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

2 JUDGE RENDAHL: Good morning. As you know,  
3 I'm Ann Rendahl, the administrative law judge in this  
4 proceeding. We are here before the Washington  
5 Utilities and Transportation Commission on Tuesday,  
6 February 24th, 2004, for the final prehearing  
7 conference before hearings commence in Docket UT-033044  
8 in the matter of the petition of Qwest Corporation to  
9 initiate a mass-market switching and direct transport  
10 case pursuant to the Triennial Review Order.

11 This prehearing conference is convened  
12 pursuant to the notice in Order No. 01, which is the  
13 first prehearing conference order in this docket.  
14 Let's take appearances first beginning with Qwest. I  
15 think all of you have already entered an appearance on  
16 the record, so just your name and who you represent.

17 MS. ANDERL: Lisa Anderl representing Qwest.

18 JUDGE RENDAHL: For AT&T?

19 MS. DECOOK: Rebecca DeCook.

20 JUDGE RENDAHL: For MCI?

21 MS. SINGER NELSON: Michel Singer Nelson and  
22 Lisa Rackner.

23 JUDGE RENDAHL: For Covad?

24 MS. FRAME: Karen Frame.

25 JUDGE RENDAHL: For the Department of Defense

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1 and All Other Federal Executive Agencies?

2 MR. MELNIKOFF: Steven S. Melnikoff.

3 JUDGE RENDAHL: For the joint CLEC's?

4 MR. KOPTA: Gregory J. Kopta of the law firm  
5 of Davis Wright Tremaine.

6 JUDGE RENDAHL: Mr. Kopta, can you identify  
7 the list, and if there are any others you are  
8 representing that aren't considered in the joint CLEC  
9 group.

10 MR. KOPTA: The clients I represent are  
11 Advanced Telecom, Eschelon, Integra, Global Crossing,  
12 McLeod USA, Pac West, Time Warner Telecom, and XO.

13 JUDGE RENDAHL: Thank you. For Commission  
14 staff?

15 MR. THOMPSON: Jonathan Thompson.

16 JUDGE RENDAHL: For WebTEC? Mr. ffitch spoke  
17 to me yesterday and let me know that he is not  
18 appearing today. They don't plan to have any cross,  
19 which is why they haven't sent any estimates or  
20 cross-exhibits, and I haven't heard from the Coalition.  
21 I did receive cross-estimates from WebTEC yesterday but  
22 no cross-exhibits, so I think that's our level of  
23 participation.

24 As we discussed off the record, the purpose  
25 of the prehearing this morning, or all day,

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1 potentially, is to assist in the final preparations for  
2 our hearings, including administrative details  
3 regarding the hearing process; identifying an order of  
4 witnesses and estimates of cross-examination times for  
5 those witnesses; identifying and marking the exhibits  
6 and cross-examination exhibits for the hearing.

7           In addition, this prehearing conference is  
8 intended to address two motions filed with the  
9 commission last week, AT&T's motion to strike Qwest's  
10 testimony concerning electronic loop provisioning and  
11 the joint CLEC's motion to compel Qwest to respond to  
12 data requests. There is another outstanding motion  
13 from Covad, but the replies to that motion are due  
14 tomorrow, and the commission will likely take that up  
15 and make a decision during the first week of hearings.

16           I have distributed an agenda to everyone this  
17 morning for our prehearing, and I'm wondering if there  
18 is any other issues the parties wish to add to the  
19 agenda. We did discuss expedited transcripts off the  
20 record. My understanding is that Qwest is requesting a  
21 one-week turnaround; is that right?

22           MS. ANDERL: That's right, Your Honor.

23           JUDGE RENDAHL: If there is a need for  
24 further expediting it, we will find out during the  
25 hearing. The only other thing I will add is we will

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1 get a list of the attorneys that will be present. Are  
2 there any other issues we need to add?

3 MS. ANDERL: Yes, Your Honor. I would like  
4 to ask for leave to file a third round of batch hot cut  
5 testimony, and I'm prepared to make the motion more  
6 formally when we get to Item No. 6 on the agenda. To  
7 the extent that that happens later in the day, I may  
8 have some time to talk to other counsel about the  
9 motion on breaks, which I have not yet had a chance to  
10 do.

11 JUDGE RENDAHL: Why don't we add that to the  
12 Topic No. 6, which is resolution of outstanding  
13 motions. Anything else we need to address?

14 MS. DECOOK: Is that a round for all parties?

15 MS. ANDERL: It would be a round for purposes  
16 of responding to material that came in in round two, so  
17 yes, it would be not just for us.

18 JUDGE RENDAHL: Thanks for that  
19 clarification.

20 MS. ANDERL: I want to have some chance of  
21 actually prevailing.

22 JUDGE RENDAHL: So now we are going to talk  
23 about our administrative details, and I think at this  
24 point that given the time estimates that everyone has  
25 given us and the fact I'm not sure it's really that

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1 helpful, I don't believe we will do opening statements  
2 or witness summaries. When I meet with the  
3 commissioners later this week, I will make sure that's  
4 the case. If there is a change, I will let you know as  
5 soon as possible so everyone can prepare.

6 MS. DECOOK: Your Honor, we would like to do  
7 witness summaries if at all possible. I don't know if  
8 everyone else shares this idea, but I think it's  
9 helpful to frame the witness's testimony and where the  
10 areas of dispute are between the parties, and even  
11 though I'm sure the commissioners will have all read  
12 everything, I think it helps it to move from area to  
13 area and put it in context.

14 JUDGE RENDAHL: I will also be briefing them,  
15 so they will get a summary, from my perspective,  
16 granted, of what has been presented in the case so far.  
17 That's part of my prehearing responsibilities with them  
18 is briefing them and giving them a sense of what's  
19 happening and where the key issues in dispute are. So  
20 I will ask them when I meet with them as to whether  
21 they want them. My sense at this point is not because  
22 of the time issue we have.

23 MS. SINGER NELSON: Your Honor, MCI thinks  
24 that summaries are helpful as well. It's not just  
25 AT&T.

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1           JUDGE RENDAHL: I'll note that. One thing  
2 that came up in the middle of discussions during last  
3 week as we were getting ready for this prehearing had  
4 to do with the Triennial Review Order and other cases.  
5 At this point, I don't think we don't need them as  
6 exhibits, and we'll just take administrative or  
7 official notice of those cases and any other state  
8 cases that you wish to rely on, and the best way to  
9 proceed in that manner is to make sure if you are going  
10 to refer to them during the hearing or in brief to  
11 provide copies to the commission. When you are in the  
12 hearing room, provide enough for the commissioners and  
13 me and any other parties who might not have access to  
14 them, and on brief, just attach it to your brief.

15           MS. ANDERL: Point of clarification, can we  
16 assume that the Bench has copies of the TRO?

17           JUDGE RENDAHL: Yes. In fact, I'm going to  
18 excerpt for them the transport and mass-market  
19 switching for them to have on the Bench. They won't  
20 have the full copy. I will have the full copy on the  
21 Bench and they will have an excerpt, but you don't need  
22 to provide that.

23           MS. DECOOK: So the orders that you want us  
24 to have copies of, are those copies of orders from  
25 Washington or from other states that we might be



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1   referencing?

2                   JUDGE RENDAHL:  Other states.  For example,  
3   the Ohio decision on market definition, something  
4   similar to that where we would have to go on the Web to  
5   access it.  It's easier if you provide a copy.

6                   MS. DECOOK:  What about the SGAT and the  
7   price list?  We brought copies.  It's voluminous.  It  
8   takes up a whole box.

9                   JUDGE RENDAHL:  Why don't we talk about that  
10  when we get to the exhibits, because I think that's a  
11  worthwhile discussion as to what to actually have.  The  
12  Bench request responses I think we might also want to  
13  talk about that, because I noticed several of you have  
14  included them.

15                   There is two other issues, the confidential,  
16  highly confidential information.  I'm hoping this will  
17  go smoothly.  The masking is an issue.  On the other  
18  hand, the fact of the masking code itself is not  
19  confidential, so if you need to refer to a company, if  
20  you can refer to a company by its masking code, then we  
21  don't need to close it.  The masking code itself is not  
22  confidential.  The data relating to that company might  
23  be, so to the extent, as we always do with confidential  
24  information and exhibits, you can refer to the exhibit  
25  in a way that doesn't highlight the confidential

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1 information itself, then we avoid that issue.

2 MS. DECOOK: I think that will be very  
3 difficult when we get into the specific trigger  
4 discussions, and we may have to go to a closed session  
5 during that phase. It probably would be easier for the  
6 other witnesses, but for those witnesses, I think it  
7 would be very difficult.

8 JUDGE RENDAHL: Are all the witnesses who are  
9 testifying in the trigger phase, have they signed an  
10 Exhibit C?

11 MS. DECOOK: I think so.

12 MS. ANDERL: But they are still not allowed  
13 to know who the carrier is. They are only allowed to  
14 know the masking code and the highly confidential  
15 designation. So if, for example, I need to cross a  
16 witness on a highly confidential response and the  
17 highly confidential response is designated with a  
18 masking code A-4, which I'm just making that up, but I  
19 cross AT&T's witness on that, it's going to disclose  
20 that A-4 is AT&T, and then those witnesses, even though  
21 they signed Exhibit C, will be privy to the supposed  
22 attorney-only information, which is how the masking  
23 codes line up with the actual carrier ID, and I don't  
24 know any way around that.

25 JUDGE RENDAHL: There isn't, and when we

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1 decided to do the masking code, we realized that we may  
2 end up with a situation where at some point, you may  
3 just know. Based on the data, at some point it's hard  
4 not to just know, so we proceed as far as we can. The  
5 commissioners are aware of this possibility as well.  
6 At the relevant point, we may need to have a motion to  
7 deal with that.

8 MS. RACKNER: It's kind of don't ask, don't  
9 tell.

10 JUDGE RENDAHL: I understand the trigger  
11 analysis is going to be the key issue, and that's what  
12 we need to talk about and clearing the room if we need  
13 to, and the commission really does not like to do that.  
14 They like to have public hearings, but to the extent  
15 you can all minimize that, let's do it, but I  
16 understand with the trigger discussion, it might be  
17 close to impossible.

18 MS. ANDERL: This is in the far distant  
19 future, but it's real sticky in the transport area.

20 JUDGE RENDAHL: Okay. That's true.

21 MS. ANDERL: Some carriers have responded to  
22 highly confidential information and masked the response  
23 as to themselves but provided in the highly  
24 confidential information information about other  
25 carriers where they identify those carriers by name.

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1                   JUDGE RENDAHL: We tried to catch that when  
2 they got filed, but we didn't catch everything. It's  
3 hard. After this whole process is over, we want to  
4 have a debriefing on masking codes and how it really  
5 works. Let's go off the record for a moment.

6                   (Discussion off the record.)

7                   JUDGE RENDAHL: When we are in the hearing  
8 room, these are the rules: No gum chewing. Make sure  
9 you turn off your phone. Don't talk to one another if  
10 you can avoid it. Whispering to a minimum, and some of  
11 you, I know, like to use your computer when you are  
12 doing cross, but the chairwoman finds it very  
13 distracting. She really tries to listen actively to  
14 what the witnesses are saying, and she finds it very  
15 distracting when there is key-tapping going on. So I  
16 know that's kind of a change in how some of you all  
17 work, but if you can avoid it, just letting you know so  
18 you don't incur the wrath.

19                   MS. ANDERL: Your Honor, along those lines,  
20 can you confirm for us today, or do you need to wait  
21 and talk with the commissioners, that the schedule will  
22 be the standard 9:30 to noon, 1:30 to five?

23                   JUDGE RENDAHL: We are going to talk about  
24 that. I'm going to talk about it with the  
25 commissioners, but I'm going to talk about that with

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1 all of you now. So let's turn to scheduling. You all  
2 have the cross-exam list that I gave you, the  
3 cross-exam times. What I did was I compiled from the  
4 witness order I received via e-mail and your cross-exam  
5 estimates. I separated them out by the first and  
6 second week of hearing, and then at the bottom, it  
7 identifies how much hearing time we have.

8           The standard hearing schedule is start at  
9 9:30. We usually take a mid-morning break at about  
10 10:30 for 15 minutes, come back and go to noon, take a  
11 break from noon until 1:30, usually take a break around  
12 three for fifteen minutes, and finish up at five. What  
13 that means is that there is six hours of hearing time  
14 per day. So, for example, with the first week of  
15 hearing, what I did was I added in time for the Bench  
16 to have questions, which they frequently do, and time  
17 for redirect and recross, which you all frequently  
18 have. So adding that in, I got an estimate of close to  
19 42 hours for the first week, while we only have 30  
20 hours.

21           Sometimes the commissioners will go late, but  
22 we won't be doing the marathon hearings that have been  
23 held in the past. The commissioners are not going to  
24 do that. They aren't going to stay until ten at night.  
25 Terry Stapleton used to do those, but we aren't going

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1 to be doing those. So I'm looking at the second week  
2 of hearing we are also at 40 hours. What that means is  
3 we are basically over about 20 hours for our hearing  
4 time.

5           The batch hot cut testimony is about 20 hours  
6 of hearing, and my proposal is that we move the batch  
7 hot cut to a separate three-day session because I don't  
8 think anyone is really ready on batch hot cut either,  
9 based on what Ms. Anderl said this morning, so that was  
10 a thought. What I did was I checked with the  
11 commissioners' assistants this morning, and the  
12 available time we have would be the 21st through the  
13 23rd of April or sometime during the week of the 26th  
14 of April. There are no hearings going on during that  
15 time. The chairwoman will be away on Friday the 23rd,  
16 but we could always go, and I don't know what the  
17 hearing schedule is in other states. I don't know what  
18 your schedules are like. So why don't we go off the  
19 record to talk about that and see what might work.  
20 Let's be off the record.

21           (Discussion off the record.)

22           JUDGE RENDAHL: After much discussion, we  
23 have come to some agreements on witness order, topic  
24 order, and how we are going to fit in all of the  
25 cross-estimates. We will be taking overall policy

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1 market definition first with Mr. Shooshan, Mr. Cabe,  
2 and Mr. Selwyn. Then addressing the trigger analysis  
3 -- I'll be off the record for a moment.

4 (Discussion off the record.)

5 JUDGE RENDAHL: The second set of issues is  
6 trigger analysis and issues having to do with product,  
7 UNE-P, UNE-L products, and I think defining the market;  
8 although that may occur in the economic modeling and  
9 cross-over discussion, which is next. So for trigger  
10 analysis, first Mr. Teitzel will appear adopting  
11 Mr. Reynolds' testimony, Mr. Easton, then Mr. Finnigan,  
12 then Mr. Monfort, and Mr. Spinks. Then we will do  
13 economic models and cross-over; first Mr. Copeland,  
14 then Mr. Buckley, Mr. Denney, Mr. Baranowski,  
15 Mr. Selwyn, and Ms. Starr adopting Mr. Finnigan's  
16 testimony.

17 During the economic modeling cross-over, we  
18 will probably split from the first week to the second  
19 week. In the second week of hearing, we will go into  
20 network architecture and operational issues starting  
21 with Mr. Weber, then Mr. Hubbard, Ms. Doberneck,  
22 Mr. Stacy, Ms. Lichtenberg, and then Mr. Falcone with  
23 the understanding that Ms. Doberneck may appear  
24 earlier. We are going to then take up transport issues  
25 with Ms. Torrence coming first, then Mr. Lynott,

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1 Mr. Fassett, and Mr. Bennett.

2           Then we have discussed this morning the  
3 potential of moving the batch hot cut testimony until a  
4 time in April. We will need three days. There is  
5 approximately 20 hours of cross-examination time  
6 estimated, and we will be discussing that more after  
7 lunch, but in terms of witness order, Mr. Pappas would  
8 go first, then Mr. White, then Ms. Barrick, then  
9 Ms. Lichtenberg, Mr. Falcone, Ms. Lynott, either  
10 Mr. Zulevic or Ms. Doberneck for Covad, then  
11 Ms. Million, Ms. Starr, Mr. Gates, and Mr. Spinks. Do  
12 I have that correct? I added in Mr. Falcone, I think,  
13 between Ms. Lichtenberg and Ms. Lynott.

14           We did some discussions off the record about  
15 cross-time. I didn't get to Qwest in terms of your  
16 cross-estimates for the other parties, but I will  
17 advise you all to look seriously at whether you can  
18 reduce those as I've asked the other parties to do so,  
19 and I'm going to ask you all to give me your  
20 cross-estimates revised by noon tomorrow electronically  
21 if you can do that. I need to present something to the  
22 commissioners by the end of the day. If you need until  
23 mid afternoon, that's fine too, but the earlier you can  
24 get me your revised estimates, that would be helpful.

25           Is there anything else that we talked about



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1 in terms of scheduling witnesses, witness order? We  
2 might go late one or two days each week depending on  
3 how the revised cross-estimates go and when we can find  
4 a time in April. We can't exactly figure that out at  
5 this point, but I think that's where we are. Is there  
6 anything else we need to add? Hearing nothing, we will  
7 be off the record.

8 (Discussion off the record.)

9 (Recess.)

10 JUDGE RENDAHL: We are now going to talk  
11 about exhibit lists. I have the exhibit lists from  
12 everyone that they sent to me yesterday. I started  
13 assigning numbers, and then when I got to the  
14 cross-exhibits for AT&T and MCI for Qwest witnesses, I  
15 realized there was a substantial amount of overlap and  
16 maybe some consolidating that could be done, so I would  
17 like to focus our efforts on that, and then once we get  
18 through the AT&T and MCI cross-exhibits, then we can go  
19 back and start assigning some numbers. We will do that  
20 and be off the record.

21 (Discussion off the record.)

22 (Lunch recess from 12:30 p.m. - 1:30 p.m.)

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AFTERNOON SESSION

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(1:30 p.m.)

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JUDGE RENDAHL: While we were off the record for a significant period of time, hours, we marked the exhibits for the witnesses appearing in the policy and market definition, trigger analysis and product testimony, economic models and cross-over, network architecture, and operational issues and transport. We ended with, I believe, something like 481, or something like that.

11

I'm going to begin marking the Bench requests, first the redacted and the confidential versions of the parties' responses to Bench requests, probably at No. 501. I will begin alphabetically by party in the case. After that, I will put in the CLEC's responses to the commission's Order No. 3 and 4, and in alphabetical order, the confidential and redacted versions. After that, I will put in the highly confidential submissions to the Bench requests and Order 3 and 4 in the masking code alphanumeric order. So when I put together the master exhibit list and circulate it to you all this week, it will have the Bench request numbers included.

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The parties have included a substantial number of documents, which it's hard to know are going

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1 to be used on cross or not. Parties are under a huge  
2 time crunch to prepare for this case and understand  
3 that they will do their best to work with each other to  
4 coordinate between now and Monday as to what actually  
5 is going to be offered as a cross-exhibit and what  
6 might actually be objected to, understanding that it  
7 may not all happen before the hearing, and we may have  
8 to take time during the hearing to address it, but I  
9 would ask the parties to do their best, as they always  
10 do, to work things out before we get to hearing.

11 We will be marking the batch hot cut  
12 testimony and exhibits later in the first week of  
13 testimony. We'll set up a time for an hour in the  
14 morning and potentially at lunch to do that one day to  
15 make sure we have all the -- in fact, maybe we should  
16 just identify -- Thursday we might go late, so I don't  
17 want to overburden us, but maybe Thursday morning we  
18 can meet before the hearing, 8:30 to 9:30, and if we  
19 need to also meet a portion of the morning on Friday,  
20 we can do that too. We are also going to have a  
21 prehearing on Monday morning from 8:30 to 9:30 to  
22 address any issues we need to on marking exhibits and  
23 identifying things before we go forward clearing up any  
24 last-minute details.

25 So I think that covers it on exhibits for

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1 now. Is there anything I missed at this point? On the  
2 record, my appreciation to Sarah Wallace and also to  
3 AT&T and MCI for coordinating that cross and getting a  
4 set of exhibits, I understand, to everybody by Friday  
5 morning at the latest?

6 MS. DECOOK: Hopefully sooner.

7 JUDGE RENDAHL: Let's now move onto the  
8 motions. There are four pending motions at this point.  
9 The Covad motion will be decided during the first week  
10 of hearing by the commissioners. We will let you know  
11 if we need oral argument during the hearing. The  
12 second motion is AT&T's motion to strike Qwest's  
13 testimony regarding loop provisioning. That affects,  
14 primarily, the Pappas, Notoriani testimony that I  
15 understand probably addresses more batch hot cut; is  
16 that correct?

17 MS. DECOOK: That's my understanding;  
18 although, I think there are some network issues in  
19 there too.

20 JUDGE RENDAHL: I guess I'm not sure there is  
21 a real need to argue this. I think it's pretty clear.  
22 It was stricken for AT&T. It should be stricken for  
23 Qwest; unless, Ms. Anderl, you have some very good  
24 reasons why that shouldn't happen.

25 MS. ANDERL: We have two points. One is we

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1 think AT&T's motion is overbroad in that it identifies  
2 one paragraph, one question and answer in the testimony  
3 that should not be stricken. Now, part of the problem  
4 is that AT&T just moved to strike pages with outline  
5 numbers and didn't say what the sentence begins and  
6 ends with, and we have filed a revised piece of  
7 testimony correcting the number of typographical  
8 errors, so the pagination is going to be off.

9 JUDGE RENDAHL: Why don't we go off the  
10 record for a moment and let you two look it over and  
11 see if you can reach an agreement.

12 (Discussion off the record.)

13 JUDGE RENDAHL: While we were off the record,  
14 we tried to decide what portion it was, and the problem  
15 is we have a difference between replaced testimony and  
16 original testimony. AT&T discussed the original  
17 testimony in their motion. There is a pagination  
18 issue. There is also a dispute about one particular  
19 question and answer regarding an impasse issue.

20 So I'm going to ask the parties, AT&T and  
21 Qwest, to go back and see if they can reach an  
22 agreement on this, understanding that I will grant the  
23 motion to strike the ELP testimony, but we need to have  
24 the parties work out the actual pagination, and if  
25 there is a further dispute, we can bring it up in the

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1 first week of hearing when we actually mark testimony  
2 for batch hot cut. Does that help?

3 MS. ANDERL: Yes. If we are pressed for  
4 time, this can wait until batch hot cut. It doesn't  
5 have to happen right away.

6 MS. DECOOK: I would like at least for this  
7 to be argued by the people who were involved, and I  
8 think Rick will be there during the network transport  
9 piece.

10 JUDGE RENDAHL: We can work on that, and see  
11 if you can work it out, and if you can't, we'll find a  
12 time to argue it.

13 The next issue is the joint CLEC's motion to  
14 compel Qwest's response to data requests. Mr. Kopta,  
15 why don't you explain briefly what the issue is.

16 MR. KOPTA: Thank you, Your Honor. There are  
17 two data requests that we are requesting the commission  
18 require Qwest to provide a substantive response to.  
19 The first one has to do with the model that Qwest has  
20 introduced or proposes to introduce to determine the  
21 profitability of CLEC entry in the mass market, and in  
22 response to one data request, Qwest indicated that it  
23 does not use that model itself, nor do any of its  
24 affiliates, and this question asked Qwest to explain  
25 why not as well as to provide the sort of analysis that

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1 Qwest or its affiliates undertake in determining  
2 whether to enter a particular mass-market area, and  
3 Qwest has refused to respond on various grounds, but  
4 it's our contention that the extent to which Qwest and  
5 its affiliates use or do not use this particular model  
6 in their own business operations is directly relevant  
7 to the commission's review of the model itself.

8           The second data request asks Qwest for its  
9 revenues for mass-market customers in the markets  
10 identified in its testimony as being areas in which  
11 Qwest should be relieved of the obligation to provide  
12 unbundled local switching, and again, there was an  
13 objection that Qwest had on the grounds of relevancy,  
14 and our contention is that Qwest has the dominant, if  
15 not monopoly, on local exchange providers in these  
16 areas; that its revenues represent comparable, or at  
17 least a maximum comparable revenue that a CLEC could  
18 expect to obtain in those areas, and therefore, those  
19 revenues are directly relevant to the analysis of the  
20 potential revenue a CLEC could hope to garner if it  
21 were to enter the mass-market local exchange in that  
22 particular market area.

23           So those are the two requests. I understand  
24 that Qwest was going to provide an oral response today,  
25 and so I'll let them explain why they think that we are

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1 not entitled to this information.

2 JUDGE RENDAHL: Ms. Anderl?

3 MS. ANDERL: Thank you, Your Honor. With  
4 regard to Data Request No. 5, we believe that the  
5 request for analysis as to what Qwest's market entry  
6 factors are is wholly irrelevant. The market entry  
7 decisions that an efficient CLEC might make really  
8 cannot be extrapolated from a particular market  
9 entrance decisions or factors in markets outside of the  
10 markets that we are looking at here.

11 That said, I have had discussions with  
12 Mr. Kopta and advised him that if we were compelled to  
13 answer Data Request No. 5, I believe our answers would  
14 be along the lines of, as to Subparts A and C, the  
15 reason that we do not use the CPRO model for our own  
16 market-entry decisions and can't tell whether we will  
17 is because it is so new, and there simply hasn't been  
18 time for Qwest to make a determination as to whether  
19 that's an appropriate tool to use in an analysis with  
20 regard to market-entry decisions. So it may be that  
21 that answer provided here today or provided in a  
22 written supplement to these data requests satisfies the  
23 joint CLEC's request on those subparts.

24 With regard to Subpart B, in addition to the  
25 argument I just presented, I believe that Qwest's



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1 market-entry factors are particularly irrelevant  
2 because Qwest out of region and as a CLEC does not  
3 serve mass-market customers, and therefore, does not,  
4 or has in the past, made market-entry decisions with  
5 regard to the market that is at issue here, which is  
6 the mass market. Qwest Communications Corporation, or  
7 QCC, operating out of Qwest's historic 14-state region  
8 serves enterprise customers, and therefore, any factors  
9 that Qwest would consider or any benchmarks that Qwest  
10 would have with regard to making a decision to enter a  
11 market or not enter a market would be with regard to a  
12 market for enterprise customers. That's not what we  
13 are looking at here in this case. We are looking at  
14 market-entry decisions with regard to mass-market  
15 customers.

16           So we, therefore, stand on our objection with  
17 regard to that portion of the request that the  
18 information sought is wholly irrelevant. It is also a  
19 specific Qwest business plan, highly competitively  
20 sensitive, and even though there is a protective order  
21 in this case, we believe the lack of relevance required  
22 to produce the information when it is not relevant  
23 would prejudice us in a way that even the protections  
24 afforded by the confidential order in the case would  
25 not alleviate.

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1 JUDGE RENDAHL: Let's just first focus on --

2 MS. ANDERL: Then I can move on to No. 10.

3 JUDGE RENDAHL: Let's stay on that for a  
4 moment. Do you have a response to comments on your  
5 request for No. 5?

6 MR. KOPTA: Yes. Briefly, Your Honor, I  
7 believe that Ms. Anderl's response today is essentially  
8 responsive to the question. We did not intend to ask  
9 for factors having to do with entering an enterprise  
10 market because as we understand it, the CPRO model's  
11 entry into the mass market, and therefore, if Qwest,  
12 and I'm assuming but would need to ask if this is not  
13 only Qwest Corporation the entity is providing service  
14 in Washington but also any of Qwest's affiliates that  
15 might be providing local exchange service outside of  
16 the 14-state region where Qwest is the incumbent local  
17 exchange carrier. If those affiliates are included, as  
18 far as I'm concerned, the responses that Ms. Anderl  
19 gave today, if provided in a supplement to their  
20 objection to this response now, would be responsive to  
21 our request, and that's all we were asking for.

22 JUDGE RENDAHL: So it sounds like with  
23 respect to No. 5, Ms. Anderl, if you could provide by  
24 Friday a supplemental response to No. 5, as you gave it  
25 this afternoon.

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1 MS. ANDERL: I was hoping to wait until the  
2 transcript arrived so that I'm as accurate as possible  
3 in my reflection of what I said.

4 JUDGE RENDAHL: Mr. Kopta, do you need it  
5 earlier than Friday for Monday's hearing? Do you need  
6 this for Monday's hearing as a cross-exhibit?

7 MR. KOPTA: These, I think, are designated  
8 for Mr. Copeland's testimony, so if we get it in  
9 advance of Mr. Copeland's testifying, that would  
10 satisfy our concerns.

11 JUDGE RENDAHL: The transcript will come  
12 out -- let's be off the record for a moment.

13 (Discussion off the record.)

14 JUDGE RENDAHL: While we were off the record,  
15 the request was made for an expedited transcript to be  
16 prepared by Friday for this prehearing so that  
17 Ms. Anderl can prepare a supplemental data request  
18 response to joint CLEC Request No. 02-005 by Tuesday at  
19 the latest of next week. Will that work for you,  
20 Ms. Anderl?

21 MS. ANDERL: That should do, so due by March  
22 2nd?

23 JUDGE RENDAHL: Correct. It is an exhibit  
24 number. It's a supplemental.

25 MS. ANDERL: But the problem is it will be

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1 part of the packet that's being assembled right now,  
2 and it won't be Bates numbered, so maybe it should be a  
3 separate exhibit number.

4 JUDGE RENDAHL: We can give it a separate  
5 number when we need to. Moving onto the next,  
6 Ms. Anderl, can you respond to the motion to compel for  
7 joint CLEC's Data Request 02-010?

8 MS. ANDERL: Yes. The joint CLEC's  
9 essentially want Qwest's average revenue per line  
10 figures for the mass-market customers in the markets  
11 we've identified, and we think that Qwest's mass-market  
12 revenues per customer are wholly irrelevant to what an  
13 efficient CLEC will derive, given entry into the mass  
14 market, and that is exactly what the FCC has told the  
15 state commissions to look at in Paragraph 519 of the  
16 TRO.

17 The FCC said, in determining the likely  
18 revenues available to a competing carrier in a given  
19 market, the state commission must consider all revenues  
20 that will derive from service to the mass markets based  
21 on the most efficient business model for entry. That  
22 means you need to consider the CLEC business model for  
23 entry. If you consider the Qwest business model for  
24 service in the market, you are considering a business  
25 model that is wholly different from what might or might

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1 not be the most efficient CLEC model for entry.

2 Most specifically, you are going to be  
3 considering Qwest's revenues that derive from service  
4 to virtually all comers. Qwest has an historic  
5 obligation to serve. It's been called  
6 carrier-of-last-resort obligation, but in general with  
7 very few and limited exceptions, if a customer calls up  
8 and asks Qwest to provide service in Qwest's incumbent  
9 footprint, Qwest has to do so.

10 That means Qwest is obligated to take  
11 low-revenue customers as well as high-revenue  
12 customers. Qwest is obligated to take customers who  
13 buy no features, who use no toll, who give Qwest no  
14 revenues other than the \$12.50 per month per line for  
15 residential service with a six-dollar FCC subscriber  
16 line charge on top of that.

17 The CLEC's, and particularly an efficient  
18 CLEC, would choose not to serve those customers. They  
19 would choose to serve higher-revenue customers. They  
20 would choose to serve customers with higher margins.  
21 That much is abundantly clear, and therefore, it seems  
22 also very clear that there is no relevance at all in  
23 considering what the average revenue per line that  
24 Qwest experiences is because there is no evidence in  
25 this record nor is there argument leading you to the

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1 conclusion that Qwest's average revenues per line are  
2 anything close to what a CLEC will experience. Indeed,  
3 we believe that CLEC's will experience much higher  
4 average revenues per line.

5           Mr. Kopta said that he thought that this was  
6 relevant because Qwest's average revenues per line for  
7 mass-market customers were the maximum comparable  
8 revenues that CLEC's could hope to achieve. There is  
9 no basis for that assertion. CLEC's can pick and  
10 choose their customers. CLEC's can market to  
11 high-revenue customers. CLEC's do that.

12           Indeed, I think that going back to Paragraph  
13 519 in the TRO, the FCC originally had a sentence in  
14 that paragraph that said, State commissions must insure  
15 that a facilities-based competitor could economically  
16 serve all customers in the market before finding no  
17 impairment. That sentence would lead you to believe  
18 that "all customers in the market" is, in fact, the  
19 relevant universe to consider and would potentially  
20 make Qwest's revenues an issue where you were looking  
21 at all customers.

22           However, in the errata that the FCC  
23 subsequently issued, the FCC struck that sentence and  
24 the accompanying footnote from Paragraph 519, I think  
25 lending great weight to the notion that, in fact, that

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1 was not what state commissions are supposed to be  
2 considering, and they are supposed to be considering  
3 the subset of customers that the CLEC is most likely to  
4 be able to win and the revenues associated with those  
5 customers.

6 Therefore, we object strenuously to providing  
7 average revenue per line for Qwest's mass-market  
8 customers. We believe it has no bearing on the issues  
9 in this case.

10 JUDGE RENDAHL: Mr. Kopta?

11 MR. KOPTA: Thank you, Your Honor. I believe  
12 Ms. Anderl has accurately summarized Qwest's position  
13 in this docket, but that is not the universally-held  
14 notion in this docket. I don't think CLEC's are  
15 willing to concede that there are a significant number  
16 of customers that they would refuse to serve in the  
17 State of Washington. An efficient CLEC would be one,  
18 certainly, that would minimize its costs, but that's  
19 not to say that an efficient CLEC would not try to  
20 serve as many customers in the local exchange market as  
21 possible, and, in fact, would want to compete directly  
22 with Qwest for all local exchange customers.

23 Certainly, I don't think that the commission  
24 would be anxious to concede that there are any  
25 significant portion of customers that have no

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1 competitive alternatives and should have no competitive  
2 alternatives. So I think that what we need to look at  
3 from our perspective are the revenues that Qwest  
4 generates from rates for local service and all of the  
5 accompanying features and other services that Qwest  
6 provides to its local exchange customers, and if a CLEC  
7 is going to compete with those rates, a CLEC is more  
8 than likely going to try to match or beat those rates,  
9 and therefore, they do represent the maximum revenue  
10 that a CLEC would be likely to achieve if it were to  
11 target the same customers that Qwest currently serves,  
12 and we are not willing to concede that that is only  
13 high-revenue customers for the small percentage of the  
14 mass market is all that is at issue in this particular  
15 proceeding, because Qwest is proposing to remove  
16 unbundled local switching as a network element in a  
17 particular area, which means that no customers in that  
18 area will be served unbundled local switching. Not  
19 just the high-revenue customers, but all the customers,  
20 and essentially, if the focus is on the high-revenue  
21 customer and the commission were to accept Qwest's  
22 position that an efficient CLEC would serve only the  
23 high-revenue customers and could make money doing that  
24 in these areas, then essentially, it's our position  
25 that the commission would be saying, Well, it's too bad



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1 for the average customer in Qwest's service area. They  
2 just won't have a competitive alternative, and we don't  
3 think that that is what the FCC meant.

4           Certainly in striking that sentence in  
5 Paragraph 519 of the Order, the FCC has left it to the  
6 state commission to determine what revenues it will  
7 consider and has not mandated that the commission  
8 review all revenues for all customers, but we think in  
9 order to properly evaluate the likely revenues both  
10 from Qwest's perspective and from other parties'  
11 perspective that the revenues that Qwest currently  
12 enjoys are certainly things that the commission needs  
13 to consider and that we have every right to place  
14 before the commission as one benchmark that the  
15 commission should use in evaluating the likely revenues  
16 that an efficient CLEC could expect to generate  
17 entering the local market in a particular mass-market  
18 area.

19           MS. DECOOK: Your Honor, could I provide you  
20 with a couple of additional sites from the TRO that you  
21 might want to consider in making your decision?

22           JUDGE RENDAHL: Yes. Let's be off the record  
23 for a minute.

24           (Discussion off the record.)

25           JUDGE RENDAHL: Ms. DeCook?

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1 MS. DECOOK: A couple of sites that weren't  
2 stricken from the TRO, one is Footnote 1497 in which  
3 the FCC states: Because economic entry depends on  
4 whether the sum total of all likely revenue sources  
5 exceed the sum total of all local likely costs of  
6 serving the market, any factor that limits or lowers  
7 potential revenues available to a competing carrier or  
8 raises the cost of serving a set of customers is a  
9 potential barrier to entry. I think that suggests to  
10 me that they are wanting the commissions to consider  
11 all likely revenue sources, not just certain selected  
12 revenue sources as Qwest suggests.

13 The other two paragraphs I would point out  
14 are 472 and 483 where the FCC was criticizing some of  
15 the economic analysis that was presented to the FCC as  
16 part of the TRO procedure, and in both cases, the FCC  
17 criticized the models that were presented as failing to  
18 consider the typical revenues gained from serving the  
19 average customer in the market. That's 472, and then  
20 483 said, The incumbent LEC studies used incorrect  
21 revenues failing to use the likely revenues to be  
22 obtained from the typical customer. That's in 483.

23 JUDGE RENDAHL: Do you have any brief  
24 rebuttal?

25 MS. ANDERL: Briefly in response to that, I

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1 would say all of the citations that Ms. DeCook provided  
2 indicate to you that you need to consider the average  
3 or typical revenues from the subset of customers that  
4 the CLEC is likely to gain, and that, I again submit,  
5 is not the entire universe of Qwest customers. It's a  
6 subset of Qwest customers which are the high-revenue  
7 customers.

8           This is not a criticism of the CLEC's entry  
9 plan. I think any company who can choose to enter by  
10 targeting high-margin or high-revenue customers would  
11 do so. They would be bad business people if they  
12 didn't do that, and we don't think the CLEC's are bad  
13 business people. We think they are going to try to  
14 make as much money as quickly as they can, and that  
15 means targeting high-revenue customers. Nothing that  
16 Ms. DeCook said indicated that the average revenues of  
17 the entire universe of customers in the state is what's  
18 appropriate to be considered, only the average revenues  
19 of those customers who are likely to be customers of  
20 the CLEC.

21           Indeed, the footnote that was stricken from  
22 the TRO, Footnote 1586, says very clearly, In  
23 determining whether impairment exists in a market  
24 including a particular group of customers, the typical  
25 revenues to be obtained from all customers in that

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1 group must be considered to insure that an entering  
2 competitor will be able to serve all customers.

3 That footnote supports Mr. Kopta's and  
4 Ms. DeCook's position, but it was stricken. I think  
5 that's a very clear indication that the FCC knew that  
6 that's not what they wanted the states to do.

7 JUDGE RENDAHL: All of the TRO interpretation  
8 aside, if I grant the motion to compel, what does that  
9 involve on Qwest's part to provide to the CLEC's?

10 MS. ANDERL: I don't know. I don't even know  
11 if we can provide information in the form requested.  
12 We've not looked into that. What we provided in  
13 Mr. Copeland's testimony, which Mr. Kopta has argued,  
14 has kind of opened the door to this type of discovery  
15 is we provided information about the average revenues  
16 of customers who have left us to go to competitors. We  
17 think that is highly relevant because that's the subset  
18 of customers we think you want to look at. Those  
19 customers are pretty easy for us to identify and define  
20 because we get reports, as do all carriers on customer  
21 loss.

22 However, to identify customers with three  
23 lines or fewer within the wire centers or MSA's where  
24 we've asked for relief and calculate an average revenue  
25 per line for those customers, I don't know if we can do

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1 that at that level of granularity or a different level  
2 with detail, or if so, how long any of those exercises  
3 would take. I can find that out, but we have not at  
4 this point determined that.

5 JUDGE RENDAHL: Because this issue turns on  
6 the interpretation of the Triennial Review Order, I'm  
7 not going to make a decision today. I would like to  
8 discuss this with the commissioners because I don't  
9 want to be making a decision that might be contrary to  
10 something they might have in mind, and so I will try to  
11 get a decision to all of you by Friday on this motion  
12 as to Joint CLEC Data Request 02-010.

13 It's an issue that the parties have squarely  
14 presented in the case in various versions of testimony,  
15 and so I don't want to foreclose that issue right now  
16 without further consultation with the commissioners who  
17 are going to be deciding this case. So I think it's  
18 only fair that I defer it, and I'm sorry to delay the  
19 issue longer, but I think it's an important one. So  
20 I'll try to let you know as soon as possible so we can  
21 get the information if we need to or decide the issue.

22 With that, I guess there is only one other  
23 issue we need to address this afternoon and that is  
24 your request, Ms. Anderl, to have an additional round  
25 of batch hot cut testimony. Before we go there, is

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1 everyone in agreement on an April set of hearings,  
2 three days, and it's up to my working with the  
3 commissioners to assign those dates. Is that  
4 acceptable to all of you? It will either be by the 21st  
5 through 23rd or some portion of the week of the 26th.

6 MR. KOPTA: Your Honor, I have a call in to  
7 my client to see if there are any scheduling issues. I  
8 have not heard back, but I will let you know as soon as  
9 possible if one of those times does not work for us.

10 MS. ANDERL: I've checked attorney  
11 availability, not witness availability, but I will note  
12 that tomorrow.

13 JUDGE RENDAHL: If you all can let me know if  
14 there are any issues that come up that I should know  
15 about, maybe by noon tomorrow, that would be helpful.

16 As far as another round of batch hot cut  
17 testimony, if we do have the hearings in April on batch  
18 hot cut, that does leave some time for one other round.  
19 I think what I would do is limit it the way I did the  
20 rebuttal round, which is no more than 20 pages of  
21 testimony so that whatever we do have is fairly short  
22 and readable, because we are still going to have the  
23 issues of -- it's a short time period between when  
24 something might be filed and when we go to hearing.

25 MS. ANDERL: We actually thought we could get

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1 ours filed by March 8th if we needed to to not squeeze  
2 people, but if we have that much time and we can file  
3 on March 20th, that's so much the better.

4 JUDGE RENDAHL: It's a simultaneous filing  
5 date, and that's something maybe you can get back to me  
6 on. Check with your client and get back to me and let  
7 me know what's an acceptable date, especially for those  
8 people who are participating in hearings that third  
9 week who may be doing both batch hot cut and the  
10 operational network. It might be a problem for them.

11 MS. ANDERL: I think the focus of our batch  
12 hot cut third round, for us at least, would probably be  
13 cost issues, and that would not impinge on the  
14 witnesses who are at the hearing, but there may be some  
15 operational things as well.

16 JUDGE RENDAHL: But if we are doing an open  
17 to everyone, the final round. So why don't you advise  
18 me tomorrow what date might work for that, and then  
19 we'll figure out a schedule. I think it would probably  
20 make sense to bifurcate the briefing.

21 So right now, we have the briefs due on April  
22 15th and April 30th on the major portion of the case.  
23 If we are in hearing the 28th, 29th, and 30th, we'll  
24 move that last date, obviously, but you might also want  
25 to propose what would be your simultaneous briefing

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1 date and simultaneous responsive briefing date for  
2 batch hot cut issues, understanding that would depend  
3 on what week of hearing we are in, so if you all can  
4 get me those thoughts in the next day or two.

5 MS. ANDERL: What do you think would be  
6 something reasonable for batch hot cut?

7 JUDGE RENDAHL: I think it's reasonable to  
8 think about getting testimony in on batch hot cut by  
9 the 29th, at the very latest, of March, so anytime  
10 before that or on that date that works for all of you,  
11 that's fine, considering you will be in hearing. If  
12 there are other hearing dates that get in the way in  
13 other states, then obviously, we can fix it.

14 As to briefing dates, I would like to keep  
15 the initial briefing date the same on the 15th, but we  
16 might have to move the 30th, and then I think two weeks  
17 after hearing is a reasonable period of time, and I  
18 also have to write the order up assuming that the whole  
19 thing is still valid at that point. Why don't we  
20 assume batch hot cut briefs by the 14th of May with  
21 responses due -- well, who is going away for an  
22 extended period of time over Memorial Day, anybody? We  
23 can do it not Friday, but we can do it the 27th -- I'm  
24 not, but I don't want to ruin anyone's four-day  
25 weekend. Why don't we do the Thursday, but if we need



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1 to bump it to Friday, we can. So Thursday the 27th of  
2 May would be the responsive briefing, and I think that  
3 does it, and then we can modify the responsive briefs  
4 on the main portion if we need to for hearings on batch  
5 hot cut.

6 MS. ANDERL: Do you think you might just move  
7 the April 30th date out to May 7th or something?

8 JUDGE RENDAHL: Yes, or something like that.  
9 If we go to hearing April 21st through 23rd, I'll  
10 probably keep the 30th hearing date, but if it's the  
11 following week, I would bump it out a week.

12 So I'll wait to hear from all of you about  
13 the April hearing times, and otherwise, I think the  
14 March 29th for the final rounds in batch hot cut and  
15 the May 14th and May 27th dates for briefing will  
16 probably work unless you all come up with alternate  
17 dates for me. Okay? Anything else?

18 MS. ANDERL: One other thing, Your Honor.  
19 The batch hot cut transcripts from the forum, we are  
20 still in the process of compiling those transcripts and  
21 associating the proper exhibits with each day of  
22 transcript, and they are going to be copied and can be  
23 messangered down here within the next day or so. It  
24 was quite voluminous. We were not able to bring them  
25 with us.

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1                   JUDGE RENDAHL: I wouldn't rush at this point  
2 on that. If it's just a matter of completing them and  
3 getting them done, go for it, but considering we are  
4 not going to mark them until sometime next week, then I  
5 appreciate the fact you are continuing to mark them and  
6 identify them.

7                   MS. ANDERL: I just wanted you to know we are  
8 still working on that.

9                   JUDGE RENDAHL: I would just include that as  
10 part of our batch hot cut exhibit marking. Also  
11 everyone, on the batch hot cut, I think it's just  
12 something we are going to have to work on next week  
13 while we are in the hearing. Take some time during  
14 lunch or before hearing one day and just hash it out,  
15 and to the extent you can all coordinate with each  
16 other on those, it will be easier, and I won't make the  
17 same mistake I made today. My apologies on that. I  
18 think we are done unless anybody else has anybody else.  
19 Thank you, Kathy. We are off the record.

20                   (Prehearing concluded at 4:35 p.m.)

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