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Court Reporter

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JUDGE CAILLE: Good morning. This is the second day of hearings in Docket UT-000883. This is the matter of the petition for Qwest for a competitive classification in certain wire centers. The parties who are present this morning are the same ones who entered their appearance yesterday, and we will now take up some preliminary matters related to exhibits before continuing with the cross-examination.

Mr. Harlow, maybe you will introduce what you've got here and hear from Ms. Anderl and anyone else.

MR. HARLOW: Briefly encapsulating what we discussed off the record, we have distributed a brief regarding, I think it's 16 exhibits that have been marked and identified in this proceeding and distributed, and we've had numerous discussions with Qwest and were aware that they intend to strenuously object to the admission of these exhibits, and it's our view that the exhibits need to be considered as a package in total because they illustrate a continuing strategy, one that was developed prior to 1995. The earliest documents begin in 1995 and continues to this very day, and the sequence of documents takes us up right into the years 1999 and 2000.

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1           The documents all relate to corporate  
2 strategy regarding pricing of Centrex services and  
3 reveal a migration of pricing strategy of Centrex Plus,  
4 which is used by resellers to Centrex Prime, which is  
5 not readily available and usable by resellers. So  
6 without seeing the whole package, you really can't take  
7 them one at a time, particularly if you start in  
8 chronological order. If you follow through the  
9 documents all the way through, what you see is that the  
10 more recent documents, although they reflect a  
11 continuing strategy, they are less descriptive of the  
12 reasons behind the strategy. Therefore, you need the  
13 earlier documents because they contain a lot more  
14 information about the reasoning behind the strategy.

15           What these documents go to is the Company's  
16 denial of Mr. Wood's assertion that premature  
17 competitive classification could allow the Company to  
18 segment the market and to restrict resale by Centrex  
19 resellers, and in fact, these documents show that the  
20 Company has intended to do that and has been actively  
21 attempting to do that for at least the last five years.  
22 So we thought the brief would be very helpful to the  
23 Commission since the documents are quite voluminous.  
24 It would be helpful to the Commission in summarizing  
25 what the documents show and why they are relevant to

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1 the proceeding. We understand the principle objection  
2 the Company is going to be based on relevance.

3 JUDGE CAILLE: Ms. Anderl?

4 MS. ANDERL: After we've had an opportunity  
5 to review the brief submitted by MetroNet, Mr. Owens  
6 will be taking the lead and presenting the substance of  
7 the Company's objection to the admissibility of the  
8 document. However, we would like to state for the  
9 record that we believe that this admission of a  
10 confidential memorandum of this nature is inappropriate  
11 in this proceeding. We attempted to work cooperatively  
12 with Mr. Harlow to determine whether or not there were  
13 objections to the documents and whether we could  
14 resolve those through negotiation. Using the  
15 information obtained in those discussions, Mr. Harlow  
16 has anticipated our objection and has prepared a brief  
17 of which we had no advance notice or warning and which  
18 we must now digest and respond to orally on the record.  
19 We believe that is prejudicial. We will read the  
20 document during the course of the morning proceedings  
21 in an attempt to respond on the time line that Your  
22 Honor orders at the morning break or whatever.

23 The substance of our objections will be both  
24 that the documents are not relevant to the issues at  
25 hand based on their contents, and also that many of



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1 them are so very, very old that they can't possibly be  
2 relevant based on the fact that they are five to six  
3 years old. A lot of the documents don't have dates on  
4 them but can be established from the context to have  
5 been drafted in the '94, '95, '96, time frame. We  
6 understand that often relevancy objections in these  
7 types of proceedings are handled on the basis of a  
8 conclusion that that type of objection goes to the  
9 weight of the evidence, not the admissibility, but we  
10 think it's very important that a determination be made  
11 as to relevance on these issues and that the  
12 determination that they are not relevant be made and  
13 form a basis for their rejection into the record.

14           It will unduly burden the record for us to  
15 have to attempt to respond to the inferences that  
16 Mr. Harlow is going to try to draw from these documents  
17 and attempt to put them into context, and we believe  
18 that it's critically important that the Commission  
19 consider what is the issue before it in this docket,  
20 and that is the state of competition in the market  
21 today and that the Commission conclude that documents  
22 prior to 1998 or 1999 can simply not have any bearing  
23 on the conclusions or findings the Commission has to  
24 make in this case. We had stipulated with Mr. Harlow  
25 that we would not make an objection as to the age of

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1 the documents for anything that was newer than 1998. I  
2 don't want to get into the substance of our argument  
3 now. We will be making that later.

4 JUDGE CAILLE: Mr. Cromwell?

5 MR. CROMWELL: I should start off by saying  
6 that Public Counsel supports the admission of these  
7 exhibits as identified in Mr. Harlow's brief. They are  
8 directly relevant to this proceeding and demonstrate a  
9 pattern of conduct by the Company.

10 To give you background, Public Counsel DR-001  
11 is, as in most of these cases, a request to Qwest to  
12 provide copies to Public Counsel of all their data  
13 response requests to all other parties. Our first  
14 awareness of the existence of these or any other  
15 documents came in Mr. Wood's rebuttal testimony filed  
16 October 6th at Page 7. At Lines 25 and 26, he referred  
17 to a 1996 Qwest memorandum entitled "Centrex resale  
18 competition in Washington." Subsequent to reading  
19 that, I contacted Mr. Harlow to find out where this  
20 document was and where in the DR responses I could find  
21 it, and I was told I could not find it there; that he  
22 and Ms. Anderl had reached an agreement regarding  
23 Qwest's response to what I believe was ATG DRs 44, 45,  
24 46, and 48 that these documents would be considered  
25 responsive and Mr. Harlow would be allowed to use them.

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1 I contacted Ms. Anderl to ask her  
2 specifically about the single document Mr. Wood  
3 referred to and asked her if I would be able to view  
4 that. We had some exchange on that and eventually, the  
5 three of us were able to reach an accommodation where  
6 Ms. Anderl provided me a faxed copy of it that Sunday.  
7 I guess it was a week from last Sunday. I became  
8 aware, therefore, that in my view, Qwest had produced  
9 documents in response to a data request which they had  
10 not provided to Public Counsel pursuant to Public  
11 Counsel DR 01-001. For the record, that data request  
12 has been admitted as Exhibit 27.

13 I also have -- although, it has not been  
14 submitted as an exhibit. I would be happy to do so if  
15 Your Honor or the Commission so desires -- a letter  
16 from Ms. Anderl dated October 24th referring to  
17 ATG/MetroNet DR's 44 through 46 and 48 that states,  
18 Qwest did not provide ATG/MetroNet a response to these  
19 requests. Now, I am aware that it may be Qwest's  
20 position that they did not respond to those data  
21 requests, that this is an entirely separate issue.  
22 That's not my understanding, and I believe pursuant to  
23 this Commission's rules, as well as Public Counsel Data  
24 Request 001 that it is incumbent upon the Company to  
25 provide copies of the documents that they produce to

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1 any party. I believe that their failure to do so is a  
2 direct violation of the discovery rules of this  
3 Commission. I object at a minimum to their not  
4 producing at least notice of the production of these  
5 documents to the other parties and really would request  
6 that this Commission admonish Qwest for its conduct  
7 regarding discovery in this case. I believe that you  
8 are well aware of the previous discovery issues that  
9 have arisen in the context of this proceeding.

10 JUDGE CAILLE: Yes, I am. I think it's  
11 probably appropriate for the commissioners to hear all  
12 of this. Is there anyone else that wants to just weigh  
13 in on this at this point? My thinking is that the  
14 commissioners probably will need to read this and just  
15 to be prepared and briefed on the issues so that they  
16 will understand -- well, on the other hand, maybe it  
17 would be just best for it to be done orally and to hear  
18 it from your mouths rather than mine. Is there anyone  
19 else who wants to speak on this at this point?  
20 Ms. Anderl?

21 MS. ANDERL: Let me just respond to  
22 Mr. Cromwell's remarks. First, I guess other than his  
23 request for Qwest to be admonished -- it's unclear what  
24 type of relief Mr. Cromwell is seeking in this docket  
25 on this issue -- we would respectfully suggest that no

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1 admonishment is necessary and that all we did is settle  
2 with ATG/MetroNet a legitimate discovery dispute, and  
3 we compromised the matter in a way that did not require  
4 us to provide copies of those documents to any other  
5 party.

6           Additionally, I really question  
7 Mr. Cromwell's timing on this. Mr. Cromwell has known  
8 about this issue for a long time. Mr. Wood referenced  
9 Qwest responses to the enumerated data requests in his  
10 September 18th testimony on Page 36, and therefore, the  
11 matter should have been on Public Counsel's radar for  
12 almost six weeks now, and yet we here nothing about it  
13 until today in an oral motion.

14           Frankly, we objected strenuously to the  
15 ATG/MetroNet data requests, and I called Mr. Harlow up  
16 and told him so. We discussed whether or not there was  
17 going to be a motion to compel or whether there was  
18 going to be some method of reaching a compromise  
19 between the requesting party and Qwest in terms of an  
20 accommodation that would address Mr. Harlow's desire  
21 for documents and Qwest's objections to the overly  
22 broad and unduly burdensome requests we felt had been  
23 promulgated as 43 or 44 through 46.

24           MR. HARLOW: 44 through 46 and 48.

25           MS. ANDERL: Thank you. The compromise we

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1 reached with Mr. Harlow was we agreed to permit him to  
2 use or review documents that has been provided in  
3 another matter, a civil litigation, and Mr. Harlow  
4 agreed he would identify which documents from that  
5 proceeding he wanted to use as exhibits and which ones  
6 he had provided his witness to review, and he did that,  
7 and that was acceptable to us. Most of those  
8 documents, the ones that are in dispute today in the  
9 motion, are documents that were produced out of that  
10 docket.

11 I do not believe that the discovery rules  
12 obligated us to provide those documents to other  
13 parties. If I believed that, I either would have done  
14 it or would not have reached the agreement I did with  
15 Mr. Harlow. I would have forced ATG/MetroNet to file a  
16 motion to compel. I thought this was a good result.  
17 ATG/MetroNet had the documents legitimately in another  
18 context. I did not believe any of the other parties  
19 were entitled to them, and if that turns out to not be  
20 the case, I appreciate guidance going forward that this  
21 was certainly not my intent to do anything to subvert  
22 the discovery rules, and I do not believe that I did.  
23 We reached an agreement to settlement a discovery  
24 dispute, and it was between Qwest and MetroNet.

25 JUDGE CAILLE: Mr. Cromwell?

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1                   MR. CROMWELL: As to relief, my comments  
2 initiated with my relief, which was my support of the  
3 admissibility of these documents. My request for  
4 admonishment of Qwest goes to their abuse of the  
5 discovery process in this proceeding. Ms. Anderl  
6 herself has stated, I believe, twice that this was a  
7 resolution of a discovery dispute with ATG/Metro.  
8                   I believe Exhibit 27, wherein Public Counsel  
9 clearly requested copies of all data requests or other  
10 requests for information from all parties in this  
11 action be provided, clearly entitles Public Counsel to  
12 copies of documents that Qwest produces to other  
13 companies in response to discovery disputes. If this  
14 commission rules otherwise, I believe it should be  
15 aware that it runs a severe risk of parties objecting  
16 to discovery disputes wherein proceedings that they  
17 don't wish all parties to have copies of certain  
18 documents, and they will resolve these little side  
19 disputes with little side agreements that none of the  
20 other parties or the Commission will ever find out  
21 about, and to correct a mischaracterization of  
22 Ms. Anderl's, as I stated before, I became aware of  
23 this issue through Mr. Wood's rebuttal testimony  
24 wherein Page 7 he referred to a single document. It  
25 wasn't until I was preparing the exhibits for last

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1 Wednesday's prehearing conference that I discovered  
2 that we didn't have the document. I began following up  
3 on that. It was a week ago Sunday that I received the  
4 memo that Mr. Wood's referred to, and it was during  
5 that process that I learned that there were more than  
6 just this one document, that there were these other  
7 ones, and in fact, never saw them until Wednesday when  
8 they were produced to the Commission and all parties.

9 I just want the record to be clear on that  
10 that from my perspective, this was a single document  
11 that Mr. Wood referred to that I didn't have. I  
12 thought it was simply a paper shuffling issue that I  
13 didn't have these data responses. That's why my staff  
14 had initiated this course with Ms. Anderl's staff to  
15 try and find out where are these. It was this gradual  
16 accretion of questions that led to my discovery of this  
17 side arrangement between Qwest and ATG, and I guess I  
18 have an overarching policy and procedural concern that  
19 if this is Qwest's approach to resolving discovery  
20 disputes, I would very much like to know if they've  
21 entered into similar arrangements in other dockets  
22 before this commission, and whether we have to further  
23 elaborate on our discovery requests to them to find out  
24 whether there are side deals in resolving discovery  
25 disputes that have produced documents to other parties



00267

1 that we have not seen. I think it's quite simply a  
2 matter of fairness.

3 JUDGE CAILLE: Since the commissioners are  
4 probably are going to need to hear these arguments from  
5 you, we will put this off until after the morning break  
6 and revisit it then, if the commissioners wish to at  
7 that time.

8 Ms. Johnston, I believe there is one -- your  
9 counsel exhibits.

10 MS. JOHNSTON: Thank you. Commission staff  
11 would like to have entered into the record several of  
12 the parties' responses to WUTC Data Request No. 3, and  
13 I have spoken with all counsel present, and if I could  
14 direct your attention to the list of counsel exhibits,  
15 and beginning with Exhibit 296, I have spoken with  
16 Mr. Weigler, who is here in the hearing room, and AT&T  
17 has no objection to the admission into the record of  
18 its response to WUTC Data Request No. 3.

19 I've spoken with counsel for Focal,  
20 Nextlink -- now XO -- Global Crossing, Electric  
21 Lightwave and McLeod. Those parties are represented by  
22 Mr. Kopta, who is also here in the hearing room, and  
23 Mr. Kopta has no objection to the admission of those  
24 responses into the record.

25 JUDGE CAILLE: Which ones are those?

00268

1 MS. JOHNSTON: Exhibit 297-HC, 298-HC,  
2 299-HC, 300-HC, and 301-HC. I've spoken with counsel  
3 for MetroNet and Advanced Telecom, Mr. Harlow, who is  
4 also present in the hearing room today. He likewise  
5 has no objection to the admission of the record of his  
6 client's responses to Staff Data Request 3. They've  
7 been marked for identification as 302-HC and 304,  
8 respectively.

9 I've spoken with Mr. Ahlers who represents  
10 Eschelon in this proceeding, and he also has no  
11 objection to the admission into the record of  
12 Eschelon's response to Staff Data Request No. 3, which  
13 has been marked for identification as Exhibit 303-C,  
14 and I've also spoken with Ms. Hopfenbeck regarding  
15 WorldCom's response to Staff Data Request No. 3, and  
16 she likewise has no objection to the admission into the  
17 record of WorldCom's response to Staff Data Request No.  
18 3. That has been marked for identification as Exhibit  
19 305-HC.

20 It's my understanding that these parties have  
21 no objection so long as the respective designations  
22 follow the respective documents, and unless I'm  
23 incorrect, I'm also making the assumption that the  
24 parties prefer to have the bench and the policy have  
25 access to these confidential and highly confidential

00269

1 documents as opposed to the being required to share  
2 their highly confidential data with the other  
3 respective parties to the docket. So I'm assuming that  
4 counsel are waiving any objection they would have to  
5 the Commission and policy only having access to the  
6 highly confidential data.

7 JUDGE CAILLE: Thank you.

8 MR. CROMWELL: I have no objection to their  
9 inclusion into the record. I do preserve for Public  
10 purposes the objections made in motion.

11 MS. JOHNSTON: There is some apparent  
12 confusion then, Mr. Cromwell, because the responses to  
13 Staff Data Request 3 were not the subject of your  
14 motion to compel. The subject of your motion to compel  
15 were the responses submitted to Commission staff in  
16 response to the Commission's June 22nd, 2000, letter.

17 JUDGE CAILLE: Maybe this is something you  
18 can confer about during the break.

19 MR. CROMWELL: Your Honor, Dr. Blackmon has  
20 clarified it for me. I have no objection.

21 JUDGE CAILLE: Is there any objection from  
22 anyone else on the exhibits that Ms. Johnston has just  
23 discussed? Hearing none, then those exhibits are  
24 admitted into the record.

25 MS. JOHNSTON: Thank you.

00270

1 JUDGE CAILLE: Let's call Mr. Hooks.  
2 (Witness sworn.)

3  
4 DIRECT EXAMINATION

5 BY MS. ANDERL:

6 Q. Good morning. Would you please state your  
7 name for the record?

8 A. Perry W. Hooks, Junior.

9 Q. Did you cause to be filed rebuttal testimony  
10 in this docket, which has been identified as 156-T?

11 A. Yes, I did.

12 Q. Do you have any changes or corrections to  
13 make to that testimony?

14 A. Yes, I do. On Page 6, Line 6, toward the end  
15 of that line, there are two words, "currently over,"  
16 that should be stricken. That is the only change.

17 Q. With that change, is your testimony true and  
18 correct to the best of your knowledge?

19 A. Yes.

20 Q. If I were to ask you the questions contained  
21 in that testimony today, would your answers be the  
22 same?

23 A. Yes, they would.

24 MS. ANDERL: Your Honor, we would offer  
25 Exhibit 156-T, and Mr. Hooks is available for

00271

1 cross-examination.

2 JUDGE CAILLE: Is there any objection to the  
3 admission of Exhibit 156-T? Hearing none, then it is  
4 admitted into the record, and Mr. Harlow, are you going  
5 to be going this morning?

6 MR. HARLOW: We have no cross for Mr. Hooks.

7 JUDGE CAILLE: Public Counsel?

8 MR. CROMWELL: Thank you, Your Honor.

9

10 CROSS-EXAMINATION

11 BY MR. CROMWELL:

12 Q. Good morning, Mr. Hooks.

13 A. Good morning.

14 Q. Just a couple of questions to establish your  
15 background. You've worked with Qwest since 1984?

16 A. Northwestern Bell then U S West and now  
17 Qwest.

18 Q. The successor entities to the current Qwest?

19 A. That is correct.

20 Q. During that time, you've held various legal,  
21 management, regulatory positions, including chief  
22 counsel of one of the sections at one time?

23 A. That is correct.

24 Q. Have you performed or are you aware of any  
25 analysis performed by Qwest of the business markets in

00272

1 Washington?

2 A. Other than proceedings such as this, not  
3 really.

4 Q. Are you familiar with Washington 271  
5 proceedings that are ongoing?

6 A. I am aware they are ongoing, but I'm not real  
7 close to the specifics of it.

8 Q. Are you familiar with the retail markets in  
9 Washington, such as were examined by Qwest in the  
10 studies produced in Exhibit 29? It's a small business  
11 group study.

12 A. I'm not familiar with Exhibit 29, no.

13 Q. I'm just making sure what questions I have  
14 about those issues I can defer for Mr. Teitzel since  
15 you will be taking off shortly. You stated in your  
16 testimony that, quote, "Qwest offers CLECs a meaningful  
17 opportunity to compete in the market in order to  
18 provide competitive to customers in the State of  
19 Washington, do you not?"

20 A. That's correct.

21 Q. To use your words, "a meaningful  
22 opportunity," is not the same thing as actual  
23 competition though, is it? I was referring to his  
24 testimony at Page 1, Lines 2 and 4.

25 A. I did not refer to the Washington statute

00273

1 when I wrote that testimony.

2 Q. Thank you, Mr. Hooks, but my question was  
3 actually whether in your mind, a meaningful opportunity  
4 is the same thing as actual competition.

5 A. I thought you were asking about it in the  
6 context of the statute, and within the context of the  
7 statute, I believe there is effective competition.

8 Q. That wasn't what I was asking, but we will  
9 again get there. My question to you is, is it your  
10 opinion that a meaningful opportunity means that there  
11 is actual competition?

12 A. No. It speaks for itself. It's an  
13 opportunity.

14 Q. Have you had the opportunity to review the  
15 law that the Commission must apply in this proceeding?

16 A. Actually, what I looked at was something that  
17 ended up in my papers last night, but I'm not sure --  
18 as I recall, there is an objection about some document  
19 being tendered and whether it was the correct statute  
20 or not.

21 Q. That was certainly my error of copying the  
22 wrong statute over the weekend. I think what we are  
23 and should, in fact, be referring to in this proceeding  
24 is 80.36.330; is that correct, Ms. Anderl?

25 MS. ANDERL: Yes.

00274

1 Q. Have you had an opportunity to review that  
2 statute, Mr. Hooks?

3 A. I didn't have that.

4 MR. CROMWELL: Do you have a copy for your  
5 witness, Ms. Anderl?

6 MS. ANDERL: I'll provide him with one.

7 Q. (By Mr. Cromwell) Would you like a minute to  
8 review that?

9 A. Yes, please. Thank you.

10 Q. Mr. Hooks, have you had the opportunity to  
11 review the law that this Commission must apply in  
12 Washington to determine if Qwest business services  
13 should be classified as competitive?

14 A. Yes. I now have had a chance to look at  
15 Revised Code of Washington 80.336.330.

16 Q. What is your understanding of the legal test  
17 to be in Washington for receiving competitive  
18 classification under that statute?

19 A. Apparently, the Commission must determine  
20 that customers of a service have reasonably available  
21 alternatives and that the service is not provided to a  
22 significant captive customer base.

23 Q. You had not had the opportunity to review  
24 that statute before filing your testimony in this case?

25 A. Well, I suppose I always had the opportunity.



00275

1 I've not done that.

2 Q. I'll strike the question. Did you review  
3 that before filing your testimony in this case?

4 A. No. This is the first time I've seen the  
5 statute.

6 Q. In your review of 80.36.330, it's clear that  
7 it does not merely require a meaningful opportunity to  
8 compete; isn't that true?

9 A. It very specifically talks about having  
10 reasonably available alternatives and not having a  
11 significant captive customer base.

12 Q. In your testimony, you also addressed  
13 interconnection agreements, did you not?

14 A. Yes, I did.

15 Q. That was at Page 3, Lines 4, to Page 4, Line  
16 3; is that correct?

17 A. Yes. It starts on Page 3 and goes into Page  
18 4, yes.

19 Q. You stated that CLECs have 250 switches  
20 installed in nine wire centers, which are the subject  
21 of the petition, did you not? I'm looking at Page 4,  
22 Lines 6 and 9.

23 A. The switches aren't necessarily installed in  
24 the wire centers. The switches are capable of serving  
25 customers within those serving wire center areas.

00276

1 Q. But your research was to nine wire centers,  
2 was it not?

3 A. Yes.

4 Q. You are aware that this company petition  
5 covers 31 wire centers, are you not?

6 A. Yes, I am.

7 Q. Which nine wire centers were you referring to  
8 in your testimony?

9 A. The ones at the time that I saw of a draft of  
10 Dr. Taylor's testimony. I don't recall the specifics  
11 at this point.

12 Q. Do you recall when you saw that draft of  
13 Dr. Taylor's testimony?

14 A. On or about that first week of October.

15 Q. So you don't know whether you were referring  
16 to the nine wire centers which would comprise roughly  
17 the five urban areas that Dr. Blackmon had identified?

18 A. No, I don't know.

19 Q. It's not Qwest's position that it's revising  
20 its petition to cover only those wire centers you refer  
21 to.

22 A. No. My understanding is we are going for the  
23 31.

24 Q. Let's go back to those 250 switches. Do you  
25 know their physical location?

00277

1           A.     No. The source it's coming from is called  
2 the LERG, and it's not a requirement of the LERG that  
3 they place the locations.

4           Q.     For the Commission's benefit, what is the  
5 LERG?

6           A.     The LERG is an acronym for the Local Exchange  
7 Resource Guide. I don't recall who publishes it now,  
8 whether it's Telcordia or someone else, but what it is  
9 is a document which allows telephone companies to  
10 determine what type of switches are available for  
11 purposes of interconnection, is one common purpose that  
12 it's used for. It also makes a difference particularly  
13 for interexchange carriers so they can determine  
14 options that they would have for routing their  
15 long-distance traffic.

16          Q.     So it fair to say that the LERG is a set of  
17 documents that the industry and people such as yourself  
18 rely on?

19          A.     It's fair to say that the industry does. I  
20 personally don't rely upon it.

21          Q.     In your current practice?

22          A.     Yes.

23          Q.     Are you able to tell us what the geographic  
24 distribution of customers are that are served by those  
25 250 switches?

00278

1       A.     Personally, I could not.  What the serving  
2 wire center characteristics are probably available  
3 elsewhere in the record.  I could not tell you that  
4 specifically without reviewing it.

5       Q.     So your answer is no.

6       A.     That's correct.

7       Q.     Are you able to tell us the distance which  
8 CLECs have extended their facilities from those 250  
9 switches?

10      A.     No.  That would vary from provider to  
11 provider.

12      Q.     So you have no idea what percentage of the  
13 customers in those wire centers might be, say, within a  
14 thousand feet of a network facility.

15      A.     To answer your question, no, but the facility  
16 isn't the same think necessarily as the switch.

17      Q.     Certainly.  Let's clarify that.  What is a  
18 switch, Mr. Hooks?

19      A.     If you will, a switch is like a computer that  
20 allows one customer to connect to another customer.  
21 That's a good question.  A switch is a switch.  It is  
22 the tools that are used by telephone companies to allow  
23 connectivity from one customer to another.

24      Q.     And there are different kinds of switches?

25      A.     Yes, there are.

00279

1 Q. Is one type of switch an end-office switch?

2 A. Very generically speaking, yes.

3 Q. A generic term for a category of switches is  
4 end-office.

5 A. More or less for their location, yes.

6 Q. What does an end-office switch do?

7 A. The end-office switch again provides that  
8 type of connection from one customer to another. It  
9 also provides a certain level of capability, most  
10 commonly the calling feature capability that a customer  
11 would have if they subscribed to the server. It's part  
12 of the software inherent or programmed into the switch.

13 Q. Is it fair to say that an end-office switch  
14 is necessary but not sufficient for providing service  
15 to a customer?

16 A. Yes, it is fair to say that because of lack  
17 of loops, for example.

18 Q. Is it also true that of those 250 switches,  
19 not all of them are end-office switches?

20 A. Yes, that would be correct. Some would be  
21 classified as tandem switches.

22 Q. Do you know how many of them might be capable  
23 of providing the services that Qwest is seeking  
24 competitive classification for in this docket?

25 A. Looking at the list, you would not be able to

00280

1 tell that. You would to have some real specific  
2 discovery of the CLECs to determine what kinds of  
3 software they have in each switch.

4 Q. So your answer is no, there is no information  
5 in the record regarding that?

6 A. I don't know about the record, but I'm just  
7 saying it's something that's not readily available.

8 Q. Mr. Hooks, would you please take a look at  
9 Exhibit 117-C. I believe it was a document that  
10 Ms. Rackner was asking Ms. Jensen about yesterday.  
11 Were you here for that testimony?

12 A. I was here for part of it. Is it also  
13 Exhibit 52-C?

14 Q. Yes, a cross-reference. Under the same  
15 parameters of Ms. Rackner's questioning yesterday, I  
16 think the question she posed to Ms. Jensen that was not  
17 answered at that time, which we would like you to  
18 answer if you are capable of doing so, the identity of  
19 the equipment type where there is an acronym in the  
20 third column. Can do you that for us?

21 A. Partially, yes.

22 Q. Please proceed.

23 A. The exist first one, DS, is a digital switch.  
24 The second, POI, it's either point of interface or  
25 point of interconnection. The term is kind of used

00281

1 both ways. NT-5, this one would be like a Northern  
2 Telecom or NorTell switch five thousand. That one is  
3 not a common acronym. That's what I believe that one  
4 is. 5-E and 4-E are AT&T 5-ESS and 4-ESS.

5           POI, point of interconnection or interface,  
6 not necessarily a switch on that. DMS is the beginning  
7 of the name for NorTell switches, and the size can  
8 vary, but it's apparently some sort of NorTel switch  
9 serving that area. VCD is not a common term. Unlike  
10 the 5-E, which is like the Western Electric  
11 terminology, I believe VCD would be a Lucent  
12 terminology for a 5-E, what would have been a Western  
13 Electric 5-E.

14       Q.     So it's the Lucent equivalent of a 5-E?

15       A.     I believe so. Most people still call them  
16 5-E's, but I think that's what that one is. D-12, this  
17 one is speculation again. This is not a common one on  
18 my part. It could very well again represent what a  
19 NorTel product, a DMS product, but I'm not sure about  
20 the size of the 12. I'm skipping over those that I've  
21 already responded to.

22           The DXC-4 is an acronym that's used sometimes  
23 for digital signal preparations equipment, but I don't  
24 recall the sizing on that one. Down about four or five  
25 further, there is a TDM, which is an abbreviation you

00282

1 see frequently with a tandem switch of some sort. Two  
2 down from there is EN-4, which is a code for  
3 Enterprise, which is another switch manufacturer. I'm  
4 going to skip over the GS-5 for a moment. I have to  
5 think about that one, and I'm going to skip the REX. I  
6 can't remember that one right offhand. The EWSD is an  
7 acronym for Seimans.

8 Q. For the record, how do you spell Seimans?

9 A. S-e-i-m-a-n-s. It's a Swedish manufacturer.  
10 I'm on the last page of this. RDE, I'm not aware of it  
11 as a switch type. It's sometimes used as an acronym  
12 for remote digital electronics. The one two below  
13 that, given this context, I don't think it's meant to  
14 be the Sprint service. I'm going to guess that stands  
15 for like an interface for optical networking. The RSC  
16 is probably an abbreviation for something like a remote  
17 switching center. I'll think about the other one, that  
18 GX-5.

19 Q. Maybe to save time, what we could do is a  
20 records requisition request, and when you get back to  
21 your office, if you could look up those and the other  
22 ones and confirm what they are, would that be possible?

23 A. We'll give it our best shot.

24 MR. CROMWELL: May I do that, Your Honor?

25 JUDGE CAILLE: Could you state for the record



00283

1 exactly what that request is?

2 MR. CROMWELL: Records Requisition No. 3  
3 would be for Qwest to identify the equipment types  
4 listed in Column 3 of Exhibit 117-C, or cross  
5 referenced as 52-C, I believe.

6 Q. (By Mr. Cromwell) Just to follow-up, you  
7 said that there was an AT&T 5-ESS and 4-ESS?

8 A. That's the manufacturer. When I say AT&T, it  
9 would really be Western Electric.

10 Q. Does 4 and 5 designate some degree of  
11 capacity, or what's the difference?

12 A. I really thought of it much more in terms of  
13 the switch software capabilities. Certainly, there is  
14 capacity associated with the size of a switch. The  
15 most common -- switches are scalable, and probably the  
16 most scaling you hear about are 5-E's are at least 100  
17 thousand customers per switch.

18 Q. Are these like a modular unit or something  
19 that can be racked?

20 A. Yes, but that's true for pretty much all the  
21 switches. You can start off with it based on what you  
22 are anticipating. Switch mods are either 10- to  
23 20-thousand lines each, and then you expand based on  
24 how you perceive your market demand to grow.

25 Q. Would it be common practice in the industry

00284

1 for Qwest or competitors to invest in an amount of  
2 switched capacity necessary to meet their expected  
3 customer demand?

4 A. Well, that's how you would have to purchase  
5 it. I suppose some could purchase much bigger scale in  
6 anticipation of getting a price discount or something,  
7 but yes, you typically grow them.

8 Q. So in your experience, it wouldn't be common  
9 for folks to buy a 100-thousand line capacity if they  
10 are just starting out.

11 A. We've seen that happen, actually.

12 Q. Where? Was it in Washington?

13 A. It would have been for switches capable of  
14 use in Washington. The switch I had in mind was based  
15 in Oregon, but that same switch is used to serve  
16 several states.

17 Q. What type of service is being provided?

18 A. If you look at the sales brochures of the  
19 company, they put out the types of features, but it's  
20 fairly common class features. There is call-waiting,  
21 three-way calling, call-hold. That type of thing is  
22 what companies typically offer, and what they have to  
23 do is when they get their generics along with their  
24 modules, they would have the right software to go with  
25 it.

00285

1           So when you look at the brochure of a company  
2 that says they will offer some of these features,  
3 especially if they only have one or two switches, they  
4 most likely bought it for both of their switches or  
5 single switch, and they are capable of providing that  
6 feature to all the customers they can reach.

7           Q.     Are you personally aware of that company in  
8 Oregon providing service to customers in Washington  
9 through that product?

10          A.     I am aware of the company offering a services  
11 in Washington. I have no reason to believe they don't  
12 offer the features, but their sales brochures would  
13 indicate they do offer it. Again, I just happen to  
14 right off the top of my head think about them because  
15 they bought a big switch right up front.

16          Q.     Was that unusual?

17          A.     You know, frankly I don't recall if that's  
18 unusual. That's the only one I'm aware of. Most that  
19 I'm aware of scale up.

20          Q.     So in your experience, it's more common for  
21 folks to scale up, as you say. They get capacity as  
22 they need it?

23          A.     Scale up in terms of numbers of customers  
24 they can reach using the switch. The features  
25 themselves are generally available whether they have

00286

1 one customer or 100 thousand customers.

2 Q. Would those be the types of features that I  
3 believe were referenced in Attachment A to the  
4 Company's petition?

5 A. If I could take a look at it.

6 MS. ANDERL: Your Honor, may I approach the  
7 witness to give him a copy of the petition?

8 JUDGE CAILLE: Yes.

9 THE WITNESS: "A" as in apple?

10 Q. (By Mr. Cromwell) I believe it's marked as  
11 Exhibit 12.

12 A. Yes. Looking at the "basic business  
13 features" column on Exhibit A, yeah, what would  
14 typically happen is that the company -- in this case,  
15 these are Qwest names, but the manufacturers offered  
16 their switches with generic software, and it has these  
17 types of features. Then the company which is offering  
18 the feature would buy the generics that would allow  
19 them to buy those kinds of features.

20 Q. Since we are here already, would you please  
21 flip back to Attachment G to the petition?

22 A. I'm there.

23 Q. The second column identifies a number of  
24 competitive switches in the different wire centers; is  
25 that correct?

00287

1       A.     It could be read that way.  It could also be  
2 read as competitive switches serving customers in that  
3 serving wire center area.

4       Q.     It's possible for a competitor to place a  
5 switch in one wire center but actually serve adjoining  
6 wire centers?

7       A.     Yes, another center.  It could also be in  
8 another state.

9       Q.     Are you personally aware of how many of those  
10 switches are capable of providing the services that are  
11 in contention in this docket?

12      A.     This is the first time I've seen this  
13 document.

14      Q.     This document also, if we go farther over to  
15 the right, also provides a number of, I think it's U S  
16 West business lines?

17      A.     Which column are you referring to?

18      Q.     Excluding a column that identifies the wire  
19 center, seven over.

20      A.     The column is titled "U S West business  
21 lines"?

22      Q.     Right.  That would be the number of business  
23 lines that Qwest currently has in these wire centers or  
24 as of the date of this data?

25            MS. ANDERL:  Your Honor, I object.  This is

00288

1 not the proper witness to be asking about this  
2 document. Mr. Hooks was not sponsoring this exhibit,  
3 and has indicated he had not previously had a chance to  
4 review this particular attachment. Certainly,  
5 Ms. Jensen or perhaps Mr. Teitzel could answer these  
6 questions but not Mr. Hooks. I guess I would suggest  
7 that it's also fairly well outside the scope of Mr.  
8 Hook's direct testimony, which is where we've been for  
9 sometime, but I will interpose the objection now.

10 MR. CROMWELL: That's fine, Your Honor. I  
11 believe that Mr. Hooks's direct testimony referred  
12 explicitly to switches in Washington. I believe he's  
13 also been proffered to this Commission as an expert on  
14 wholesale, as well as based upon his experience,  
15 clearly, an expert on regulatory matters. I believe  
16 the line of questioning is appropriate, and I am happy  
17 to defer to Mr. Teitzel.

18 Q. (By Mr. Cromwell) Mr. Hooks, would  
19 Mr. Teitzel be better able to answer these sorts of  
20 questions, or do you know?

21 A. I'm assuming that he is. Yeah, I haven't  
22 seen him run out of the room, so apparently so.

23 Q. All right, sir, I will defer those questions  
24 for Mr. Teitzel. Are you comfortable answering  
25 questions about the technical capabilities of

00289

1 switching? Are you all right going back to that line  
2 of discussion?

3 A. Between the three of us, I probably have more  
4 information about it. Comfortable, not really, but  
5 certainly, I can talk about it on a higher level, yes.

6 Q. I'll take that as you being in the best  
7 position. Just to follow up with a couple of  
8 statements and identifications of switches you've made  
9 before, what is a tandem switch?

10 A. A tandem switch is a switch for switches, if  
11 you will. What the industry typically uses a tandem  
12 switch for is to serve as a central point for trunks  
13 that is connecting end-user traffic from one end-office  
14 switch to another end-office switch without the two  
15 end-office switches being directly connected through  
16 trunks.

17 There is basically two ways to connect them.  
18 One way is a direct connection between the two  
19 end-office switches, or alternatively, you would  
20 connect the two end-office switches to a tandem switch,  
21 sort of like a hub, spoke kind of arrangement, and then  
22 the tandem switch completes the connection between the  
23 two end-offices.

24 Q. Could it be located in an end-office CO, for  
25 example? Could a tandem switch be located in a central

00290

1 office where end-office switches are also located to  
2 provide those kinds of connectivity functions that you  
3 just described?

4 A. Yes.

5 Q. Can you tell us, what is a host?

6 A. A host is a switch that has attached to it,  
7 usually through something called an umbilical, which is  
8 a fiber connection. It provides software capability  
9 that is used to provide primarily features to end-users  
10 connected to a remote module. The remote module would  
11 not have the same software features that the host would  
12 have, but it acts on behalf of the host, if you will,  
13 in order to complete the type of desired functionality.

14 Q. Can you tell us specifically what remote  
15 does?

16 A. What the remote does is it really provides  
17 the connection, more often than not provides the  
18 connection to the end-user customer. Remotes do have  
19 some limited capabilities in terms of switched software  
20 capabilities, but primarily, that capability resides  
21 with the host switch. You have the remote sometimes to  
22 extend the distance that you can place your remotes  
23 away from the host switch so that you can shorten the  
24 length of your loops.

25 Q. Can you tell us what V and H coordinates are?



00291

1       A.     Yes.  Vertical and horizontal, but what it is  
2 it gives you a location, and they are used for purposes  
3 of calculating distances, for purposes of mileage  
4 pricing more often than not.

5       Q.     Mileage pricing to retail customers?

6       A.     It is used for like primarily private lines,  
7 so yes.  To the extent you are talking about private  
8 line services, it's not something used for normal  
9 residential or business service.

10      Q.     Let me take a step back.  V and H  
11 coordinates, those do map to latitude or longitude  
12 positions; is that correct?

13      A.     Yes, they do.

14      Q.     Qwest keeps track of that data?

15      A.     Well, I believe it's in documents such as the  
16 LERG.  You have to identify your V and H coordinates  
17 when you place a switch.  So we would get access to it,  
18 but whoever keeps the LERG is really the party  
19 responsible for keeping track, if you will.  It's a  
20 static.  Once it's placed in there, the V and H is  
21 generally static.  Unless new switches come in, they  
22 are just placed in V and H coordinate.

23      Q.     Just so I understand, it's the LERG or the  
24 folks that keep the LERG that keep the listing of the V  
25 and H coordinates for all the switches.

00292

1           A.     That's my understanding, yes.  There may be  
2 other sites as well.

3           Q.     Mr. Hooks, you went through and identified a  
4 number of switches -- I believe, it's Exhibit 117 --  
5 and you had stated in response to a separate question  
6 that it was your experience that most switches have a  
7 modular capacity of 10 or 20 thousand each?

8           A.     That's correct.

9           Q.     Did you happen to know the precise capacity  
10 of the switches you are identifying in that list, or  
11 would that be something that would be better produced  
12 in a record requisition response?

13          A.     The record requisition response would only  
14 tell you what these acronyms mean.  You wouldn't know  
15 to what extent it would be scaled just by the type of  
16 switch.  You would have to get that from the company or  
17 from the company that has the switch to know how large  
18 they had sized it.

19          Q.     And what kind of capacity they currently have  
20 or might project having?

21          A.     Yes.  You would need to get that from them.  
22 Presumably what it would reflect is what they believe  
23 they could serve at that time or likely to serve during  
24 that time, but that's the presumption.

25          Q.     I think you mentioned a few minutes ago that

00293

1 of the 250 switches you refer to, you did not know what  
2 their location was or how many customers were being  
3 served. Do you know what percentage of those 250  
4 switches are capable of providing either the services  
5 that are subject to this petition or services that are  
6 not, such as cellular, PCS, or data?

7 A. I believe I testified to when the CLEC offers  
8 the service and they put in their sales brochures, it  
9 reflects that they put that software capability within  
10 the switch. So the assumption that I'm making, because  
11 it's just a typical assumption, if they say they can  
12 offer that class feature, that switch is going to  
13 provide that class feature. I'm assuming they aren't  
14 going to put it in their sales brochure and not offer  
15 it.

16 Q. But specifically, of the 250 you referred to,  
17 you don't know, for example, how many are packet-based  
18 switches?

19 A. What I would have to do is see which company,  
20 but to your specific question about packet basis, none  
21 of these jump out at me as packet at all.

22 Q. So your answer is no?

23 A. None of these are packet switches.

24 Q. And you don't know if any are toll only, toll  
25 and local?

00294

1       A.     The LERG is for local exchange, so I doubt if  
2 any of them are toll only. They are offering some form  
3 of local exchange service. Again, the capabilities  
4 would be what the CLECs claim they are saying, as a  
5 general rule.

6       Q.     Mr. Hooks, are you familiar with the  
7 Washington revenues for Qwest?

8       A.     No.

9       Q.     Let's go back to an area you will be  
10 comfortable with. In your testimony, you also address  
11 the use of resale as a competitive tool in Washington,  
12 did you not?

13      A.     Yes.

14      Q.     However, it's true that resale cannot  
15 restrain the exercise of market power by Qwest, is it  
16 not?

17      A.     Can you refer me to a specific spot you are  
18 talking about in my testimony?

19      Q.     Certainly. It's at Page 7, Lines 15 through  
20 18. You discuss resale as a competitive option, did  
21 you not?

22      A.     Yes, I did.

23      Q.     Correct me if I'm wrong, but you've got about  
24 16 years of legal regulatory experience, management  
25 experience at Qwest?

00295

1 A. That's correct.

2 Q. Can you tell me whether it is true that  
3 resale cannot constrain the exercise of market power by  
4 Qwest?

5 A. That resale cannot restrain it? Let me first  
6 of all say I'm not here as an economic witness. You  
7 are trying to track this to my testimony. Qwest is not  
8 in a position that it can just arbitrarily just jack up  
9 prices and not have resale be a factor in holding  
10 prices down. We have a price that we set. There is a  
11 certain discount that's given to a CLEC. The CLEC has  
12 its own options on where it wants to price its  
13 services, be it resold services or other services. So  
14 if we were to just arbitrarily jump our prices way up,  
15 it does not mean that a CLEC will have to jump their  
16 prices up. They can continue to keep their prices low,  
17 lower, whatever they would like to do, but to the  
18 extent they market it to end-user customers, they then  
19 do pose a realistic competitive alternative to Qwest,  
20 and, in fact, can be a significant restraining or  
21 constraining force on our pricing of our services.

22 Q. Are you familiar with the Department of  
23 Justice horizontal merger guidelines?

24 A. Yeah, somewhat. I know they exist. It's not  
25 something I work with.

00296

1 MS. ANDERL: I'm going to object. Mr. Hooks  
2 has six lines of testimony prepared for resale. Never  
3 once does he mention the Department of Justice merger  
4 guidelines. Dr. Taylor really testifies about that.  
5 He's already indicated on the record that he's not here  
6 as the Company's economist, nor does his testimony put  
7 him forth as such. Mr. Cromwell persists in asking  
8 questions that are outside the scope of Mr. Hooks's  
9 direct testimony, and I'm sorry I have to continue to  
10 object, but I must.

11 MR. CROMWELL: Mr. Hooks has testified and  
12 the record reflects that I believe he's had 16 years of  
13 legal and regulatory management at Qwest. I think  
14 before Ms. Anderl jumped in, he did mention that he's  
15 familiar with them but has not worked with them. I  
16 believe that Qwest has presented Mr. Hooks as a  
17 witness. He is clearly the witness with the greatest  
18 degree of legal expertise that Qwest has propounded in  
19 this proceeding, and I believe it's a fair line of  
20 questioning.

21 MS. ANDERL: Again, my objection is the scope  
22 of Mr. Hooks's direct, and cross has to be limited  
23 legitimately to the scope of his direct testimony.  
24 Yes, has he has a significant amount of experience.  
25 That doesn't mean that everything he might know

00297

1 something about is fair game for cross-examination.  
2 That's simply not the way the rules work, I don't  
3 think. I think it's appropriate to limit  
4 cross-examination to those matters which Qwest has  
5 raised on direct through his testimony, and we have yet  
6 to hear Mr. Cromwell direct us to a portion of  
7 Mr. Hooks's testimony that shows these lines of inquiry  
8 to be proper.

9 MR. CROMWELL: I believe I can tie it up, if  
10 you will allow me.

11 JUDGE CAILLE: Go ahead.

12 Q. (By Mr. Cromwell) Mr. Hooks, are you  
13 familiar with the DOJ horizontal merger guidelines in  
14 your 16 years of experience at Qwest?

15 A. I'm familiar with them not so much from my  
16 experience but from reading the Wall Street Journal and  
17 things like that. I haven't worked with them directly.

18 Q. Let me tie it back to your testimony  
19 regarding reseller. It is true that a reseller whose  
20 price is set by the source of the service or product it  
21 sells and with whom it is in direct competition cannot  
22 constrain the exercise of market power by that source  
23 company where it's wholesale price is a percentage of  
24 the source company's resale cost; is that true?

25 MS. ANDERL: Same objection, Your Honor.

00298

1 JUDGE CAILLE: The objection is sustained.  
2 It's beyond the scope of his testimony.

3 MR. CROMWELL: Thank you, Mr. Hooks. That  
4 was my last question for you. Have a nice day, sir.

5 JUDGE CAILLE: Does Staff have cross of  
6 Mr. Hooks?

7 MS. JOHNSTON: No, Your Honor.

8 JUDGE CAILLE: Commissioners? No questions.

9 MR. WEIGLER: I have just a few questions.

10

11 CROSS-EXAMINATION

12 BY MR. WEIGLER:

13 Q. You struck that there is over 368  
14 collocations in Washington. Is there exactly 368  
15 collocations in Washington as of the date of your  
16 testimony, October 6th?

17 A. The document that I looked at was as of  
18 August 31st, and what happened was I had three  
19 different source documents that are trying to scramble  
20 around and get that number, and one was like 350 and  
21 another had 3 something, but then I decided on going  
22 with the August 31st number, which was 368, and just  
23 didn't through editing fail to knock out "currently  
24 over."

25 Q. So there is 368 collocations on the



00299

1 approximate date of August 31st.

2 A. That's correct, August 31st.

3 Q. You indicate that a collocation is a  
4 beachhead for additional competition. Just because  
5 there is 368 collocations, that doesn't mean that each  
6 one of those collocators, for lack of a better word, is  
7 actually providing service to Washington residents,  
8 does it?

9 A. You are right. Some have actually just the  
10 space and haven't placed the equipment in there. Some  
11 would be serving business customers and not necessarily  
12 residential customers.

13 Q. Or that their network isn't complete and they  
14 aren't serving any customers; couldn't that be correct?  
15 Just because they are collocating doesn't mean they are  
16 serving end-users.

17 A. That is correct. The majority would be, but  
18 not necessarily all.

19 Q. Do you have any information in your testimony  
20 on how many of those collocators are actually serving  
21 end-users of the 368 collocators?

22 A. It's not contained within this testimony.

23 MR. WEIGLER: Thank you. No further  
24 questions.

25 MS. RACKNER: I do have a couple of follow-up

00300

1 questions.

2

3

CROSS-EXAMINATION

4 BY MS. RACKNER:

5 Q. Mr. Hooks, I'd like to refer you back to your  
6 rebuttal testimony on Page 4 where you referenced 250  
7 switches deployed at the network. You stated that that  
8 information came from the LERG?

9 A. That's my understanding, yes.

10 Q. In comparing your testimony, you didn't  
11 personally consult the LERG, did you?

12 A. That is correct.

13 Q. So you relied on Dr. Taylor?

14 A. Dr. Taylor and another person that works on  
15 our team who worked on it.

16 Q. I just have one more question. I'd like to  
17 direct you to Page 8 in your testimony. On Line 5,  
18 where you refer to define market segments, could you  
19 explain for me what you mean by the term "market  
20 segments"?

21 A. Yes. Some people would say their market  
22 segments are res customers; some would say biz  
23 customers. Some would say high-end. The point of that  
24 is each CLEC decides what they want to call their  
25 market segments.

00301

1 Q. Would it be fair to say that even within the  
2 larger market segment of business there are smaller sub  
3 market segments?

4 A. I think it's probable that a CLEC would  
5 decide that these are small businesses. These are  
6 large businesses. These are businesses in business  
7 parts. I think it's fair to think there would be  
8 further segmentation.

9 MS. RACKNER: Thank you. That's all I have.

10 JUDGE CAILLE: Does anyone else have any more  
11 cross? Any redirect?

12 MS. ANDERL: I don't think so, Your Honor.  
13 No.

14 JUDGE CAILLE: Then thank you, Mr. Hooks.  
15 You are excused.

16 THE WITNESS: Thank you.

17 MS. ANDERL: We'd like to request that  
18 Mr. Hooks be excused from further attendance so he may  
19 travel back to Denver. Sometimes witnesses are  
20 expected to remain so they may be recalled, but I'd  
21 like to have him excused.

22 JUDGE CAILLE: Is there any objection?  
23 Hearing nothing, you are excused. Well take our  
24 morning recess until 11 o'clock.

25 (Recess.)

00302

1                   JUDGE CAILLE: We have returned from our  
2 morning recess, and we have argument on several  
3 exhibits that have been offered and marked, and I have  
4 asked Qwest to review the memorandum that Mr. Harlow  
5 submitted to us this morning, and I would like to know  
6 if you are prepared to respond orally at this time.  
7 Just to let you know, Mr. Owens, I think you would  
8 probably go first, and then Mr. Harlow would respond  
9 and then you would have rebuttal.

10                   MR. OWENS: Thank you, Your Honor. Yes, I  
11 suppose with the caveat that there hasn't been a lot of  
12 time to analyze the points here, we will respond.

13                   JUDGE CAILLE: Then the next matter is to  
14 clear the room. I assume the argument will touch on  
15 these confidential matters, so we will need to clear  
16 the room of anyone who has not signed the  
17 confidentiality agreement.

18                   MR. HARLOW: I didn't think Your Honor's  
19 precaution is a good one from our perspective. I don't  
20 know whether Mr. Owens tends to get into the  
21 confidential information or not.

22                   MR. OWENS: It will be somewhat difficult to  
23 avoid discussing the specifics; although, I suppose  
24 from an order standpoint, it seems like we are going to  
25 be discussing matters that at least a portion of our

00303

1 position will be that there isn't a proper evidentiary  
2 foundation for the admission of these documents. In  
3 order to address that, we are having to make some  
4 assumptions about what Mr. Teitzel, the witness through  
5 whom these exhibits are being offered, would say about  
6 them, and I'm going to make the points based on what I  
7 believe he will say. It's a little awkward to do that  
8 before he's been asked the questions.

9           COMMISSIONER HEMSTAD: Would you prefer to  
10 hold this discussion until that point is reached in the  
11 presentation and all the questions are asked?

12           MR. OWENS: I recognize that there is perhaps  
13 a problem in that it's most economical to try to  
14 address common arguments that pertain to all the  
15 exhibits simultaneously or nearly as simultaneously as  
16 we can, but I do agree with Commissioner Hemstad that  
17 it would be more orderly for the proponent of the  
18 exhibits to attempt to establish an evidentiary  
19 foundation, and then you can make your judgment as to  
20 whether that foundation has been laid after we make our  
21 objection.

22           I suppose one way to do it is to ask the  
23 witness foundational questions. When I talk about  
24 foundation, I'm not talking about the narrow issue of  
25 are these documents copies of documents that physically

00304

1 appeared in one or more of Qwest's files. We have  
2 agreed that counsel doesn't need to establish that  
3 fact. However, from a review of the brief, it appears  
4 that they are being offered to establish the existence  
5 of a strategy, or one or more strategies, and it  
6 appears to me at this point, there is no evidentiary  
7 foundation that would establish that these documents  
8 are evidence of such a strategy, and that's what would  
9 have to be established.

10 MR. HARLOW: Your Honor, if I could briefly  
11 address the foundational question. I might clarify a  
12 little bit what we are agreeing with Qwest on and what  
13 we are not. We entered into a stipulation with Qwest  
14 that states that Qwest will stipulate to the  
15 authenticity of the cross exhibit documents within five  
16 days after receiving notice that MetroNet intends to  
17 use them, and we provided that notice on Tuesday of  
18 last week, so that date has come and gone. There was a  
19 provision which states that if Qwest cannot stipulate,  
20 Qwest will make available witnesses with knowledge of  
21 these documents for deposition. So I think the first  
22 thing we need to clarify is whether Qwest is  
23 stipulating to authenticity, and my understanding is  
24 they are, and I think while we didn't spell out what's  
25 meant by authenticity in the stipulation, I think we

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1 are intending that their stipulation is that they are  
2 authentic business records of Qwest, which means they  
3 can come in with other evidentiary requirements met  
4 under the business exceptions records or hearsay rule.

5 CHAIRWOMAN SHOWALTER: We are starting to get  
6 into the arguments, but we haven't got in front of us  
7 the issue yet, but we are having a discussion about  
8 what the issue is going to be, but we haven't yet  
9 gotten an offer to read these --

10 MR. HARLOW: I'm trying to narrow the issues  
11 a bit with trying to deal with one of the foundational  
12 issues, which is authenticity of these documents as  
13 business records of Qwest, and the reason I'm raising  
14 it is I think our stipulation addresses that, and we  
15 can dispense with that and take it further down the  
16 road with other objections.

17 MR. OWENS: I thought I said that we were not  
18 contesting that they were true copies of documents that  
19 physically appeared in Qwest's files. I believe that  
20 covers the substance of the stipulations. However,  
21 that is not by itself -- the fact that they are not  
22 inadmissible under the hearsay rule, which, of course,  
23 the hearsay rule doesn't bind this Commission anyway  
24 except it can't make findings exclusively on the basis  
25 of hearsay, doesn't go to the issue of whether there is

00306

1 a proper evidentiary foundation that they are what they  
2 purport to be, as counsel is arguing them, namely,  
3 evidence of a corporate strategy.

4 JUDGE CAILLE: Mr. Ahlers, are you on the  
5 line? Fred, could you cut the line out? Thank you.  
6 I'm not clear, Mr. Owens. Are you objecting to doing  
7 this up front right now?

8 MR. OWENS: I'm saying that it's somewhat  
9 awkward to address our position that one of the reasons  
10 why most of these documents should not be admitted is a  
11 lack of foundation without the witness having been  
12 asked the foundational questions.

13 MR. HARLOW: Your Honor, to clear one  
14 formality, I think we have enough based on the  
15 stipulation that these are business records and the  
16 purposes for which we intend to offer them that we can  
17 go ahead and make our offer at this time and that  
18 Mr. Owens can then state his objection, and then  
19 presumably, if it's sustained on certain grounds then I  
20 may need to do some foundational cross, and if it's  
21 overruled, I will need to do recross on these exhibits.  
22 So we offer Exhibits 16-C, and 86-C through 99-C. I  
23 believe there is a typo in the memo. 299-C is listed  
24 twice, so let me make sure those are the correct  
25 numbers.



00307

1                   CHAIRWOMAN SHOWALTER: Counsel, if you could  
2 tell me, what is 16-C since 16-T is Mr. Teitzel's  
3 testimony?

4                   MR. OWENS: 16-C was a memorandum dated  
5 August 27.

6                   MR. HARLOW: That's what I have, Your Honor.

7                   MR. CROMWELL: I believe Mr. Teitzel's  
8 testimony is 76.

9                   CHAIRWOMAN SHOWALTER: Is it 76-C?

10                  MR. OWENS: 76-T is Mr. Teitzel's testimony.

11                  CHAIRWOMAN SHOWALTER: I apologize.

12                  MR. HARLOW: I believe actually that we are  
13 offering -- I need to correct the memorandum in my  
14 offer. It would be 86-C through 97-C and then skipping  
15 98 for the time being. I don't believe the Company is  
16 objecting to that, and then the final offer would you  
17 99-C.

18                  CHAIRWOMAN SHOWALTER: So in your memorandum  
19 where it says 99-C and 99-C that was a duplication.

20                  MR. HARLOW: Yes. We did skip the 98-C  
21 correctly.

22                  JUDGE CAILLE: 98-C should be stricken and  
23 replaced with 97?

24                  MR. HARLOW: No. 97 and the other exhibits  
25 that we've marked are simply to be dealt with later.

00308

1 They are a different issue. There may not be any  
2 issues as to those. We are just skipping 97 for  
3 purposes of this argument, but we are still intending  
4 to offer later on. 98 we are offering at this time and  
5 99 we are offering at this time.

6 JUDGE CAILLE: Any objection?

7 MR. OWENS: First, Your Honor, there seems to  
8 have been, notwithstanding our attempt to resolve this,  
9 some kind of miscommunication. Qwest did not indicate  
10 that it objected to 99-C since that is a document that  
11 at least on its face was prepared by Mr. Teitzel and  
12 within a reasonable period of time to Qwest's  
13 application in this case. I don't think there is any  
14 need to argue about that.

15 JUDGE CAILLE: I'll admit 99-C into the  
16 record then.

17 MR. OWENS: I think counsel is correct that  
18 we did not object to Exhibit 98-C.

19 JUDGE CAILLE: 98-C is admitted as well.

20 MR. OWENS: I guess since counsel has rested  
21 on the stipulation, I should note that these documents  
22 are exclusively not the results of a normal data  
23 request response, but they were produced in, as  
24 Ms. Anderl stated, civil litigation. There is no  
25 indication on all of them, except for, I believe,

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1 three, which would be Exhibit 86-C, 87-C, and 89-C as  
2 to who authored the documents and to whom they were  
3 directed.

4           Without exception, there is no evidence as to  
5 what use, if any, was made of them. They appear to  
6 simply be documents that were produced from Qwest's  
7 files in response to civil discovery in another matter,  
8 and there isn't any evidence to support the repeated  
9 references in the memorandum that they show a strategy  
10 or more than one strategy. In fact, some of them are  
11 labeled drafts. There is no indication whether anyone  
12 in a responsible policy making role at Qwest ever took  
13 any specific action based on these documents, and it  
14 seems to me, Your Honor, that before you can admit  
15 these as evidence of counsel's proffering them for a  
16 strategy so that, as he indicates in his oral  
17 statements, he can argue certain matters on brief, you  
18 need to have some evidence that, in fact, they were a  
19 strategy or part of a strategy.

20           I guess counsel wants to deal with them as a  
21 package, but I think it's important to address them  
22 individually. 86-C describes itself on the first page  
23 as a rough draft. 87-C is near in time, and it is  
24 signed by people who is last name is provided, but  
25 there isn't an indication, no evidence, at least so

00310

1 far, that any specific action was taken on this. There  
2 are some recommendations provided. In other words, on  
3 the last page, it summarizes the document as saying,  
4 These are a few of our ideas. There isn't any evidence  
5 at this point that these ideas were ever acted on.

6 With regard to 88-C, there is no indication  
7 who prepared this or what was done with it. It asks  
8 questions, but there is certainly no evidence that  
9 strategy is embodied in or was forwarded by the  
10 document. Exhibit 89-C does have names on it, but  
11 again, at the end of the document, it indicates that it  
12 is in some way a preliminary analysis and needs to have  
13 further work done. Again, no evidence that a strategy  
14 was based on it.

15 Exhibit 90-C, in the memorandum, counsel  
16 testifies at Page 3 that the specific price increase  
17 that is described here as being the Company's filing  
18 did not go into effect. Well, there is no evidence  
19 that the specific price increase actually was filed, no  
20 evidence on the record. Exhibit 91-C, again, there  
21 isn't any evidence that 91-C reflects a strategy that  
22 Qwest acted on. Exhibit 92-C, again, no indication of  
23 who prepared it or what, if anything, it was used for.  
24 It just indicates that there are some recommendations  
25 at the top of the page, not any action taken on them.

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1           Exhibit 93-C is an extensive document, again,  
2 not identified as to recipient or what action was taken  
3 on the basis of these words. Certainly, nothing to  
4 support the broad claims that counsel is making on the  
5 basis of the document with regard to Centrex Prime.  
6 Exhibit 94-C, there is no indication of who prepared  
7 this or what it was used for or that Qwest took any  
8 specific action on it. Most of it appears to have to  
9 do with activities in Iowa, not Washington. Exhibit  
10 95-C, similarly, no indication of author or any action  
11 taken on the basis of it or who received it.

12           Exhibit 96-C, no identification of author or  
13 action taken on the basis of it, no indication whether  
14 it's a draft or was superseded at some point in time.  
15 97-C similarly, it has a date, but there is no  
16 indication of who prepared it or what action, if any,  
17 was taken on the basis of it. So I don't believe that  
18 there is a sufficient evidentiary foundation to admit  
19 those documents as evidence of strategy as counsel has  
20 offered.

21           CHAIRWOMAN SHOWALTER: Counsel, can you just  
22 tell me again on 93-C what your objections were? I was  
23 getting behind in writing it down.

24           MR. OWENS: There is no indication of who  
25 received it or what, if any, action was taken on the

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1 basis of it. It appears to recite certain goals and  
2 product observations, but there is certainly no  
3 indication that it embodies any kind of strategy with  
4 regard to Centrex Prime as counsel offers it. It seems  
5 that we have no idea who received it or what use was  
6 made of it. It asks a lot of questions. I suppose  
7 that's normal in a large company, but there is no  
8 indication, at least on this record, of any action  
9 being taken on the basis of it.

10 An additional basis is that, as Ms. Anderl  
11 pointed out, most of these documents are stale as far  
12 as this case is concerned. Qwest filed its petition  
13 June 7th of this year. With the exception of 97-C,  
14 which has a date of October 20th, 1999, these documents  
15 all appear to be from a period a year and a half or  
16 longer before Qwest filed its application, and as such,  
17 they do not address or do not tend to make more or less  
18 likely the existence of a fact in issue as to whether  
19 or not products have sufficiently available substitutes  
20 and whether Qwest has a significant captive customer  
21 base in the wire centers that Qwest is seeking to have  
22 classified as competitive for the services involved in  
23 this case.

24 I think more fundamentally, if this issue of  
25 strategy relates to Qwest's activities, Qwest has

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1 introduced evidence, and if you find that there are  
2 sufficiently available alternatives, then Qwest's  
3 strategy for the pricing of its own services is really  
4 fundamentally irrelevant to your decision-making  
5 process. If you don't find that there are sufficiently  
6 available alternatives, then, again, Qwest's strategy  
7 for the pricing of its product and services is also  
8 irrelevant. In the first case, you should grant the  
9 petition, but in the second case you shouldn't; that  
10 is, if you find that there are sufficiently available  
11 alternatives and Qwest does not have a significant  
12 customer base, the strategy that you are being asked to  
13 consider with these exhibits really is quite beside the  
14 point, and I think that is the case either way.

15 CHAIRWOMAN SHOWALTER: On that point, does  
16 the capability of Qwest to engage in this kind of  
17 activity bear on the question of what constitutes  
18 effective competition? In other words, do we need a  
19 higher threshold for effective competition if on the  
20 other side of the equation there is a capability of  
21 strategies for raising prices, for example?

22 MR. OWENS: I think what you found in the  
23 990022 case is that when there is effective  
24 competition, you expect there to be changes in prices  
25 and that the market will control ultimately what prices

00314

1 are set. So I think it's the reverse; that if you find  
2 that there are, as I said, sufficient alternatives  
3 available and that Qwest lacks a significant captive  
4 customer base, then you would normally expect  
5 competitors in the marketplace to resolve strategies to  
6 compete with one another, and those strategies would  
7 involve repricing their services from time to time.

8 COMMISSIONER HEMSTAD: Are you through with  
9 your principle arguments? I have a couple of  
10 questions, but I don't want to interrupt you.

11 MR. OWENS: Just give me a second. There is  
12 also one ground that's argued here at the end of the  
13 memo without really any support is the claim that  
14 because of one or more of the documents shows that  
15 Centrex Prime is subject to individual case-basis  
16 pricing that somehow that means it's not subject to  
17 resale and that these documents are relevant for that  
18 purpose. There is no foundation that that's the case.  
19 The witness hasn't been asked, or there is no evidence  
20 through this witness or any witness as to whether or  
21 not the fact that Centrex Prime is subject to  
22 individual case-basis pricing means that it's not  
23 subject to resale as a retail product. As a matter of  
24 law, it's subject to resale. So to the extent that  
25 that argument is being advanced through the admission



00315

1 of, I believe it is 97-C, there is simply no basis for  
2 you to rule that that's a ground for admission of that  
3 exhibit.

4 CHAIRWOMAN SHOWALTER: Am I right that 97-C  
5 is not being offered at this point?

6 MR. HARLOW: You are correct, and maybe it's  
7 just a mistaken reference, because I thought 97-C was  
8 probably going to come in without an objection.

9 CHAIRWOMAN SHOWALTER: We had 98 and 99, they  
10 did come in without objection, and 97 I thought was not  
11 being offered at this point.

12 MR. HARLOW: I thought because of the vintage  
13 was coming in without objection. If it is going to be  
14 objected to, I guess I'd like to offer that as well and  
15 take that up at the same time as the others.

16 MR. OWENS: The memo doesn't mention 97-C.  
17 The argument appears to refer to it. We did not object  
18 on the basis of staleness; however, we do object on the  
19 basis of the lack of foundation, what I mentioned  
20 before.

21 MR. HARLOW: Your Honor, we offer 97-C, and I  
22 apologize for the confusion. This memo had to be put  
23 together by someone else in my office, and it was late  
24 and time was short.

25 MR. OWENS: Thank you. That concludes my

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1 argument on the opening part.

2 COMMISSIONER HEMSTAD: Just a couple of  
3 questions. You indicated these documents have been  
4 previously produced by superior court civil litigation?

5 MR. OWENS: Federal District Court antitrust  
6 litigation.

7 COMMISSIONER HEMSTAD: I take it that was an  
8 action by the resellers against U S West.

9 MR. OWENS: By MetroNet. They are not  
10 technically restyling themselves as a reseller.

11 COMMISSIONER HEMSTAD: Were they produced now  
12 as a result of the data request or in a position of  
13 MetroNet and simply offered here.

14 MR. OWENS: My understanding, Commissioner  
15 Hemstad, that this was the discovery dispute that  
16 Ms. Anderl referred to earlier in responding to  
17 Mr. Cromwell before our break that Qwest had in the  
18 antitrust case produced the documents. MetroNet  
19 sought, essentially, a duplicative production through  
20 its data request here, and Qwest objected to that, and  
21 as a resolution of that dispute, Qwest agreed to allow  
22 MetroNet to review and then take whatever action in  
23 this case it deemed appropriate based on the fact that  
24 it physically already had the documents.

25 COMMISSIONER HEMSTAD: Is that case still

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1 proceeding, or is that case completed?

2 MS. ANDERL: If I may, it's still in the  
3 discovery process. I guess I just want to emphasize  
4 that the documents were not produced in response to  
5 data requests in this docket, in our view. They were  
6 documents that MetroNet already had that in a  
7 compromise of a discovery dispute, we allowed them to  
8 review.

9 COMMISSIONER HEMSTAD: I was just trying to  
10 get the procedural history in mind. Just a general  
11 question -- in asking this question, I'm not making any  
12 inference on the merits, but you say there is no  
13 evidence of a strategy or in some instances as to who  
14 is the author and so on, but there is no question these  
15 are business records. How is MetroNet to determine  
16 those issues without at least starting with the  
17 documents? Are you suggesting it would have to know  
18 who prepared or to whom they were sent or who saw them  
19 or whether they were drafts or final documents and so  
20 on? They would have to have the answers to all of  
21 those questions before they were offered here as part  
22 of a theory of a general strategy?

23 MR. OWENS: I believe they would have to have  
24 sufficient evidence for you to find that they were what  
25 they are being offered for, namely, ingredients or

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1 evidence of an overall strategy. At this point, all  
2 you have is copies of paper taken from files. You have  
3 no indication that anyone ever saw them, no indication  
4 that any action was taken on this. So you would have  
5 to have some evidence in this record establishing those  
6 facts that they are what they purport to be.

7 COMMISSIONER HEMSTAD: How would you do that;  
8 through depositions and further data requests?

9 MR. OWENS: Certainly, those are ways that  
10 that could be done.

11 COMMISSIONER HEMSTAD: But it would all have  
12 to be established in advance before offering them and  
13 then further exploring it with the witness?

14 MR. OWENS: Yes, before they are admissible.  
15 If they choose to explore them with Mr. Teitzel or not,  
16 there still needs to be a proper evidentiary foundation  
17 for you to receive them in evidence.

18 JUDGE CAILLE: Mr. Harlow?

19 MR. HARLOW: Thank you, Your Honor and  
20 Commissioners. I appreciate you bearing with this  
21 rather lengthy argument. Let me give a little  
22 background first. Just remind you I'm representing  
23 MetroNet and Advanced Telcom Group in this proceeding.  
24 Both of them are active resellers of Centrex Plus  
25 service. I think the record in this proceeding

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1 establishes clearly that Centrex Plus is certainly a  
2 popular vehicle of choice for resellers. We have data  
3 from one of the exhibits that Ms. Jensen discussed that  
4 was not objected to, Exhibit 17-C, that shows that  
5 currently, and this was as of February '99, 41,143  
6 Centrex Plus lines are being resold in the State of  
7 Washington. Ms. Jensen could not testify as to whether  
8 or not any Centrex Prime lines are being resold, but we  
9 have Record Requisition No. 1 to address that.

10 MetroNet and ATG feel as though they've been  
11 getting slowly but surely squeezed out of the Centrex  
12 Plus resale market in the State of Washington, and that  
13 is with some regulatory constraint. The service is  
14 currently partially classified as competitive, and we  
15 have a real issue, which is the subject of the  
16 antitrust case, with regard to the pricing of the  
17 quote, competitive portion of Centrex Plus.

18 MetroNet and ATG are very concerned that if  
19 competitive classification is granted to the entire  
20 service that indeed they will be squeezed out, and this  
21 is what Mr. Wood testifies about at Pages 34 and 35 of  
22 his responsive testimony. Qwest responds in numerous  
23 testimony, but perhaps it's best stated in Dr. Taylor's  
24 testimony at Pages 36 to 37 that the Commission need  
25 not worry about this. That Qwest can't possibly

00320

1 squeeze out the competitors for a number of reasons,  
2 including the reason that Mr. Owens stated here this  
3 morning which is that supposedly, there is effective  
4 competition which would prevent this kind of  
5 behavior, but that begs the questions. We believe the  
6 documents show that, indeed, Qwest has market power,  
7 continues to have it, and is exercising it, is thinking  
8 about exercising it in the future and plans to exercise  
9 it in the future.

10           Again, I won't go document by document. I  
11 think they are best addressed as a package, and bearing  
12 in mind what they are offered for, and Mr. Owens  
13 takes -- Yes, we put it under the broad category of  
14 corporate strategy, but I think Mr. Owens takes a  
15 narrow view of strategy and says, Well, if you can't  
16 show that any of this was implemented, then you really  
17 can't have laid a foundation this is corporate  
18 strategy.

19           Well, in fact, if you recall Ms. Jensen's  
20 testimony yesterday, and Exhibit 19, which is now a  
21 public document, Ms. Jensen agreed that the Company has  
22 succeeded in implementing a good deal of its strategy  
23 already, including new termination liability, amount,  
24 terms, and conditions. They've successfully introduced  
25 the chip-in charge. They've eliminated the deal rate,

00321

1 and they've increased prices in Washington. So  
2 clearly, some of it's been implemented, but going to  
3 more of the documents where admittedly not everything  
4 has been implemented, the strategy of the Company  
5 should not be so narrowly construed as what the Company  
6 is actually pursuing on a company-wide basis.

7         It's a rare opportunity that we have in this  
8 kind of proceeding to have these kinds of strategy  
9 documents, because typically, and I often ask for  
10 strategy documents, and that's what we ask for here,  
11 and the Company responds that that is overbroad and  
12 unduly burdensome and so on and so forth, and we either  
13 have a discovery dispute or we give up, but often  
14 times, the scope of that kind of discovery is narrowed.  
15 But the Company here, and I commend the Company for its  
16 willingness to let us use documents we already had in  
17 our possession so that we could have access to this  
18 kind of document in this case, but here we are dealing  
19 with a situation where the Commission is, in part,  
20 trying to predict the future, and part of this exercise  
21 in this docket is to determine whether today there is  
22 an existence of effective competition, and certainly,  
23 we think the documents go to that.

24         But in addition, we believe there is a  
25 critical public interest element to this docket, and as

00322

1 part of that public interest element, the Commission  
2 needs to look to the future as best it can in terms of  
3 what the Company is planning to do, might do, is  
4 working on, things it could do, and these are the kinds  
5 of things these documents go to. This shows what Qwest  
6 is thinking, what they are working on, what their  
7 motivations are, what their rationale is. In the case  
8 of the documents we have put together in a packet, we  
9 think we see a consistent direction toward curtailing  
10 Centrex Plus resale, raising the price of the service,  
11 pricing it through per collocation pricing in a way  
12 that is not attractive, rolling out the Centrex 21 to  
13 compete with Centrex resellers at the low end of the  
14 market, the small business customers, which the  
15 documents acknowledge Centrex 21 is not suitable for  
16 resale because of its pricing, and then rolling out  
17 Centrex Prime in '97, which reimposes the very per  
18 location pricing and the bundling of features and  
19 access lines which the Commission twice told this  
20 company that it should not do because it was  
21 anticompetitive, in Docket 911488, the Centrex Plus  
22 case, and again in 950200, the rate case, and they've  
23 been able to do this because the pricing is ICB. It's  
24 not publicly filed anywhere. We haven't had access to  
25 it until this case.



00323

1           Why is this relevant in spite of the  
2 foundational objections of Mr. Owens? Quite simply,  
3 it's because of the nature of the case again. This is  
4 not a criminal case. We don't have to prove as  
5 intervenors criminal conspiracy. We don't have to  
6 prove that, in fact, and their need not be a finding of  
7 fact to deny this petition, but the Company has XYZ  
8 strategy. This is simply a window into the Company's  
9 thinking, the possibilities, things the Commission  
10 needs to be concerned with in determining the public  
11 interest.

12           So since these documents don't go to ultimate  
13 facts in the case, even I think under the evidence  
14 rules that would apply in superior court or federal  
15 court, I don't think that the kind of foundation that  
16 Mr. Owens is advocating needs to be shown, because  
17 these don't go to ultimate facts. These go to issues  
18 of concern to the public interest, but I think it's  
19 also important to bear in mind that this Commission  
20 does not apply the rules of evidence of superior court.  
21 Commissioner Hemstad's question kind of hinted at this  
22 is that we would be here for another day or two  
23 cross-examining various witnesses to lay that kind of  
24 foundation that Mr. Owens is suggesting is necessary.  
25 I don't think it's necessary. I don't think it's

00324

1 efficient for this Commission, and certainly, it will  
2 preclude the Commission from getting this kind of  
3 window into the Company's thought processes and  
4 strategies and goals and how they operate and how they  
5 move the Commission along through their regulatory  
6 initiatives. I think this is something the Commission  
7 ought to feel lucky to have in this case, because  
8 usually we simply have a company saying, "Well, here's  
9 why we want to do this," and the intervenors and maybe  
10 Staff and Public Counsel say, "No, No, No. We think  
11 they have another goal." Here we have through the  
12 Company's own business records documents that support  
13 the intervenors' contentions as to how the Company  
14 might use competitive classification or might abuse  
15 competitive classification if it were granted.

16 CHAIRWOMAN SHOWALTER: You touched on this,  
17 but what is your answer to Mr. Owens' arguments that  
18 this doesn't go to the question of whether there is or  
19 isn't effective competition. If there is effective  
20 competition, we should competitively classify. If  
21 there isn't, we shouldn't.

22 MR. HARLOW: Mr. Wood addresses this in his  
23 prefile testimony, and we will address it on brief. We  
24 don't agree with the Company's theory that you must  
25 competitively classify if you find there is effective

00325

1 competition. We really think it's a two-part test. We  
2 think you must find effective competition under the  
3 statute, but that you may deny, because the statute is  
4 phrased in the permissive: The Commission may grant  
5 competitive classification if it finds, and therefore,  
6 since you may deny even if you find effective  
7 competition, it's permissive, and we think that's where  
8 the public interest element comes in.

9           Now, of course, the admissibility of  
10 documents is not governed by one party or the other's  
11 theory of the case. So even though the Commission may  
12 ultimately disagree with our view of the statute, we  
13 think it's appropriate for the evidence to come in so  
14 we have evidence to support our argument on brief.

15           CHAIRWOMAN SHOWALTER: Are these documents  
16 that were provided in the discovery in this case, or  
17 did you have them and you were bound to be using them  
18 in the other case and Qwest allowed you to use them in  
19 this case?

20           MR. HARLOW: I'm glad you asked because we  
21 take a different view of the Company; although, you can  
22 understand that the parties have different views of  
23 this, and the reason is our stipulation states quote,  
24 "MetroNet will use the documents Qwest produced in  
25 MetroNet v. U S West, Civil Case No. C-00013C as

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1 responses to Request Nos. 43 to 46 and 48." And then  
2 it goes on to state that they will be subject to the  
3 protective order.

4           So we clearly thought these were responses,  
5 and just by way of background to help you understand,  
6 part of the reason, my understanding of why the Company  
7 did this is there was such a huge filing of cases. We  
8 literally have a number of attorneys that have spent  
9 many, many weeks reviewing these documents, and we went  
10 down to a fairly small stack, and part of that is  
11 because the requests in the antitrust case are much  
12 broader than the requests were here. I guess from a  
13 principle perspective, I don't think Mr. Cromwell would  
14 have been able to review the documents, given their  
15 huge, huge volume.

16           CHAIRWOMAN SHOWALTER: Does the stipulation  
17 cover more than the documents that have been introduced  
18 here?

19           MR. HARLOW: The stipulation, yes, allowed us  
20 to use all documents in this case, and again, that was  
21 in part to benefit Qwest, because absent that  
22 stipulation, they would have had to review this huge  
23 number of documents and winnow them down to documents  
24 that were responsive to our narrower requests in this  
25 docket, and we did that work for them, in effect.

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1                   CHAIRWOMAN SHOWALTER: What is your answer to  
2 this staleness question or objection that was raised?  
3 Why are these documents relevant to this company and  
4 this petition?

5                   MR. HARLOW: If I may make an analogy, if I  
6 were to hatch a conspiracy to assassinate the president  
7 in 1995, and I created a series of documents that  
8 showed the conspiracy and my reasons therefore and how  
9 I was going to accomplish it, but for some reason, that  
10 conspiracy were foiled and the president survived, and  
11 then I tried again in '97 and I create some more  
12 documents that again show my motivation and what I'm  
13 intending to do, and then that's foiled and I try it  
14 again in the year 1999 and 2000.

15                   By now, I've already written a bunch of times  
16 why I was doing this and my motivations, and so I'm  
17 simply outlining how I plan to accomplish it, and now  
18 this time I get caught. Again, this is not a perfect  
19 analogy because we are not in a court of law, and  
20 conspiracy isn't the ultimate issue in this case, but  
21 clearly those earlier documents will be relevant to  
22 show the motivation and the rationale and the method  
23 that was intended behind the conspiracy, and I think  
24 that's clearly what we have here, the same goal,  
25 grandfathering. I could have brought in documents from

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1 '91 and '92 showing how per location pricing was  
2 intended to reduce what was then called arbitrage or  
3 resale. The company has been trying to do the same  
4 thing for many, many years, and this Commission,  
5 through our efforts, has been trying to tell the  
6 Company to try to stop doing these things for many  
7 years, and quite simply, I think, particularly given  
8 that we filed an antitrust case against the Company, I  
9 would expect they would be more careful about what  
10 they'd say in some of their documents after they knew  
11 that was coming.

12 CHAIRWOMAN SHOWALTER: Finally, what is your  
13 answer to some of the documents that aren't identified  
14 as to author. They are just pieces of paper that come,  
15 admittedly, from the Company. What is your response to  
16 that issue?

17 MR. HARLOW: Again, we are not trying to  
18 prove as an ultimate issue in this case any particulars  
19 in the documents. What we are trying to do is show you  
20 the corporate culture of Qwest, what they are thinking  
21 about, what they are working on, and that gives you a  
22 better basis to form a decision as to whether or not  
23 the Commission needs to be concerned about continuing  
24 activities in this vain, continuing efforts to  
25 grandfather Centrex Plus, to migrate customers to

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1 Centrex Prime and Centrex 21, which my belief that the  
2 Record Requisition No. 1 is going to show a dramatic  
3 difference between resale volumes of Centrex Plus  
4 compared to the other two products.

5 JUDGE CAILLE: Anything in response,  
6 Mr. Owens?

7 MR. OWENS: Yes, Your Honor.

8 JUDGE CAILLE: Mr. Cromwell, would you like  
9 to speak as to your related issue?

10 MR. CROMWELL: I would. If it's more  
11 convenient for the Commission to consider the  
12 procedural question separate from the admissibility of  
13 these documents, I would be happy to defer that to  
14 after lunch, if it's convenient for them.

15 CHAIRWOMAN SHOWALTER: First, just on the  
16 admissibility of the documents, do you have any  
17 position one way or the other?

18 MR. CROMWELL: Yes. We support the  
19 admissibility of the documents.

20 MR. HARLOW: One thing I want to add on the  
21 staleness is, and most of this goes to the weight.  
22 This is not a jury. This is an experienced bench, and  
23 I expect full well that this Commission will take into  
24 account the issues that Mr. Owens has raised in  
25 determining what weight to give these documents.

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1 CHAIRWOMAN SHOWALTER: I'd just like to hear  
2 from any of the parties. Do you have a position to the  
3 admissibility of the documents?

4 MS. JOHNSTON: No, we don't.

5 MS. RACKNER: TRACER supports the  
6 admissibility of the documents. We believe the  
7 documents are important. I guess I would just make the  
8 point that Mr. Harlow just made. Most of Mr. Owens'  
9 comments went to the weight of the documents, whether  
10 one can draw an inference or a strategy or a conspiracy  
11 from the documents. Certainly, the Commission is  
12 experienced enough to read the documents and decide for  
13 itself whether it draws that inference.

14 MR. WEIGLER: I agree.

15 MR. KOPTA: We would also support the  
16 admissibility of the documents. I think one of the  
17 issues that has been raised up to now is also the  
18 ability of resale to act as a market check, and so  
19 anything that reflects on the ability of Qwest to  
20 continue to be able to manipulate resale so that it  
21 can't be used as a market check would undermine any  
22 finding of effective competition, and I realize that  
23 these documents may not be substantive on those  
24 grounds, but certainly, to the extent that they go  
25 toward even the possibility or the opportunity to have



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1 an impact on the ability of resale to act as any kind  
2 of market check is something that the Commission needs  
3 to consider.

4 JUDGE CAILLE: And response now, Mr. Owens?

5 MR. OWENS: Thank you, Your Honor. First,  
6 counsel for MetroNet misstated Ms. Jensen's testimony.  
7 I believe she testified quite clearly that Qwest had  
8 not increased the prices for Centrex Plus, and he  
9 stated that she did.

10 He also indicated that you are being asked to  
11 predict the future in this case. I believe that's  
12 clearly untrue. The statute under which this case is  
13 brought does not suggest that you should engage in  
14 attempting to predict the future. Your task is to,  
15 based upon the facts as they exist, determine whether  
16 or not Qwest's services are subject to effective  
17 competition as set out in the statutory criterion.

18 Counsel essentially asks you to ignore the  
19 issue that Qwest has raised by repeatedly referring to  
20 what he claims the documents show as what Qwest is  
21 thinking. There isn't any evidence that these  
22 documents show what Qwest is thinking. No person is  
23 identified, with the exception of three exhibits, as an  
24 author or recipient. No indication that any policy  
25 maker at Qwest ever saw these documents or relied on

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1 them for anything or even thought about them. So I  
2 don't believe you can simply hurdle the objection that  
3 way by simply assuming that the evidentiary foundation  
4 has been laid when the basis of our objection is that  
5 it hasn't.

6           Inexplicably, I believe counsel argued that  
7 somehow the resellers have not had access to Centrex  
8 Prime. There is no evidence of that. As a resale  
9 service, Centrex Prime is subject to resale. Counsel  
10 for the joint CLECs argued that under some kind of  
11 gauzy standard that anything that shows that resale may  
12 not be effective as a market check should be admitted.  
13 Let's be very clear. There is nothing in any of these  
14 documents that indicates that any resale under the  
15 terms of the Telecommunications Act reselling or retail  
16 service subject to the wholesale discount was in any  
17 way being restricted or limited.

18           The conspiracy argument, again, this simply  
19 asks you to make a decision on evidentiary objection  
20 based on some assumptions about motives which aren't  
21 relevant. We are not in a conspiracy case. Counsel  
22 admits that. Counsel even admits that findings on  
23 strategy are not even necessary for your decision in  
24 this case. He asks you to consider this under the  
25 permissive language in the statute that says you may

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1 grants competitive classification.

2           Well, you didn't employ that standard in the  
3 990022 case. You made very specific findings on the  
4 existence of effective competition, and you granted  
5 limited competitive classification based on those  
6 findings. This is asking you to make a significant  
7 departure from that, and as I said, there is no  
8 evidentiary foundation for the admission of these  
9 exhibits, and the objective that you are being asked to  
10 consider is certainly not well defined in any case,  
11 notwithstanding the existence of effective competition,  
12 which would, based on a finding of that competition,  
13 prevents Qwest from effecting the market through its  
14 pricing decisions that you nonetheless show the basis  
15 of some undefined strategy to do that, deny the finding  
16 of effective competition in the competitive  
17 classification.

18           JUDGE CAILLE: Mr. Cromwell, is there  
19 anything else we need to know?

20           MR. CROMWELL: For the benefit of Chairwoman  
21 Showalter -- I think Commissioner Hemstad was here when  
22 I was making my earlier statement on the record -- I  
23 would simply reiterate that it's fundamentally a  
24 question of fairness. The stipulations between the two  
25 parties in question clearly identified these documents

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1 as responsive to a data request, Public Counsel's data  
2 request, which requested the responses provided to all  
3 other parties is in the record in this case.  
4 Ms. Anderl's separate letter, which I referred to  
5 previously, which is not in the record, which I  
6 received on October 24th, stated that they had not  
7 produced anything in response to those data requests,  
8 clearly contradicted by the stipulation she entered  
9 into with ATG and MetroNet.

10 I believe it's fundamentally a question of  
11 both fairness and abuse of the discovery process. If  
12 parties are free to object to a data request and enter  
13 into a side deal for production of documents -- I think  
14 the facts here are very unusual in that you have  
15 litigation which resulted in these documents, but put  
16 that aside and look at the policy issue of the  
17 discovery process, and if parties are free to enter  
18 into side agreements to resolve discovery disputes  
19 wherein those documents are not produced to all other  
20 parties, it places all other parties at a severe  
21 disadvantage.

22 The only way we became aware of these  
23 documents was through the reference in Mr. Wood's  
24 testimony. Upon following up thereafter, as I  
25 previously stated, we discovered this wasn't one memo

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1 but a whole bunch of documents, and that they had  
2 reached this side deal, and my request was first a  
3 statement supporting admissibility, and second, an  
4 admonishment of the Company to go to it's conclusion  
5 that it was appropriate to enter into a side agreement  
6 regarding discovery wherein that discovery was not  
7 produced to the other parties in the proceeding, or at  
8 some minimum, at least, a notice that such a thing had  
9 occurred.

10 JUDGE CAILLE: Anything further?

11 MS. ANDERL: I don't believe that the  
12 commissioners were on the bench when Mr. Cromwell and I  
13 had this prior discussion, so even if my responses are  
14 in the transcript, if I might just give a brief oral  
15 response. I feel very strongly about adherence to the  
16 Commission's discovery rule, and I believe we do a very  
17 good job of that. I believe that occasionally in order  
18 to avoid motions to compel, parties do come up with  
19 creative solutions to what are otherwise objectionable,  
20 overly broad, and unduly burdensome data requests.  
21 That's what happened here.

22 We did not produce documents in response to  
23 the enumerated data requests. We reached a separate  
24 arrangement with Mr. Harlow where his clients were  
25 enabled by us to use documents they already had in

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1 their possession. Mr. Cromwell and Public Counsel  
2 received notice that documents had been used by ATG and  
3 MetroNet in Mr. Wood's September 18th testimony on  
4 Pages 34 and 36. Mr. Cromwell has known about this for  
5 six weeks. If he had an issue with it, he should have  
6 filed a motion to compel. He did not. I do not  
7 believe that there was anything in the Public Counsel  
8 Data Request No. 1 which required us to produce to him  
9 documents which were essentially not produced in this  
10 docket. They were permitted to be used as a compromise  
11 of a dispute between Qwest and ATG/MetroNet with regard  
12 to whether or not Qwest would answer Data Requests 44  
13 through 46 and 48.

14 Mr. Cromwell asks you to put aside the  
15 specific facts of the case. I think they are very  
16 relevant, and I think they should be considered as a  
17 very unique solution to a sticky problem in a case that  
18 was being tried on a tight timeline. There was no  
19 intent to deny other parties relevant information. I  
20 think that sanctions in this case, such as Mr. Cromwell  
21 asked for -- one, it would be simply absurd to admit  
22 otherwise inadmissible evidence in a way to punish  
23 Qwest, and I don't believe a sanction would be  
24 appropriate either. I think it would send the wrong  
25 message about parties attempting to reach resolution of

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1 discovery disputes without necessarily bringing those  
2 to the Commission or the administrative law judge, and  
3 it would discourage informal resolutions such as the  
4 accommodation that we reached.

5           COMMISSIONER HEMSTAD: As a result of the  
6 compromise or accommodation reached with MetroNet, was  
7 it understood which documents would be submitted?

8           MS. ANDERL: Mr. Harlow committed to identify  
9 those documents five days in advance of the hearing,  
10 and he did that, and other than the authentication  
11 issue, which we did stipulate to, we reserved all other  
12 objections, including relevance.

13           MR. CROMWELL: If I may, Your Honor, I've  
14 already made a record regarding the facts of notice in  
15 this matter. I would want to clarify for the  
16 Commission I'm not impugning for personal intents, nor  
17 am I requesting any sanction. My request was for  
18 admonishment. I suppose if we wanted to look at a  
19 tradition sanction, a traditional sanction for  
20 discovery abuse is exclusion of the exhibits that are  
21 being promulgated by the abusing parties --

22           And again, it really gets down to a question  
23 of fairness. I'm in no way impugning Ms. Anderl's  
24 personal motives in this case. My concern both in this  
25 case and more generally is whether this is a practice

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1 for Qwest, and if so, is this occurring in other  
2 dockets in front of the Commission. It really gets to  
3 the question of, if you don't know what you don't know,  
4 you don't know what to ask for, and if you've already  
5 asked for everything you give anybody else, and they  
6 are, in effect, in this case giving something to  
7 somebody else and not giving it to us, how do you more  
8 clearly state that? I would just leave you with that  
9 thought.

10 JUDGE CAILLE: Ms. Johnston?

11 MS. JOHNSTON: I would just like to state for  
12 the record that Commission staff supports very strongly  
13 the notion that the need to data requests that the  
14 parties submit to one another at the outset of  
15 proceeding be honored throughout the course of a given  
16 case. This case, Commission staff, and I assume the  
17 other parties also, received copies of Mr. Harlow's  
18 data request to Qwest, and I notice in my books that I  
19 don't have corresponding responses to those requests,  
20 but just to give the bench an idea of the language of  
21 the requests, I would like to read Data Request No. 46.  
22 This is in the context of this docket: "Please produce  
23 all documents created since 1/1/96 that reflect, show,  
24 or relate to planning, strategy, studies, or analyses  
25 of existing or potential products/services to compete



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1 with resold Centrex Plus service, including with that  
2 limitation, Centrex 21 and Centrex Prime.

3 CHAIRWOMAN SHOWALTER: Whose request was  
4 that?

5 MS. JOHNSTON: Mr. Harlow's request on behalf  
6 of his clients to Qwest. So I guess I would like to  
7 direct my comments more generally rather than to the  
8 facts presented here, but as a general proposition, I,  
9 as counsel for Staff, like to believe that the need to  
10 data requests that we send to one another, generally,  
11 they Data Requests No. One on behalf of the party.  
12 Please provide us responses to any other data requests  
13 submitted to you to any other party in this proceeding,  
14 and evidently that didn't happen here.

15 CHAIRWOMAN SHOWALTER: I have a question for  
16 Ms. Anderl. By all accounts, this came up in an  
17 unusual way, but at the point at which the documents  
18 had been narrowed to ones that were going to be offered  
19 here, which I guess was at least five days before the  
20 hearing, at that point, wouldn't it have been correct  
21 for, at least at that point, anyway, or no later than  
22 that point, wouldn't it have been correct for Qwest to  
23 provide those documents to the other parties?

24 MS. ANDERL: Indeed, MetroNet, in the  
25 predistribution of potential cross-examination

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1 exhibits, did provide those documents to the other  
2 parties, and we did not object to the anticipatory  
3 provision of those documents.

4 CHAIRWOMAN SHOWALTER: So Mr. Harlow, you did  
5 distribute these to all the other parties?

6 MR. HARLOW: Yes, I did.

7 CHAIRWOMAN SHOWALTER: Then let me hear from  
8 Mr. Cromwell. Should the distribution have occurred at  
9 a date prior to that, and given the sequence of events,  
10 where, in essence, Qwest seems to have delegated the  
11 job of deciding what was responsive and what wasn't to  
12 Mr. Harlow, how should this have been done?

13 MR. CROMWELL: I think there is two issues  
14 there. First, Mr. Harlow's distribution was last  
15 Wednesday at the prehearing conference, which is sort  
16 of the, if you will, drop-dead date by which we all  
17 have to have our exhibits in for each other. If I  
18 intended to use those exhibits during my  
19 cross-examination of these witnesses, it would be very  
20 hard for me to have prepared that cross-examination as  
21 part of my package, if you will, prior to last  
22 Wednesday when I had to come in with my exhibits.

23 So yes, we did receive notice of these  
24 exhibits at what I would deem sort of the final hour  
25 that a package of exhibits is customarily distributed,

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1 and I agree there is sort of an unusual fact situation  
2 here where Qwest, to a degree, delegated to MetroNet  
3 the authority to narrow what set of documents would be  
4 designated, but it was my understanding that it was  
5 five days prior to the prehearing conference where you  
6 were going to give them notice?

7 MR. HARLOW: Five days prior to the hearing,  
8 this hearing.

9 CHAIRWOMAN SHOWALTER: Is your view that  
10 Qwest should not have delegated that job; that once it  
11 was requested of them, they should have taken the  
12 responsibility to answer the responsive request and  
13 decide for themselves what was responsive and then  
14 provide it to everyone?

15 MR. CROMWELL: No, Your Honor. I have  
16 absolutely no objection to parties attempting to find  
17 creative ways to otherwise resolve discovery disputes  
18 we would have to lay in your lap. My concern is that  
19 Qwest and MetroNet were aware of this dispute at some  
20 date far in advance of this hearing, and they undertook  
21 this process to resolve it far in advance of last  
22 Wednesday's hearing. Given the unique facts of the  
23 situation, it may not have been possible for Mr. Harlow  
24 to identify this set of documents prior to last  
25 Wednesday. He had at least, if not more, constraints

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1 than the rest of us in terms of trying to make the 16  
2 copies and all the rest of it that we do here prior to  
3 last Wednesday.

4 My objection is to the process that we have a  
5 data request that places a burden upon Qwest in this  
6 case to provide copies to all parties that their  
7 responses to data requests. Now, given the odd factual  
8 underpinnings of this production, I think at a minimum  
9 was incumbent upon Qwest to notify other parties that  
10 they had entered into this arrangement or were  
11 contemplating this sort of arrangement and let us know  
12 it was out there. Quite frankly, my first awareness of  
13 this was in reading Mr. Wood's testimony, that there  
14 was a memo I didn't know about, so I tried to find it,  
15 couldn't find it. I had to start nibbling away at the  
16 cheese to find out where it was.

17 MR. HARLOW: This is going in a direction  
18 that I think I feel I should say something, if I may,  
19 Your Honor.

20 JUDGE CAILLE: Go ahead, and then  
21 Ms. Johnston.

22 MR. HARLOW: I don't know that I'm being  
23 tarred here, but I feel I'm being tainted. I don't  
24 believe we were ever delegated responsibility for  
25 complying with Qwest's discovery response obligations.

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1 I certainly don't think we ever accepted that. We  
2 obtained satisfactory responses to our discovery  
3 requests and made some of those responses in our view,  
4 made some of those exhibits in this proceeding, and I  
5 certainly hope the Commission doesn't feel like we  
6 accepted any responsibility for complying with Qwest  
7 discovery responsibilities.

8 MR. CROMWELL: Your Honor, if I may just  
9 respond to Mr. Harlow. I concur; I was not trying to  
10 impugn Mr. Harlow's motivations, nor was I alleging  
11 that Qwest had delegated its discovery responsibilities  
12 to Mr. Harlow. Merely that it appeared there had been  
13 a delegation of exhibit identification in terms of  
14 narrowing the set.

15 MS. JOHNSTON: I would just like to add that  
16 I guess I disagree with Public Counsel on at least one  
17 aspect of his argument, and that is I believe it is  
18 incumbent upon the dissatisfied party in litigation to  
19 take stock of either receipt of discovery responses or  
20 lack of receipt of discovery responses and file motions  
21 to compel as needed.

22 I discovered that we didn't have responses to  
23 Mr. Harlow's Data Request 44 through 46 and 48, and I  
24 didn't think it was necessary to presentation of  
25 Staff's case to file a motion to compel or call up and

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1 meet and confer with Ms. Anderl to find out about  
2 those. So I disagree with Public Counsel on that  
3 point.

4 JUDGE CAILLE: We will take this under  
5 advisement, and because of the special open meeting  
6 that's at 1:30, could you plan to be back by 2:00

7 (Lunch recess taken at 12:20 p.m.)

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AFTERNOON SESSION  
(2:10 P.M.)

JUDGE CAILLE: We have returned from our extended luncheon recess, and the Commission has a ruling on the exhibits. Qwest's objection is overruled and the exhibits will be admitted into the record. The Commission finds that the exhibits are relevant to the issue of what is effective competition and the related issues raised by the parties concerning resale and price squeeze. The documents are business records and thus are admissible under an exception to the hearsay rule.

The Commission does not agree with Qwest that there must be evidence of implementation of a strategy to establish a foundation for the admission of these exhibits. Rather, the Commission believes they are relevant to the broader issue of effective competition, and the Commission feels that these documents can be used by the parties to support their theories in the case. The Commission will give them the appropriate weight. Therefore, Exhibit 16-C, 86-C through 97-C, and 99-C are admitted into the record.

Then with respect to the procedural issue concerning the sharing of discovery responses with parties who have requested it, the Commission believes

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1 as a general rule, and as our discovery rules set  
2 forth, that responses should be shared with those  
3 parties who have requested it. Having said that,  
4 Commission recognizes that this is an unusual set of  
5 circumstances, as the parties have also recognized, and  
6 we do not want to discourage parties from working out  
7 discovery disputes in creative ways. However, we do  
8 believe that it would have been appropriate for notice  
9 of the way this request was being handled to have been  
10 communicated to the parties so that the parties could  
11 react appropriately. With that, I believe we are ready  
12 for Mr. Teitzel.

13 (Witness sworn.)

14

15 DIRECT EXAMINATION

16 BY MR. OWENS:

17 Q. Please state your name and address for the  
18 record.

19 A. My name is David L. Teitzel, T-e-i-t-z-e-l.  
20 I'm located in Room 2904, 1600 Seventh Avenue, Seattle  
21 Washington, 98191.

22 Q. By whom are you employed?

23 A. I'm employed by Qwest Corporation.

24 Q. Are you the same David L. Teitzel who has  
25 caused to be predistributed in this case testimony



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1 that's been marked as Exhibit 76-T for your direct and  
2 78-T for your rebuttal, and associated exhibits 77-C,  
3 79, 80, 81, 82, 83, 84, and 85?

4 A. Yes, I am.

5 Q. Do you have any additions, changes, or  
6 corrections to make to any of your testimony or  
7 exhibits?

8 A. I do have one correction to make on my  
9 rebuttal testimony, which is labeled as 78-T. At Page  
10 14 of the body of the testimony beginning at Line 17  
11 where the sentence begins, "In addition," I would  
12 strike that entire sentence through the end of Line 20.

13 Q. Thank you. With that change, if I were to  
14 ask you the questions printed in Exhibit 76-T and 78-T,  
15 would your answers be as set forth therein?

16 A. Yes, they would.

17 Q. With regard to Exhibit 77-C, was this exhibit  
18 prepared by you or under your direction and  
19 supervision?

20 A. Yes, it was.

21 Q. Is it true and correct to the best of your  
22 knowledge?

23 A. Yes, it is.

24 Q. With regard to Exhibits 79 through 85, are  
25 these true copies of the documents that they purport to

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1 be copies of?

2 A. Give me just a moment here. Yes, they are.

3 Q. As for those documents that purport to be  
4 reproductions of the files on the Internet, were those  
5 downloaded and printed by you?

6 A. They were not downloaded and printed by me.  
7 They were downloaded by someone who reports to me.

8 Q. Are they accurate depictions of the material  
9 on the Web sites they purport to be?

10 A. Yes, they are.

11 MR. OWENS: Qwest offers 76-T, 78-T and 77-C,  
12 and 79 through 85 into evidence.

13 JUDGE CAILLE: Is there any objection?

14 MR. HARLOW: Your Honor, the Company agreed  
15 last week to withdraw the question and answer in the  
16 rebuttal testimony 78-T on Page 12 beginning on Line 7  
17 through Line 25.

18 JUDGE CAILLE: Thank you very much,  
19 Mr. Harlow.

20 MR. OWENS: That is correct. We didn't  
21 intend to overlook that. We would not offer that part  
22 of Exhibit 78-T.

23 MR. HARLOW: With that clarification, we have  
24 no objection, Your Honor.

25 JUDGE CAILLE: With the clarification that

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1 the question on Page 12 of the rebuttal testimony  
2 designated as 78-T, that that has been withdrawn, the  
3 exhibits are admitted into the record.

4 MR. OWENS: Mr. Teitzel is available for  
5 cross-examination.

6 JUDGE CAILLE: Mr. Harlow, were you going to  
7 begin?

8 MR. HARLOW: Yes. I do have a preliminary to  
9 offer some additional cross exhibits that I certainly  
10 hope will be less controversial. If we can get them  
11 stipulated in, we can avoid cross-examination on those.  
12 I think we ought to break it down first by offering the  
13 responses by Qwest to data requests in this docket,  
14 which would be Exhibits 100, 101, 104 through 108. We  
15 would like to offer those at this time.

16 MR. OWENS: No objection.

17 JUDGE CAILLE: Then 100, 101, 104 through 108  
18 are admitted into the record.

19 MR. HARLOW: If 102 and 103 can also be  
20 admitted without objection, we would offer those at  
21 this time, but if there is objection, we would reserve  
22 to offer it until we cross on them.

23 MR. OWENS: We are prepared to object to both  
24 of those exhibits.

25 MR. HARLOW: Let's reserve those then, Your

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1 Honor.

2

3

CROSS-EXAMINATION

4 BY MR. HARLOW:

5 Q. Good afternoon, Mr. Teitzel.

6 A. Good afternoon.

7 Q. Have you had occasion to hear of or see a  
8 memo distributed within Qwest referred to as the Tacco  
9 (phonetic) memo?

10 A. I do not recall seeing a copy.

11 Q. Have you heard of such a memorandum?

12 A. I don't recall having heard of such a  
13 memorandum, no.

14 Q. Has anyone within Qwest spoken of a  
15 memorandum and referred to it as the Tacco memo?

16 MR. OWENS: I'm going to object. That was  
17 asked and answered. He was asked in the previous  
18 question whether he'd heard of such a memo, and he said  
19 no. Now he's being asked the same question in a  
20 different way.

21 JUDGE CAILLE: I believe he's being asked the  
22 same question. The objection is sustained.

23 Q. (By Mr. Harlow) Mr. Teitzel, could Qwest  
24 have defined its market for which it's seeking  
25 competitive classification in this proceeding more

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1 narrowly either in terms of production or services or  
2 geography?

3 A. Qwest could have defined this petition a  
4 variety of different ways. However, the manner in  
5 which it is defined is a manner in which we believe to  
6 be appropriate, and I believe it's properly reflective  
7 of the competitive entry we are seeing in the market  
8 place.

9 Q. If this particular petition were to be  
10 denied, hypothetically speaking, would Qwest  
11 theoretically be able to go out, collect data, or  
12 conduct a survey to define a market on a geographic  
13 basis perhaps more narrowly than a wire center?

14 A. I would maintain that hypothetically, data  
15 could be aggregated in a variety of different ways to  
16 define the market in a variety of different ways.  
17 Again, I believe the manner in which this petition is  
18 framed is the appropriate manner in this environment.

19 Q. I understand that. Do you recall the  
20 testimony by Ms. Jensen about how the Company obtained  
21 support for the high-cap docket 990022 and how they  
22 hired firms to walk the streets; do you recall that?

23 A. I do recall.

24 Q. No such effort was undertaken in regard to  
25 this particular petition, was there?

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1       A.     There was not, because these services in this  
2 petition are defined much more broadly. They are  
3 provided in a much more ubiquitous manner than a wire  
4 center.

5       Q.     Is there anything that would prevent Qwest  
6 from undertaking that kind of effort with regard to the  
7 services listed in this docket?

8       A.     Yes, I believe there would be a reason. I  
9 don't believe that Qwest could walk the streets, to use  
10 your terminology, to identify where call-waiting is  
11 located for or call-forwarding variable may be  
12 collocated. It's provided on a switch basis.

13       Q.     Would they walk the streets, perhaps, and  
14 knock on some doors of businesses and hire a firm to  
15 survey those businesses and determine whether they had  
16 in their minds competitive options for the services  
17 that are identified in the petition?

18       A.     It's a hypothetical, and hypothetically,  
19 Qwest could knock on every door of any customer that  
20 subscribes to Qwest service and ask that question.

21       Q.     Do you think you would need to knock on every  
22 single door to have some kind of statistical sampling  
23 of what's available out there?

24       A.     It's a difficult question. To answer to gain  
25 a reliable statistical sample, you would need to sample

00353

1 a fairly large number of customers in a large  
2 geographical area.

3 Q. I assume Qwest also could have hired a firm  
4 to contact the competitors themselves and pose as  
5 hypothetical customers and see what kinds of services  
6 the competitors would be willing to offer?

7 A. That is hypothetically a means that could be  
8 done to engage a market.

9 Q. But again, that's not something that Qwest  
10 did in preparation for this docket?

11 A. Qwest supplied extensive data in this docket  
12 relative to tariffs, advertisements, switch locations,  
13 et cetera.

14 Q. My question was, did Qwest take particular  
15 step.

16 A. Qwest did not take that particular step.

17 Q. Turning your attention to your direct  
18 testimony, Exhibit 76-T at Page 17 on Line 22. I think  
19 I have the wrong line site, but I believe in your  
20 testimony you indicate that there are services that  
21 Qwest offers that its competitors do not. Am I  
22 remembering that correctly?

23 A. I believe at Page 17, I state at Line 22,  
24 "Nor does Qwest offer every service provided by its  
25 competitors." I believe that's the context you are

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1 referring to.

2 Q. At Line 15 you say, "It is readily apparent  
3 that competitors are technologically capable of  
4 providing functional equivalent services." Giving that  
5 testimony, does that imply that there are services that  
6 competitors are capable of providing that they do not,  
7 in fact, currently provide?

8 A. I believe the testimony is that based on the  
9 evidence we've collected, competitors are providing  
10 virtually every service we offer. We've identified in  
11 Attachment H of the petition, there may be  
12 functionality inherent in the switch to provide  
13 additional services that may not be provided.

14 Q. When you say you believe they are offering  
15 virtually every service, does that mean you have reason  
16 to believe they are not offering everything single  
17 service in your petition or that perhaps you do not  
18 have actual knowledge that they are, in fact, offering  
19 every single service that's identified in your  
20 petition?

21 A. No, I don't believe that was my intent. In  
22 Attachment B, we identified a sampling of competitors  
23 relative to their offerings of basic exchange services,  
24 features, Centrex services, and DS trunks, and for that  
25 range of services, which includes all the services



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1 identified in Attachment A to our petition, there are  
2 competitors providing those services in the market  
3 today.

4 Q. Thank you for that clarification. Is it fair  
5 to characterize your and Ms. Jensen's testimony as both  
6 contending that there are no barriers to entry into the  
7 market for the services that are the subject of your  
8 petition?

9 A. I respond by saying I would maintain that  
10 "barriers to entry" is a subjective term. I believe if  
11 a competitor must make an investment to enter a market,  
12 that could be viewed by a competitor as a, quote  
13 unquote, "barrier to entry." Does it slow entry or  
14 stop entry? No, I don't think so.

15 Q. What do you define as entry? Do you define  
16 registering with this Commission as entry?

17 A. I think that is an initial step in entry. I  
18 believe investment in the market is entry. I believe  
19 reselling of Qwest services can be defined as entry.

20 Q. Is investment requirement potentially a  
21 barrier to entry?

22 A. Again, I struggle because I believe barrier  
23 to entry is a subjective term. I believe that markets  
24 require investment by competitors for that competitor  
25 to enter a marketplace, so certainly, there is an

00356

1 up-front cost, an ongoing cost to provide service in a  
2 market. Is that a barrier? I would maintain that it  
3 is not. Competitors are here. They are making those  
4 investments.

5 Q. You were here when I was cross examining  
6 Ms. Jensen?

7 A. Yes, I was.

8 Q. Do you recall me asking her to try to  
9 delineate between what I ended up calling the served  
10 versus the unserved?

11 A. I do recall that, yes.

12 Q. She indicated in her prefiled testimony that  
13 she believes competitors are serving the most  
14 profitable market segments but choosing not to serve  
15 the less profitable segments; do you recall that?

16 A. Yes.

17 Q. Do you believe the unserved, if you will, as  
18 we used that term yesterday, do you believe that is a  
19 profitable market segment for CLECs?

20 A. Again, that's somewhat of a subjective  
21 question, I think. Unserved could involve customers  
22 who are not yet served by a CLEC who may be potential  
23 customers of that CLEC but may not have been yet  
24 approached or may not have yet signed a contract or  
25 some other agreement with that CLEC.

00357

1 Q. You are saying that profitability is a  
2 subjective term? Isn't that an accounting entry?  
3 Isn't it pretty easy to determine whether a company is  
4 profitable or not?

5 A. I may need you to clarify the question. I  
6 thought you were asking me about unserved versus  
7 served, and could some unserved customers be profitable  
8 customers, potentially, for a competitor. My answer is  
9 certainly, they could.

10 Q. My question is, is it possible, if you are  
11 correct that those currently unserved market segments  
12 are probably, that they are unserved because there are  
13 barriers to entry?

14 A. Not at all. A competitor may be a recent  
15 entrant into the market. He may have a limited  
16 customer base and have full intentions of expanding  
17 that base aggressively. They may not have served a  
18 particular customer because they may not have yet  
19 marketed to that customer.

20 Q. According to your petition, there is a great  
21 deal of entry, not one single new entrant by large,  
22 well-financed companies. Wouldn't you think it would  
23 be rational for those companies to provide service to  
24 this unserved market segment if there were no barrier  
25 to entry and it were profitable to do so?

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1       A.     I would agree.  You have characterized our  
2 testimony exactly accurately.  There are a layering of  
3 competitors in the marketplace, but taken in the  
4 aggregate are providing service or have the capability  
5 to provide service to every customer in each of the 31  
6 wire centers included in our petition.  To the extent  
7 that a particular customer may not be served by a  
8 particular provider, that's not evidence, in my mind,  
9 that that customer is not potentially in that CLEC's  
10 marketing plans and may eventually be a customer of the  
11 CLEC.

12       Q.     So you are saying that maybe some day, these  
13 customers will be served by CLECs; is that correct?

14       A.     Many are being served by CLECs today.  Many  
15 more will be in the future.

16       Q.     I have in mind your rebuttal testimony, 78-T,  
17 Page 2, and you are responding to Dr. Blackmon's  
18 testimony.  First of all, talking about service to  
19 small business customers.  Do you have that testimony  
20 in mind?

21       A.     Could you refer me to a particular line?  I  
22 have the page here.

23       Q.     That's Page 2.  On Page 1, you have the sub  
24 heading, "Response to Dr. Glen Blackmon's testimony,"  
25 and you talk about on Line 9, "Teligent is serving the

00359

1 small business market," and on Line 1 on Page 2, you  
2 talk about Eschelon, ATG, and Mr. Davis. On Line 3 you  
3 say, "targets small and medium-size business  
4 customers." Do you have the testimony in mind?

5 A. Yes.

6 Q. I take it from data request responses that  
7 Qwest defines the small business market as the two- to  
8 three-line customer; is that correct?

9 A. I need to response respond by saying that U S  
10 West has recently been purchased by Qwest. We are now  
11 a merged company, and the classic U S West definition,  
12 small business customers would be a larger customer  
13 subset, those having up to 20 lines at a location. The  
14 definition is now evolving and changing as we set in  
15 place new marketing organizations, and what was  
16 formerly the small business market has been redefined  
17 as the national mass market organization. That group  
18 would maintain that typically five lines or less at a  
19 location would be considered small business on a  
20 going-forward basis.

21 Q. So the current definition is up to 20 for  
22 small business?

23 A. No. That was the classic U S West condition.  
24 The national mass market's definition under the new  
25 Qwest organization would be considered five lines or

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1 less. That organization has now just been put into  
2 place.

3 Q. Do you have any understanding from  
4 Dr. Blackmon's testimony and recommendations as to how  
5 Staff has defined small business for purposes of this  
6 docket?

7 A. I believe Staff has considered small business  
8 as being three lines and under. That's my  
9 recollection.

10 Q. Do you have any basis on which to determine  
11 what Teligent means in its advertising that it's  
12 serving a small business?

13 A. I don't have an immediate recollection of how  
14 Teligent would define their market. I don't recall  
15 having access to a marketing plan.

16 Q. There is certainly nothing in this record  
17 that reflects what Teligent means by a small business  
18 record, is there?

19 A. I don't have access to that, no.

20 Q. I think that's the reason, but are you  
21 intending to indicate that the answer to my question is  
22 yes, that there is nothing in the record?

23 A. There is nothing that I've seen in the  
24 record; that would be correct.

25 Q. Is there anything in the record or to your

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1 knowledge to tell you how Eschelon or ATG defined small  
2 business?

3 A. Once again, I suspect the definition of small  
4 business varies and evolves as has ours recently.  
5 Again, I haven't seen marketing plans from those  
6 providers to determine how they define small business.

7 Q. Do you know how Sprint defines the small  
8 business market?

9 A. I would have to give the same answer.

10 Q. In your rebuttal testimony at Page 7, Exhibit  
11 78-T, you state that rate changes if competitive  
12 classification is granted will be supported with cost  
13 data; do you recall that testimony?

14 A. Yes, I do.

15 Q. Do you have any understanding as to whether  
16 or not Qwest will be submitting rates to the Commission  
17 under ICB, which stands for "individual case basis,"  
18 contracts or special contracts or something of the  
19 like?

20 A. I'm not directly involved in that process.  
21 My understanding of the process, however, is that each  
22 contract is submitted with the Commission and filed  
23 with the Commission, and I believe the contract is  
24 supported by cost data.

25 Q. Do you have any idea or projections as to how

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1 many contracts might be submitted to the Commission if  
2 competitive classification is granted?

3 A. No, I don't.

4 Q. Would you presume it's going to be a larger  
5 number than are being filed with the Commission today?

6 A. Not necessarily. We have contracting  
7 flexibility today to price on ICB basis, and there are  
8 guidelines in place governing how those contracts are  
9 filed today. This classification in this petition  
10 would be focused on gaining pricing flexibility in a  
11 noncontract basis for the services reflected in Exhibit  
12 A.

13 Q. Staying with contracts, however, when  
14 contracts are filed, are they typically designated as  
15 confidential by Qwest?

16 A. I believe that's true.

17 Q. It is true, is it not, that only summary data  
18 regarding the quantities of service being provisioned  
19 under the contracts and the toll or gross price, if you  
20 will, is made publicly available to CLECs?

21 A. To the best of my knowledge, that's also  
22 correct.

23 Q. So CLECs will have no way to know, for  
24 example, what you are charging for a particular line or  
25 particular feature; is that correct?



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1       A.     I believe the CLEC could approach the  
2 Commission staff who would have access to the contract  
3 and request that information on a confidential basis,  
4 but it's not as a matter of practice provided directly  
5 by Qwest to a CLEC.

6       Q.     Would the Company object to the Staff  
7 providing more specific data to CLECs and their  
8 representatives?

9       A.     I'm not in a position, quite frankly, to make  
10 that representation on behalf of the Company.

11      Q.     In your view, are competitors to be entitled  
12 to resell any special contract rates that you may file  
13 if competitive classification is granted?

14      A.     Yes, they would be.

15      Q.     To whom would they be entitled to resell  
16 those rates?

17      A.     I believe that the resold rates would be  
18 available as a matter of law to retail -- I should say  
19 the resale rates would be available as a matter of law  
20 to retail customers in Qwest service territory.

21      Q.     Throughout the territory and to any  
22 customers?

23      A.     It's my understanding, and I would offer this  
24 as a non attorney, it's my understanding that any Qwest  
25 retail service is subject to resale requirements

00364

1 throughout Qwest service territory.

2 Q. I'm just trying to clarify, is the Company  
3 willing to permit, for example, the lowest price  
4 contract that Qwest cites to offer post competitive  
5 classification, if such is granted, to any customer  
6 anywhere within Qwest's territory in the State of  
7 Washington, or would there be some qualifications on  
8 the ability to resell?

9 A. I think in the competitive zone petition, it  
10 would be Qwest's view that were it necessary to lower a  
11 price, introduce new package, whatever that case may  
12 be, that package or price would be available to any  
13 customer within that defined competitive zone. In this  
14 case, this would be within the wire center, but that  
15 price may be available on a statewide basis.

16 Q. How would a CLEC know what rate to ask for if  
17 it wanted to try to resell that rate to other customers  
18 within the wire center?

19 A. I would maintain that a CLEC could approach  
20 Qwest, asserted that you are aware that contracts are  
21 being offered by virtue of the fact they are being  
22 filed with the Commission, assert that you may have a  
23 similar system configuration as a particular retail  
24 customer, and ask for a quote. I would maintain that  
25 Qwest would quote you a price that would be comparable,

00365

1 equal, to the retail price offered in that contract  
2 less a resale discount if you have an approved  
3 interconnection agreement.

4 Q. You've introduced a new concept here, which  
5 is a similar configuration. Is that some qualification  
6 that would be attached to this ability to resell?

7 A. I think the duty Qwest would have would be to  
8 provide a price, and the same price, to any similarly  
9 situated customer in the competitive zone, as we've  
10 discussed in our petition.

11 Q. What are the elements that would enable Qwest  
12 and the reseller to determine whether the reseller's  
13 customer is similarly situated to the Qwest retail  
14 customer?

15 A. There may be some legal interpretations here,  
16 so I would offer this opinion as a non attorney. I  
17 would suggest that to the extent Qwest continues to  
18 file contracts with the Commission, and we will, those  
19 are available for review. Any CLEC, any competitor may  
20 come in and ask for a quote within that competitive  
21 zone and will be given a quote if that competitor is  
22 configured on a similar basis with the same terms.

23 Q. Does "similar basis" mean that they would  
24 have to be at the same address or perhaps the same  
25 distance from the central office?

00366

1       A.     I wouldn't think it would have to be that  
2 narrowly defined. I think if the configuration were  
3 similar, if the geographical market were similar, the  
4 number of loops involved were similar, those would all  
5 be considered factors in that determination.

6       Q.     What do you mean by "similar"? I'm just  
7 trying to figure out when we can resell it and when we  
8 can't. How would CLECs know whether their perspective  
9 customer was similar enough to get a different rate or  
10 not?

11      A.     Again, I would qualify my answer as to a  
12 nonlegal opinion, but my understanding of the law is  
13 that similarly situated customers must be offered  
14 comparable services. I don't think the law says that  
15 services must be identical or that the customers must  
16 be identical in their configuration, but there must be  
17 some similarity in that quote.

18      Q.     Would you agree that a reseller were to be  
19 able to offer services to prospective customer needs to  
20 know what price it's going to propose to a customer?

21      A.     If I could clarify, are you referring to a  
22 contracted rate or noncontracted rate?

23      Q.     Either one. Before they make an offer to a  
24 customer, are they typically going to need to know what  
25 the price quote is going to be?

00367

1           A.     I would say that would be true, and I believe  
2 it's easily discernible if the service is available by  
3 tariff or price list.  On a contract basis, I believe  
4 that there are mechanisms available through dialogue  
5 with the Company and dialogue with the Staff, were that  
6 to be required, to get at a similar quote.

7           Q.     Would you agree that the easiest way for the  
8 CLEC to be able to know what its price might be within  
9 a wire center would be to have access to all the tariff  
10 rates, terms, and conditions of the contracts that are  
11 in effect in that wire center between Qwest and its  
12 retail customers?

13          A.     I would qualify my answer again by saying  
14 that I'm not intimately familiar with what restrictions  
15 are available or are in place on the sort of  
16 information shared with the CLEC today relative to  
17 contracts.  I would suggest that whatever those  
18 guidelines would be, they would continue to remain in  
19 force after competitive zones were to be approved.  The  
20 CLEC could certainly gain information that they would  
21 have available today through dialogue with the  
22 Commission staff.  It is conceivable there could be  
23 more information supplied between the CLEC and Qwest.  
24 That would be an issue that should be worked out  
25 between the parties and the Commission on a

00368

1 going-forward basis.

2 Q. I appreciate your statement as best as you  
3 know it of your company's position and so forth, but my  
4 question, which I'll reask, was would you agree that  
5 that would be the best way for the CLEC to be able to  
6 know what its price might be within a given wire  
7 center; that hypothetically Qwest would provide all of  
8 the contracts, rates, terms and conditions to CLECs?

9 A. I respond as best I can in the hypothetical,  
10 and I would say that hypothetically, any competitor  
11 would find it more convenient to conduct business were  
12 they to have access to all of Qwest's proprietary  
13 information. Is it that appropriate? I would suggest  
14 probably not.

15 Q. If it's considered proprietary and it's not  
16 appropriate to make it available publicly, and then we  
17 come full circle again to the question of, how do the  
18 CLECs know what their cost is going to be for services  
19 that they may wish to resell within a wire center that  
20 you are saying hypothetically is available for resale?

21 A. I'm suggesting that if a reseller or any  
22 other CLEC would like to provide service on a resold  
23 basis, they may approach Qwest for a quote, if it were  
24 a contracted service. If it were not a contracted  
25 service, the price list would be fully available for

00369

1 public review.

2 Q. So you are saying we would have to identify a  
3 customer, at least the customer's attributes, such as  
4 the number of lines and general location, and then  
5 request a quote from Qwest; is that the approach you  
6 are suggesting?

7 A. I'm suggesting that's my understanding of the  
8 way the process would work. The Commission will have  
9 full overview of those contracts. They will determine  
10 that Qwest is pursuing and following appropriate rules  
11 and guidelines and establishing pricing for those  
12 contracts.

13 Q. I assume then that after the CLEC has  
14 gathered their relevant data from prospective customers  
15 and then presented the quote to Qwest or presented the  
16 parameters to Qwest, Qwest would then respond back with  
17 a quote?

18 A. That's correct.

19 Q. That would be the order of things?

20 A. That's correct.

21 Q. Then after all that takes place, the CLEC  
22 could finally propose a price to the customer; is that  
23 correct?

24 A. Once again, if the discussion is narrowly  
25 focused on contracts, that would be the process.

00370

1 Q. That's what the discussion is focused on.

2 A. Again, if the Commission is having the  
3 opportunity to review the contract, which they do today  
4 and they would in the future, they would quickly  
5 determine whether or not Qwest were appropriately  
6 pricing that contract.

7 Q. At Page 8 of your rebuttal testimony, Exhibit  
8 78-T, Lines 3 to 4 -- actually, it starts on Line 1 --  
9 you state that if Qwest is denied the ability to  
10 compete on a more equal footing, then consumers will be  
11 harmed by having the fruits of full competition, such  
12 as limitations, technological advancements, and  
13 increased focus on customer demands. Do you see that  
14 testimony?

15 A. Yes, I do.

16 Q. Can you name a technological advancement or  
17 innovation that Qwest has somehow precluded from  
18 offering without competitive classification?

19 A. I can't think of one at the moment. It  
20 doesn't come immediately to mind.

21 Q. You are the director of product and market  
22 issues; is that correct?

23 A. I am.

24 Q. You support the retail side of Qwest with  
25 regard to regulatory issues, I assume?



00371

1           A.     I should qualify the term "support." My  
2 title is director of product and market issues. I'm in  
3 the public policy and law organization of Qwest, and my  
4 specific responsibilities involve working with the  
5 marketing side of the house, which I'm not in, by the  
6 way, to understand advocacies and issues they would  
7 like to see mentioned in the marketplace. I then write  
8 testimony around those advocacies and deliver the  
9 advocacies to the regulatory bodies.

10          Q.     So when you say, "marketing side of the  
11 house," you are referring to the retail marketing side  
12 of the house?

13          A.     I support primarily national mass markets  
14 that we discussed previously.

15          Q.     Do you assist the retail side of the house in  
16 developing products?

17          A.     No, I don't.

18          Q.     You state at Page 8 of your rebuttal  
19 testimony on Line 17, "Qwest has internal policies that  
20 prohibit the sharing of carrier-specific information  
21 between its wholesale and retail divisions"; do you see  
22 that?

23          A.     Yes, I do.

24          Q.     Would you say that if Qwest were to succeed  
25 in gaining some or all of the relief it seeks in this

00372

1 proceeding that that would be of benefit to the retail  
2 side of the house?

3 A. If I could paraphrase your question, please.  
4 Are you asking if Qwest is to receive the relief it's  
5 seeking in this petition, would that be a benefit to  
6 the retail organization of Qwest?

7 Q. Yes.

8 A. My answer is yes.

9 Q. Do you think it would be a benefit to the  
10 wholesale customers of Qwest?

11 A. This petition is not focused on wholesale  
12 products or prices or services. Relative to whether a  
13 wholesale organization would view this as a, quote  
14 unquote, "good thing" or not, I don't think is an  
15 issue. I don't think it's material.

16 Q. Who was Starla Rook?

17 A. Starla Rook reports to me directly.

18 Q. What is her position?

19 A. She is a witness support manager for Qwest  
20 Corporation reporting directly to me.

21 Q. She supports the retail side of the house in  
22 a similar manner that you described that you do?

23 A. As I described a moment ago, she's also in  
24 the policy and law organization and supports the retail  
25 market group in a similar fashion.

00373

1 Q. Abe Friedman he was an attorney with U S  
2 West?

3 A. My understanding is Abe Friedman has a law  
4 degree. He's not practicing. I believe he reported to  
5 Ms. Jensen in a support capacity.

6 Q. He participated in the drafting of the  
7 petition that's at issue in this docket; is that  
8 correct?

9 A. Yes.

10 Q. Would you please turn to Exhibit 102-C? Is  
11 this a memorandum from Starla Rook to Abe Friedman to  
12 you and others?

13 A. Yes, it is.

14 Q. Does this memorandum describe a meeting that  
15 you held to strategize and develop the petition that is  
16 filed in this docket?

17 A. Yes. It describes a meeting that was held on  
18 March 6th, 2000.

19 Q. In this meeting, you were attempting to  
20 determine what support you would need for the petition  
21 in order for the petition to be successful; is that  
22 correct?

23 A. It was a planning meeting to talk about the  
24 competitive zone petition and frame who was going to be  
25 taking which role in assembling the petition.

00374

1 Q. There was also discussion at this meeting  
2 about how to define the scope of a petition  
3 graphically; is that correct?

4 A. Yes, there was.

5 Q. If you would please look at the bottom of the  
6 page, the last paragraph of the first page under the  
7 heading "small business." It reads -- actually, this  
8 is a protected document. Let me just ask you to read  
9 that paragraph at the bottom of the page under the  
10 heading "small business" to yourself.

11 A. (Witness complies.) Are you asking me to  
12 review only the last paragraph on the first page?

13 Q. Yes.

14 A. I have done that.

15 Q. Does that indicate that the Company data  
16 gathered from the retail side was considered to be  
17 insufficient to adequately support this petition?

18 A. I can add context to this paragraph. I  
19 participated in this discussion. At the point in time  
20 that this was written back in March, we had loss data  
21 for late 1999 that we had tracked internally. The loss  
22 data we had around losses in Washington were as  
23 self-reported by customers when they left Qwest for a  
24 competitor. We knew that since customers were  
25 self-reporting, it was only a subset of total losses.

00375

1 So we were very clear at that time it was not a full  
2 view of competition and had to be augmented.

3 Q. Turn, please, to Exhibit 103-C.

4 A. I have that.

5 Q. Is this memo pretty similar to Exhibit 102-C  
6 except it describes a meeting held on March 16 of 2000?

7 A. That is correct.

8 Q. If you would look at the number paragraphed 5  
9 at the bottom of the first page of 103-C without  
10 reading it out loud.

11 A. (Witness complies.). Yes, I reviewed that.

12 Q. Who is Elaine Garly?

13 A. She is a database manager in Qwest, and  
14 Ms. Garly is the contact whom we turn to for  
15 information relative to wholesale numbers. She's been  
16 fully trained on how the data should be matched or  
17 aggregated so it fully complies with any carrier  
18 proprietary requirements.

19 Q. Does this memoranda reflect she was, in fact,  
20 asked for data from the wholesale side in connection  
21 with the filing of this petition?

22 MR. OWENS: I'm going to object. There is no  
23 foundation. The document indicates at the top that  
24 it's not in connection with business services.

25 MR. HARLOW: I'm trying to lay the foundation

00376

1 here. I don't think this foundation objection is  
2 appropriate at all.

3 MR. OWENS: The document on its face speaks  
4 about residential services, not business services. It  
5 hasn't been asked what this document pertains to the  
6 filing in this case.

7 MR. HARLOW: Mr. Owens may have a point;  
8 although, the witness just said this memo is the same  
9 thing. It just reflects a subsequent meeting about  
10 this very same petition.

11 MR. OWENS: No, he did not testify to that.  
12 He was asked if this was a memo recounting a similar  
13 meeting on a different date. He was not asked whether  
14 it pertains to this current filing.

15 MR. HARLOW: I'll withdraw the question.

16 Q. (By Mr. Harlow) Mr. Teitzel, does Exhibit  
17 103-C have to do with this particular filing?

18 A. I'm sorry; I didn't catch your entire  
19 sentence.

20 Q. Does Exhibit 103-C have to do with this  
21 particular filing?

22 A. It does not. It was a memo that was  
23 discussing a meeting held earlier this year at which  
24 time Qwest was considering filing a joint residence and  
25 business petition in this docket. A decision was

00377

1 subsequently reached on the file for a business focus  
2 here. So this does not relate to the immediate docket,  
3 no.

4 Q. Let's turn back to Exhibit 102-C. Again,  
5 looking at the last paragraph of the first page and  
6 asking you to draw on your recollection the meeting as  
7 well as that. Was data requested from the wholesale  
8 side of the house in this docket to support this  
9 filing?

10 A. Yes, it was.

11 Q. Was the data requested reflected in the  
12 description of the information following the second  
13 line of the last paragraph after the word "grid"?

14 A. Yes. My understanding is that the data as  
15 requested and as masked appropriately was used in large  
16 part to support the petition we filed in this docket.

17 Q. When you say, "masked appropriately," you  
18 aren't intending to give a legal opinion as to the  
19 interpretation of interconnection agreements as to if  
20 that information may or may not be provided for the  
21 purposes of a petition such as this, are you?

22 A. Mr. Harlow, I believe I testified previously  
23 I'm not an attorney. I'm not suggesting to be one. I  
24 would suggest that Ms. Garly, who is the provider of  
25 this data on wholesale side is fully trained on what

00378

1 can or cannot be done by our attorneys.

2 Q. Is Ms. Garley an attorney?

3 A. She is not.

4 MR. HARLOW: Your Honor, at this time I would  
5 withdraw 103-C and offer 102-C.

6 MR. OWENS: No objection.

7 JUDGE CAILLE: Then 102-C is admitted into  
8 the record and 103-C is withdrawn.

9 Q. (By Mr. Harlow) If you would turn, please,  
10 to Exhibit 98-C.

11 A. I have that.

12 Q. This is a data request response in which we  
13 requested documents that reflect or relate to planning,  
14 strategy, studies, or analyses of how Qwest could or  
15 would use, implement, or benefit from competitive  
16 classifications of services and so forth?

17 A. That is correct.

18 Q. A single proprietary document is provided; is  
19 that correct?

20 A. That is correct.

21 Q. Turn now to Exhibit 19-C, please.

22 A. I have that.

23 Q. Do you recall Ms. Jensen testifying yesterday  
24 that this same kind of document is produced internally  
25 by Qwest with regard to planned filings and rate



00379

1 changes for other services; do you recall that?

2 A. I do recall that testimony.

3 Q. That includes services that are subject in  
4 this petition; is that correct?

5 A. I believe that to be true.

6 Q. Yet, those documents were not provided in  
7 response to the data request that is marked Exhibit  
8 98-C; is that correct?

9 A. Just to clarify, was Exhibit 19 a data  
10 request response, or is this an antitrust document?

11 Q. 19 was an antitrust document. I referred to  
12 it mistakenly, but it's now been designated as 19.  
13 It's no longer confidential.

14 A. Again, Starla Rook reports to me. She  
15 responded to the data request in 98-C, and she is an  
16 extremely thorough manager. She did not have access to  
17 this document in developing that response. So she  
18 answered the request as honestly and accurately as she  
19 possibly could on that date, but this data was not  
20 supplied in response to the data request showing 98-C.

21 Q. If we could turn back to Page 3 of your  
22 direct testimony, Exhibit 76-T, do you see on Line 19  
23 you say, "As the rate of loss grows and the support  
24 from high-margin services is no longer available, rate  
25 increases become inevitable." Do you see that?

00380

1 A. Yes, I do.

2 Q. Do you agree that if the market for those  
3 services is truly effectively competitive that the  
4 market will drive prices for those services down?

5 A. I believe that a major element, a major  
6 feature of competition is that prices tend to be driven  
7 toward costs, whether that be up or down toward costs  
8 in competitive markets.

9 Q. Are you familiar with the term "a normal  
10 profit"?

11 A. I have heard that, yes.

12 Q. Would you take that to mean a profit that  
13 would be earned by a firm in a highly competitive  
14 market?

15 A. It's a question that may be asked of  
16 Dr. Taylor as he testifies, but I would offer my  
17 opinion. I believe my answer would be that would be an  
18 interpretation of normal profit.

19 Q. Would you agree that if the market for these  
20 so-called "high-margin services" that you referred to  
21 in your testimony is effectively competitive, then  
22 effectively, the high margin will be driven out and the  
23 profit will be driven to a normal profit?

24 A. I would maintain that I would not expect in a  
25 competitive market for margins to be the same across

00381

1 services. I think margins will vary based on perceived  
2 value of the service and discretionary level of the  
3 service, a variety of factors. Do I expect the prices  
4 will be driven toward cost in a competitive market? I  
5 certainly do.

6 MR. HARLOW: Thank you, Mr. Teitzel. I have  
7 no further questions.

8 JUDGE CAILLE: Mr. Cromwell?

9 MR. CROMWELL: Thank you, Your Honor. If I  
10 may have a moment.

11

12 CROSS-EXAMINATION

13 BY MR. CROMWELL:

14 Q. Good afternoon, Mr. Teitzel.

15 A. Good afternoon.

16 Q. We had a chance to speak briefly yesterday,  
17 and I identified a handful of exhibits for you. Did  
18 you have a chance to review those?

19 A. Yes, I did.

20 Q. Are you comfortable testifying regarding  
21 those exhibits?

22 A. Yes, I am.

23 Q. At Page 13, Lines 7 through 9 of your direct  
24 testimony, you identified at least four alternative  
25 facility-based providers or CLECs in each of the 31

00382

1 wire centers, which are the subject of the petition now  
2 before the Commission; is that correct?

3 A. That's correct.

4 Q. It is also true that Qwest is relying upon  
5 the number of ported lines to a certain degree of  
6 competitiveness in each of these 31 wire centers?

7 A. We have maintained that ported numbers are an  
8 addition measure of the degree to which these wire  
9 centers are competitive, yes.

10 Q. Just to make sure I'm clear on this,  
11 Mr. Harlow had asked you a question about studies that  
12 you or someone at Qwest might have hired who could have  
13 performed it. Is it true that Qwest did not perform a  
14 study to determine the number or percentage of business  
15 customers served by CLECs in each of these wire  
16 centers?

17 A. Qwest did not have access to accurate counts  
18 or complete counts of access lines service by each CLEC  
19 in each wire center.

20 Q. Did Qwest have access to any counts?

21 A. Qwest has supplied substantial evidence in  
22 this docket around number of members ported, around  
23 number of unbundled loops sold, number of lines being  
24 resold. Is that your question?

25 Q. No, it was not. My question was whether

00383

1 Qwest had access to any numbers. In other words, I  
2 believe you said you didn't have access to reliable  
3 numbers?

4 A. Qwest does not have access, and I should  
5 qualify my statement, to our competitors marketing  
6 databases. We cannot discern specifically how many  
7 customers each provider serves in the marketplace  
8 today. However, I would expand my answer a bit, if I  
9 could.

10 Q. Please.

11 A. By referring to Qwest data response to the  
12 Commission staff as WUTC 01-001, and on the first page  
13 of that response, Qwest did supply loss data by wire  
14 center for small business customers and large business  
15 customers, which are denoted as BNGS, by the way, and  
16 there are a significant number of lines shown as having  
17 migrated to a competitor, and I would emphasize again  
18 that these are lines that are denoted as having been  
19 lost by Qwest by virtue of the fact the customer has  
20 self-reported, and we would maintain this is a subset  
21 of our losses.

22 Q. For the record, Mr. Teitzel, do you know the  
23 exhibit number of that document you are referring to?

24 A. I'm sorry. I have a copy of the data request  
25 response. My copy is not marked with an exhibit

00384

1 number.

2 JUDGE CAILLE: Did you say this was a Staff  
3 data request?

4 THE WITNESS: Intervenor was Washington  
5 Utilities and Transportation Commission. The request  
6 number was WUTC 01-001.

7 MR. CROMWELL: I believe it's 114.

8 Q. (By Mr. Cromwell) I appreciate your answer,  
9 Mr. Teitzel, but I do not believe you've answered my  
10 question, so let's start over. Has Qwest performed a  
11 study to determine the number or percentage of business  
12 customers served by CLECs in each of these 31 wire  
13 centers, yes or no?

14 A. I would have to answer yes, and I would say  
15 that, again, by referring back to the data request we  
16 just referred to, and I believe this data was used in  
17 part to calculate percentage of lines served in the  
18 facilities basis and on a resale basis in each wire  
19 center in the petition.

20 Q. When was that data gathered and by whom?

21 A. The vintage of the data I just referred to  
22 was 1998, 1999 data. It would have been gathered  
23 during the first quarter of 2000, and I believe Elaine  
24 Garly was the source for this data.

25 Q. Who is Ms. Garly?

00385

1 A. She's in the wholesale organization.

2 Q. Has Qwest examined what percentage of  
3 business customers in each of the 31 wire centers is  
4 within 1,000 feet of existing or planned CLEC network  
5 facilities?

6 A. In this docket, to my knowledge, that  
7 analysis was not done.

8 Q. I did not ask you whether in this docket that  
9 was done. What I asked you was whether the company  
10 that you are employed by has examined that information.  
11 I would ask you to answer yes or no.

12 A. Not to my knowledge.

13 Q. So you are not capable today of telling this  
14 commission what percentage of business customers in  
15 each of the 31 wire centers has competitive facilities  
16 in sufficient proximity to make service a  
17 cost-effective alternative to the services those  
18 customers currently receive from Qwest; is that true?

19 A. I would not maintain that. I would maintain  
20 that facility locations have been supplied, as in  
21 Ms. Jensen's testimony and the petition we filed in  
22 this docket that maintain also that unbundled network  
23 elements can be considered a form of facilities-based  
24 competition. To the extent a competitor has a switch  
25 collocated in a Qwest central office, unbundled loops

00386

1 can be used to serve virtually any customer in that  
2 wire center.

3 MR. CROMWELL: Your Honor, I'm going to move  
4 to strike Mr. Teitzel's answer. I don't believe it was  
5 responsive to the question I asked.

6 MR. OWENS: The motion is clearly  
7 inappropriate. It was directly responsive. He was  
8 asked whether or not he was in a position to tell the  
9 Commission what percentage of businesses were available  
10 for a facilities-based competition within 1,000 feet of  
11 existing CLEC facilities, and his answer is, in effect,  
12 they all are.

13 MR. CROMWELL: Actually, Mr. Owen is  
14 referring to a question I asked two questions ago. I'd  
15 be happy to state the question again for the record in  
16 a yes or no format for Mr. Teitzel's benefit.

17 Q. (By Mr. Cromwell) Mr. Teitzel, yes or no,  
18 can you tell this commission what percentage of the  
19 business customers in each of the 31 wire centers have  
20 competitive facilities in sufficient proximity to make  
21 service a cost-effective alternative to the service  
22 those customers receive from Qwest?

23 A. If you are asking for a yes or no answer, I  
24 would have to qualify my answer.

25 Q. What would your answer be before you qualify.



00387

1       A.     My answer would be yes, Qwest has supplied  
2 substantial information in our petition to document the  
3 presence of facilities, in addition to the fact that  
4 unbundled network elements are available to serve  
5 virtually 100 percent of the business customers in each  
6 of the 31 wire centers.

7       Q.     I believe we have all read the testimony you  
8 are referring to, so let me ask you a different  
9 question. Am I correct in understanding that it is  
10 Qwest's position that none of its business customers in  
11 the 31 wire centers are captive customers, as that term  
12 is used, in RCW 80.36.330?

13       A.     I'd respond by saying in our petition, in our  
14 testimony, we maintain that each business customer in  
15 each of these wire centers has choice today. In that  
16 sense, they are not captive.

17       Q.     So if I'm to understand your answer, it is  
18 correct that it is Qwest's position that no customers  
19 are captive, as the term is used by this statute?

20       A.     Absolutely.

21       Q.     Has Qwest determined what number or  
22 percentage of business customers in each of the 31 wire  
23 centers CLECs would, in fact, be willing or able to  
24 serve?

25       A.     I believe that's a compound question, but I

00388

1 can answer it in two parts.

2 Q. I'd be happy to rephrase it if you would  
3 like.

4 A. You said "willing and able." I think those  
5 are two different thoughts.

6 Q. I'd be happy to rephrase the question.

7 Mr. Teitzel, has Qwest determined what number or  
8 percentage of business customers in each of the wire  
9 centers CLECs are, in fact, able to serve?

10 A. Yes, we have determined that percentage.

11 Q. What is that percentage?

12 A. 100 percent.

13 Q. Has Qwest determined what number or  
14 percentage of business customers in each of the wire  
15 centers CLECs are willing to serve?

16 A. I'd answer that by saying I am not privy to  
17 any of the CLECs' marketing plans. That's very  
18 confidential information. I am in possession of many  
19 of the price lists that are on file with the Commission  
20 and have also reviewed Web pages by the competitors.  
21 To the extent they are licensed and they have services  
22 in place in Washington, I believe they do not restrict  
23 their availability of their services. If that  
24 represents willing to serve in a market, I think it's  
25 exactly that. They are holding themselves out as being

00389

1 willing to serve customers.

2 Q. Mr. Teitzel, are you aware of the evidentiary  
3 requirements of the Commission's supplemental  
4 interpretative and policy statement in UT-970300;  
5 specifically those found in Attachments A and B?

6 A. To clarify, are you referring to the Revised  
7 Code of Washington, 80.36.330?

8 Q. I'm actually referring to the 271 proceeding.  
9 Are you familiar with that proceeding at all?

10 A. I'm not directly familiar with that, no.

11 Q. So you have no opinion or knowledge regarding  
12 the factual record that's to be created in that docket?

13 A. No, I don't.

14 Q. At Page 9, Lines 7 through 9 of your rebuttal  
15 testimony, you state that defining relative geographic  
16 markets on less than a wire-center basis would be  
17 administratively onerous; is that correct?

18 A. That is very correct.

19 Q. I take it from your response you still  
20 believe that today.

21 A. I believe it today and I believed it then.

22 Q. Mr. Teitzel, are familiar with the DOJ  
23 horizontal merger guidelines and how geographic markets  
24 are defined under that framework in Section 1.2?

25 A. I heard testimony this morning with Mr. Hooks

00390

1 on that point. Other than that discussion, I am not  
2 familiar with it.

3 Q. Regarding Exhibit 111, are you familiar with  
4 this exhibit?

5 A. I have reviewed it, yes.

6 Q. If we flip to the back couple of pages, which  
7 cover the more recent promotions offered by Qwest --  
8 let's just say for 1999, there is Page 1 of 2, 2 of 2,  
9 and then there is a single page for the promotions so  
10 far for the year 2000; are you with me?

11 A. Yes, I am.

12 Q. It appears the majority of those promotions  
13 were for a one- to two-month duration; is that correct?

14 A. That is correct.

15 Q. Do you know whether the Company has requested  
16 a waiver of the 30-day notice provision for some or all  
17 of these promotions?

18 A. I'm not aware of such a waiver, no.

19 Q. I'd like to turn your attention to Exhibit 29  
20 now. It's a set of small business group studies  
21 performed by Qwest. Are you familiar with that  
22 exhibit?

23 A. Just a moment, please.

24 MS. JOHNSTON: It's also in the record as  
25 Exhibit 126-C, and it's separated by tabs.

00391

1 MR. OWENS: It's also 233-C.

2 MR. CROMWELL: Just a side question, are the  
3 commissioners' exhibit copies separated by a sheet or  
4 something so everyone has?

5 MS. JOHNSTON: Yes, under Exhibit 126, that  
6 exhibit only.

7 Q. (By Mr. Cromwell) Mr. Teitzel, the first  
8 document I have is a 1999 small business segmentation  
9 study by Bill Williams dated September of '99.

10 A. I have that, yes.

11 Q. Are you familiar with Mr. Williams?

12 A. I have heard of Mr. Williams. I generally  
13 know what his function is. I don't work with him  
14 closely.

15 Q. What position does he hold, and what is his  
16 function?

17 A. In 1999 when this was conducted, he was in  
18 our market intelligence and decision support group. We  
19 refer to it as an MIDS organization. It was a market  
20 research group which no longer exists in the form it  
21 existed in then.

22 Q. Please turn to Page 54.

23 A. I have that.

24 Q. In the upper right-hand corner, do you see a  
25 reference to a quote, "Gold Plus businesses"?

00392

1 A. Did you say Page 54?

2 Q. I am looking at Page 54.

3 A. I do not see that on Page 54.

4 Q. Let's make sure we are looking at the same  
5 study. I have the September '99, Bill Williams 1999  
6 small business segmentation study?

7 A. That's the document I'm looking at, yes. I'm  
8 sorry. It's a small typed up in the upper right-hand  
9 corner.

10 Q. If you will now flip to Page 68.

11 A. I have that page.

12 Q. There is sort of a bar graph table there that  
13 divides customers by value segments that are titled  
14 either "Gold" or "Gold Plus," "Silver," "Bronze," or  
15 "Other"; is that correct?

16 A. That is correct.

17 Q. How is the Company defining those category of  
18 customers?

19 A. I would preface my comments by saying that I  
20 was not involved in this statement nor have I been  
21 involved directly in segmentation studies for small  
22 business, but generally, I would say the Gold and Gold  
23 Plus are the highest valued customers as measured by  
24 total billed revenue on a monthly basis, and then the  
25 tapering tends to step down, Gold into the Silver,

00393

1 Bronze categories based on total revenue the customer  
2 generates.

3 Q. Are there any other measures that determine  
4 that categorization of your customers?

5 A. That's the primary measure, as I recall.  
6 There could be others. I don't recall them off the top  
7 of my head.

8 Q. Would you please flip back to what I have as  
9 the third document in that set. It's titled "small  
10 business segmentation study, Phase 3," also by  
11 Mr. Williams dated February 8th of this year. Do you  
12 have that one as well?

13 A. Yes, I do.

14 Q. Would you please turn to Page 3? For  
15 Mr. Harlow's benefit and the record, if you go from the  
16 back -- it's almost easier to do that. If you start at  
17 the back, there is a study there that's essentially 36  
18 pages long. So look at the numbers in the bottom right  
19 corner and you will get down to 1, and then you will  
20 start over, and the document I'm referring to is 44  
21 pages long, so if you backtrack to Page 3. It kind of  
22 looks like a Power Point, and the title is  
23 "methodology."

24 A. I have that page.

25 Q. Referring to that, it looks as though this

00394

1 portion of the study or this study created high-value  
2 and low-value customer groups; is that correct?

3 A. That's my understanding, yes.

4 Q. Do you know how, if at all, those high and  
5 low value definitions correspond to the Gold Plus,  
6 Gold, Silver, Bronze, and Other value segmentation  
7 levels used by the Company?

8 A. It denotes that high-value groups are defined  
9 as those being 10 Lines and above at a primary  
10 location. Although I did not conduct the study, I  
11 believe that many of those customers will be customers  
12 that would be characterized by having highly monthly  
13 revenue streams and probably are in many cases in the  
14 Gold classification.

15 Q. Let's go backwards to the second document.  
16 For the benefit of those present, after you get to the  
17 first page of that, the second document in the sequence  
18 is also 44 pages long, and it's by what I believe to be  
19 Mr. Brown and Ms. Thornton dated October 7th of 1999.  
20 It's a segment-based analysis of opportunities and  
21 strategies. Do you have that document in front of you?

22 A. I have that page, yes.

23 Q. Looking at this study dated October 7th,  
24 would you also turn to Page 3?

25 A. I have that page.



00395

1 Q. Are these the six vertical markets that Qwest  
2 small business group divided its small business  
3 customers into according to their type of business?

4 A. At the time this study was done, these were  
5 the segments that were considered to be the target  
6 market segments, if you will, in small business. As I  
7 testified earlier, there is a new organization, post  
8 Qwest merger, called national mass markets. They may  
9 be viewing the market differently now. At the time  
10 this study was run, this was the marketing segmentation  
11 philosophy.

12 Q. I appreciate that clarification. Are you  
13 aware of whether the Company has supplemented its  
14 responses to these data requests with new information  
15 related to that national mass market strategy?

16 A. I'm not sure that information exists yet. I  
17 think it's still coalescing.

18 Q. So this would be the most recent information  
19 the Company has?

20 A. To my knowledge.

21 Q. Just for the record because the first title  
22 is a bit hard to read, it looks to me like that says,  
23 "manufacturing, wholesale, and transportation"; is that  
24 correct?

25 A. Yes.

00396

1 Q. The other five categories are professional  
2 services, finance, insurance, real estate, retail and  
3 skilled services, construction, agriculture, mining,  
4 and retail goods.

5 A. That is correct.

6 JUDGE CAILLE: Let's take a 15-minute break.

7 (Recess.)

8 JUDGE CAILLE: We are back on the record  
9 after our afternoon break, and Mr. Cromwell will resume  
10 his cross-examination of Mr. Teitzel.

11 Q. (By Mr. Cromwell) Mr. Teitzel, do you still  
12 have in front of you the segment-based analysis, is I  
13 believe where we got to?

14 A. To be honest with you, I flipped the page  
15 during the break and lost the spot. It was the  
16 segment-based analysis of opportunities and strategy by  
17 Larry Brown and Jan Thornton?

18 Q. Yes.

19 A. I do have that referenced.

20 Q. Would you please turn to Page 38? If you  
21 would take Page 38 and flip back to Page 44 so you have  
22 that segment of the study in hand, and just go ahead  
23 and read into the record the title at the top of each  
24 of those pages beginning at Page 38.

25 A. Beginning at Page 38, the caption at the top

00397

1 of the page states, "we are not capturing the growth in  
2 the market." 38 through 44?

3 Q. Yes?

4 A. To clarify, you wanted the captions at the  
5 top of the page read into the record on each page,  
6 including Page 44?

7 Q. Please.

8 MR. OWENS: Your Honor, this really seems  
9 burdensome. This material is already in the record.

10 MR. CROMWELL: It is getting late. I'll  
11 withdraw that question.

12 Q. (By Mr. Cromwell) Would you look at those  
13 please and just read them to yourself quickly and maybe  
14 get through this in a shorter fashion. Let me know  
15 when you are ready.

16 A. (Witness complies.)

17 Q. Would you concur that this study identifies  
18 the Gold Plus and Gold customer as the ones Qwest is  
19 losing?

20 A. I cannot make that general statement. It  
21 appears that there is a downward revenue trend in Gold,  
22 Gold Plus, also in several segments of the Bronze  
23 category.

24 Q. Would you accept that relative to the other  
25 value segments Qwest uses, the Bronze and other low

00398

1 tech, to use the term, in the study of customers are  
2 the ones Qwest is proportionally keeping?

3 A. I believe some of the low tech segments are  
4 those tending to remain with Qwest to a greater degree  
5 than Gold or Gold Plus, yes.

6 Q. It appears that they are not targeting the  
7 Bronze or other value segment customer to any  
8 significant degree; is that correct?

9 A. Degree is a somewhat subjective term. I  
10 would suggest this study indicates to me that  
11 competitors are targeting the higher value customers as  
12 an entry strategy in the marketplace and tends to work  
13 down from there.

14 Q. One last question about this exhibit and then  
15 we will move on. This is actually going to relate to  
16 some questions I have later. Let's flip to the first  
17 document, the September '99 small business segmentation  
18 study. Take a look at Page 25, if you would, please.  
19 Let me know when you are there.

20 A. I have that page.

21 Q. What is the title of the bar graph on that  
22 page?

23 A. The title of the bar graph is "mean number of  
24 lines at primary location."

25 Q. What mean number of lines does that bar graph

00399

1 provide in the first row that's titled "total small  
2 businesses"?

3 MR. OWENS: Your Honor, we are getting into  
4 specific numbers on the document, and this is a  
5 proprietary exhibit, and the number is in the record  
6 already. So I don't see a purpose in having  
7 Mr. Teitzel recite right now that number.

8 Q. Do you see that number, Mr. Teitzel?

9 MR. CROMWELL: I'll withdraw that question.

10 THE WITNESS: Yes.

11 Q. (By Mr. Cromwell) You stated in response to  
12 cross-examination by Mr. Harlow that the classic U S  
13 West definition of small business was up to 20 lines.  
14 Would you agree that the number identified here as the  
15 mean number of lines is significantly smaller than  
16 that?

17 A. I'd agree with that, yes.

18 Q. In fact, about a quarter? Well, withdraw. I  
19 think that's all I have for this exhibit. Mr. Teitzel,  
20 would you please turn to Exhibit 102, or if you  
21 remember it, it's the Starla Rook e-mail; do you recall  
22 that exhibit from Qwest of Mr. Harlow?

23 A. I have that.

24 Q. Do you see her reference to a phrase -- I  
25 believe it's the third paragraph from the bottom --

00400

1 there is a quotation around "share of wallet study"?

2 A. Yes.

3 Q. Can you tell us what share of wallet is?

4 A. A share of wallet is a term for a study that  
5 was conducted by our MIDS organization -- that was the  
6 competitive intelligence organization we spoke about a  
7 moment ago -- that determined what proportion of the  
8 total customers' telecom spending Qwest is obtaining;  
9 in other words, of the wallet of expenditures going out  
10 for telecom spending, what proportion is Qwest  
11 obtaining in the market.

12 Q. I'd now ask you to turn to Exhibit 118-C.  
13 That is a wire-center-by-wire-center display of BTN  
14 counts for less than five?

15 A. That's correct.

16 Q. If you go to Exhibit 119, which is not  
17 confidential, in that response to a Staff data request,  
18 isn't it true that Qwest defines small business as  
19 those clients between two and three business lines in a  
20 single location?

21 A. That was the response. As I mentioned  
22 previously, the small business organization was focused  
23 on the market being 20 lines and less when classic U S  
24 West was in existence. That definition is now  
25 evolving. I think I mentioned our national mass market

00401

1 organization defines small business as being five lines  
2 and fewer location.

3 Q. Can you tell me whether the answer to this  
4 data request nominates it as a Qwest or U S West  
5 response?

6 A. It is much closer to the Qwest definition  
7 than it would have been U S West.

8 Q. What term is used in the data response, sir?

9 A. I'm sorry, what term is used in the data  
10 response?

11 Q. What company's title is referenced in this  
12 data response? Let me put it another way: Isn't it  
13 true that the response is denominated, "U S West"?

14 A. It does state U S West in the response.

15 Q. Is this how you would define large and small  
16 customers?

17 A. I would define a small business customer  
18 consistently with the definition of national mass  
19 markets, which would be five lines and fewer on a  
20 going-forward basis.

21 Q. So you do not agree with this data request  
22 response?

23 A. I believe that this comprises a significant  
24 portion of that market but not the entire market below  
25 five lines.

00402

1 Q. I would ask you now to turn to Exhibit 123,  
2 which has been marked confidential.

3 A. I have that exhibit.

4 Q. Have you had a chance to review this exhibit?

5 A. Yes.

6 Q. Whether you've determined for yourself or if  
7 you would be willing to accept subject to check that  
8 the SPG and BGS data reflected in this exhibit was  
9 derived from what has been marked as Exhibit 114, the  
10 Company's responses to the UTC data request 01-001,  
11 confidential Attachments A and E.

12 A. Let me verify that quickly, if I could. Yes,  
13 that is correct.

14 Q. Just so the record is clear, you are  
15 acknowledging that this data request does reflect the  
16 information provided in Exhibit 114.

17 A. Yes, it does.

18 MR. CROMWELL: I'd move the admission of  
19 Exhibit 123 at this time.

20 JUDGE CAILLE: Is there any objection? Then  
21 the exhibit is admitted into the record.

22 Q. (By Mr. Cromwell) Mr. Teitzel, while Qwest  
23 did not provide information specific to the 31 wire  
24 centers, is it reasonable to assume that a large  
25 percentage of the numbers reflected here are customers



00403

1 in those 31 wire centers?

2 A. I'd have to disagree with the way you  
3 characterize that question. We've supplied substantial  
4 information about customers in the 31 wire centers.  
5 This particular analysis was not conducted for those 31  
6 wire centers, if that was your question.

7 Q. I perhaps should state it more clearly.  
8 Would you agree that Exhibit 114 did not provide  
9 information specific to the 31 wire centers?

10 A. Before I answer that question, would you ask  
11 it one more time?

12 Q. Going back to Exhibit 114, which was the  
13 Company's response to UTC Data Request 01-001, the  
14 Company's confidential Attachments A and E, would you  
15 agree that the Company's responses there was not  
16 specific to the 31 wire centers?

17 A. The responses in Exhibit 114-C were not  
18 specific to wire centers. They were focused on larger  
19 geographical areas.

20 Q. Therefore, since Exhibit 123 was derived  
21 therefrom, is it also fair to say that Exhibit 123 is  
22 not specific to those 31 wire centers?

23 A. That would be correct.

24 Q. What I'm asking you is based upon your  
25 knowledge, would it be fair to assume, based upon your

00404

1 knowledge of the amount of customers in those 31 wire  
2 centers, whether the information the Company supplied  
3 in Exhibit 114, and is reflected in Exhibit 123, is a  
4 large percentage of those customers in the 31 wire  
5 centers?

6 A. I would agree that the customers and the  
7 revenue generated by those customers in the 31 wire  
8 centers represents the majority, not the minority of  
9 business revenue, especially small business revenue in  
10 the state.

11 Q. Is it also fair to say that there are now or  
12 likely to remain many small business customers  
13 represented by these BTN and that these customers have  
14 the lowest revenue per line?

15 A. Once again, I want to be properly responsive.  
16 Would you ask the question one more time?

17 Q. Sure. Would you agree that there is today  
18 many small business customers represented by these BTN  
19 counts and that these customers have the lowest revenue  
20 per line?

21 MR. OWENS: I'm having trouble following the  
22 question. Which customers have the lowest revenue per  
23 line?

24 MR. CROMWELL: The small business customers.

25 MR. OWENS: Compared to the other numbers on

00405

1 the document?

2 MR. CROMWELL: Yes.

3 Q. (By Mr. Cromwell) Mr. Teitzel, what is SPG?

4 A. SPG is "small business group," and that was  
5 the classic U S West organization I talked about that  
6 typically focused on 20 lines or fewer.

7 Q. What is BGS?

8 A. It is "business and government services" that  
9 equates roughly to large business.

10 Q. So for Mr. Owens' benefit, is it fair to say  
11 that today as between the large and small business  
12 customers that the small business customers represented  
13 by the BTN counts here have the lowest revenue per  
14 line?

15 A. I'm struggling with "lowest." Certainly, the  
16 revenue per line is lower for small business customers  
17 than large business customers. Typically because the  
18 range of services are less sophisticated generally,  
19 less expensive generally.

20 Q. Then I think we have agreement that at least  
21 to a degree that small business customers have a lower  
22 revenue per line than large business customers?

23 A. On the average, that would be true.

24 Q. On the average, is that likely to remain  
25 true?

00406

1       A.     Interesting question.  I would maintain that  
2 competition tends to focus on more densely  
3 concentrated, typically the larger customers, more  
4 valuable customers first.  To the extent that Qwest  
5 loses a significant portion of this large business  
6 base, I would imagine the differential between these  
7 two groups, relatively, customers remaining with Qwest  
8 will shrink over time.

9             Whether there will ever be a crossover or  
10 whether they become one and the same number, I don't  
11 know, but I suspect the differential will probably  
12 change and diminish over time.  Did I answer your  
13 question?

14       Q.     I think that's fine.  You said more densely  
15 concentrated large business customers.  Were you  
16 speaking graphically dense?

17       A.     I think graphically dense.  I think typically  
18 it could also be with where there is a dense  
19 concentration of access lines at that location.  It  
20 could be maybe not a metropolitan area necessarily but  
21 an area, to throw out a number, 1,000 large business  
22 access lines at a large business location that would be  
23 economical to serve by running out a high-capacity pipe  
24 or facility to that location.

25       Q.     An example might be an aerospace facility

00407

1 somewhere?

2 A. Sure.

3 Q. Would you agree that there are differences in  
4 the products these customers buy?

5 A. I would agree with that, yes.

6 Q. I think you touched on this briefly before,  
7 but I would like you to explain more fully that  
8 difference in revenue per line figure as it relates to  
9 the mix of products that these customer groups purchase  
10 on average?

11 A. Would you like me to expand on some of those  
12 differences?

13 Q. Yes. What accounts for that difference in  
14 revenue per line?

15 A. I think on a revenue-per-line basis, a large  
16 business customer may be subscribing to additional  
17 feature functionality. It could be subscribing to  
18 private line services, possibly point-to-point  
19 connection, diverse business locations together that  
20 you typically wouldn't see in a small business arena.  
21 Small business, I think, is primarily access line,  
22 vertical feature-type focuses from a customer  
23 standpoint.

24 Q. So these would be differences between the  
25 customer service demands of the customer groups you are

00408

1 talking about?

2 A. If you will, the customer needs in the  
3 segments are different. Large business customers often  
4 have multiple locations. That may not be true on the  
5 average for small business customers.

6 Q. In fact, Qwest's retail operations recognize  
7 these difference between the small and large customer  
8 groups we are discussing, and at least as far as the  
9 small business group in the study we discussed a minute  
10 ago that they also make differences based upon the  
11 shortage of markets that they look at within the small  
12 business segment; is that true?

13 A. Qwest and before Qwest, U S West, recognize  
14 that different customer segments have different needs,  
15 and we have attempted to package and offer our services  
16 in unique ways to those segments that will meet those  
17 needs.

18 Q. Why are customer-specific revenues  
19 proprietary information?

20 A. On this basis, if there is information about  
21 what our market is sized at, what customers look like,  
22 how they are configured, what kind of revenue they  
23 generate, it can all be information that can be helpful  
24 to a competitor to help design their entry strategy  
25 into the marketplace. So for that reason, I think they

00409

1 would be viewed proprietary.

2 Q. Your comments are also applicable to the  
3 customers that Qwest enters into specific contracts  
4 with for service as to that proprietary information?

5 A. I believe details about specific customer  
6 contracts are proprietary. Again, they are filed as a  
7 matter of course with the Commission for their review  
8 in each case.

9 Q. Mr. Teitzel, at this time I would ask you to  
10 go to Exhibit 12.

11 A. Yes, I have that.

12 Q. This is the Company's petition, and at  
13 Attachment M -- first, I should preface. Were you here  
14 for Ms. Jensen's testimony?

15 A. Yes, I was.

16 Q. I think there was some discussion, Attachment  
17 M has a series of wire center maps that identifies  
18 collocators, switches, porters, resellers; is that  
19 correct?

20 A. Yes, I was here for that testimony.

21 Q. It identifies the number of competitive  
22 switches located in a wire center?

23 A. Yes, it does.

24 Q. If we go to Attachment G -- I believe this  
25 was a question I asked Mr. Hooks. He thought you might

00410

1 be in a better position to answer it -- we go seven  
2 columns over, there is provided the U S West business  
3 line numbers?

4 A. I have that.

5 Q. There is a column entitled "U S West business  
6 lines" that provides business lines for each of the  
7 wire centers?

8 A. Yes, there is.

9 Q. Have you also had the opportunity to review  
10 Ms. Battacharya's testimony filed in this case?

11 A. Yes, I did.

12 Q. Including the exhibits she filed?

13 A. Yes.

14 Q. Maybe we can skip flipping books. Do you  
15 recall what was Exhibit 3 to her testimony, that I  
16 believe has been nominated as Exhibit 193 in these  
17 proceedings, provided a percent market share for the  
18 wire centers; do you recall that?

19 MR. OWENS: I'm going to object. I believe  
20 that exhibit performs a market share calculation by  
21 exchange, not wire.

22 MR. CROMWELL: Mr. Owen is indeed correct.  
23 It was by exchange. Do you recall that?

24 THE WITNESS: I recall generally the  
25 testimony. Would you like me to read that?



00411

1 Q. (By Mr. Cromwell) No. I'm just making a  
2 record as to the information there and wanted to ask  
3 you a couple of questions. Would you agree that taking  
4 that data, those three sets of data, the number of CLEC  
5 switches, the number of Qwest lines, and the Staff  
6 exchange-based market share percentage, that you could  
7 estimate the number of CLEC lines on an exchange basis?

8 A. I certainly do think that could be done. If  
9 the wire centers were aggregated properly into the  
10 exchanges in Staff's testimony, that could be done.

11 CHAIRWOMAN SHOWALTER: I'm confused. You  
12 said we didn't need to turn to a document, but what  
13 were you talking about?

14 MR. CROMWELL: I was talking about the market  
15 share calculation that Ms. Battacharya performed in  
16 Exhibit 3 to her testimony, which has been marked as  
17 Exhibit 193.

18 CHAIRWOMAN SHOWALTER: Even though you think  
19 this witness doesn't need to refer to it, I don't  
20 understand the question without looking at it. So it  
21 would help me if you do tell us what exhibit you are  
22 talking about so I can follow. So 193 is what you were  
23 referring to?

24 MR. CROMWELL: It was, Your Honor. I was  
25 essentially establishing proper foundation for the

00412

1 final question I asked, and I'm not going to ask any  
2 further questions regarding that exhibit, which is why  
3 I was attempting to save everyone the trouble of  
4 flipping books.

5 CHAIRWOMAN SHOWALTER: You are getting a  
6 question and answer in the record, but I don't go back  
7 and read the record if I've been here to hear it. It  
8 helps me to understand it right in the moment.

9 MR. CROMWELL: I apologize for trying to jump  
10 two steps ahead. I had my soda this afternoon, as you  
11 can see.

12 Q. (By Mr. Cromwell) Mr. Teitzel, would you  
13 agree that a facility-based CLEC would need switching  
14 to provide services?

15 A. I would agree with that whether it were  
16 provided directly by the CLEC itself or purchased and  
17 resold from another provider.

18 Q. If the capacity that that CLEC, either owned  
19 or rented, if you will, was full, would you also agree  
20 that they would need to add capacity to add customers?

21 A. Certainly.

22 Q. Has Qwest done any studies to determine  
23 available CLEC volume capacity to add lines to their  
24 existing switches?

25 A. I believe I heard Mr. Hooks testify this

00413

1 morning that these switches that are in place and  
2 owned, if you will, by the CLECs are modular where they  
3 can be expanded as demand expands. So the capacity, as  
4 I heard him testify, could you expanded in 100-thousand  
5 block increments, so I think the demand is certainly  
6 scalable and the capacity is certainly scalable to  
7 switch.

8 Q. I heard Mr. Hooks' testimony as well, and I  
9 think, if you will bear with me and subject to check, I  
10 think he testified they were in modular as small as 10-  
11 to 20-thousand increments, but my question to you is  
12 whether the Company had done a study to determine CLEC  
13 volume capacity to add lines to their existing  
14 switches?

15 A. There has not been a study conducted in that  
16 fashion that I'm aware of, other than the fact that  
17 there is a 1999 CLEC report that Qwest purchased which  
18 does show type of switches, and I believe it also shows  
19 capacity in market, but Qwest itself has not conducted  
20 that study.

21 Q. Mr. Teitzel, are you familiar with business  
22 customer demographic at all?

23 A. Generally. I'll respond to a question if I  
24 can.

25 Q. Is it true that customers other than

00414

1 businesses buy services that are covered by this  
2 petition?

3 A. Yes, it is.

4 Q. Would those types of customers include, for  
5 example, nonprofit organizations?

6 A. It certainly could.

7 Q. Health care, medical?

8 A. Certainly.

9 Q. Nursing homes, educational institutions?

10 MR. OWENS: I'm going to object to the form  
11 of the question, Your Honor. There is no indication  
12 that nursing homes are not businesses. The question  
13 assumes that they aren't.

14 MR. CROMWELL: I'll rephrase the question for  
15 Mr. Owen's benefit.

16 Q. (By Mr. Cromwell) Would it be true to your  
17 knowledge, Mr. Teitzel, that an entity which has  
18 obtained IRS nonprofit status might indeed also  
19 purchase business services such as are the subject of  
20 this petition as identified in Column 2 of Attachment A  
21 to the Company's petition?

22 A. I believe that -- once again, I'm not an  
23 attorney, but I would offer this answer. I believe  
24 that businesses or organizations or entities such as  
25 you describe could be a health care organization,

00415

1 not-for-profit organization. If it were determined to  
2 be a business-type customer, they could certainly buy  
3 services identified in Attachment A to the petition.

4 Q. What do you mean by "business-type customer"?

5 A. Qwest, I believe, would classify any customer  
6 that would not be a residential customer, an  
7 application where it's not a business application in  
8 the home or business service is required where it's not  
9 a residential dwelling, that would qualify for a  
10 business location.

11 Q. So maybe to analogize, Qwest is agnostic as  
12 to what type of entity is using business services, and  
13 the discrimination is between residential versus  
14 business service?

15 A. I would not want to classify Qwest as being  
16 agnostic, but certainly, nonresidential customers could  
17 buy the services listed in Attachment A to the  
18 petition.

19 Q. Small business classification doesn't  
20 directly correlate to the size of a business-type  
21 entity, does it?

22 A. No, it doesn't. It is geared more around the  
23 blind services purchased by that entity.

24 Q. So from Qwest's perspective, it's the  
25 relevant size of the customer, the size of the employee

00416

1 base, the size of the services it requires; is that  
2 correct?

3 A. I'm not sure I would agree with that  
4 entirely. I think if an entity were an educational  
5 entity, a university, that would determine that that  
6 would be treated as a larger business customer, that  
7 its needs are different, typically, but I would say  
8 that in general, it is services and access lines  
9 purchased that drive that entity to a particular  
10 market.

11 Q. In your example, that would be a BGS-type  
12 customer, a university?

13 A. Yes.

14 Q. So it's also possible for a relatively small  
15 company that has very few employees to have very strong  
16 demand for business services; is that true?

17 A. Certainly.

18 Q. Does Qwest, in fact, have business customers  
19 of that type?

20 A. Yes, we do.

21 Q. You stated in your testimony that the 30-day  
22 regulatory interval -- I should say 30-day regulatory  
23 interval places Qwest at a competitive disadvantage  
24 relative to its competitors who enjoy a 10-day approval  
25 interval, did you not?

00417

1 A. Yes, I did.

2 Q. You also identified, I believe it was four  
3 bullet point items that Qwest would be able to do under  
4 competitive classification, did you not, and I'm  
5 referring to Page 8 of your testimony.

6 A. Page 8 of my direct testimony?

7 Q. Yes, I believe so. Do you see that?

8 A. Yes, I do.

9 Q. The first three items refer to the 10-day  
10 notice period and the fourth to customer-specific  
11 services and pricing; right?

12 A. Yes, they do.

13 Q. Isn't it also true that Qwest can achieve  
14 each of those four items through the use of its  
15 expanded rate tariff?

16 A. I believe the banded-rate tariff has  
17 parameters that are exactly that -- the low band and a  
18 high parameter with which prices could be changed, but  
19 this classification would not be a banded  
20 classification.

21 Q. I understand that, Mr. Teitzel. My question  
22 to you, sir, is of the four points you are making at  
23 the top of Page 8 of your testimony, is it true or is  
24 it not true that each of those goals, if you will, can  
25 be achieved through the Company's current use of its

00418

1 banded-rate tariff?

2       A.     I think the first three within those two  
3 limited parameters we talked about could be done under  
4 the 10-day notice under the price-banding rules as I  
5 understand them. The fourth bullet talks about  
6 packaging, bundling for pricing service in the  
7 customer-specific basis. That reference is really to  
8 the wire center focus where Qwest may need to role out  
9 a unique package or bundle to respond to a particular  
10 competitor entry in the competitive zone or wire  
11 center. That could not be done without granularity  
12 under the current banded tariff.

13       Q.     Has Qwest attempted to compete under the  
14 banded-rate tariff authority for each of the services  
15 it is seeking to have declared competitive in the 31  
16 wire centers?

17       A.     I am not aware that Qwest has sought that  
18 flexibility. For example, I do not believe we have the  
19 flexibility to price -- based on our five business  
20 line, as an example, today, nor do I believe we've  
21 sought that, to my knowledge.

22       Q.     If we could go back to Page 6 of your  
23 testimony, you stated that Qwest needs the ability to  
24 price its services flexibly in order to compete; is  
25 that correct?



00419

1 A. Yes.

2 Q. To use your own words, that means the ability  
3 to pick and choose its customer and service areas?

4 A. I don't believe that's my testimony. I said  
5 Qwest does not have the ability to pick and choose its  
6 customer and service area.

7 Q. Is that something that you are seeking to do  
8 through this case?

9 A. No. I think what we are asking for is to  
10 have services classify as competitive on a  
11 competitive-zone basis such that within any particular  
12 wire center, we could price a service or package a  
13 service in a way to respond to competition but not at  
14 an individual customer level.

15 MR. CROMWELL: One moment, Your Honor. I  
16 think I may be done.

17 MR. CROMWELL: Thank you, Mr. Teitzel. I  
18 have no further questions.

19 JUDGE CAILLE: Staff?

20 MS. JOHNSTON: No, Your Honor.

21 JUDGE CAILLE: XO?

22 MR. KOPTA: No questions, thank you.

23 JUDGE CAILLE: Anyone else? Commissioners?

24

25

00420

1 CROSS-EXAMINATION

2 BY CHAIRWOMAN SHOWALTER:

3 Q. I think what I'm actually doing is going  
4 through your testimony as I've marked it. Beginning  
5 with your major as an undergraduate in industrial  
6 psychology. I've never known quite what that is. What  
7 is industrial psychology as a subject?

8 A. Industrial psychology is a major in  
9 psychology with a focus on business and personnel  
10 issues. So it's a blending of psychology and business,  
11 including economics, personnel courses.

12 Q. On Page 15 of your testimony, your direct  
13 testimony, Exhibit 76, Lines 4 and 5, you say, "Today  
14 in every one of the 31 wire centers, customers can go  
15 to the well-advertised and widely-available competitors  
16 of Qwest to purchase equivalent service offerings," and  
17 my question is, what is your basis for saying that,  
18 that the customers can go and purchase those offerings  
19 in every one -- let's break it down. Do you mean to  
20 say in that in every one of the 31 wire centers, some  
21 customers can do that or all or a significant number of  
22 customers, almost all?

23 A. Our position is that competition is a  
24 layering of offerings. In some cases, they are  
25 facility-based providers that provide their own

00421

1 facilities, and in some cases, competitors are using  
2 unbundled network elements, and in some cases they are  
3 reselling, and our petition is, as we've shown in  
4 Attachment B, for example, which shows a subset of the  
5 total number of customers providing service to these  
6 wire centers that these services are available from  
7 alternative providers. As I testified previously, to  
8 the extent competitive switches are located in these  
9 wire centers, these services are all available today.

10 Q. If I looked at Attachment B of Exhibit 12,  
11 what I see there is services offered by CLECs, and from  
12 that, I would assume that at least some customers or at  
13 least one customer can get those services, but how do I  
14 derive from what you have provided whether it's one or  
15 two customers or almost all customers or all customers  
16 in a wire center being able to get the array of  
17 services provided here?

18 A. That's a reasonable question. Many of these  
19 providers, and I would use ELI as an example, or maybe  
20 a better example would be Nextlink in Spokane, are  
21 providing services not only on a resale basis but on a  
22 facilities basis. To the extent Nextlink is providing  
23 its own switching facilities, and it is in Spokane, it  
24 can provide services to customers located along their  
25 own physical facility routes or by using unbundled

00422

1 loops to get to the customers or by reselling services.  
2 So I would maintain these competitors are selling  
3 service to customers today.

4 Q. It seems that you have established that there  
5 are competitors present in the 31 different wire  
6 centers in different combinations and numbers. I'm  
7 trying to ask the question from the customer's point of  
8 view, whether the customer can get service from a CLEC  
9 in a given wire center, and can you point me where in  
10 the evidence, or what is the best evidence that either  
11 all customers or most customers or almost all customers  
12 can take or are, in fact, able in the present day to  
13 take advantage or to pursue an alternative provider if  
14 they want to? That is a different question than  
15 whether there are alternative providers present in a  
16 wire center.

17 A. I see the distinction. Let me use Nextlink  
18 as an example in Spokane. Let's say you are located in  
19 Spokane/Chestnut, for example, if you are in that wire  
20 center. I reviewed Nextlink's price list. I've  
21 reviewed their promotional offering. They are there in  
22 Spokane. They are heavily marketing in Spokane,  
23 advertising as well as direct sales forces. To the  
24 best of am understanding, based on the data we have  
25 supplied, any customer in Spokane in that wire center

00423

1 can call Nextlink and place an order, any business  
2 customer today, without restriction. There is no  
3 restriction in the price list or marketing material  
4 that I have seen.

5 Q. So what wire center were you just referring  
6 to?

7 A. I think I said Chestnut.

8 Q. So your evidence is that Nextlink is present  
9 in the Spokane/Chestnut wire center; that Nextlink  
10 advertises heavily in the Spokane area, which includes  
11 Spokane/Chestnut, and that Nextlink, in fact, provides  
12 at least to some customers.

13 A. They are providing service to customers today  
14 in that wire center.

15 Q. Is it from those facts that you conclude that  
16 any customer, any business customer in Spokane/Chestnut  
17 could get the same kind of service from Nextlink?

18 A. From my review of all the facts that we've  
19 been able to obtain in this docket, including the price  
20 list, marketing materials, everything that we have  
21 available, I can see no evidence that a customer in  
22 Spokane/Chestnut, that any customer could not call  
23 Nextlink and order business service and receive that  
24 service today.

25 Q. That was put in the negative. So far I think

00424

1 your answer is what I would call circumstantial  
2 evidence. You can get at this issue in a number of  
3 ways. The direct evidence would be direct evidence of  
4 one, two, three, seven or more customers actually  
5 getting service from Nextlink or some other direct  
6 evidence that a service was available to them just for  
7 the asking, but I take it there isn't that kind of  
8 direct evidence in this case.

9 A. Your Honor, if I could, we have supplied  
10 information that we are losing customers in  
11 Spokane/Chestnut; that we know we are losing customers  
12 both to resale and facility-based competition. We are  
13 very careful and cautious not to pull information out  
14 that may be carrier-specific competitive loss data that  
15 could violate the carrier proprietary Commission rules.  
16 So I as a witness do not have that specific data. I  
17 believe the Commission staff may have obtained that  
18 data since they are not bound by those same  
19 constraints.

20 Q. I didn't mean to pick on Nextlink. I think  
21 you had. I meant it as an example. Let's turn then to  
22 the loss data. Again, you can look at lost business in  
23 terms of lost lines, lost revenue, or lost customers,  
24 and it seems to me that what we have mostly here is  
25 lost lines; am I right on that? And maybe lost

00425

1 revenue, but have we got evidence before us about lost  
2 customers, direct evidence of customers, not lines or  
3 revenues?

4 A. We talked about access lines previously. We  
5 also talked about billed telephone numbers or BTNs.

6 Q. Numbers, that would be another way.

7 A. Right, and a BTN roughly corresponds to a  
8 customer. You could have one BTN and three access  
9 lines billed to that BTN at a customer location.

10 Q. What is a BTN?

11 A. Billed telephone number. So again, that  
12 would be the customer's primary billing number. That  
13 would correspond roughly with the number of customers.

14 Q. I was going to ask you about that, because  
15 there is somewhere in your testimony where you discuss  
16 lines versus customers. I don't remember, actually, if  
17 it was lines versus customers or numbers versus  
18 customers, but you are responding -- it must be in your  
19 rebuttal -- to Dr. Blackmon's assertion that a small  
20 number of customers account for a large number of  
21 lines, and I think you agree with that principle. Do  
22 you recall where that is in your testimony?

23 A. I don't recall the precise site.

24 Q. Here it is. It's on Page 5 of your rebuttal  
25 testimony, Lines 17 through 19.

00426

1 A. I see the context.

2 Q. So you say Dr. Blackmon is correct.

3 Specifically for Qwest, 20 percent of Qwest business  
4 accounts generate 87 percent of the business revenue  
5 and 60.5 percent of the business lines. So this is why  
6 I'm not sure what I can draw from a loss of business  
7 lines. If 20 percent of the business accounts account  
8 for 60 percent of the lines --

9 MR. OWENS: Madam Chairwoman, I don't believe  
10 that's what the testimony says. That's a new sentence.  
11 It says "60.5 percent of business lines in Washington  
12 are small business lines.

13 CHAIRWOMAN SHOWALTER: I'm sorry; I  
14 apologize.

15 THE WITNESS: I can try to help, if I can.  
16 This generally is the 80/20 rule where we say that 20  
17 percent of our customers generate roughly 80 percent of  
18 the revenue. That means that 20 percent of our  
19 customers in the small business arena would be high  
20 users of features, high users of toll, high users of  
21 other services like DSL, potentially, that could be  
22 high value, high revenue-type producing services. Then  
23 the remainder would typically be the single-line  
24 business customer who may be a very low toll user, if  
25 he has one or no features, et cetera. So a small



00427

1 number of our customers could be viewed by our  
2 competitors as being highly attractive and large  
3 revenue producers.

4 Q. So that's a relationship of customers to  
5 revenue.

6 A. Yes.

7 Q. Is there any similar kind of relationship of  
8 customers to lines, or in general, if you have lost 20  
9 percent of your lines, does that or doesn't that  
10 correlate to 20 percent loss of customers, or is that  
11 something that can't be determined by loss of lines?

12 A. Maybe to clarify, if we were to lose 20  
13 percent of our billed telephone numbers, BTNs, that  
14 would be roughly 20 percent of our customers. Again,  
15 it's precise, but it is close.

16 Q. How does that square with an agency such as  
17 this one, say, where we have a lot of phone numbers,  
18 but we are one customer? Is there some kind of bell  
19 curve of customers in the number of lines that they  
20 typically have?

21 A. Well, I believe in the small business arena,  
22 especially in the newly defined small business arena as  
23 we talked about being five or fewer lines, the average  
24 is somewhere around three. In the large business  
25 arena, entities such as this, the range is great.

00428

1 Q. So if we were looking at the universe of  
2 small business customers, then there is a higher  
3 correlation of phone numbers to customers, or closer  
4 correlation, than if we were looking at larger ones.

5 A. Absolutely.

6 Q. Bearing that proposition in mind that there  
7 is a closer correlation, and I'm asserting it more as a  
8 proposition than a fact, where is the evidence of lost  
9 numbers that would correlate or be about the small  
10 businesses by wire center?

11 MR. OWENS: Madam Chairwoman, when you say  
12 "numbers," are you talking about business lines or  
13 billed telephone numbers?

14 CHAIRWOMAN SHOWALTER: I thought we had  
15 gotten onto billed telephone numbers as the closer  
16 correlation to customers than lines.

17 THE WITNESS: It is, and the data we talked  
18 about previously was our response to WUTC 01-001.

19 Q. (By Chairwoman Showalter) 114. So turning to  
20 Exhibit 114 then --

21 A. This was the data we had available at the  
22 wire center level, and this was on a line basis. I  
23 don't think I had a comparable exhibit showing BTNs by  
24 wire center.

25 Q. Is it fair to say so far of my questions of

00429

1 you, you have asserted a relatively close correlation  
2 between number of customers and number of phone  
3 numbers; is that the way to put it, billed phone  
4 numbers?

5 A. I think if these numbers were to be divided  
6 by approximately three, especially in the small  
7 business numbers, you would be pretty close in terms of  
8 counts of customers by wire center.

9 Q. So Exhibit 114 has to do with lines; right?

10 A. It does.

11 Q. It does? Because it's labeled at the top SBG  
12 BTN loss. I thought that had to do with billed  
13 telephone numbers.

14 A. I'm sorry; do we have the same exhibit? Mine  
15 says "'98/'99 competitive loss summary by wire  
16 center/CLLI, 1998 SBG line loss. I apologize. My  
17 numbers probably don't correspond to yours. Mine is  
18 just my copy of my data request response, WUTC 01-001.

19 CHAIRWOMAN SHOWALTER: Counsel, could you  
20 make sure the witness has Exhibit 114-C and make sure I  
21 have it too, but I think this is something we just put  
22 in our notebooks yesterday or not?

23 THE WITNESS: On the copy that Mr. Owens just  
24 handed me, it shows Attachment E of that data request,  
25 and I've got a more comprehensive set in front of me

00430

1 here that has all of the other attachments A through E.  
2 So that could be the difficulty here.

3 Q. (By Chairwoman Showalter) What I have for  
4 Exhibit 114 is three pages, and the first page at the  
5 top says "Confidential Attachment E." That is at the  
6 upper right-hand corner; do you see that?

7 A. I do.

8 Q. On the left-hand side it says, "SBG BTN loss  
9 summary." Is that the page you are looking at?

10 A. Mr. Owens just handed me that page, and that  
11 is a BTN summary. Again, I apologize, but I have many  
12 more attachments to that request, so there must be  
13 omission of pages.

14 Q. But just to complete Exhibit 114-C, the next  
15 two pages each have the designation, "Confidential  
16 Attachment A" on them.

17 A. They do.

18 Q. And they each have the same title, but they  
19 are not the same documents or pages. It is hard since  
20 these are confidential to distinguish them, and they  
21 aren't duplicates because they have different numbers.  
22 By the way, this is one more good reason to have page  
23 numbers on exhibits. Do you have the two pages that  
24 say "Confidential Attachment A" at the top?

25 A. I do, and the first page is a small business

00431

1 BTN loss summary, and the next page is BNGS. One is  
2 small business and one is large business.

3 Q. This exhibit then relates to billed telephone  
4 number loss.

5 A. And this was at a state level, correct.

6 Q. So at a state level, then how do you explain  
7 -- it's got MSA's; is that right? I'm looking at the  
8 one that says, "Confidential Attachment E.

9 A. Yes, it does.

10 Q. I guess I'll ask this question: Exhibit 114  
11 does not analyze BTN loss at the wire center level; am  
12 I correct on that, at least the pages in this exhibit  
13 that's presented to us?

14 A. You are correct, Your Honor. The pages you  
15 have in front of you do not. There was an error of  
16 omission on the remainder.

17 Q. Is there anything I can derive from Exhibit  
18 114 about loss of customers in the 31 wire centers?

19 A. Yes. You will see Seattle/Tacoma, which  
20 would comprise a portion of those 31 wire centers, with  
21 a customer loss year-to-date 2000, this year only off  
22 to the right. Spokane is right below that with the  
23 number of customer loss January through April 2000.

24 Q. I want you to be very precise in your answer.  
25 Is that showing loss of customers or loss of billed

00432

1 telephone numbers?

2 A. That is billed telephone numbers, and I would  
3 testify that they are reasonable approximations of  
4 customers.

5 Q. Would that mean only one number per customer?

6 A. No. Typically, a customer could be a  
7 three-line customer, as we discussed earlier, that  
8 would have a lead billed telephone number, would have  
9 three lines in that customer's account. So in that  
10 event, you could have some multiple-line customers with  
11 only one BTN.

12 Q. If I am one customer and I have five phone  
13 numbers, is that correct going to show up as one BTN or  
14 five?

15 A. One BTN.

16 Q. So this would then, in general, be a close  
17 correlation to number of customers, even though it's  
18 not, per se, customers. It's billed telephone numbers.

19 A. It's a reasonable approximation, yes.

20 Q. Then if my interest is loss of customers in  
21 the 31 wire centers, the closest I can get is to look  
22 at Spokane, for example, and what assumptions can I  
23 make about the number of wire centers in Spokane as  
24 reflected in this Exhibit 114 compared to the number of  
25 wire centers in Spokane that are the subject to the

00433

1 petition?

2 A. My recollection is we asked for all of the  
3 Spokane wire centers to be classified in this petition,  
4 and I can verify that in just a moment. I would  
5 suggest these losses are occurring in the aggregation  
6 of Spokane wire centers that make up the Spokane  
7 exchange.

8 Q. Is there a place that I can compare the loss  
9 of BTNs in Spokane with the number of BTNs that Qwest  
10 has in the same area?

11 A. We had an exhibit we spoke about earlier -- I  
12 believe Ms. Jensen testified to it as well -- which  
13 showed access lines and percentage of access lines lost  
14 to competition. I don't recall as I sit here whether  
15 that was a BTN comparison. I can try to locate that if  
16 you give me a moment.

17 Q. All right.

18 MR. OWENS: Madam Chairwoman, as long as you  
19 are thinking about this, rather than waiting until  
20 redirect, I would note if you look at the cover sheet  
21 of Exhibit 114-C, it describes Attachment C and D,  
22 which appear to include by wire center the competitive  
23 loss information you were discussing, and those were  
24 not included when this exhibit was prepared and  
25 offered, and we would be happy to supplement the record

00434

1 by providing that as a supplemental exhibit. It's from  
2 1998 and 1999.

3 CHAIRWOMAN SHOWALTER: I believe that does  
4 get to the question I'm asking, and since the parties  
5 have seen this, I think that would be a good idea.

6 MR. OWENS: We could provide that tomorrow.

7 JUDGE CAILLE: That would be Bench Request 2.  
8 Just so I'm clear, Mr. Owens, these Attachments C and D  
9 are not the ones in the original petition?

10 MR. OWENS: That's correct, Your Honor. They  
11 are information that was responsive to Staff Request  
12 1-001 asking for supporting information behind  
13 Mr. Teitzel's testimony about customer loss.

14 CHAIRWOMAN SHOWALTER: Mr. Teitzel was  
15 looking for a document, but I just wonder if it was  
16 Exhibit 122.

17 THE WITNESS: It may be, I'm not immediately  
18 turning to it.

19 CHAIRWOMAN SHOWALTER: I mean 123-C.

20 MR. OWENS: Was this the document, Madam  
21 Chairwoman? (Witness indicating.)

22 CHAIRWOMAN SHOWALTER: Yes.

23 MR. OWENS: That's the exhibit Public Counsel  
24 prepared.

25 THE WITNESS: No. Unfortunately, the



00435

1 document I'm thinking about was one I believe  
2 Ms. Jensen testified to which showed losses at the wire  
3 center level and proportionate losses to U S West  
4 access lines in that wire center.

5 CHAIRWOMAN SHOWALTER: That might have been H  
6 of the petition. That's okay. I think you are still  
7 going to be on the stand a little bit by tomorrow  
8 morning. We ought to pause here. Maybe we need to  
9 conclude for the day, which would be fine, because I  
10 know that people have to get home for  
11 trick-or-treating.

12 JUDGE CAILLE: Is that all right with  
13 everyone if we pause now and take up tomorrow morning?  
14 Then we are adjourned until tomorrow morning at 9:30.

15 MR. CROMWELL: Just for the record, Your  
16 Honor, I will be replaced by Mr. ffitich tomorrow  
17 morning.

18 (Hearing convened at 5:00 p.m.)

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