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

2 JUDGE BERG: This is a hearing before the
3 Washington Utilities and Transportation Commission in
4 Docket Number UT-013097. The parties in this case are
5 Tel West Communications, LLC, Petitioner, versus Qwest
6 Corporation, Respondent. The parties shall be referred
7 to in this proceeding as Tel West and Qwest.

8 Notice of this hearing was provided to
9 parties, served to parties on February 26, 2002, as part
10 of the Third Supplemental Order in this proceeding. My
11 name is Larry Berg. I'm the presiding officer assigned
12 to this case. As parties know, this is a proceeding
13 that's being conducted pursuant to Washington
14 Administrative Code 480-09-530. As presiding officer, I
15 will be entering an initial order consisting of
16 recommendations to the commissioners, after which
17 parties are entitled to the process that is provided in
18 480-09-530 for presenting their positions with regards
19 to the decision and recommendations directly to the
20 commissioners. Those additional proceedings will be
21 separately noticed and scheduled.

22 I will also indicate for the record that
23 013097 has been divided into two separate parts in order
24 to facilitate the presentation of issues in dispute in
25 this proceeding. Today's proceeding is intended to

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1 address issues relating to operator services and
2 directory assistance, also referred to as OS/DA, that is
3 typically written as OS slash DA. And the other subject
4 of the proceeding here today are billing disputes, and
5 in particular whether or not Qwest is timely responding
6 to claims for reimbursement or credit from Tel West in
7 accordance with the terms and conditions of the
8 interconnection agreement between the parties.

9 Today's date is March 11th, 2002. The
10 hearing is being held at the Commission's headquarters
11 in Olympia, Washington. At this time, we will go ahead
12 and take appearances from counsel. I will note that
13 counsel, all counsel, have previously appeared in this
14 proceeding. It will only be necessary for counsel to
15 state the name, their affiliation, and the party they
16 represent, and we will begin with Petitioner.

17 MR. RICE: Good morning, Your Honor, this is
18 David Rice with Miller Nash representing Tel West.

19 MR. HARLOW: Good morning, Your Honor, Brooks
20 Harlow with Miller Nash representing Petitioner Tel
21 West.

22 MR. SHERR: Good morning, Your Honor, Adam
23 Sherr, S-H-E-R-R, in-house counsel for Qwest.

24 MS. ANDERL: Lisa Anderl representing Qwest.

25 JUDGE BERG: Thank you, counsel.

0149

1 Before we begin cross-examination of
2 witnesses and proceeding, I will go ahead and indicate
3 for the record that the order of witnesses that will
4 appear will be Mr. Swickard for Tel West to be followed
5 by Mr. Teitzel for Qwest, Ms. Malone for Qwest, and
6 Mr. Brotherson for Qwest.

7 At the close of the hearing, parties will be
8 allowed to make closing arguments on legal arguments as
9 well as closing arguments based upon evidence developed
10 during the course of the hearing. I will indicate that
11 the parties have pre-filed briefs in this matter. Those
12 briefs have been very valuable, and I thank counsel for
13 the excellent work that they did in discussing both the
14 legal issues and some of the factual issues that need to
15 be resolved in this case.

16 Before going on the record, there was
17 discussion with the parties regarding certain other
18 matters that need to be addressed, and the one issue
19 that was not taken care of off the record is a motion by
20 Tel West that I believe has two sides to it. First is
21 Tel West's belief that Qwest has violated the protective
22 order that has been entered in this case, and in
23 particular as it relates to two separate exhibits.
24 Those exhibits will be marked as Exhibits C-18 and C-33.
25 I will let counsel present their arguments on the

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1 motion, including as I understand it to be a motion to
2 strike certain of those exhibits and to otherwise seek
3 other protection including having those exhibits
4 excluded from testimony.

5 Mr. Harlow, I will, with those introductory
6 remarks, I will leave it to you to both present the
7 basis for your motion and to more specifically address
8 what Tel West wants this Commission to do.

9 MR. HARLOW: Yes, thank you, Your Honor. In
10 order to make our argument, we will need to clear the
11 hearing room and the bridge line of any parties who are
12 not signatory to the protective order in the docket.

13 JUDGE BERG: All right, then at this time I
14 will be muting the send on the Commission's controls
15 over the bridge line. I will indicate to anybody who
16 may be listening on the bridge line that as soon as
17 discussions regarding confidential information has
18 concluded, I will reopen the bridge line for the parties
19 to listen in.

20

21 (CONFIDENTIAL SESSION BEGINS)

22

23

24

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0166

1 JUDGE BERG: During a confidential discussion
2 among the parties regarding the confidentiality and the
3 relevancy of certain references to exhibits and the
4 exhibits themselves, parties presented arguments, and I
5 am now prepared to make the decision of the Commission
6 on those matters on the record as part of the general
7 proceeding.

8 It's my conclusion that the references
9 themselves do not constitute a violation of the
10 confidentiality agreement, but they are not relevant and
11 shall be stricken from the record.

12 I agree with counsel for Tel West that the
13 parties continue to try and put each other in the worse
14 light possible and continue to delve into matters that
15 go more towards whether or not specific requests for
16 credits, refunds, or removable charges are appropriate.
17 The only relevance that I see to even the OS/DA part of
18 these exhibits that Tel West agrees may be crossed on
19 goes to whether or not Tel West has already received
20 compensation from its own customers and on that basis no
21 longer has a valid claim for a credit from Qwest under
22 some theory of contract law and remedy.

23 With regards to the specific issues at hand
24 here, whatever Tel West's business practices are with
25 regards to its own clients and specifically in the area

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1 of billing, that does not address whether or not, as a
2 matter of Qwest's provisioning services, whether or not
3 Qwest has, in fact, provisioned billed number screening
4 for its dial lock feature in accordance with its
5 contractual agreement with Tel West and consistent with
6 its tariffs.

7 On that basis, the paragraph 5, paragraph
8 enumerated 5 on page 8 of Qwest's pre-hearing brief and
9 the sentence beginning on page 23, line 21, with the
10 word further and continuing to conclusion on page 24,
11 line 3, concluding with the words price list are
12 stricken.

13 And with regards to Exhibits 18 and 33,
14 Exhibits 18 and 33 may only be used for purposes of
15 cross examining witnesses with regards to OS/DA billing
16 notations and not with regards to any other matters on
17 those billing statements, but specifically the subject
18 matter of the motion and objections raised by Tel West.

19 MS. ANDERL: Your Honor, two items, if I may.
20 I do not believe that Mr. Harlow objected to the first
21 sentence of paragraph 5, and if that was the case, does
22 that modify your ruling in any way?

23 MR. HARLOW: Your Honor, we did, we objected
24 to the entire paragraph.

25 MS. ANDERL: Your Honor, the first sentence

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1 does not have anything to do with the claimed
2 confidentiality objection nor even Mr. Harlow's claimed
3 relevance objection.

4 JUDGE BERG: I understand, Ms. Anderl, but
5 again, from my perspective, that first sentence, while
6 it is also contained in Data Request 005, that may
7 actually be a separate exhibit number which we should
8 identify at this time, again goes to the charges that
9 Tel West directs to its customers. And I understand
10 that there has been development both in testimony and in
11 other arguments that go to the fact that somehow Tel
12 West on the basis of its charges is implicitly assuming
13 the risk that it may have charges that it can not
14 collect from its customers, but that is not relevant to
15 the issues that I feel need to be addressed and that I'm
16 going to be resolving here today.

17 It's been something that has been in the
18 background throughout this proceeding, and I think both
19 parties have been very liberal with each other in
20 allowing certain lines of inquiry to proceed. And in
21 some ways, it does create a more complete picture of the
22 business operations of the parties separately from what
23 their rights and obligations are under the
24 interconnection agreement, but sometimes the danger in
25 allowing that to remain in the record is that it just

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1 carries one step too far, which is what happened in this
2 instance. I agree that the generic reference to the
3 information does not breach the confidentiality
4 agreement that was entered by the Commission, but I
5 think there's certainly some merit to the argument that
6 this is -- these references are made to put Tel West in
7 a bad light, and it just has no place in this
8 proceeding.

9 MS. ANDERL: Very well, Your Honor.

10 One other item, and that is your ruling on
11 the admissibility of C-18 and C-33, there is other
12 information on the billing statements not having to do
13 with the issue we just discussed and which also we don't
14 believe is confidential, but we would like to wait until
15 we actually decide whether we need to or want to cross
16 on that. We may ask that the billing statements either
17 be revisited or admitted for different purposes.

18 JUDGE BERG: I believe that's consistent with
19 the representations by Mr. Harlow. The Tel West
20 response to Qwest's Data Request 005 has been marked as
21 exhibit, will be marked as Exhibit 11, so there are
22 three exhibits that will not be admitted by stipulation,
23 and that will be Exhibit 11, Exhibit 18, and Exhibit 33,
24 and I will address other objections to the admission of
25 those exhibits when they are offered.

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1 MR. HARLOW: Your Honor, we don't object to
2 admission of 11. It was 38, 18, 33, and 38.

3 JUDGE BERG: All right, well, I will just
4 indicate then that that portion of 005 that refers to
5 the initial month charges and the monthly charges that
6 Tel West imposes to its customers is not relevant. And
7 if 005 is to be -- although 005 may be admitted, I just
8 want parties to understand that whatever arguments may
9 be based on the monthly billing charges between Tel West
10 and its customers is not considered relevant.

11 All right, counsel, anything further?

12 MS. ANDERL: Your Honor, in anticipation of a
13 dispute on this paragraph 5, I had previously called my
14 secretary and told her to hold the delivery of the hard
15 copies of the brief to the Commission. I think they had
16 gone to the messenger 15 minutes before I called her.
17 She may have gotten them back. In the event that
18 they're not on the way down here, do you want us to just
19 refile with those --

20 JUDGE BERG: No. If, in fact, conveniently
21 we can get control of those copies and strike the matter
22 from them, we will do so. It would be more of a concern
23 if, in fact, that information was considered to be a
24 breach of the confidentiality agreement. As it stands,
25 it will be considered stricken, and if we can accomplish

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1 the material striking, we will do so, but it's not
2 essential.

3 MS. ANDERL: Thank you, Your Honor, we will
4 find out later today.

5 JUDGE BERG: Okay. What I want to do now is
6 go ahead and address the exhibit list that has been
7 prepared and the stipulation of admission of exhibits,
8 and then we will take a five minute recess.

9 There has been an exhibit list prepared
10 enumerating exhibits that are tabbed. There's a column
11 field identified as tab and an exhibit number field that
12 is blank. Each of the 50 separately described documents
13 on Qwest's exhibit list will be marked as exhibits with
14 the same exhibit number as the discreet tab number that
15 appears. Thus tab number 1 becomes Exhibit Number 1,
16 tab number 3 becomes Exhibit Number C-3. All exhibits
17 on the exhibit list 1 through 50 shall be identified in
18 the record at this point as if read in their entirety.

19

20 Exhibit 1 is Direct Testimony of Jeff
21 Swickard, Exhibit JS-T. Exhibit 2 is May 10, 2001
22 Letter from Tel West to Qwest, Exhibit A to Direct
23 Testimony. Exhibit C-3 is Tel West's Billing Disputes
24 with Qwest, Exhibit B to Direct Testimony
25 (CONFIDENTIAL). Exhibit C-4 is Supplemental Testimony

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1 of Jeff Swickard, Exhibit JS-ST (INCLUDES CONFIDENTIAL
2 INSERTS). Exhibit C-5 is Qwest's Response to Tel West
3 Data Request No. 11, Exhibit JS-ST-A (CONFIDENTIAL).
4 Exhibit 6 is Tel West's Complaint and Petition for
5 Enforcement. Exhibit 7 is Tel West's Response to Bench
6 Request No. 1. Exhibit C-8 is Tel West's Response to
7 Qwest Data Request 001 (CONFIDENTIAL). Exhibit 9 is Tel
8 West's Response to Qwest Data Request 002. Exhibit C-10
9 is Tel West's Response to Qwest Data Request 004
10 (CONFIDENTIAL). Exhibit 11 is Tel West's Response to
11 Qwest Data Request 005. Exhibit 12 is Tel West's
12 Response to Qwest Data Request 006. Exhibit 13 is Tel
13 West's Response to Qwest Data Request 008. Exhibit C-14
14 is Tel West's Response to Qwest Data Request 010
15 (CONFIDENTIAL). Exhibit 15 is Tel West's Response to
16 Qwest Data Request 012. Exhibit 16 is Tel West's
17 Response to Qwest Data Request 013. Exhibit 17 is Tel
18 West's Response to Qwest Data Request 019. Exhibit C-18
19 is Tel West's Response to Qwest Data Request 020
20 (CONFIDENTIAL). Exhibit C-19 is Tel West's Response to
21 Qwest Data Request 022 (CONFIDENTIAL). Exhibit 20 is
22 Tel West's Response to Qwest Data Request 026. Exhibit
23 21 is Tel West's Response to Qwest Data Request 029.
24 Exhibit 22 is Tel West's Response to Qwest Data Request
25 032. Exhibit 23 is Tel West's Response to Qwest Data

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1 Request 034. Exhibit 24 is Tel West's Response to Qwest
2 Data Request 047. Exhibit 25 is Tel West's Response to
3 Qwest Data Request 048. Exhibit 26 is Tel West's
4 Response to Qwest Data Request 049. Exhibit 27 is Tel
5 West's Response to Qwest Data Request 050. Exhibit C-28
6 is Tel West's Response to Qwest Data Request 051
7 (CONFIDENTIAL). Exhibit 29 is Tel West's Response to
8 Qwest Data Request 053. Exhibit 30 is Tel West's
9 Response to Qwest Data Request 055. Exhibit 31 is Tel
10 West's Response to Qwest Data Request 056. Exhibit 32
11 is Tel West's Response to Qwest Data Request 059.
12 Exhibit C-33 is Tel West's Response to Qwest Data
13 Request 061 (CONFIDENTIAL). Exhibit 34 is Tel West's
14 Response to Qwest Data Request 062. Exhibit 35 is Tel
15 West's Response to Qwest Data Request 068. Exhibit 36
16 is Tel West's Response to Qwest Data Request 069.
17 Exhibit 37 is Tel West's Response to Qwest Data Request
18 070. Exhibit C-38 is 03/07/02 E-Mail from Pamela
19 Johnson to Adam Sherr te 206-Z-7-0296 Dec 7, 2001
20 Billing Disputes with attachment (CONFIDENTIAL).
21 Exhibit 39 is Response Testimony of Larry B. Brotherson,
22 LBB-T1. Exhibit C-40 is Qwest's Billing Dispute Work
23 Sheet, LBB-C2 (CONFIDENTIAL). Exhibit C-41 is Response
24 Testimony of Kathy Malone, KM-T1 (CONFIDENTIAL).
25 Exhibit 42 is WN U-43, Qwest's Resale of Regulated

0174

1 Telecommunication Services Tariff, Section 2.1.A and .B,
2 KM-2. Exhibit 43 is 11/29/01 Qwest Internal
3 Notification re Updated Information Regarding Optional
4 Features for Resale, KM-3. Exhibit 44 is Tel West's
5 Responses to Qwest's First Set of Data Requests, Nos.
6 -003, -005, -006, -008, -009, -010, and -012, KM-4.
7 Exhibit 45 is Exhibit B to Qwest's Second Set of Data
8 Requests to Tel West and Tel West's Responses to Qwest's
9 Second Set of Data Requests Nos. -021, -027, -029, -033,
10 -034, -043, -045, -046, -047, -048, -049, -050, -053,
11 -055, -056, -057, -058, and -059, KM-5. Exhibit 46 is
12 Customized Routing Service Request for Line Class Code,
13 completed by Tel West, KM-6. Exhibit 47 is Response
14 Testimony of David L. Teitzel. Exhibit 48 is WN U-40,
15 Qwest's Exchange and Network Services Tariff, Section
16 10.4.1.A, .B and .C, DLT-2. Exhibit 49 is WN-U40,
17 Qwest's Exchange and Network Services Tariff, Section
18 5.4.3.B and .D, DLT-3. Exhibit 50 is WN U-40, Qwest's
19 Exchange and Network Services Tariff, Section 10.4.3.A,

20

21 JUDGE BERG: And all exhibits except exhibits
22 18 and 33 are admitted by stipulation of the parties and
23 approval of the Commission.

24 All right, with that, counsel, let's take

25 a --

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1 MR. SHERR: Your Honor, can I just have a
2 moment?

3 JUDGE BERG: Yes, sir.

4 MR. HARLOW: 38, as well, Your Honor.

5 JUDGE BERG: All right, thank you, also 38,
6 Exhibit C-38, is also not admitted by stipulation.
7 Thank you, Mr. Sherr, I appreciate you keeping close
8 tabs on me. And those Exhibits 18, 33, and 38 shall be
9 further addressed in the event they are offered for
10 admission during the course of the proceeding.

11 Then at this time, we will take a five minute
12 recess.

13 (Recess taken.)

14 JUDGE BERG: Mr. Swickard, if you would
15 please stand and raise your right hand.

16

17 Whereupon,

18 JEFF SWICKARD,
19 having been first duly sworn, was called as a witness
20 herein and was examined and testified as follows:

21

22 JUDGE BERG: Mr. Harlow, if you would please
23 go ahead and qualify your witness.

24 MR. HARLOW: Thank you, Your Honor.

25

0176

1 D I R E C T E X A M I N A T I O N

2 BY MR. HARLOW:

3 Q. Will you please state your name for the
4 record.

5 A. My name is Jeff Swickard.

6 Q. By whom are you employed?

7 A. Tel West Communications.

8 Q. What's your position?

9 A. President.

10 Q. You have in front of you Exhibits 1 through
11 6, excuse me, 1 through 5, that would be your testimony,
12 your supplemental testimony?

13 A. Yes, I do.

14 Q. Those exhibits, do you have any corrections
15 to those pre-filed testimony or exhibits?

16 A. No, I do not.

17 MR. HARLOW: Your Honor, the witness is
18 available for cross.

19 JUDGE BERG: Mr. Sherr.

20 MR. SHERR: Thank you.

21

22 C R O S S - E X A M I N A T I O N

23 BY MR. SHERR:

24 Q. Thank you, Mr. Swickard, my name is Adam
25 Sherr. We have met before. I'm an attorney for Qwest.

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1 I'm going to ask you some questions now. You have in
2 front of you the notebook of exhibits. I will be
3 referring to different documents throughout the notebook
4 by their tab number. That's also their exhibit number.

5 As you said, you are the president of Tel
6 West?

7 A. Yes, I am.

8 Q. How long have you been president?

9 A. Almost four years.

10 Q. Was it 1998 that you became president?

11 A. Yes.

12 Q. And did you found Tel West?

13 A. Yes.

14 Q. Before forming Tel West, what was your
15 telecommunications background?

16 A. I worked for AT&T, MCI, and U S West.

17 Q. And how long did you work for U S West?

18 A. Approximately two years.

19 Q. While you were a U S West employee, were you
20 ever a wholesale billing manager?

21 A. No, I was not.

22 Q. Your testimony refers to the fact that you
23 were a strategic account manager; is that correct?

24 A. Yes.

25 Q. What is that job?

0178

1 A. I sold services for the public services
2 division of Qwest, which represented the pay phone and
3 0+ services to large customers.

4 Q. So it was a sales position?

5 A. Yes.

6 Q. As a significant part of your job, did you
7 every process CLEC billing disputes?

8 A. No.

9 Q. You're Tel West's only witness in this phase
10 of the docket, are you not?

11 A. Yes, I am.

12 Q. And as Mr. Harlow just went through, you
13 filed direct and supplemental direct testimony?

14 A. Yes, I did.

15 Q. In preparing for today, did you review that
16 testimony?

17 A. Yes, I did.

18 Q. Has Tel West served Qwest data requests in
19 this phase of the docket?

20 A. Can you ask your question again, I'm sorry?

21 Q. Sure. Did Tel West send to Qwest discovery
22 requests or they're called data requests?

23 A. Yes.

24 Q. Asking for information?

25 A. Yes, I'm sorry.

0179

1 Q. In preparing for today, did you review
2 Qwest's answers to those?

3 A. Yes, I did.

4 Q. Has Qwest also served Tel West with data
5 requests in this phase of the docket?

6 A. Yes.

7 Q. And in preparing for today, did you review
8 Tel West's responses to those data requests?

9 A. Yes, I did.

10 Q. Did you help prepare those data request
11 responses?

12 A. Yes, I did.

13 Q. I want to talk to you a little bit about Tel
14 West in general. I understand from your testimony that
15 Tel West primarily serves the segment of the public that
16 has credit troubles or has been disconnected by an ILEC
17 for nonpayment. Is that accurate?

18 A. For the purpose of this hearing, yes, that's
19 what we do.

20 Q. Well, is that accurate?

21 A. We offer other services as well.

22 Q. But primarily you serve that segment of the
23 public that I just described?

24 A. For residential customers, yes.

25 Q. Do you serve that segment of the public

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1 voluntarily?

2 A. Yes.

3 Q. And does serving that segment of the public
4 bring with it unique risks to Tel West?

5 A. Yes.

6 Q. What are those risks?

7 A. Can you define the word risk, what --

8 Q. Well, let's look at your testimony. It's
9 under tab 1. Perhaps this will help you in answering
10 the question. If you flip to page 3 of your testimony,
11 tab 1 is your, or excuse me, Exhibit 1 is your direct
12 testimony, on page 3 on line 8, actually beginning on
13 line 6, and I will just read it to you here so you can
14 see where I'm focusing on.

15 Our focus within the residential market
16 is quite marrow, residential customers
17 who have been disconnected for
18 nonpayment or have an unresolved billing
19 dispute with an ILEC. Because of the
20 high risks, customer turn, and
21 operational costs of serving this class
22 of customers, Tel West's rates are
23 somewhat higher than typical ILEC
24 residential rates.

25 Do you see where I read from?

0181

1 A. I don't.

2 Q. Okay. It's under tab 1. You're looking at
3 the wrong notebook.

4 A. Oh, sorry.

5 Q. And it's on page 3, lines 6 through 10.

6 A. I'm sorry, mine must be different from yours.

7 MR. SHERR: Your Honor, may I approach the
8 witness to take a look at the notebook?

9 JUDGE BERG: Yes.

10 BY MR. SHERR:

11 Q. Do you see now where I was reading from?

12 A. I do, I'm sorry.

13 Q. And could you also look at page 6 of your
14 testimony.

15 JUDGE BERG: Mr. Swickard, while you're
16 finding that spot on page 6, if you might turn that
17 microphone so it's just pointed a little bit closer.
18 That's great, thank you very much, sir.

19 Q. And I direct your attention to line 8 that
20 starts, and I will read you the sentence again:

21 Because of this credit risk, Tel West
22 bills for service for a month in
23 advance, but unlike Qwest, we do not
24 require a deposit.

25 Do you see where I'm reading from there?

0182

1 A. Yes, I do.

2 Q. Okay. Two times in your testimony you
3 mentioned risk. What did you mean by that?

4 A. I think the population that we serve
5 primarily has operational expenses that are different
6 than the type of customer that does not have to pay in
7 advance, i.e., our customers are -- tend to call us more
8 than the typical customer to make payment arrangements.
9 Our customers -- our customers generally have to pay in
10 advance because of the -- their credit qualifications,
11 so those are our inherent risks.

12 Q. Do they increase the likelihood of your bad
13 debt costs?

14 A. Our agreement with our customers should
15 preclude that debt. We don't extend credit to our
16 customers, and therefore we don't consider it bad debt.
17 Our customers pay for service one month in advance for
18 their residential service, which is the service that we
19 provide.

20 Q. But looking back at page 3 of your testimony,
21 you again say because of the high risks. I assume those
22 are risks to Tel West, are they not?

23 A. Yes, they are risks to Tel West.

24 Q. So what risks are you talking about then?

25 A. The risk -- to serve our customers is more

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1 expensive because of the operational hassles I guess in
2 terms of serving our customers. Our customers are
3 tremendously demanding, and I think that the risk that
4 we're associating here is that it's because we don't
5 have a credit screening process for our customers, it's
6 very difficult, if not impossible, to collect for any
7 services that are not billed in advance.

8 Q. That's what you meant by risks?

9 A. Yes.

10 Q. It's my understanding that Tel West primarily
11 serves its customers via resale; is that correct?

12 A. Yes.

13 Q. And the vast majority, at least in
14 Washington, is by resale?

15 A. Yes.

16 Q. When a new customer requests service from Tel
17 West, how does Tel West get service to that customer?

18 A. We order that service from Qwest by IMA.

19 Q. And what is IMA?

20 A. Intermediated mediated access, interconnect
21 mediated access I think is what that stands for. It's a
22 system that we use to interact with Qwest to order
23 resale services.

24 Q. And it's an electronic system?

25 A. Yes.

0184

1 Q. When does a telephone number get assigned to
2 the customer?

3 A. The customer, our end user or us? We get the
4 telephone number when we place the order with Qwest.

5 Q. And you then provide it to your customer?

6 A. It depends on how that customer has obtained
7 service through us. For example, if a customer paid in
8 a way that we don't have direct contact with the
9 customer for the first time, then they would not get it
10 on that initial call. And in some cases, customers that
11 are in unique situations would get that information.

12 Q. Explain to me how customers can get service
13 from you without having contacted you.

14 A. They may not contact us direct. We use
15 agents where customers can go in and obtain service
16 where they give the necessary information, and that
17 information is sent to us electronically, so we don't
18 have a direct contact with the customer.

19 Q. Does Tel West reuse telephone numbers?

20 A. To the extent that Qwest reuses the numbers
21 that they assign to us, we would, but we don't -- we
22 order new service for every customer that we establish
23 service for.

24 Q. So if a customer, hypothetical customer Jones
25 has a specific phone number and hypothetical customer

0185

1 Jones disconnects service and hypothetical customer
2 Smith asks for service, you don't simply reassign
3 customer Jones's phone number to customer Smith?

4 A. No, we do not.

5 Q. And as you mentioned, Tel West prebills its
6 customers for service; is that correct?

7 A. Yes.

8 Q. Can you again explain that briefly?

9 A. Our customers pay for service in advance, one
10 month in advance of service.

11 Q. So say, for example, a customer wants to
12 receive or is going to receive service, not a new
13 customer, but an ongoing customer is going to receive
14 service for the time period March 1 through March 30,
15 when would Tel West send out a bill to that customer for
16 that March service?

17 A. We would send out a statement for the
18 customer as a reminder prior to March 1.

19 Q. When?

20 A. We have different billing periods, and so I
21 don't, you know, I don't -- I don't know the exact date
22 that we send it out prior.

23 Q. You don't know how many days in advance?

24 A. I do not.

25 Q. Do you know how many days then the customer

0186

1 has to pay the bill before again this hypothetical March
2 service?

3 A. I don't know how many days, no. We operate
4 under the guidelines of the Commission in terms of how
5 long we extend our customers. And in many cases, you
6 know, we work with the customers a little bit more than
7 our standard disconnection policy.

8 Q. How many billing cycles do you have per
9 month?

10 A. I don't know.

11 Q. Can you give me a ball park?

12 A. Yeah.

13 Q. And I should specify for Washington.

14 A. Oh, okay, less than five.

15 Q. And are those evenly spaced out throughout
16 the month?

17 A. No, it's dependent on -- it's dependent on
18 the time period of which we get their statements to them
19 by. And I'm sorry, I just don't remember the amount of
20 days that we send the bills out or the statements out
21 prior to that. There is a time period that we do send
22 it out. I just don't know the exact days.

23 Q. Maybe I wasn't being clear with my question.
24 You said you have approximately, and I won't hold you to
25 this number, but approximately five different billing

0187

1 cycles in a given month. What I'm asking is, would
2 those billing cycles occur spread out, spread out in
3 sort of even intervals over the month, or might those
4 five billing cycles be the 1st, 2nd, 3rd, 4th, and 5th
5 of the month?

6 A. They're not spaced out evenly. And again,
7 it's the way that our bills are generated are based on
8 -- our statements are generated or based on the time
9 period before as a kind of as a reminder before the
10 service is actually due, so that those days I don't
11 know. I didn't come prepared for that, I'm sorry.

12 Q. Understanding that you don't know all of the
13 specifics, would you expect that a bill for March
14 service might go out to a customer as late as March 1st?

15 MR. HARLOW: Objection, relevance, Your
16 Honor.

17 MR. SHERR: Your Honor, this is a very
18 relevant line of questioning that I'm doing. This is
19 foundational questions so that we can discuss the bills
20 that were provided to Qwest last Friday evening, and so
21 I'm trying to understand what the mechanics of Tel
22 West's billing practices are so that we can understand
23 those statements.

24 JUDGE BERG: All right, I will allow this one
25 question. But to the extent that the reason is the way

0188

1 I understand it is you're looking to see whether in fact
2 the statement goes out prior to the billing cycle or
3 whether it actually goes out during the billing cycle.
4 But unless there's some other reason why the exact time
5 would be relevant, it would be helpful to move on after
6 that.

7 MR. SHERR: I understand.

8 A. Could you restate your question?

9 BY MR. SHERR:

10 Q. Would you expect that a Tel West bill for the
11 services for March 1 through March 30 would go out from
12 Tel West to your customer on March 1?

13 A. Generally that should not happen.

14 Q. It should happen well before that?

15 A. Yes.

16 Q. To give your customer an opportunity to pay
17 before the start of that service period?

18 A. Absolutely.

19 Q. Do your bills specify a statement date?

20 MR. HARLOW: Objection, relevance, Your
21 Honor.

22 MR. SHERR: Your Honor, it's the same thing,
23 and I'm happy to show, maybe speed this up a little bit,
24 and show Mr. Swickard his own statements in the notebook
25 so that he can respond. Again, this is highly relevant

0189

1 to understanding the billing statements that we received
2 again after close of business on the last day before
3 hearing.

4 JUDGE BERG: Is there a particular exhibit
5 that can be referred to to tie the questions in to?

6 MR. SHERR: Yes, Your Honor.

7 JUDGE BERG: I would be more comfortable if
8 the questions were going to an exhibit other than the
9 testimony that may already be in the record.

10 MR. SHERR: Understood, Your Honor.

11 JUDGE BERG: All right.

12 BY MR. SHERR:

13 Q. Please look at tab 18.

14 JUDGE BERG: And I believe that would be
15 Exhibit C-18.

16 MR. SHERR: That's correct, Your Honor. And
17 just as a procedural matter, I intend to ask questions
18 regarding the documents that have been attached here.
19 The documents that have been attached here are actual
20 bills provided by Tel West this last Friday, and then
21 there's also some screen printouts from November bills.
22 These are in conjunction with Tel West's response to
23 Data Request Qwest-020. While the data request itself
24 and the response itself are not, the text response are
25 not confidential, all of the attached documents are

0190

1 confidential.

2 I would like to approach -- I would like to
3 continue on a non-confidential basis in this way, and I
4 want to seek your guidance as to whether it's
5 appropriate. What I would like to do is ask
6 Mr. Swickard about these individual documents without
7 referring to the customer name or the customer address
8 or the telephone number or account numbers or statement
9 numbers, but to be able to ask about other information
10 that's on the invoice itself. And I think that way, at
11 least in my judgment, that should avoid any
12 confidentiality problems or any need to clear the room
13 or mute the conference bridge.

14 JUDGE BERG: All right.

15 MR. SHERR: Is that acceptable?

16 JUDGE BERG: To some extent, we will start
17 going down that road, and if it goes beyond the OS/DA
18 billing background information to resolve the issues
19 that we have identified here, then I'm sure Mr. Harlow
20 will let you know if he thinks you have gone too far.

21 Let me also indicate for the record as I look
22 at Exhibit 18, I notice that there are two sheets to
23 Exhibit C-18 that are on white paper, the initial
24 response and supplemental response. Am I to understand
25 that those two pages are non-confidential; is that

0191

1 correct?

2 MR. HARLOW: That's correct, Your Honor.

3 JUDGE BERG: All right. I would indicate to
4 parties that where there is an exhibit that is
5 designated as a confidential exhibit with the letter C,
6 if there is a non-confidential portion, those exhibits
7 will ultimately be identified as, for example, Exhibit
8 18, C-18, so the non-confidential portion of an exhibit
9 will remain non-confidential. The fact that we may be
10 designating it at the outset as a confidential exhibit
11 may be amended in the follow-up order to follow with a
12 final exhibit list for administrative purposes. All
13 right.

14 MR. SHERR: Can I proceed, Your Honor?

15 JUDGE BERG: Yes, sir.

16 BY MR. SHERR:

17 Q. Mr. Swickard, are you looking at tab 18 of
18 the notebook?

19 A. Yes, I am.

20 Q. And again, this is Exhibit C-18. Confirm for
21 me that pages 2, the pages that are marked in the bottom
22 right-hand corner, 2 through 11 are copies of actual Tel
23 West bills.

24 A. Yes, they appear to be.

25 Q. And that these documents were faxed by Tel

0192

1 West to Qwest counsel on Friday, March 8?

2 MR. HARLOW: I don't think that the witness
3 is aware of that, but we will stipulate to that.

4 JUDGE BERG: Thank you, Mr. Harlow.

5 BY MR. SHERR:

6 Q. Are these true, correct, and complete copies
7 of billing statements?

8 A. Yes, they appear to be.

9 Q. Notice, if you will, the documents are blank
10 on the back side. Do Tel West billing statements have
11 language on the back side?

12 A. Yes, they do.

13 Q. But that was not provided; is that correct?

14 A. I think --

15 MR. HARLOW: Objection, that was provided in
16 a separate data request.

17 Q. That was not provided in response to this
18 data request; is that correct?

19 A. Yes.

20 Q. And is the back of a billing statement that
21 was provided to Qwest, is that uniform?

22 A. Yes, it is.

23 Q. It's uniformly on each bill?

24 A. Yes, it is.

25 Q. It hasn't changed?

0193

1 A. No, it hasn't.

2 Q. So these are true and correct copies of the
3 front side of some actual bills?

4 A. Yes.

5 Q. Do you notice near the bottom of -- and I'm
6 looking at page 2.

7 A. Yes.

8 Q. Near the bottom of page 2 on the left-hand
9 side there's an account number, a statement number, and
10 a statement date. Do you see on number 2 that statement
11 date says 2-4-02?

12 A. Yes, I do.

13 Q. What does that represent; what does that
14 information represent?

15 A. I think this was when the actual statement is
16 printed.

17 Q. Do you know whether that's the date it was
18 mailed as well?

19 A. No, I do not.

20 Q. Do you recall that in Data Request Qwest-020
21 that Qwest asked for copies of all November Washington
22 Tel West bills? And if you need to refresh your
23 recollection, you can look at the first page under tab
24 18, which is Exhibit 18.

25 MR. HARLOW: Your Honor, can we simply refer

0194

1 to exhibit numbers rather than tab and then repeating
2 exhibit number?

3 JUDGE BERG: Yes, but let me just indicate
4 that if parties happen to fall into referring to a tab
5 number, we will understand for the record that the
6 reference to a tab number is also a reference to an
7 exhibit number.

8 MR. SHERR: I will try to migrate my brain
9 over to that.

10 BY MR. SHERR:

11 Q. Do you see where I'm pointing to on page 1?

12 A. Yes, I do.

13 Q. 020, do you recall that that was Qwest's data
14 request?

15 A. Yes, I do.

16 Q. Do you recall that Tel West objected to that
17 data request?

18 A. Yes, I do.

19 Q. And told Qwest and the Administrative Law
20 Judge that actual bills for November of 2001 were no
21 longer available?

22 A. I'm actually not the person that responded to
23 this. There were two other people involved, and they're
24 actually the people who referred this information to our
25 counsel.

0195

1 Q. But you're Tel West's only representative
2 here today, are you not?

3 A. Yes, I am.

4 MR. SHERR: I guess I would ask, Your Honor,
5 I might ask Mr. Harlow if he can stipulate that that was
6 Tel West's representation with regard to Qwest-020?

7 MR. HARLOW: The document has been admitted,
8 and it speaks for itself.

9 MR. SHERR: Well, the document does not
10 contain that particular representation, which was
11 verbal. And again, that representation was that copies
12 of actual November bills were no longer available.

13 MR. HARLOW: At the time of this response?

14 MR. SHERR: On February 20th.

15 MR. HARLOW: I think we -- I guess you're
16 referring to the argument we had on the phone, and it
17 may be in the record. I don't remember exactly what we
18 represented.

19 MR. SHERR: I can tell you it was not
20 transcribed, Your Honor.

21 JUDGE BERG: Wasn't this the subject of a
22 discovery dispute?

23 MR. SHERR: It was.

24 JUDGE BERG: All right, and was the discovery
25 dispute resolved by the Commission?

0196

1 MR. SHERR: It was in a compromise fashion.

2 JUDGE BERG: All right. And so are you
3 trying to show that there was some kind of
4 misrepresentation prior to the resolution of the
5 discovery dispute?

6 MR. SHERR: I do, that is my intention.

7 JUDGE BERG: This witness can only testify as
8 to what he knows to the best of his ability, Mr. Sherr.

9 MR. SHERR: Okay. I would ask, Your Honor, I
10 know that that discovery conference was not transcribed,
11 I would ask you for one of two things, either for
12 Mr. Harlow to stipulate subject to check that that was
13 Tel West's representation, or for Your Honor, since you
14 were on the call as well, to take notice of the fact
15 that that was their representation.

16 MR. HARLOW: I don't really understand the
17 relevance, Your Honor. This bill is apparently dated
18 February of 2002, so why are we talking about a
19 stipulation on November bills. I don't see what
20 relevance that has.

21 MR. SHERR: It's a foundational question,
22 Your Honor. The relevance will be clear in about two
23 questions.

24 JUDGE BERG: You know, Mr. Sherr, I can't
25 recall the specifics of this dispute either.

0197

1 Mr. Swickard will be on the stand for a while this
2 morning and this afternoon. If a determination of what
3 the positions of the parties are is essential, could you
4 please talk with Mr. Harlow before we begin our
5 afternoon session. And then, if necessary, I will look
6 at my notes and see what I can ascertain.

7 I recall requiring that certain current
8 billing statements be made available. I also recall
9 that certain past billing statements were not available
10 because they existed in electronic version only. As to
11 where that line gets drawn, I don't recall. But I
12 presume that if I ordered Tel West to actually produce
13 certain copies of current billing statements, it was
14 only because Tel West made it known that those could be
15 made available.

16 MR. SHERR: And that's the point that I'm
17 leading to, Your Honor. I will move on.

18 JUDGE BERG: All right. I am beginning to
19 see the point you're making that there's a statement
20 date of 2-4, and at that point in time, Tel West stated
21 that because of its business processes, in order to pull
22 out these specific statements, they could not make them
23 available until 3-8.

24 MR. SHERR: That's correct, Your Honor.

25 JUDGE BERG: All right.

0198

1 Mr. Harlow.

2 MR. HARLOW: I would think that the witness
3 could be asked that question, Your Honor. I don't -- I
4 can't really answer as a witness for Tel West.

5 JUDGE BERG: Sure, I was just looking to see
6 if you had any more -- if that clarified your
7 recollection of our discussion at that time, Mr. Harlow.

8 MR. HARLOW: I wouldn't be able to shed any
9 more light on it until I spoke with Mr. Swickard.

10 JUDGE BERG: All right.

11 That's my recollection, Mr. Sherr.

12 MR. SHERR: Okay, well, I will proceed here
13 quickly. And to the extent Mr. Swickard doesn't know,
14 he doesn't know.

15 JUDGE BERG: All right.

16 MR. SHERR: But I guess I would ask, you
17 know, I will talk to Mr. Harlow about this at a break,
18 but I would ask, Your Honor, to the extent Mr. Swickard
19 doesn't know, just have a continuing request that you
20 take judicial notice of the questions I'm asking and
21 that the representations were made.

22 JUDGE BERG: I understand that's your
23 position.

24 MR. SHERR: Okay.

25 BY MR. SHERR:

0199

1 Q. In discussing, Mr. Swickard, Tel West's
2 response to Data Request Qwest-020, do you recall that
3 Tel West informed Qwest that it could not print copies
4 of November bills because the only records that were
5 available were electronic copies of the information that
6 was in those bills?

7 A. I can't remember exactly. Essentially these
8 data requests were distributed amongst those people who
9 have those responsibilities within our organization, and
10 the responses basically were relayed back to our
11 counsel. I remember that we -- our archived bills or
12 statements are available in electronic copy, and that's
13 what we -- I thought that we gave you.

14 Q. Bills themselves?

15 A. Statements or copies of our screens that we
16 can see the information.

17 Q. Okay.

18 A. The information contained on the statements,
19 I guess I should say, was available in electronic
20 format, which is what we attempted to give to you.

21 Q. So you gave us screen printouts, but the
22 actual bills were not available from November of 2001?

23 A. I don't remember the exact time period, but
24 historical statements are not available in their
25 original format. I know that that's our -- that's a

0200

1 system parameter that we have.

2 Q. You don't retain paper copies of statements
3 each month?

4 A. No, we do not.

5 Q. You only retain this electronic record that
6 has the information that was originally put in the
7 statement?

8 A. Correct.

9 Q. Is that accurate?

10 A. (Nodding head.)

11 Q. Do you recall that Qwest modified its request
12 to asking for the screen printouts for November of 2001
13 and for ten actual current bills as of the time period
14 we were discussing?

15 A. I'm aware that you requested the current
16 bills.

17 Q. Okay. Are you aware that Tel West and Qwest
18 had a discovery conference with the Judge on February 20
19 regarding this exact issue?

20 A. Yes.

21 Q. Are you aware that at that conference Tel
22 West represented to the Judge that as of that date,
23 which was February 20, that no current bills were then
24 available for that time period?

25 A. Again, I don't remember the dates of the

0201

1 statements. I remember the conversation or I remember
2 participating in that call, but again, I don't remember
3 the exact dates.

4 Q. So you were present for that discussion with
5 the Judge?

6 A. I think that I -- I think I understand what
7 you're referring to, and I think that I was -- was a
8 party on that call if I'm -- it's the same one you're
9 describing.

10 Q. Do you recall saying that current -- that the
11 next Washington run of bills would not be until March 5
12 and that copies could not be produced to Qwest until
13 March 8th?

14 A. Again, I'm really sorry, I don't remember the
15 exact dates. Again, I'm relaying information from
16 people internally, and I'm just not prepared for that
17 question.

18 Q. But the bills themselves did not appear at
19 Qwest until March 8th; is that correct? Isn't that what
20 you testified to before?

21 MR. HARLOW: I think that's what I stipulated
22 to, counsel.

23 Your Honor, I object to relevance of this
24 continuing line of questions.

25 JUDGE BERG: Mr. Sherr, just in looking at

0202

1 these billing statements, I see statement dates of 2-4,
2 2-26, 2-7, 2-5, 2-25, 2-4, 2-15, 2-4, 2-14, 2-27, and I
3 understand that this witness doesn't know whether the
4 statement date is, in fact, the mailing date. I also
5 note that there are other dates included in the little
6 box to the right of the information that you're
7 referring to. And we could, you know, probably take all
8 of this information and try and ferret out, well, which
9 ones might have been available sooner and which ones
10 might not have, but I don't know how productive that
11 would be. I understand the point you're making, and so
12 if that's something to be argued later, I understand
13 exactly the link that you're trying to make between
14 certainly the statement date on number 2 and the
15 production of documents on March 8th.

16 MR. SHERR: Okay, I will proceed from there.

17 JUDGE BERG: Okay.

18 MR. SHERR: Thank you, Your Honor.

19 BY MR. SHERR:

20 Q. Still looking at that same exhibit, which is
21 Exhibit C-18, could you look at page 3, please. Are you
22 looking at that document?

23 A. Yes, I am.

24 Q. Okay. The upper right-hand corner is a
25 summary of charges, is it not?

0203

1 A. Yes, it is.

2 Q. The fourth charge down after taxes and
3 surcharges says pay per use, does it not?

4 A. Yes, it does.

5 Q. And it has a price of \$6.40?

6 JUDGE BERG: Again, I want to hold off on --
7 this is on a confidential document?

8 MR. SHERR: It is, Your Honor, and that's --
9 in terms --

10 MR. HARLOW: And I don't -- really we
11 shouldn't be putting numbers on the record. I don't
12 think it's a big deal, but we really shouldn't.

13 JUDGE BERG: Yeah, I prefer not to put
14 numbers on the record unless it's absolutely essential.

15 MR. SHERR: Okay. I can just refer to -- ask
16 him if there is a number there.

17 JUDGE BERG: Yes.

18 MR. SHERR: Okay.

19 BY MR. SHERR:

20 Q. Is there a charge on that bill associated
21 with pay per use?

22 A. Yes, there is.

23 Q. What does that represent, that charge?

24 A. Although I -- I'm not sure what the specific
25 amount represents, but pay per use is commonly defined

0204

1 as those calling features such as last call return,
2 three-way calling, on demand switch type services.

3 Q. So this reflects that Tel West was charging
4 this customer for pay per use services, does it not?

5 A. Correct.

6 Q. Okay. If you would please flip to the next
7 page, which is page 4 of the exhibit, you will see at
8 the upper right-hand corner three separate charges for
9 pay per use, directory assistance, and long distance.
10 Do you see those?

11 A. Yes, I do.

12 Q. Okay. Could you turn the page to page 6, and
13 you see at the upper right that there are charges
14 associated with directory assistance and long distance?

15 A. Yes.

16 Q. And if I could have you look at page 10, are
17 there charges associated here with directory assistance
18 and long distance?

19 A. Yes.

20 MR. SHERR: If I could just have a moment,
21 Your Honor.

22 BY MR. SHERR:

23 Q. Mr. Swickard, I would ask you to look back at
24 Exhibit 1, which is under tab 1 to your testimony, and
25 again, this is your February 8 testimony, is it not?

0205

1 A. Yes, it is.

2 Q. If you could please look at line, I'm sorry,
3 page 6, line 16, it says there:

4 It is not cost effective for Tel West to
5 attempt to collect these charges from
6 this category of end users.

7 Does it not?

8 A. Yes, it does.

9 Q. When you supplemented this testimony on
10 February 15, did you modify that statement at all?

11 A. Actually, I need to refer to the supplemental
12 testimony.

13 Q. Okay.

14 A. Where's that?

15 Q. Please take a look, it's under tab 4.

16 JUDGE BERG: Would it help the witness if
17 there was a particular page or line number that you had
18 in mind?

19 MR. SHERR: Your Honor, there isn't one.

20 JUDGE BERG: All right.

21 MR. SHERR: I'm just trying to establish that
22 that testimony hasn't been modified.

23 MR. HARLOW: Your Honor, I think that the
24 testimony speaks for itself.

25 MR. SHERR: I can move on.

0206

1 JUDGE BERG: All right.

2 MR. SHERR: The testimony is in the record.

3 JUDGE BERG: Those sorts of points,

4 Mr. Sherr, I think, you know, if you are confused

5 whether or not a statement in the supplemental, you

6 know, is or isn't associated with the statement in the

7 original testimony, it certainly bears follow up.

8 Otherwise, you can make those points on argument.

9 MR. SHERR: Understood Your Honor.

10 JUDGE BERG: All right.

11 MR. SHERR: Thank you.

12 BY MR. SHERR:

13 Q. Mr. Swickard, I would ask you to look at

14 Exhibit 14, which is under tab 14. Are you there?

15 A. Yes, I am.

16 Q. Do you recognize this as Tel West's response

17 to Data Request Qwest-010?

18 A. Yes, I do.

19 Q. And does it not, doesn't it say after the

20 objection in the first sentence, this would be the third

21 paragraph of text down:

22 Without waiving this objection, Tel West

23 states that it does not attempt to

24 collect these charges from end users

25 except in unusual circumstances.

0207

1 A. Yes, it does.

2 Q. And what does these charges refer to?

3 Doesn't it refer to pay per use services?

4 MR. HARLOW: Your Honor, at this point --

5 A. I don't see where --

6 JUDGE BERG: Just a second, please. When you

7 hear the lawyers starting to debate, that's usually a

8 good time to hold your responses, Mr. Swickard.

9 Mr. Harlow, was there a point you wanted to
10 make before the witness answers?

11 MR. HARLOW: Your Honor, pay per use was a
12 defined term in we believe Data Request Number 3, and
13 that definition applied to all the data requests. It's
14 not been made an exhibit, but in fairness to the
15 witness, I think we need to supply the witness with a
16 copy of that response or that data request.

17 JUDGE BERG: All right.

18 MR. HARLOW: Because Qwest created the
19 definition of pay per use for purposes of the discovery.

20 JUDGE BERG: All right, we're going to mark
21 that as Exhibit 51.

22 MR. HARLOW: Oh, Your Honor --

23 MR. SHERR: Your Honor, I brought a
24 sufficient number of copies so that if needed -- can I
25 have one?

0208

1 MR. HARLOW: No.

2 JUDGE BERG: Okay, and it looks like there's
3 a confidential portion to the exhibit; is that right?

4 MR. SHERR: There is, Your Honor.

5 JUDGE BERG: All right, and is it necessary
6 for the confidential portion to be attached for purposes
7 of completeness for your questions?

8 MR. SHERR: Not for these particular
9 questions.

10 JUDGE BERG: All right. Well, Mr. Harlow, is
11 it necessary for the confidential portion to be
12 likewise --

13 MR. HARLOW: I will need a moment, Your
14 Honor.

15 JUDGE BERG: Well, just to make it easy
16 then --

17 MR. HARLOW: I think we'll just leave the
18 response together.

19 JUDGE BERG: We'll just take the documents
20 together, so Exhibit 51 is 51, C-51.

21 And, Mr. Sherr, again please give me the
22 reference to the data request number.

23 MR. SHERR: It's Qwest-003.

24 JUDGE BERG: All right, and I will indicate
25 for the record that the exhibit includes the Tel West

0209

1 Response to Qwest DR 003.

2 MR. SHERR: I suppose I should ask Mr. Harlow
3 if he will stipulate to the admission of this document.

4 MR. HARLOW: We have no objection.

5 JUDGE BERG: All right, Exhibit 51 and C-51
6 are admitted.

7 BY MR. SHERR:

8 Q. Mr. Swickard, could you read the definition
9 of pay per use that's in Exhibit C-51?

10 A. I'm sorry, I'm having so much trouble keeping
11 up here, so 51, there's actually no --

12 Q. The document that Mr. Harlow just handed you.

13 A. Oh, okay, the Qwest data response?

14 Q. That's correct. Could you just read -- maybe
15 it would be easiest if you just read the question that
16 was provided there, which starts fully describe.

17 A. (Reading.)

18 Fully describe all efforts Tel West
19 takes to block its customers from
20 accessing pay per use services, e.g.,
21 operator services, directory assistance,
22 intraLATA toll, interLATA toll,
23 hereafter collectively pay per use
24 services.

25 Q. So in responding to Qwest's data request, is

0210

1 that the understanding of pay per use that you had in
2 mind?

3 A. It's my understanding that we responded to --
4 we responded to this using your terminology of pay per
5 use, which we do not agree with. But for the purposes
6 of the responses, we did use the language of pay per
7 use. Pay per use for -- it's commonly known as features
8 like last call return, three-way calling, and that sort
9 of thing and not inclusive of operator services,
10 directory assistance, intraLATA toll, or interLATA toll,
11 but for the purposes of our responses, we went ahead and
12 used your terms.

13 Q. Okay. So looking back at Exhibit 14 in your
14 notebook, which is tab 14, Tel West's response to Qwest
15 Data Request Qwest-010, again, I read to you that line
16 before that said:

17 Without waiving this objection, Tel West
18 states that it does not attempt to
19 collect these charges from end users
20 except in unusual circumstances.

21 If you look up to the question itself next to
22 where it says Qwest-010, can I gather from the question
23 that these charges refers to pay per use charges as
24 Qwest has defined it?

25 A. Yes.

0211

1 Q. Thank you. Please look at Exhibit 15. Do
2 you recognize this as Tel West's response to Qwest Data
3 Request Qwest-012?

4 A. Yes.

5 Q. And could you read for me the response that
6 Tel West provided beginning with, without waiving this
7 objection.

8 A. (Reading.)

9 Tel West does not attempt to collect
10 these charges from its customers except
11 in very rare circumstances. Tel West
12 can confirm that these charges it is
13 disputing with Qwest in these
14 proceedings have not already been dealt
15 with or collected from its end users.
16 Qwest should refer to response Qwest-010
17 for further information.

18 Q. And again, these services here in your
19 response refers to pay per use services as Qwest has
20 defined them?

21 A. Yes.

22 Q. If you could please turn to Exhibit 16, and
23 do you recognize this as Tel West's response to Data
24 Request Qwest-013?

25 A. Yes.

0212

1 Q. Could you please read the response to sub
2 part A beginning, without waiving this objection, near
3 the top of the page.

4 JUDGE BERG: And, Mr. Swickard, there's a
5 general tendency when you read to speed up, but you may
6 want to just read at a normal tone for the benefit of
7 the court reporter.

8 A. (Reading.)

9 Tel West responds that it rarely
10 attempts to recover these charges from
11 end users. Tel West directs Qwest to
12 its response to Qwest-010.

13 Q. And again, not to be redundant, these charges
14 refers to pay per use charges?

15 A. Yes.

16 Q. As Qwest has defined them?

17 A. Correct.

18 Q. Could you please now turn to Exhibit 29. Do
19 you recognize Exhibit 29 as Tel West's Response to Data
20 Request Qwest-053?

21 A. Yes.

22 Q. About two thirds of the way through the
23 second paragraph, could you read me Tel West's response
24 beginning with, generally Tel West only.

25 A. Sure.

0213

1 Generally Tel West only elects to
2 attempt collection if the amount of the
3 charges incurred is over \$30. Although
4 this is not a rigid standard, most often
5 Tel West has no success in collecting
6 any money from the customer. The
7 customer usually denies having made the
8 calls and refuses to pay for the
9 charges.

10 Q. Thank you.

11 MR. SHERR: Your Honor, at this point, Qwest
12 needs to raise a procedural concern, very great
13 procedural concern that it has, and I'm sure Your Honor
14 has predicted it already by indulging me going through
15 all of those steps. These bills that Tel West, the
16 bills that we went through that Tel West waited until
17 March 8 to provide us reveal that Tel West was
18 untruthful to Qwest, untruthful to Your Honor in two
19 very important ways repeatedly to the great prejudice
20 and essentially in a manner that results in Qwest being
21 ambushed the day before trial regarding the truthfulness
22 of those statements.

23 Number one was the availability of current
24 bills that we had to wait over two weeks from February
25 18, which is when I believe the data requests were due,

0214

1 responses were due, until March 8th for copies of actual
2 bills that we could have then done follow-up discovery
3 on.

4 And number two, repeatedly through testimony,
5 through data request response, and as recently as the
6 brief that was filed on Friday, Tel West up and down
7 explains that it doesn't collect these charges, it's not
8 cost effective for it to collect these charges, it
9 doesn't do it except in rare circumstances, they have a
10 threshold that they follow. And the bills that we
11 received at 5:00 on Friday undermine that completely.
12 We are highly disturbed by this, Your Honor. We ask
13 that some sort of sanctions be imposed on Tel West that
14 it will provide a sufficient disincentive to this party
15 and to any other party from acting as fast and loose in
16 discovery as this party has.

17 JUDGE BERG: Well, let me respond on two
18 points. Number one, my recollection is that there were
19 certain processes involved in not just the sending of
20 records but the retention of records and the ability to
21 search records that all went to their ability to make
22 them available any sooner than the date that they
23 represented. Now you have pointed me to some billing
24 statements that have earlier billing dates or statement
25 dates than others, and it might appear that, in fact,

0215

1 some billing statements could have been made available
2 sooner, but I'm going to find that this wasn't an ambush
3 tactic, that there is no ability to particularly discern
4 between these statements to say which ones could have
5 been available sooner and which ones with billing
6 statement dates later in the February month rightfully
7 could not have been made available when they were done.

8 And on top of it all is, as I have stated
9 before, I think the point you're going to, Mr. Sherr, is
10 to the extent you're going to the credibility of the
11 witness, that's understood, and that's an argument that
12 I'm sure parties will make at every opportunity, and
13 probably rightfully so. At the same time, I don't think
14 that every time a party is able to in some way cast
15 doubt on another party's credibility that it's an
16 opportunity or a time for a sanction to be imposed.

17 In this particular instance, the subject
18 matter in my opinion still goes to the issue of whether
19 or not, in fact, a claim for a refund or a credit on any
20 particular bill is justified on the basis that it's
21 already been collected. To the extent that there are
22 some conflicts, I understand the conflicts, but I'm not
23 going to take any other steps to impose sanctions at
24 this point in time. I will balance that with the
25 credibility of the witnesses and the weight to be given

0216

1 to the various exhibits. I don't know what else
2 practically would make a difference in this proceeding.

3 The parties in their briefs I thought both
4 did a good job of summarizing the ultimate issues apart
5 from the broad range of testimony that was filed in this
6 proceeding. Tel West did emphasize the issue of whether
7 or not Qwest's billed number screening service and dial
8 up service operated as it was represented and intended.
9 It's a point that's not addressed as directly in Qwest's
10 brief, but on the other hand there's quite a bit of
11 argument in Qwest's brief that goes to those issues as
12 well.

13 So at this time, there will be no other
14 sanctions, but I will take arguments based on
15 credibility into account at the close of the proceeding.

16 MR. SHERR: I understand your ruling, Your
17 Honor.

18 JUDGE BERG: Thank you, Mr. Sherr.

19 MR. SHERR: I will proceed with my questions
20 for Mr. Swickard if you would like me to at this time,
21 Your Honor.

22 JUDGE BERG: Yes, sir, let's go for another
23 half hour, please. And, Mr. Sherr, you can just keep an
24 eye on the clock. After we get past 12:10, the next
25 good stopping point for you, let me know.

0217

1 MR. SHERR: I will.

2 JUDGE BERG: All right.

3 BY MR. SHERR:

4 Q. Mr. Swickard, how many states does Tel West
5 do business in?

6 A. Just give me a moment.

7 MR. SHERR: Your Honor, I think I can help
8 the witness answer the question. There is a data
9 request response that provides the rates of Tel West for
10 each state. That may be helpful.

11 MR. HARLOW: Your Honor, if there's a data
12 request that answers the question, it seems it would be
13 helpful to just refer to it in arguments.

14 MR. SHERR: It has not been admitted. It's
15 not part of the notebook here.

16 JUDGE BERG: If the witness can answer the
17 question, please answer the question.

18 THE WITNESS: Just give me a moment.

19 A. Can I ask you a quick question regarding your
20 question. Is it where we're certified or where we
21 actually offer service?

22 BY MR. SHERR:

23 Q. Let me restate the question.

24 In how many states do you provide
25 telecommunications services to customers?

0218

1 A. Approximately 15.

2 Q. Would you accept subject to check that I
3 think the number is 16?

4 A. Yes.

5 Q. How many interconnection agreements or resale
6 agreements does Tel West have total?

7 A. I don't know.

8 Q. Do you have at least one resale agreement or
9 interconnection agreement per state?

10 A. At least one, yes.

11 Q. In some states you have more than one?

12 A. Yes.

13 Q. And how many ILECs do you deal with?

14 A. I think eight.

15 Q. And you have testified you're the president
16 of Tel West?

17 A. Yes.

18 Q. How many employees does Tel West have?

19 A. About 54, I think.

20 Q. And as the president, they all report to you
21 directly or indirectly; is that correct?

22 A. Yes.

23 Q. Describe for me your day-to-day
24 responsibilities as president of this company.

25 A. My day-to-day responsibilities include

0219

1 managing a variety of management personnel that manages
2 a customer service operations group, a provisioning
3 group, a billing, what we call billing auditing group,
4 and work with outside consultants and counsel
5 essentially, and including accountants and things like
6 that.

7 Q. So primarily managerial?

8 A. Yes.

9 Q. And not so much day-to-day operations?

10 A. I think when you're a small business owner,
11 you're really involved in both, and I would consider Tel
12 West a small business. So there's certainly areas where
13 I'm more involved with detailed issues versus other
14 areas where I'm really involved at a higher level, so.

15 Q. Did you negotiate each of the at least 16
16 interconnection agreements you said you have in place at
17 present?

18 A. No.

19 Q. Other employees assisted you?

20 A. Other employees or outside counsel or
21 support.

22 Q. Did you negotiate any of those yourself?

23 A. No.

24 Q. So you didn't negotiate the Washington
25 interconnection agreement? And let me be clear, when I

0220

1 refer to the Washington interconnection agreement, I'm
2 referring to the current agreement.

3 A. I did not participate in active negotiations
4 with Qwest.

5 Q. Who did?

6 A. Don Taylor, an outside consultant that we
7 hired.

8 Q. But you signed the intersection agreement?

9 A. Yes, I did.

10 Q. On behalf of Tel West?

11 A. Yes, I did.

12 Q. Do you know who supplied the first draft of
13 the interconnection agreement, whether it was Tel West
14 or it was Qwest?

15 A. No, I do not. I assume Qwest.

16 Q. You didn't direct -- strike that.

17 Did you direct Mr. Taylor to present a draft
18 interconnection agreement to Qwest?

19 A. I directed Mr. Taylor to negotiate with Qwest
20 on a variety of issues that we felt were important.
21 Does that answer your question?

22 Q. Did Mr. Taylor do that by letter?

23 A. I believe he notified Qwest via letter,
24 E-mail, and telephone conversations with our Qwest
25 negotiator.

0221

1 Q. But to your knowledge, Mr. Taylor didn't
2 draft an entire agreement and present it to Qwest?

3 A. No.

4 Q. Do you know how many drafts of the agreement
5 there were before it was signed?

6 A. No.

7 Q. Do you know if there was more than one?

8 A. I don't know.

9 Q. During the course of the negotiations, did
10 Tel West, and when I refer to Tel West, I mean you or
11 your agent, Mr. Taylor, did you or Tel West object to
12 Section 5 --

13 MR. HARLOW: Your Honor, object to the term
14 agent. It hasn't been established the relationship
15 between Mr. Taylor and Tel West.

16 JUDGE BERG: All right, I understand --

17 MR. HARLOW: The question is all right other
18 than that word.

19 JUDGE BERG: Yes, I understand agent may
20 connote something different. I understand Mr. Taylor
21 was a consultant.

22 MR. SHERR: That's fine.

23 JUDGE BERG: And so, Mr. Sherr, if you would
24 just go ahead and for my benefit repeat the question.

25 MR. SHERR: I will.

0222

1 BY MR. SHERR:

2 Q. Mr. Swickard, during the course of the
3 negotiation of the interconnection agreement, to your
4 knowledge, did Tel West, meaning Tel West employees or
5 Mr. Taylor, its consultant, object to Section 5.4.4 of
6 the agreement as drafted?

7 MR. HARLOW: Excuse me, could the witness be
8 provided a copy of the interconnection agreement and
9 that language?

10 MR. SHERR: And for this particular language,
11 Your Honor, we have a complete copy of the
12 interconnection agreement, this particular language is
13 also in Mr. Brotherson's testimony. Would you prefer an
14 entire copy?

15 MR. HARLOW: It's up to you. I just want the
16 sections you're questioning him on.

17 JUDGE BERG: I think it's important that he
18 either have a copy for reference or some further
19 definition of what 5.4.4 covers that would enable him to
20 answer in more detail.

21 MR. SHERR: Your Honor, we will provide
22 Mr. Swickard with a copy of the interconnection
23 agreement. I did not make ten copies of that document
24 because it's so --

25 JUDGE BERG: I understand, that's not

0223

1 necessary. And likewise, I think it's something that
2 you -- certainly the agreement, reference to the
3 agreement, I think will suffice. If there are other
4 documents that need to be referred to by section number,
5 it's possible you could describe the section for the
6 witness if that may be helpful.

7 MR. SHERR: Understood, Your Honor.

8 And for the benefit of the Bench and for
9 Mr. Harlow and Mr. Rice, that section appears on page 3
10 of Mr. Brotherson's testimony, which is Exhibit 39,
11 which has been admitted.

12 BY MR. SHERR:

13 Q. Mr. Swickard, have you found Section 5.4.4 in
14 the agreement?

15 A. Yes, I have.

16 Q. Okay. To your knowledge, did Tel West during
17 the course of the negotiations object to the inclusion
18 of that language?

19 A. I don't know. I was not actively involved in
20 the negotiations of this agreement.

21 Q. So you don't know -- do you know whether this
22 was discussed specifically?

23 A. I don't know.

24 Q. And same question for Section 6.2.9?

25 MR. HARLOW: What's the question, did Tel

0224

1 West object?

2 Q. Could you please find 6.2.9 in the agreement,
3 and let me know when you have found it.

4 A. I found it.

5 Q. To your knowledge, did Tel West object to the
6 inclusion of that language in the agreement when it was
7 being negotiated?

8 A. I don't know.

9 Q. Did Tel West to your knowledge seek
10 arbitration under Section 252 of the Telecommunications
11 Act of that Section 6.2.9?

12 A. No, we did not.

13 Q. And did Tel West seek arbitration under
14 Section 252 of the Act of the provision of Section 5.4.4
15 during the negotiations of the agreement?

16 A. No, we did not.

17 Q. If you could please look back to Section
18 5.4.4, did Tel West suggest the -- well, let me start
19 over.

20 In this proceeding, it's correct that Tel
21 West has suggested that the Commission adopt a 30 day
22 penalty mechanism with regard to Qwest processing
23 billing disputes; is that correct?

24 MR. HARLOW: Object to the use of the term
25 penalty.

0225

1 Q. I can withdraw the word penalty. A 30 day
2 mechanism?

3 A. Yes, that's true.

4 Q. Which, in effect, if Qwest does not respond
5 to Tel West within 30 days of receiving its billing
6 disputes, that those billing disputes are deemed to have
7 been resolved in Tel West's favor; is that correct?

8 A. That is correct.

9 Q. To your knowledge, during the course of the
10 negotiations of this agreement, did Tel West suggest
11 that very mechanism to Qwest?

12 A. No, we did not that I'm aware of.

13 Q. To your knowledge, were any provisions of
14 this interconnection agreement modified after the first
15 draft was provided?

16 A. I don't know.

17 Q. To your knowledge, of any of the
18 interconnection agreements that Tel West is a party to,
19 in the negotiation process, have any terms ever been
20 modified from their original drafts?

21 A. I don't know.

22 Q. Mr. Swickard, could you look back in the
23 notebook at Exhibit 1, which again is your testimony,
24 and look at page 4. Let me know when you're ready.

25 A. I have page 4.

0226

1 Q. Could you read me the language that starts on
2 line 15, that paragraph that begins, based on my
3 understanding.

4 A. (Reading.)

5 Based on my understanding, Tel West's
6 obligation for OS/DA changed under the
7 current agreement, which was effective
8 on October 31st, 2001. Once that
9 agreement became effective, I informed
10 Qwest's billing account management that
11 Tel West will no longer accept these
12 services from Qwest.

13 Q. What did you mean by based on your
14 understanding?

15 A. Based on my understanding of our agreement.

16 Q. That you weren't involved in negotiating?

17 A. Correct.

18 Q. Where did that understanding come from?

19 A. Reading the final agreement that I signed.

20 Q. So before you signed the agreement, you read
21 the entire agreement?

22 A. Yes, I did.

23 Q. So it's your testimony or it has been your
24 testimony that Tel West as of that moment had a
25 contractual right to resell a basic line free of access

0227

1 to OS and DA; is that correct?

2 MR. HARLOW: Your Honor, I'm going to object
3 to the extent it calls for a legal conclusion. Request
4 that questions be limited to his understanding.

5 JUDGE BERG: I thought that was the basis of
6 the question, but perhaps, Mr. Sherr, if you could --

7 MR. SHERR: I could use those magic words,
8 Your Honor.

9 JUDGE BERG: Yes.

10 BY MR. SHERR:

11 Q. Is it your testimony that as of the effective
12 date of the agreement that Tel West, is it your
13 understanding, that Tel West then had a contractual
14 right to resell a basic line free of access of OS and DA
15 without having to pay for blocking products?

16 A. It's my understanding that Tel West would not
17 be required to purchase OS or DA from Qwest once this
18 agreement was accepted by the Commission.

19 Q. Now you just said it's my understanding and
20 talked about it in the present tense; was that your
21 understanding as of the date you signed the agreement?

22 A. Yes.

23 Q. If you could please look to Exhibit 19. Do
24 you recognize this as Tel West's response to Data
25 Request Qwest-022?

0228

1 A. Yes, I do.

2 Q. And could you look at the sub part B, which
3 says:

4 Fully describe all facts and produce all
5 documents supporting your contention
6 that Tel West and Qwest specifically
7 negotiated the issue of Tel West's
8 customers' access to pay per use
9 services.

10 Do you see where I read?

11 A. Yes.

12 Q. Could you read just to yourself the paragraph
13 below. It's too lengthy probably to be read into the
14 record. And let me know when you have read that.

15 A. Okay.

16 (Reading.)

17 I have read it.

18 Q. Have you looked at page 3 of that document?
19 Could you look to page 3 of that document, still under
20 tab 19, who is the respondent for Tel West on this data
21 request, page 3 of tab 19?

22 A. Okay, I'm sorry, on mine there's a
23 handwritten number, and then there's also a typed
24 number, which --

25 Q. I'm referring to the handwritten number in

0229

1 the bottom right-hand corner.

2 A. Okay.

3 Q. Who was the respondent on this data request
4 response?

5 A. I was.

6 Q. So although you didn't know anything about
7 the actual negotiation of the agreement, as you have
8 just testified, you responded regarding -- in this data
9 request, you responded to what happened during the
10 negotiation; is that correct?

11 A. I'm sorry, I only read the response. Would
12 you like me to read the entire data request again?

13 Q. Did you prepare this data request response?

14 A. Yes, I did.

15 Q. But you testified earlier that you were not
16 involved in the day-to-day negotiation of the agreement.

17 A. That is correct.

18 Q. Does this response, is it still true and
19 correct?

20 A. Yes, it is.

21 Q. Would you please look at page 4 of this
22 exhibit, which is on yellow paper, the first page on
23 yellow paper. Let me know when you have found it.

24 A. Found it.

25 Q. Now these are purported to be Mr. Taylor's

0230

1 notes from his negotiations with Qwest for the
2 interconnection agreement; is that correct?

3 A. Yes.

4 Q. Okay. And I won't read what it says, because
5 Tel West has indicated that this is confidential, but
6 the line item number 5 is with regard to Mr. Taylor's
7 notes with regard to negotiation of the OS/DA issue; is
8 that correct?

9 A. Yes.

10 Q. And after identifying the issue, it appears
11 to me that he explained the progress on that point in
12 the negotiations; is that correct?

13 A. I'm not sure that I understand your question.

14 Q. Well, the words that follow, starting with
15 the sixth word where it says Nancy, starting there, the
16 rest of that line, the rest of that bullet point number
17 5 refers, it appears to me at least, that that is Don
18 Taylor's description of the status of the negotiations
19 on that particular issue. Do you think that's accurate?

20 A. Yes, this is -- yes.

21 Q. Okay. And this does not indicate that Qwest
22 had agreed to the OS/DA treatment that Tel West was
23 seeking?

24 MR. HARLOW: Your Honor, I object, the
25 document speaks for itself.

0232

1 that.

2 MR. SHERR: Okay.

3 BY MR. SHERR:

4 Q. It says, OS/DA issue, no answer; is that
5 correct?

6 A. Yes, it does.

7 Q. So in your opinion, does that indicate
8 whether Qwest had agreed to the OS/DA demand that Tel
9 West was making?

10 A. Again, I didn't view these notes prior to
11 today. These are Don's notes.

12 Q. What do you think it means?

13 A. I think it means that the OS/DA issue is
14 still pending.

15 Q. Now the interconnection agreement went into
16 effect but -- was signed in August of 2001; is that
17 correct?

18 A. I assume that's correct. I don't know the
19 date.

20 Q. Will you accept that subject to check, that
21 that is the date?

22 A. Yes.

23 Q. Okay. And it was effective, as you
24 testified, on October 31 of 2001; is that correct?

25 A. Correct.

0233

1 Q. At any time after the agreement became
2 effective, did Tel West inform Qwest -- I should say,
3 did Tel West instruct Qwest to remove dial lock and all
4 other blocking products from its lines?

5 A. No, it did not.

6 Q. Instead, Tel West continued to not only pay
7 the recurring charges associated with those products
8 that remained on ongoing lines, but also ordered those
9 products and paid the nonrecurring charges for new lines
10 that it acquired after that time; is that correct?

11 A. For the most part, yes.

12 Q. What about that is not correct?

13 A. There are some lines that we did not
14 provision dial lock on.

15 Q. When you answered data requests, did you not
16 indicate that you order dial lock on 100% of lines where
17 available?

18 A. We do order dial lock on 100% of lines where
19 available. There are some cases where we could not
20 order dial lock because of Qwest's system or
21 capabilities for central office. And also in the case
22 of conversion orders, it appears that there are some
23 customers that were not provisioned with dial lock.

24 Q. But on those lines, you don't have any reason
25 to believe that it was not technically feasible to order

0234

1 dial lock; is that correct?

2 MR. HARLOW: Objection, vague, what do you
3 mean by those lines?

4 Q. On the lines that were converted,
5 Mr. Swickard, you just said that there were also some
6 converted lines that dial lock was not ordered for; is
7 that correct?

8 A. That's correct.

9 Q. Do you believe that dial lock was available
10 technically for those lines?

11 A. I don't know. I didn't check those lines.

12 Q. And when Tel West complained to the
13 Commission informally in July of 2001 and formally in
14 October of 2001, didn't Tel West describe its OS/DA
15 issue as a non-contractual violation by Qwest?

16 MR. HARLOW: You know, Your Honor, I would
17 appreciate it if Mr. Swickard's referring again to
18 documents that they be placed in front of the witness
19 for his review.

20 MR. SHERR: If Mr. Swickard doesn't know, I
21 can certainly point him to those documents.

22 JUDGE BERG: I think you can -- I will allow
23 the witness to answer the question without reference to
24 the document if he can. But again, I think that if
25 where, as a foundation to another question, if that's

0235

1 important, I think it's good to ask it. If you're
2 looking to make a point based on the face of the
3 document, that's something that the document will just
4 speak to itself, Mr. Sherr.

5 MR. SHERR: Okay.

6 JUDGE BERG: And I see some echoes from the
7 briefs that the parties have filed already, and there
8 will be that chance to make arguments.

9 MR. SHERR: Okay, I would be happy to direct
10 Mr. Swickard so that he can confirm the question that I
11 just asked.

12 BY MR. SHERR:

13 Q. Mr. Swickard, if you could look at Exhibit 6,
14 please, this is under tab 6. Have you found that
15 exhibit?

16 A. Yes, I have.

17 Q. Could you look at page 9, please. And now
18 that I directed you to do that, let me direct you back
19 to the first page. This is a copy of Tel West's
20 original complaint and petition in this proceeding, is
21 it not?

22 A. This is a document that I had hired
23 Mr. Taylor to draft initially to discuss the complaints
24 against Qwest.

25 Q. Would you agree subject to check that this is

0236

1 the original complaint and petition that was filed to
2 commence this proceeding?

3 A. Yes.

4 Q. Could you please look at page 9. Just to
5 follow up on what you said, when Mr. Taylor --
6 Mr. Taylor drafted this for you?

7 A. Yes, he did.

8 Q. And when Mr. Taylor did that, he was doing
9 that on your behalf; is that correct?

10 A. That's correct.

11 Q. As your consultant?

12 A. Yes.

13 Q. Looking at page 9, the top of the page, it
14 says, additional non-contractual complaints against
15 Qwest, does it not?

16 A. Yes, it does.

17 Q. Could you, again this is too long probably to
18 read into the record, but could you just read to
19 yourself the first paragraph, and let me know when
20 you're done.

21 A. (Reading.)

22 Yes, I'm done.

23 Q. Okay. Could you please read for the sake of
24 the record just the one sentence that starts seven lines
25 from the bottom. At the very right of the line, it

0237

1 says, although, continues, charging Tel West. Could you
2 read that line, please.

3 A. (Reading.)

4 Although charging Tel West for these
5 blocking features is not a violation of
6 its agreement with Tel West, it
7 demonstrates clearly that Qwest shows no
8 interest in working with Tel West as a
9 valued wholesale customer and
10 co-provider of service to end users.

11 Q. Thank you. Could you look at what was
12 Exhibit H, in the same tab, Exhibit H to the complaint.
13 It's the very last page of the exhibit. And at the top
14 it says, notice to Qwest of intent to file a complaint.
15 Do you see where I'm reading?

16 A. Yes, I do.

17 Q. Okay. Was that dated October 10, 2001?

18 A. Yes, it was.

19 Q. And did you sign that document?

20 A. Yes, I did.

21 Q. And did you sign it on behalf of Tel West?

22 A. Yes, I did.

23 Q. As its president?

24 A. Yes.

25 Q. Okay. Could you please read out loud the

0238

1 section that starts in the middle of the page, also
2 stated in the complaint, read that line and the first
3 bullet point under it.

4 A. (Reading.)

5 Also stated in the complaint are several
6 non-contract related complaints against
7 Qwest as demonstration of Qwest's
8 failure to treat Tel West as a valued
9 wholesale customer.

10 Q. And keep reading the next line as well,
11 please.

12 A. (Reading.)

13 Requiring added cost, toll and directory
14 assistance blocking features.

15 Q. That's fine, thank you.

16 To your knowledge, in either the complaint
17 which is at the front of this exhibit or in this October
18 10 notice, did Tel West refer to Section 6.2.9 of the
19 new agreement; do you know?

20 A. I'm sorry, can you ask your question again?

21 Q. Sure. To your knowledge, in either -- well,
22 to your knowledge, in the complaint itself, which was
23 the first document we looked at, when discussing the
24 OS/DA issue, which was the paragraph you just read, did
25 it make any mention of Section 6.2.9 of the new

0239

1 agreement? That's on page 9 of the complaint.

2 A. I'm not aware that it does.

3 Q. Okay. And Exhibit H, which is the last thing
4 you just read from, when discussing the OS/DA issue,
5 does it make any mention of the new interconnection
6 agreement?

7 A. No, it does not.

8 Q. And no mention of Section 6.2.9 specifically?

9 A. No, it does not.

10 Q. And the complaint was filed on October 30, I
11 believe. Would you accept that subject to check,
12 October 30 of 2001?

13 A. Sure, I will accept that.

14 Q. And the new interconnection agreement became
15 effective the very next day, did it not?

16 A. Yes, it did.

17 Q. So is it your testimony that -- and you have
18 testified that it was your belief as of the date you
19 signed the interconnection agreement, the new one, that
20 Section 6.2.9 entitled Tel West to a basic line with no
21 access to operator services or directory assistance
22 without having to pay for blocking features; is that
23 correct?

24 A. Our understanding is that we don't have to
25 purchase under our current agreement operator services

0240

1 or directory assistance from Qwest.

2 Q. I'm not asking your understanding today. I
3 understand your understanding today from reading your
4 brief. What I'm asking is, as of the time that you
5 signed the agreement, I believe you testified that as of
6 the day you signed the agreement, because you read it in
7 full, it was your understanding that you were going to
8 be able to resell basic lines that did not have access
9 to OS and DA and were not going to be required to pay
10 for a blocking product to accomplish that. Was that not
11 your testimony?

12 A. The way that you're phrasing it is a little
13 bit misleading. What we -- what I thought in terms of
14 my understanding when I read the agreement was that I
15 looked throughout the entire agreement to see if I was
16 responsible for directory assistance or operator
17 services to Qwest, and so we -- I believed that I would
18 not have to buy operator services or directory
19 assistance from Qwest.

20 Q. So that was your belief?

21 A. Yes.

22 Q. As of the date you signed it?

23 A. Yes.

24 Q. But you don't mention that in this complaint,
25 do you?

0241

1 A. We do not, and I --

2 Q. And this was filed the day before the new
3 agreement became effective, didn't it?

4 MR. HARLOW: Objection, asked and answered.

5 MR. SHERR: We can let the record reflect
6 that that's what Mr. Swickard answered.

7 Your Honor, can I have just a moment.

8 Your Honor, I think this would be a good time
9 to take a break if that's acceptable.

10 JUDGE BERG: All right, let's be back at
11 between -- try and be back at 1:30. Worse case
12 scenario, we want to try and be underway at 1:45. So if
13 you have a window there, if you shoot for 1:30 to be
14 back, then that gives you a little time to settle in,
15 and hopefully we're back on the record at 1:45.

16 At this point, we're adjourned for lunch.

17 (Luncheon recess taken at 12:20 p.m.)

18

19 A F T E R N O O N S E S S I O N

20 (1:45 p.m.)

21 JUDGE BERG: I will indicate that over the
22 lunch hour Mr. Sherr was called out on a family medical
23 emergency. Ms. Anderl will resume cross examination of
24 Mr. Swickard.

25 Mr. Swickard, I will just remind you that you

0242

1 remain subject to the oath you took this morning.

2 Ms. Anderl, whenever you're ready, you can go
3 ahead and begin.

4 MS. ANDERL: Thank you, Your Honor.

5

6 C R O S S - E X A M I N A T I O N

7 BY MS. ANDERL:

8 Q. Good afternoon, Mr. Swickard.

9 A. Good afternoon.

10 Q. I'm Lisa Anderl, an attorney for Qwest. I
11 will be finishing the questioning for you this
12 afternoon.

13 Mr. Swickard, in looking at some of the data
14 request responses, I see the name as a respondent
15 indicated of Stan Efferding. Is that a Tel West
16 employee?

17 A. Yes, it is.

18 Q. What does he do for you?

19 A. He is an operations manager. He does --
20 performs operations functions supervising our customer
21 service group, our billing group which does audit
22 claims, and our provisioning group.

23 Q. Does he have any responsibility for the
24 preparation of the disputed items on the monthly bills
25 that Tel West disputes to Qwest?

0243

1 A. Yes, he does supervise the group that does
2 that.

3 Q. And who specifically in his group does that,
4 or if there's more than one?

5 A. Yeah, there's a couple of people that do that
6 sort of work. Are you looking for their names?

7 Q. Yes, please.

8 A. Okay. One is Moon Wymore, M-O-O-N,
9 W-Y-M-O-R-E. Another person that works in that group is
10 Debra McBride. And then there's a couple of new
11 employees. One is named Lisa, and I don't know her last
12 name, and then we have one temporary person working on
13 that as well.

14 Q. Thank you. Would you turn to tab or Exhibit
15 3 in the notebook that you have. Can you identify that
16 document or series of documents for me?

17 A. It's Tel West's billing disputes with Qwest.

18 Q. Would that be for the period of April 2001
19 through November of 2001?

20 A. Yes.

21 Q. To the best of your knowledge, are these all
22 of the disputed charges that Tel West had with Qwest for
23 that period of time?

24 A. Yes.

25 Q. Do you know what PGOCC stands for when that

0244

1 acronym is used on that document?

2 A. I don't know what it stands for. I think
3 what they're requesting is custom choice.

4 Q. Is that a feature package?

5 A. Right.

6 Q. That Qwest offers?

7 A. Yes.

8 Q. And does Tel West occasionally resell that
9 feature package?

10 A. Yes.

11 Q. Mr. Swickard, could you please turn to
12 Exhibit C-18.

13 A. I'm sorry, C?

14 Q. Oh, 18, I'm sorry. And you see that the
15 first two pages are white, and the rest of it is yellow?

16 A. Yes.

17 Q. Okay, could you turn to page hand numbered
18 page 5, please.

19 A. Yes.

20 Q. Do you see the customer name on that bill,
21 and I don't want you to say it?

22 A. Yes.

23 Q. Is that individual a Tel West employee?

24 A. Yes.

25 Q. And for how long has he been a Tel West

0245

1 employee approximately?

2 A. Over a year.

3 Q. And do you know if he has received telephone
4 service from Tel West for approximately that same period
5 of time?

6 A. Yes.

7 Q. Turn to page hand numbered page 2 of that
8 same Exhibit 18 or C-18. Is that individual also a Tel
9 West employee?

10 A. Yes.

11 Q. And is that the same individual for whom a
12 bill was produced at hand numbered page 9?

13 A. Yes.

14 Q. Let me ask you some questions about the
15 billing dispute provisions in the interconnection
16 agreement generally. Do you still have a copy of the
17 new interconnection agreement on the table with you?

18 A. Yes.

19 Q. And if you would turn to Section 5.4.4.

20 MS. ANDERL: I will apologize in advance to
21 the parties and to the Judge if I seem to reask a
22 question, one or more questions that Mr. Sherr already
23 asked. I believe we probably don't mean to repeat, but
24 rather just mean to confirm testimony that's already
25 been given, and the hand off from one lawyer to the next

0246

1 might have made that not as smooth as it could have
2 been.

3 BY MS. ANDERL:

4 Q. Now the Section 5.4.4 contains a provision
5 requiring both Qwest and Tel West to expedite the
6 investigation of any disputed amounts; is that right?

7 A. Yes.

8 Q. And was there a provision requiring an
9 expedited investigation in the first or old
10 interconnection agreement?

11 A. I don't know. I don't think so.

12 Q. And then the current agreement that we're
13 looking at went into effect on October 31st of 2001?

14 A. Yes.

15 Q. Now does Section 5.4.4 contain any
16 requirement that the billing disputes raised by either
17 party be resolved within a specific number of days?

18 A. No, I don't believe so.

19 Q. Do you know if there are any other provisions
20 in the interconnection agreement that would require
21 investigation and resolution of billing disputes in a
22 set number of days?

23 A. I'm not aware of any.

24 Q. Do you know if the word expedite as its used
25 in that Section 5.4.4 is defined anywhere in the

0247

1 agreement?

2 A. I don't know.

3 Q. Is it your testimony that expedited in this
4 case means 30 days?

5 A. I'm sorry, can you ask your question again?

6 Q. Is it your position that expedite in this
7 case, as the word is used in Section 5.4.4, means 30
8 days?

9 A. I don't know that that's my position. I
10 think it's one of our recommended remedies.

11 Q. Do you think that it would constitute an
12 expedited investigation if Tel West had one billing
13 dispute on a single charge and Qwest took 30 days to
14 investigate it and resolve it?

15 A. I think depending on the nature of the claim.

16 Q. Would you agree that it might take Qwest a
17 different amount of time to investigate and resolve 10
18 claims than it would to investigate and resolve 1,000
19 claims?

20 A. I think that -- I mean I don't know that --
21 that I can answer that question exactly. I mean it
22 depends on the amount of resources I think that Qwest
23 dedicates to that to resolve it.

24 Q. Do you think that would also depend on the
25 nature of the disputed charges?

0248

1 A. Yes.

2 Q. Did you read Mr. Brotherson's testimony prior
3 to taking the stand today?

4 A. Yes.

5 Q. Did you read in his testimony the description
6 of what Qwest does in order to investigate and resolve a
7 billing dispute generally?

8 A. Yes.

9 Q. Now while you were with U S West, you did not
10 process any wholesale billing disputes, did you?

11 A. No, I did not.

12 Q. Was there anything in Mr. Brotherson's
13 testimony with regard to the description of what Qwest
14 does to investigate and resolve a billing dispute that
15 you believe does not happen?

16 A. I don't remember everything about his
17 testimony, I'm sorry.

18 Q. So as you sit here today though, you can't
19 think of anything that when you read it, you thought
20 that that sounded wrong?

21 A. The -- again, I think I would probably rather
22 review it before I said anything. But based on what I
23 remember, it sounded like it was certainly more
24 challenging than had been described by the person who
25 performed the work to me in the past.

0249

1 Q. Was that Sheryl Hild?

2 A. Yes.

3 Q. And you worked with Sheryl during most of
4 2001 as your billing dispute manager; is that right?

5 A. Yes.

6 Q. Okay. Can I ask you to turn, Mr. Swickard,
7 to Mr. Brotherson's testimony, which is in your book. I
8 will give you a page number here in a moment, or a tab
9 number rather, 39, and if you would turn to page 7 of
10 that document. Do you have that?

11 A. Yes.

12 Q. Do you see there that that is
13 Mr. Brotherson's testimony with regard to the process
14 that Qwest follows to investigate and resolve billing
15 disputes with Tel West?

16 A. Yes.

17 Q. Do you see on line 11, Mr. Brotherson begins
18 to describe the first step in the process, that is to
19 pull up the bill Tel West is disputing to check the
20 description and amount?

21 A. Yes.

22 Q. Do you have any reason to believe that that
23 does not happen?

24 MR. HARLOW: Objection, Your Honor, no
25 foundation.

0250

1 MS. ANDERL: Well, I asked earlier, Your
2 Honor, whether there was anything in Mr. Brotherson's
3 testimony that when Mr. Swickard read it he believed it
4 did not sound accurate, and he said he wanted to review
5 it before he could make a specific response, and I'm
6 therefore taking him through it.

7 JUDGE BERG: Rather than walk him through it
8 line by line, perhaps we can give him an opportunity to
9 read it and, you know, respond in a broader sense. It
10 might help you focus in, and it might save us some time.
11 Is that acceptable, counsel?

12 MS. ANDERL: Your Honor, that was my question
13 earlier, is whether there was generally, whether there
14 was anything in there that he could identify that
15 sounded like it did not happen, and he couldn't answer
16 that.

17 JUDGE BERG: I understand.

18 MS. ANDERL: So I believe that all we can do
19 is go through it on a step by step basis.

20 JUDGE BERG: Well, he was answering off the
21 top of his head. If he had an opportunity to take a
22 moment and read it, it may save you some work.

23 MR. HARLOW: Your Honor, my objection goes
24 more to the fact that the witness -- in fact, Qwest made
25 a point of crossing the witness and asking the witness,

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1 he has never done this function that's described in
2 here, so there's no foundation that he would be able to
3 either confirm or rebut the steps that Mr. Brotherson
4 testifies to.

5 JUDGE BERG: Well, Mr. Swickard is the
6 president of the company, and I wouldn't want to
7 preclude him from having some relevant experience that
8 might relate to this, and I would rather he read it and
9 then reanswer the question.

10 MS. ANDERL: Mr. Harlow's representation
11 could be taken as a stipulation that Tel West doesn't
12 dispute these steps. That would be fine as well.

13 MR. HARLOW: No, my objection simply went to
14 whether you had laid the proper foundation for asking
15 these questions.

16 JUDGE BERG: I think Ms. Anderl is posing
17 that there be a stipulation. Would you prefer that we
18 go through a question and answer?

19 MR. HARLOW: Yes, Your Honor.

20 JUDGE BERG: All right.

21 Ms. Anderl, I will leave it to you how best
22 to proceed.

23 BY MS. ANDERL:

24 Q. Mr. Swickard, do you have any basis to
25 believe that the first step as described by

0252

1 Mr. Brotherson on lines 11 and 12 ending on 13 does not
2 happen in a Qwest resolution of a Tel West billing
3 dispute?

4 A. No, I do not.

5 Q. The second step as identified by
6 Mr. Brotherson is that the billing manager reviews the
7 end user's customer service record generally to check
8 for any restriction or blocking services. Do you have
9 any reason to believe that that doesn't happen?

10 A. I do.

11 Q. What's the basis for that?

12 A. Not all disputed items have a USOC associated
13 with them.

14 Q. To the extent that the disputed charge would
15 have a USOC associated with it, do you have any reason
16 to believe that that would not be a step that would have
17 to be taken?

18 A. No.

19 Q. The next step applicable to either some or
20 all of the charges is identified on lines 16 through 20,
21 which would be the billing manager going into a Qwest
22 data base to verify the date the service was installed
23 and to check the original LSR on services where a
24 blocking -- on contested charges where a restriction or
25 blocking service would be necessary. Do you have any

0253

1 reason to believe that the billing manager does not
2 check the LSR?

3 A. I believe they only check the LSR if there's
4 a question regarding provisioning of the order. Is that
5 an answer to your question?

6 Q. What do you mean by that?

7 A. That they only check the local service
8 request that we have sent in if there actually is some
9 sort of reason to believe that it was not provisioned
10 correctly by Qwest.

11 Q. Isn't the LSR the form where Tel West would
12 request the blocking or restriction service?

13 A. Yes.

14 Q. Okay. And so if there were a question about
15 whether it had been properly ordered in the first place,
16 the billing manager would probably check the LSR; isn't
17 that right?

18 A. I'm sorry, one more time.

19 Q. I will rephrase it.

20 If there were a question about whether Tel
21 West had ordered the billing or blocking or restriction
22 service, isn't it true that one way to verify that would
23 be to check the LSR?

24 A. Yes.

25 (Cell phone interruption.)

0254

1 MS. ANDERL: I apologize, Your Honor, under
2 the circumstances, I had the phone on just in case. I
3 will turn it off.

4 BY MS. ANDERL:

5 Q. And at lines 20 through 22, Mr. Brotherson
6 describes that depending on what the result of the
7 investigation up to that point is, the billing manager
8 might sustain the disputed charge indicating that no
9 block had been requested or something along those lines.
10 Do you see that?

11 A. Yes.

12 Q. And has that on occasion been your
13 experience, that that has happened?

14 A. Yes.

15 Q. And the next possible step there is the flip
16 side of that, if I can describe it that way, which is
17 that perhaps the service was requested but not put in
18 place, in which case Tel West would be given a credit by
19 Qwest. Do you see that?

20 A. Yes.

21 Q. And is it accurate that that has also been
22 your experience on some of the disputed charges?

23 A. Yes.

24 Q. Now do you understand FIDs, F-I-D-S, field
25 identifiers?

0255

1 A. Not really.

2 Q. No further questions on Mr. Brotherson's
3 testimony, so let's kind of just go back to the
4 negotiation and other discussions around Section 5.4.4
5 of the contract. Is it your understanding that the
6 language in 5.4.4 is Qwest proposed language?

7 A. If I can just dig up my interconnection
8 agreement, it's out of order.

9 Q. Sure, it's the one that requires the parties
10 to expedite the investigation of disputed amounts.

11 A. One more time, I'm sorry?

12 Q. Is that language Qwest's draft language or
13 Tel West's draft language?

14 A. I don't know.

15 Q. Do you know if Tel West disputed the language
16 in Section 5.4.4 before you signed the interconnection
17 agreement?

18 A. I don't know.

19 Q. And you didn't request arbitration on that
20 language, did you?

21 A. No, I did not.

22 Q. Did Tel West ask Qwest to include a 30 day
23 automatic resolution mechanism in the interconnection
24 agreement such as what you're asking for here?

25 A. I wasn't -- I wasn't part of the negotiation

0256

1 between Qwest and Tel West other than signing the
2 agreement once it was completed.

3 Q. You signed the agreement on or about August
4 15th of 2001?

5 A. That seems right. I don't have it in front
6 of me, but that seems the right time.

7 Q. If you want to verify it, Mr. Swickard, you
8 can turn to page 256 of the interconnection agreement,
9 and that will enable you to check that.

10 A. I'm sorry, what was the date that you said?

11 Q. August 15th, 2001.

12 A. That's correct.

13 Q. Now at that time, August 15th, 2001, were
14 there billing disputes pending between Tel West and
15 Qwest from April and May of 2001?

16 A. I would assume so, yes.

17 Q. Is it correct that Tel West's current
18 practice is to dispute 100% of pay per use charges?

19 MR. HARLOW: Objection, vague, we need a
20 definition of pay per use, whether she's referring to it
21 in the sense that they defined in the data request or in
22 the sense that Mr. Swickard understands it.

23 JUDGE BERG: I think we know what you mean,
24 Ms. Anderl, but it would be helpful if we could give it
25 more definition for someone else who might be looking at

0257

1 the record.

2 BY MS. ANDERL:

3 Q. Mr. Swickard, accepting for the moment
4 Qwest's definition of pay per use charges, which
5 includes operator services, directory assistance, and
6 inter and intraLATA toll, is it correct that Tel West
7 disputes 100% of those charges back to Qwest?

8 MR. HARLOW: Your Honor, I object to the use
9 of the term pay per use defined that way. I think
10 particularly since we have another category of charges
11 that are, in fact, called pay per use that it will be
12 very confusing, perhaps even to us in the hearing room,
13 but certainly to someone reviewing the record, and I
14 think we should use the terms, when we're talking about
15 OS/DA toll, we should use those terms.

16 MS. ANDERL: Your Honor, I would call your
17 and Mr. Harlow's attention to Exhibit Number 51 that was
18 just admitted at Mr. Harlow's request, which contains
19 that very definition of pay per use charges as Qwest
20 defined them for purposes of this docket. I guess I
21 don't understand Mr. Harlow's objection at this point.
22 I think he's trying to just inject delay and confusion
23 into this docket with these objections.

24 JUDGE BERG: Well, I think Mr. Harlow is
25 trying to develop some uniform terminology, but I think

0258

1 we're past that point. We already have Tel West that
2 uses one sense of pay per use in its operations, and I'm
3 certain that Qwest didn't use this term in its
4 definition because it wanted to confuse the matter.

5 MS. ANDERL: That would be correct.

6 JUDGE BERG: And I don't see that the pay per
7 use charges or services as defined or used by Tel West
8 are really at issue here except to the extent that they
9 appear as a line item billing on some of those copies
10 that were produced. So I'm going to let counsel just
11 pose it clarified what they mean, and we understand that
12 the two companies use these terms differently, and
13 answers will just have to be given in that context.
14 That will apply the same if Tel West needs to make
15 reference to pay per use when Qwest witnesses are on the
16 stand.

17 MS. ANDERL: And, Your Honor, so that the
18 record is sufficiently clear, I can break it down more
19 granularly.

20 BY MS. ANDERL:

21 Q. Mr. Swickard, is it correct that Tel West
22 disputes back to Qwest 100% of the directory assistance
23 charges that appear on Qwest's bills to Tel West?

24 A. This is very difficult to answer, because our
25 practice has changed several times since we have been

0259

1 doing business with Qwest. And we are trying to dispute
2 all of directory assistance calls back to Qwest, but the
3 dispute process is a very challenging endeavor for us,
4 because we have to go through page by page thousands of
5 pages of Qwest's bills to identify these calls and put
6 them on spreadsheets annually. So we have a lot of
7 errors, and we have a lot of problems disputing these
8 charges. So for me to say that yes, our practice is to
9 dispute 100% is not accurate. However, we do try to
10 dispute as many of these as possible, and that is some
11 -- that's a relatively recent change.

12 Q. Turn please to tab 14. Could you please look
13 at the last paragraph and read the second and third
14 sentences of that paragraph.

15 A. (Reading.)
16 Now Tel West disputes all OS/DA charges.
17 To the best of our knowledge, Tel West
18 does not dispute charges with Qwest if
19 it is attempting to collect them from
20 end users. Attached is a document with
21 additional confidential information
22 regarding this request.

23 Q. I'm sorry, please read the second sentence,
24 up until.

25 A. (Reading.)

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1 Up until January of 2002, Tel West
2 disputed with Qwest only those OS/DA
3 charges that dial lock failed to block.

4 Q. Okay. And then the next sentence says, now
5 Tel West disputes all OS/DA charges. Do you see that?

6 A. Yes.

7 Q. What time period does now refer to?

8 A. I think that now is intended to mean from
9 when this was drafted.

10 Q. And is that response contained there still
11 true and correct now, as of March 11th, 2002?

12 A. I think it's -- I think it's important to
13 clarify that we attempt to dispute all OS/DA charges.

14 Q. Okay. So when I asked you earlier does Tel
15 West dispute back to Qwest 100% of the directory
16 assistance charges, if I were to reask that question,
17 what is your answer?

18 JUDGE BERG: If I may just seek a
19 clarification, Ms. Anderl. When you say dispute, do you
20 mean their position as opposed to whether or not, in
21 fact, there are any potential claims that have not been
22 presented on further review?

23 MS. ANDERL: Well, Your Honor, I guess what
24 I'm just trying to explore with this witness is, does
25 the sentence, now Tel West disputes all OS/DA charges,

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1 is it fair to paraphrase that to say, Tel West disputes
2 100% of the directory assistance charges. That's really
3 all I'm looking for. When they say all, do they mean
4 100%? I mean does all really mean all?

5 A. It seems so simple, but when you say dispute,
6 do you mean actually render a claim to Qwest or that we
7 just --

8 BY MS. ANDERL:

9 Q. Why don't you look at that sentence in tab 14
10 where it says, now Tel West disputes all OS/DA charges.
11 What did you mean when -- what did Tel West mean when
12 Tel West wrote that sentence that says, now Tel West
13 disputes all OS/DA charges?

14 A. I think that that sentence was meant to say
15 that Tel West's intentions are to dispute all OS/DA
16 charges.

17 Q. And what does that mean? Does that mean to
18 challenge them back to Qwest?

19 A. Yes.

20 Q. Does Tel West dispute all toll charges that
21 appear on its bills?

22 A. Yes.

23 Q. Does Tel West dispute all operator services
24 charges that appear on its bills from Qwest?

25 A. Yes.

0262

1 Q. And when I say dispute, I mean it in the same
2 way you just used it, which means challenge those back
3 to Qwest. Is that how you're answering those questions?

4 A. I am. It's a manual process, and so if you
5 looked at like our Qwest bill and it said directory
6 assistance charges on the front page and those charges
7 totalled a certain amount, my guess is that our dispute
8 would not match that amount, so I'm just trying to be as
9 clear as possible.

10 Q. Does Tel West dispute other charges back to
11 Qwest that it calls -- on numbers that Tel West calls
12 pay per use charges?

13 A. Yes.

14 Q. Are those different from operator services
15 and DA and toll?

16 A. Yes.

17 Q. Can you describe for me what you mean when
18 you say pay per use?

19 A. Well, we actually got the definition of pay
20 per use from Qwest, and that is how it appears on our
21 bills. Pay per use is one item. Directory assistance
22 is another. Special charges are another, which
23 incorporate operator service type calls. And I even
24 brought a Qwest bill that shows those charges if you
25 would like to see it. They're the way that we define

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1 pay per use is exactly how it is printed on our bill.
2 So those would include charges like last call return,
3 three-way calling, local switch pay per use items. And
4 it's the same way it's defined in the front of the
5 telephone book.

6 Q. Okay. So last call return, three-way
7 calling, what else?

8 A. Maybe call trace. I don't know all of the
9 pay per use features, but those are the ones that I
10 think are most commonly used.

11 Q. Now you agreed with Mr. Sherr earlier, I
12 think, that there may be some lines that Tel West has on
13 which Tel West has never ordered a blocking or
14 restriction product; is that right?

15 A. Yes.

16 Q. And does Tel West dispute charges that appear
17 on those lines as well?

18 A. Yes.

19 Q. Is it correct that when Qwest investigated
20 Tel West's December billing disputes, Qwest found more
21 than 300 charges that were disputed where Tel West had
22 not ordered a blocking product?

23 A. I don't know the exact, the exact number.

24 Q. Were there some?

25 A. I remember reading the response, but I don't

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1 remember the details of it. Do you? I imagine there
2 were some.

3 JUDGE BERG: Is there a document you could
4 point the witness to, Ms. Anderl?

5 MS. ANDERL: There is not, Your Honor. This
6 happened late in the process, and I'm just asking the
7 witness's recollection. These are December billing
8 disputes for which we don't have a spreadsheet in the
9 record.

10 BY MS. ANDERL:

11 Q. What's the name of your current billing
12 manager at Qwest?

13 A. Nancy. I'm sorry, I don't know her last
14 name.

15 Q. If I were to remind you that it were
16 Hawbaker, does that sound correct?

17 A. Yes.

18 Q. And do you recall that approximately ten days
19 ago you received an E-mail from her with a preliminary
20 resolution of some the first batch of Tel West's
21 December billing disputes?

22 A. Was that sent to me or someone else?

23 Q. It was sent to Tel West. Were you advised by
24 any of your employees that such an E-mail was received
25 at Tel West?

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1 A. Not that I remember.

2 Q. Did you inquire into that before coming to
3 the hearing today?

4 A. No, I did not.

5 Q. Now in order to dispute the various charges
6 back to Qwest, including pay per use as both you and I
7 defined them, what steps does Tel West take?

8 A. The first step is to wait for the receipt of
9 the bill from Qwest. And once we receive the bill, we
10 go through every page, paper page, and verify that that
11 customer or that telephone number exists in our data
12 base, and to verify that the features that we're being
13 billed for are features that appear in our systems. In
14 addition, we look to see if there are any additional
15 charges on the bill that we don't feel belong and create
16 a spreadsheet, an Excel spreadsheet, that tracks the
17 information as we go through.

18 Q. Do you research any of the individual
19 telephone numbers to determine or verify whether you, in
20 fact, did order a blocking or a restriction product on
21 those lines?

22 A. No, we do not.

23 Q. Mr. Swickard, the interconnection agreement
24 billing dispute provisions that we have been talking
25 about in Section 5.4.4 contain a requirement that Tel

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1 West must submit its billing disputes to Qwest within 30
2 days after the receipt of the billing from Qwest. Do
3 you recall that, or do you see it there?

4 A. I don't see it there, but I recall something
5 like that.

6 Q. Could you just take a quick look at the first
7 three lines of Section 5.4.4. Do you see that now?

8 A. Yes.

9 Q. Which of your employees are responsible for
10 complying with that 30 day requirement?

11 A. Debra McBride is probably -- is responsible
12 for that.

13 Q. And have you given her any training or
14 instructions with regard to compliance with that
15 requirement?

16 A. I have not personally, no.

17 Q. Do you know if anyone else in your company
18 has?

19 A. I don't know.

20 Q. Do you know if Tel West has met that
21 requirement since the time that the interconnection
22 agreement has been effective?

23 A. I believe we have, especially since the 30
24 days from what I'm reading starts from receipt of our
25 bill.

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1 Q. When you received Qwest's bills for prior
2 month's service, the bill that you received in December
3 you received on December 7th; isn't that true?

4 A. I don't remember the exact dates. I think
5 December 7th is our bill date and not the actual date
6 that we receive it.

7 Q. You don't know when you received it?

8 A. No. The bills do not come on a regular
9 schedule from Qwest. The Qwest bills take quite a bit
10 of time in some cases, and in other cases they come
11 quickly.

12 Q. Do you know when you provided Qwest with your
13 list of disputed items for the bill that you received in
14 December?

15 A. I don't have that date.

16 Q. Do you know how many items you disputed for
17 December?

18 A. No.

19 MR. HARLOW: A little louder, please.

20 A. No.

21 Q. Now in your testimony at page 12, you can
22 turn there if you would like to, it's tab 1, page 12,
23 lines 8 and 9, there you're talking about the maximum 30
24 day period for resolution that you're asking the
25 Commission to impose in this case. Do you see that?

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1 A. Yes.

2 Q. Do you believe that 30 days is a reasonable
3 maximum response time for Qwest to have if Tel West
4 disputes 500 charges in a month?

5 A. Yes.

6 Q. What if Tel West disputes 750?

7 A. Yes.

8 Q. What if Tel West disputes 2,500?

9 A. Yes.

10 Q. What if Tel West disputes 5,000 charges in a
11 month?

12 A. Yes.

13 Q. So you're saying that regardless of the
14 number of disputed charges, the same 30 day period
15 should apply?

16 A. Yes.

17 Q. And will Tel West be able to compile its
18 disputed charges within the same period of time whether
19 they're disputing 500 charges or 5,000 charges?

20 A. Yes.

21 Q. Mr. Swickard, turn to page or tab 27, please,
22 Exhibit 27. Do you see there a discussion with regard
23 to the December 7th billing that you and I talked about
24 a moment ago?

25 A. Yes.

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1 Q. And that response indicates that Tel West
2 didn't dispute charges from Qwest's December 7th invoice
3 until January 18th, 2002; isn't that right?

4 A. Yes.

5 Q. Is that more than 30 days from December 7th?

6 A. Not based on the receipt of the bill.

7 Q. I thought you told me you didn't know when
8 you received the bill.

9 A. You asked me if it was a reasonable time
10 within 30 days. Is that the question?

11 Q. When did you receive Qwest's December 7th
12 bill?

13 A. I'm not sure.

14 Q. So do you know if you disputed the 390
15 billing disputes within 30 days after you received the
16 bill?

17 A. No.

18 Q. Can you please turn to tab 38, and we have
19 identified that entire document as confidential.
20 Mr. Swickard, do you recognize the first page or any
21 part of the first page of Exhibit C-38?

22 A. No.

23 Q. Do you recognize the name Debra McBride?

24 A. Yes.

25 Q. Do you recognize the E-mail address that is

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1 indicated after her name here in the middle of the page?

2 A. Yes.

3 Q. Is that E-mail an accurate E-mail address for
4 Debra McBride, your employee?

5 A. Yes.

6 Q. Do you see the date on that?

7 A. Yes.

8 Q. What is the date on that?

9 A. December, oh, March 7, 2002.

10 Q. Okay. That's the date near the top after
11 Ms. McBride's E-mail address; what's the date there?

12 A. February 28, 2002.

13 Q. And what's the subject line?

14 A. 206Z070296, December 7, 2001, disputes.

15 Q. And --

16 JUDGE BERG: Let me just interrupt here.

17 While the letter Z may give some confidentiality or
18 anonymity to the billing code number, again, if we can
19 work together to eliminate any references that might
20 lead to personally identifiable information, I would be
21 more comfortable.

22 Q. What is that 206 number; do you know? Do you
23 recognize that?

24 A. No.

25 Q. You don't recognize that as a Tel West

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1 account number with Qwest?

2 A. I don't know all of our account numbers with
3 Qwest.

4 Q. Would you accept subject to your check that
5 it is?

6 A. Yes.

7 Q. And do you recognize the 15 pages or 14 pages
8 that are attached behind the E-mail transmission?

9 A. I have never seen this before, so I don't
10 know.

11 Q. Do you recognize it? I'm not asking you if
12 you have ever seen it before. I'm asking you if looking
13 at it now you recognize it.

14 A. As a billing dispute? I don't -- I mean it's
15 nothing that I have done. I mean it's nothing I have
16 seen before. What do you mean by recognize?

17 Q. Well, I'm trying to give you a chance to tell
18 me if it's something that looks familiar to you. Is
19 that a form of billing dispute that Tel West would send
20 to Qwest?

21 A. It looks a little different than what I have
22 seen before that we send. This does not look like an
23 Excel spreadsheet. But, you know, again, I don't know.
24 I haven't seen it.

25 Q. If I were to give you an opportunity to check

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1 these telephone numbers, Mr. Swickard, would you be able
2 to verify that those were telephone numbers for Tel West
3 customers that Tel West obtains via resale from Qwest?

4 A. Yes.

5 MS. ANDERL: Your Honor, we would like to
6 move the admission of C-38 based on this witness's
7 identification of it and his ability to check and verify
8 its authenticity. We believe it is a Tel West document
9 that was submitted to Qwest. It was submitted to us
10 past the time when we could have submitted it with our
11 testimony. We do believe it can be authenticated by
12 this witness and that it is relevant.

13 MR. HARLOW: Your Honor, we object to the
14 admission. Foundation hasn't been laid. Possibly it
15 could be some other day, but we're here now. This is
16 rather late in the game to be introducing brand new
17 billing disputes.

18 JUDGE BERG: When could it be authenticated?

19 MR. HARLOW: Well, I think, you know, the
20 method proposed is that I guess it's subject to check
21 that we go through and manually check every phone
22 number. That's a fairly burdensome thing to do.

23 JUDGE BERG: Well, I mean if this is
24 something that a Tel West employee by the name of Debra
25 McBride has presented to Qwest as a list of billing

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1 disputes, it should be a fairly easy thing to consult
2 with Ms. McBride to confirm whether or not that's the
3 case.

4 MR. HARLOW: Well, I guess --

5 JUDGE BERG: So --

6 MR. HARLOW: Let me just add, Your Honor, we
7 aren't bringing these charges in as part of our dispute,
8 so I don't know why they're being brought in by Qwest.

9 MS. ANDERL: We can talk to that, Your Honor,
10 if we need to.

11 MR. HARLOW: I fail to see the relevance of
12 these disputes as well, Your Honor.

13 JUDGE BERG: All right, Ms. Anderl.

14 MS. ANDERL: Well, Your Honor, we believe
15 what this document shows is an additional almost 350
16 billing disputes for the December Qwest invoices. That
17 coupled with the 390 that were submitted in January
18 totals over 700 disputed items for December alone. We
19 think that the magnitude of the numbers of disputes is
20 relevant to the relief that Tel West has requested in
21 terms of a 30 day trigger, and we also think that it's
22 relevant to Tel West's claim that 30 days is reasonable,
23 given that Tel West itself has taken more than 60 days
24 to come up with all of its December billing disputes.
25 And for both of those reasons, we think that it has

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1 significant bearing on the considerations here. We're
2 not asking you to walk through any of the line items on
3 a piece by piece basis. That's not our intent.

4 JUDGE BERG: So if I can repeat what I hear,
5 the purpose is to confirm whether, in fact, the total
6 number of separate line items contained in this E-mail
7 in fact represent billing disputes from the month of
8 December?

9 MS. ANDERL: From the December Qwest invoice
10 to Tel West, correct.

11 JUDGE BERG: All right I'm going to make it a
12 Bench Request. I believe the information is relevant,
13 but I also understand that this witness is not able to
14 confirm that. And if these are, if this in fact was
15 presented from Tel West to Qwest with the intent that it
16 represent billing disputes arising in the month of
17 December, I think that's something that should be --
18 that's usually the kind of thing I would expect someone
19 to confirm.

20 MR. HARLOW: Is this Number 2, Your Honor?

21 JUDGE BERG: Yes. That's the kind of item I
22 would normally expect counsel to be able to come up with
23 on a phone call over the lunch break. But if I can get
24 a response back tomorrow morning when parties reappear,
25 I would appreciate it.

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1 MR. HARLOW: Assuming we're not done today
2 you mean, Your Honor?

3 JUDGE BERG: Assuming we're not done today.
4 But I think the main point, Mr. Harlow, is that counsel
5 I think wants to make reference to it in arguments. So
6 even if we're done with testimony today but we don't
7 make oral arguments, it would be pertinent. Otherwise I
8 will just take it as a conditional argument with follow
9 up, and then I will have the benefit of whatever it
10 might be after a response is received.

11 MR. HARLOW: Certainly.

12 JUDGE BERG: All right.

13 MS. ANDERL: Thank you.

14 BY MS. ANDERL:

15 Q. Mr. Swickard, did Tel West receive a bill
16 from Qwest during the month of January?

17 A. I assume so. I don't know.

18 Q. Do you know if Qwest or Tel West has disputed
19 any charges back to Qwest from that bill?

20 A. I don't know.

21 Q. And if I were to ask you the same questions
22 for February, would your answers be the same?

23 A. Yes.

24 Q. And if Tel West has not provided Qwest any
25 disputed charges for January, what does that mean? Does

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1 that mean that there aren't any or that -- well, does it
2 mean there aren't any?

3 A. I don't know. It could mean several things.
4 It could mean that we haven't received the bill. I mean
5 it could mean a lot of things. It could mean that we
6 made a mistake. I mean there's lots of potential
7 options, so I don't know.

8 Q. With regard to the billing disputes that Tel
9 West forwarded to Qwest on January 18th, do you have
10 those in mind? Tab 27, looking at Exhibit 27, does that
11 refresh your memory that Tel West submitted billing
12 disputes to Qwest on January 18th?

13 A. Yes, that's our response.

14 Q. Do you know if Qwest has responded?

15 A. I don't know.

16 Q. Okay. Now if the Commission rules against
17 Tel West on the issue of blocking for operator services
18 and directory assistance, will Tel West continue to
19 dispute 100% of the operator services and directory
20 assistance charges that appear on its bills? I know it
21 was a long question, I'm sorry.

22 A. I just haven't anticipated what we will do in
23 the future. We're hoping that doesn't happen, but I
24 don't -- I don't know what we would do.

25 Q. And if the Commission rules in favor of Tel

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1 West on the operator services and DA blocking issues,
2 would you expect that there would be far fewer billing
3 disputes in the future?

4 A. Yes.

5 Q. Couple of questions about your disconnection
6 policy. If you could turn to page or tab, this is
7 harder than it looks, Exhibit 34, which is the same as
8 tab 34.

9 JUDGE BERG: In spite of the difficulty in
10 referencing exhibit and tab, it does make it very easy
11 to quickly get to the document.

12 MS. ANDERL: Right, and thanks for your
13 patience, Your Honor.

14 BY MS. ANDERL:

15 Q. Is this an accurate copy of a pamphlet or
16 other information that Tel West provides some of its
17 customers?

18 A. Yes.

19 Q. Do you provide this to all of your customers?

20 A. We provide this information, not always in
21 this format.

22 Q. Okay. Is it correct that if a customer
23 places an order with you by telephone, you provide this
24 information to them orally as opposed to in writing?

25 A. Yes.

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1 Q. So which customers get a copy of this
2 document?

3 A. A customer who pays in person to sign up at a
4 location that acts as our agent.

5 Q. Okay. In item number 2, do you see that
6 paragraph?

7 A. Yes.

8 Q. If you could take a look at that, please, and
9 could you please read the last two sentences starting
10 with, if any charges?

11 A. (Reading.)

12 If any charges appear on your telephone
13 number not authorized by Tel West
14 Communications, your local service will
15 be disconnected, and no refunds will be
16 given. You will be notified of any
17 changes on your bill either in writing
18 or by telephone.

19 Q. It says there that your local service will be
20 disconnected. Is that what always happens?

21 A. No.

22 MR. HARLOW: Your Honor, objection,
23 relevance.

24 JUDGE BERG: The witness has answered
25 already.

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1 BY MS. ANDERL:

2 Q. Under what circumstances does disconnection
3 occur?

4 MR. HARLOW: Objection, relevance, Your
5 Honor.

6 JUDGE BERG: Ms. Anderl.

7 MS. ANDERL: Well, Your Honor, I guess this
8 goes back to Mr. Swickard's testimony and the petition
9 generally that the actions that Tel West takes to
10 protect itself from these charges and the efforts that
11 it takes to both prevent the charges from happening and
12 reinforce to its customers that the policy is, in fact,
13 serious. It appears to us, and we're about to get into
14 this, that a number of the charges, a number of the
15 telephone numbers or accounts have repeat pay per use or
16 other types of charges on them for which Tel West's
17 policy states the customers will be disconnected. And
18 we believe that that's an important consideration given
19 that Tel West disputes all of these charges back to
20 Qwest contending they shouldn't have to pay for them,
21 and yet at the same time tells their customers that,
22 customer, you will be disconnected if you incur these
23 charges, but then doesn't follow through on that. We
24 think that that type of behavior provides a powerful
25 incentive for the customers to continue to incur these

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1 types of charges and really sets us up for the kinds of
2 disputes that we're having.

3 We again think this is important for you to
4 consider in terms of crafting a remedy, especially some
5 sort of a self executing 30 day remedy. And so we think
6 it's important not from the operator services/DA
7 perspective, because we have already talked about that
8 and whether, you know, and what kind of blocking ought
9 to be in place, but we think that really the equities
10 are critical here where Tel West is essentially asking
11 for you to craft a new and equitable remedial provision
12 to insert into their interconnection agreement.

13 If it's any comfort, I don't have a lot of
14 questions on this topic.

15 JUDGE BERG: Well, I think the -- I think
16 this will lead into some discussion we will have when
17 the parties make their closing arguments, but I --
18 Ms. Anderl, I still see this as a matter of whether or
19 not Qwest has a defenseable position with regards to any
20 specific line item claimed for credit. What you're
21 going to be arguing to me by putting all the pieces
22 together, I can see, you know, how Qwest's position is
23 adding up, but in particular whether or not Tel West
24 follows through with its policies or threats to its own
25 customers, there may be many different reasons why it

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1 doesn't happen. I understand Qwest's concern is that
2 there may be a particular Tel West customer that is a
3 repeat offender and which continues to incur these
4 charges, but then that's to my way of thinking again a
5 defense to a particular claim for reimbursement and does
6 not go directly to whether or not there is a -- whether
7 or not Qwest's service has functioned properly in the
8 first place.

9 And I'm trying to understand what you're
10 saying about the link to the claim for 30 day relief,
11 and I think that the demand for a 30 day, but I think
12 that seems to be more connected to your argument that
13 it's not reasonable to process a large number or
14 excessive number of claims within a short time period,
15 and this is just one more aspect.

16 MS. ANDERL: Well, yes, but it's not just
17 that. It's that Tel West is, you know, basically asking
18 for disputed amounts to be automatically resolved in
19 their favor within a very short period of time. I think
20 the parties agree that that 30 day period that they're
21 asking for is not something that's currently contained
22 in their interconnection agreement, so they're asking
23 for, you know, a new provision in their interconnection
24 agreement that is essentially I think extraordinary
25 equitable relief, and we think that what Tel West does

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1 to avoid the creation of these billing dispute issues in
2 the first place is important when you consider what
3 they're asking for, the time frames, which does relate
4 to the burdon that is put on Qwest to research and look
5 into each of these charges.

6 JUDGE BERG: Well, I think that argument can
7 be made based on the other evidence itself, Ms. Anderl.
8 If, in fact, there is an exhibit that shows those repeat
9 offenses, then I think that will speak for itself. I
10 really see this as sort of a rather remote, not remote,
11 but to whatever extent it's linked to the core issue is
12 very tenuous, and I think it doesn't really improve your
13 other arguments any further, and they're all well
14 developed.

15 MS. ANDERL: Very well, Your Honor. Just one
16 additional line of questioning then.

17 BY MS. ANDERL:

18 Q. Mr. Swickard, could you turn back to Exhibit
19 18, which is also C-18 on the yellow pages. Do you have
20 that?

21 A. Yes.

22 Q. Can you look at page 5 again, which is the
23 one I had directed your attention to earlier.

24 A. Yes.

25 Q. And maybe you want to kind of keep one finger

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1 there, and then also turn to tab or Exhibit 3, please,
2 which is the spreadsheets that are Tel West's billing
3 disputes with Qwest from April through November. Are
4 you there?

5 A. Yes.

6 Q. Okay. Now we can do this one month at a
7 time, or we can do it more generally. Let me ask you
8 first, Mr. Swickard, can you accept subject to your
9 check that for each month shown in Exhibit 3, the
10 telephone number that's shown in Exhibit C-18, page 5,
11 shows up?

12 A. Yes.

13 MS. ANDERL: Thank you, Your Honor.

14 JUDGE BERG: Thank you, Ms. Anderl.

15 MS. ANDERL: No further questions.

16 JUDGE BERG: Thank you.

17 Redirect?

18 MR. HARLOW: A little bit, Your Honor, thank
19 you.

20

21 R E D I R E C T E X A M I N A T I O N

22 BY MR. HARLOW:

23 Q. Good afternoon, Mr. Swickard. You will be
24 pleased to know this indicates we're getting close to
25 the end.

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1 This morning when Mr. Sherr was questioning
2 you, you were questioned about Exhibit 19, which is tab
3 19, and I think it might be easiest if you would turn to
4 that at this time. Just let me know when you're there.

5 A. I'm there.

6 Q. Okay. In particular, if you would look at
7 the confidential attachments, the yellow pages.

8 A. I have them.

9 Q. And do you see the date, both of the dates on
10 those two pages are in May of 2001?

11 A. Yes.

12 Q. Do you see that?

13 A. Yes.

14 Q. And this apparently reflects Mr. Taylor's
15 negotiations with Qwest. To your knowledge, what was
16 the next thing that occurred in regard to your
17 negotiating or executing the current interconnection
18 agreement with Qwest?

19 A. We received our agreement.

20 Q. And when did that occur?

21 A. In July.

22 Q. Are you aware of any other negotiations or
23 notes or discussions between any representative of Tel
24 West and Qwest between the date of these notes in
25 Exhibit 19 and your receipt of the interconnection

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1 agreement that you signed?

2 A. No.

3 Q. Now you indicated on cross that you read the
4 current interconnection agreement when you received it
5 in August of last year; do you recall that?

6 A. Yes.

7 Q. And were you looking for provisions regarding
8 whether or not Tel West had to take and pay for Qwest's
9 operator services and directory assistance?

10 A. Yes.

11 Q. And what did you find on that subject?

12 A. I did not find any language, any provisions
13 in the agreement that would require me to buy operator
14 services or directory assistance from Qwest.

15 Q. What about Section 6.3.5? If you have the
16 interconnection agreement there, I would ask you to turn
17 to it now.

18 MS. ANDERL: Objection, Your Honor, this is
19 outside the scope.

20 MR. HARLOW: Your Honor, Section 6.3.5
21 specifically references pay per use charges, and there
22 was a great deal of cross on what pay per use charges
23 means.

24 MS. ANDERL: Your Honor, there was no cross
25 on this section.

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1 MR. HARLOW: There was cross on whether or
2 not -- a great deal of cross on whether or not
3 Mr. Swickard understood, and he repeatedly said he
4 understood the agreement as a whole to not require Tel
5 West to order, take, or pay for operator service and
6 directory assistance charges. Qwest's position in this
7 docket as disclosed in their brief is they think this
8 section, which is a part of the contract as a whole,
9 governs operator services and DA by the use of the term
10 pay per use charges. There was also a great deal of
11 cross on what pay per use means. I think this is wide
12 open for redirect.

13 JUDGE BERG: I do recall the witness
14 testifying that there were claims submitted for pay per
15 use charges as defined by Tel West in addition to claims
16 for credit for pay per use charges as defined by Qwest,
17 so to follow up on that, I will allow the witness to
18 answer the question.

19 MR. HARLOW: Thank you, Your Honor.

20 BY MR. HARLOW:

21 Q. Mr. Swickard, do you have the current
22 agreement open to Section 6.3.5?

23 A. Yes.

24 Q. And have you had a chance to read it while we
25 were discussing the objection?

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1 A. Yes.

2 Q. It uses the term services or features that
3 are billed on a per use or per activation basis; do you
4 see that language?

5 A. Yes.

6 Q. Okay. Give some example -- well, first of
7 all, do you recall reading this section in August at the
8 time you signed the agreement?

9 A. Yes.

10 Q. And in your understanding, did that create an
11 obligation on Tel West's part to take or pay for
12 operator services or directory assistance services?

13 A. No.

14 Q. Why not?

15 A. Well, I specifically remember reading this
16 portion, because operator services and directory
17 assistance were a major point in our negotiations, and I
18 read this to read that we would -- Tel West would only
19 be responsible if a customer used pay per use features
20 like continuous redial, last call return, the ones that
21 are listed here. And pay per use is a very generally
22 accepted term in our industry as these sorts of features
23 and not operator assistance and directory assistance
24 calls. And the reason that I wasn't concerned about
25 this portion of the agreement is that there are blocks

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1 that are currently available for free to block pay per
2 use futures like the ones listed and the others that we
3 talked about. So I agreed to sign this because those
4 blocks are currently available and are available for
5 free when we provision them on the line.

6 Q. Thank you. Let's take a look at those
7 examples, and they're in the parentheses there,
8 continuous redial, last call return, call back calling,
9 and call trace. Do you see those?

10 A. Yes.

11 Q. Are any of those examples of what you would
12 consider to be operator services?

13 A. No.

14 Q. Are any of those examples of what you would
15 consider to be directory assistance?

16 A. No.

17 Q. You mentioned this afternoon when Ms. Anderl
18 was cross-examining you that you had, I'm looking for
19 it, you said you had looked at some bills or had brought
20 some bills with you with regard to this question of pay
21 per use and how it appears on your bill.

22 A. Yes, I did.

23 Q. Do you have those with you on the stand?

24 A. Yes.

25 Q. Can you please pull those out and read us the

0289

1 categories of bills that appear on that bill without
2 giving any of the confidential information like the
3 phone number.

4 MS. ANDERL: Your Honor, I think this is
5 objectionable. Again, this is outside the scope. This
6 is a response that the witness volunteered in response
7 to a question that I asked that did not ask for this
8 information. He should not be permitted to shoehorn in
9 additional direct based on this line of inquiry which I
10 did not pursue.

11 MR. HARLOW: Your Honor, there was no motion
12 to strike the response.

13 JUDGE BERG: I'm concerned about the
14 reference to exhibits that the witness has brought with
15 him today and which have not previously been exchanged
16 between the parties, and I don't think it adds anything
17 further than the language that's right there in 6.3.5,
18 Mr. Harlow, unless I'm missing something.

19 MR. HARLOW: Your Honor, what we're trying to
20 establish is that there is an understood and accepted
21 industry definition of pay per use. And, in fact, Qwest
22 established the definition, establishes the definition
23 through the front covers of its front pages of its phone
24 books and from its bills. I don't view this as any
25 different than the E-mail that Qwest has brought in

0290

1 likewise at the hearing, and I don't see any reason that
2 we can't bring it in since it did come up on cross.

3 JUDGE BERG: I did hear that testimony from
4 this witness, and it's duly noted that that was his
5 testimony that that definition is in the front of the
6 phone book and that he is using the same definition as
7 appears on the bills that the company receives, so I
8 don't know what else would be achieved by this.

9 MR. HARLOW: I guess if Qwest is willing to
10 stipulate that pay per use doesn't include operator
11 services and directory assistance. I don't think that
12 will -- it sounds like you want me to move on, and
13 you're sustaining the objection, but --

14 JUDGE BERG: I'm going to sustain the
15 objection.

16 MR. HARLOW: Okay.

17 JUDGE BERG: But I'm doing so by also letting
18 you know, Mr. Harlow, that I heard that testimony from
19 this witness, and I prefer to stay clear of exhibits or
20 documents that the witness has brought with him to the
21 witness stand here today.

22 MR. HARLOW: Okay, Your Honor, we'll move on.

23 BY MR. HARLOW:

24 Q. Mr. Swickard, if you would turn please to
25 Exhibit 6. Again, Mr. Sherr was asking you about that,

0291

1 and call to your attention the heading on page 9 of this
2 exhibit, additional non-contractual complaints against
3 Qwest. First of all, do you recall when this exhibit
4 was first put together?

5 A. We put this together prior to signing the
6 agreement with Qwest for our new agreement, our new
7 interconnection agreement.

8 Q. And if you will look on the first page of the
9 petition, in the fourth line, it talks about the 1998
10 resale agreement in the fourth and fifth line. Do you
11 see that language?

12 A. Yes.

13 Q. And then if you would please turn to the,
14 it's after page 11, it's the 12th page on the back, a
15 list of exhibits. Do you see that?

16 A. Yes.

17 Q. Exhibit A refers to a resale agreement. Do
18 you know which agreement that refers to?

19 A. That was the agreement prior to the agreement
20 we have today.

21 Q. Do you see any list of exhibits that
22 references the current agreement between the parties?

23 A. No, I do not.

24 Q. And if you would please turn to Exhibit H to
25 Exhibit 6, which is the last page in the document. Do

0292

1 you have that in front of you?

2 A. Yes.

3 Q. Do you see the numbered paragraphs 1 through
4 4 that Mr. Sherr crossed you about?

5 A. Yes.

6 Q. Okay. Do you see the agreement references,
7 the section references?

8 A. Yes.

9 Q. Do you see the numbering protocol, how it
10 uses Roman numeral followed by a letter followed by a
11 number?

12 A. Yes.

13 Q. Is that numbering protocol used in your
14 current agreement?

15 A. No, it's not.

16 Q. Was that numbering protocol used in your
17 prior agreement?

18 A. I believe it was.

19 Q. Do you see anything on this page that
20 references the current agreement?

21 A. No, I do not.

22 Q. Off hand, and if you need to take a minute to
23 thumb through it, do you see any reference in Exhibit 6
24 to any provision of the current agreement, to a specific
25 section of the current agreement?

0293

1 A. No, I do not.

2 Q. Thank you, Mr. Swickard, you can set that
3 aside now.

4 You will recall Ms. Anderl asked you whether
5 or not -- asked you about 300 disputes, December
6 disputes, where apparently Qwest found that Tel West had
7 not ordered a blocking product. Do you recall that?

8 A. Yes.

9 Q. And what was occurring with your business?
10 Were you making any acquisitions at that time?

11 A. Yes.

12 Q. Do you have one in mind specifically?

13 A. We bought the customer base of a company
14 called Reconnex.

15 Q. And when you bought the customer, when you
16 bought the customer base of Reconnex, did you disconnect
17 those customers and then reconnect them the way you
18 ordinarily order your residential lines from Qwest?

19 A. No, we did not.

20 Q. Did you simply transfer them over from
21 Reconnex as they were equipped?

22 A. Yes, we did.

23 Q. You were asked some questions about when you
24 received the December 7th bill, and I believe you
25 indicated you don't know exactly when you received that

0294

1 particular bill. Do you recall that line of
2 questioning?

3 A. Yes.

4 Q. Does Tel West ever receive a Qwest bill on
5 the same date of the bill date?

6 MS. ANDERL: Objection, Your Honor, there's
7 no foundation. This witness has been unable to answer
8 questions with regard to when Tel West receives bills
9 from Qwest.

10 JUDGE BERG: I'm going to sustain the
11 objection. I heard this witness to say that the
12 statement date on the bills is not the date that they're
13 received.

14 MR. HARLOW: Your Honor, I would like to put
15 some parameters on it. It's kind of general. I think
16 the witness can put some parameters on it through
17 redirect. I will be very brief on this.

18 JUDGE BERG: Would you --

19 MR. HARLOW: How about if I withdraw the
20 question and restate a new question.

21 JUDGE BERG: Yes, let me hear that.

22 BY MR. HARLOW:

23 Q. Mr. Swickard, what would be the outside
24 number of days that you can recall that it took Tel West
25 to receive a Qwest bill after the bill date shown on the

0295

1 bill?

2 MS. ANDERL: Same objection, Your Honor, lack
3 of foundation. This is an even more general question
4 and I think bears even more closely on the types of
5 questions that I asked Mr. Swickard that he was unable
6 to answer.

7 MR. HARLOW: Your Honor, I disagree, that
8 Ms. Anderl has mischaracterized the testimony of this
9 witness. The witness -- the questions focused
10 specifically on this particular December 7th bill. My
11 question is general. The witness may say, I don't know.
12 But if the witness answers that he can recall a time
13 frame that it took up to X number of days from the bill
14 date, I think that's relevant and is a different
15 question than Ms. Anderl was asking with regard to the
16 specific bill.

17 JUDGE BERG: All right, I will let the
18 witness answer the question, but it also becomes proper
19 subject for further recross.

20 BY MR. HARLOW:

21 Q. Do you recall the question?

22 A. If you could say it again, I would appreciate
23 it.

24 Q. Okay. Do you have a recollection as to the
25 outside number of days, in other words, the longest

0296

1 number of days from the bill date that it has taken Tel
2 West to receive a Qwest bill?

3 JUDGE BERG: With regards to December?

4 MR. HARLOW: No, in general.

5 JUDGE BERG: All right.

6 A. I don't know the specific number of days. In
7 some cases, and it's very rare cases, but it has taken
8 up to two months previously to receive a Qwest bill.

9 MR. HARLOW: That's all I have, Your Honor.

10 JUDGE BERG: No questions from the Bench.

11 MS. ANDERL: Not surprisingly, Your Honor,
12 some recross.

13 JUDGE BERG: Yes, please.

14

15 R E C R O S S - E X A M I N A T I O N

16 BY MS. ANDERL:

17 Q. Mr. Swickard, let me understand the types of
18 charges that Tel West currently disputes to Qwest, and I
19 apologize if I have asked you these before, but does Tel
20 West dispute last call return charges back to Qwest
21 currently?

22 MR. HARLOW: Your Honor, I'm hesitating a
23 little bit. I mean I don't think this is an
24 inappropriate question, but I do want to make it clear
25 that no such charges are the subject of our billing

0297

1 dispute claim.

2 MS. ANDERL: Well, Your Honor --

3 JUDGE BERG: If the witness can answer the
4 question, he should answer. I think we're talking about
5 definitions of class.

6 A. We dispute last call return pay per use
7 charges if we believe that we provisioned a block on
8 that line.

9 BY MS. ANDERL:

10 Q. What's the name of that block that you
11 provisioned?

12 A. I don't know the USOC. There are separate
13 USOCs for each pay per use item.

14 Q. What about three-way calling, do you dispute
15 those charges back to Qwest?

16 A. If we believe that -- if we believe we have
17 provisioned a line with a block.

18 Q. What about call trace?

19 A. Same thing.

20 Q. Okay. Mr. Harlow asked you some questions
21 about Section 6.3.5 in the interconnection agreement,
22 could you please turn to that. Is last call return one
23 of the types of calls that's listed in that paragraph as
24 being billed on a per use basis?

25 A. Yes.

0298

1 Q. What about call trace?

2 A. Yes.

3 Q. Does it say anywhere in that paragraph that
4 the CLEC does not have to pay Qwest for those charges if
5 they have provisioned a block on the line?

6 A. No, it does not.

7 Q. Are you aware of whether it says that
8 anywhere in the interconnection agreement?

9 A. I don't know of any place that it says that
10 in the interconnection agreement.

11 MS. ANDERL: That's it, Your Honor.

12 MR. HARLOW: Nothing further.

13 JUDGE BERG: All right, Mr. Swickard, thank
14 you for being here and testifying today. You're now
15 excused from the witness stand.

16 Let's take a ten minute break. We will be
17 off the record.

18 (Recess taken.)

19 JUDGE BERG: Mr. Teitzel, if you will stand
20 and raise your right hand.

21

22 Whereupon,

23 DAVID L. TEITZEL,

24 having been first duly sworn, was called as a witness

25 herein and was examined and testified as follows:

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1

2

JUDGE BERG: Thank you.

3

MS. ANDERL: Thank you, Your Honor.

4

5

D I R E C T E X A M I N A T I O N

6

BY MS. ANDERL:

7

Q. Mr. Teitzel, good afternoon.

8

A. Good afternoon.

9

Q. Would you please state your name and your

10 business address for the record.

11

A. Yes, my name is David Teitzel, it's spelled

12

T-E-I-T-Z-E-L. My business address is 1600 Seventh

13

Avenue, Seattle, Washington, zip code 98191.

14

Q. Mr. Teitzel, do you have before you your

15

response testimony and as well as the exhibits that were

16

attached to that response testimony?

17

A. Yes, I do.

18

Q. Is that testimony and are those exhibits true

19

and correct to the best of your knowledge?

20

A. Yes, they are.

21

Q. And you don't have any changes or corrections

22

to make?

23

A. I do not.

24

MS. ANDERL: Thank you.

25

Your Honor, I believe that the documents have

0300

1 already been admitted by stipulation, so therefore we
2 would tender the witness for cross.

3 JUDGE BERG: Thank you, Ms. Anderl.

4 Mr. Harlow.

5 MR. HARLOW: Thank you, Your Honor.

6

7 C R O S S - E X A M I N A T I O N

8 BY MR. HARLOW:

9 Q. Good afternoon, Mr. Teitzel.

10 A. Good afternoon, sir.

11 Q. On page 2 of your testimony, you discuss the
12 purpose of your testimony. Do you recall that?

13 A. Yes, I do.

14 Q. Is one of the purposes of your testimony to
15 address the negotiations that occurred between Tel West
16 and Qwest over the current interconnection agreement
17 between the parties?

18 A. No, it is not.

19 Q. Were you involved at all in those
20 negotiations?

21 A. I was not.

22 Q. Do you have any personal knowledge at all of
23 the course of those negotiations?

24 A. Only anecdotal from my involvement in this
25 particular docket.

0301

1 Q. So things you would have heard in preparation
2 for the testimony?

3 A. In this docket, that's correct.

4 Q. Perhaps including things you might have heard
5 from your counsel?

6 A. I have no specific recollection of a specific
7 instance, but that could be correct.

8 Q. Mr. Teitzel, I have some questions about
9 CustomNet, which was mentioned in your testimony of
10 course, and discussed at some length in Ms. Malone's
11 testimony, but I take it you advocate CustomNet as a
12 potential blocking service that Tel West could order to
13 solve its OS and DA problem that it talks about in this
14 case?

15 A. I think certainly CustomNet is a good option
16 that Tel West could consider, as would a retail customer
17 of Qwest, to block access to, outgoing access I should
18 say, to services like toll and DA.

19 Q. And is that based on your knowledge and
20 understanding generally of how CustomNet works?

21 A. Yes.

22 Q. Okay. If I were to talk to you about or ask
23 you questions about how CustomNet uses line class codes,
24 is that something you could converse on based on your
25 background?

0302

1 A. I'm not a technical expert in terms of how
2 line class codes are applied. I could respond
3 generally.

4 Q. What about Ms. Malone, is that more in the
5 area of her expertise, or would those kind of questions
6 be more for you?

7 A. Please ask the question. I will answer it if
8 I can. You may direct it to Ms. Malone if you're not
9 satisfied with my answer.

10 Q. Okay, I think that's a good way to approach
11 it. All right, I understand that CustomNet is
12 implemented by programming line class codes into the
13 switch; is that correct?

14 A. That is true.

15 Q. And then these line class codes become
16 associated somehow with certain telephone numbers?

17 A. That's correct. The line class code is
18 associated with a particular telephone number and
19 directs the software how a particular call should be
20 handled.

21 Q. And there are I guess in some switches there
22 can be hundreds of different line class codes; is that
23 correct?

24 A. That is true.

25 Q. And that is also the way that customized

0303

1 routing works; isn't that correct?

2 A. That's my understanding. Again, I'm not a
3 technical expert, but that is my understanding.

4 Q. And is that another option that Qwest has
5 identified for Tel West to avoid OS and DA charges?

6 A. Mr. Harlow, customized routing is not a
7 retail service. My understanding is that it's a
8 wholesale service. I'm here to advocate on Qwest's
9 behalf retail issues. I understand it has been advanced
10 to Tel West as an option for you to consider as a
11 wholesale product.

12 Q. Okay. But it also works using line class
13 codes; is that correct?

14 A. I believe that's true.

15 Q. And I believe Qwest is advocating that not
16 only could customized routing be used to direct OS and
17 DA calls to particular trunks so that they could go to
18 particular carriers, but Qwest is also suggesting that
19 the customized routing could instead direct the calls
20 that are programmed to be intercepted by that line class
21 code to an intercept or basically to go nowhere other
22 than to the intercept; is that correct?

23 A. At this point, I would have to say I would
24 recommend you would ask that question of Ms. Malone. I
25 think she is much more attuned to that issue than I. I

0304

1 am aware generally that that discussion has happened
2 between Qwest and Tel West, but I do honestly not know
3 the details of that discussion.

4 Q. All right, we can reserve those questions,
5 but will you still be here at the conclusion of
6 Ms. Malone's testimony in case we have to come back to
7 you on these?

8 A. If she's through by 5:00 today.
9 I'm just joking, yes, I will, I will be happy
10 to do that, yes.

11 JUDGE BERG: Gallows humor.

12 Q. All right, page 3 of your testimony, you talk
13 about the components of basic residential local service,
14 and you talk about specifically access to emergency
15 services, access to operator services, and access to
16 interexchange services. Do you have that testimony in
17 mind?

18 A. Yes, I do, and that's correct.

19 JUDGE BERG: Mr. Harlow, just for the record,
20 this is Exhibit 47.

21 MR. HARLOW: I will take your word for it,
22 Your Honor, I'm working off of my copy now.

23 JUDGE BERG: That's fine, thank you.

24 MR. HARLOW: I appreciate the tie in to the
25 record.

0305

1 BY MR. HARLOW:

2 Q. Now you also talk about touch tone signaling
3 and usage, access and usage of the switch network within
4 the local calling area; do you see that?

5 A. Yes, I do.

6 Q. All right. Now switching, of course, is
7 something, a function that is provided for local calls
8 by the local switch; is that correct?

9 A. That is correct.

10 Q. What about operator services, are operator
11 services typically provided out of the local switch?

12 A. Operator services are typically provided out
13 of a centralized location and maybe locations plural,
14 typically not out of the local switch itself.

15 Q. So in other words, typically what the local
16 switch does is depending on the line class code, if it's
17 a -- if it's directed to Qwest, the call to the 0+ or
18 the 0- call will be routed from the local switch to what
19 I call an operator services platform. Are you
20 comfortable with that term?

21 A. Yes, that's reasonable.

22 Q. And the operator service platform is also a
23 type of switch; isn't that right?

24 A. It's a mechanized platform that routes calls
25 to a particular operator, so it's a computerized device,

0306

1 if you will.

2 Q. Okay. And in some cases the operator is a
3 live operator, and in some cases the operator is another
4 computer; is that correct?

5 A. That is true.

6 Q. And you tell us the operator services
7 platform is located off site. In fact, all the local
8 switch does is route the call to a particular trunk that
9 goes to the site of the operator services platform. Is
10 that right?

11 A. That's a reasonable characterization, yes.

12 Q. And have you ever heard the term operator
13 services provider?

14 A. Yes.

15 Q. And would you say that AT&T and WorldCom are
16 operator services providers, among other things?

17 A. That's reasonable, yes.

18 Q. Are there companies that specialize in simply
19 just providing operator services rather than primarily
20 1+ toll services?

21 A. Yes, there are.

22 Q. And does Qwest have an operator services
23 provider or an OSP arm?

24 A. Qwest certainly has an operator services
25 operation within Qwest. I'm not sure I would

0307

1 characterize it as an arm, but there is an organization
2 that focuses on providing that service.

3 Q. Let's switch for a minute to directory
4 assistance or DA. Is DA also something that's typically
5 provided to outside the local switch?

6 A. Yes, directory assistance is not inherent in
7 the switching function itself locally.

8 Q. And is that --

9 A. There's a separate group of DA operators to
10 which DA calls are routed.

11 Q. And is that typically performed in the same
12 way that the end user would dial 411 or 555-1212, and
13 then their call would be routed over a trunk to a
14 directory assistance platform?

15 A. Yes.

16 Q. And again, the directory assistance could be
17 a computer, could be a human being?

18 A. That's correct.

19 Q. Are there companies other than Qwest that
20 provide directory assistance?

21 A. Yes, there are.

22 Q. And Qwest also has a directory assistance
23 function within its corporate umbrella, if you will, as
24 well; is that correct?

25 A. Again, an organization focused on providing

0308

1 that service or function, that's correct.

2 Q. And Qwest, of course, has tariffs in place
3 for its local services that provide access to OS and DA;
4 is that correct?

5 A. We have tariffs governing charges for those
6 functions. Was that your question?

7 Q. Yeah, but I'm just speaking at a very high
8 level now, that you're -- let me backtrack.

9 With the exception of certain large customers
10 and high capacity customers, Qwest local exchange
11 services are generally governed by tariff in Washington;
12 isn't that correct?

13 A. That's reasonable.

14 Q. The same is not true with regard to operator
15 services and directory assistance; is that correct?

16 A. I believe those services are governed by a
17 price list, not a tariff specifically.

18 Q. And I assume that your understanding would be
19 the reason for that is operator services and directory
20 assistance services are provided by these other
21 companies we have talked about, AT&T and WorldCom, and
22 therefore they're considered competitive services?

23 A. Yes, they have been classified as competitive
24 by this Commission.

25 Q. Okay. Let's talk a little bit about how the

0309

1 local switch works. As I understand it, by default that
2 the Qwest switches, the Qwest local switches, are
3 programmed with the line class codes that cause calls
4 411 and 0 calls to be routed to Qwest operators and
5 Qwest directory assistance. Is that generally the case?

6 A. If I could just paraphrase your question and
7 answer it. I believe you're asking how is a local
8 exchange line typically provisioned, and I will answer
9 from the retail perspective. And the answer is if we're
10 speaking about residents, the line class codes do direct
11 calls as part of that local exchange service, retail
12 local exchange service, to Qwest operator services and
13 Qwest DA providers as a default.

14 Q. I was going to use the term default, but you
15 beat me to it. So it is possible to have those calls
16 routed to another provider like AT&T by changing or
17 programming in a line class code; is that correct?

18 A. That is correct.

19 Q. In the case of routing to Qwest, there would
20 be no -- there would be no charge imposed to continue
21 the default and have the calls routed to Qwest's OS and
22 DA; is that correct?

23 A. I'm sorry, I think I missed the first half of
24 that question. Would you repeat that?

25 Q. Qwest as the local service provider wouldn't

0310

1 impose any charge to, because the Qwest OS and DA are
2 default, Qwest wouldn't impose a charge to route the
3 calls to Qwest's OS and DA; is that correct?

4 MS. ANDERL: Objection, Your Honor, the
5 question is vague, impose a charge on or to whom?

6 MR. HARLOW: On anyone.

7 A. Qwest --

8 JUDGE BERG: One second, Mr. Teitzel.

9 MR. HARLOW: Not for the call itself, but for
10 the routing.

11 JUDGE BERG: I have to, you know, be honest
12 with counsel that I was still trying to piece the
13 question together myself, and I don't have a clear grasp
14 of what's being asked.

15 Could you repeat the question to the best of
16 your ability, Mr. Harlow.

17 MR. HARLOW: Well, let me take it in another
18 order, and maybe it will be easier to follow then.

19 BY MR. HARLOW:

20 Q. If a line is to deliver a call by default to
21 say AT&T for operator services and directory assistance
22 and it's a Qwest line on a Qwest switch, Qwest would
23 impose a charge to develop a customized routing for that
24 particular line on a CLEC presumably?

25 MS. ANDERL: Well, I guess again, Your Honor,

0311

1 I would object on multiple reasons, not the least of
2 which is that the question is very confusing, and
3 Mr. Teitzel has already clarified that these are the
4 types of questions that need to be directed to
5 Ms. Malone. Mr. Harlow has now just moved in one fell
6 swoop into questions about the wholesale products.

7 JUDGE BERG: Mr. Harlow --

8 MR. HARLOW: If I have moved beyond this
9 witness, then I'm happy to hold this for --

10 JUDGE BERG: Yes, why don't you. Can you put
11 it as a hypothetical, Mr. Harlow.

12 MR. HARLOW: It sounds to me like I need to
13 hold these for Ms. Malone, so I will withdraw and move
14 on.

15 JUDGE BERG: All right.

16 BY MR. HARLOW:

17 Q. Still on page 3 of your testimony, you talk
18 about voice grade, that basic residential provides voice
19 grade access to the public switched network, unlimited
20 access and usage of the switched network within the
21 local calling area. Do you have that testimony in mind?

22 A. Yes, I do.

23 Q. Now in this case, you have distinguished
24 between access on the one hand and usage on the other,
25 and I take it the access on that line to local calling

0312

1 comes at no charge; is that correct, no charge to the
2 end user?

3 A. If we're talking about local access to the
4 local network for a local seven digit dialed call, I
5 would respond by saying that for the \$12.50 recurring
6 rate on a flat residential line, the customer receives
7 not only access or the ability to call the local calling
8 area, but unlimited usage within that local calling
9 area.

10 Q. Now let's switch for a minute to a measured
11 residential line. In the case of a measured residential
12 line, I take it that for the flat rate for that measured
13 service, the access again would be provided at no
14 additional charge, but in that instance usage would be
15 provided at an additional charge; is that correct?

16 A. I think that's a reasonable characterization,
17 yes.

18 Q. Okay. Now you also mentioned that retail or
19 residential customers have access to emergency services
20 such as 911. Do you see that?

21 A. Yes, I do.

22 Q. And again, 911 is something that the customer
23 can access at no additional charge over their \$12.50
24 bill; is that correct?

25 A. That's right.

0313

1 Q. Now 911 is also a service that's provided
2 over trunks and out of a separate location than the
3 local switch; is that correct?

4 A. That's correct, a 911 call is routed through
5 a special trunk group to an emergency services operator.

6 Q. And Qwest is compensated for the 911 trunks
7 and associated services by whom?

8 A. Compensated by whom?

9 Q. Let me make it more leading. Do you
10 understand the term PSAP, P-S-A-P, public safety
11 answering point?

12 A. Yes.

13 Q. And this is a platform established or paid
14 for by local governments typically?

15 A. That's my understanding, that's correct.

16 Q. And so is it your understanding that those
17 governments, PSAPs if you will, will pay for the 911
18 trunks and other facilities that Qwest provides in order
19 to make 911 work?

20 A. Yes, 911 is typically a publicly funded
21 function serving the public interest obviously, and it's
22 supported by the taxpayer, so that's how that bill is
23 paid.

24 Q. Now Qwest basic residential local exchange
25 service provides access not only to Qwest operator

0314

1 services but also potentially to AT&T, for example; is
2 that correct?

3 A. I'm sorry, ask the question again, please.

4 Q. Does Qwest's basic residential local exchange
5 service also provide access to AT&T's operator services
6 and directory assistance services?

7 A. Yes, certainly AT&T can be accessed, and I
8 should explain just a little bit before I answer this
9 directly.

10 Q. Well --

11 A. If a long distance --

12 Q. We can elaborate on that, but if your answer
13 is --

14 A. I can't --

15 Q. -- as fair as a yes, then I think we ought to
16 just --

17 A. I can't give you a specific yes or no without
18 describing just a little bit. If a subscriber
19 pre-subscribes to AT&T's 1+ long distance service and
20 they dial the code 00, which is an access code to AT&T's
21 DA service, that is a way the customer can access AT&T's
22 directory assistance. So if they're a local exchange
23 customer of Qwest paying \$12.50 a month, they're
24 pre-subscribed to AT&T, with that \$12.50 fee, they have
25 the ability or the right, if you will, to dial 00 to

0315

1 access AT&T's directory assistance under those
2 circumstances.

3 Q. You did anticipate some of my follow up. So
4 the presubscription is called a PIC, P-I-C, for primary
5 interexchange carrier?

6 A. It is.

7 Q. And if the customer does access AT&T over the
8 Qwest residential line, does Qwest necessarily bill and
9 collect for calls that the customer places through AT&T?

10 A. I believe AT&T has resumed its billing
11 function, so I do not think we bill the end user on
12 AT&T's behalf.

13 Q. But there are situations where Qwest does
14 bill the end user on AT&T's behalf for OS and DA
15 services?

16 A. I'm not sure. I'm not certain. I don't
17 think so, but I'm not certain, as I say.

18 Q. I'm talking about in the past. Well, let me
19 make it more generic. Are there interexchange carriers
20 or OSPs for whom Qwest does bill and collect for OS and
21 DA calls?

22 A. I believe that's true.

23 Q. And is it correct that Qwest does so either
24 under a billing and collection contract or a billing and
25 collection price list?

0316

1 A. That's my understanding.

2 Q. And is Qwest compensated for the billing and
3 collection service by the OS and DA provider?

4 A. That's also my understanding.

5 Q. To your knowledge, does Qwest have a billing
6 and collection arrangement with Tel West?

7 A. I'm aware that Qwest has an interconnection
8 agreement with Tel West. We heard that today. Relative
9 to a billing and collection arrangement, I'm not certain
10 of that. I don't think so as I sit here, but I'm not
11 certain.

12 Q. Would another one of the witnesses in the
13 room be able to address that?

14 A. I believe Ms. Malone could address that
15 question.

16 Q. Okay, we will reserve the balance of this for
17 her.

18 Turning to page 4 of your testimony, you were
19 asked to define CustomNet and dial lock. Do you see
20 that Q&A?

21 A. Yes, I do.

22 Q. You would agree, would you not, that
23 CustomNet has no capability at all to block collect
24 calls?

25 A. That is correct. CustomNet is designed to

0317

1 block outgoing long distance type calls.

2 Q. Billed number screening is the service that's
3 intended to block for collect calls?

4 A. That is correct.

5 Q. Can billed number screening also block
6 billing to a third number where that third number is a
7 screened number in the LIDB data base?

8 A. That's true.

9 Q. LIDB is L-I-D-B.
10 Are you familiar with the direct cost of
11 CustomNet service?

12 MS. ANDERL: Objection, Your Honor,
13 irrelevant. We had a discovery dispute on this issue.

14 MR. HARLOW: We did, and now we have Qwest's
15 brief, and they argue quite strongly that the Commission
16 ought to take into account public policy, and I tend to
17 agree with that actually. But what we really are
18 getting here is this case really isn't about cost so
19 much as it is about revenues, and what we intend to
20 argue is that Qwest basically seeks to protect its
21 revenue stream. CustomNet is a very low cost service,
22 and we think the witness will be able to identify that
23 cost is less than a cent. So Qwest is really trying to
24 protect a pure profit revenue stream of \$2 a month by
25 forcing CLECs to use CustomNet.

0318

1 JUDGE BERG: I'm not conducting an
2 arbitration here, Mr. Harlow, and I understand that
3 parties may be making, you know, references to relative
4 merits of different services. I'm, you know, thinking
5 that maybe I don't understand everything that I think I
6 do, and so I'm letting a lot of questioning go on to see
7 where it leads and what else I might learn in the
8 process. But I am not interested in pricing points of
9 other services, and so I'm going to sustain the
10 objection.

11 MR. HARLOW: Okay.

12 BY MR. HARLOW:

13 Q. On page 5 toward the bottom, you're talking
14 about limitations of dial lock, and you say, finally
15 dial lock enables the subscriber to call Qwest. Do you
16 see that?

17 A. Yes, I do.

18 Q. And I guess your implication there is that
19 the customer might be -- a Tel West customer might be
20 able to call Qwest and essentially eliminate the
21 restrictions of dial lock or perhaps change the pin?

22 A. No, not at all.

23 Q. What's the purpose of this testimony?

24 A. I'm representing this to be how dial lock is
25 provisioned in the retail environment. It's a retail

0319

1 service that's subject to resale provisions of the
2 Telecom Act. I'm suggesting here that an end user, a
3 retail end user or the end user of record, in this case
4 that would be Tel West in this proceeding, can call
5 Qwest's enhanced service center and change the types of
6 numbers that are being screened or blocked with dial
7 lock. I'm not suggesting in any way that Tel West's end
8 user can do that function. They're not our customer of
9 record.

10 Q. Okay, thank you for that clarification in
11 that testimony.

12 On page 6, you state:

13 Thus, if a resaler's end user accesses
14 the account right after dial lock is
15 installed but before the resaler can
16 change the pin, it may be that the end
17 user retains a certain amount of control
18 over the outbound calling capability on
19 that line.

20 Do you see that testimony?

21 A. Yes, I do.

22 Q. Do you know if this has ever happened to Tel
23 West?

24 A. It's offered here as a hypothetical as
25 something that could potentially happen based on timing.

0320

1 Based on timing of the order, if the end user, the Tel
2 West end user, temporarily had access to that line as a
3 newly installed line, they may be able to reset a
4 default and use it.

5 Q. So you can't say that that's ever happened
6 even a single time to Tel West, can you?

7 A. I can't say that has happened. I'm offering
8 here hypothetically it could.

9 Q. But you can't tie that hypothetical into any
10 of the billing disputes that have been addressed in this
11 proceeding, can you?

12 A. I can not.

13 Q. Turning to page 7 of your testimony, it's on
14 the bottom of page 6, top of page 7, you're talking
15 about toll restriction service. Do you see that?

16 A. Yes, I do.

17 Q. Toll restriction service, do you know what
18 the charge is for that?

19 A. It's \$2 per month.

20 Q. We're looking something up on that charge,
21 but we'll come back to it.

22 Prior to 1998, are you aware that an end user
23 in order to obtain directory assistance had to dial 1
24 and then either an area code or no area code and then
25 555-1212?

0321

1 A. I know that at a point in the past that was
2 the dialing code to access directory assistance. As I
3 sit here, I don't recall if that was the precise point
4 in time or not.

5 Q. All right. We have a data request response
6 from Qwest to Tel West 02-021. The respondent is listed
7 as Crystal Herbertson. I don't think you're Crystal
8 Herbertson, but if I show it to you, would you be
9 willing to accept subject to check the facts stated in
10 the data request?

11 A. Yes, I would.

12 MR. HARLOW: Just a moment, Your Honor, we're
13 looking for copies for counsel.

14 JUDGE BERG: All right.

15 MS. ANDERL: I've got my own, thank you,
16 Mr. Harlow, I didn't think I did.

17 THE WITNESS: Thank you.

18 MR. HARLOW: You're welcome.

19 JUDGE BERG: Mr. Harlow, would you identify
20 this once more, describe it.

21 MR. HARLOW: This is Tel West Data Request
22 02-021.

23 JUDGE BERG: And this is --

24 MR. HARLOW: And Qwest's response.

25 JUDGE BERG: Okay, that will be marked as

0322

1 Exhibit 52.

2 MR. HARLOW: Okay. This is the same one you
3 have if you want to mark Exhibit 52 on it.

4 BY MR. HARLOW:

5 Q. Mr. Teitzel, can you accept subject to check
6 that this is, in fact, Qwest's response to Tel West's
7 Data Request Number 21?

8 A. Yes, I would.

9 MR. HARLOW: Your Honor, we offer Exhibit 52.

10 MS. ANDERL: No objection.

11 JUDGE BERG: It's admitted.

12 BY MR. HARLOW:

13 Q. So at the date indicated, April of 1998,
14 after that, there was a change in that the prefix of 1
15 was no longer required; is that correct?

16 A. That is correct.

17 Q. And so after that change occurred, toll
18 restriction service would no longer block calls to
19 directory assistance, whereas before the change they
20 would have; is that correct?

21 A. That is my understanding, that's correct.

22 Q. So in addition to the \$2 charge that was
23 previously imposed for toll restriction service, a
24 resaler that wished to block access to directory
25 assistance would now have to pay an additional \$2 less

0323

1 discount for CustomNet or \$3.95 for dial lock or perhaps
2 customized routing; is that correct?

3 MS. ANDERL: Objection, Your Honor, I don't
4 believe that a proper foundation for that question has
5 been laid in terms of what the various services do or do
6 not provide and whether you have to order all of them or
7 some of them or what combination. I think that maybe he
8 can lay that foundation with this witness, but I don't
9 think it exists at this point.

10 MR. HARLOW: I'm frankly at a loss to
11 understand the foundation objection. The witness has
12 addressed dial lock and CustomNet and explained what
13 they are, and I'm simply asking the wrap up question
14 that with this change in how DA is provided changed to
15 411 that now you have to -- the CLEC has to order one of
16 those additional blocking products that Mr. Teitzel
17 described in his direct testimony.

18 JUDGE BERG: That's the way I see it as just
19 a wrap up. The witness can answer.

20 A. And I will attempt to answer as I understand
21 the question. I think, and Ms. Malone may want to
22 amplify this answer as well as she assumes the stand
23 here, but I believe a CLEC, as could any retail
24 customer, can choose from several options to screen or
25 block outgoing calls to DA and long distance services.

0324

1 Dial lock is certainly an option. There is a less
2 expensive option which is called CustomNet, which is
3 priced at \$2 a month, that the retail customer or a
4 resaler can choose to implement. A toll restriction
5 relative to blocking directory assistance I would say is
6 not a good option, because toll restriction specifically
7 blocks toll calls. It does not block access to
8 directory assistance. So I would suggest that either
9 dial lock or CustomNet or possibly custom routing,
10 speaking about the resaler or CLEC, may be an option to
11 consider.

12 BY MR. HARLOW:

13 Q. So you're speaking today, but prior to 1998,
14 toll restriction service did block calls to directory
15 assistance?

16 A. It did.

17 Q. Thank you.

18 I'm going to skip this.

19 Are there certain blocking services that are
20 provided both to CLECs and end users at no charge, at
21 least no recurring charge?

22 A. I'm not aware of one. I can tell you that
23 services at issue today and the services in my testimony
24 such as CustomNet, toll restriction, dial lock, do carry
25 recurring rates, and those rates are accessible to

0325

1 retail customers as well as CLECs that may purchase
2 those on a resale basis.

3 Q. Okay. Do you know if Qwest operator services
4 platforms have the capability to do LIDB dips to
5 determine if a line is screened against operator service
6 charges?

7 A. I would have to characterize my answer by
8 saying again I'm not a technical expert, but certainly
9 operator services platforms are equipped to do LIDB dips
10 to see if certain restrictions may be on a line such as
11 billed number screening.

12 Q. And they have that capability to do that both
13 on incoming calls that come from the number to be billed
14 as well as collect calls that come from a number other
15 than the one to be billed; is that correct?

16 A. I believe LIDB can examine characteristics of
17 an inbound call on a particular line to see if a
18 particular call may be allowed, so I think the answer is
19 yes to both of those --

20 Q. Okay.

21 A. -- questions.

22 Q. Do you know if Qwest's directory assistance
23 platform has the capability to do LIDB dips?

24 A. LIDB is a concept that's relative to operator
25 services typically. It's not a concept that I'm aware

0326

1 of that relates to directory assistance. As I sit here,
2 I can't say it's technically impossible to tie a
3 directory assistance and LIDB together. I don't think
4 it's done as a matter of course.

5 Q. Do you know if Qwest's directory assistance
6 arm, if you will, takes directory assistance calls that
7 are billed to alternate billing?

8 A. Yes.

9 Q. And please describe how that works.

10 A. An alternate billed call could be a call to a
11 credit card, calling card, if you will, and a customer
12 could charge a DA type call, DA inquiry to a calling
13 card.

14 Q. Returning to CustomNet, which you do on page
15 10 of your testimony, and you have discussed it as
16 another optional call blocking service, I wanted to ask
17 you, do you know if CustomNet works with necessarily in
18 all of Qwest's switches to all of Qwest's optional
19 features?

20 A. With many services, there are feature
21 interaction issues where certain features may not work
22 well or at all with certain other services. I believe
23 to your first question, I think CustomNet works
24 virtually identically in all types of switches in
25 Qwest's service territory. There may be some limited

0327

1 feature interactions that may not work well together.
2 I'm trying to recall which they may be. I'm seeming to
3 recall Call Waiting may be one of those features. I can
4 verify that for you if you would like.

5 Q. Yes, I guess specifically does CustomNet
6 screening work with Call Waiting in DMS-10 offices?

7 A. I believe --

8 Q. If you're struggling with that, I do have a
9 document that may help.

10 A. I would like to look at it, please.

11 MR. HARLOW: Your Honor, it would probably be
12 best to go ahead and number this as Exhibit 53.

13 JUDGE BERG: And what are we looking at,
14 Mr. Harlow?

15 MR. HARLOW: I will let the witness identify
16 it as soon as we have copies out for distribution.

17 JUDGE BERG: All right, something that was
18 produced by Qwest?

19 MR. HARLOW: In a way, yes, it's off their
20 wholesale web site, Your Honor.

21 JUDGE BERG: We will describe this document
22 as --

23 MR. HARLOW: How about CustomNet product
24 description.

25 JUDGE BERG: -- Qwest on-line CustomNet

0328

1 product description.

2 BY MR. HARLOW:

3 Q. I will give you a moment, Mr. Teitzel, to
4 look through Exhibit 53.

5 A. I reviewed it.

6 Q. Can you identify Exhibit 53?

7 A. This Exhibit 53 is a -- appears to be a
8 screen shot of an on-line wholesale reference piece
9 regarding the CustomNet long distance blocking feature.

10 Q. Do you accept subject to check that this is
11 off of Qwest's wholesale Internet web site?

12 A. I would accept that subject to check. I have
13 not reviewed this document before this moment, but it
14 appears to be that.

15 Q. Would you take a look at, I see there's a
16 whole punch right through the page number, Your Honor,
17 it would be page 5.

18 A. I have that page.

19 Q. And do you see where it says, in a DMS-10
20 switch type, CustomNet is not available with Call
21 Waiting?

22 A. I do see that.

23 Q. Do you know if CustomNet works with Call
24 Waiting in a DMS-100 switch?

25 A. I recall seeing a similar provision in the

0329

1 retail methods that I have reviewed, and my recollection
2 is that it does work with that feature in a DMS-100.
3 This restriction is limited to a DMS-10.

4 Q. Do you know when, if ever, CustomNet was
5 recommended to Tel West by a Qwest employee for blocking
6 OS and DA services?

7 A. As I sit here, I don't know that. I know
8 that it's been recommended at some point. Exactly when,
9 I honestly don't know.

10 Q. Do you know that at some point dial lock had
11 been recommended to CLECs by Qwest as a way to block OS
12 and DA?

13 A. Once again, I believe that it had at some
14 point in the past. I can't testify as to the specifics.
15 I believe Ms. Malone can answer that question.

16 Q. Okay, well, we will get back to that with
17 her.

18 MR. HARLOW: And then finally if I may
19 approach the witness, Your Honor, with a data request
20 response. We didn't -- this one is voluminous, and it's
21 confidential, so we didn't make enough for exhibits.
22 And if we end up having to make it an exhibit, we'll
23 make copies later, but I think we can just question on
24 it.

25 JUDGE BERG: All right, we will mark this as

0330

1 Exhibit 54, and Mr. Harlow, the reference to the data
2 request and the party responding.

3 MR. HARLOW: It is Qwest's response to Tel
4 West Data Request 02-034.

5 JUDGE BERG: Thank you, Mr. Harlow. At one
6 point, I will need at least one copy for my records
7 without regard to whether it's tendered for admission.

8 MR. HARLOW: Certainly. I really want to try
9 and keep this at a high level, and we'll drill down if
10 we need to.

11 BY MR. HARLOW:

12 Q. Data Request Response 34 deals with retail
13 and wholesale policies regarding adjustments of OS/DA
14 charges or bills?

15 A. That's correct.

16 Q. And the confidential attachment describes in
17 great detail the retail processes; is that correct?

18 A. That is correct.

19 Q. Okay. But I would like to take this at kind
20 of a high level. Qwest's policy is to make adjustments
21 for retail customers when they dispute OS and DA
22 charges; is that correct?

23 A. Yes. And again at a very high level, if a
24 dispute arises, Qwest service representatives
25 investigate the complaint, determine if the charge is

0331

1 warranted, whether it was technically possible to make
2 that particular call on that particular day, and if so,
3 the charge is sustained.

4 Q. And again at a very high level, if there is a
5 block on the line for the particular disputed call, then
6 the representative will, of course, adjust the charge
7 off for the customer; is that correct?

8 A. Well, not in all instances. I think in
9 certain cases, for example, the billed number screening
10 that blocks inbound collect type calls or calls from a
11 third number, there is a provision in the tariff that
12 says that in some instances certain calls may not be
13 blocked due to characteristics of the switching
14 equipment at the originating end of the call. In those
15 instances, there would not be an adjustment.

16 Q. Doesn't the Qwest customer service
17 representative have the discretion to adjust the charge
18 off the retail customer's bill?

19 A. If the customer and Qwest -- if Qwest
20 receives a complaint from the customer and if we
21 investigate it, determine that the situation is as the
22 customer has represented it, they've got the appropriate
23 blocking feature on, if that's what the dispute revolves
24 around and it appears that there was a software glitch
25 or difficult to say what the situation might be, there

0332

1 will be an adjustment.

2 Q. And that's consistent with Qwest's internal
3 policy is to make that adjustment?

4 A. If it appears to be a problem of Qwest's
5 making in some way, there would be an adjustment.

6 MR. HARLOW: Those are all the questions at
7 this time, Your Honor.

8 JUDGE BERG: Ms. Anderl.

9 MS. ANDERL: Thank you, just a few.

10

11 R E D I R E C T E X A M I N A T I O N

12 BY MS. ANDERL:

13 Q. Mr. Teitzel, Mr. Harlow asked you some
14 questions about whether a resaler would have to order
15 CustomNet on top of toll restriction service in order to
16 block both the toll and directory assistance after the
17 April 1998 changeover. Do you recall that line of
18 questioning?

19 A. I do.

20 Q. To your knowledge, does CustomNet block a
21 certain class of toll type 1+ calls?

22 A. CustomNet will block direct dial toll calls,
23 1+ toll calls.

24 Q. And CustomNet also blocks directory
25 assistance; is that right?

0333

1 A. It does.

2 Q. So prior to 1998, a subscriber who had
3 CustomNet would have had 1+ and directory assistance
4 blocked; is that right?

5 A. Prior to 1998 when ordering CustomNet
6 specifically?

7 Q. Yes.

8 A. Yes.

9 Q. And subsequent to 1998, a subscriber to
10 CustomNet would also have had the ability to block 1+
11 toll and directory assistance; isn't that right?

12 A. That's correct, and I think the distinction
13 was the toll restriction.

14 Q. But if a customer were intending to block 1+
15 toll type calling and they had CustomNet, would there be
16 any need for them to order toll restriction on top of
17 that?

18 A. No.

19 Q. Mr. Harlow asked you some questions about
20 whether Qwest offers any blocking services for free to
21 its end users or to its CLECs; do you recall that?

22 A. I do.

23 Q. And when you responded to that question, were
24 you intending to include in your response both blocking
25 and screening type services?

0334

1 A. The context of my response was around the
2 services in my testimony, so to the extent that they're
3 blocking in the case of BNS or billed number screening
4 inbound calls, that would be a version of screening. To
5 the extent they're screening outbound calls, I think the
6 answer would be yes.

7 Q. And then the billed number screening, what is
8 your recollection of the charges that are associated
9 with that service?

10 A. That service has a \$6.50 nonrecurring charge,
11 as I recall, without a monthly recurring rate.

12 Q. Mr. Harlow also asked you some questions
13 about the ability of CustomNet to work in all central
14 offices; do you recall that?

15 A. Yes, I do.

16 Q. And he pointed out to you on Exhibit 53 some
17 discussion about the limitations of CustomNet in a
18 DMS-10 switch type; do you recall that?

19 A. I do.

20 Q. Can you generally characterize what type of
21 central office a DMS switch type would be used in, or do
22 you know that?

23 A. I can say generally that a DMS-10 would be in
24 typically a smaller exchange, a smaller community,
25 serving a more limited number of end users, as opposed

0335

1 to a DMS-100, which might be in a large metropolitan
2 area.

3 Q. And to the extent that this DMS switch type
4 limitation would pertain to CustomNet on a resale basis,
5 do you know whether those same restrictions would
6 pertain to CustomNet on a retail basis for Qwest end
7 users?

8 A. They're exactly the same.

9 MS. ANDERL: That's all that I have, Your
10 Honor, thank you.

11 JUDGE BERG: No questions from the Bench.

12 MR. HARLOW: Nothing further, Your Honor.

13 JUDGE BERG: All right.

14 Mr. Teitzel, thank you very much for being
15 here and testifying today. You're excused.

16 Is it all right, Mr. Harlow, to excuse this
17 witness at this time?

18 MR. HARLOW: I thought he indicated he would
19 be here until 5:00. I don't expect we will have
20 anything further for him, but I think Ms. Malone is up
21 next, and so we should know by 5:00 whether or not --

22 JUDGE BERG: All right, Mr. Teitzel, I am
23 going to wait until the conclusion of Ms. Malone's
24 testimony to formally excuse you. If for some reason
25 you need to leave before you hear from me, if you would

0336

1 feel free to raise your hand or let me know.

2 THE WITNESS: Thank you, Your Honor.

3 MS. ANDERL: Your Honor, Qwest would call
4 Kathy Malone to the stand.

5 JUDGE BERG: All right.

6 MS. ANDERL: Your Honor, before Ms. Malone is
7 sworn and testifies, I would like to note for the record
8 that I neglected to offer part of an exhibit, one of the
9 disputed ones that we had with Tel West, and I don't
10 know -- I would like to take that up before we close
11 today. I don't know if you want me to do that now.

12 JUDGE BERG: Let's take that up right now.

13 MS. ANDERL: Thank you, Your Honor. We had
14 pending three data request responses that Tel West did
15 not stipulate to, C-18, C-33, and C-38. Now I believe
16 C-38 has been addressed by virtue of a Bench Request,
17 and so we will await the outcome there. We will
18 withdraw C-33 and not offer that. And we would offer
19 only a portion of C-38, or I'm sorry, C-18, and that is
20 pages 1 through 11. We asked a number of questions
21 about those, Your Honor, those sheets. Some of the
22 questions were somewhat oblique so as not to bring
23 specific confidential information into the record, and I
24 frankly think that references to things such as
25 statement date and telephone numbers, which we do need

0337

1 for our argument, will be impossible to ascertain unless
2 we have as a part of the record those first 11 pages of
3 that exhibit. And Mr. Swickard did authenticate them.
4 I don't think that there's any question about that.

5 JUDGE BERG: Mr. Harlow.

6 MR. HARLOW: I guess I understood that you
7 ruled that these would be admitted for the limited
8 purpose this morning, so we don't withdraw our
9 objection, and I don't think we need to rehash it.

10 JUDGE BERG: All right. I may have held this
11 back, but I certainly allowed the line of questioning.
12 I appreciate your cooperation.

13 And C-33 is noted as withdrawn, and C-18, and
14 I should say that is 18, C-18, pages 1 through 11 are
15 admitted. Only pages 1 through 11 are admitted, and
16 that includes page 1 and page 1-A.

17 MS. ANDERL: Thank you, Your Honor, that's
18 what we have offered.

19 JUDGE BERG: All right, one moment while I
20 make a notation here.

21 All right, at this time, Ms. Malone, would
22 you please stand and raise your right hand.

23

24

25 Whereupon,

0338

1 KATHY MALONE,
2 having been first duly sworn, was called as a witness
3 herein and was examined and testified as follows:

4

5 JUDGE BERG: Thank you.

6 MS. ANDERL: Thank you, Your Honor.

7

8 D I R E C T E X A M I N A T I O N

9 BY MS. ANDERL:

10 Q. Good afternoon, Ms. Malone.

11 A. Good afternoon.

12 Q. Could you please state your name and your
13 business address for the record.

14 A. My name is Katherine Malone. My address is
15 1801 California Street, Suite 2360, Denver, Colorado
16 80202.

17 Q. Ms. Malone, did you file response testimony
18 and attached exhibits in this docket?

19 A. Yes, I did.

20 Q. Do you have those documents before you?

21 A. Yes, I do.

22 Q. And those documents have been identified as
23 Exhibits 41 through 46 for purposes of this proceeding.
24 Do you have any changes or corrections that you need to
25 make?

0339

1 A. No, I do not.

2 MS. ANDERL: Your Honor, again, as I
3 understand, these documents have already been admitted,
4 we will therefore tender the witness for cross.

5 JUDGE BERG: So noted, thank you.

6 MR. HARLOW: Your Honor, before we begin, we
7 have a clean up too, which is to offer Exhibit 53.

8 MS. ANDERL: No objection.

9 JUDGE BERG: All right, Exhibit 53 is
10 admitted.

11

12 C R O S S - E X A M I N A T I O N

13 BY MR. HARLOW:

14 Q. Afternoon, Ms. Malone.

15 A. Good afternoon.

16 Q. You have been patient today. I was reviewing
17 your experience and didn't see anything about your
18 education. Did you attend college?

19 A. I did not. I have, if you will notice, 38
20 years of service. I barely had time to go to college.

21 Q. Where did you go to high school?

22 A. In Denver.

23 Q. And graduated from?

24 A. A private school in Denver.

25 Q. Okay. You're not an attorney I assume then,

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1 are you?

2 A. No, I'm not.

3 Q. And your purpose of the testimony on page 2,
4 you address a number of things, but I don't see anything
5 about the negotiations between Tel West and Qwest
6 regarding the current interconnection agreement between
7 the parties. Were you intending to address the factual
8 background of those negotiations?

9 A. I was not present at the negotiations, so I
10 wouldn't be attesting to what took place at those
11 negotiations.

12 Q. So likewise I assume you have, in fact, no
13 personal knowledge of those negotiations?

14 A. That's true.

15 Q. You talk a lot about the interconnection
16 agreement in your testimony. Would you characterize
17 that as a legal agreement?

18 A. I would characterize that as a legal
19 agreement, but I think the way I have discussed it in my
20 testimony is how those paragraphs that I have referred
21 to are to be put in context to the inclusion of DA and
22 operator services. That's all the intent is in my
23 testimony.

24 Q. Thank you for that clarification. Let me
25 come back to the CustomNet questions that we got into a

0341

1 little bit with Mr. Teitzel, and I take it you were here
2 for that testimony?

3 A. Yes, I was.

4 Q. Just to lay the foundation again, CustomNet
5 is a service that's provided using line class codes; is
6 that correct?

7 A. That's correct.

8 Q. And I take it there is a line class code in a
9 Qwest switch that currently directs by default most end
10 user calls to Qwest operator services and to Qwest
11 directory assistance?

12 A. It would be to all Qwest end users, all calls
13 are gone to Qwest DA and operator services.

14 Q. And is that also done by a line class code is
15 my question?

16 A. Yes, that's my understanding of how it's
17 attained.

18 Q. And customized routing also functions using
19 line class codes; is that correct?

20 A. Yes, it does.

21 Q. Now I understand that you and the other Qwest
22 witnesses advocate that Tel West could use line class
23 codes under the customized routing section of the
24 interconnection agreement to route its end users'
25 attempts to call OS and DA in certain ways; is that a

0342

1 fair summary?

2 A. That's correct. One of the options that was
3 given to Tel West to block his DA and operator services
4 calls was to obtain customized routing. And there
5 again, that would be done through line class codes, as
6 you said.

7 Q. And when was that option given to Tel West?

8 A. I'm not exactly sure of the date. I thought
9 it was offered sometime early on when the complaint was
10 filed or maybe even prior to the complaint, sometime in
11 early November.

12 Q. Do you know what was offered to Tel West
13 under the old agreement to block those calls?

14 A. I don't know. I know Tel West was using dial
15 lock. Is that what you're referring to?

16 Q. Yes.

17 A. And I don't know if that was actually offered
18 to Tel West or how he came upon using dial lock.

19 Q. Okay.

20 A. I'm not aware of that.

21 Q. Now I take it from your testimony that there
22 are, in addition to the option of using customized
23 routing by line class codes to route OS and DA dialed
24 calls to a particular trunk so they would actually go to
25 an operator service and directory assistance platforms,

0343

1 that you can instead route them to an intercept; is that
2 right?

3 A. First, I think I need to explain a little bit
4 to you about how customized routing works. It is a
5 wholesale service that Qwest offers. However, at this
6 point in time, we have no one has yet to request that.
7 A resaler, for example, has never requested to block DA
8 and operator services. The normal use of customized
9 routing is for a provider to use an alternate DA and
10 operator services provider other than Qwest.

11 In the case of Tel West, we did have
12 available our all other customized routing option, where
13 if the customer tells us their specific needs, we will
14 design line class codes to try to accommodate the
15 customer to the type of service he is requesting.

16 Q. All right. I heard what you said, and I want
17 to make sure I heard it correctly. You're saying that
18 there have been CLECs that have ordered customized
19 routing to go to trunks?

20 A. No. I said at this point in time, that's
21 what our initial offering of customized routing is for.
22 It's for a CLEC that wants to be their own operator
23 services provider other -- to use a provider other than
24 Qwest is how I should put it. They don't want to
25 provide the service themselves, they don't want Qwest to

0344

1 provide it, they want it provided by another party, for
2 instance.

3 Q. Okay.

4 A. So we would then have to use for them
5 customized routing.

6 Q. And is that being done today?

7 A. No.

8 Q. Okay.

9 A. No one has requested that service today.

10 Q. Has anyone requested the other service you
11 described, which is customized routing to an intercept?

12 A. No. And like I said, no resaler typically
13 wants to block DA and operator services from the line
14 that it comes included with.

15 Q. Other than apparently Tel West?

16 A. Exactly.

17 Q. Okay. So this would be kind of plowing new
18 ground if you were going to develop customized routing
19 to an intercept?

20 A. That's correct.

21 Q. Explain how that would work. Would there be
22 -- where would the intercept message come from, a Qwest
23 switch?

24 A. My understanding is in a normal customized
25 routing, the CLEC would have to order trunks. Those

0345

1 trunks then would go to the provider of his choice to
2 have the operator services and DA traffic delivered.
3 With the option that was offered to Tel West, they would
4 not need the trunks. It would be something that could
5 go just to an intercept operator and have some type of a
6 recording that, you know, says this call can not be
7 completed as dialed.

8 Q. Well, my understanding of the interconnection
9 agreement is that in order to do this, Tel West would
10 have to pay the charges specified in the interconnection
11 agreement for developing the line class codes and for
12 programming them in, and that's done on a CO by CO
13 basis; is that correct?

14 A. That's true, and the reason for that is
15 because a line class code is unique to the owner of that
16 line class code. The customer tells us what type of a
17 service he's looking for, we then have to design a line
18 class code to accommodate that type of service, and then
19 that line class code has to be programmed in each switch
20 that's designated by the customer.

21 Q. And then if they were going to -- if Tel West
22 were going to route via a trunk group to an actual
23 provider, they have to also incur trunking charges,
24 correct?

25 A. That's correct, they would have to have

0346

1 trunks to get to the provider of their choice.

2 Q. If they were to go with the option of the
3 intercept, would they have any other costs, perhaps not
4 trunking, but would there be a switching charge incurred
5 for the intercepts or anything like that?

6 A. No. They would just have -- the customized
7 routing is a nonrecurring charge, so once they pay for
8 the line class codes to be developed and then to be
9 deployed in each one of the switches that they choose,
10 that would be the extent of the charges that would be
11 required.

12 Q. So Qwest would provide the intercept and the
13 recording for free; is that right?

14 A. Yes.

15 Q. Now what I understand that this latter form
16 of customized routing, the one to the intercept, would
17 do is it would take calls such as 1+, 0+, 0, perhaps not
18 0-, but 411, 1-555-1212, 011, any number of chargeable
19 calls would be routed to the intercept depending on how
20 the line class code was set up; is that right?

21 A. Right, depending on how Tel West would order
22 that line class code.

23 Q. And supposing hypothetically -- would you
24 turn to Exhibit 53 if you have it in front of you still,
25 if the exhibit notebook is up there still.

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1 MS. ANDERL: I don't believe that she does
2 have that.

3 I will approach the witness, if I may, Your
4 Honor.

5 JUDGE BERG: All right.

6 MR. HARLOW: Thank you, Ms. Anderl.

7 BY MR. HARLOW:

8 Q. Would you please turn to the pages that
9 describe the dialing patterns and what CustomNet blocks.

10 A. I think I have that.

11 Q. Okay. And it would be possible, I take it,
12 to design a customized routing that would handle all of
13 the same kind of calls that CustomNet does; is that
14 right?

15 A. That's correct.

16 Q. And in essence then, Tel West in developing
17 with Qwest and paying Qwest for developing customized
18 routing, would have developed a blocking product in
19 effect; isn't that correct?

20 A. That's correct, that would be what Tel West
21 chose to use the customized routing service for.

22 Q. And since that line class code wasn't being
23 used by Tel West to actually route calls anywhere other
24 than the intercept, it's possible that another CLEC
25 could come in and use the same line class codes; is it

0348

1 not?

2 A. To my understanding, that would only be if
3 Tel West would give them the permission to do so. The
4 line class code that Tel West pays for is going to be
5 unique to Tel West. If Tel West would have another
6 provider that he's going to do some type of service with
7 and he's willing to let that provider use that line
8 class code, he could do so, but it is unique to Tel
9 West.

10 Q. So you're saying Tel West could in effect
11 resell its line class codes to another CLEC?

12 A. I guess you could consider it resell. You
13 could have some type of an agreement with them.

14 Q. All right. If you would please turn to
15 Section 9.12.1 of the interconnection agreement.

16 A. I don't have a copy of that either.

17 MS. ANDERL: Here you go.

18 (Discussion off the record.)

19 BY MR. HARLOW:

20 Q. 9.12.1 is the section of the current
21 agreement that governs customized routing; is that
22 correct?

23 A. That's correct.

24 Q. Does it say anywhere in Section 9.12.1 that
25 Qwest could not allow another CLEC to use Tel West's

0349

1 hypothetically developed line class codes?

2 A. No, it does not.

3 Q. Does it say anywhere in there that Tel West
4 would be permitted to in effect resell its line class
5 codes if it had Qwest develop them?

6 A. No, it doesn't, but where my knowledge is
7 coming from is discussing this in length with the
8 product manager.

9 Q. Taking a look specifically at Section
10 9.12.1.1, the very first sentence, it says:

11 The customized routing permits the CLEC
12 to designate a particular outgoing trunk
13 that will carry certain classes of
14 traffic.

15 Do you see that?

16 A. Yes, I do.

17 Q. Anywhere in Section 9.12 is there a
18 description of the proposal that Tel West advocates in
19 its testimony that customized routing would instead
20 route Tel West calls to an intercept message?

21 A. No, because as I explained earlier, this is
22 our standard offering for customized routing. The one
23 that's being offered to Tel West is our all other option
24 for customized routing, and it would -- it's a unique
25 offering, and the customer can design it however he

0350

1 needs to, and then we develop line class codes based on
2 his needs.

3 Q. Do you have your Exhibit KM-3, which is
4 Exhibit 43, in front of you?

5 A. Yes, I have that.

6 Q. And I'm sorry, that's the wrong exhibit. If
7 you would please turn to Exhibit KM-5, which is Exhibit
8 45.

9 A. I have it.

10 Q. And this is the customized routing request
11 form, if you will?

12 A. That's correct.

13 Q. And if you will see down below the, well,
14 let's see, about eight lines down, it says, quantity of
15 trunks in place ordered. Do you see that?

16 A. Yes, I do.

17 Q. Okay. And then it says far end CLLI, which
18 we all say CLLI?

19 A. I see that.

20 Q. And that's an acronym for the switch?

21 A. The end office switch, yes.

22 Q. And that's the end office switch where the
23 line class codes are to route the traffic; is that
24 correct?

25 A. That's correct.

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1 Q. And do you see about, oh, five more lines
2 down in all capital letters trunk status?

3 A. Yes, I do.

4 Q. And then apparently you're supposed to check
5 or circle facility available, yes or no; do you see
6 that?

7 A. Yes, I do.

8 Q. And then you see right below that, it says,
9 if no, then the sales executive will refer back to the
10 CLEC?

11 A. Yes, I do.

12 Q. And then it says, when trunk orders can be
13 released from held facilities reissue this request?

14 A. Yes.

15 Q. Okay. Does that reflect that according to
16 this form the trunks must be ordered and available
17 before the line class codes will be programmed?

18 A. Again, I would have to state that this is our
19 standard offering for customized routing where the CLEC
20 or resaler or someone wants to have a provider other
21 than Qwest provide their operator and DA services.
22 That's why the form is designed the way it is. If Tel
23 West is interested in pursuing the customized routing
24 option, all they would have to do is get with their sale
25 executive, and the lines on this form that are

0352

1 appropriate to his need could be filled out and
2 submitted to Qwest.

3 Q. How is Tel West supposed to have known this
4 option existed before it commenced this litigation?

5 MS. ANDERL: Your Honor, I guess I'm going to
6 object to this line of questioning. Now certainly Qwest
7 has opened up the issue of customized routing and line
8 class codes with Ms. Malone's testimony. We don't mean
9 to suggest otherwise. But as Your Honor has pointed
10 out, this isn't an arbitration, and I think that really
11 trying to negotiate on the stand with the witness what
12 the terms and conditions of this service are going to be
13 is inappropriate.

14 We suggested this to call to Tel West's and
15 Your Honor's attention the fact that there are a number
16 of options that Tel West could pursue other than
17 litigation. We think we have made clear when Tel West
18 first became aware of these options, and I think that
19 this type of exploration of product descriptions really
20 doesn't belong here, although we would be happy to
21 pursue it with Tel West in the appropriate forum.

22 JUDGE BERG: I understand this may be on the
23 fringe of the issues, but I am going to let some
24 questions go on.

25 But, Mr. Harlow, I think you need to phrase

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1 your question in a less argumentative context, and so
2 far I don't know that this witness has any knowledge of
3 how these, it's not so much to Tel West, but how these
4 services are made known to general. If you could --

5 MR. HARLOW: I will rephrase, Your Honor.

6 JUDGE BERG: -- maybe lay just a little
7 foundation on how these sorts of things are commonly
8 made available.

9 BY MR. HARLOW:

10 Q. Ms. Malone, can you point to anything in Tel
11 West's interconnection agreement or anything in the line
12 class code order form that would alert Tel West that
13 there is this other option where they can use customized
14 routing to block a call by routing it to an intercept
15 rather than to a trunk?

16 A. I would say that probably the language in the
17 interconnection agreement, as you pointed out, reflects
18 more our standard offering. However, I'm confused to
19 the fact that this was made aware to Tel West in
20 November at some point in time and that they didn't come
21 to Qwest and try to pursue how to fill out this form or
22 ask us for any type of information that we could have
23 provided to them. And, in fact, I was made aware that
24 when they did try at the last minute to get a meeting
25 together that they said it was only to appease the Judge

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1 was the only reason they were pursuing the option. So I
2 think that Qwest has tried to do what they could to help
3 Tel West, and I don't really think they have
4 legitimately in good faith tried to pursue this option.

5 Q. At this point in time, do you know how much
6 this option would cost Tel West?

7 A. I don't, because I don't know how many
8 offices Tel West needs to have this implemented in. Our
9 costs are currently being addressed in the Phase D of
10 the cost docket. Those are our costs, and I can't
11 remember off the top of my head what those costs that
12 we're proposing are. But if they knew how many switches
13 that they need to deploy this in, it would -- they could
14 roughly develop a cost of what it would be to pursue the
15 customized routing option.

16 Q. Let's move on. On page 2 of your testimony,
17 you reference Qwest's tariff WNU 41. Did you mean to
18 reference WNU 40 there?

19 MS. ANDERL: What line?

20 MR. HARLOW: That's right under Roman Numeral
21 III, please describe generally, please generally
22 describe Qwest local exchange service offerings in
23 Washington.

24 MS. ANDERL: I believe that you may be
25 looking at the wrong testimony, Mr. Harlow.

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1 MR. HARLOW: I might be looking at
2 Mr. Teitzel's testimony.

3 THE WITNESS: I was going to say, I don't see
4 anything like that.

5 MR. HARLOW: Okay, but I do have some follow
6 up for Malone.

7 BY MR. HARLOW:

8 Q. Do you remember the questioning about billing
9 and collection and whether or not Tel West has a billing
10 and collection agreement with Qwest?

11 A. Yes, I do.

12 Q. In fact, can you confirm that Qwest has no
13 such agreement with Tel West?

14 A. That's correct.

15 Q. And so if Tel West bills and collects OS and
16 DA calls provided by Qwest OS and DA arms, Tel West will
17 not be compensated for the billing and collection
18 function by Qwest?

19 A. I wouldn't characterize the scenario as that.
20 I don't believe they're performing a billing and
21 collection function for Qwest.

22 Q. What function do you believe they're
23 performing?

24 A. Their end user has incurred a charge using
25 one of Qwest's services, and Qwest needs to be paid for

0356

1 that. It's not a billing and collection service. It's
2 a matter of being compensated for the use of a service
3 provided to them.

4 Q. But would you say Tel West is reselling
5 Qwest's OS and DA service in that scenario?

6 A. Qwest is reselling -- Tel West is reselling
7 Qwest's retail service, and with that included comes
8 operator services and DA.

9 Q. I'm sorry, but I didn't hear an answer to my
10 question as to whether or not you would characterize
11 that as a resale of Qwest's OS and DA services?

12 A. Yes, because they're reselling the 1FR line.

13 Q. And you're saying that that comes with the OS
14 and the DA?

15 A. That's correct.

16 Q. What about the scenario where a call gets
17 through the screening or the blocking somehow, or maybe
18 there isn't any and it goes to AT&T, would you say Tel
19 West is reselling AT&T's service?

20 A. I don't understand how -- I don't think their
21 end user -- a call could get to AT&T without
22 deliberately dialing AT&T.

23 Q. If that occurred then, would --

24 A. No, I wouldn't say that they're reselling
25 AT&T services. They're just using AT&T to provide the

0357

1 service to them. What they're doing is, you know, using
2 our 1FR line that comes with DA and operator service,
3 and they're circumventing that and dialing AT&T.

4 Q. Do you know if Qwest does billing and
5 collection for, if not AT&T, companies like AT&T?

6 A. At one point in time they did. I'm not
7 familiar with what companies if they still do that for.

8 Q. And in that instance, is Qwest compensated by
9 the OS and DA provider for billing and collecting those
10 calls?

11 A. They would be compensated by the company that
12 they have a billing and collection agreement with, but
13 they're not being compensated for the DA and OS calls
14 just because it's a DA and OS call. They're being
15 compensated for a billing and collection function.

16 Q. Let's talk for just a minute about just
17 collect calls. In the case of a collect call, Qwest is
18 required to provide the rate for the call on request by
19 the caller?

20 MS. ANDERL: Objection, Your Honor, I'm not
21 sure that this is directed to any portion of either
22 Ms. Malone's testimony or testimony or questions that
23 Mr. Teitzel deferred to her.

24 A. And I really don't know. I'm not familiar
25 with collect calls.

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1 Q. All right, well, let me continue to go
2 through your testimony and come back to it if I find out
3 where it ties in. Otherwise, it may be for
4 Mr. Brotherson.

5 Did you hear Mr. Teitzel's testimony about
6 the OS and DA being provided out of a separate platform
7 from the local switch?

8 A. Yes, I did.

9 Q. And did you agree with that characterization
10 of how those services work?

11 A. Yes, I did.

12 Q. Are you familiar with the poles, ducts,
13 conduits, and right of way section of Tel West's
14 interconnection agreement?

15 A. No, I'm not.

16 Q. Are you familiar with that section generally
17 as it appears in Qwest's SGAT?

18 A. I just know that it appears. That's not one
19 of the products that I represent.

20 Q. Okay. Here's some questions where I think we
21 had to move off Mr. Teitzel. You know, I'm not going to
22 go into that again.

23 Have you reviewed Tel West's price list?

24 A. I have vaguely seen it. I haven't reviewed
25 it in any type of detail.

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1 Q. Do you recall if it offers billing and
2 collection service?

3 A. I don't recall.

4 Q. Do you recall if it offers operator services
5 of any type?

6 A. I don't recall.

7 Q. Do you recall if it offers directory
8 assistance?

9 A. I don't recall.

10 Q. Okay. Now let's come back to your Exhibit
11 KM-3, which is Exhibit 43, and let me know when you have
12 that.

13 A. Can you tell me what it is? It will be a
14 little bit faster for me.

15 Q. It is the web change notification form.

16 A. Okay.

17 Q. Ride the lights in the top right.

18 A. Okay, I have it.

19 Q. And that's referred to you in your testimony,
20 let's see, my pagination is different here, it says
21 about page 10 roughly, I believe. You have a question,
22 how did Qwest notify Tel West regarding end properties
23 of dial lock. Do you recall that?

24 A. Yes, I do. It's actually on page 8.

25 Q. Yes, page 8 and 9, okay. And apparently your

0360

1 contention is that this exhibit was how Qwest notified
2 Tel West regarding improper use of dial lock; is that
3 correct?

4 A. That's correct.

5 Q. Okay. And where in the exhibit does it do
6 that?

7 A. The announcement date in the exhibit itself
8 was sent out to all CLEC resalers making them aware of
9 changes in our web page and what products are changing,
10 and then specifically they described the changes to dial
11 lock.

12 Q. And what was sent out to CLECs allegedly was
13 just the first two pages of Exhibit 43; isn't that
14 correct?

15 A. I believe that's correct.

16 Q. And does it mention anywhere in the first two
17 pages of Exhibit 43 that dial lock is not to be used for
18 blocking OS and DA?

19 A. I have seen it here somewhere. Hold on just
20 a minute. There's a sentence down here that refers them
21 to the dial lock PCAT is being modified to provide
22 Qwest's policy on credits/adjustments.

23 Q. So there's no mention on the notification
24 form, the two page notification form, of OS or DA; is
25 that correct?

0361

1 A. No, it's specifically talking about the dial
2 lock product here, and then it would be the
3 responsibility of the resaler to go in and review the
4 change to the dial lock product to see what changes are
5 being made and how it would affect their services.

6 Q. Is there anything on these two pages that
7 says you can't use dial lock as a blocking service as a
8 resaler?

9 A. Well, I don't know too if this is the entire
10 web change or if this is just a couple of specific
11 pages. I know that I have seen, when I went into the
12 web site, that I have seen the notation that it is not
13 supposed to be used -- it's not a tool for resalers to
14 use for blocking purposes.

15 Q. Right, well, let's turn the page then to the
16 first page of the web site. It's numbered by in the
17 handwritten numbers on the bottom right, it's number 4.
18 Do you see where it says dial lock product description?

19 A. Oh, yes.

20 Q. Okay. And it says, it is not designed to
21 function as a toll blocking tool for resalers. Do you
22 see that?

23 A. I'm sorry, what page are you on?

24 Q. It's hand numbered 4.

25 A. Oh, okay.

0362

1 Q. It's the first page of the web site, the last
2 sentence of the product description section.

3 A. Yes, I do.

4 Q. And it references toll blocking. Do you see
5 that?

6 A. Yes, I do.

7 Q. And toll is blocked by a service call toll
8 restriction service; isn't that correct?

9 A. That's correct.

10 Q. That sentence certainly doesn't mention OS
11 and DA. Can you find anywhere in this exhibit that OS
12 and DA services are mentioned?

13 A. I would just say the product description in
14 general would include DA and operator services. The way
15 it describes blocking can include local and long
16 distance outgoing calls, so local would be DA/operator
17 services.

18 Q. So it says it can block local, but it says
19 it's not designed for resalers to block toll. Is that a
20 fair summary?

21 A. That's true.

22 MR. HARLOW: That's all the questions I have,
23 Your Honor.

24 JUDGE BERG: Redirect, Ms. Anderl?

25 MS. ANDERL: No, Your Honor.

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1 JUDGE BERG: No questions from the Bench.

2 Ms. Malone, thank you very much for being
3 here and testifying. You're excused.

4 THE WITNESS: Thank you.

5 JUDGE BERG: All right, and at this time,
6 Mr. Harlow, could Mr. Teitzel also be released?

7 MR. HARLOW: No, we have another hour of
8 cross for him, Your Honor. All right, we'll let him go.

9 (Discussion off the record.)

10 (Recess taken.)

11

12 Whereupon,

13 LARRY BROTHERSON,

14 having been first duly sworn, was called as a witness
15 herein and was examined and testified as follows:

16

17 D I R E C T E X A M I N A T I O N

18 BY MS. ANDERL:

19 Q. Good afternoon, Mr. Brotherson.

20 A. Good afternoon.

21 Q. Would you please state your name and your
22 business address for the record.

23 A. Larry Brotherson, B-R-O-T-H-E-R-S-O-N, 1801
24 California Street, Suite 2350, Denver, Colorado 80202.

25 Q. Thank you. And, Mr. Brotherson, you filed

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1 responsive testimony as well as an exhibit. The exhibit
2 is -- the testimony is under Exhibit Number 39, and the
3 Exhibit is 40 or C-40 because it is a confidential
4 exhibit?

5 A. That's correct.

6 Q. Do you have any changes or corrections to
7 make to your written testimony?

8 A. Yes, I do, some minor ones here.

9 Q. If you would direct us first to the page and
10 then to the line number, that would be great.

11 A. On page 9, starting on line 13, of the 311
12 December line items sustained, because Tel West had not
13 requested a blocking service on the line, dial lock was
14 available for all 311 affected lines. Since the time of
15 filing this testimony, we actually got a bankers box of
16 actual LSRs and went back through them confirming
17 everything and found 6 additional lines where the Tel
18 West did order dial lock, and those will be sustained,
19 or excuse me, will be adjusted, so that will reduce the
20 number 311 down to 305.

21 Q. And then should that change be made to both
22 of the times that 311 appears?

23 A. It should be -- the change should be made on
24 line 13 and on line 15.

25 Q. Thank you. Are there other changes or

0365

1 corrections?

2 A. Yes. Then on page 10 of my testimony
3 starting with the last word on line 12, for example,
4 Qwest issued its billing statement to Tel West on
5 December 7th, 2001. In fact, the close date on the bill
6 date was December 7th. The bill was not printed and
7 mailed out until three days later.

8 Q. So would it be --

9 A. I think -- I think the change should be
10 issued its billing statement -- I think that maybe we'll
11 strike -- well, Qwest mailed its billing statement to
12 Tel West on December 11th, 2001.

13 Q. Any other changes or corrections?

14 A. No.

15 Q. Okay. Thank you, Mr. Brotherson.

16 MS. ANDERL: Your Honor, I know that Exhibit
17 39 had already been admitted. Because of the way we
18 were doing things, it's a little unusual, we would ask
19 that the admitted exhibit actually reflect the changes
20 that Mr. Brotherson just made and then tender the
21 witness for cross.

22 JUDGE BERG: What I would like to do is have
23 Qwest file an errata sheet capturing the changes that
24 Mr. Brotherson has noted. That will be marked as
25 Exhibit 55, and that will be Errata to Response

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1 Testimony of Larry B. Brotherson dated February 28th,
2 2002, Marked as Exhibit 39, and the errata sheet will be
3 Exhibit 55, and the errata sheet will be admitted.

4 MS. ANDERL: We will provide that this week,
5 Your Honor.

6 JUDGE BERG: Thank you, that will be just
7 fine, Ms. Anderl.

8 MS. ANDERL: I think I tendered
9 Mr. Brotherson for cross, I'm not sure. If I didn't, I
10 do so now.

11 JUDGE BERG: I think I jumped in before you
12 did, but at this point, Mr. Harlow, please proceed.

13 MR. HARLOW: Thank you, Your Honor.

14

15 C R O S S - E X A M I N A T I O N

16 BY MR. HARLOW:

17 Q. Mr. Brotherson, you are an attorney, I
18 understand?

19 A. By degree, yes. I don't -- I'm not a member
20 of the Qwest law department. I'm in the management
21 organization.

22 Q. You used to be involved in negotiating
23 interconnection agreements with CLECs; is that right?

24 A. That's correct.

25 Q. In 1999, you switched to director of

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1 wholesale advocacy, however?

2 A. That's correct.

3 Q. Okay. Since the Tel West agreement was
4 negotiated in 2001, I assume you didn't have any direct
5 involvement with those negotiations?

6 A. No.

7 Q. Do you have any personal knowledge of the
8 course of those negotiations?

9 A. No.

10 Q. At the bottom of page 5 of your testimony,
11 you mention a Sheryl Hild, Sheryl is spelled
12 S-H-E-R-Y-L, Hild, and you indicate that she retired at
13 the end of 2001?

14 A. Yes.

15 Q. Is she no longer with Qwest in any capacity?

16 A. We brought Sheryl back on contract to help us
17 work on some of the case load in the Des Moines business
18 office.

19 Q. Is that contract up, over?

20 A. No, she's still there. It's on a part-time
21 basis. I don't know how many days a week she's working,
22 it's not full time, but she was working last week.

23 Q. Do you know when that contract or is there an
24 expiration on that contract?

25 A. I'm not familiar with the terms.

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1 Q. Has anyone replaced Sheryl Hild in terms of
2 the functions she performs vis-a-vis Tel West?

3 A. Replaced in the sense that a new service rep
4 has been assigned to the Tel West account, that's Nancy
5 Hawbaker.

6 Q. Is she in training, or is she already
7 trained?

8 A. No, she's an experienced service rep. She's
9 got several years, quite a few years with the company.

10 Q. Turning --

11 A. She just was moved over to the Tel West
12 account.

13 Q. Okay. Turning to page 6 then, you discussed
14 390 December disputes, and you say that thus Qwest does
15 not believe there's any problem with the billing dispute
16 resolution process. Would you agree that until mid
17 February when Qwest resolved the April billing disputes
18 that there was a problem?

19 A. Certainly they were not handled as promptly
20 as I would like to have seen.

21 Q. So would it be fair to say that there was a
22 backlog that has been cleared up now?

23 A. I think that's a fair assessment.

24 Q. How do we know this problem won't arise
25 again?

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1 A. Well, at least in part as a result of the Tel
2 West matter and the fact that it was brought to the
3 attention of the business office, they have implemented
4 a tracking system that now tracks the status of all
5 pending complaints for all accounts. That went into
6 effect in December.

7 Q. Now you have made some corrections on your
8 testimony about the December 7th bill, December 7th
9 apparently, in spite of your corrections, December 7th
10 was the actual date on the bill?

11 A. That's the close date. In other words, calls
12 up through December 7th, for example, would be reflected
13 on the bill, I believe.

14 Q. Does Qwest print a bill date on its bills to
15 Tel West?

16 A. I believe so.

17 Q. What would be the date that would have been
18 printed on that December --

19 A. December 7th, I believe.

20 Q. So can we call that the bill date of December
21 7th?

22 A. Yes.

23 Q. And that, of course, is a date that will live
24 in infamy; is that right?

25 A. Yes.

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1 Q. Couldn't resist.

2 And based on your corrections, apparently it
3 was mailed on the 11th, four days later; is that
4 correct?

5 A. Right.

6 Q. Does the mailing always take four days
7 exactly?

8 A. No.

9 Q. Does it sometimes take more time or less
10 time?

11 A. Generally you get the what -- they're called
12 the AMA tapes, the billing tapes, as of the close date.
13 Then you generate -- you print. In fact, it -- there's
14 a couple of locations, one in Albuquerque, one in Omaha,
15 they're called the print ranch, which is a huge printing
16 center that prints customer bills. And you would take
17 the billing tape, and you would print the bills, and
18 then it goes through a certain amount of cycling to get
19 generated, put in envelopes, sent out through the postal
20 service.

21 Q. So these aren't being mailed locally from
22 Seattle, they're being mailed out of the Midwest?

23 A. Yeah, they're being mailed out of the
24 printing centers.

25 Q. Do you know whether they're mailed first

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1 class?

2 A. First class.

3 Q. Okay. In the case of a company like Tel
4 West, which has thousands of bills, would it be in an
5 envelope or a box?

6 A. You know, I couldn't tell. It would depend
7 upon how they get their bills. I have not seen Tel
8 West's bill as it is packaged to go out in the mail.

9 Q. But certainly some CLEC bills go out in
10 perhaps a box or multiple boxes?

11 A. Most CLECs that have that type of billing
12 receive their bills electronically. A large carrier
13 like an AT&T, for example, receives electronic bill
14 format.

15 Q. Then I take it you don't actually know how or
16 how fast the postal service handles these envelopes or
17 boxes?

18 A. No.

19 Q. Now assuming that the bills were mailed, or
20 excuse me, were received no earlier than December the
21 12th and then Tel West submitted the disputes on January
22 18th, they would have been submitted in about what, I
23 guess about 35, 36 days roughly?

24 A. Using those examples, yes.

25 Q. Those would be calendar days including the

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1 several holidays in that time frame?

2 A. Over Christmas, yes.

3 Q. And Qwest responded to them by February 27th.

4 I believe that's what your testimony indicates.

5 A. Yes.

6 Q. So that's about 40 days after the disputes

7 were received?

8 A. Well, in your hypothetical. I need to double

9 check when they were actually received.

10 Q. I don't mean to make it a hypothetical, so if

11 you want to provide the actual dates, that's terrific.

12 A. January 18th to February 27th?

13 Q. Yes.

14 A. Is about 40 days, yes.

15 Q. Would you call that a reasonable time frame

16 to resolve those particular billing disputes?

17 A. Yes.

18 Q. Would you call that expedited?

19 A. Given the number of claims that were being

20 processed, yeah, I think we were doing a pretty good

21 job. As you're probably aware, we also processed some

22 Oregon claims during that time frame and responded to

23 those prior to the February 27th response on the

24 Washington claims.

25 Q. I'm probably not aware of that actually.

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1 A. I'm sorry, Tel West received notification --
2 received information on their Oregon claims in addition
3 to the Washington claims. In retrospect, maybe we
4 should have done Washington first.

5 Q. Or perhaps we can resolve the Oregon dispute
6 here as well, but I think not.

7 All right, did you have a chance to read Tel
8 West's pre-hearing brief?

9 A. Yes.

10 Q. Are you familiar with the alternative remedy
11 that Tel West proposed in its brief to put a definition
12 on the term expedite?

13 A. Are you talking about the 30 day proposal?

14 Q. I'm talking about the 1.5 times the number of
15 days that Tel West took to submit the disputes.

16 A. Generally, yes.

17 Q. And would you agree that that formula would
18 fit within the actual facts in terms of how long it took
19 Tel West to submit the bills and then for Qwest to
20 respond?

21 A. No.

22 Q. All right, let's just walk through the
23 numbers.

24 A. If I might ask you to repeat the question.

25 Q. All right, well, 35 days give or take is how

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1 long it took Tel West to submit the bills, submit the
2 disputes.

3 A. All right.

4 Q. And under the alternative --

5 A. We're talking the December, January --

6 Q. -- alternative formula, you would multiply 35
7 days times 1.5, and what do you come up with
8 approximately?

9 A. 50 whatever.

10 Q. So under that formula, Qwest would have
11 responded well within that proposal in this particular
12 month; is that correct?

13 A. In that particular month for the types of
14 issues that they raised in that particular bill series,
15 yes.

16 Q. Now if the Commission were to rule in Tel
17 West's favor on the OS and DA dispute, would it be as
18 difficult as you described in your testimony to deal
19 with bill disputes?

20 A. Without knowing what the bill dispute is, I
21 don't know as I can answer that. For example, if
22 there's a dispute around customized routing, it may take
23 a whole different set of facts for investigative
24 purposes.

25 Q. Well, assume hypothetically that the

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1 Commission orders that Qwest can't bill Tel West for OS
2 and DA services unless Tel West specifically orders
3 them; do you have that hypothetical in mind?

4 A. Okay.

5 Q. It would be fairly simple in that case, would
6 it not, to take -- to deal with a dispute submitted by
7 Tel West which says, on such and such a phone number you
8 billed for OS? You would simply write them off,
9 wouldn't you, you wouldn't have to check call blocking?

10 A. Right. If we're ordered not to bill
11 something, it would be a pretty simple process on that
12 particular dispute.

13 Q. Would you assume that by the same token if
14 the Commission rules against Tel West on the OS/DA issue
15 that Tel West won't be able to dispute every charge,
16 they will only be able to dispute the ones where they
17 ordered blocking; isn't that correct?

18 A. For those kinds of disputes, that would be
19 correct.

20 Q. So would you agree the outcome of this case
21 will simplify the process of the parties handling
22 billing disputes around OS and DA?

23 A. For those kinds of disputes, I think the
24 process is going to be simplified.

25 Q. Turn please to page 9 of your testimony.

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1 A. I'm hesitating on my last answer.

2 Q. You know, actually I covered this with --

3 A. If I might --

4 JUDGE BERG: One second, Mr. Harlow.

5 A. If I might --

6 Q. Sure.

7 A. The hypothetical or the example that we just
8 discussed, I'm not sure I understand -- is tied in part
9 on what you said is a ruling. And I guess to the extent
10 that we still need to go into a customer's bill to, in
11 fact, establish that the blocking was in place or the
12 blocking wasn't in place as a predicate to determine
13 whether or not it should or should have not fallen under
14 any particular ruling if, in fact, such a ruling should
15 occur, would involve certain steps would have to take
16 place irrespective of -- it may facilitate the decision
17 making process once the facts are gathered. I'm --
18 depending upon your hypothetical, it may or may not
19 change the steps to go through before the decision is
20 made.

21 Q. Okay, thank you for the clarification.

22 Are you on page 9?

23 A. I am.

24 Q. Okay. And you talk there about Qwest's
25 review of the November and December billing dispute

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1 spreadsheets.

2 A. I see that.

3 Q. Okay. And you talk about a claim of 28
4 November line items Tel West did not request a blocking
5 on 27 and of, well, 305 December line items Tel West did
6 not request a blocking service on 305 of the lines. Do
7 you see that?

8 A. Yes.

9 Q. Did you examine billing dispute spreadsheets
10 prior to November and December time frame?

11 A. Yes.

12 Q. And did you find that situation to be the
13 case, i.e., a number of disputed line items where no
14 blocking had been ordered in prior months' spreadsheets?

15 A. Yes, there would have been sustained no third
16 number, third party, you know, third number call
17 blocking or sustained no three-way call blocking.

18 Q. Did it occur with the same frequency as you
19 found in November and December?

20 A. It would have varied by month. Certainly
21 December was a high month of sustained charges because
22 of no blocking. I think also some of the very early
23 months as we were trying to work through this backlog
24 and we were in the middle of this litigation, we
25 sustained an awful lot of, or excuse me, we adjusted an

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1 awful lot of the lines to try and get through some of
2 these adjustments.

3 Q. So would December have been kind of the high
4 point for lines that didn't have blocking services on
5 where they were available?

6 A. December would have been the high point for
7 lines that were sustained because the charges -- where
8 the charges were sustained because the blocking was not
9 in place.

10 Q. Are you aware that Tel West purchased the
11 customer base of a company called Reconnex in this time
12 frame?

13 A. No.

14 Q. If you --

15 A. I have heard the testimony of the witness,
16 but beyond that, no.

17 Q. Did you, in auditing December, did you check
18 to see who had initially ordered those lines, whether it
19 was Tel West or some other CLEC?

20 A. No.

21 Q. Okay.

22 A. Again, that would be I guess an example of
23 where every billing situation could become unique in its
24 own right in terms of the time involved to address it.

25 Q. Does Qwest do anything before it sends out

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1 the bills proactively to make sure that the bills are
2 accurate?

3 A. Normal -- on an individual customer, no, not
4 -- the normal process of the billing tape is the only
5 steps. If there develops a problem on a particular
6 billing tape which could impact a number of customers,
7 there are steps that they go back through a backup
8 system and the like. But no, in terms of a specific
9 customer --

10 Q. So --

11 A. -- it's generated off of the usage that's
12 captured on the switch.

13 Q. So it's initially up to the customer to audit
14 the bills and identify any errors?

15 A. If there are errors on the bill, yes.

16 Q. And, in fact, there are routinely errors on
17 Qwest's bills to Tel West, are there not?

18 A. There are a lot of disputes. I'm not sure
19 that these calls are not taking place. I think there's
20 disputes between the parties, there are issues around
21 whether blocking was ordered in conjunction with the
22 calls that got through. I'm not sure that the billing
23 tape is reflecting that there was or was not a DA -- I
24 mean I don't believe there's an error on whether or not
25 that DA call is placed. I think the dispute is between

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1 Tel West and Qwest around what was ordered, was there
2 blocking, those kinds of issues. I don't believe that
3 that's a billing error in that sense.

4 Q. Well, Qwest makes a number of adjustments
5 every month on Tel West's bills based on disputes; isn't
6 that correct?

7 A. That's correct.

8 Q. And in the meantime, Tel West has to pay the
9 charges in dispute; is that correct?

10 A. Could you repeat the question?

11 Q. In the meantime, until the dispute is
12 resolved, Tel West is responsible to pay the charges on
13 the bill?

14 A. If they have a specific charge that they are
15 disputing, the agreement would permit them to withhold a
16 disputed amount and pay only the balance that's not in
17 dispute.

18 Q. Do Qwest billing managers need to seek
19 authority for their adjustments to CLECs' bills?

20 A. There are authorization levels at different
21 levels within the company. If it was a significant
22 adjustment, they would need to seek approval from a
23 supervisor. The individual account managers have
24 authorization levels in working with customers that
25 don't require approval.

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1 Q. In the case of Tel West, has Tel West's
2 billing managers had to seek approval for adjustments
3 that have been made say within the last year?

4 A. That could be possible. I think the
5 authorization level for a service manager is about
6 \$1,500, so if there were any adjustments in excess of
7 \$1,500 on a given month, it would have required
8 supervisor approval.

9 Q. Can that delay the process of resolving the
10 billing dispute?

11 A. I'm not -- I don't know what's involved in
12 the authorization process.

13 Q. It takes some time, doesn't it?

14 A. Well, I would imagine that he may want to, he
15 or she may want to review the dispute before he okays
16 it, but I'm not sure what the time frames are.

17 MR. HARLOW: Thank you, Mr. Brotherson,
18 that's all I have.

19

20 E X A M I N A T I O N

21 BY JUDGE BERG:

22 Q. Mr. Brotherson, a rare question from the
23 Bench. With regards to the ability of Tel West to
24 withhold disputed payments, could you point me to that
25 paragraph in the agreement?

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1 A. I'm pretty sure it's in Section 5.

2 Q. Under payment, 5.4 somewhere maybe?

3 A. Yes, thank you. I believe it's 5.4.4:
4 Should CLEC or Qwest dispute in good
5 faith any portion of the monthly billing
6 under this agreement, the parties will
7 notify each other in writing within 30
8 calendar days of receipt of such
9 billing, identify the amount, reason,
10 and rationale for such dispute. At a
11 minimum, CLEC and Qwest shall pay all
12 undisputed amounts due.

13 I think if you also look to -- it's kind of
14 implicit in several sections. In 5.4.3, the first
15 sentence states:

16 Qwest may disconnect any and all
17 services for failure by CLEC to make
18 full payment less any disputed amounts
19 as provided for in this section of this
20 agreement.

21 Which says you can withhold the disputed
22 amounts and not be subject to disconnect. And I think
23 there's some other sections in here without --

24 Q. I see the context of 5.4.4.1 addresses where
25 a disputed charge has been withheld.

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1 A. Okay, yes, yes.

2 JUDGE BERG: All right, thank you.

3 MR. HARLOW: Can I follow up briefly on that,
4 Your Honor?

5 JUDGE BERG: Yes.

6

7 C R O S S - E X A M I N A T I O N

8 BY MR. HARLOW:

9 Q. Under the section that the Judge just cited,
10 5.4.4.1, if Tel West were to withhold the disputed
11 amount and then the dispute were resolved in Qwest's
12 favor, like say the 311 charges from December, Qwest
13 could be assessed late charges in that circumstance;
14 isn't that correct?

15 MS. ANDERL: You mean Tel West?

16 Q. Tel West, yes.

17 A. Yes.

18 MR. HARLOW: Thank you.

19

20 R E D I R E C T E X A M I N A T I O N

21 BY MS. ANDERL:

22 Q. Mr. Brotherson, Mr. Harlow asked you a
23 question about whether Qwest's resolution of the
24 December billing disputes in 40 days would fit within
25 the parameters of the relief that Tel West has requested

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1 on the 1.5 times remedy. Do you recall that?

2 A. Yes.

3 Q. Regardless of whether Qwest was able to
4 resolve Tel West's December billing disputes in 40 days
5 and Tel West had submitted them 35 days after the bill
6 date, is that always going to be a reasonable measure to
7 assess as to whether the dispute resolution has been
8 done on an expedited basis?

9 A. No, it's not going to be an ironclad rule,
10 because as I stated in my testimony, the time involved
11 in investigating a dispute is in part tied to the nature
12 of the dispute. The dispute may involve collocation
13 charges, it may involve reciprocal compensation issues,
14 so the various CLECs could have various types of
15 disputes, not all in the nature of a dispute around a
16 directory assistance charge. I think under pick and
17 choose, a provision like that would -- well, I -- there
18 would certainly be a question, I guess I wouldn't
19 concede up front, but there would certainly be a
20 question as to whether or not any other CLEC would then
21 be entitled to a 1.5 formula type of automatic
22 assessment irrespective of the nature of their disputes
23 as well. So for a number of reasons, it would not be
24 appropriate language in an interconnection agreement.

25 Q. Mr. Brotherson, are you aware of any CLECs

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1 who have advocated that the language in Qwest's
2 interconnection agreement with Tel West 6.2.9 provides a
3 CLEC with automatic access at no charge to a line free
4 of operator services and DA?

5 A. No, in fact, everyone expects to receive
6 directory assistance and operator services when they
7 order a 1FR. There is no separate step to order 911 or
8 operator services or DA when you order a 1FR. It is
9 part and parcel with the product.

10 MS. ANDERL: Nothing else, Your Honor.

11 MR. HARLOW: Nothing further, Your Honor.

12 JUDGE BERG: Mr. Brotherson, thank you very
13 much for being here and testifying. You are excused
14 from the witness stand and released from the hearing.

15 Are there any other witnesses to call?

16 MS. ANDERL: No, Your Honor.

17 MR. HARLOW: No, Your Honor.

18 JUDGE BERG: All right, let's be off the
19 record for a moment.

20 (Discussion off the record.)

21 JUDGE BERG: All cross examination of
22 witnesses has concluded. Tomorrow parties will convene
23 at 10:00 a.m. in this hearing room for presentation of
24 closing argument both in the way of oral arguments of
25 the legal issues and summary arguments on the evidence

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1 presented and developed during the hearing here today.

2 And with that, we will be adjourned. Thank
3 you, everyone.

4 (Hearing adjourned at 6:00 p.m.)

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