

1 BEFORE THE WASHINGTON STATE
 UTILITIES AND TRANSPORTATION COMMISSION
 2 In The Matter of the)
 Petition for Arbitration of)
 3 an Interconnection Agreement) DOCKET NO. UT-043045
 Between)
 4) Volume III
 DIECA COMMUNICATIONS, INC) Pages 204 to 381
 5 d/b/a COVAD COMMUNICATIONS)
 COMPANY)
 6)
 with)
 7)
 QWEST CORPORATION)
 8 Pursuant to 47 U.S.C. Section)
 252(b), and the Triennial)
 9 Review Order.)
 _____)

10

11 A hearing in the above matter was held on
 August 27, 2004, from 9:30 a.m to 4:10 p.m., at 1300
 South Evergreen Park Drive Southwest, Room 206, Olympia,
 12 Washington, before Administrative Law Judge ANN RENDAHL.

13 The parties were present as follows:
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17

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 19 896-6095, E-mail winslow.waxter@qwest.com; and by JOHN
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24 Joan E. Kinn, CCR, RPR

25 Court Reporter

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

2 JUDGE RENDAHL: We're back for the second day
3 of hearing in Docket Number UT-043045, which is the
4 Arbitration or Petition for Arbitration by Covad for an
5 Agreement with Qwest, and we have a new attorney with us
6 this morning, Mr. Devaney, and if you would please state
7 your appearance.

8 MR. DEVANEY: Thank you, Your Honor, John
9 Devaney on behalf of Qwest Corporation. I'm with the
10 law firm Perkins Coie, my address is 607 - 14th Street
11 Northwest, Washington D.C., zip code there is
12 20005-2011, my work telephone number is (202) 434-1624.

13 JUDGE RENDAHL: Thank you, Mr. Devaney, and
14 if you could give us your -- did you just give us your
15 telephone numbers?

16 MR. DEVANEY: I did. Oh, do I need to give a
17 fax number as well?

18 JUDGE RENDAHL: Fax and E-mail.

19 MR. DEVANEY: Fax is (202) 434-1690, and
20 E-mail is jdevaney@perkinscoie.com, Perkins Coie is
21 P-E-R-K-I-N-S, C-O-I-E.

22 JUDGE RENDAHL: Thank you very much.

23 MR. DEVANEY: Thank you.

24 JUDGE RENDAHL: And other counsel remain as
25 stating an appearance from yesterday.

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1 While we were off the record we discussed the
2 agenda for this morning. We have deferred discussion of
3 the effect of the FCC's Interim Order on this
4 arbitration to this morning, but the parties have raised
5 a few administrative matters that relate to that, and so
6 let's turn to that issue first.

7 Mr. Devaney, if you would like to start.

8 MR. DEVANEY: Thank you, Your Honor. Yes,
9 Your Honor, off the record we suggested that as Qwest
10 suggested that it would be wise in our view to either
11 take administrative notice of the existing Covad-Qwest
12 interconnection agreement or alternatively enter the
13 entire agreement into the record of this arbitration.
14 And we are of that view because of the FCC's Interim
15 Order issued I think one week ago today.

16 In that order the FCC says that with respect
17 to access to loops, dedicated transport, and switching
18 that for a period of six months or until the FCC issues
19 its final unbundling rules, terms and conditions that
20 existed with respect to those three elements as of June
21 15th, 2004, shall apply. And in the short time since
22 the order has been issued, Qwest has had some
23 opportunity to evaluate precisely what that means but
24 not full opportunity, and it is apparent to us that that
25 ruling should have some bearing on the issues in this

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1 arbitration and that terms and conditions that existed
2 on June 15th, 2004, could very well apply to the new
3 Qwest-Covad agreement that's being arbitrated.

4 And to ensure that the record contains all
5 the terms and conditions that currently exist between
6 the parties, we think it would be wise to include the
7 agreement in the record or as we said through
8 administrative notice so that the parties have the
9 chance to fully evaluate which of those terms and
10 conditions might apply to the issues in this
11 arbitration.

12 JUDGE RENDAHL: Thank you.

13 Ms. Frame.

14 MS. FRAME: Yes, Your Honor. While Covad
15 doesn't oppose I guess the Commission or the ALJ taking
16 judicial notice of the current or existing
17 interconnection agreement, I just want to point out
18 again that really what the interim rules do is they are
19 basically enforcing or making the LECs continue to have
20 in place really just the unbundled access to switching,
21 enterprise market loops, and dedicated transport under
22 those same terms and conditions that applied under their
23 interconnection agreement as of June 15th, 2004.

24 So I'm not really quite sure what other -- I
25 don't think there are any other issues that are really

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1 relevant to this particular arbitration proceeding that
2 we can't address on the briefs, and those are some of
3 those other issues that I spoke about yesterday with
4 respect to Section 271 and how that pertains to
5 interconnection agreements, and I think that will be
6 fully addressed when the Commission comes out with their
7 permanent rules. So I'm not really sure that any of the
8 unbundled elements issues per se really pertain at all
9 to what we're negotiating or arbitrating here today, so
10 I'm a little unclear as to really what else out of the
11 current interconnection agreement that Qwest is really
12 referring to. I guess I would like to flesh that out a
13 little bit more.

14 JUDGE RENDAHL: Mr. Devaney.

15 MR. DEVANEY: Two examples, Your Honor. One
16 would be the issue of commingling. That is obviously an
17 issue in this arbitration, and Covad is seeking to
18 include provisions that would require Qwest to commingle
19 certain elements together. And that is a term and
20 condition relating to access to the three elements
21 addressed in the FCC's Interim Order, and we think that
22 therefore the terms and conditions that existed on June
23 15th, 2004, with respect to commingling, for example,
24 would have a direct bearing on that issue in this
25 arbitration.

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1 Similarly, Covad has requests for what we
2 believe to be fairly extensive network unbundling under
3 Section 251 of the Act, Section 271 of the Act, and
4 under state law, and that goes to those three elements,
5 that is switching, transport, and high capacity loops.
6 Because the June 15th agreement certainly will have
7 terms and conditions relating to access to those
8 elements, those terms and conditions should have some
9 bearing on Covad's request for unbundling in this case.
10 And what bearing to be honest we're not sure yet, but we
11 just need to be able to address that and if there is an
12 effect to bring it to the court's and the Commission's
13 attention. And with the agreement in the record or with
14 administrative notice of the agreement, we will have the
15 ability to do that.

16 JUDGE RENDAHL: Okay.

17 Ms. Frame, any response?

18 MS. FRAME: Well, I guess I would agree with
19 Qwest on a few of those comments that Mr. Devaney just
20 stated, but with respect to commingling I don't believe
21 that that was in our existing interconnection agreement.
22 I believe that that's a new section, and so.

23 JUDGE RENDAHL: Okay, I guess it's apparent
24 to me that, well, I would like to have more of a
25 discussion on the Interim Order, but before we get there

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1 I will just preface it with this. There continues to be
2 a great amount of uncertainty even with the Interim
3 Order because of the mandamus petition that has been
4 filed by Qwest and Verizon, so we need to keep our
5 options open in this arbitration to address whatever may
6 occur until the Commission addresses the request for
7 approval of an agreement.

8 So what I would propose is that we take
9 administrative notice of the exhibit but that you all
10 provide me with a copy of it so that I have access to
11 that when I'm making my decisions in this matter.
12 Because we don't know at this point what will be
13 relevant and what won't be relevant until things flesh
14 out a bit more, and so I think it is fair to address it
15 that way, and in that respect we will have access to the
16 information that was requested in Records Requisition
17 Number 1 for the provisions on discontinuing service and
18 orders. My understanding based on the off the record
19 discussion is that there were no provisions in the prior
20 agreement, but I can take administrative notice of that
21 when I receive a copy and when I'm making my decisions
22 on that issue.

23 So I understand Records Requisition Number 1
24 is withdrawn; is that correct?

25 MS. WAXTER: Your Honor, that is correct, but

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1 again we would like to take the opportunity, I'm not
2 sure that there wasn't any reference, I just am not sure
3 how the references that are contained in the current ICA
4 may or may not affect the discussion that we were having
5 yesterday. But the specific record request, especially
6 given that the interconnection agreement will be
7 admitted or that administrative notice will be taken, we
8 may or may not have an opportunity or have a need to
9 brief it.

10 JUDGE RENDAHL: Thank you, Ms. Waxter.

11 So now I would like to spend a few moments,
12 not a great amount of time, discussing the possible
13 impact of the FCC's Interim Order. And specifically,
14 Mr. Devaney, as you pointed out and Ms. Frame as well,
15 the Interim Order appears to freeze state commission
16 ability to arbitrate any agreements relating to three
17 specific elements, mass market loops, enterprise market,
18 I mean mass market switching, enterprise market loops,
19 and dedicated transport. Now I say appears, we are
20 still trying to figure out what the impact of the
21 Interim Order is on state commission authority under
22 Section 252 to arbitrate agreements, and so I think it's
23 appropriate to include those issues in briefing.

24 My thoughts are that we continue this
25 proceeding to address the issues that you all have teed

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1 up in this proceeding, including the TRO issues, and
2 address them but then keep in mind in briefing that we
3 also address what the impact is under the Interim Order
4 so that we in a sense have covered all the bases and
5 have covered any issues that we need to so we can tee
6 this up both for an arbitrator's decision and Commission
7 decision. So I guess I would like your thoughts on
8 that, first beginning with Ms. Frame.

9 MS. FRAME: Specifically just on how to
10 address the Interim Order in the briefing, is that the
11 question? I guess I'm a little unclear as to what
12 you're asking us to comment on. I would be more than
13 happy to try to comment on something that I'm a little
14 bit clearer on.

15 JUDGE RENDAHL: All right, I guess my
16 proposal is that in a sense we continue today as if the
17 Interim Order never came out, to arbitrate the issues as
18 they were presented, but also in the brief address what
19 impact the Interim Order would have on what we were
20 doing today. And so I'm asking you if that makes sense
21 or if you're proposing a different format for today.

22 MS. FRAME: Actually, that makes a lot of
23 sense to Covad, I mean to go ahead and take the
24 evidence, whatever evidence we need to have today, and
25 then to address those issues in the post hearing brief.

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1 JUDGE RENDAHL: Okay.

2 Mr. Devaney.

3 MR. DEVANEY: Your Honor, we also agree that
4 approach makes sense.

5 Were you interested in any advocacy from us
6 this morning about what we think the order means and how
7 it affects the Commission's jurisdiction, or shall we
8 just save that for the briefs?

9 JUDGE RENDAHL: I think it might be -- I was
10 thinking yesterday it would be helpful to have it, but I
11 think the more we discussed it yesterday morning, I
12 think it made sense to address it in brief, because it
13 is -- it has only been out for a week, and who knows
14 what will happen. I think the Commission is still
15 evaluating for itself what it means. So I think to have
16 that information in brief may be more useful than to
17 have you expend your efforts on that this morning.

18 MR. DEVANEY: Okay, thanks.

19 JUDGE RENDAHL: So I apologize if you have
20 spent time away from other matters preparing on that for
21 this this morning.

22 MR. DEVANEY: No problem, thank you.

23 JUDGE RENDAHL: Is there anything else we
24 need to discuss this morning before we start with your
25 first witness?

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1 MS. WAXTER: Your Honor, I just have two very
2 brief cleanup matters, and that's just in looking at the
3 exhibit list, we didn't actually formally move to admit
4 the joint issues list, which is Exhibit Number 70.

5 JUDGE RENDAHL: Correct, or the agreement.

6 MS. WAXTER: Or the agreement, right. So I
7 would move for the admission of both Exhibits 70 and 71
8 at this time.

9 MS. FRAME: Covad has no objection.

10 JUDGE RENDAHL: All right, and as I noted
11 yesterday, I will modify the reference to the draft
12 interconnection agreement to refer to the June 21st
13 version that was provided to me, so I will admit
14 Exhibits 70 and 71 for this proceeding.

15 MS. WAXTER: And one final cleanup matter
16 with respect to Exhibit 71 is that Section 9.1.1.8, it
17 appears in the draft interconnection agreement as an
18 open issue, but that section has, in fact, been
19 resolved.

20 JUDGE RENDAHL: And I guess we don't need to
21 have whatever the resolved language is until the request
22 for approval comes through.

23 MS. FRAME: That's correct, and we -- I would
24 hope that we would even clean this up a little bit more
25 with -- we have to file a revised petition anyway with a

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1 caption change, so Covad would be happy to file the
2 correct I would say agreement to the extent that 9.1.1.8
3 has been resolved.

4 JUDGE RENDAHL: I guess I will leave that up
5 to you. In terms of the corrected caption, I don't know
6 that we need a complete revised filing, but I think just
7 the petition itself with a revised caption.

8 MS. FRAME: Okay.

9 JUDGE RENDAHL: And an explanation in a cover
10 letter will I think suffice for that.

11 MS. WAXTER: And presumably we don't have to
12 file any kind of a response to that.

13 JUDGE RENDAHL: You do not.

14 MS. WAXTER: Okay, thank you.

15 JUDGE RENDAHL: If you agree to the caption
16 change, then there's no need for a response.

17 MS. WAXTER: We agree, thank you.

18 JUDGE RENDAHL: Okay, so we're ready for
19 Ms. Doberneck I believe.

20 Welcome back.

21 THE WITNESS: Thank you I think.

22 JUDGE RENDAHL: And you remain under oath
23 from yesterday.

24 And, Ms. Frame, do you have any preliminary
25 issues for Ms. Doberneck?

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1 MS. FRAME: No, and we would tender her for
2 cross-examination.

3 JUDGE RENDAHL: Thank you, Ms. Frame.
4 Mr. Devaney.

5 MR. DEVANEY: Thank you, Your Honor.

6

7 Whereupon,

8 MEGAN DOBERNECK,
9 having been previously duly sworn, was called as a
10 witness herein and was examined and testified as
11 follows:

12

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

14 BY MR. DEVANEY:

15 Q. Good morning, Ms. Doberneck.

16 A. Good morning.

17 Q. I believe we're beginning with the issue of
18 copper retirement this morning, and what I would like to
19 do is first be clear about what it is that Covad is
20 proposing. And I understand from our conversation
21 before we began this morning that you will have Covad's
22 language in front of you; is that correct?

23 A. Yes, the specific sections in which we
24 disagree and I believe also contains our proposal, I do
25 have that with me.

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1 Q. Okay. And just to be clear, as I understand
2 it in Section 9.2.1.2.3.1 of Covad's proposed agreement,
3 Covad is proposing that Qwest would not be able to
4 retire a copper facility, and I'm quoting now:

5 Without first provisioning an
6 alternative service over any available
7 compatible facility (i.e., copper or
8 fiber) to Covad or Covad's end user
9 customer.

10 Is that correct?

11 A. That is correct.

12 Q. And further under that same section, the
13 alternative service that Qwest would be required to
14 provide could not degrade the service or increase the
15 cost to Covad or its end users; is that right?

16 A. Yes.

17 Q. Could you please turn to your direct
18 testimony, which is Exhibit 21-T at page 21.

19 A. Yes.

20 Q. And on it looks on my copy like line 8, you
21 ask, the Covad proposal is consistent with the TRO,
22 correct? You answer, it is, and then you go on and
23 provide more. And what I would like to ask you is, do
24 you agree with me that nowhere in the TRO in the section
25 on copper retirement is there a requirement that an ILEC

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1 provide an alternative service before retiring a copper
2 facility?

3 A. Well, I guess I would disagree for the
4 reasons that I lay out in my testimony, which is to the
5 extent the entirety or portion of the loop that Qwest is
6 going to retire, that copper portion, will deny us
7 access to the entire loop, an entire loop facility
8 serving an existing customer, that in that circumstance
9 there may be the requirement that an alternative service
10 be provided.

11 Q. Do you have in front of you the
12 cross-examination exhibits that Qwest designated?

13 A. No, I do not.

14 MR. DEVANEY: May I approach, Your Honor?

15 JUDGE RENDAHL: You may.

16 BY MR. DEVANEY:

17 Q. Ms. Doberneck, I have handed you
18 cross-examination Exhibit Number 31, which is excerpts
19 from the Triennial Review Order.

20 A. May I ask you a question? You gave it to me
21 in two separate sections, is it really just one exhibit?

22 Q. It is one exhibit, right.

23 A. Okay.

24 Q. And I hope that I have included in there the
25 sections on copper retirement from the Triennial Review

0221

1 Order, I think that I did. And again, I just want to
2 focus on your testimony that Covad's proposal is
3 consistent with the TRO, and I want to ask you to point
4 to a paragraph in that order where it says an ILEC has
5 to provide an alternative service before retiring a
6 copper loop. And obviously you can take a minute or two
7 to review it if you would like.

8 A. I would agree with you that there is no
9 precise wording that says, if an ILEC retires copper, it
10 must provide an alternative service. But that does not
11 mean in my mind that our proposal is not consistent with
12 the TRO for the reasons I lay out in my testimony. In
13 addition -- I mean if you want me to go through my
14 testimony, I can provide --

15 Q. That's okay, you have answered my question.

16 MR. NEWELL: Your Honor, I'm sorry to
17 interrupt, for the record, can Mr. Devaney tell us which
18 paragraphs of the TRO make up the exhibit Ms. Doberneck
19 is reading from?

20 Q. Ms. Doberneck, would you mind reading into
21 the record the first paragraph in the excerpt and the
22 last paragraph, just the numbers that is.

23 A. Sure, the first full paragraph that is
24 contained in the exhibit is Paragraph 270, and the last
25 full paragraph is Paragraph 292.

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1 JUDGE RENDAHL: Mr. Devaney, my copy goes
2 through Paragraph 295. What was your intention with the
3 exhibit?

4 MR. DEVANEY: May I approach the witness?

5 JUDGE RENDAHL: You may.

6 THE WITNESS: Did I not say Paragraph 295?

7 JUDGE RENDAHL: You said 292.

8 THE WITNESS: I'm sorry, I meant 295.

9 JUDGE RENDAHL: Thank you for the
10 clarification.

11 BY MR. DEVANEY:

12 Q. Ms. Doberneck, still focusing on this concept
13 of an alternative service requirement, am I correct that
14 Covad's proposed contract language does not provide a
15 definition of this alternative service that Qwest would
16 be required to provide?

17 A. It is not a defined term in the agreement,
18 which is not particularly unusual given the length of
19 the contract.

20 Q. Okay. And with respect to Covad's proposed
21 condition that this alternative service can not degrade
22 the service or increase the cost, is the term degrade
23 service defined anywhere in the agreement as proposed by
24 Covad?

25 A. No, but it's not necessary. I think there's

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1 a very plain meaning understanding that we all share of
2 what degrade is. It means less than the service you get
3 now. And when we were negotiating the SGAT during the
4 271 agreement, one of the principles that the parties
5 did agree upon pretty early in that process is that we
6 did want to keep defined terms in the agreement to those
7 that really required definition and/or areas for example
8 that were critical to understanding the legal
9 obligations, such as for example the definition of a
10 UNE. Because the agreement of the parties was such at
11 some point it becomes somewhat unwieldy and unwise to
12 define everything in the agreement, so we went
13 consistent with a principle that had been adhered to by
14 the parties for quite some time in terms of this
15 agreement.

16 Q. Okay. Just to be clear then, there's no
17 metric, for example, by which one could measure under
18 this contract whether Qwest has provided a degraded
19 service? And by metric I mean a metric in the
20 agreement?

21 A. Well, I would -- no, there is no metric in
22 the agreement, but I would disagree that there's
23 actually no very objective standard against which you
24 could measure whether the service has degraded. Because
25 just like Qwest, Covad defines its product by speeds, up

0224

1 to 256k, that's a nice easy benchmark by which we can
2 measure, both Qwest and Covad, whether there has been a
3 degradation of service or not.

4 Q. And no such benchmarks are in your proposal,
5 correct?

6 A. That is not in the proposal or in the
7 agreement, but as I mentioned, I think it's a pretty
8 easy standard for the parties to use.

9 Q. And in a similar vein with respect to the
10 proposed requirement that this alternative service not
11 increase costs for Covad or its end users, is there
12 anything in the agreement that says increased cost as
13 compared to what?

14 A. The answer is no, but I'm at a loss. Again,
15 I mean our cost is what we pay today, it either
16 increases or not. It's pretty straightforward.

17 Q. But wouldn't it make sense if that's going to
18 be a cap on what Qwest can charge to include that in the
19 agreement so there's no dispute about what the amount
20 is?

21 A. The struggle that I have with your question
22 is that all of this could have been addressed during
23 negotiations, and Qwest refused to negotiate. If,
24 however, the question is would we be willing to include
25 some kind of language that would help Qwest in terms of

0225

1 fixing its obligation, absolutely, we're open to that.

2 Q. Well, let's talk about what amount Covad is
3 paying today, because I would like to understand how
4 much you think Qwest would be able to charge Covad for
5 this alternative service that it would have to provide
6 in your proposal, under your proposal. Do you know
7 today in Washington what Covad is paying Qwest for the
8 DSL service that Covad provides to its customers?

9 A. Yes, I do.

10 Q. What's the amount?

11 A. Actually, on the nonrecurring side, I'm not
12 100% positive, I think it's around \$35 for install on
13 the nonrecurring side, but I believe that's probably not
14 relevant since we're talking about existing customers.
15 So it would be the recurring side. On the recurring
16 side, the elements that we order and that we pay for on
17 a recurring basis that are specific to that particular
18 line would be the actual charge for the high frequency
19 portion of the loop as well as two interconnection tie
20 pairs. Obviously there are also additional charges that
21 are associated with that like collocation, transport,
22 things like that. But as far -- that we would continue
23 to pay to Qwest. But as far as specific to that line,
24 you're talking about the high frequency portion of the
25 loop and the two ITPs.

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1 Q. And are the ITPs a monthly recurring rate?

2 A. Yes, they are.

3 Q. So --

4 A. It's \$1.96 for the two.

5 Q. And what's the line sharing rate recurring,
6 about \$2?

7 A. It is \$2, yes.

8 Q. So under your proposal then, the most Qwest
9 could charge for this alternative service on a recurring
10 basis would be roughly \$3.96; is that correct?

11 A. For the specific elements associated with
12 that line, yes.

13 Q. Okay. And that's regardless of what the cost
14 of the alternative service is, right? If the
15 alternative service costs \$10 for Qwest, it could still
16 only charge Covad \$3.96 under your proposal, correct?

17 A. Well, to the extent we're being clear about
18 cost versus revenue.

19 Q. Yes.

20 A. Yes, I would agree, there would be no
21 increase in cost to Covad.

22 Q. And then you also said that the nonrecurring
23 charges that Covad pays Qwest today aren't relevant
24 because we're talking about existing customers, but if
25 Qwest were required to provide an alternative service,

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1 it of course would have to install that alternative
2 service, wouldn't it?

3 A. I'm not certain to be honest, so there -- I
4 think I said I don't believe that NRCs apply. I mean I
5 may not -- I'm not certain about that.

6 Q. But here's my point, isn't that something the
7 agreement ought to address?

8 A. As I said before, we are always open. If
9 Qwest is willing to accept this proposal, we are
10 absolutely willing to include the kinds of provisions or
11 certainty Qwest would need.

12 Q. Okay.

13 A. But since Qwest never wanted to discuss it
14 period, we're not going to volunteer where Qwest has now
15 identified any kind of problems it might have with the
16 language.

17 Q. Ms. Doberneck, I do need to respond -- I'm
18 sorry, I cut in a little early there.

19 JUDGE RENDAHL: Yes, and if you could wait
20 until she's finished, then you will have an opportunity
21 to ask a follow up.

22 MR. DEVANEY: Sorry.

23 BY MR. DEVANEY:

24 Q. I do want to ask you about your suggestion
25 that Qwest refused to negotiate this, and I think I need

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1 to respond to that with a question. Isn't it a fact
2 that Qwest did not negotiate prices for an alternative
3 service because it was Qwest's view that there's no
4 requirement in the Triennial Review Order to provide an
5 alternative service?

6 A. I suppose I see them as being one and the
7 same thing. If you won't talk about the provision, of
8 course we'll never get to the pricing, so I think
9 they're the same thing.

10 Q. Okay. Ms. Doberneck, at page 9 of your
11 direct testimony, and again for the record that's
12 Exhibit 21-T.

13 A. Sorry, page 9 did you say?

14 Q. Correct. You identify VISP service as a
15 possible alternative service that Qwest might offer. Do
16 you see that?

17 A. Yes, as the kind of product that might be
18 available as an alternative service, yes.

19 Q. And do you know what Qwest's costs are to
20 provide VISP service?

21 A. Qwest has never told me the cost. I only
22 know the rates that it would anticipate charging.

23 Q. And do you know what rate Qwest is charging
24 in Washington today for that?

25 A. It's actually out of the FCC I think 1 Access

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1 Tariff, the Qwest FCC Access 1 Tariff, and on a
2 nonrecurring basis, this is in the exhibit, I believe
3 the nonrecurring charge is \$99 and the recurring charge
4 varies depending on the speed of the service that's
5 being offered.

6 Q. Do you recall what the range is for the
7 recurring rate?

8 A. For a consumer product, which is what I focus
9 on because this is where I think the impact would be, I
10 think it's \$21.99 to \$29.99 the rate would be charged.

11 Q. And under your proposal, Qwest wouldn't be
12 able to charge Covad more than \$3.96; is that correct?

13 A. That is correct, but again that's a cost
14 versus a revenue issue I think.

15 Q. Ms. Doberneck, you and I have been through
16 quite a few cost dockets together, haven't we?

17 A. I believe yes.

18 Q. Yes.

19 A. Certainly more than one.

20 Q. More than one, I think maybe three.

21 A. The fun lasts a lifetime, yes.

22 Q. And I take it you would agree with me that
23 under the Act an ILEC like Qwest has a right to recover
24 the costs as defined by TELRIC it incurs to provide
25 unbundled network elements and interconnection services?

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1 A. Yes, that is the TELRIC standard.

2 Q. And have you analyzed whether your \$3.96
3 limit is consistent with Qwest's right to recover its
4 costs under the Act?

5 A. Considering we have seen no evidence from
6 Qwest as to any kind of costs it would incur, we have
7 only seen statements, we have not had that opportunity.

8 Q. I don't want to beat this issue into the
9 ground, so I just have one or two more questions about
10 it, and then I will move on, but please move to page 19
11 of your direct, Exhibit 21-T, and I want to focus on
12 lines 8 through, actually I guess it's 7 through 9,
13 where you say:

14 At least under Covad's proposal, Qwest
15 will continue to recover its costs and
16 make a reasonable profit without any
17 additional expenses.

18 Do you see that?

19 A. Yes.

20 Q. What language are you referring to in Covad's
21 proposal that would ensure Qwest recovers its costs and
22 earns a reasonable profit?

23 A. It would not be the language in the proposal.
24 It's based on my assumption in terms of for example if
25 we -- what I would assume approximately Qwest's costs to

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1 be, which I think TELRIC, the TELRIC rates that are
2 being charged is the proxy that I use. So if you're
3 continuing to recover the TELRIC rate from Covad, which
4 you would be because we would continue to pay that cost,
5 then you would recover your cost plus a reasonable
6 profit. But that is not contained specifically in the
7 language that Covad proposed for the interconnection
8 agreement.

9 Q. Please turn to page 5 of your direct, Exhibit
10 21-T, and at lines 15 through 19, and I have to say that
11 my line numbers are sometimes appear in the middle of
12 two sentences, so my line numbers might be one line off.

13 A. Mine do too, so we're probably right at the
14 same place.

15 Q. Okay. You state there that:
16 Looking at it from the perspective of
17 new consumers looking for a service
18 provider, they have no choice in
19 providers where Qwest has retired copper
20 and replaced it with fiber. A
21 consumer's only option is to go with
22 Qwest or perhaps the incumbent cable
23 company.

24 Do you see that?

25 A. Yes, I do.

0232

1 Q. Are you aware of the state of cable
2 competition here in Washington?

3 A. In a very general sense I have an
4 understanding of, you know, cable penetration versus DSL
5 penetration and what that looks like. Specific to the
6 state of Washington I don't know, at least not right now
7 as I sit here today.

8 Q. But you agree there are cable providers who
9 could serve Covad -- who could serve customers here
10 today in Washington?

11 A. Certainly.

12 Q. And do you also agree that Covad itself could
13 offer these customers you're referring to in this
14 testimony resale DSL?

15 A. I am not certain I agree with that. Would
16 you like me to explain why?

17 Q. Sure.

18 A. The reason I say that, my understanding of
19 the Qwest DSL resale option is that it is -- Qwest DSL
20 is not just DSL, it is both voice and data, so we would
21 be reselling both Qwest voice and Qwest DSL. So where I
22 see an impediment for example to Covad having that
23 option is we would have to persuade the customer to also
24 -- to change its voice service to Covad in order to say
25 you're still getting, quote-unquote, your data service

0233

1 from Covad. And I think that probably could be a pretty
2 significant impediment, particularly when you look at
3 the fact that we wouldn't also be offering the long
4 distance component, and I know one of the big price
5 points Qwest has going for it right now is the great
6 pricing it can provide when it combines both the long
7 distance and the local voice service.

8 Q. Are you familiar though with Qwest's Choice
9 DSL product?

10 A. I know I have seen it certainly on the Web
11 site. My understanding though that the Qwest Choice DSL
12 is tied more to speeds. But other than that, other than
13 what's on the Web site in terms of speeds and pricing.

14 Q. So have you analyzed whether that's a product
15 that might be available to Covad?

16 A. Well, like I said, my understanding of the
17 resale product was that it's voice and data.

18 Q. Okay. But have you specifically analyzed
19 that product?

20 A. Not that product.

21 Q. Okay.

22 A. I suppose the first time it came up was in
23 Ms. Stewart's rebuttal testimony, and I did not have an
24 opportunity before sitting here today to look into that.

25 Q. In the previous sentence, again this is page

0234

1 5, you -- I'm sorry, strike that question.

2 Please go to page 14 of your direct.

3 A. And are we going to get into the confidential
4 portion or just that page?

5 Q. No, I don't think we will.

6 A. Okay.

7 Q. At lines 3 through it appears to be 6, you
8 state that:

9 Covad is not passively sitting around
10 waiting for Qwest to force customers off
11 our network and to result in a straining
12 of our central office based collocation
13 spaces and equipment. To the contrary,
14 Covad is working to develop alternative
15 ways to provide service to our
16 customers.

17 Do you see that?

18 A. Yes, I do.

19 Q. Are you able to tell us what those
20 alternative ways are?

21 A. The answer is yes, I can. What I don't know
22 is whether it constitutes confidential information at
23 this point.

24 THE WITNESS: With your permission, Your
25 Honor, I would like to make this confidential, and then

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1 I can check over the break whether this is public
2 information, and then we can undesignate it.

3 JUDGE RENDAHL: Let's be off the record for a
4 moment.

5 (Discussion off the record.)

6 BY MR. DEVANEY:

7 Q. Ms. Doberneck, without getting into what
8 specific products Covad has in mind, it is correct that
9 Covad is in the process of developing products that it
10 believes will permit it to continue providing service to
11 its customers; is that right?

12 A. I wouldn't go so far as to say we are in the
13 process of developing products. What I would say is we
14 are pursuing alternatives that we hope will materialize
15 into an option that we could use, an alternative option.
16 There is a fair amount of research I think from both a
17 technical and an economic standpoint that is going to be
18 required, and, you know, my understanding is this is,
19 well, there's not even a point in time at which I think
20 we could say it's a go or even a no go option.

21 Q. Still on page 14, the next sentence after the
22 one I last read states:

23 Notwithstanding these efforts, it is not
24 appropriate for Qwest to have the
25 unilateral ability to disconnect the

0236

1 existing Covad customers under the guise
2 of technological development.

3 Do you see that?

4 A. Yes, I do.

5 Q. When you speak of under the guise of
6 technological development, are you referring there to
7 the deployment of fiber?

8 A. Yes.

9 Q. Why do you use the term guise, are you
10 suggesting that the deployment of fiber is not some sort
11 of favorable technical development?

12 A. I'm not saying that. What I'm saying is
13 certainly in the routine course of business Qwest may
14 deploy fiber as part of just, like I said, routine
15 course of business, standard network modifications.
16 What I am talking about, however, in that sentence is
17 the reality that Qwest or any other company who has
18 control over the last mile can very easily eliminate
19 access by competitors to the network by the deployment
20 of fiber. For example, by targeting an area where Covad
21 may have a heavy concentration of customers, Qwest for
22 example could decide, we're going to deploy fiber there
23 because that leaves a whole bunch of customers for us to
24 grab because their Covad service would be disconnected.

25 Q. And do you have any evidence that Qwest is

0237

1 engaging in that sort of practice?

2 A. Not necessarily with the deployment of fiber.

3 Q. And, Ms. Doberneck, there is obviously
4 conflicting testimony between you and Ms. Stewart about
5 investment incentives related to fiber. Would you call
6 that a fair characterization?

7 A. Yes, I would.

8 Q. And with that in mind, I would like to focus
9 a little bit on it, page 19 of your direct, line 13, you
10 say that fiber deployment does not necessarily result in
11 any meaningful consumer benefit. And with that
12 statement in mind, I want to ask you, do you think that
13 in weighing Covad's proposal for copper retirement
14 against Qwest's that this Commission should not consider
15 how one proposal might affect incentive to deploy fiber
16 versus the other proposal?

17 A. Well, I think actually the Commission very
18 much probably needs to address that, because we have
19 placed it so squarely at issue in Ms. Stewart's and my
20 testimony, absolutely.

21 Q. And do you agree that deploying fiber allows
22 Qwest to better compete against cable companies in
23 Washington, because, for example, as I think you
24 acknowledge in your testimony, Qwest can offer video?

25 A. Well, actually, no. In some circumstances it

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1 may, but when I looked at the information Qwest produced
2 with respect to -- I want to state this so we don't go
3 confidentially here. When I looked at the information
4 with respect to where Qwest had decided to deploy fiber
5 and the span of copper loop that was then left
6 remaining, it was very clear to me that at least some of
7 Qwest's fiber deployment in no way enhanced or at all
8 facilitated its ability to provide video. Certainly in
9 some circumstances it did, but that is not across the
10 board. So it tells me when Qwest is deploying its
11 fiber, it's not necessarily in order to compete with the
12 cable companies, it may be for some other reason all
13 together.

14 Q. But you agree that certainly in some
15 circumstances the deployment of fiber by Qwest thus far
16 has permitted it to compete with cable companies by
17 offering video?

18 A. I would say it has given Qwest the technical
19 capability to do that. I don't know if Qwest is
20 actually providing video over its own lines at this
21 point.

22 Q. And would you agree that with Qwest or other
23 carriers having that ability that in the end that
24 creates more consumer choice in terms of carriers it can
25 choose for the services they desire?

0239

1 A. I mean I would say no. Because if I took
2 your I guess hypothetical or proposal, I think you wind
3 up with a duopoly of Qwest and the cable company. I
4 think the consumers benefit when they have generally
5 more broadband providers from which to choose rather
6 than just Qwest or the cable company.

7 Q. Well, do you agree that fiber provides
8 obviously more bandwidth and allows greater data to be
9 moved at faster speeds?

10 A. Well, can I -- my answer is twofold. One is
11 if you're talking about fiber to the home, my answer is
12 absolutely, but Qwest isn't doing that. If you're
13 talking about the hybrid situation which Qwest is doing
14 where it's deploying fiber feeder, again the potential
15 exists for more bandwidth if the span of the copper loop
16 that is left there is short enough to allow for that
17 additional bandwidth. But if you're still having a
18 copper distribution loop that's 3,000 feet, it doesn't
19 change at all the bandwidth that would be available for
20 an individual customer at the end of that copper
21 subloop.

22 Q. But the simple point I want to see if you
23 will agree with is that more bandwidth is better for
24 consumers; do you agree with that point?

25 A. Well, I guess first more bandwidth if it gets

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1 to consumers can be a consumer benefit. I think perhaps
2 where we would deviate is, for example, to what purposes
3 that bandwidth is put. I have a hard time saying Pay
4 Per View is a consumer benefit. Certainly it's a nice
5 choice, but when I think of consumer benefit, I think of
6 consumer welfare, and I don't put Pay Per View in that
7 category.

8 Q. I guess you're not a boxing fan, huh?

9 A. Or NASCAR.

10 Q. Ms. Doberneck, just a few more questions on
11 copper retirement and we will be done with that subject.
12 If you would like to see the excerpt, let me know, but I
13 think you will agree with me that in Paragraphs 282 and
14 283 of the TRO, the FCC sets forth some notice processes
15 for copper retirement and a process by which CLECs can
16 object to the retirement once they receive notice. And
17 again, if you would like to see it, I will show it to
18 you, but do you agree with that?

19 A. Yes, and if we keep it general, I don't need
20 to see the specific paragraphs.

21 Q. And my question for you is, do you agree with
22 me that the process by which CLECs can object to
23 retirement is really, it's an important part of the
24 process in terms of what the FCC has set forth?

25 A. Right, in the absence of a -- the procedural

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1 right, you couldn't even get to a substantive right at
2 least as far as the federal rules are concerned as
3 opposed to whatever state rules might apply.

4 Q. And isn't it true that Covad's proposal in
5 this case for copper retirement doesn't set forth
6 language implementing that procedural process for
7 objecting? And please have a look if you would like.

8 A. Well, I guess perhaps I disagree, because in
9 our proposed 9.2.1.2.3, we do lay out the notice process
10 along the line, I don't know if it tracks exactly, I
11 believe it does, but it's intended to reflect what the
12 TRO had to say with respect to the notice requirements.

13 Q. Well, let's take a quick look at that, and
14 I'm looking now for the record at the issues matrix,
15 which is Exhibit 70.

16 JUDGE RENDAHL: And which page are you on?

17 Q. I am looking at page 1, and I'm looking at
18 Covad's proposed Section 9.2.1.2.3, and what I see,
19 Ms. Doberneck, is that Covad has struck through Qwest's
20 proposed language that would have included the process
21 for objecting and the treatment of objections. Do you
22 agree that that's what Covad is proposing?

23 A. Well, we certainly did strike through the
24 Qwest language, yes.

25 Q. And you haven't proposed in your own language

0242

1 that that objection and resolution of the objection
2 process be included in the agreement, have you?

3 A. You know, at this point I would have to look
4 at the specific TRO provisions in connection with the
5 notice to really answer your question since we do
6 reference the notice portion of the TRO, but I would
7 have to compare the two if you need -- if you really
8 want an answer to your question.

9 MS. FRAME: Your Honor, may I approach the
10 witness and give her my copy of the exhibits for the
11 TRO?

12 JUDGE RENDAHL: Please go ahead.

13 MS. FRAME: Thank you.

14 THE WITNESS: Thank you.

15 JUDGE RENDAHL: My understanding of the
16 exhibit is that it's the TRO text that may not include
17 the rules. Is that a correct understanding,
18 Mr. Devaney?

19 MR. DEVANEY: That is correct.

20 MS. FRAME: That's correct.

21 JUDGE RENDAHL: Okay. So to the extent that
22 you're asking about the rules, I'm not sure that
23 Ms. Doberneck has the rules per se.

24 MR. DEVANEY: You know what, Your Honor, I
25 think I will just move on. I think that the record will

0243

1 speak for itself, and we can brief this, so I don't need
2 to --

3 MS. FRAME: Well, then Covad would ask that
4 the question actually be stricken then from the record,
5 because he basically testified, and we didn't really
6 have an answer.

7 MR. DEVANEY: Okay, I will continue, I will
8 let Ms. Doberneck answer. This won't take long at all,
9 we can do this quickly.

10 JUDGE RENDAHL: Why don't we repeat the
11 question.

12 BY MR. DEVANEY:

13 Q. Please take a look at Paragraph 283 of the
14 TRO excerpt, which for the record is Exhibit 31, and the
15 second sentence of that paragraph reads:

16 First, we establish a right for parties
17 to object to the incumbent LEC's
18 proposed retirement of its copper loops
19 for both short-term and long-term
20 notifications as outlined in Part 51 of
21 the Commission's rules.

22 JUDGE RENDAHL: If you can slow down while
23 you're reading, that would be helpful. Thank you.

24 Q. And then it goes on to say:

25 Second, we establish a mechanism to deny

0244

1 such objections automatically unless the
2 Commission rules otherwise within 90
3 days of the Commission's public notice
4 of the intended retirement.

5 Do you see that?

6 A. Yes.

7 Q. And my question for you is whether Covad's
8 language implements those two sentences by providing for
9 a right of objection and providing that the objection
10 will be denied within 90 days unless the FCC otherwise
11 rules?

12 A. If you could just give me a moment.

13 I would agree that the specific language you
14 just read into the record is not included with the
15 reference that we make to that notice will be provided
16 and it will be done in accordance with the FCC rules.
17 But as I look at what the TRO says, I believe, at least
18 my read of the TRO, and I don't have the rules and to be
19 honest haven't looked at them, but it sounds like the
20 rules track Paragraphs 281 or are intended to track
21 Paragraphs 281 to 283, so I think the reference to rules
22 would incorporate that.

23 Q. And which reference to rules are you alluding
24 to in your language?

25 A. In our proposed language?

0245

1 Q. Uh-huh.

2 A. The FCC rules?

3 Q. Yes, which --

4 A. If I look at 9.2.1.2.3, it talks about
5 notification or provide public notice of such planned
6 replacements in accordance with FCC rules.

7 Q. And that's what you're relying on?

8 A. I'm sorry, when you say I'm relying on, for
9 what?

10 Q. For the proposition that that incorporates
11 the objection and resolution of the objection process.

12 A. That would be my assumption not having the
13 rules in front of me.

14 Q. Okay.

15 A. One thing I suppose I should clarify though
16 to make sure our record is clear is that like the TRO,
17 you know, the focus here is on fiber to the home and the
18 network modification rules that are associated with
19 that. Our copper retirement proposal does go beyond
20 that to include not just fiber to the home but when you
21 have the hybrid loops as well.

22 Q. Okay. Ms. Doberneck, two more questions for
23 you on this, and we will be done. Please look at page 6
24 of your direct testimony, lines 6 through 8, and again
25 that's Exhibit 21-T.

0246

1 A. I'm sorry, you said page 6?

2 Q. Correct.

3 A. Lines 6 through 8?

4 Q. Correct.

5 A. Okay.

6 Q. You state there that:

7 The sole issue we are addressing in this
8 arbitration relative to copper
9 retirement is how to address the impact
10 on existing Covad customers as copper
11 loops are being replaced in whole or in
12 part by fiber.

13 And as you will recall, we had this
14 discussion in Colorado back in June, and am I correct in
15 understanding that if Covad obtains new customers under
16 the agreement that we're arbitrating or during the
17 pendency of the agreement we're arbitrating that Covad's
18 proposal would apply to those new customers?

19 A. It would apply to all customers we had on our
20 network as of the date the interconnection agreement
21 being negotiated is signed. That would include both
22 gains as you talk to -- as well as losses because of
23 churn from -- on the network.

24 Q. So would it apply to customers Covad obtains
25 after signing the interconnection agreement?

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1 A. No, it would be on the day we signed say we
2 have a million customers in the state of Washington, it
3 would apply to those million customers and not to the
4 million and one customer we added after we signed the
5 agreement.

6 Q. Okay. Then I have to ask you, is there
7 anything in Covad's language that makes that point
8 clear?

9 A. What I think makes it clear is this section,
10 I'm sorry, in our proposed language of 9.2.1.2.3.1.

11 This section will govern the retirement
12 of copper facilities which are serving
13 CLEC served end user customers or CLECs
14 at the time such retirement is
15 implemented.

16 I think that language is pretty clear,
17 because the provision itself doesn't become operative
18 until the agreement becomes operative. So you're
19 talking about people we are -- customers we are serving
20 as of the time the agreement becomes effective.

21 Q. Okay. But it's your language doesn't limit
22 it to customers serving at the time the agreement
23 becomes effective, does it, there's nothing that says
24 that?

25 A. Well, no, it does not include the phrase, at

0248

1 the time the agreement becomes effective.

2 Q. All right.

3 A. But I would suspect if we tried to claim that
4 right now, Qwest would say, it's not a part of your
5 agreement.

6 Q. And then my final question for you relates to
7 page 1 of your response testimony, and for the record
8 that is Exhibit 29-RT.

9 A. Yes, I have that in front of me.

10 Q. I'm paraphrasing here, but on page 1 from
11 lines 12 through roughly 23 you state that there's been
12 no change of law, and this is -- you talk about this in
13 connection with copper retirement, you state there's
14 been no change of law and that Qwest's obligation is to
15 provide access to all UNEs that were available prior to
16 February 2003 at cost based TELRIC rates. I think I
17 have accurately paraphrased that, but if I haven't,
18 please correct me.

19 A. I think it's an accurate paraphrasing.

20 Q. And my simple question for you, is it Covad's
21 view that the Triennial Review Order and the D.C.
22 Circuit's USTA II decision did not constitute a change
23 in law?

24 A. I think a formatting change in my testimony,
25 no, it was not -- it got put under copper retirement

0249

1 inadvertently by me, which is Ms. Stewart had addressed
2 it, and I responded to her, but she did it as what I
3 would say sort of a generic issue and not specific to
4 copper retirement, and I should have responded in the
5 same vein, and unfortunately I put it in the copper
6 retirement section rather than as a stand alone issue.

7 Q. Okay, so does this go to issue 2 that we have
8 agreed to address on briefs?

9 A. I would say yes.

10 MR. DEVANEY: All right, then I will withdraw
11 the question and move on.

12 Thank you, Ms. Doberneck.

13 I'm done, Your Honor.

14 JUDGE RENDAHL: Thank you, Mr. Devaney.

15 I have a few questions, and because I am not
16 as entrenched in these issues as you are all, bear with
17 me as I try to understand the issues in play here.

18

19 E X A M I N A T I O N

20 BY JUDGE RENDAHL:

21 Q. In your discussion just now with Mr. Devaney,
22 I believe the sections at issue in the draft
23 interconnection agreement, which is Exhibit 71, you were
24 talking about Section 9.2.1.2.3 and the two subsections
25 underneath that, at least with respect to retirement of

0250

1 copper loops; is that correct?

2 A. Yes.

3 Q. Are there any other provisions in the
4 agreement that relate to retirement of copper loops?

5 A. Ultimately I would defer to counsel. My
6 understanding is no, that these are the only sections
7 that are specific to the copper retirement issue.

8 Q. Okay. And is it your understanding that the
9 copper retirement issue is solely with respect to fiber
10 to the home loops?

11 A. No. Well, the Qwest language I can't speak,
12 obviously I can't speak on behalf of Qwest as to the
13 scope of their language. Our language is not limited to
14 just the retirement of copper where it is replaced with
15 fiber to the home loops. It also includes the scenario
16 in which Qwest would retire feeder and replace the
17 copper feeder with fiber such that you would have a
18 hybrid copper fiber loop.

19 Q. All right. But the sections at issue fall
20 under Section 9.2.1.2, which addresses fiber to the home
21 loops, correct? Do you need to see a copy of the
22 exhibit?

23 A. You know, I just have the matrix portions, I
24 don't have the complete section, it probably would be
25 helpful.

0251

1 MS. FRAME: I would be more than happy to
2 provide it to her.

3 JUDGE RENDAHL: If you could provide the
4 witness with Exhibit 71, that would be helpful.

5 BY JUDGE RENDAHL:

6 Q. Again, I'm looking at Section 9.2.1.2, and my
7 question I believe was whether the sections at issue in
8 this arbitration fall within the fiber to the home loop
9 section.

10 A. Let me answer this way, Your Honor, because
11 in fact that is one of the things I find confusing about
12 the Qwest language is the scope of the language, whether
13 it's just fiber to the home or also includes hybrid
14 loops. My read of it is while some of the sections talk
15 -- the first section talks about fiber to the home, in
16 fact my read of the Qwest language and certainly the
17 Covad language also applies to hybrid loops, and that
18 where at least Covad is talking specifically about fiber
19 to the home, it is so designated, and where it is not
20 specifically designated as fiber to the home, it would
21 include the hybrid loops.

22 Q. Wouldn't it be more clear to have a separate
23 section for fiber feeder?

24 A. Or perhaps just hybrid loops generally
25 consistent with the TRO, I think it would probably help

0252

1 clarify the scope of the copper retirement that we're
2 talking about, yes.

3 Q. And is it your understanding -- do you still
4 have a copy of the TRO excerpts?

5 A. Yes, I do.

6 Q. All right, then if you could look at what's
7 been marked as Exhibit 31 and refer to Paragraph 283
8 that you and Mr. Devaney were discussing, and look at
9 Footnote 829.

10 A. Yes.

11 Q. Is it your understanding that the opportunity
12 for objection to a copper retirement and the mechanism
13 for the FCC to consider the objection, does that only
14 apply to fiber to the home, or does it also apply to
15 retirement of copper feeder?

16 A. My understanding is that the procedural
17 mechanisms that are laid out with regard to objection
18 relate when copper is retired so that you have a fiber
19 to the home loop, whether that's the replacement of the
20 entire copper loop or you already have fiber somewhere
21 and you're replacing a subloop with fiber. But the net
22 result has for the FCC the opportunity to object only
23 applies when you're talking about a network modification
24 that results in a fiber to the home loop.

25 Q. Now I think you stated Covad's primary issue

0253

1 here is access to fiber feeder, or is it the issue of
2 access to fiber to the home?

3 A. Our issue really is focused at this point in
4 time much more where you have the situation of just
5 feeder, copper feeder retirement replaced with fiber
6 based on what Qwest has to date done in terms of its
7 network modifications, which they don't have fiber to
8 the home at this point, at least in the state of
9 Washington.

10 Q. Okay. Now if you turn to your Exhibit 21-T
11 on page 3 at lines 21 to 22.

12 A. I'm sorry, Your Honor, I was putting things
13 away, what page do you want me to refer to?

14 Q. Page 3.

15 A. Page 3.

16 Q. At lines 19 through 22 at the bottom.

17 A. Yes.

18 Q. And in your testimony, I'm paraphrasing here,
19 but you state that the entire loop needs to be copper in
20 order to provide the DSL service unless there's a remote
21 DSLAM, D-S-L-A-M, placed at the mid point. Is that a
22 correct paraphrase?

23 A. Certainly under the current law I believe we
24 operate under today that would be the case. However,
25 based on Qwest's advocacy with respect to fiber feeder,

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1 I don't actually think just the placement of a DSLAM out
2 at a remote terminal would actually allow us to provide
3 service if there were fiber feeder.

4 Q. Okay. And I just need to clarify from your
5 testimony when you talked about the mid point, do you
6 mean where the fiber feeder meets the copper subloop?

7 A. Yes.

8 Q. Okay. And is your assumption in this
9 statement in your testimony that the fiber feeder would
10 run from the central office to the DSLAM?

11 A. Yes.

12 Q. Okay. And then the copper loop would run
13 from the DSLAM to the end user whether it's a residence
14 or a business?

15 A. Yes, although I think really we're talking
16 about residential customers, not business.

17 Q. Okay. And related to this, in your response
18 testimony, which is Exhibit 29-RT, if you look at page 4
19 beginning at line 23, you're responding to Qwest's
20 proposal I guess, and you state that there's no way to
21 get the traffic from a remote terminal back to the
22 central office. And by that I'm asking whether it's, I
23 want to know whether your statement here is that it's
24 not legally feasible, economically feasible, or
25 technologically feasible, or a combination of those, and

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1 if you can explain.

2 A. Sure. I would say it's neither legally
3 feasible nor economically feasible. From the legal
4 standpoint, because Qwest as I understand it has taken
5 the position that no access is required to that fiber
6 feeder, we don't have the ability, for example, to lease
7 that transport from the remote terminal back to the
8 central office. That leaves us with a situation of the
9 only way we could get it back is ultimately to try and
10 lay either our own fiber or copper distribution plant to
11 get traffic from the remote terminal back to central,
12 back to the central office. It's my belief that given
13 what we would think the impact would be in terms of the
14 number of customers, you know, whose traffic we would be
15 hauling at that point, there's no way economically you
16 could justify laying -- incurring that kind of cost.
17 And the other part, which is not really economics but is
18 simply just a time factor, you know, the time it would
19 take us if we could do it to obtain rights of way
20 actually to construct the facility, you know, it may be
21 too long for a customer to wait to make that transition.

22 Q. When you say legally Qwest isn't required to
23 lease it to you, is that under the -- is that period or
24 is that under TELRIC rates?

25 A. You know, I am not certain. I just take it

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1 from -- and again, this I believe gets to issues that
2 are just going to be briefed, and I don't recall
3 necessarily whether it's in the testimony here but at
4 least from Colorado, Qwest had took the position that it
5 is not required to provide access to the fiber feeder,
6 so I take that as no access period. Now whether they
7 would be open to access under a different pricing
8 regime, I don't know the answer.

9 Q. Okay. At page 3 of the same testimony, your
10 responsive testimony, at lines 9 through 11, you refer
11 to state requirements applicable to incumbent copper
12 retirement practices. Are you aware of any Washington
13 statutes or rules that address copper retirement?

14 A. At least to the extent it's contained in my
15 testimony, I don't believe I refer to, and it's my
16 direct testimony, I don't believe I refer to any
17 specific rules or regulations.

18 Q. I didn't find any in your testimony, and
19 that's why I'm wondering if you're aware of any or would
20 rely on any?

21 A. As I sit here today, the only thing I am
22 specifically aware of or can point to is what would be
23 contained in my testimony.

24 Q. Okay, thank you.

25 Have you reviewed Ms. Stewart's direct and

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1 responsive testimony?

2 A. Yes, I have.

3 Q. Do you have her testimony with you? I have a
4 general question, I don't know if it --

5 A. Why yes, I do.

6 Q. You do, are you in luck. Okay, Ms. Stewart's
7 direct testimony, which is now marked as Exhibit 61-T,
8 at page 6, Ms. Stewart discusses Qwest's processes for
9 copper retirement. Are you familiar with that portion
10 of her testimony?

11 A. Page 6 of her direct testimony?

12 Q. Correct.

13 A. Yes.

14 Q. Are you aware whether Qwest has retired any
15 copper facilities that affected Covad in Washington?

16 A. At this point in time I am not.

17 Q. Or in Qwest's 14 state region?

18 A. I am not aware of copper retirement activity
19 that resulted in a disconnect of a Covad customer.

20 Q. Okay. And if you turn to page 10 of that
21 exhibit, Exhibit 61.

22 A. Yes.

23 Q. Ms. Stewart also discusses a process that
24 Qwest would send a broadcast E-mail to all CLECs when
25 the new copper retirement disclosures are added to the

0258

1 Web site; are you familiar with this portion of her
2 testimony?

3 A. Yes, and I think she also reiterates that in
4 her responsive testimony.

5 Q. Okay. Are you aware if Qwest is doing this,
6 has Covad received any broadcast E-mails to your
7 knowledge?

8 A. Not to my knowledge.

9 Q. Okay. I think I may just have one other
10 question. Covad and Qwest have entered into a
11 commercial agreement, correct?

12 A. For line sharing, yes.

13 Q. For line sharing. Are you aware, because I
14 do not have that agreement before me, are you aware if
15 that agreement addresses any of the copper retirement
16 issues --

17 A. It does --

18 Q. -- in this arbitration?

19 A. I'm sorry for interrupting.

20 It does not address copper retirement issues.

21 JUDGE RENDAHL: Okay, I believe that's all I
22 have.

23 Ms. Frame, do you have any redirect?

24 MS. FRAME: Yes, we do, but we would like a
25 moment to confer.

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1 JUDGE RENDAHL: All right, well, I think this
2 may be an appropriate time to take our break since we
3 have been going for a while this morning, so we will be
4 off the record until 5 after 11:00, and then we will
5 come back and begin with your redirect.

6 MS. FRAME: Okay, thank you.

7 JUDGE RENDAHL: We will be off the record.

8 (Recess taken.)

9 JUDGE RENDAHL: Mr. Newell, you will be
10 conducting redirect?

11 MR. NEWELL: Yes, Your Honor.

12 JUDGE RENDAHL: Please go ahead.

13

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

15 BY MR. NEWELL:

16 Q. Ms. Doberneck, if you could, I would like you
17 to turn to Paragraph 282 of the TRO, which hopefully is
18 in your package there.

19 A. I have that in front of me.

20 Q. I need to get it in front of me.

21 I would like you to read the sentence that
22 begins right after Footnote 828, which I believe is on
23 the sixth line of the paragraph.

24 A. Would you like me to read that out loud or to
25 myself?

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1 Q. Out loud, please.

2 A. (Reading.)

3 Unless the copper retirement scenario
4 suggests that competitors will be denied
5 access to the loop facility as required
6 under our rules, we will deem all such
7 oppositions denied unless the Commission
8 rules otherwise upon the specific facts
9 and circumstances of the case at issue
10 within 90 days of the Commission's
11 public notice of the intended
12 retirement.

13 Q. Okay, let's focus on the first phrase of that
14 sentence, unless the copper retirement scenario suggests
15 that competitors will be denied access to the loop
16 facility as required under our rules. Is it your
17 understanding that xDSL capable loop facilities are
18 required under the FCC's rules?

19 A. They are specifically required under the
20 FCC's rules.

21 Q. Given this statement by the FCC, what do you
22 believe is an appropriate copper retirement policy in
23 circumstances where access would be denied to xDSL
24 capable loops?

25 A. Would you believe I think it would require a

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1 provision of alternative service. No, I don't mean to
2 be flip here, but what it tells me or suggests to me at
3 least is that the commission, excuse me, the FCC was
4 intent on ensuring that loop access existed where you
5 were serving existing competitors. When you look at the
6 scenario of how it would impact Covad, I think it
7 results directly in the proposal we have, which is in
8 the absence of any spare copper over which we could
9 provide our service, that an alternative service would
10 have to be required, be provided, because otherwise we
11 don't have access to the loop in order to provide
12 service to the customer.

13 Q. And again, the Covad service, the xDSL
14 service we're talking about is traditionally provided
15 over legacy facilities, it's not a service that takes
16 advantage of next generation facilities deployed by
17 Qwest or any other incumbent; is that a fair statement?

18 A. That's right, yes.

19 Q. I would like you to turn to Paragraph 294,
20 which I hope is also in your package there.

21 A. Yes, I have that.

22 Q. And can you read for the record the first
23 sentence of that paragraph of the TRO.

24 A. (Reading.)

25 We stress that the line drawing in which

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1 we engage does not eliminate the
2 existing rights competitive LECs have to
3 obtain unbundled access to hybrid loops
4 capable of providing DS1 and DS3 service
5 to customers.

6 Do you want me to keep going or stop there?

7 Q. No, that's fine.

8 A. Okay.

9 Q. Now the line drawing that's referred to in
10 this sentence is accomplished primarily in Paragraph 293
11 immediately preceding? And if you would like to take a
12 look at Paragraph 293 to confirm that, that's fine.

13 A. Yes, my understanding is that the line
14 drawing that the FCC is referring to in Paragraph 294
15 does refer to the line between the older legacy network
16 and equipment that would go with it and the next
17 generation type facilities that are the, quote-unquote,
18 new rules, new lines.

19 Q. So is it fair to say based on these
20 statements in your opinion that the FCC intended to
21 maintain access to digital capable loops using legacy
22 technology despite the employment of fiber in an
23 incumbent's network?

24 A. Yes, which is why I state in my direct
25 testimony that we do believe that our proposal is

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1 consistent with the TRO.

2 Q. Now in every instance where Qwest would
3 replace a portion of their loop plant, copper loop plant
4 with fiber, does that necessarily result in the offering
5 of new services to customers?

6 A. No. As I was trying to explain, and I
7 believe it was on cross-examination by Mr. Devaney, the
8 deployment of fiber in and of itself does not
9 necessarily allow a carrier to provide any kind of
10 additional services or enhanced services. Very much if
11 you look at the way Qwest is deploying fiber, it very
12 well may not even allow them to provide anything other
13 than the DSL service they're currently providing.

14 Q. Now I'm going to offer a hypothetical. If
15 let's suppose that Qwest had a copper feeder facility
16 that became too expensive to maintain and it was time
17 for that feeder facility to be replaced, is it your
18 understanding that under most circumstances Qwest as a
19 routine maintenance and upgrade, network upgrade matter,
20 would replace that copper feeder with a fiber facility?

21 A. I would expect and my understanding of Qwest
22 testimony in both Washington and Colorado is that Qwest
23 generally would replace that with fiber. It's the --
24 generally it is the thing you do from an engineering
25 efficiency perspective. It does not preclude Qwest from

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1 replacing old copper feeder with new copper feeder, but
2 -- I'm not an engineer, but talking to engineers I think
3 it's highly unlikely that would happen.

4 Q. Is that because as a general matter fiber,
5 even if it's not used to provide any new services, is a
6 technologically superior alternative from a maintenance
7 and cost perspective?

8 A. I don't know if I would say it's
9 technologically superior. I do know having read various
10 ILEC statements about why they deploy fiber, the cost
11 savings that you ultimately have or realize as a result
12 of deploying fiber allow you to I think it's SBC said
13 recover its costs in a very short period of time. So
14 from a cost perspective, I think that's the primary
15 driver, not necessarily the technological aspect,
16 although that may factor in.

17 Q. So in that circumstance, would you expect an
18 incumbent LEC to need any more incentive to deploy fiber
19 than the cost savings?

20 A. No.

21 Q. Mr. Devaney asked you about the possibility
22 of, or I believe he suggested the possibility of
23 reselling Qwest DSL services in cases where copper had
24 been retired that had served Covad customers. In
25 general, do you believe that's a viable method of

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1 serving Covad's customers?

2 A. In general, Covad does not do resale. We're
3 a facilities based provider, so our preference by far is
4 to take advantage of, you know, over a billion dollars
5 worth of investment and use our own facilities in order
6 to provide service rather than to lose the value of that
7 investment and just provide resale service.

8 Q. And if Qwest were able to retire even a
9 portion of the loops serving Covad's customers in areas
10 where you have made this investment, what would --
11 without providing some method of reaching those
12 customers, what would the result be on Covad's
13 investments?

14 MR. DEVANEY: Your Honor, I'm going to
15 object, this is outside the scope of my
16 cross-examination and Your Honor's questions as well.

17 JUDGE RENDAHL: Can you repeat the question
18 for my benefit?

19 BY MR. NEWELL:

20 Q. If Qwest's proposals are adopted, which would
21 allow for the retirement of copper facilities and the
22 denial of access to any alternative facilities to serve
23 Covad's customer, what result would that have on Covad's
24 sunk investments in the state of Washington?

25 JUDGE RENDAHL: I would agree with

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1 Mr. Devaney, that seems to go beyond the scope. The
2 only related question I can think of is Mr. Devaney's
3 question to Ms. Doberneck about stranding the
4 investment, but I don't know that this --

5 MR. NEWELL: That's --

6 JUDGE RENDAHL: -- necessarily builds upon
7 that.

8 MR. NEWELL: That's precisely the answer I
9 expected to get, but we can move on nonetheless. I
10 think it's covered relatively clearly in Ms. Doberneck's
11 direct testimony, so.

12 BY MR. NEWELL:

13 Q. Mr. Devaney asked you about the deletion of
14 the section of the agreement being negotiated that Qwest
15 had proposed that memorialized the FCC's copper
16 retirement notice requirements. Do you recall that?

17 A. I do, yes.

18 Q. Do you recall or have any reason to know why
19 Covad proposed deleting that section from the agreement?

20 A. My understanding ultimately is that it's
21 unnecessary. It's a federal requirement that exists
22 regardless of whether it's in our interconnection
23 agreement, and Qwest is required to comply with it
24 independent of any contract obligation we might have
25 because it is an FCC rule.

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1 Q. And it's an obligation, a reporting
2 obligation to the FCC and not to Covad specifically; is
3 that correct?

4 A. I believe that is the case. I would have to
5 check to answer unequivocally.

6 Q. I believe the judge asked you about the
7 applicability of the FCC's notice requirements, the
8 copper retirement notice requirements to retirement
9 related to hybrid loops as opposed to fiber to the home
10 loops. What is your understanding with respect to the
11 FCC's network notification requirements for the
12 replacement of anything other than or for the deployment
13 -- retirement associated with the deployment of anything
14 other than fiber to the home loops?

15 A. Can you ask me a different or shorter
16 question.

17 Q. Do you understand that there are network
18 notification requirements that apply to network
19 modifications other than the retirement of copper and
20 replacement of copper with fiber to the home loops?

21 MR. DEVANEY: Your Honor, I am going to
22 object at this point to the leading nature of the
23 question.

24 JUDGE RENDAHL: Can you rephrase your
25 question yet again. I was having some difficulty

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1 understanding it. I think the witness may as well. It
2 may address the leading issue as well.

3 BY MR. NEWELL:

4 Q. Are there more -- is there more than one set
5 of rules related to incumbent LEC network modifications?

6 A. My understanding is there's a fairly lengthy
7 set of network modification rules with which an
8 incumbent LEC must comply that include both short-term
9 and long-term impacts. These are in addition to network
10 modification rules that the FCC articulated in the TRO
11 that applies specifically to fiber in the home loops.

12 Q. I believe the judge asked you, or perhaps it
13 was Mr. Devaney, asked you about instances where Covad
14 had been notified of copper retirement activities by
15 Qwest that affected Covad service. Do you recall those
16 questions?

17 A. I recall the question about whether we had
18 received the broadcast E-mail that Ms. Stewart
19 referenced in her testimony, I recall that.

20 Q. Despite the fact that you haven't received
21 notification of such retirements, do you have concerns
22 about the future possibility of such retirement
23 affecting Covad?

24 MR. DEVANEY: Your Honor, objection to the
25 leading.

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1 JUDGE RENDAHL: I will allow the question.

2 A. I kind of hear two questions. One is what do
3 I think about the broadcast E-mail, and secondly, am I
4 concerned about impacts of possible future retirement,
5 and I don't know which question you intended to ask or
6 if it in fact was both.

7 BY MR. NEWELL:

8 Q. I intended to ask the first part of your
9 response after I had asked the second, which was the
10 question I intended, but why don't you go ahead and
11 answer both.

12 JUDGE RENDAHL: Well, Mr. Newell, why don't
13 you break down your question for the witness, please.

14 BY MR. NEWELL:

15 Q. Does Covad have concerns about future copper
16 retirement activity by Qwest?

17 MR. DEVANEY: And again, I renew my objection
18 on leading.

19 JUDGE RENDAHL: Mr. Newell, I think this is
20 pretty much covered in Ms. Doberneck's testimony. I
21 don't know that we're going over any new ground.

22 BY MR. NEWELL:

23 Q. Well, then let's get to the second part of
24 what I think the witness noticed was built into my first
25 question, which is with respect to the broadcast E-mail

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1 system that's described in Ms. Stewart's testimony, what
2 would Covad like to see in such a process, in such an
3 E-mail that would be sent out?

4 A. I could be wrong, I think the notion of the
5 broadcast E-mail is new or a development since last we
6 met to discuss about the copper retirement issues, but
7 what we would be looking for and what is not clear at
8 this point is what is the substance of the E-mail, and
9 what we would be looking for is basically very similar
10 to what we get today from BellSouth, which is a
11 notification of we are retiring copper, you know, here's
12 the copper being retired, the area impacted, the central
13 office, the circuits that are impacted. The additional
14 item that BellSouth provides which is of greatest
15 utility to us is an actual identification of the
16 circuits that have been inventoried to Covad that are
17 assigned to Covad customers, and there's an
18 identification of the circuits that are impacted, the
19 Covad circuits that are impacted by the copper
20 retirement BellSouth is going to be undertaking.

21 Q. Okay.

22 A. And that is I would say the primary thing we
23 would want from a broadcast E-mail.

24 Q. Okay.

25 A. Or just E-mail.

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1 Q. You had discussed with Mr. Devaney which
2 Covad customers would fall within Covad's proposed
3 copper retirement language, and I believe there was some
4 question about whether it would apply to Covad customers
5 at the time their copper was retired or Covad customers
6 at the time the agreement was signed. Do you recall
7 that?

8 A. I do recall the question. I guess what I --
9 JUDGE RENDAHL: Is there a question pending?

10 A. Oh, I do recall the question or the question
11 and answer, yes.

12 Q. And have you had a chance to review that
13 language again and determine whether the answer you gave
14 reflected Covad's proposal?

15 A. What I had been focusing on in answering
16 Mr. Devaney's question is at what point did the -- does
17 our provision kick in, and I had been focusing
18 essentially on when does it start applying, and so I was
19 looking at the effective date of the agreement. What
20 occurred to me though is that I misspoke in terms of the
21 scope of the customers that it impacted. It's not the
22 snapshot of time of just the customers when we sign, but
23 it would be any customer we had at the time of the
24 copper retirement. So I think it's more than I think
25 what my prior answer to Mr. Devaney had indicated, that

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1 it would be any current customer of Covad during the
2 effective date of the agreement who would be impacted by
3 a copper retirement.

4 Q. Mr. Devaney also asked you whether you were
5 aware of Qwest employing any tactics to retire
6 facilities to cut off Covad customers. Do you recall
7 those questions?

8 A. Yes.

9 Q. Do you have concerns with respect to Qwest's
10 proposed language allowing for such tactics?

11 MR. DEVANEY: Your Honor, objection, leading.

12 JUDGE RENDAHL: Can you rephrase your
13 question, Mr. Newell.

14 MR. NEWELL: I can try.

15 BY MR. NEWELL:

16 Q. Are there provisions in the agreement
17 proposed by Qwest that bear on your concerns with
18 respect to such tactics?

19 MR. DEVANEY: Same objection.

20 MR. NEWELL: One moment, Your Honor.

21 BY MR. NEWELL:

22 Q. Can you explain for us, Ms. Doberneck, your
23 concerns with respect to Qwest's proposed copper
24 retirement language?

25 A. Yes, I can. Obviously the first one is it

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1 would not allow us to continue serving existing
2 customers. The related concern is there was nothing in
3 the Qwest language that would preclude it from a
4 targeted copper retirement that would specifically
5 impact Covad customers. And between those two, I have a
6 great deal of concern, because obviously we want to
7 ensure that our customers who have chosen us remain with
8 us until they choose to leave Covad.

9 MR. NEWELL: I have nothing further.

10 Oh, excuse me, my co-counsel reminds me I do
11 have one more question. I apologize, Your Honor.

12 May I approach the witness, Your Honor?

13 JUDGE RENDAHL: You may.

14 MR. NEWELL: I'm going to hand the witness
15 two pages from Covad's petition for arbitration.

16 JUDGE RENDAHL: And which pages are they?

17 MR. NEWELL: Pages 6 and 7.

18 BY MR. NEWELL:

19 Q. Have you had a chance to identify the
20 citation to the Revised Code of Washington that's
21 included in these pages?

22 JUDGE RENDAHL: Would that be Footnote 4?

23 MR. NEWELL: I believe that's the exact
24 citation, yes. There's a quotation of a portion of the
25 statute in the body of the petition.

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1 A. Yes, I have.

2 BY MR. NEWELL:

3 Q. The Judge asked you --

4 MR. DEVANEY: Your Honor, I'm sorry, but
5 could I have a copy?

6 JUDGE RENDAHL: It's in Covad's petition. Do
7 you all have a copy of the petition with you? If not, I
8 will hand you mine.

9 Let's be off the record for a moment.

10 (Discussion off the record.)

11 JUDGE RENDAHL: Mr. Newell, did you have a
12 question pending?

13 MR. NEWELL: No, Your Honor.

14 BY MR. NEWELL:

15 Q. My question is, the Judge had asked you
16 whether there were any state law provisions that pertain
17 to the retirement of copper facilities. After reviewing
18 this language, do you have a response to that question?

19 A. While I think the question was actually, was
20 there anything contained in my testimony, that answer
21 remains the same. However, from a policy standpoint,
22 RCW 80.36.300, which is cited in the petition, I believe
23 supports the Covad proposal to the extent that it tasks
24 this Commission with promoting the diversity in the
25 supply of telecommunications services and products in

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1 the telecommunication markets throughout the state.

2 MR. NEWELL: Thank you. I have nothing
3 further.

4 MR. DEVANEY: Just a few questions, Your
5 Honor.

6 JUDGE RENDAHL: Please.

7 MR. DEVANEY: Thank you.

8

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

10 BY MR. DEVANEY:

11 Q. Ms. Doberneck, when did you last see RCW
12 80.36.300?

13 A. In the flesh as opposed to quoted in the
14 petition?

15 Q. Yes.

16 A. It probably would have been, I apologize, but
17 I can't be any more specific than in the months, the few
18 months after October 27th, 2003.

19 MR. DEVANEY: Okay, I have just a handful of
20 questions for you, it won't take long.

21 But, Your Honor, before I get into the
22 substance, if I could go back and ask that Exhibit 31,
23 which are the TRO excerpts that we have been talking
24 about, be entered into the record.

25 JUDGE RENDAHL: Any objection to entering

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1 into the record what's been marked as Exhibit 31?

2 MR. NEWELL: No objection, Your Honor.

3 JUDGE RENDAHL: Is Qwest withdrawing Exhibit
4 30 at this point?

5 MR. DEVANEY: Your Honor, it's possible that
6 we may use that for additional cross later.

7 JUDGE RENDAHL: I keep forgetting,
8 Ms. Doberneck just keeps coming back on the stand.

9 THE WITNESS: Like a bad penny.

10 JUDGE RENDAHL: All right, so Exhibit 31 will
11 be admitted.

12 MR. DEVANEY: Thank you, Your Honor.

13 BY MR. DEVANEY:

14 Q. Ms. Doberneck, I would like to ask you about
15 Paragraph 282 of Exhibit 31 that you talked with
16 Mr. Newell about during your redirect.

17 A. Right, in the context of the network
18 modification rules surrounding the fiber to the home.

19 Q. The last sentence of that paragraph you
20 discussed with Mr. Newell, and as you read it, it says:

21 Unless the copper retirement scenario
22 suggests that competitors will be denied
23 access to the loop facility as required
24 under our rules.

25 JUDGE RENDAHL: You need to slow down,

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1 Mr. Devaney, when you're reading.

2 MR. DEVANEY: I'm sorry, I'll start that
3 again.

4 JUDGE RENDAHL: Thank you.

5 BY MR. DEVANEY:

6 Q. (Reading.)

7 Unless the copper retirement scenario
8 suggests that competitors will be denied
9 access to the loop facility as required
10 under our rules, we will deem all such
11 opposition as denied unless the
12 Commission rules otherwise upon the
13 specific facts and circumstances of the
14 case at issue within 90 days of the
15 Commission's public notice of the
16 intended retirement.

17 Do you see that language?

18 A. Yes, I do.

19 Q. Now I think you relied on at least a portion
20 of that language as supporting Covad's proposal for an
21 alternative service requirement. Did I hear you
22 correctly?

23 A. Yes, as far as why we believe our proposal
24 would be consistent with the TRO.

25 Q. Okay. But isn't it a fact that what the FCC

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1 has done here is establish a process by which an ILEC
2 can announce that it's retiring a copper facility, and a
3 CLEC then can object to that retirement, and if a CLEC
4 does, then the FCC decides whether the retirement should
5 go forward?

6 A. I don't see such a distinction between the
7 procedural and substantive right for two reasons. One
8 is you never get to a substantive right without a
9 procedural right, so perhaps at the end of the day they
10 wind up being the same thing. The second part is at
11 least the way I read this is that essentially you have
12 two types of objections that could be made by a
13 competitor. One is if they retire this copper, then we
14 will be denied access to the loop facilities. And the
15 way I read it is that in that scenario for those
16 existing customers that would be impacted, there is no
17 retirement. The other portion is an objection based on
18 something else, in which case you have two outcomes.
19 You provide your facts and circumstances, and either the
20 FCC rules yay or nay, or the FCC doesn't rule and it's
21 denied automatically at the end of the 90 days.

22 Q. Well, let me just break my question into a
23 couple of piece parts then. Do you agree that Qwest has
24 a right under Paragraph 282 to notify the FCC that it
25 intends to retire a copper facility?

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1 A. Yes.

2 Q. And do you agree that a CLEC has a right to
3 object to that notice if it desires to do so?

4 A. Yes.

5 Q. And then do you agree that the ultimate
6 decisionmaker should a CLEC object is the FCC?

7 A. Not necessarily to the extent that this
8 Commission would see either its policy mandates or some
9 other rule that would also apply. So the FCC may be
10 depending on how this Commission interprets its state
11 statute obligations.

12 Q. Would you agree with me there's nothing in
13 Section 282 or Paragraph 282 that we just read that
14 says, oh, and by the way, maybe the states will decide
15 this, not us, the FCC, should a CLEC object?

16 A. It's not in Paragraph 282, but in other
17 paragraphs the FCC is very clear that nothing in its
18 network modification rules supersedes applicable state
19 rules or regulations, and that would be Paragraph 271.

20 Q. And just to be clear, this process that the
21 FCC set forth in Paragraph 282 where notice is provided,
22 an objection is made, the objection is either deemed
23 denied by time or ruled upon by the FCC, that process is
24 not provided for in Covad's language in this case; isn't
25 that correct?

0280

1 A. I don't think you have any way out of the
2 process because it's an FCC obligation or a federal
3 obligation that Qwest has to comply to, so I don't think
4 our language changes that or not.

5 Q. The answer is, the process isn't set forth in
6 your language? That's all I'm asking.

7 A. No, no, you are correct, the process is not
8 set forth in our language.

9 Q. There was a discussion you had also about
10 Qwest's notice of copper retirements and --

11 A. The broadcast E-mail?

12 Q. Right. Now am I correct in understanding
13 that in Covad's proposal there would be no requirement
14 for Qwest to send out an E-mail to CLECs?

15 A. That's actually not the case.

16 Q. Can you --

17 A. We -- oh, I'm sorry.

18 Q. Go ahead, I'm sorry, I'm cutting you off, go
19 ahead.

20 A. We do agree that Qwest should provide that
21 notification. The point I was trying to make is or what
22 I wanted to say is the way the notification would be
23 efficient or effective in our mind is along the lines I
24 described with the information we would want to be
25 included in that notification, the broadcast E-mail.

0281

1 Q. Do you know if the FCC rules that are alluded
2 to in Covad's notice language provide for E-mail notice
3 of any kind?

4 A. You know, I don't have the rules in front of
5 me, so I can't answer.

6 Q. Okay. And my final question for you is you
7 made a statement toward the end of your redirect that
8 something to the effect of Qwest's proposal wouldn't
9 allow Covad to continue serving its customers. Do you
10 remember saying that?

11 A. Not specifically, but I have no reason to
12 doubt that I may have said that.

13 Q. Now you and I already had discussions about
14 other alternatives for Covad to pursue to continue
15 serving customers, but what I want to ask you about now
16 is are you aware that Qwest has in its language
17 committed that it will not retire copper facilities when
18 it deploys fiber if it's technically feasible to leave
19 those facilities in place?

20 A. Yes.

21 MR. DEVANEY: Okay, thank you. No further
22 questions.

23 JUDGE RENDAHL: Okay, and I have nothing to
24 add either, so I believe on this issue we're done.

25 Let's be off the record for a moment.

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1 (Discussion off the record.)

2 JUDGE RENDAHL: We are going to take our
3 lunch break. We will be back at 1:15, and when we come
4 back, we will bring Ms. Stewart onto the stand.

5 For now, Ms. Doberneck, you can step down
6 until the next issue.

7 Let's be off the record.

8 (Luncheon recess taken at 11:50 a.m.)

9

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

11 (1:20 p.m.)

12

13 JUDGE RENDAHL: Ms. Stewart, you are on the
14 stand, and if you would state your name and your address
15 for the record, please.

16 THE WITNESS: Yes, my name is Karen A.
17 Stewart. My address is 421 Southwest Oak, Portland,
18 Oregon 97205.

19 JUDGE RENDAHL: And can you check to see if
20 the button is up on your microphone.

21 THE WITNESS: I don't think it was.

22 JUDGE RENDAHL: Okay, thank you.

23 Would you raise your right hand, please.

24 (Witness Karen A. Stewart was sworn.)

25 JUDGE RENDAHL: Please go ahead, Mr. Devaney.

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1 Whereupon,

2 KAREN A. STEWART,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5

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

7 BY MR. DEVANEY:

8 Q. Good afternoon, Ms. Stewart. You filed two
9 pieces of testimony in this case I believe, direct and
10 response testimony; is that right?

11 A. That is correct.

12 Q. And for the record your direct testimony has
13 been marked as Exhibit 61-T, and attached to it is a
14 single exhibit which is an excerpt from a Colorado
15 hearing, and that has been marked as Exhibit 62, and
16 your response testimony is Exhibit 63-RT. In connection
17 with both pieces of testimony, Ms. Stewart, are the
18 answers that you provided true and correct to the best
19 of your knowledge?

20 A. Yes, they are.

21 Q. And do you have corrections to either piece
22 of testimony?

23 A. No, I do not.

24 MR. DEVANEY: Your Honor, we would ask that
25 Exhibits 61-T, 62, and 63-RT be admitted into the

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1 record.

2 JUDGE RENDAHL: Is there any objection from
3 Covad?

4 MS. FRAME: No, Your Honor.

5 JUDGE RENDAHL: The Exhibits marked as 61-T,
6 62, and 63-RT are admitted.

7 MR. DEVANEY: Thank you, Your Honor.

8 Ms. Stewart is available for cross.

9 JUDGE RENDAHL: Ms. Frame.

10 MS. FRAME: Thank you.

11

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

13 BY MS. FRAME:

14 Q. In your testimony, you testify that Qwest's
15 primary concern is about cost it appears when we're
16 talking about retirement of copper and providing an
17 alternative service to Covad, that maintaining copper is
18 expensive, so let's talk about this cost a little bit.
19 In most of the copper retirement scenarios that you
20 have, you overlay the copper with fiber, correct? It's
21 not a true copper retirement though according to --
22 right?

23 A. Correct, normally when Qwest places fiber, if
24 at all possible it leaves the copper in place.

25 Q. So the cost of maintaining both as you do

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1 today is not anything different than what you would
2 normally do, correct?

3 A. Well, what we did historically might not be
4 what decisions we would make in the future as there are
5 additional services, additional revenue opportunities,
6 electronics is cheaper for fiber, we may indeed make
7 totally different decisions in the future.

8 Q. But today that's what you do, and those are
9 the costs that you incur?

10 A. Typically we do leave the copper in place.

11 Q. Can you quantify the costs that you have to
12 maintain the copper?

13 A. In this proceeding I can not. Qwest deals
14 with its costs for copper maintenance in its cost
15 dockets.

16 Q. Have you conducted any analysis on the
17 maintenance of copper here?

18 A. I personally have not. I'm not a cost
19 witness for the company.

20 Q. But not in this proceeding at all, you
21 haven't provided Covad or the Commission with any
22 evidence at all of providing access for maintaining
23 copper?

24 A. No.

25 Q. Let's talk a little bit about the

0286

1 alternatives. Did you propound or did Qwest propound
2 discovery on Covad as to what would constitute an
3 alternative?

4 A. Not that I'm aware of.

5 Q. Did you ever ask in -- well, let me back up
6 that a little bit.

7 Did you ever -- were you part of the
8 negotiations of this interconnection agreement to be
9 negotiated?

10 A. No, I was not.

11 Q. Do you know if anybody ever on the Qwest team
12 asked in the negotiations of Covad what could be
13 considered an alternative?

14 A. Not to my knowledge.

15 Q. Let's go through the Qwest language for the
16 interconnection agreement.

17 JUDGE RENDAHL: Ms. Stewart, do you have the
18 interconnection agreement language with you?

19 THE WITNESS: I believe I do, yes.

20 JUDGE RENDAHL: Okay.

21 BY MS. FRAME:

22 Q. So specifically it would be probably the
23 easiest way to go through it would be to Exhibit, I
24 think it was the matrix, which was Exhibit 70.

25 JUDGE RENDAHL: It's the joint issues list.

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1 Q. Do you have that in front of you?

2 A. Yes, I do.

3 Q. Great. Let's go through 9.2.1.2.3, and I'm
4 going to read some specific language to you, and I'm
5 going to ask if it applies to -- what it applies to, if
6 it applies to fiber to the home or if it applies to a
7 hybrid or if it applies to both. So specifically if you
8 look at Qwest's proposed language 9.2.1.2.3, and I guess
9 it would be the seventh line down it starts, actually it
10 starts on the sixth line, Qwest will: (1) Provide
11 notice of such planned replacement on its Web site, and
12 it gives a Web site and little two i's, provide public
13 notice of such planned replacement in accordance with
14 FCC rules. Can you tell us whether this pertains to
15 fiber to the home, FTTH, or hybrid, or does it apply to
16 both?

17 A. In the interconnection agreement in the
18 section it's located, it does apply to the FTTH loop.

19 Q. And that's it?

20 A. As it relates to our contractual obligation
21 in this document, yes.

22 Q. Okay. So not hybrid, not both?

23 A. It currently -- we do not have a legal
24 obligation to provide that type of notice. It is
25 Qwest's intention to provide notice for all copper

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1 retirements, just not copper retirements associated with
2 FTTH. But as it relates to this document and to the
3 TRO, the obligation in this document consistent with the
4 TRO is specific to FTTH.

5 Q. Okay, let's go down in that language a little
6 bit more, and toward the end of this first page where it
7 states:

8 In accordance with FCC's rules: (i) a
9 CLEC obligation to a Qwest notice that
10 plans to replace any copper loop or
11 copper subloop with an FTTH loop shall
12 be filed with the FCC.

13 Is that also just applies to FTTH?

14 A. As it relates to the language in this
15 interconnection agreement, yes.

16 Q. What about let's go on to the next section or
17 two sections actually, it's 9.2.1.2.3.1 and also
18 9.2.1.2.3.2. I think that's it, lots of numbers there.
19 I guess if you go to the third line down or really that
20 whole first section where it states:

21 When infrastructure demand requires
22 Qwest to retire copper loops or copper
23 subloops, Qwest will leave copper loops
24 or copper subloops serving CLECs' end
25 user customers in service where it's

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1 technically feasible to do so.

2 Again, what does that apply to?

3 A. Once again it's a subset of the section that
4 talks about FTTH loops, so it's discussing a very
5 specific situation around the overbuild where we place
6 FTTH loops in an area where we currently have copper.

7 Q. Do you know whether any of the language
8 that's proposed -- so let me strike what I was going to
9 ask.

10 So you won't leave that then in the ground if
11 it's hybrid; is that correct?

12 A. We're talking hypothetically. Qwest will
13 make the best networking decision with the facts at hand
14 when they're presented. The question you had was is the
15 applicability -- what is the applicability of this
16 language in this agreement, and I was just clarifying
17 the applicability in this language in this agreement is
18 to the FTTH loops.

19 Q. That's your proposed language?

20 A. Correct.

21 Q. Do you know if Covad has an opportunity to
22 object per the FCC rules as they apply to a copper
23 retirement scenario where the result is a hybrid loop?

24 A. Not that I'm aware of. Once again, I'm not
25 an expert on all of the FCC rules, but once again this

0290

1 discussion about notice is specific to the FTTH loops
2 and not to when we replace copper in just the feeder and
3 an FTTH loop is not involved.

4 Q. So there's no way then for a CLEC to actually
5 object then as far as you're aware of?

6 A. As far as I'm aware.

7 Q. The objection then that is part and parcel of
8 I guess was written into the TRO where there's a 90 day
9 period in which you can actually object to the FCC, what
10 does that pertain to?

11 A. My understanding is it's a subset of the FTTH
12 loop replacement.

13 Q. And wouldn't you agree that those -- any sort
14 of objections that a CLEC may make would be expensive
15 both to Qwest and to the CLEC in an efficient use of
16 resources?

17 A. I can't make an estimation on that type of
18 statement.

19 Q. Okay. Wouldn't you agree that a loss, and I
20 think you state this in your testimony, that there is a
21 possibility that an alternative, quote-unquote, would be
22 about \$2,400 a year for Covad or something to that
23 effect? I don't know the exact amount, but it's
24 somewhat insignificant compared to appearing before the
25 FCC before each -- each time that an objection is filed.

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1 A. I got the dollar amount from Ms. Doberneck's
2 testimony, and whether or not -- once again I can't make
3 a judgment whether it's to the advantage of Covad or
4 Qwest to object over a \$2,400 item.

5 Q. You state in your testimony that the FCC has
6 rejected proposals like Covad's, you know, maintaining
7 -- with respect to maintaining the copper or providing
8 some access, alternative access. Have you read the
9 comments provided by the CLECs to the FCC that were
10 referenced in the TRO?

11 A. I have read excerpts and just some of the
12 excerpts as it related specifically to copper
13 retirement, yes.

14 Q. But not the entire comment?

15 A. Not the entire comment.

16 Q. Right.

17 A. I read the section relative to this
18 discussion.

19 Q. And there's several comments, correct?

20 A. Correct.

21 Q. Let's talk about competition in the state of
22 Washington. Do you believe it would be more beneficial
23 for the state of Washington and its consumers that Qwest
24 compete with the cable company or have Qwest compete
25 with other companies that would provide broadband

0292

1 service?

2 A. I'm -- I guess I'm hesitating because I'm not
3 sure the way that you phrased it, it's basically you're
4 trying to make me make a qualitative statement whether
5 one type of competition is better than another type of
6 competition, and I don't really feel qualified to speak
7 to the state of Washington and its exact competitive
8 status. So I personally do not know enough about the
9 competitors in Washington to make that kind of judgment.

10 Q. Well, you state a lot -- I mean you write
11 quite a bit in your rebuttal testimony on page 9 about
12 consumer choice, but it appears, and I think you would
13 agree, that most of the choice that you're talking about
14 is the choices offered by the ILEC but not by the
15 entire, you know, CLEC and ILEC community; is that
16 correct?

17 A. Well, what I talk about is the fact that
18 consumer choice can't be just narrowly focused on if one
19 player can not use the type of structure or products
20 they would ideally like to use, that doesn't mean as a
21 whole there isn't more competitive opportunities for
22 everyone. Because once you have the FTTH loops in, you
23 know, as mentioned in the testimony, that allows Qwest
24 to compete head to head with the cable companies. There
25 may be other services that are provided, other facility

0293

1 based, there may be other resale services that are
2 provided over those. So I think it's kind of premature
3 to say that it forecloses competition from all
4 alternative providers.

5 All we were saying is to focus on, well,
6 these four or five customers may not be able to choose
7 Covad, so therefore the whole facility should not be
8 replaced and we shouldn't be allowed to put in copper to
9 replace that, that just seems -- it's not appropriate
10 when you look at as a whole what happens to everyone in
11 that area and the different alternatives that would be
12 available to them.

13 Q. Well, wouldn't you agree that Covad's
14 proposed language, and I'm sure you have had an
15 opportunity to take a look at the proposed language in
16 the issues list; is that correct?

17 A. Yes, I have.

18 Q. Wouldn't you agree that if you read that
19 language, it can be construed as making sure that
20 there's no anticompetitive effect or direct harm to the
21 CLEC, in this case Covad?

22 A. I don't know about that, because what I read
23 in the language is that Qwest would be required to
24 provide an alternative service no matter how expensive
25 that service may be, and that seems anticompetitive to

0294

1 me that Qwest would be required to potentially provide a
2 service below cost so someone else can use that service
3 to compete against them. That seems very
4 anticompetitive to Qwest.

5 Q. You have already testified though that a lot
6 of the cost is already being incurred by Qwest as you
7 start laying fiber over copper, correct?

8 A. But if we had made that decision to keep both
9 in place, your alternative service would never come into
10 play, because we would be leaving it in place, and your
11 customers would be there working on the copper that we
12 did not retire. And so what we're talking about is the
13 situation where we have made the judgment it's not
14 appropriate to leave the copper in place, it's not
15 appropriate to continue to have that maintenance cost,
16 and now you're asking us to provide an alternative
17 service. Because if we left the copper in place, made
18 that business decision to pay for both maintenances, we
19 would not have contacted you about a retirement, your
20 customers would still work on your copper. So it is
21 relative.

22 Q. On I believe it's on page 13 of your
23 rebuttal, you refer to just a couple of customers, and
24 actually could you pull out your page 13 of your
25 rebuttal testimony.

0295

1 A. I have it.

2 Q. I'm trying to find it, just one second.

3 I think you talk about in the middle of the
4 page, specifically lines 11 through 15, that the
5 illustrative number of times is for five customers, so I
6 think kind of the what I'm getting from your testimony,
7 if you would agree, is that it's just a couple of
8 customers that we're concerned about here, correct?

9 A. I got the number of five customers from
10 Ms. Doberneck's testimony, and so that was the number of
11 customers, or I think that was how she quantified a
12 handful of customers.

13 Q. Okay. What about later on then on lines 21
14 through 23, and why don't you read from lines 19 through
15 I guess the end of the sentence on the next page.

16 A. Okay, the first, start with the first
17 complete -- beginning of the first complete --

18 Q. Correct.

19 A. -- sentence?

20 Q. Correct.

21 A. (Reading.)

22 If the Covad estimated savings (the flip
23 side of the Qwest revenue lost) of
24 \$2,400 are an accurate statement of the
25 amount at stake here, one wonders why

0296

1 Covad is going through the resource
2 intensive exercise of seeking
3 arbitration of this issue, particularly
4 when Covad is essentially asking the
5 Commission to disregard federal law
6 regarding the treatment of enhanced
7 information services.

8 Q. So we are -- you're implying that we're just
9 concerned about a few customers on Covad's behalf; is
10 that correct?

11 A. I was taking at face value Ms. Doberneck's
12 statement that this would probably only apply to a
13 handful of customers.

14 Q. Then you also state here that Covad is
15 essentially asking the Commission to disregard federal
16 law; is that correct?

17 A. Yes.

18 Q. In what way is Covad asking this Commission
19 to disregard federal law?

20 A. The context that I was thinking of is the
21 context of asking the Commission to require Qwest to
22 provide its xDSL product in some manner for Covad that
23 would potentially be a below cost, that we would be
24 required whenever we replaced copper to provide an
25 alternative service, not only below cost, but an

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1 alternative service that in that scenario we may have no
2 legal obligation to provide.

3 Q. But you have overbuilt your facilities,
4 correct, and you're already getting revenues from those
5 facilities?

6 A. Overbuilt implies that we built too many
7 facilities. I don't know that I can agree with that in
8 general.

9 Q. And I guess the other question in this is
10 that you haven't provided any cost studies on this
11 either, have you, to Covad or to -- in the form of
12 either responses to data requests or evidence that you
13 have propounded here?

14 A. No, we have not provided any costs of
15 alternative services.

16 Q. We have talked a lot about what Qwest has
17 done with fiber to the home and, oh, gosh, I think that
18 you were served with discovery requests by Covad; is
19 that correct?

20 A. Yes.

21 Q. And were you responsible for helping respond
22 to those data requests?

23 A. Yes.

24 Do I need to get them?

25 Q. Yes, please.

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1 JUDGE RENDAHL: Are you referring to what's
2 been marked as Exhibit 66?

3 MS. FRAME: That's correct.

4 A. I have 66 before me.

5 BY MS. FRAME:

6 Q. Thank you. Were you the respondent to Data
7 Request 01-002?

8 A. Yes, in conjunction with legal.

9 Q. And were you also responsible for helping
10 with Request Number 003?

11 A. I sat on calls where we discussed the data
12 requests, but as you can see it was legal and Michael
13 Wolz who was responsible for the actual answer on this
14 data request.

15 Q. But you have read the data request in
16 response?

17 A. Excuse me?

18 Q. You have read the data request --

19 A. Yes, I have.

20 Q. -- response?

21 A. Yes, I have.

22 Q. What about 004?

23 A. Yes, same situation.

24 Q. And 006?

25 A. 006 I helped craft the response with legal

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1 counsel.

2 Q. What about 007?

3 A. Situation where I did participate in calls
4 where these were being discussed, however the primary
5 respondent was legal counsel and Michael Wolz.

6 Q. But you have read this particular response as
7 well?

8 A. I have read it, correct.

9 Q. What about 008 and its associated
10 confidential information?

11 A. Yes.

12 Q. Same answer as before?

13 A. There's an additional respondent from Qwest
14 identified, yes.

15 Q. What about 009?

16 A. I helped craft this with assistance from
17 legal counsel.

18 Q. And 010?

19 A. Legal counsel plus another Qwest
20 representative.

21 Q. Same answers as before?

22 A. One of the answers as before.

23 Q. And 011?

24 A. Yes.

25 Q. And 012?

0300

1 A. Yes, Qwest legal counsel and Michael Wolz
2 were responsible for this data request.

3 Q. And you have stated that you have actually
4 read all of these requests and read the responses?

5 A. Yes, I have.

6 Q. And do you have any corrections, or would you
7 like to change any of your responses as you sit on the
8 stand today?

9 A. I'm not aware of any necessary changes to
10 these data requests.

11 MS. FRAME: Covad would like to move for
12 admission of Exhibit 66.

13 JUDGE RENDAHL: Is there any objection from
14 Qwest?

15 MR. DEVANEY: No objection, Your Honor.

16 JUDGE RENDAHL: Okay.

17 MS. FRAME: There is confidential information
18 in one of the data request responses.

19 JUDGE RENDAHL: Yes, and I am aware of that,
20 and it is marked confidential. They will be admitted,
21 and the exhibit will be marked as confidential to
22 reflect that. It's not so indicated on the exhibit
23 list, but it will be indicated that way. So with that,
24 the exhibit will be admitted.

25 MS. FRAME: Thank you.

0301

1 MR. DEVANEY: Your Honor, if I could add
2 while Qwest does not object to the admission of the
3 exhibits, I would like it to be clear that we're not
4 waiving the objections set forth to some of the data
5 request responses.

6 JUDGE RENDAHL: So noted.

7 MR. DEVANEY: Thank you.

8 MS. FRAME: Could I have a minute, Your
9 Honor?

10 JUDGE RENDAHL: You may.

11 Let's be off the record.

12 (Discussion off the record.)

13 BY MS. FRAME:

14 Q. Ms. Stewart, is Qwest willing to make any
15 commitments for hybrid loops like they do to the
16 commitments for fiber to the home?

17 A. As it relates to our notice requirements,
18 that will we send out notices, it is Qwest's intent when
19 it implements fully the requirements under this
20 interconnection agreement in the TRO as it relates to
21 the FTTH that it would provide notice any time it
22 totally retires copper to a portion of the loop. So
23 yes, we would agree to apply this to -- the notice
24 requirement to hybrid loops.

25 Q. Where is that promise to provide notification

0302

1 for copper retirement; is it memorialized anywhere?

2 A. It's not memorialized, nor have we been asked
3 to memorialize it.

4 Q. Would you be willing to commit to
5 memorializing it?

6 A. I would be willing to commit perhaps through
7 the briefing process. Would that be an appropriate
8 place to see if we could come up with language to
9 memorialize it?

10 Q. And that would be included in the
11 interconnection agreement?

12 MR. DEVANEY: Your Honor, I'm going to object
13 to the line of questioning at this point, because it's
14 asking Ms. Stewart essentially to take a position on
15 negotiations and what language the company would agree
16 to, and I prefer rather than have a witness answer that
17 on the spot that we have a chance to consider it and
18 address the issue in brief.

19 JUDGE RENDAHL: I think it's appropriate for
20 the parties to address it in brief. I think Ms. Stewart
21 has said she wasn't part of the negotiation, so I don't
22 know that she can commit for Qwest to this. I
23 understand Covad's concern about this given the
24 testimony today, and I think it's something that parties
25 could negotiate and then let the Commission know in

0303

1 brief if it's been able to reach any agreements on that.

2 MR. DEVANEY: Thank you.

3 MS. FRAME: Thank you.

4 JUDGE RENDAHL: Is that an appropriate
5 resolution at this point?

6 MS. FRAME: Yes, that's fine. I'm wondering
7 if we could -- I guess that's probably appropriate, I'm
8 not going to go further with the questioning on this
9 then.

10 JUDGE RENDAHL: I'm sorry, I'm assuming that
11 even though we're here at hearing that the parties are
12 still continuing to negotiate given that there are other
13 states involved in arbitrations; is that correct?

14 MS. FRAME: We would be open to negotiating.
15 We haven't recently discussed further modifications of
16 the interconnection agreement being negotiated. We did
17 have conversations with Qwest as recent as the end of
18 July on a few of the issues, but that's where we stand
19 right now.

20 JUDGE RENDAHL: Okay.

21 Mr. Devaney.

22 MR. DEVANEY: And from Qwest's perspective,
23 certainly if there are issues that appear to be
24 beneficial for both parties to negotiate, we are
25 certainly open to doing that.

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1 JUDGE RENDAHL: Okay, I just encourage you
2 that if this is something the parties can work further
3 on, it looks like it might be beneficial to talk about
4 it further and not just in brief. Although that's
5 useful, if you all can come to an agreement, it's
6 sometimes better for you to do it than for me to tell
7 you what I think you should do.

8 MR. DEVANEY: Thank you.

9 JUDGE RENDAHL: That said, go for it,
10 Ms. Frame.

11 MS. FRAME: The only -- the last comment that
12 I would make particularly on that issue is that of
13 course if we did discuss this in briefs, we would want
14 to discuss what the substance of that notice would be,
15 but that would be it.

16 So I have no further questions for
17 Ms. Stewart at this point.

18 JUDGE RENDAHL: Thank you, Ms. Frame.

19 Ms. Stewart, I do have a few questions.

20 THE WITNESS: Okay.

21

22 E X A M I N A T I O N

23 BY JUDGE RENDAHL:

24 Q. Do you have your direct testimony in front of
25 you?

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1 A. Yes, I do.

2 Q. Which is Exhibit 61-T.

3 A. Correct.

4 Q. If you look at page 6 of that exhibit.

5 A. I have it in front of me.

6 Q. On that page you discuss Qwest's processes
7 for copper retirement, which you have discussed with
8 Ms. Frame as well. Are these practices in place now
9 across Qwest's region, or is this just policy at this
10 point?

11 A. Generally I believe all the practices are in
12 place. I would need to do just a quick review to see if
13 any of them were specifically FTTH TRO applicable, I
14 don't believe so. I think it was more our general
15 discussion that as we look to replace copper, we first
16 look to see if it's technically feasible to leave it in
17 place. If it is, we do, and if not, then we move
18 forward to do a replacement, and we will do that
19 replacement per any obligation such as in the TRO.

20 Q. And is that statement, the general practice
21 statement in your testimony, is that documented anywhere
22 by Qwest in any of its various Internet Web site
23 documents available to CLECs or other documents
24 available to CLECs?

25 A. I am not aware if any of these particular

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1 procedures or guidelines for copper replacement are
2 available on a public Web site available to CLECs, I'm
3 not aware that they are.

4 Q. Do you know if they -- are you aware if
5 they're available in any documented form?

6 A. I am not aware of exactly all of the forms
7 that our network engineers may have access to.

8 Q. So to your knowledge at this point, these
9 guidelines are as stated in your testimony, mostly
10 verbal?

11 A. Correct. I met with the various people, or
12 others in my company -- in the company have met with
13 various people and said, okay, now how does this work
14 when we go to replace copper, what do we do, this was
15 the discussion. I personally have never asked for any,
16 you know, backup technical publication that supports it,
17 so I'm at a loss to know if one as explicit in this
18 order exists or not. It may well, I don't know.

19 Q. Thank you.

20 If you turn now to page 10 of Exhibit 61-T.

21 A. Yes.

22 Q. And at this point at lines 10 to 11 in your
23 testimony, and I'm paraphrasing, you state that Qwest
24 will send broadcast E-mails to all CLECs when new copper
25 retirement disclosures are added to the Web site.

0307

1 Again, is this similar to what we just discussed, is
2 this more of a verbal undocumented guideline by Qwest at
3 this point?

4 A. No, actually I do know about this one,
5 because I did ask for the guidelines on this one,
6 because being a fairly new process as required per the
7 TRO, I did ask to see the documentation, and Qwest does
8 have a draft at this point, because the full
9 implementation of the TRO was slightly delayed, as we
10 all know. But I did ask to see the Web site, and I did
11 ask to -- information on the Web site, I did ask to see
12 the draft guidelines of what type of copper replacement
13 would go to the Web site, and then did ask to see the
14 forms that the engineers would use. So actually on this
15 case, I have personally viewed the documentation.

16 Q. So is this still in a draft form, or is it
17 available on the Web site now?

18 A. It's a little difficult to answer the
19 question precisely only because it's currently a process
20 being implemented. We've got some notice requirements
21 to CLECs and et cetera, and I think that's literally all
22 going out this week.

23 Q. So it has not yet been implemented?

24 A. It's all there -- right. We have not sent
25 out any notifications yet if that's the answer to the

0308

1 question. It's all in the process of being delivered
2 consistent with our TRO obligations.

3 Q. I guess my question is, has Qwest implemented
4 it to the point that if a CLEC went to the Web site,
5 there would be a location there for the CLECs to look,
6 whether or not Qwest has posted any notices to that Web
7 site? Do you understand what I'm asking you?

8 A. I know exactly what you're saying, and the
9 reason I'm hesitating is because I'm not sure if the
10 screen shot that I got was a production shot or not. So
11 if it's not -- if it wasn't there yesterday, it's
12 probably there today. Because for -- I mean I just want
13 to be totally accurate. I did see a Web -- a shot of
14 what it would look like, but what I don't know if that
15 was an existing shot or if that was the production shot
16 of what it would look like.

17 Q. I understand. But it is Qwest's intent to
18 put this practice into place?

19 A. That is correct, is in the process of putting
20 it in place.

21 Q. So in this practice that's soon to be
22 implemented, who would the -- would Qwest send an E-mail
23 to the affected CLEC, or would it be just posted to that
24 particular place on the Web site?

25 A. Okay, what Qwest's commitment on notification

0309

1 is, which we believe goes beyond the TRO, is that once a
2 decision was made to retire the copper, we would put it
3 up on the Web site, and we would send an E-mail
4 notification to all CLECs that we just posted up on the
5 Web site a copper retirement notification.

6 Q. Okay. And related to a question Ms. Frame
7 asked you, would that E-mail notice go out only with the
8 choice to retire the copper versus overlaying the
9 copper?

10 A. Well, if you overlay the fiber and leave the
11 copper in place, there would be no notice. We are
12 talking about the situation that would be noticed is
13 when the copper is no longer available, so it would be a
14 retirement of copper notification.

15 Q. Okay, thank you, I just wanted to be sure I
16 knew exactly what we were talking about here.

17 Were you here this morning when Ms. Doberneck
18 was asked a question about the Qwest Choice DSL product?

19 A. Yes, I was.

20 Q. Okay. And I don't have a reference in your
21 testimony to that. Are you familiar with your testimony
22 on that as an alternative to Covad?

23 A. Yes, I am.

24 Q. Can you explain to me whether under this
25 option, the Qwest Choice DSL product, would that be a

0310

1 resale option to Covad?

2 A. And my only hesitation is that I'm not the
3 resale expert within the company, and with all of the
4 legal uncertainty and changes that have happened, it
5 seems like the resale and what is available and not
6 available for resale seems to be a very detailed
7 situation. But my understanding is that there are a
8 variety of ways in which a CLEC could resell a DSL like
9 service, and one would be via UNE-P if they were a UNE-P
10 provider, which is slightly different than resale,
11 there's the complete resale, and then Qwest does have a
12 fairly new stand alone DSL product that is available, my
13 understanding, is available for resale, and that's all
14 subject to, you know, what point in time we are with
15 what interconnection agreement, because there have been
16 many changes in the whole resale arena.

17 Q. I guess my next question is, are you aware of
18 whether the Qwest Choice DSL product is the stand alone
19 DSL product you just mentioned?

20 A. No, it is not. It's a -- the stand alone DSL
21 product includes both the loop and the, for lack of a
22 better word, it's not -- it includes the whole service,
23 it includes everything, not just the loop portion. The
24 Choice -- and Choice DSL actually is a product that has
25 various components, and some components include

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1 everything, some components just include the DSL
2 connection, and I'm going to use networking very
3 loosely, and then you can choose your own ISP. So
4 there's actually a whole bunch of various scenarios.

5 Q. Okay. And just to clarify your role here in
6 this arbitration, you're here to testify as to Qwest's
7 obligations for copper retirement?

8 A. That is correct.

9 Q. But you're not here to testify or participate
10 in any give and take as to language in the agreement; is
11 that correct?

12 A. That is correct.

13 JUDGE RENDAHL: Okay, then I won't ask the
14 question I had next, so I'm done.

15 MS. FRAME: Your Honor, I don't know if this
16 is the appropriate time, but Covad would like to make a
17 records request for the notification that we have been
18 talking about.

19 JUDGE RENDAHL: Let's be off the record for a
20 moment.

21 (Discussion off the record.)

22 JUDGE RENDAHL: While we were off the record,
23 Ms. Frame and I discussed what would be Record
24 Requisition Number 3, which would be the notice to CLECs
25 of the copper retirement that would be generated by this

0312

1 E-mail, by the Web site based copper retirement notice
2 process and copies of the Web page that was referred to,
3 that Ms. Stewart referred to in her testimony. Is there
4 anything else that I haven't covered in that description
5 of Record Requisition Number 3?

6 MS. FRAME: That is a very good description,
7 Your Honor.

8 JUDGE RENDAHL: Okay.

9 MS. FRAME: I think that's right.

10 JUDGE RENDAHL: Okay.

11 And now I guess we turn to -- and I'm going
12 to ask the parties after we take a break following
13 Ms. Stewart's testimony for the parties to discuss the
14 feasibility of that.

15 So, Mr. Devaney, you have some redirect I
16 understand.

17 MR. DEVANEY: Thank you, Your Honor.

18

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

20 BY MR. DEVANEY:

21 Q. Ms. Stewart, I just have one or two questions
22 for you. You testified in response to Ms. Frame's
23 question that Qwest has not provided any costs of an
24 alternative service to Covad; do you recall that?

25 A. Yes, I do.

0313

1 Q. Are you aware of whether in their proposal
2 Covad had identified any alternative service for which
3 Qwest could provide costs?

4 A. I'm only aware of the alternative service
5 that Ms. Doberneck mentioned, the VISP. She did mention
6 that as in theory an alternative service.

7 Q. And in their language proposal are you aware
8 of whether they list any alternative service?

9 A. No, they do not.

10 MR. DEVANEY: Thank you, that's all I have,
11 Your Honor.

12 JUDGE RENDAHL: Ms. Frame?

13 MS. FRAME: I just have one question.

14

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

16 BY MS. FRAME:

17 Q. Is this I guess it's the Qwest Choice DSL; is
18 that correct?

19 A. Correct.

20 Q. Is that the stand alone DSL or otherwise
21 referred to as naked DSL; do you know if that's --

22 A. I don't know if -- I'm aware of which DSL
23 you're talking about, I'm not sure if -- Choice DSL is a
24 name of a product line, and then there's choices under
25 it, and to be honest I'm not sure as I sit here if the

0314

1 naked DSL comes up under that banner or not or whether
2 it comes up under another product name.

3 MS. FRAME: Okay, thank you.

4 JUDGE RENDAHL: Okay, I believe that we're
5 done at this point. I would suggest that we take a 15
6 minute break, and when we come back we will address the
7 remaining issues with Ms. Doberneck and Ms. Stewart.

8 Thank you very much, we will be on a break.
9 Let's be off the record.

10 (Recess taken.)

11 JUDGE RENDAHL: While we were off the record,
12 Ms. Waxter handed me a copy of the response to Record
13 Requisition Number 1; is that correct?

14 MS. WAXTER: 2.

15 JUDGE RENDAHL: Number 2, Number 1 was
16 withdrawn?

17 MS. WAXTER: Correct.

18 JUDGE RENDAHL: So this is the response to
19 Record Requisition Number 2, it will be marked as
20 Exhibit 44, and the description is Qwest's response to
21 CLEC request regarding billing and repair systems change
22 request dated August 16th, 2004.

23 And, Ms. Frame, did you wish to move that as
24 an exhibit?

25 MS. FRAME: Yes, Your Honor.

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1 JUDGE RENDAHL: And is there any objection by
2 Qwest?

3 MS. WAXTER: No objection.

4 JUDGE RENDAHL: Okay, so what's been marked
5 as Exhibit 44 will be admitted.

6 Ms. Doberneck, you are back on the stand, you
7 remain under oath, and we're now discussing issues 1 and
8 2; is that correct?

9 MR. DEVANEY: Commingling and ratcheting, I'm
10 not sure --

11 MS. FRAME: I believe they're 2 and 3.

12 MR. DEVANEY: I don't think it's 2.

13 JUDGE RENDAHL: 1 and 2.

14 MR. DEVANEY: 1 and 2?

15 JUDGE RENDAHL: 1 and 2?

16 MS. FRAME: I thought copper was 1.

17 MR. DEVANEY: Copper is 1.

18 MS. FRAME: 2 and 3.

19 JUDGE RENDAHL: 2 and 3, thank you.

20 So are there any preliminaries we need to go
21 through with the witness, Ms. Frame?

22 MS. FRAME: No, we tender Ms. Doberneck for
23 cross-examination.

24 JUDGE RENDAHL: Mr. Devaney.

25 MR. DEVANEY: Thank you, Your Honor. And,

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1 Your Honor, just to be sure the record is clear, the
2 parties have agreed to limit their cross-examinations to
3 issues of commingling and ratcheting, and the other
4 unbundling issues that are raised by issue 2 will be
5 addressed on the briefs.

6

7 Whereupon,

8

MEGAN DOBERNECK,

9 having been previously duly sworn, was called as a
10 witness herein and was examined and testified as
11 follows:

12

13

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

14

BY MR. DEVANEY:

15

16

17

18

Q. Ms. Doberneck, are you familiar with the
existing Qwest-Covad interconnection agreement, not the
one being arbitrated here, but the one that's in effect
today?

19

20

A. Relatively speaking. I'm more familiar with
some provisions than others.

21

22

Q. And was that agreement in effect on June
15th, 2004, to your knowledge?

23

A. Yes.

24

25

Q. Is it correct that that agreement does not
allow for commingling?

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1 A. I don't know.

2 Q. As we talk about commingling, are you
3 familiar with whether the act of commingling elements
4 together is any different from the act of combining them
5 together?

6 A. You know, honestly I would just go with -- I
7 mean the short answer is I don't know the difference. I
8 would really just go in terms of the definition of
9 commingling, what the FCC had to say in the TRO, and
10 beyond that I really couldn't answer your question.

11 Q. So in terms of what one physically does to
12 commingle elements together or combine them together,
13 you don't know if there's a difference?

14 A. I do not.

15 Q. Okay. Do you have a view on whether Qwest is
16 required to combine elements provided under Section 251
17 with elements provided under Section 271?

18 A. Are you talking combining as synonymous with
19 commingling?

20 Q. No.

21 A. Or as some sort of stand alone?

22 Q. Some stand alone, combining as opposed to
23 commingling.

24 A. You know, I'm not -- I did not familiarize
25 myself with that issue at all in the context of my

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1 testimony or the hearing today.

2 Q. I'm going to ask you to assume for purposes
3 of my question that there's not an obligation to combine
4 a 251 element with a 271 element. And you don't have to
5 accept that, but I'm asking you for purposes of my
6 question to just take that as a given.

7 A. Okay, let me just make sure, I'm taking as a
8 given there's no obligation to combine a 251 element
9 with a 271 element?

10 Q. That's right.

11 A. Okay.

12 Q. For example a loop with transport, okay. And
13 I understand that Covad disagrees with the
14 characterization, but --

15 MS. FRAME: And, Your Honor, we would just
16 object to this line of questioning. At this point we're
17 really just supposed to be crossing on the issue of
18 commingling, and that is what the witness is being
19 proffered for right now, commingling and then
20 ratcheting, and then that's it. We're not talking about
21 combining, we're not talking about anything else other
22 than our issue at hand.

23 JUDGE RENDAHL: Well, I guess I will allow
24 Mr. Devaney to try to bring this into the commingling
25 range, and if it doesn't appear that it does, then we'll

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1 address the question.

2 BY MR. DEVANEY:

3 Q. And here's my question. If you assume that
4 Qwest isn't required to combine a 251 element like a
5 loop with a 271 element like transport, if Qwest were
6 required to commingle those elements, the end result
7 would be just as though Qwest had combined them; isn't
8 that correct?

9 MS. FRAME: Again, Your Honor, we're going to
10 object to this line of questioning. The witness has
11 stated that she's not here to testify about combining,
12 and I don't believe that --

13 JUDGE RENDAHL: Well, I think the witness
14 testified that she wasn't familiar, didn't know and
15 couldn't state what the difference was between
16 commingling and combining, so I'm not sure that she can
17 answer the question, but I will allow her to answer.

18 MS. FRAME: And I would also further the
19 objection in the sense that it calls for a legal
20 conclusion.

21 MR. DEVANEY: Could I briefly respond, Your
22 Honor?

23 JUDGE RENDAHL: Please do.

24 MR. DEVANEY: The intent behind this line of
25 questioning is first of all it's inevitable that there's

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1 legal issues that are interspersed with the parties'
2 commingling positions, so I think we all all day today
3 have been talking about some legal issues.
4 Unfortunately that's an unavoidable part of this.

5 But with respect to this particular issue,
6 the intent of the question is we believe that there's
7 not an obligation to combine 251 with 271 elements, and
8 our advocacy with respect to commingling for -- the
9 commingling issue is if we have to commingle those
10 elements, that's no different from combining them, and
11 therefore it supports our position that you can't be
12 required to commingle 271 elements because it would
13 undercut the ruling that we don't have to combine 271
14 and 251 because there's no difference. And that's why
15 the line of questioning is relevant.

16 JUDGE RENDAHL: My guess is this is something
17 more appropriate for brief. If this is Qwest's
18 position, I don't know that you will be gaining anything
19 from asking the questions from the witness.

20 MR. DEVANEY: Okay.

21 JUDGE RENDAHL: If it's the parties' legal
22 position, I don't know that -- Ms. Doberneck isn't
23 testifying as a per se legal witness. You know, I guess
24 I question the value.

25 MR. DEVANEY: That's fine, I will move on and

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1 we'll address it in brief, Your Honor.

2 JUDGE RENDAHL: Okay.

3 BY MR. DEVANEY:

4 Q. Ms. Doberneck, another one of the commingling
5 disputes between the parties has to do with resale
6 commingling, and in particular Qwest has proposed to
7 include some services that it believes it does not have
8 to do resale commingling for, correct?

9 A. That is my understanding of the nature of the
10 dispute, yes.

11 Q. And just to make sure we're in agreement on
12 some issues, you agree, don't you, that Qwest is not
13 required to commingle two resale services together?

14 A. The linchpin of the commingling must be a 251
15 UNE, so to the extent the resale items would not be a
16 251 UNE, that would be correct, but I don't know if
17 they're necessarily mutually exclusive or not. It's a
18 little bit out of my bailiwick.

19 Q. And do you agree that the only resale
20 services Qwest is required to commingle are those that
21 qualify as telecommunications services under the Act?

22 A. That is my understanding, and I think the Act
23 lays it out, what is required to be made available by
24 Qwest on a resale basis.

25 Q. And now of the categories Qwest has listed

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1 that it believes it does not have to provide resale
2 commingling, do you agree that non-telecommunications
3 services do not have to be provided for resale?

4 A. You know, I have not looked at it to that
5 extent. What I have looked at is sort of the I guess
6 the more affirmative where Qwest has to provide or
7 commingle resold items which is under telecommunications
8 service. So I haven't looked in terms of what
9 constitutes a telecommunications service versus not, so
10 I would take your word for what would not be, fall
11 within the scope of that telecommunications service
12 definition.

13 Q. Take a look, please, at your rebuttal
14 testimony, which is Exhibit 29-RT, page 9.

15 A. Yes.

16 Q. Lines 6 through 8, you say:
17 As I understand it, the products Qwest
18 lists are not properly considered resale
19 products anyway or at least are not sold
20 resold telecommunications services
21 covered by Section 251(c)(4).

22 A. Right.

23 Q. So you do agree then the products that Qwest
24 has listed in its language to exclude from resale are
25 not telecommunications services?

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1 A. I have been told that's the case, and I
2 agree.

3 Q. Okay, thank you.

4 Ms. Doberneck, one of the other disputes
5 relating to commingling is whether the FCC's so called
6 EEL eligibility criteria should be included in the
7 interconnection agreement, correct?

8 A. Yes.

9 Q. And as I understand Covad's position, it's
10 not necessary to include those criteria because Covad
11 can not order EELs under this agreement; is that right?

12 A. Right, why have criteria in for a product
13 that is not included in the interconnection agreement.

14 Q. And just to be clear about that, does Covad
15 agree that it can not order any EELs under this
16 agreement including commingled EELs?

17 A. I'm thrown for a loop by when you say
18 commingled EELs. I would agree under the agreement that
19 we can not order EELs, so if -- so I can answer that
20 part, but I'm a little confused by the what when you're
21 referring to commingled EELs what you mean.

22 Q. For example, in the Triennial Review Order
23 the FCC at Paragraph 594 says that a UNE loop in
24 combination with a special access transport service is a
25 commingled EEL, and my question for you is, is it your

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1 view that Covad can not order such a product under this
2 agreement?

3 A. I guess if we -- if I look at it in the
4 context of Paragraph 594, I mean I guess I just don't
5 know the answer. I think you're getting into some legal
6 issues, and I think it's probably -- I just don't know
7 the answer to that question right now.

8 Q. Well, if you're not sure or if Covad's not
9 sure whether it can order a commingled EEL as the FCC
10 has defined the term under this agreement, wouldn't the
11 safe thing be to include the eligibility criteria in the
12 agreement?

13 MR. NEWELL: Your Honor, we object to the
14 question. The primary problem I believe with the
15 question is what Mr. Devaney means by a commingled EEL,
16 and it's not so much the technical specifications but
17 the pricing that would be associated with the
18 arrangement he's discussing which is discussed in the
19 TRO. To the extent he's talking about a combination of
20 UNEs, that's -- I believe there would be one answer to
21 that question, and to the extent he's talking about a
22 commingling arrangement that would combine -- that would
23 attach UNEs purchased under Section 251 with a special
24 access circuit, I believe the answer would be different.
25 So if he could specify, I think it would be helpful to

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1 the witness.

2 JUDGE RENDAHL: Mr. Devaney, can you make
3 that clarification, or is that the intent of your
4 question?

5 BY MR. DEVANEY:

6 Q. Well, here's the question that I'm seeking an
7 answer to. In Paragraph 594, the FCC --

8 JUDGE RENDAHL: Well, let's wait.

9 Ms. Doberneck, do you have a copy of that
10 paragraph?

11 THE WITNESS: I do.

12 JUDGE RENDAHL: Okay, I just wanted to --

13 THE WITNESS: I came prepared this time.

14 JUDGE RENDAHL: I just wanted to make sure.

15 BY MR. DEVANEY:

16 Q. You will see there's a carryover sentence
17 from page 375 to 376 of the TRO, and the FCC says:

18 For example, where a state commission
19 finds that transport on a specific route
20 is not available as a UNE pursuant to a
21 Commission defined trigger, a UNE loop
22 would still be available in combination
23 with a special access transport service
24 on that route so long as the eligibility
25 criteria are satisfied.

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1 And you will see before that sentence that
2 the language suggests that that is a commingled EEL that
3 the FCC is referring to. And what I'm trying to clarify
4 is whether Covad believes that under this
5 interconnection agreement being arbitrated it would be
6 permitted to order this type of facility that is a UNE
7 loop in combination with a special access transport
8 service.

9 A. Well, I have two struggles in answering. The
10 first is if we're talking -- it's unclear to me, because
11 if Qwest is doing the combining, then the question I
12 would have is whether the access or how we get the
13 special access circuit for example that's referenced
14 here would be something that we would get pursuant to
15 any method other than unbundling under Section 251(c)(3)
16 of the Act. And if that answer were yes, I suppose I
17 would think it would fall within the commingling
18 definition. But if the answer is no, which I think
19 special access is -- when you order special access it's
20 because there isn't unbundling available. I mean we
21 could still do it so long as we did the combining
22 ourselves. So I see a difference between who is doing
23 the combining here, because I think it might change my
24 answer.

25 The other portion would be are what we're

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1 really getting at is pricing, because I think the net
2 result is, yeah, we can order them absolutely, if we
3 combined them ourselves we could do that, and I think
4 then we come to the question of pricing.

5 Q. Well, is it your view that under the
6 agreement Covad can order this, by this I mean a UNE
7 loop combined with special access transport, with Qwest
8 doing the combining?

9 A. If that special access transport, if we could
10 order it pursuant to any method other than unbundling
11 under Section 251(c)(3) of the Act, my assumption would
12 be yes, we could order it by the terms of the TRO
13 itself. If we had to do it as a special access circuit
14 that's not provided to us via the other unbundling
15 methods, which would be presumably 271, the answer would
16 be no if we wanted Qwest to do the combining.

17 Q. And since the answer may differ in your view
18 based on circumstances and since I think you would agree
19 that EEL eligibility criteria would apply to this
20 product -- let me begin with that question. Do you
21 agree that EEL eligibility criteria would apply to this
22 product?

23 A. This product being where we ordered a UNE
24 loop and asked Qwest to combine it with special access
25 transport?

0328

1 Q. Yes.

2 A. Again, I, you know, I'm looking at how does
3 our language track the TRO, so I'm looking to what the
4 TRO says. And again, if we're getting that special
5 access circuit by a method other than unbundling under
6 Section 251(c)(3) of the Act and Qwest is doing the
7 combining, then I think the answer is yes, it would be a
8 commingling arrangement if it constituted a high
9 capacity EEL, it would be subject to whatever the
10 eligibility criteria.

11 However, if we're not getting that special
12 access circuit, and I don't know the answer as to how
13 we're getting access to that special access circuit, if
14 it is not pursuant to any method of un -- if it is not
15 pursuant, for example, to Section 271, then I would say
16 it is not a commingling arrangement, and I don't think
17 actually Qwest would be probably be under a combination,
18 I'm sorry, under an obligation to combine that for Covad
19 in the first place.

20 Q. Okay, thank you.

21 Ms. Doberneck, am I correct that Covad's not
22 contending that the EEL eligibility criteria that Qwest
23 has included in its proposed language is inaccurate?

24 A. I don't believe we are contesting whether
25 Qwest accurately captured the eligibility criteria, no,

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1 except to the extent we don't want them in the
2 agreement.

3 Q. Right.

4 And my final question for you on commingling
5 is, and you can turn to her testimony if you would like,
6 but Ms. Stewart on page 16 of her direct testimony
7 proposes some backup language or alternative language
8 for addressing the EEL eligibility criteria issue.

9 A. I'm sorry, you said page 16 of her direct?

10 Q. Right, and just again for the record, the
11 direct is Exhibit --

12 JUDGE RENDAHL: 61-T.

13 MR. DEVANEY: Thank you.

14 JUDGE RENDAHL: And what page are we looking
15 at?

16 MR. DEVANEY: We are looking at page 16 of
17 Ms. Stewart's direct.

18 BY MR. DEVANEY:

19 Q. Lines 11 through 17, beginning on line 11,
20 Ms. Stewart says, alternatively, Qwest would accept a
21 somewhat different resolution of this issue, and she
22 goes on to explain that instead of listing the EEL
23 eligibility criteria, and I'm now paraphrasing, the
24 agreement could exclude EELs from the definition of the
25 UNEs that are available and also make it clear under the

0330

1 UNE combination definition that Qwest isn't required to
2 combine high cap loops with high cap transport. Is that
3 alternative acceptable to Covad in lieu of listing the
4 EEL eligibility criteria, or do you know?

5 MS. FRAME: Your Honor, we're going to object
6 as to whether it's acceptable to Covad. I think we're
7 getting into the same issue that we had with Ms. Stewart
8 and her, you know, rewriting the agreement on the stand.
9 I think we need to have the negotiators actually work on
10 the language.

11 MR. DEVANEY: Fair enough, maybe I can
12 rephrase the question.

13 JUDGE RENDAHL: I guess if I can ask,
14 Ms. Doberneck, are you involved in the negotiations of
15 the agreement?

16 THE WITNESS: I am not directly involved in
17 the negotiations. I certainly have discussions with the
18 people who are involved in the day-to-day negotiations
19 about what's going on.

20 JUDGE RENDAHL: But you're not the primary
21 decisionmaker as to what goes into the agreement?

22 THE WITNESS: I am not the sole decisionmaker
23 as to what goes into the agreement. I certainly have
24 input into the decision, but I don't have complete say.

25 JUDGE RENDAHL: Okay, in that situation I

0331

1 would tend to grant the objection by Ms. Frame. So if
2 you can change your question, that might be helpful.

3 BY MR. DEVANEY:

4 Q. Well, apart -- let me ask you the question
5 then without you saying that you're binding Covad to
6 this agreement. Do you personally see this alternative
7 language as something that is reasonable?

8 A. Personally I think it would be difficult to
9 agree to the language if for no other reason than there
10 is a great deal of flux surrounding what ultimately are
11 the obligations of Qwest and the rights of Covad and
12 vice versa in any state in this region with respect to
13 access obligations, pricing obligations, so I think it
14 would be difficult to make that commitment at this point
15 in time until we have a little bit more definition about
16 what those access obligations are.

17 Q. Okay.

18 Let's talk briefly about ratcheting, and I
19 would ask you to turn to your response testimony, which
20 is Exhibit 29-RT, and in particular page 10.

21 A. Okay.

22 Q. I would like you to focus on your diagram at
23 the bottom of page 10.

24 A. Okay.

25 Q. And as I understand it, your two diagrams

0332

1 portray scenarios where in Covad's view -- in the first
2 diagram, UNE pricing would apply because there are
3 completely qualifying services being carried over the
4 elements.

5 A. Can you just give me a second?

6 Q. Yeah, sure.

7 A. Just to actually look at the --

8 Q. Just let me know when you're ready.

9 A. Sure.

10 (Reading.)

11 Okay, I'm sorry, I have reviewed it, now I'm
12 ready to answer the question if you could restate it,
13 please.

14 Q. Sure. As I understand it, the intent of your
15 two diagrams is to show first what pricing would apply
16 where all qualifying services are carried over the
17 elements in question; is that correct?

18 A. Yes.

19 Q. And then second, your second diagram is to
20 show what pricing would apply when some non-qualifying
21 services are entered into the picture; is that correct?

22 A. It's not quite right. It's where one of the
23 input loops is providing only non-qualifying service.

24 Q. That's a more accurate way to say it.

25 A. Yes.

0333

1 Q. That's right. And in the bottom diagram
2 where you have one of the loops carrying only
3 non-qualifying service, do you agree that the MUX shown
4 in your diagram would be priced at a tariffed rate
5 instead of a UNE TELRIC rate?

6 A. The multiplexer, yes, that's correct.

7 Q. Yeah. And the same for the transport, that
8 once you introduce a loop that's only non-qualifying
9 service, the transport would be at a tariffed rate as
10 opposed to a UNE rate?

11 A. Right, to the extent it's aggregated onto
12 that transport circuit, that's right, the transport
13 circuit would be purchased out of and paid at the
14 tariffed rate.

15 Q. And do you agree therefore that the
16 ratcheting contract language adopted in this case ought
17 to reflect that fact, that when you introduce a
18 non-qualifying only circuit that the multiplexer and the
19 transport are at tariffed rates?

20 A. The language should make clear -- I think
21 there's two ways you can go about it. One is only when
22 UNE pricing is available, which is the way Covad
23 proposes it, or alternatively it could specify, which I
24 don't think the Qwest language does, the situation I
25 have laid out here, which is when affirmatively the

0334

1 access pricing would apply.

2 Q. And you believe that that would be
3 appropriate to do?

4 A. I believe the more appropriate way is to make
5 clear when the UNE pricing applies.

6 Q. Well, why not also make it clear when the
7 access pricing applies?

8 A. I suppose you could do that as well, which I
9 think actually also the Covad proposed language does.

10 Q. Well, we can -- I won't get into that battle
11 with you, we can address that on brief.

12 Let's though take a quick look at the Covad
13 language, and I would ask you to take a look at the
14 issues matrix, which is Exhibit 70, and in particular if
15 you would look at Section 9.1.1.4.2, Covad's proposed
16 language.

17 JUDGE RENDAHL: And which page on the issues
18 matrix?

19 MR. DEVANEY: If you bear with me one moment,
20 34.

21 A. I'm sorry, did you say 9.1.1.4.2?

22 BY MR. DEVANEY:

23 Q. I did.

24 A. Okay, I'm with you.

25 Q. The phrase within that provision that reads:

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1 In the event CLEC commingles services
2 obtained by any method other than
3 unbundling under Section 251(c)(3) of
4 the Act with 251(c)(3) UNEs --

5 And it goes on and says:

6 And all services commingled are used to
7 provide a qualifying service.

8 What I want to ask you is what is meant by
9 the phrase, and all services commingled; what does that
10 mean?

11 MS. FRAME: Your Honor, I'm going to object,
12 because it isn't being read as it reads, so if we could
13 read it into the record correctly, that would be great.

14 MR. DEVANEY: Sure, I'll do it one more time.

15 BY MR. DEVANEY:

16 Q. (Reading.)

17 In the event CLEC commingled services
18 obtained by any method other than
19 unbundling under Section 251(c)(3) of
20 the Act with 251(c)(3) UNEs, and all
21 services so commingled are used to
22 provide a qualifying service.

23 What is meant by the phrase, and all services
24 so commingled, Ms. Doberneck?

25 A. I would actually include to make sure you

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1 understand it the portion also of are used to provide a
2 qualifying service to make sure you have the appropriate
3 context. And what we mean here, I mean it's a reference
4 to the prior phrase, which is your 251, the commingled
5 251 UNEs, and the non 251 UNEs, the other UNEs you
6 obtain pursuant to unbundling and that combination of
7 UNEs that have been commingled together so long as
8 they're providing the qualifying service, which ties in
9 the requirement of in order to get UNE pricing, those
10 UNEs have to be providing a qualifying service.

11 Q. And --

12 A. So it's used to refer to the grouping of the
13 251(c)(3) UNEs and the other UNEs.

14 Q. Do you agree with me that the term all
15 services commingled could be clearer than it is?

16 A. Not anymore, because I looked at it more
17 carefully.

18 Q. Oh. In Colorado when I asked you that
19 question, do you recall saying, and this is on page 175
20 of the Colorado transcript:

21 Since I'm not the lawyer, I suppose I'm
22 free to say I suppose it could have been
23 clearer than it is actually in the
24 proposal.

25 A. Yes. I mean since that time I have had the

0337

1 opportunity to reread the TRO and to look at our
2 language to see what the purpose is, which is to tie
3 together the various components that would allow you to
4 get UNE pricing. And having taken that second look, I
5 actually think it is as clear as can be, because it has
6 to tie a lot of elements together.

7 MR. DEVANEY: Your Honor, I'm just about
8 done, but if I could just have one minute.

9 JUDGE RENDAHL: Please do.

10 Let's be off the record for a moment.

11 (Discussion off the record.)

12 MR. DEVANEY: Just for the record, the
13 excerpt that I read from the Colorado transcript is
14 Exhibit 30, and I would ask that that excerpt be entered
15 into the record. I have only used that single page, and
16 my cross exhibit is more than that. I'm perfectly happy
17 to just have that page entered into the record to not
18 overburden the record, but I guess what I will do is I
19 will propose the whole thing, and if you all would like
20 just that page, that's fine with me.

21 JUDGE RENDAHL: Ms. Frame.

22 MS. FRAME: I want to take a quick look at it
23 again. I think when we actually received the cross
24 exhibits from Qwest, we got the whole kit and caboodle,
25 so I just need a moment to take a look at the exhibit.

0338

1 MR. DEVANEY: Okay.

2 JUDGE RENDAHL: We will be off the record.

3 (Discussion off the record.)

4 MR. NEWELL: We would prefer that the entire
5 exhibit be admitted into evidence to obviate any
6 possibility that reading one page could create any
7 context issues. I think given the amount of paper used
8 in this proceeding anyway, I don't think it's that much
9 of a burden.

10 JUDGE RENDAHL: If the parties don't object,
11 I will admit it as it was offered initially in its
12 entirety, so it will be admitted as it was submitted by
13 Qwest originally.

14 MR. DEVANEY: Thank you, Your Honor.

15 JUDGE RENDAHL: And I understand you have no
16 further questions.

17 MR. DEVANEY: That's correct.

18

19 E X A M I N A T I O N

20 BY JUDGE RENDAHL:

21 Q. Ms. Doberneck, I have a few, and this time
22 really just a few. And if you look at your Exhibit
23 29-RT, which is the response testimony, at page 10, I'm
24 going to talk about the same -- I'm going to ask you
25 some questions about the same diagrams.

0339

1 A. Okay.

2 Q. Because I'm trying to understand what's
3 exactly at issue here. The two examples you have given,
4 one is where the loops coming in are solely qualifying
5 services coming into the multiplexer and the transport;
6 is that correct?

7 A. No, the loops are providing qualifying
8 service, they may also be providing a non-qualifying
9 service as well, but the -- but they -- each one is
10 providing at least a qualifying service.

11 Q. Okay, well, then let me step back. Do you
12 understand Qwest -- that Covad and Qwest would agree on
13 the pricing if the loops were solely providing
14 qualifying services?

15 A. Yes, I believe we would agree if the loops
16 coming into the multiplexer and then going over to the
17 transport solely provided qualifying service, I think we
18 would all agree, I'm waiting for a shake or a nod over
19 there, that that pricing would be UNE pricing.

20 Q. Okay. And likewise for the diagram at the
21 bottom where one of the loops coming in is not providing
22 -- is providing solely non-qualifying service that the
23 multiplexer and the transport would then be priced at
24 the tariff rate?

25 A. Correct, we are in agreement on that as well.

0340

1 Q. So the issue is whether, as I understand it,
2 the issue that Qwest and Covad have is what the pricing
3 would be if the loops were providing what you describe
4 as a mixed use where there is a qualifying service but
5 they're also providing non-qualifying service?

6 A. And I don't want to be presumptuous, but I
7 don't actually think we disagree there either. I think
8 we are in agreement that if each of the three loops,
9 we'll say all three of the loops are providing both
10 qualifying and non-qualifying that we would continue to
11 price the multiplexer and the transport at UNE pricing.
12 I think we are in agreement there as well.

13 Q. So can you explain to me what the issue is?

14 A. I believe while we agree in principle, where
15 we deviate is the language we believe implements the
16 ratcheting pricing regime or the non-obligation to
17 ratchet. And so it's not the principles, it's the
18 actual language. And as I understand it, Qwest, and
19 again I don't want to be presumptuous, but my
20 understanding through the Colorado arbitration, one of
21 the primary objections is that they think, that Qwest
22 believes the Covad language does not allow for the
23 conversion to tariff pricing in a situation where one of
24 the input loops provides solely non-qualifying. They
25 think our language doesn't allow them to then change the

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1 UNE pricing for that multiplexer and transport to
2 tariff, access tariff pricing.

3 Q. Okay, and I will allow Qwest to -- I will
4 address this also with Ms. Stewart.

5 A. And then we obviously have a disagreement
6 with the Qwest language and what we think it does, which
7 is -- I can tell you that if you would like to know.

8 Q. And I would like to know, but I just -- so
9 your understanding is this is just a language issue?

10 A. I believe so.

11 Q. Okay. And what is the issue with the Qwest
12 language?

13 A. I think, well, my opinion or Covad's opinion
14 since I am the Covad representative, is that in Qwest's
15 effort to try and get the ratcheting principle into one
16 paragraph, that essentially what they have done is two
17 things that cause it to deviate we think from the
18 ratcheting requirement or non-requirement. And the one
19 is -- the first for me, the first real problem in terms
20 of the language is where you go I guess it's the third
21 sentence.

22 Q. And what are you referring to now?

23 A. I'm looking at the issues matrix.

24 Q. And what page?

25 A. I have Colorado.

0342

1 Q. Which --

2 A. It's 9.1.1.4 at page --

3 Q. I have page 32.

4 A. Correct.

5 Q. Which is the beginning of that portion.

6 A. Yes, that's the beginning.

7 And the way Qwest has defined mixed use and
8 where it becomes problematic for us is you can't get UNE
9 pricing when it's -- the way Qwest has defined mixed
10 use. And when I look at their mixed use, I think it
11 allows Qwest to look for those individual loops going
12 into the multiplexer arrangement, to not look just at
13 the loop itself and whether it's providing a qualifying
14 or a non-qualifying service, but it would actually allow
15 Qwest to go to like what service is being provided over
16 an individual channel within that loop. So you're
17 actually not looking at the loop, you're going to a
18 channelized basis, and I think that takes you away from
19 what the FCC said in the TRO.

20 So you're not looking at the loop, but Qwest
21 would be able to go, well, you know, say there are 24
22 channels on this DS1 loop going into the multiplexer,
23 because one of those channels is being used to provide
24 solely a non-qualifying service, the whole thing is
25 taken out of UNE pricing. And I think our position is

0343

1 you need to look at the loop and whether the loop is
2 providing a qualifying service or not.

3 JUDGE RENDAHL: Okay, thank you, that's all I
4 have.

5 Ms. Frame, do you have any redirect or
6 Mr. Newell?

7 MS. FRAME: Mr. Newell is going to handle it.

8

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

10 BY MR. NEWELL:

11 Q. Ms. Doberneck, if you could turn to page 22
12 of the Washington issues matrix, which lists Covad's
13 proposed language on Section 9.1.1.5.

14 A. Yes.

15 Q. If you could read that first paragraph into
16 the record, please.

17 A. (Reading.)

18 Service eligibility criteria. With
19 respect to combinations of high capacity
20 (DS1 and DS3) loops and interoffice
21 transport (high capacity EELs), there
22 are additional eligibility criteria that
23 do not apply to other UNEs.

24 Do I stop there, or do you want me to
25 continue?

0344

1 Q. That's fine.

2 A. Okay.

3 Q. I want to break this apart to expand on the
4 discussion you had with Mr. Devaney about commingled
5 EELs. In your opinion, does the term high capacity loop
6 apply, or does that term encompass both UNE loops and
7 non-UNE loops such as a private line?

8 A. I consider it to be a UNE loop. I'm sorry,
9 the question was UNE loop or does it also include
10 private line?

11 Q. My question was -- I will rephrase it.

12 In your opinion, is the term high capacity
13 loop broad enough to encompass both UNEs and non-UNE
14 loops such as special access loops?

15 A. Yes, I mean as a generic matter a high
16 capacity loop could be, so long as it's high capacity
17 and it goes to a customer, you can get it from any
18 source. So in that sense, yes, it's a generic term that
19 could include both.

20 Q. And the term interoffice transport used in
21 this sentence, in your opinion would the term
22 interoffice transport under this agreement be broad
23 enough to encompass both unbundled dedicated interoffice
24 transport known as UDIT under the agreement as well as
25 special access transport or some other form of transport

0345

1 provided by Qwest?

2 A. Yes, I mean it's a generic term, and the
3 question -- yes, it would be broad enough to include any
4 kind of transport regardless of the source of the --
5 from where or where you get it from, the ordering place,
6 tariff or interconnection agreement.

7 Q. So if a combination of those two described
8 terms is then defined as a high capacity EEL in this
9 sentence, what is your opinion about, in the context of
10 the sentence as a whole, what is your opinion of Covad's
11 ability to order a commingled EEL or a high capacity EEL
12 would be the better term under the agreement?

13 A. Well, per the language of 9.1.1.5, it would
14 be subject to the additional eligibility criteria that
15 do not apply to other UNEs.

16 Q. Just to --

17 A. And I --

18 Q. Just to clean this up, if you can read the
19 very next sentence of 9.1.1.5.

20 A. (Reading.)

21 Upon request by CLEC, the parties --

22 Q. I didn't mean to interrupt you, I'm sorry,
23 but we skipped the sentence that I wanted you to read,
24 which is between -- it's the sentence preceding the one
25 you were about to read.

0346

1 A. I only see two sentences in 9.1.1.5, and I
2 read the first one. Oh, you're right, I'm sorry, I
3 missed it.

4 CLEC will not order high capacity EELs.

5 Okay, so yes, I found the sentence.

6 Q. So to Mr. Devaney's question, do you see an
7 opportunity under this language for Covad to order any
8 combination of high capacity loop and interoffice
9 transport under this agreement?

10 A. Pursuant to our own language, the answer
11 would be no, we will not order it and don't have
12 ordering rights under the agreement.

13 MR. NEWELL: Thank you, I have no further
14 questions.

15 JUDGE RENDAHL: Mr. Devaney.

16 MR. DEVANEY: Thank you, Your Honor, if I
17 could have 20 seconds.

18

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

20 BY MR. DEVANEY:

21 Q. Ms. Doberneck, just to follow up on your
22 counsel's question, as I heard you, I think you said
23 that Covad would not be able to order a combination of
24 high cap loops and interoffice transport under this
25 agreement. And my question for you is, when you say

0347

1 interoffice transport, are you including special access
2 transport?

3 A. I would include tariffed transport that Qwest
4 could order, I mean Covad could order, whether it's
5 special access or some other type of tariffed transport
6 product.

7 Q. Covad can not order that under this agreement
8 with a high cap loop; is that correct?

9 A. That is my understanding of how the language
10 would operate, yes.

11 MR. DEVANEY: Thank you, that's all I have.

12 JUDGE RENDAHL: Okay, thank you.

13 Thank you, Ms. Doberneck, you truly are done
14 now, you are excused.

15 And, Ms. Stewart, I think it's your turn now.

16 Let's be off the record for a moment.

17 (Discussion off the record.)

18 JUDGE RENDAHL: Ms. Stewart, you remain under
19 oath from earlier this afternoon.

20 THE WITNESS: Yes.

21 JUDGE RENDAHL: And, Mr. Devaney, are there
22 any preliminaries we need to go through with
23 Ms. Stewart?

24 MR. DEVANEY: No, thank you, Your Honor.

25 JUDGE RENDAHL: Ms. Frame or Mr. Newell, do

0348

1 you have any cross-examination for this witness?

2 MS. FRAME: Yes, just a few questions, really
3 truly just a few questions.

4 JUDGE RENDAHL: You may go ahead.

5

6 Whereupon,

7 KAREN A. STEWART,

8 having been previously duly sworn, was called as a
9 witness herein and was examined and testified as
10 follows:

11

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

13 BY MS. FRAME:

14 Q. Because we're not discussing a lot of the TRO
15 issues, it's a little -- I am trying to whittle this
16 down.

17 Let's talk a little bit about your
18 commingling direct and responsive testimony. I want to
19 see if I understand your testimony correctly. You state
20 that you have a concern about not including the EELs
21 language in the interconnection agreement because you're
22 concerned about other CLECs effectively obtaining an EEL
23 by ordering a high cap loop and a high cap transport and
24 requesting that Qwest combine these two facilities so
25 essentially opting in or picking and choosing even

0349

1 though that's gone away but opting in to the entire
2 Covad agreement. Is that your concern here?

3 A. Our concern is that while Qwest does not
4 believe this interconnection agreement can be used to
5 order EELs because it does not include the combination
6 language in 9.23, we are concerned that other CLECs or
7 individuals not involved with the extensive negotiation
8 and research we are might mistakenly think that they can
9 by perhaps just using the general commingling language.
10 So to be prudent, we feel that it's appropriate to put
11 in the service eligibility criteria.

12 And I think as just demonstrated earlier in
13 this courtroom, it is a confusing topic, and what we
14 didn't want to do was somehow someone to be able to go
15 from, you know, section A to B to C and then colluse it
16 together and say, okay, I want you to put all these
17 elements together, and oh, by the way, there's no
18 service eligibility requirements. So in abundance of
19 caution, we believe it is prudent and appropriate to
20 include service eligibility.

21 Q. Ms. Stewart, were you -- you weren't here
22 yesterday when we asked a series of questions about the
23 elimination of pick and choose and opting in to entire
24 negotiated agreements and Judge Rendahl's questions
25 about an SGAT and negotiating an SGAT to meet a CLEC's

0350

1 particular requirements or whatever they need to obtain
2 out of that particular interconnection agreement, were
3 you?

4 A. I was not here yesterday, so no, I do not
5 know about that discussion.

6 Q. Okay. You are aware though that the pick and
7 choose rule of old has now been eliminated by the FCC?

8 A. That is my understanding.

9 Q. So essentially some of your concern really is
10 now eliminated as a result of that?

11 A. Some of our concern is eliminated, but
12 however our complete concern has not been eliminated.
13 And once again it has to do if you take and try to
14 colluse together the UNE combination definition, the
15 commingling definition, the fact that there's transport
16 and loops in here, that someone might feel, well, it's
17 unnecessary for me to have had that 9.23, quote-unquote,
18 the section that provides for combinations and
19 commingling as it relates to connecting or attaching to
20 UNEs or high cap commingled EELs together, that they're
21 going to somehow try to interpret or draw a road map
22 that they didn't need 9.23. And so that's why we
23 believe it is prudent to include the service eligibility
24 requirements.

25 Q. But this possibility is like one out of a

0351

1 million possibilities, correct, very, very, very slim
2 that anyone would ever try to manipulate, first of all
3 opt in to the entire agreement, and then try to
4 manipulate this particular phrase to do what you're
5 supposedly concerned about here today?

6 A. Yeah, I represented EELs and UNE combinations
7 in general in the 271 proceedings, and so I'm one of the
8 company resources for when there is concerns, and I
9 would say it's quite a few more than one in a million
10 that we get inquiries about what can I combine or not
11 combine or what I need or don't need in my
12 interconnection agreement since regularly I'm drawn upon
13 as a SME to give my input on that. So there's actually
14 quite a bit of maybe even legitimate questions or
15 concerns about what people can combine with
16 interconnection language.

17 Q. But they wouldn't have this in their
18 particular SGAT or in their interconnection agreement,
19 correct?

20 A. Wouldn't have this what?

21 Q. Well, this language or the exclusion of this
22 language, the EEL service eligibility language.

23 A. Well, they frequently don't, but the actual
24 issue to put it bluntly is people who want to get
25 combinations of EELs without doing an EEL amendment, and

0352

1 that's quite a frequent question that we receive, so
2 it's exactly point on with this.

3 Q. But that would happen whether or not this
4 language was included or excluded out of this particular
5 interconnection agreement with Covad, correct?

6 A. It is correct that there still can be
7 questions about the applicability or the necessity of
8 9.23, but what this does is that should somehow that
9 path be trying -- woven through where someone attempts
10 to use it without including an EEL amendment, we would
11 have the service eligibility requirements in there. And
12 since quite frankly the whole concept of commingled EELs
13 and the fact that we're going to have to put private
14 line and UNEs together is a fairly new concept, and
15 we're still working through that. We have included in
16 our 9.23 commingled EELs, so we have addressed it in
17 9.23. It's not addressed in an interconnection
18 agreement without 9.23. So as long as there's
19 commingling language in the agreement, we feel that it's
20 appropriate and prudent to make sure that the service
21 eligibility criteria are included and that they would
22 apply to any high capacity EEL, including a commingled
23 EEL.

24 Q. But couldn't you just point to the language
25 where it says that you can not order EELs in this

0353

1 agreement? I mean it's clear as mud, correct?

2 A. Well, I think it's clear to me you can't
3 order, but unfortunately there's not always a lot of
4 clarity on everyone else's part.

5 Q. Okay.

6 JUDGE RENDAHL: Ms. Stewart, you mentioned
7 that you were referred to as a SME, can you -- that's
8 what I heard, but is that an acronym?

9 THE WITNESS: Yes, and if I used it, I
10 apologize, it's capital S-M-E, subject matter expert.

11 JUDGE RENDAHL: Thank you, that's what I
12 thought I heard, I just wanted to clarify.

13 BY MS. FRAME:

14 Q. I just have a few more questions about
15 commingling, then I think I'm going to move on to
16 ratcheting. In your direct testimony you state that
17 Covad's language requires Qwest to commingle network
18 elements provided under 271 with wholesale services,
19 correct?

20 A. Correct.

21 Q. Can you direct me specifically to the
22 provisions that Covad has proposed where Covad suggests
23 that 271 elements may be commingled with wholesale
24 services? Can you show me on the issues matrix?

25 A. Okay, I just think you have changed the --

0354

1 you started with 251 and 271 and then went 251
2 wholesale, so the two parts of your question were not
3 consistent.

4 Q. Well, I didn't say 251 at all in either of my
5 two --

6 A. I misunderstood you then.

7 Q. Okay. So the first question was, in your
8 direct testimony you state that Covad's language
9 requires Qwest to commingle network elements, so I
10 didn't specifically say 251, provided at all under 271,
11 so its network elements under 271 with wholesale
12 services, and I believe you said yes.

13 A. Yes.

14 Q. And now I'm asking you to direct me to those
15 provisions that Covad proposed that suggest that 271
16 elements may be commingled with wholesale services.

17 A. Okay, we have to look at basically in context
18 two sections. One is the section that talks about
19 commingling, 9 --

20 JUDGE RENDAHL: And you're referring now to
21 Exhibit 70, which is the joint issues list, correct?

22 THE WITNESS: Correct.

23 JUDGE RENDAHL: And which pages are you
24 referring to?

25 THE WITNESS: It actually begins at the

0355

1 bottom of 19, but I just realized that there's not a
2 section number. I guess it's number 4, definition of
3 commingling.

4 BY MS. FRAME:

5 Q. Okay.

6 A. So in the definition of commingling, you are
7 stating that Qwest must commingle anything, any
8 251(c)(3) UNEs with anything attained at any other
9 method other than unbundling and --

10 Q. Well, can you read that verbiage
11 specifically. It appears as though you're not quite --
12 you're paraphrasing, and I think it's very exacting when
13 you're looking at proposed contract language to read
14 exactly what has been proposed.

15 A. Yes, I can do that.

16 Q. Thank you.

17 A. (Reading.)

18 Commingling means the connecting,
19 attaching, or otherwise linking of
20 251(c)(3) UNEs or a combination of
21 251(c)(3) UNEs to one or more facilities
22 or services that a requesting
23 telecommunications carrier has attained
24 at wholesale from Qwest pursuant to any
25 method other than unbundling under

0356

1 Section 251(c)(3) of the Act.

2 And it goes on to say or combinations
3 thereof.

4 Q. Well, I want you to finish, because it
5 doesn't necessarily or combinations thereof, so why
6 don't you read the rest of the section.

7 A. Oh, you wanted it all read into the record?

8 Q. Please.

9 A. Excuse me. Can I begin with --

10 Q. You say --

11 A. -- or --

12 Q. Right.

13 A. -- continuing where I left off.

14 Or the combination of a 251(c)(3) UNE or
15 a combination of 251(c)(3) UNEs with one
16 or more such facilities or services.

17 Q. So when you read that proposed language, it
18 appears to me, and wouldn't you agree, that it
19 eliminates any confusion with respect to Qwest's
20 obligations to commingle non-UNEs with UNEs available to
21 or pursuant to Section 271 or even state law, because
22 right here we're only talking about 251(c)(3) UNEs,
23 correct?

24 A. Correct, but Covad has expanded its
25 definitions of UNE and UNE combinations to include -- if

0357

1 you go to unbundled network element UNE, it's -- and I
2 will quote.

3 Q. And where is that?

4 A. It's in the definitions section.

5 Q. Meaning on page 19, or are you looking at the
6 issues list, or are you looking at an old agreement or
7 an old agreement being negotiated?

8 A. I'm actually looking in the definitions
9 section, and I think at the part that has been sent to
10 brief.

11 JUDGE RENDAHL: The definition section of the
12 draft agreement?

13 THE WITNESS: Correct.

14 MS. FRAME: Well, if it's that, I think that
15 we had actually --

16 JUDGE RENDAHL: Let's be off the record for a
17 moment.

18 (Discussion off the record.)

19 JUDGE RENDAHL: While we were off the record
20 we determined that the definition of unbundled network
21 element that was referred to or 251(c)(3) UNE is on page
22 4 of the disputed issues list, Exhibit 70.

23 BY MS. FRAME:

24 Q. Would you agree though when it comes to
25 commingling, way back where you just read, we redefined

0358

1 the term UNE pursuant to 251(c)(3), correct? That's
2 what language is before us right now in this particular
3 issue?

4 A. Correct, but Qwest does not agree with the
5 definitions and --

6 Q. It doesn't agree with the -- I'm sorry, it
7 doesn't agree with the definition of 251(c)(3)?

8 A. My understanding is that it's being briefed
9 on a legal basis, and so I feel reluctant to have any
10 discussions about it. But in general my understanding
11 is Qwest and Covad do not agree on the definition of
12 UNEs and 251(c)(3) UNE, and that issue is to be briefed.

13 Q. That's correct, that is to be briefed, but I
14 was specifically asking you about the definition of
15 251(c)(3) and the particular provision that we are
16 discussing right now on commingling, so I think you have
17 answered my question, strike that.

18 A. Okay.

19 Q. I'm going to move on to ratcheting, make this
20 a lot shorter here. You state in your direct testimony
21 that Covad's concern regarding the rates Qwest will
22 charge for portions of a commingled circuit are
23 unfounded because Qwest clearly provides for the billing
24 of mixed use circuits at TELRIC rates; is that correct?

25 A. I don't know that I use the words mixed use.

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1 You will have to direct me to my testimony.

2 MR. DEVANEY: Your Honor, if we could have a
3 page number, please.

4 MS. FRAME: I don't -- unfortunately when I
5 prepared this question I didn't have it in front of me,
6 so if you will give me a moment, that would be great, I
7 will direct the witness to that.

8 JUDGE RENDAHL: Okay, let's be off the record
9 for a moment.

10 (Discussion off the record.)

11 JUDGE RENDAHL: While we were off the record
12 I think the reference is to Exhibit 61-T at page 20.
13 Which lines are we referring to?

14 MS. FRAME: Well, it starts at line 20, but
15 it continues all the way through 21, because I
16 specifically asked Ms. Stewart about TELRIC, and that is
17 discussed on the next page.

18 JUDGE RENDAHL: Okay, then why don't you
19 reask your question.

20 MS. FRAME: Okay.

21 JUDGE RENDAHL: Now that we have the
22 reference.

23 MS. FRAME: All right.

24 BY MS. FRAME:

25 Q. On page 21, your question is:

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1 What concerns does Qwest have about
2 Covad's proposed language relating to
3 rate ratcheting and prices for
4 commingled facilities and services?

5 It appears to me that your, and would you
6 agree, that your concern is that or that you believe
7 Covad's concern regarding the rates is that Qwest will
8 charge for portions of the commingled circuit -- I
9 should just strike that, let me just start from the very
10 beginning. I will just go back to my original question.

11 You state in your direct testimony, now we
12 have already figured out where that is, that Covad's
13 concern regarding the rates Qwest will charge for
14 portions of a commingled circuit are unfounded because
15 Qwest clearly provides for the billing of mixed use
16 circuits at TELRIC rates, correct?

17 A. Well, I believe, and I guess I'm going to
18 copy Ms. Doberneck a little bit on this, I'm going to be
19 presumptuous in that I believe that Covad and Qwest
20 agree in theory how circuits ought to be billed,
21 ultimately be billed, that in general we're in
22 agreement. What we're not in agreement with is the
23 language that implements that so that each party
24 reserves its rights to UNE rates, and each party
25 reserves its rights or in our case to ask for tariff

0361

1 rates, and so we have a dispute about that.

2 My understanding of, after hearing the
3 testimony and reading everything I have read, that
4 Covad's primary concern is they feel our language could
5 be interpreted to mean that if they had qualifying and
6 non-qualifying on a circuit, then that qualifying and
7 non-qualifying got MUXed up so there was non-qualifying,
8 that somehow because of that mix of qualifying and
9 non-qualifying we would ask that tariff rates be
10 charged. So it really has to do with when a circuit
11 meets the qualifying, shouldn't we just make sure that
12 the fact that there's some non-qualifying on there
13 doesn't change the rate, because the original circuit or
14 facility had qualifying.

15 And the reason I believe that the Covad
16 concerns are unfounded are not only because of our
17 ratcheting language, and I believe we just discussed it
18 in 9.1.4, but in 9.1.1 of the Qwest proposed language we
19 hit this issue head on I believe, and it's very clear,
20 and I would like to read the Qwest language that Covad
21 has requested be deleted. And I think if this language
22 was not deleted, it would go a long way toward
23 addressing any concern that Covad had.

24 Q. And is this 9.1.1 though that we're going to
25 be briefing?

0362

1 A. Well, it's the ratcheting, it's a section of
2 9.1.1 that has to do with ratcheting or potentially I
3 guess.

4 Q. Or is it 9.1.1.4?

5 A. No, it's 9.1.1, Qwest proposed, and I will
6 read --

7 Q. Well, I think I'm going to withdraw my
8 question, because I think that's something that we're
9 addressing in the legal briefs.

10 A. Well, it's responsive to your question.

11 JUDGE RENDAHL: I think there are to some
12 degree some mixed issues, and I think if you point us to
13 the proper reference, the record can read for itself,
14 but if you could point to me where in the issues list
15 the 9.1.1 language is, that would be helpful.

16 THE WITNESS: I don't believe it's in the
17 issues list. I think it got I don't know if cut off is
18 the right word, but --

19 JUDGE RENDAHL: So it would be in the draft
20 agreement?

21 THE WITNESS: Right.

22 JUDGE RENDAHL: Which has been marked as
23 Exhibit 71.

24 THE WITNESS: Right.

25 JUDGE RENDAHL: And so just so that I

0363

1 understand, what you're stating is that you believe that
2 the language, the original language that Qwest had
3 proposed --

4 THE WITNESS: Correct, for 9.1.1, included
5 this statement, if I could read the statement, and I
6 realize it can stand for itself.

7 JUDGE RENDAHL: And I guess I'm not sure, do
8 you have Exhibit 71?

9 THE WITNESS: The interconnection agreement?
10 I have a version, but it's a version back I'm afraid. I
11 have a May copy.

12 JUDGE RENDAHL: I'm going to hand you what's
13 been --

14 Let's be off the record for a moment.

15 (Discussion off the record.)

16 JUDGE RENDAHL: We identified in Exhibit 71
17 the language, Ms. Stewart will read it, and then I think
18 we'll move on.

19 THE WITNESS: My understanding that Covad has
20 requested that in 9.1.1 the following statement be
21 deleted:

22 UNES shall only be obtained through the
23 provision of qualifying services. To
24 the extent spare capacity exists, it may
25 then be used for non-qualifying

0364

1 services.

2 And I think that was Covad's concern, that a
3 UNE that's qualifying could also be used for
4 non-qualifying services and retain its UNE rate.

5 JUDGE RENDAHL: Let's be off the record for a
6 moment.

7 (Discussion off the record.)

8 BY MS. FRAME:

9 Q. Ms. Stewart, I'm going to have you read some
10 more from this proposed language. Let's call your
11 attention to page 32 of the joint disputed issues list,
12 and specifically 9.1.1.4. Are you there?

13 A. Yes, I am.

14 Q. Okay, third line from the bottom, I just want
15 you to read out loud for the record starting at the word
16 such.

17 A. (Reading.)

18 Such mixed use circuits or facilities
19 shall not be ordered or billed as
20 unbundled network elements.

21 MS. FRAME: And I think I will just have you
22 stop there.

23 Thank you, I have no more questions.

24 JUDGE RENDAHL: And I do have a few.

25

0365

1 E X A M I N A T I O N

2 BY JUDGE RENDAHL:

3 Q. And I will ask you or try to ask the same
4 questions I asked Ms. Doberneck. I didn't write them
5 down, but they go to the question of trying to find out
6 if in fact there is a disagreement in principle between
7 the parties and whether it is just language.

8 If all of the loops going into a multiplexer
9 are providing solely qualifying services, would you
10 agree that the rate for the multiplexer and the
11 transport would be at TELRIC rates?

12 A. Yes.

13 Q. If one of the loops going into the
14 multiplexer provided solely non-qualifying services, you
15 would agree that the multiplexer and the transport
16 leaving the multiplexer would be billed at tariff rates?

17 A. Yes.

18 Q. If one of the loops provided both qualifying
19 and non-qualifying services, so it is a qualifying
20 service but it is also providing non-qualifying services
21 going into the multiplexer, do you agree with Covad that
22 the multiplexer could be -- should be billed at TELRIC
23 rates?

24 A. Assuming that there were no other fully
25 non-qualifying circuits. If it was just the leftover

0366

1 spare capacity of one of the UNEs so it had
2 non-qualifying, spare capacity was being used for
3 non-qualifying and there were no other scenario, then
4 correct, the multiplexer and the transport could be
5 available at UNE rates.

6 Q. Okay. And just so that I understand the
7 technology involved here, because I think this may be an
8 issue for me, is it possible for one of the channels
9 going in, in the loop, to provide both a qualifying and
10 a non-qualifying service? Is that possible? I just
11 don't -- I mean I'm not -- technologically this isn't my
12 area.

13 A. It's a little difficult to answer that in
14 general because how the circuit's actually used by the
15 end user customer and, you know, I find it -- I think it
16 would be difficult to unilaterally say yes or no. I'm
17 just trying to think of a kind of an example.

18 This is not an example, but why I'm
19 struggling a little bit is that like some people might
20 consider a fax line a data line, and a fax line is
21 usually typically a voice or a narrow band line that
22 they happen to hook up to a fax machine and they're
23 using it for fax, but the underlying facility is a voice
24 line, and so is it a data line or is it a voice line.
25 And if you switch it between the fax machine and the

0367

1 phone -- so it's difficult to just in a vacuum respond
2 whether a line can have qualifying and non-qualifying
3 simultaneously in the same channel. I would have to
4 think through it, and it would take some type of
5 splitter I guess, and they would use some part for voice
6 and some part for some non-qualifying service.

7 Q. Okay, if --

8 A. I mean it's --

9 Q. I guess I'm just trying to figure out if
10 there is in fact a dispute in principle, and so is it
11 Qwest's view that if there is spare capacity on the loop
12 that is being used that initially qualified as
13 qualifying service going in and then the spare capacity
14 is now being used for non-qualifying service, Qwest
15 would agree that the TELRIC rate would still apply to
16 the multiplexer and the transport?

17 A. That is correct, that that was the only, you
18 know, there wasn't any totally non-qualifying circuits
19 that we threw into that.

20 Q. Okay. And so it's your -- you would agree
21 with Ms. Doberneck that this is a language issue?

22 A. That's my understanding, that in principle
23 through all that I have read and seen that the parties
24 agree on how pricing ought to be conducted ultimately,
25 it's just struggling or we feel our language of course

0368

1 is clear, but the two parties seem to be struggling to
2 agree on the exact language that captures that.

3 Q. Okay, thank you.

4 If you could look at your Exhibit 61-T at
5 page 11.

6 A. Yes.

7 Q. And beginning at line 14, that answer is, no,
8 the TRO requires requesting carriers to mingle UNEs,
9 would you agree that it's more properly read, the TRO
10 permits requesting carriers?

11 A. That's probably a better use of the --
12 instead of permits versus requires is probably a good
13 edit, yes.

14 Q. Well, would you accept subject to check that
15 looking at the TRO reference that that's what the TRO
16 says, that it permits requesting carriers?

17 A. Subject to check, yes, I would agree.

18 Q. Okay, thank you.

19 Are you familiar with Ms. Doberneck's
20 testimony, prefiled testimony?

21 A. I have read both of her direct and rebuttal,
22 yes.

23 Q. Do you have a copy of her rebuttal testimony
24 with you?

25 A. I believe I do.

0369

1 Q. And that would be Exhibit 29-RT, if you turn
2 to page 7 at lines 1 through 7.

3 A. I apologize, I don't have it marked by
4 issues.

5 Q. Page 7.

6 A. I believe I am, mine starts with the words we
7 have at the top.

8 Q. Right. Ms. Doberneck's statement indicated
9 that this subissue concerning EELs criteria may be
10 resolved. Is that -- am I not reading this correctly?

11 A. What I understand Ms. Doberneck is saying in
12 this section is that subsequent to the closing of the
13 negotiations and the starting of this arbitration, Covad
14 is subsequently interested in negotiating a EEL
15 amendment that would include high capacity EELs and
16 would include the service eligibility requirements. So
17 I believe that's what she is discussing here, that if we
18 would agree to amend the interconnection agreement with
19 EELs, including our service eligibility criteria as
20 written, then they think that would solve the issue.

21 Q. Are you aware whether any response has been
22 made to Covad on this issue?

23 A. I'm not aware if any response has been made.
24 I'm not actively involved in the negotiations.

25 JUDGE RENDAHL: Okay, I don't have any other

0370

1 questions.

2 Mr. Devaney, do you have any redirect?

3 MR. DEVANEY: Just one, thank you, Your
4 Honor.

5

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

7 BY MR. DEVANEY:

8 Q. Ms. Stewart, do you, with respect to the line
9 of questioning that Your Honor just asked, are you at
10 all familiar with whether Qwest has an obligation after
11 the Triennial Review Order and the USTA II decision to
12 provide high capacity transport?

13 MS. FRAME: Your Honor, I would object to
14 that question, it's a -- I would still go ahead and
15 object, it calls for a legal conclusion, and I believe
16 Ms. Stewart doesn't have the background to testify to
17 that.

18 MR. DEVANEY: I can rephrase the question.

19 JUDGE RENDAHL: Why don't you go ahead and do
20 that.

21 BY MR. DEVANEY:

22 Q. Do you know if Qwest as a policy and legal
23 matter and as a company believes that after the TRO and
24 USTA II it has an obligation to provide high capacity
25 transport?

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1 A. No, that USTA II vacated certain portions of
2 the TRO including portions to do with high capacity
3 loops and high capacity transport.

4 MR. DEVANEY: Thank you, that's all I have,
5 Your Honor.

6 JUDGE RENDAHL: Ms. Frame or Mr. Newell?

7

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

9 BY MR. NEWELL:

10 Q. Ms. Stewart, I believe you just testified
11 that Qwest's position is they have no obligation at this
12 time to provide a high capacity transport to CLECs
13 including Covad; is that correct?

14 A. I believe that the legal landscape of what
15 we're obligated to do and not obligated to do is
16 different between existing agreements and new
17 agreements, and for new agreements I do not believe that
18 Qwest is required to provide access to high capacity
19 transport and loops at this time.

20 Q. So if this agreement were implemented with
21 Covad's proposals in this arbitration deleting the
22 service eligibility criteria and making clear that EELs
23 are not available, would it be the case then that any
24 carrier opting in to this agreement would fall under
25 that category you just described as not being eligible

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1 to order high capacity transport?

2 A. I do not know personally the legal status of
3 opt ins of agreements at this time, and I'm not talking
4 pick and choose, I'm talking with the interim rules. I
5 don't want to go excessively there. If I could slightly
6 rephrase your question, is your question, if this
7 interconnection agreement that we're arbitrating could
8 only be picked up in its entirety, and that's where I'm
9 not sure given the current state of the interim rules
10 whether it could or could not be picked up, say it
11 could, if this interconnection agreement clearly stated
12 that EELs of no type, and the FCC actually identifies
13 three types of EELs, and that three types are new UNE
14 EELs, converted EELs, and commingled EELs, if this
15 interconnection agreement made that totally clear and
16 none of those kind of EELs were available without an
17 amendment or a different agreement, then Qwest would be
18 open to removing the service eligibility requirements as
19 I indicated in my testimony.

20 Q. Well, if we all agree that this agreement
21 does not permit a carrier to order EELs and we all agree
22 that any carrier opting in to this agreement would have
23 to take the entire agreement, although I don't know that
24 that's especially relevant to this question, and Qwest
25 believes that high capacity EELs need not be made

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1 available on a going forward basis, then why on earth
2 would we include service eligibility criteria in this
3 agreement?

4 MR. DEVANEY: Your Honor, I will object that
5 it's been asked and answered. Ms. Stewart explained the
6 concern about opt ins at some length.

7 JUDGE RENDAHL: I guess I would ask you to
8 break down your question, because I think a part of it
9 may have been answered but maybe not all of it.

10 MR. NEWELL: I will try. I think it's by its
11 very nature a complicated question to ask precisely.

12 BY MR. NEWELL:

13 Q. We all agreed that EELs are not available
14 under this agreement, did we not?

15 A. Correct.

16 Q. And Qwest believes that EELs are not --
17 they're not required to provide high capacity EELs on a
18 going forward basis. And when I say going forward
19 basis, I mean they're not obligated to negotiate an
20 agreement to provide for high capacity EELs today.

21 A. That's my understanding, yes.

22 Q. And we would agree that any carrier opting in
23 to this agreement either in whole or in part would be
24 opting in to the agreement at some date after today; is
25 that fair to say?

0374

1 A. Yes.

2 Q. Those facts being agreed to and that being
3 the case, why would the agreement need service
4 eligibility criteria?

5 A. And it's back to we in this room collectively
6 agree that there's no way you can order an EEL including
7 a commingled EEL out of this agreement, but just based
8 on my experience in working with combinations and EEL
9 amendments over the last several years, not all carriers
10 agree that you have to have 9.23, the EEL amendment, as
11 the only way to order EELs. So we felt that the
12 commingled EEL issue and high capacity EELs are so
13 critical that it is prudent to include the service
14 eligibility criteria in the event subsequently other
15 people have a different reading of the interconnection
16 agreement.

17 But as I indicated, if Covad, as I indicated
18 in my direct testimony, if Covad is open to language in
19 the interconnection agreement making it clear that no
20 EELs of any kind can be ordered, then Qwest would be
21 open to potentially removing the service eligibility
22 requirement. We want it explicit and very explicit that
23 no type of EEL could be ordered.

24 Q. When you say no type of EEL being ordered,
25 are we talking about no type of high capacity EEL, or do

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1 you have a concern about DS0 EELs as well?

2 A. The service eligibility criteria do not apply
3 to DS0 EELs, so it is the high capacity EELs, and it is
4 the fact that prior to the TRO there was only basically
5 one kind of EEL, but the TRO created the concept of
6 three different types of EELs as I have already
7 identified, so it's making sure that all the EEL types
8 identified are explicitly excluded.

9 Q. Is there something in particular you find
10 troubling or incomplete about the language in 9.1.1.5,
11 and I'm on page 22 of the issues matrix, is there
12 something you find incomplete about the sentence?

13 A. I'm sorry, what page are you on?

14 Q. Page 22, excuse me.

15 A. 22, okay.

16 Q. Is there something incomplete about the
17 second sentence of 9.1.1.5 proposed by Covad that reads,
18 CLEC will not order high capacity EELs?

19 A. The part that I was a little concerned about
20 is actually the tail end of the sentence above that, in
21 that even though you use high capacity loops and
22 interoffice transport, which I agree could be generic,
23 they could mean UNEs or they could mean tariffed
24 services, you go on to say, that do not apply to other
25 UNEs, and I felt that that qualifier up above made it

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1 sound like you were only talking about high capacity
2 loops and interoffice UNEs. So when you read it in
3 context, the complete statement, I felt that someone
4 could interpret that you were only talking about UNEs
5 and you were not talking about the other types of more
6 generic use, which would include then commingled EELs.

7 Q. So if rather than UNEs at the end of that
8 sentence you just read into the record, the term
9 services were used, a broader term there, would that
10 alleviate that concern for you?

11 A. It would start to alleviate the concern, but
12 I think if it just in plain English said, you can not
13 order any type of EEL including, and we go boom, boom,
14 the three type of EELs created by the FCC in the TRO,
15 that would be the clearest information.

16 Q. Okay, let's go with your hypothetical that
17 someone not as legally adept as all of us in this room
18 were to adopt this agreement and were to mistakenly
19 believe that they could order a high capacity EEL under
20 the language in this agreement, they would place an
21 order with Qwest for the EEL; is that correct?

22 A. Ultimately they would attempt to place an
23 order for an EEL, yes.

24 Q. And based on your understanding of Qwest's
25 ordering systems and EELs, what would the outcome be

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1 when that order was received by Qwest?

2 MR. DEVANEY: Your Honor, I'm going to
3 register an objection. This all began when I asked a
4 single question on redirect, and my question was in
5 response to Your Honor's inquiry about whether Qwest had
6 responded to this request from Covad relating to
7 negotiations. That was the sole intent of my question.
8 We're now off spending a lot of time on the EEL
9 eligibility criteria issue, which is I don't think a
10 fair flowing from the question that I asked.

11 JUDGE RENDAHL: Mr. Newell, how much more do
12 you have in this vein?

13 MR. NEWELL: Very, very brief, two minutes
14 tops depending on how long it takes Ms. Stewart to
15 answer, but it all flows back to her hypothetical that
16 she raised with respect to somebody misinterpreting this
17 agreement and understanding the effect of that, but it's
18 -- we're very near the end.

19 JUDGE RENDAHL: And how much of this could be
20 done on brief?

21 MR. NEWELL: Actually, they're factual
22 issues, I don't know whether much of this can be done on
23 brief, but I think it's helpful to have Ms. Stewart
24 explain and sort of follow through on her hypothetical.

25 JUDGE RENDAHL: I will allow very brief more

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1 on this, and then I think we need to either move on or
2 end it.

3 MR. NEWELL: Okay.

4 BY MR. NEWELL:

5 Q. So this wayward renegade CLEC would place an
6 order for an EEL, Qwest would reject that order, would
7 it not?

8 A. If they did not have the proper ordering
9 USOCs and et cetera against their contract in our
10 system, it would be rejected, correct.

11 Q. And at that point, the onus would be on the
12 CLEC to file a complaint or seek arbitration of a new
13 agreement or take some legal action to enforce what they
14 believe their right to order a high capacity EEL would
15 be; is that correct?

16 A. That's correct, they typically start with
17 more of an inside our company escalation, and it's only
18 then if they're dissatisfied or continue to be
19 dissatisfied they might go the route that you
20 identified.

21 MR. NEWELL: Okay, thank you, I have nothing
22 further.

23 JUDGE RENDAHL: Mr. Devaney.

24 MR. DEVANEY: Nothing, Your Honor.

25 JUDGE RENDAHL: I have one housekeeping

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1 matter before you all can go, and that is relating to
2 Record Requisition Number 3. I asked the parties to
3 discuss off the record and I'm wondering if there has
4 been some resolution of that.

5 MS. FRAME: Yes, there was between me and
6 Ms. Waxter, who is no longer here. I don't know if
7 Mr. Devaney was part of --

8 MR. DEVANEY: I have not, she told me it had
9 been resolved though.

10 MS. FRAME: Yes, it has been resolved. They
11 were going to produce that document as well as the Web
12 site page to Covad was my understanding.

13 JUDGE RENDAHL: Okay.

14 MS. FRAME: And once we receive it, if we
15 could still get it admitted into the record, I don't
16 know how that would work, but if we get it within the
17 day or so or within five days, do we still have the
18 ability to move?

19 JUDGE RENDAHL: Yes, you would have the
20 ability to move into the record as an exhibit the record
21 requisition response. And if you all could work on that
22 before you make the filing, then I'm sure if it's an
23 agreed to motion, then it makes it easier for me to rule
24 on. Otherwise I will send out a notice asking for a
25 response. So that's the process.

0380

1 MS. FRAME: It's my understanding that it
2 will be agreed to beforehand; is that correct,
3 Mr. Sherr?

4 MR. SHERR: We can talk about it at the point
5 that we provide it.

6 MS. FRAME: Okay, thank you.

7 JUDGE RENDAHL: With that, are there any
8 exhibits that need to be admitted or discussed that we
9 haven't discussed?

10 MS. FRAME: Your Honor.

11 JUDGE RENDAHL: We admitted 30, correct,
12 which is Ms. Doberneck's testimony in Colorado.

13 MR. DEVANEY: Yes, that's correct.

14 JUDGE RENDAHL: The entire --

15 MR. DEVANEY: That's correct.

16 JUDGE RENDAHL: And just going through the
17 list here, Ms. Frame, did you intend to offer what's
18 been marked as Exhibits 64 and 65?

19 MS. FRAME: I don't believe so, Your Honor,
20 just one second.

21 JUDGE RENDAHL: Those were the TRO excerpts.
22 The parties can refer to those even though they're not
23 an exhibit.

24 MS. FRAME: That was my question, so no,
25 that's fine, we don't need to.

0381

1 JUDGE RENDAHL: So those will be withdrawn?

2 MS. FRAME: Yes.

3 JUDGE RENDAHL: Okay.

4 MR. SHERR: Your Honor, that was 64 and 65?

5 JUDGE RENDAHL: 64 and 65, the Triennial

6 Review Order cites and the Paul McDaniel testimony

7 before the Colorado Public Utilities Commission.

8 Is there anything else we need to address

9 before I let you all go?

10 Hearing nothing, this hearing is adjourned.

11 Thank you all for appearing, and thank you, Ms. Stewart,

12 for your testimony.

13 We're off the record.

14 (Hearing adjourned at 4:10 p.m.)

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