

1                   BEFORE THE WASHINGTON UTILITIES AND  
2                   TRANSPORTATION COMMISSION

3   In the Matter of the                    )  
4   Investigation into                    )  
5   U S WEST COMMUNICATIONS, INC.'s   ) Docket No. UT-003022  
6    ) Volume XLV  
7   Compliance with Section 271 of   ) Pages 6596 to 6632  
8   the Telecommunications Act of    )  
9   1996                                    )  
10  -----)  
11  In the Matter of                    )  
12  U S WEST COMMUNICATIONS, INC.'s   ) Docket No. UT-003040  
13  Statement of Generally            ) Volume XLV  
14  Available Terms Pursuant to       ) Pages 6596 to 6632  
15  Section 252(f) of the               )  
16  Telecommunications Act of 1996    )  
17  \_\_\_\_\_)

13                   A hearing in the above matters was held on  
14   April 2, 2002, at 9:35 a.m., at 1300 South Evergreen  
15   Park Drive Southwest, Room 206, Olympia, Washington,  
16   before Administrative Law Judge ANN RENDAHL.

17                   The parties were present as follows:

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24                   Joan E. Kinn, CCR, RPR  
25   Court Reporter

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23 line, by MEGAN DOBERNECK, Attorney at Law, 7901 Lowry  
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1                               P R O C E E D I N G S

2                               JUDGE RENDAHL: Good morning, everyone.

3 We're here this morning for a pre-hearing conference in  
4 the Dockets Number UT-003022 and 003040 in the matter of  
5 the investigation into U S West's compliance with  
6 Section 271 of the Telecommunications Act of 1996 and in  
7 the matter of U S West's Statement of Generally  
8 Available Terms or SGAT pursuant to Section 252(f) of  
9 the Telecommunications Act of 1996. It is Tuesday  
10 morning, April 2nd, at 9:30. My name is Ann Rendahl.  
11 I'm the Administrative Law Judge presiding over this  
12 pre-hearing conference.

13                              Pursuant to notice sent out to the parties,  
14 we're here to discuss scheduling for the last phase of  
15 this process, in particular scheduling hearings for  
16 discussion of the OSS, final OSS test report, public  
17 interest issues, and any remaining compliance or other  
18 issues we need to discuss. We have hearings scheduled  
19 in April to discuss performance information, data  
20 reconciliation reports, change management, and  
21 compliance issues. And we're not necessarily here to  
22 discuss those issues, but I would like to focus on the  
23 OSS, public interest, and compliance issues for the last  
24 set.

25                              However, we do have one issue that has come

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1 up concerning the April hearing, and that is a motion  
2 filed by Covad concerning testimony that Qwest filed for  
3 Mr. Stright, or according to Qwest they filed it for  
4 Mr. Stright. So what I would like to do is have the  
5 parties, unless you have resolved your issues in the  
6 meantime, I would like to have Ms. Doberneck, if you  
7 could briefly state your position, and then we'll turn  
8 to Qwest, and then I would like to resolve that today.

9 MS. DOBERNECK: Thank you, Your Honor. Can  
10 you hear me okay?

11 JUDGE RENDAHL: I can hear you bright and  
12 clear.

13 MS. DOBERNECK: Okay, thank you. I think the  
14 heart of Covad's motion is --

15 JUDGE RENDAHL: Ms. Doberneck.

16 MS. DOBERNECK: Yes.

17 JUDGE RENDAHL: Before you go forward, I'm  
18 kind of jumping ahead of myself, I haven't taken  
19 appearances formally on the record.

20 MS. DOBERNECK: Okay.

21 JUDGE RENDAHL: Maybe a little bit too much  
22 coffee this morning, I apologize. So let's take  
23 appearances first, I apologize, Ms. Doberneck.

24 Let's begin with Qwest here in the hearing  
25 room, Ms. Anderl.

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1 MS. ANDERL: Thank you, Your Honor, Lisa  
2 Anderl appearing on behalf of Qwest.

3 MR. CRAIN: And Andrew Crain appearing on  
4 behalf of Qwest.

5 JUDGE RENDAHL: Mr. Crain, could I ask you to  
6 make sure your microphone is on.

7 MR. CRAIN: Oh, sure.

8 JUDGE RENDAHL: And bring it close to you.

9 MR. CRAIN: Andrew Crain on behalf of Qwest.

10 JUDGE RENDAHL: Thank you.

11 MR. CROMWELL: Robert Cromwell on behalf of  
12 Public Counsel.

13 JUDGE RENDAHL: Thank you.

14 And on the bridge line for Qwest.

15 MR. STEESE: Chuck Steese on behalf of Qwest.

16 JUDGE RENDAHL: Thank you.

17 For AT&T.

18 MS. DECOOK: Rebecca DeCook on behalf of  
19 AT&T.

20 JUDGE RENDAHL: For WorldCom.

21 MS. NELSON: Michel Singer Nelson on behalf  
22 of WorldCom.

23 JUDGE RENDAHL: For Covad.

24 MS. DOBERNECK: Megan Doberneck on behalf of  
25 Covad Communications Company.

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1                   JUDGE RENDAHL:  And, Mr. Kopta, are you here  
2 for XO, ELI, and Time Warner Telecom?

3                   MR. KOPTA:  Just for ELI and Time Warner  
4 Telecom, Gregory Kopta of the law firm Davis, Wright,  
5 Tremaine.

6                   JUDGE RENDAHL:  Thank you.

7                   Okay, let's proceed, thank you.

8                   Ms. Doberneck.

9                   MS. DOBERNECK:  Thank you, Your Honor.  As I  
10 was about to launch into my extensive argument, really  
11 the heart of our motion is relatively brief and  
12 straightforward.  We are all operating in an extremely  
13 time constrained proceeding.  We have specific deadlines  
14 by which the parties are obligated to file their  
15 testimony or their comments.  And from the appearance  
16 and review of Mr. Strike's testimony, it appears that  
17 this is part of Qwest's affirmative or prima facie case  
18 in connection with the issues of performance data and  
19 the Liberty performance data reconciliation.  And in  
20 that regard, we had a very specific deadline that was  
21 set for the filing of that testimony, and that Qwest  
22 failed to meet that deadline, and for those reasons the  
23 testimony should be struck.

24                   Now I have received Qwest's response, and in  
25 that response Qwest makes some factual assertions that,

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1 oh, this is testimony that is not provided on behalf of  
2 Qwest, that Mr. Stright simply asked Qwest to file it  
3 for him because he has no other method by which to file  
4 it. And certainly, you know, I am not, you know, I do  
5 not have direct knowledge of what Mr. Stright did or did  
6 not do. There is no affidavit from the copy I received,  
7 there may have been, verifying that, in fact,  
8 Mr. Stright made that request.

9           But more importantly, I think if you look at  
10 a substantive review of Mr. Stright's testimony, it's  
11 not in any way responsive to what Qwest filed as part of  
12 its prima facie case. While it doesn't say Qwest has  
13 done X, Y, or Z, it is clearly a component of the case  
14 upon which Qwest will rely to say it has made its prima  
15 facie case of demonstrating that its performance data is  
16 accurate and reliable and that it has satisfied this  
17 particular component of the 271 inquiry.

18           So again, I take issue with the timing of the  
19 filing, because I believe it's a prime part of Qwest's  
20 prima facie case, and Qwest missed the deadline. I  
21 believe a review of Mr. Stright's testimony demonstrates  
22 that it's not responsive to any sort of prima facie case  
23 Qwest has made, that it is a part of Qwest's prima facie  
24 case. And so either on the merits or just from a  
25 procedural timing perspective, Qwest failed to meet the

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1 deadline, and that testimony should be struck.

2 JUDGE RENDAHL: Thank you, Ms. Doberneck.

3 And for Qwest.

4 MS. ANDERL: Thank you, Your Honor, this is  
5 Lisa Anderl. I may defer to or ask Mr. Steese to chime  
6 in on some issues, because some of the information  
7 relevant to the response to this motion bears on  
8 Mr. Stright's participation in other states, and  
9 Mr. Steese has more knowledge about that than I do. But  
10 just to respond to Ms. Doberneck's argument, Mr. Stright  
11 is not Qwest's witness. And while it is correct that we  
12 did file his testimony, and as I noted in the pleading  
13 that we filed at noon yesterday, certainly our cover  
14 letter explaining our filing and the timing of it could  
15 have been more clear. But that does not alter the  
16 circumstances that we believe the testimony of  
17 Mr. Stright could have been appropriately filed either  
18 on the March 8th direct filing of Qwest or on the March  
19 22nd filing when other parties were permitted to  
20 respond.

21 I think we can't lose sight of the fact that  
22 Liberty and Mr. Stright are not employed by Qwest or on  
23 behalf of Qwest for the data reconciliation process.  
24 Rather they are doing this function for the ROC. And I  
25 think we can't lose sight of the fact that it's not just



1 Qwest's data that the reconciliation addresses. It  
2 addresses Qwest's data along with the three CLECs who  
3 participated in the data reconciliation process. And so  
4 certainly it seems that it is not at all clear that this  
5 testimony was required to have been filed on March 8th.  
6 And so we therefore think that the motion to strike is  
7 not well taken on a timeliness issue.

8           Even if the testimony were clearly untimely,  
9 which we don't believe it is, we believe that no party  
10 has been prejudiced by the filing on the 15th, that  
11 there were no surprises in Mr. Stright's testimony, that  
12 all parties have had a reasonable opportunity to  
13 formulate a response to that testimony should they  
14 desire to do so. And absent some showing of real  
15 prejudice, the testimony should not be stricken but  
16 rather should be included in the record. And if Covad  
17 needs additional time to respond to that testimony,  
18 certainly they haven't asked for that, but that is  
19 something that could be considered as a part of the  
20 remedy.

21           To the extent that Mr. Stright has not  
22 appeared on behalf of Qwest but rather has appeared as a  
23 third party independent reviewer in other state  
24 proceedings, perhaps Mr. Steese could address that  
25 briefly.

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1 JUDGE RENDAHL: Mr. Steese.

2 MR. STEESE: Thank you, Judge Rendahl. I'm  
3 Chuck Steese on behalf of Qwest.

4 JUDGE RENDAHL: Could you speak up just a bit  
5 or directly into the mouthpiece.

6 MR. STEESE: Sure, is that better?

7 JUDGE RENDAHL: Not much.

8 MR. STEESE: Is that better?

9 JUDGE RENDAHL: That's much better, thank  
10 you.

11 MR. STEESE: Mr. Stright has testified in  
12 several different states now at this point in time as it  
13 relates to data reconciliation. As of the time that the  
14 March 8th date came and went, he had testified in  
15 Arizona on two occasions, in Colorado on one occasion,  
16 and in each of those situations the staff actually  
17 physically called Mr. Stright as a witness. And shortly  
18 thereafter, we had a hearing in, meeting after March  
19 8th, we had a hearing in Nebraska where the Nebraska  
20 Commission did the same. And then in North Dakota there  
21 was a hearing where the commission staff told us they  
22 did not physically have a means by which to call  
23 Mr. Stright, and as a result we called Mr. Stright.  
24 Interestingly, AT&T objected bitterly to that saying  
25 he's not a Qwest witness, and we would tend to agree

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1 with that actually, that he is not a Qwest witness.

2           And so not only does this show that  
3 historically in other states Mr. Stright has not been  
4 called as a witness but, as a Qwest witness, but that  
5 more importantly Mr. Stright has testified numerous  
6 times. Ms. Doberneck as well as AT&T and WorldCom have  
7 been at most of those proceedings and have heard him  
8 testify and just as importantly have been participating  
9 with Mr. Stright's day-to-day review of the data  
10 reconciliation process. There's absolutely no surprise.

11           Mr. Stright is really a commission third  
12 party witness having been retained by the ROC, and we  
13 think at this point in time it would do the Commission a  
14 good deal of good to hear what he has to say on data  
15 reconciliation. And if you look at the testimony that  
16 Covad and AT&T have filed, it's strewn throughout with  
17 comments of the data reconciliation, how it's proceeded  
18 to date, and what their thoughts are with respect to it.

19           So with respect to prejudice, we just don't  
20 think there is any on top of the fact that Mr. Stright  
21 really isn't technically a Qwest witness.

22           JUDGE RENDAHL: Thank you.

23           Any rebuttal from Covad?

24           MS. DOBERNECK: Yes, please, Your Honor. Two  
25 points briefly. One is the first is, again, we have a

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1 lot of argument here on behalf of Qwest as to who or who  
2 not or whether Mr. Stright is or is not a witness on  
3 their behalf. I will set that one aside, because to the  
4 extent his testimony is permitted and he does appear at  
5 the hearing, I think it will become evident on whose  
6 behalf Mr. Stright is appearing.

7           But more importantly, the issue here is we  
8 are all faced with a very compressed time frame in which  
9 to accomplish all of the things we need to do throughout  
10 the Qwest region in order to complete this particular  
11 process. We have set particularly stringent deadlines  
12 for the filing of testimony, comments, briefs, what have  
13 you. The parties are entitled to rely upon those  
14 deadlines, and Qwest has not done so.

15           The issue here is not where is the prejudice  
16 to the other parties. The issue here is why did Qwest  
17 not comply with the deadlines. It provided no  
18 demonstration as to why it could not comply with those  
19 deadlines. It provided no demonstration as to whether  
20 this testimony was even solicited on the part or by the  
21 Commission. So I think, you know, the rules are there  
22 for a reason. We are all living by those rules, and  
23 they should be enforced, because it has been part of the  
24 process with which we have all been living, and that is  
25 a compressed time frame, and I think that is it.

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1 JUDGE RENDAHL: Thank you, Ms. Doberneck.

2 I have to say when I was reading through both  
3 the motion and the response, I found this whole issue to  
4 be quite interesting, because I think it's something  
5 that this Commission failed to take into consideration  
6 for this phase of the hearing and for the next phase,  
7 which is that there are independent third parties who  
8 are acting on behalf of the commissions who are not  
9 represented by either CLECs or Qwest and frankly should  
10 not be. And I guess it raised consternation on my  
11 behalf that Mr. Stright could not call the Commission  
12 directly to find out how he should file something with  
13 the Commission. I did not hear from Mr. Stright and nor  
14 to my knowledge did Staff, and I'm curious as to why  
15 Mr. Stright would contact Qwest, although given the  
16 context from other states, it makes a bit of sense,  
17 although Qwest is not his client.

18 I think in the interest of having the  
19 information here before the Commission, I think it's  
20 important to have that information, so purely for that

21 --

22 Let's be off the record for just one minute.

23 (Discussion off the record.)

24 JUDGE RENDAHL: So because I believe the  
25 information is important, because it is information that

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1 the parties have heard in other states, it doesn't  
2 appear to be much different from the conclusions that  
3 were reached in Mr. Stright's report, I don't believe it  
4 is so prejudicial that any timing issue could harm the  
5 parties.

6 Now I am cognizant of the fact that there are  
7 strict time deadlines, and so I don't want this issue to  
8 occur in the future. So I'm going to deny Covad's  
9 motion, but in the future for anything else that would  
10 come from a third party, I think that we will be  
11 contacting the third party consultants to let them know  
12 that if they plan to file anything with this State that  
13 they need to contact us and make independent  
14 arrangements to have it filed here, and they can appear  
15 on their own behalf, and we will call them without any  
16 counsel and have them present their case. But I do not  
17 believe that it is appropriate for either a CLEC or for  
18 Qwest to present that information on their behalf.

19 Does that make sense?

20 MS. DOBERNECK: Your Honor, this is Megan  
21 Doberneck, and just it makes sense to me, and I want to  
22 be clear as far as the presentation of Mr. Stright's  
23 testimony at the hearing. Will CLECs be permitted to  
24 cross-examine him on this issue? Because I do believe  
25 it goes to credibility of the testimony he does provide.

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1                   JUDGE RENDAHL:  Yes, and as with in other  
2  hearings I have been in where there is a party who is  
3  for whatever reason not represented by counsel, that  
4  person will be made available for cross-examination, and  
5  the presiding judge will make sure that there is no --  
6  nobody is taking advantage per se of that witness, okay,  
7  so I will be taking extra special care to watch out for  
8  that witness.  But yes, everyone will be allowed to  
9  cross-examine Mr. Stright should he appear, and I need  
10 to make some inquiries of Mr. Stright to make sure that  
11 he does plan to appear.

12                   MR. STEESE:  Judge Rendahl, may I ask one  
13 question as well?

14                   JUDGE RENDAHL:  Yes, Mr. Steese.

15                   MR. STEESE:  To the extent that you have a  
16 process for this, is there some process, and Qwest bears  
17 the burdon in the 271 docket, will we have an  
18 opportunity to do cross and then the functional  
19 equivalent of recross after the CLECs have gone, or do  
20 we have our one shot, and where will we be in the  
21 pecking order, what -- how will we proceed?  Does that  
22 make sense?

23                   JUDGE RENDAHL:  No, it does make sense, but  
24 this is not your witness.  This is an independent  
25 report, so I don't know necessarily that there is any

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1 need for recross. I think this, you know, this is a  
2 witness that you obtain cross-examination of based on  
3 his testimony. It is not Qwest's witness, and you can,  
4 I believe, prove your case based on your  
5 cross-examination and your briefs on, you know, your  
6 testimony that you filed on the report that he has made.

7 MR. STEESE: Judge Rendahl, I'm not objecting  
8 to that, I'm just trying to ask about the procedure so  
9 we can plan accordingly. In that regard then, Qwest  
10 would respectfully request that it had the opportunity  
11 to be last in the order of cross-examining Mr. Stright.

12 JUDGE RENDAHL: Well, to the extent, I mean  
13 both parties if necessary may have recross. Two rounds  
14 I don't have any problem with. It just depends on how  
15 long this goes on. And I think this is an issue that we  
16 can bring up at our pre-hearing on the 18th in  
17 preparation for the April hearings, and I want you all  
18 to keep thinking about that.

19 MR. STEESE: Fair enough, thank you.

20 JUDGE RENDAHL: And in the meantime, I will  
21 send a letter out, copy to all of you, to all of the  
22 third party consultants notifying them of the process  
23 for filing any information here with the Commission.

24 MR. CRAIN: On that point, if you're going to  
25 be --



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1                   JUDGE RENDAHL: I don't know that your  
2 microphone is on. The button needs to be up.

3                   MR. CRAIN: Oh, it's up, okay.

4                   On that point, the ROC has actually  
5 established a procedure for, because they know that  
6 commissions are going to have a lot of hearings after  
7 the OSS test report comes out, Bob Center from MTG is  
8 acting as the coordinator for getting the vendors to  
9 those types of conferences. So you can just contact  
10 Mr. Center, and he will be able to work that for this  
11 Commission.

12                   JUDGE RENDAHL: Thank you.

13                   MR. CRAIN: Sure.

14                   JUDGE RENDAHL: Okay, so the next topic is  
15 the scheduling, and just briefly before we get into the  
16 status of the OSS report, there was a need to reschedule  
17 a portion of or cancel a portion of the April hearing  
18 dates that we had set aside, and I'm assuming you all  
19 received the notice that we don't have available the  
20 Monday and Tuesday of the following week. And I do  
21 remember from our pre-hearing conference in early  
22 February that there were conflicts based on hearings in  
23 I believe it was North Dakota that I believe maybe it  
24 was AT&T who was going to be covering hearings there all  
25 week, and so. But it looked, when I relooked at my 27th

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1 supplemental order and how we had laid out the hearing,  
2 that there was a fair amount of dead time in the hearing  
3 week, and so this just forces us to compress it a bit.

4           And we might want to think about -- I want  
5 you to think about between now and our pre-hearing on  
6 the 18th how best to compress our schedule and when you  
7 want witnesses and issues raised. And to the extent you  
8 all can discuss that amongst yourselves, I would  
9 appreciate you do that. And if you reach some  
10 conclusion, please notify us in advance so we can plan  
11 accordingly as well.

12           MS. ANDERL: Is it still correct, Your Honor,  
13 that we don't have Wednesday morning available?

14           JUDGE RENDAHL: That is correct, that's an  
15 open meeting.

16           MS. ANDERL: And all of the other days are  
17 full days?

18           JUDGE RENDAHL: All of the other days are  
19 full days, and if we need to, we can go later to  
20 accommodate the issues. It appeared that we had  
21 compliance issues covering a day and a half of oral  
22 argument, and I'm just not sure that that's necessary or  
23 makes sense, and so it looked like we had some give, so  
24 that's --

25           MS. DECOOK: Your Honor.

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1 JUDGE RENDAHL: Ms. DeCook.

2 MS. DECOOK: It may be worthwhile just so  
3 that everybody is on the same page in terms of what  
4 compliance issues are to be addressed at this particular  
5 hearing. Do you think we could have a discussion about  
6 that?

7 JUDGE RENDAHL: I think that would be  
8 helpful. Why don't we be off the record for a few  
9 minutes so we can have that discussion, and then we'll  
10 be back on the record. Let's be off the record.

11 (Discussion off the record.)

12 JUDGE RENDAHL: While we were off the record,  
13 we had a discussion about the topics for the compliance  
14 portion of the April hearings and determined that it  
15 would cover at the very least the reconsideration orders  
16 on Workshops I and II and the final orders in Workshops  
17 III and IV, understanding that reconsideration petitions  
18 are pending, and that we would discuss later in this  
19 pre-hearing whether to incorporate compliance with QPAP  
20 into that. Mr. Cromwell made a suggestion to move the  
21 QPAP compliance to the May hearings given the process of  
22 receiving an order and receiving a compliance filing by  
23 Qwest and responding in time for the April hearing.  
24 AT&T, WorldCom, Covad, and ELI and Time-Warner Telecom  
25 agree with Mr. Cromwell's proposal. Qwest would prefer

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1 to keep it in the April hearing in order to move things  
2 along.

3           And while we were off the record, Ms. Anderl  
4 made a verbal request for an extension of time for  
5 answers to petitions for reconsideration on the Workshop  
6 IV final order to April 8th, Monday, April 8th, and that  
7 is granted.

8           Okay, the next issue we need to talk about is  
9 the scheduling for the last bit here. My understanding,  
10 and I'm open for correction, is that the interim report  
11 is at this point likely to come out April, end of April,  
12 and then we're looking mid May for the final report. Is  
13 there any final information on this?

14           MR. CRAIN: The current dates, and we're at  
15 the stage of the testing where this really does look  
16 like this is when things are going to happen, April 19th  
17 the draft final report will be issued by KPMG. There  
18 will be a technical conference held by the ROC on May  
19 14, 15, and 16, and the final final report will be  
20 issued on May 20th. Qwest has appealed to the executive  
21 committee a couple of -- or one issue that could  
22 possibly move that May date back a week. But for the  
23 purposes of today, those are the scheduled dates, April  
24 19th the draft final report and May 20th for the final  
25 final report.

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1 JUDGE RENDAHL: Thank you, Mr. Crain.

2 Is there any party who has comments on that  
3 schedule Mr. Crain just iterated?

4 MS. DECOOK: Your Honor, Becky DeCook, just  
5 one comment, I got some information from Ms. Tribby that  
6 indicated that the appeal that Mr. Crain mentioned is to  
7 be voted on today, and so we should know whether the May  
8 14, 16 technical conference and the final report date  
9 are going to be moved hopefully today.

10 JUDGE RENDAHL: Is there some way for me to  
11 formally receive that information?

12 MS. DECOOK: Is there a document that  
13 indicates that or --

14 JUDGE RENDAHL: I guess maybe for Qwest to  
15 notify us of the resolution of that.

16 MR. CRAIN: We certainly can notify -- oh,  
17 excuse me, sorry.

18 JUDGE RENDAHL: Mr. Griffith, advisory Staff,  
19 would like to make a comment.

20 MR. GRIFFITH: Yes, Your Honor, we will be  
21 participating in the call in a few minutes. I think it  
22 starts at 10:30, so we can come in here as soon as the  
23 decision is made and inform the parties how it went.

24 JUDGE RENDAHL: That would be helpful, thank  
25 you.

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1                   Okay, then that takes care of that issue.  
2   That was my basic understanding of the timing, and given  
3   that, I was concerned about the May dates that we had  
4   scheduled and reserved and concerned that if the  
5   technical conference was occurring the same week that  
6   the hearings we had established, that that might create  
7   a bit of concern for the parties.

8                   And so I have a proposal, and that proposal  
9   is that we not take the entire week of May 13th to  
10   discuss public interest, the OSS test, and compliance  
11   issues, but that we take Monday the 13th and Tuesday the  
12   14th to talk about public interest and compliance, give  
13   the parties a brief period of time to respond to the  
14   final report, and have hearings on the OSS report the  
15   week of June 3rd, in particular, Tuesday the 4th,  
16   Wednesday the 5th, and Thursday the 6th if necessary.  
17   Does that meet with the parties' comfort?

18                   MR. CROMWELL: I'm sorry, could you give  
19   those dates, 3rd, 4th, 5th, and 6th?

20                   MS. DECOOK: Your Honor, I'm looking for the  
21   calendar.

22                   JUDGE RENDAHL: Sorry, I'm not -- it would be  
23   the 13th and 14th of May to talk about public interest  
24   and compliance. That's a Monday and a Tuesday. And  
25   then to discuss the final OSS test report on Tuesday,

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1 beginning Tuesday June 4th, going the 5th and 6th as  
2 necessary. Those are, you know, again, the Commission's  
3 calendar is quite full, and as soon as I knew that there  
4 might be some slippage, I tried to look for dates that  
5 might be available, and those dates were available due  
6 to rescheduling of another hearing. There is really,  
7 aside from that, there really is nothing else left in  
8 May and June. And understanding the timing that we have  
9 here, this is about it. And I don't feel comfortable,  
10 and I have conferred with the commissioners, and they do  
11 not feel comfortable talking about the final OSS test  
12 report if it's not out in May.

13 MR. CRAIN: Those dates work for Qwest.

14 MS. DECOOK: Your Honor, Becky DeCook, just  
15 so I'm clear, the May 13th and 14th days would be public  
16 interest, any compliance issues including QPAP, and then  
17 the 6-4 to 6-6 dates would be the OSS test, performance  
18 issues, data reconciliation issues; that's the scope?

19 JUDGE RENDAHL: Well, the OSS report and then  
20 any remaining compliance issues that might still be out  
21 there.

22 MS. DECOOK: Okay.

23 MR. CROMWELL: That's fine with us.

24 JUDGE RENDAHL: Okay.

25 MS. DECOOK: I'm not aware of any conflicts

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1 on the 6-4 through 6-6 dates, but I have to say that I  
2 don't know all the performance deadlines and schedules,  
3 so I will need to check with Ms. Tribby on that, but I  
4 don't see based on our calendar that that's going to be  
5 a problem.

6 JUDGE RENDAHL: Ms. Nelson.

7 MS. NELSON: Judge, so far it works for me.  
8 I did just send out an E-mail to the people at WorldCom  
9 that work on OSS issues to check to see what their  
10 calendar looks like, but if the other parties don't have  
11 conflicts, I presume that WorldCom witnesses on that  
12 issue don't have conflicts either. I will let you know,  
13 hopefully I will get a response back quickly, and I will  
14 let you know during this hearing what I hear, if there  
15 is a conflict, but it works fine for me.

16 JUDGE RENDAHL: Okay.

17 And Ms. Doberneck.

18 MS. DOBERNECK: I continue to have a conflict  
19 the week of May 13th, but given the way we're  
20 bifurcating the issues, I can arrange for coverage, and  
21 the June 4th to 6th dates are fine by me.

22 JUDGE RENDAHL: Okay.

23 And Mr. Kopta.

24 MR. KOPTA: Well, we don't have any  
25 witnesses, so it's just me, and those dates are fine



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1 with me.

2 JUDGE RENDAHL: All right, well, then we will  
3 plan accordingly. And my thought is that we will  
4 predominantly on Monday and Tuesday the 13th and 14th of  
5 May be discussing public interest issues and maybe  
6 reserve half a day for compliance, although given that  
7 it is the QPAP, we may need to split it half and half,  
8 and we can discuss that more in detail as we go forward.  
9 But also cognizant of the fact that I know this is  
10 really Public Counsel's issue, that we will allow Public  
11 Counsel the time it needs to address the issue of public  
12 interest during those two days, and we can plan time  
13 accordingly for all the parties. Given that schedule --

14 MR. CROMWELL: Your Honor.

15 JUDGE RENDAHL: Mr. Cromwell.

16 MR. CROMWELL: Just on that point, I can let  
17 you know that we don't intend to bring Mr. Cooper back  
18 on any additional issues that have arisen since his  
19 testimony last August. We would intend pursuant to one  
20 of the paragraphs in the 28th order to supplement the  
21 record with some issues that have arisen since last  
22 August, but we can do that largely in writing. So I  
23 think that what we've got for May on public interest is  
24 probably going to be more along the lines of oral  
25 argument.

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1 JUDGE RENDAHL: Okay.

2 MR. CROMWELL: And that would likely be  
3 brief. I don't see it as something terrifically  
4 expansive.

5 JUDGE RENDAHL: Okay. Well, then we will map  
6 that out in terms of preparation. What I would like to  
7 have, and I will contact Mr. Center to do that, is to  
8 have him file a copy of the draft final with us and a  
9 copy of the final.

10 Now let's be off the record to talk about  
11 filings based on those reports.

12 (Discussion off the record.)

13 (Recess taken.)

14 JUDGE RENDAHL: While we were off the record,  
15 we discussed how to schedule the hearings in May and  
16 June based on the topics of public interest, OSS tests,  
17 and any compliance issues. What we discussed is we will  
18 be in hearing the week of May 13th, the days May 13, 14,  
19 and 15th. The 15th is a day in reserve in case we need  
20 it, but at least it will be scheduled. On Monday, May  
21 13th, we will be discussing public interest issues. To  
22 the extent they move over into the 14th, we will use the  
23 morning, and then we will have the afternoon to talk  
24 about compliance issues, meaning reconsideration orders  
25 on the Workshops III and IV and QPAP, the QPAP final

1 order.

2           The filing deadlines for those May hearing  
3 dates are as follows. On April 19th, Qwest will make  
4 its initial compliance filing on the QPAP final order  
5 and reconsideration orders on Workshops III and IV. Any  
6 other party not Qwest may make a filing based on public  
7 interest issues, comments, briefs, testimony, whatever  
8 form their discussion on public interest will be. On  
9 May 1st, parties may respond to Qwest's compliance  
10 filing from April 19th, and Qwest will respond to the  
11 parties' public interest filing from the 19th. On May  
12 8th, each party has rebuttal based on the May 1st  
13 filing.

14           I will schedule a pre-hearing conference in  
15 coordinating with Judge Berg, it will be either the 8th,  
16 9th, or 10th of May during the cost docket time.  
17 Hopefully I will be able to coordinate a time for about  
18 an hour. There will also be a pre-hearing conference at  
19 8:30, starting at 8:30 on May 13th, and we will start  
20 the hearing at 9:30.

21           For the June dates, we have scheduled June  
22 4th, 5th, and 6th here before the Commission to talk  
23 about the final OSS tests and any remaining compliance  
24 issues. We discussed off the record that we can't yet  
25 determine necessarily what the compliance issues will be

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1 to be discussed on the 6th of June or during those  
2 hearing days or the dates and that we will raise that  
3 during our pre-hearing on April 18th or later as need  
4 be.

5           The final OSS test report at this point is  
6 scheduled to be due on the 20th, understanding there is  
7 a steering committee phone call that was held today, but  
8 there was not sufficient quorum to make a determination  
9 on Qwest's appeal for the final filing date. My  
10 understanding from Mr. Griffith is that determination  
11 will hopefully be made Thursday or Friday of this week.  
12 Once that decision is made, we may need to reconvene  
13 based on -- in a telephonic pre-hearing if the date is  
14 not, for the final test report, is not the 20th. If it  
15 is some other date, then we will reconvene, and I will  
16 set a time to discuss scheduling.

17           But based on the 20th as the final test  
18 report date, Qwest must file its pleading on that final  
19 test report on Friday the 24th of May, and any party may  
20 file a response to Qwest's pleading on Friday the 31st.  
21 Any exhibits and a list of witnesses must be filed with  
22 the Commission by noon on June 3rd. Again, there will  
23 be a pre-hearing conference at 8:30 on the morning of  
24 June 4th, and we will start the hearing at 9:30.

25           Parties raised the issue while we were off

1 the record about filing, and I think I made a note in  
2 the 27th pre-hearing order that given the press of the  
3 schedule, the parties could file electronically and  
4 receive service from other parties by electronic mail,  
5 and I will continue that decision through the end of  
6 this case. But what that means is that parties must be  
7 aware that if there are -- is there anything that -- if  
8 there is anything that can not be served electronically,  
9 it must be provided to the other parties by overnight  
10 mail so that they can receive them in due time, and that  
11 requirement is for all parties.

12 And I believe that summarizes our discussion  
13 on scheduling. If there's anything I didn't -- if  
14 there's anything I left out, please go ahead and remind  
15 me now.

16 MS. DECOOK: Your Honor.

17 JUDGE RENDAHL: Ms. DeCook.

18 MS. DECOOK: Just one clarifying point, the  
19 pleadings that the CLECs may file on the 31st, it may  
20 take multiple forms, and I just want to -- I don't want  
21 anybody to be surprised by that. It may take the form  
22 of testimony, it may take the form of comments or other  
23 forms, and I just don't want that to be foreclosed by  
24 your use of the term pleading. I wasn't sure if that  
25 was your intent or not.

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1 JUDGE RENDAHL: No, it was not my intent to  
2 limit it. I wasn't sure of the form of the pleading  
3 that would be filed, pleading or comments or testimony.

4 MS. DECOOK: Great.

5 JUDGE RENDAHL: So by using the term  
6 pleading, I'm not meaning to limit it.

7 MS. DECOOK: Thank you.

8 JUDGE RENDAHL: Okay.

9 MS. DOBERNECK: Your Honor, this is Megan  
10 Doberneck, and I wasn't clear, consistent with the prior  
11 pre-hearing order, will we still be permitted to file  
12 electronically so long as our hard copies go out same  
13 day for filing with the Commission?

14 JUDGE RENDAHL: Correct.

15 MS. DOBERNECK: Thank you.

16 JUDGE RENDAHL: But again, if there's  
17 anything that either we or other parties can't receive  
18 electronically, those need to be sent next day.

19 MS. DOBERNECK: Correct, yes, thank you.

20 MS. DECOOK: Your Honor, I didn't hear you  
21 say this on the record, but you did state that we on the  
22 6-4, June 4th through the June 6th hearing, we plan to  
23 do the OSS test issues first?

24 JUDGE RENDAHL: Correct. So the 4th and the  
25 5th, we would be discussing the OSS test, and on the 6th

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1 we would be discussing compliance, and thank you.  
2 Ms. DeCook addressed scheduling that in Minnesota AT&T  
3 may need to have its witnesses or attorneys present in  
4 Minnesota to discuss the OSS test report on June 6th, so  
5 we will make every effort to allow AT&T to schedule its  
6 appropriate people on the 4th and the 5th to accommodate  
7 their needs.

8 MS. NELSON: Judge, that would probably have  
9 to go for WorldCom as well.

10 JUDGE RENDAHL: Okay, well, we will talk  
11 about that during -- hopefully we can address that as we  
12 get closer, maybe during the pre-hearing conference on  
13 the 8th, 9th, or 10th of May. As we get closer, we will  
14 know everyone's schedules and have a better sense.

15 Okay, the only other issue remaining would be  
16 this issue of exhibits for the April hearing, and has  
17 anyone given any thought to that particular topic? I  
18 raised the point off the record before we started the  
19 pre-hearing about a number of exhibits that were filed  
20 on performance issues and change management prior to our  
21 December hearing, and those issues were moved, and I'm  
22 just wondering what we really need to use for our April  
23 hearings.

24 MS. DOBERNECK: Your Honor, this is Megan  
25 Doberneck, and thinking -- speaking on behalf just of

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1 Covad, as far as performance and data reconciliation  
2 issues, I would consider the scope of whatever exhibits  
3 we would use basically to disregard what we did in  
4 December and to utilize the most recent filings on I  
5 think it was the 18th, I can't remember which day it  
6 was, when CLECs amended their comments on data and data  
7 reconciliation. That would be the entire scope of what  
8 Covad would intend to present at the April hearings.

9           The one question I did have is, you know, we  
10 addressed this before, but to the extent, for example,  
11 Covad filed comments on data and data reconciliation and  
12 then we had attachments to those comments, whether we  
13 wanted to treat those as exhibits for purposes of the  
14 hearing or would be treating them as pleadings that were  
15 incorporated into the record or that the Commission  
16 could look at if it chose. So I gave you more, I think,  
17 than you asked for, but that is one additional issue  
18 that will have to be resolved as far as determining what  
19 will be an exhibit or not.

20           JUDGE RENDAHL: Well, I think we can talk  
21 about that on the 18th, but I guess I'm -- are you  
22 talking about the exhibits you filed for the December  
23 hearing or the exhibits you are filing now?

24           MS. DOBERNECK: The exhibits I'm filing now.

25           JUDGE RENDAHL: Okay, well, we can talk about



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1 that on the 18th.

2 MS. DOBERNECK: Okay.

3 MS. DECOOK: Are you talking about, Your  
4 Honor, the miscellaneous filings by Qwest with  
5 performance results and the various counter filings that  
6 have been made by Qwest and other parties on since that  
7 weren't necessarily filed in preparation for a hearing?

8 JUDGE RENDAHL: I'm talking about that, but  
9 I'm also talking about what was filed in preparation for  
10 the December hearing. Mr. Williams filed testimony and  
11 exhibits, Mr. Kail filed testimony and exhibits on  
12 behalf of AT&T, Mr. Finnegan as well, WorldCom filed  
13 comments, and Covad filed comments with attachments for  
14 the December hearing on performance. And so first I'm  
15 wondering what to do about that, do we just ditch that  
16 and go forward with what's been filed now.

17 And then the second question has to do with  
18 the -- what you raised about the, you know, filings that  
19 Qwest has made and the responsive pleadings that parties  
20 have filed based on Qwest's filings that are not based  
21 on any hearing per se.

22 So I guess the first question is, what would  
23 you have us do with Mr. Kail's and Mr. Finnegan's  
24 testimony in --

25 MS. DECOOK: I'm talking on that one, Your

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1 Honor.

2 JUDGE RENDAHL: Pardon?

3 MS. DECOOK: I'm talking on that one.

4 JUDGE RENDAHL: Okay.

5 MS. DECOOK: On the CMP filings that have  
6 been made, I would think that we wouldn't want those  
7 ditched, because I think they reflect the process that  
8 the parties have gone through and the genesis of some of  
9 the disputes to the extent they still remain disputes,  
10 but I certainly think we could probably identify for the  
11 Commission which ones in particular are germane at this  
12 point.

13 JUDGE RENDAHL: Okay, well, there are filing  
14 deadlines for the hearing on change management, and so  
15 to the extent that there are additional items you want  
16 us to be able to include in the record, I would like all  
17 of you to in preparation for our April 18th pre-hearing  
18 conference file with the Commission on April 16th  
19 whatever your list of exhibits and witnesses, and that  
20 includes anything that was filed directly for the April  
21 hearings and anything that we should have in our piles.  
22 Does that help?

23 MS. DECOOK: That does help. And, Your  
24 Honor, I did get some clarification on our December  
25 filing. We do intend to use that data as evidence in

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1 the upcoming hearing.

2 JUDGE RENDAHL: Do you mean the testimony as  
3 well as the attachments, the exhibits?

4 MS. DECOOK: Yes.

5 MS. ANDERL: Well, and, Your Honor,  
6 Mr. Steese can speak to this more specifically, but I  
7 believe it was our position that especially since AT&T  
8 had argued that the data from the December hearings was  
9 going to be too stale to be relevant that we likely  
10 should just be going based on what was filed in March  
11 and April for the April hearings or February, March, and  
12 April.

13 That said, there may be some exhibits  
14 attached to the original filings such as PID definitions  
15 or other things that are more generic that need to be  
16 captured, but I don't believe we were going to be  
17 relying on the specific performance data that had been  
18 prepared for the December hearings. I think that the  
19 whole point was to rely on the more current data, but I  
20 suppose we can argue that.

21 JUDGE RENDAHL: So if the parties will file  
22 on the 16th what you plan to use during the hearing, we  
23 will dicker over it on the 18th based on, you know, what  
24 people think is appropriate or not. But it will help us  
25 to know what to organize for that hearing and help you

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1 all to organize for the hearing.

2           Okay, is there anything else that we need to  
3 discuss this morning?

4           MR. KOPTA: Just one other thing, Judge  
5 Rendahl, this is Greg Kopta, on that list of exhibits,  
6 do you want included cross-examination exhibits as well?

7           JUDGE RENDAHL: Yes, please, thank you.

8           MR. KOPTA: Thank you.

9           JUDGE RENDAHL: And if you might do those  
10 separately.

11          MR. KOPTA: I will do that, thank you.

12          JUDGE RENDAHL: So a list of your exhibits, a  
13 list of your cross exhibits, and a list of your  
14 witnesses, that would be helpful. And then during the  
15 18th pre-hearing, we will talk about the exhibits and  
16 talk about mapping out, to the extent it's  
17 cross-examination, we will talk about cross-examination  
18 time, and to the extent it's oral argument, we will map  
19 out a list and try to organize it.

20          Okay, is there anything else we need to talk  
21 about this morning?

22          Hearing nothing, I think we can adjourn.  
23 Appreciate your calling in and being here this morning,  
24 and if there's nothing else before us, we will be off  
25 the record.

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(Hearing adjourned at 11:30 a.m.)

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