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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION
3 In the Matter of the Petition)
4 of QWEST CORPORATION to) DOCKET NO. UT-033044
5 Initiate a Mass-Market)
6 Switching and Dedicated) Volume IV
7 Transport Case Pursuant to) Pages 122 to 154
8 the Triennial Review Order.)
9 _____)

10 A hearing in the above matter was held on
11 February 10, 2004, from 10:00 a.m to 10:50 a.m., at 1300
12 South Evergreen Park Drive Southwest, Room 108, Olympia,
13 Washington, before Administrative Law Judge ANN RENDAHL.

14 The parties were present as follows:

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

2 JUDGE RENDAHL: Good morning, I'm Ann
3 Rendahl, the Administrative Law Judge presiding over
4 this matter. We're here before the Washington Utilities
5 and Transportation Commission on Tuesday, February the
6 10th, 2004, for a pre-hearing conference in Docket
7 Number UT-033044, captioned in the Matter of the
8 Petition of Qwest Corporation to Initiate a Mass-Market
9 Switching and Dedicated Transport Case Pursuant to the
10 Triennial Review Order.

11 By short notice sent to all parties via
12 E-mail, fax, and mail on Friday, February the 6th and
13 Monday, February the 9th, I'm convening this pre-hearing
14 conference to discuss two motions submitted by Qwest.
15 The first is a motion to modify Order Number 8 to allow
16 up to six in-house experts to review highly confidential
17 data and requesting expedited resolution. The second
18 motion the Commission received on Friday electronically
19 from Qwest. It's a motion to strike portions of AT&T's
20 witness Robert Falcone's January the 23rd, 2004, direct
21 testimony that addresses electronic loop provisioning or
22 ELP.

23 So those are the issues that are before us
24 this morning, but before we go into that let's take
25 appearances formally from everyone. If you have

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1 appeared before the Commission before and given all of
2 your particulars, name, address, telephone, et cetera,
3 you don't need to do that this morning, but if you
4 haven't, please do so. So let's start with Qwest.

5 MS. ANDERL: Thank you, Your Honor, this is
6 Lisa Anderl appearing on behalf of Qwest.

7 MR. STEESE: This is also Chuck Steese on
8 behalf of Qwest.

9 JUDGE RENDAHL: Okay.
10 And for Staff.

11 MR. THOMPSON: Jonathan Thompson on behalf of
12 Staff.

13 MR. TRAUTMAN: And Greg Trautman on behalf of
14 Commission Staff.

15 JUDGE RENDAHL: Thank you.
16 For Covad.

17 MS. FRAME: Yes, Your Honor, this is Karen
18 Frame on behalf of Covad.

19 JUDGE RENDAHL: Thank you.
20 For MCI.

21 MS. SINGER NELSON: Michel Singer Nelson
22 appearing on behalf of MCI.

23 JUDGE RENDAHL: For the joint CLECs, and
24 Mr. Kopta would you please identify who those are this
25 morning.

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1 MR. KOPTA: Yes, Your Honor. Gregory Kopta
2 of the law firm Davis Wright Tremaine on behalf of
3 Advanced TelCom, Echelon, Integra, Global Crossing,
4 McLeodUSA, Pac-West, Time Warner Telecom and XO.

5 JUDGE RENDAHL: Thank you.

6 Now just a point of, just a question,
7 Advanced TelCom, is that also known as ATG?

8 MR. KOPTA: It is, Your Honor.

9 JUDGE RENDAHL: Thank you.

10 MR. KOPTA: Sort of a doing business as.

11 JUDGE RENDAHL: Thank you.

12 Mr. Butler.

13 MR. BUTLER: Yes, Art Butler for Webtech.

14 JUDGE RENDAHL: And for AT&T.

15 MS. DECOOK: Rebecca DeCook and Richard
16 Walters for AT&T, and Mr. Walters' particulars are the
17 same as mine.

18 JUDGE RENDAHL: Okay, I believe he gave that
19 information at the last pre-hearing we had.

20 MS. DECOOK: I think Walter Eggers is on the
21 line for AT&T also, and I will let him give his details.

22 MR. EGGERS: Yes, I am, thank you, Your
23 Honor. It's Walter Eggers, E-G-G-E-R-S, with the law
24 firm of Holland & Hart. My address is 2515 Warren
25 Avenue, W-A-R-R-E-N, Suite 450, in Cheyenne, Wyoming

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1 82001, telephone (307) 778-4200.

2 JUDGE RENDAHL: And your fax number, please?

3 MR. EGGERS: It's (307) 778-8175.

4 JUDGE RENDAHL: And what's your E-mail so we
5 can get you on the list as well?

6 MR. EGGERS: Thank you, it's
7 weggers@hollandhart.com.

8 JUDGE RENDAHL: And hollandhart is one word?

9 MR. EGGERS: Yes, it is.

10 JUDGE RENDAHL: And it's W-E-G-G-E-R-S?

11 MR. EGGERS: That's correct.

12 JUDGE RENDAHL: Okay, thank you.

13 MR. EGGERS: Thank you.

14 JUDGE RENDAHL: For the Department of Defense
15 and other Federal Agencies.

16 MR. MELNIKOFF: This is Steve Melnikoff on
17 behalf of the Department of Defense and all other
18 Federal Executive Agencies.

19 JUDGE RENDAHL: Okay, thank you.

20 Is there anyone else on the line who we
21 haven't received an appearance from?

22 Okay, hearing nothing, we will go forward to
23 the matters before us today. The first would be the
24 motion Qwest filed on Friday electronically, which is
25 the motion to modify Order Number 8 requesting expedited

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1 resolution. I will just advise the parties that I have
2 not had an opportunity to discuss this with the
3 commissioners, so I won't be making a decision on the
4 record this morning on this issue, but I do want to take
5 everyone's input on it so that I can bring that to the
6 commissioners.

7 So first, Ms. Anderl or Mr. Steese, please
8 explain the motion and make your pitch.

9 MS. ANDERL: Yes, Your Honor, this is Lisa
10 Anderl. Can you hear me all right?

11 JUDGE RENDAHL: I'm going to turn the volume
12 up here and see if that helps.

13 Can you go ahead again.

14 MS. ANDERL: Yes, how's this?

15 JUDGE RENDAHL: Much better.

16 MS. ANDERL: All right. Your Honor, we filed
17 the motion to request six in-house experts, an increase
18 of one from the five that the Commission had previously
19 allowed, simply because of the volume of testimony that
20 we received from the number of different witnesses from
21 the other parties and the number of subject matters that
22 are being covered where highly confidential testimony
23 and information is used. We simply need an additional
24 in-house expert to review Mr. Stacy's testimony, and his
25 testimony is highly confidential.

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1 As I detailed in my motion, Mr. Teitzel and
2 Mr. Reynolds had already signed Exhibit C, as had
3 Mr. Copeland and Mr. Buckley, all working on the direct
4 testimony. Ms. Torrence submitted highly confidential
5 testimony on transport issues and of course has to
6 review the highly confidential testimony submitted in
7 response, so she is number five as our expert. And then
8 Mr. Hubbard, who addresses operational issues including
9 collocation and CLEC to CLEC cross connections needs to
10 be able to read Mr. Stacy's testimony.

11 We simply do not have any outside experts who
12 are addressing those issues who could substitute for the
13 need of those witnesses directly, review the highly
14 confidential material, and therefore we're asking for an
15 increase in the number of permitted in-house Exhibit C
16 signers.

17 JUDGE RENDAHL: Okay, anything further?

18 MS. ANDERL: No, Your Honor, not from me.

19 JUDGE RENDAHL: Okay, I will note that I have
20 not received notice from the records center that anyone
21 filed a response to Qwest's motion; has anyone done so?

22 Okay, hearing nothing, we'll first go to
23 Staff in the room and then to those on the bridge line
24 for any response.

25 Mr. Thompson.

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1 MR. THOMPSON: Well, Staff has no objection,
2 but of course it's not really -- it's CLEC data that
3 we're talking about, so it wouldn't make sense for us to
4 take a position I don't think.

5 JUDGE RENDAHL: Okay, thank you,
6 Mr. Thompson.

7 I guess we will first go to MCI given that
8 it's Mr. Stacy's testimony that's involved here.
9 Ms. Singer Nelson.

10 MS. SINGER NELSON: Your Honor, MCI has no
11 objection to Qwest's motion.

12 JUDGE RENDAHL: Thank you.

13 AT&T, Ms. DeCook.

14 MS. DECOOK: No objection, Your Honor.

15 JUDGE RENDAHL: No objection?

16 MS. DECOOK: Correct.

17 JUDGE RENDAHL: Is there any party who does
18 have an objection to Qwest's motion?

19 MR. KOPTA: Your Honor, this is Greg Kopta on
20 behalf of the joint CLEC's. We don't have an objection,
21 we just wanted to note for the record that Qwest has in
22 their motion at least to our satisfaction demonstrated
23 the need to have an additional person on the list of
24 party or in-house personnel at Qwest that are authorized
25 to see highly confidential information. We are, of

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1 course, concerned with the number of parties and
2 therefore in a previous response to a previous motion
3 had proposed that the number be limited to five, but I
4 think the circumstances are such that we don't have an
5 objection to this particular motion, but we would
6 express our caution that further expansion we would
7 probably object to.

8 JUDGE RENDAHL: Thank you, Mr. Kopta.

9 Any other comments from parties on the line
10 about Qwest's motion?

11 Okay, as I noted, I'm going to consult with
12 the commissioners on this issue, so it's not likely that
13 you will see an order from the Commission on this issue
14 until I would say Thursday morning at the very earliest,
15 but I will attempt to get something out as quickly as
16 possible so that Qwest can address these issues and
17 prepare for the 20th.

18 Anything else on this issue?

19 Okay, let's move on to Qwest's motion to
20 strike Mr. Falcone's or portions of Mr. Falcone's
21 testimony. Ms. Anderl or Mr. Steese.

22 MS. ANDERL: Yes, Your Honor, that will be
23 Mr. Steese.

24 JUDGE RENDAHL: Go ahead, Mr. Steese.

25 MR. STEESE: Yes, Your Honor, can you hear me

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1 well?

2 JUDGE RENDAHL: Quite fine.

3 MR. STEESE: The text of the motion itself is
4 fairly self explanatory, so I will be fairly high level,
5 and if you have questions I will be happy to answer
6 them.

7 In the triennial review decision, the FCC
8 made specific reference to a proposal submitted by AT&T
9 for a process known as electronic loop provisioning.
10 The stated purpose of AT&T's proposal is to allow for
11 the provisioning of loops in mass quantities without the
12 need for manual intervention. The FCC considered the
13 approach and specifically rejected the approach in the
14 TRO stating among other things:

15 To packetize the entire public switch
16 network for both voice and data services
17 would in the estimation of one party
18 cost more than \$100 Billion.

19 In addition, the FCC stated, and I quote:
20 The record in this proceeding does not
21 support a determination that electronic
22 provisioning is currently feasible.

23 Despite the fact that the FCC specifically
24 rejected electronic loop provisioning, AT&T has spent
25 many pages through the testimony of one of its

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1 witnesses, Mr. Falcone, attempting to urge that this
2 Commission adopt an electronic loop provisioning
3 approach. Given the FCC's specific rejection of this
4 proposal, Qwest requests that the Commission strike
5 those portions of Mr. Falcone's testimony that relate to
6 electronic loop provisioning, and the specific portions
7 that we seek to strike are identified in our motion.

8 In addition to that, I would note that AT&T's
9 response to Mr. Falcone's testimony appears to be that
10 the states have been reserved the right to make this
11 particular decision despite the fact that the FCC
12 specifically rejected it. And again in that particular
13 point the FCC dealt with this issue head on. In the TRO
14 the FCC says that the states are extended jurisdiction
15 to make certain decisions, and then it goes forward and
16 identifies the specific jurisdiction that the states
17 have been granted. And one is to adopt a batch hot cut
18 process. Another is to decide whether switching is a
19 UNE, et cetera. And so there is a specific role given
20 to the states in the TRO as Your Honor knows.

21 And the FCC did not say anything such as,
22 states, although we reject the ELP approach, this is
23 something that we leave open for the states to decide.
24 So in this particular situation, there is certain
25 testimony that the FCC has rejected and that the FCC in

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1 no way, shape, or form extended to the states to decide
2 in this particular docket or otherwise at this point.

3 And so we respectfully request that the
4 portions of Mr. Falcone's testimony relating to
5 electronic loop provisioning be stricken and that the
6 focus of the proceeding as it relates to loops be
7 focused on the batch hot cut process.

8 That's all I have, Your Honor.

9 JUDGE RENDAHL: Okay, thank you, Mr. Steese.
10 We'll go first to AT&T.

11 MR. WALTERS: Thank you, Judge, Rick Walters,
12 AT&T. I think it's important to note up right up front
13 that Qwest has focused particularly on this paragraph
14 491 of the TRO where the FCC discussed AT&T's ELP
15 proposal at the FCC, and I think it's important to note
16 that the FCC rejected AT&T's ELP proposal at the FCC
17 based on the record in that proceeding. Also regarding
18 the cost issue, it's also interesting to note that the
19 FCC stated that based on one cost estimate submitted by
20 SBC that they found that the cost -- it suggested that
21 the cost may be -- that the ELP proposal may be costly.
22 But what is also important to point out is that nowhere
23 in the order did the FCC state that the states are
24 prohibited from reviewing and considering ELP.

25 I think it's important that you look at the

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1 context of ELP and put it in context of the entire order
2 and look at other statements that the FCC stated
3 regarding the batch hot cut process. And some of the
4 things the FCC stated was that they recognized the
5 deficiencies in the hot cut process are seen and felt by
6 customers. The FCC recognized that CLEC's are likely to
7 lose customers as a result of the problems of the hot
8 cuts. The FCC recognized that many of the problems are
9 inherent in the process itself. The FCC recognized that
10 the ILEC's, Qwest, connect and disconnect a customer by
11 a mere software change or an electronic manner. The FCC
12 stated that the batch hot cut process may mitigate
13 impairment, but it did not conclude that the batch
14 process would for certain eliminate the impairment.

15 JUDGE RENDAHL: Can you give some --

16 MR. WALTERS: The FCC stated that the states
17 should review the evidence of Qwest's pro formas and
18 reliability of the hot cut process. The FCC stated:

19 This review is necessary to ensure that
20 the customer loops can be transferred
21 from the incumbent LEC main distribution
22 frame to the competitive LEC collocation
23 as promptly and as efficiently as the
24 incumbent LECs can transfer customers
25 using unbundled local switching.

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1 JUDGE RENDAHL: Mr. Walters.

2 MR. WALTERS: Yes.

3 JUDGE RENDAHL: Can you give me the paragraph
4 references where you're citing to, because I know this
5 is -- you didn't submit anything in writing, and I
6 suggested parties do this orally, but it will help me in
7 making my decision.

8 MR. WALTERS: Up to now essentially the
9 statements about the FCC can be found in Paragraphs 466,
10 467, 423, 465, and Footnote 1574.

11 JUDGE RENDAHL: Thank you.

12 MR. WALTERS: And the FCC also recognized
13 that the CLEC may continue to be impaired even after a
14 batch process is adopted, and that's Paragraph 512.

15 I think it's important to point out that AT&T
16 believes that it's appropriate to put in evidence that
17 addresses the continued impairment. The FCC has
18 recognized that there's continued impairment and that
19 any process must be as efficient as the ILEC process.
20 AT&T believes that, you know, it is reasonable to put in
21 a proposal or a type of solution that would, in fact,
22 provide a method of transferring customers that is
23 similar and equal in quality to what the ILECs have
24 today.

25 Now I discussed this matter with our client

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1 further, and it's AT&T's not expecting the Commission to
2 order ELP in the triennial review proceeding. However,
3 we believe ELP provides a good benchmark guide for what
4 an appropriate batch hot cut process must accomplish in
5 terms of curing the impairment and must demonstrate the
6 level impairment needed to cure impairment and should be
7 allowed for at least the purpose even if states are not
8 going to adopt it. ELP sets an aspirational target
9 against which any proposed batch hot cut process should
10 be measured. If the batch hot cut process does not
11 prove adequate, even the FCC recognized that there may
12 be a need later to revisit the ELP issue.

13 So we believe put in the context of the
14 entire triennial review order that the ELP testimony is
15 relevant and provides a good standard on which to base
16 whether the batch hot cuts process that is adopted is
17 adequate. For those reasons we believe the testimony
18 should not be stricken.

19 JUDGE RENDAHL: Thank you, Mr. Walters.

20 Before I go back to you, Mr. Steese, for
21 response, I'm going to ask if there's any other parties
22 who wish to weigh in on this matter?

23 MS. FRAME: Your Honor, this is Covad
24 Communications, Karen Frame. Covad has not had a chance
25 to really look at this order, however, or this motion,

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1 excuse me, but we would like the opportunity to brief it
2 subsequent to this oral argument. We're in support of
3 AT&T's position.

4 JUDGE RENDAHL: Thank you, I will take that
5 suggestion under advisement here.

6 Any other party who wishes to weigh in?

7 Okay --

8 MR. STEESE: Your Honor, were you going to
9 come back to me, or were you expecting me to interject
10 when you said any other party wish to weigh in?

11 JUDGE RENDAHL: No, I was going to come back
12 to you.

13 MR. STEESE: Okay, thank you, I'm sorry for
14 interrupting.

15 JUDGE RENDAHL: Why don't you go ahead,
16 Mr. Steese.

17 MR. STEESE: Again I will be brief. It
18 appears as though AT&T has now conceded that the
19 Commission is not expected in any way, shape, or form to
20 adopt an ELP proposal in this particular docket at
21 least, and so what we're looking at is several pages of
22 testimony that asks the Commission to do the very thing
23 that AT&T's counsel now says it's not asking the
24 Commission to do, which is to adopt here what the ELP
25 process is and recommend that the Commission adopt an

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1 ELP process. When you look at Paragraph 486 of the TRO,
2 it specifically says:

3 We ask state commissions to take certain
4 actions designed to alleviate impairment
5 in the markets over which they exercise
6 jurisdiction.

7 And then there are -- and there's a heading
8 above Paragraph 486, small Roman ii, called state
9 actions and determinations, and under that is a series
10 of bullets that are the specific issues the state
11 commissions are asked to perform. One of them is to
12 adopt a batch hot cut process, and the whole argument
13 asking for an ELP is counter to a batch hot cut process.

14 The argument that Mr. Walters is making is in
15 effect there is no process other than electronic loop
16 provisioning that will ever be deemed adequate to AT&T,
17 because a batch hot cut process is by definition
18 inadequate, because they think we have electronics that
19 will allow us to provision on our retail side. And
20 until we reach that standard, nothing is acceptable. It
21 is that pointed, and that is exactly contrary to what
22 the FCC is asking the state commission to perform.

23 In addition, when you look at the specifics
24 of batch hot cuts, we have now had eight days of
25 hearings where we sat down with various parties

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1 including AT&T on a batch hot cut process. Did we reach
2 resolution on all issues, the answer is no. But we
3 reached resolution on very large aspects of a process
4 for provisioning batch hot cuts. The differences of
5 view were around the edges, and the principal points of
6 how batch hot cuts would be performed were agreed to.
7 And now despite the fact that we had all of this
8 workshop and all of this process and all of this
9 discussion, AT&T is asking the Commission to throw away
10 all of that work and find it inadequate as a matter of
11 law. That is not what the order is about, and as a
12 result we ask that the testimony of Mr. Falcone insofar
13 as it relates to ELP be stricken.

14 JUDGE RENDAHL: Thank you, Mr. Steese.

15 I'm going to take this matter under
16 advisement as well and hope to have this resolved by
17 Thursday along with the other motion filed by Qwest.

18 Is there any other issue that we need to
19 address this morning?

20 MS. ANDERL: Yes, Your Honor, this is Lisa
21 Anderl, I have two issues. One is a brief clarification
22 with regard to the process for submitting a request for
23 going over length on the 20 page limitation on our
24 rebuttal testimony that's due on the 20th. At this
25 point we believe we have one or more witnesses who will

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1 need more than 20 pages, and our question is, is it
2 necessary or appropriate to make a motion prior to the
3 20th, or may we file the over length testimony with a
4 supporting motion as to the basis for the need to be
5 over length? And a corollary to that is, does the 20
6 page limitation include exhibits?

7 JUDGE RENDAHL: No.

8 MS. ANDERL: Okay, that's good, thank you.

9 JUDGE RENDAHL: I will state right now it's
10 just the testimony, not the exhibits, although I hope
11 the exhibits aren't more than, you know, oh, I don't
12 know, a quarter of an inch.

13 MS. ANDERL: Well, we hope so too, Your
14 Honor, but as everyone knows, sometimes spreadsheets and
15 other things get long quickly.

16 JUDGE RENDAHL: Right.

17 I guess my preference would be to -- I mean
18 are we talking a couple pages here, or are we talking a
19 need for, you know, double the length of the testimony?

20 MS. ANDERL: We're talking for at least two
21 witnesses, Peter Copeland and Chip Shooshan, the need
22 for maybe 30 to 40 pages.

23 JUDGE RENDAHL: I would say prepare the
24 motion in advance.

25 MS. ANDERL: All right, as soon as we know

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1 how long the testimony is apparently going to be, we
2 will file something with the Commission just as soon as
3 we can thereafter.

4 JUDGE RENDAHL: Okay, thank you.

5 MS. ANDERL: The other matter that we had,
6 which may make much of what we discussed today here --

7 MR. KOPTA: Excuse me, Lisa, before we get on
8 to that, this is Greg Kopta, while we're talking about
9 the surrebuttal testimony I wanted to raise one issue on
10 that particular topic, and that is we obviously based on
11 the last pre-hearing conference have the ability to file
12 supplemental testimony in response to the errata that
13 Qwest filed to Ms. Torrence's testimony, and we would
14 anticipate updating one of the exhibits to Mr. Fassett's
15 testimony to do just that. But in addition there were
16 -- there has been some additional information that we
17 have gotten after the testimony is filed and we also
18 would request the ability to include that information in
19 that exhibit along with the supporting responses to
20 subpoenas and data requests that we've got on which that
21 exhibit is based.

22 JUDGE RENDAHL: It's probably appropriate to
23 make a motion in advance as well, Mr. Kopta, but I would
24 suggest you speak to Ms. Anderl and Mr. Steese about
25 that, and maybe it won't be such a big issue.

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1 MR. KOPTA: All right, thank you.

2 JUDGE RENDAHL: Let me know if it is, and I
3 will expect a motion from you.

4 MR. KOPTA: Okay.

5 JUDGE RENDAHL: Okay, Ms. Anderl.

6 MS. ANDERL: Yes, Your Honor. Well, Qwest at
7 this point in time would like to raise the issue of a
8 delay in this docket, and I was able to speak with a
9 number of the parties before we got on the bridge this
10 morning. To those of you who I wasn't able to reach,
11 including Ms. Frame and Mr. Melnikoff, I apologize, I
12 just ran out of time. But what we would like to propose
13 is a 60 day delay in the docket in light of the
14 uncertainty around the D.C. Court Appeals argument and
15 pending decision on the FCC's TRO.

16 We think that there's substantial question at
17 least as to whether the delegation to the states is
18 going to be lawful. And under the circumstances with
19 Washington the first state to go to hearing in 20 days
20 and the amount of resources that would be expended in
21 terms of lawyer and witness time on the docket, we think
22 that at this point it may be more prudent to have a
23 delay and evaluate the D.C. Court order when it comes
24 out, which I think the conventional wisdom is it will be
25 very soon.

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1 I can go into more detail, Your Honor, about
2 the scheduling proposal if you would like, but we did
3 want to raise that issue at this point, and I think
4 everybody is on the bridge who needs to be to discuss
5 this if necessary.

6 JUDGE RENDAHL: Now I will note for the
7 record that Ms. Anderl did call me and advise me she was
8 going to be discussing this this morning, and because of
9 that I did inquire with the commissioners' calendars as
10 to what is available for later. I have not brought this
11 up to the commissioners, and I'm assuming, Ms. Anderl,
12 you're going to be making this request in writing.

13 MS. ANDERL: If Your Honor wishes us to
14 reduce the motion to writing, we can. We were just
15 anticipating that it would be permissible to make the
16 motion orally.

17 JUDGE RENDAHL: Well, it might be best to put
18 it in writing given that if we're going to be discussing
19 dates, it might be best to put some dates in something
20 in writing that is easily presented to the
21 commissioners.

22 MS. ANDERL: Understood, Your Honor.

23 JUDGE RENDAHL: Okay. In looking at their
24 calendars, the first time regardless of the 60 day
25 suspension request would be in June. The weeks of June

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1 7th and 28th are the first available two weeks the
2 commission has to hear the case if we don't go forward
3 in March.

4 MS. ANDERL: Is it June 7th and 28th, Your
5 Honor?

6 JUDGE RENDAHL: That's correct.

7 MS. ANDERL: All right. As I understand it,
8 just the background for those on the phone who aren't
9 familiar with what is going on in some of the other
10 states, there is a motion pending in Colorado for a
11 delay. It's not been decided yet. The motion was not
12 made by Qwest in Colorado although we do not oppose it.
13 I believe that Colorado is looking at the week of June
14 21st as the date for hearings, assuming that hearings
15 will happen, so I think June dates would be acceptable
16 for Washington as well.

17 JUDGE RENDAHL: Okay. I guess what I'm
18 suggesting is that you make that request in writing, and
19 then make any subsequent slippage in testimony to be
20 filed, et cetera. Again, I will endeavor to have a
21 decision on the motion by Thursday along with the other
22 two motions that are pending, but I do need to consult
23 with the commissioners. So if you can file something
24 electronically by the end of the day today, then I can
25 bring it to the commissioners.

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1 MS. ANDERL: Yes, Your Honor, we'll get
2 something in shortly after noon.

3 JUDGE RENDAHL: Okay. And so if, in fact,
4 the Commission does decide to bump the hearings to June,
5 what is the nature of your request? I mean what exactly
6 would you be asking for in terms of suspending the
7 schedule?

8 MS. ANDERL: What we would like, Your Honor,
9 because this is really a resource driven request, we
10 would like all activity in the docket to be suspended
11 for 30 days so that activity in the docket would pick up
12 on or around April 12th or 16th again assuming -- well,
13 let me back up.

14 JUDGE RENDAHL: That's 60 days.

15 MS. ANDERL: Did I say -- yeah.

16 JUDGE RENDAHL: You said 30.

17 MS. ANDERL: Oh, I meant 60.

18 JUDGE RENDAHL: All right.

19 MS. ANDERL: Obviously assuming there is an
20 order from the court sometime this month or early next
21 month, there may be a need to have another pre-hearing
22 conference to do some analysis, regroup and make a
23 decision as to what procedurally is appropriate in light
24 of any court decision. But assuming that the court
25 decision comes out and says, you know, this FCC order is

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1 just fine, move forward and have your proceeding,
2 states, then what we're looking for is, as I said, a
3 suspension in this docket for 60 days so that no
4 discovery would be propounded or due during that time,
5 no testimony would be due during that 60 day period, and
6 that the schedule would pick up in the middle of April
7 or the end of April where pending discovery would then
8 be due. And the batch hot cut and the rebuttal
9 testimony would also be due say some date that makes
10 sense like the 7th of May, that would be then 30 days
11 prior to the hearing, and we then just move forward down
12 the road toward hearing.

13 JUDGE RENDAHL: Okay, any comments based on
14 Ms. Anderl's oral motion that's going to be turned into
15 a written motion? Other than shouts of glee, but
16 anyway.

17 MR. MELNIKOFF: Your Honor, this is Steve
18 Melnikoff, I just wanted to know from Qwest what will
19 this do to, under Qwest's new proposed schedule, what
20 would that do to the July deadline, assuming that the
21 court either doesn't overturn the authority or doesn't
22 come out with an order, what would that do to the July
23 3rd deadline that the FCC has imposed upon states to
24 finalize their orders?

25 MS. ANDERL: Assuming that nothing changes

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1 between now and July 2nd, that July 2nd deadline would
2 still be in place. The Commission would obviously under
3 the circumstances that we have laid out not meet that
4 deadline. However, Qwest would not take any action
5 based on the Commission's failure to meet that deadline.
6 In other words, Qwest would not go to the FCC and ask
7 the FCC to decide the case because the state commission
8 hasn't.

9 Additionally, the Commission if it were
10 concerned about failure to meet the deadline I believe
11 might have the option of rolling the information in this
12 docket into a new docket and basically starting a six
13 month docket on, you know, July 5th. Because six month
14 dockets are, of course, what's set up in the order to
15 happen after the nine month docket. So I don't think
16 that there's any -- I think that assuming the status
17 quo, the deadline would still be there and the
18 Commission wouldn't meet it, but I don't think that
19 there would be any negative consequences flowing out of
20 that.

21 MR. MELNIKOFF: Thank you.

22 MS. FRAME: This is Karen Frame with Covad.
23 In light of the fact that the Oregon commission
24 requested an extension under 90 day determination and it
25 was denied by the FCC, I mean how do you -- how do you

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1 see that decision by the FCC in packing any of these
2 nine month quote/unquote decisions not being made on
3 time? Do you think that the FCC is going to pull
4 something similar to what they did in the Oregon
5 request?

6 MS. ANDERL: That would just be asking me to
7 speculate too much.

8 MS. FRAME: Right. Well, I know, I'm just
9 concerned. I mean Covad doesn't join in Qwest's motion.
10 I mean the TRO is the law as it stands right now, and if
11 we requested stays on everything that came forth from
12 the FCC and went up on appeal, then we would never get
13 anything accomplished. And our concern is that some of
14 this evidence and testimony and responses that we
15 responded in the data requests will be stale if, you
16 know, and we'll be continuing with discovery forever.
17 So that's our concern. We're not going to officially
18 oppose the motion, but we're not going to join either.

19 MS. DECOOK: Your Honor.

20 JUDGE RENDAHL: Yes, who is this?

21 MS. DECOOK: Becky DeCook for AT&T.

22 JUDGE RENDAHL: Ms. DeCook.

23 MS. DECOOK: We don't take a position on this
24 motion either, because it really is Qwest's case to
25 pursue or not to pursue. However, I am concerned about

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1 the nine month deadline issue, and it seems to me that
2 in order to protect the parties and perhaps the
3 Commission in this case if the Commission decides to
4 grant a request for a continuance that we might want to
5 get some sort of written assurances from Qwest.

6 JUDGE RENDAHL: About what Ms. Anderl
7 discussed about not going to the FCC?

8 MS. DECOOK: Either not going to the FCC or
9 waiving the nine month deadline.

10 JUDGE RENDAHL: Any other comments?

11 MR. MELNIKOFF: This is Steve Melnikoff
12 again. I'm not sure that Qwest could waive the nine
13 month deadline. I still haven't parsed that out in my
14 mind. But I would assume that Qwest, as I think Covad
15 pointed out, it is their case to pursue or not to
16 pursue, so I guess the assurances would be that it would
17 not contest the status quo of the circumstances
18 underlying the nine month proceeding and would be
19 content on pursuing this in an additional six month
20 subsequent proceeding.

21 And, in fact, I guess in answer or at least
22 some thoughts on how the Oregon 90 day proceeding, I
23 think that is slightly different because that was a one
24 time shot at a national finding with no mechanism for
25 continued proceedings thereafter, unlike the nine month.

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1 MR. THOMPSON: This is Jonathan Thompson, I
2 would agree with that last point. And also as I recall
3 it was a deadline to petition in which states were to
4 petition the FCC to overcome a finding of
5 non-impairment, and that's different than the procedural
6 situation for the nine month case.

7 JUDGE RENDAHL: Okay, anything else that you
8 would like me to present to the commissioners when I
9 meet with them, any other arguments?

10 MS. FRAME: Your Honor, this is Karen Frame
11 again with Covad. I wanted to let you know what's
12 happening in some of the other states as well. The New
13 Mexico commission is considering this extension or a
14 stay I guess you could say in their Thursday open
15 meetings. The idea has been kicked around in Minnesota
16 as well, but no formal motion has been filed yet. In
17 Colorado, as Ms. Anderl stated, the motion has been
18 filed by the Office of Consumer Counseling. From the
19 grumblings I have heard after speaking with several
20 people that actually were in charge of filing the
21 motion, there is indication, although it hasn't been
22 granted yet, that the Colorado commission was seriously
23 looking at granting the motion. I have not, and I am
24 personally participating in 8 of our 14 state Qwest
25 region, heard of any other motions that are pending or

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1 other commissions that are considering this at this
2 point.

3 MS. ANDERL: Your Honor, this is Lisa Anderl.
4 Thanks, Ms. Frame, for fleshing that out a little bit.
5 I do have a little bit more information as well. My
6 understanding is that the New Mexico commission is
7 actually considering a delay in this docket on its own
8 motion because of state resource issues. I have also
9 been told, although I don't have direct knowledge, that
10 a motion for delay has been filed by other parties in
11 both Nebraska and North Dakota.

12 JUDGE RENDAHL: Filed by other parties, not
13 Qwest?

14 MS. ANDERL: Other parties not Qwest, and
15 Qwest is, of course, not opposing the motion in those
16 states.

17 MR. THOMPSON: Your Honor, this is Jonathan
18 Thompson again, I think another piece of information
19 that's worth noting is that I'm told that Washington is
20 the first of the Qwest states to be going to hearing; is
21 that correct?

22 MS. ANDERL: Yes, it is. There is no earlier
23 hearing in the TRO than the one that starts here in
24 Washington on March 1st.

25 JUDGE RENDAHL: Okay, any other information

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1 that you would like me to have before I meet with the
2 commissioners?

3 Okay, well, I appreciate you bringing that
4 information, Ms. Anderl, orally, but again if you can
5 get that into the Commission in writing and include some
6 of the information that was discussed this morning, that
7 would be helpful.

8 MS. ANDERL: We will do so.

9 JUDGE RENDAHL: Just to sum up and moving
10 backwards, Ms. Anderl, if Qwest is seeking to go over
11 the 20 page limit for rebuttal testimony, then you
12 should do so in advance and describe the nature of the
13 over length and the need for it.

14 Mr. Kopta and Ms. Anderl, please try to work
15 together about Mr. Kopta's issue about the supplemental
16 testimony, supplemental responsive testimony, and if you
17 have an issue, please bring it to me.

18 On the issue of Qwest's two motions, the one
19 to strike AT&T testimony and the motion to expand the
20 number of expert witnesses from five to six, now my
21 assumption is that applies to all parties and not just
22 Qwest.

23 MS. ANDERL: That seems fair, Your Honor.

24 JUDGE RENDAHL: Okay. I will be bringing
25 those as well to the commissioners and will attempt to

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1 have an order out from the Commission by Thursday.

2 Is there anything else we need to discuss
3 this morning?

4 Hearing nothing, I appreciate all of your
5 willingness to call in and be present on such short
6 notice. You know, in the event we do go forward as
7 scheduled, that's why we're holding this on such short
8 notice, and we will be letting you know soon on all of
9 these issues, so thanks very much for appearing this
10 morning.

11 All right, the pre-hearing conference is
12 adjourned.

13 (Hearing adjourned at 10:50 a.m.)

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