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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3

4 In re Application of US WEST,) Docket No. UT-991358
5 INC., and QWEST COMMUNICATIONS) Volume III
6 INTERNATIONAL, INC. for an) Pages 197-271
7 Order Disclaiming Jurisdiction,)
8 or in the Alternative,)
9 Approving the US WEST, INC. -)
10 QWEST COMMUNICATIONS)
11 INTERNATIONAL, INC. Merger.)
12 _____)

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14 A hearing in the above matter was
15 held on December 6, 1999, at 9:34 a.m., at 1300
16 Evergreen Park Drive Southwest, Olympia, Washington,
17 before Administrative Law Judge DENNIS MOSS.

18

19 The parties were present as
20 follows:

21 AT&T COMMUNICATIONS OF THE
22 NORTHWEST, INC., NEXTLINK, and ADVANCED TELCOM GROUP,
23 INC., by Gregory J. Kopta, Attorney at Law, Davis,
24 Wright, Tremaine, 1501 Fourth Avenue, Suite 2600,
25 Seattle, Washington 98101.

26 US WEST COMMUNICATIONS, INC., by
27 Lisa A. Anderl, Attorney at Law, 1600 Seventh Avenue,
28 Room 3206, Seattle, Washington 98191 (Appearing via
29 teleconference bridge), and James M. Van Nostrand,
30 Attorney at Law, 600 University Street, Suite 3600,
31 Seattle, Washington 98101.

32

33 THE COMMISSION, by Sally G.
34 Johnston, Assistant Attorney General, 1400 S.
35 Evergreen Park Drive S.W., P.O. Box 40128, Olympia,
36 Washington 98504-0128.

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1 PUBLIC COUNSEL, by Simon ffitch,
Attorney at Law, 900 Fourth Avenue, #2000, Seattle,
2 Washington 98164.

3 RHYTHMS LINKS, INC., by Angela Wu,
Attorney at Law, Ater Wynne, Two Union Square, 601
4 Union Street, Suite 5450, Seattle, Washington 98101
(Appearing via teleconference bridge.)

5
SBC INTERNATIONAL, INC., by Arthur
6 A. Butler, Attorney at Law, Ater Wynne, Two Union
Square, Suite 5450, 601 Union Street, Seattle,
7 Washington 98101 (Appearing via teleconference
bridge.)

8
QWEST, by Ronald Wiltsie, Attorney
9 at Law, Hogan & Hartson, 555 13th Street N.W.,
Washington, D.C. 20004 (Appearing via teleconference
10 bridge.)

11 LEVEL THREE COMMUNICATIONS, by
Rogelio Pena, Attorney at Law, 707 17th Street, Suite
12 3600, Denver, Colorado, 80202, (Appearing via
teleconference bridge.)

13
McLEOD USA, by Mark Trincherro,
14 Attorney at Law, Davis, Wright, Tremaine, 1300 S.W.
Fifth Avenue, Suite 3200, Portland, Oregon, 97201
15 (Appearing via teleconference bridge.)

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24 BARBARA SPURBECK, CSR
25 COURT REPORTER

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1 JUDGE MOSS: Good morning. We're on the
2 record in the matter styled In re Application of US
3 West, Inc. and Qwest Communications International,
4 Inc. for an order disclaiming jurisdiction or, in the
5 alternative, approving the US West-Qwest
6 Communications merger. And I shortened that
7 slightly. This is Docket Number UT-991358. We are
8 convened in the Commission's hearing room on December
9 the 6th for purposes of a discovery conference to
10 hopefully resolve any lingering issues.

11 I am informed off the record that there are
12 some lingering issues that will require our attention
13 and hopefully final resolution this morning. And
14 then we'll take up any other business.

15 Our first order of business, however, is to
16 take appearances, and I'll begin here in the room.
17 And those of you on the bridge line who are
18 representing the same party, I'll ask that you speak
19 up in turn after your representative who is present
20 here speaks. So we'll begin, then, with Mr. Van
21 Nostrand, and then we'll ask Ms. Anderl. Go ahead.

22 MR. VAN NOSTRAND: Thank you, Your Honor.
23 On behalf of Joint Applicant US West, James M. Van
24 Nostrand.

25 MS. ANDERL: Thank you, Your Honor. Lisa

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1 Anderl, appearing by telephone for US West
2 Communications.

3 JUDGE MOSS: Okay. Ms. Anderl, again I'm
4 going to ask you to speak up a little bit as you
5 speak into the phone there. It's a better
6 connection, but -- and this goes for all of you on
7 the conference bridge line. Please, if you're on a
8 conference line or a cell phone, I ask that you pick
9 up the handset or switch to a hard line phone, and
10 that does make the clarity a little better. Okay.
11 Mr. Kopta.

12 MR. KOPTA: Thank you, Your Honor. Gregory
13 Kopta, on behalf of AT&T, Nextlink, and ATG.

14 JUDGE MOSS: Mr. ffitich.

15 MR. FFITCH: Simon ffitich, Assistant
16 Attorney General, on behalf of Public Counsel.

17 JUDGE MOSS: Ms. Johnston.

18 MS. JOHNSTON: Sally Johnston, Assistant
19 Attorney General, on behalf of Staff.

20 JUDGE MOSS: Mr. Wiltsie.

21 MR. WILTSIE: Ronald Wiltsie, Your Honor,
22 Hogan and Hartson.

23 JUDGE MOSS: And did we lose you there, Mr.
24 Wiltsie?

25 MR. WILTSIE: No, Your Honor.

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1 JUDGE MOSS: You're still with us. It
2 sounded like your line cut off. And you need to
3 state whom you represent for the record, please.

4 MR. WILTSIE: Yes, Your Honor. Ronald
5 Wiltsie, at Hogan and Hartson, for Joint Applicant
6 Qwest.

7 JUDGE MOSS: Thank you. And Mr. Pena.

8 MR. PENA: Rogelio Pena, with Nichols and
9 Pena, on behalf of Level Three Communications.

10 JUDGE MOSS: Ms. Wu.

11 MS. WU: Angela Wu, with Ater Wynne,
12 representing Rhythms Links, Inc.

13 JUDGE MOSS: Mr. Butler.

14 MR. BUTLER: Arthur A. Butler, for SBC
15 International.

16 JUDGE MOSS: And Mr. Trincherro.

17 MR. TRINCHERO: It's Mark Trincherro, on
18 behalf of McLeod USA.

19 JUDGE MOSS: I apologize for mispronouncing
20 your name, Trincherro.

21 MR. TRINCHERO: Thank you.

22 JUDGE MOSS: Let's start with Public
23 Counsel.

24 MR. FFITCH: Your Honor, my appearance this
25 morning relates to a report, I believe, rather than

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1 particular outstanding disputes. We have one matter
2 that we are still following up with the company on.
3 I believe this is our DR Number 29, to which we
4 received a response indicating that an attachment had
5 not yet been prepared. To my knowledge, we have not
6 yet received that attachment.

7 I have inquired of Counsel last week when
8 we might receive that, and don't believe I have a
9 prediction yet from the company on when we might
10 receive that. And Lisa, I know you're on the line.
11 You might have an update for me on that.

12 MS. ANDERL: I do.

13 JUDGE MOSS: Go ahead, Ms. Anderl. Give us
14 the update.

15 MS. ANDERL: All right. Thank you, Your
16 Honor. Can you hear me better? I changed
17 telephones, and that was the beep that you heard
18 earlier.

19 JUDGE MOSS: We seem to have a better
20 connection now.

21 MS. ANDERL: All right. I did place an
22 inquiry as to where Attachment B was last week. And
23 towards the middle or end of last week, I got a
24 message back stating that we believe we had a source
25 for that information and the document was in the

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1 process of being compiled. Unfortunately, my contact
2 on that was out of the office on Friday, the 3rd, and
3 so we're following up this morning with the timing
4 and estimated filing date for that Attachment B. I
5 do suspect that it will be forthcoming in a day or
6 so.

7 MR. FFITCH: Thank you. In addition to
8 that, we propounded nine additional data requests by
9 the deadline of November 30th, and those have not
10 been answered yet. Under the rule, the answers are
11 not due yet. So we don't know whether or not we will
12 have any unresolved issues on those nine additional
13 DRs. And that concludes my discovery report at this
14 point.

15 JUDGE MOSS: Okay. So you don't have
16 anything for me to resolve today?

17 MR. FFITCH: No, Your Honor.

18 JUDGE MOSS: Okay. Ms. Johnston, how about
19 Staff?

20 MS. JOHNSTON: I don't have anything that
21 requires resolution this morning, either, Your Honor.
22 We also issued additional data requests by the
23 deadline, November 30th. Specifically DRs 141
24 through 150 remain outstanding, though, according to
25 your order, all responses are due by Friday, December

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1 10th, this week. So until that date, I won't know
2 whether or not there remain unresolved issues.

3 One data request which is important to
4 Staff's case, Data Request Number 140, the response
5 to that was due last Thursday, 12/2. We have not yet
6 received a response to that, although it's my
7 understanding that representatives of US West have
8 been in personal communication with three of Staff's
9 witnesses, Dave Griffith, Suzanne Stillwell and Kathy
10 Folsom, so I'm hopeful that their issues will be
11 resolved, as well.

12 JUDGE MOSS: Okay. Just to interject a
13 thought here that we may want to go ahead and
14 establish a tentative date and time for further
15 discovery conference today, so that we can reserve
16 the necessary facilities to accommodate any disputes
17 that arise over these requests, the responses to
18 which are not yet due. So as we get to the end of
19 the day and I forget that, I'll trust one of you to
20 remind me and we'll do that.

21 I don't have my calendar right now, so I'll
22 have to take a recess to go get that. So we'll do
23 that. One of you please do help me remember.

24 All right. Mr. Kopta, it would appear that
25 it is your turn.

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1 MR. KOPTA: Well, would that I could be as
2 brief as Public Counsel and Commission Staff.

3 JUDGE MOSS: Why do I have the sneaking
4 suspicion that would not be the case?

5 MR. KOPTA: Well, your suspicion is
6 well-founded. We met with US West and Qwest last
7 week to discuss the outstanding issues and managed to
8 pare down the list substantially.

9 US West and Qwest have agreed to supplement
10 their responses to most of the data requests to which
11 we were seeking answers to be compelled. We've not
12 received any of those supplements yet, so we don't
13 know whether there is going to be any other
14 outstanding issues with respect to those data
15 requests, but I'm assuming that those can be dealt
16 with at the future discovery conference that you just
17 referenced, should there be continuing issues.

18 Unfortunately, we were not able to reach
19 any or complete resolution on approximately 25 data
20 requests, and I'm not sure that there's any other way
21 to approach it than to go through them one-by-one to
22 raise the issues before Your Honor for resolution.

23 JUDGE MOSS: I fear you are correct. Do
24 you have them so that I can refer to them, a set of
25 them?

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1 MR. KOPTA: We have a copy of our motion to
2 compel with the data request responses attached,
3 which I can provide to you for your reference.

4 JUDGE MOSS: I probably have that. This is
5 what you filed previously?

6 MR. KOPTA: Yes. Not all of those
7 obviously are at issue, and there may be some that
8 have some supplement to them since we filed our
9 motion, so to the extent that that is the case, then
10 we'll try and point that out and let you know what
11 the supplemental response was and why it's not
12 sufficient.

13 JUDGE MOSS: Okay. I have your -- let me
14 check here. Okay. I have your motion as filed on
15 November the 8th. And attached to that -- well,
16 let's see. All right, you had attached, I believe,
17 two appendices?

18 MR. KOPTA: I believe that's correct.

19 JUDGE MOSS: And the first of these appears
20 to provide -- include data requests and responses,
21 objections, what have you. Would that be the full
22 set?

23 MR. KOPTA: That was the full set of data
24 requests that we were seeking to receive responses
25 to. And so the ones we will be discussing today

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1 should be a subset of those.

2 JUDGE MOSS: Okay. Will we need to look at
3 the Appendix Two at all? Those were -- well, I'm not
4 sure what those are. Actually, that's pretty brief.
5 That's a couple of -- looks like Public Counsel-type
6 data requests.

7 MR. KOPTA: I don't anticipate we will need
8 to look at that.

9 JUDGE MOSS: All right. So I need to focus
10 on Appendix One. That's where I am. What's the
11 first one?

12 MR. KOPTA: The first one is Data Request
13 Number 13.

14 JUDGE MOSS: Okay. Tell me why you need
15 this information.

16 MR. KOPTA: This is information -- we've
17 asked for a list of services that US West provides in
18 states other than those in which it is an incumbent
19 local exchange company. Our concern is that
20 investment that should be going into the state of
21 Washington and other states where US West is an
22 incumbent local telephone company will be diverted to
23 services in other states, and we simply want to know
24 what other services are potentially services that may
25 receive that funding.

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1 JUDGE MOSS: Okay. Who's going to respond
2 for US West?

3 MR. VAN NOSTRAND: I'll respond, Your
4 Honor.

5 JUDGE MOSS: Thank you.

6 MR. VAN NOSTRAND: First, I think our
7 objection is grounded on the fact that it relates to
8 states other than Washington. The question is
9 directed to states other than those in which it
10 operates as an incumbent local exchange company,
11 which, obviously, in Washington, US West does operate
12 as an incumbent local exchange company.

13 And the objection would be that it's not
14 relevant to issues in this proceeding. To the extent
15 there is a nexus shown to the transaction, the
16 proposed merger on the services, I believe we are
17 willing to supplement our response to the extent we
18 could state that we -- that addresses that particular
19 question, but obviously we don't know what the impact
20 of the merger will have on services outside of US
21 West's 14-state area.

22 But we can offer that supplemental
23 response, which addresses the second question, second
24 part of Number 13. The first part, we feel it's just
25 not relevant to the issues in this proceeding.

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1 JUDGE MOSS: Now, I know you've set up this
2 website. When I say you, I mean US West-Qwest, the
3 Applicants have set up this website, which I assume
4 -- well, I shouldn't say I assume. As I understand
5 it, this includes discovery responses in all
6 jurisdictions in which this matter is pending before
7 a regulatory body.

8 MR. VAN NOSTRAND: Yes.

9 JUDGE MOSS: And would this type of
10 information be available on that site?

11 MR. VAN NOSTRAND: Could you address that,
12 Ms. Anderl?

13 MS. ANDERL: Yes, Your Honor. Actually,
14 all that is available on the website are discovery
15 responses, nonconfidential discovery responses to
16 data requests propounded by the parties in other
17 merger proceedings. And so to the extent that we had
18 identified out-of-region services in response to any
19 other data requests, that would be available, but I
20 believe, because we've tried to be very consistent
21 with our responses from one state to another and
22 provide information -- well, if we were providing
23 information in one state, we would provide it in
24 others, as well -- I believe this information is not
25 specifically available on the website.

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1 And Mr. Wiltsie, certainly if Qwest knows
2 anything to the contrary, feel free to step in on
3 that, but I think the short answer is no, it's not.

4 MR. WILTSIE: Your Honor, this is Ronald
5 Wiltsie, for Qwest. We have nothing further on that.

6 JUDGE MOSS: Thank you. Okay. Mr. Van
7 Nostrand, as I understand his comments, Mr. Kopta,
8 says that Applicants can provide you information with
9 respect to the second part of your question, which
10 seems to be the thrust of why you asked it. Would
11 that be satisfactory to you?

12 MR. KOPTA: No, Your Honor. We don't think
13 that that would be satisfactory. What we want is to
14 know what services are provided out of region, so
15 that we can have an understanding of what types of
16 services US West is funding in addition to its local
17 services.

18 The tension is how much is US West going to
19 invest in the state of Washington and its local
20 facilities, as opposed to how much it's going to
21 invest outside of that. Obviously, our main concern
22 is not US West's services outside of the state of
23 Washington; our concern is that there will be
24 obligations or business ventures that US West is
25 going to prefer in other states over its local

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1 exchange businesses in Washington, and we simply want
2 an identification of the potential or the existing
3 services that US West is offering that could present
4 that potential.

5 JUDGE MOSS: Now, I assume that, to the
6 extent US West is offering services in any
7 jurisdiction, these services are being marketed in
8 some fashion or another, so there's no real issue of
9 confidentiality here. What about the matter of
10 burden? Mr. Van Nostrand, the objection says it's
11 overly broad. How difficult would it be to provide
12 AT&T and company with a list of services?

13 MR. VAN NOSTRAND: I'll let Ms. Anderl
14 address that.

15 MS. ANDERL: Your Honor, if it is limited
16 to telecommunications services, I would expect that,
17 to the extent that US West was operating out of
18 region, it would be providing telecommunications
19 services either under a tariff, contract or a price
20 list. And because I have not investigated that, I
21 don't know what the level of work would be to check
22 those and provide the information, but if -- I
23 believe -- I can't say. I'm sorry. I'd like to be
24 able to say it wouldn't be unreasonably difficult,
25 but I just really don't know.

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1 Certainly all services is incomprehensibly
2 broad. All telecommunications services might be
3 somewhat more reasonably limited.

4 JUDGE MOSS: Would that satisfy your needs?

5 MR. KOPTA: Well, it raises another issue
6 in my mind. I wasn't aware that US West provides
7 services other than telecommunications services, with
8 the spinoff of Media One, but it still raises the
9 same issue in terms of where else -- what other
10 services are going to be competing for the investment
11 dollars of US West in the merged company.

12 Obviously, if it would -- our object is not
13 to create an enormous burden. I wouldn't think that
14 it would be that difficult to have a list of all of
15 the services that a company provides. But if Your
16 Honor believes that it would be unduly burdensome to
17 ask for all services that US West provides, then
18 telecommunications services is the next best option.

19 JUDGE MOSS: Well, I have to strike some
20 balance in these things to the extent that I can, and
21 Ms. Anderl represents that she thinks it could be
22 relatively easy to provide a list of
23 telecommunications services.

24 MS. ANDERL: Well --

25 JUDGE MOSS: Relatively easy was the wrong

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1 choice of words, Ms. Anderl, I can tell from your --

2 MS. ANDERL: Well, actually, Your Honor, I
3 was reading the question as one out of region, and it
4 is, in fact, out of Washington. And we do provide
5 telecommunications services both out of region and
6 out of Washington. Out of Washington in region is 13
7 states, and each state has probably five or six
8 tariff binders that describe the tariffed or price
9 listed telecommunications service that the company
10 offers in each of those states.

11 JUDGE MOSS: Let me interrupt, because this
12 question appears to go only to jurisdictions where
13 you do not operate --

14 MS. ANDERL: Oh, okay. I'm sorry, you're
15 right. It did say not as an incumbent, so it is out
16 of region.

17 JUDGE MOSS: That would be much more
18 limited, wouldn't it, in scope?

19 MS. ANDERL: It seems as though it should
20 be, but I -- as I said, I have not investigated what
21 the scope of services that the company offers out of
22 region are, and I don't know.

23 JUDGE MOSS: All right. I'm going to
24 require that someone undertake that and report back
25 to Mr. Kopta's clients or through him, however you

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1 all are doing this, to the extent of
2 telecommunications services that are outside of your
3 14-state region where you provide local exchange
4 service.

5 And again, I think, as we've discussed
6 throughout, and this point will carry through the
7 day, we're concerned about the potential impact of
8 the merger, and of course, that's got to be Mr.
9 Kopta's concern on behalf of his clients, as well.
10 So I think you all can work together to get him some
11 sort of useful information on this question as it
12 relates to the potential impact on investment in
13 Washington State. What's the next one?

14 MR. KOPTA: Number 22.

15 JUDGE MOSS: Oh, this is a long one. Give
16 me a minute. Okay. I've read the request, and I'm
17 beginning to work my way through the response, which
18 includes several objections.

19 With respect to the objection that it's
20 outside the scope of the issues in this docket, I
21 overrule that objection. The second objection is
22 that it's overly-broad, unreasonable and unduly
23 burdensome. We're going to have to return to that,
24 because it is quite broad and does appear to me that
25 it might impose an undue burden.

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1 Let me read on here. Well, I gather from
2 the objection that US West has not compiled this
3 information in any sort of an easily retrievable
4 fashion. Would that be right, Mr. Van Nostrand?

5 MR. VAN NOSTRAND: That's my understanding,
6 Your Honor.

7 JUDGE MOSS: That's how I read it. Mr.
8 Kopta, this is a pretty broad request, going back
9 five years, asking them to produce just about
10 anything they've done with respect to investment in
11 any docket, in any jurisdiction. Is there some way
12 you can limit this?

13 MR. KOPTA: We would be willing, as we have
14 in other data requests, to limit it to the state of
15 Washington.

16 JUDGE MOSS: Well, with that limitation,
17 Mr. Van Nostrand, is that something you could respond
18 to without terrible burden? I recognize these are
19 publicly-available documents, and Mr. Kopta could
20 send a team of paralegals down here and get on our
21 records management system and probably discover all
22 of this stuff on his own, but perhaps US West has it
23 available in a more readily retrievable fashion for
24 -- limited to Washington State.

25 MR. VAN NOSTRAND: I think perhaps with the

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1 limitation of the time period, as well, Your Honor.
2 I know, in others of these, AT&T has agreed to limit
3 the years to '97 forward or '98 forward, and perhaps
4 '98 forward, limited to the state of Washington,
5 would be a reasonable resolution of this.

6 JUDGE MOSS: What's the minimum time period
7 you think would find useful, given what you intend to
8 do with this?

9 MR. KOPTA: I think certainly since US
10 West's last rate case, which was in 1995.

11 MS. ANDERL: Your Honor, the last rate case
12 was in 1997, and produced an order in January of
13 1998. Is that right? Ninety -- yes.

14 JUDGE MOSS: Okay. Well, I think it should
15 be limited in time, as well, and I think if we go
16 back to '97, that will be adequate, so let's have a
17 response for the period '97 forward, and limit it to
18 Washington State. What's the next one?

19 MR. KOPTA: Number 23.

20 JUDGE MOSS: All right. Let me take a
21 moment to read these. Okay. This is somewhat
22 similar, and the objection is identical to the
23 previous question. However, I note that this
24 question is limited to orders or directives. It does
25 go back to '94, which I find probably a little far

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1 back, but it seems to me that this would be a fairly
2 limited number of documents and that, by providing a
3 copy of the order itself, that would necessarily
4 include all of the information asked for in subparts
5 A, B, and probably C, probably D, and then, of
6 course, E would require -- unless there were
7 compliance filings or something like that, that would
8 require more effort, perhaps.

9 Mr. Van Nostrand or Ms. Anderl, whoever's
10 the most suitable person to respond, if we imposed a
11 similar limitation on this one, '97 forward, where
12 would we stand?

13 MS. ANDERL: Your Honor, let me take a shot
14 at that, if I might.

15 JUDGE MOSS: Yeah.

16 MS. ANDERL: I understand that 22 is more
17 particular to representations that US West made, and
18 thus perhaps information that is more readily
19 available to US West. However, 23 is clearly a
20 request that US West do AT&T's legal research for it.
21 And as such, I think it's entirely inappropriate.
22 Had AT&T wanted to research these orders themselves,
23 they certainly could have. And then, to the extent
24 that such orders or directives of the Commission
25 contained requirements as set forth in that question,

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1 AT&T could very easily have propounded subpart E as a
2 separate question or focused on the particular orders
3 or directives.

4 But at this point in the game, I think that
5 it's not appropriate or really a good use of US
6 West's time to be doing research that these other
7 parties could have done over the past two months.

8 JUDGE MOSS: Okay. Well, this is the sort
9 of problem we get into, and this is where my job
10 begins to clench. It is my expectation in these
11 proceedings that the parties will work cooperatively
12 together to develop the body of information that each
13 party requires to present its case.

14 And yes, I agree with everything you've
15 said, but I also believe that it is incumbent upon
16 the party to whom a request is propounded to work
17 with the party propounding the request to narrow it
18 or identify ways in which the party requesting the
19 information can be satisfied.

20 It strikes me that all that would have
21 needed to be done here two months ago is for US West
22 to provide Mr. Kopta and his clients with a list of
23 all those docket numbers, and then he could have
24 undertaken that research, but without that, it would
25 be incredibly cumbersome for him to have to send

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1 somebody out to each of these jurisdictions and go
2 through their records management systems in order to
3 identify dockets in which US West was involved. I'm
4 certain information regarding what those docket
5 numbers are and so forth is readily available and
6 could easily have been provided.

7 You're right, Ms. Anderl, it is now late in
8 the game. It does appear to me that this is a
9 legitimate area of inquiry, that it does bear on the
10 proceeding here, and we need to have a response to
11 it. I think 1994 goes back a little far, although I
12 understand the reason for selecting that date. As to
13 subpart E, again, had this groundwork been done with
14 respect to subparts A through D, I suspect E could
15 have been tailored fairly narrowly.

16 So at this point, what I'm going to require
17 is that US West provide the appropriate guidance --
18 and I keep saying Mr. Kopta and his client, so forth.
19 I'm just going to use the shorthand of referring to
20 counsel by name, with the understanding that I'm
21 always referring to the party. Provide Mr. Kopta
22 with a road map, if you will, to the dockets in which
23 this subject matter is part of the subject matter in
24 the various jurisdictions since '97. And yes, to the
25 extent these are public documents and they're not

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1 readily -- cannot be readily provisioned by US West
2 -- in other words, to the extent US West would have
3 to go out and pull these things from files or pull
4 these things from commissions to get official copies
5 or what have you, then we can leave that burden on
6 Mr. Kopta.

7 But on the other hand, to the extent
8 they're readily available, they could be provided and
9 perhaps save some time. I will have to then permit
10 Mr. Kopta the opportunity to follow up with respect
11 to subpart E, and I will require that he do so in a
12 fairly pointed fashion, so as not to make this
13 inquiry broader than necessary.

14 But I'm concerned at this juncture already
15 with the timeliness, and we'll talk more about that
16 at the end of the day. I think my ruling on this
17 data request is probably clear enough at this point,
18 so let's move on to the next one.

19 MR. KOPTA: The next one is Number 29.

20 JUDGE MOSS: Now, Mr. Kopta, do I
21 understand this is limited to Washington State?

22 MR. KOPTA: Yes, Your Honor.

23 JUDGE MOSS: All right. I've read the
24 question and the response. Is there anything that US
25 West wants to add?

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1 MR. VAN NOSTRAND: The fact that it's
2 limited to Washington State is news to me this
3 morning, Your Honor. I would point out we have had
4 two separate meet and confers with AT&T in an effort
5 to try to get these requests narrowed in scope and
6 duration. We have explored the issues, they are
7 overly broad as written, and with the exception of
8 probably three or four requests, there was no effort
9 made to narrow the request either as to scope or
10 time. So we have tried to narrow the request in a
11 manner that we might be able to go forward on. It
12 has been unsuccessful, which is why we're here this
13 morning.

14 JUDGE MOSS: Okay. Thank you, I appreciate
15 that. And that's very fair that you should put that
16 in the record.

17 MR. KOPTA: I would note, also, that this
18 particular data request on its face refers to the
19 state, which is Washington.

20 JUDGE MOSS: Well, it seemed clear enough
21 to me, but there's always room for misunderstanding
22 when confronted with broad discovery from many
23 parties, and of course I am sensitive to the fact
24 that this is not the only jurisdiction in which this
25 matter is going forward, so we'll just chalk that up

00222

1 to honest misunderstanding and, limited to Washington
2 State, I'll order that the information be provided.
3 What's next?

4 MR. KOPTA: Number 30, which is essentially
5 the same question for Qwest.

6 JUDGE MOSS: All right. I don't see any
7 reason to discuss it. We'll have the same thing.
8 It's limited to Washington State. What's next?

9 MR. KOPTA: Number 33.

10 JUDGE MOSS: All right. Mr. Kopta, I'm
11 going to have to ask you to explain to me why you
12 need this level of detailed information about the
13 interconnections.

14 MR. KOPTA: We have asked for each point in
15 US West's network at which a CLEC has requested
16 interconnection. Not each request, but each point in
17 the network, so that we can understand those points
18 at which US West will allow interconnection and those
19 at which it will not.

20 This provides background as far as what
21 facilities are available and whether US West has been
22 required to or refused to modify any facilities in
23 order to allow interconnection at a particular point
24 in its network.

25 JUDGE MOSS: Okay. Let's have a response

00223

1 from the Applicants.

2 MR. VAN NOSTRAND: First of all, Your
3 Honor, as I believe the response indicates, that
4 requires US West to compile information which has not
5 currently been compiled. Second, there's no nexus
6 shown to the transaction. The latter question, as
7 far as describe the impact of the merger, is a
8 connection to the transaction. We have answered that
9 question.

10 As to the former part of the data request,
11 there's no connection to the transaction. It's just
12 information gathering, with no stated purpose.

13 JUDGE MOSS: All right. I'm going to deny
14 this request, except to the extent it's been
15 answered. What's the next one?

16 MR. KOPTA: Number 34.

17 JUDGE MOSS: Okay. This is somewhat
18 similar to the previous one. Anything to add to
19 what's previously been argued?

20 MR. KOPTA: Yes, Your Honor. This is
21 orders that have been denied or delayed because of
22 lack of available facilities, which goes to the heart
23 of the concerns that my clients have, which is the
24 lack of investment in local exchange facilities in
25 Washington, and again, the opportunity for this

00224

1 merger to result in additional or the same level of
2 investment outside of Washington, rather than in
3 Washington, where it's needed.

4 JUDGE MOSS: Mr. Van Nostrand.

5 MR. VAN NOSTRAND: Again, Your Honor,
6 there's no stated connection to this transaction.
7 There's not even a question as to what the impact of
8 this transaction will have on these issues. It's
9 just information gathering with no apparent
10 connection to this proceeding.

11 JUDGE MOSS: Well, I'm not prepared to say
12 that it has no connection to this proceeding, to the
13 extent Mr. Kopta's tying it to the question of US
14 West-Qwest prospective investment in Washington State
15 in terms of facilities and efficiencies that may
16 exist.

17 However, I do find that this information
18 that's being requested here appears to me to be
19 somewhat overbroad and strikes me as something that
20 would impose quite a burden to respond. I'm assuming
21 that there's quite a volume of these requests and
22 they would have to be parsed through.

23 It may be that this is an area that will
24 precipitate some further inquiry following the filing
25 of testimony, and of course there will be an

00225

1 opportunity for follow-up discovery at that time.
2 Frankly, I'm thinking in terms of this issue as one
3 that appears to me, depending on who the witnesses
4 are and what they say, might best be developed
5 through cross-examination and by very direct
6 questions about the anticipated levels of investment
7 and that sort of thing.

8 MR. KOPTA: Unfortunately, Your Honor,
9 based on the testimony that we have to date, none of
10 the witnesses that US West or Qwest have identified
11 would be -- have testified on anything like this, and
12 I don't know that they would have the knowledge to be
13 able to respond to anything along these lines.

14 In addition, US West does have an
15 obligation under the act to provide parity in its
16 provisioning and should be tracking the service
17 quality that it is providing to competitors, as well
18 as to its own customers. So it's a little difficult
19 for me to believe that US West does not track this
20 information.

21 JUDGE MOSS: Ms. Anderl, does US West track
22 this information?

23 MS. ANDERL: I'm re-reading the question,
24 Your Honor. Yes and no, Your Honor. US West does
25 know when it has an order that it held for lack of

00226

1 availability, but in general, those are in
2 current-type reports.

3 This is a request that is not limited in
4 time in the first place, and it is -- but beyond
5 that, it's so broad that, you know, I don't know that
6 US West -- I know that US West does not have a
7 specific report that it could go to and just tell the
8 computer print that report and we'll give it to AT&T.
9 I believe that it would be a significant amount of
10 labor to pull all of the held orders and identify any
11 instance of the information associated with that
12 order that AT&T's seeking.

13 Interestingly, this is the type of data
14 request that AT&T is also asking in its separate
15 complaint docket, 991292. I believe this request may
16 be focused on facilities for producing local service,
17 and the Docket 991292 is a complaint with regard to
18 access services, but clearly AT&T and others have a
19 forum in other more-limited-in-focus Commission
20 dockets to obtain this type of information and to air
21 their grievances and address specific issues about
22 held orders.

23 So I know that's a little bit more
24 information than you asked for, but I think the short
25 answer to your question is we don't have a report

00227

1 readily available that would immediately provide this
2 information.

3 JUDGE MOSS: Actually, the information is
4 useful. Has this information been requested in the
5 other docket that you referenced?

6 MS. ANDERL: As it relates to access
7 services, yes.

8 JUDGE MOSS: Has that information been
9 provided?

10 MS. ANDERL: Yes.

11 JUDGE MOSS: So that, at least, is
12 available. Mr. Kopta, are you working on that case?

13 MR. KOPTA: No, Your Honor, I'm not.

14 JUDGE MOSS: So you don't have any idea
15 whether that might satisfy you?

16 MR. KOPTA: I do not.

17 JUDGE MOSS: Okay. What I'm going to
18 require is that US West provide that same information
19 to Mr. Kopta in this proceeding and ascertain the
20 degree of difficulty that would be involved in
21 responding fully to this request for a 12-month
22 period, and if that is not something that is going to
23 require two or three person days of effort, then go
24 ahead and provide the response.

25 To the extent that it does prove to be a

00228

1 really cumbersome undertaking, then that should be
2 reported to me, and I'll either further limit or deny
3 the request at that time, but I think -- and of
4 course, I'm depending on everybody acting in good
5 faith here, but I think you can provide the
6 information that's already been compiled for purposes
7 of the other docket, and that may prove sufficient.
8 Clear enough? Ms. Anderl, did you have a question?

9 MS. ANDERL: Just two -- no, just one, Your
10 Honor. It's fairly voluminous. Might I ask if Mr.
11 Kopta would be willing to come to our office to
12 review it this afternoon or tomorrow?

13 JUDGE MOSS: I think as long as you mean
14 the office in Seattle and not in Denver, that might
15 be possible.

16 MS. ANDERL: I do.

17 JUDGE MOSS: Although given the weather
18 today, he might be happy to go to Denver. All right.
19 How about it, Mr. Kopta?

20 MR. KOPTA: Well, I can try and see.

21 JUDGE MOSS: Well, set something up. We
22 may have to have some further discussion on this one.

23 MS. ANDERL: We could talk about that
24 off-line, Your Honor. And we'll copy the stuff if we
25 need to. I was just trying to be conservative with

00229

1 resources, but that's all right.

2 JUDGE MOSS: We want to save those fir
3 trees in the Pacific Northwest, don't we?

4 MS. ANDERL: That was kind of the idea.

5 JUDGE MOSS: I see. All right.

6 MR. KOPTA: Number 38, which is essentially
7 the same question, but for collocation.

8 JUDGE MOSS: Okay. Then I'm going to give
9 essentially the same answer. Let's see what can be
10 done for a 12-month period. Go ahead, Ms. Anderl.

11 MS. ANDERL: Sorry. The only problem there
12 is, of course, that there are a number of -- we're
13 getting into other CLECs' proprietary information
14 here with orders for collocation or related
15 facilities submitted by a CLEC. If we provide this
16 information to Mr. Kopta, he and his clients know
17 what every other CLEC is doing in the state, and I
18 suspect that those that are not represented by Mr.
19 Kopta might not wish to have that information
20 disclosed.

21 JUDGE MOSS: Can't you disclose this
22 information without identifying the CLECs?

23 MS. ANDERL: Yes and no. Sometimes it's
24 pretty obvious, by just identifying the central
25 office, who it is, but we can certainly undertake to

00230

1 mask the CLEC identity if we're required to provide
2 the information for, you know, for all carriers for
3 the 12-month period, as you did with Number 34.

4 JUDGE MOSS: Yeah, let's look at it that
5 way. And again, I do take the matter of business
6 confidentiality seriously and I do want to be
7 cautious about that. We don't want to be disclosing
8 information that others who are not parties to this
9 proceeding would be sensitive about. To the extent
10 these are private business arrangements outside of
11 the scrutiny of the regulatory authorities, there may
12 be some issues there. We deal with the same thing on
13 the energy side with special contracts sometimes, so
14 let's do be sensitive about that. But we'll put this
15 one in the same category as the previous one, then.

16 MR. KOPTA: Just to note, Your Honor, we
17 are not interested in getting the identity of those
18 carriers. That's not why we want this. So it's
19 certainly what we would anticipate getting from US
20 West, in any event.

21 JUDGE MOSS: Good, all right. Let's move
22 on. What's the next one?

23 MR. KOPTA: Forty-one. And actually, 41
24 and 42 are linked.

25 JUDGE MOSS: Okay. We'll look at them

00231

1 together, then. All right. I think I need a
2 telecommunications engineer sitting up here next to
3 me today. This question is getting into some areas
4 that I frankly don't understand the implications of.
5 And so instead of having that engineering expertise
6 available, I'm going to have to rely on lawyerly
7 expertise to explain to me why you need this
8 information.

9 MR. KOPTA: This is really more or less in
10 the same line of the questions we've talked about
11 before. Call blocking is a problem that occurs when
12 there are insufficient facilities in between central
13 offices or locations, and what we are trying to do
14 here is determine the extent to which, again, a lack
15 of facilities either for CLECs or, in particular, for
16 US West in terms of its own call routing and the
17 interconnection with Qwest, whether there's any
18 distinction and whether there are problems in terms
19 of lack of facilities between US West's central
20 offices and, again, whether the merger will have any
21 impact on that.

22 JUDGE MOSS: And the idea is to learn this
23 information, establish sort of a baseline, if you
24 will, against which to consider potential impacts of
25 the merger.

00232

1 MR. KOPTA: That's correct. If there is no
2 call blocking, then it's not an issue. If there is
3 call blocking, then the issue is is that going to
4 remain or is that going to improve as a result of the
5 merger, and is there a distinction between the call
6 blocking that occurs in calls made between US West
7 customers, as opposed to calls made between US West
8 customers and CLEC customers.

9 JUDGE MOSS: I wonder if it would be useful
10 and more efficient if I were to require a narrative
11 response to the question you just posed, rather than
12 the sort of detailed response that the questions call
13 for. And let me hear from US West.

14 MR. VAN NOSTRAND: Your Honor, the question
15 is answered in Number 42. To the extent it relates
16 to the impacts of the merger, US West has obligations
17 under the act and Commission interconnection
18 agreements and tariffs and orders, and the merger
19 will not affect those obligations. And it can't be
20 said what impact post-merger operational matters.
21 Those have not been decided this morning.

22 I believe Question 42 answers the question,
23 the last paragraph of 42 answers the question, to the
24 extent there's been a nexus demonstrated between this
25 issue and the transaction.

00233

1 JUDGE MOSS: Well, I don't really see that
2 last paragraph as being responsive. The question is
3 whether this problem exists, and to the extent it
4 does, whether there are any plans to diminish the
5 problem or eliminate the problem as part of the
6 combined company's efforts following the merger. I
7 mean, that's basically how I understood the question
8 as restated.

9 MR. KOPTA: Yes, Your Honor.

10 JUDGE MOSS: And all these things are
11 certainly true that are recited in the last paragraph
12 of US West's response to Number 42, but they don't
13 really address that question.

14 And so what I'm going to do is require US
15 West to provide a narrative response to the question
16 as I essentially rephrased it, as Mr. Kopta phrased
17 it just before I spoke. And I suspect we're going to
18 have to have an expedited transcript of today's
19 undertaking in order to let everybody be perfectly
20 clear.

21 So Mr. Kopta, on your hand, it may be a
22 question of getting on the telephone with the
23 appropriate person and discussing how to frame this
24 question in a way that it can be responded to in a
25 narrative. And on US West's part, that's the only

00234

1 form of response I'm going to require. What's next?

2 MR. KOPTA: Number 51.

3 JUDGE MOSS: I haven't been keeping track.

4 How close are we to being finished with yours?

5 MR. KOPTA: We are probably maybe about

6 halfway.

7 JUDGE MOSS: All right. Let's do 51, and

8 then we're going to take a brief recess. For US

9 West, were these documents provided to the U.S.

10 House Committee on Commerce under seal?

11 MS. ANDERL: There was no provision, Your

12 Honor, to do that under seal, and so they were

13 provided to the Commerce Committee with the caveat to

14 the committee that US West believed the documents to

15 be confidential. Since that time, I will explain,

16 one of the documents at issue has been ruled upon by

17 the Superior Court here in Washington, and that

18 Superior Court has affirmed the Washington

19 Commission's determination in Docket 971063 that

20 several sentences in that document are not

21 confidential. However, the rest of the -- and not

22 publicly disclosable.

23 The rest of the document was designated as

24 a network planning document and retained its

25 confidential designation. Of course, the fact that

00235

1 US West claimed the confidentiality on a document or
2 not is probably not material to this data request,
3 because there are provisions under which US West
4 could provide that document under the terms of the
5 protective order here. So that's not really the
6 claim.

7 The claim is relevance to the proceeding,
8 in that the documents sought here were documents that
9 were provided to MCI and to the Washington Commission
10 during the Docket 971053 that concluded almost a year
11 ago now, it was before the Commission, and
12 themselves actually date to the 1996 time frame.

13 US West could see no connection to the
14 merger, no nexus to the merger transaction, and no
15 bearing on any of the issues that the Commission
16 seeks to investigate in this proceeding. And that
17 was really why we objected to this.

18 JUDGE MOSS: Okay. Did you say those
19 documents were part of the record in that prior
20 proceeding?

21 MS. ANDERL: Yes.

22 JUDGE MOSS: All right. Mr. Kopta, you can
23 get those from the Commission's Records Center just
24 by requesting the file in that docket.

25 MR. KOPTA: Except that those are

00236

1 designated as confidential. And not being a party to
2 that, we could request it, but then we would, I
3 suppose, need to go to Superior Court and --

4 JUDGE MOSS: Well, I think that Ms. Anderl
5 has answered that by pointing out that we do have
6 procedures for the provision of confidential
7 information in this docket, so to the extent you
8 identify portions of that prior docket that you
9 believe you need to look at to develop your case, to
10 the extent those are marked confidential, then I
11 would expect you to develop some sort of protocol for
12 communicating with Ms. Anderl or whoever the
13 appropriate person is, and have those provided under
14 the confidentiality agreement.

15 But I don't see that US West would need to
16 respond separately to this. I mean, they're readily
17 available. They're right here at the Commission, so
18 -- unless that would be easier for US West. Maybe it
19 would be easier for US West to simply provide these
20 things under confidentiality agreement.

21 MS. ANDERL: That's the thing, Your Honor.
22 It would be. I was going to -- I hate to jump in on
23 Mr. Kopta's side here, but as I said, we had hoped
24 simply to prevail on the relevance objection and
25 having a ruling that the documents were not

00237

1 reasonably related to the merger transaction. We're
2 certain that Mr. Kopta will treat them as
3 confidential and take all due precautions. I guess
4 we'll have the same discussion again if they're
5 sought to be admitted as evidence as to whether
6 they're admissible evidence.

7 JUDGE MOSS: Yeah, but as you know, Ms.
8 Anderl, you've been through this many times and you
9 understand the guidance that we have on discovery is
10 not necessarily that it be relevant or be admissible,
11 but rather that it be reasonably calculated to lead
12 to the discovery of admissible evidence.

13 And the Commission has identified
14 competitive issues as among those that it wishes to
15 examine in connection with the merger, and while some
16 of these data requests are rather specific in terms
17 of the things they're looking into, they do relate to
18 the matter of evolving competition in the
19 telecommunications industry, which, to date at least,
20 has been manifest primarily through interconnection
21 arrangements with the CLECs, and so it would be
22 difficult for me sitting here, from my perspective,
23 to say, Oh, there's no relevance, there's no
24 conceivable relevance, and therefore, grant your
25 objection on that basis. Just generally, that's

00238

1 probably one of the more difficult objections to
2 sustain in a discovery context.

3 So having said all that, what sort of
4 volume are we talking about here?

5 MS. ANDERL: Very small.

6 JUDGE MOSS: I'm going to go ahead and
7 order that you provide these under the
8 confidentiality agreement. And we're going to take
9 about a five to seven-minute recess here. I'll ask
10 the parties to keep themselves in the vicinity so we
11 can get started again promptly at about 20 before the
12 hour by the wall clock, and that is about seven
13 minutes from now by my watch and by that clock. So
14 we'll see everybody back here or hear everybody back
15 here then.

16 (Recess taken.)

17 JUDGE MOSS: Let's go back on the record.
18 Let's see. Did we do 51?

19 MR. KOPTA: Yes, Your Honor, we did.
20 You're up to number 60.

21 JUDGE MOSS: Sixty. Leaping ahead by tens,
22 all right. It looks to me like it's been responded
23 to, Mr. Kopta.

24 MR. KOPTA: Well, the first part has not
25 been responded to. The company stated they don't

00239

1 know what they're going to do, but they haven't
2 identified what they're doing now so that we can make
3 some kind of an independent analysis as to whether
4 that would be sufficient or whether perhaps Qwest's
5 procedures are superior to US West's or vice versa,
6 so that we can explore the extent to which, once they
7 become affiliates, how information will -- how
8 customer information will remain protected.

9 JUDGE MOSS: Well, I'll require US West and
10 Qwest to update their response to the second part of
11 the question, to the extent some specific decisions
12 are made in this regard, prior to the -- or even as
13 of the time of the hearing, as they're obligated to
14 do under the general rules of discovery.

15 Although I recognize that we don't follow
16 the civil rules of discovery, we're certainly not
17 bound by them in Commission proceedings, my
18 experience over the years has always been that
19 parties have an obligation to update responses when
20 things change. And I would expect that here if that
21 process has not been followed historically or
22 traditionally. I want it to be, in connection with
23 responses such as this. Otherwise I'm going to
24 overrule the request. What's next?

25 MR. KOPTA: Number 61.

00240

1 JUDGE MOSS: Ooh.

2 MR. KOPTA: Sorry we couldn't --

3 JUDGE MOSS: My reaction, for the record,
4 was due to the fact it was over a page. Give me a
5 minute.

6 MR. KOPTA: You probably only need to read
7 the first paragraph.

8 JUDGE MOSS: Oh, all right. Good.

9 MR. FFITCH: What was the number of the
10 last one, Greg?

11 MR. KOPTA: Sixty.

12 JUDGE MOSS: Well, again, I think US West
13 and Qwest have answered the question. I mean, this
14 is what are they planning to do. You know, perhaps
15 it could be asked a little more pointedly whether
16 it's intended any existing plans will change. And
17 the fact that there's no definitive plan to seek
18 Section 271 relief or authority, I would think of it
19 as authority, as opposed to relief. In Washington
20 State, I would think that would tell you everything
21 you need to know.

22 MR. KOPTA: Well, we were also wanting to
23 know what they were going to be doing in preparation
24 for doing that, in terms of complying with the
25 various requirements under Section 271, and one

00241

1 doesn't comply with that after filing; one complies
2 with it before filing.

3 And to the extent the response is that they
4 don't know, if that extends, it's not drafted that
5 way. They only answer whether they're going to file.
6 They don't answer whether they've had any plans about
7 how they're going to comply with 271. If the
8 response is they don't know, then that's a response
9 that's not there now.

10 JUDGE MOSS: I see. That's really the last
11 part of your question, how will you achieve the
12 specific requirements, and then you list them.

13 MR. KOPTA: Yes.

14 JUDGE MOSS: Which is why I don't have to
15 read subparts A through N?

16 MR. KOPTA: That's correct.

17 JUDGE MOSS: Well, I would require a
18 response to this extent: To the extent that US West
19 has actively undertaken to satisfy these various
20 requirements of 271, I think they should say whether
21 and to what extent they have done that, whether
22 there's any plan -- maybe US West has already
23 answered this -- whether there's any specific plan
24 about meeting these requirements.

25 So you know, I think the point is and what

00242

1 I'm trying to explain is that Mr. Kopta's question,
2 as I read it now, is not just about filing a Section
3 271 application, if that's the right phraseology, but
4 rather goes more to the underlying elements. And so
5 to the extent there are definitive plans with respect
6 to meeting these underlying elements that are somehow
7 tied to -- that are somehow impacted by the merger, I
8 would want the Applicants to provide that
9 information, and that could be done in the form of a
10 narrative response or by providing filings that would
11 bear on these different areas or what have you.

12 Probably good starting place would be a
13 narrative response that expands on the current
14 response to the extent of the underlying points in
15 the 271 process. And the answer may remain that
16 there are no definitive plans with respect to any of
17 these. If that's so, again, that's a full answer.
18 So all right. I hope that was clear enough.

19 MR. KOPTA: For our purposes, yes.

20 JUDGE MOSS: Okay. We'll assume that it is
21 clear enough, then. Go on to the next one.

22 MR. KOPTA: Number 62. And again, before
23 you gasp, it's not necessary to read A through J.

24 JUDGE MOSS: I don't see -- oh, there is a
25 response. I'm sorry. It threw me, the format here.

00243

1 Who wants to respond for US West on this?

2 MR. VAN NOSTRAND: Your Honor, if I could
3 supplement that response, I think the issue goes to
4 whether or not this is the proper scope of -- proper
5 subject of discovery. They're asking for, basically,
6 strategy. They're asking for negotiation of
7 potential conditions in the context of discovery.
8 It's just inappropriate discovery, and I don't -- it
9 goes beyond the stated response there in terms of
10 outside the scope of the issue. It's just a question
11 of whether it's properly discoverable evidence, and
12 it's clearly not.

13 JUDGE MOSS: Okay. What I'm thinking of,
14 in terms of the nature of this, and if I'm wrong, I'm
15 sure you all will tell me. Again, the Commission is
16 interested in the potential impact of this merger on
17 the competitive landscape in Washington State. To
18 the extent this merger has some bearing on the speed
19 and effectiveness of the Section 271 process coming
20 in to being for US West or its successor after the
21 merger, I think that's clearly relevant.

22 MR. WILTSIE: Your Honor, this is Ronald
23 Wiltsie for Qwest. The problem we have with this
24 data request is pretty much summarized at the very
25 end of it, where it asks us to identify all

00244

1 conditions to which we'd be willing to agree. It's
2 not asking for facts, it's not asking for documents;
3 it's asking for the company's legal strategy in this
4 case. That's not an appropriate question to be asked
5 in a data request. Maybe if we were in a negotiation
6 room, but it's not appropriate in this forum right
7 now.

8 JUDGE MOSS: Okay. Thank you, Mr. Wiltsie,
9 and I had not read that part of it yet. I was
10 focusing on the first part of it. And I think your
11 point is well-taken. And I think, generally, the
12 suggestion in the first part of the question, asking
13 whether the merged company or subsidiaries will
14 agree, to a lesser degree, imposes that same kind of
15 problem.

16 I think if the question is modified so that
17 what it's requesting is the extent to which the
18 companies have plans, have intentions to perhaps
19 accelerate the Section 271 process by doing some of
20 these things, not necessarily as conditions of the
21 merger or conditions of the merger's approval, but as
22 part of the overall effort with respect to 271, then
23 it's relevant, discoverable information.

24 So this question is really very similar to
25 the previous one, and what I want to require is that

00245

1 US West and Qwest disclose, whether subject to
2 confidentiality or not, information that will allow
3 the Commission to determine what impact the merger
4 may have on this Section 271 process and, hence, on
5 the state of competition in the telecommunications
6 industry in Washington State.

7 The Commission's interest is, in that
8 specific regard, whether the merger of these two
9 companies might forestall the realization of a more
10 competitive telecommunications marketplace, might
11 have no effect on that one way or the other, or might
12 accelerate that process. And so I think that's the
13 effort to which this discovery is directed, but I
14 can't disagree with what Mr. Wiltsie said with
15 respect to particularly the last part of it. That is
16 more proper subject matter for the negotiation table.

17 But to the extent there are some filings or
18 efforts under way or specific plans with respect to
19 the implementation of the various elements that go
20 into a 271 application, then I will require that
21 those be disclosed, subject to any protective order
22 conditions that are appropriate. Next.

23 MR. KOPTA: Number 64, which is essentially
24 the same type of question, except with reference to
25 Section 272 of the act, instead of 271.

00246

1 JUDGE MOSS: Well, again, I think to the
2 extent there are things that will change, things
3 anticipated to change as a result of the merger with
4 respect to the various requirements of Section 272,
5 those should be disclosed.

6 However, having said that, I note that,
7 subject to their objections, Qwest and US West have
8 responded, at least in part and in a somewhat general
9 way, and I suspect there's some other discovery
10 related to this divestiture question that probably
11 would satisfy the need for inquiry into that.

12 So to the extent the merger is going to
13 precipitate some change in these various elements,
14 then I want the applicants to provide that
15 information to Mr. Kopta, but otherwise I'll overrule
16 the -- or deny the request. What's next?

17 MR. KOPTA: Number 67.

18 JUDGE MOSS: This strikes me as being quite
19 similar to one of the ones we dealt with earlier.

20 MR. KOPTA: Yes, it's -- in this case, it's
21 facilities to customer premises, as opposed to
22 interoffice facilities, but it's essentially the same
23 type of request.

24 MR. TRINCHERO: Thirty-four?

25 JUDGE MOSS: Yeah, 34, thank you. And I

00247

1 don't recall specifically how we limited 34, but I
2 believe we did limit that in time.

3 MS. ANDERL: Your Honor, the ruling on
4 Number 34, as I have it in my notes, is that we're
5 required to allow AT&T -- or the limits in this case
6 -- to review data for 12 months that we have already
7 produced in the AT&T complaint proceeding.

8 MR. KOPTA: That's not the way my notes
9 reflect it. My understanding of your ruling was that
10 US West was to provide the information or make
11 available the information that was provided in the
12 access proceeding and to investigate whether and the
13 extent to which they could provide this information
14 for the last 12 months specific to this data request,
15 as opposed to the information that was specific to
16 access in that proceeding.

17 JUDGE MOSS: Well, I'm not going to ask the
18 reporter to go back and try to find that, but -- and
19 unfortunately, I can see that we may be back with
20 further controversy, despite my effort to be clear in
21 making these rulings. I hope that doesn't happen.
22 Is this information also the subject of discovery in
23 the access charge or access complaint? And Ms.
24 Anderl, we're having a hard time hearing you again.

25 MS. ANDERL: Okay, Your Honor. It's not

00248

1 clear from this request exactly what AT&T is looking
2 for here. I suspect that if they identify orders or
3 requests by a CLEC, they are looking for orders or
4 requests for facilities used to provide local
5 service. And so no, that is not the subject of the
6 access complaint.

7 JUDGE MOSS: So this information, at least,
8 then, would have to be developed from scratch?

9 MS. ANDERL: US West would have to create
10 it, yes.

11 JUDGE MOSS: Well, again, this does seem to
12 go to the question of investment and whether the
13 customers in Washington might be better off or not as
14 a result of the merger, to the extent there are
15 existing facilities limitations that might improve or
16 might not. Part of the objection is the burden. And
17 let me ask you, Ms. Anderl, whether 12 months would
18 alleviate that problem, as opposed to all time?

19 MS. ANDERL: Certainly only having to
20 investigate 12 months worth of data is easier than
21 forever.

22 JUDGE MOSS: Even though forever only goes
23 back, what, three or four years, I guess, in this
24 context.

25 MS. ANDERL: Yes.

00249

1 JUDGE MOSS: Nevertheless --

2 MS. ANDERL: I can't tell you how much less
3 work it would be to limit the search to, you know,
4 everything from let's say, you know, December 1, 1998
5 forward. I do know that we would have to create
6 documents which are not now in existence in order to
7 respond to this request, as we are probably going to
8 have to if we are required to respond to 34, as well.

9 JUDGE MOSS: Yeah, and that's part of the
10 discovery process. That happens. You don't always
11 have things compiled, but you do have the data.
12 Well, let's give a try to the 12-month time frame
13 limitation. Again, I think the identity of the CLECs
14 is not a necessary part of the response. And if
15 further problems develop, if it turns out that this
16 is a task too onerous to be accomplished within a
17 reasonable period of time, then I'm sure you all will
18 report back to me on that after you've made some
19 effort to respond, and we'll see what we can do or
20 have to do at that point. So what's next?

21 MR. FFITCH: Excuse me.

22 JUDGE MOSS: Wait a minute, I have an
23 interruption here from --

24 MR. FFITCH: This isn't an interruption. I
25 have a procedural question. This is Simon ffitich,

00250

1 for Public Counsel.

2 JUDGE MOSS: All right, Mr. ffitch.

3 MR. FFITCH: Perhaps it would have been
4 better to raise this at the break. I'm wondering if
5 it makes sense to perhaps address general questions,
6 so the parties who are not involved in the motions to
7 compel might depart if they chose to do so. And we
8 had talked about maybe setting a follow-up hearing on
9 discovery, for example. And I'm not sure how much
10 time you have left, how much time Mr. Kopta has left,
11 but I thought I would raise that point.

12 JUDGE MOSS: Not your idea of high
13 entertainment, is it? No, I understand, and I think
14 that's a point well-taken. Is there anything other
15 than the scheduling of this other tentative discovery
16 conference that we need to take up?

17 MR. FFITCH: I don't think I have anything
18 else. I guess I had sort of a general observation
19 about some of our other data requests that was
20 prompted by part of the discussion that was had here
21 with regard to continuing responses, but other than
22 that -- which wouldn't require resolution, I don't
23 think -- nothing else.

24 JUDGE MOSS: Does anybody else have any
25 matters of a general nature that we need to resolve?

00251

1 I don't want to force anybody to sit here and go
2 through this data request-by-data request unless
3 they're directly involved. Okay, fine. Well, let's
4 take just a very brief recess, I'll go get my
5 calendar, and we'll set that tentative date. If you
6 have some observation you need to make about
7 obligation for ongoing updates and so forth, then
8 we'll do that, and then we'll return to the
9 scintillating work of going through data requests one
10 at a time.

11 MR. FFITCH: I meant no reflection whatever
12 on the interest that is being generated by the
13 discussion.

14 MS. JOHNSTON: I do.

15 JUDGE MOSS: Ms. Johnston may be more frank
16 with us. All right. We'll go off the record for
17 just about three minutes, give me a chance to get my
18 calendar.

19 MR. FFITCH: Thank you, Your Honor.

20 (Recess taken.)

21 JUDGE MOSS: Let's go back on the record.
22 I took the time while I was down there to check the
23 availability of rooms, and we could have room 108 on
24 the afternoon of the 10th, or we could have this room
25 on the 13th. I guess, actually, as I recall

00252

1 something Ms. Johnston said earlier, I believe the
2 10th is actually the day on which some of this stuff
3 would be coming in, so that would probably be
4 premature, but we could go ahead and schedule
5 tentatively for the 13th.

6 MS. JOHNSTON: Your Honor, I will be out of
7 the office all day on the 13th.

8 JUDGE MOSS: Well, I didn't check the 14th,
9 so I don't know what we're going to do about that. I
10 don't want to push this out too far. Will you be
11 available on the 14th?

12 MS. JOHNSTON: Yes.

13 JUDGE MOSS: All right. Does anybody else
14 have an availability problem on the 14th?

15 MR. KOPTA: I'm not sure. There may be a
16 hearing in Utah that I need to be in on the 14th, but
17 we would be able to have somebody else in our office
18 come down. So I don't want to hold that up just for
19 me.

20 JUDGE MOSS: All right. Yes, the
21 constraints on the Attorney General's office and the
22 Public Counsel's office are, of course, much greater
23 than they are for those of you that have the
24 resources of private firms. So we'll tentatively set
25 the 14th, subject to room availability. I'll just

00253

1 have to put out a notice anyway.

2 MR. FFITCH: Thank you, Your Honor.

3 JUDGE MOSS: I'm also thinking, though, if
4 we get this down to where the dispute between any two
5 parties is a matter of two or three requests,
6 something manageable, then we could probably handle
7 it by telephone conference without the participation
8 of all the parties.

9 I'll go out on a limb here, because this is
10 not something that has come up in my experience at
11 this Commission and I have not discussed it with my
12 colleagues, but I don't see any due process barrier
13 to resolving a discovery dispute as between one party
14 and another without convening a hearing. Does
15 anybody see a legal problem with that?

16 MS. JOHNSTON: No, I don't see any problem
17 with that at all, Your Honor, although I do think it
18 would be fair to notify other parties of the
19 existence of a telephone conference call scheduled to
20 discuss discovery matters as to other parties.

21 JUDGE MOSS: Well, from my standpoint, it's
22 a fairly inefficient way to proceed, but I don't mind
23 doing it. I do not wish to heighten the inefficiency
24 or the burden on my office of having to do that sort
25 of notice, so what I'm going to suggest is if the

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1 parties get down to the point where they have gotten
2 it to within a few questions and there's still some
3 dispute that cannot be resolved, I want you all to
4 make all the necessary arrangements for a
5 teleconference call to me. You can get notice out to
6 everybody by e-mail that you're going to do that. I
7 will make myself available at virtually any moment in
8 time to take care of that, subject to the fact that I
9 usually go to bed about 11:00 at night, do not rise
10 until about 6:30 in the morning, and would not care
11 to be disturbed in the intervening hours.

12 Now, hopefully, too, we're going to have
13 all this wrapped up fairly quickly, but of course,
14 discovery's an ongoing process, and the Applicants
15 are going to have their opportunity at it, too, and
16 so I do want to let you all know that, from the 24th
17 day of December through the -- well, the 2nd of
18 January is a Sunday, I will be unavailable. So
19 nobody is allowed to have any disputes during that
20 time frame.

21 MS. JOHNSTON: Well, the discovery
22 responses are due Friday, December 10th, so I can't
23 imagine that there should be any outstanding
24 discovery disputes during your vacation.

25 JUDGE MOSS: Well, but as I point out,

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1 there will be some other discovery in the other
2 direction once the Staff, Intervenors and Public
3 Counsel file their testimony. There may be some
4 discovery in the other direction, particularly with
5 respect to the Intervenors.

6 MS. JOHNSTON: We always comply in a timely
7 manner, Your Honor.

8 MR. FFITCH: The other -- I'm sorry, I
9 didn't --

10 JUDGE MOSS: That's all right. I was just
11 laughing. Go ahead.

12 MR. FFITCH: The other issue I just wanted
13 to address was the issue of continuing obligation to
14 respond. We have received answers to nine different
15 -- by my count, nine different data requests, which
16 essentially indicate that there is no answer at the
17 present time because certain planning has not been
18 undertaken.

19 Under a continuing obligation to respond,
20 presumably the joint applicants would supplement
21 those responses if certain issues had been addressed
22 by planning committees or by the companies in some
23 fashion. I just wanted to raise that point, put it
24 on the record. At this point, we haven't followed up
25 on those or otherwise raised the issue, but I thought

00256

1 I should do it at this time. And I'm not sure
2 whether those follow-up activities have occurred yet
3 at the joint applicants' offices, but there are a
4 number of those that we're aware of, and they may
5 give us some concern in the future.

6 JUDGE MOSS: Okay. Well, in the various
7 jurisdictions in which I have practiced over the
8 years, either as an advocate or a judge, in all the
9 discovery I have ever participated in, there is a
10 continuing obligation on the part of one who is the
11 subject of discovery to update or supplement a
12 response where there is a material change from the
13 response originally given, and I would expect that to
14 be the general rule in this jurisdiction, as well.

15 I can't say that I know that definitively
16 to be the case, because, frankly, this is the most
17 complicated discovery that I have personally
18 encountered since my two-year tenure began at this
19 Commission. But I did see some nods of affirmance
20 from Ms. Johnston as I said that I would expect that
21 would be the practice in this jurisdiction, as well.
22 So unless somebody tells me to the contrary, that's
23 what I would expect to occur. Otherwise, the purpose
24 of discovery is defeated, which is, of course, in our
25 context, disclosure, realization of the truth.

00257

1 That's what we're after. So does that clarify the
2 point adequately?

3 MR. FFITCH: Yes. Thank you, Your Honor.

4 JUDGE MOSS: You're welcome. And is there
5 anything else of a general nature that we need to
6 discuss? There are some parties who have other
7 obligations this morning, and there really is no need
8 to sit through the line-by-line treatment of all
9 these data requests unless you just find that
10 interesting. So anybody on the -- Mr. Kopta's about
11 to have something to say, I think, but is there
12 anybody on the bridge line who has a matter of a
13 general nature that they wish us to take up at this
14 time?

15 MS. ANDERL: No.

16 JUDGE MOSS: Okay. Hearing that, I'll let
17 Mr. Kopta speak.

18 MR. KOPTA: I just wanted to confirm that
19 there will be a discovery conference on the 14th.

20 JUDGE MOSS: Let's go ahead and schedule it
21 for that morning. We may end up holding it in my
22 office if it's just a couple of parties, but I guess
23 -- I'm thinking out loud this morning, and this is --
24 the difficulty I just recognized in saying that is we
25 do need to do these things on the record, I suppose.

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1 However, if we're down to a question or two, and
2 something that's going to take a half an hour to hash
3 through, the Commission does have the authority to
4 make a record by tape recording, and I have done that
5 in other types of hearings. Those, of course, can
6 then be transcribed by private arrangement if the
7 party so desires.

8 I do want to be able to handle this quickly
9 and informally, so that's the process we'll follow,
10 if need be. We'll go ahead and schedule it
11 tentatively for the 14th, and if there's a
12 significant body of material that needs to be taken
13 up, then we will convene more formally to do that. I
14 would ask that the parties let me know by, say,
15 mid-afternoon on the 13th so that -- we will have
16 scheduled a court reporter and the room and what have
17 you -- we might be able to cancel that if we're
18 dealing with such a limited amount of material that
19 we don't really need to have a full-blown discovery
20 conference. And I suspect everyone would prefer
21 that, so -- but I will make the reservations in the
22 meantime. Okay.

23 MR. TRINCHERO: Your Honor, this is Mark
24 Trincherro. Will there be a conference bridge for the
25 Tuesday meeting?

00259

1 JUDGE MOSS: Yeah, we'll work it out some
2 way. I'm operating in the blind a little bit here,
3 because I didn't check on the availability of
4 facilities on the 14th. But if we can't do the
5 conference bridge line, we can make some other
6 arrangements for telephonic communication and
7 participation. Although, having said that, I want to
8 remind the parties that, to the extent they have
9 controversies of the magnitude that Mr. Kopta has
10 brought to us today, I'd encourage almost to the
11 point of expecting that such a party would come and
12 participate in person, as Mr. Kopta has done.

13 Now, I don't mind dealing with some of
14 these problems telephonically, but I don't like to
15 deal with an extensive body of them over the phone.
16 It's difficult for me, it's difficult for the court
17 reporter, and so I think I'm clear enough on that.

18 Okay. Well, then, at this juncture, those
19 who have other business to attend to and don't wish
20 to sit through the balance of the line-by-line,
21 certainly you're free to go and I will think
22 nonetheless of you.

23 MS. JOHNSTON: I think I'll go to lunch
24 now. Thank you, Your Honor.

25 MR. FFITCH: Thank you, Your Honor.

00260

1 JUDGE MOSS: All right, okay. Let's get
2 back to the individual requests. What number are we
3 up to?

4 MR. KOPTA: Number 73.

5 MS. ANDERL: I'm sorry, Mr. Kopta, there
6 was a beep right when you said the number.

7 MR. KOPTA: Sure, 73.

8 MS. ANDERL: Thank you.

9 JUDGE MOSS: And I take it, Mr. Kopta, that
10 you do not find the last two sentences adequately
11 responsive to your question?

12 MR. KOPTA: That's correct. And let me
13 also add that, in our discussions last week, Qwest
14 said that it will supplement its response to this
15 data request, although US West said that it would
16 not. So this is really directed toward US West. And
17 our concern with the response that US West provided
18 is that it substantially narrowed the question by
19 restating it, and then answered a different question.

20 JUDGE MOSS: All right. I'm going to order
21 US West and Qwest to respond to this question as
22 written. What's next?

23 MR. KOPTA: Number 74.

24 JUDGE MOSS: C-a-t-e-r-s?

25 MR. KOPTA: It seems like that was scanned

00261

1 in. Every time it was the word carriers, it somehow
2 was read to be a T instead of a double R. That's my
3 only -- because it's consistent throughout all of
4 them.

5 JUDGE MOSS: Seems to me that this might be
6 limited to Washington.

7 MR. KOPTA: We would be willing to limit it
8 to Washington.

9 JUDGE MOSS: Does that take care of the
10 unduly burdensome problem, Ms. Anderl? Are you the
11 one best suited to answer that?

12 MS. ANDERL: Mr. Van Nostrand and I didn't
13 actually specifically decide which of us was going to
14 address this one.

15 JUDGE MOSS: Well, whichever one of you
16 wishes to discuss it, that's my question. Does
17 limiting this to Washington take care of the
18 burdensome problem?

19 MS. ANDERL: Certainly it narrows it
20 somewhat. Again, the rate, terms and conditions
21 would be found in our tariff, and it would be our
22 preference to -- well, my view is that --

23 JUDGE MOSS: Well, you could just identify
24 the tariffs perhaps.

25 MS. ANDERL: If we could do that, I think

00262

1 that that would go a long way to it. And those are
2 the ones that we provide. I'm not sure what the
3 connection or rationale is for describing the
4 advanced services that US West might receive from
5 another carrier. And so certainly that question is
6 still puzzling to me how it's related to any possible
7 merger transaction, rather than -- as opposed to what
8 US West is actually offering.

9 JUDGE MOSS: Okay. We've got the providing
10 and the receiving part, Mr. Kopta, and Ms. Anderl
11 questions the receiving part. Why do you need to
12 know that?

13 MR. KOPTA: Well, this is really the flip
14 side of the prior request. It's just to enable us to
15 determine the terms and conditions on which US West
16 and Qwest provide services to each other and provide
17 and receive services from others in terms of making
18 sure that there is not any discrimination.

19 JUDGE MOSS: All right. Well, with the
20 limitation to Washington State, I'm going to order
21 this one responded to. What's next?

22 MR. KOPTA: Number 80.

23 JUDGE MOSS: I'm struggling with this one a
24 little bit. It seems to me that, to the extent US
25 West has made some sort of a commitment, then there

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1 shouldn't be a problem disclosing that information in
2 response to this. As far as the next clause, "or is
3 willing to make," I would deny discovery in response
4 to that, unless there's some specific plan to do
5 something in light of the merger, in which case I
6 think it should be responded to. But it seems to me
7 the response already says that those decisions have
8 not been taken, at least as of the date of this
9 response.

10 This response is becoming familiar, whereby
11 it says, Without waiving this objection, the merger
12 will not affect US West Communications, Inc.'s
13 obligations under the Telecommunications Act of 1996,
14 which sort of goes without saying. Is the suggestion
15 here that US West has made some sort of a public
16 statement or drafted some sort of a document that
17 reflects what it views its obligations to be under
18 the Telecommunications Act of 1996 with respect to
19 the providing access to UNEs on a nondiscriminatory
20 basis?

21 MR. VAN NOSTRAND: No.

22 JUDGE MOSS: Okay. Mr. Van Nostrand says
23 no, that that has not been done. And to that extent,
24 this last part of US West's response is not
25 responsive to anything. It goes without saying that

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1 the company is obligated to obey the law.

2 MS. ANDERL: Well, Your Honor, that's
3 correct, I guess. And in fact, Section 251, in
4 (C)(3) of the act imposes a specific requirement of
5 nondiscriminatory access. I think that all US West's
6 response was meant to indicate was that US West is
7 committed to following the requirements of the act
8 and the FCC and the interconnection agreements to
9 which it is a party in the state of Washington, and
10 it does make that commitment to do so. I think, to
11 that extent, the answer is responsive to the
12 question.

13 MR. KOPTA: Well, I would just note that
14 Ms. Anderl gave a different response than is here,
15 and that would certainly be fine if that's all that
16 there was, but that wasn't what was responded to
17 here. We simply wanted a direct answer to the
18 question, not their standard, boilerplate response
19 that they stick in, whether or not it's appropriate
20 to the question.

21 JUDGE MOSS: Yeah, if that boilerplate, and
22 I think that is an appropriate word, considering how
23 much it's used in here -- if what you just said, Ms.
24 Anderl, is what that is meant to reflect, then it's a
25 lot easier to just say it directly and pointedly in

00265

1 response to the question, and that will go a long way
2 toward relieving controversy. So I'm going to
3 require that you craft a new response or supplemental
4 response to this question, 80, along the lines of
5 what you stated on the record or as appropriate.
6 What's the next one?

7 MR. KOPTA: Number 86. And I will note
8 that Qwest indicated in its meeting with us last week
9 that it will supplement the second part of the data
10 request, but was still evaluating whether it would be
11 willing to provide a supplemental response to the
12 first part. So I don't know. I've not had a chance
13 to talk with Mr. Wiltsie.

14 JUDGE MOSS: Okay. I think there should be
15 a response to this question, and that is so ordered.
16 What's next?

17 MR. KOPTA: Number 88.

18 JUDGE MOSS: All right. I'm going to deny
19 88, as to the first question, and require a response
20 to the second question, beginning with the words,
21 "Please describe the plan." And of course, the
22 answer may be there is no plan, but I do require a
23 response to it. What's next?

24 MR. KOPTA: Number 98.

25 JUDGE MOSS: I'll require a response to

00266

1 this. What's next?

2 MR. KOPTA: Number 100. And I will note
3 that US West and Qwest both stated that they would
4 supplement their response to the data requests
5 limited to the state of Washington and from the time
6 period January 1st, 1998, to date. And so I believe,
7 if they are still willing to do that, that that would
8 be fine.

9 JUDGE MOSS: Is US West still willing to do
10 that?

11 MR. VAN NOSTRAND: Subject to a comment to
12 the contrary by Ms. Anderl, yes.

13 JUDGE MOSS: Ms. Anderl, you have a bite at
14 the apple here, too.

15 MS. ANDERL: No, Your Honor. If that's
16 what we agreed to, that's certainly what we'll do.
17 Did I understand state of Washington, 1997 forward?

18 JUDGE MOSS: State of Washington, January
19 '98 forward.

20 MS. ANDERL: Okay, great.

21 JUDGE MOSS: Even better than you thought.
22 All right. What's next?

23 MR. KOPTA: Number 101. And consistent
24 with other data requests, we're willing to limit this
25 to the state of Washington, as far as books that are

00267

1 either kept in Washington or Washington-specific
2 records at the FCC.

3 JUDGE MOSS: Okay. The question's
4 essentially in two parts: What do you do now and
5 what impact will the proposed merger have. Both US
6 West and Qwest have said, Well, the merger's not
7 going to have any impact on that, we'll continue to
8 maintain the same sets that we maintain now, in
9 accordance with the statutes and rules of -- let's
10 limit it to Washington. What is it that you don't
11 know here, Mr. Kopta?

12 MR. KOPTA: What books and records they
13 maintain. We simply asked them to identify and
14 describe the books and records that they maintain.

15 JUDGE MOSS: For purposes of regulatory
16 compliance?

17 MR. KOPTA: That's correct.

18 JUDGE MOSS: Is there a problem responding
19 to that? I mean, is that a big deal?

20 MR. VAN NOSTRAND: I think it's just to the
21 -- the response is that practices in that regard will
22 not change. I mean, the merger would have no impact
23 in this area. It's --

24 JUDGE MOSS: Yeah.

25 MR. WILTSIE: Your Honor, Ronald Wiltsie,

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1 for Qwest. As a question of nexus to the merger, we
2 don't see how this list is going to lead to the
3 discovery of any admissible information. Their
4 discovery closes on December 10th.

5 JUDGE MOSS: Why would you need this list
6 independently of any impact on what their reporting
7 requirements are?

8 MR. KOPTA: Well, to enable us to do some
9 of the research that was discussed earlier. If we
10 can identify what the books and records are, then we
11 can try and ascertain, at least to the extent that
12 those are public records, whether those are
13 sufficient or whether there's a need for additional
14 books and recordkeeping or whether there's an issue
15 with what they're currently providing, in terms of
16 what happens when you have Qwest merging with US
17 West.

18 JUDGE MOSS: Okay. This looks pretty
19 simple and straightforward. I'm going to require
20 that a list be provided of whatever responsive books
21 and records -- whatever books and records US West and
22 Qwest file in Washington State with this Commission,
23 and will limit it in that way. And that should be a
24 fairly straightforward and simple matter. Ms. Anderl
25 can probably list them off the top of her head.

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1 MS. ANDERL: I purposely avoid knowing that
2 level of detail unless I absolutely have to.

3 JUDGE MOSS: Ah, the virtues of seniority,
4 or I should say the prerogatives of seniority. Okay.
5 Very well. Does this bring us to the end?

6 MR. KOPTA: It does.

7 JUDGE MOSS: Good. All right. That takes
8 care, then, of Mr. Kopta's clients. Do we have other
9 outstanding discovery disputes that we need to
10 resolve today? And I will go back to my list and
11 call on you. Let's see. Okay. Mr. Pena, are you
12 there? He has left us. Ms. Wu, are you there? She
13 has left us. Mr. Butler, are you there? I've
14 obviously been far too boring this morning. Mr.
15 Trincherro, are you there?

16 MR. TRINCHERO: Yes, I am here. I remained
17 on the line. We don't have anything on behalf of
18 McLeod today (inaudible).

19 JUDGE MOSS: Okay. Mr. Trincherro, we're
20 having a very difficult time picking up what you're
21 saying. And it was enough that I'm not going to try
22 to reiterate it, but I will say for the record that I
23 understood you to say that you have nothing that we
24 need to take up today?

25 MR. TRINCHERO: That's correct.

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1 JUDGE MOSS: Okay. Anybody else? Well, we
2 made it by noon, Mr. Van Nostrand. Good prediction.
3 All right. Well, we do have this conference
4 tentatively scheduled for the morning of the 14th at
5 9:30. We'll get a notice out on that. Parties keep
6 me informed if there's any need for us to have that.
7 Please let me know by no later than mid-afternoon on
8 the 13th, so that we can cancel it and we won't have
9 to have somebody drive down from Seattle to report
10 this.

11 In terms of the rulings today, I think, for
12 my purposes, at least, I would not feel the need to
13 order an expedited transcript. However, one or more
14 of the parties may feel the need for that in light of
15 their experience working together in the discovery
16 process. So if one of you feels the need to have my
17 determinations verbatim in order to promote the
18 further cooperation between you, then you might wish
19 to make that arrangement with the court reporter
20 afterwards. Otherwise, I will not order an expedited
21 transcript for my purposes.

22 And if you make me write a written order on
23 this, then you'll just have to wait till I get it in
24 due course, and I'm not inclined to do that. So
25 please don't ask unless it becomes absolutely

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1 necessary. Anything else we need to take up today?

2 MR. KOPTA: No, Your Honor.

3 MR. VAN NOSTRAND: No, Your Honor.

4 JUDGE MOSS: Thank you all very much.

5 We're off the record.

6 (Proceedings adjourned at 11:45 a.m.)

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