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BEFORE THE WASHINGTON UTILITIES AND

2

TRANSPORTATION COMMISSION

3

In the Matter of the)
Investigation into)

4

U S WEST COMMUNICATIONS, INC.'s) Docket No. UT-003022
) Volume XLII
Compliance with Section 271 of) Pages 6152 to 6322
the Telecommunications Act of)
1996)

7

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In the Matter of)

8

) Docket No. UT-003040
U S WEST COMMUNICATIONS, INC.'s) Volume XLII
) Pages 6152 to 6322

9

Statement of Generally)
10 Available Terms Pursuant to)
Section 252(f) of the)
11 Telecommunications Act of 1996)

12

13

A hearing in the above matters was held on

14

December 19, 2001, at 9:30 a.m., at 1300 South Evergreen

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Park Drive Southwest, Room 206, Olympia, Washington,

16

before Administrative Law Judge ANN RENDAHL and

17

CHAIRWOMAN MARILYN SHOWALTER and COMMISSIONER PATRICK J.

18

OSHIE and COMMISSIONER RICHARD HEMSTAD and THOMAS SPINKS

19

and PAULA STRAIN.

20

The parties were present as follows:

21

THE PUBLIC, by ROBERT W. CROMWELL, JR.,
Assistant Attorney General, 900 Fourth Avenue, Suite
22 2000, Seattle, Washington, 98164-1012, Telephone (206)
464-6595, Fax (206) 389-2058, E-Mail
23 robertcl@atg.wa.gov.

24

Joan E. Kinn, CCR, RPR
25 Court Reporter

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1 QWEST CORPORATION, by LISA ANDERL and ADAM
2 SHERR, Attorneys at Law, 1600 Seventh Avenue, Suite
3 3206, Seattle, Washington 98191, Telephone (206)
4 345-1574, Fax (206) 343-4040, E-mail landerl@qwest.com;
5 and by LYNN A. STANG, Attorney at Law, 1801 California
6 Street, Suite 4900, Denver, Colorado 80202, Telephone
7 (303) 672-2734, Fax (303) 295-7069, E-mail
8 lxstang@qwest.com.

9 TIME WARNER TELECOM, XO WASHINGTON, INC.,
10 AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., and
11 ELECTRIC LIGHTWAVE, INC., by GREGORY J. KOPTA, Attorney
12 at Law, Davis, Wright, Tremaine, LLP, 1501 Fourth
13 Avenue, Suite 2600, Seattle, Washington 98101, Telephone
14 (206) 628-7692, Fax (206) 628-7699, E-mail
15 gregkopta@dwt.com.

16 WORLDCOM, INC., by MICHEL SINGER-NELSON,
17 Attorney at Law, 707 - 17th Street, Suite 4200, Denver,
18 Colorado 80202, Telephone (303) 390-6106, Fax (303)
19 390-6333, E-mail michel.singer_nelson@wcom.com.

20 COVAD COMMUNICATIONS COMPANY, by MEGAN
21 DOBERNECK, Attorney at Law, 7901 Lowry Boulevard,
22 Denver, Colorado 80230, Telephone (720) 208-3636, Fax
23 (720) 208-3256, E-mail mdoberne@covad.com.

24 AT&T, by STEVEN WEIGLER, Attorney at Law,
25 1875 Broadway, Suite 1500, Denver, Colorado 80202,
Telephone (303) 298-6508, Fax (303) 298-6301, E-mail
weigler@att.com.

17

18 ALSO PRESENT:

19 JOHN FINNEGAN, bridge line, AT&T
20 MARK REYNOLDS, Qwest
21 PEGGY EGBERT, bridge line
22 Utah Commission Staff

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1 -----
2 INDEX OF EXHIBITS
3 -----

| 4 | 5 EXHIBIT: | 6 | 7 MARKED: | 8 ADMITTED: |
|----|------------|--------------------|-----------|-------------|
| 6 | | QWEST (No witness) | | |
| 7 | 1290 | | | 6247 |
| 8 | 1291 | | | 6247 |
| 9 | 1292 | | 6275 | 6275 |
| 10 | | AT&T (No witness) | | |
| 11 | 1295 | | | 6247 |
| 12 | 1296 | | | 6247 |
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| 19 | | COVAD (No witness) | | |
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P R O C E E D I N G S

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JUDGE RENDAHL: This is our second day of presentation before the Washington Commission on Qwest's performance assurance plan and the report from the multi-state proceeding, and we had a -- we were following our agenda yesterday, and I think we're going to make a few changes this morning. We will start with the special access and other performance measures, which is Issue N, and then turn to payment level for high value services, Issue M, and then turn to Issue Q, sufficiency of payments, and hopefully we can complete those before the morning break and try to finish the other issues before we break for lunch.

14

So that's our plan, so let's turn to, before we turn to Issue N, are there any housekeeping issues that we need to address before we get started?

17

Hearing nothing, let's start. Ms. Stang, do you want to lead off the discussion on that?

19

MS. STANG: I will.

20

JUDGE RENDAHL: Okay.

21

MS. STANG: Thank you, Judge Rendahl, and

22

good morning.

23

JUDGE RENDAHL: Oh, I'm sorry, before you go ahead, there is one housekeeping matter. For the

25

record, Mr. John Finnegan from AT&T and Ms. Peggy Egbert

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1 from the Utah Commission are on the bridge line.
2 Mr. Finnegan may participate, but Ms. Egbert has
3 explained that she's just listening in.

4 So is there anyone else on the bridge line
5 besides Ms. Egbert and Mr. Finnegan?

6 Okay, hearing nothing, go ahead, Ms. Stang.

7 MS. STANG: Thank you.

8 By way of some background, we first received
9 a request for special access performance measurements to
10 be put into the performance assurance plan in comments
11 that we had filed in front of Mr. Antonuk for his
12 review. We had come a long way down the funnel on the
13 PAP development by that time. We had had our PAP
14 workshops in which we had agreed to certain principles,
15 including the fact that we would use the ROC PIDs as the
16 foundation for the PAP. We had on numerous occasions
17 negotiated what the ROC PIDs would be, which of those
18 ROC PIDs would actually be included in the PAP, and as I
19 think I indicated, we included the majority of them.
20 Special access was never a ROC PID, and it was never
21 asked for in the ROC PAP collaborative as we were
22 discussing what performance measurements should be in
23 the PAP, and to my recollection they were never a part
24 of any of the CLEC plans that have been filed. Keep in
25 mind that in the PAP collaborative, there were a number

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1 of plans in addition to Qwest's that were filed and
2 asked for consideration. In other words, CLECs had
3 their favorite plans on the table too, and we all ended
4 up agreeing to work from Qwest.

5 But the point I want to make is it just
6 wasn't in sight. And, in fact, the issue had come up in
7 the ROC OSS collaborative at one point when the parties
8 were developing PIDs, I mean way back when OP-3s and 4s
9 were being developed. At one point, there was a request
10 to consider special access in the ROC PIDs, and it was
11 resisted by us and the collaborative in general. And
12 the requester, who was ELI, finally withdraw that
13 request. The view, and this is in testimony in the ROC
14 PEP, in the ROC hearing in front of Mr. Antonuk, that
15 the collaborative felt, and certainly Qwest felt, that
16 that wasn't a 251 issue, so it was not developed in that
17 process.

18 As I said, we then went through the PEP
19 process, no one ever asked for special access. So we
20 were really faced with this for the first time in the
21 Antonuk hearing. And we obviously believe that this is
22 a wholly inappropriate thing to include in a PAP. It
23 wasn't appropriate in the ROC PIDs, because it wasn't a
24 251 issue. It's not appropriate in a ROC PAP either,
25 and the reason is the -- what the CLECs are asking of us

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1 is to include and pay penalties on orders for special
2 access that they purchase out of our retail tariffs, and
3 predominantly out of our FCC tariffs.

4 The testimony in the record in the ROC in
5 front of Mr. Antonuk is that for XO and ELI, I believe,
6 that the majority of their purchases are out of the FCC
7 tariff. They admitted that. Our witness, Ms. Stewart,
8 testified to the fact that 97% of the channel
9 terminations that -- for special access that we provide
10 is out of the FCC tariff. So the issue is there's
11 interstate traffic running off those tariffs, and if you
12 incorporate that into a performance assurance plan,
13 which is meant to keep backsliding for the purposes of a
14 local market, we're paying for provisioning of orders
15 that are off the interstate tariff governed by another
16 jurisdiction and carrying traffic that are not -- is not
17 local traffic. Now you will hear --

18 CHAIRWOMAN SHOWALTER: Can you just explain
19 to me, why is including special access as a measurement,
20 why does that translate to having to pay for it, since
21 we had discussion yesterday about there's some things
22 that are just in the PAP for which there is no recovery?
23 Are those two separate issues, whether you report within
24 the PAP versus whether you pay, or they're one and the
25 same?

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1 MS. STANG: To me, they're one and the same.
2 I mean the purpose of having a measure in the PAP is
3 that it will get a payment. And actually, it's not
4 really precise to say that the measures in the PAP that
5 are diagnostic, that measures that are diagnostic are
6 actually in the PAP. The way that we really approached
7 this is to say, for some measures that are already in
8 the PAP like OP-3 and 4, if they have submeasurements
9 that are diagnostic and they received a standard, they
10 come in. I mean if they're just a part of what's
11 already sort of the skeleton of the PID, they come in.

12 Now those -- so there is a -- there is an
13 expectation that when they get a standard, they will get
14 a penalty. I mean there's not a purpose of having in my
15 mind a measurement in the PAP that doesn't get a
16 penalty, because that's -- it's a penalty plan. So our
17 concern is that if you start just to measure it, what is
18 that for. I mean what's the end gain there,
19 particularly if you're measuring -- you're producing
20 results that someone expects -- I mean the purpose of
21 the results in the PAP is that we make self executing
22 penalties on them and that they're standards we agree to
23 be governed by.

24 Now what you will hear from the CLECs is,
25 well, gee, we use special access to provision local

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1 service, so we think that it's local and we need to --
2 we need to measure it as the PAP, as part of the PAP,
3 and there are a couple of problems with that argument.

4 Number one, there's no way for us to ever
5 know -- let's assume what they're saying is true, that
6 they use special access that they purchase out of
7 interstate tariff to provision local service. Let me
8 start by saying the FCC has said, well, we understand
9 that, and furthermore we understand you may even use
10 that to provision local service in lieu of a UNE, but
11 we're going to tell you two things, and they said this
12 repeatedly, it's not a 271 issue, it's not a public
13 interest issue. They said that specifically, actually
14 it's at the Bell Atlantic order at Paragraph 335, I'm
15 sorry, Massachusetts at Paragraph 335, I'm sorry, SBC at
16 335, and for the Verizon Massachusetts at Paragraph 156.
17 And it's in my presentation if you look at page 18,
18 there's a quote there. And they have also said, you
19 know, it's not -- it's not -- we don't even -- aren't
20 going to consider it a 271 issue even if you use it in
21 lieu of UNEs, okay.

22 And they further said, you even have a way of
23 using -- of having special access dealt with as a UNE by
24 converting. The FCC does have a rule that allows
25 conversion if there's a significant local traffic and

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1 you can show that, and then that traffic gets converted
2 to EELs, and EELs are in our performance assurance plan.
3 Now some of them are diagnostic and -- right now, and
4 I'm going to tell you why and what that means, but some
5 are not. And under our agreement, we would incorporate
6 submeasurements of PIDs that are diagnostic into the
7 plan once they get standards. That happened in the ROC
8 OSS collaborative recently, and they will come in as
9 payment opportunities in the PAP.

10 So those are three things that the FCC has
11 said about the relationship or the treatment of special
12 access, and those are three important reasons why we
13 should not be treating special access blatantly and just
14 sort of taking measurement for traffic that we purchase
15 off or that they purchase off the FCC tariff. It's not
16 271, and to the extent that there is some local
17 implications to it, the FCC has said how we're going to
18 do it. You convert it to EELs, you show a significant
19 amount of traffic, you convert it to EELs, that will
20 come into our PAP, and that's the appropriate way to
21 treat it.

22 That's not what they're asking for. They're
23 asking that we measure every order that they buy out of
24 our FCC tariff, every order, and that at -- for some
25 purpose, and right now what they're arguing is that

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1 they're -- it should be a payment opportunity in the
2 PAP. Or at least I think their first -- that's their
3 first line of -- first request. Their second position
4 is, okay, we'll just measure it if you don't want to
5 actually penalize it, but I mean what -- the end game
6 here is they want to provision that through special
7 access, and they want for us to pay when we don't meet
8 some defined standard.

9 There's a document that's not in the record
10 but -- well, I think it is in the record. I think
11 WorldCom even attached it to their comments. And it is
12 a document from the ROC OSS collaborative where they
13 were addressing what measurements need to have
14 standards. And the outcome of that was that there will
15 be some EEL measures that were previously diagnostic
16 that will have standards. The standards were --

17 JUDGE RENDAHL: What document is that that
18 you're referring to?

19 MS. STANG: I believe --

20 JUDGE RENDAHL: Exhibit D?

21 MS. STANG: Let me show it to them so I make
22 sure we're talking about the same document.

23 JUDGE RENDAHL: Let's be off the record.

24 (Discussion off the record.)

25 JUDGE RENDAHL: Please go ahead.

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1 MS. STANG: Okay, and a lot of this is not
2 relevant to this proceeding, but for the purpose of the
3 EELs, you can see that the standard was devised and
4 agreed to for OP-3, 4, oh, I'm sorry, OP-3 and 4, oh,
5 just OP-3, take that back, OP-3, the standard is 90%
6 and --

7 CHAIRWOMAN SHOWALTER: I'm sorry, can you
8 direct us what cell to look at?

9 MS. STANG: Page 2, and the cell at the very
10 beginning under PID numbers, you can see OP-3, 4, 5, and
11 6.

12 CHAIRWOMAN SHOWALTER: Thank you.

13 MS. STANG: Okay, and if you follow across,
14 then you see categories applicable and you see EELs, and
15 the current standard was diagnostic, and you can see
16 that for OP-3 there's now going to be a 90% standard.
17 And if you also look, there are other places that we
18 have EELs, for instance, back down on the left-hand
19 column if you follow down under PID numbers, you see
20 that we have EELs as a submeasurement identified for
21 maintenance and repair, but it remains diagnostic.

22 And the significance of this is, you know, we
23 had a group collaborative with all the parties who are
24 sitting before you, and they could have argued for a
25 standard there. And if they argued for a standard,

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1 there would have been more of these EEL categories that
2 come into the PAP. But they agreed that the standard,
3 the appropriate standard right now would be for just
4 OP-3.

5 CHAIRWOMAN SHOWALTER: Well, I think this
6 gets back to my earlier question. It seems that there
7 are clearly three possibilities: Don't include any of
8 this in the PAP, include a measure as diagnostic only
9 with no standard, and then diagnostic with a standard.
10 And between the last two, I tried to get a sense of -- I
11 was making -- trying to make that distinction, but I
12 thought you said there is no distinction, but it seems
13 that there is a distinction.

14 MS. STANG: It still -- it's still the
15 premise that the PAP is a remedy plan. And once we, you
16 know, put these in the PAP, then they're going to have a
17 payment opportunity. Can't take them out I mean or I
18 guess what was the purpose of putting them in. So we --
19 now -- and my -- so the answer is the -- because of the
20 expectations that there will be a penalty associated
21 with performance measures that are in the PAP, it
22 shouldn't come in even as diagnostic.

23 And from a technical perspective, again, we
24 don't include diagnostic measures in the PAP. If you
25 look in the way the PAP treats measures, they're ones

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1 that you have to have a standard to have a penalty. So
2 if they're measured, if the PAP document says we're
3 going to include special access even if you don't now
4 put a standard to it and a payment, the expectation is
5 if it's not -- it's in that plan, it's a part of the
6 plan and that there would be a standard and a penalty
7 associated with it.

8 CHAIRWOMAN SHOWALTER: Well, I guess I don't
9 know that this is appropriate here or not, but we do on
10 occasion require disclosure of statistics, and we put
11 them on our Web site, et cetera, and we view that as
12 having a positive effect on companies because they don't
13 want to be shown to be the worst in the state or
14 whatever. And it just stops there so that sunshine has
15 its own effect in some contexts. Is that -- is it
16 appropriate or not in a backsliding prevention document
17 to take the step of disclosure. Obviously I think
18 you're quite correct, it could lead to the next step if
19 the disclosure determines that this is a big problem and
20 whatever this -- whether whatever the substance is
21 belongs in a PAP.

22 MS. STANG: I would -- I would say there's
23 nothing to prevent you. Keep in mind, we're talking
24 about services that they either purchase out of tariffs
25 but this Commission governs. I mean -- and so to the

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1 extent that what -- in part, I mean 3% would be. So I
2 guess what I would say to that is, yes, I think the risk
3 is there, and it is for the reasons I stated a problem
4 and objectionable. I would also say there's nothing to
5 prohibit this Commission and, what I want to talk about
6 in a minute, the FCC from doing whatever is in their
7 authority to do it otherwise, and I would say that's the
8 approach to take.

9 One thing that's very significant about this
10 is the FCC has just opened a rule making, an MPRM, on
11 this very issue, and it is for the same reasons or
12 concerns. It is over provisioning concerns. But what
13 we have said is, if you have that, it's really a
14 service, it's just out of tariffs, and in some
15 instances, and primarily in, where these CLECs purchase
16 it, an FCC issue. So, in fact, AT&T was a big proponent
17 of going to the FCC and saying, you need to do something
18 about this. At the same time, you have other CLECs
19 coming to the state saying, you need to do something
20 about this. So the MPRM basically is going to
21 investigate a host of issues, but the FCC has said, this
22 is, you know, this is something we're going to
23 investigate, and it's their jurisdiction from our point
24 of view, and that's what the state should do, is to
25 allow the FCC to deal with tariffs under their

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1 jurisdiction.

2 Now I will point out, I mean I'm sure this
3 will be raised here, and that Phil Weiser as the Special
4 Master in Colorado agreed with us, and he said, this
5 isn't a 271 issue. I mean he didn't agree with us, he
6 said it on his own, but he agrees that it's a 271 issue.
7 He said, you know, there is probably some validity in
8 looking at this, but the states, he was talking to
9 Colorado then, should work with the FCC in conjunction
10 with, you know, how are we going to deal with this, it's
11 not a PAP issue, it's not a 271 issue.

12 Chairman Gifford asked us to put special
13 access in the PID to do what you're saying, measure it,
14 you know, I will think about penalties later, but
15 measure it. And that -- for the same reasons I just
16 explained to you, we said, we don't think that's
17 appropriate. We said, you know, you've got this MPRM
18 going on in the FCC, and you may have some state, you
19 know, although it's deregulated, special access in many
20 states is deregulated and I honestly don't know in
21 Washington, but the point is some states have --
22 regulate it very loosely, but they can still exercise
23 whatever oversight they have over that independently.

24 We're not saying we can tie your hands to
25 that, but this is a performance assurance plan that is a

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1 backsliding plan. What did you have to do to get here.
2 What, you know, what -- so that should define what the
3 backsliding relates to. We didn't have to show how we
4 provision special access to get here. In fact, the FCC
5 said time and time again, we don't care about that for
6 271 purposes. And now you've got another venue looking
7 at this to say, well, okay, we're going to, it's our
8 issue, we're going to look at it. So all of this seems
9 in our mind to say, that's not a good idea here, and we
10 really do object to it. We have that on one of the
11 issues we have raised to the full commission in
12 Colorado.

13 JUDGE RENDAHL: Ms. Stang, can you take just
14 another minute or two, we want to move on to other
15 parties.

16 MS. STANG: Surely. I will talk about in a
17 minute, there's some practical issues too, and one of
18 the things the FCC is going to look at is to say, well,
19 wait a minute, how can we even, you know, what are the
20 measurement issues about this. Again, this just never
21 came up. We don't know how we would even begin to
22 provide meaningful measures or that we could, you know,
23 have a way, a path to that. And I may have another
24 comment or two, but I will hold it for rebuttal if
25 that's okay.

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1 JUDGE RENDAHL: Okay, thank you.

2 Mr. Kopta.

3 MR. KOPTA: Thank you, Your Honor.

4 One of the aspects of the QPAP that the
5 Commission needs to look at is whether it provides some
6 assurance to CLECs that use a variety or different CLECs
7 that use different forms of entering into the local
8 exchange market in the state of Washington not solely on
9 resale, not solely on UNE-P, not solely on facilities,
10 but that CLECs that choose whatever entry strategy
11 that's authorized under state or federal law have some
12 opportunity to have the obligations that this Commission
13 has established enforced. Interestingly enough, Qwest
14 takes the position that the Commission should encourage
15 facilities based competition. But as the QPAP is
16 currently configured, it's exactly those competitors
17 that are left out of the QPAP that have very little, if
18 any, ability to enforce the obligations that this
19 Commission has established.

20 We put in a substantial amount of evidence,
21 testimony of Mr. Knowles on behalf of XO, which is
22 Exhibit 1265 and 1266-C, as well as the testimony of Tim
23 Kagele on behalf of Time-Warner Telecom, which is
24 Exhibit 1267, that goes into this in more detail. But
25 in general, these carriers have all constructed their

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1 own networks. They each have one or more switches in
2 Washington. They have fiber optic rings that they have
3 constructed connected to those switches. And they rely
4 on Qwest primarily to get interconnection and to get
5 last mile connectivity, essentially loops. And within
6 that category, it's largely high capacity circuits, DS1,
7 DS3 type circuits, both loops and on occasion transport.

8 And unfortunately, the only way that we have
9 been able to get those circuits is out of special
10 access. They have not been available as UNEs.
11 Initially Qwest refused to provide them as UNEs and only
12 recently has said that it will provide them as UNEs, but
13 the problem is that there are a number of restrictions
14 on the ability to use the same facilities to provide
15 both UNEs and special access. And we have discussed
16 this in Workshop III already, and I won't repeat that
17 discussion here.

18 So what we're left with is the vast majority
19 of circuits that facilities based providers obtain from
20 Qwest come out of the special access tariff. They're
21 not in the PAP. We have no recourse under the PAP for
22 problems that arise with provisioning maintenance and
23 repair of those circuits. And so we have proposed that
24 those be included, not because it's a tariff service,
25 but essentially because this is the only way we have of

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1 providing local service in the state of Washington.

2 The numbers that Qwest has on performance
3 bear us out. Qwest has yet to provision a DS3 loop in
4 the state of Washington, zero. The number of EELs that
5 Qwest has provisioned in the state of Washington through
6 August, nine. They say they're available, they're not.
7 I mean as a practical matter, they're not available, and
8 so this is what we're left with. We have to get them
9 out of the special access tariff if we're going to get
10 them.

11 And if the Commission is concerned about the
12 ability of competitors to provide local exchange service
13 in the state of Washington, then it should be concerned
14 about these circuits. I mean XO, ELI, and Time Warner
15 provide a significant amount, if not the majority, of
16 competition to Qwest on a facilities basis in the state
17 of Washington. So how can a QPAP be in the public
18 interest if it excludes the very carriers that are
19 providing a competitive alternative to Qwest service.

20 One of the things that Qwest has said is a
21 problem is jurisdiction. Commission, you can't -- you
22 can't do anything about this. Well, that certainly
23 didn't slow down Chairman Gifford. As Ms. Stang eluded,
24 he didn't agree that these should be included in the
25 QPAP in terms of payment obligations, but he concluded

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1 that they should be measured, as the Chairwoman
2 suggested, sort of the sunshine approach, that if we
3 show what the performance is, then that in and of itself
4 may be sufficient to ensure that there is comparability
5 of service quality between those circuits and other
6 types of services. And if that's what the Commission
7 would be inclined to do, we would certainly ask that at
8 the minimum that we get some kind of report.

9 And Qwest also says, oh, gee, there's a
10 problem, we don't know how to measure these. Well, I
11 find that interesting, because if you look at the PIDs,
12 the performance indicators, the standards for DS1 and
13 DS3 circuits, whether they're as loops or as transport,
14 is parity with retail private line. Now retail private
15 line includes special access, so in their performance
16 reports that you have been getting from Qwest, they
17 include reports on special access, because they're
18 comparing it against the high capacity loops to the
19 extent that they provide any. Or even if they don't,
20 they're still providing measures.

21 So from a jurisdictional standpoint, Qwest
22 doesn't seem to make any distinction from the fact that
23 these are from the FCC tariff, because they're providing
24 it to you as a comparative to local service. They're
25 saying, here's how we provision all of high capacity

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1 service, including those that are provisioned out of the
2 FCC tariff, against how we provision UNEs in the state
3 of Washington. So Qwest already includes FCC tariff
4 services in its reports, and it reports on its
5 performance.

6 What it doesn't do is disaggregate that from
7 -- because from their point of view, a tariff is retail.
8 Now, you know, ELI obtaining a special access circuit
9 out of the FCC tariff to provide local service is not a
10 retail customer, and yet that performance is included in
11 their retail parity measure. And that unfortunately
12 causes a lot of problems, not only because we don't see
13 how carriers are treated apart from end users, but
14 because it actually masks an opportunity for
15 discrimination.

16 And just to give you a numeric example, let's
17 say that a DS1 UNE is provisioned in 10 days, and Qwest
18 provisions a DS1 special access circuit in 15 days, and
19 then Qwest provisions an end user private line circuit
20 in five days. They use an average on their retail
21 waiting, so their average is going to say, hey, we
22 provision our retail service within 10 days and our UNE
23 within 10 days and so we have parity. When, in fact,
24 they're providing UNEs in 10 days, special access in 15
25 days, so the competitors are getting the short end of

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1 the stick, and yet the end user is getting a
2 significantly superior service where all of a sudden
3 they're saying there's parity, when, in fact, there is
4 not.

5 And so by including special access measures
6 in the performance -- in the QPAP, the Commission at a
7 minimum if you -- even if you don't have penalties
8 associated, can see whether that's happening. You can
9 say, okay, here's your special access performance,
10 here's your UNE performance, and here's your end user
11 performance, so that you can see whether there is
12 parity, true parity, if what you want to find is parity.

13 The other issue other than special access is
14 EELs, and that was the one that Ms. Stang also spent
15 some time talking about. There has been one measure
16 that has been included as there's been a bench mark
17 established so I'm assuming a payment opportunity, but
18 there are several others that continue to be
19 "diagnostic". And the problem that we have there is two
20 fold.

21 Number one, an EEL is nothing more than a
22 combination of a loop and transport. You get payment
23 opportunities and measures for a loop, you get payment
24 opportunities and measures for transport. There is
25 absolutely no reason why you can't have those same

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1 things when all you're doing is combining the two
2 elements together. It's ridiculous to say that all of a
3 sudden an EEL becomes a new product that we have to do
4 some diagnostic measures on when we have been dealing
5 with loops and transport since day one.

6 The second problem is that Ms. Stang didn't
7 explain to you that a diagnostic measure when it becomes
8 a standard is not automatically incorporated into the
9 QPAP. At some point the QPAP is frozen, shortly before
10 it's filed with the FCC, I believe. And any other
11 changes have to come through the six month review
12 process. So let's say that Qwest has filed with the
13 FCC, and then there's a decision that there's going to
14 be a conversion of a diagnostic measure to a bench mark.
15 That's not automatically incorporated in the QPAP. You
16 have to wait until the six month review process, which
17 happens after the FCC has approved their application and
18 the QPAP goes into effect as it's currently structured.
19 So, you know, even if Qwest files with the FCC early
20 sometime in the second quarter of next year, we're not
21 looking at getting any conversion from a diagnostic to a
22 bench mark even if that happens on a measurement side
23 into the QPAP until sometime in the following year. So
24 that's, from our perspective, that causes some real
25 heartache, because you will have a standard, and as we

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1 discussed yesterday, you don't get any relief, any
2 outside of the QPAP, and you don't get any relief inside
3 of the QPAP.

4 So those are really the issues from our
5 perspective that are problematic with respect to special
6 access and EELs.

7 COMMISSIONER HEMSTAD: I have a question, and
8 I'm looking at the materials from Qwest and the comment
9 of the FCC, reading, the FCC has repeatedly made clear
10 that it:

11 Does not consider provisions of special
12 access services pursuant to tariffs for
13 purposes of determining checklist
14 compliance equally. There is no need to
15 consider the provision of special access
16 in context of the public interest
17 requirement.

18 What is your reaction to that in what we're
19 talking about here?

20 MR. KOPTA: My reaction is that that's
21 certainly what the FCC has said, and naturally we're
22 disappointed that that's what the FCC has said. What
23 we're saying to this Commission is that may be the
24 floor, but it's not the ceiling. What the Commission
25 needs to look at here is how is local service

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1 provisioned in the state of Washington. And today, a
2 good part of it, if not the majority of it, is
3 provisioned using at least in part special access
4 circuits. And so I think in this state, I don't know
5 what it's like in New York or Massachusetts or Texas,
6 but in Washington, those are the circumstances that we
7 deal with here today.

8 And, you know, obviously the FCC is thinking,
9 okay, we're not going to deal with that here, and that's
10 really what they're saying in their orders, we're not
11 going to deal with that here, we're going to deal with
12 that someplace else, and they have issued an MPRM. The
13 problem with the MPRM is that one of the questions that
14 they're asking is, should we even do anything about
15 this. So we could be sitting here a year from now not
16 having heard anything from the FCC or having heard from
17 them saying, well, yeah, there are a lot of issues, and
18 we just won't do anything about it right now. In the
19 meantime, all we have are special access circuits to be
20 able to provision local exchange service, and we're not
21 getting the kind of service that we should be able to
22 get to be able to provide an effective alternative to
23 consumers in Washington. Thank you.

24 JUDGE RENDAHL: Is there any other party who
25 wishes to comment on this issue?

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1 MS. NELSON: I would like to, WorldCom.
2 Commissioner Hemstad, in response
3 specifically to your question, I looked at the cites
4 that are in Qwest's slide, and those discussions are
5 about different various checklist items, but the
6 specific one on the public interest piece of that, that
7 quote is in a footnote, and it was within the context of
8 a discussion of Section 272, so there wasn't a real
9 fully developed discussion of the issue of how special
10 access affects the public interest analysis.

11 The other thing that I thought about when I
12 looked at the FCC orders on this issue was it looked
13 like what the FCC was doing was evaluating arguments
14 made at the FCC where the state hasn't already made a
15 recommendation that special access should be included in
16 the PAP, you know, in either in the way that
17 Commissioner Gifford would like to see it included or in
18 some way where penalties would be attached to it. So I
19 haven't seen an analysis from the FCC where the state
20 has actually included special access in the PAP, and I
21 -- and so we don't know what the FCC would do with that
22 once it got there.

23 MS. STANG: May I ask, Ms. Singer-Nelson, are
24 you representing that there are states with PAPs that
25 have special access?

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1 MS. NELSON: No.

2 MS. STANG: Okay, because your comments
3 seemed to indicate that you thought that the FCC's view
4 was conditioned on a situation where they had special
5 access in the PAP.

6 MS. NELSON: No, not at all, no, that wasn't
7 what my argument was at all.

8 JUDGE RENDAHL: I would like all the comments
9 to be directed to the Bench.

10 MS. STANG: I apologize.

11 CHAIRWOMAN SHOWALTER: I have a question of
12 Mr. Kopta.

13 MS. NELSON: Sure.

14 CHAIRWOMAN SHOWALTER: Mr. Kopta, at the --
15 toward the end of your comments, and I actually think at
16 the beginning too, you said, and they meaning certain
17 CLECs, are not going to get relief outside of the QPAP.
18 Why is that?

19 MR. KOPTA: We had the discussion yesterday
20 that if something is measured and included within the
21 measures that the QPAP addresses but there's no payment
22 opportunity, it is included because of the --

23 CHAIRWOMAN SHOWALTER: Because of the
24 contractual obligations?

25 MR. KOPTA: Right.

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1 CHAIRWOMAN SHOWALTER: Okay, thank you.

2 JUDGE RENDAHL: Okay, Ms. Stang, just a few
3 minutes on rebuttal, and then Mr. Spinks has a few
4 questions, and then I think we need to move on.

5 MS. STANG: Okay.

6 MS. NELSON: Excuse me, Judge, I haven't
7 finished. I just wanted to respond to the
8 Commissioner's question.

9 JUDGE RENDAHL: Okay.

10 MS. NELSON: But WorldCom actually addresses
11 this issue in the brief extensively, but I did want to
12 go through some of the arguments. WorldCom does think
13 that this is part of the public interest analysis, and
14 the reason is once Qwest is ultimately granted 271 long
15 distance authority, it will have increased incentive to
16 provide poor performance on these very key circuits to
17 its competitors in favor of its own retail customers, so
18 it's going to affect the competitive aspects of both the
19 local market and the long distance market here in
20 Washington.

21 Now several states have ruled that special
22 access services should be measured. Colorado's, you
23 know, Commissioner Gifford's recommendation is the only
24 place where that's been in the context of the 271 case.
25 But in Texas after the 271 case had gone through, Texas

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1 recognized that access should be a level of
2 disaggregation for UNE measures when access is ordered
3 in place of UNEs, just like Commissioner Gifford did,
4 and that's currently under arbitration in Texas. New
5 York, after the 271 docket was over, they addressed
6 special access as a separate matter. The New York
7 Commission concluded its investigation and found access
8 critical to businesses and to CLECs for local
9 competition and that Verizon continued to be the
10 monopoly provider of the last mile facilities. The New
11 York Commission found that access service provisioning
12 was poor and discriminatory to CLECs compared to the
13 ILEC retail customers and held all access circuits
14 should continue to be reviewed subject to performance
15 reporting. And then in our brief --

16 JUDGE RENDAHL: Do you have a cite for that,
17 or is this in your brief?

18 MS. NELSON: It's in our brief.

19 And then Massachusetts, again, not in the 271
20 docket, but the commission ordered Verizon to report to
21 the Commission on its performance on both interstate and
22 intrastate access circuits. In Indiana, the Indiana
23 Commission issued a guidance to the parties in --
24 actually in the Ameritech PAP proceeding and expressed
25 its tendency to include special access in the PAP. And

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1 then we all know about what Commissioner Gifford is
2 recommending in the Colorado case.

3 Now the issue of this Commission's
4 jurisdiction over access services purchased out of the
5 interstate tariff was addressed very extensively by the
6 Commission in the AT&T special access complaint
7 proceeding. And this Commission found that it did have
8 jurisdiction over those circuits even if it was
9 purchased out of the interstate tariff. And it -- the
10 argument there was on mixed use facilities where there's
11 both interstate and intrastate traffic going over a
12 facility, it only needs to contain 10% interstate
13 traffic to be classified -- to be purchased out of the
14 interstate tariff. So this Commission said, since there
15 was intrastate traffic flowing over those circuits, it
16 had jurisdiction to require good quality of service on
17 that circuit.

18 Now in response to some of Ms. Stang's
19 arguments, the parties did start -- if the -- I don't
20 think it's significant that the parties didn't talk
21 about special access a lot at the beginning of this
22 process. However, if the Commission were to find that
23 was significant that the parties had just started
24 bringing it up later, in fact, WorldCom did raise it at
25 the very last meeting of the PEP collaborative when it

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1 was -- when it was -- when Qwest walked away from the
2 PEP collaborative, so it was raised at that time.

3 Now on the -- in response to the argument
4 about the purpose of the PAP having self executing
5 penalties, I think the Commission could, like
6 Commissioner Gifford, refuse to look at the PAP in that
7 narrow way and agree to -- there's nothing preventing
8 the Commission from agreeing to have measurements
9 included in the PAP on special access services but not
10 attach penalties to that at this time. There's nothing
11 preventing the Commission from doing that.

12 As far as the issue of the FCC looking at
13 special access services right now, as Mr. Kopta said,
14 the Commission's just beginning its process, and the
15 process is slow, problems exist currently, and we need
16 the -- we need some kind of relief now, particularly if
17 Qwest were to get into the long distance market prior to
18 there being any standards set by the FCC for special
19 access services. Because again, it's -- they're very
20 important services to both local and long distance
21 competitors, and if there -- there is definitely an
22 incentive, a natural incentive, for Qwest as a monopoly
23 provider and a competitor to provide better service
24 quality to its retail customers than it is to its --
25 than it has to its wholesale customers. So if the

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1 standards aren't in place until, you know, sometime a
2 couple of years from now, we will lose a lot of ground
3 in that initial time where Qwest has actually entered
4 the long distance market. So WorldCom would ask that
5 the Commission start reviewing its service quality,
6 Qwest's service quality now and not wait until the FCC
7 does something.

8 I'm just thinking about whether I have any
9 more responses to what Ms. Stang said. Well, so in
10 closing, I think it is -- it should be part of the
11 Commission's review of the PAP. WorldCom thinks for the
12 reasons expressed in the brief and the reasons I
13 highlighted today that it should be included in the PAP.
14 WorldCom would like there to be attached penalties, but
15 there -- but at a minimum, we would like to see special
16 access included so that the service quality is measured,
17 and you could actually do as Commissioner Gifford is
18 recommending the Colorado Commission do.

19 Thank you.

20 JUDGE RENDAHL: Thank you.

21 Ms. Stang.

22 MS. STANG: Briefly.

23 JUDGE RENDAHL: Briefly.

24 MS. STANG: What Mr. Kopta said is not true.

25 There is no reason that they can not purchase the

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1 combinations, UNEs, to provide the service that they
2 want to provide. The reason that there aren't the kinds
3 of measurements that he eludes to is the CLECs aren't
4 purchasing it. They don't want to purchase it through
5 UNEs. Yes, there was a time in which we weren't
6 offering it, but we do now, and there's absolutely no
7 reason they can't do it, and I understand that actually
8 his clients are interested in doing conversions and have
9 been talking to Qwest about that. With respect -- and
10 they could do other things too. They could purchase it
11 out of the local tariffs if they're so concerned about
12 it.

13 But the end game here is they want the
14 convenience or the benefits that they have or believe
15 they have purchasing it out of the federal tariff,
16 including lower prices, and want us to pay for things
17 that have nothing to do with local service. Ms. Singer
18 says, well, yes, you could have some local traffic
19 riding on that FCC tariff, but you could have interstate
20 traffic, and we can't tell what part is what. They
21 can't -- they don't like that they can't distance
22 themselves from what the FCC has said on this matter,
23 and they have said nothing compelling that should make
24 you distance yourself or reject what the FCC has said so
25 far as well.

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1 With respect to the diagnostic measures, I
2 meant to emphasize this, and if I didn't, these parties
3 sat at the table at the ROC collaborative, and if they
4 thought there should be diagnostic standards for EELs,
5 they should have made that affirmative proposition or
6 proffer, but they didn't. Maybe that was their strategy
7 not to. In the end, what we have said about diagnostic
8 measures, including them in the PAP, is that we will do
9 it up through this ROC process, and then we will do it
10 at the six month review. There's really no other
11 opportunity. It's not going to happen in between. But
12 again, if they thought that there was a concern that
13 something was going to be -- I mean if they're thinking
14 there's going to be a need to -- an impending need to
15 have a measure go from diagnostic to a standard before
16 the first six month review, why weren't they in the ROC
17 OSS collaborative saying, no, I want this standard now.
18 They could have taken that to the steering committee, to
19 an independent decider, and they knew we had made a
20 commitment to roll that through the PAP. They didn't.

21 With respect to the right under the PAP to
22 sue for special access, we made this clear in our
23 collaborative to their responses for requests for
24 admissions. We're not saying they have -- are precluded
25 from pursuing remedies for things that aren't covered,

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1 i.e., special access. We made it -- I mean there are
2 things -- you can take that to an absurd conclusion. I
3 mean we have said personal injury, property damage,
4 intellectual rights. Those things may be in the SGAT,
5 but they're not covered by the PAP. We're not saying we
6 preclude all your rights to that. We made it clear it
7 didn't preclude special access, so Mr. Kopta should
8 understand that. If you ignore the FCC MPRM, what we're
9 going to end up with potentially is standards that
10 conflict, because the FCC certainly thinks they have
11 jurisdiction over special access purchased out of their
12 tariff.

13 Finally, I'm not going to go through this,
14 but I -- we have addressed the so called precedent that
15 Ms. Singer-Nelson refers to, and it's not. If you take
16 a look at the cases, they sort of glommed together as
17 sort of an utter -- for the proposition that states are
18 doing what they urge you to do, you will see that that's
19 not true. Number one, these states including
20 Massachusetts said they have no jurisdiction over the
21 federal. They're looking at it but not assuming that
22 they have jurisdiction for under FCC tariffs. If,
23 again, if you look at these dockets, you will see they
24 have nothing to do with 271. They are local or dockets
25 that the commission initiated under their own

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1 jurisdiction.

2 And, you know, we said that to Chairman
3 Gifford, if you think that they need to look at this,
4 open up some sort of informal investigation, but it's
5 not a PAP issue. And if that's really what these CLECs
6 are looking at, then they shouldn't -- and what they
7 want, they shouldn't be afraid, they shouldn't be
8 insisting that it come into the PAP. And I would refer
9 you to our comments on that. Again, Texas is
10 arbitrating. There has not been any state today which
11 has included a PAP. Indiana, there is a recommendation
12 from staff to look at it, but again, it's not -- there's
13 not been a determination, and I think this MPRM is going
14 to affect dramatically all the movements which has been
15 initiated by CLECs to have it included, because the FCC
16 has said, we have jurisdiction over our tariffs, and
17 we're going to look at these things, and that's where it
18 should be dealt with.

19 Thank you.

20 JUDGE RENDAHL: Thank you, I know Mr. Spinks
21 has a few questions.

22 MR. SPINKS: At least one. Qwest and the
23 CLECs are at impasse over whether performance measure
24 PO-2(b) should be included in the QPAP, and I'm
25 wondering how that issue, assuming that the steering

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1 committee and executive committee decide that it's most
2 appropriate for each state to decide that individually,
3 how does that issue get before us; would there be a
4 paper record?

5 MS. STANG: Would you like me to answer that
6 first, Mr. Spinks?

7 JUDGE RENDAHL: Yes.

8 MS. STANG: I would like to distinguish a
9 little bit what we have been talking about, first of
10 all, with respect to the rollover of diagnostic measures
11 that are part of PIDs, and they're already in the PAP as
12 product disaggregation. We have not said we
13 automatically roll over new measures, you know, that
14 come in. There's a reason for that, and that's because
15 we know what the diagnostic measures are that are
16 product disaggregations, because they're already in the
17 PAP. We have talked about that. We have that
18 visibility. We don't have that to new measures that
19 might be developed, whole new measures like the 02 or
20 there are others. So we don't see that automatically
21 rolling into the PAP.

22 What we think -- where we think that will
23 come in is at the six month review. I mean the parties
24 will have the opportunity, and keep in mind nobody has
25 asked that that be in the PAP to this date. It's never

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1 been requested in the PAP to this date. I believe that
2 is true. So the point is we would put it in the PAP at
3 the six month review.

4 I see your face. I think what -- I mean
5 they're asking for it now in the ROC OSS, but they never
6 asked for it through any PAP process.

7 MR. SPINKS: Well, it had been diagnostic
8 until recently when the standards had been set, and then
9 in conjunction with that, I understand that they have
10 also asked that it be included in the PAP.

11 MS. STANG: Well, they didn't make that
12 request in our hearings, and they could have done that
13 even though it were diagnostic.

14 MR. SPINKS: Okay, so Qwest's proposal is
15 that you wait until the six month review to consider it?

16 MS. STANG: That's our view is that that's
17 the appropriate place for entirely new PIDs to come into
18 the PAP.

19 MR. SPINKS: And the CLECs' view?

20 MR. FINNEGAN: This is John Finnegan, I would
21 like to respond to that.

22 JUDGE RENDAHL: Before you do that,
23 Mr. Finnegan, we will have to swear you in as a witness.

24 MR. FINNEGAN: That was what I was going to
25 say.

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1 (Witness John Finnegan was sworn.)

2 MR. FINNEGAN: At least AT&T's view on the
3 PO-2(b) measurement, and this is a measurement of
4 Qwest's ability to process orders without intervention,
5 until we have got a bench mark set through the ROC
6 process, it's somewhat premature to make the request in
7 the PAP process to have that included in the
8 measurement.

9 In the ROC process, the CLECs had requested
10 two things. One was that a bench mark be established
11 for what Mr. Spinks has accurately described as what had
12 been a diagnostic standard. And the second thing we
13 requested was that once the bench mark was set, the
14 measure be included in the QPAP. Qwest's response to
15 that was basically accepting the fact that a bench mark
16 could be set for the PO-2(b) measurement, but that it
17 was inappropriate for a PAP decision to be made in the
18 ROC process.

19 The issue is still at impasse and -- at the
20 ROC. There's two things that could happen in the ROC
21 impasse for the PO through the executive committee. One
22 is the -- I guess there's several things, but generally
23 they could say, yes, let's establish a bench mark, but
24 the QPAP discussion is premature. The second thing they
25 could do is agree that its bench marks should be set and

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1 it should be in the QPAP. But if the former decision is
2 made and the QPAP issue is kicked to the individual
3 states, once the bench mark has been set, at that time,
4 we would request the PID be included in the QPAP.

5 MR. SPINKS: Well, that's precisely what I
6 had anticipated, which is why I had asked the question.
7 How will that process work when AT&T requests that for
8 Washington?

9 MS. STANG: Well, I guess we don't agree that
10 their -- the steering committee made a determination
11 that they can decide what's in the QPAP.

12 MR. SPINKS: No, I'm assuming that they
13 don't.

14 MS. STANG: Yeah, I think that's their point.
15 Well, we think it's appropriately raised at the six
16 month review, and I guess I would say I'm not sure what
17 harm that is, I mean particularly with PO-2(b), I mean
18 this is why, and then Mr. Williams is here and he's been
19 very much closer to what goes on or what has gone on in
20 the ROC process over this issue, but this is one the FCC
21 has been very tentative about in how it handles it for
22 review for 271 given the CLECs' ability to affect how we
23 deal with this measure. So I guess the question is I
24 mean why would it be inappropriate to wait until the six
25 month review? Why is it necessary that it be included

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1 now?

2 MR. FINNEGAN: I would like to respond to
3 that if I could.

4 JUDGE RENDAHL: I think the Chairwoman has a
5 question, and then why don't you give your response.

6 CHAIRWOMAN SHOWALTER: Yeah, and this is
7 Chairwoman Showalter. It's probably a question or
8 comment that goes to you as well. It strikes me that
9 this issue is not before us here. That is, there's an
10 event that we know about in the ROC process that could
11 lead to a request by someone at some point in time that
12 we do something to incorporate a new issue into the
13 QPAP. Whether that would be timely before we come out
14 with an order on this or isn't timely and would need to
15 be postponed to a later date, i.e., the six month
16 review, I don't know, because what's in front of us
17 today doesn't include it at all.

18 I would say as a general comment, somewhere
19 along the line you've got to cut things off. We have
20 something in front of us that we have to decide, and as
21 with any hearing and ongoing proceeding, things do creep
22 in along the way. But yet you do draw a line at some
23 point. It seems like to me that we don't know on this
24 issue whether it's one of the things that are going to
25 creep in along the way or it's too late because we

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1 simply haven't got it in front of us. Does anyone want
2 to comment on that?

3 JUDGE RENDAHL: I think first Mr. Finnegan,
4 because you were about to jump in, and then Ms. Stang,
5 and then I think we ought to end this issue.

6 Mr. Finnegan.

7 MR. FINNEGAN: Sure, the issue of what's the
8 harm, and I'm not afraid to do the math, but it looks
9 like the earliest Qwest could get into or get 271 relief
10 in the state of Washington is sometime in the June, July
11 time frame. If you tag an additional six months on top
12 of that, delaying the decision on whether or not that
13 measurement should be in the process is effectively
14 pushing it off another year, and that's quite a long
15 time to be without what we consider to be an important
16 issue.

17 As far as the Chairperson's comments, we had
18 been waiting on the ROC executive committee for a
19 decision. I don't know how this would work
20 administratively, but our preference, as I had described
21 it, was for to have the decision first on the bench
22 mark. To ensure that it doesn't become an untimely
23 request, we might suggest now that the PO-2(b)
24 measurement be included as one of the performance
25 measurements in the Washington PAP but regardless of

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1 whatever the outcome is in the executive committee
2 appeal.

3 JUDGE RENDAHL: Ms. Stang.

4 MS. STANG: Well, you know, obviously we
5 object to that. I mean it's not as if this is the first
6 moment that AT&T had to consider this process. The
7 issue -- I mean if Mr. Finnegan was concerned about it,
8 he could have teed it up all along the way, and he did
9 not. Obviously we're going to have to demonstrate some
10 -- it's not as if we don't -- aren't held to some
11 standard for PO-2(b) in the FCC's review and they're
12 going to look at it.

13 But, you know, to your point, we have to draw
14 the line somewhere, and we have. We have gone through
15 this process, and they had multiple opportunities to
16 raise it, and they could have raised it just like they
17 did -- actually, they did raise two diagnostic measures
18 in Mr. Antonuk's process and asked us, they were changed
19 management measures, and asked us to accept them, and we
20 made an exception there. It was in front of
21 Mr. Antonuk, and we said, okay, we're going to put those
22 in, and we will accept the standard that the ROC gives
23 us. You know, it was a way to try and get to some
24 closure. They didn't -- they could have raised PO-2(b)
25 as one of those issues there. They did not. So I think

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1 that that shows a credibility of Mr. Finnegan's claim.

2 JUDGE RENDAHL: Okay, thank you.

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

4 (Recess taken.)

5 JUDGE RENDAHL: We're back on the record
6 after our morning break, and we are starting with the
7 Issue M, payment level for high value services, and
8 because of our limited amount of time, Qwest will have
9 five minutes to address its issue, its comments on this
10 issue, and the other parties will collectively have five
11 minutes, and they can divvy that up as they wish, but we
12 need to get through these issues this morning.

13 Go ahead, Ms. Stang.

14 MS. STANG: I will let Mr. Kopta start on
15 that, and I will just reserve my comments for rebuttal.

16 JUDGE RENDAHL: Thank you.

17 Mr. Kopta.

18 MR. KOPTA: Thank you, Your Honor.

19 In some ways in light of the last discussion
20 that we had, this is somewhat theoretical, because we're
21 still constrained in our ability to obtain high capacity
22 UNEs. But being in -- being as optimistic as possible
23 and believing that at some point we will be able to get
24 more of these, the QPAP, as we discussed yesterday, is
25 designed to ensure that Qwest has the financial

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1 incentive to provide quality service. And with respect
2 to the high capacity circuits, both loops and transport,
3 the current payment levels that are in the QPAP don't do
4 that. They're set at the same level whether you get a
5 two wire analog loop or a DS3 loop, even though the
6 price varies enormously.

7 In our brief, as we explained, the retail
8 rate or the tariff rate for a DS3 circuit, for example,
9 is \$1,500, and the UNE rate that Qwest proposed in the
10 cost docket here is around \$800. So they can make a
11 whole lot of payments for poor service if they hang on
12 to that customer paying \$1,500 rather than providing us
13 the loop for \$800 and having the customer be ours
14 instead of Qwest's.

15 Qwest did include a proposal during the
16 hearings to adjust the payment levels for those types of
17 services, but Qwest conditioned that on a reduction in
18 the payments for other types of services. There was
19 nothing in the record that demonstrated any connection
20 between those. For example, if you look on Exhibit
21 1204-C, which is the presentation that Mr. Inouye had at
22 the hearing, specifically on page 13, it lists what
23 Qwest's proposal was, and there's absolutely no evidence
24 linking the rates for business and residential resale
25 with DS3 loops, and there was no indication that the

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1 payment levels were set at a level that was somehow an
2 average of all of the different types of payment levels.
3 In fact, Qwest agreed to increase payment levels for
4 collocation without any corresponding decrease in any
5 other service.

6 So from our point of view, there was no
7 established relationship between the various payment
8 levels so that you needed to sort of have a revenue
9 neutral approach so that if you're going to increase
10 some, you're going to have to decrease others. But each
11 payment level for each type of service needs to be
12 sufficient to ensure compliance with the obligations
13 with respect to that service. And as it stands right
14 now, that's not the case with the DS1, DS3 loops and
15 with DS1, DS3 transport. And I think that basically
16 covers the issue.

17 JUDGE RENDAHL: Thank you.

18 Ms. Stang.

19 MS. STANG: You need to understand the
20 context of this. The -- all these services under what
21 our plan was, the Texas plan, are treated as we have
22 been treating them in Attachment 1 to our PAP. Remember
23 we talked about those PIDs. We had offered in addition
24 to all the other things I talked about that we did to
25 increase the payment level for services, including as to

06199

1 some of these high valued services, remember I talked
2 about the critical value and reducing the critical
3 value, which is one way of saying, we're going to, you
4 know, basically increase the opportunity that we're
5 going to end up making payments on those, so that in
6 addition to increasing payments on other services, we
7 addressed an in -- upped the payment level of our PAP
8 well above over Texas as we had started.

9 This was another kind of an issue, and it
10 actually was approached -- we were approaching the ROC
11 collaborative to do this, and we said, we will consider
12 that, we were trying to be reasonable and get to
13 resolution, the PEP collaborative, and we said, we will
14 consider that. Well, in the hearing, Mr. Finnegan put
15 out a proposal, and we said, that proposal doesn't make
16 sense to us, because our concept of what you might be
17 asking for is you want to raise some services, and you
18 think they're higher valued services, then the right
19 thing to do is to consider whether the other services
20 that you by definition then don't consider higher value
21 services should be adjusted, calibrate them.

22 And what Mr. Kopta pointed to you is
23 evidence. It's the exhibit that's in Mr. Inouye's
24 exhibit at page 13 and 12. He asks -- he took a look at
25 -- he took a look at both the AT&T proposal and our

06200

1 proposal, and he basically said, the way that we would
2 approach this, the offer that we would make is to look
3 at the value of the service and look at the relationship
4 to the payment amount that you're proposing, and try to
5 calibrate that approach by making sure that as you took
6 the value, you took the payment amount, and there was a
7 ratio, a consistent ratio between the service that they
8 paid or the price they paid and the amount of penalty
9 that was proposing. AT&T didn't like that approach.

10 And what Mr. Antonuk said was, you know, if
11 you're going to ask for this increase, this up, then you
12 need to also be reasonable and make the adjustment down.
13 You know, if your premise is one is worth more, then you
14 need to look at that. And so that's what we proposed,
15 and AT&T and the others rejected it. Actually,
16 Mr. Kopta's clients never really supported this proposal
17 until after the hearing. But in the end, that was
18 Mr. Antonuk's ruling is that it was reasonable, if you
19 want to do something, it was reasonable to do it up and
20 down. It was our offer had been rejected, and therefore
21 he didn't feel like there was a requirement, keep in
22 mind the standard, is this necessary for there to be an
23 effective backsliding program, you know. He concluded
24 no given the history both of the changes we have made
25 and the Texas plan.

06201

1 And I -- I submit this is evidence, both in
2 terms of the testimony and the exhibit that we provided
3 in the multi-state and the parties' opportunity to
4 extensively cross-examine Mr. Inouye. In fact, not only
5 on this issue, but he was cross-examined for over the
6 course of three days on all of these PAP issues. And
7 that's all.

8 JUDGE RENDAHL: Mr. Kopta, I have just one
9 more question. Are you proposing then to go back to the
10 AT&T proposal that was made during the multi-state
11 hearing, or what is your proposal, what do you recommend
12 that we do?

13 MR. KOPTA: Well, what we would recommend is
14 that the Commission establish the payment rates at those
15 that Qwest proposed for the DS3 loops and transport and
16 DS1 loops and transport. Again, Ms. Stang is talking
17 about high value, and that's the way that the AT&T
18 approached it. From our perspective, it's not so much
19 an issue of high value as relationship to the financial
20 situation of the cost of the service to Qwest and the
21 retail rate for the service. So if there is a -- if
22 they can make a payment to a CLEC and have that be the
23 -- oh, all right, I will cut it short and say, if you
24 look at the reference that I gave to you, the payment
25 references and for DS3 and DS1 for UBL and UDIT for both

06202

1 DS3 and DS1 on this exhibit that it should be the
2 payment levels that Qwest has proposed in this exhibit.

3 JUDGE RENDAHL: Without any concomitant
4 lowering of payments in other areas?

5 MR. KOPTA: That's correct. I mean from our
6 perspective, we're fine with lowering the payments for
7 resale. I mean we don't do resale. But I don't think
8 it's our place to say take it away from somebody else to
9 give it to us, and I don't think there's been anything
10 established in this record that has any link between
11 resale and high capacity loops.

12 JUDGE RENDAHL: Okay, I'm just trying to
13 clarify what the recommendations that the parties are
14 making.

15 Any questions?

16 CHAIRWOMAN SHOWALTER: No.

17 JUDGE RENDAHL: Thank you.

18 MS. DOBERNECK: Your Honor, if I could

19 just --

20 JUDGE RENDAHL: One minute.

21 MS. DOBERNECK: I will be 20 seconds. I
22 would just simply suggest from Covad's perspective that
23 we would vehemently object to this calibration notion.
24 One of the elements that Qwest proposed to calibrate
25 downwards is two wire non-loaded loops. From Covad's

06203

1 perspective, that is a huge component of our ability to
2 provide service in this state in the local market, so we
3 would strongly object to any downward movement on that
4 one.

5 JUDGE RENDAHL: Thank you.

6 MS. STANG: Can I make just one last comment,
7 and that is -- that is that keep in mind that no one
8 established that any of the changes, the upward
9 mobility, was necessary to establish the sufficiency of
10 tier 1 or tier 2 payments.

11 JUDGE RENDAHL: Thank you.

12 Okay, let's move now to the issue of
13 sufficiency of payments, and which of the parties intend
14 to comment on this? Is there one party that's going to
15 carry the ball? Mr. Weigler, Ms. Doberneck, does
16 anybody wish to speak on this?

17 MS. STANG: Or can we also ask the specifics
18 of -- this was one that I wasn't quite sure what the
19 exact nature -- I mean sufficiency is pretty broad.

20 CHAIRWOMAN SHOWALTER: What letter is this?

21 JUDGE RENDAHL: This is letter Q.

22 Ms. Doberneck.

23 MS. DOBERNECK: Honestly, my -- I was
24 focusing more on being responsive to Qwest and how it
25 was approaching the sufficiency issue. I mean depending

06204

1 on what Ms. Stang says, I mean I think it may be covered
2 in the brief, and I'm just kind of up in the air. And
3 if she has no further comment other than their briefing,
4 I think I can rely on mine as well.

5 JUDGE RENDAHL: Maybe I will ask a question.
6 Is the question whether the -- related to what we were
7 talking about before, the payments that are set forth in
8 the QPAP, are they sufficient to create a disincentive
9 to Qwest or an incentive to Qwest to create good
10 performance? Is that the issue?

11 MS. DOBERNECK: I view the issue as the
12 incentive and the compensation, and both of those are
13 covered in our brief. And if Qwest isn't making any
14 further statement, I'm happy to rely on our briefing
15 comments.

16 MS. NELSON: Excuse me, Judge, I just wanted
17 to add that our argument that we talked about a little
18 earlier about the evidentiary argument of the value of
19 the evidence that Qwest, the relevance --

20 JUDGE RENDAHL: That was off the record.

21 MS. NELSON: Oh, okay. WorldCom did brief an
22 issue on the relevancy of some evidence that Qwest
23 presented and that Mr. Antonuk addressed in his report.

24 JUDGE RENDAHL: Do you have a page reference
25 in the report?

06205

1 MS. NELSON: Yes, let me find the page
2 reference in our brief, page 6 and 7 in our brief, and
3 it's the report at page 25, I believe. So this -- that
4 would fall into this category. I think our brief
5 addresses the issue, and we don't need to reargue it,
6 but I did want to note that it was included in that
7 issue.

8 JUDGE RENDAHL: Thank you.
9 Mr. Weigler, you just raised your hand.

10 MR. WEIGLER: Just to say that we have some
11 comments on this in our brief, and we will rely on those
12 comments.

13 JUDGE RENDAHL: Do you have page references?

14 MR. WEIGLER: Starting at page 10.

15 JUDGE RENDAHL: Okay.

16 Ms. Stang.

17 MS. STANG: The only thing I would say
18 because I think they're kind of vague comments, no one
19 objected to Ms. Singer-Nelson, I mean no one objected to
20 the evidence, and to the extent that they felt like it
21 wasn't relevant or sufficient, they neither objected to
22 the evidence that we provided or provided any of their
23 own. And I refer the Commission to what we have
24 referred to here before, which I think is 1224,
25 Mr. Inouye's slide CTI-5, which is chalk full of

06206

1 evidence of the payments, both the tier 1 and tier 2
2 payments that are made under the plan.

3 I mentioned yesterday there's a figure on
4 slide 2 that is the total priceouts for the nine states,
5 February through May. And I won't mention that number,
6 because it is confidential, but I will say that for
7 Washington, I think I mentioned this yesterday, 29% of
8 that number is Washington alone, so you can see that the
9 payment amounts are extraordinarily robust.

10 If you're interested more in terms of the
11 individual payment amounts for individual orders that we
12 would miss, I would ask you to look at the slides that
13 follow on three and four for misses for OP-13(a), OP-3
14 and 4. We tried to price out a miss under those
15 performance measures to give a magnitude of the kinds of
16 payments that we would make. And again, they were --
17 they are very robust, and no party brought forth any
18 evidence to the contrary.

19 So that is the -- my response, and I think
20 that the Commission can derive the same conclusion from
21 this exhibit as well as Mr. Inouye's testimony regarding
22 this exhibit.

23 JUDGE RENDAHL: Thank you. I will just note
24 I think the exhibit is 1204-C, not 1224.

25 MS. STANG: Oh, I'm sorry, thank you.

06207

1 MR. WEIGLER: I just want to point out that
2 AT&T in the proceeding did bring up some objections to
3 that particular exhibit. I mean not the admission of
4 the exhibit, but did bring up the possibilities of the
5 robustness and the plan not being quite what Qwest
6 presented. But those -- that's in the record. So when
7 they said no one brought up in any objections or any
8 other evidence, that's, in my recollection, that's not
9 true.

10 JUDGE RENDAHL: Thank you.

11 Any questions?

12 Okay, well, thank you for your brevity on
13 that point.

14 MS. STANG: It was either five minutes or all
15 day.

16 JUDGE RENDAHL: Good choice.

17 Let's move to the next issue, which would be
18 back to Issue I, the duration or severity of the cap.
19 Is this an all day or nothing issue as well?

20 MR. WEIGLER: What I was planning to do was
21 walk through the math and then have Mr. -- turn it over
22 to Mr. Finnegan.

23 Mr. Finnegan, are you on the phone?

24 MR. FINNEGAN: Yes.

25 MR. WEIGLER: Okay, great.

06208

1 And then turn it over to Mr. Finnegan to
2 explain the issue. We will do it under five minutes.

3 JUDGE RENDAHL: Thank you.

4 Mr. Finnegan, you might not be able to hear
5 Mr. Weigler go through his presentation because he's
6 away from a mike. Let's see if we can get him one.

7 Okay, you will be able to hear it now.

8 And for the record, Mr. Weigler has written
9 some notes on a flip chart which we may want to include
10 as a demonstrative exhibit, but for now, he's referring
11 to a chart, and if you can explain what you've got on
12 the chart as you walk through it, that would be helpful
13 for the record.

14 MR. WEIGLER: Sure. Before turning this over
15 to Mr. Finnegan, I just want to walk through what I have
16 written on the board. This is an example of a situation
17 where Qwest is capped in a measure at 100%, and I will
18 explain what I mean. The CLECs, this is a, for lack of
19 a better term, would this be called an interval, John,
20 the CLEC installation interval minus parity standard of
21 performance divided by parity standard of performance?

22 MR. FINNEGAN: Yes, in that example, it will.

23 MR. WEIGLER: Okay. And that's an interval
24 that affects a lot of PIDs, OP-3, OP-4, MR-6, OP-5 are
25 some examples. So let's look at the math on this.

06209

1 JUDGE RENDAHL: Can you, before you go
2 through the math, can you explain what the purpose of
3 this function is, the -- or is that something
4 Mr. Finnegan is going to go through?

5 MR. WEIGLER: Mr. Finnegan will go through
6 that.

7 JUDGE RENDAHL: Okay.

8 MR. WEIGLER: I'm just showing that there's
9 an interval here. I'm just going through the math, and
10 then I really have to turn it over.

11 JUDGE RENDAHL: That's fine.

12 MR. WEIGLER: So let's go through the math
13 here. For example, the installation, the actual
14 installation interval that Qwest comes up with is 12
15 days, and the parity standard of performance would
16 actually be 4 days. So Qwest did it in 12 days, the
17 parity, what they're doing it for their retail customers
18 is 4 days, so you would take the 12 days minus the 4
19 days and divide it by the 4 days, and that would get --
20 because it's parity standard, installation interval
21 minus parity standard performance divided by parity
22 standard performance. That's 12 minus 4 over 4, which
23 is -- equals 2 or the effectiveness of 200%. And then
24 you take actually, as a hypothetical, you would take
25 200% times the 100 orders, and that would be 200

06210

1 occurrences.

2 What Qwest does is, in a QPAP, is even though
3 you're coming up with a 2.0 here or a 200%, Qwest caps
4 that at 100%. So you wouldn't have a 2.0 here, although
5 that's what the math shows, you would have a 1 times 100
6 orders. So the CLECs' payments, even though that the
7 disparity is actually 12 days minus 4 days comes up with
8 a 2 or a 200%, Qwest would cap that, take that in half,
9 and you're not actually getting the severity.

10 And with that, I would turn it over to my
11 expert to explain it a little better.

12 CHAIRWOMAN SHOWALTER: Before you do that,
13 before you get to the content of this, just so that
14 we're simply following the math.

15 MR. WEIGLER: Sure.

16 CHAIRWOMAN SHOWALTER: Is it 100% because
17 it's half of 200% or because 100% is the cap?

18 MR. WEIGLER: Qwest has made 100% the cap.

19 CHAIRWOMAN SHOWALTER: Okay. So if in that
20 example it were 16 days instead of 12 and you arrived at
21 300% instead of 200%, the cap would still be 100%?

22 MR. WEIGLER: That's right.

23 CHAIRWOMAN SHOWALTER: Okay.

24 MR. WEIGLER: And that's what we're arguing
25 against.

06211

1 CHAIRWOMAN SHOWALTER: All right.

2 JUDGE RENDAHL: Mr. Finnegan.

3 MR. FINNEGAN: First, I want to warn you, our
4 PBX went down this morning, so I'm talking on a cell
5 phone, and I have been dropping off every once in a
6 while, so if I do drop off, I will call back.

7 JUDGE RENDAHL: Thank you.

8 MR. FINNEGAN: This is really a simpler
9 matter to understand than it may first appear. In
10 calculating how much Qwest owes under the plan, you
11 multiply what are called the payment occurrences by the
12 payment amounts in tables that Qwest has. The payment
13 amounts vary by the number of consecutive months of miss
14 and the characterization of a measurement as high,
15 medium, or low. But I won't talk about the payment
16 amounts in the tables. What I want to focus on is how
17 you arrive at the payment occurrences.

18 The way you arrive at the payment occurrences
19 are through multiplying two factors together. The first
20 factor is the amount of activity that's in a given
21 month. And the reason for that is it recognizes, all
22 other things being the same, if you have more
23 performance in a month than say some other CLECs, you
24 should get more compensation, all other things being the
25 same. So if you have 1,000 orders completed in a month

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1 and one other CLEC only has 10 orders completed in a
2 month, if you're both provided the same inadequate
3 performance, the CLEC with the 1,000 orders should
4 generally receive more compensation than the CLEC with
5 10 orders.

6 The other factor is how far away from the
7 standard has Qwest performance deviated, and the concept
8 there is the worse Qwest's performance gets, the higher
9 the payments should be, and that calculation of how far
10 Qwest performance has deviated from the standard is what
11 Mr. Weigler had demonstrated in that example. It's what
12 the CLEC result is minus what the standard is divided by
13 the standard.

14 What Qwest has proposed to do is arbitrarily
15 cap how poor their performance can be at 100%. So as
16 Chairwoman Showalter pointed out, if their performance
17 to a CLEC is 16 days or 20 days or 50 days and the
18 performance to the standard is 4 days, it doesn't matter
19 that Qwest's performance can be that much worse than
20 what the standard is. All the CLEC would be entitled to
21 for the purposes of the calculation of the deviation
22 from the standard is 100%.

23 So there reaches a point where there's no
24 additional incentive for Qwest to improve its
25 performance. They pay the same in that example whether

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1 they provide the service to the CLEC in 8 days, 12 days,
2 or 120 days. There's no additional incentive for Qwest
3 to improve their performance, and there's no reflection
4 of the fact that Qwest performance has deviated in one
5 case, let's say a 12 day interval, a lot more than it
6 would be in an 8 day interval.

7 We pointed this out in the hearing, and
8 Mr. Antonuk apparently misunderstood the argument. He
9 thought we were arguing or AT&T was arguing that we
10 should totally disregard the one factor, the quantity of
11 orders or the quantity of transactions, and solely
12 concentrate on the deviation from the standard. That
13 was not our intent at all. We had always recognized
14 that the payment occurrence was a function of both the
15 amount of activity a CLEC had done in a month and the
16 deviation from the standard. What we were arguing is
17 you should not artificially cap what the percent
18 deviation from standard would be because that creates
19 the wrong incentives and sends the wrong policy message.

20 JUDGE RENDAHL: Thank you, Mr. Finnegan.

21 I'm going to turn now to Qwest for their
22 response or Mr. Reynolds.

23 MS. STANG: Yeah, I think Mr. Reynolds can go
24 ahead and do this a little more expeditiously.

25 JUDGE RENDAHL: Okay, Mr. Reynolds, you were

06214

1 sworn in yesterday, you remain under oath.

2 MR. REYNOLDS: Okay, thank you. I'm going to
3 have to play the game show host here too.

4 John, can you hear me?

5 MR. FINNEGAN: Yes, I can.

6 MR. REYNOLDS: Just for Mr. Finnegan's
7 comfort, I'm going to use pretty much the same numbers
8 that AT&T used, but I would like to go through the
9 calculations a little bit more so that you understand
10 Qwest's perspective on this issue.

11 MS. STANG: Mark, you might want to use a
12 different colored marker.

13 MR. REYNOLDS: I will.

14 And so I have written on the easel the 12
15 minus 4 divided by 4 equals 200%, and I would like to
16 talk -- I'm going to simplify the example a little bit
17 more. This 12 represents an average number of days per
18 order for an interval. And what I'm going to do is use
19 an example of 3 orders, one 2 days, one 31 days, and one
20 3 days, and if you add those up, hopefully my math is
21 right, you get 36 days total. And this is actually how
22 the matrix works. We would divide the 36 by 3 orders,
23 and you would get 12 average days. And I want you to
24 notice that if this is the retail parity standard and
25 this was derived similarly using retail orders and

06215

1 retail installation intervals, that on 2 out of 3 of
2 these, Qwest actually beat the retail standard. It had
3 1 -- it had 1 order that was way out of whack at 31
4 days, but we average that in, we average it all
5 together, and we end up with 12 as the average.

6 What Qwest is saying is that we should cap
7 this at 100% because you have to have some reflection of
8 where the actual occurrence was. This is the missed
9 occurrence. There's one missed occurrence in my
10 example. If we go back to AT&T's example, if you
11 recall, they had 100 orders down there. Well, some
12 portion of those 100 orders probably met the standard,
13 and all Qwest is saying is that we should not be held
14 responsible for more than the number of orders the CLEC
15 submitted in the first place.

16 And we would submit that this same type of
17 limiting function is included in the other plans
18 approved by the FCC. In fact, for Kansas, they limited
19 this not to 100% but to 50% just for this very reason.
20 And so I would submit that Qwest actually is making a
21 severity payment here, that is we're compensating more,
22 at least in my example, more than just the order we
23 missed, we're also compensating two other orders that
24 were in compliance. And although we didn't argue it
25 here today, Qwest put on substantial evidence of the

06216

1 amount of money it pays out on interval measures, and no
2 party refuted that that amount of money was
3 insufficient.

4 MS. STANG: And, you know, I think it helps
5 to put this in perspective.

6 JUDGE RENDAHL: You will need a microphone,
7 can you borrow from Mr. Weigler.

8 MS. STANG: It helps to set this up that, you
9 know, this is a per occurrence plan, and Mr. Antonuk
10 goes over this. I mean this plan started out as a per
11 occurrence plan, and that means something. That means
12 we're going to pay on these occurrences. And like Texas
13 and New York, I mean, I'm sorry, Texas, Kansas, and
14 Oklahoma, it's set up in this way where there is this
15 cap given the issues that you -- that Mr. Reynolds just
16 discussed. And in the record at 1207 I think is we
17 submitted pages from the FCC docket for Kansas and
18 Oklahoma that shows that there are these same kind --
19 that these same mechanism is used there for the same
20 reasons that Mr. Reynolds talked about, that the equity
21 in paying on the number of orders that you actually have
22 and not misaligning so that you're paying a penalty on
23 orders that really met the standard.

24 MR. REYNOLDS: I would just add one more
25 thing. I know that as part of AT&T's argument that they

06217

1 claim that there should be severity, that is, you know,
2 Qwest should be penalized for the magnitude of how it
3 misses the interval, and I would -- and I think I
4 pointed this out, but I would just stress that there is
5 a severity aspect to Qwest's plan, and I showed you that
6 we actually pay out on more than just the one missed
7 occurrence, we pay out on every occurrence or ever order
8 up to 100%.

9 MR. FINNEGAN: May I respond?

10 JUDGE RENDAHL: In one minute.

11 MR. FINNEGAN: I think what Qwest is doing is
12 mixing up a couple of concepts. In Mr. Reynolds'
13 example, he's identifying that they have made two
14 commitments and missed one commitment. But for an
15 average interval measure, it's not a commitments met
16 measure. It's a measure of on average, did you meet the
17 bench mark or did you meet the standard for that
18 average. The presumption is you will have missed the
19 average. The way you can miss the average is you can
20 miss a lot of measures by a little bit, or you can have
21 a few orders with very long durations. That's the
22 nature of the average. And it's proper and appropriate
23 that even though under Mr. Reynolds' example they may
24 have made those two commitments, they really blew it on
25 the third one, and the average mechanism accounts for

06218

1 that, and it should appropriately also be accounted for
2 in the percent deviation from standard. The standard is
3 an average. The standard is not the number of
4 commitments met.

5 JUDGE RENDAHL: Thank you, Mr. Finnegan.

6 I think we ought to move off this issue now.
7 I appreciate the presentations on this point. Let's
8 go --

9 CHAIRWOMAN SHOWALTER: I'm sorry, I just want
10 to make, just my general confusion, but I understand
11 here we're talking about a collective data that compares
12 parity, et cetera. But for any item that goes into that
13 data, let's say the 31 day order, is that order also
14 subject to payment under the escalating tier 1 payments?
15 In other words, outside of this measure and payment at
16 an individual level, is it also being addressed with an
17 ongoing escalated payment that flattens at the end of
18 six months?

19 MR. REYNOLDS: It is somewhat of a different
20 issue, but the answer to that is, to the extent that we
21 missed the same matrix for the same CLEC in the prior
22 month, yes. It would continue to escalate until we
23 started to meet the performance measure, and then it
24 would step down an amount for each conforming month.

25 CHAIRWOMAN SHOWALTER: So am I right to say

06219

1 that at least for the things that are measured on an
2 individual basis under the escalating payments, that
3 event has a dual characteristic, it's looked at as an
4 individual event, it's also compiled in some parity
5 comparison data; is that correct?

6 MR. FINNEGAN: May I respond?

7 JUDGE RENDAHL: Go ahead.

8 MR. FINNEGAN: It's -- on the individual
9 payment on an -- in the payment tables in an individual
10 month, a miss is as good as a mile. If you miss, it
11 doesn't matter if you missed by a little or missed by a
12 lot. It's just whether or not you missed or not. So
13 there's on an individual monthly basis in the payment
14 tables really no consideration of what we characterize
15 as the severity of the miss, how severely have you
16 departed from the standard. The severity of the miss is
17 accounted for in the deviation from the standard that we
18 had just talked about.

19 I hope that helps to answer the question.

20 MR. REYNOLDS: I guess I would just add that
21 the severity portion of it is calculated when you
22 actually calculate the miss, the number of misses, the
23 calculation of the number of misses themselves is a
24 calculation of severity.

25 MS. STANG: Right, Mr. Finnegan is taking the

06220

1 position that this is the only way, but that's not
2 correct.

3 JUDGE RENDAHL: Okay, let's move on to the
4 next issue, which is Issue K, recovery of payments from
5 rate payers.

6 And I understand that, Mr. Cromwell, you have
7 a brief comment on that, and Qwest may have a response.

8 MR. CROMWELL: Thank you, Your Honor.

9 Yes, we believe that the QPAP should
10 expressly preclude Qwest from recovering payments from
11 rate payers. We believe this is clearly the FCC's
12 stated policy, and you can find this reflected in the
13 Bell Atlantic New York 271 order at Paragraph 443.

14 I will reserve the rest of my time.

15 JUDGE RENDAHL: Thank you.

16 Ms. Stang.

17 MS. STANG: What the FCC order says is
18 clearly stated in the order. I mean the FCC cites case
19 law with respect to this issue. If there is law that
20 governs this, and we don't dispute the law, it does not
21 belong in a contract between parties. This Commission
22 has the ability to execute on that law when the time
23 comes. We have stated in our testimony that we intend
24 to book this below the line if you wonder about our
25 intentions, but it's still inappropriate for such a --

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1 such a -- for a legal requirement or a statement of the
2 law to be included in the QPAP

3 JUDGE RENDAHL: Mr. Cromwell and then
4 Mr. Weigler.

5 MR. CROMWELL: Thank you, Your Honor.

6 I agree it is well settled policy by the FCC.
7 I also see no harm in this Commission making an
8 affirmative statement recognizing that and making it
9 explicit in the context of the QPAP that will be
10 applicable to Washington.

11 JUDGE RENDAHL: Thank you.

12 Mr. Weigler.

13 MR. WEIGLER: Looking back at the record and
14 the QPAP proceeding in front of Mr. Antonuk, Mr. Inouye
15 said that this particular language, and it's on page 9
16 of my presentation, on rate recovery is appropriate but
17 again refused to put it in the QPAP. I am more
18 concerned on Qwest's refusal to put it in the QPAP.
19 Certainly you look in the QPAP, there's a lot of
20 interplay between what commissions and legal principles,
21 and there's no reason why this shouldn't be in there
22 too, and my huge concern is why Qwest is refusing to put
23 this in. I think maybe they're thinking if we don't put
24 it in, something maybe will slip aside, and maybe they
25 can do it.

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1 MS. STANG: If it's the law, what validity do
2 your concerns have? I mean the FCC said it's the law,
3 and if this Commission believes they have the ability to
4 enact the law, then I don't know what your suspicions
5 are really worth.

6 JUDGE RENDAHL: Okay, well, thank you for
7 your comments on that.

8 We have now the remaining other issues
9 category, and there were the parties had identified
10 quite a few, and I know Mr. Spinks has a few questions
11 as well.

12 Ms. Singer-Nelson, had you intended to put on
13 some information about critical value discussion?

14 MS. NELSON: Yes.

15 JUDGE RENDAHL: Okay, and Mr. Warner will do
16 that?

17 MS. NELSON: Yes, Judge.

18 JUDGE RENDAHL: Okay, let's hear your piece,
19 Mr. Warner.

20 MR. WARNER: Thank you.

21 Again, one of the points that we have raised
22 in our comments starting on page 23 and continuing on
23 page 24 was the statistical approach that was partially
24 agreed to in the PEP collaborative, and WorldCom
25 highlights -- partially agreed to because there were

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1 certain parties that agreed to this and certain parties,
2 WorldCom and Z-Tel specifically, that did not agree to
3 this agreement. So again, although this agreement is
4 what's been put into the Qwest performance assurance
5 plan, WorldCom notes that it did not agree to this
6 aspect of the statistical approach. And I -- it's
7 outlined in our comments, but I want to kind of just
8 explain it to make sure that it's clear and folks can
9 understand it, because I know statistics is kind of
10 confusing to folks.

11 COMMISSIONER HEMSTAD: Where is it in your
12 brief?

13 MR. WARNER: It's again on page 23 and page
14 24.

15 JUDGE RENDAHL: And is this concerning the
16 critical Z value.

17 MR. WARNER: The critical value, yes.

18 JUDGE RENDAHL: The critical value.

19 MR. WARNER: Again, what the partial
20 agreement basically said that is for certain -- again,
21 the partial agreement was to alter the critical value
22 from 1.65 to 1.04 for a limited number of services for
23 the volumes of 1 to 10 and to increase the critical
24 value at varying levels for progressively larger
25 volumes. And so I guess just to explain, when you're

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1 looking at the performance results that are produced
2 with a parity measure, you're basically implying a
3 statistical test to that. And with a statistical test,
4 you have a chance of two types of error. Type one
5 error, which is just for ease I will state it as Qwest's
6 guilt, the test says that Qwest is guilty when they're
7 really not or --

8 JUDGE RENDAHL: So it's a false positive for
9 poor performance.

10 MR. WARNER: So that would -- so that's
11 something that Qwest wants to guard against because it
12 impacts them. Then there's the type two, which is that
13 Qwest would be found innocent for providing the correct
14 service when they actually weren't.

15 JUDGE RENDAHL: So a false negative.

16 MR. WARNER: Yeah, and that would hurt --
17 well, that's negative to the CLECs. And there's
18 somewhat of an attempt to try to balance those two types
19 of errors in this step function of reducing the critical
20 value for low volumes to 1.04 for certain measures, and
21 increasing the critical value on the higher volumes was
22 somewhat of an attempt to I guess address that.

23 WorldCom's position is that if we're going to
24 increase the critical value on the high end measures,
25 volumes for all measures -- that we should -- the 1.04

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1 critical value should apply for all measures from the
2 volumes of 1 to 10 instead of the limited number that
3 was produced in the agreement.

4 JUDGE RENDAHL: And is there a more in-depth
5 discussion of the reasons based on statistics why that
6 1.04 critical value should be applied across the board?

7 MR. WARNER: Just in general, as the volumes
8 decrease or get lower, the chance of a type two error
9 gets higher, again, which is bad for the CLECs, so we
10 want to guard against that. And by lowering that
11 critical value, you're basically giving yourself a
12 greater confidence in the results that you're getting.
13 So that's the basis of it. So instead of applying it to
14 just a limited number of measures as was done here, we
15 would suggest it applies to all measures, just like when
16 we increased the critical value on the higher end
17 volumes, it applies to all services as well.

18 JUDGE RENDAHL: Okay, thank you.

19 Ms. Stang or Mr. Reynolds.

20 MS. STANG: I think I can handle this one.
21 You know, it was the value of a negotiated agreement, an
22 important one. Think about what we gave up. Remember
23 we talked about the K table, and I can't stress enough
24 the length and the contention over these statistical
25 issues.

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1 And the answer to your question, Judge
2 Rendahl, is there was no evaluation or analysis in terms
3 of credible substantive evidence about the impact or the
4 effect or the basis for what WorldCom is proposing.
5 And, in fact, in the workshop, we even presented
6 testimony from another representative of WorldCom who
7 participated initially in some of our workshops,
8 particularly from her statement in Arizona where she
9 talked about accepting a different critical or tiered
10 critical values or different critical values for
11 services.

12 So we think this is really an inappropriate
13 -- an unfounded attempt to really -- to create a
14 different scenario, one that is not balanced. We struck
15 a balance based on collaboration of many -- and the
16 input of many CLECs in that collaborative over an
17 extensive period of time talking about these issues in
18 great depth, and it would be I think very inappropriate
19 to just with the swap of a pen try and reverse that.

20 MR. WARNER: Can I just have one follow up on
21 that?

22 JUDGE RENDAHL: Please, one minute.

23 MR. WARNER: I would just -- I would just
24 also state that as we go through this, Arizona is also
25 looking at this issue, and although that hasn't been

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1 finalized, they have made the recommendation that
2 instead of allowing the -- on the high end the critical
3 value to increase in the step function that it does --
4 that it cuts off at 2.0 for the critical value.

5 JUDGE RENDAHL: Before you respond, when you
6 say Arizona is looking at this, I know they're going
7 through the PAP process on their own, and is this a
8 recommendation; who has made this recommendation?

9 MR. WARNER: It's from the ACC, the Arizona
10 Corporate Commission.

11 JUDGE RENDAHL: The staff, the advocacy
12 staff?

13 MS. STANG: Legal counsel.

14 JUDGE RENDAHL: Okay, thank you. And has
15 there been a decision on this issue by the Arizona
16 Commission, or is this just part of a workshop process?

17 MR. WARNER: I guess it's not a final
18 decision. We have made comments on the report.

19 JUDGE RENDAHL: Ms. Stang, do you have any --

20 MS. STANG: Yeah, I guess to put that in
21 context, what happened was we got through the workshop
22 process in Arizona with the K table being what was on
23 the table, we went to the ROC PEP collaborative and
24 arrived at this agreement. Arizona Staff, Maureen
25 Scott, asked us and DCI, who were the facilitators,

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1 asked us if we would be willing to incorporate those
2 agreements and bring them forward into Arizona. And we
3 said, if you would like us to, if we can resolve some
4 issues, we may -- we said we would be willing to do it,
5 and then they recommended a change. Again, none of that
6 was in the record and we felt outside of the bounds of
7 the reasons we had provided the agreement. So we have
8 contested that, because what was on their record is a K
9 table, and what we brought was a voluntary agreement to
10 change it upon their acceptance, so.

11 JUDGE RENDAHL: So the Arizona process is
12 approximately slightly behind where we are?

13 MS. STANG: Well, there's a recommendation --
14 I think the equivalency, you could say there's the
15 equivalent of a staff recommendation, although she did
16 receive comments and the next step is for her to
17 respond. So until there's sort of a final staff
18 recommendation, she needs to respond to our comments.

19 JUDGE RENDAHL: Okay, thank you.

20 I know Mr. Spinks has some questions. Are
21 there any other issues that any party wishes to raise?

22 Mr. Cromwell.

23 MR. CROMWELL: Yes, auditing, monitoring, and
24 report.

25 JUDGE RENDAHL: Okay, why don't you spend a

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1 couple minutes on that.

2 MR. CROMWELL: Briefly, Your Honor, Public
3 Counsel does not support a multi-state effort to audit
4 and review the QPAP because performance issues will not
5 be identical in each of the Qwest states. It makes it
6 quite difficult for Washington specific parties to
7 participate, and it decreases the transparency of state
8 regulatory action.

9 Public Counsel recommends that the WUTC
10 maintain complete authority over reviews, audits, and
11 monitoring of the QPAP performance issues for
12 Washington. We believe these activities should be state
13 specific with appropriate consultation and coordination
14 with other in-region states as the staff deems
15 appropriate. We recommend the inclusion of the audit,
16 review, and monitoring provisions found in the CPAP.
17 The references for that from the CPAP attached to the
18 Colorado Chairman's 11-5 order is or are Sections 10,
19 14, and 17.

20 We also recommend the inclusion of a
21 provision in the QPAP which would specify that Public
22 Counsel, other interested parties, and the general
23 public may petition the Commission to initiate an audit
24 or review of Qwest performance measurement reporting.

25 As to reporting, we would request that Public

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1 Counsel be deemed a relevant party for purposes of
2 receiving the monthly QPAP performance results that be
3 provided to the Commission and providing input into the
4 modification and enforcement of that plan. We would
5 urge that Qwest's wholesale service quality performance
6 data be made available to the public. At a minimum, we
7 believe that the aggregate performance data utilized to
8 calculate tier 2 penalties should be publicly available
9 as well as the aggregate dollar amounts that Qwest will
10 be paying under tier 1 and tier 2 penalties.

11 CHAIRWOMAN SHOWALTER: I have a question.
12 There might be two or three ways to approach this issue.
13 One seems to be the QPAP as it's currently stated seems
14 to anticipate and determine in advance a multi-state
15 approach. Another way would be for us to state
16 explicitly, no, after we get through with our
17 multi-state process here, it's up to us, the State of
18 Washington, to monitor, et cetera. A variation of the
19 second approach is to say, well, we retain jurisdiction,
20 this is our domain, however, it may prove to be, we may
21 prove to -- it may prove to be desirable when we get
22 there to do something on a multi-state basis. Do you
23 have an objection to that last way of characterizing
24 things? Are you asserting that we better just stay at
25 home from here on out? I mean can understand why you

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1 might feel that way, but.

2 MR. CROMWELL: I like it here.

3 CHAIRWOMAN SHOWALTER: Obviously to date, we
4 have found it convenient to engage in multi-state
5 efforts, and we have made relatively individual choices
6 on that. By that I mean the State of Washington has
7 decided in different arenas when to be multi-state and
8 when not to. Is there any problem in your view with our
9 retaining jurisdiction and authority over future events
10 but acknowledge that we may well want to team up with
11 other states?

12 MR. CROMWELL: I would agree with your
13 primary statement regarding retention of jurisdiction,
14 and I believe that's entirely appropriate, and we would
15 support that. That would be our, if I were to rank
16 these, I would say our primary goal in this context is
17 that the UTC make it explicit that it is retaining
18 jurisdiction and the right to control the review
19 process. And we would, as we have stated before, oppose
20 the Qwest veto provision that's currently included in
21 the QPAP.

22 However, that said, and I do believe that it
23 is appropriate for the Commission when the specific
24 circumstances dictate that it is appropriate for a
25 multi-state process to be the most efficient means for

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1 both the various state commissions in Qwest's in-region
2 territory as well as Qwest to resolve specific issues
3 that come up during those six month review processes.
4 So we're not opposed to that in principle.

5 However, that said, I would note that the
6 multi-state process we engaged in in this context was
7 quite difficult for us. It poses not only -- I suppose
8 the best way to put it is it poses resource allocation
9 problems that are quite public these days as to state
10 government, and we are certainly not immune from those.

11 I think that the other issues that are quite
12 significant that we would like you to consider is the
13 transparency of government regulation. This is an open
14 hearing. We in Washington through our legislature have
15 made policy decisions to make virtually everything
16 government does available to the public unless there is
17 a pressing and immediate concern of why that issue or
18 matter should not be made public. That is our default
19 in how we operate here in this state. Taking regulatory
20 action out of state, moving processes to Denver or to
21 Phoenix, significantly impedes the ability of the public
22 to either sit in and listen if anyone is so perversely
23 interested to do so, or, you know, quite seriously to
24 avail themselves of it and to be involved in the
25 process, and so we have a general concern about that.

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1 JUDGE RENDAHL: Okay, I think, Ms. Stang, you
2 had one point about a correction you wanted to note, and
3 why don't you do so quickly, and then we will turn to
4 Mr. Spinks for his questions, and then I think we may be
5 done.

6 MS. STANG: May I respond?

7 JUDGE RENDAHL: Very briefly.

8 MS. STANG: I think there are a couple of
9 issues to keep in mind when you think about
10 collaborative versus individual. Number one, auditing
11 as we have seen through the ROC process is regional.
12 There aren't separate things that you do on a state
13 basis. Once you audit a PID, it really for the most
14 part almost entirely is done for the regions. And so
15 Qwest has a grave concern about individual states
16 retaining authority or the intention to have the ability
17 to fully audit or reaudit at any time the PIDs.

18 The reason for the collaborative is it makes
19 sense, we get the efficiencies, and from Qwest's point
20 of view, we're not having to have duplicity that will
21 interrupt our business processes. I mean auditing is
22 resource intensive on Qwest's part, because it requires
23 our personnel to explain and provide data.

24 With respect to the six month review, again,
25 the collaboration is to the benefit of the CLECs

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1 certainly and the states, and the question then becomes,
2 you know, if we do this individually or you want some
3 benefits of collaboration but each state wants to retain
4 the right to do something different, Qwest is put in the
5 situation of saying, you know, kind of to the point of
6 you negotiate to a point, but if no one is on the state
7 side or CLEC side for those states is going to commit in
8 the collaborative, then you really negate, I think, the
9 purpose or the efficiencies of a collaborative, because
10 we have nothing to gain by that collaborative if we're
11 still going to have to go to states and have things
12 determined once again starting over.

13 So those are issues I think you need to think
14 about when you think about whether, you know, is a
15 collaborative a good and useful idea and, you know, the
16 pros and cons of what we have suggested. We are
17 implementing what Mr. Antonuk suggested, and we thought
18 that was based on some interest states had in trying to
19 replicate some of the experiences we have had in the
20 past that were efficient.

21 CHAIRWOMAN SHOWALTER: Well, in the current
22 process that we're in, we found that it is a good idea
23 to engage in the multi-state activity, but clearly we
24 reserved for ourselves ultimate decision making
25 authority, which is why we're here today. In the

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1 proposal of the PAP, what is assumed is multi-state
2 versus what would still be reserved for the state to do?
3 Is it the auditing that's multi-state but some decision
4 that might be based on that would be reserved to this
5 state? How, in other words, in the PAP as it stands
6 now, in essence, how much is the state giving up in
7 terms of decisions that order new actions as distinct
8 from learning information?

9 MS. STANG: Well, I think for the most part
10 it conceives a collaborative approach so that when you
11 do it, it is done on a collaborative approach.

12 CHAIRWOMAN SHOWALTER: But what's it?

13 MS. STANG: Well, auditing certainly is. And
14 the way we have approached and tried to implement the
15 facilitator's report on the six month review is to say
16 is there a way that you could do, you know, sort of a
17 group review. And I think perfectly possible and
18 appropriate that the parties agree that we will have a
19 collaborative and we will have a decision maker resolve
20 these issues. And just like you could have an
21 arbitrator decide issues within, you know, a state, you
22 could have an arbitrator decide issues outside of the
23 state for a number of states when you're talking about a
24 contractual agreement anyway. So that's the approach
25 that we took. We tried to say it's kind of, especially

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1 on the six month review where you're talking about
2 future kinds of actions, that is on a collaborative
3 basis, what happens in terms of the evolution of the
4 PAP.

5 I will note that what we have retained in the
6 PAP is for dispute issues. Let's just talk about
7 implementation on example. We provided this offset
8 language, which by the way when I went back and read it,
9 we're talking about offsets for the same activity in the
10 PAP. You need to look at that whole provision. I
11 realize we were very narrow yesterday. But so if we
12 offset, the CLECs can come to this Commission, who knows
13 a lot about the PAP, because they can for those purposes
14 exercise either the option to come to the Commission or
15 the option to go to arbitration under the dispute
16 resolution provisions.

17 So in terms of the ongoing enforcement of the
18 PAP, the way it's written now is it's the same as
19 enforcement of the SGAT. I differ, I mean I point out
20 that that is different than how it would be handled on a
21 going -- in terms of changes on a going forward basis.
22 So that's the -- that's another role that the states
23 would have in terms of the ongoing administration,
24 interpretation of terms that are already set in the PAP.

25 MR. CROMWELL: Chairwoman Showalter, to

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1 answer your question, in Section 15 of the QPAP Qwest
2 filed on November 5th I believe it is, Subsection 15.1.4
3 relating to auditing, the proposal appears to be that
4 any dispute out of the audit plan would be reviewable by
5 an oversight committee of commissioners, appealable then
6 to a committee of chairs of the participating
7 commissions. That would be the I guess the
8 jurisdictional review process that does not appear to be
9 provisioned for review by any state commission. Again,
10 it keeps it all in a multi-state process.

11 CHAIRWOMAN SHOWALTER: Thank you.

12 JUDGE RENDAHL: Mr. Weigler, you had your
13 hand up, very briefly.

14 MR. WEIGLER: I was just going to say the
15 same thing as Mr. Cromwell. If you look at Section 15,
16 I mean the Commission is basically being taken out of
17 the audit process. I think Section 15 speaks for
18 itself. And in Section 16, the six month review, as we
19 discussed before, the Commission is basically being
20 taken out of the six month review process.

21 JUDGE RENDAHL: Thank you.

22 Ms. Stang, very briefly, because I really
23 want to give Mr. Spinks an opportunity to ask his
24 questions. There was something you wanted to correct.

25 MS. STANG: Well, I --

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1 JUDGE RENDAHL: Is it something you can
2 submit?
3 MS. STANG: I absolutely can, and I prefer to
4 do it that way. We would give the parties an
5 opportunity to respond, but we misspoke in our comments,
6 and I just want to correct it, and I have a pleading now
7 that I can file.
8 JUDGE RENDAHL: And let's make it very
9 briefly, your pleading no more than five pages, and
10 again, responses no more than five pages.
11 MS. STANG: I think it's two.
12 JUDGE RENDAHL: Okay. If you can file yours
13 by this Friday and responses, is next Friday the 28th?
14 MR. KOPTA: Yes.
15 MR. CROMWELL: Your Honor, if I may have
16 permission to respond if we choose to by fax as I will
17 be in Utah.
18 JUDGE RENDAHL: Why don't we extend the date
19 given the holiday. I don't want to ruin anyone's
20 holiday here. You already have a filing on the 28th.
21 Would the 3rd, the 2nd or the 3rd work better?
22 MR. CROMWELL: Yes.
23 JUDGE RENDAHL: Okay.
24 MR. CROMWELL: The 3rd if possible.
25 JUDGE RENDAHL: Responses to that.

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1 MS. NELSON: Thank you.

2 JUDGE RENDAHL: All right, Mr. Spinks, and
3 then we will break at 12:15.

4 MR. SPINKS: These are questions over the
5 redlined QPAP that was filed in response to Bench
6 Request 37. In Section 14.2 in part it says that CLEC
7 specific data would be provided to the Commission upon
8 request "pursuant to the terms of an order of the
9 Commission". And the question we have here is, is the
10 order that was entered in this case at the beginning of
11 it sufficient for those purposes?

12 MS. STANG: Do you mean a protective order
13 that was entered in this docket?

14 MR. SPINKS: Yes.

15 MS. STANG: The issue here is CPNI, and so we
16 think that we need some other direction of the
17 Commission on an audit for this data to be provided on
18 an ongoing basis. It can be very straightforward, but
19 it is just to provide us with protection that we're
20 turning this over to someone who is the lawful authority
21 to require it.

22 JUDGE RENDAHL: Any other comments on that
23 issue, or is there general agreement on that?

24 Hearing nothing, I'm assuming there's
25 agreement.

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1 Mr. Spinks.

2 MR. SPINKS: Thank you.

3 Section 16.1, which is the six month review,
4 says in part that:

5 The criteria for reclassification of a
6 measure shall be whether the actual
7 volume of data points was less or
8 greater than anticipated.

9 And I'm concerned about that language,
10 because it seems to limit very narrowly the purposes for
11 which a measure could be reclassified and wouldn't
12 include things like performance or other concerns that
13 might be raised, and I was wondering if Qwest could
14 maybe respond to that.

15 MS. STANG: I guess one answer is provided
16 you the redlined, I'm sorry, my presentation, a
17 comparison you will notice that was taken almost
18 verbatim from the Southwestern Bell Texas plan, and I
19 may just consult with Mr. Reynolds for a minute to see
20 if he has any other ideas about the rationale for that.

21 JUDGE RENDAHL: Let's be off the record for a
22 moment.

23 (Discussion off the record.)

24 MS. STANG: I can't give you more of a
25 justification right now, but I guess what I would say is

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1 I'm happy to supplement my comments now after talking to
2 Mr. Inouye, and I can provide that to you through a
3 Bench request or something if I have more to say. I
4 don't know that we will, but I mean Mr. Inouye was our
5 lead negotiator earlier, and he may have the gem of
6 knowledge I can't provide you right now.

7 JUDGE RENDAHL: Okay, well, why don't we make
8 that Bench Request 39, and the rule on Bench requests is
9 that they're due ten days after the transcript is
10 available, and the transcript will repeat the question
11 for you. And I think to speed this up, I think
12 Mr. Spinks has one other Bench request for Qwest that
13 will allow us to complete this portion of the
14 proceeding.

15 Mr. Spinks.

16 MR. SPINKS: Thank you.

17 For Sections 14.4 and 15.5, could Qwest
18 identify whether there are any performance plans
19 approved so far by the FCC that contain the language in
20 those sections as Part A. And Part B is why Qwest
21 believes that language should be included in the QPAP.

22 MS. STANG: I got the first one, 14.4, the
23 second one was?

24 MR. SPINKS: 15.5.

25 MS. STANG: Thank you.

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1 JUDGE RENDAHL: And again, Qwest will have
2 ten days, ten business days I believe, to respond after
3 the transcript is received to respond to those Bench
4 requests.

5 MS. STANG: Clarification whether either of
6 these has a similar provision?

7 MR. SPINKS: Yes.

8 MS. STANG: Corresponding to any other QPAP,
9 and the second question was what was the basis for it in
10 our view?

11 MR. SPINKS: Yes, why Qwest believes -- I
12 have looked in Texas, and the ones I have seen, I have
13 not found that language anywhere else, but it may be
14 that you were looking at something else.

15 MS. STANG: And I think 14.4 is new, yeah,
16 that 14 -- I can just tell you right now 14.4 was
17 implementing Mr. Antonuk's order or by virtue of the
18 redline -- that -- or the redlining tells me that
19 anyway, but we're happy to provide you that information.

20 JUDGE RENDAHL: Thank you.

21 Okay, is there anything else that we need to
22 address on the issue of QPAP?

23 Ms. Singer-Nelson.

24 MS. NELSON: Just briefly, on the comments on
25 Qwest's responses to the Bench request that the parties

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1 filed, a lot of the comments that WorldCom and AT&T put
2 together have been addressed in the general statements
3 arguments on some of the other issues, but a few of them
4 haven't. And I just wanted to note that these responses
5 exist, and they're comments on, you know, how compliant
6 is Qwest's proposed Exhibit K with the proposed order or
7 the proposed -- the recommendations of the Liberty
8 Consulting report.

9 So I think that it's -- it's my -- it's my
10 anticipation that the Commission will ask for another
11 compliance run of the QPAP after the Commission issues
12 its final decision on the issues we have discussed here,
13 so it's my anticipation that we would be able to comment
14 on how compliant that language is with the Commission's
15 order.

16 JUDGE RENDAHL: As we are doing this
17 afternoon on Workshops I and II without the
18 reconsideration orders in place, we will have to have
19 another compliance run at it before we complete this
20 process, so your assumption is correct.

21 MS. NELSON: Okay, thanks.

22 JUDGE RENDAHL: And we have not forgotten
23 about the responses to Qwest's responses to the Bench
24 request. Those are part of the record.

25 MS. NELSON: Thank you, that's all I wanted

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1 to make sure of.

2 JUDGE RENDAHL: Okay, is there anything more
3 on the performance assurance plan that we need to
4 address this morning?

5 MS. STANG: I had a great closing argument,
6 but I guess you don't want to hear it.

7 JUDGE RENDAHL: I don't think so.

8 Well, thank you all for going through these
9 issues and explaining our questions and thanks for
10 coming, and we will see you back after lunch at 1:45 for
11 discussion of compliance issues. Thank you.

12 Let's be off the record.

13 (Luncheon recess taken at 12:15 p.m.)

14

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

16 (1:45 p.m.)

17 JUDGE RENDAHL: Let's be on the record for
18 the afternoon portion of our hearing in Dockets
19 UT-003022 and UT-003040. We're here this afternoon of
20 December 19th to discuss issues of Qwest compliance
21 within its SGAT with Commission orders in Workshops I
22 and II in this proceeding. And let's do appearances
23 since we have a slightly different group this afternoon
24 from what we had the last day and a half, and then we
25 will discuss exhibits and talk about the format of

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1 proceeding, beginning with Ms. Anderl.

2 MS. ANDERL: Thank you, Your Honor, Lisa
3 Anderl representing Qwest.

4 MR. KOPTA: Gregory J. Kopta of the law firm
5 Davis, Wright, Tremaine, LLP, on behalf of AT&T
6 Communications of the Pacific Northwest, Inc., XO
7 Washington, Inc., and Electric Lightwave, Inc.

8 JUDGE RENDAHL: Ms. Doberneck.

9 MS. DOBERNECK: Good afternoon, Megan
10 Doberneck, Covad Communications.

11 JUDGE RENDAHL: Thank you. At my left is
12 Ms. Strain of Commission Advisory Staff, and Ms. Strain
13 has prepared a matrix which I believe she circulated to
14 all parties that identifies the information that Qwest
15 initially presented and made some additional columns
16 indicating comments and reply from other parties that
17 might assist us in our presentation today. We thought
18 it might make it easy to follow along this list and
19 indicate which are agreed to and which are still in
20 contention. Is that acceptable to the parties?

21 MS. ANDERL: Yes, Your Honor.

22 JUDGE RENDAHL: Okay. The exhibits from the
23 parties on compliance issues beginning with Exhibit
24 1290, which is marked on the circulated exhibit list,
25 which is Qwest's demonstration of compliance with

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1 Commission orders filed as of October 1st with
2 attachments, and then going through to 1291, which is
3 Qwest's reply. Then AT&T's exhibits are marked 1295
4 through 1302. There were some, we need to delete the
5 reference to Exhibit 1303. That was a duplication.
6 It's been removed from your binders, so it's not in
7 there. And for the parties, the Exhibits 1299 through
8 1302, AT&T supplemented modified versions of those
9 exhibits, and those have also been inserted into your
10 binders. Then Covad's comments on the October 1st
11 filing are marked as 1305.

12

13 (The following exhibits were identified in
14 conjunction with QWEST.)

15 Exhibit 1290 is Qwest's Demonstration of
16 Compliance with Commission Orders as of October 1, 2001,
17 with Attachments A-D. Exhibit 1291 is Qwest's Reply to
18 CLEC Comments on SGAT Compliance with Workshop 1 and two
19 Orders, 12/5/01.

20

21 (The following exhibits were identified in
22 conjunction with the testimony of AT&T.)

23 Exhibit 1295 is AT&T's Comments Regarding
24 Qwest's Compliance with Washington Commission Orders
25 Regarding Workshop 1 issues (11/21/01). Exhibit 1296 is

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1 AT&T's Comments Regarding SGAT Sections 6, 7, and 8.
2 Exhibit 1297 is Exceptions and Comments on the Report on
3 the Paper Workshop Issues (Attachment A to AT&T's
4 Comments). Exhibit 1298 is Qwest Release Notification
5 Form (Attachment B to AT&T's Comments). Exhibit 1299 is
6 SGAT Revised Section 7.3.6 (Attachment C to AT&T's
7 Comments). Exhibit 1300 is SGAT Revised Section
8 10.8.2.27. Exhibit 1301 is SGAT Revised Section
9 10.8.4.1. Exhibit 1302 is SGAT Revised Exhibit D.

10

11 (The following exhibits were identified in
12 conjunction with the testimony of COVAD.)

13 Exhibit 1305 is Covad Communications
14 Company's Comments on Qwest's October 1, 2001 Compliance
15 Filing, 11/20/01.

16

17 JUDGE RENDAHL: Are there any objections to
18 admitting those documents into the record?

19 MS. ANDERL: No, Your Honor.

20 MR. KOPTA: No objection.

21 JUDGE RENDAHL: Okay, then those will be
22 admitted.

23

24 Let's begin with Qwest's demonstration,
25 Qwest's comments on those issues that are still open
unless, Ms. Anderl, you have a suggestion.

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1 MS. ANDERL: Well, I did talk briefly about
2 this with Ms. Doberneck and Mr. Kopta, and I wonder if
3 it doesn't make sense for the parties who contend
4 noncompliance after we have kind of laid our case out to
5 go through and explain that and have us respond. By
6 that, I do not mean to suggest that there is any
7 shifting of the burdon of establishing that we have
8 complied, but rather that it may not be productive for
9 me to walk through all the language to say why we think
10 it complies. I'm happy to do that though, and I'm also
11 happy to give kind of an overview in terms of what we
12 attempted to do if that would be helpful.

13 JUDGE RENDAHL: Let's be off the record for a
14 moment.

15 (Discussion off the record.)

16 JUDGE RENDAHL: After some discussion, we
17 determined that we will follow along with the matrix
18 that Ms. Strain developed and that Mr. Kopta and
19 Ms. Doberneck will initiate the discussion on issues
20 that are still at issue and will give us the appropriate
21 references to the matrix so we can follow along with the
22 discussion.

23 Mr. Kopta.

24 MR. KOPTA: Thank you, Your Honor. Starting
25 at the very beginning, and I rather than having an

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1 introductory statement will just go right to the issues.
2 This is the issue that's from ordering paragraph in the
3 final order from Workshop I at 87, and this has to do
4 specifically with SGAT Section 10.8.2.27 and also has
5 some additional ramifications in other parts of the
6 SGAT. And if you look at Exhibits 1300 through 1302,
7 then those are really the exhibits that are the SGAT
8 language that we're talking about with respect to this
9 issue, which is specifically the ability of CLECs to
10 obtain or review copies of right-of-way agreements that
11 Qwest has executed with third parties.

12 And our concern with the language that Qwest
13 has proposed is that it introduces at least a couple of
14 new issues that were never raised as part of the
15 proceedings before this Commission and apparently were
16 parts of the multi-state and perhaps Colorado, I'm not
17 sure. And those are specifically any obligation on the
18 part of a third party to redact some information from
19 agreements with Qwest and any concerns as far as
20 confidentiality goes. Neither of those two issues was
21 raised in these proceedings, and so what AT&T has done
22 is proposed some language that reflects what the
23 Commission has done without the additional language and
24 issues that the language that Qwest has proposed raises.

25 JUDGE RENDAHL: Ms. Anderl.

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1 MS. ANDERL: Thank you, Your Honor.

2 This one is a little bit more complex as the
3 first issue to start out with. Some of the ones -- some
4 of the later issues are pretty straightforward where I
5 could just say to you, you know, look, we did exactly
6 what the Commission ordered us to do, and that ought to
7 end it, and what AT&T is trying to propose here is
8 something new. Here we've got a little bit of
9 complexity because this is an issue that relates to
10 Workshop I that happened a really long time ago, and the
11 multi-state and some other workshops followed on and
12 produced some additional refinements and evolution of
13 the language and the forms that we're using in the SGAT.

14 We believe that the language that we filed to
15 comply with the final order requirement does indeed
16 comply. The final order in Paragraph 87 was very clear
17 that Qwest was required to eliminate provisions that
18 require land owner approval prior to a CLEC viewing
19 agreements and eliminate provisions that require CLECs
20 to negotiate with land owners for Qwest's right to cure
21 a CLEC breach. Those two provisions or provisions in
22 the SGAT pertaining to those two issues have been
23 removed, and I don't believe that there's any dispute
24 about that. AT&T has not pointed to any language that
25 should have been removed that wasn't.

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1 However, AT&T is correct that there are some
2 additional provisions that Qwest has proposed in its
3 SGAT and in its Exhibit D to the SGAT. Qwest believes
4 that those provisions are appropriate. We went into our
5 -- some detail in our reply comments about that issue,
6 our reply comments being Exhibit 1291, and the
7 discussion of this issue starts in that document on page
8 24 and goes for about four or five pages.

9 To clarify, we did import some language from
10 the multi-state facilitator's order that was approved in
11 the multi-state proceeding on this issue. The language
12 specifically pertains to the CLECs' use of any
13 confidential information it might obtain in reviewing
14 the right-of-way agreements. Qwest would like to limit
15 the CLECs' ability to use that confidential information
16 to the purposes for which the information is disclosed
17 to the CLEC. And Qwest believes that that's reasonable.
18 Certainly reciprocal obligations of that nature have
19 been imposed on Qwest's use of CLEC confidential
20 information in other provisions in the SGAT. And
21 certainly if Qwest is obliged under a certain provision
22 of the law to disclose confidential information to the
23 CLEC, the CLEC's use of that information ought to be
24 limited to that, to the purposes stated in the law that
25 required the disclosure.

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1 The only other thing that I would mention,
2 which I think AT&T might have lost sight of to some
3 extent, although I'm not sure about that, this provision
4 is a fairly limited and narrow provision, Section
5 10.8.2.27. It only pertains to non-recorded
6 right-of-way or access agreements. Because most of the
7 issues that are raised in this context don't exist if
8 the agreements are recorded. Then they are a matter of
9 public record, they can be obtained. The kind of hoops
10 and limitations that are imposed in this section just
11 don't exist. These are unrecorded agreements. Some of
12 them are agreements that pertain to our right, Qwest's
13 right to be inside of a building which Qwest doesn't
14 necessarily agree even pertains to the rights-of-way
15 issue but does appear to be encompassed within the
16 Commission's initial and final orders, and we therefore
17 folded that in as well.

18 And for the balance, as I said, we did put in
19 about four or five pages of comments, and as to the
20 minute detail, I will rest on those comments.

21 JUDGE RENDAHL: Any follow up?

22 MR. KOPTA: Only to say that this is a
23 compliance issue. Compliance means what did the
24 Commission order and is the SGAT language that's
25 provided in compliance with the Commission's order.

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1 It's not an opportunity to reopen this issue and raise
2 additional issues. If Qwest wants to do that, there's a
3 different way of doing it than through compliance.

4 COMMISSIONER HEMSTAD: Which is?

5 MR. KOPTA: Which would be, as they have done
6 in other instances, ask for reconsideration, ask for
7 rehearing or to reopen the record on this particular
8 issue. I mean we're not saying that there isn't a way
9 for them to do it. It's just that this is compliance.

10 COMMISSIONER HEMSTAD: Well, I was going to
11 ask your response on the merits to the point, the
12 confidential information should reasonably be limited to
13 the purposes for which it has been disclosed, and that
14 seems perfectly reasonable to me.

15 MR. KOPTA: Well, in general it may be. I
16 think the issue is who are those people. What kind of
17 confidential information is it that we're talking about.
18 Is there indeed any confidential information. And we
19 don't have a record in this proceeding of any of those
20 issues, so there are facts surrounding that issue that
21 would color any language that the Commission would want
22 to determine with respect to that issue. So that's why
23 I say it's not appropriate here, because we don't have a
24 record on which --

25 COMMISSIONER HEMSTAD: Right, so then we're

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1 back to the procedural matter.

2 MR. KOPTA: Correct.

3 COMMISSIONER HEMSTAD: Should this be raised
4 by some form of motion to reconsider or to reopen rather
5 than modify the substance here?

6 MR. KOPTA: Some vehicle that would allow for
7 additional factual evidence.

8 COMMISSIONER HEMSTAD: Ms. Anderl, do you
9 have any comment on that?

10 MS. ANDERL: As I said in my opening
11 statement, this is one of the stickier issues, because I
12 understand Mr. Kopta's problem. You know, typically we
13 have imported agreed upon language from the multi-state
14 or language where say the CLECs have prevailed in the
15 multi-state, and it's not been favorable to Qwest, and
16 no one has objected to that, of course. And I don't
17 frankly recall the status of the issue in the
18 multi-state, if the CLECs have ultimately acceded to
19 this language or have just acceded to Commission final
20 determinations approving the language without really
21 ever agreeing to it.

22 And so I guess what I would say is that what
23 we have done is complied with the Commission order,
24 because we have taken out what we were ordered to take
25 out. This is not strictly the language that existed in

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1 the March 22, year 2000, SGAT, that is correct. And,
2 you know, we were hopeful that it would be
3 non-controversial because it's more updated and reflects
4 an evolution of the position, but --

5 JUDGE RENDAHL: So would you have any
6 objection to filing a petition for reopening on this
7 particular point if it comes to that?

8 MS. ANDERL: We would have to decide what we
9 wanted to do. I don't know if we would want to reopen
10 the record for Workshop I. If the Commission were to
11 determine that this language were not appropriately
12 included in the SGAT in its current version, we would
13 have to make a decision about what to do.

14 COMMISSIONER HEMSTAD: Apparently the idea is
15 that if the parties agree, you can make a modification
16 if there's no dispute.

17 MS. ANDERL: Sure.

18 COMMISSIONER HEMSTAD: But apparently now
19 there's a disagreement. I guess the question is, are
20 you disagreeing just because you want to disagree, or is
21 the issue, you know, significant?

22 MR. KOPTA: As you know, I'm always very
23 agreeable.

24 COMMISSIONER HEMSTAD: Yes.

25 MR. KOPTA: No, there are some substantive

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1 disagreements. And what's happening in the multi-state
2 is a little bit complicated, but in general, Utah has
3 taken one avenue, and the rest of the states have taken
4 another. And one of the things that the Utah Commission
5 has done is said, Qwest, you and AT&T go negotiate some
6 confidentiality language and then come back to us, and
7 that's happening right now. It hasn't finished yet.
8 And that was because the Commission said go do it. It
9 wasn't something that AT&T agreed was appropriate, and
10 so I think that's the problem that we have with this
11 language.

12 CHAIRWOMAN SHOWALTER: On the process
13 question, if this were the only proceeding going on and
14 Qwest was introducing new language that hadn't been part
15 of our earlier processes, it seems like you have a
16 stronger point. But there are all of these proceedings
17 going on in different places, and it seems to me, kind
18 of cutting to the quick, have you had an opportunity to
19 address this argument in another forum, and is there
20 something on the record? In other words, have, in fact,
21 you been able to debate this issue and the language of
22 the debate could be imported here and we make a
23 decision, which is different from an issue catching you
24 by surprise. And given that this is an unusual
25 proceeding anyway, we don't have the same rules, and we

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1 don't have the same rules, and unlike any other
2 proceeding, we have multiple proceedings from which the
3 parties are borrowing. I'm just wondering what kind of
4 a, you know, detriment is it to try to decide this
5 issue.

6 COMMISSIONER HEMSTAD: And the additional
7 point, I think we all would like for our mutual benefits
8 to minimize more proceedings.

9 MR. KOPTA: You mean you're not enjoying all
10 of this? No, I understand, and it has been an issue
11 that has been sort of evolved since it was first raised
12 in Washington, and there has been discussion of this, of
13 these issues in the multi-state and probably in
14 Colorado. I'm not sure exactly where else it's been
15 addressed. I would need to check with the folks that
16 were more directly involved to see whether they feel
17 like there's a record that we could just provide to the
18 Commission and say, here's whatever everybody said in
19 these other proceedings, now it's up to you to make
20 whatever determination that you want to make. I can
21 certainly investigate that and get back to the
22 Commission and the parties if that's what the Commission
23 would like to do on this.

24 JUDGE RENDAHL: And also the status of the
25 Utah AT&T-Qwest discussion, if there's been some

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1 resolution that's acceptable, then maybe that would
2 assist us as well.

3 MR. KOPTA: And I will be happy to provide
4 that.

5 JUDGE RENDAHL: So in terms of the first
6 issue, it seems that Qwest is willing to make the
7 changes on the multi-tenant environment issue. It's the
8 remaining two issues that AT&T and Qwest still have
9 differences on?

10 MS. ANDERL: That's correct.

11 JUDGE RENDAHL: And Mr. Kopta will get back
12 to us on the status of those, where those last two
13 issues are.

14 MR. KOPTA: Yes, I will.

15 JUDGE RENDAHL: Thank you.

16 COMMISSIONER HEMSTAD: We would be delighted
17 if you could come to some agreement.

18 MR. KOPTA: That's what everybody is saying.

19 The next issue that we have is Revised
20 Initial Order, Footnote 7, page 10, which is actually
21 the third issue down. And that has to do with field
22 verifications of conduit, as you can see. Specifically
23 language that Qwest proposed with respect to the CLECs'
24 ability to conduct its own field verification, in other
25 words, to go out and check and see whether there's

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1 actual space by looking in the manhole as opposed to
2 looking at the drawings in the Qwest central office.
3 And with respect to this issue, we have
4 raised in the cost docket the issue of, number 1, we
5 don't think that it's necessary to have a field
6 verification. And if it is necessary, then it's much
7 more limited than what Qwest has proposed. So our
8 position is that that's an issue that the Commission is
9 going to decide in the cost docket, and obviously the
10 SGAT will need to be framed consistent with that. But
11 for the moment, we're not willing to say that even with
12 respect to self provisioning that what Qwest has
13 proposed is appropriate.

14 JUDGE RENDAHL: Ms. Anderl.

15 MS. ANDERL: Thank you, Your Honor.

16 I would just point out, as we did in our
17 written comments starting on page 30, that we proposed
18 the CLEC field verification language on July 6, year
19 2000, and I do believe that this is the first time that
20 we have heard from ELI and XO that they do not agree
21 with the way the language is phrased. We believe that
22 it is perfectly consistent with the requirement that
23 there be a provision in the SGAT that CLECs be permitted
24 to do field verifications.

25 It is correct that the costs for that are at

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1 issue in the cost docket. And to some extent the
2 thoroughness of the inspection and the nature of the
3 inspection is linked to the costs, because if you do a
4 cursory review, it doesn't take as long and it doesn't
5 cost as much.

6 But we believe that the language that we have
7 proposed in the SGAT, if I can just find it here, which
8 is 10.8.4.2.1, just permits the CLEC to perform a field
9 verification. It does require that verifications be
10 conducted with a Qwest approved contractor who will
11 monitor the CLEC contractor, and that then Qwest will
12 use the drawings that are created by the CLEC inspector
13 to do the final verification. We don't know what else
14 we would have proposed that would enable the CLEC to do
15 a field verification.

16 And as I said, I believe it's reasonable
17 since this language has been out there for about 16
18 months that if there were a problem with it, it would
19 have been identified before now.

20 COMMISSIONER HEMSTAD: What about XO/ELI's
21 apparent point that they wish to pursue it in the 3013?

22 MS. ANDERL: Well, and, Your Honor, I think
23 that's, as I said, it's okay to pursue costs and prices
24 and to have some debate about costs and prices, but
25 terminology in the SGAT that permits CLEC to conduct the

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1 inspection in the first instance is language that ought
2 to be developed in the SGAT proceeding, and I don't
3 think we are generally in the business of developing
4 terms and conditions or language in the cost docket,
5 given all the other issues that come up. And so it's
6 really a process objection from a practical standpoint.

7 JUDGE RENDAHL: Okay.

8 MS. ANDERL: I was going to say, I guess I
9 would just note that the SGAT proceeding has in some
10 instances required Qwest to modify certain tariffs or do
11 other things that cross pollinate with the cost dockets.
12 In our compliance filing, our original compliance
13 filing, we attached a couple of tariff revisions or
14 other changes that we made that were in accord with the
15 requirement out of the SGAT docket.

16 So I'm not saying that, you know, you build a
17 steel wall between the two dockets, but that generally
18 you try to keep them separate. And certainly if the
19 cost docket evolves in such a way that it becomes
20 obvious that there are changes needed to this SGAT
21 language, we would do that. It's just that if you're
22 going to set up the rules ahead of time, we don't think
23 that it's the right place to do the issue in the first
24 instance. That's all.

25 JUDGE RENDAHL: Okay, which is the next open

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1 issue?

2 MR. KOPTA: The next one is final order
3 Workshop I at 90, which has to do with reciprocal
4 compensation.

5 JUDGE RENDAHL: And I will make a note here
6 just before we get started that that is an issue that is
7 subject to a petition for reconsideration by Qwest, and
8 my apologies in that there is no final order on
9 reconsideration on this issue yet. So given that
10 preface.

11 COMMISSIONER HEMSTAD: And I might add, that
12 issue is never going to go away.

13 MR. KOPTA: You know, I was going to say, how
14 many times have we done this. Yeah, and we do not have
15 an objection obviously with following the law and doing
16 what the FCC has ordered us to do at least for now until
17 the D.C. Circuit decides whether that's the appropriate
18 thing. But for now, what the FCC has said is the law,
19 and we proposed some modifications to the language that
20 Qwest had proposed for the permissive use portion of
21 reciprocal compensation, and I think we're pretty close
22 actually to coming up with language that we can agree
23 on. You know, I think we agree substantively. I'm
24 looking at the issues that we had outstanding, and two
25 out of the three issues that I'm aware of, I think we

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1 can agree on language if we, you know, are given the
2 opportunity.

3 One is that the rates, the FCC rates once
4 someone opts into the SGAT, apply prospectively, so if
5 there was some other interconnection agreement that had
6 different rates in it up to that point, that nothing in
7 the SGAT would change those rates. We had proposed some
8 language that said terms. Qwest said, well, that's too
9 broad because there are terms, for example, the caps are
10 set based on first quarter 2001. And obviously our
11 intent is not to exclude that applicability, because
12 that's in the FCC order. So I think we just need to
13 focus in on rates, and it seems like we agree on that
14 from a substantive standpoint. We just haven't agreed
15 on the language.

16 JUDGE RENDAHL: Mr. Kopta, AT&T has offered
17 and we have admitted Exhibit 1299, which discusses
18 language on ISP bound traffic. Can you explain if there
19 has been any agreement between AT&T and Qwest on this
20 particular language and what the areas of disagreement
21 are?

22 MR. KOPTA: Thanks for the clarification.
23 Yes, Ms. Anderl obviously can correct me if I'm wrong,
24 but my understanding is that Qwest accepted most of the
25 changes that AT&T had proposed, and there were just

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1 three areas that we are left with a lingering dispute
2 on.

3 MS. ANDERL: I was going to say, I think
4 that's true, and if you wanted to walk through it
5 section by question, I could jump in and say yes we
6 agree to delete or yes we agree to add, and maybe that
7 would be an efficient way to get it nailed down.

8 MR. KOPTA: And doing that, if you look at
9 Section 7.3.4.4, the issue that I think we still have is
10 the word all in the second line, exchange of all traffic
11 subject to Section 251(b)(5).

12 JUDGE RENDAHL: And this is in which section?

13 MR. KOPTA: This is in Section 7.3.4.4.

14 JUDGE RENDAHL: Okay.

15 MR. KOPTA: And as I understand it, Qwest's
16 concern with all is that it's unclear and may be
17 overinclusive. Qwest has proposed the term EAS/local,
18 and AT&T's concern is that term is undefined and may be
19 too limiting. And the phrase all traffic subject to
20 Section 251(b)(5) is what's said in the FCC order, and
21 so when in doubt, our proposal is to just parrot the
22 language from the FCC and let whatever happens with that
23 happen.

24 JUDGE RENDAHL: Ms. Anderl.

25 MS. ANDERL: Mr. Kopta is right, that is kind

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1 of the crux of the issue. And at the risk of having my
2 client less than happy with me, I don't know that we
3 mean anything different here. I think we like our
4 language, they like their language, but I don't know
5 that the outcome is going to be any different. We
6 thought that all might raise questions whereas EAS/local
7 was more clear.

8 JUDGE RENDAHL: Is there any --

9 MS. ANDERL: But 251(b)(5) traffic is
10 251(b)(5) traffic.

11 JUDGE RENDAHL: As we discussed on one of the
12 prior issues, is there any likelihood that Qwest and
13 AT&T are going to be discussing this issue in other
14 proceedings?

15 MS. ANDERL: I don't know about other
16 proceedings, but certainly Mr. Kopta and I can go back
17 to our clients and try to hammer these last little
18 wrinkles out.

19 JUDGE RENDAHL: Do you think it's more likely
20 that you would be able to work out the wrinkles on this
21 issue, or should we go through line, you know, section
22 by section and identify -- I mean I think it's helpful
23 to identify where the issues are, but I'm wondering
24 whether it's helpful for the two of you to go back to
25 your clients and see if you can hammer out something

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1 that works if it's an issue of you both understand what
2 you're talking about but you don't have the -- you can't
3 find the right words to describe it.

4 MR. KOPTA: Well, actually, my understanding,
5 and it is just my understanding, is that there is
6 conceptual agreement, it's just how do we make sure that
7 the language is right. And so I think, at the risk of
8 irritating my client, that we could probably work this
9 out. And if we can't, then we can present something
10 much more narrow to the Commission as far as here's
11 something that we can't resolve, we need you to tell us.

12 JUDGE RENDAHL: Would that work?

13 CHAIRWOMAN SHOWALTER: Go try.

14 JUDGE RENDAHL: Those are my thoughts.

15 MS. ANDERL: And we did agree to delete
16 7.3.4.3, which is the stricken through section in the
17 first part of Exhibit 1299, I believe.

18 JUDGE RENDAHL: Okay.

19 MS. ANDERL: We skipped over that, but we're
20 fine with taking that out.

21 MR. KOPTA: Right, I was just going to the
22 ones still at issue.

23 JUDGE RENDAHL: If you don't mind pointing
24 out just very briefly the others just so that we know
25 what the issues are, and then if you can work out the

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1 language amongst yourselves, that would be helpful.

2 MR. KOPTA: Okay, sure.

3 The next one is in 7.3.6.1, and that's the
4 issue that I was describing in concept, which is that
5 when a party opts into the SGAT, that those terms take
6 effect or the rates take effect as of the date that the
7 party opts into the SGAT as opposed to what may have
8 been applicable under a prior interconnection agreement.

9 JUDGE RENDAHL: As opposed to retrospective?

10 MR. KOPTA: Right. And if you look at that,
11 I think the dispute is focused on the third line from
12 the bottom at the very end. The whole sentence reads,
13 starts on the line above that:

14 While the subsections of this section
15 7.3.6 reference dates that precede the
16 effective date, the parties agree that
17 the terms of such subsections apply only
18 on a prospective basis, et cetera.

19 And again, Qwest's concern was that terms was
20 too broad, and we're certainly willing to narrow that
21 down to specifically referencing rates or bill and keep
22 mechanism as opposed to the generic terms. And that's
23 not something that Qwest has had a chance to look at,
24 but I think we can probably work that one out.

25 The third issue is on the very last section,

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1 which is currently marked as 7.3.6.2.3.4, I know, too
2 many numbers, I'm sorry, the very last section that has
3 not been stricken. And the concern here was the use of
4 the term interconnection configurations, that that
5 really doesn't have a whole lot of meaning. And so what
6 we wanted to do was to revise it so that it takes out
7 that term and basically captures the concept that in the
8 event that CLEC and Qwest were not exchanging traffic
9 during this time that we need to look at, then ISP
10 traffic is exchanged on the bill and keep basis. Again,
11 that's what the FCC order requires, and so I don't think
12 that it's something that we disagree with substantively,
13 it's just making sure that we get the language right.

14 JUDGE RENDAHL: Well, please go ahead and see
15 if you can work out those language issues, and report
16 back to us once you do. Or if you don't, let us know.

17 MR. KOPTA: You will be the first.

18 JUDGE RENDAHL: Great.

19 MR. KOPTA: The second issue underneath this
20 same heading, Final Order Workshop I at 90, is
21 compensation for interconnection facilities. This is
22 what we were just talking about was minute of use, now
23 we're talking about the facilities that -- the pipes
24 that connect the two switches. And Qwest has included
25 in a couple of SGAT sections talk about each party's

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1 responsibility for sharing the cost of those facilities,
2 that that share is determined based on non-ISP bound
3 traffic, so they're excluded ISP bound traffic that's
4 carried over those facilities in determining who is
5 responsible for how much of the facility.

6 This is -- I'm not aware that this is part of
7 the motion for petition for reconsideration from
8 Ms. Anderl. We can certainly clarify that. I don't
9 believe that it is. And to the extent that it's not,
10 this Commission has already decided that ISP traffic
11 should be treated as local, and it should be treated as
12 local for the purposes of determining respective cost
13 sharing responsibility for interconnection facilities.

14 Ms. Anderl or Qwest in their comments said,
15 well, you know, the natural meaning of the FCC order is
16 that you take ISP traffic out. That's not our reading.
17 You know, I -- the FCC specifically addressed
18 permissive use compensation, not facility sharing.
19 That's not subject to the same kinds of concerns. We're
20 talking about just the pipes. Nobody is making any
21 money off of these interconnection facilities,
22 particularly if they're provided by Qwest. It's just
23 how much do we have to pay for this facility when the
24 vast majority of it is being used by Qwest customers
25 sending traffic over to CLEC customers, most of which

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1 may happen to be ISPs.

2 So from a compliance standpoint, the
3 Commission has already determined that this traffic is
4 to be treated as local, and we think that it should be
5 treated as local for purposes of these SGAT sections.

6 JUDGE RENDAHL: Ms. Anderl.

7 MS. ANDERL: Thank you, Your Honor.

8 This is an issue that remains in dispute, and
9 as our comments on page -- our reply comments, Exhibit
10 1291, starting on page 8 discuss this issue. We do
11 believe that the FCC's holding that this traffic is
12 local is -- not local rather, that ISP traffic is not
13 local, is a not local holding for all purposes, not just
14 reciprocal compensation but also for cost sharing on a
15 reciprocal use of interconnection facilities analysis.
16 There is no factual or theoretical or intellectual basis
17 for drawing a line there. And while it is not
18 technically a part of the petition for reconsideration
19 in that it's not listed out as a separate issue, I think
20 that Qwest's petition for reconsideration on the first
21 workshop order does fairly encompass this issue.

22 Additionally, you would be familiar with this
23 issue from just having had it briefed by Qwest, and I
24 think other parties briefed and argued in the Workshop
25 III final order where -- or the pending Workshop III

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1 final order. In the Workshop III initial order, the
2 issue came up because Workshop III addressed EELs, and
3 EELs have what the FCC calls the local use restriction
4 on them. And the question came up in the context of
5 that issue as to whether you count ISP traffic as local
6 to satisfy the FCC's local usage test to convert a
7 private line facility to an EEL.

8 And so we do believe this continues to be an
9 open issue before the Commission in a couple of
10 different contexts, and we think that not local means
11 not local, and we therefore recommend that it be
12 excluded in accordance with the FCC's order from these
13 provisions as well and that Qwest's SGAT language on the
14 issue is therefore in compliance with the requirements
15 of the law as set forth by the FCC.

16 JUDGE RENDAHL: Anything further on this?

17 MR. KOPTA: No, I think Ms. Anderl is right
18 that it is a continuing issue. The Commission is pretty
19 familiar with it, I think, based on the number of times
20 that we have talked about it, and so I think certainly
21 the reference to the Workshop III order is probably a
22 good one, because that was the last time that we talked
23 about that particular issue and what's the meaning of
24 the FCC's order, so.

25 JUDGE RENDAHL: Thank you.

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1 What's our next issue?

2 MR. KOPTA: There are a couple of issues in
3 which we basically said, you know, gee, the Commission
4 said this and AT&T hasn't done it, I mean and Qwest
5 hasn't done it. And Qwest says, well, that's because
6 it's pending in motion for reconsideration, so I'm going
7 to skip those issues. I don't really see that there's
8 anything to discuss about those.

9 The next one is a couple of pages over, and
10 that's the 15th order at 150. It has to do with
11 interconnection at any technically feasible point.

12 JUDGE RENDAHL: So which SGAT section are we
13 talking about?

14 MR. KOPTA: This has got three different SGAT
15 sections although they're all in the same general area,
16 7.1.2, 7.1.2.1, and 7.1.2.3.

17 JUDGE RENDAHL: So this is the 15th
18 Supplemental Order at Paragraph 150?

19 MR. KOPTA: Yes.

20 JUDGE RENDAHL: And this is on page six of
21 the -- well, please go ahead.

22 MR. KOPTA: There are two issues that come up
23 here, and actually there are later cross references to
24 it later in the matrix, as Ms. Strain and we discussed
25 earlier off the record. But the two primary issues come

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1 up in Section 7.1.2.1 and 7.1.2.3.

2 In Section 7.1.2.1, Qwest has included a
3 sentence that says that, and I'm paraphrasing here, that
4 entrance facilities can not extend beyond the wire
5 center boundary. And what this whole SGAT section says
6 basically is -- establishes the obligation for parties
7 to have interconnection facilities, and this is kind of
8 stuck in here. And I understand Qwest's point that they
9 say that an entrance facility can't go beyond its wire
10 center boundaries. That's not really the issue.

11 This particular part of the SGAT establishes
12 the obligation for the parties to have interconnection
13 facilities, and if Qwest is providing those facilities,
14 then it needs to provide those facilities. If it's
15 called entrance facility plus transport plus something
16 else, then that's fine, but we're not limiting this
17 section just to entrance facilities. It's to any
18 interconnection facility. This is a general provision
19 of the SGAT.

20 And so what we are afraid of is that by
21 putting this in here, then there's some kind of
22 limitation on Qwest's obligation to construct
23 interconnection facilities or participate in the
24 construction of interconnection facilities that doesn't
25 go beyond a wire center boundary, and we think the

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1 Commission has already decided that that is not the
2 case.

3 JUDGE RENDAHL: Ms. Anderl, before you go
4 ahead, I'm going to interject that I should really have
5 made the SGAT filed on September 21st an exhibit,
6 because I think we're referring to sections even though
7 they're listed in various parties' pleadings. I think
8 it makes sense to make that a part of the record. Qwest
9 filed it in a sense in compliance with the first and
10 second orders, it's my understanding.

11 MS. ANDERL: Yes, Your Honor, I think we were
12 wanting to update the SGAT in any event, but certainly
13 we used that and filed a redlined version with footnotes
14 to reflect compliance.

15 JUDGE RENDAHL: Okay.

16 MS. ANDERL: And that would be fine with us.
17 We kind of view these SGATs as, you know, maybe not
18 outside the record, but independent and not necessarily
19 needing to have an exhibit number, but we're fine to
20 have it in the record.

21 JUDGE RENDAHL: Well, we have done it in the
22 past in other workshops in tracking where we are, and so
23 it may make sense.

24 Let's be off the record for a moment.
25 (Discussion off the record.)

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1 JUDGE RENDAHL: We will mark and admit as
2 Exhibit 1292 for the record the SGAT that Qwest filed on
3 September 21st, 2001, both the redlined version and the
4 clean copy for the record.

5 MS. ANDERL: Thank you, Your Honor.

6 JUDGE RENDAHL: Go ahead, Ms. Anderl.

7 MS. ANDERL: I was troubled when I read the
8 comments on this particular section of the SGAT,
9 7.1.2.1, because I was worried that we had stuck a
10 sentence in there and carried it out or over from
11 another workshop or something where it didn't belong, so
12 I did specifically look into this issue. And if the
13 commissioners would like to turn to that section, I
14 think it would be helpful to take a look at it. It is
15 7.1.2.1. It is also contained, quoted in its entirety
16 in AT&T's comments on Workshop II issues, which is
17 Exhibit 1296, and that's on page three of that document.
18 And what we're really talking about here is the third
19 sentence in that paragraph.

20 CHAIRWOMAN SHOWALTER: Can you just read the
21 sentence.

22 MS. ANDERL: Yeah, it says:

23 Entrance facilities may not extend
24 beyond the area served by the Qwest
25 serving wire center.

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1 JUDGE RENDAHL: And so AT&T proposes to
2 delete that?

3 MS. ANDERL: To delete that, yes.

4 JUDGE RENDAHL: And Qwest says it needs to
5 remain in and why?

6 MS. ANDERL: And Qwest says it needs to
7 remain in. As I said, I researched this after this
8 issue was raised, concerned that perhaps some language
9 had been imported that should not have been imported.
10 My research disclosed that this identical language was
11 in the March 22nd SGAT, year 2000, and was also in the
12 June 29, year 2001, SGAT. The only change that has been
13 made is that the word Qwest has been substituted for the
14 reference to U S West. So I believe that this fairly
15 should have been an issue in Workshop II if the parties
16 objected to that language.

17 We think it's entirely appropriate to have
18 the language in there, because we think that it is
19 correct to say that an entrance facility goes only
20 between the CLEC point of interconnection or switch and
21 the Qwest serving wire center that serves the area where
22 the CLEC POI is. And I don't want to be awkward about
23 that. Let me explain it a little bit.

24 If a CLEC locates in Bellevue in a block that
25 is served by the Bellevue Glencourt central office and

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1 they say here's our point of interconnection, here's our
2 switch, we would like you to provide us entrance
3 facilities, we will say, sure, those will be entrance
4 facilities to interconnect at the Bellevue Glencourt
5 central office, because that is the serving wire center
6 that you're in. If a CLEC were to say, we want you to
7 provide us an entrance facility from Bellevue to the
8 Seattle main central office, we would say, no, that's
9 not the way it works, entrance facilities only go from
10 where you are to the Qwest serving wire center that
11 serves that area.

12 Now they can have -- a CLEC can have a single
13 point of interconnection per LATA, and we will take the
14 traffic from there and route it around the LATA as we
15 have been required to do. We're not requiring them to
16 have multiple points of interconnection, and we're not
17 requiring them to do anything really other than not
18 force us to build an entrance facility that extends over
19 multiple wire centers. That just doesn't make any
20 sense. It's never been the way the particular facility
21 has been costed or priced in all of the cost dockets
22 that this Commission has undergone.

23 The assumptions that have been built in to
24 driving the cost result for the entrance facility
25 pricing is that the distance is fairly short and that

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1 the CLEC point of interconnection will be in the same
2 physical geographic territory as the serving wire center
3 to which it's connected. We have had entrance facility
4 rates tariffed in the interconnection tariff for a
5 little bit over a year now. I think those rates were
6 effective December 2nd, 2000, and I can tell you that
7 the language that we're proposing here is consistent
8 with the assumptions that we used to produce the costs
9 and prices for those entrance facility rates.

10 JUDGE RENDAHL: Brief follow up, Mr. Kopta.

11 MR. KOPTA: Yes, thank you.

12 I think the problem is concept versus
13 product, and this is something that has come up numerous
14 times in this proceeding. To use Ms. Anderl's analogy,
15 if a CLEC wants to exchange traffic with Qwest at the
16 Seattle main office and its switch is in Bellevue, Qwest
17 will provide those facilities. It's just that it's
18 called an entrance facility to the Bellevue Glencourt
19 office and then interoffice transport from Bellevue
20 Glencourt to Seattle main. And the concern that we have
21 here is that this is talking -- the heading of this
22 section if you look is Qwest provided facility, and it
23 says:

24 Interconnection may be accomplished
25 through the provision of a DS1 or a DS3

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1 entrance facility.

2 So our understanding is since this is in
3 small case that this is Qwest's use of the term to
4 indicate the facilities that Qwest is providing between
5 its switch and the CLEC switch. What Qwest is saying by
6 adding this sentence on the limitation of entrance
7 facilities is saying its product called entrance
8 facilities does not extend beyond the wire center
9 boundary. And our concern is when you start mixing
10 those, then all of a sudden there may not be the
11 obligation to provide the connection between the two
12 switches, because all of a sudden you have extended the
13 product to include what the generic term is supposed to
14 mean.

15 JUDGE RENDAHL: Ms. Anderl, does the entrance
16 facility in the sentence that AT&T wishes to strike,
17 does Qwest -- is that Qwest provided -- is that Qwest's
18 facility, or is that a CLEC provided facility, and maybe
19 the language needs to be changed to reflect that, and
20 maybe I'm not understanding the dispute.

21 MS. ANDERL: I guess I'm not sure I
22 understood Mr. Kopta's concern. I mean I think that
23 there are multiple places in the SGAT that would impose
24 upon us an obligation to provide the interoffice
25 transport that he's worried about between Glencourt and

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1 Seattle main. We have to provide them that. We know
2 that, and there are other SGAT provisions in addition to
3 the Telecom Act that impose that obligation.

4 We think the product definition is important,
5 because it's important to recognize that some -- that
6 the things are priced in a way that -- in the way that
7 they're defined. And interoffice transport is priced on
8 a mileage distant sensitive basis, because the
9 assumption is that you can't find a flat rated charge
10 that makes sense because you don't ever know on any sort
11 of a reliable basis what a good assumption is for the
12 distance, so you just say, fine, we will do it on a per
13 mile basis. And so Mr. Kopta's concern that removing
14 that or that leaving that language in there somehow
15 limits our obligation to provide interconnection I think
16 is misplaced.

17 CHAIRWOMAN SHOWALTER: Well, but if that's
18 Mr. Kopta's concern and you don't think the sentence
19 legitimately affects that concern, why don't you have
20 another sentence saying this section does not apply to
21 transport between the Bellevue and Seattle in effect? I
22 mean is it possible just to add a sentence in to make it
23 explicit that this doesn't affect that concern?

24 MR. KOPTA: That it doesn't affect the
25 obligation to provide facilities between --

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1 CHAIRWOMAN SHOWALTER: If you agree that it
2 doesn't, then why not just say it doesn't?

3 MS. ANDERL: I think that might be a
4 reasonable approach as long as what Mr. Kopta's clients
5 are proposing isn't that they be allowed to expand wire
6 centers within an entrance facility.

7 MR. KOPTA: That's not my understanding. I
8 think the concern is and has been, how do you construct
9 the facilities between the two switches, and we just
10 want to make sure that there is the obligation to do
11 that and not get bollixed up in limitations on
12 particular products as opposed to the basic concept. So
13 again, you know, we would be willing to talk with Qwest
14 to see if there is some additional language that we can
15 agree on.

16 MS. ANDERL: Put this on a list of items to
17 discuss.

18 JUDGE RENDAHL: Yes, you might start writing
19 a list.

20 CHAIRWOMAN SHOWALTER: You're going to need a
21 long lunch together.

22 MR. KOPTA: Fortunately, Lisa and I like each
23 other, so it won't be too bad.

24 MS. ANDERL: If only it were that easy.

25 MR. KOPTA: If it were up to us, we wouldn't

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1 be here.

2 JUDGE RENDAHL: The next issue, or are we
3 done with that point?

4 MR. KOPTA: With that point, we're done.

5 The next issue is within that same block, the
6 15th Order at Paragraph 150, and in this case it's SGAT
7 Section 7.1.2.3. And for this section, Qwest has added
8 some language on terms and conditions for using mid span
9 meets for access to unbundled network elements. And our
10 concern is that this is a lot of extra language that
11 talks about issues that were never discussed in the
12 context of the workshop. As I recall, this language
13 actually was language that Mr. Antonuk came up with in
14 the multi-state. And as you probably know from the last
15 day and a half, we're not overly fond of that language.
16 So what AT&T has proposed is to take that language out.

17 JUDGE RENDAHL: Ms. Anderl.

18 MS. ANDERL: Thank you, Your Honor.

19 We believe that the language is compliant
20 with language in an initial order and that was
21 apparently overlooked when we did our compliance table
22 and not explicitly picked up in the final order. And I
23 only realized this as I began preparing for this
24 argument, and I referenced the footnotes in the redlined
25 SGAT. In Section 7.1.2.3 regarding mid span meet POI,

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1 Qwest has footnoted that language with a reference to
2 the February 22nd, 2001, Washington initial order on
3 Workshop II at Paragraph 87 requiring Qwest to permit
4 mid span meets to be used to access UNEs. And I
5 apologize that that was not made clear in our remarks.
6 As I said, I think that that was something that was just
7 an oversight on our part. It wasn't one of the things
8 that we picked up to put into our compliance table.

9 It may be that Mr. Kopta's clients aren't
10 happy with this language because it probably does track
11 what happened in the multi-state, but we believe it's
12 also consistent with the requirements in the Washington
13 Commission's initial order at least, which we don't
14 believe was reversed by the final order, that required
15 us to allow mid span meets to be used to access UNEs.
16 That's what we think the language does, and that's what
17 we think we were required to do, and that's what we did.

18 JUDGE RENDAHL: Mr. Kopta.

19 MR. KOPTA: Well, it does a little bit more
20 than that, and that's our concern. Rather than simply
21 saying that these can be used for -- for example, let's
22 look at 7.1.2.1, the very last sentence:

23 Entrance facilities may be used for
24 interconnection with unbundled network
25 elements.

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1 That's exactly what we think ought to be same
2 kind of sentence with mid span meets, and they're both
3 in compliance with the Commission's orders. Qwest,
4 however, adds a lot of extra terms or a lot of extra
5 language and some additional terms that were not
6 discussed in the initial order, were not discussed in
7 the workshop, and are not appropriate. So what we're
8 looking for is one sentence that says exactly what this
9 sentence says that I just read.

10 JUDGE RENDAHL: Okay, thank you.

11 MR. KOPTA: The next issue is 15th Order at
12 Paragraph 152.

13 JUDGE RENDAHL: Before you go further on
14 that, is it possible for the parties to identify for us
15 at least for that discussion on Section 7.1.2.3 that
16 there may be some discussion from the multi-state
17 transcripts that may explain where that came from to
18 explain why it is Qwest has done what it has done.

19 MR. KOPTA: We certainly can look into that.
20 I know that Mr. Antonuk has a habit of sometimes coming
21 up with his own language, and so I don't know whether
22 this was something that was addressed, so we will look
23 into it.

24 JUDGE RENDAHL: Thank you. Sorry to
25 interrupt.

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1 MR. KOPTA: There are again a couple of
2 issues within this particular order reference.

3 JUDGE RENDAHL: And that's 15th Supplemental
4 Order at 152?

5 MR. KOPTA: That's correct. And this has to
6 do with SGAT Sections 7.2.2.8.6 and 7.2.2.8.6.1, and
7 these provisions have to do with forecasting with
8 interconnection trunking and more specifically have to
9 do with what happens in the event that there's a
10 difference between the forecast that a CLEC provides and
11 a forecast that Qwest has developed and the issue of
12 deposits for the difference between those two forecasts
13 if the CLEC requires or insists on having Qwest build to
14 the CLEC's forecast.

15 And AT&T provided some revised language that
16 we believe is more appropriate in capturing the
17 requirements that the Commission has ordered. And I
18 know that Qwest is concerned, saying that this is above
19 and beyond a narrow issue of the pro rata nature of the
20 deposit and any refund. But our view is that this is a
21 compliance issue with the Commission order and that
22 there was a couple of different aspects to the
23 Commission order, that this language more appropriately
24 captures that order.

25 The other issue, I will go ahead and address

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1 that right now, has to do with the Commission's
2 requirement that Qwest guarantee that there is a -- that
3 it will build -- will provide the additional facilities
4 once a CLEC pays a deposit. And this one I think is
5 probably the most contentious of the language changes.

6 What Qwest had initially placed in I believe
7 this is 7.2.2.8.13, no, that's a different one. I think
8 we're still talking about those same SGAT sections. And
9 what Qwest had initially or what -- yeah, what Qwest had
10 initially proposed as far as a guarantee was to simply
11 state that it guaranteed that the interconnection
12 facilities would be there, but that if they weren't,
13 then it would refund the deposit. And in AT&T's view,
14 that's a meaningless guarantee. I mean whether they
15 guaranteed it or not, I'm assuming they would give us
16 our money back if they didn't build the facility.

17 So what AT&T was looking for was some
18 recourse, some way to enforce this guarantee. And as we
19 discussed in the QPAP, without having some way of
20 getting out of that, then what we would have is just
21 what's in the QPAP, which is also not a guarantee. So
22 that's why AT&T had proposed that the CLEC would be able
23 to seek recourse if it suffered damages by Qwest not
24 providing the facilities when AT&T or another CLEC had
25 said we need these, here's a deposit, and Qwest didn't

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1 build it.

2 JUDGE RENDAHL: Ms. Anderl.

3 MS. ANDERL: Thank you, Your Honor.

4 AT&T did propose some revised language in its
5 comments, Exhibit 1296, starting on page four, and
6 Mr. Kopta and I were trying to talk about this during
7 the break. Unfortunately, as Mr. Finnegan indicated,
8 their PBX went down, and Mr. Kopta was not able to talk
9 to his client about some suggestions that we had for
10 compromise on this language. We would like to continue
11 to pursue that, but in the meantime, we can tell you
12 what our position is. And that is that -- so let me
13 just kind of back up.

14 If you go to Qwest reply comments on page 5,
15 it's important that I be able to make a typographical
16 error correction, because otherwise it's very confusing
17 to try to read our comments on this issue. If you're on
18 page 5, line 12.

19 JUDGE RENDAHL: In Exhibit 1291, excuse me?

20 MS. ANDERL: Yes.

21 JUDGE RENDAHL: And Qwest is saying that
22 there are two sections 7.2.2.1.5?

23 MS. ANDERL: No, I'm sorry, has our -- are
24 our lines off? I'm on line 12.

25 JUDGE RENDAHL: Oh, okay.

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1 CHAIRWOMAN SHOWALTER: 7.2.2.8.6.1.

2 MS. ANDERL: Right, 7.2.2.8.6.1, and then on
3 line 14 you see the reference to that same 7.2.2.8.6.1.
4 The reference on line 12 needs another .1 after it.

5 CHAIRWOMAN SHOWALTER: At which number, we've
6 got two numbers there?

7 MS. ANDERL: 7.2.2.8.6.1 should say .1 after
8 it.

9 JUDGE RENDAHL: Thank you.

10 MS. ANDERL: And we were trying to be helpful
11 in those four lines by saying there are two sections
12 that AT&T proposes that we will take and two that we
13 won't take, and this clarifies that. AT&T, if you look
14 at AT&T's proposed language, AT&T did do some clean up
15 and some reformatting. For the most part, we're okay
16 with a lot of that.

17 What we really do object to is a provision
18 that AT&T put in that they now have numbered
19 7.2.2.8.6.1.3, which provides for where AT&T
20 unilaterally in this SGAT language has created for
21 itself a right to sue for damages and other remedies
22 that we do not believe is fairly encompassed within the
23 Commission's language on this issue.

24 And as Mr. Kopta has said before, it's a
25 compliance issue. It is a compliance issue. We think

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1 our language did what the Commission ordered us to do.
2 We think AT&T's language goes way beyond that, and we
3 therefore object to it.

4 JUDGE RENDAHL: What is the likelihood that
5 the two parties may reach agreement based on your
6 discussion?

7 MR. KOPTA: I will answer that that I don't
8 know. I haven't been able to discuss it at all with my
9 client, and so I have no prospect. And I apologize, I
10 should have mentioned that we were trying to discuss
11 this beforehand. I didn't mean to indicate that we
12 weren't trying to work this out, but.

13 JUDGE RENDAHL: Well, I think we will
14 consider your arguments pending your telling us that you
15 have worked out the issue, so maybe that's something to
16 add to your list. But in the meantime, we will keep it
17 on our list.

18 MR. KOPTA: Thank you.

19 JUDGE RENDAHL: Okay. I think in the
20 interest of giving our brain a break, we may need to
21 take a short break. Let's be off the record for that
22 purpose. We will be back at 3:15.

23 (Recess taken.)

24 JUDGE RENDAHL: Let's be back on the record
25 after our afternoon break, and the parties indicate we

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1 have a few more issues to cover but that we might be
2 finished by 4:00.

3 So let's start back with you, Mr. Kopta. I
4 think we're talking about SGAT Section 7.2.2.8.13, which
5 is covered in the 15th Supplemental Order at Paragraph
6 152.

7 MR. KOPTA: That's correct. And this issue
8 is really pretty basic from our perspective. In the
9 workshops, we had agreed on language for this particular
10 section, and Qwest has now revised that based on some
11 language that was developed in Colorado, and we want the
12 language that we agreed on in Washington.

13 JUDGE RENDAHL: Okay.

14 Ms. Anderl.

15 MS. ANDERL: Well, there you go. We
16 understand what Mr. Kopta's clients are saying. We
17 believe though that there was kind of a quid pro quo and
18 that the CLECs gained by having Qwest remove language
19 which would allow Qwest to demand a deposit for CLECs
20 with a history of underforecasting or overforecasting
21 and underutilization, and that in return for that, Qwest
22 did need the, I hate to use this word, but the
23 unilateral right to resize an underutilized trunk group.
24 And I would imagine that Mr. Kopta does not object to
25 the deposit language going back in if the trunk group

06291

1 utilization language as he wants also goes back in, but
2 I don't know that that really gets to the heart of the
3 issue.

4 We believe that the language as negotiated
5 and approved in Colorado is reasonable. It does give
6 Qwest the right to resize a trunk group that is
7 consistently underutilized, but it does not give Qwest
8 the right to resize that trunk group in a manner that
9 would impact the CLEC's ability to pass traffic over it.
10 We would always retain 25% excess capacity, and the CLEC
11 is, of course, always free to submit new ASR or access
12 service requests to increase the size of the trunk group
13 if its traffic should grow. But Qwest has had a problem
14 in the past with underutilization of trunk groups. It's
15 a lot of empty facilities in some instances sitting out
16 there, and Qwest needs to be able to recapture those
17 facilities and use them for its own traffic or for other
18 CLEC needs.

19 JUDGE RENDAHL: Okay, this is another one of
20 those issues that it appears that because of the
21 evolving nature of this process throughout the region,
22 there's language that has come up in another state that
23 was not agreed to here in this state, so there's a
24 process issue that appears that Mr. Kopta raised that
25 maybe this isn't the forum to raise this new language.

06292

1 But I think as we did earlier, it would be helpful for
2 us to have the background for this new language. If
3 that means that there is testimony transcripts from
4 Colorado -- I guess I would ask the parties, is this
5 agreed to language from Colorado or language that
6 Colorado, the Commission, imposed on Qwest, or do we
7 know that?

8 MR. KOPTA: I do not know.

9 MS. ANDERL: Mr. Kopta doesn't generally
10 represent clients in Colorado. My belief is it was the
11 result of a negotiation, but I was not there. That's
12 what was represented to me from folks who were involved.

13 JUDGE RENDAHL: Okay.

14 MS. ANDERL: That it was negotiated, but
15 obviously not with XO, who isn't in Colorado.

16 JUDGE RENDAHL: Okay.

17 MS. ANDERL: This is related, of course, to
18 the deposit and guarantees issue. We can fold this in
19 for additional discussion. If there's room for
20 compromise on some of the other language, there might be
21 room for compromise here. I would certainly commit to
22 take that back as a package.

23 JUDGE RENDAHL: I think that would be
24 helpful, because if there was agreed to language in
25 another state, understanding XO was not a participant,

06293

1 it would be helpful to know what the basis for that
2 agreement was, understanding there looks like there
3 might have been some quid pro quo here, and maybe
4 further discussion between the parties would help. So
5 if you all can continue your discussions, and if you
6 reach agreement, please let us know. And if you don't,
7 let us know, and we will set a date for these
8 notifications maybe so that we can get some finality
9 here one way or the other.

10 MR. KOPTA: The one thing that I would add
11 just on a substantive basis is that the language that we
12 agreed to in Washington does give an opportunity for a
13 CLEC to explain why it needs the excess capacity. And
14 certainly there's the dispute resolution process, which
15 Qwest has more often than not said is available to CLECs
16 if they have an issue. And so we're just obviously
17 uncomfortable with the unilateral ability to resize the
18 trunk group, and the fact that we might be able to order
19 some more later is not much comfort. But we will look
20 and see what happened in Colorado and let you know if we
21 can work it out among us chickens.

22 JUDGE RENDAHL: Okay, thank you.
23 And what is the next issue?

24 MR. KOPTA: The next issue really is one of
25 not so much an issue as it's kind of an explanation of

06294

1 why it was in the comments, and that's the 15th Order at
2 155.

3 JUDGE RENDAHL: And that's SGAT Section
4 7.1.2.2 and 7.3.1.2.2?

5 MR. KOPTA: Right. Some of this issue was
6 kicked over to the cost docket in terms of
7 responsibility for sharing of interconnection
8 facilities, and the EICT was one aspect of it that the
9 Commission issued a decision in this docket, but
10 basically the rest of it was kicked over to the cost
11 docket. And so I -- we really weren't very expansive in
12 our comments except to say we're not sure that this is
13 the only element, and the reason that we say that we're
14 not sure that that's the only element is because the
15 cost docket is going to be looking at that issue. So I
16 don't think we need to say anything more about it here.
17 It's just that whatever happens in the cost docket will
18 need to be incorporated into the SGAT.

19 JUDGE RENDAHL: Okay.

20 Ms. Anderl, any comments on that?

21 MS. ANDERL: We agree with Mr. Kopta that it
22 is teed up for a decision in the cost docket. We think
23 that we did what we were required to do by the 15th
24 Order. I am not going to argue that Mr. Kopta can't
25 argue for more. I don't think he's entitled to it, but

06295

1 I will let him argue for it, and it's perhaps an issue
2 not to be resolved here.

3 JUDGE RENDAHL: Okay, well, then we will wait
4 and see what happens in the cost docket and import those
5 changes back into this process.

6 MR. KOPTA: That's it for interconnection. I
7 think we're up on collocation, which is Ms. Doberneck's
8 bailiwick.

9 JUDGE RENDAHL: Okay, Ms. Doberneck, the
10 first issue on our list under collocation is the 15th
11 Supplemental Order at Paragraph 156.

12 MS. DOBERNECK: Correct, and what I would
13 note, I talked about this with Ms. Strain, is that there
14 were two provisions that were not reflected in the
15 matrix that Covad had commented upon, and those were
16 SGAT Sections 8.2.6.3 and 8.2.1.16.

17 And with respect to Qwest's comments on
18 8.2.1.16, with Qwest's explanation, we are fine with the
19 change Qwest has made to that and believe it's
20 compliant.

21 We continue to have a concern with Section
22 8.2.6.3, and this relates as you know to the 15th
23 Supplemental Order, which in essence said that CLECs
24 should be able to obtain physical and virtual
25 collocation without restriction, and the focus is on

06296

1 virtual collocation. Covad had suggested that that
2 particular SGAT section be revised to eliminate a
3 reference just to physical collocation and simply to
4 revise it to say that Qwest will provide all other
5 necessary and/or applicable collocation services and
6 facilities, believing that that was consistent with the
7 Commission's intent in saying that CLECs have the right
8 to request virtual collocation under any circumstance.

9 I understand that Qwest's response is that
10 the language of 8.2.6.3 is based on the FCC rules, and I
11 would submit that as a general matter FCC rules
12 regarding collocation are established with the idea of
13 virtual collocation being a default in that the way the
14 rules are set up, it says a CLEC can request physical
15 collocation, if that's not available, then you can get
16 virtual collocation. Well, this Commission has made
17 clear that a CLEC can opt for virtual collocation
18 regardless of whether -- they don't have to even try to
19 get physical collocation, they can select that as their
20 option. So that is the basis of our comment that there
21 should be a revision to that particular section.

22 JUDGE RENDAHL: Okay, now so that was --
23 those were two additional sections that should have been
24 included under Paragraph 156?

25 MS. DOBERNECK: Yes.

06297

1 JUDGE RENDAHL: Okay, thank you.
2 Okay, the next issue?
3 Ms. Strain has a question, I'm sorry.
4 MS. STRAIN: Just to clarify, Ms. Doberneck,
5 so you don't have a concern with the changes that Qwest
6 made to the other three sections referred to in that
7 matrix, 8.1.1.8, 8.2.7, and 8.4.6?
8 MS. DOBERNECK: Correct.
9 MS. STRAIN: Okay, thank you.
10 MS. DOBERNECK: The next issue is the 15th
11 Supplemental Order at Paragraph 157. Qwest had proposed
12 alternative language to what Covad had included in its
13 comments. Covad believes that Qwest's proposed language
14 resolves all of our concerns, and with the incorporation
15 of that language, we consider the issue closed, fine,
16 fully compliant.
17 JUDGE RENDAHL: Mr. Kopta.
18 MR. KOPTA: I had just one concern on Section
19 8.3.1.9, and that wasn't reflected on the matrix. It
20 was in the ELI/XO comments.
21 JUDGE RENDAHL: And is this for collocation?
22 MR. KOPTA: This is for collocation.
23 JUDGE RENDAHL: 8.3.1?
24 MR. KOPTA: 1.9, and it's also the same
25 language in 8 -- well, no, I think it's 8.3.1.9 is the

06298

1 proper reference.

2 JUDGE RENDAHL: And what is the issue,
3 without arguing at this point, just so we get it on the
4 list.

5 MR. KOPTA: The issue is channel
6 regeneration. I mean it's the same issue that is
7 included here. It's just that it's specified as Covad
8 being the party that raised the issue, so it's really
9 the language that Qwest has used to identify its channel
10 regeneration charge.

11 JUDGE RENDAHL: Okay, so why don't you go
12 ahead and give us your concerns then.

13 MR. KOPTA: Okay.

14 JUDGE RENDAHL: Unless you're okay with
15 Qwest's language.

16 MR. KOPTA: Well, the only thing is, and
17 maybe it's as much a clarification as anything else, is
18 in the first new sentence, it stated that channel
19 regeneration will not be charged separately for
20 interconnection between the collocation space, et
21 cetera. Interconnection is capitalized, and the
22 definition of interconnection is in Section 4.27, and
23 that term is defined as referring to the connection
24 between networks for the purpose of transmission and
25 routing of telephone exchange traffic. And so I think

06299

1 the term interconnection is too limited. We may be
2 obtaining DS1 or DS3 circuits for purposes other than
3 just interconnection. And in those circumstances, we
4 shouldn't be charged for channel regeneration to connect
5 our network with Qwest's network for that purpose to
6 access UNEs, in other words.

7 JUDGE RENDAHL: Okay, so looking at Qwest's
8 language in Exhibit 1291 on page 17, that's the language
9 I'm assuming, Ms. Doberneck, you're referring to as
10 acceptable to Covad?

11 MS. DOBERNECK: Yes.

12 JUDGE RENDAHL: Mr. Kopta, what is it that
13 Covad -- that ELI finds objectionable, I'm sorry, XO?
14 Which one of your clients finds this unacceptable?

15 MR. KOPTA: This is ELI and XO, two out of
16 three. It's the very first sentence. It's the same as
17 what's in the September 21st SGAT, which is Exhibit
18 1292. And it's merely the limitation to
19 interconnection, and I'm not sure that that was the
20 intent, to limit it to just interconnection. But since
21 that is a defined term and it is limited to facilities
22 used for the exchange of traffic, we don't think that
23 that's -- we think it's a little narrower than what
24 hopefully Qwest intended and certainly what we think the
25 Commission required.

06300

1 JUDGE RENDAHL: Ms. Anderl.

2 MS. ANDERL: It didn't occur to me as an
3 issue until Mr. Kopta raised it. He might be right.
4 Did Mr. Kopta have a suggested alternative word?

5 MR. KOPTA: We might put this on our list of
6 if we can work it out. If we don't disagree in the
7 concept, then we can work out the language.

8 JUDGE RENDAHL: Please go ahead and put it on
9 your list, and again, we will talk about the due date
10 for these at the end of the process.

11 Okay, Ms. Doberneck.

12 MS. DOBERNECK: The next issue we raised is
13 at the 15th Supplemental Order at Paragraph 159, and
14 it's regarding the interval for collocation. I should
15 preface this by saying some of it was divining the
16 Commission's intent, which I realize is a hazardous
17 undertaking, but simply I would state that I had
18 interpreted the Commission's order to state that when
19 the FCC's waiver expires that the interval return to
20 what is the current standard interval of 90 days. I
21 certainly don't disagree with Qwest's position that,
22 well, we don't know if it's going to be 90 days, perhaps
23 it will be 120 days, whatever. So in one portion of
24 this, I think clarification from the Commission would be
25 helpful. Are we talking what the FCC says is the

06301

1 standard interval upon ruling upon the request for a
2 waiver, or does the Commission mean 90 days.
3 Setting that issue aside though, regard --
4 and, you know, once the Commission determines whether
5 it's 90 days or what the FCC will then set the standard
6 interval to be, Covad still believes it's both
7 appropriate and necessary for Qwest to incorporate into
8 the SGAT its obligation to adhere to the standard
9 interval upon resolution of this issue by the FCC and
10 what the Commission determines should be the standard
11 interval. Our concern is that FCC proceedings can be
12 very lengthy. We may not get a determination from the
13 FCC for quite some time. And in the absence of Qwest's
14 commitment, I'm afraid this is one of those kinds of
15 things that would fall through the crack. And unless
16 somebody dusts off the cobwebs of the, you know, 271
17 workshops and the orders that have emanated from them,
18 that we won't get around or Qwest won't get around to
19 amending the SGAT to include what the Commission
20 intended with respect to the interval once the waiver
21 expires.

22 JUDGE RENDAHL: Okay, thank you.

23 Ms. Anderl.

24 MS. ANDERL: Thank you, Your Honor.

25 I think I have to address two issues, the

06302

1 8.2.6.3 language that Ms. Doberneck brought up, and then
2 the issue that she just addressed. 8.2.6.3 is one
3 sentence long, and it says:

4 Qwest will provide power and all other
5 physical collocation services and
6 facilities.

7 That language is directly from the FCC rule.
8 The cite is rule 51.520-323 subsection K. It's in our
9 comments, Exhibit 1291, at pages 15 and 16. I won't
10 belabor that here. I just wanted you to know that we
11 did address it. And we don't believe that it's contrary
12 to the Commission's order. The Commission's order
13 requires us to allow physical and virtual collocation
14 with no limitations, and we don't believe that that
15 language imposes a limitation on virtual collocation,
16 but rather is in place to comply with the FCC for -- to
17 be consistent with the FCC's requirements in its
18 collocation rule.

19 With regard to the section that Ms. Doberneck
20 just addressed, which is 8.4.3.4.5, and it just concerns
21 the interval within which Qwest is obliged to complete a
22 provisioning window forecast as required, qwest does
23 currently have a waiver from the FCC with regard to what
24 that interval is. Ms. Doberneck is right, we don't know
25 how long the FCC proceeding is going to last, but we do

06303

1 know that the waiver will extend for at least as long as
2 the FCC proceeding lasts, and we think it's at this
3 point premature and unnecessary to revise the SGAT. If
4 something different comes out of the FCC and this is an
5 issue for anyone, it will, of course, be something that
6 we will have to revise under the change of law
7 provisions that are addressed elsewhere in the SGAT.

8 JUDGE RENDAHL: Okay, thank you.

9 Ms. Doberneck.

10 MS. DOBERNECK: Okay, moving right along to
11 my last issue, and that is the 11th Supplemental Order
12 at Paragraph 155(a) regarding written policies and
13 performance documents that Qwest maintains and whether
14 those comply with the SGAT or not. I understood the
15 order to be very clear that Qwest was obligated with
16 this filing to demonstrate its -- the conformance
17 between its policies and the SGATs. I took demonstrate
18 to be an affirmative offer of proof. Qwest responded
19 that it's premature. I suppose my response is I don't
20 think it's premature. I think there has been a failure
21 to demonstrate compliance.

22 A couple of things that I would like to point
23 out specifically. During the collocation workshops,
24 Covad specifically raised as issues Qwest's methods of
25 -- methods of procedure and other internal process

06304

1 documentation that would delay the turnover of
2 collocation space. We specifically raised those as
3 issues, and there has been no offer of proof by Qwest in
4 connection with this compliance filing that it has
5 corrected its methods of procedure in other internal
6 documentation to be consistent with the SGAT. I think
7 that was an obligation to do so, and I don't see that
8 there has been any evidence on that point.

9 With regard to the PCATs or the product
10 catalogs and the technical publications that Qwest
11 maintains with respect to collocation, Qwest in essence
12 said it's premature, this is all being dealt with in the
13 change management process, take it there. Well, the
14 short answer is that we have. Qwest also suggested that
15 these -- the internal documentation was not relevant to
16 the SGAT. It may not be relevant to what the SGAT says,
17 although I suppose if we -- I'm losing my grip on the
18 earlier sections, but there is a provision within --
19 with respect to general terms that specifically deals
20 with consistency between Qwest's internal documentation
21 and the SGAT, so I do believe it's an SGAT issue.
22 Setting that aside though, the 11th Supplemental Order
23 was very clear that compliance with this particular
24 checklist item required consistency of internal
25 documentation in the SGAT. And again, I don't see that

06305

1 that's happened.

2 I will tell you with regard to the change
3 management process, I won't belabor the point, suffice
4 it to say I think you are probably all aware it's
5 undergoing redesign. Redesign has become a rather
6 contentious issue. Where we stand though with regard to
7 the product catalogs and the technical publications is
8 just not that simple, and I have great concern with
9 regard to Qwest proving its compliance of its internal
10 documentation with the SGAT.

11 And I will just briefly tell you, we have
12 reached agreement in the change management redesign
13 process that Qwest will provide its, on a going forward
14 basis, PCATs and tech pubs with a decoder ring,
15 essentially an identification of changes and an
16 explanation of why the changes were made, primarily
17 because of these 271 workshops and orders that have come
18 out of various commissions.

19 The sticking point has been a number of PCATs
20 and tech pubs that came out before we reached that
21 agreement in redesign, essentially any PCAT or tech pub
22 that came out primarily from the beginning of this year
23 until about October of this year. At this point, while
24 Qwest has agreed that it will provide an identification
25 of an explanation for changes for PCATs, we have no such

06306

1 agreement with the technical publications. This is a
2 pretty significant issue for us. It's an enormous
3 volume of documentation, and it's really not feasible to
4 go through it to determine compliance without any
5 indication of whether a change has been made or why a
6 change has been made.

7 Ultimately, my concern is that at some point
8 here we're running out of time. I don't have an
9 objection to running these changes through CMP redesign.
10 Don't get me wrong, I think that's an appropriate use.
11 But the speed at which we're going with the change
12 management process, the dates by which supposedly these
13 changes are going to be made suggests to me that we are
14 not going to get to these issues within the redesign or
15 the change management process in time to then bring it
16 back to this Commission for a demonstration of
17 compliance. At some point, Qwest will be filing its
18 Section 271 application, and that's it for this
19 Commission and its ability to say approval or not of
20 checklist compliance.

21 So I think that it needs to be clear that
22 with respect to these internal documents and
23 publications, that they need to -- that CLECs need to be
24 able to bring their issues with regard to whether
25 they're compliant with the SGAT to the Commission. And

06307

1 by simply pushing it off to CMP, I have a great fear
2 that we will never have that opportunity to raise our
3 concerns with regard to compliance with this Commission.

4 JUDGE RENDAHL: Thank you.

5 Ms. Anderl.

6 MS. ANDERL: Thank you.

7 This issue is discussed in Qwest's reply
8 comments, Exhibit 1291, at pages 19 through 21, and
9 Ms. Doberneck is half right. Qwest did say that these
10 issues are premature to be raised at this point in time,
11 because they are being dealt with in the change
12 management process. But we also rebutted Covad's
13 arguments on a substantive basis, and so it's not really
14 fair to say that we didn't address the issues that
15 Ms. Doberneck raised.

16 Covad's allegations are difficult to respond
17 to, because they're somewhat general, and we find
18 ourselves unable to really pin down what it was that
19 Covad thought should have been changed or that exists
20 that wasn't changed. For example, Ms. Doberneck
21 mentioned the issue with regard to the delay in turnover
22 of collocation space, but that she's not seeing any
23 evidence that we have changed internal methods in
24 procedures or documents, et cetera, to address that
25 concern. I personally am not aware of internal methods

06308

1 and procedures or documentation that was linked to any
2 problems associated with delays in turnovers of
3 collocation space and therefore would require to be
4 changed to be in compliance with the final order.

5 We did provide the Commission in Exhibit
6 1270, or 1290, I'm sorry, which was our October 1st
7 compliance filing, it had four attachments, and
8 Attachment B is by far the lengthiest. It is a printout
9 of a number of our product listings, product
10 descriptions, and other guidelines, methods, and
11 procedures describing remote collocation, microwave
12 collocation, entrance facilities, multi-tenant
13 environment collocation, including product diagrams, et
14 cetera. These are posted on the Web. They are
15 available to CLECs. It was our demonstration of
16 compliance to this Commission, and we believe that it is
17 satisfactory to show that our products and methods are
18 consistent.

19 There are some things that are 14 state
20 applicable region wide that are posted on the Web site
21 and may be inconsistent with something that the
22 Commission here has ordered. However, there are links
23 on that Web site to state-specific SGATs, and those
24 SGATs always do by their own terms prevail over any
25 general product descriptions. So we may, for example,

06309

1 have a general product description that's acceptable to
2 10 state commissions but been modified by 3 or 4. And
3 in those cases, the specific SGAT would prevail.

4 And so I guess, you know, without specific
5 provisions in any of our documentation that is as
6 alleged to be noncompliance, it's difficult to address
7 it. We do believe however though that the argument that
8 this debate is premature is important, because the
9 industry agreed collaboratively to work through the
10 change management process. We think we are making
11 progress there, and we do believe that that is the right
12 place for these issues to be addressed. If there are
13 specific compliance issues with regards to language
14 processes or documents, we're happy to address those.

15 JUDGE RENDAHL: Thank you. Ms. Anderl, what
16 is the estimated completion date for the change
17 management redesign?

18 MS. ANDERL: I don't know. I would have to
19 talk to Mr. Crain or one of the other folks who were
20 involved in it substantively. It may be that
21 Ms. Doberneck has a better idea.

22 MS. DOBERNECK: We do not have an end date at
23 this point. We have scheduled meetings through the end
24 of February at this point to deal with product and
25 process changes. Essentially the way the parties set it

06310

1 up was first to deal with system changes and then to
2 move on to product and process, so we have meetings
3 scheduled through the end of February to address product
4 and process. And not wanting to open a can of worms at
5 all, but I think you can probably tell from the comments
6 of the parties on the status report that at least on the
7 CLECs' part there is a perception of issues that have
8 been -- the issues that have arisen that may either
9 delay it, completion. But at this point, suffice it to
10 say we do not have an end date by which we know we will
11 complete redesign.

12 JUDGE RENDAHL: Thank you.

13 Ms. Strain has a question or two.

14 MS. STRAIN: With respect to the attachments
15 that you have to your comments, Ms. Anderl, you have the
16 first attachment I'm looking at is called a product
17 listing, and then it says, it's in black and white, and
18 it says collocation and then product description, and
19 then there's another attachment behind that one that's
20 in color that's got blue and red print on it.

21 MS. ANDERL: Right.

22 MS. STRAIN: Is that the same document just
23 in a different form, or is it a different document? It
24 appears to be -- the text on it appears to be identical,
25 and I'm just curious whether this is just two versions

06311

1 of the same document.

2 MS. ANDERL: Yes, I have not read both of
3 them side by side and can't tell you whether they are
4 identical. I believe that the second document that's in
5 color is a representation of the Web site and shows you
6 the links you would get if you were actually on the Web
7 site and that the black and white is just the text only.

8 MS. STRAIN: Okay. My second question is
9 with respect to these two documents. If I wanted to
10 compare these to the SGAT and/or for that matter to
11 compare these documents or any of the other ones that
12 you attached to the SGAT to determine whether the
13 documents have inconsistencies, would I have to go page
14 by page, or are there -- in other words, is there any
15 kind of decoder ring with these documents that you have
16 provided us?

17 MS. ANDERL: We have not linked the documents
18 to SGAT sections in order to cross reference them, no.

19 MS. STRAIN: Okay.

20 MS. DOBERNECK: Ms. Strain, if I could just
21 add something, because I agree, I think it's difficult
22 to review. The on-line version is somewhat easier than
23 the hard copy documentation, because there is some
24 highlighting, things of that nature, which are helpful.
25 It is easier than the hard copy.

06312

1 MS. ANDERL: Thank you, Ms. Doberneck.

2 MS. DOBERNECK: I tried in the spirit of
3 cooperation.

4 JUDGE RENDAHL: Okay, so does that conclude
5 your remaining issue on collocation, Ms. Doberneck?

6 MS. DOBERNECK: I have no further issues. I
7 think I'm at my seven minutes.

8 JUDGE RENDAHL: And, Ms. Anderl, you had
9 indicated you had one other issue on number portability.

10 MS. ANDERL: Mr. Kopta does, and I may
11 respond to his comments.

12 JUDGE RENDAHL: Okay, Mr. Kopta.

13 MR. KOPTA: Thank you.

14 Actually, it's just as a clean-up matter.
15 There is one issue on resale that's after the number
16 portability section.

17 JUDGE RENDAHL: Okay.

18 MR. KOPTA: So I want to talk about it now,
19 because we discussed off the record that it was
20 discussed. Specifically it's SGAT Section 6.2.3.

21 JUDGE RENDAHL: Okay.

22 MR. KOPTA: It's on the very last page of the
23 exhibits, and it was discussed yesterday in the context
24 of the QPAP, and so I'm not representing a need to
25 discuss it here but just wanted to point out that that

06313

1 is an issue. It's one of those cross referenced type.

2 JUDGE RENDAHL: So that is the 15th

3 Supplemental Order at Paragraph 92?

4 MR. KOPTA: Yes.

5 JUDGE RENDAHL: And this is related to the

6 offset issue?

7 MR. KOPTA: Right.

8 JUDGE RENDAHL: That was discussed yesterday?

9 MR. KOPTA: Right.

10 JUDGE RENDAHL: Okay.

11 MR. KOPTA: And we specifically discussed

12 this SGAT section, so it's the same issue, same thing,

13 so we don't need to talk about it again.

14 JUDGE RENDAHL: Okay, thank you for pointing

15 that out to us.

16 Ms. Anderl, do you have any comments in

17 reply?

18 MS. ANDERL: I agree with Mr. Kopta.

19 JUDGE RENDAHL: Okay.

20 MR. KOPTA: The only other issue has to do

21 with number portability. It's a little confusing

22 because of the way that this matrix was set up. The

23 issue was identified under 15th Order at Paragraph 164.

24 JUDGE RENDAHL: And that would be on the 15th

25 page of our version we're using on the Bench.

06314

1 MR. KOPTA: And it does have to do with SGAT
2 Section 10.2.2.4, but really the order provision that it
3 most closely relates to is the following, which is the
4 2-22-01 initial order, move the time for basically
5 disconnecting the customer to midnight of the day after
6 the due date when it's -- when the conversion is
7 supposed to take place. But in SGAT Section 10.2.2.4,
8 the last sentence that Qwest has in that section, and
9 this is on page six of our comments as well as in the
10 SGAT, states that:

11 If CLEC requests Qwest to do so by 8:00
12 p.m. of Mountain Time, Qwest will assure
13 that the Qwest loop is not disconnected
14 that day.

15 The problem we have obviously is that we have
16 until the next business, it would be midnight of the
17 following day to disconnect. And so what Qwest
18 essentially is requiring here is that we provide them
19 with notice that there's a problem, that they may not
20 disconnect it by 8:00 p.m. of the due date so that it
21 won't be disconnected by midnight on the following day,
22 so in essence a 28 hour notice of a problem.

23 And the concern that we have is that we may
24 not be able to notify them by 8:00 p.m. of that day.
25 The Commission obviously is concerned about people

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1 getting disconnected, and that's why it established
2 midnight on the following day as the time to make sure
3 that the customer doesn't get disconnected. And so if
4 we notify them at 8:01, does that mean that they're
5 going to be disconnected at midnight on the following
6 night? It doesn't make any sense. And, in fact, in
7 Qwest's product description, which we have attached as
8 Attachment B, and I -- is that Exhibit 1297.

9 MS. ANDERL: 8.

10 MR. KOPTA: 8, 1298.

11 JUDGE RENDAHL: Yes, it's 1298.

12 MR. KOPTA: On the third page, that actually
13 the Qwest's product or wholesale program documentation
14 provides that while the co-provider should provide
15 notice on the due date during business hours, that it
16 shouldn't notify -- it needs to notify Qwest no later
17 than noon of the following day. And so that's why we
18 had proposed to incorporate that same thing into the
19 SGAT. If necessary, we should be able to notify Qwest
20 by noon of the following day if there's been a problem.
21 I mean if we're doing an out of hours cut on the due
22 date and something happens and we don't know about it
23 until 9:00 or midnight, then we should be able to tell
24 Qwest, and they should not take down the customer at
25 midnight of the following day.

06316

1 So that's essentially the issue is that we
2 want to make sure that we have enough time to complete
3 the work that we need to do, and if there's going to be
4 a problem, that we give Qwest notice in a manner that
5 allows them enough time to make sure that it doesn't get
6 disconnected, but not in so much time that we have a
7 problem because something arises in the meantime and the
8 customer is going to get cut off.

9 JUDGE RENDAHL: Okay. Ms. Anderl, I'm
10 looking also at Exhibit 1295 at page six, and that
11 appears to include AT&T's proposed language on this
12 issue.

13 MS. ANDERL: Thank you, Your Honor.

14 JUDGE RENDAHL: Or at least it lists what
15 Qwest's proposal is, and the text describes AT&T's
16 suggestions.

17 Go ahead, Ms. Anderl.

18 MS. ANDERL: Right, Your Honor.

19 Qwest would replace 8:00 p.m. on the due date
20 with 12:00 noon on the day after the due date.

21 JUDGE RENDAHL: To resolve the issue?

22 MS. ANDERL: I'm sorry, AT&T would like us to
23 do that.

24 JUDGE RENDAHL: I thought we had agreement.

25 MR. KOPTA: We were so close.

06317

1 MS. ANDERL: You know, I didn't even hear
2 what I said, but I saw all the looks, and I knew I must
3 have misspoken. I'm sorry.

4 This is what AT&T would have Qwest do, and we
5 disagree. We think that there's a difference here that
6 AT&T is not recognizing between the due date and what
7 kind of slippage they get after the due date, and that's
8 really what the issue here is. There is a due date, and
9 we think that the cut off at 8:00 p.m. on the due date
10 is the reasonable rule. The exception to that rule is
11 we will not trigger the switch translations until 11:59
12 p.m. the day following the due date in order to avoid
13 customers being disconnected. That is what we believe
14 drives the permission to have the slippage, the concern
15 about customers being disconnected, not AT&T needing to
16 be late.

17 And so we have two sections that address this
18 issue. The first is 10.2.2.4, which says that if the
19 CLEC requests Qwest to do so by 8:00 p.m. Mountain Time,
20 Qwest will assure that the Qwest loop is not
21 disconnected that day. That is the general rule. The
22 concern that AT&T raises is addressed in 10.2.5.3.1,
23 which is the SGAT provision that says that Qwest will
24 set the ten digit unconditional trigger for numbers to
25 be ported by 11:59 p.m. on the business day preceding

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1 the scheduled port date and then that it will -- if --
2 further down in the paragraph, it says:

3 Qwest will not disconnect the customer's
4 billing and account information until
5 11:59 the next business day after the
6 due date.

7 That's in order, as I said, to prevent
8 customers from being disconnected. We don't think that
9 it's reasonable to basically extend the due date, which
10 is what AT&T's language would request. So we think
11 we're in compliance with the order. We think that this
12 is the right way to set it up.

13 We state in our comments that this language
14 is important to be retained for other reasons as well,
15 including the fact that the language in the SGAT now
16 tracks the PID or performance indicator definition for
17 this measure that was approved by the ROC, and we
18 therefore think that it's important to retain it for
19 that reason as well.

20 I think that's it on this issue, thank you.

21 JUDGE RENDAHL: Any questions?

22 MS. STRAIN: I have a question.

23 Ms. Anderl, how do you reconcile the
24 difference between the two documents, one of which has
25 an 8:00 p.m. deadline for notifying you of a delay, and

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1 the other document, the product document, which
2 specifies noon the following day? What -- can you kind
3 of tie those together for me?

4 MS. ANDERL: Again, I think that what we have
5 tried to do in the SGAT is kind of put in what the
6 general rule is. And in the product document, we have
7 allowed for the exception to the general rule. But the
8 late notification is not what we believe the rule is.
9 The rule is notification on the due date and that
10 there's a recognition that in instances it may be
11 necessary to have exceptions to those, but we did not
12 think it appropriate to memorialize that exception in
13 the SGAT.

14 MS. STRAIN: Does the product document have
15 the general rule in it that's consistent with the SGAT,
16 and does it reflect the 12:00 noon deadline as an
17 exception? And I'm asking this because I don't have it
18 in front of me.

19 MS. ANDERL: Okay. And it's been a while
20 since I have reviewed it. I need to check that.

21 MR. KOPTA: I have a copy if you would like
22 to look at it.

23 JUDGE RENDAHL: Well, if you want to hand it
24 to Ms. Anderl.

25 MS. ANDERL: I'm looking at it as well, I'm

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1 sorry, it's just it's about five pages long.

2 CHAIRWOMAN SHOWALTER: Maybe Mr. Kopta has a
3 reference.

4 MR. KOPTA: Yes, the language is on page
5 three, the first paragraph.

6 MS. ANDERL: It does not appear to contain
7 the 8:00 p.m. on the due date requirement, no. The
8 product notification does not. It does -- it is
9 consistent with the SGAT in the sense that both the SGAT
10 and the product notification form reflect that the
11 disconnect will not happen until 11:59 the day after the
12 due date.

13 JUDGE RENDAHL: Okay, thank you.

14 Is there anything further from the parties on
15 compliance issues? I think we have gone through the
16 issues in dispute on the matrix.

17 MS. ANDERL: May I just ask a clarification?
18 We had suggested some clarifying language to this
19 section as well in response to another issue that AT&T
20 raised, and I was curious if that was acceptable. And
21 that's referenced on the matrix, Initial Order at
22 366(b).

23 MR. KOPTA: In general --

24 JUDGE RENDAHL: 366(b)?

25 MS. ANDERL: B.

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1 JUDGE RENDAHL: B as in boy?

2 MS. ANDERL: B as in boy.

3 JUDGE RENDAHL: Okay.

4 MR. KOPTA: In general, it is fine. I mean
5 the only thing that we want to make sure is that we
6 don't need to take a Qwest product in a managed cut or
7 coordinated cut in order to get the deadlines, but I
8 don't -- I don't think that that's implicit in this
9 language. In other words, I don't think that there's a
10 problem with that. That seems to be fairly clear. That
11 was the real concern that we had.

12 JUDGE RENDAHL: So do you need to check with
13 your client again?

14 MR. KOPTA: I would like to verify that.
15 When I spoke with them, that was their initial reaction,
16 but I will verify that and let you know as part of the
17 list of things that we will let you know about.

18 JUDGE RENDAHL: Right, if you can add that to
19 your list.

20 And the only remaining issue I think is what
21 date you all report back to us on, and I'm thinking that
22 it might be best for you all to respond in January, and
23 would the -- do you think the 3rd or 4th is appropriate,
24 or do you need more time than that given the holiday
25 season to consult with your client and various vacation

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1 schedules people might have?

2 MS. ANDERL: I think we could use a little
3 bit more time. I was actually going to propose the
4 15th, assuming that's not a weekend.

5 JUDGE RENDAHL: The 15th is a Tuesday. Does
6 that --

7 MR. KOPTA: That would be fine.

8 JUDGE RENDAHL: Then we will set the 15th for
9 -- and why don't you all make a joint reply if you -- I
10 mean if you're in agreement, a joint reply will work.
11 If there are areas of disagreement, then you can each
12 make your own filing.

13 MS. ANDERL: We will do that.

14 JUDGE RENDAHL: Okay. Well, thank you very
15 much, and we appreciate those of you who have traveled
16 out here and those of you who have traveled down from
17 Seattle too, and thanks very much, and we will be in
18 recess.

19 (Hearing adjourned at 4:20 p.m.)

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