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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

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4 In re Application of US WEST,) Docket No. UT-991358
5 INC., and QWEST COMMUNICATIONS) Volume IV
6 INTERNATIONAL, INC. for an) Pages 272 - 284
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 14, 1999, at 9:36 a.m., at 1300
16 Evergreen Park Drive Southwest, Olympia, Washington,
17 before Administrative Law Judge DENNIS MOSS.

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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 (Appearing via
26 teleconference bridge.)

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

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1 THE COMMISSION, by Sally G.
2 Johnston, Assistant Attorney General, 1400 S.
3 Evergreen Park Drive S.W., P.O. Box 40128, Olympia,
4 Washington 98504-0128.

5 PUBLIC COUNSEL, by Simon ffitch,
6 Attorney at Law, 900 Fourth Avenue, #2000, Seattle,
7 Washington 98164 (Appearing via teleconference
8 bridge.)

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

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

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

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24 Barbara L. Spurbeck, CSR
25 Court Reporter

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1 JUDGE MOSS: We're on the record now. All
2 I'll ask for -- I think all of your have entered
3 appearances previously. I'll just ask for your name
4 and who you represent, and we can move through this
5 quickly. Mr. Wiltsie.
6 MR. WILTSIE: Yes, Your Honor. Ronald
7 Wiltsie, with Hogan and Hartson, for Qwest.
8 JUDGE MOSS: All right. Ms. Wu.
9 MS. WU: Angela Wu, with Ater Wynne, for
10 Rhythms Links, Inc.
11 JUDGE MOSS: Mr. Trincherro.
12 MR. TRINCHERO: Mark Trincherro, of Davis
13 Wright Tremaine, on behalf of McLeod USA.
14 JUDGE MOSS: Mr. Kopta.
15 MR. KOPTA: Gregory Kopta, of Davis Wright
16 Tremaine, on behalf of AT&T, Nextlink and ATG.
17 JUDGE MOSS: Mr. Van Nostrand.
18 MR. VAN NOSTRAND: James Van Nosrand, with
19 Stoel Rives, on behalf of US West Communications,
20 Inc.
21 JUDGE MOSS: Ms. Anderl.
22 MS. ANDERL: Lisa Anderl, in-house counsel
23 for US West.
24 JUDGE MOSS: Mr. ffitch.
25 MR. FFITCH: Simon ffitch, Assistant

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1 Attorney General, for Public Counsel.

2 JUDGE MOSS: And Ms. Johnston.

3 MS. JOHNSTON: Sally Johnston, Assistant
4 Attorney General, on behalf of Commission Staff.

5 JUDGE MOSS: Have I missed anyone?

6 Apparently not. We've had some off the record
7 discussion. It appears that there has been some
8 significant progress made in the discovery process,
9 and it also appears that there are some lingering
10 questions and matters that might best be managed by
11 first allowing the parties to have an opportunity off
12 the record to discuss these things among themselves,
13 and I want to allow that opportunity.

14 And then, when that conversation or those
15 conversations are concluded, we'll go back on the
16 record. And if there's anything that I need to
17 resolve, I will do so, and otherwise, we will close
18 this up fairly quickly this morning. So I guess, Ms.
19 Anderl, I'm going to put the onus on you to manage
20 these conversations and direct them to the
21 individuals. We have three. Mr. Kopta, Mr.
22 Trincherro, and Ms. Wu have all indicated they need to
23 have some discussion with you, and of course, we'll
24 open that up, as well, with respect to anything that
25 has happened late with respect to Staff and Public

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1 Counsel, as well, who have indicated some follow-up
2 questions and what have you.

3 So we'll go off the record, and I will
4 monitor this conversation so that we can get back on
5 the record at the earliest moment and finish this up.
6 Off the record.

7 (Discussion off the record.)

8 JUDGE MOSS: The parties have had an
9 opportunity to have some off-the-record conversation
10 regarding the status of discovery in terms of
11 particular data requests.

12 I understand there are a couple of issues
13 regarding timing that we need to resolve, and we'll
14 take those up. As far as the problem with Rhythms
15 Inc., Ms. Wu's client, it seems to me that Ms. Anderl
16 has indicated that she's perfectly prepared to give
17 Ms. Wu and her client a couple days to do some
18 further inquiry within their group regarding the
19 status of discovery responses, and that there might
20 need to be some follow-up in light of that.

21 Ms. Anderl, you indicated you would be
22 available tomorrow afternoon; is that correct?

23 MS. ANDERL: Yes, Your Honor.

24 JUDGE MOSS: So I think the best course of
25 action with respect to that one is for the parties to

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1 continue to work together -- and it does seem to me
2 that that's been occurring -- and allow that time.
3 And if controversies remain, then we can follow the
4 protocol we established during our last discovery
5 conference, which allows for individual disputes to
6 be resolved by me in telephone conference and without
7 the presence of a court reporter to make a transcript
8 type record.

9 MS. WU: Your Honor, can I ask you a
10 question here?

11 JUDGE MOSS: Yes.

12 MS. WU: In light of the timing issue,
13 would it be reasonable to try to coordinate with Lisa
14 tomorrow afternoon about any additional questions
15 that we have, but get some sort of deadline on when
16 we could get the responses by, so that we are assured
17 of getting them in time to be able to file prefiled
18 testimony and exhibits on the 23rd?

19 JUDGE MOSS: Well, our deadlines are as
20 established earlier in the process. I don't
21 remember. What is it, five days, seven days? I've
22 forgotten.

23 MS. WU: Mm-hmm.

24 JUDGE MOSS: So those are the guidelines
25 we're working in, and as they say, you can't squeeze

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1 water from rocks, and what happens -- what will
2 happen will happen, and if there's a delay and I
3 become convinced that it is a delay caused by
4 stonewalling or foot-dragging or that sort of thing,
5 then we may have to have some adjustment to the
6 procedural schedule to accommodate that. If, on the
7 other hand, it's simply a matter of having gotten out
8 of the gate a little late and the volume of discovery
9 and so forth, there's a lot of information floating
10 around out there now, I do believe, and we'll just
11 have to take it one step at a time and see how it
12 goes.

13 It may well turn out that, in your
14 conversation tomorrow afternoon and in the
15 intervening conversations with your own clients, that
16 much of this can be resolved.

17 MS. WU: Okay.

18 JUDGE MOSS: So let's handle it that way.

19 MS. WU: Thank you.

20 JUDGE MOSS: I think the best thing I can
21 do is simply continue to make myself available where
22 the parties find themselves at loggerheads, and I
23 will do that.

24 MS. WU: All right, thank you.

25 JUDGE MOSS: Now, what was -- remind me,

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1 what was the specific point on timing, Mr. Trincherro?

2 MR. TRINCHERO: Your Honor, there are
3 several questions that McLeod had put to US West in
4 which we requested information relative to service
5 quality provided to CLECs by US West for the state of
6 Washington. We had requested all information over
7 the last three years, which would be the relevant
8 time period in which US West was providing such
9 services to CLECs.

10 We've been given information by US West
11 that on a number of these, limited to just
12 information from January 1st, '99, through -- well,
13 nearly the last few months. Then, on others, we did
14 get some information that went back as far as July
15 '98, and it was my request of US West to see if we
16 can't get, within the next week or so, any
17 information that they have from prior years going
18 back to '96, if it has been reported.

19 And I understand from Ms. Anderl that US
20 West probably didn't even start reporting any of this
21 information until about 1997, and so the request here
22 is, you know, we asked for any information over the
23 last three years. We've been given information over
24 the last 12 months or so, and our request is to have
25 you compel US West to give us the rest of the

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1 information as soon as they can.

2 JUDGE MOSS: Ms. Anderl.

3 MS. ANDERL: Thank you, Your Honor.

4 Understanding the tight time frames that we are under
5 and attempting to respond to discovery in a timely
6 manner, we gave Mr. Trincherro what was available
7 within the response period. And in those cases, it
8 was either from July 1998 or January 1999 forward.

9 This was, we believed, also consistent with
10 your orders in prior data requests, specifically ones
11 with AT&T, where we were asked to provide three or
12 five years' worth of data, and we were ordered then
13 to provide 12 months' worth of data, as a reasonable
14 time frame. Therefore, we felt that what we were
15 providing was reasonable under the circumstances and
16 appropriate.

17 In certain instances, we don't even have
18 anything, I think, before July of 1998, or at least
19 not in a form of report that could be compiled
20 easily. And there may be manual work that would be
21 required to provide the 1997 information that would
22 be extraordinarily time-consuming and take weeks. It
23 may be that we have additional data for some of the
24 reports. Say, for example, in response to number
25 three, we provided January 1999 forward. It may be

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1 that we could go back to the same time period. That
2 is, the July 1998, relatively more easily. And if
3 Your Honor orders us to do that, obviously we will.
4 We simply felt that what we had provided was
5 reasonable under the circumstances and would ask for
6 your guidance on that.

7 JUDGE MOSS: Okay. My experience tells me
8 that having sets of data for matched periods is a
9 very helpful thing to have, in terms of analysis.
10 And so I think it is important for US West to try to
11 carry that data set. I think the July '98 period
12 forward would provide either 12 months or perhaps a
13 few more months than that, depending on how currently
14 the data is kept, and so I would ask that US West
15 take that step, at least. Or I'll go further than
16 asking; I'll require that.

17 As far as periods prior to the July 1998,
18 as I understand your point, Ms. Anderl, it is that it
19 would become increasingly difficult and burdensome in
20 the earlier periods, in that there would be required
21 a manual extraction and compilation of data. Is that
22 essentially correct?

23 MS. ANDERL: Yes.

24 JUDGE MOSS: All right. I'm going to
25 require the July '98 forward and also require that

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1 that be done expeditiously.

2 MS. ANDERL: I will ask that that be done
3 as soon as we get off the call, and I will contact
4 Mr. Trincherero after that with an estimate of what the
5 completion time will be.

6 JUDGE MOSS: I think that's a very good
7 plan. All right. Anything else that -- excuse me.
8 I'm sorry, I'm coming down with a cold, so I'm
9 clearing my throat and coughing. I apologize.
10 Anything else that I need to resolve?

11 MR. TRINCHERO: Your Honor, this is Mark
12 Trincherero. One request that I would make, a number
13 of parties are receiving supplemental responses over
14 the next few days. One of the requests that McLeod
15 sent out quite a while back was to get copies of
16 responses to other parties's discovery, so that we
17 wouldn't have to propound any duplicative discovery.

18 I guess I would just request that US West
19 try to get those responses to the other parties that
20 have requested copies.

21 JUDGE MOSS: All right. I'm sure US West
22 will be cognizant of the need to distribute some
23 responses more broadly than others, and this is not
24 an atypical type of request, and we did have some
25 discussion about it in earlier sessions, and I am

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1 fairly convinced that, at least in some regards, it
2 does produce more efficiency if people are not
3 duplicating requests or writing requests that are
4 closely similar. And so to the extent we can gain
5 those efficiencies, we do allow for that broader sort
6 of sweep. And Ms. Anderl, I'm sure you have a list
7 of those who have requested all responses.

8 MS. ANDERL: Yes, Your Honor, and we, in
9 fact, have been sending those supplements out
10 yesterday and today, on Friday, in a report to us, to
11 make sure that the requesting party had received the
12 responses in hand.

13 JUDGE MOSS: Sure.

14 MS. ANDERL: And because of the volume of
15 information that's been produced over the past week
16 or so, there were stacks of paper that are assigned
17 to each of the counsel on this phone call, and
18 they'll be getting those over the next day or so.

19 JUDGE MOSS: Yeah.

20 MS. ANDERL: And certainly, if any of them
21 have a specific question that they're interested in
22 the answer to, they are free to either check the
23 database or call me, and if it's not a lengthy
24 response, we'd be happy to pull that out and give it
25 special handling and fax it to them or something.

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1 JUDGE MOSS: All right. Anything else?
2 Mr. ffitich.

3 MR. FFITCH: I don't have anything at this
4 time, Your Honor.

5 JUDGE MOSS: Mr. Wiltsie.

6 MR. WILTSIE: No, Your Honor.

7 JUDGE MOSS: Ms. Johnston.

8 MS. JOHNSTON: No.

9 JUDGE MOSS: Well, I believe that will
10 conclude our business this morning. All right.
11 Well, thank you all very much, and keep me apprised
12 if there are any difficulties. I will try to
13 continue to make myself available this week, subject
14 to fighting this cold off. But we'll make
15 arrangements, and if need be, I can always talk with
16 you all on the telephone from home, if that is
17 necessary.

18 So let's try to keep this thing moving, and
19 I appreciate what I perceive to be an acceptable
20 level of cooperation, if not a commendable level of
21 cooperation, and I may yet feel that we've arrived at
22 the commendable stage, in which case I will say so.
23 So thank you all very much, and we'll go off the
24 record.

25 (Proceedings adjourned at 10:01 a.m.)