and we weren't a party to that, is that  
7 something we would then also have to provide them. So  
8 I guess that's just the general concern we have.

9 CHAIRWOMAN SHOWALTER: I think you would have  
10 different choices. I'm not sure all are fair or not,  
11 but one, you already are, I take it, an intervenor in  
12 the 271 process, aren't you, or are you participating  
13 in some way?

14 MS. MCCLELLAN: To be honest, I'm not sure if  
15 we are. If we are, I believe it might be that the  
16 Northwest office is on the service list, but they are  
17 not participating in any meaningful way.

18 CHAIRWOMAN SHOWALTER: It seems like there is  
19 some obligation, anyway, to monitor the 271 proceeding  
20 and then act accordingly. One way, I would think,  
21 would be to pipe up and say, Well, this isn't Verizon  
22 we are talking about or our product, and we want to  
23 reserve our right to talk about this later, or another  
24 way would be to pipe up and say, This is too big an  
25 issue to be going on here. It should be going on in a



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1 generic proceeding, and another way would be to simply  
2 join the issue there and express your views.

3           I'm not really certain what would be  
4 appropriate because this is an abstract point I'm  
5 making, but I guess in my mind, that's a little bit why  
6 we are here today is that I'm nervous about the overlap  
7 as well as the gaps, and we just want to make sure  
8 we've got the right thing at the right time but also  
9 recognizing that there is a demand on our time and a  
10 demand for a schedule because Qwest has filed a 271, so  
11 that we wouldn't simply not do something in 271 because  
12 we want to get to it next year, but we want to  
13 accommodate any party that maybe should have a bigger  
14 role to play on any particular issue somehow.

15           MS. MCCLELLAN: I think that that is a fair  
16 point to point out that we do have an obligation to at  
17 least monitor. I guess part of the issue is just the  
18 fundamental question of how are terms and conditions  
19 for UNE's and wholesale services to be dealt with, and  
20 it is our view that the proper way to deal with those  
21 under the Telecommunications Act is either through the  
22 interconnection agreement process or an SGAT process,  
23 and we have chosen the interconnection agreement route,  
24 and I guess by doing that, we are mindful or watchful  
25 to make sure that we don't end up in a position where

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1 because Qwest has filed an SGAT, that decisions that  
2 are made on the just and reasonableness of their SGAT  
3 with their terms and conditions -- if decisions in that  
4 docket are to be binding, there is sort of an abstract  
5 worry that it sort of bypasses our right to go through  
6 the interconnection agreement process.

7           And I guess you are right. It is our  
8 obligation in light of that proceeding or whenever we  
9 see that danger arising to say something about it, but  
10 I just wanted to raise the issue now to sort of  
11 reinforce our view that Verizon believes that its terms  
12 and conditions should be addressed through the  
13 interconnection agreement process as the Commission  
14 decided they would be when they first established the  
15 generic docket in 1996.

16           COMMISSIONER HEMSTAD: I was going to add an  
17 overgeneralized comment that whether Verizon is an  
18 active party in any of these proceedings or not, we  
19 make decisions here, and particularly in adjudicating  
20 cases. Later, issues that arise, everyone looks at  
21 those decisions for whatever precedential value it has,  
22 and it depends upon whether the facts and circumstances  
23 are substantially the same or different, and I assume  
24 if Verizon wishes to differentiate itself in some way,  
25 it would show how it's different, but if the issue is

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1 largely the same, Verizon runs the risk that the  
2 attitude of the Commission would be to decide the  
3 precedent and go on. That's how the normal process of  
4 adjudication occurs. I don't know why this is  
5 inherently different from that.

6 MR. CROMWELL: I just happen to have a copy  
7 of the 271 service list, and I don't find an appearance  
8 by counsel for Verizon in-house or outside.

9 JUDGE WALLIS: Thank you.

10 MS. MCCLELLAN: I agree that the orders that  
11 come out of that docket would have precedential value.  
12 I guess the difference comes in, do you differentiate  
13 Verizon to establish why the decisions made for Qwest  
14 shouldn't apply in the 271 docket when the decisions  
15 are made, which I don't think is appropriate, or do you  
16 go through the process of if there are terms and issues  
17 and agreements between the CLECs in the interconnection  
18 agreement process that go to arbitration, then in the  
19 context of that arbitration, Verizon has the burden of  
20 differentiating itself from Qwest.

21 MR. HUDSON: I would just like to know -- I'm  
22 not necessarily taking a position for Winstar on this  
23 current issue that's being discussed, but a question of  
24 whether or not an ILEC offers its services that it's  
25 required to under Section 251 is something the state

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1 has some ability to choose different routes. A number  
2 of ILECs would express preference they only want to do  
3 it through an interconnection agreement, and state  
4 commissions have required an addition, or instead of  
5 that, to do it through tariffs or other means, and I  
6 don't think the Commission has to feel limited by  
7 Verizon's preference to only do it through  
8 interconnection agreements.

9           And I would also add that there have been a  
10 number of proceedings across the country that have  
11 dealt with issues similar to the ones now pending for  
12 multiple incumbents in the same proceeding, and Verizon  
13 has certainly experienced that, for example, in Texas,  
14 with proceedings dealing with SBC and Verizon and  
15 several other states, so I think the Commission has a  
16 fair degree of flexibility in dealing with this in a  
17 way it sees just and reasonable.

18           MS. MCCLELLAN: Just to follow up on that, in  
19 the other states, just as in this one, where there are  
20 generic dockets that Verizon has participated in with  
21 another ILEC, those have been generic costing dockets  
22 where terms and conditions are only addressed to the  
23 extent where they have cost and price applications,  
24 which is what the Washington Commission has done here  
25 and that we don't object to. We have not faced, in the

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1 former GTE states, a situation where GTE and/or Verizon  
2 West has had to participate in a 271 proceeding solely  
3 for the purpose of putting out its position and being  
4 heard on terms and conditions issues.

5 JUDGE BERG: Ms. McClellan, this is Larry  
6 Berg, and I just want to see if Verizon also considers  
7 it possible that some of these future changes may fall  
8 under the alternative dispute provisions of existing  
9 interconnection agreements, and likewise, whether it's  
10 possible that if so, if it's perceived as an  
11 enforcement of an existing interconnection agreement,  
12 that parties could avail themselves of this  
13 commission's expedited resolution process.

14 MS. MCCLELLAN: We do think that would be  
15 entirely appropriate. It's an issue that is an  
16 interpretation of an existing interconnection agreement  
17 that that would occur through the offer to the  
18 agreement.

19 MR. BUTLER: This is Art Butler. A point  
20 clarification on a question specifically with regard to  
21 microwave collocation and Verizon's position. My  
22 understanding, based upon discussions in the letters on  
23 compliance filing was that Verizon contended to file a  
24 tariff, including the terms and conditions for  
25 microwave collocation, and those would be reviewed

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1 through the normal tariff process as opposed through  
2 some interconnection agreement negotiation, etcetera.  
3 Am I correct about that?

4 MS. MCCLELLAN: You are, and that actually  
5 raises -- there is a sort of an exception to the  
6 general rule is on collocation issues where as a result  
7 of the merger conditions, Verizon was required to file  
8 a state tariff for collocation, and we did that in  
9 Washington, but we also did that sort of in the quick  
10 market so that a CLEC who is negotiating an  
11 interconnection agreement can just refer to that tariff  
12 in its agreement. We did that as a result of an FCC  
13 requirement and not voluntarily, but since microwave  
14 collocation is a part of a general collocation, we  
15 figured that it would be appropriate to file terms and  
16 conditions as an amendment to this collocation tariff.

17 MR. HUDSON: In Qwest's case, the terms and  
18 conditions for microwave collocation are going to be  
19 dealt with through SGAT.

20 MS. ANDERL: That's our intent, Mr. Butler.

21 MR. BUTLER: The question I have is with  
22 respect to when those filings on terms and conditions,  
23 when those might be expected for both Qwest and  
24 Verizon.

25 MS. ANDERL: You know, we would be happy to

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1 work with the interested parties on that. My  
2 understanding is there are only two, Teligent and  
3 Winstar. Since we are past the collocation phase of  
4 the SGAT 271 proceeding, we would just as soon come up  
5 with some agreed terms and conditions and language.  
6 Since we were successful in agreeing upon rates, we are  
7 optimistic about the terms and conditions as well, but  
8 I think we can come up with something fairly quickly.  
9 It's just a matter of getting the parties together.

10 MR. BUTLER: And Verizon?

11 MS. MCCLELLAN: For Verizon, I don't know  
12 when the date will be. I see that they are developing  
13 those terms and conditions now, but I don't know when  
14 they will be filed.

15 MR. BUTLER: Does the Commission contemplate  
16 any particular time by which we should try to resolve  
17 this issue?

18 MR. HUDSON: I would add for Winstar that  
19 having a date certain might be helpful to insure that  
20 discussions move along, and I think if the parties all  
21 agree that they can start negotiations are occurring,  
22 they can seek to extend that date, but I think that  
23 having some date would be helpful.

24 JUDGE WALLIS: Would it be appropriate to  
25 designate such a date in the prehearing conference

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1 order?

2 MS. ANDERL: That would be fine with Qwest.

3 MR. BUTLER: Yes.

4 CHAIRWOMAN SHOWALTER: Ms. McClellan raised a  
5 couple of times the concern that something in 271 could  
6 be find binding on Verizon, and it's my assumption that  
7 nothing in 271 would be directly binding on Verizon.  
8 It would be binding on Qwest, but the issue would be so  
9 well developed that the next time it comes around, a  
10 lot of work would already have been done.

11 MS. MCCLELLAN: We understand that we run  
12 that risk.

13 MS. ANDERL: We understand Verizon's concern,  
14 and I don't mean to minimize it. My next comment,  
15 which is I don't think that concern is a lot different  
16 than the concerns that U S West and GTE had in 1996 and  
17 '97 when they were kind of taking turns coming before  
18 an arbitrator, each of them presenting issues of first  
19 impression and then the other one was second.

20 COMMISSIONER HEMSTAD: That's the risk that  
21 any participant, current or new, faces in this  
22 industry.

23 MS. ANDERL: That's right. I agree with  
24 that. Sometimes you feel like you wish you could have  
25 been there first.



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1                   COMMISSIONER HEMSTAD: Or maybe you prefer to  
2 be second.

3                   CHAIRWOMAN SHOWALTER: But it is the roll of  
4 an intervenor to intervene, to protect certain  
5 interests, at least in the type of proceeding where you  
6 can have an intervenor, and I think 271 is a fairly  
7 open process.

8                   MS. ANDERL: I agree with that. If I recall  
9 properly, there were no -- I don't know if there were  
10 interventions allowed in the initial arbitrations. I  
11 don't think that there were, so that was a little bit  
12 different.

13                   JUDGE WALLIS: I think we are ready for you  
14 Mr. Harlow.

15                   MR. HARLOW: Just a few comments, and I think  
16 to some extent, this was kind of hinted at in the  
17 discussion that's just taken place, so it's helpful,  
18 but I think maybe we just take it head-on. I think  
19 it's helpful to kind of think about when we talk about  
20 terms and conditions, and there are certain kinds of  
21 terms and conditions that are sort of a contractual,  
22 general nature, and I don't think we are too far apart  
23 from Qwest and Verizon in viewing those as probably not  
24 being necessarily taken off the cost docket.

25                   But then there are terms and conditions that

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1 really go more to the definition of the service, and I  
2 think our line sharing over digital loop carrier issue  
3 is an example of that kind of term and condition, and  
4 in that instance, when you are talking about really  
5 defining the service in terms of what does it include,  
6 how could it be provisioned or how is it going to be  
7 provisioned, that's going to impact costs and prices  
8 quite clearly, at least in a potential basis.  
9 Although, we are going to get into this issue,  
10 depending on what the Supreme Court does with the 8th  
11 Circuit of whether you cost and price based on the  
12 actual technology used versus the hypothetical  
13 forward-looking technology that might be used, and  
14 that's something that I don't want to get too deeply  
15 into because we are going to address that in our briefs  
16 in a couple of weeks.

17           But to the extent we are talking about those  
18 kinds of terms and conditions, we do have to take those  
19 up in the cost docket, and because of that, the other  
20 thing is there is clearly a dispute teed up for the  
21 Commission, and I'm sure there will be more in terms of  
22 CLECs seeking to have the Commission compel Qwest and  
23 Verizon to offer certain services in the conjunction of  
24 cost dockets, and again, there is going to be an issue  
25 in terms of how far can the Commission go in

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1 determining the architecture versus the pricing, but  
2 those kinds of issues, I think, rather than -- I  
3 wouldn't phrase the question, could they be brought at  
4 either docket. I think those issues, at least as to  
5 Qwest, need to be brought up in both dockets, and I  
6 think we've been doing a pretty good job, really, of  
7 doing that, and I think the Commission has been good  
8 about allowing enough leeway to develop the issue fully  
9 for both dockets and recognizing there is an overlap  
10 and not for closing development of the record in either  
11 docket simply because it might also be addressed to  
12 some extent in a different docket, and I think we ought  
13 to continue in that vein.

14 I do want to respond to a couple of comments  
15 in Qwest's written filing. First of all, with regard  
16 to line sharing over digital loop carrier, we sort of  
17 agree with Qwest. I think given the status of their  
18 filing that we probably aren't going to develop a  
19 permanent solution to that issue in Part B of the cost  
20 docket. We do think it's essential to develop an  
21 interim solution to that issue, and we will propose one  
22 for both Qwest and Verizon, and then finally, Qwest  
23 kind of discussed the forward-looking issues, which we  
24 really haven't gone into yet, and noted that under the  
25 current law of the State of Washington, tariffs for new

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1 services would become effective on 30 days notice, and  
2 I'm assuming that Qwest is referring to the  
3 modification the legislature made a few years ago of  
4 the suspension statute that doesn't allow the  
5 Commission to suspend tariffs for new services.

6 I don't think that's the end of the inquiry,  
7 however, and I don't know that Washington law is going  
8 to fully govern rates for new services because of  
9 federal law which requires that states, either through  
10 an arbitration or generic cost docket, to insure that  
11 the prices for all services, to the extent we are  
12 talking UNE and collo, are cost based under certain  
13 specific cost standards.

14 So it would be to me it doesn't make sense  
15 that we would have been able to litigate in the  
16 arbitration context the initial UNE's and whether they  
17 were cost based and that those rates would become  
18 interim, and yet, Qwest is now proposing in round two  
19 that it could impose permanent rates on 30 days notice  
20 with no opportunity for notice of hearing and  
21 suspension, and there are a couple of ways we could  
22 approach that. One could be we all sit down and agree  
23 that the Washington law does not apply and that the  
24 Commission does not compel -- Qwest is not entitled to  
25 really assert an effective date as it would with the

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1 standard retail tariff filing and that the tariff would  
2 not become effective until approved by the Commission  
3 after an appropriate opportunity for reinput by the  
4 parties, and if necessary, a hearing.

5 Another approach would be that new tariffs  
6 for new services could be allowed to go into effect  
7 under complaint or investigation and that they would be  
8 subject to true-up and potentially retroactive refunds  
9 if the rate were found to be above the appropriate cost  
10 basis. Those are my comments, and I'm available for  
11 questions.

12 JUDGE WALLIS: Ms. Hopfenbeck?

13 MS. HOPFENBECK: The only thing I would add  
14 is I do agree with Mr. Kopta that I think there are a  
15 few areas, a few unbundled network elements that still  
16 need to be costed out, and the only one I would  
17 identify is a rate for the daily usage fee and records  
18 exchange. This was the issue that we addressed in the  
19 271 context. We didn't address the daily usage fee,  
20 but we did address whether or not it was appropriate  
21 for there to be payment for transit records, exchange  
22 of transit records and exchange of Category 11 records,  
23 and we have a dispute as to whether or not it makes  
24 sense to impose a charge for that exchange of records.  
25 Our view is basically that the cost of imposing such a

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1 charge outweighs sort of the revenues that you yield  
2 from charging. But, at any rate, that is something  
3 that really needs to be addressed in the cost docket.

4 MR. HARLOW: I agree with what Mr. Kopta  
5 said. I don't disagree with anything Mr. Heath said.

6 MS. HOPFENBECK: But I have nothing further  
7 other than that.

8 JUDGE WALLIS: Thank you. Mr. Hudson?

9 MR. HUDSON: I would just like to reecho what  
10 Mr. Butler said. Winstar is really focused on the  
11 microwave collocation issues, and we want to make sure  
12 that however the Commission decides to deal with that,  
13 whether a separate proceedings or Qwest SGAT proceeding  
14 or Verizon tariff proceeding or some sort of  
15 consolidated proceeding, that there is a date in place  
16 to make sure that that moves forward on an expeditious  
17 basis, but that's really my only interest for this  
18 prehearing.

19 JUDGE WALLIS: Thank you, Mr. Hudson.

20 Mr. Butler?

21 MR. BUTLER: I have nothing further.

22 JUDGE WALLIS: Thank you. Mr. Cromwell?

23 MR. CROMWELL: I think the only thing I have  
24 to add is in partial response to Chairwoman Showalter's  
25 question to Ms. Anderl about sequencing or possibly

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1 synchronizing the dockets, and while I confess to not  
2 participating in the price docket -- Mr. ffitich is  
3 handling that case for us -- it's my assumption that  
4 this commission has to establish unbundled pricing  
5 before it can conclude the 271-B checklist items. I'm  
6 assuming that is a predicate to its findings under 271.

7 MS. ANDERL: I don't know if it's my  
8 opportunity to respond. We would not agree with that.  
9 We don't think so. We can talk more about that on line  
10 or off line.

11 JUDGE WALLIS: What I'm going to suggest is  
12 we let Mr. Trautman make some comments and then we will  
13 return to you, Ms. Anderl.

14 MR. TRAUTMAN: Staff generally is comfortable  
15 with the comments of Qwest and Verizon and the division  
16 of issues into cost and pricing on the one hand, which  
17 should be appropriate for the generic docket, and the  
18 tariff process, and the terms and conditions being the  
19 SGAT, in the case of Qwest, and noting that the SGAT  
20 would not be directly binding on Verizon but that in  
21 arbitration, certainly, any decisions that came out of  
22 the SGAT might well have precedential value, and also  
23 we were in general agreement about the synchronization  
24 that it appears the processes will be able to be  
25 synchronized fairly closely.

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1                   COMMISSIONER HEMSTAD: I think Mr. Kopta  
2 pointed out that in the SGAT filing there are prices  
3 included; didn't you say?

4                   MR. KOPTA: That's correct. There is an  
5 entire pricing appendix to the SGAT.

6                   COMMISSIONER HEMSTAD: This is addressed to  
7 any of you. Is that, in a certain sense, incidental?  
8 How do you separate out pricing and terms and  
9 conditions if the SGAT has a list of prices?

10                   MS. HOPFENBECK: If I could speak to that  
11 just briefly. I think when the SGAT was initially  
12 filed by Qwest and the 003040/003022 dockets were  
13 consolidated initially, there was an effort made by the  
14 parties to sort of identify the pricing issues and  
15 where they should be addressed, because it's true that  
16 Exhibit A to the SGAT lists all the prices that Qwest  
17 proposes to charge.

18                   It also is very usefully footnoted as to sort  
19 of the status of different prices, where they've been  
20 either decided already by the Commission or whether  
21 they expect to be, and that was followed up by  
22 opportunity for all the parties to discuss where they  
23 should go, and that's how we ended up with the cost  
24 docket structured the way it is. It's just that during  
25 the course of the 271 process, there have been some



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1 developments with respect to certain issues, such as  
2 the ones that Mr. Kopta addressed and the one that I  
3 addressed, that indicate that there are some gaps.

4           MR. KOPTA: Just to follow up on that a  
5 little bit, each interconnection agreement has the  
6 equivalent of an exhibit that has a pricing limit, and  
7 this sort of dovetails with Mr. Harlow's comments, and  
8 that pricing appendix for the individual  
9 interconnection agreements was established at the time  
10 the agreement was either negotiated or arbitrated, so  
11 there was an opportunity to have some impact on terms  
12 of what the interim price was going to be, and the  
13 Commission established the cost docket to sort of  
14 decide prices on a generic basis, and one of the issues  
15 on a going-forward basis with the SGAT is that it's a  
16 different process because Qwest presumably, unless the  
17 Commission determines otherwise, would be able to file  
18 an SGAT revision with a new product and a price, and  
19 that would kind of be it as far as what the  
20 availability of that is.

21           That wouldn't preclude someone from trying to  
22 negotiate or arbitrate something different in the  
23 meantime, but it does highlight that this is a slightly  
24 different kind of critter and maybe something that we  
25 need to think about a little harder and decide how best

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1 to implement new products and price changes in a way  
2 that's expeditious and yet fair to everyone involved.

3 CHAIRWOMAN SHOWALTER: But your point about  
4 Qwest being able to file a new SGAT and that's it is  
5 subject to Mr. Harlow's arguments that maybe that's not  
6 it because maybe the federal law requires something  
7 else.

8 MR. KOPTA: Right. If you just looked at the  
9 statute and nothing else, then Qwest could file  
10 something and the Commission could either approve it or  
11 reject it within 60 days or allow it to take effect  
12 subject to further review. So the feds kind of leave a  
13 lot of discretion up to the Commission in terms of what  
14 they are going to do, and if it's something that  
15 involves pricing, it's probably not something you are  
16 going to feel comfortable dealing with in a 60-day  
17 period, so do you allow it to take effect? Do you  
18 reject it and say, We'll keep thinking about it and you  
19 can refile it after we've had some additional  
20 proceedings?

21 I guess that's what we are here to talk  
22 about, what makes the most sense on a going forward  
23 basis so you don't have any one party that has  
24 unilateral authority to make changes on a going-forward  
25 basis before the Commission has an opportunity to

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1 review it and other parties have an opportunity to  
2 weigh in and say whatever they want.

3 CHAIRWOMAN SHOWALTER: Are we here to talk  
4 about that, or are we here to talk about how to handle  
5 that issue? That is, I heard the suggestion that in  
6 one of these proceedings, I think the 271 proceeding,  
7 we would actually address the legal issue of how to go  
8 forward, and then I guess an alternative is not to  
9 address it, and the next time somebody comes in with  
10 something, then we address it.

11 MR. KOPTA: We would prefer not to do the  
12 latter just because often times, these are important  
13 issues, and the FCC may identify new unbundled network  
14 elements, and if it takes a year or year and a half to  
15 get it, then that undermines the whole effort to make  
16 it available.

17 But by the same token, I think that we are  
18 here to try and get an idea of what would happen on a  
19 going-forward basis, because inevitably, there will be  
20 something new that comes up. We have to deal with the  
21 process that stands right now, and presumably at some  
22 point, the Commission will have a complete SGAT before  
23 it that it will approve or require additional  
24 revisions. It ultimately will approve, would be my  
25 expectation, and once that has happened, then you are

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1 almost dealing with a quasi tariff in that it's  
2 something on file with the Commission that the parties  
3 can execute or take services out of but not yet quite a  
4 tariff because it's something that a CLEC either needs  
5 to incorporate into another interconnection agreement  
6 or sign and have created as an interconnection  
7 agreement.

8           So it's neither a fish nor fowl kind of  
9 situation, but I don't think we can fall back on  
10 existing state law with respect to tariff filings and  
11 have everybody be comfortable with it, because it's not  
12 really a tariff.

13           MS. ANDERL: If I could address the issue of  
14 the pricing appendix to the SGAT as it relates to the  
15 tariffs, I think the important distinction here is that  
16 the tariffs bind both Qwest and the CLECs, and each  
17 CLEC has its own interconnection agreement, and those  
18 interconnection agreement pricing appendices now  
19 incorporate the tariff rates, and neither party can do  
20 anything unilaterally to effect a change to that, and  
21 then separate from that is the SGAT and the pricing  
22 appendix, which is not a contract until somebody  
23 executes it, but nevertheless, it's binding upon Qwest.

24           When we filed the SGAT initially, we tried  
25 very, very hard to sync up the pricing appendix with

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1 Commission-approved rates, and we have people whose job  
2 it is to map the prices to Commission orders and  
3 footnote them, as Ms. Hopfenbeck pointed out, and  
4 sometimes we have some amusing results from that --

5 COMMISSIONER HEMSTAD: Some of our orders are  
6 hilarious.

7 MS. ANDERL: One of the Commission's orders  
8 established a resale discount of 14.69 percent. Now  
9 based on parties' subsequent comments, the Commission  
10 actually approved a resale discount of 14.74 percent,  
11 but it seems like every third time we get a pricing  
12 index back, someone has gone back to the Commission  
13 order, and it says 14.69. They put it into the SGAT,  
14 then cross it out and call someone and explain why it's  
15 14.74, so we try to keep those things very closely  
16 synced up.

17 CHAIRWOMAN SHOWALTER: Ms. Anderl, that was a  
18 real knee-slapper.

19 JUDGE WALLIS: Off the record.

20 (Discussion off the record.)

21 MS. ANDERL: What I was saying is we try to  
22 keep those things very closely synced up. That said,  
23 per the other parties' comments, could we at some point  
24 in the future file an SGAT that had something in it  
25 that we've never done before and a new rate for it?

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1 Yeah, I think we could do that, and I think this is  
2 kind of a worthwhile discussion to try to explore,  
3 should it be the tariff change process? Should it be  
4 the SGAT change process? What kind of time lines  
5 should apply?

6           As I think I said in my comments, there are  
7 probably a lot of ways to address it, and we kind of  
8 tossed out one as a suggestion, but I think what's  
9 important to remember for the CLECs, at least for  
10 existing rates, is they always have the protection of  
11 their interconnection agreement, and that even I would  
12 suggest to you that their interconnection agreement and  
13 the prices contained in that are binding unless there  
14 is a change to the tariff, which I think all the  
15 interconnection agreements kind of require the prices  
16 to be synced up to the results of a cost docket, and  
17 those results are memorialized in a tariff.

18           So I would submit to you that if the tariff  
19 changed, that would affect a change to the CLEC's  
20 prices, but I think that there are significant  
21 protections in place in the tariff change process.  
22 Even if we assume that we just followed the existing  
23 state law process, the 30-day consideration and ability  
24 of the Commission to suspend the tariff filing is not  
25 something we take lightly. I don't think we would be

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1 just venturing in with lots of tariff changes that we  
2 didn't feel we could support or weren't justified.  
3 It's a lot of work for both parties or all parties to  
4 engage in that, so to the extent you have to have a  
5 process, I think that's a good one.

6 JUDGE WALLIS: Mr. Kopta suggested the  
7 possibility of an interpretive and policy statement as  
8 a means to explore and determine process. What's your  
9 reaction to that suggestion?

10 MS. ANDERL: I don't know how I react to  
11 that. I think that the one experience that I have with  
12 the interpretive and policy statement in connection  
13 with the 252(i) provisions of the Act, I think it was a  
14 good process, and I think it did operate probably to  
15 clarify a lot of issues and probably to circumvent a  
16 lot of disputes, once people had a pretty good idea of  
17 how things were going to be, even though it wasn't  
18 formally in a rule. So it's probably not a bad way to  
19 do it. I'm just wondering about the timing of that  
20 process.

21 Again, I don't know how much exploration  
22 there really needs to be. I think that there isn't any  
23 reason to suggest that the statutory and regulatory  
24 process for tariff changes would not apply, and I don't  
25 know how much room there really is to debate the issue

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1 of filing an SGAT and it's effective on 60 days notice,  
2 and the Commission could continue to hold proceedings  
3 on it after that. I don't think an interpretive and  
4 policy statement would work. It would certainly give  
5 the parties an opportunity to clarify their positions  
6 or set them forth in writing and give people an  
7 opportunity to respond.

8 MR. KOPTA: One of the reasons that I had  
9 proposed that was because that is generally how the  
10 Commission has addressed procedural issues that arise  
11 out of the Act. While Ms. Anderl might think I don't  
12 know why the tariff provisions wouldn't apply, I think  
13 the Commission has consistently stated that there are  
14 proceedings under the Act that don't come under state  
15 law, and so it wouldn't automatically apply because  
16 this isn't a tariff filing. It's an SGAT.

17 Now, maybe the tariff with the prices in it  
18 would, but then you would have some discrepancy between  
19 the generic tariff that has wholesale prices and the  
20 SGAT, and so I think what makes sense is to make sure  
21 there is some consistency and some predictability in  
22 terms of what's going to happen on a going-forward  
23 basis, again, as the Commission implements the Act, and  
24 in this case, it's Section 252(g), if I remember  
25 correctly, which is the SGAT section.



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1 JUDGE WALLIS: Do others wish to comment on  
2 this?

3 MS. ANDERL: I guess if we are just talking  
4 general response, I would like to point out that I  
5 think that the five issues that need to maybe be  
6 addressed in a cost docket are, I think, very small. I  
7 don't know that any of them are really mandated under  
8 the Act or properly identified as unbundled network  
9 elements. I'm encouraged by that. It kind of  
10 reinforces the wisdom of the process that the  
11 Commission engaged in earlier, which was to make  
12 parties identify things that needed to be included in  
13 the cost docket. I will be hopeful that we wouldn't  
14 necessarily even need to have a Part C for  
15 miscellaneous charges and daily usage fee. Maybe there  
16 are other ways to do it, but I did want to respond to  
17 those.

18 I actually thought we had addressed the  
19 CLEC-to-CLEC cross-connect issue by saying that CLECs  
20 could do that themselves so we didn't necessarily have  
21 to establish any prices for that. There is a couple of  
22 things that could maybe warrant further substantive  
23 discussion, and I think maybe we are only here for  
24 procedural things, so I won't go into that any more.

25 JUDGE BERG: Do you see a necessity for

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1 further proceedings to address the DSL over DLC, and if  
2 so, is that an opportunity to clean up some of these  
3 other lose ends?

4 MS. ANDERL: As I said, I think Qwest would  
5 be happy to develop costs and proposed prices for the  
6 DSL over DLC. If other parties don't find that  
7 proposal to be acceptable, I would expect that there  
8 would be desire on one or more parties' parts for  
9 additional proceedings, and certainly, we could include  
10 other issues if we do have another phase to the docket.  
11 I think everybody ought to have an opportunity to  
12 suggest things that ought to be included.

13 MR. KOPTA: Prior to establishing a Part C,  
14 what might make sense would be for Qwest to take a look  
15 at Exhibit A to the SGAT that has all the pricing in  
16 it, compare that with what prices the Commission has  
17 already established and has yet to establish, and  
18 identify where there are any holes, and certainly, our  
19 preference would be to see if we could, very much like  
20 the microwave collocation, come up with some prices  
21 that everyone could agree to, and then we wouldn't need  
22 to have a Phase C, because I agree that the items that  
23 come to my mind immediately are those that are not like  
24 DS-1 loops or something.

25 So to the extent that we can resolve at least

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1 some of those issues informally or through the regular  
2 SGAT 271 process, that would be preferable before  
3 stating right now that we would need a Phase C but hold  
4 open that possibility in case there are some things  
5 that would justify having another phase of the cost  
6 docket.

7 MS. ANDERL: The only other thing I wanted to  
8 respond to was Mr. Cromwell's suggestion with regard  
9 to -- for finalizing prices prior to going to the FCC  
10 on the 271 issues, and I won't go into any great detail  
11 on this, but I think what the Commission will find in  
12 looking at the states where the FCC has already  
13 approved the incumbent entry for long distance market  
14 is that SBC and Verizon, I think, in all instances did  
15 not have in that sense final costs or prices determined  
16 by the state commission for each and every service  
17 element or unbundled network element that they were  
18 offering. I think that that would be almost an  
19 impossibility to be final for all time, and I believe  
20 what the FCC determined was relevant was whether or  
21 not, as I stated earlier, the states had established a  
22 process and had been applying TELRIC standards, and  
23 there was a method for CLECs and others to have their  
24 issues resolved in a way that was consistent with the  
25 Act, not that all of those issues in terms of pricing

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1 be finally resolved.

2 JUDGE WALLIS: Would the parties like the  
3 opportunity to submit thoughts in writing?

4 MR. KOPTA: You mean additional thoughts  
5 along the lines of what we've discussed today?

6 JUDGE WALLIS: Yes, after having heard each  
7 others comments.

8 MS. ANDERL: I would suggest that maybe if  
9 the Commission wanted to explore the issues further, an  
10 additional series of questions might be helpful. I  
11 don't think that I would on my own come up with  
12 additional comments I wanted to submit.

13 MR. HARLOW: That's something along the lines  
14 of what I would have said.

15 JUDGE WALLIS: Let's be off the record for a  
16 minute.

17 (Discussion off the record.)

18 JUDGE WALLIS: I think it would probably be  
19 best to conclude this session with an expression of  
20 appreciation to those of you who have participated  
21 today and brought matters to the Commission's  
22 attention. This has provided an opportunity to look at  
23 potential gaps and at potential overlaps. You have the  
24 opportunity in the proceedings in which you are a party  
25 to monitor those proceedings and to raise issues that

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1 you choose to raise. Having had this discussion, I  
2 think we all have a better common understanding of  
3 where potential gaps and potential overlaps may lie.  
4 Is there anything further?

5 MR. HARLOW: Your Honor, Judge Berg had left  
6 a voice mail for me earlier this week about a subject  
7 to check in the 3013 docket. I've been able to trade  
8 voice mails with Mr. Klick, and I don't know if you  
9 want to go off the record to take that up.

10 JUDGE BERG: I think that's something that I  
11 would like to take up separately. I think what I'm  
12 looking for is some written confirmation that after  
13 reviewing the record that the situation of inquiry be a  
14 response is as you thought it was. I interpreted your  
15 original letter to try and comply with the notice  
16 requirement but that you would follow up after having a  
17 chance to review the actual transcript, but I prefer  
18 not to deal with that now.

19 MR. HARLOW: We will send a new letter in  
20 promptly substituting the question as I had taken it  
21 from my notes with the actual transcript. Just for the  
22 parties' information, it's not going to change the  
23 outcome of the letter.

24 JUDGE BERG: Thank you.

25 JUDGE WALLIS: Is there anything further?

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1 MS. HOPFENBECK: I owe you an exhibit in  
2 003013. That completely slipped my mind until this  
3 moment, and I will get it in as quickly as I can

4 JUDGE WALLIS: Before we conclude, there is  
5 one matter that may or may not be moot in light of our  
6 discussions, but it's one that I wish to raise. At the  
7 outset of the 271 docket, that is UT-003022, the  
8 parties accepted that members of the Commission's  
9 regulatory services division would service advisors to  
10 the Commission in that docket, UT-003022.

11 Later, Qwest filed its SGAT and sought  
12 review. The commissioners consolidated the dockets,  
13 and the parties are aware that the regulatory services  
14 staff members continue to participate as advisors in  
15 the consolidated dockets. At the outset of the 271  
16 docket, it was anticipated that the docket would be  
17 defined by a bright line and that there would be no  
18 overlap with any other docket. Adding the SGAT review  
19 to 3022 and the assumption of a more significant role  
20 in the 271 docket of the SGAT and some other minor  
21 unforeseen development in both dockets means that, as  
22 we have acknowledged today, some minor touch points may  
23 exist. This conference was designed to allow all of  
24 the parties and the commissioners to explore whether  
25 touch points exist, and if so, how to deal with them.

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1           The commissioners clearly have not and will  
2 not engage in any discussions with regulatory services  
3 staff serving as their advisors about the substantive  
4 issues in the generic, that is, the 3013 docket. Staff  
5 has helped identify potential SGAT loose ends that  
6 parties have mentioned in the proceeding. The  
7 commissioners may find it convenient to discuss limited  
8 3013 process issues, not substantive matters, with  
9 staff to assure the commissioners and parties that all  
10 matters eventually have a process for their resolution.

11           We believe that this approach, coupled with  
12 the parties' opportunity to weigh in on these matters  
13 today and on an ongoing basis, complies with the ex  
14 parte understandings and waivers that the parties gave  
15 at the outset of the 3022 docket as well as with APA  
16 requirements. We wanted to make this statement to make  
17 certain that we remain on the same wave length with all  
18 of the parties on this issue and to allow the parties  
19 the opportunity to state any concerns that you might  
20 have, either now or later in writing.

21           So, you may state any concerns now, or if you  
22 choose to make statements in writing, if you could have  
23 those in to us next Tuesday, we would be grateful to  
24 hear them. Is there anything further? Thank you all  
25 very much.

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1 (Prehearing conference concluded at 3:00 p.m.)  
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