

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3	In the Matter of the)	
	Petition of)	
4	QWEST CORPORATION)	DOCKET NO. UT-033044
	To Initiate a Mass-Market)	Volume No. III
5	Switching and Dedicated)	Pages 88 - 121
	Transport Case Pursuant to)	
6	the Triennial Review Order.)	

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8 A prehearing conference in the above matter

9 was held on January 30, 2004, at 10:00 a.m., at 1300

10 South Evergreen Park Drive Southwest, Olympia,

11 Washington, before Administrative Law Judge ANN E.

12 RENDAHL.

13

14 The parties were present as follows:

15 COVAD COMMUNICATIONS COMPANY, by KAREN S.

16 FRAME (via bridge line), Senior Counsel, 7901 Lowry

17 Boulevard, Denver, Colorado 80230; telephone, (720)

18 208-1069.

19 QWEST CORPORATION, by LISA A. ANDERL (via

20 bridge line), Corporate Counsel, 1600 Seventh Avenue,

21 Suite 3206, Seattle, Washington 98191; telephone (206)

22 345-1574.

23 WASHINGTON UTILITIES AND TRANSPORTATION

24 COMMISSION, by JONATHAN THOMPSON, Assistant Attorney

25 General, 1400 South Evergreen Park Drive Southwest,

Post Office Box 40128, Olympia, Washington 98504;

telephone, (360) 664-1225.

26 AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST,

27 INC.; TCG SEATTLE, INC.; TCG OREGON, INC., by REBECCA

28 B. DECOOK and RICHARD WOLTERS (via bridge line),

29 Attorneys at Law, 1875 Lawrence Street, Room 1575,

30 Denver, Colorado 80202; telephone, (303) 298-6357.

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XO COMMUNICATIONS, INC.; ADVANCED TELCOM GROUP, INC.; PACWEST TELECOM, INC.; TIME WARNER TELECOM OF WASHINGTON, LLP; INTEGRA TELECOM, INC.; MCLEOD LOCAL SERVICES, INC.; GLOBAL CROSSING LOCAL SERVICES, INC.; ESCHELON TELECOM, INC., by GREGORY J. KOPTA (via bridge line), Attorney at Law, Davis Wright Tremaine, 1501 Fourth Avenue, Suite 2600, Seattle, Washington 98101; telephone, (206) 628-7692.

WEBTEC, MCI, INC., by LISA RACKNER (via bridge line), Attorney at Law, Ater Wynne, 222 Southwest Columbia, Suite 1800, Portland, Oregon 97201; telephone, (503) 226-8693.

DEPARTMENT OF DEFENSE, AND ALL OTHER FEDERAL EXECUTIVE AGENCIES, by STEPHEN S. MELNIKOFF (via bridge line), General Attorney, Regulatory Law Office, United States Army Litigation Center, 901 North Stuart Street, Suite 700, Arlington, Virginia 22203-1837; telephone, (703) 696-1643.

MCI, INC., by MICHEL SINGER NELSON (via bridge line), Attorney at Law, 707 17th Street, Suite 4200, Denver, Colorado 80202; (303) 390-6106.

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

2 JUDGE RENDAHL: As you know, my name is Ann
3 Rendahl. I'm the administrative law judge presiding
4 over this matter. We are here before the Washington
5 Utilities and Transportation Commission. This is
6 Friday, January the 30th, 2004, for a prehearing
7 conference in Docket No. UT-033044, captioned in the
8 matter of the petition of Qwest Corporation to initiate
9 a mass market switching and direct transport case
10 pursuant to the Triennial Review Order.

11 By very short notice, sent to the parties, I
12 believe, on Wednesday the 28th, based upon a motion to
13 strike filed by AT&T, I sent a notice to the parties
14 via fax, mail, and e-mail about this
15 prehearing/discovery conference. In addition, Qwest
16 filed a motion yesterday for an exception to the
17 masking requirement in Order No. 5 in this proceeding
18 requesting an expedited resolution, and considering we
19 had this prehearing scheduled, I sent a notice
20 yesterday indicating that any responses could be made
21 orally to Qwest's motion during this prehearing
22 conference.

23 In addition, after we address those two
24 issues, we should discuss any housekeeping matters we
25 need to take up in advance of the hearing scheduled in

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1 March. So before we go any farther, let's take
2 appearances from the parties. Most everyone is on the
3 bridge line, so I'll take Staff, who is in the room,
4 first, and then we will go to the bridge line.

5 MR. THOMPSON: This is Jonathan Thompson
6 representing the Commission staff.

7 JUDGE RENDAHL: For Qwest?

8 MS. ANDERL: Lisa Anderl representing Qwest.

9 JUDGE RENDAHL: For Integra?

10 MS. JOHNSON: Karen Johnson.

11 JUDGE RENDAHL: For Covad?

12 MS. FRAME: Karen Frame.

13 JUDGE RENDAHL: MCI?

14 MS. RACKNER: Lisa Rackner.

15 MS. SINGER NELSON: Michel Singer Nelson on
16 behalf of MCI.

17 JUDGE RENDAHL: Mr. Kopta, would you care for
18 me to read the list of your clients?

19 MR. KOPTA: I can do that, Your Honor. This
20 is Gregory Kopta on behalf of Advanced Telecom,
21 Eschelon, Integra, Global Crossing, McLeod USA, Pac
22 West, Time Warner Telecom, and XO.

23 JUDGE RENDAHL: For AT&T?

24 MS. DECOOK: Rebecca DeCook and Richard
25 Wolters.

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1 JUDGE RENDAHL: Mr. Melnikoff?

2 MR. MELNIKOFF: This is Steve Melnikoff
3 representing the Department of Defense and all federal
4 executive agencies.

5 JUDGE RENDAHL: Can you speak more directly
6 into the speaker phone or into the handset if you do
7 speak up again during this conference?

8 MR. MELNIKOFF: Yes, I will.

9 JUDGE RENDAHL: Mr. Butler, are you on the
10 line? Ms. Rackner, are you going to take up
11 representing WeBTEC if Mr. Butler doesn't appear?

12 MS. RACKNER: Yes.

13 JUDGE RENDAHL: So you are also appearing on
14 behalf of WeBTEC.

15 MS. RACKNER: Yes.

16 JUDGE RENDAHL: So the first issue this
17 morning is AT&T's motion, and in response, Qwest,
18 Staff, and MCI filed responses. I believe Staff
19 doesn't object to AT&T's proposal. MCI supports MCI's
20 proposal, but Qwest filed something indicating an
21 agreement with AT&T. So why don't we first have AT&T
22 and then Qwest and then MCI and Staff address these
23 issues.

24 MR. WOLTERS: We filed our motion to strike,
25 or in the alternative to extend time for discovery

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1 because Qwest filed a revised or supplemental exhibit,
2 RT-90-C. I have discussed with Ms. Anderl, and it
3 looks like Ms. Anderl is willing to allow us to send
4 out discovery on the supplemental exhibit to both the
5 CLEC's and to Qwest, and based on whatever we get from
6 that discovery, address the issues that we may have in
7 either our supplemental filing on or before the date
8 for filing surrebuttal.

9 Also, because of the 14-day turnaround that
10 exists in the present procedural order, we would need
11 Qwest to respond to the discovery in a shorter period
12 of time than the 14-week turnaround. I believe
13 Ms. Anderl agreed they would file their discovery
14 responses to any discovery we sent out yesterday by
15 February 16th. I believe we have worked this matter
16 out between AT&T and Qwest.

17 JUDGE RENDAHL: Maybe I should have Qwest now
18 speak to the issue of not just AT&T but any impact this
19 may have on other parties similarly situated to AT&T.

20 MS. ANDERL: Lisa Anderl for Qwest. We did
21 make this agreement with AT&T. I frankly didn't
22 contemplate that any other party would be similarly
23 situated since no other party had filed discovery nor
24 had any other party really called me to complain about
25 the errata testimony that we filed for Ms. Torrence.

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1 That errata has been out there for over two weeks now,
2 and I had the impression rightly or wrongly that if
3 anybody needed further information or inquiry on that,
4 I would have received inquiries either via telephone or
5 in formal written discovery.

6 So with regard to what we've agreed to with
7 AT&T, we would adhere to that. However, I don't know
8 that we can agree to that for all of the other parties
9 because that additional discovery served on us would be
10 an additional burden, and having to read and digest
11 potentially many parties' submissions of testimony very
12 late in the game prior to the hearing is more
13 complicated than just agreeing to let AT&T supplement
14 their testimony.

15 JUDGE RENDAHL: Let's see if this is, in
16 fact, an issue first. Ms. Singer Nelson, is this an
17 issue for MCI in terms of responding to Ms. Torrence's
18 supplemented testimony and exhibits?

19 MS. SINGER NELSON: Yes, Your Honor, it is an
20 issue for us. We haven't sent discovery out to Qwest
21 on Ms. Torrence's supplemental testimony, and I don't
22 know that we necessarily intend to send additional
23 discovery to Qwest. I think we can review what AT&T
24 submits and use that in any supplemental testimony they
25 want to file, but I do understand from my experts on

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1 the transport issue that they would like additional
2 time to, perhaps, file supplemental testimony if needed
3 based on the additional information that Ms. Torrence
4 put in her exhibit.

5 JUDGE RENDAHL: So essentially, MCI would
6 rest on discovery that AT&T would propound but request
7 a similar accommodation to file supplemental testimony
8 if needed on the reply date.

9 MS. SINGER NELSON: Yes.

10 JUDGE RENDAHL: Ms. Anderl, is Qwest amenable
11 to that?

12 MS. ANDERL: Your Honor, I think there was
13 one proposal that was raised, and I apologize. I read
14 everything on my screen quickly and don't recall which
15 party proposed it, but that Qwest respond to discovery
16 by February 10th and any supplemental filings be due by
17 February 13th.

18 MR. KOPTA: Your Honor, that was our proposal
19 except that it wasn't a supplemental file. It was a
20 filing of any testimony in response on transport
21 issues, so we do have an issue, and I will not
22 interrupt Ms. Anderl, but I wanted to clarify it was
23 our proposal only slightly different than her
24 recollection.

25 MS. ANDERL: Thank you. If it were what I

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1 just described, that might be something that we could
2 get on board with, but we do think that it's important
3 that all of the parties do file their testimony in as
4 complete a version as they have available on February
5 2nd. The hearing dates are really approaching like the
6 speed of light, and I don't think we can wait nine more
7 days to see people, for the first time to see their
8 direct testimony on transport.

9 JUDGE RENDAHL: I'm going to take comments
10 from the other parties before we come back to you,
11 Ms. Anderl, because I did take MCI's comments and have
12 now heard from Mr. Kopta and his clients, so why don't
13 we start with Ms. Johnson.

14 MS. JOHNSON: I'll go with what Greg's
15 representing, Your Honor. I'm really listening in.

16 JUDGE RENDAHL: And Ms. Frame?

17 MS. FRAME: Your Honor, Covad actually did
18 call Ms. Anderl earlier this week and ask for
19 clarification on their revised testimony, I guess you
20 could say, so we are okay with that. We do want to
21 alert the court we will be filing a motion today that
22 we are still in the process of drafting, and it does
23 directly pertain to the transport testimony.

24 JUDGE RENDAHL: Is it possible to make it
25 orally this morning and we take it up right now?

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1 MS. FRAME: I think we are going to have to
2 schedule it for oral argument at a later date.

3 JUDGE RENDAHL: The testimony is due Monday.

4 MS. FRAME: I understand the testimony is due
5 Monday. This motion actually goes to the transport
6 testimony, but it is a motion for summary judgment.

7 JUDGE RENDAHL: Okay. We will take that up
8 later.

9 MS. FRAME: Thank you.

10 JUDGE RENDAHL: So, Ms. Frame, your position
11 is that you have no issue on this subject at this
12 point?

13 MS. FRAME: That is correct.

14 JUDGE RENDAHL: Ms. Rackner, for WebTEC.

15 MS. RACKNER: WebTEC is not going to be
16 filing testimony so it's not going to take a position
17 on this issue.

18 JUDGE RENDAHL: Thank you. Ms. Decook,
19 you've already addressed it. Mr. Melnikoff.

20 MR. MELNIKOFF: Your Honor, in terms of
21 discovery, it's not a problem for us. I just am
22 concerned about when rebuttal to the second round would
23 take place if part of the second round is coming in on
24 February 20th.

25 JUDGE RENDAHL: Okay.

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1 MR. MELNIKOFF: And I don't know at this
2 point whether that's going to be a problem for us, but
3 obviously, we would like to -- on the transport matter.

4 JUDGE RENDAHL: That is the proposal. And
5 staff, Mr. Thompson?

6 MR. THOMPSON: Staff doesn't intend to file
7 testimony or do discovery on transport issues, so we
8 really don't have an interest in the issue.

9 JUDGE RENDAHL: So really the issue is --

10 MR. WOLTERS: If I may interrupt, I didn't
11 hear what Mr. Kopta's proposal is, and I would like to
12 respond if I may.

13 JUDGE RENDAHL: Mr. Kopta, please go ahead.

14 MR. KOPTA: Thank you. I did want to make it
15 clear I was just correcting or trying to clarify
16 Ms. Anderl's comments so her recollection was clearer.
17 The proposal that we have is that any transport
18 responsive testimony would not be due until February
19 the 13th. There would not be any requirement to file
20 something on February 2nd, but that Qwest would respond
21 to discovery, and we have been working, as I understand
22 it, with AT&T on making sure that the discovery of the
23 additional filing that Qwest made will represent
24 whatever interest that we have as well so that there
25 wouldn't be any additional discovery that we would be

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1 contemplating but that Qwest would respond to that by
2 February 10th and that the transport testimony would
3 then be due on February 13th.

4 Rather than having split it up as Qwest
5 apparently has done and having two different phases of
6 transport testimony, our proposal is that there be one
7 piece of testimony that incorporates all of the
8 testimony that Qwest has filed on transport issues as
9 opposed to breaking it up, and we have not, as I
10 understand it, had an opportunity to discuss that with
11 them. That was actually something that we had thought
12 about in response to the letter that we got reflecting
13 AT&T and Qwest's discussions, and we were not involved
14 in those discussions, but our preference is as a way of
15 conserving resources and consolidating all testimony on
16 transport issues to have a single round that would be
17 filed on February 13th.

18 MR. WOLTERS: I did talk to Ms. Steel. She
19 did represent what Mr. Kopta said to me, and I went
20 back and looked, and we also had to send discovery to
21 the CLEC's because by adding new routes, there were
22 CLEC's involved, so we sent discovery out, I believe,
23 on the 23rd.

24 Under the procedural order, those responses
25 aren't due, under my calculations, until the 12th. So

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1 it would be very difficult for me to wait and get all
2 of the responses from the CLEC's on the 12th and then
3 be required to file some kind of testimony on the 13th
4 and incorporate those responses. While I understand
5 Mr. Kopta's concern, it still leaves me in a position
6 where at that point, I have to file something on the
7 13th.

8 Also, I have obligations on the 11th and 12th
9 with the company to be out of town. So if I got
10 discovery from Qwest on the 10th, it wouldn't do me any
11 good because I'm going to be gone the 11th and 12th,
12 and those commitments cannot be changed, and again, it
13 would be very difficult for me to file testimony on the
14 13th. So the proposal I have worked out with
15 Ms. Anderl takes into consideration all my concerns.
16 One, the CLEC discovery giving Qwest enough time to get
17 their discovery and still file in time before the
18 hearing, so Mr. Kopta's proposal may work for him, but
19 I don't believe it would work for me.

20 JUDGE RENDAHL: I have a question for you,
21 Mr. Wolters, and for Ms. Anderl, and that has to do
22 with Mr. Melnikoff's question about the concern about
23 Qwest's or any other parties' rebuttal to any
24 responsive testimony that comes in on the 20th, because
25 that's the date that rebuttal testimony is due.

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1 We are going to hearing. We have a
2 prehearing conference scheduled four days later and
3 going to hearing 10 days after the rebuttal testimony
4 is due, so what is Qwest's proposal for any response
5 that Qwest or any other party might make to that
6 supplemental transport responsive testimony?

7 MS. ANDERL: Your Honor, if supplemental
8 transport testimony came in to us prior to the 20th, we
9 would endeavor to respond to it as well as we
10 reasonably could on the 20th. In other words, if
11 Mr. Wolters were able to get testimony together and
12 file it as supplemental testimony by the 16th or 17th
13 or 18th, perhaps we could file something along with our
14 rebuttal on the 20th.

15 More realistically though, I think we were
16 planning on just evaluating what we received on the
17 20th as a supplemental filing and requesting leave to
18 provide oral rebuttal if we thought that was necessary.

19 MR. WOLTERS: First of all, I think testimony
20 that CLEC's are going to be filing is essentially
21 trying to eliminate routes; that the question is, are
22 there any CLEC's that are going to file testimony
23 wanting to keep routes. So I think there shouldn't be
24 anybody that is adverse to AT&T's decision of
25 eliminating routes on the CLEC side.

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1 Staff said they weren't filing testimony on
2 the 2nd. They haven't said whether they are going to
3 be filing testimony on the 20th. If they were not
4 going to file testimony on the 20th on transport, then
5 the staff could be put in a position where they were
6 prejudiced or disadvantaged. So the only party I can
7 really see that has any problems or could have problems
8 filing on the 20th would be Qwest, because they, in
9 essence, would not have that opportunity to file
10 surrebuttal.

11 I would say two things: Qwest is the one
12 that added the new routes; therefore, by adding the
13 routes put themselves in that position. Secondly, most
14 of the filing we are going to make is on the 2nd, so it
15 would only be very limited issues and very limited
16 routes, and again, I can't say whether at this time
17 it's acceptable to AT&T whether they have the
18 opportunity to provide live surrebuttal. I think if
19 anything, that is the ultimate issue that the judge
20 would have to decide, whether Qwest would have that
21 opportunity, but I do not think any other parties would
22 be filing testimony that would be adverse to whatever
23 AT&T would be filing on the 20th.

24 MS. ANDERL: Your Honor, could I just clarify
25 one thing?

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1 JUDGE RENDAHL: Yes.

2 MS. ANDERL: Qwest did not add routes to its
3 errata testimony filing of Ms. Torrence, and if we need
4 to go through that errata testimony in order for me to
5 explain to you how and why we didn't add routes, even
6 though previously there were 25 and now there are 29
7 listed, we can do that, but very briefly, let me just
8 say there were originally 25 routes listed in her
9 testimony.

10 In the errata, we have provided what looks
11 like 29 routes, but the last four routes, the ones that
12 were, quote/unquote, added, 26, 27, 28 and 29, have the
13 A and Z locations. In other words, the end points are
14 the same as other routes that are already listed on
15 Ms. Torrence's exhibit. So all we were endeavoring to
16 show there was that we felt we could prove that route
17 up more than one way.

18 So I do take great issue with the
19 characterization of this errata filing as adding
20 routes, and I think all of the routes that were placed
21 in issue at the beginning are the only ones that are
22 still at issue.

23 JUDGE RENDAHL: As to that issue, I think it
24 would be very helpful for Qwest and the other parties
25 to flesh out that issue in their testimony in terms of

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1 what their issues are with the testimony and why it's
2 justifiable so that we are in a better position if we
3 get to this argument about Qwest making oral
4 surrebuttal testimony to what AT&T and other parties
5 file on the 20th, if they do, so that we have a record
6 in the testimony already of why it's justifiable.

7 MS. ANDERL: I understand, Your Honor. Thank
8 you.

9 JUDGE RENDAHL: So I appreciate your comments
10 today on that, but I would like to hold the thought
11 of -- I'm not going to grant this morning to Qwest the
12 ability to make oral surrebuttal but will reserve that
13 until hearing.

14 MS. ANDERL: Thank you.

15 MR. MELNIKOFF: Your Honor?

16 JUDGE RENDAHL: Mr. Melnikoff.

17 MR. MELNIKOFF: I cannot say for certain that
18 we are not planning to file surrebuttal or that third
19 round, but clearly, if something comes in on February
20 20th on this supplemental filing, we may need an
21 opportunity. I can't commit one way or the other at
22 this point.

23 JUDGE RENDAHL: And I understand that, which
24 is why I'm not committing one way or the other to Qwest
25 and other parties to grant oral surrebuttal. I would

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1 like to take that up when we get there and see what the
2 basis for it is.

3 MR. MELNIKOFF: And all I'm saying is you and
4 the others had specified Qwest only, and I can't rule
5 out that we might be in the same position.

6 JUDGE RENDAHL: And there might be other
7 parties besides yourself, so the issue of addressing
8 this on the record, which I'm sure all parties are
9 capable of doing, although we are used to the written
10 testimony mode, if we need to flesh out the issue in
11 the hearing, we will address that issue when it comes
12 up, as long as the parties have fully represented in
13 the testimony that they do file why there might be a
14 need to do so, including what Ms. Anderl explained
15 about that Qwest alleges that it doesn't add routes and
16 maybe AT&T's assertion that it has. Whatever your
17 assertions are, make it clear in what you file on
18 Monday and on the 20th.

19 Now, that's assuming we are going to go that
20 route, so I just want to go back to Mr. Kopta and maybe
21 Ms. Singer Nelson, we need to flesh out with MCI and
22 Qwest as well that the proposal that AT&T makes is
23 available to all other parties who are going to be
24 filing testimony on transport. First, Ms. Singer
25 Nelson.

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1 MS. SINGER NELSON: Thank you, Judge. I
2 would be satisfied with the proposal that AT&T has made
3 for MCI.

4 JUDGE RENDAHL: Let me just recap it. That
5 would be that AT&T will be coordinating discovery on
6 this issue so that Qwest will only be receiving
7 discovery on the supplemental testimony and the exhibit
8 at issue here for Ms. Torrence and that Qwest will
9 endeavor to respond to that discovery by the 16th, and
10 if a party feels the need to file supplemental
11 responsive testimony on that narrow issue, they may do
12 so by the 20th with the issue of oral rebuttal to be
13 addressed at the hearing.

14 MS. SINGER NELSON: Yes.

15 JUDGE RENDAHL: So with that capturing the
16 summary, you're accepting that proposal.

17 MS. SINGER NELSON: Yes. Just to clarify, I
18 want to make sure that the issue that is open for
19 supplemental transport is the matters discussed in
20 Ms. Torrence's revised transport testimony.

21 JUDGE RENDAHL: Correct, and only that issue.

22 MS. SINGER NELSON: Thank you. Yes, that's
23 fine with me then.

24 JUDGE RENDAHL: Mr. Kopta?

25 MR. KOPTA: Yes, Your Honor. Obviously, we

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1 prefer our own proposal, but if the Court were not to
2 accept that, and again, if I haven't before, I will now
3 apologize that there was not as much communication and
4 there should have been so we are discussing
5 cross-proposals before you rather than having worked it
6 out amongst ourselves beforehand, but in the event that
7 you do not accept our proposal, then we would ask that
8 we be permitted to do the same thing that AT&T and MCI
9 have just discussed.

10 JUDGE RENDAHL: Okay, and Ms. Anderl, with
11 that additional discussion, I know you were hesitant
12 initially to allow other parties to join into the
13 agreement reached between AT&T and yourself. Is this
14 an acceptable resolution?

15 MS. ANDERL: Your Honor, I'm not going to be
16 flip when I say this, but what are my other choices?

17 JUDGE RENDAHL: I'm not sure there are any.
18 I need to clarify if there is any grave issue here.
19 The issue is a narrow one that the parties would be
20 filing supplemental responsive testimony on.

21 MS. ANDERL: Right, and I would like to point
22 out, and this is in support of the fact that that
23 should be very narrow and also to give the parties some
24 direction, we did provide a significant number of data
25 request responses to AT&T and to the parties on

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1 Ms. Torrence's testimony on the 28th, day before
2 yesterday. Mr. Wolters, you did get those on
3 Wednesday, didn't you?

4 MS. WOLTERS: I know I got them on the 29th.
5 I haven't determined I got them on the 28th yet.

6 JUDGE RENDAHL: Those were responses to data
7 requests?

8 MS. ANDERL: Yes, and the reason for
9 Ms. Torrence's -- and I don't really want to get into
10 the merits of what she did in her errata but just for
11 clarity, one of the reasons we filed the errata was
12 because when we got all of the discovery from AT&T, and
13 AT&T asked us, I think, over 100 questions on
14 Ms. Torrence's testimony, as she meticulously went
15 through her testimony trying to identify and
16 cross-reference CLEC's, she found typographical errors
17 where an alphanumeric code that should have said N-11
18 said W-6 or something like that, and in reconciling
19 those in order to answer AT&T's discovery, she learned
20 that she had to make this errata filing, which is kind
21 of the genesis of that.

22 Now, in the discovery responses that we
23 provided on Wednesday, to the extent that those
24 questions prompted us to file an errata, I believe we
25 tried to answer the question not just by saying, Well,

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1 we filed an errata, but saying we filed an errata, and
2 the proper carrier is C-11, and giving the answer for
3 that proper carrier.

4 So it may be that all of the supplemental
5 discovery that we got from Mr. Wolters yesterday, and
6 we did get quite a bit of it, is really information
7 that's already been provided and is just simply going
8 to be a matter of people sitting down and thinking
9 those things up.

10 JUDGE RENDAHL: I appreciate that
11 clarification.

12 MS. ANDERL: I want people to look at the
13 discovery responses we've already filed. It might
14 speed things up. The data request responses we get to
15 you all on the 16th may just say, Look, we've already
16 provided you this information in the detailed discovery
17 responses we filed on the 28th.

18 As I was saying, as long as anything
19 supplemental is filed on the 20th is really limited to
20 the errata, we will just deal with it as best we can,
21 Your Honor. If that means we just cross-examine on it,
22 fine. If that means we ask for supplemental oral
23 surrebuttal, that's what we will do, and we'll see how
24 that comes out.

25 JUDGE RENDAHL: Is there any objection to

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1 this proposal before we move on? Hearing nothing, this
2 is the proposal I read into the record earlier, but I
3 just wrote it down for myself just to make sure, and so
4 I'm going to read it in again, and if anybody has
5 clarification of it, let me know.

6 AT&T will coordinate discovery with other
7 parties on the revised Torrence testimony and exhibits.
8 Qwest will respond to those data requests, that
9 discovery by the 16th of February. Parties have an
10 opportunity to file supplemental responsive testimony
11 on the narrow issue of the revised Torrence testimony
12 on February the 20th, and oral rebuttal, if necessary,
13 on the very narrow issue will be addressed at the
14 hearing, whether to allow it and the scope.

15 Again, this is a very narrow scope we are
16 talking about here. Does that capture the issue, the
17 proposal?

18 MS. ANDERL: It did for Qwest, Your Honor.

19 MR. WOLTERS: I believe it did for AT&T also.

20 JUDGE RENDAHL: Let's move on to the next
21 issue then, which is Qwest's motion for an exception to
22 the masking requirement. Ms. Anderl, why don't you go
23 ahead and explain that.

24 MS. ANDERL: Your Honor, I don't know that I
25 have a lot to add to the pleading, but we have an

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1 exhibit to the combined testimony of Dennis Pappas and
2 Linda Notariani that is a regional exhibit that we have
3 filed in unmasked form as highly confidential in other
4 states. It is an Excel spreadsheet that has a number
5 of carrier names and other identifying information in
6 it, I believe, with regard to line splitting.

7 Just so that it's clear, I don't believe I
8 got a notice saying we were going to be addressing
9 this; although, I don't know if I'm 100 percent caught
10 up on my e-mail. I just don't know if the other
11 parties....

12 JUDGE RENDAHL: Because I got it and I wanted
13 to wrap it up into this, I sent a notice yesterday. It
14 was served because I have a service date and I received
15 a copy back from the records center, and I believe I
16 also received the courtesy e-mail from my staff.

17 MS. ANDERL: I have no problem with
18 discussing it, but I want to let you know I don't have
19 a record of that in my e-mail.

20 JUDGE RENDAHL: I'll check on that. Did you
21 get a fax?

22 MS. DECOOK: Your Honor, we did get it by
23 e-mail.

24 MR. MELNIKOFF: We got it by fax.

25 MS. FRAME: Covad received it by fax.

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1 JUDGE RENDAHL: It looks like there was an
2 issue about e-mail, but it was sent out by fax as well.

3 MS. ANDERL: That's fine, Your Honor. I'm
4 prepared to talk about it. I just didn't pull it out
5 in front of me. I believe the subject of the exhibit
6 is a line splitting. In most states, it was probably
7 filed as Dennis Pappas's Exhibit 19. In Washington, it
8 was DPLN-20, or it will be if and when we file it.

9 We had had technical problems trying to
10 accomplish the masking because of the way the data is
11 included in the Excel spreadsheet. There were pivot
12 tables in there that wouldn't allow us to do the
13 masking, so we would have to recreate the exhibit, and
14 it's fairly lengthy.

15 The other point was we had filed it unmasked
16 in a number of other jurisdictions, and I know many of
17 the parties in this proceeding are parties in multiple
18 jurisdictions, so it seems in this case that those
19 masking requirements were both unnecessary and somewhat
20 burdensome, and there would not be any prejudice to
21 make an exception to it for this document.

22 JUDGE RENDAHL: Let's hear responses, first
23 beginning with AT&T.

24 MS. DECOOK: AT&T has no objection.

25 MS. SINGER NELSON: MCI has no objection.

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1 JUDGE RENDAHL: Staff?

2 MR. THOMPSON: Staff has no objection.

3 JUDGE RENDAHL: Mr. Kopta, your clients?

4 MR. KOPTA: Based on Qwest's representation
5 that there is only one party involved and that she has
6 contacted them and they don't object, then we don't
7 have any objection either.

8 JUDGE RENDAHL: Ms. Johnson, I'm assuming
9 that Mr. Kopta is speaking for your company.

10 MS. JOHNSON: Yes, he is.

11 JUDGE RENDAHL: Ms. Frame?

12 MS. FRAME: Covad has no objection either.

13 JUDGE RENDAHL: Mr. Melnikoff?

14 MR. MELNIKOFF: This doesn't impact us. We
15 have no objection.

16 JUDGE RENDAHL: Am I missing anybody?

17 MS. RACKNER: WebTEC has no objection.

18 JUDGE RENDAHL: Thank you, Ms. Rackner.

19 Hearing no objection, I would grant the motion of Qwest
20 to make an exception for this one exhibit to the
21 masking requirement in Order No. 5 and direct Qwest to
22 file the exhibit if not -- well, today might be
23 difficult, but Monday.

24 MS. ANDERL: We will file it on Monday as
25 highly confidential on blue paper in the envelope,

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1 etcetera, and the only exception will be that there
2 will be carrier names instead of alphanumeric codes.

3 JUDGE RENDAHL: Thank you. The only other
4 issue I wanted to bring up this morning had to do with
5 just our scheduling for getting ready for the hearing.
6 Ms. Walker in ALD wanted to make sure the parties were
7 aware of a notice that was sent out on January the 2nd
8 that we needed to change the location of our prehearing
9 conference for Tuesday the 24th. There is a hearing
10 going on in Room 206 that week, so we've been bumped to
11 this room, Room 108.

12 We will also not have the conference bridge,
13 so in order to arrange alternate facilities, we need to
14 know how many people we need to arrange for. So if you
15 do not plan on attending in person on Tuesday the 24th,
16 we need to know -- of course I don't have that notice
17 in front of me, let me see. We requested that you let
18 us know by Tuesday the 17th if you plan on needing a
19 conference bridge facility, so I'm just giving you a
20 reminder.

21 But that also tee's up the issue that we do
22 have a prehearing conference scheduled on the 24th to
23 mark exhibits, and Order No. 1 in this proceeding set
24 out the procedural schedule, and in that order, it
25 identified that your exhibit lists, your identification

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1 of witnesses, and your time estimates are due on the
2 23rd. I'm not sure I set a time, but probably noon
3 would be advisable. Let me look. Actually, it doesn't
4 have a time, but let's make it noon, and electronic
5 filing is advisable and acceptable.

6 MS. ANDERL: Your Honor, that's for exhibit
7 lists, cross estimates, and cross-exhibits?

8 JUDGE RENDAHL: Right. Exhibit lists,
9 cross-exhibits, examination times, and identification
10 of witnesses so that we know how many witnesses we are
11 dealing with. You all should probably be coordinating
12 with each other now about how you wish to schedule the
13 two weeks of hearing and in terms of what issues should
14 be addressed first. We don't need to talk about it
15 this morning, but I'm going to encourage you all to
16 talk about it amongst yourselves, what issues to
17 address first, what witnesses you expect to have, what
18 their availability is, and so if you can sort of -- so
19 we can be more coordinated in advance and not have to
20 do all of this on the 24th.

21 MS. ANDERL: Thank you. I did send out an
22 e-mail and am starting to get some responses back from
23 the parties with the proposal that I had set up for
24 testimony, order of witnesses, etcetera.

25 JUDGE RENDAHL: Great. I'm glad you are all

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1 thinking about. That's all I had this morning. Is
2 there anything else, any other scheduling issues,
3 discovery issues, anything else we need to address this
4 morning?

5 MS. DECOOK: Quick question here, please.
6 When we talk about scheduling, do you anticipate, aside
7 from any motions that might come up at the beginning of
8 the hearing, that we will go right into witness
9 testimony, or do you want oral presentation of
10 positions or anything like that?

11 JUDGE RENDAHL: I hadn't thought about that.
12 Our time is going to be fairly short considering the
13 number of issues we have to deal with. Why don't you
14 all talk about that amongst yourselves and see if it's
15 something you need. I'm not sure the commissioners
16 generally require that. I can find out if that's
17 something they would like.

18 MS. DECOOK: The second question is, is this
19 a case where you would entertain witness summary?

20 JUDGE RENDAHL: I will find out both on the
21 issue of any sort of initial oral arguments and witness
22 summaries and let you all know in the next week or so
23 about that, and to do that, I might just send out a
24 notice, and if not, I will just do an informal e-mail
25 to everyone letting you know.

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1 MS. DECOOK: Thank you, Your Honor.

2 JUDGE RENDAHL: Is there anything else we
3 need to bring before us this morning?

4 MS. ANDERL: Yes, Your Honor. I would like
5 to raise the issue of some sort of discovery limitation
6 and cutoff after the testimony on February 2nd. We
7 have received close to a thousand data requests in
8 Washington. Well, I don't know if that's true.
9 Certainly with subparts, and well over 500. AT&T alone
10 is approaching 100 data requests to us.

11 We are finding that to be extremely
12 burdensome in terms of responding, as well as doing
13 hearing and testimony preparation as we get closer and
14 closer to the hearing becomes more and more burdensome
15 to do that, particularly in light of the fact that
16 sometimes we would then be in a situation where
17 discovery responses are due during the hearing, which
18 production of those is very complicated.

19 So I would like to raise the issue of at
20 least the concept of either a time line by within which
21 all discovery must be submitted or some limitation on
22 just the total gross number of data requests that can
23 be submitted.

24 JUDGE RENDAHL: Is this something that I can
25 ask you all to discuss amongst yourselves and if you

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1 can't agree on something to bring it back before me, or
2 are you already anticipating, Ms. Anderl, that this is
3 an issue?

4 MS. ANDERL: It already is an issue.

5 JUDGE RENDAHL: You are thinking of after the
6 2nd.

7 MS. ANDERL: Right. I'm operating under the
8 assumption that a new round of testimony will prompt
9 additional waves of discovery, and just as a
10 conceptually, I'm not sure that it is appropriate for
11 there to be just kind of unlimited, on time limited and
12 on quantity limited, discovery between the 2nd of
13 February and the 1st of March.

14 MS. SINGER NELSON: Your Honor, I think MCI
15 would like to have the opportunity to file additional
16 discovery after the February 2nd testimony is filed,
17 and perhaps even after any additional or supplemental
18 testimony is filed later on if just cause is shown a
19 necessity for another round of testimony, so I do think
20 this is an issue we can discuss off-line amongst the
21 parties and see if we can come up with an agreement,
22 but I'm not going to at this point agree that discovery
23 should stop by next week or anything like that. I
24 would have to see the testimony before I would be able
25 to make any concession on that.

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1 MS. DECOOK: Your Honor, I think what
2 Ms. Anderl proposes in concept is probably something
3 that we would be willing to talk about. The difficulty
4 that I see is not knowing what the testimony is going
5 to look like and what the scale and scope of any new
6 issues that are addressed or raised in that testimony,
7 it's pretty hard to place an arbitrary limit on
8 discovery, so I think while we may be able to agree to
9 some conceptual limit, it may be subject to doing a
10 just-cause showing that we should be allowed to exceed
11 that based on any new issues on whatever filing is made
12 on the 20th.

13 JUDGE RENDAHL: I'll just say right now I'm
14 hesitant, Ms. Anderl, and I'm going to let other
15 parties speak too, but I'm hesitant to say we are just
16 going to cut off testimony on the 2nd, and the
17 Commission doesn't normally progress on this kind of a
18 schedule, and there is enough time between the last
19 round of testimony and hearing to allow additional
20 discovery and to allow parties to prepare for hearing.

21 We are facing the schedule presented to us by
22 the FCC, so there is some circumstances in this case
23 that we don't normally face, so I would encourage the
24 parties to discuss it amongst themselves, and I'm not
25 going to make a decision on it today, but I also don't

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1 want to foreclose anyone else from speaking on this
2 issue.

3 MS. ANDERL: Just as a clarification, we were
4 not proposing that there be no discovery anymore. I
5 was going to propose something more specific, if
6 permitted, that something along the lines of no
7 discovery could be issued on the February 2nd testimony
8 after February 9th, just so that we would know when we
9 had the universe of things we needed to address and
10 could start to manage our resources.

11 JUDGE RENDAHL: Now, does any other party
12 wish to speak on this issue? It sounds like it's
13 something that would be amenable to e-mail discussion
14 of proposals by one party on the other to see if
15 everyone can reach an agreement on discovery cutoff
16 time and potential limitation of discovery, so I'm
17 going to leave it to you all to reach an agreement, and
18 if you can't, please let me know as soon as possible so
19 we can convene another brief prehearing conference.

20 MS. ANDERL: Thank you, Your Honor.

21 JUDGE RENDAHL: Is there anything else that
22 needs to come to us this morning? Hearing nothing and
23 having no other issues before us this morning, this
24 prehearing conference is adjourned, and I will enter a
25 prehearing conference order as quickly as possible. It

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1 will probably be on Monday. So thank you all for
2 accommodating the short notice, and have a good
3 weekend, and we will talk to you soon.

4 (Prehearing conference concluded at 10:55 a.m.)

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