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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3

4 In the Matter of the Petition) Docket No. UT-000883
of) Volume IX
5) Pages 643-907
US WEST COMMUNICATIONS, INC.)
6)
for Competitive Classification)
7 of Business Services in)
Specified Wire Centers.)
8 _____)

9

10 A hearing in the above matter was
11 held on November 2, 2000, at 9:12 a.m., at 1300
12 Evergreen Park Drive Southwest, Olympia, Washington,
13 before Administrative Law Judge KAREN CAILLE,
14 Chairwoman MARILYN SHOWALTER, Commissioner Richard
15 Hemstad, and Commissioner William R. Gillis.

16 The parties were present as
17 follows:

 QWEST CORPORATION, by Douglas N.
18 Owens, Attorney at Law, 1325 Fourth Avenue, Suite
940, Seattle, Washington, 98101, and Lisa A. Anderl,
19 Attorney at Law, 1600 Seventh Avenue, Room 3206,
Seattle, Washington 98191.

20

 XO WASHINGTON, INC., ELECTRIC
21 LIGHTWAVE, INC., McLEOD USA TELECOMMUNICATIONS
SERVICES, INC., FOCAL COMMUNICATIONS OF WASHINGTON,
22 GLOBAL CROSSING TELEMAGEMENT, and GLOBAL CROSSING
LOCAL SERVICES, INC., by Gregory J. Kopta, Attorney
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Square, 1501 Fourth Avenue, Seattle, Washington,
24 98101.

25 Barbara L. Nelson, CSR
Court Reporter

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1 TRACER, by Lisa F. Rackner,
Attorney at Law, Ater Wynne, 222 S.W. Columbia, Suite
2 1800, Portland, Oregon 97201.

3 THE COMMISSION, by Sally G.
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5 PUBLIC COUNSEL, by Simon ffitch,
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7 METRONET, ATG and WORLDCOM, by
8 Brooks Harlow, Attorney at Law, Miller Nash, 601
Union Street, Suite 4400, Seattle, Washington, 98101.

9 ATG, by David Rice, Attorney at
10 Law, Miller Nash, 601 Union Street, Suite 4400,
Seattle, Washington 98101.

11 ESCHELON TELECOM OF WASHINGTON, by
12 Dennis Ahlers, Attorney at Law, 730 Second Avenue,
Suite 1200, Minneapolis, Minnesota 55402 (Via
13 Teleconference Bridge.)

14 AT&T, by Steven H. Weigler,
Attorney at law, 1875 Lawrence Street, Room 1524,
15 Denver, Colorado 80202.

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1 JUDGE CAILLE: We are in the fourth day of
2 evidentiary hearings in Docket Number UT-000883.
3 This is a petition by Qwest for competitive
4 classification in specified wire centers. All of the
5 counsel who are present have previously entered their
6 appearances, and Dr. Goodfriend has been previously
7 sworn and is still under oath, and we will begin with
8 her cross-examination, continue with her redirect --
9 or begin her redirect. I'm sorry. Why don't we
10 begin this morning with the redirect of Dr.
11 Goodfriend.

12 MS. RACKNER: Thank you, Your Honor. And I
13 do just have a few minutes of redirect. I was able
14 to streamline things last night.

15

16 R E D I R E C T E X A M I N A T I O N

17 BY MS. RACKNER:

18 Q. Good morning, Dr. Goodfriend.

19 A. Good morning, Ms. Rackner.

20 Q. In response to questions last evening from
21 Commissioner Showalter, you made some statements
22 regarding the experience of the CLECs in the wake of
23 the issuance of the Commission's order in the hi-cap
24 case. Do you know what that experience or what that
25 impact has been?

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1 A. No, I do not. What I intended to say was
2 that the Commission made the right decision with
3 respect to the framework in that proceeding. I don't
4 have any information about the specific effects of
5 the Commission decision on the development of that
6 market. I observed that the CLECs continue to add
7 switches and fiber, but that observation says nothing
8 about the existence, continuing existence of barriers
9 to entry, provisioning problems, maintenance
10 problems, other kinds of anticompetitive behavior,
11 and I think there's indications, for example, by Ms.
12 Anderson in this proceeding, her testimony is that
13 there continue to be a parade of problems having to
14 do with creating environment where there's true ease
15 of entry for CLECs.

16 I caution, also, and conclude in my
17 testimony that should the Commission decide to grant
18 pricing flexibility, as the Company requests in this
19 petition, that that premature grant of entry is going
20 to give Qwest an opportunity to be more effective in
21 pursuing anticompetitive behaviors, and so I urge the
22 Commission not to grant the petition.

23 Q. Thank you. Also in response to Chairwoman
24 Showalter's questioning, you stated that you do not
25 believe that Section 271 of the Telecommunications

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1 Act preempts RCW 80.36.330. Could you please explain
2 your opinion of the relationship between those two
3 statutes?

4 A. Staff makes the observation, and I agree
5 with the observation, that had the Commission,
6 preceding this case, made a finding with respect to
7 271 compliance, it would be easier for the
8 Commission, there would be more grounds for granting
9 a petition such as this.

10 That's because, from the FCC's point of
11 view, 271 provides some of the necessary conditions
12 for a meaningful opportunity to compete to be assured
13 and establishes irreversibility of those conditions.
14 And in that way, I think the 271 standards are
15 complementary and I believe should precede our
16 findings such as that or a stronger foundation would
17 raise the foundation the Commission would have for
18 granting a proposal such as this.

19 Q. Thank you. Now, on cross-examination from
20 Mr. Owens, he pointed you to a place in your
21 testimony where you quote from an article by Trent
22 Spiridellis in the Wall Street Transcript. Can I
23 direct your attention back to that article? It's
24 Exhibit 169.

25 A. Yes.

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1 Q. Please turn to -- it's approximately the
2 fourth page in, at the top of the page. It says in
3 bold, The switches and the equipment.

4 MS. JOHNSTON: I'm sorry, I'm not with you.
5 Where?

6 MS. RACKNER: It's approximately four pages
7 in. It's the same section that Mr. Owens directed
8 Dr. Goodfriend to yesterday. At the top of the page,
9 unfortunately, and I apologize, they're not numbered,
10 it says in bold, The switches and the equipment, in
11 bold.

12 MS. JOHNSTON: I'm there. Thank you.

13 CHAIRWOMAN SHOWALTER: I'm not there yet.

14 MS. RACKNER: Okay. Commissioner Hemstad,
15 I've just directed everyone to Exhibit 169.

16 CHAIRWOMAN SHOWALTER: I see it.

17 Q. At the bottom of the page, there's a
18 question and answer to Mr. Spiridellis, and there are
19 some numbers that, when Mr. Owens asked you about
20 them, you said that you could not reconcile
21 specifically. I believe, and correct me if I'm
22 wrong, he was asking you about the statement that
23 says, about Focal, The company's average number of
24 lines per customer increased from 290 in the first
25 quarter to about 300 at the end of the second

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1 quarter. Do you see that?

2 A. Yes, I do.

3 Q. And then jump down a line or two. It says,
4 Focal's corporate customers subscribe to an average
5 of about 66 access lines. Do you see that?

6 A. Yes, I do.

7 Q. And when Mr. Owens asked you whether you
8 could reconcile those numbers, you looked for a
9 document and then said no, you could not. Can you do
10 so now?

11 A. Yes. His suggestion was that that
12 discrepancy indicated that this company was serving
13 retail or smaller customers, and I knew that not to
14 be their marketing strategy. I looked in the wrong
15 document. If you look up --

16 MR. OWENS: Your Honor, that
17 mischaracterizes my question. I did not use the term
18 retail. I simply asked if it was a correct
19 interpretation that sole proprietors or partnerships
20 would subscribe an average line count significantly
21 greater than 300 in order to make the numbers work
22 out correctly. I didn't use the word retail or imply
23 it.

24 MS. RACKNER: I don't think that's what the
25 witness said, but thank you for that clarification.

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1 MR. OWENS: She said the implication of my
2 question was that it was directed at retail
3 customers.

4 JUDGE CAILLE: Can the witness answer the
5 question?

6 THE WITNESS: Yes. Excuse me. Above -- in
7 the first column, above that last line referencing
8 the 290 to 300 lines per customer, looking above the
9 second to last paragraph of the question preceding,
10 you'll see there that Mr. Spiridellis indicates, he
11 says it's important and he says that Focal has
12 relationships with more than 220 ISPs, Internet
13 service providers, including nine of the top ten in
14 the nation.

15 With that information, it's possible to
16 understand that his estimation of average customer,
17 average lines, the 300 average lines per customer,
18 takes into account the relationship with these very
19 large customers, the 220 Internet service providers.
20 Thus, continuing to the top of the second column, his
21 discussion that Focal's corporate customers subscribe
22 to an average of about 66 access lines, he's
23 distinguishing customers that are not Internet
24 service providers, but private corporations.

25 I had the opportunity this morning to

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1 contact Mr. Spiridellis, and that indeed was how
2 those numbers are to be reconciled.

3 Q. Thank you. Yesterday afternoon, Chairwoman
4 Showalter asked you if you would apply the standards
5 of the Department of Justice Merger Guidelines
6 differently in this case than you would in the case
7 of a merger, and you answered yes in a very general
8 way. Could you explain why you would apply those
9 guidelines differently?

10 A. With a regulated firm, we have a dominant
11 firm in the market whose dominance is attributable to
12 franchising the existence of price entry regulation.
13 In a market, an unregulated market with a dominant
14 firm, it's typically understood that that firm's
15 efficiencies and ability to employ capital, its
16 superior efficiencies have led it to grow to a larger
17 size than the average firm in that market.

18 So we can't attribute dominance in the
19 regulated context to superior management or superior
20 economic efficiencies.

21 In addition, that dominance conferred by
22 regulation creates what I call an incumbency
23 advantage, and that is an ability and desire to erect
24 barriers to entry, other ways to frustrate entry by
25 what may very well be more efficient firms, who will

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1 now have the opportunity to compete in the market.
2 And so I think that fundamental difference suggests
3 that one needs to apply a more stringent standard, as
4 a general matter, in evaluating the kinds of economic
5 issues that are presented in the Merger Guidelines.

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

8 JUDGE CAILLE: Any re-cross?

9 MR. OWENS: Yes.

10

R E C R O S S - E X A M I N A T I O N

12 BY MR. OWENS:

13 Q. Is it your testimony, Dr. Goodfriend, that
14 you believe that Washington has had, in the past,
15 franchise price and entry regulation?

16 A. The existence --

17 Q. Well, yes or no?

18 A. Yes, yes.

19 MR. OWENS: Okay. Thank you. That's all.

20 JUDGE CAILLE: Any other re-cross?

21 Anything further?

22

23

E X A M I N A T I O N

24 BY CHAIRWOMAN SHOWALTER:

25 Q. I wanted to just follow up on one statement

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1 you just made regarding 271, and I heard you to say
2 it would -- if we had ruled on 271 and approved an
3 application or recommended approval, that that would
4 bolster the grounds for granting this petition.

5 But one aspect you didn't address is that
6 271 is a statewide review, and this proceeding is in
7 narrower geographic areas and service areas. So I
8 take it, while you would like to see that happen
9 before, in essence, the scope of this proceeding's
10 quite a bit narrower, in one sense, than a 271
11 proceeding.

12 A. We provided, based on a data response from
13 Qwest, the revenues at stake. The areas they've
14 asked you to look at are the areas of the most
15 significant economic activity comprising over the
16 great majority of where CLEC entry has occurred, so
17 in my view, a finding in 271 is essentially a finding
18 about these particular areas where the CLECs have
19 concentrated their entry.

20 Q. Well, let me put the question in the
21 reverse, then. In your view, if we grant the
22 petition in these 31 wire centers, do you think that
23 we are essentially making an equivalent finding to
24 271? Are we tipping our hand in the 271 or are we
25 dealing with the same issues?

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1 A. I don't believe it's symmetric in that way.

2 CHAIRWOMAN SHOWALTER: Okay. Thanks.

3 JUDGE CAILLE: Anything further? All

4 right. Thank you, Dr. Goodfriend. You're excused.

5 And Mr. Ahlers, is your witness on the line? Mr.

6 Ahlers?

7 MR. AHLERS: Judge, can you hear me?

8 JUDGE CAILLE: Yes.

9 MR. AHLERS: Okay. I'm not sure if he's on
10 the line or not. I told him to call in approximately
11 now. He's in a different location than I am.

12 JUDGE CAILLE: All right. Is Mr. Davis on
13 the bridge line? I think we did ask him to call in
14 at 9:30, because we expected the redirect to take
15 about that amount of time, so we have a --

16 CHAIRWOMAN SHOWALTER: Why don't we just
17 pause.

18 JUDGE CAILLE: -- pause.

19 MR. KOPTA: While we're pausing, although I
20 think there was an agreement on the stipulation or a
21 stipulation to admit Ms. Anderson's testimony and
22 exhibits, I don't know that they were ever officially
23 entered into the record, nor have the cross exhibits
24 that Qwest designated for that testimony and to which
25 we stipulated admission been actually admitted. So

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1 in this break, I thought I would jump in and see if
2 we could make sure that those are admitted into the
3 record.

4 JUDGE CAILLE: Is there any objection to
5 the admission of -- let me just find it here.

6 MR. KOPTA: Starts with Exhibit 281-T.

7 JUDGE CAILLE: Why don't you go ahead and
8 list those for the record, Mr. Kopta.

9 MR. KOPTA: Yes, we are offering Exhibits
10 281-T, which is the response testimony of Kaylene
11 Anderson, Exhibit 282 and Exhibit 283, which are
12 exhibits to that testimony. And to save Ms. Anderl
13 or Mr. Owens some time, they've designated cross
14 exhibits for Ms. Anderson that are numbered 284, 285,
15 286-C, 287-C, 288-C, 289-C, 290 and 291, and my
16 understanding is that the parties have stipulated to
17 admission of all of those exhibits.

18 JUDGE CAILLE: Is that correct?

19 MR. OWENS: Yes, Your Honor.

20 MS. RACKNER: That's correct.

21 JUDGE CAILLE: Thank you. Then those
22 exhibits are admitted into the record.

23 MR. KOPTA: Thank you, Your Honor.

24 MR. OWENS: I guess, as another
25 housekeeping matter, Your Honor, there are seven

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1 exhibits that were erroneously identified as being
2 Qwest cross-examination exhibits of Mr. Davis, those
3 being 270 through 276. Pursuant to discussions with
4 counsel for Eschelon, Qwest acknowledges that that
5 somehow was in error. I'm not sure who was
6 responsible. Qwest would not be offering those
7 exhibits through Mr. Davis.

8 JUDGE CAILLE: All right. So 270 through
9 276, are they someone else's or --

10 MR. OWENS: I believe they're already in
11 the record as other exhibits numbers, Your Honor.

12 JUDGE CAILLE: All right. So we'll just
13 strike 270 through 276.

14 MR. OWENS: Correct.

15 JUDGE CAILLE: Any other housekeeping
16 matters while we're waiting?

17 MR. AHLERS: Your Honor, this is Dennis
18 QP662Ahlers. I'm assuming that Mr. Davis' testimony is
19 261-T; is that correct?

20 JUDGE CAILLE: That's correct.

21 MR. AHLERS: Okay. Mr. Ahlers, as long as
22 we're talking about the exhibits associated with Mr.
23 Davis, are you going to have any objection to the
24 cross exhibits of Qwest?

25 MR. AHLERS: No, Your Honor. I've talked

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1 with counsel about that, and we have no objection.

2 MR. OWENS: Then I guess, at this time,
3 Qwest would offer 262 through 269.

4 JUDGE CAILLE: All right. Those are
5 admitted into the record, as well. He has a couple
6 more minutes, by this clock, I think.

7 CHAIRWOMAN SHOWALTER: We'll probably hear
8 a beep when he gets on the line. Let's go off the
9 record for a minute.

10 (Recess taken.)

11 JUDGE CAILLE: Mr. Davis, have you joined
12 us?

13 MR. DAVIS: I just did.

14 JUDGE CAILLE: Thank you. We are -- I
15 think all counsel are in the room right now. We
16 are ready to go ahead with your cross-examination.
17 I'm going to -- I'll have Mr. Eschelon (sic)
18 introduce you.

19 MR. OWENS: You want to swear him first?

20 JUDGE CAILLE: First, let me swear you in.
21 Whereupon,

22 RON DAVIS,
23 having been first duly sworn, was called as a witness
24 herein and was examined and testified as follows:

25 JUDGE CAILLE: Thank you. And Mr. Ahlers,

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1 you may proceed.

2

3 D I R E C T E X A M I N A T I O N

4 BY MR. AHLERS:

5 Q. Good morning, Mr. Davis.

6 A. Good morning.

7 Q. Would you please state your name and your
8 address for the record?

9 A. My name is Ron Davis. And my home address?

10 Q. Your business address.

11 A. My business address. I'm -- actually, let
12 me -- I'm not sure. We just moved into a new office.
13 My business address is 7175 S.W. Beveland Street,
14 Suite 100, Tigard, Oregon, 97223.

15 Q. Could you please state your position with
16 Eschelon Telecom?

17 A. I'm the director of sales for the Northwest
18 region.

19 Q. Thank you. And did you prepare or have
20 prepared for you the testimony that was filed in this
21 matter, labeled as Exhibit 261-T?

22 A. I did.

23 Q. And do you have any changes to make to that
24 at this time?

25 A. I do not, no.

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1 MR. AHLERS: Your Honor, I would move for
2 admission of that testimony and tender the witness
3 for cross-examination.

4 JUDGE CAILLE: Is there any objection to
5 the admission of Exhibit 261-T? Hearing none, then
6 the exhibit is admitted into the record and Mr. Davis
7 is available for cross-examination. I believe -- is
8 Staff the only party --

9 MS. JOHNSTON: Yes, I believe so.

10 JUDGE CAILLE: -- to have cross? All
11 right. Other than the Commissioners. You may
12 proceed, Ms. Johnston.

13 MS. JOHNSTON: Thank you.

14

15 C R O S S - E X A M I N A T I O N

16 BY MS. JOHNSTON:

17 Q. Good morning, Mr. Davis.

18 A. Good morning.

19 Q. I'm the lawyer for Commission Staff in this
20 proceeding. I just have a couple of questions for
21 you.

22 A. Okay.

23 Q. In Exhibit 261-T, you testified that
24 Eschelon has experienced difficulty attracting small
25 or medium-sized business customers to Eschelon's

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1 service; is that right?

2 A. Yes.

3 Q. But it's true, isn't it, that you have
4 identified no specific examples where a potential
5 customer refused to leave Qwest because of the
6 long-term contract containing a termination penalty?

7 A. That is correct.

8 Q. To your knowledge, do CLECs use term
9 contracts, as well?

10 A. To my knowledge, yes, there are some of
11 them out there that do have contracts when they sign
12 up their customers. However, they tend to be
13 12-month contracts.

14 Q. Are you aware of the existence of any
15 contracts with longer than 12-month terms?

16 A. Rarely have I run across any that go longer
17 than the 12 months. Occasionally, I've seen two, and
18 that's about it. Other than the Centrex-21 contracts
19 with Qwest.

20 Q. What sort of contracts would Eschelon
21 employ?

22 A. Eschelon employs a 12-month contract.

23 Q. And to your knowledge, do many of these
24 CLEC contracts also contain termination penalties?

25 A. Yes, they do.

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1 Q. Do Eschelon's contracts contain termination
2 penalties?

3 A. Yes, they do.

4 MS. JOHNSTON: That's all I have. Thank
5 you.

6 JUDGE CAILLE: Commissioners.

7

8

E X A M I N A T I O N

9 BY CHAIRWOMAN SHOWALTER:

10 Q. Hello, this is Chairwoman Showalter. On
11 page two, line four of your testimony, you say, Our
12 primary target customers are small and medium-sized
13 business customers. What do you mean by small and
14 medium-sized customers?

15 A. What we mean is we typically target a
16 company that has anywhere from three to 15 business
17 lines and maybe one to 50 employees.

18 Q. All right. We heard yesterday from a
19 customer who said that he had -- who has three, then
20 four, then five business lines, as his small business
21 grew, but he had contacted you and had gotten a
22 preliminary, I think, agreement to be served by you,
23 but that he hadn't yet been, and he's unencumbered by
24 other contracts. In fact, he was very desirous to
25 switch to a competitor. And he says he has been

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1 trying to get service from you and can't, and he
2 didn't know the reasons why.

3 My question to you is do you have a
4 priority list of customers? Is a customer with only
5 three to five lines a lower priority customer for
6 you?

7 A. Absolutely not.

8 Q. Can you think of the reasons why you might
9 not be able to serve a customer who wants your
10 service?

11 A. Well, without knowing more information
12 specifically on this customer and doing the research,
13 I probably would not be able to provide a very good
14 answer.

15 Q. Okay. What method of service are you using
16 for your -- for competitors, or excuse me, for
17 customers, small business customers in Washington,
18 resale or facilities-based? What is your --

19 A. We've been doing resale up until recently.
20 We have our switch up and running and now we are
21 moving to a facilities-based service. However, there
22 are certain central offices where we are not
23 collocated, and we're still offering service on a
24 resale basis.

25 Q. I see.

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1 A. And now, one of the things that could be
2 with the other customer, if they were outside of the
3 central offices we serve either resale or
4 facilities-based, then we would have difficulty
5 getting the service.

6 CHAIRWOMAN SHOWALTER: Okay. Thank you.

7 JUDGE CAILLE: Anything? No other
8 questions? Yes.

9

10 C R O S S - E X A M I N A T I O N

11 BY MR. OWENS:

12 Q. Mr. Davis, Doug Owens, for Qwest. I
13 believe the witness that the Chairwoman was talking
14 about was named Mr. Paxhia, P-a-x-h-i-a, and his
15 company was called Merchant Services, Inc., in
16 Renton. Does that help you to know the facts and
17 specifics of this circumstance?

18 A. I'm not familiar with that specific account
19 at this time, no.

20 MR. OWENS: Thank you.

21 JUDGE CAILLE: Any redirect?

22 MR. AHLERS: Just one, if I could.

23

24 R E D I R E C T E X A M I N A T I O N

25 BY MR. AHLERS:

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1 Q. Mr. Davis, is one of the -- what are some
2 of the examples of delays that would cause a delay in
3 us getting service, in Eschelon getting service to a
4 customer?

5 A. One of the delays could very well be the
6 fact that we do have to work with other providers.
7 And sometimes we are at the mercy of other providers,
8 as well, to give the end product to a potential
9 customer.

10 Q. What would be an example of that?

11 A. Well, it kind of depends on the situation.
12 However, there's many different ways that a -- you
13 know, an order can be held up. And it depends on
14 whether we're talking analog or digital, it depends
15 on if we're talking about new service versus just
16 reselling or taking over existing service.

17 Q. In what way would it be outside of
18 Eschelon's control? I should say, in what
19 circumstances would it be outside of Eschelon's
20 control?

21 A. Well, we rely, once we receive an order
22 from a customer, we rely on Qwest, when we turn in
23 the order, to process the actual order, to actually
24 do the change. So at that point, we rely on Qwest
25 for due dates for switching over, we rely on them for

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1 doing that.
2 MR. AHLERS: All right. Thank you. I have
3 nothing further.
4 JUDGE CAILLE: Any re-cross?
5 MS. JOHNSTON: No, Your Honor.
6 JUDGE CAILLE: All right. Thank you very
7 much, Mr. Davis. You are excused.
8 MR. DAVIS: Thank you.
9 JUDGE CAILLE: According to our schedule,
10 our next witness will be Ms. Bhattacharya.
11 MR. FFITCH: Your Honor.
12 JUDGE CAILLE: Yes.
13 MR. FFITCH: The attorneys for Qwest have
14 very graciously changed places with us just to allow
15 us to -- as a courtesy for our witness, and we'd
16 offer to change back so they can be back close to
17 their documents and in their accustomed place at this
18 time.
19 JUDGE CAILLE: Go ahead.
20 MR. AHLERS: Your Honor, this is Dennis
21 Ahlers again.
22 JUDGE CAILLE: Is this something that needs
23 to be on the record, Mr. Ahlers?
24 MR. AHLERS: No, it doesn't.
25 JUDGE CAILLE: Let's go off the record.

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1 (Discussion off the record.)

2 JUDGE CAILLE: All right. Let's go back on
3 the record. And Ms. Bhattacharya, if you'll rise, I
4 will swear you in.

5 Whereupon,

6 GARGI BHATTACHARYA,
7 having been first duly sworn, was called as a witness
8 herein and was examined and testified as follows:

9 JUDGE CAILLE: Thank you. Go ahead,
10 Counsel.

11 MS. JOHNSTON: Thank you.

12

13 D I R E C T E X A M I N A T I O N

14 BY MS. JOHNSTON:

15 Q. Good morning, Ms. Bhattacharya.

16 A. Good morning.

17 Q. Please state your full name for the record,
18 spelling the last.

19 A. My name is Gargi Bhattacharya, spelled B,
20 as in boy, h-a-t-t-a-c-h-a-r-y-a.

21 CHAIRWOMAN SHOWALTER: Will you bring the
22 microphone a little closer to your mouth, and maybe
23 move it down a little bit.

24 Q. What is your business address?

25 A. 1300 South Evergreen Park Drive, S.W.,

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1 Olympia, Washington, 98504.

2 Q. What is your occupation and where do you
3 work?

4 A. I work for the Washington Utilities and
5 Transportation Commission as a telecommunications
6 analyst.

7 Q. In preparation for your testimony here
8 today, did you pre-distribute direct testimony and
9 exhibits marked for identification as Exhibits 191-T,
10 192 and 193?

11 A. I did.

12 Q. Do you have any revisions, corrections or
13 modifications to your testimony or exhibits?

14 A. I have a minor change on page two, on line
15 seven.

16 CHAIRWOMAN SHOWALTER: What exhibit is this
17 going to be?

18 THE WITNESS: 191-T.

19 Q. And what is that change?

20 A. It refers to the testimony of witness Dr.
21 Blackmon as GB-1-T, and that should be BGB-1-T.

22 Q. Are those exhibits true and correct, to the
23 best of your knowledge?

24 A. Yes.

25 Q. Were they prepared by you or under your

00672

1 direction or supervision?

2 A. Yes.

3 Q. If I were to ask you the questions set
4 forth in Exhibit 191-T today, would your answers be
5 the same?

6 A. Yes.

7 MS. JOHNSTON: I move for the admission of
8 Exhibits 191-T, 192 and 193, Your Honor.

9 JUDGE CAILLE: Is there any objection to
10 the admission of these exhibits? Then they are
11 admitted into the record.

12 MS. JOHNSTON: Ms. Bhattacharya is
13 available for cross-examination.

14 JUDGE CAILLE: Okay. And I believe Public
15 Counsel or Qwest? I have -- or is it Tracer? I'm
16 sorry.

17 MS. RACKNER: Oh, I'm sorry, it is Tracer,
18 and I was just hesitating, because I thought ATG was
19 going first, but I'm happy to go first. I have just
20 a few questions.

21

22 C R O S S - E X A M I N A T I O N

23 BY MS. RACKNER:

24 Q. Good morning, Ms. Bhattacharya.

25 A. Good morning.

00673

1 Q. I'd like to direct you to page three of
2 your testimony, which is Exhibit 191. The first Q&A
3 is lines nine through 11, or rather, the whole Q&A
4 you describe the process that you went through to
5 gather information that you used in your
6 calculations; is that correct?

7 A. Yes.

8 Q. And line 11 -- excuse me, lines eight
9 through 11, you refer to a letter being accompanied
10 by a verification form?

11 A. Yes.

12 Q. Now, is that verification form the document
13 that's listed under -- as Exhibit 192?

14 A. Yes, it is.

15 Q. And is that the same verification form that
16 was attached to the Commission's order in this
17 docket, the order requiring disclosure of
18 information, dated August 11th, 2000? And for your
19 convenience, I've set a copy of that in front of you.

20 A. I believe that the order was issued on July
21 27th, and the companies were required to respond by
22 August 11th.

23 Q. That's correct. Thank you. And is the
24 verification form that's attached to that order the
25 same verification form that appears in this case as

00674

1 Exhibit 192?

2 A. Yes, it is.

3 Q. Now, and the letter that's also attached to
4 the order we just referred to, that's the letter that
5 you referred to in your testimony, as well?

6 A. Yes, it is.

7 Q. Now, I'm looking at the letter, and at the
8 bottom of the paragraph -- excuse me, bottom of the
9 page, there are instructions to the recipients of the
10 letter as to how to fill out the verification form;
11 is that correct?

12 A. Mm-hmm, yes.

13 Q. And it says, for the types of lines that
14 are being reported under numbers one and two, that
15 resold lines should be stated separately; correct?

16 A. Yes.

17 Q. Okay. And I'm turning to the verification
18 form now, which is also attached to the order. It
19 might be easier to get to than Exhibit 192. I don't
20 see any spot for the CLECs to fill out resold lines.
21 Is there a specific place on this form?

22 A. No, there's not.

23 Q. And why not?

24 A. We felt that if companies wanted to
25 additionally send us their resold line information,

00675

1 they could address it in a letter or an attachment to
2 this particular form.

3 Q. Okay. And did any companies do that?

4 A. Some did.

5 Q. Did some companies indicate somewhere on
6 this form that there were resold lines?

7 A. No, they did not.

8 Q. So to the extent they did, they did it on a
9 separate page?

10 A. Yes.

11 Q. And did you take any action to verify the
12 information that the CLECs sent you on the forms?

13 A. In addition to the form and the letter was
14 a verification form that went out to each of the
15 companies. It's the last page of the document you
16 handed out. And each company was required to have a
17 notarized verification sent in.

18 Q. And perhaps I didn't state my question well
19 enough. Did you take any action to assure that the
20 CLECs were filling out the forms correctly?

21 A. I did not. I assume that they would comply
22 with the Commission order.

23 Q. Okay. Well, I guess what I'm getting at --
24 well, let me back up a little bit. On your letter,
25 the end of your letter that went out, let me find the

00676

1 place, it states that if the CLECs have any questions
2 regarding the notice, that they should contact you
3 directly; correct?

4 A. Yes.

5 Q. Did any CLECs call with questions about how
6 to fill out the forms?

7 A. Some did.

8 Q. Okay. Do you recall how many?

9 A. Not accurately.

10 Q. Okay. Did any have questions about how to
11 separate out the resold lines?

12 A. No, they did not.

13 Q. And the calculations that you performed to
14 get to your HHI Index, did you separate out the
15 resold lines?

16 A. The information that was provided in the
17 attached form that's, I believe, Exhibit 192, was to
18 not have included any resold lines.

19 Q. So let me turn your attention to 193, and
20 that's your market concentration results. So you're
21 telling me that, as far as you know, there were no
22 resold lines included in the calculations that you
23 made?

24 A. As far as I know.

25 MS. RACKNER: Thank you. I have nothing

00677

1 more.

2 JUDGE CAILLE: Does ATG have questions,
3 cross for Ms. Bhattacharya?

4 MR. RICE: We have no questions.

5 JUDGE CAILLE: Qwest.

6 MR. OWENS: Just very briefly, Your Honor.

7 I believe there's an agreement to admit what's been
8 marked as Exhibits 194 through 196 without foundation
9 questions. That's Staff's responses to Qwest Data
10 Requests 1, 4 and 7.

11 MS. JOHNSTON: That's correct.

12 MR. OWENS: We would offer those.

13 JUDGE CAILLE: Then Exhibits 194, 195 and
14 196 are admitted into the record.

15 MR. OWENS: Thanks.

16

17 C R O S S - E X A M I N A T I O N

18 BY MR. OWENS:

19 Q. Good morning, Ms. Bhattacharya.

20 A. Good morning.

21 Q. Just so that I understand, the universe of
22 companies that you polled for information in Exhibit
23 193 was the same 31 companies that Qwest identified
24 in its June 7th petition; is that correct?

25 A. That's correct.

00678

1 Q. And are you aware of whether or not the
2 number of registered providers of local exchange
3 service has increased in the state of Washington
4 since that time?

5 A. Yes, the number of registered companies has
6 increased.

7 Q. And obviously you haven't polled those
8 companies since the work that you did to prepare 193;
9 correct?

10 A. No, I did not.

11 Q. So with more competitors in the
12 marketplace, if they had customers, would your
13 mathematical calculations result in a lower
14 concentration?

15 A. It may or it may not.

16 MR. OWENS: Okay. Thank you. That's all.

17 JUDGE CAILLE: Is there any other cross for
18 Ms. Bhattacharya? Commissioners, do you have any
19 questions?

20 CHAIRWOMAN SHOWALTER: I'm sorry, I don't.

21 JUDGE CAILLE: Any redirect?

22 MS. JOHNSTON: No, Your Honor.

23 JUDGE CAILLE: All right. Thank you, Ms.
24 Bhattacharya. You're excused. And our next witness
25 will be Dr. Blackmon.

00679

1 MS. JOHNSTON: Your Honor, could we take a
2 break? Dr. Blackmon needs to go and retrieve some of
3 his documents from his office.

4 JUDGE CAILLE: Okay. Let's take a
5 five-minute break.

6 MS. JOHNSTON: Thank you.
7 (Recess taken.)

8 JUDGE CAILLE: Let's go back on the record.
9 And Dr. Blackmon, if you'll please stand, I'll swear
10 you in.

11 Whereupon,

12 DR. GLENN BLACKMON,
13 having been first duly sworn, was called as a witness
14 herein and was examined and testified as follows:

15 JUDGE CAILLE: You may proceed, Ms.
16 Johnston.

17 MS. JOHNSTON: Thank you.

18

19 D I R E C T E X A M I N A T I O N

20 BY MS. JOHNSTON:

21 Q. Good morning, Dr. Blackmon.

22 A. Good morning.

23 Q. Please state your name for the record,
24 spelling the last?

25 A. Glenn Blackmon, B-l-a-c-k-m-o-n.

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1 Q. What is your business address?

2 A. 1300 South Evergreen Park Drive, S.W.,
3 Olympia, Washington.

4 Q. What is your occupation?

5 A. I'm Assistant Director for
6 Telecommunications at the Washington Utilities and
7 Transportation Commission.

8 Q. In preparation for your testimony here
9 today, did you pre-distribute direct testimony and
10 exhibits, marked for identification as Exhibits
11 201-T-C, 202 and 203?

12 A. Yes.

13 Q. Do you have any revisions, corrections or
14 modifications to either your testimony or exhibits?

15 A. Yes. On page two, line 21, the docket
16 number there should be UT-99 -- I did it again --
17 970767. That's all.

18 Q. Okay. Are those exhibits true and correct,
19 to the best of your knowledge?

20 A. Yes.

21 Q. Were they prepared by you or under your
22 direction or supervision?

23 A. Yes.

24 Q. If I were to ask you the questions set
25 forth in Exhibit 201-T-C today, would your answers be

00681

1 the same?

2 A. Yes.

3 MS. JOHNSTON: I move for admission of
4 Exhibits 201-T-C, 202 and 203, Your Honor.

5 JUDGE CAILLE: 203-C?

6 MS. JOHNSTON: Yes. Oh, thank you.

7 JUDGE CAILLE: Is there any objection to
8 the admission of those exhibits? Hearing none, then
9 those exhibits are admitted into evidence.

10 MS. JOHNSTON: Thank you. Dr. Blackmon is
11 available for cross-examination.

12 JUDGE CAILLE: I believe -- is it just
13 Qwest that has cross-examination for Dr. Blackmon?

14 MS. JOHNSTON: That's correct.

15 MR. OWENS: Thank you, Your Honor. As a
16 preliminary matter, Qwest had identified some
17 responses to its data requests by the Staff to be
18 introduced through Dr. Blackmon as Exhibits 221
19 through 224, and I understand that there's no
20 objection to admitting those without foundation.

21 MS. JOHNSTON: That's correct.

22 JUDGE CAILLE: That's correct? Then those
23 exhibits are admitted into the record.

24 MR. OWENS: Thank you.

25 MR. FFITCH: Your Honor, may I interject

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1 that, with the leave of my colleague, Mr. Owens, I
2 just wanted to confirm that Public Counsel's cross
3 exhibits also, Exhibits 204 through 220 have been
4 admitted through Mr. Blackmon?

5 MS. JOHNSTON: That's correct.

6 JUDGE CAILLE: That's correct? Then those
7 exhibits, Exhibits 204 through 220 are admitted, as
8 well.

9 MR. FFITCH: Thank you, Your Honor. Thank
10 you, Mr. Owens.

11 MR. OWENS: You're welcome.

12

13 C R O S S - E X A M I N A T I O N

14 BY MR. OWENS:

15 Q. Good afternoon, Dr. Blackmon.

16 A. Good morning.

17 Q. Still good morning. You're right. It's
18 been a long day already. Just a few questions. Ms.
19 Jensen, in her testimony, her rebuttal, Exhibit 7-T,
20 gave her understanding of the significance or
21 practical implementation of your conditions and your
22 alternative recommendation. Do you recall that?

23 A. In general, yes.

24 Q. Do you have any specific areas where you
25 disagree with her reading or understanding of those

00683

1 recommendations?

2 MS. JOHNSTON: Well, Your Honor, I hate to
3 do this, but I'm going to have to make an objection
4 here without -- I mean, if you want to refer Dr.
5 Blackmon to Ms. Jensen's specific testimony or what
6 her representations were, that's one thing, but to
7 ask Mr. Blackmon to endorse wholeheartedly wholesale
8 her testimony, I don't think that's fair.

9 MR. OWENS: Well, I didn't ask for an
10 endorsement, but I have no problem with making some
11 kind of specific reference.

12 JUDGE CAILLE: Thank you. Please do.

13 Q. Begins on page nine.

14 A. I'm sorry, I don't have her testimony up
15 here.

16 CHAIRWOMAN SHOWALTER: What exhibit?

17 JUDGE CAILLE: What exhibit?

18 MR. OWENS: Exhibit 7-T.

19 THE WITNESS: I have the testimony. What
20 page?

21 Q. Beginning at page nine, and continuing on
22 through the part of page 11 that ends at line six is
23 where she discusses her understanding of your
24 conditions.

25 A. I've gone through page 11, line six, and

00684

1 haven't found anything in her statement of
2 understanding that I would disagree with. I would
3 think that the Commission will ultimately be guided
4 by its statement of the conditions in the order if it
5 were to choose this approach.

6 Q. Thank you. Now, at page 13 of your
7 testimony, Exhibit 201-T-C, you say that unbundled
8 network elements are not yet a proven commercial
9 product. It's correct, isn't it, that you don't
10 dispute the fact, as shown in Qwest's Attachment H to
11 Exhibit 12, that it has actually provided unbundled
12 loops to competitors in the wire centers at issue
13 here?

14 A. No, I don't disagree with the fact that
15 some unbundled loops have been provisioned.

16 Q. Is there some objective criteria that you
17 have in mind for judging when unbundled loops would
18 be, in your phrase, a proven commercial product?

19 A. I haven't attempted to define an objective
20 criterion to do that. It would -- well, for
21 instance, in the testing of Qwest's operational
22 support systems, that there is this notion of
23 commercial volumes of orders being processed through
24 it, and so I would think that -- what I have in mind
25 is something similar to that, see a volume of orders

00685

1 that demonstrates the ability of competitors to place
2 their orders and have them filled reliably and
3 quickly.

4 Q. Another concern that you identified with
5 regard to the UNE platform is that the nonrecurring
6 charge that you discuss in your testimony is a
7 cumulation of the individual nonrecurring charges for
8 all of the individual elements that comprise the UNE
9 platform; is that correct?

10 A. Yes, I believe I discuss that at page 17.

11 Q. Are you aware of whether or not Qwest,
12 after the date of your testimony or perhaps
13 coincidentally with it, submitted to the Commission
14 proposed nonrecurring charges for the UNE platform
15 that are lower than the sum of all the nonrecurring
16 charges for the individual elements?

17 A. Yes, I'm aware that, in the generic cost
18 case, that the Commission -- the Company, Qwest, has
19 proposed significantly lower nonrecurring charges.
20 In fact, that's one reason why I testified in a
21 hopeful way about the future of the unbundled network
22 element platform, but I still believe that, today,
23 the high nonrecurring charges are still there.

24 Q. And that nonrecurring charge is in the
25 neighborhood of \$12 for the first line, \$12.41.

00686

1 Would you accept that?

2 A. The proposed one?

3 Q. Yes.

4 A. Yes.

5 Q. Do you know whether or not that rate has
6 actually been included in any existing negotiated
7 agreement?

8 A. I believe that there are amendments in the
9 works to do that. I haven't seen that actual
10 amendment from this state doing that yet.

11 Q. But would it be a correct understanding
12 that when such amendments are presented and approved
13 by the Commission, that would go at least a good
14 distance toward addressing your concern about the
15 level of nonrecurring charges for the UNE-P?

16 A. Yes, to the extent my concern is with that
17 charge itself, the part that I discuss there at page
18 17 in that particular sentence, if Qwest reduces the
19 nonrecurring charge to the level that it has proposed
20 in the generic cost case, I think that will take away
21 that one concern about the unbundled network element
22 platform.

23 Q. Okay, thank you. Dr. Blackmon, are you
24 aware of whether or not Qwest has publicly stated
25 that it is willing to enter into amendments with

00687

1 CLECs for existing agreements to incorporate that
2 reduced price that I asked you about a minute ago as
3 the nonrecurring charge for the UNE-P?

4 A. I'm not sure what a public statement would
5 -- you know, what that would constitute, but I
6 believe that Qwest has committed at least one
7 individual competitor to do that. And the way this
8 process works, if they, in fact, follow through and
9 do that for one, it will be available to all.

10 Q. Directing your attention to page 22 of
11 Exhibit 201-T-C, you say that it's difficult for you
12 to imagine that a firm would let 40 percent of its
13 market switch to competitors without responding by
14 cutting prices. Are you aware of any pending
15 litigation between Qwest and resellers that might
16 have an impact on Qwest's decisions to reduce certain
17 prices of retail services?

18 A. No.

19 Q. You're not aware of any antitrust
20 litigation between a reseller and Qwest?

21 A. I saw some documents that apparently kind
22 of spilled over into this case, but that's the extent
23 of my knowledge of that case.

24 Q. You also discuss on that same page that the
25 Staff has only been able to determine how many lines

00688

1 are being served by competitors, and not how many
2 customers purchase those lines. You listened to Mr.
3 Teitzel's testimony about the significance of the
4 count of billed telephone numbers; correct?

5 A. I heard some of it.

6 Q. Based on that, do you have any view as to
7 whether or not the Commission could use that
8 information to give it some approximate count of the
9 number of small business customers that it's lost?

10 A. Well, not necessarily based on that, but
11 just in general, I believe that billed telephone
12 number data would be useful in assessing the loss of
13 customers as opposed to the number of lines.

14 MR. OWENS: That concludes my
15 cross-examination. Thank you, Doctor.

16 THE WITNESS: You're welcome.

17 JUDGE CAILLE: Yes, Mr. ffitch.

18 MR. FFITCH: Your Honor, I didn't identify
19 anything. I just have, really, one or two questions,
20 if I may.

21 JUDGE CAILLE: Go ahead.

22 MS. JOHNSTON: I thought we had a
23 stipulation?

24 MR. FFITCH: We have a stipulation? I
25 thought we'd just given estimates. I don't want to

00689

1 violate a stipulation.

2 MS. JOHNSTON: Your Honor, may we have one
3 moment?

4 JUDGE CAILLE: Yes, let's go off the record
5 just a moment.

6 (Discussion off the record.)

7 MR. FFITCH: My apologies, Your Honor.
8 This is probably a function of the pinch-hitting
9 that's going on here. I just clarified that we do
10 have a stipulation that we're not going to ask any
11 questions of Dr. Blackmon. So I withdraw. Thank
12 you.

13 JUDGE CAILLE: Does anyone else have any
14 cross for Dr. Blackmon? Chairwoman Showalter.

15

16 EXAMINATION

17 BY CHAIRWOMAN SHOWALTER:

18 Q. Well, I have a lot of questions, I think,
19 if I can articulate them without the benefit of other
20 cross-examination. Let me begin with trying to
21 clarify what Staff's position is in this case.

22 Am I correct that you are recommending that
23 we competitively classify in the four identified
24 areas, Seattle, Bellevue, Spokane and Vancouver, the
25 DS1 or higher -- services over DS1 or higher

00690

1 equipment; is that correct?

2 A. That's correct.

3 Q. And then I was a little confused reading
4 your testimony. Are you -- well, first of all, are
5 you recommending that the Commission do anything
6 beyond the first recommendation?

7 A. Well, I've offered an alternative
8 recommendation, so I think that it is a
9 recommendation. I'm recommending that you do one of
10 those two things.

11 Q. Either competitively classify only DS1 or
12 higher services in the four areas or impose
13 conditions?

14 A. Yes.

15 Q. All right. And is the recommendation
16 regarding imposition of conditions limited to the
17 same four geographical areas?

18 A. Yes.

19 Q. All right. I'd like to explore a little
20 bit the relationship of the conditions that you're
21 recommending -- let's go into the alternative
22 recommendation right now -- the relationship of the
23 conditions that you're recommending as they -- the
24 relationship of those conditions to our need to find
25 effective competition.

00691

1 And I think my question is, is our need to
2 find effective competition present in those areas
3 independent or dependent on the conditions that we
4 might impose?

5 A. The way I've thought about it is that the
6 Commission needs to make a decision about how to
7 define the relevant market, and I think that, based
8 on the high-capacity case, it's already been
9 established that the relevant market can be a
10 specific geographic area and that it can be a
11 specific service. I think that's just stated in the
12 tariff, that -- I mean, in the law, that it could be
13 for a specific service.

14 The difficult question here is whether the
15 relevant market should be defined again, broken down
16 further by the size of the customer. And if you take
17 that approach, then, and you say that there are two
18 markets here, the small business and the large
19 business, that you should only classify the large
20 business market as competitive.

21 On the other hand, you may conclude that
22 the best approach is to define the market as being
23 the offering of these services in these geographic
24 areas, in which case you have a market that, I think,
25 is undeniably mixed in terms of the degree to which

00692

1 customers have access to competitors. And you could
2 -- depending on how you think about the captive
3 customer base and whether it's substantial or not,
4 you could decide that, looking at that market as a
5 whole, say Spokane as a whole, that the whole thing
6 should remain as a regulated tariff service.

7 We would recommend that you not do that,
8 but that you instead look at that market as one that
9 is subject to effective competition, looking at it,
10 you know, with a broad view, but also recognizing
11 that, within it, there are somewhat inseparable
12 pieces where competition is not yet fully effective.
13 So safeguards need to be put in place for those
14 subsets of the market.

15 Q. So but does that mean in terms of meeting
16 the needs, the demands of the statute, that we would
17 be finding there's no captive customer base, because
18 we've taken care of that problem through a regulatory
19 condition? That is, they aren't captive to the
20 threat of higher prices because we guaranteed that
21 there will be the same service at the same price; is
22 that -- am I getting that correct?

23 A. I don't -- I would not -- I don't contend
24 that the conditions themselves make these customers
25 not captive. I think that either they are or they

00693

1 aren't. Rather, it's that, with these conditions in
2 place, that the captive customer base is less
3 substantial. You can worry less about the captive
4 part, in terms of whether it's substantial, if there
5 are conditions that protect that segment than you
6 could if there were no conditions there.

7 Q. I think the statutory word is significant.
8 In other words, there may be captive customers, but
9 it's not significant because they're protected by
10 certain conditions?

11 A. That's right.

12 Q. All right. I think I want to get at the
13 same question a different way. If there were no
14 conditions, if we were not going to impose the
15 conditions, is it your view that there is or there
16 isn't effective competition in these areas as they
17 relate to small business customers?

18 A. I believe there's not effective competition
19 for small business customers.

20 Q. All right.

21 A. In these areas.

22 Q. Now, with the conditions in place, do you
23 believe there is or isn't effective competition for
24 small business customers in those areas?

25 A. If you choose to define the market as being

00694

1 the small business customers, then even with the
2 conditions, I don't think that there is effective
3 competition.

4 Q. Then how can we adopt your recommendation
5 --

6 A. If you adopt that --

7 Q. -- on the statute?

8 A. Right. Well, it would, again, it would be
9 -- it depends on how you define the market. And
10 there are -- I believe that there are concerns -- we
11 have concerns about making too much of the
12 distinction between large business and small business
13 and treating those as separate markets, because there
14 are ways that one can sort of substitute one of those
15 services for the other and one market for the other,
16 depending on how you provision your service or
17 depending on, from the customer side, how you choose
18 to order your service.

19 And so, since the line between those two is
20 fuzzy, then there's a judgment call that needs to be
21 made about whether to treat it as a single market, in
22 which case it has mixed levels of competition, or to
23 say, well, no, we can separate those two, and that's
24 how we should proceed. And if you do, then I think
25 that, to me, the evidence is very clear that the

00695

1 small end of the market customers do not have enough
2 choice to grant unfettered pricing flexibility.

3 Q. All right. If we look at this as a whole
4 undifferentiated market of all business customers, do
5 you believe there is or isn't effective competition
6 in those four areas?

7 A. I believe that, looking at it as a whole,
8 you really have to -- at least I have to think about
9 it with those conditions sort of as part of the
10 analysis. Again, because sort of the test there is
11 whether there's a captive customer base or not. And
12 if you have conditions, and I think you can give less
13 weight to that captive customer base, and thereby
14 conclude that the market as a whole is subject to
15 effective competition.

16 Q. All right. So with the conditions in place
17 and an undifferentiated market, do you believe
18 there's effective competition in those areas?

19 A. Yes.

20 Q. All right. And I understood your last
21 comment to mean that you don't believe that every
22 single customer in an area has to have identical
23 options in order -- competitive options in order for
24 us to make a finding of effective competition?

25 A. No, I don't, and I think that's well

00696

1 supported by the Commission's prior decisions on
2 competitive classification.

3 Q. Then I'd like to explore just a little bit
4 the factual basis for finding that there is effective
5 competition, and one set of evidence revolves around
6 revenue loss, line loss, billed telephone number loss
7 from Qwest to competitors. And I'm wondering if you
8 can tell me, of that body of evidence, what kind of
9 evidence you find the most persuasive on the question
10 that there is effective competition?

11 A. We didn't give a lot of weight to those
12 loss of customer numbers, but some combination of the
13 loss of lines and the loss of customers, billed
14 telephone numbers as a proxy for that I think would
15 be the most useful statistic in that area.

16 Q. But you said, in general, you didn't give
17 much weight to that. What evidence do you consider
18 the most persuasive on the question of effective
19 competition?

20 A. Well, for us it's looking at the structure
21 of the market. How, in practice, can competitors
22 enter this market, you know. Is it really practical
23 for them to enter the market and offer service on an
24 equal footing with Qwest. And then we combine that
25 with various reality checks, one of them being the

00697

1 look at the market concentration numbers.

2 And our experience over several cases now
3 is that you have to look at those two together, that
4 -- the comparison I make is to the long distance
5 service. There, sort of the conditions for entry
6 were so favorable, it was so easy for long distance
7 companies to enter than Qwest or, at that time, US
8 West, local toll market that market share didn't
9 really matter much. And we were confident, so
10 confident in the structural analysis that we
11 recommended competitive classification when -- the
12 day that competition started, in terms of one-plus
13 equal access.

14 Here, it's not so clear at all that the
15 structure permits easy entry. It's a lot more
16 complicated. So because of that, we give more weight
17 to the market concentration analysis. And we were
18 very impressed with the survey to find that, you
19 know, in the range of 30 to 40 percent of the lines
20 had moved to -- either had moved to competitors or
21 new business had sprung up and just gone straight to
22 the competitors.

23 Q. What do you say to the criticism that since
24 lines don't equal customers and a small portion of
25 customers have a lot of lines, that it's misplaced to

00698

1 be calculating HHI on the basis of lines or it
2 doesn't tell us very much?

3 A. I think it's a very fair point to say that
4 one can get to a 40 percent market share for the
5 competitors while still having some segments of the
6 customer base where Qwest has 100 percent of the
7 market share. I think I've made that point myself.
8 And that -- you know, when sort of the first time you
9 see those market share numbers, I think that the
10 natural first reaction to say that, oh, yeah, this is
11 a very competitive market and it should be -- pricing
12 flexibility should be granted. That's why we looked
13 at individual customer segments.

14 And so we concluded that the way the
15 competitors have gotten to 40 percent is not by
16 serving 40 percent of the little customers and 40
17 percent of the big customers, 40 percent of the ISPs
18 and 40 percent of insurance companies, but by
19 entering certain -- you know, competing very
20 successfully in certain areas of the market.

21 Q. I want to go back for a second to my
22 previous inquiry about small versus large customers
23 and whether we should or shouldn't be differentiating
24 that market. You made some comments about there
25 being a fuzzy line between small and large, and I

00699

1 would like to know what you think is the appropriate
2 market? Which way should we be going, an
3 undifferentiated market or distinguishing between
4 small and large? Because I think I read your
5 testimony to be kind of in the conditional, if you go
6 this way, if you go that way, but which way should we
7 go?

8 A. Right. And when I wrote the testimony, I
9 was not at all sure that Qwest would find the
10 alternative recommendation acceptable, because I
11 really do think it creates some risk for them that
12 they will end up with more regulation of that segment
13 of the market, that in the small business area,
14 without those conditions, they could ask for certain
15 tariff changes that they won't be able to as a result
16 of those conditions.

17 Given that, in fact, Qwest has accepted
18 those conditions, I think I would recommend that
19 approach. I think that it better reflects the
20 specific characteristics of these markets. In
21 particular, it reflects the near term prospects that
22 we see with things like the unbundled network element
23 platform, the 271 process, and the improvements in
24 provisioning that we can anticipate as a result of
25 that.

00700

1 Q. That -- you just mentioned something about
2 the UNE platform, and I just didn't hear your answer
3 to Mr. Owens when he asked you a question about the
4 nonrecurring charge and had some event occurred
5 regarding nonrecurring charges being accumulated or
6 not. What was your answer there?

7 A. We've seen movement on that issue from
8 Qwest over the last month. In their prefiled
9 testimony in the generic cost case, they're proposing
10 significantly lower nonrecurring charges. Not as low
11 as some of the other parties in that case, but the
12 range of dispute in the generic cost case is much
13 lower than the numbers that are being charged today.
14 And Qwest has agreed to lower the current charge to
15 its testimony position in the interim.

16 So until you make a decision in the generic
17 cost case, they've agreed to charge their -- the
18 position that they're testifying to, the rate that
19 they're testifying to, to those carriers who request
20 it.

21 Q. Okay. I want to ask you a little bit about
22 the standard that we should be applying in terms of
23 whether competitors will or can constrain prices, and
24 Dr. Goodfriend testified that, in her opinion, the
25 standard is will constrain, and there's some dispute,

00701

1 I think, over what you mean or don't mean by able,
2 can, or are likely to.

3 What do we have to find as present in the
4 market and what do we have to predict about that
5 market in terms of constraint of price, in your view,
6 under the statute? I shouldn't say have to. How
7 should we interpret the statute?

8 A. Right.

9 Q. It's a should question.

10 A. In Section 330, there are those
11 subparagraphs B and C that are considerations, rather
12 than findings that you have to -- that you actually
13 have to reach, but they -- B speaks to the
14 availability of alternative service, and C speaks to
15 the ability of the alternative providers to offer
16 service, which I've always read to be sort of two
17 different levels of alternative sources of supply
18 that could constrain the incumbent's market power.

19 And you know, among economists, there is a
20 big dispute about whether it's enough to rely on
21 potential entry, that, you know, well, if you find
22 that it's easy for firms to get into a market, is
23 that enough to believe that there's competition, is
24 that enough to constrain prices, even if, in fact, no
25 entrant has actually taken that step versus a

00702

1 stricter standard, and one that I prefer, which is
2 that we have to actually see their faces, they have
3 to be in the market offering service, so that it is
4 readily available, and that's the standard that I
5 think I have testified to.

6 When I use the word can, I did not mean it
7 in any way as a hypothetical or a conditional
8 ability. I meant it more like, you know, if a
9 student asks a teacher, Can I go to the library, if
10 the teacher says, Yes, you can -- well, she'll
11 probably say, You mean may you go to the library, but
12 then she'll say, Yes, you can, and there's no doubt
13 that the student will once you said that. So to me,
14 can and will are the same.

15 Q. So it's a ready and able and likely to
16 standard?

17 A. Mm-hmm, right. Well, and because the
18 rational economic actor that these competitors can be
19 assumed to be, if they can constrain prices, they
20 will constrain prices.

21 Q. All right. I realize that this -- the can
22 and will debate occurs more in the Merger Guidelines
23 than directly under our statute, and that leads,
24 actually, to my next question, which is the value of
25 the Merger Guidelines in this proceeding. But I want

00703

1 to stop for a minute. Do we need a morning break?

2 JUDGE CAILLE: Why don't we take a little
3 break. Yes.

4 CHAIRWOMAN SHOWALTER: Why don't we do
5 that, then.

6 JUDGE CAILLE: Let's take a 15-minute
7 morning break, please. We're off the record.

8 (Recess taken.)

9 JUDGE CAILLE: Let's go on the record.

10 Q. I want to address the question of how the
11 Merger Guidelines should fit into our analysis under
12 our statute and what your response is to Dr.
13 Goodfriend's testimony on that question.

14 A. Her testimony is that if you look at a
15 market and find that it fails the Merger Guidelines,
16 that doesn't mean that you regulate the prices of the
17 biggest firm in the market. That's the question that
18 we asked her yesterday, and she said that you don't.

19 So I think that the relationship between
20 the two is simply that you're looking at market
21 structure and market concentration in two different
22 settings with two different legal standards, two
23 different sets of concerns, though, in both cases, I
24 think ultimately your concern is the undue exercise
25 of monopoly power, market power.

00704

1 Q. So were you looking at some of the same
2 factors and using some of the same tools, but were
3 making a different determination? Is that your
4 understanding?

5 A. That's right. You know, the Herfindahl
6 Hirschman Index has become very closely associated
7 with the Merger Guidelines, so much so that it seems
8 to invite a conclusion that if one is using the
9 Herfindahl Hirschman Index, one should use the Merger
10 Guidelines in general, and I don't think that's true
11 at all.

12 That index has been around a lot longer
13 than the current Department of Justice Merger
14 Guidelines have been, it pre-dates sort of the
15 theoretical basis for the Merger Guidelines. It was
16 used as a tool by the Department of Justice because
17 it's a very useful summary statistic of market
18 concentration, but that's all it is. It's just a
19 summary statistic that's useful and it's useful in
20 more than one subject.

21 Q. All right. I'd like you to look at Dr.
22 Goodfriend's rebuttal testimony, and that would be
23 Exhibit 168-T, specifically on page 27, 168-T, page
24 27.

25 A. I have that.

00705

1 Q. All right. On lines nine through 19, Dr.
2 Goodfriend criticizes your use of the HHI in this
3 setting. Would you respond to her criticisms there?

4 A. Well, the first point that any particular
5 numerical threshold is arbitrary, I guess I can
6 understand that concern, but I can't entirely agree
7 with it. I think that the standard -- that whatever
8 threshold one uses needs to be informed by one's
9 understanding of the market structure. And I think
10 that she says that to some extent, too, because she
11 talks about the -- what she characterizes as the
12 5,000 threshold of toll services as not having an
13 equivalent in this case, but I think that suggests to
14 me that she does recognize that there's a
15 relationship between the threshold and the market,
16 structure of the market. Toll is different from
17 business local exchange service, and so whatever
18 standard one would come up with, it might be
19 different.

20 And if we led her to the impression that we
21 had used 5,000 numbers to cut off in the toll case,
22 I'm sorry that we did that. We certainly -- we
23 didn't even calculate the HHI numbers when we did the
24 toll case, but I can -- what I testify to is that
25 they would have been substantially above 5,000. But,

00706

1 obviously, we didn't use the 5,000 threshold there,
2 because if so, we wouldn't have recommended a
3 competitive classification. And so we were left,
4 then, with the necessity to define some standard, and
5 whatever standard we defined, again, we were open to
6 accusation of being arbitrary.

7 Qwest has certainly shared with me their
8 concern that we just missed Issaquah by the standard
9 we chose, and they sure would like to have it so that
10 Issaquah was in the competitive group. But we also
11 had to recognize that while there is this continuum
12 of degrees of market concentration, we needed to pick
13 some number, and we picked 5,000, because it reflects
14 the index that would be produced if you had two firms
15 of equal size, and that, with two firms of equal
16 size, that certainly is higher than what the Merger
17 Guidelines would say, but there are also plenty of
18 examples out there in the economy today where you
19 have two firms competing against each other and the
20 government doesn't regulate the prices of either one.

21 In terms of the second point there about
22 adjusting the threshold, which adjusting is her term,
23 not mine, but, again, I think you have to do that.
24 You have to let market structure inform your judgment
25 on market concentration, and I don't think that that

00707

1 means that you're tolerating more monopoly power in
2 one area than another; it's just that you're
3 recognizing that it's inherently difficult to measure
4 the ease of entry or the availability of alternative
5 services. So you look at what customers are actually
6 doing.

7 And if your prior belief is that the entry
8 is very easy, then I think you should be more willing
9 to accept higher levels of concentration and be
10 comfortable with those than if your prior belief is
11 that it's very hard to get into that market.

12 Q. All right. What is your answer to Dr.
13 Goodfriend's expressed fears that Qwest is going to
14 start exhibiting anticompetitive behavior should we
15 grant this classification? And maybe I could break
16 it down. Do you think they have incentives to do so,
17 first of all, that is, predict they will try to do
18 it, and if they do, what would be the consequence
19 under our competitive classification, say, with
20 conditions?

21 A. I think there are two parts -- at least for
22 me, it's easier to think about two parts to that.
23 One is their use of whatever market power they have
24 in the network access, that the provisioning of
25 special access circuits or the provisioning of

00708

1 unbundled network elements, or even the providing
2 access to their rights-of-way, telephone poles and
3 ducts, things like that, there is a part of their
4 business that is undeniably noncompetitive, and they,
5 of course, have incentives to favor their own retail
6 services in the way they provision those sort of
7 network or wholesale services. Any firm would have
8 that incentive.

9 And it's our job to regulate that part of
10 their business in a way that, even though they have
11 the incentive wherever possible, we don't let them
12 act on that incentive. And I won't try to
13 characterize it one way or the other. It's sort of
14 whether they -- you know, how strongly they would
15 tend to act on that incentive.

16 The other part has to do with the retail
17 service. And I believe that the criticisms or the
18 forecasts of anticompetitive behavior on the retail
19 side really are premised on an assumption or a belief
20 that there's not competition in those retail
21 services. Because if there were competition in the
22 retail service, then I think, almost by definition,
23 whatever ability they had to engage in price
24 discrimination or selective marketing would be
25 considered fair play and the competitive companies

00709

1 would not challenge that for risk that their own
2 behavior would come under the same restrictions.

3 If I thought that that market were not
4 competitive, then I too would be concerned about
5 giving them pricing flexibility, because I would
6 think they would use it to the detriment of the
7 customers and the competitors. So I think it really
8 comes back to a difference of opinion about the level
9 of competition.

10 Q. Okay. How important is this distinction
11 between retail versus facility-based competition?
12 What do you think we should be looking at when we
13 look at the presence of competition? Do we look at
14 it all undifferentiated or should we make
15 distinctions between facilities-based and
16 resale-based?

17 A. In terms of, for instance, market
18 concentration or looking at whether there are
19 services that are readily available that are good
20 substitutes for Qwest service, resold service ought
21 not count, in my opinion, because it's priced to the
22 reseller on a percentage basis. Maybe they can buy
23 it for 15 percent less than the retail price, so
24 Qwest has the perfect ability to keep those prices in
25 tandem. Any time it raises its retail price, the

00710

1 price that the resellers pay will go up by exactly
2 the same percentage amount.

3 So in terms of looking at the existence of
4 alternative services, you need to look at
5 facilities-based, but then the tougher question
6 comes, and that is whether or not to look at
7 competition that takes the form of using Qwest
8 facilities to compete against the Qwest retail
9 service. And there we have a difference of opinion,
10 and I believe that --

11 Q. Who's the we there?

12 A. Between Staff and MetroNet and Public
13 Counsel and Tracer, that it's a legitimate form of
14 competition to use the facilities of the incumbent to
15 provide the retail service. And the example that I
16 used to help convince myself of it is long distance
17 service, which I think everybody's been very
18 comfortable with the decision to classify Qwest's
19 long distance service as competitive, because
20 everybody else is out there providing that service.

21 Well, most of the intraLATA toll service,
22 the local toll service, goes over Qwest's own
23 network. The competitors buy access service from
24 Qwest, they may provide a switching function along
25 the way or they may not, but the call that goes, say,

00711

1 from here to Olympia -- from here to Seattle relies
2 very heavily on Qwest's own network, even when it's
3 AT&T or WorldCom or Sprint that's providing the
4 service.

5 So that you have an example there where the
6 facilities themselves may or may not be competitive.
7 We have not classified switched access service as
8 competitive, and yet we have classified the toll
9 service that rides on that switched access as
10 competitive. And to me, that's exactly what we're
11 proposing to do here.

12 We're not proposing to classify the
13 underlying facilities themselves as competitive. In
14 some cases, they already have been; in other cases,
15 they haven't, but instead, we're looking at the
16 retail service that would flow over those.

17 Q. Well, a couple follow-up questions there.
18 On these -- on the discount for resale, am I right
19 that this 15 percent discount or whatever it may or
20 may not be, that the discount is contained -- or they
21 are contained in interconnection agreements or
22 agreements between Qwest and the CLECs, as opposed to
23 a rule of ours?

24 A. They're in interconnection agreements, but
25 they're based on the Commission's order in the

00712

1 generic cost and pricing docket. So the Commission
2 specified that the resale discount, based on what it
3 found to be Qwest and US West and GTE's expenses that
4 they incur with the retail function.

5 Q. But wasn't that determination a cost-based
6 determination, in general? That is, wasn't the
7 Commission looking at the cost of providing such a
8 service and, for the retail price, there's a profit
9 and other things that go to Qwest, and there's a
10 discount off of that for the wholesale provision of
11 it, but in essence, wasn't it cost-based?

12 A. The resale discount was cost-based.

13 Q. I mean, it seems like perhaps the order or
14 the interconnection agreements didn't take into
15 account the possibility that if the price were
16 deregulated and, as a regulatory matter, no longer
17 bears a relationship to cost, and the price could go
18 -- could be doubled at the retail level legally, and
19 not maybe effectively in the marketplace, that
20 suddenly you have a discount off of that that is off
21 of that higher retail price that isn't really the
22 wholesale cost.

23 A. I think we may be misunderstanding each
24 other. For instance, if we take the Qwest business
25 rate, 26.89, in the generic cost and pricing docket,

00713

1 the Commission didn't establish a cost basis for that
2 rate. What they did is figure out, sort of on
3 average, how much of that 26.89 goes to cover the
4 retailing function, and it was stated as a percentage
5 basis, and then that established a lower price of
6 which a competitor could buy that service for resale.
7 So the net price is not a cost-based price,
8 necessarily, at least not because of that docket.

9 It could be that, because of an earlier
10 investigation, it was calculated to be cost-based,
11 but only the discount itself was determined in that
12 case to be based on cost. So obviously, there's some
13 approximation or averaging that's going on there.
14 The same resale discount is applied to every service,
15 even though there may be more retailing expenses in
16 some than in others, and over time, the amount of
17 retailing expenses may change.

18 If you just look at single event, for
19 instance, if Qwest were to raise that price to, say,
20 \$50, the discount as to actual dollar amount would go
21 up a lot. One might say that, well, their retailing
22 expenses didn't go up, so that's a windfall to the
23 competitor because of that. And that may be true or
24 it may not, that they're then getting a bigger dollar
25 discount, but I think by far the bigger factor there

00714

1 is that the competitor, their net price has then
2 virtually doubled.

3 And so if they were in the market to try to
4 compete with Qwest on a price basis, they would have
5 a very hard time doing that, because their costs will
6 go up in tandem with Qwest's costs, so that they
7 would struggle ever to get a meaningful advantage
8 over Qwest on price.

9 Q. Is that one reason why you think we should
10 not be focused on the resale competition as much as
11 the facilities-based competition?

12 A. I think it's the reason why.

13 Q. I wanted to ask you how our previous order
14 for high-capacity lines relates, if at all, to this
15 proceeding. First of all, do you have any
16 observations as to how competition is working out in
17 that market in those areas since our order? Have you
18 noticed any price increases, for one thing?

19 A. No, I haven't noticed any price increases.
20 I really haven't seen a lot of change in Qwest's
21 behavior, either, in terms of their -- you know, the
22 testimony that Mr. Teitzel offered about how much
23 they needed this pricing flexibility. I continue to
24 be skeptical about how much they need it, because my
25 experience has been that when we grant these

00715

1 competitive classifications, not much happens
2 afterwards. Maybe one of these days it will, but
3 we've seen -- well, every time you go to downtown
4 Seattle or Spokane, you can just see the sidewalks
5 and see how much more fiber is being laid in the
6 ground, so that competition is certainly increasing
7 in those areas, but I don't see that as having been
8 triggered by that decision at all. I think it
9 shouldn't be. If things were done right, your
10 decisions on competitive classification will follow
11 market behavior and not drive market behavior.

12 Q. I wanted to ask you about these ICBs. It's
13 a type of contract, I take it, but can you describe
14 it to me a little bit more, what use is being made of
15 them. It's not something I'm familiar with.

16 A. The intercontinental ballistic contract?
17 I'm afraid I can't. Individual case basis, for some
18 companies, they will state in their tariff or their
19 price list that they offer a particular service, but
20 they find that they can't pick a particular price
21 because the details will vary so much from customer
22 to customer.

23 Or in other cases, it will be a service
24 that is not even listed in the price list or the
25 tariff at all, in which case, under our law and our

00716

1 rules, they need to file a contract with us so they
2 achieve this result where every service that they
3 offer and every price they charge is published by
4 being on file here at the Commission. And then it's
5 not actually an ICB, but special contracts, where a
6 company will, for one reason or another, offer
7 service to a customer at a rate lower than what's
8 found in the tariff or the price list. They file
9 those here, too.

10 Q. And I take it there has to be a good reason
11 to do that or not. Do we approve those contracts or
12 are they simply filed here?

13 A. They're filed here. Typically, they're
14 allowed to go into effect. Approval is not required.

15 Q. If there appear to be something
16 discriminatory or against public policy, does the
17 Staff have the right to object to it?

18 A. I think it's like a tariff filing, that
19 we'd recommend suspension, though I'm not sure that's
20 true with the competitive contracts of the
21 competitive companies.

22 Q. If we grant competitive classification
23 along the lines of your alternate recommendation with
24 conditions, can you tell me whether it will increase
25 or decrease or change the use of ICBs?

00717

1 A. You know, it could go either way. We see
2 examples now where a service that is not classified
3 as competitive, the companies nonetheless face
4 competitive pressures, and so they file -- they
5 negotiate a special contract with the customer. They
6 use the contract as the tool to meet the market in
7 their pricing.

8 It could be that if they had competitive
9 classification of that service, that they would then
10 use their price list as the tool, so we might see
11 fewer special contracts. On the other hand, once a
12 service is classified as competitive, the contracts
13 for it are no longer subject to 80.36.170 and 180,
14 the preference and discrimination statutes. So that
15 could cause a company to favor contracts as a vehicle
16 over the price list. So we might see more contracts
17 as a result of that.

18 Q. With respect to some of the large
19 customers, in particular, the Tracer customers that
20 were mentioned, and I think I only heard two
21 mentioned by name, Boeing and Group Health, I am
22 having a hard time understanding why their needs are
23 distinctive compared to other large firms that
24 operate in two different ILEC territories. What's
25 your comment on that?

00718

1 A. I too have not been persuaded by that
2 testimony. I realize that the Tracer members have
3 said that, except for one member in one area,
4 Spokane, they have used only the incumbent, either
5 Qwest or Verizon, for their telecommunications
6 service. It's my understanding that they do a lot of
7 self-provisioning too, but apparently when they go
8 out to the companies, the telecommunications
9 companies, they have thus far only chosen the
10 incumbent.

11 But I also know that there are companies,
12 not necessarily Tracer members, who may have their
13 office park in the Verizon area, and they buy service
14 from US West or from Qwest. There are entities that
15 are in the legacy Qwest area, like Seattle, who buy
16 service from Verizon or from another competitive
17 company, so I know that there are examples of large
18 organizations that have complex telecommunications
19 requirements, who either use a combination of
20 telephone companies or they use someone other than
21 the incumbent.

22 Q. Because the implication of one of Dr.
23 Goodfriend's comments, and I'm not trying to put
24 words in her mouth, but I found myself thinking that
25 the implication might be that until we have a set of

00719

1 competitors with a nationwide or even global
2 footprint, that until that happens, we really don't
3 have the kinds of competitors that big firms need.
4 And yet I'm not sure I can say that that's really in
5 everybody's interest, although maybe that's where
6 things are headed.

7 But, certainly in the past, multi-state or
8 multi-national firms need to use and do use a mix of
9 telecommunications providers. I'm right on that, I
10 think.

11 A. I think you are.

12 CHAIRWOMAN SHOWALTER: Well, I think that's
13 all the questions I can think of at this point.

14 Thanks.

15

16 E X A M I N A T I O N

17 BY COMMISSIONER GILLIS:

18 Q. I just have a few. I think that Chairwoman
19 Showalter asked a lot of the questions I was
20 interested in, as well. A couple clarifications.
21 One is I believe I heard you state that, in your
22 opinion, resale should not be considered when we look
23 for evidence of effective competition. Did I hear
24 you correct on that?

25 A. That's correct. I mean, not to suggest

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1 that we shouldn't value resale. I think it's a very
2 important tool toward, you know, increasing the level
3 of competition, it's a very useful sort of transition
4 device, but I don't think it counts when it comes to
5 measuring the extent of which customers have
6 alternative sources of service.

7 Q. And then I think I understand another part
8 of your testimony to indicate while you see a lot of
9 potential from UNE-based competition, given some
10 recent changes, that -- maybe I'm not quite
11 characterizing it right, but essentially that it's
12 not ripe yet as a competitive option at the present
13 time?

14 A. I think that's correct. I think we're
15 close, but we're not quite there.

16 Q. So just focusing on the present time, does
17 that leave us with facility-based competition as our
18 available measure of, I guess, true available options
19 that would provide effective competition?

20 A. I think the other, in addition to the
21 facilities of the competitors, which, by themselves,
22 would not justify the recommendation that Staff is
23 making, we also have the competitors's ability to use
24 special access or private line circuits of Qwest to
25 extend their reach beyond their own facilities.

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1 Q. And how do I reconcile that with your -- I
2 guess the Herfindahl Index or market penetration type
3 of data that -- because, as I understand it, the
4 percentages of lines captured by competitors includes
5 both resale, UNE, as well as facility-based?

6 A. Well, when I say resale, I don't mean
7 unbundled network elements.

8 Q. Right.

9 A. So what we've attempted to capture with our
10 market concentration measure is service that is
11 provided by competitors over their own facilities or
12 over the facilities of Qwest, whether that's an
13 unbundled network element or a special access
14 circuit.

15 Q. So you've left resale out of that?

16 A. We've tried our best to do that, yes.

17 Q. Then another clarification is I heard you,
18 I believe, say that, in your opinion, within the four
19 geographic zones, that the small business market,
20 however defining that, is not yet effectively
21 competitive; is that correct?

22 A. Yes, and if we were to define the market as
23 -- the relevant market as small business only, then I
24 would not consider it to be subject to effective
25 competition.

00722

1 Q. But what I didn't hear you say and I wanted
2 to ask you is, if we were to define the market as the
3 large pipe users and the uses and services delivered
4 over DS1 and higher in those four geographic zones,
5 is it your opinion that the evidence in the record is
6 sufficient to demonstrate that subset of the market
7 to be effectively competitive in those four zones?

8 A. Yes.

9 Q. And what is it about that dividing line,
10 the DS1 and higher services, DS1 and higher that
11 makes that distinction in your mind and particularly
12 as it relates to the evidence in the record?

13 A. Part of it is we looked at what the
14 competitors are offering. What they're offering,
15 primarily, is service that starts with a T-1 or DS1,
16 same thing, and then it goes from there, okay. You
17 need a DS1 level of service, and then we'll talk to
18 you about long distance, voice mail, data circuits,
19 things like that, but that seems to be the base from
20 which the competitors make their offers.

21 That, to us, fits -- is very consistent
22 with what we see with the ordering of circuits by the
23 competitors from US West/Qwest. They order DS1 or
24 T-1 circuits from Qwest, and it explains the market
25 share numbers, that -- the fact that we do have 30 or

00723

1 40 percent of the lines in the camp of the
2 competitors is consistent with them having some
3 success at offering service and they've told us that
4 they use -- they order T-1s from Qwest, at least in
5 part, because they find that that's a reliable method
6 of getting access than it is to try to deal with
7 individual unbundled loops.

8 Q. And what specific aspects of the record
9 would I look to to verify your statement that the
10 competitors are focusing on the offerings that are
11 associated with the use of the large pipes, if I
12 could use that shorthand?

13 A. The exhibit -- I don't know the exhibit
14 number, but it's the business plan exhibit of the
15 competitors is one area, I think, that's very useful
16 to look at. And then in my testimony, at page 20, I
17 cite two examples of companies that focus very
18 specifically on the T-1 level. And I could add to
19 that that Nextlink recently, when they changed their
20 name to XO, they also rolled out a new set of
21 services and a new set of promotions, and those also
22 were keyed to the T-1 and above level of service. I
23 think their price list says that they hold themselves
24 out to offer service to smaller customers, but if you
25 look at the promotions, the promotions are for the

00724

1 larger customers.

2 Q. You're referring to Nextlink and GST as two
3 examples on page 20?

4 A. No, I was referring to Electric Lightwave.
5 I think it carries over to the next page. So it
6 would be Electric Lightwave and GST were the ones
7 that were -- where, in my testimony, I identified
8 that level and --

9 Q. And -- I'm sorry.

10 A. No, that's all.

11 Q. And yesterday, when I was asking -- I think
12 it was Mr. Teitzel -- about the Exhibit H in the
13 petition, and it was referring to the use of UNEs,
14 and then counsel for Qwest clarified in his redirect
15 that apparently Staff has the unmasked companies for
16 that particular exhibit; is that right?

17 A. I believe that's true, yes.

18 Q. And I don't know if I can ask this or not,
19 since it's unmasked, but do you know if GST and
20 Nextlink are two of the companies that utilize UNEs
21 outside of the Seattle area offhand?

22 A. Outside the Seattle area?

23 JUDGE CAILLE: Just a moment. I'm not
24 quite sure whether this would be confidential.

25 MS. JOHNSTON: We think it would be, Your

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1 Honor.
2 JUDGE CAILLE: All right.
3 CHAIRWOMAN SHOWALTER: Is there a reason
4 that the Commission should not have this exhibit
5 unmasked?
6 MS. JOHNSTON: None that I could think of.
7 CHAIRWOMAN SHOWALTER: Why don't we ask for
8 it as a bench request?
9 COMMISSIONER GILLIS: Okay. Well, let me
10 just do that last one as a bench request.
11 THE WITNESS: Because I was going to say I
12 didn't know, but --
13 COMMISSIONER GILLIS: That works for me.
14 CHAIRWOMAN SHOWALTER: That's going to be
15 Bench Request Number --
16 JUDGE CAILLE: It will be Bench Request
17 Number Four. And Commissioner Gillis, can you please
18 articulate for me --
19 COMMISSIONER GILLIS: Exhibit H -- oh, it's
20 Exhibit 12-C, I guess, but Subsection H was the
21 particular exhibit that I was looking at, and the
22 exhibit before us is coded, but apparently there
23 exists an unmasked version of that, and we'd like to
24 have the unmasked version of that portion of Exhibit
25 12-C.

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1 JUDGE CAILLE: All right. Thank you.

2 MR. KOPTA: Your Honor.

3 JUDGE CAILLE: Yes, go ahead.

4 MR. KOPTA: Just as a caution, that would
5 be information that we would consider to be highly
6 confidential and would ask that it be provided to the
7 Commission only and designated as highly confidential
8 and not shared with any other individual party in
9 this proceeding.

10 JUDGE CAILLE: That will be done, Mr.
11 Kopta. I'm just -- so will that be coming from
12 Staff?

13 MS. JOHNSTON: We'll provide it.

14 JUDGE CAILLE: Thank you.

15 COMMISSIONER GILLIS: Thank you for
16 interrupting me. I didn't mean to ask for something
17 that's confidential.

18 COMMISSIONER HEMSTAD: If I can just pursue
19 that point. If that's relevant information and
20 useful to us, isn't it pertinent to the other parties
21 and their attorneys to know what it is in case they
22 wish to comment on it in their brief?

23 MR. KOPTA: That's part of the dilemma of
24 getting into company-specific market data, and we're
25 not comfortable with having that sort of information

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1 on the record. We understand that it's maybe of
2 benefit to the Commission. Qwest already has that
3 data, obviously, since they were the ones that
4 provided it. Our concern is simply with other
5 carriers, and I think all of the carriers share the
6 same concern. And at least from our perspective, we
7 would waive the right to be able to see other
8 companies' individual data and would ask that others
9 representing companies in this proceeding would also
10 waive it, and so that that would be the way to handle
11 it from our perspective.

12 COMMISSIONER HEMSTAD: Well, then, do the
13 other parties meet that and waive their right to see
14 it?

15 MR. FFITCH: Your Honor, for Public
16 Counsel, Simon ffitch, I haven't had a great
17 opportunity to consider this issue. I think, for the
18 record, we would in general take the position that
19 under 80.04.095, Public Counsel has a right to review
20 the material subject to confidentiality protection.
21 And in addition, the Commission has protected
22 commercially sensitive material under a highly
23 confidential designation in a number of proceedings,
24 and in those proceedings, at least counsel and
25 certainly Public Counsel have been permitted access

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1 to that information, again, subject to the
2 protections that are in the highly confidential
3 order.

4 So I guess I'd just like to make that
5 statement of position in the record at this time. We
6 would not waive our right to see confidential
7 information that's being presented. I'd be happy to
8 give this some further consideration, talk to Mr.
9 Kopta about it, but at this point I would like to
10 reserve that option for Public Counsel.

11 MR. KOPTA: And I would just clarify that
12 our concern is not with Public Counsel; our concern
13 is with other competitors. So we would have no
14 problem with Public Counsel viewing that data. I
15 mean, it is customer proprietary network information,
16 and therefore government is obviously allowed to see
17 that type of information. It's just the other
18 competitors is our concern.

19 COMMISSIONER HEMSTAD: Who else is left?
20 Tracer and MetroNet?

21 MS. RACKNER: Tracer is not a competitor,
22 so my assumption was that Mr. Kopta did not have a
23 problem with Counsel of Tracer reviewing the
24 materials.

25 CHAIRWOMAN SHOWALTER: Well, maybe the

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1 thing to do is think about this over lunch. I would
2 encourage counsel for any party, whether a company or
3 not, to think seriously about whether you, in fact,
4 need to see this. And if you don't, waive it, so we
5 don't have to deal with that issue. But if counsel
6 feels they do need to see it, then we'll have to
7 think about a procedure for that, and we do have
8 procedures.

9 MS. JOHNSTON: That's the point I'd like to
10 make, Chairwoman. There is a procedure in place in
11 this very docket. The Second Supplemental Order in
12 this case, which is the protective order,
13 contemplates that other highly confidential data will
14 become an issue, and paragraph 15 in the protective
15 order of this docket describes a process by which
16 Public Counsel and Staff and others who seek access
17 to highly confidential data may obtain that.

18 CHAIRWOMAN SHOWALTER: Right.

19 MS. JOHNSTON: I guess I'd just ask that
20 counsel examine the terms of the protective order in
21 the case and make a decision on behalf of our
22 respective clients what it is they want to do.

23 JUDGE CAILLE: Thank you, Ms. Johnston.
24 Commissioner Gillis, we've interrupted you.

25 COMMISSIONER GILLIS: That's all right.

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1 JUDGE CAILLE: Have you finished your
2 questions?

3 COMMISSIONER GILLIS: No, I haven't.

4 JUDGE CAILLE: Okay. Do you have quite a
5 few more or --

6 COMMISSIONER GILLIS: Probably finish in 10
7 minutes.

8 JUDGE CAILLE: Okay.

9 COMMISSIONER GILLIS: Thank you.

10 Q. This is something I could have asked to
11 Qwest, but I imagine you can help me. I'm just
12 trying to understand the scope of the petition. A
13 hypothetical company based in Seattle competitive
14 zone, say with 10,000 employees, and then they have
15 an operation also in Everett, which is not a
16 competitive zone, with also a lot of employees.
17 Would the competitive pricing flexibility that the
18 Seattle -- Seattle's the headquarters, or billing
19 address, but would the competitive flexibility apply
20 just to the services provided or utilized, I guess is
21 the right word, utilized within the Seattle
22 competitive zone would apply to the entire usage of
23 that firm, that hypothetical firm?

24 A. It would only apply to the services that
25 are provided within the area that's been designated

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1 as competitive.

2 Q. So I suppose there would be, in the
3 business deal, so to speak, there would be a tradeoff
4 in whatever bids would come in, that, in this case,
5 say Qwest would need to do the deal with this new
6 flexibility based on those, say, 10,000 -- let's say
7 10,000 lines or 10,000 customers. On those 10,000
8 lines, rather than total lines, call them 20,000
9 lines, and so there's the volume issue versus
10 something more specific.

11 I would think one consideration of the deal
12 might be that if you can take the whole package, the
13 20,000 lines, there's some volume benefits that could
14 enter into a competitive equation versus where the
15 flexibility directly applies is just to the 10,000.
16 So would you see those kind of trade-offs? Does this
17 make any sense, what I'm saying?

18 A. Yes, it certainly does, Mr. Commissioner.
19 And the introduction of competitive zones, you know,
20 will certainly complicate pricing for Qwest and for
21 large customers that deal with Qwest in many
22 different areas of the state. I think it's
23 inevitable that that happens as we see the
24 competition increase.

25 And I agree with you about the sort of

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1 factors that could go into pricing service to a
2 multi-location customer. You may well look at the
3 volumes at individual locations as well as the
4 overall volume, and their tariffed or price listed
5 prices in each of those locations may be different.

6 Q. The last questions I wanted to ask you is,
7 really, I feel I'm a little bit at a disadvantage,
8 because I don't have any -- I was expecting some
9 cross from Tracer to help focus this, but I'll just
10 ask you a general question.

11 It is not lost on me that the strongest
12 opposition to your recommendation comes from the
13 organization that -- one of the strongest opposition
14 comes from the organization that represents the
15 largest customers in the state, Tracer, and I'm not
16 sure I understand that. I mean, I'm following their
17 testimony and listening to their testimony, but I'm
18 really asking you to put a point on it from your
19 perspective, that, at least intuitively, you would
20 think that your core recommendation within the four
21 zones that applies to that largest market segment,
22 largest user market segment would, in fact, be most
23 beneficial to the largest customers, but the
24 organization representing those customers appears to
25 have a different view. And can you put a point on

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1 the distinction of why you come down differently than
2 they do?

3 A. In my testimony, I discuss the other tools
4 that Qwest already has today to meet competition.
5 The ability to use individual customer contracts, in
6 particular. So because of that, today, for a large
7 business customer, Qwest is a company that has
8 downward pricing flexibility and does not have upward
9 pricing flexibility. I know, from day-to-day
10 experience, that we see contracts come in, filed
11 here, from companies that may or may not be members
12 of Tracer. I can't testify to who is a member of
13 that, but they are large companies who secure
14 contracts at discounted prices from Qwest. Qwest
15 justifies those contracts on the basis that they have
16 to lower the price to meet competition.

17 So I believe that today large businesses
18 are benefiting from pricing flexibility, and I think
19 that that affects their position on this proposal.
20 And I wouldn't -- so you were characterizing it as
21 they would benefit from the pricing flexibility, but
22 I don't necessarily agree that they benefit from it.
23 If they do, it's in a more of a dynamic sense, you
24 know, the idea that if you declare this to be
25 competitive and that changes sort of the attitude of

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1 both Qwest and the competitors about how they're
2 going to approach service in these areas, and that
3 would benefit them over the long run, I believe.

4 Q. This will be the last question, but what
5 about the argument that, benefits aside, there may be
6 some harm, at least to the extent that these
7 companies operate in multiple areas and it's a
8 position that pricing flexibility may, in fact,
9 discourage the development of competition. Do you
10 buy into that or --

11 A. No, I don't. I don't believe that pricing
12 flexibility discourages competition. It recognizes
13 the existence of competition. It's already there.
14 And if anything, it encourages competition. One
15 thing that I experience frequently is that customers
16 think that there is no competition and there can't be
17 until the UTC declares it to be competitive. So I
18 think that the mere act of declaring competition,
19 even though you know you're not doing that, because
20 you're doing a ribbon cutting, saying bring it on in,
21 it will be perceived that way among many customers.

22 COMMISSIONER GILLIS: Okay. Thank you.

23 THE WITNESS: You're welcome.

24 JUDGE CAILLE: Okay.

25 CHAIRWOMAN SHOWALTER: How are we doing on

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1 time?

2 JUDGE CAILLE: We've cut substantially.

3 CHAIRWOMAN SHOWALTER: I'm trying to decide
4 whether to take a one-hour or a one-and-a-half-hour
5 lunch.

6 JUDGE CAILLE: Let's go off the record,
7 please.

8 (Lunch recess taken.)

9 JUDGE CAILLE: Let's go back on the record.
10 We have recommenced after the luncheon recess and
11 we're in the process of questioning Dr. Blackmon.
12 And Commissioner Hemstad, I believe you have some
13 questions for Dr. Blackmon.

14

15 E X A M I N A T I O N

16 BY COMMISSIONER HEMSTAD:

17 Q. I believe my colleagues have covered most
18 of the ground that I might have pursued. I really
19 just want to pursue one more point, and it's really
20 in response to the question put to you by the Chair,
21 and with regard to the issue of the relevant market.

22 As I understand your response, you're
23 saying that were we to decide that the relevant
24 market is bifurcated and we have a product market for
25 larger customers and a separate market for the

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1 smaller customers, that it would be your position,
2 then, that, with or without the conditions, the small
3 market would not be effectively competitive. Did I
4 understand that correctly?

5 A. You did.

6 Q. But that if we decide the relevant market
7 is a single market, large and small, then with the
8 conditions, that would be your position that it is an
9 effectively competitive market?

10 A. That's correct.

11 Q. And I guess I'm having trouble
12 understanding that distinction. Is it that the small
13 market gets submerged into a larger pole, in that
14 sense, or that somehow the access to competitive
15 choice is different in that larger relevant market?

16 A. However you define the relevant market, you
17 will be faced with variations within that market, and
18 you'll be faced with a question of whether to
19 essentially make your decision based on the average
20 or one extreme or the other. You could look at the
21 least competitive end of what you consider to be the
22 relevant market or you could look at the most
23 competitive end. That's the decision the Commission
24 will need to make.

25 So that's -- I think that there is a point

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1 beyond which you can no longer slice and dice a
2 market and still consider it to be a separate market
3 from everything else around it, everything that
4 you've left on the cutting table, because there will
5 be opportunities for substitution that will render --
6 an extreme would be if you took a single customer and
7 said they are a market, and there just wouldn't be
8 any meaning to that, because even though you could
9 look at that customer and say whether or not they
10 have access to alternative sources of supply, their
11 demand is easily substituted by going to the business
12 next door.

13 You know, I just -- there's too much
14 substitution ability to define that as a distinct
15 market, a single customer. So you back away from
16 that and the question is how far away do you back and
17 can you make a meaningful distinction between the
18 large and the small market? And if you can't, then I
19 believe that it would be unfortunate to say that
20 there's no competition there, because, on average
21 because we know that there's some small customers for
22 whom there's not effective competition, that it would
23 be better -- because it's a mistake to regulate
24 competition, it would be better to find tools to deal
25 with the element within the market that doesn't have

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1 choice, so that you can then go ahead and allow
2 pricing flexibility in the rest of the market.

3 Q. Okay. But in the real world, on the
4 ground, under either scenario or under the scenario
5 of defining a single market, it doesn't change the
6 reality of the opportunity for choice to be available
7 to small customers. In other words, under either
8 scenario, the real environment is the same for that
9 category; isn't that true?

10 A. I believe that is true. And in the real
11 world, on the ground, with these conditions, those
12 customers are not any worse off as a result of this
13 approach than they would be were you to segment the
14 market and only classify the high end.

15 Q. But to get that larger definition of the
16 relevant market and then, with the additions in place
17 for the subset, is really, then, a solution to meet
18 the statutory standard of effective competition?

19 A. I believe it's a solution that meets the
20 statutory standard. I would not say that it's driven
21 by a need to meet the standard so much as it's driven
22 by just trying to come up with practical solutions
23 for what we view as a mixed market.

24 And I -- you know, so this recommendation
25 comes not from, you know, trying to squeeze it into

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1 the statutory definition. I mean, I'll readily admit
2 that it's a difficult one to reconcile with the
3 statutory standard. I think it makes a lot of common
4 sense, and I'm sure you'll get lots of good advice in
5 the briefs about how it fits with the law, but I
6 recommend it to you primarily on a -- that it's good
7 policy.

8 COMMISSIONER HEMSTAD: Okay. Thank you. I
9 have just a comment I would like to make. I frankly
10 find it troubling that neither Public Counsel nor
11 Tracer, apparently in agreement with Staff, saw fit
12 to cross-examine Dr. Blackmon. Dr. Goodfriend was
13 cross-examined extensively. Dr. Blackmon -- and now,
14 as I see it, the Staff and Qwest not as much have
15 come together, at least Qwest is prepared to
16 acquiesce in the position of the Staff, which leaves
17 then the burden of cross-examination primarily, were
18 it to occur, to Public Counsel and Tracer, as the
19 interested parties in the upper end or the lower end
20 of the discussion about the product market here.

21 The Bench is neither typically prepared nor
22 equipped to take on the role of cross-examination.
23 We normally are inquiring more of clarifications for
24 our own understanding. And as we go about attempting
25 to make a decision ultimately that is intended to be

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1 grounded in the public interest, I've always found
2 aggressive cross-examination to be very helpful. And
3 the lack of it here is not helpful.

4 JUDGE CAILLE: Is there any follow-up cross
5 to -- yes.

6 MR. OWENS: Just a couple, Your Honor.
7 Thanks.

8 JUDGE CAILLE: And ATG, as well.

9 MR. RICE: We also have follow-up cross.

10 JUDGE CAILLE: Why don't you go ahead, Mr.
11 Owens.

12 MR. OWENS: Thank you, Your Honor.

13

14 R E C R O S S - E X A M I N A T I O N

15 BY MR. OWENS:

16 Q. Dr. Blackmon, during some dialogue between
17 you and Chairwoman Showalter, I believe you were
18 discussing your evaluation of the competitiveness of
19 the market, and you analyzed that wholesale and the
20 retail separately. And I believe you said, in
21 connection with the wholesale side of Qwest's
22 business, that it had incentives to favor its retail
23 operations. Did I correctly understand you?

24 A. Yes, you did.

25 Q. Okay. And you were talking financial

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1 incentives?

2 A. I was talking economic incentives, yes.

3 Q. Would you agree with me that Qwest also has
4 economic incentives to obtain relief from the
5 restrictions imposed by Section 271 of the
6 Telecommunications Act?

7 A. Yes, I would agree with that. And Qwest is
8 a large company with lots of semi-independent
9 decision-makers, and the incentives differ quite, I
10 think, remarkably among the different parts of the
11 company.

12 Q. So by discussing, in your remarks with the
13 Chairwoman, incentives that Qwest has to favor its
14 retail business, you didn't mean to suggest that
15 there weren't countervailing incentives driven by
16 other economic imperatives for the company?

17 A. No, I didn't mean to say that that was the
18 only incentive out there.

19 Q. Thank you. You also discussed briefly the
20 retail resale of wholesale discount and whether that
21 was cost-based?

22 A. Yes.

23 Q. And is it correct that, under the act, the
24 way that cost or that discount is determined by the
25 state commission is determination of the retail

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1 marketing, billing, and collection costs that will be
2 avoided by the local exchange provider?

3 A. I think there's a big debate about whether
4 it's will be avoided or it can be avoided, but I'd
5 rather not go in that direction, but it is avoided
6 cost standard.

7 Q. Okay. Commissioner Gillis asked you some
8 questions, a hypothetical question, actually, about a
9 large business that had 10,000 lines divided between
10 Seattle and perhaps a smaller satellite location in
11 Everett. Do you recall that discussion?

12 A. Yes.

13 Q. In your experience, would that kind of a
14 situation normally be covered by a contract already?

15 A. It's my experience that a customer who had
16 20,000 lines, regardless of where they were, would
17 most likely buy those under a contract. The
18 exception, I think, would be if they were so far into
19 self-provisioning that they only needed minimal sort
20 of trunks to connect to the public network.

21 Q. And I think you mentioned that you, in
22 fact, see contracts from Qwest for similar
23 situations. Do you also see contracts from other
24 providers for providing services to large business
25 customers, such as you were discussing with

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1 Commissioner Gillis?

2 A. I certainly see contracts. I can't, off
3 the top of my head, think of one from a customer that
4 large that involved a competitive company.

5 Q. So not quite 20,000 lines, but some level
6 smaller than that you have seen contracts?

7 A. I just can't recall exactly what the
8 biggest one or -- you know, I'd just have difficulty
9 characterizing the contracts.

10 MR. OWENS: Thank you. That's all I have.

11 MS. JOHNSTON: Your Honor, would now be a
12 good time for Dr. Blackmon to respond to -- actually,
13 Mr. Owens, you asked Dr. Blackmon to accept, subject
14 to check, certain prices. Have you had an
15 opportunity to --

16 THE WITNESS: To check those?

17 MS. JOHNSTON: Yeah, check those figures.

18 THE WITNESS: Yes, I have. This had to do
19 with the replacement price for the \$200, the
20 nonrecurring charge for the unbundled network element
21 platform. And I was asked to check the price of
22 \$12.41, is what Qwest is proposing and what they are
23 now offering as an interim price, and that is correct
24 where it's converting an existing line from Qwest's
25 retail service to this UNE platform.

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1 If it's an initial line that's totally new,
2 the nonrecurring charge would be \$46.02, still well
3 below the \$200 number that I mentioned in the
4 testimony, but also significantly higher. There are
5 all sorts of prices that they charge, depending on if
6 it's an additional line within the same order and
7 things like that. So the prices are more complex
8 than a single price, but, in general, they are
9 significantly lower than the \$200 level.

10 JUDGE CAILLE: Go ahead, Counsel.

11 MR. RICE: Thank you, Your Honor.

12

13 R E C R O S S - E X A M I N A T I O N

14 BY MR. RICE:

15 Q. Dr. Blackmon, do you recall Bench Request
16 Number Four, in which Commissioner Gillis asked for
17 unmasked data in Exhibit 12-C-H?

18 A. Yes.

19 Q. How did you obtain the unmasked data?

20 A. It was provided by Qwest, I think in
21 response to a data request. I'm not sure.

22 Q. Do you recall the name of the person at
23 Qwest who sent you that information?

24 A. No, I don't.

25 Q. Okay. Did anyone tell you in the hallway

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1 during lunch who provided this information to you?
2 Did you learn that for the first time at that point?

3 A. I can't swear that we're talking about the
4 same thing, but I think that Theresa Jensen said in
5 the hall --

6 Q. Thank you.

7 A. -- that she provided the unmasked data. It
8 goes to the Attorney General's Office, to their legal
9 secretary, and I see it after it's already in a book
10 with the cover letter removed.

11 MR. RICE: Thank you. One moment, please.
12 Thank you. That is all.

13 JUDGE CAILLE: Thank you. Is there any
14 other --

15 MR. FFITCH: Your Honor, if I may, I just
16 wanted to respond on behalf of Public Counsel to
17 Commissioner Hemstad's remarks. I felt that would be
18 appropriate, if I may, briefly. We certainly accept
19 the Commissioner's point, and in general, agree with
20 the value of cross-examination. Here, to the extent
21 that Dr. Blackmon is agreeing with the company, in
22 any event, our focus has been on Qwest's case and
23 witnesses, since the company has the burden of proof
24 on those same issues.

25 I'll note that, jointly with Tracer, we did

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1 designate and conduct cross of one of the Staff
2 witnesses, Ms. Bhattacharya. I apologize for the
3 pronunciation. I'm working on that.

4 JUDGE CAILLE: It took me a while.

5 MR. FFITCH: There has also been a bit of
6 confusion or ambiguity regarding our stipulation with
7 cross. It was our understanding that we had reserved
8 the ability to at least do follow-up to questions
9 from the Bench, and we have a difference of opinion
10 with regard to the agreement that was reached, and
11 are acceding to the broader restrictions that Staff
12 believes are in that stipulation, but -- and finally,
13 I'll note that Staff Counsel in this case conducted
14 no cross-examination whatever of the chief witnesses
15 for the Company, even though they are directly
16 adverse to the Company on the majority of the
17 geographic areas, customers and services in this
18 petition.

19 MS. JOHNSTON: Your Honor, now I feel
20 compelled to say something.

21 JUDGE CAILLE: Go ahead, Ms. Johnston.

22 MS. JOHNSTON: I think that you should not
23 lose sight of the fact that both Commission Staff and
24 Petitioner, Qwest, were of the opinion that this
25 matter could -- this docket could have proceeded on a

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1 paper record. Given that we're in hearing, we're
2 going forward.

3 Also, in response to some representations
4 made by Mr. ffitich, I just want to make a record that
5 Public Counsel approached me with a proposed
6 stipulation on behalf of Ms. Rackner and Mr. Harlow
7 regarding cross-examination, or lack thereof, in
8 exchange for a stipulation into the record of some
9 exhibits. So that was not my proposal at all.

10 Given the concerns of the Commissioners,
11 however, the stipulation notwithstanding, if Counsel
12 for Tracer, Public Counsel, or MetroNet, ATG, would
13 like to ask follow-up questions of Dr. Blackmon, we
14 would not object to that.

15 CHAIRWOMAN SHOWALTER: Well, since
16 everyone's getting a chance to talk here, I don't
17 want to leave Commissioner Hemstad alone in his
18 comments. It is very difficult for us to act as
19 trial attorneys, and where the parties' positions are
20 in agreement, it makes some sense, I would think,
21 perhaps not to cross-examine. But where I am
22 confused is where the parties are taking different
23 positions that haven't been reconciled and the
24 testimony that has been submitted by the parties
25 differs and disagrees with one another, the

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1 Commission is left to its own devices to try to
2 reconcile or choose positions, knowing that the
3 parties had not even attempted in the hearing to try
4 to narrow the issues and gauge the issues, refute the
5 issues, to somehow join the issues such that we can
6 see where the weaknesses are and where they aren't.

7 Sometimes I think parties think that it's
8 to their advantage in their own position not to
9 cross-examine the other party for fear that that
10 witness will either enhance the witness' case or
11 damage the other's case. And I'm just speaking for
12 myself. I, as a Commissioner, listening to
13 cross-examination, I really don't buy it. I think
14 that it says something, silently, I guess, if the
15 parties are not able or willing to engage each other
16 in their own positions.

17 So I want to concur in Commissioner
18 Hemstad's remarks, although it's been kind of an
19 experience for me to try to be an attorney here.

20 MR. HARLOW: Your Honor, Madam Chairwoman,
21 Commissioners, I have to say, not just the
22 Chairwoman, but the entire Bench, I can't recall
23 another proceeding where we've had as active cross
24 from the Bench as we've had in this proceeding, and I
25 think it's been very helpful.

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1 We chose not to waive cross. In fact, I
2 think we weighed in pretty heavily on that. And part
3 of the reason is that we wanted Mr. Wood, our witness
4 we've sponsored, to have a chance to appear in front
5 of the Commission and to respond to questions. And
6 in this instance, we, of course, have actively
7 crossed a number of the witnesses, but in this case,
8 we felt the record could be developed better through
9 Mr. Wood's rebuttal testimony, which we also had to
10 fight vigorously to get, as well as the
11 Commissioners' opportunity to question Mr. Wood on
12 our views on the Staff's recommendation.

13 And I realize that that may have left you a
14 little bit in the lurch, but we have tried not to
15 leave you totally in the lurch, because we think
16 we've joined the issues to Mr. Wood's testimony.

17 JUDGE CAILLE: Are there any other
18 comments? Ms. Rackner.

19 MS. RACKNER: I just want to briefly
20 comment that, to echo Mr. Harlow's comments, that we
21 did think that the issues would be best joined
22 through rebuttal testimony of Dr. Goodfriend, but --
23 and we did not plan cross for Dr. Blackmon for that
24 reason, but I do want to say that, in the future,
25 having considered your comments and considering the

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1 issues from your perspective, I think we might have
2 made a different decision.

3 So I want to tell you that I appreciate
4 your comments, and I hope to be practicing in front
5 of this Commission a great deal in the future, and we
6 won't omit cross for any witnesses in the future.

7 COMMISSIONER HEMSTAD: Well, don't take it
8 too hard.

9 MS. RACKNER: You're afraid you're going to
10 be sorry, aren't you?

11 JUDGE CAILLE: So with that, is there any
12 follow-up cross for Dr. Blackmon?

13

14 E X A M I N A T I O N

15 BY CHAIRWOMAN SHOWALTER:

16 Q. I have one follow-up question to your
17 answer to Commissioner Hemstad's questions to the
18 effect that, on the ground, the customers are the
19 same, regardless of how we characterize them as one
20 market, a mixed market, or large and small.

21 I may have asked you this before lunch, but
22 can you point to me in your testimony or just tell me
23 now the most compelling reason why you feel we
24 should, in fact, treat this as a broader, mixed
25 market, as opposed to segmented into two?

00751

1 A. I think that the basic reason to go that
2 direction, and it's not that it's so much more
3 compelling than the other, but it's the preference
4 that I have, but -- is that these are the same
5 services being provided in the same geographic areas.
6 There is some degree of substitutability between
7 services that are provisioned over a DS1 circuit
8 versus ones that are provisioned over individual
9 copper loops.

10 So it is hard to keep that distinction in
11 place at a practical level, even at so practical a
12 level as the price list itself and the tariff. We've
13 thought some about how the company would need to
14 structure its price list and its tariff if only the
15 larger segment is to be in the price list, and we're
16 not exactly sure how to do that, though I'm sure we
17 could figure it out if you choose to go that way.

18 Q. All right. Then one more question. If we
19 do choose to go that way, what are the kinds of
20 statistics or dynamics that we would be looking at
21 after the fact to see if we had made the right call
22 or not? What would you be looking for as a negative
23 sign and what would you be looking for as a positive
24 sign that we had done the wrong or the right thing?

25 A. Under which alternative? I'm sorry.

00752

1 Q. In this, I think here I was speaking of the
2 broader market of all business services in the four
3 geographic areas with conditions. If that's the road
4 we take, how will we be gauging whether the market is
5 remaining competitive or not?

6 A. I think we'll judge that based on what we
7 see from the competitors and from Qwest, in terms of
8 the continued ability of competitors to use the
9 special access circuits of Qwest, and then to add to
10 that the ability to use unbundled network elements.
11 And I would expect to see more and more use of
12 unbundled elements in the smaller end of the market.
13 And that, to me, would be a sign that, in fact,
14 competition was increasing in that market.

15 And then I'd hope to see prices move. And
16 I believe that, as the competition increases, we'll
17 see even more pressure on all the companies to do
18 some combination of lower prices and more services.

19 CHAIRWOMAN SHOWALTER: Thanks.

20 JUDGE CAILLE: Is there any further
21 follow-up cross? Any redirect?

22 MS. JOHNSTON: No, Your Honor.

23 JUDGE CAILLE: All right. Thank you.

24 You're excused, Dr. Blackmon. And I believe Mr. Wood
25 is the next witness?

00753

1 MR. HARLOW: I thought Mr. Taylor, or Dr.
2 Taylor, sorry.

3 MS. JOHNSTON: Yes, Dr. Taylor's next. I
4 was going to say, it's too late for Mr. Wood to get
5 his plane, isn't it?

6 MR. HARLOW: Yes, quite late.
7 Whereupon,

8 DR. WILLIAM E. TAYLOR,
9 having been first duly sworn, was called as a witness
10 herein and was examined and testified as follows:

11 JUDGE CAILLE: Thank you. Counsel.

12 MR. OWENS: Thank you, Your Honor.

13

14 D I R E C T E X A M I N A T I O N

15 BY MR. OWENS:

16 Q. Good afternoon, Dr. Taylor.

17 A. Good afternoon.

18 Q. Would you please state your name and
19 address for the record?

20 A. My name is William E. Taylor. My address
21 is National Economics Research Associates, Inc., One
22 Main Street, Cambridge, Massachusetts, 02142.

23 Q. And are you the same William E. Taylor
24 who's caused to be prefiled in this case testimony
25 that's been identified as Exhibit 213-T, and an

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1 associated exhibit that's been identified as 232,
2 constituting your curriculum vitae?

3 A. Yes.

4 JUDGE CAILLE: Excuse me, Mr. Owens. That
5 213 is in error. It should be 231.

6 MR. OWENS: Oh, 231, you're right. I was
7 reading it and not seeing what it said. Thank you,
8 Your Honor.

9 Q. With that correction, is your testimony as
10 identified in Exhibit 231-T?

11 A. Yes, that's correct.

12 Q. And was the curriculum vitae prepared by
13 you or under your direction or supervision?

14 A. Yes.

15 Q. Is it true and correct, to the best of your
16 knowledge?

17 A. Yes.

18 Q. Do you have any additions, changes or
19 corrections to make to your prefiled testimony,
20 Exhibit 231-T?

21 A. No, I don't.

22 Q. If I were to ask you the questions printed
23 in the exhibit, would your answers be as set forth
24 therein?

25 A. They would.

00755

1 MR. OWENS: Thank you. Qwest offers 231-T
2 and 232 into evidence.

3 JUDGE CAILLE: Is there any objection to
4 the admission of those exhibits?

5 MR. FFITCH: No objection.

6 JUDGE CAILLE: Then they are admitted into
7 the record.

8 MR. OWENS: Dr. Taylor is available for
9 cross-examination.

10 JUDGE CAILLE: Mr. ffitch.

11 MR. FFITCH: Thank you, Your Honor.

12

13 C R O S S - E X A M I N A T I O N

14 BY MR. FFITCH:

15 Q. Good afternoon, Dr. Taylor.

16 A. Good afternoon, Mr. ffitch.

17 Q. As you may have gathered, I'm Simon ffitch,
18 with the Office of Public Counsel, and I have a few
19 questions on cross-examination.

20 First of all, before we get started, there
21 was one housekeeping matter, Your Honor. I discussed
22 this with Mr. Owens. In the exhibit list, we've
23 identified for cross-examination Exhibits 233-C,
24 234-C, 235 and 236-C, and it's my understanding that
25 Qwest does not object to the admission of these

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1 exhibits, and I would offer them at this time.

2 JUDGE CAILLE: Mr. ffitch, I have in my
3 records that 236 is no longer confidential.

4 MR. FFITCH: That's consistent with the
5 notes in our exhibit list, Your Honor.

6 JUDGE CAILLE: All right. Is there any
7 objection?

8 MS. ANDERL: Your Honor --

9 MR. OWENS: Can we have a second?

10 MS. ANDERL: Our packets seem to be missing

11 --

12 JUDGE CAILLE: I can tell you 233-C is also
13 Exhibit 29-C.

14 MR. FFITCH: That's my understanding, Your
15 Honor.

16 MS. ANDERL: That explains that.

17 JUDGE CAILLE: And 236 is also Exhibit 55.

18 MS. JOHNSTON: Yes.

19 MR. FFITCH: That's also consistent with my
20 understanding, Your Honor.

21 MR. OWENS: Are there going to be questions
22 on the exhibits?

23 MR. FFITCH: There are not.

24 MR. OWENS: Okay. Then we don't have any
25 objection to their admission.

00757

1 JUDGE CAILLE: All right. Then 233-C,
2 234-C, 235 and 236 are admitted into the record.

3 MR. FFITCH: Thank you, Your Honor.

4 Q. Dr. Taylor, I'd first like you to turn to
5 your qualification statement that's been marked as
6 Exhibit 232.

7 A. I'm afraid I don't have a copy of that up
8 here with me. May I borrow one?

9 Q. Perhaps your counsel will assist. I will
10 have a couple of questions about that.

11 A. Sure.

12 MR. FFITCH: You might also provide the
13 witness with a copy of the petition and attachments,
14 as long as we're pausing for this. I was going to
15 touch on those, as well.

16 MR. OWENS: Are you going to be asking
17 about Attachments G and H?

18 MR. FFITCH: No.

19 Q. Do you have the qualifications statement?

20 A. Yes, Mr. ffitch.

21 Q. And that indicates that you received your
22 doctorate in economics in 1974; correct?

23 A. Yes.

24 Q. And then in the next year, in 1975, you
25 joined Bell Telephone Labs; is that correct?

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1 A. No, not quite. I was a -- did work for
2 them on a consulting basis in the summer. My first
3 serious job after graduate school was at Cornell, so
4 I left -- I'm sorry, I left graduate school in '72,
5 taught at Cornell through '75, and then went to Bell
6 Laboratories.

7 Q. All right. And you were at Bell Labs for
8 what years?

9 A. Well, roughly '75 through 1988, if you
10 include Bellcore, which was the continuation of Bell
11 Laboratories after divestiture.

12 Q. All right. So you anticipated my question.
13 You then continued on with Bellcore through 1988, and
14 then, since then, you've been with NERA; correct?

15 A. Yes.

16 Q. And at NERA, you've done a significant
17 amount of work, a significant amount of work as a
18 testimonial witness; correct? You've listed about 13
19 single-spaced pages of telecom proceedings where
20 you've provided testimony; correct?

21 A. Yes.

22 Q. And I'd like to turn you to page 12 of your
23 qualification statement, again, Exhibit 232. Are you
24 there?

25 A. Yes.

00759

1 Q. Now, on page 12, there is a section headed
2 Mergers.

3 A. Yes.

4 Q. And that list of cases goes on to the
5 middle of the next page, 13. Can you tell me in
6 which -- or in any of those cases were you testifying
7 on behalf of any clients other than incumbent
8 telephone companies?

9 A. No, I don't believe so.

10 Q. And in any of those cases, did you provide
11 testimony recommending against the proposed mergers?

12 A. No.

13 Q. I'd ask you to turn to page 16 of your
14 qualifications statement.

15 A. Yes.

16 Q. You have that. And there's a heading, is
17 there not, Bell Entry into IntraLATA Markets?

18 A. Yes, that's correct.

19 Q. Again, a list of cases extending to the
20 next page. And in which of those proceedings, if
21 any, did you testify on behalf of a client who was
22 not an incumbent telephone company?

23 A. These were all for incumbent -- actually,
24 Bell Telephone companies, since it's Section 271.

25 Q. Thank you. And in any of those

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1 proceedings, did you recommend against the approval
2 of Bell entry into the intraLATA markets?

3 A. No.

4 Q. And if you could now turn to page 14 of
5 that same exhibit, the bottom of the page. I'm
6 sorry. Do you have that?

7 A. Yes.

8 Q. The bottom of page 14, there's a heading,
9 Classification of Services as Competitive?

10 A. Yes.

11 Q. And you list -- I've counted approximately
12 eight or nine cases, I believe. In any of those
13 cases, were you representing a client other than an
14 incumbent telephone company?

15 A. Or association of incumbent telephone
16 companies, no.

17 Q. And in any of those proceedings, did you
18 recommend against classification of a service as
19 competitive?

20 A. No.

21 Q. Now, I'd like to turn to your testimony
22 proper in this case, which is Exhibit 231-T. And you
23 only filed rebuttal in this case; is that correct?

24 A. Yes.

25 Q. And I'll ask you to turn to page two of

00761

1 your testimony, where you state the purpose of your
2 testimony. There you state, beginning at line 11,
3 that you were asked by Qwest to review the direct
4 testimony of Staff, Public Counsel, Tracer and the
5 intervenors; correct?

6 A. Yes.

7 Q. And to evaluate the issues raised by the
8 parties in this case, to paraphrase?

9 A. Correct.

10 Q. And turning to page three at line 17, you
11 state that one of the issues is the definition of the
12 market for purposes of the proceeding; correct?

13 A. Yes.

14 Q. And that's a key issue in determining if
15 effective competition is present, is it not?

16 A. Yes.

17 Q. Did you consult with Theresa Jensen or
18 anyone else at Qwest regarding the preparation or
19 framing of this petition prior to its filing?

20 A. To my knowledge, not directly, I did not.
21 People who work for me may have, but in general, I
22 had nothing to do with the framing of the petition.

23 Q. All right. So I take it you did not
24 perform your own analysis prior to the filing of
25 Qwest's petition to determine the appropriate

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1 geographic or product markets where effective
2 competition might be present for purposes of an
3 application; is that correct?

4 A. Prior to the filing of the petition, no.

5 Q. Now, can I ask you to turn to page nine of
6 your testimony.

7 A. Yes.

8 Q. Line 22. And at line 22, you state, My
9 belief is that Qwest's petition and accompanying
10 testimony by Qwest Witnesses Theresa Jensen and David
11 Teitzel have demonstrated clearly that in 31 wire
12 centers in question, alternative service providers
13 are present and in a position to provide one or more
14 alternative services, whether through resale, the use
15 of unbundled loops, or their own facilities.

16 A. That's correct.

17 Q. So if I'm understanding, the factual basis
18 for your conclusion there is found in the Qwest
19 petition and the testimony of Ms. Jensen and Mr.
20 Teitzel?

21 A. That's correct.

22 Q. Now, if you could turn to page 18, please?

23 A. Yes.

24 Q. At lines two through four, there you state
25 that Qwest has catalogued sufficient facilities-based

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1 entry so that exercise of market power will not be
2 possible, and then, on line four, mention some
3 documentation by Mr. Teitzel; correct?

4 A. Yes.

5 Q. And again, would I be correct to understand
6 that the factual basis for this statement is found in
7 the Qwest filing and in the testimony of Ms. Jensen
8 and Mr. Teitzel?

9 A. That's correct. Well, and in part in my
10 contribution to the facilities-based competition,
11 which is the bottom of page 18, the discussion of
12 switches coming from the LERG.

13 Q. And we'll get to that in a moment. Other
14 than this LERG discussion, which we will address, am
15 I correct to understand that the factual basis for
16 the opinions which you rendered in your testimony is
17 found in the Qwest petition and the testimony of the
18 Company witnesses?

19 A. Yes, that's correct.

20 Q. You've already answered my next question,
21 which was was there anything else. And the answer
22 was, I take it, the LERG routing guide information
23 that you mention on page 18. Is that correct?

24 A. Yes, the Local Exchange Routing Guide
25 count of competitor switches.

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1 Q. All right. Other than that, was there any
2 other factual basis for your testimony here?

3 A. I believe that's my only contribution to
4 facts on the ground, the competitive nature of
5 services in Washington. The rest of it is trying to
6 straighten out the economics, the interpretation one
7 puts on these facts in trying to answer the question
8 that the Commission has to answer.

9 Q. All right. Now, I'm going to ask you now
10 to -- well, let me shuffle my binders one moment
11 here. First of all, just looking at the table that
12 you have presented on page 18, you state there that
13 the number of competitor switches in Auburn is 22;
14 correct?

15 A. That's correct.

16 Q. And I'd like to ask you to go to the
17 Attachment M of Exhibit 12, which is the company's
18 petition, and go to the first page of that
19 attachment.

20 A. Yes.

21 Q. And if you look at the legend on that
22 exhibit -- I guess I'll wait a second as others are
23 trying to locate it.

24 COMMISSIONER HEMSTAD: What page?

25 Q. This will be the very first page of

00765

1 Attachment M. The first page is an Auburn map, is it
2 not, Dr. Taylor?

3 A. Yes.

4 Q. And do you know if this is a map of an
5 exchange or map of a wire center?

6 A. Well, I guess I don't know for certain. My
7 only description on the map is Auburn.

8 Q. All right. If you'll look at the legend on
9 that map, it states that the number of competitive
10 switches in Auburn is zero; isn't that correct?

11 A. Yes, that's what that says.

12 Q. Now, let's -- looking simultaneously at
13 your page 18 table, you state that Bellevue has 39
14 competitor switches, do you not? I'm going to be
15 referring to that a couple of times, so if you want
16 to just keep your finger in the table one on page 18.

17 A. Yes.

18 Q. Thirty-nine competitor switches in Bellevue
19 on your table. If you turn to the next page of
20 Attachment M, you see a map of Bellevue Glencourt, do
21 you not?

22 A. Yes.

23 Q. That shows one competitive switch?

24 A. That's what the legend says, yes.

25 Q. And if you turn to the next page of the

00766

1 Attachment M, Bellevue Sherwood?

2 A. Yes.

3 Q. The legend indicates zero competitive
4 switches?

5 A. That's what it says.

6 Q. And if you'll just confirm for me that
7 those are the only two Bellevue maps in this
8 attachment, I think you'll find that if you turn the
9 page, we're on to Issaquah?

10 A. Subject to check, yes.

11 Q. So we have a total of one competitor switch
12 indicated in the Attachment M; correct?

13 A. That's correct.

14 Q. Okay. Now, let's look at Issaquah, the
15 next map. In Table One of your testimony, you
16 indicate that there are 14 competitor switches in the
17 Issaquah exchange?

18 A. Correct.

19 Q. And in Attachment M, the Issaquah map
20 indicates that there are zero competitive switches in
21 Issaquah; isn't that right?

22 A. That's what it says.

23 Q. Now, to speed this along, I'm going to ask
24 you to agree, subject to check, to the comparison
25 numbers that I've done for the rest of the table.

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1 A. Subject to check, surely.

2 Q. For Kent, you've stated that there are 20
3 competitor switches in your table; Attachment M
4 indicates zero. For Renton, your table indicates 22;
5 Attachment M indicates one switch. For Seattle, your
6 table indicates 52 switches, Attachment M indicates
7 27 switches, including certain wire centers with zero
8 competitive switches. For Spokane, your table
9 indicates 25 competitive switches; Attachment M
10 indicates 11 competitive switches, including wire
11 centers with zero competitive switches. For Tacoma,
12 your table indicates 36 competitor switches;
13 Attachment M indicates two competitor switches.
14 Vancouver, your table indicates 27 competitive
15 switches, and Attachment M indicates three.

16 And as you indicate on Table One, that adds
17 up to a grand total of 257 competitor switches for
18 the nine exchanges, as you've described them, as
19 compared with a total of 45 competitive switches
20 indicated in Attachment M. And again, I'm asking you
21 to accept that, subject to check.

22 A. Sure.

23 Q. I did but perform a simple mathematical
24 function, which I believe is called addition, to
25 arrive at those numbers, but --

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1 A. Attorney addition, which is different.

2 Q. That's why I'm asking you to accept it
3 subject to check.

4 A. Sure.

5 Q. Doesn't the LERG number, the LRG number
6 include independent telephone company switches?

7 A. It lists independent telephone company
8 switches, but my calculation that I use is restricted
9 to CLECs, competitive access providers, wireless
10 companies and PCS providers. I have the list of
11 owners of those switches in each of the exchanges,
12 and we can go down and list them, if you'd like.

13 Q. Well --

14 A. In fact, they're listed by, in my backup,
15 by CLEC, wireless, CAP. And just thumbing through
16 it, I have a small number -- I see one independent
17 telephone company's switch. There may be a couple of
18 others, but a tiny fraction.

19 Q. Do you know if that list includes POIs?

20 A. I guess I don't know by that phrase. These
21 are switches for routing and it includes all of those
22 and only those.

23 Q. All right. Doesn't the LERG list also
24 include packet switches?

25 A. Yes.

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1 Q. And tandem switches?
2 A. Tandem, certainly.
3 Q. And signaling transfer points?
4 A. That I don't know.
5 Q. And end office switches, as well?
6 A. End office switches, certainly.
7 Q. End office switches, for the court
8 reporter, was that your answer?
9 A. Yes.
10 Q. E-n-d?
11 A. Correct.
12 Q. I'll just represent to you that we've been
13 unable to replicate your figure of 257.
14 Your Honor, I'd like to enter a record
15 requisition for Dr. Taylor's work papers and backup
16 data. He's indicated that he has such documents.
17 Would you be able to provide that
18 information in response to a record requisition, Dr.
19 Taylor?
20 A. Certainly.
21 JUDGE CAILLE: That would be Record Request
22 Number Five.
23 MR. FFITCH: Thank you.
24 MR. OWENS: Excuse me, Your Honor. Perhaps
25 in order that this could be made part of the record,

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1 it should be a Bench request.

2 MR. FFITCH: Well, we'd like the
3 opportunity to review the data and then submit it as
4 an exhibit if we believe that that's useful to the
5 Bench. We're, at this point just trying to replicate
6 the numbers, but whatever the Bench's preference is.
7 We're quite comfortable with having it be a Bench
8 request, Your Honor.

9 JUDGE CAILLE: All right. Let's do it as a
10 Bench request, then, and then it will be Number Five,
11 as well.

12 MR. FFITCH: And I'm not sure if the -- can
13 I have a moment, Your Honor?

14 JUDGE CAILLE: Certainly.

15 MR. HARLOW: While that's going on, I was
16 under the assumption that record requisitions were
17 part of the record, but if not, I wish to offer the
18 Record Requisition Number One that we made.

19 JUDGE CAILLE: Is there any objection to --
20 I take it you've received it?

21 MR. HARLOW: We have, Your Honor. It's
22 also confidential.

23 MR. OWENS: It hasn't been provided to the
24 Bench, because, of course, record requisitions
25 aren't. At least not by us, it hasn't.

00771

1 JUDGE CAILLE: That's correct. Only the
2 bench requests come to the Bench. Is there any
3 objection to the admission of Record Requisition
4 Number One? Hearing none, then --

5 MR. OWENS: Are you going to assign that an
6 exhibit number, Your Honor, or just going to refer to
7 it as Record Requisition Number One?

8 CHAIRWOMAN SHOWALTER: It seems like we
9 would make it the next bench request.

10 COMMISSIONER HEMSTAD: No.

11 MR. HARLOW: I think it came in through Ms.
12 Jensen, and we've reserved some numbers for her. Or
13 we can just tack it on the end, I guess.

14 MR. OWENS: It could be 72, right.

15 JUDGE CAILLE: Seventy-two.

16 MR. FFITCH: I apologize. Perhaps either
17 Counsel or the Bench could just restate which record
18 requisition that was and which exhibit number it
19 became?

20 MR. HARLOW: Well, it was Record
21 Requisition Number One, and I think we were numbering
22 it 72-C; is that correct?

23 MR. OWENS: 72-C.

24 JUDGE CAILLE: That's correct.

25 MR. OWENS: And it was a breakdown of

00772

1 Centrex lines resold by the products of Centrex
2 Prime, Centrex-21 and then the balance, I believe.
3 Centrex Plus.

4 MR. HARLOW: If we need to submit the Bench
5 copies, we'll need to make those during a break, I
6 guess.

7 JUDGE CAILLE: If you would, please.

8 MR. HARLOW: Certainly.

9 MR. FFITCH: Your Honor, I had a follow-up
10 question on our -- well, I guess it's become a bench
11 request now.

12 JUDGE CAILLE: Bench request, yes.

13 MR. FFITCH: Bench Request Number Five.

14 Q. Dr. Taylor, can you include with that the
15 entire LERG materials?

16 A. I can in the sense of going back and
17 reproducing it. What I have here is not the entire
18 LERG record, but, rather, the OCN name, the category,
19 and the switch code is what I have in front of me.

20 Q. My thought is that if the entire LERG is
21 provided, that we'll have explanatory material that
22 will help with the deciphering of the more reduced
23 materials you have there.

24 A. Sure.

25 MR. FFITCH: Thank you.

00773

1 JUDGE CAILLE: So that will be part of the
2 record or -- or the bench request?

3 MR. FFITCH: Yes.

4 Q. And now, if I could ask you to turn to page
5 39, Dr. Taylor, page 39 of your rebuttal, Exhibit
6 231-T?

7 A. Yes.

8 Q. And please go to line 16.

9 A. Yes.

10 Q. Now, in that Q&A, you're responding to Dr.
11 Goodfriend's point that, armed with pricing
12 flexibility, Qwest could potentially manage entry
13 into the market, are you not?

14 A. I'm responding to that phrase in Dr.
15 Goodfriend's testimony, yes.

16 Q. All right. And at line 20 of that answer,
17 you say, and I quote, this point is neither true, nor
18 a matter of concern, and I'm just trying to
19 understand that sentence. Are you saying there,
20 Don't worry, that could never happen, or do you mean,
21 even if it is true, it's not a matter of concern?

22 A. Yes. What I'm saying is that in
23 competitive markets, unregulated competitive markets,
24 this type of behavior, that is, particularly for
25 large business customers of offering packages of

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1 services designed to serve those particular customers
2 is the way of the market. It's a good thing. It's
3 not a bad thing. That may have or may not have the
4 effect that it, quote, deters entry in the sense that
5 it makes it more difficult for any other competitor
6 to serve that customer, but that's a good thing, too.

7 I mean, anything that Qwest or AT&T or
8 anybody else can do to make a customer so happy they
9 want to stay with Qwest, that deters entry to serve
10 that customer, but we don't care. It's not a matter
11 of concern. That's a good thing. That's what
12 competition is supposed to do. That's the sense of
13 that sentence.

14 Q. So the ultimate goal is happiness for the
15 consumer, regardless of whether entry is deterred?

16 A. Yes, I think it's fair to say the goal in
17 all of this, in fact, the goal of entry, if it comes
18 down to that, the goal of competition isn't as an end
19 in itself; it's to get better services, lower prices,
20 better response for consumers. That's the end
21 product.

22 If we end up with competition in lots of
23 firms that produces that, that's good, because then
24 we won't need this Commission. But if we don't,
25 doesn't matter. Still, the end product ought to be

00775

1 lowest possible prices, best services for consumers.

2 That's the end of the day.

3 Q. All right. And then, going to line --

4 excuse me, page 40, the next page, line two, perhaps

5 sort of following up on your last answer, you say

6 that that kind of product differentiation frequently

7 takes the form of special contracts, volume

8 discounts, multi-part pricing or other forms of price

9 discrimination; right?

10 A. Correct.

11 Q. Then you continue on, you say, In

12 competitive markets, such price discrimination

13 actually improves economic efficiency by bringing

14 services to consumers at prices closest to what

15 they're willing and able to pay and reducing both

16 buyer and seller risk. And that's essentially what

17 you were just saying again in your prior answer;

18 right?

19 A. Right, that's an aspect of it.

20 Q. I'm not an economist, obviously; I'm a

21 lawyer. I read the phrase "prices closest to what

22 customers are willing and able to pay," and it looks

23 a lot to me like whatever the traffic will bear. Can

24 you -- is there any difference between that phrase

25 and the saying "whatever the traffic will bear?"

00776

1 A. Sure. I mean, the difference is the
2 sentence begins with the phrase "in competitive
3 markets." So I think the best neutral way to think
4 about it is suppose you have big customers and little
5 customers. You can think of -- if you're trying to
6 serve that market, you can think of all sorts of
7 pricing schemes, declining block tariffs, as we're
8 accustomed to thinking of in utilities, or similar
9 things like that in order that a particular package
10 that you put together is attractive for a large user
11 or a small user, an infrequent user, all sorts of
12 things.

13 And the way that people compete in the real
14 world is by putting together groups of these packages
15 designed to extract as much consumer surplus as
16 possible from the customer that buys it, but, of
17 course, in competition with other people, and you set
18 up a whole set of these things.

19 Did you ever look at, say, cellular prices.
20 Look at what your cellular company offers. There's
21 probably two dozen different packages you could buy,
22 ranging from, you know, sort of \$20 a month and
23 nothing to \$300 a month and all sorts of things. The
24 reason you have that wide variety of different
25 choices is because people have different preferences.

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1 And you can target -- a firm can target its offering
2 to reach as many of these different types of people
3 as possible.

4 If they simply had one price for everybody,
5 first of all, customers wouldn't buy as much, there
6 would be less consumer surplus produced by the
7 system, and secondly, you wouldn't sell as much and
8 you wouldn't make as much money. We're much better
9 off if you can, to the extent competition permits,
10 you can target these packages to reflect consumers'
11 actual preferences.

12 Q. And you've stated elsewhere in your
13 testimony, and I don't have a page number for you,
14 but in general, you've stated that, in this
15 competitive market we're talking about, customers
16 could be differently situated as to the level of
17 competitive alternatives that they have; correct?

18 A. Oh, sure. I mean, that's always true. But
19 that doesn't necessarily tell you whether the service
20 price has to be regulated or not or whether a
21 supplier has market power or not.

22 I mean, I'm differentially located in the
23 tomato market and I buy tomatoes once every month or
24 so, and I couldn't tell you within 30 cents what the
25 price of a tomato, a pound of tomatoes was, so me and

00778

1 Del Monte are in very different positions. But I
2 don't have to worry about that as a customer. Even
3 though I may not have much alternative but to go to
4 my local grocery store, I'm well taken care of by the
5 competitive process by others who are at the margin.

6 Q. Now, you go on to, in that same paragraph,
7 to say, at line seven, we're on page 40 again of
8 Exhibit 231-T, In their wisdom, the authors of RCW
9 80.36.170 and RCW 80.36.180 did not extend the
10 prohibitions against undue preferences and
11 discrimination to services classified as competitive
12 under RCW 80.36.330. That's correct? I've read that
13 correctly, haven't I?

14 A. Yes.

15 Q. And what are those two statutes that you
16 refer to in the beginning of the sentence, 170 and
17 180?

18 A. Well, 170 is unreasonable preference
19 prohibited. One-eighty is rate discrimination
20 prohibited.

21 Q. So --

22 A. And I could read the text, if you'd like,
23 but --

24 Q. That's fine.

25 A. That's what it is.

00779

1 Q. That's sufficient, thank you. And so is it
2 your understanding that if competitive classification
3 is granted in this case, that those prohibitions no
4 longer apply?

5 A. Yes, that is my understanding.

6 Q. And so that Qwest could allow or practice
7 undue or unreasonable preference or practice rate
8 discrimination without violating the statute if
9 competitive classification is granted?

10 A. Well, it can ignore the prohibitions in 170
11 and 180. The phrase "undue preference and undue
12 discrimination" covers further sins, which may be
13 illegal in other contexts. All this sentence says is
14 that whatever 170 and 180 means, it doesn't, in my --
15 as I understand it, apply to services classified as
16 competitive.

17 Q. All right.

18 A. And I point out in the earlier part of the
19 paragraph how that makes sense. That's the -- that
20 there is discrimination, not undue discrimination,
21 but discrimination, which actually serves customers
22 in a competitive unregulated market.

23 Q. But as I understand your statement here,
24 you know, let's say I'm a customer and I can
25 establish in my hypothetical that there's been an

00780

1 unreasonable preference or rate discrimination
2 practiced against me. If the service I'm receiving
3 has been classified as competitive, I cannot rely
4 upon the statute to make a claim against the company
5 on that basis; correct?

6 A. That is my understanding, though I -- you
7 know, I'm not a Washington lawyer, but that's my
8 understanding.

9 Q. I understand you're not an attorney, but
10 because you did make this point, I wanted to probe
11 your understanding. And finally, just to summarize,
12 I understand your view that this is a laudible
13 feature of the competitive market and that it's not a
14 matter of concern?

15 A. Absolutely, yes. Imagine cellular markets
16 where there was one price for everybody, as opposed
17 to many different packages for different people.

18 MR. FFITCH: May I have a moment, Your
19 Honor? Your Honor, we don't have any further
20 questions. Thank you, Dr. Taylor.

21 THE WITNESS: Thank you.

22 JUDGE CAILLE: Is there any other cross for
23 Dr. Taylor?

24 MR. HARLOW: After the admonishment --

25 CHAIRWOMAN SHOWALTER: You better think of

00781

1 something to ask.

2 MR. HARLOW: I have an hour of cross, Your
3 Honor.

4 THE WITNESS: Thank you very much,
5 Commissioner Hemstad.

6 MR. HARLOW: I think we all want to get
7 finished today, but I do have a question.

8

9 C R O S S - E X A M I N A T I O N

10 BY MR. HARLOW:

11 Q. At page 29 of your rebuttal testimony.

12 A. Yes.

13 Q. Line seven, you state, quote, Yet he also
14 appears to argue that the Commission should withhold
15 any grant of flexibility until -- that this is until
16 the market is effectively competitive. Your next
17 sentence starts out, if the latter premise is
18 correct. Are we to infer from that statement that
19 you believe the latter premise is incorrect?

20 A. No, I'm just --

21 MR. HARLOW: Okay. Thank you. That's all
22 I have.

23 THE WITNESS: Okay.

24 MR. KOPTA: Well, I could do that.

25 JUDGE CAILLE: Anyone else?

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1 CHAIRWOMAN SHOWALTER: Does this mean it's
2 our turn again?

3 JUDGE CAILLE: Yes, it's our turn.

4

5 E X A M I N A T I O N

6 BY CHAIRWOMAN SHOWALTER:

7 Q. Well, I'll begin with some basic questions.
8 First, can you define for me consumer surplus?

9 A. Sure. It's the difference between what a
10 customer's willing to pay for something and what he
11 or she actually pays. Technically, it's the area
12 under the demand curve to the left of where the price
13 and quantity actually is.

14 Q. So it occurs in the circumstance where a
15 consumer pays less than he or she might be actually
16 willing to pay?

17 A. Actually willing to pay, yes, that's
18 correct.

19 Q. So to that extent, the seller is not
20 getting the benefit of that differential?

21 A. That's correct.

22 Q. All right. On page 39 of your testimony,
23 you were asked questions about your comments at lines
24 16 to 22. And I think you said you thought it
25 wouldn't be a problem if a number of competitors or

00783

1 one big competitor bid the price down for consumers,
2 because that would be good for consumers?

3 A. That's correct.

4 Q. Is there a danger that a monopoly or a near
5 monopoly, such as Qwest, would be in a position to
6 offer more efficient price compared to competitors,
7 and so would do that, which would be good, at least
8 in the short run, but isn't there a phenomenon, and
9 as an economist, you probably know the term that I'm
10 looking for, but where essentially one big company
11 squeezes out the rest, and thereby gains a monopoly,
12 and at that point can exercise market power, at which
13 point prices start to go back up.

14 First of all, is there a name for that? Is
15 that price squeeze or --

16 A. No, that's predatory pricing.

17 Q. Okay, predatory pricing.

18 A. And yes, it's a logical possibility,
19 something that people care enough about to pass laws
20 against, so it's not impossible. On the other hand,
21 sort of all of the economic wisdom since the Sherman
22 Act started looking at predatory pricing has been
23 that it is, I think in the words of the Supreme
24 Court, rarely attempted and rarely successful.

25 If you think about it, there are a couple

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1 of reasons for that. I mean, the first is it's a
2 pretty sloppy way to drive a competitor out of
3 business. I mean, in a sense, you price yourself
4 below cost, hurting yourself, so that you hurt him,
5 hopefully, more. You have deeper pockets, you can
6 outlast him, he goes broke, and you raise the price.

7 Q. Okay, wait a minute. I think I did not
8 have predatory pricing in mind, where the large
9 company was pricing below cost. I think I had in
10 mind a scenario where the larger company could
11 actually provide the service at or above cost at a
12 cheaper price than the competitors.

13 A. Yes, okay.

14 Q. And in the short run, seems to me a
15 consumer would say, Fine, I get the service cheaper,
16 so that's better.

17 A. Mm-hmm.

18 Q. But that, in a longer term sense, it may
19 not be better to have fewer and fewer competitors in
20 the market because of other dynamics like innovation
21 and lethargy and --

22 A. Sure.

23 Q. -- things like that.

24 A. Okay.

25 Q. I thought I took Dr. Goodfriend's comments

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1 to be worried about things like that. And why are
2 you not worried?

3 A. Well, first, I guess I probably wouldn't
4 agree that telecommunications services are a natural
5 monopoly in the sense that one firm can supply them
6 for whatever reason, either because it's more
7 efficient by size or by some other reason or any
8 other reason.

9 I think the premise of the 1996
10 Telecommunications Act was that we didn't think that
11 local exchange business was a natural monopoly and
12 that multiple firms could supply services more
13 cheaply, in total, than a single firm. So we more or
14 less committed to go down that road.

15 Now, your point that a firm like Qwest,
16 say, hypothetically, whose costs are lower than
17 anyone else's, though frequently people complain that
18 ILECs are lazy and fat and stupid and their costs are
19 higher than everyone else's, but suppose they're
20 lower, and that they actually price down to cost.
21 Well, that's a good thing, as you mentioned in your
22 question. That's not something that we should ever
23 try to prevent.

24 If, as a consequence, we don't have
25 competition coming as quickly as we thought, all that

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1 means is that we'll have to regulate longer than we
2 thought, it means that the premise of the act is
3 probably wrong, and that one provider is more
4 efficient than many providers.

5 Q. Well, what about a time difference? Maybe
6 the premise of the act isn't wrong, but that it's
7 kind of hard to get from here to there.

8 A. Right.

9 Q. Meaning that the ILEC has in place the
10 network, so those are sunk costs and present, whereas
11 it takes a while for competitors to get going. And I
12 think that theory is that if you deregulate the ILEC
13 too soon, the competitors don't really get a foothold
14 and get in the door, or maybe if they're just in the
15 door, they get pushed back out of the door. Isn't
16 that really the issue for us, that we have to decide
17 under the statute? Is there competition, effective
18 competition such that that scenario really won't
19 occur?

20 Not that we're not worried about it
21 happening. We would be worried about it happening,
22 because then we'd be going back toward a single
23 company, as opposed to back toward more competition.

24 A. Yes, I think what -- the way that's been
25 approached, particularly in the Telecommunications

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1 Act, is to ensure that whatever economies of scope
2 and scale that the ILECs have, because they've been
3 doing this for years, because they're big, because
4 whatever, get passed through to competitors to the
5 extent competitors want to make use of them. That's
6 the logic of requiring resale and the sale of
7 unbundled elements, and in particular, at the TELRIC
8 method of pricing unbundled network elements to
9 ensure that customers and CLECs get to buy them,
10 taking full advantage of all the economies of scale
11 when you calculate the TELRIC of the ILEC.

12 So you're right in that the
13 Telecommunications Act tries to take that into
14 account by making entry and use of the ILEC's network
15 to achieve ubiquity in a wire center or in an area as
16 cheaply as possible. That was their plan for that.
17 And I think we're still experimenting and seeing
18 exactly how successful that's going to be.

19 What also caught my ear about what you said
20 is there is the opposite danger, which is --
21 economists call the infant industry problem, which
22 is, sure, if you protect competitors and have sort of
23 a hothouse competition for some period, it's likely
24 that those competitors will get better at doing what
25 they do, their own economies of scale will come into

00788

1 play, and they'll be better competitors.

2 But I think it's at least many people's
3 view in history that when that has been done, it's
4 not been good public policy in the long run, because
5 it's very hard to determine when those infants have
6 grown up and to remove from them the advantages that
7 they had.

8 I mean, an example may well be long
9 distance in the United States. Though they never
10 said they did it, the FCC carefully set access
11 charges for a long time, so that AT&T was at a
12 disadvantage with respect to access charges, compared
13 to what was then called the OCCs, the other common
14 carriers, MCI and Sprint, and that advantage was
15 removed slowly over time, kicking and screaming.

16 There's still some elements of that
17 advantage left today. It's very, very difficult,
18 even when, 15 years after divestiture, to remove
19 those advantages.

20 So logically, you might be correct, there
21 may be some circumstances in which it pays to
22 hothouse competition and let it grow. I can't say
23 you're wrong, as a matter of logic. I think, as a
24 matter of experience, I would disagree that that
25 would be good public policy.

00789

1 Q. But surely, there's some limit to your
2 position, because if you had no hothouse at all, it
3 would deregulate the monopoly overnight, and then it
4 would be awfully hard for the competitors to get in
5 the door, wouldn't it?

6 A. Not in the circumstance we have here. When
7 we speak of deregulating or actually declaring
8 competitive, we're only talking about the retail
9 services. No one is talking about deregulating UNE
10 prices or interconnection terms and conditions.
11 Those remain regulated by a higher authority in some
12 respects. So if you were to flash-cut, deregulate
13 retail services today, CLECs would still be able to
14 market their services statewide, even though they
15 don't have networks statewide, because they're able
16 to use the network of the ILEC, according to the
17 terms of the Telecommunications Act.

18 Q. So you're saying that if we got wholesale
19 competition completely open and satisfactory, then we
20 shouldn't -- and wholesale regulation, I should say
21 --

22 A. Right.

23 Q. -- then we shouldn't worry about retail
24 regulation?

25 A. Yes, that's right. Yeah.

00790

1 Q. Okay. You raised the issue in your
2 comments just now about resale, and I wanted to ask
3 you about resale versus facilities-based competition
4 and what you think of Dr. Blackmon's comment that we
5 really shouldn't be looking at the resale market when
6 we are looking at whether there's effective
7 competition, recognizing, though, that it is a good
8 transition tool?

9 A. I think I generally agree with the thrust
10 of what he said. I think I disagree a bit with the
11 words that he chose. As I remember his phrase, he
12 said you really can't count on resale when you're
13 counting noses to determine whether people have a
14 competitive choice or not. And assuming he said
15 that, I think I would disagree with that.

16 I would agree with him that resale
17 competition by itself, that is, with no UNEs or no
18 anything else, cannot provide complete protection for
19 price for just the reason that he gave. That is, if
20 you double the retail rate and there's no other way
21 that competitors can get into the market, all the
22 resale competition does is goose everything up by a
23 factor of two, and it doesn't protect consumers from
24 a price change.

25 Now, two things to say about that. One,

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1 that's not realistic, and I don't think Dr. Blackmon
2 would say that it was, in the sense that every CLEC
3 that's considering resale is also considering
4 competing through using unbundled elements, building
5 its own facilities, and those prices are grounded in
6 the costs of those materials.

7 So if you were to double the retail rate,
8 effectively double the price that a reseller has to
9 pay, the reseller doesn't have to pay that in
10 reality. He can go buy a UNE platform and get
11 roughly the same services at a much lower price.

12 I guess the second thing I would say is
13 that what resale competition does do, what it's very
14 good at, is that it gives customers a choice. That
15 is, if there's some element about Qwest's service,
16 retail services that people don't like, and we see
17 this frequently, I think, in my experience in the
18 small business area, where you have a whole different
19 set of small businesses that do very different things
20 and want special treatment, in the sense they want
21 their bill presented in some way, they want discounts
22 in some direction or another, because they're just
23 very different kinds of businesses, I mean, pool
24 halls, pizza parlors, law firms. You know, they have
25 very, very different needs, and resellers are very

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1 good at providing those service differences.

2 So in the sense of competing by providing
3 service differences, I think resale is just fine.
4 And finally, where resale does provide price
5 protection, it is not, as Dr. Blackmon said, for the
6 whole nine yards, or at least for the network part of
7 it, but it is for the difference. That is, the
8 difference, the 15 percent between the retail price
9 that they compete against and the wholesale price
10 that they pay.

11 As far as that difference is concerned,
12 there is frantic competition for being able to
13 produce those services at a cheaper rate, because if
14 the reseller can do that, he can lower his price
15 below Qwest's price and can take lots and lots of
16 business away. So I would call it competition for
17 the margin, not competition in the aggregate.

18 Q. Okay. I want to ask you about the degree
19 to which you think the factual evidence of market
20 share is important versus the structural conditions,
21 if I have stated that right. I think I read your
22 testimony as saying we should focus more heavily on
23 the structural conditions by which, I take it you
24 mean the presence of competitors' switches in the
25 various wire centers and their readiness to compete

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1 versus how many customers they now have?

2 First of all, would you just characterize
3 that difference in your own words? I don't want to
4 mischaracterize it.

5 A. Sure. I think you've characterized it
6 correctly, that when looking at markets served by
7 ex-monopolists, by firms that used to have a hundred
8 percent of the market, not because they were good,
9 but because they were the only game in town,
10 regulated entry forbidden. Because they had to start
11 with a hundred percent, looking at the level of
12 market share doesn't make much sense. I mean, it
13 does for ordinary competitive firms, who've sort of
14 earned their way up to whatever share of the market
15 that they get, but for ILECs today, it's really the
16 opposite situation.

17 You started -- you were given 100 percent
18 at birth, and the question is have you shed enough of
19 that, or let's look at the process which is causing
20 you to lose customers and to lose market share.

21 And it's that process, I think, that is
22 appropriate to look at, because it's that process
23 that affects Qwest's ability to raise price or to
24 determine price, and that, ultimately, when we're
25 talking about market power, that's what we're looking

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1 for.

2 So it's conditions of entry. It's not the
3 level of market share, but the change in market share
4 over time. It's the ubiquity of collocation, for
5 example, of UNE loops in different wire centers.
6 It's the ability of competitors to come in and
7 actually locate and get customers that, if I were
8 giving Qwest business advice, I would say, you know,
9 take all this stuff into account when you think that
10 you can raise price for this service. Haven't you
11 noticed that you're losing customers right and left
12 in Seattle and Tacoma. It's that story; not you've
13 got three-quarters of the market in any one of these
14 places, and therefore, you don't have to worry.

15 Q. Well, let's talk about the three-quarters
16 of the market or at least the customers who don't
17 seem to have a choice or they don't think they do,
18 that it's been asserted in this case and there's been
19 some evidence in some actual, you know, an actual
20 customer in front of us yesterday --

21 A. Yes.

22 Q. -- who feel that they simply don't have
23 alternatives -- well, there might be various reasons.
24 One reason might be because, really, nobody wants
25 their business, another might be people might want

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1 their business if they went that low on their
2 priorities, and another might be they want their
3 business, but they can't get there, for some reason.

4 What is your response to -- if it is a fact
5 that there are customers that no competitor really
6 wants to go after?

7 A. Well, I guess where I would start is with
8 the idea that suppose there are small customers or
9 customers who really do not have alternatives. I
10 listened to the same story that you listened to, and
11 it sounded like, after some due diligence, the guy
12 just didn't have an alternative.

13 However, what that doesn't tell you is what
14 the effect of that is on the prices that Qwest sets
15 for a 1MB rate. I mean, for example, I live in
16 downtown Boston, I live within walking distance of a
17 market, a supermarket, and it would take a tremendous
18 price increase for me to go anywhere else, because
19 you have to walk in Boston, the streets are a mess,
20 and it's the only one I can walk to.

21 Well, in a sense, I'm a captive customer.
22 I don't have an alternative. I'm like the gentleman
23 we had here yesterday. Yet the supermarket charges
24 me the same price it charges everybody else. They
25 could charge me a lot more if they only knew the

00796

1 pitiful position I'm in. On the other hand, there
2 are lots of people in Boston who shop at that market
3 who have a choice, who live on the other side of the
4 market or could walk someplace else or who have a car
5 in the parking place and could go someplace else.

6 The net effect of all that is that
7 supermarket prices in Boston are pretty competitive,
8 and I get to take advantage of that. I get
9 tremendous consumer surplus from that because I don't
10 have to pay anywhere near what it's worth to me. My
11 point is that, for, say, a small business customer
12 that calls around and nobody wants to deal with him,
13 he has to pay list price from Qwest for a 1MB, well,
14 there are customers who do have alternatives, and
15 those customers keep Qwest from effectively raising
16 prices of 1MB at will. This guy doesn't, but others
17 do.

18 Q. What is 1MB?

19 A. I'm sorry, a basic business exchange line.

20 Q. It's not a business line or --

21 A. A line, yes.

22 Q. A line. Well, I'm just trying to think
23 about your analogy and if it's apt or not. What if
24 the class that this fellow was a member of is
25 businesses with one, two or three lines, and

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1 supposing there's very little interest among
2 competitors for anybody who falls into that.
3 Nonetheless, are customers with two, three, four,
4 five, six or more lines exercising the kind of
5 consumer power that will benefit the smaller
6 customers, and why?

7 A. Yes, because, at least today, and tomorrow,
8 if Dr. Blackmon's conditions were in place, Qwest
9 would be unable to charge a different price, a higher
10 price, to the onesie-twosies than the price that they
11 would charge to everybody else. So that as long as
12 there are competitive alternatives that control the
13 price of the basic exchange line, it doesn't matter
14 if it's controlling it for one-line business
15 customers or five-line business customers or 10-line
16 business customers, as long as there are constraints
17 in the aggregate so that US West -- so that Qwest
18 doesn't find it to its advantage to raise the price
19 of that service, then the customers that have only
20 one line or two lines and that, hypothetically, at
21 least, no one wants to serve, still get to take
22 advantage of it.

23 Q. What stops Qwest from engaging in -- with
24 ICBs, these contracts for those for whom they want to
25 lower the price, and then -- well, either leaving the

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1 price where it is for the rest, if there are
2 conditions, or raising the price for the lesser --
3 for the less desirable group if there are no
4 conditions?

5 A. Well, nothing that I understand prevents
6 Qwest from writing ICB contracts under these rules to
7 lower prices. I mean, that's got to be a good thing.
8 And in fact, one of the advantages, I think, of
9 declaring these services to be or reclassifying them
10 as competitive is that, finally, for these ICBs,
11 which are, almost by definition, competitive, why
12 would anyone want to write a contract with a lower
13 price if he didn't have to?

14 Finally, Qwest will be on the same footing
15 as the other people replying to the RFP. As I
16 understand it today, when Qwest goes off and tries to
17 do an RF -- a response to a proposal, comes up with
18 an ICB, that has to be approved by the Commission.
19 So if I'm a salesman and I say, Boy, can I do
20 something for you, here's the price, here are the
21 services, here's a package, but wait, you know, we
22 have to go check, we're not sure that it can actually
23 be like this, and if the next salesman that comes in
24 isn't constrained like that, that's a big advantage.

25 So nothing stops, in your example, Qwest

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1 from filing ICBs to lower prices. What prevents
2 Qwest from holding price the same for the basic
3 business customer, who we assume has no alternative,
4 nothing does. If it has no competitive alternative
5 and there's -- the service has been declared
6 competitive, then there's no regulatory tool left to
7 move that price around. And if you are concerned
8 that there is no competitive alternative, then Dr.
9 Blackmon's rule makes sure that one-line basic
10 exchange customers aren't worse off than they are
11 today.

12 CHAIRWOMAN SHOWALTER: Okay. That's all I
13 can think of for now. Probably we should take a
14 break.

15 JUDGE CAILLE: Take a break, yes. Let's
16 come back at 3:30. We're off the record.

17 (Recess taken.)

18 JUDGE CAILLE: Let's go back on the record.
19 And Chairwoman Showalter, do you have more questions?

20 Q. I think I have just one more area of
21 inquiry, and that is the relationship of the Merger
22 Guidelines to our statute. And I read your testimony
23 as focusing pretty heavily on the Merger Guidelines.
24 And you may not be as familiar with our statute, but
25 I wonder if you have any views about the value of the

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1 Merger Guidelines in the context of the statute that
2 we need to be operating under?

3 A. Sure. I think the main value of the Merger
4 Guidelines is telling us how to define a market. If
5 that's not part of what's explicit in your statute,
6 but it is implicit in your statute. The Merger
7 Guidelines tells us how you go about thinking about
8 what a product market is and what a geographic market
9 is, and I think that's -- seems to be general
10 agreement among everybody that whatever the Merger
11 Guidelines means by those are the things we ought to
12 use.

13 Where I think the Merger Guidelines doesn't
14 help is, in their sort of quantitative nature, the
15 Merger Guidelines break up markets into concentrated
16 and unconcentrated areas, and in the concentrated
17 ones, ones with HHIs over 1,800, they have one set of
18 rules for how big a change in the HHI would be
19 permitted by a merger. If it's less concentrated,
20 it's a different level.

21 I think those suggestions as to what a
22 concentrated market might be or not are irrelevant
23 for this process. I think they're important and
24 useful for mergers, where you're trying to ask the
25 question how much does a little less concentration

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1 cost us in terms of somebody's going to have more
2 ability to control price, as compared with what we
3 have under your statute, which is the incumbent is
4 losing market share. Has it lost enough so that it
5 no longer has the prospect of being able to control
6 market price. It's moving in the opposite direction,
7 I think.

8 Q. Okay. If you would turn to page 25 of your
9 testimony. It's Exhibit 231-T.

10 A. Yes.

11 Q. You were asked some questions earlier
12 regarding lines 15 to 19, but you take Dr. Blackmon
13 to task because he says the Commission must conclude
14 that effective competition actually exists in that
15 market. And you go on to say, This contradicts and
16 falls short of the standards set by antitrust
17 authorities, namely, that the relevant market be
18 measured by including potential competitors.

19 And I just want to discuss that distinction
20 a little bit. When I look at our statute -- and I
21 don't know if you have the statute in front of you.

22 A. Yes, I do.

23 Q. RCW 80.36.330.

24 A. Yes.

25 Q. Whether it was wise or not for our own

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1 legislature to define effective competition, I don't
2 know, but they did. And it's stated in the present
3 terms that, the present tense, effective competition
4 means that customers of a service have reasonably
5 available alternatives, and that the service is not
6 provided to a significant captive customer base.

7 And then there's some factors that we can
8 look at in making that determination, but we have to
9 come back to that determination. And I looked at
10 your testimony here, on pages 18 and 19, as possibly
11 not taking into account our statute. Surely, I think
12 it may be fine to look at potential competition as
13 part of an overall dynamic that we think may occur,
14 but do you agree that we also, under our statute,
15 have to look at the current state of competition and
16 what choices customers now have?

17 A. Yes, I agree with that. I think the
18 distinction I'm making on page 25 is a little bit
19 different, and I guess it's inartfully worded. If
20 you look at the Merger Guidelines, for example, they
21 make the point that it isn't just competitors'
22 competitors in existence today in the market today
23 that controls prices today. The point that the
24 Merger Guidelines has, when they include potential
25 competitors, is that -- not that we're looking

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1 forward in time and we'll worry about -- take into
2 account future competition for this exercise; it
3 really is a present tense thing.

4 It says, in the Merger Guidelines' mind,
5 today Qwest is unable to raise its price because, if
6 it does, it knows that here are 10 other firms which
7 may not be in the market today, but which would be if
8 Qwest raised its price. So I agree with you that
9 your statute calls for looking at competition today,
10 and I guess the only thing I'm trying to say on page
11 25 is that -- to know what effective competition is
12 today, don't exclude potential competitors the way
13 the Merger Guidelines thinks about them.

14 Q. Okay.

15 A. They belong in there, too.

16 Q. So maybe we should not exclude them, but we
17 certainly couldn't rely only on potential competition
18 under our statute. Would you agree with that?

19 A. I think so, yes. All I'm trying to say is
20 that effective competition can include effects from
21 competitors who are not competitors in the market
22 today.

23 CHAIRWOMAN SHOWALTER: Okay. Well, thanks.
24 That's the questions I have.

25 THE WITNESS: Thank you.

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1 COMMISSIONER HEMSTAD: Believe it or not, I
2 don't have any questions.

3 MS. JOHNSTON: Hey, that's not fair.

4 JUDGE CAILLE: Commissioner Gillis.

5 COMMISSIONER GILLIS: I think I just have
6 one question.

7

8 E X A M I N A T I O N

9 BY COMMISSIONER GILLIS:

10 Q. You had some discussion with the Chair
11 regarding Commissioner -- Glenn Blackmon's comment,
12 condition, that the price be the same for the large
13 businesses and the small businesses within a given
14 area. And do you have an opinion about that
15 condition and the implications for the competitive
16 interest of potential competitors in these small
17 businesses?

18 A. Yes, I guess so. I mean, if it is the
19 Commission's view at the end of the day that small
20 businesses would face higher prices, poorer service,
21 or whatever as a result of unconstrained pricing
22 flexibility, I disagree with that, but if that's the
23 conclusion that you all reached, the restriction that
24 prices for those small business -- the services those
25 small business customers pay cannot increase sort of

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1 solves the problem, in a sense.

2 That is, it makes them no worse off than
3 they are today. It may well be that other customers
4 get an advantage from the competitive process, but at
5 least these people who have, by hypothesis, no
6 alternatives, are not harmed.

7 Now, what the effect of that is on the
8 CLECs, I guess that's hard to say. I mean, it
9 depends upon what you think the competitive market
10 price really ought to be for that service. Remember,
11 this is a price which was set by the regulatory
12 process, so I have no idea whether it's too high or
13 too low as far as what a competitive market price
14 might be. If that price is too low, then, under Dr.
15 Blackmon's conditions, it might well be that these
16 customers will never get a competitive alternative
17 because, at that price, no one would find it
18 attractive to enter.

19 On the other hand, if the price is higher
20 than the competitive market price, people will be
21 ultimately coming in to serve them. And of course,
22 once collocation and unbundled network elements are
23 ubiquitous, then it's very easy to serve them once
24 you're in the wire center.

25 Q. You hit around it, but specifically Dr.

00806

1 Blackmon's -- I think that he used the words, stated
2 that they would be -- the small business customers
3 would be no worse off as a result of this condition.
4 And the question that I'm asking you is is that true,
5 to the extent that an implication of that condition
6 may be less choice for these small business customers
7 in maybe even the intermediate term than would be
8 otherwise?

9 A. Well, I think I would agree with you up
10 until "than would be otherwise." That is, if you
11 left the service basic -- business basic exchange as
12 a regulated service, no pricing flexibility, I guess
13 it might be the case that if that price were
14 sufficiently high that it attracts entry, then --
15 well, no, I'm sorry.

16 No, I think if it were sufficiently high
17 that it would attract entry, then you would have
18 entry whether or not Qwest has pricing flexibility,
19 but is required to keep that price at its current
20 level. I mean, if it's attractive to serve some guy
21 at 26 bucks a month today, then he will have
22 alternatives. If it isn't, he won't.

23 If Qwest had pricing flexibility and were
24 able to raise that price, on the one hand, the
25 customer now pays more; on the other hand, if that

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1 price were below the competitive market level, the
2 customer now gets alternatives.

3 I mean, if nobody wants to serve it because
4 26 bucks isn't enough to make it a profitable deal,
5 then price rises to the market price under pricing
6 flexibility, ultimately, and pays more, but gets
7 choice. I wouldn't say he's better off, necessarily,
8 nor worse off. In a sense, he's been held at an
9 artificially low price by your regulation. And one
10 of the things he's given up by having that low price
11 is having lots of alternatives. You can't have both,
12 I guess, you know, below market price and lots of
13 people who want to serve you. That doesn't make
14 sense.

15 Q. And I suppose ultimately it's an empirical
16 matter whether the price is below market or above
17 market, and we really don't know. Is that your
18 answer?

19 A. I believe that's right. One of the nice
20 things about pricing flexibility is that you can find
21 out, in the sense that see what happens, what Qwest
22 does and what other suppliers do.

23 Q. I suppose the flip side of that statement
24 is also that our standard maybe truly should be
25 whether or not there is effective or sustainable

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1 competition, whatever term we -- effective is the
2 statutory term, but sustainable, maybe it's the
3 policy goal -- competition for all segments of the
4 market before we would want to -- or maybe I
5 shouldn't say all segments. What I want to say is
6 effective competition for the relevant segment of the
7 market, in this case, we're talking about small
8 business segment of the market, before we would want
9 to give that price flexibility?

10 A. Well, I would look at it from the other
11 side. I would ask, if you give Qwest pricing
12 flexibility, what would be the effect? Would it then
13 be able to raise that price for everybody, across all
14 segments? And if the answer to that question is no,
15 that there's enough competition, possibly not for
16 small business customers, but for 10 and 12-line
17 customers, to keep that price low, then you've won.

18 That is, the small -- the onesies and
19 twosies are protected thanks to competition for the
20 tens and the twelves. So I would look at it sort of
21 the other way. It isn't whether the ones and the
22 twos have enough alternatives to protect themselves,
23 it's whether the service as a whole has enough
24 competition that the price can't go up.

25 Q. Again, it strikes me as an empirical

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1 matter, which we don't really have any evidence on
2 the record one way or the other, but one scenario
3 being that it is, in fact, more costly to serve the
4 onesies and twosies versus -- or I don't think I --
5 there's much lower margins, at least, to serve
6 onesies and twosies versus the large users, where
7 there's potentially more margins.

8 And Qwest, the incumbent, has universal
9 access to the whole portfolio of customers within the
10 relevant geographic area, whereas an incumbent -- I
11 mean, a competitor doesn't have that portfolio. And
12 so it's in the competitor's interest in serving the
13 below margin customers, the onesies and twosies,
14 without having the offsetting large customers in
15 their portfolio. It strikes me as problematic if
16 that empirical were true, that they would actually
17 pursue the small business market.

18 A. Well, I guess I would agree with you if I
19 were a CLEC. I would sort of rank my markets in
20 terms of profitability, start with the most
21 profitable and work my way down, and I think I would
22 agree with you that residential and small, one-line
23 business customers are probably towards the bottom of
24 that wish list of customers that I wish I had.

25 On the other hand, some of the CLECs that

00810

1 we're talking about are not small CLECs who are
2 constrained by capital markets or anything like that.
3 These are the WorldComs and the AT&Ts of the world.
4 And if they can serve profitably residential market
5 or the small business market, I think they'd
6 ultimately get around to doing it.

7 Q. And I guess that's precisely what I was
8 stating to you as one way of approaching the
9 question, is if what you just said is the reality,
10 then, and there's a factual record to back it up,
11 then it's fairly easy to conclude that there's
12 effective competition for that segment.

13 But the issue before us is is there a
14 record of factual basis for us to make that decision.
15 And the implication of this is that, if it's not
16 true, if there's not effective competition for that
17 lower end of the market and we choose to impose a
18 condition, we choose to open up pricing flexibility
19 for this lower end of the market and impose a
20 condition that would potentially exclude the
21 profitability of a competitor serving the small end
22 of the market, then I'm having a hard time getting to
23 the conclusion that these small businesses are better
24 off.

25 A. Well, under that set of hypotheses, I think

00811

1 you're right. I think it is a fact that no customer
2 can enjoy low prices, that is, prices below what a
3 competitive market would bring, and a competitive
4 choice. That isn't anything that you can do or that
5 a market will bring. And I would have to say that I
6 don't think that probably would be good public policy
7 to do that.

8 Now, I think ultimately competition is
9 going to move prices toward cost, and for some
10 customers and some services, that means up and not
11 down. The good news is that it also brings all the
12 other benefits of competition, choice and someone to
13 call when you're angry at Qwest, a different variety
14 of services and all the good things. But for some,
15 it may involve higher prices, as well.

16 Q. And I want to pursue with you one other
17 line that builds off of some of Dr. Blackmon's
18 testimony this morning, or was it this afternoon?
19 I'm forgetful now. But one of his presumptions was
20 that the largest customers probably are able to
21 obtain the benefits of competition through special
22 contracts or those types of means, and that may be an
23 explanation of why those customers could have less
24 interest in this form of pricing flexibility. Do you
25 have an opinion on that?

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1 A. Yes, I guess. I mean, I've been involved
2 in a number of pricing flexibility cases across the
3 country, and by and large, if you had asked me before
4 I came here what the position of large business
5 customers was, it was generally that they were in
6 favor of pricing flexibility for the incumbent. The
7 idea being that they found it awkward and difficult
8 when they tried to negotiate an ICB contract with the
9 incumbent, and the incumbent was hobbled in the sense
10 that either it had to have the contract approved or
11 it had special rules that it had to obey and others
12 didn't, and it was my take that large business
13 customers would have preferred that the incumbent
14 local exchange carrier be able to wheel and deal just
15 like the CLECs.

16 And I have to say, I think this is the
17 first case I've been in where we've seen the
18 opposite, and I have to confess I don't understand.

19 COMMISSIONER GILLIS: Okay. Thank you.

20 THE WITNESS: Sure.

21 JUDGE CAILLE: Nothing further? Yes, Ms.

22 Rackner.

23

24 R E C R O S S - E X A M I N A T I O N

25 BY MS. RACKNER:

00813

1 Q. Good afternoon, Dr. Taylor.

2 A. Good afternoon.

3 Q. I just want to take you up on some of the
4 comments you just made about your puzzlement at why
5 the very large customers are opposing the petition in
6 this case. In preparing for your testimony today,
7 did you interview any very large customers?

8 A. Not for this case, no. I've been involved
9 in that in other cases.

10 Q. So you personally have interviewed very
11 large customers about their concerns about pricing
12 flexibility being given to incumbents?

13 A. Not me myself, but in projects under my
14 direction, yes.

15 Q. But you yourself have not?

16 A. No.

17 Q. Okay. And were you here for Dr.
18 Goodfriend's testimony?

19 A. Yes.

20 Q. Okay. So you heard her say that she had
21 interviewed very large customers; correct?

22 A. I believe I recall her saying that, yes.

23 Q. And were you here when she explained what
24 she heard from very large customers as to why they
25 were concerned about Qwest, in this case, getting

00814

1 pricing flexibility?

2 A. Well, I was surely here, but I don't think
3 I could reproduce what she said.

4 Q. Did you hear her say that one of their
5 concerns had to do with having geographically
6 disparate locations? Do you recall that?

7 A. I remember her saying that, yes, but that
8 didn't make much sense to me.

9 Q. Well, were you here when she also talked
10 about the large customers' concerns that a CLEC would
11 be unable, through their network, to efficiently
12 deliver to geographically disparate locations?

13 A. Sure, but that's not a reason why a large
14 business customer would want to prevent Qwest from
15 having pricing flexibility and being able to reduce
16 its prices to that large business customer. It's a
17 reason why they would prefer to use Qwest.

18 Q. Is it your thought that what the very large
19 customers are concerned about is Qwest reducing its
20 prices to them?

21 A. Surely. That's for large business
22 customers who depend nearly exclusively on contracts,
23 on RFPs, on off-tariff prices, what happens to
24 tariffed services isn't terribly important. My view,
25 from the studies that I have directed, my view of the

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1 concerns of large business customers is that all
2 players, including, of course, the incumbent, whose
3 network, as you have said, they may want to use for
4 other reasons, be free to package together the kinds
5 of services, the kinds of pricing that the individual
6 large business customer really needs.

7 Q. So your thought is that the larger
8 customers are not concerned about prices going up; is
9 that correct?

10 A. Well, I believe -- yes, that's correct, in
11 the sense that what they see as pricing flexibility
12 is not a fear that prices go up. Pricing flexibility
13 is an opportunity for not just prices to them to go
14 down, but probably more important for contracts to
15 more easily reflect the very specific nature of the
16 services that these large business customers need.

17 Q. Okay. Well, you're observing that the
18 business customers are concerned about contract rates
19 for themselves, as opposed to tariffed rates;
20 correct?

21 A. Yes.

22 Q. Okay. And I believe that you discussed
23 somewhere in your testimony RCW 80.36.170 and
24 80.36.180?

25 A. Correct.

00816

1 Q. Now, if Qwest -- let me take a look -- why
2 don't I direct you to your testimony at page 40.

3 A. Yes.

4 Q. I see that you say that the drafters, in
5 their wisdom, did not extend the prohibitions against
6 undue preferences and discrimination to the services
7 classified competitive; correct?

8 A. Yes.

9 Q. Well, would you agree with me, then, that
10 if Qwest receives the flexibility that it's asking
11 for today, that it would be able to discriminate in
12 any way it wants with respect to contracts; is that
13 correct?

14 A. With respect to Sections 170 and 180, those
15 would no longer apply. I believe that's the direct
16 answer to your question. And if I were a large
17 business customer, that's a good thing, because what
18 I want is discrimination. That is, I want Qwest to
19 be able to put together a special package for me and
20 others exactly in my circumstance, rather than
21 forcing me to buy some pre-packaged tariffed set of
22 services. I'm in favor of more discrimination if I'm
23 a large business customer.

24 Q. Well, I understand that that's your theory,
25 but you heard Dr. Goodfriend testify that she had

00817

1 spoken to the members of Tracer, and that they had
2 said they had sought alternative providers and they
3 could not find good alternatives to Qwest; is that
4 correct?

5 A. It's certainly correct that she said that,
6 and for all I know, it may be true, but that doesn't
7 go to this point. Suppose she's exactly right and
8 that members of Tracer, for whatever reason, can only
9 use Qwest. Suppose that's the case. Then what does
10 pricing flexibility do for those people? In my view,
11 from the ones -- not the Tracer members, but in
12 Pennsylvania and in New Jersey, where I've done these
13 studies, what they tell me is we then can use the
14 Qwest services better than we could before without
15 pricing flexibility. Pricing flexibility allows the
16 Qwest salesperson to come in here, put together the
17 exact package we want, guarantee that it's going to
18 go through without a Commission having to have a
19 hearing on it, and even in the case where there's no
20 competition, no competitors to serve, we, the large
21 business customer, are better off for having this
22 pricing flexibility.

23 Q. Well, that assumes that, in the long run,
24 that customer is satisfied with the quality of
25 service they're getting from Qwest. Let's assume for

00818

1 a minute that the customer is hoping for the
2 development of a competitive market so that it will
3 have other choices in the long run. At that point,
4 wouldn't the pricing flexibility work against the
5 Tracer customer's interest, instead of in favor of
6 it?

7 A. Well, it ought not to. I mean, as I
8 understand your hypothesis, we've got a Tracer
9 customer today who only has a Qwest service, but is
10 going to be willing to give up the lower prices,
11 better service that it could get from Qwest, because
12 it doesn't really like Qwest's service at all, but it
13 has no choice, because it thinks if Qwest doesn't get
14 pricing flexibility, in the long run, we'll have more
15 competition and I will have -- I, the Tracer
16 customer, will have more choice.

17 If that's your question, I think that's
18 awfully sort of hypothetical for a large business
19 customer decision to make today. I don't -- wouldn't
20 concede at all that more pricing flexibility for
21 Qwest means less competition in the long run. I
22 think it means more efficient competition in the long
23 run.

24 Q. Are you aware that, in the state of
25 Washington, that even if Qwest receives pricing

00819

1 flexibility, that there will still be a price floor
2 for its services; correct?

3 A. I believe that's correct, yes.

4 Q. Okay. And so to the extent that is a large
5 customer -- let me back up a minute. That to the
6 extent that the size of a business is allowing it to
7 exercise a certain amount -- you know, ability to
8 negotiate with Qwest --

9 A. Yes.

10 Q. -- and to the extent it may now be
11 receiving a service that is close to cost, that even
12 if Qwest receives pricing flexibility, its prices
13 won't drop?

14 A. Well, its prices, by definition or by law,
15 can't drop below the floor, but at the same time
16 we've been discussing all of this, I think we
17 conceded that it was just for these large business
18 customers where carriers make a margin, that it's a
19 very profitable service -- area of service to sell.
20 May well be that the unit price is very close to the
21 price floor, to the incremental cost, but with large
22 volumes of service that these customers demand, these
23 are very, very attractive customers for carriers to
24 come after. I mean, that's where all the competition
25 is, that's where the money is, as a bank robber once

00820

1 said.

2 So it may be that prices ultimately in
3 these packages can't go down per unit very much,
4 because, hypothetically, they're already close to the
5 floor, but the total bill that Boeing pays or
6 something like that can fall a lot with a very small
7 change in rate, because the volumes are so big.

8 Q. But, again, your answers keep assuming that
9 the Tracer customers are satisfied with Qwest's
10 service quality and are willing to suffer that
11 service quality in order to obtain lower prices;
12 correct?

13 A. No, I don't think so. In the hypothesis I
14 was using, they were using Qwest because they were
15 the only game in town and because CLECs, you said,
16 either wouldn't serve them or didn't have a
17 ubiquitous enough network to provide service. And we
18 can add to that your hypothesis that they don't like
19 Qwest's service, either, but, of course, they don't
20 have a choice in this hypothesis. They have to take
21 Qwest's allegedly or hypothetically crummy service.

22 But that doesn't tell me why they're better
23 off if they can't bargain freely with Qwest, if Qwest
24 doesn't have the flexibility to put together packages
25 of services which are declared competitive. I don't

00821

1 see why that makes the large business customer better
2 off. Seems to me they're always better off if Qwest
3 can respond to what they need --

4 Q. Wouldn't you --

5 A. -- most efficiently.

6 Q. I'm sorry for interrupting. Wouldn't you
7 at least agree that a further development, though, of
8 a competitive market for these services would be to
9 the benefit of that Tracer customer?

10 A. Absolutely.

11 MS. RACKNER: That's all I have.

12 JUDGE CAILLE: Mr. ffitch.

13 MR. FFITCH: Just one or two brief
14 questions.

15

16 R E C R O S S - E X A M I N A T I O N

17 BY MR. FFITCH:

18 Q. Dr. Taylor, first of all, is it your
19 understanding that, prior to the passage of the
20 Telecommunications Act of 1996, that US West had a de
21 jure or legal monopoly in the state of Washington?

22 MR. OWENS: I'm going to object as being
23 beyond any question that I heard anybody on the Bench
24 ask.

25 MR. FFITCH: Well, Your Honor, I believe

00822

1 that the witness specifically addressed that question
2 in response to -- commented on that point in response
3 to questions from the Bench.

4 CHAIRWOMAN SHOWALTER: I think we talked
5 about monopolies.

6 MR. OWENS: Not a de jure monopoly.

7 MR. FFITCH: The witness used the term
8 regulation, and I think that I'm perfectly --

9 CHAIRWOMAN SHOWALTER: I think he said that
10 Qwest or an ILEC began with a monopoly at birth,
11 which is a legal monopoly.

12 JUDGE CAILLE: Anything further, Mr. Owens?

13 MR. OWENS: No.

14 JUDGE CAILLE: The objection is overruled.

15 THE WITNESS: Well, I think Madam
16 Chairwoman said what I said fairly exactly, namely,
17 at birth, which means not 1988, but I presume 1984 is
18 when US West at least was born. And I don't know
19 what the legal restrictions were on competitive entry
20 in Washington at any point in time, probably, but I
21 would stand on my statement that regulation, be it
22 price regulation of Qwest services or direct entry
23 regulation, were responsible for the 100 percent
24 market share that US West had at birth.

25 Q. So you don't know whether or not, prior to

00823

1 1996, Qwest had a legal monopoly in the state -- or
2 US West, pardon me, had a legal monopoly in this
3 state, and its predecessor companies?

4 MR. OWENS: Objection, asked and answered.

5 MR. FFITCH: I don't believe I got an
6 answer to the question.

7 MR. OWENS: You did get an answer to the
8 question. The witness said he didn't know what the
9 legal status of entry regulation was.

10 JUDGE CAILLE: Is that your response, Mr.
11 Taylor?

12 THE WITNESS: That's what I said a minute
13 ago.

14 Q. You're adopting Counsel's response that you
15 didn't know?

16 A. No, we can read back my response as I gave
17 it and I will stand on that.

18 MR. FFITCH: I'm satisfied with the answer,
19 Your Honor.

20 Q. And just one more question. I understand,
21 Dr. Taylor, that in your view, there is effective
22 competition in Washington for all of the 31 exchanges
23 that are subject of this petition?

24 A. That's correct.

25 Q. And that, therefore, there is no

00824

1 significant captive customer base in any one of the
2 31 exchanges?

3 A. That is my understanding, yes.

4 MR. FFITCH: I don't have any other
5 questions, Your Honor.

6 MR. OWENS: I'm going to object to that
7 form of the question. It's 31 wire centers, not 31
8 exchanges that Qwest is seeking to have competitively
9 classified.

10 MR. FFITCH: I stand corrected. I intended
11 to say 31 wire centers.

12 JUDGE CAILLE: Thank you.

13 Q. Is your answer the same as to the wire
14 centers?

15 A. Yes. I missed the distinction. Sorry.

16 JUDGE CAILLE: Anything further? Redirect.

17 MR. OWENS: Thank you, Your Honor. Just a
18 few questions.

19

20 R E D I R E C T E X A M I N A T I O N

21 BY MR. OWENS:

22 Q. Dr. Taylor, Public Counsel asked you some
23 questions asking you to compare the table on page 19
24 of Exhibit 261-T (sic) with Attachment M, as in Mike,
25 to the petition, which was Exhibit 12-C. And he

00825

1 walked you through some addition exercises to come to
2 the conclusion that the total -- well, the totals and
3 the individual numbers on page 18 of Exhibit 261-T
4 (sic) differed in some respects significantly from
5 the corresponding numbers shown on the pages of
6 Attachment M for competitive switches. Do you recall
7 those questions?

8 A. Yes.

9 Q. Do you know for what time period the
10 information on page 18 of Exhibit 261-T (sic) was
11 drawn?

12 A. I believe it was drawn -- well, the note on
13 my backup says October 23rd, but that's not right,
14 because we filed testimony on October 6th. So no, I
15 guess the short answer is I don't know the date on
16 which this was drawn. It was drawn close to October
17 6th, because that's when we filed the testimony.

18 Q. And are you aware of the approximate filing
19 date of the Company's petition, to which Attachment M
20 was appended?

21 A. June 7th of this year.

22 Q. Are you aware of whether or not the
23 switches -- switch counts listed on the various pages
24 in Attachment M are for switches generally that serve
25 those areas, or are they more particularly

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1 categorized than that?

2 A. More particularly, I think. If I look at
3 the petition on page 12 of the text of the petition,
4 where it describes Attachment M, it says, and I
5 quote, Attachment M quantifies the number of
6 providers collocated in US West wire centers and
7 identifies wire centers with competitors' central
8 office switches capable of providing equivalent
9 business telecommunications services.

10 So I take that to mean that Attachment M is
11 only looking at a subset of the switches in the wire
12 centers, namely, those of collocators.

13 Q. Counsel also asked you whether or not your
14 count of switches would include independent companies
15 or designated ICO switches in the LERG, and I believe
16 you said yes?

17 A. Yes, that's correct.

18 Q. Is there any reason why it would be
19 inappropriate to include independent company, or ICO
20 switches in the count that you have on page 18, at
21 least as far as the purpose of that count?

22 A. No. I think, as I look at the list, I have
23 two or three ICOs, which are GTE switches, and those
24 are GTE switches located in Qwest territory for which
25 GTE is effectively behaving as a CLEC.

00827

1 Q. Is there any reason, in your understanding,
2 why it is necessary that a switch be physically
3 positioned within a particular wire center in order
4 to provide switched service to customers who are
5 physically located within that wire center?

6 A. No, not at all. And in fact, the general
7 architecture that CLECs use when they serve a variety
8 of business customers is to serve a much larger
9 geographic area than an end office switch in an
10 ILEC's network would serve. So it's quite common for
11 a single switch that a CLEC provides to serve
12 multiple wire centers, sometimes even multiple
13 states.

14 Q. Thank you. And finally, Counsel for Tracer
15 asked you several hypotheticals concerning a captive
16 very large customer and various possibilities as far
17 as negotiating lower prices for the services that
18 Qwest could provide, notwithstanding its
19 dissatisfaction with the service. Do you recall
20 those?

21 A. Yes.

22 Q. In your view, if a very large customer
23 really were a captive, in the sense that it had no
24 available alternatives to provide its service, would
25 there be any particular reason why Qwest would agree

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1 to reduce its price to that company below the tariff
2 rate?

3 A. Good point. If truly captive, and had no
4 choice, then presumably Qwest would be obliged -- or
5 they would prefer to charge at the monopoly price for
6 whatever services it wants, but I presume that this
7 captive can still purchase out of the tariff, so no.
8 For a truly captive, even large business service,
9 whatever Qwest could charge is always limited by
10 what's in the tariff.

11 MR. OWENS: Thank you. That's all.

12 JUDGE CAILLE: Any re-cross? All right.
13 Thank you, Dr. Taylor.

14 THE WITNESS: Thank you.

15 JUDGE CAILLE: You're excused. Call Mr.
16 Wood.

17 MR. HARLOW: Mr. Wood is ready to go, Your
18 Honor.
19 Whereupon,

20 DON WOOD,
21 having been first duly sworn, was called as a witness
22 herein and was examined and testified as follows:

23 JUDGE CAILLE: Thank you.

24

25 D I R E C T E X A M I N A T I O N

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1 BY MR. HARLOW:

2 Q. Good afternoon, Mr. Wood, or perhaps even
3 good evening would be appropriate.

4 A. Good afternoon.

5 Q. As soon as you get situated, I'd like to
6 know if you have in front of you what have been
7 marked in this proceeding as Exhibits 241-T, 242 and
8 243-T?

9 A. Yes, I do.

10 Q. Were Exhibits 241-T and 243-T prepared
11 under your direction and supervision?

12 A. Yes.

13 Q. Is Exhibit 242 your curriculum vitae?

14 A. Yes, it is.

15 Q. Do you have any corrections to mention with
16 regard to 241-T or 243-T?

17 A. I have one correction, and it is an error
18 that occurs throughout 241-T. In the process of the
19 final preparation of the document, there was a
20 correction made to correct the spelling of Qwest, or
21 to actually take the correct spelling and make it
22 into the trade name spelling, which is Q-w. In the
23 process, when I refer to Qwest's request,
24 r-e-q-u-e-s-t became r-e-q-w-e-s-t. So while
25 r-e-q-w-e-s-t is probably a very accurate description

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1 of in fact what is at issue in this proceeding, it's
2 not technically grammatically correct, so it should
3 be q-u.

4 CHAIRWOMAN SHOWALTER: A special kind of
5 request.

6 THE WITNESS: I rather liked the way it
7 came out.

8 Q. If I were to ask you the questions
9 contained in Exhibit 241-T and Exhibit 243-T, would
10 your answers be as set forth in those exhibits?

11 A. Yes, they would.

12 MR. HARLOW: Your Honor, we offer Exhibits
13 241-T, 242 and 243.

14 JUDGE CAILLE: Is there any objection to
15 the admission of these exhibits?

16 MS. JOHNSTON: No objection. I just have a
17 question. Are you quite certain, Mr. Harlow, Exhibit
18 241-T is not confidential? I have a confidential
19 version of that.

20 MR. HARLOW: It should be probably
21 designated T-C. It is confidential, and the witness'
22 copy is yellow. I appreciate your noting that.
23 Also, an administrative matter. If Mr. Rice may
24 approach the Bench, we have the Bench copies of
25 Exhibit 72-C, I think it is, the record requisition.

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1 JUDGE CAILLE: Thank you.
2 CHAIRWOMAN SHOWALTER: Did this become an
3 exhibit?
4 JUDGE CAILLE: Yes.
5 CHAIRWOMAN SHOWALTER: What exhibit number?
6 JUDGE CAILLE: 72-C.
7 MR. HARLOW: 72-C, yes.
8 JUDGE CAILLE: Go ahead.
9 MR. HARLOW: We've made the offer and we're
10 awaiting a ruling, Your Honor.
11 JUDGE CAILLE: Oh, I'm sorry.
12 MR. HARLOW: I interrupted the process.
13 JUDGE CAILLE: Yeah, I guess I thought that
14 we had admitted this into the record. Is there any
15 objection to the admission of Exhibit 72-C?
16 MR. HARLOW: No, no, no. That was
17 admitted, I believe. It's 241 through 243, I'm
18 waiting for.
19 JUDGE CAILLE: Sorry, it's getting late in
20 the day. Is there any objection to the admission of
21 Exhibits 241-T-C, 242, and 243-T? Hearing none,
22 those are admitted into the record.
23 MR. HARLOW: Thank you, Your Honor. The
24 witness is available for cross.
25 JUDGE CAILLE: I believe Mr. Owens.

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1 MR. OWENS: Thank you, Your Honor.

2

3 C R O S S - E X A M I N A T I O N

4 BY MR. OWENS:

5 Q. Good afternoon, Mr. Wood.

6 A. Good afternoon, Mr. Owens. It's been a
7 while.

8 MR. OWENS: It has. As a preliminary
9 matter, Your Honor, Qwest had identified several
10 exhibits for introduction in cross-examination
11 through Mr. Wood. They've been identified as 244
12 through 256, and I believe I understand that there's
13 no objection to those being admitted without
14 foundation questions.

15 JUDGE CAILLE: Did you say 244 through 256?

16 MR. OWENS: Yes, Your Honor, 256.

17 JUDGE CAILLE: Is there any objection?

18 MR. HARLOW: No, Your Honor.

19 JUDGE CAILLE: Then those exhibits are
20 admitted into the record.

21 MR. OWENS: And I would like to correct
22 some references that I made earlier in redirect of
23 Dr. Taylor. I think I referred to 261, when it was
24 really 231, was the designation of his testimony. I
25 didn't mean to create a confusion in the record.

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1 JUDGE CAILLE: Okay. Thank you.

2 MR. OWENS: I can move on now.

3 Q. Directing your attention to page seven of
4 Exhibit 241-T, Mr. Wood, at line ten, you say, The
5 flexibility afforded the incumbent former monopoly
6 provider must be timed correctly, and then you go on
7 to explain. And would it be a fair statement that
8 when you use the term timed correctly, you would be
9 correctly understood as meaning not too early?

10 A. No, I think it's not too -- I think I
11 certainly tried to explain that it's not too early
12 and not too late, that the Commission should try to
13 time it correctly so that the incumbent can't create
14 barriers to entry if it's done too early, and
15 likewise, if it's done too late, there's one less
16 competitor and potential harm to the company that's
17 making the application, but if you're going to err
18 from a consumer's standpoint, you should err on the
19 side of waiting slightly, rather than being slightly
20 premature, because, from the consumer's standpoint,
21 if you're too early, there's substantial detriment.
22 If you're slightly too late, there's much less
23 detriment.

24 In fact, if Qwest is correct in its claim
25 that effective competition exists for all customers,

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1 including small business customers throughout these
2 31 wire centers, then there would be no harm in
3 delaying the decision, but there could be substantial
4 harm in making the decision prematurely.

5 Q. You say at line 20 of the same page that
6 the presence of one additional competitor will not
7 provide a material incremental benefit to consumers.
8 And that one additional competitor you're referring
9 to is Qwest; is that right?

10 A. Well, I'm referring specifically to Qwest's
11 claim that -- one of two claims it's making in the
12 proceeding. One is that, by allowing this pricing
13 flexibility, that the Commission needs to do that in
14 order to provide benefits to these customers, and the
15 simultaneous but conflicting claim that effective
16 competition already exists in all of these markets.

17 Q. Well, sir --

18 A. Both of those things can't be true.

19 Q. Sir, you're not answering my question. I'm
20 simply asking you, the phrase "one additional
21 competitor," you intend that to refer to Qwest; is
22 that right?

23 A. I'm specifically referring to Qwest's claim
24 that consumer benefit will be created by its entry
25 into a market that it also characterizes as being

00835

1 already effectively competitive.

2 Q. Qwest is already providing services that it
3 is seeking to have competitively classified in the
4 state of Washington in these wire centers; is that
5 right?

6 A. That's not my point, but, yes, I think
7 that's factually correct.

8 Q. At the bottom of page eight of Exhibit
9 241-T, line 23, you say, I urge the Commission to do
10 so in this proceeding. And the word "so" refers to
11 "to impose requirements or restrictions to ensure
12 that the outcome of any competitive classification
13 will serve the public interest;" is that right?

14 A. Well, that's half right. It's also the
15 phrase that appears below that, which is "to consider
16 the broader impact that granting the request would be
17 likely to have," which goes back to what I was
18 describing before. I think 80.36.330 gives the
19 Commission considerable flexibility in what it
20 considers, including other -- the phrase "other
21 measures of market power." I encouraged them to do
22 so.

23 Q. Thank you. On page nine of the same
24 exhibit, beginning at line 13, the underlined
25 material says, "Rely on its competitors to provision

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1 network facilities essential to Qwest services in a
2 timely manner." Now, you would agree with me, would
3 you not, that there is not any legal requirement on
4 Qwest's competitors to provision any network
5 facilities essential to Qwest operations, at least at
6 this time?

7 A. Legal requirements --

8 Q. Yes.

9 A. -- specifically? No. But, unfortunately,
10 as a practical matter, when you get down on the
11 ground --

12 Q. Sir, my question was just whether you would
13 agree that there's no legal requirement?

14 A. There's no legal requirement that
15 competitors use Qwest's facilities; that's right.
16 The requirement is a market or financial requirement.

17 Q. No, I'm sorry. Perhaps you didn't
18 understand my question. There's no legal requirement
19 that competitors provision facilities to Qwest for
20 Qwest's use in providing its services?

21 MR. HARLOW: Your Honor, I think we need to
22 clarify the question, that it's not calling for a
23 legal conclusion here.

24 MR. OWENS: I'm just asking for his
25 understanding, Your Honor.

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1 JUDGE CAILLE: With that caveat, that it is
2 your understanding. Also, Mr. Wood, if you could
3 please answer the question with a yes or no.

4 THE WITNESS: Of course.

5 JUDGE CAILLE: And then follow it with --
6 and one more thing. Slow down a little bit for our
7 court reporter.

8 THE WITNESS: I'm sorry. I think that I
9 understand your question now and the cause of the
10 confusion. On the underlined reference on page nine
11 and the underlined references that carry over to page
12 ten are not suggested to be legal requirements that
13 exist. They are suggested to be conditions that
14 would exist if Qwest were to truly have what it's
15 asking for in Ms. Jensen and Mr. Teitzel's testimony,
16 which is an equal footing with its competitors, or to
17 compete under the same conditions currently enjoyed
18 by its competitors.

19 Q. I'm simply --

20 A. If Qwest actually wants either one of those
21 things, these are the conditions that would have to
22 be put into place for that to truly happen.

23 Q. Let me see if I can ask it a different way,
24 because I don't think I got an answer to my question.
25 Are you aware of any way that Qwest can require its

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1 competitors to provision it network facilities that
2 are essential to Qwest services?

3 A. No, which is why Qwest can never really
4 have equal footing or compete under the same
5 conditions as its competitors.

6 Q. So the answer is no?

7 A. The answer is no, which is why I disagree
8 with Ms. Jensen and Mr. Teitzel.

9 Q. On page ten, you've also underlined some
10 material on lines three and eight and nine. And is
11 it similarly true that there's no way that Qwest can
12 require its competitors to provide it collocation
13 space in their central offices?

14 A. Yes, that is also true, which is an
15 additional reason why there can be no equal footing
16 and be no same conditions.

17 Q. Now, on page 11 of the same exhibit, you
18 allege that Qwest has, and this begins at line 22,
19 that Qwest retail operations have been given access
20 to this information, and you refer within the phrase
21 "this information" to Attachment H and the summary
22 version of that information, Attachment G; isn't that
23 correct?

24 A. Yes.

25 Q. So what is your evidence that Qwest's

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1 retail operations have been given access to this
2 information?

3 A. It comes from two sources -- actually,
4 three sources, all of which are proprietary exhibits,
5 but I can describe them to you and then you can tell
6 me what, if any, portion of those you would like me
7 to read.

8 Q. All right.

9 A. The first is Exhibit 15, which I would
10 describe -- I think I can describe without revealing
11 confidential information as a statement of corporate
12 policies of, at least at this time, US West, now
13 Qwest. And in order to tell you what sentence I
14 relied on, I'd have to reveal that sentence, so I'm
15 not sure how you'd like to proceed on that.

16 Q. Go ahead and list the other sources.

17 A. Okay. It would also be Exhibit 16-C, which
18 I would describe as a report prepared by retail
19 operations, and also Exhibit 102-C, which appears to
20 be the minutes of a meeting associated with the
21 development of the petition in this proceeding and
22 the strategy to be taken to both develop the elements
23 of the petition and to have it adopted or approved.

24 And at least at one time, I'd also relied
25 on what was originally marked as 103-C, but I

00840

1 understand that's been withdrawn, although it would
2 go to the same point.

3 Q. So is that a complete response to my
4 question?

5 A. That's a response in terms of the documents
6 that I have in front of me, yes.

7 Q. Do you have any other facts on which you
8 rely, any other evidence to support your claim at
9 page 11, lines 22 and 23?

10 A. I believe the answer is no. I believe
11 that's the total of what I relied on.

12 Q. Now, please refer to Exhibit 15-C. And
13 without reading the material, can you identify what
14 page it appears on that you rely on to, in part or in
15 whole, to support your claim at page 11 that we've
16 been discussing?

17 A. It's not a Bates-stamped page, but it's
18 page three of six of that document.

19 Q. So it's the third page of the yellow pages?

20 A. Well, they're numbered in the bottom left.

21 Q. All right. Can you identify whether the
22 statement is in the upper or the lower half of the
23 page?

24 A. Yes, I can. It's in the lower half.

25 Q. So there is a statement on the lower half

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1 of this page that you believe is evidence that Qwest,
2 as to Attachments G and H, provided the information
3 on those attachments to its retail operations?

4 A. No, it's my reading that it is -- well, I'm
5 not sure how much you want me to say here. It's my
6 understanding it is US West's policy that, as a
7 policy matter, it will use that kind of information
8 to advance its regulatory strategies, including those
9 related specifically to retail operations, such as
10 this proceeding.

11 And then the following documents indicate
12 that not only is it Qwest's corporate policy to
13 utilize that kind of information in order to advance
14 the interests of its retail unit, that it, in fact,
15 has done so, both in terms of resale competition and
16 in terms of non-resale competition.

17 Q. So would I correctly understand from that
18 answer that the material on the third page of Exhibit
19 15-C that you're relying on is on the lower half of
20 the page and, in the lower half of that division, the
21 fourth bullet point?

22 A. No. How about the fifth bullet point.

23 Q. Fifth bullet point, sorry. Yes, okay.

24 That's what you have in mind?

25 A. That's what I have in mind. It's the

00842

1 statement of Qwest's policy. And then the subsequent
2 documents indicate that it, in fact, acted in
3 accordance with that policy.

4 Q. All right. Now, directing your attention
5 to Exhibit 16-C, can you identify the page on which
6 you rely for the testimony at page 11 that refers to
7 the information in Attachments G and H to the
8 petition?

9 A. It is the second page. It's the one
10 Bates-stamped USW 104668, and this is the resale
11 example in which Qwest's retail marketing unit has,
12 in fact, used wholesale information in order to
13 develop its strategy for marketing retail services,
14 which appears to be consistent with the corporate
15 policy, but completely inconsistent with the language
16 in the interconnection agreements and with Qwest's --

17 MR. HARLOW: Your Honor, Your Honor, I
18 simply asked what page the statement is on, and I'm
19 getting a recapitulation of the witness' argument,
20 rather than an identification of the page.

21 MR. HARLOW: Your Honor, Mr. Owens should
22 be directed not to interrupt the witness. If he has
23 a problem with an answer and believes it's
24 nonresponsive, he can subsequently move to strike as
25 nonresponsive. Until he finishes the question --

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1 excuse me, the answer, we can't know how it's going
2 to be tied into the question.

3 MR. OWENS: I think, on the face of it,
4 Your Honor, that a rambling discourse in response to
5 a question that asks for a page number is
6 nonresponsive, and I do move to strike.

7 CHAIRWOMAN SHOWALTER: Yeah, and I'd also
8 say we're dealing with confidential material, so the
9 idea of letting the witness answer as long as the
10 witness wants may have some perils of its own. Yeah,
11 I think the answer should be stricken. The witness
12 should simply answer the question asked. As always,
13 your Counsel has the opportunity to ask you questions
14 later that may elicit a fuller response.

15 THE WITNESS: Yeah, I'm sorry. I don't
16 mean to ramble. We're in a situation where I'm
17 trying to describe where it is on the page without
18 actually reading the language, and I was attempting
19 to be helpful in doing that, but --

20 Q. I hadn't asked you where on the page it
21 was, but I will now. Under the heading entitled
22 Methodology, is that the text where the Commission
23 would look on page two of Exhibit 16-C to find the
24 evidence that you rely on for the statement I've been
25 asking you about on page 11 of your testimony?

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1 A. Yes, it is.

2 Q. And is it in the first paragraph of that
3 section?

4 A. Yes, it is.

5 Q. And is it in the last sentence of the first
6 paragraph?

7 A. Yes, it is.

8 Q. And do you know for what time periods the
9 information in Attachments G and H to the exhibit
10 were gathered?

11 A. For what time periods?

12 Q. Yes.

13 A. I can look at the exhibit. I don't know
14 offhand. I have the date of the exhibit, but not the
15 date of the data.

16 Q. Well, the date at the top of the exhibit,
17 Attachment G, says it's as of 2/1/2000; correct?

18 A. Yes, but I don't know the date of the data
19 collection, but I'll -- that's the date of the
20 exhibit.

21 Q. And the same date for Attachment H that is
22 before the amendment to that?

23 A. Yes. Actually, I stand corrected, Mr.

24 Owens. I think there were several versions of

25 Attachment G that were produced, and I believe the

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1 latest is dated 6/30/00.

2 Q. But the earliest was February 1st; is that
3 right?

4 A. I think I only have the corrected copies,
5 or at least the last two corrected copies, both of
6 which are dated June 30th.

7 Q. Would you agree that that's after 1997?

8 A. Sure.

9 Q. Directing your attention to Exhibit 102-C,
10 can you state on which page or pages the evidence is
11 that you rely on to support your testimony on page
12 11?

13 A. It's the first two pages, Bates-stamped USW
14 085120 and 5121.

15 Q. Can you define what you mean by the phrase
16 "retail operations," as you use it on line 23 of page
17 11 of your testimony?

18 A. I'm sorry, what's the question?

19 Q. Can you define the phrase "retail
20 operations," as you use it in your testimony at page
21 11, line 23?

22 A. Well, I would define it as anyone employed
23 by a retail organization or anyone in an organization
24 that was acting directly on behalf of the interests
25 of that retail organization. And I think this

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1 document describes someone who is doing exactly that.
2 Q. Which paragraph on the first page,
3 paragraph or paragraphs, do you rely on for that
4 statement just treating them -- numbering them from
5 top to bottom?

6 A. Well, there's some subheadings that I think
7 might help. The first subheading is access. I did
8 not rely on that one. The next heading is small
9 business, and I did rely on that paragraph, which
10 carries over to the next page into the information
11 that was redacted for some reason from the
12 confidential version.

13 Q. And is there some evidence in this document
14 that establishes that the information in Attachments
15 G and H were derived from collocation applications,
16 facility needs forecasts, and UNE orders from
17 competitors?

18 A. Yes.

19 Q. What paragraph is that?

20 A. That's the paragraph we were just
21 describing. It's a case where you've got individuals
22 who are attempting to satisfy what's referred to as
23 the market unit and developing a plan that, in order
24 to have it adopted in the interests of that retail
25 market unit, are using -- and I would suggest

00847

1 misusing the wholesale information that Qwest has
2 about the competing providers that it collected by
3 virtue of its operation as a wholesale provider.
4 That's exactly what I'm referring to in my
5 testimony, and I think this paragraph describes how
6 that was being accomplished and considered at the
7 very time that the petition itself was being
8 developed. No other competitor but Qwest would have
9 that capability.

10 Q. So do you have affirmative evidence that
11 the information described in that paragraph was not
12 obtained from sources outside Qwest?

13 A. Well, the word internal appears here, but
14 let's see. What's being described as what is
15 developed is, in fact, a very accurate description of
16 Attachments G and H.

17 Q. Sir, that wasn't my question. My question
18 is do you have evidence that the information
19 described in this paragraph that you say you're
20 relying on is not obtained from sources outside
21 Qwest?

22 A. Let me make sure I understand. What's
23 being described here is, in fact, one grid, and in
24 fact, G and H is a completely separate grid derived
25 from different sources.

00848

1 Q. I'm just asking you if you have information
2 or evidence that the information that's described
3 here in this paragraph that you indicate you're
4 relying on was not obtained from sources outside of
5 Qwest?

6 A. No, my conclusion is based on the fact that
7 this is a very accurate characterization of G and H.
8 In fact, it sounds exactly like the description of
9 Attachments G and H.

10 Q. But that's your conclusion?

11 A. Yes, it is.

12 Q. Is it possible for Qwest to purchase from a
13 third party, who is not involved in the process of
14 provisioning UNE orders, facilities forecasts or
15 collocation orders information similar to what was
16 included in Attachments G, M and H -- or G and H?

17 A. I don't know, but if I understand Mr.
18 Teitzel's testimony correctly, that information was
19 not available from external sources to Qwest. That
20 was one of his primary complaints and one of his
21 primary justifications for his reliance on the
22 internal information.

23 Q. Is it possible for Qwest to purchase
24 information from third parties on the number of
25 collocations?

00849

1 A. Again, I don't know. I've never seen such
2 a data source, and again, that ability would
3 conflict, I think, directly with Mr. Teitzel's
4 testimony.

5 Q. So you don't think Mr. Teitzel relied on
6 the 1999 CLEC Report?

7 A. I think he specifically did, but he also
8 made several statements that the detailed information
9 that Qwest needed to justify its petition, including
10 the detailed information that I think is described in
11 the paragraph on 102-C, was not available from
12 external sources, and that's why Qwest relied on the
13 internal sources.

14 Q. So you're not disputing that Qwest can buy
15 information on the number of collocations from a
16 source that's not involved in the provision of those
17 collocations?

18 A. Well, I'm not disputing that you can buy
19 the 1999 CLEC Report, but I do not believe that
20 information is sufficient to create Attachments G and
21 H, and I didn't understand your witness' testimony to
22 suggest that that information was sufficient to
23 produce Attachments G and H. In fact, I understood
24 it to be the opposite.

25 Q. Are you disputing that the CLEC Report

00850

1 contains information on collocations by CLEC?

2 A. I'm not disputing that it contains
3 information on that. I am disputing that the
4 information is sufficient to produce Attachments G
5 and H. And I think I'm in agreement with your
6 witnesses on that regard.

7 Q. Is it possible to buy information from
8 sources other than Qwest that are involved in the
9 provisioning of collocation on the count and type of
10 CLEC switches?

11 A. I think Dr. Taylor looked in the LERG,
12 which is one possibility, although I think his count
13 overstated significantly.

14 Q. Well, is the answer to my question yes or
15 no?

16 A. The answer is clearly yes, there is.

17 Q. Thank you.

18 A. But not sufficient to create Attachments G
19 and H, which is the subject of my testimony.

20 Q. Is it possible to obtain information on the
21 identity and number of resellers in a particular area
22 from sources other than Qwest?

23 A. Same response.

24 Q. So the answer is yes?

25 A. The answer is yes, but not sufficient to

00851

1 create G and H, Attachments G and H.

2 Q. It's your conclusion that the item
3 described as having been created in this paragraph is
4 Attachment G and H; is that right?

5 A. Yes, it is.

6 Q. But you don't have any direct evidence of
7 that?

8 A. Well, I have pretty compelling
9 circumstantial evidence of that.

10 Q. You don't have any direct evidence; is that
11 right?

12 A. I don't think there's any direct evidence
13 in the proceeding, no. But it's the only source that
14 your witnesses have identified, the internal source.
15 It's the only source that your witnesses have
16 identified as being sufficient to create Attachments
17 G and H.

18 Q. So have you attempted to reconstruct
19 Attachments G and H from publicly-available
20 information?

21 A. I have, from the select portions of the
22 1999 CLEC Report that I have, and it can't be done
23 from that. I agree with at least Mr. Teitzel. I
24 don't know if Ms. Jensen said so or not. I agree
25 with Mr. Teitzel in that regard that that can't be

00852

1 done.

2 Q. Do you have any evidence that the
3 information you refer to at page 11 has been used by
4 any Qwest employees for any purposes other than
5 litigating this proceeding?

6 A. No, I haven't suggested otherwise. Well, I
7 take that back. I think the information has
8 certainly been used for the purposes, to some degree,
9 that it is properly used for, in terms of the
10 interconnection agreements. Outside of the scope of
11 the interconnection agreement, the use that I
12 describe in my testimony is to use in this
13 proceeding, which is specifically in support of the
14 retail operation. What's being requested in this
15 proceeding is of no benefit to Qwest's wholesale
16 operation.

17 Q. Let me ask this. Do you have any evidence
18 that -- aside from providing the service involved and
19 aside from litigating this proceeding, do you have
20 any evidence that any Qwest retail employee has used
21 or been given access to the information?

22 A. No, I've made no such claim. My claim goes
23 to this proceeding and the benefit that this
24 proceeding would have with the retail operation.

25 Q. So you have no evidence that Qwest has used

00853

1 the information, along with its current ability to
2 engage in contracting to, as you put it on page 12,
3 target competitive offerings; is that correct?

4 A. That's correct. What I'm describing there
5 is what could happen if the relief requested is
6 granted.

7 Q. Qwest does have the ability to engage in
8 competitive contracts today; correct?

9 A. It does.

10 Q. At page 19 of your testimony, you state
11 that resale -- this is at line three -- that resale
12 competition suffers from an additional limitation
13 that resellers are especially vulnerable to a price
14 squeeze, intentional or unintentional, by the
15 incumbent.

16 Now, it's true, isn't it, that the
17 wholesale discount is set by this Commission?

18 A. Yes, that's certainly true, but it has
19 nothing to do with Qwest's ability to engage in a
20 price squeeze.

21 Q. It's true, isn't it, that Qwest, when it
22 resells a service and the purchaser of that service
23 for resale pays the retail price, less the wholesale
24 discount, Qwest does not have the ability to alter
25 the spread between the competitor's input cost and

00854

1 the price against which that competitor competes in
2 the retail service that Qwest is selling?

3 A. No, that's certainly not true. In fact,
4 the opposite is true.

5 Q. Then let me ask you this. If Qwest is
6 selling a 1FB for \$28 and a CLEC purchases for resale
7 a 1FB at \$28, minus 14.74 percent, and Qwest
8 unilaterally reduced the 14.75 percent difference
9 between the price the CLEC pays and the price Qwest
10 charges a retail customer?

11 A. It's a long question. I think the answer
12 is no. Nothing in the question is really related to
13 what I'm describing here.

14 Q. On page 23 of your testimony, at line five,
15 where you state that Qwest has conceded that services
16 it has included in its request are not being offered
17 by competitors today. Where does that concession
18 appear?

19 A. I'm sorry, my pagination is a little
20 different. My line numbering is a little different
21 than yours.

22 Q. The sentence begins, In fact, Qwest has
23 included services in the request that it readily
24 concedes are not being offered by its competitors
25 today.

00855

1 A. Yes, Mr. Teitzel described that in his
2 testimony, that what Qwest included were services
3 after going to what it believed were the vendors of
4 the switches purchased by CLECs and asking what
5 features were -- or could be offered with such a
6 switch, that it included services related to the
7 features that could be offered from the vendors that
8 Qwest thought CLECs were purchasing from, even when
9 there was nothing on the Attachment -- I think it's A
10 that lists -- no, it's -- well, certainly on A, but
11 also the Matrix D that describes other offerings.

12 Even if there's no other identified
13 offering that corresponds to that service, that
14 nevertheless, if Qwest felt like CLECs ought to be
15 offering the service, then it included the service on
16 the list.

17 Q. Is that a complete answer?

18 A. I hope so.

19 Q. Well, do you know?

20 A. Well, I relied specifically on Mr.
21 Teitzel's testimony that said that's exactly what
22 they did. In fact, I looked at the matrix in
23 Attachment D, and he is correct. There do appear to
24 be services that are being requested in Attachment A
25 for which Qwest has no entry on Attachment D. So I'm

00856

1 taking -- based on that information and taking Mr.
2 Teitzel at his word, I believe that Qwest has
3 included services that are not actually being
4 provided by CLECs, but that it feels could
5 potentially be offered.

6 Q. At page 21 -- excuse me, 27 of your
7 testimony, beginning at line 14, where you recite
8 what you consider to be the rationale for Ms.
9 Jensen's testimony at pages four and six of her
10 testimony, and my question is, is that your
11 understanding of the exclusive rationale that Ms.
12 Jensen offered for her testimony that you quote
13 there?

14 CHAIRWOMAN SHOWALTER: Counsel, what page
15 are you on?

16 THE WITNESS: Yeah, I'm --

17 MR. HARLOW: I'm not following the same
18 line numbers, either.

19 THE WITNESS: I think we've got a reference
20 problem.

21 Q. Oh, I'm sorry.

22 A. Oh, I do see what you're referring to. I
23 show it at page 27, line three, or starting on line
24 four, I think.

25 Q. Well, I have no explanation. This is the

00857

1 version of the testimony I was provided. Apparently,
2 the pagination is different.

3 MR. HARLOW: We checked our witness' copy
4 against what was in the Records Center yesterday, and
5 it matched up, so --

6 MR OWENS: I understand that I have an
7 electronic version, so --

8 THE WITNESS: I mean, I'll work with you,
9 Mr. Owens. I think I see -- it's the sentence
10 starting, "At pages four and six of her testimony."

11 MR. OWENS: Yes.

12 THE WITNESS: Is that what you're referring
13 to?

14 CHAIRWOMAN SHOWALTER: For our record, this
15 is page 27, referring to lines three and four.

16 THE WITNESS: Starting on line four, yes,
17 ma'am, and I guess continuing on to some point on
18 line six.

19 Q. Right. So my question is, when you say the
20 rationale for this claim is, and then you go on to
21 state your understanding, is it your testimony you
22 believe that's the only rationale that Ms. Jensen
23 offered for that statement?

24 A. That's the rationale stated at those pages
25 of her testimony, that she felt like the internal

00858

1 numbers wouldn't be ported, which didn't really --
2 wasn't consistent with my experience at all.

3 Q. Is it your contention, going back to
4 Attachments G and H, that Qwest has somehow published
5 the information in those attachments by filing this
6 case with the Commission?

7 A. No, it's my contention that you have
8 utilized that information in order to advance your
9 retail unit's interests in a way that conflicts with
10 the requirements of the interconnection agreement.

11 MR. OWENS: I'd move to strike everything
12 after no, Your Honor.

13 MR. HARLOW: Your Honor, I think we've
14 always allowed witnesses to explain their answer
15 after answering yes or no, and I think the witness
16 complied with that directive here.

17 CHAIRWOMAN SHOWALTER: I didn't hear the
18 question.

19 JUDGE CAILLE: The objection is overruled.
20 We do allow the witness to make an explanation after
21 giving a yes or no answer.

22 Q. On page 36 of your testimony, Exhibit
23 241-T, and this is a confidential number, so I just
24 want to ask you, without revealing any information,
25 beginning at line 13, you recite for the next eight

00859

1 lines certain information you gathered from a
2 response to a data request. And I wanted to ask you,
3 isn't it true that that data request is not specific
4 to the state of Washington? The document that you
5 got the numbers that are bracketed in the proprietary
6 version?

7 A. I think that's right. I think it refers
8 region-wide, pre- and post-merger.

9 Q. And is it also correct that that document
10 is labeled as a draft?

11 A. Not my version.

12 Q. On the second page and all the other pages,
13 do you see the word draft?

14 A. I do see it, which would explain the
15 mathematical errors on the page that I relied on.
16 The stated percentages don't match -- the pie charts
17 don't match the underlying data, but they're within a
18 couple of percentage points.

19 Q. Directing your attention to the rebuttal,
20 243-T.

21 A. Yes, sir.

22 Q. And page six, line two, you describe
23 Qwest's motivation to provide UNEs and UNE-P. It's
24 true, isn't it, that Qwest is legally required to
25 provide UNEs and UNE-P?

00860

1 A. It is legally required to provide them.
2 Its motivation to provide them on a timely manner, at
3 proper quality, in ways that can be used --

4 Q. Is the answer yes?

5 A. Well, I think the answer is what I was
6 giving you, Mr. Owens.

7 Q. I didn't hear a yes or a no.

8 A. Is it legally required to provide them at
9 some basic level? Yes, it is.

10 Q. Thank you.

11 A. But that's not what I'm referring to with
12 these lines of my testimony.

13 MR. OWENS: Thank you. That's all I have.

14 JUDGE CAILLE: Is there other cross for --

15 MS. JOHNSTON: Yes, I have a couple of
16 questions, Your Honor.

17 JUDGE CAILLE: Go ahead.

18

19 C R O S S - E X A M I N A T I O N

20 BY MS. JOHNSTON:

21 Q. Mr. Wood, your clients, MetroNet and
22 Advanced Telecom, buy Centrex from Qwest and use it
23 to compete against Qwest business local service; is
24 that correct?

25 A. That's my understanding, yes. That's the

00861

1 primary business of both carriers, although I believe
2 MetroNet also provides service using some other
3 means.

4 Q. Would you agree that there are CLECs that
5 also offer both Centrex and regular business exchange
6 service?

7 A. Yes, I believe there are.

8 Q. Is it your opinion that the Commission
9 should regulate the margin between Centrex and
10 business local service for these competitive
11 companies?

12 A. No, it shouldn't regulate the margin. What
13 it should do is prevent Qwest from having the ability
14 to reduce prices on one end and increase prices on
15 the other end and create a price squeeze, which is
16 what the company's request would allow to happen, and
17 that's what I'm addressing here.

18 This is one means of taking a service and
19 taking inefficient pricing out of the market, and
20 resellers ought to be able to do that, but no, I'm
21 not suggesting that they regulate to protect any type
22 of carrier or any type of scenario, but what Qwest is
23 asking for would allow a price squeeze, and I'm
24 suggesting there are very good reasons not to allow
25 that to happen.

00862

1 MS. JOHNSTON: Thank you. That's all I
2 have.

3 JUDGE CAILLE: Any other cross?
4 Commissioners.

5

6 E X A M I N A T I O N

7 BY CHAIRWOMAN SHOWALTER:

8 Q. Would you turn to page 16 of your direct
9 testimony? That's Exhibit 241.

10 A. Yes, ma'am.

11 Q. I'm interested in exploring the
12 relationship of, I think, about four different
13 things.

14 A. Okay.

15 Q. So here they are. First, assume that the
16 Commission does competitively classify let's say some
17 wire -- some set of wire centers. Assume that the
18 conditions recommended by Dr. Blackmon are imposed,
19 and therefore, the cost for the lower end business
20 services can't go up, so actually, that's the first
21 condition I'm thinking about, that upper limit.

22 Then the next condition is that would be
23 that Qwest can't sell below its cost, because I
24 believe that's a condition of a statute, so that
25 we've got a floor and a ceiling now.

00863

1 A. Right.

2 Q. And now, the third factor I'd like to
3 introduce is wholesale prices at the different zones
4 and how this affects things, and it's actually,
5 unfortunately, a question I forgot to ask Dr.
6 Blackmon, because I would have asked him, too, and
7 perhaps Dr. Taylor.

8 The first question I have, if you know, is
9 whether the wholesale price that we have established
10 in the five different zones --

11 A. Right.

12 Q. -- is the same as the second condition, the
13 lower limit cost?

14 A. I don't believe -- I believe it should be.
15 I don't believe that's what's being proposed. As I
16 understand -- I mean, I think it should be, in terms
17 of -- I mean, that's one of, actually, the
18 recommendations that I make at the end of my
19 testimony, one of the conditions that I would place
20 on the flexibility, if you're going to allow it.

21 Because the rates for those unbundled
22 network elements, those wholesale rates are set at a
23 consistent basis across a wire center. As I
24 understand it, you have zones and wire centers within
25 those zones, but within the wire center, the price is

00864

1 the same for all users.

2 You're going to have a situation where a
3 competitor comes in -- can come in, and if Qwest has
4 what it has asked for in terms of pricing flexibility
5 for all of the customers whose cost to serve -- the
6 cost to Qwest to serve them is less than that average
7 that you've set for the UNE, Qwest will always be
8 able to offer a rate that a competitor cannot match.

9 Q. But I read that and I read your fear of
10 that happening, and then the first question that
11 popped into my mind was, well, but wait. Aren't we
12 determining what the cost is, also wire center by
13 wire center? Because your fear is that the actual
14 cost to the ILEC is lower than the average in, say,
15 the core of the wire center --

16 A. Yes, ma'am.

17 Q. -- and higher than the average in the outer
18 part of the wire center, and therefore, in the core
19 of the wire center, the Qwest will lower its prices
20 --

21 A. Yes.

22 Q. -- below that average?

23 A. Yes.

24 Q. And that led me to question whether that's
25 the case or whether there would be the assumption

00865

1 that the average is the cost until deaveraged again.
2 And maybe you can't answer this question.

3 A. Well, I think I can, because what I'm
4 recommending is that you not allow that deaveraging.
5 As I understand Mr. Teitzel's testimony and the
6 Company's position is that their floor is TSLRIC,
7 total service long-run incremental cost, and that
8 they can calculate that at a very specific level, at
9 a level less than the wire center, in fact, down to
10 the level of an individual customer.

11 If they have that ability, then for that
12 core, they will always have the ability to
13 under-price the below average, because the cost, the
14 effective cost floor for the CLEC and the cost
15 actually incurred by the CLEC is based on the UNE
16 price, which is the average for the wire center.

17 Qwest's actual cost will be less than the
18 average for some core of customers and greater than
19 the average for others. So there would always be
20 some customers, if that's the floor for Qwest, where
21 they can under-price.

22 That's why I'm suggesting that you make two
23 provisions if you're going to allow the flexibility
24 for small business at all. One is making the UNE
25 price as part of the floor and the other is to

00866

1 require that Qwest make offerings equally across a
2 wire center. In other words, if it's going to make
3 an offering to a customer in the central core, that
4 it make that same offer generally available to any
5 customer within the wire center. Those two
6 protections, I think, would eliminate that concern.

7 Q. All right. And I think I understand what
8 the issue is; I'm just not completely certain of what
9 would already be constraining in a regulatory sense,
10 that the -- Qwest, or whether it is something that
11 would have to be imposed?

12 A. Well, I think you have some flexibility in
13 80.36.330, in terms of defining what that cost
14 standard is going to be.

15 Q. Yes.

16 A. I think -- it's my understanding that would
17 allow you to incorporate those UNE prices in that
18 standard, and I would certainly encourage you to do
19 that, rather than the standard the company is
20 suggesting, which would allow it to under-price a
21 competitor that was relying on UNEs.

22 Q. All right. Now, I want to think for a
23 minute about the non-core part --

24 A. Yes, ma'am.

25 Q. -- of the wire center. So that's where

00867

1 the, quote, real costs are higher than the average
2 wire center price that we have determined?

3 A. That's right.

4 Q. So there, isn't it the case that the
5 competitor may have an advantage if the price that
6 they have to pay is lower than the, quote, real cost?

7 A. Well, if you're going to apply that
8 standard to Qwest on its pricing for those customers,
9 that's potentially the case, if the competitor is in
10 that wire center at all. But the competitor has to
11 make an entry decision on that wire center based on
12 what it can successfully offer throughout the area.

13 And if you tell them invest the time,
14 effort and capital to come into a given wire center
15 to begin to offer service, but you're going to be
16 prohibited from the central core of customers out to
17 some level, what you're going to be left with is the
18 area around the periphery, which has -- you know,
19 it's fairly low density, in terms of business
20 customers, most of them tend to be in the core area,
21 you're going to be left with the leftovers, if you
22 will, but go ahead and spend the money to come in.

23 I think that's the other concern that I had
24 with Dr. Blackmon's recommendation. I think you're
25 going to have competitors being frozen out of those

00868

1 wire centers. They're not going to be there to have
2 that advantage.

3 Q. So you want to make sure that the core or
4 below average areas of the wire center are available
5 to the CLECs. And if they are, so much the better
6 for the outer areas?

7 A. Absolutely, because then you will have the
8 competitors there to serve, and they will -- any
9 competitor coming into that wire center then, once it
10 has the threshold market possibility to be there,
11 with a UNE that's averaged, especially for the loop,
12 across that wire center area, they're equally
13 motivated to serve both the core customers and the
14 outlying customers.

15 So the way to get the benefit to the
16 outlying customers is perhaps a bit indirect, but you
17 won't get the cost of the benefit at all for those
18 customers if the CLEC isn't in that market to start
19 with. And if you allow them to compete for that wire
20 center in that market, then they're equally likely to
21 serve both sets of those customers.

22 Q. Okay. If you could turn to page 36 of your
23 testimony, beginning on lines 22 and 23. Is your
24 description here of the haves and the have-nots and
25 freezing out or freezing the haves, is this the same

00869

1 dynamic we were just discussing or a different one?

2 A. The dynamic that we just discussed is part
3 of this. It's not the entirety of this, but it is
4 still related to that central core, in this case,
5 where customers have facilities-based alternatives,
6 and that's where Qwest is going to be highly
7 motivated to offer attractive prices.

8 And then the question comes, you know, from
9 a customer standpoint, who's looking out for the
10 customers whose business is not passed by the
11 facility of a CLEC, that the CLEC owns itself. Well,
12 the only way to look out for them is to develop
13 competitive entry or make possible competitive entry
14 through another means, either resale or UNEs. For
15 price protection, it has to be through the unbundled
16 elements.

17 Q. All right. But at line 23, when you say,
18 Customers with existing facilities-based competitive
19 alternatives could be offered rates that Qwest
20 competitors will be unable to match, why will Qwest
21 be able to offer a price that the existing
22 facilities-based competitor cannot match?

23 A. Well, if it's facilities-based with its own
24 facilities, it has a cost of providing those, and
25 let's assume it's equally efficient, in terms of

00870

1 direct cost to Qwest. Qwest's proposed floor for its
2 competitive prices is TSLRIC. Qwest witnesses have
3 stated numerous times, in numerous proceedings, and
4 they're right about this, no company can price at
5 TSLRIC in the long run and make money absent some
6 other source of revenue.

7 For the CLEC that's trying to compete in
8 that core with its own facilities, it would be forced
9 to price down to TSLRIC, which is not a long-term
10 viable alternative, because it doesn't have another
11 set of customers to make up the difference. Qwest
12 has that set of customers. It's those small business
13 customers that don't have facilities-based
14 competitive alternatives in that area.

15 So while it extracts enough money from
16 those customers who have no alternative, it can make
17 up the difference and make up for the fact that it's
18 charging only TSLRIC to the core customers.

19 Q. So this gets back to the issue of how we
20 set that floor for costs and what goes into it, and
21 whether it's TSLRIC or something else?

22 A. That's part of it, and certainly how you
23 set the floor is going to determine whether
24 competition, based on unbundled elements, is possible
25 or impossible for this area. In terms of the

00871

1 facilities-based competition, if you make competition
2 available and do whatever it takes to make
3 competition available for the small business
4 customers that are being left out of the central
5 business core, then you'll take away some of the
6 ability of Qwest to fund pricing down to TSLRIC and
7 the core.

8 So that's why I made both recommendations
9 at the end of my testimony.

10 CHAIRWOMAN SHOWALTER: Okay, thank you.

11 COMMISSIONER HEMSTAD: I don't have any
12 questions.

13 COMMISSIONER GILLIS: No questions.

14 JUDGE CAILLE: All right. Any follow-up
15 cross to the Bench? No. Then redirect.

16 MR. HARLOW: Okay. I don't have a lot, but
17 I think we ought to consider the possibility of a
18 break, since it's been two hours, in case the witness
19 or other participants need to.

20 CHAIRWOMAN SHOWALTER: Would anybody like a
21 break?

22 MS. JOHNSTON: No.

23 CHAIRWOMAN SHOWALTER: Let's just finish.

24 MR. HARLOW: Let's just finish. Good idea.

25 COMMISSIONER HEMSTAD: Everybody agrees on

00872

1 that.

2 THE WITNESS: Including the witness.

3

4 R E D I R E C T E X A M I N A T I O N

5 BY MR. HARLOW:

6 Q. Still trying to catch that 3:30 flight, Mr.
7 Wood?

8 A. Always. No, I love it here.

9 Q. With regard to the cross about Exhibit
10 102-C by Mr. Owens, you briefly mentioned 103-C. Can
11 you please state for the record whether you rely in
12 part on 103-C for your testimony that it appeared to
13 you that Qwest used confidential CLEC data for
14 regulatory -- purposes of regulatory initiatives?

15 A. Well, I think it's certainly consistent
16 with what's in 102, and in fact, expands on that
17 somewhat. I don't think the conclusion in my
18 testimony relies on 103-C, but certainly 103-C lays
19 part of the foundation for the fundamental problem
20 here that the company with the wholesale information
21 is using that information to benefit its retail
22 operation.

23 Q. Referring you to your discussion about the
24 inability to recreate Exhibits G and H from the CLEC
25 Report, that can be purchased, apparently?

00873

1 A. Yes, sir.

2 Q. Can you state specifically what it is that
3 can't be accomplished that is accomplished in G and H
4 without the confidential data that Qwest can obtain
5 from its wholesale side?

6 A. Sure. There are specific percentages,
7 there are lines that are associated with resale
8 numbers that are associated, at least potentially,
9 with unbundled elements. None of that information is
10 available in the CLEC Report, but that information is
11 fundamental to calculating the information that then
12 Ms. Jensen and Mr. Teitzel rely on, which is the
13 percent of resale business lines and the percent of
14 CLEC ported telephone numbers.

15 Q. And how are Exhibits G and H broken down
16 geographically?

17 A. By wire center.

18 Q. Is that kind of breakdown available from
19 the publicly-available reports?

20 A. No, this is more specific than what's
21 available there. And I didn't realize, really, that
22 there was any contention here on how G and H were
23 developed. I thought Ms. Jensen was very clear that
24 they used internal data to do it, not outside public
25 data.

00874

1 Q. And were you present when the Bench
2 requested that an unmasked version of Exhibit H be
3 provided as part of a bench request?

4 A. I was.

5 Q. Were you present when Dr. Blackmon
6 indicated the source of that unmasked data?

7 A. Yes, I was.

8 Q. And do you recall what that source was?

9 A. I believe he said Ms. Jensen.

10 Q. And do you have an understanding as to what
11 Ms. Jensen's role is with regard to this petition?

12 A. Well, I think she is a regulatory person,
13 who is the primary sponsor and appears to be part of
14 the team that served as the conduit to take the
15 wholesale information and deliver it to the interests
16 of the retail operation, and I think the whole
17 process of the decision to use the information in
18 that way is outlined in 102-C. In fact, I think it
19 suggests that Qwest doesn't believe it could support
20 the petition without this information successfully.

21 Q. Thank you, Mr. Wood. Do you recall Mr.
22 Owens' question? First he asked you whether, in
23 fact, Qwest can't change the spread between the
24 wholesale and the retail, and you said that was not
25 true?

00875

1 A. Right.

2 Q. And then he followed up with a question
3 about can Qwest change the 14.75 percent
4 differential, and you stated no, but that's not
5 related to your testimony. Do you recall that?

6 A. I do.

7 Q. Can you illustrate why the first question
8 that he asked is not true?

9 A. Sure. The first question he asked was
10 related to the spread between the wholesale and
11 retail. And if it's a Qwest service being provided
12 at wholesale and being resold as the same service at
13 retail, then the differential between wholesale and
14 retail is the 14.75. But if that's not the case, if
15 it's being resold at retail to provide a different
16 capability or a different service, then the 14.75 is
17 not -- does not create or really is irrelevant to the
18 spread between wholesale and retail.

19 Q. Does the 14.75 spread have any relation to
20 the CLEC's costs of retailing?

21 A. Presumably, that's the level that an
22 efficient provider could match or more efficient
23 provider could do something less than.

24 Q. I'm sorry, I meant on an absolute dollar
25 cost basis, not a percentage basis.

00876

1 A. No, and that's perhaps one of the
2 shortcomings of using the percentage methodology for
3 the resale discount, is that once you calculated it
4 based on Qwest's data, if Qwest reduces the price of
5 that service, it's going to create a different number
6 of absolute dollars, a smaller number of absolute
7 dollars, which would squeeze the CLEC.

8 If it increases the price, it would make an
9 absolute number of greater dollars, and the CLEC
10 would then either move upward with Qwest's price or
11 face the consequences of having its wrists slapped,
12 if you will, of Qwest reducing the price and
13 squeezing the percentage, absolute dollar margin
14 available to the CLEC.

15 Q. That kind of gets into my next question,
16 which relates to Mr. Owens' cross about your
17 testimony that the Commission needs to ensure that
18 Qwest cannot impose a price squeeze.

19 Can you -- first of all, was that testimony
20 intended to reflect solely the situation with regard
21 to a particular service that is sold to the same
22 class of customers and as the same service with
23 merely the 14.75 percent discount?

24 A. No, it certainly includes that situation,
25 but it's broader than that, because resale is an

00877

1 important entry vehicle for CLECs. Some use it for a
2 longer period of time, some for a short period of
3 time, but the Qwest -- there's several Qwest exhibits
4 that indicate that Qwest acknowledges that CLECs use
5 resale as an entry vehicle to enable them to develop
6 a customer base and develop revenues that they can
7 take to capital markets and show that they should be
8 able to generate the capital to invest in their own
9 facilities.

10 Q. Have you seen any evidence in this record
11 that would suggest that the Commission should be
12 particularly concerned that Qwest might try to
13 squeeze out these other kinds of resellers?

14 A. Yes.

15 Q. And what is that evidence?

16 A. There are several documents that have been
17 made exhibits that indicate that Qwest has an ongoing
18 and a forward-looking strategy of removing the
19 ability of resellers to utilize Centrex Plus, and
20 also has engaged in some efforts to squeeze the price
21 so that the margin is not there.

22 Q. And how can they do that more effectively
23 if competitive classification is granted?

24 A. Well, if they have competitive
25 classification, then they're in the position of being

00878

1 able to increase the price of the service being
2 resold, which increases the cost to the competitor,
3 and decreasing the price selectively of the service
4 that it's -- the retail service that it's being sold
5 at. So it can target, customer by customer, where
6 the reseller has been successful and squeeze the
7 reseller effectively out of the market. It's not a
8 particularly difficult thing to do, given the
9 flexibility that Qwest is asking for.

10 Q. Is there anything in your conditions that
11 might help prevent this?

12 A. Well, certainly the condition that requires
13 the same offering be made across the wire center
14 level, and certainly the requirement that the
15 Commission look at, when looking at a floor, the
16 price that should be set, not the TSLRIC.

17 Q. What about Mr. Teitzel's testimony that
18 that can already be done with ICB contracts?

19 A. Well --

20 Q. And I refer specifically to confidential
21 ICB contracts.

22 A. Well, I think he's right. It can be done.
23 The problem, of course, with the confidential ICBs on
24 a resale basis is the reseller doesn't have access to
25 those and doesn't know what the new resale price

00879

1 would be. So when Qwest files the confidential ICB,
2 the CLEC effectively loses the customer, because they
3 don't know what they can offer to service on a resale
4 basis to the customer for, except rely on Qwest to
5 provide the information. And if they don't have
6 access to the contract itself, they would be totally
7 relying on Qwest to tell them what the price is and
8 to do that in a forthcoming way.

9 MR. HARLOW: Thank you, Mr. Wood.

10 JUDGE CAILLE: Re-cross.

11 MR. OWENS: Thank you.

12

13 R E C R O S S - E X A M I N A T I O N

14 BY MR. OWENS:

15 Q. Mr. Wood, I think I heard you answer, in
16 response to redirect, that the kind of price squeeze
17 you were talking about is where Qwest would change
18 the price of the resold service in relation to what
19 you characterize the retail service it's being sold
20 as. Did I understand you correctly?

21 A. That is one of the concerns, yes.

22 Q. And so what you are talking about is
23 selling Centrex against 1FB; is that correct?

24 A. That's one example, yes.

25 Q. And those are two different services,

00880

1 aren't they?

2 A. Well, functionally, no. They're only two
3 different services because Qwest has tariffed them
4 separately and it's got -- that's exactly the
5 problem, is that it's tariffed equivalent
6 functionality at very different prices, and that's
7 inefficient in the marketplace and that's the kind of
8 inefficiency that competition would eliminate.

9 If you had full competition, it would be
10 impossible. If you had effective competition, to use
11 the language of the law, it would be impossible for a
12 company to sell equivalent functionality at two very
13 different prices. Simply couldn't happen. So the
14 fact that we're even discussing this example
15 indicates that effective competition doesn't exist
16 for the 1FB services.

17 What resale allows a CLEC to do is to
18 perform the function of eliminating Qwest's ability
19 to charge those very different prices for the same
20 functionality, which is a movement toward market
21 efficiency, something that benefits consumers and the
22 Commission ought to encourage.

23 Q. So would it be all right with you if Qwest
24 itself were to eliminate that disparity by reducing
25 the price of the 1FB down to the same as Centrex?

00881

1 A. If that met the other price floor
2 conditions, then there would be nothing wrong with
3 that. The problem is that Qwest states very clearly
4 in these documents that that's not its strategy, that
5 that's not what it wants to do.

6 Q. That wasn't what I asked you, sir. I just
7 asked you if that would be consistent with your view
8 of market efficiency, for Qwest to reduce the price
9 of 1FB down to the Centrex?

10 A. Subject to the other price floor
11 constraints I described, yes.

12 Q. Directing your attention to your redirect
13 about the use of Exhibits G and H, is it your
14 understanding that if Qwest is granted Section 271
15 relief, that would benefit Qwest's retail operations?

16 A. Yes.

17 Q. And is it also your understanding that as

18 --

19 MR. HARLOW: Excuse me, are you talking
20 about 271 relief?

21 MR. OWENS: Yes.

22 MR. HARLOW: Not eighty-three relief.

23 MR. OWENS: That's right.

24 MR. HARLOW: Thank you for your
25 clarification. I thought we were switching dockets.

00882

1 MR. OWENS: No.

2 Q. Is it your understanding that, as part of
3 obtaining Section 271 relief, Qwest must demonstrate
4 the level and detail of competitive presence?

5 A. I don't think the level of competitive
6 presence is a checklist item. I think you have to
7 show that you were meeting some absolute minimum
8 standard of complying with specific sections of the
9 act, including 251 and 252.

10 Q. So is it your understanding that Qwest
11 could meet that burden without showing that it's
12 actually providing unbundled network elements as part
13 of its proof?

14 A. I think you would have to show that you
15 were doing some minimum level of offering those
16 elements, but I don't think that requirement is the
17 same at all as having an incentive structure in place
18 that motivates Qwest's wholesale operation to
19 actually do that.

20 Q. So do you draw a distinction between
21 offering unbundled network elements and actually
22 providing them, as far as what Qwest would have to
23 prove?

24 A. No.

25 Q. Would Qwest have to use internal data to

00883

1 prove that it was actually providing UNEs in Section
2 271?

3 A. No.

4 Q. You don't think so?

5 A. No, sir. Certainly not internal data of
6 the type of Exhibit G and H is.

7 Q. So is it your testimony that, similar to
8 your position here, Qwest should not be allowed to
9 use information on its provision of unbundled network
10 elements to prove that it's actually providing those
11 in obtaining 271 relief?

12 A. I think it -- I think it requires a
13 fundamentally different demonstration in 271 than
14 what you have demonstrated here. I don't think this
15 is adequate or necessary to your demonstration of
16 271.

17 Q. Well, I'm asking you about the use of what
18 you characterize as internal information. Are you
19 saying that Qwest should not be allowed to prove that
20 it's providing UNEs by using internal information in
21 obtaining Section 271 relief?

22 A. No, sir. I'm saying that the degree of
23 detail on these exhibits is not necessary to make
24 that demonstration, nor is it sufficient to make that
25 demonstration, because nowhere on these exhibits does

00884

1 it indicate the number of held orders, the time lag
2 of the held orders, the quality of the UNEs,
3 presumably presented on these exhibits. These
4 exhibits are not sufficient for 271 purposes, nor is
5 all of this information necessary for 271 purposes.
6 There you have a very different burden associated
7 with the 14-point checklist.

8 MR. OWENS: Thank you.

9 CHAIRWOMAN SHOWALTER: I just have one
10 follow-up question.

11

12

E X A M I N A T I O N

13 BY CHAIRWOMAN SHOWALTER:

14 Q. If Centrex and IFB are functionally
15 equivalent, but Centrex is lower priced than IFB, I
16 take it?

17 A. It's priced differently in a different
18 structure, and some of the elements are lower priced,
19 especially the features.

20 Q. Then why aren't resellers reselling Centrex
21 and competing against the higher IFB price, or are
22 they?

23 A. Well, that's what they're doing. In fact,
24 that's primarily what ATG and MetroNet are doing, is
25 to provide a competitive presence to compete away

00885

1 that artificial price distinction that got created in
2 the Qwest tariffs originally.

3 Q. So your concern is that if we classify the
4 service as competitive, that Qwest will raise the
5 price of Centrex?

6 A. Well, they can raise the price of Centrex
7 and decrease the price of 1FB selectively, on a
8 customer by customer basis, if necessary. I agree
9 with Dr. Blackmon in his observation, I don't want to
10 mischaracterize him. I think I'm stating this right,
11 that when you look at what Qwest could do today with
12 banded rates, it could set a ceiling at the tariffed
13 price and a floor at cost, that the only difference
14 between that capability and what they're asking for
15 here is two things.

16 One is the ability for upward pricing
17 flexibility, and I encourage you to look at Exhibit
18 -- again, at 102-C, page two, because you'll see that
19 there is, in fact, a specific discussion about
20 ensuring that upward flexibility is included in the
21 capabilities asked for in the petition. So that's
22 clearly something that Qwest is asking for, something
23 they're interested in getting, and something I think
24 they could then use as an anticompetitive means
25 against resale.

00886

1 Q. Which, doesn't this support Dr. Blackmon's
2 point, that we should not be focusing too much on
3 resale as a measure of effective competition, because
4 it's so dependent on the price --

5 A. Yes.

6 Q. -- of Qwest's retail?

7 A. It supports what I believe is Dr.
8 Blackmon's point, which is also my point, that you
9 should not rely on resale at all, because it cannot
10 constrain prices and cannot protect customers.

11 CHAIRWOMAN SHOWALTER: Thank you.

12 JUDGE CAILLE: Anything further?

13 MR. HARLOW: Just one area of re-cross.

14

15 R E D I R E C T - E X A M I N A T I O N

16 BY MR. HARLOW:

17 Q. If you would please take a look at Record
18 Requisition Number One, which I believe you have.
19 It's been numbered Exhibit 72.

20 A. Yes.

21 Q. And just a moment ago, in response to
22 Chairwoman Showalter, you indicated that Qwest had
23 raised the price of Centrex selectively. Is there
24 anything about Exhibit 72-C that suggests that kind
25 of behavior or that kind of capability?

00887

1 A. Yes,

2 Q. Will you please explain?

3 A. Yeah, without describing each service
4 specifically, what Qwest has isolated is the form of
5 Centrex that resellers are primarily reselling. And
6 this shows you, of all of the Centrex lines being
7 resold, that a very high percentage of those are, in
8 fact, associated with this one form of Centrex. Now,
9 that form of Centrex has essentially been isolated as
10 a resale mechanism, and what's being offered on a
11 retail basis by Qwest is not that service, but
12 something else.

13 The service that's being resold here the
14 very high percentage of the time is also the service
15 that Qwest has engaged in an ongoing strategy of
16 trying to grandfather and eliminate from the
17 wholesale opportunity. So I think the Chairwoman's
18 question yesterday to Dr. Goodfriend about, well, you
19 know, doesn't Qwest have an incentive to be a
20 wholesaler, I think the answer is that they're
21 showing themselves in these exhibits to be a very
22 reluctant wholesaler. And any opportunity they would
23 have to eliminate that wholesale opportunity
24 completely, by withdrawing the service or
25 grandfathering the service, that's always their first

00888

1 choice.

2 Whenever you see a document where they're
3 discussing how are we going to deal with Centrex
4 competition in resale, the first option is never how
5 are we going to price our services better or how are
6 we going to offer a better service; the first option
7 is always how are we going to eliminate the wholesale
8 service to prevent resellers from having the
9 opportunity.

10 Q. Is there a service on Exhibit 72-C that
11 they seem to have succeeded in eliminating that
12 possibility of resale?

13 MR. OWENS: That's leading.

14 MR. HARLOW: Kind of not getting at my
15 point without a leading question.

16 MR. OWENS: Well --

17 MR. HARLOW: I don't think it's leading. I
18 haven't suggested the answer. I asked him is there a
19 service on there that suggests that.

20 MR. OWENS: Also no foundation.

21 JUDGE CAILLE: The witness can answer that
22 question. The objection's overruled.

23 THE WITNESS: There are three forms of
24 Centrex here. One has (confidential) percent resale.
25 One has --

00889

1 Q. Now we've got to clear the room.

2 A. Oh, I'm sorry. One has a very large
3 percentage and one has a very small percentage and
4 one has an even smaller yet percentage, so that would
5 suggest the answer is yes.

6 Q. One very small. Can you tie that at all to
7 your testimony about selective price increases?

8 A. Well, exactly. Once you have -- if you can
9 differentiate, from Qwest's standpoint, the form of
10 Centrex that resellers are using and the form of
11 Centrex that you're selling as a retail service, you
12 can leave your retail prices where they are and
13 inflate only the prices associated with the service
14 that your competitor is attempting to resell. Of
15 course, if you can eliminate that product altogether,
16 then all the better, and that's, in fact, what they
17 tried to do.

18 Q. Do you know how Qwest has done that with
19 regard to the service that has an even smaller
20 percentage of resale?

21 A. Well, they have reduced the price for one
22 of the services listed here down to a level that
23 would create a very small margin if the Centrex were
24 being resold as Centrex.

25 Q. Is there anything about the pricing

00890

1 structure that assists Qwest in accomplishing that
2 goal of selectively raising the price?

3 A. I don't know between these services.

4 MR. HARLOW: Thank you.

5 CHAIRWOMAN SHOWALTER: I need to ask a
6 question, and I don't know if it's -- probably is of
7 Counsel, but it's regarding 72-C. It refers to the
8 lines depicted on Exhibit 17-C, and my 17-C has
9 almost nothing on it. It says 17-C Sub, and there is
10 a column at the top that, Says current number of
11 lines, but it's full of -- it's blank. There's no
12 set of numbers. So I can't --

13 MR. HARLOW: Yes, I'd be happy to direct
14 your attention. It would be -- you should have a
15 number in the third column, at the very bottom of the
16 page. You should have two numbers.

17 CHAIRWOMAN SHOWALTER: Yes, I do.

18 MR. HARLOW: With a slash between them.

19 CHAIRWOMAN SHOWALTER: Yes, okay.

20 MR. HARLOW: And then the one on the right,
21 which is under the heading Resale, is the number that
22 Exhibit 72-C is comparing with.

23 CHAIRWOMAN SHOWALTER: Okay.

24 MR. HARLOW: I think it would have been
25 helpful to have that number repeated again on Exhibit

00891

1 72-C, but it just wasn't.

2 CHAIRWOMAN SHOWALTER: It would have, but
3 now I see. That's the universe we're talking about
4 over on 72-C, that -- the number after the slash on
5 17-C.

6 MR. HARLOW: Yes.

7 CHAIRWOMAN SHOWALTER: All right.

8 MR. HARLOW: We'll try to pull it together
9 in confidential version of our brief, as well.

10 JUDGE CAILLE: Is that all?

11 CHAIRWOMAN SHOWALTER: That's all.

12 JUDGE CAILLE: Mr. Owens.

13 MR. OWENS: Just a couple of questions,
14 Your Honor.

15

16 R E C R O S S - E X A M I N A T I O N

17 BY MR. OWENS:

18 Q. It's true, isn't it, Mr. Wood, that
19 resellers can resell any of the three types of
20 Centrex on Exhibit 72-C at the wholesale discount of
21 14.74 percent?

22 A. Legally, yes; practically, no. That's the
23 distinction.

24 Q. And you called Qwest a reluctant
25 wholesaler. Isn't it true that, the day before

00892

1 yesterday, Qwest announced an agreement with McLeod
2 for \$600 million worth of resold services?

3 A. I do not -- I cannot speak to that
4 agreement. McLeod is one of my clients and I have
5 represented them in proceedings with US West, and I
6 can tell you that it was a long, hard-fought battle
7 to get those interconnection agreements and to get
8 the ability to resell the service.

9 Q. Can you accept, subject to check, that such
10 an agreement was announced the day before yesterday?

11 A. I will do my best to check that.

12 MR. OWENS: Thank you.

13 JUDGE CAILLE: Anything further?

14 MR. HARLOW: I think we've all had enough.

15 JUDGE CAILLE: Well, thank you very much.

16 MR. HARLOW: Thank you for your patience

17 and going late to accommodate this witness.

18 THE WITNESS: Yes, thank you all.

19 MS. ANDERL: Procedural matter, Your Honor.

20 JUDGE CAILLE: Yes. Let me excuse the

21 witness. Thank you, Mr. Wood.

22 THE WITNESS: Thank you.

23 JUDGE CAILLE: Is this something you'd like

24 the whole Commission to hear or --

25 MS. ANDERL: It's simply that we have the

00893

1 response to Bench Requests One and Two ready for
2 distribution, so if they want to stick around to get
3 their copies, I guess, but no, they don't need to.

4 JUDGE CAILLE: I'm wondering if they have
5 it already. Oh, no, no, it's not a bench request.
6 We've gotten record requests.

7 MS. JOHNSTON: I have a question about the
8 unmasked data. I believe it's requested in Bench
9 Request Number Four. I would like to inquire, Your
10 Honor, whether or not Counsel wishes to have access
11 to that highly confidential data or were they
12 satisfied with the Bench receiving copies?

13 MR. FFITCH: Your Honor, Public Counsel has
14 conferred with Mr. Kopta, and it's my understanding
15 that -- well, Public Counsel would like to have a
16 copy of the unmasked data.

17 JUDGE CAILLE: And as I recall, Mr. Kopta,
18 you were okay with that?

19 MR. KOPTA: We have no objection to that.

20 MS. RACKNER: It's my understanding that
21 Mr. Kopta also has no objections with Tracer to
22 receive a copy.

23 MR. KOPTA: That's correct.

24 MR. OWENS: Your Honor, the problem is I
25 don't think Mr. Kopta represents all the companies

00894

1 that used data that's included on an unmasked basis
2 on that document, and while Public Counsel is a
3 government agency, and I think stands in different
4 relation than a private party in this matter, and
5 Qwest doesn't have any problem with Public Counsel
6 seeing it. And maybe we're not allowed to assert the
7 rights of non-parties, but I think it raises some
8 serious concerns to provide this information, which
9 Qwest provided in good faith to the Staff, on the
10 basis that it would be used only by the Staff, to a
11 private entity, such as Tracer, without getting the
12 permission of all the companies whose information
13 appears on there.

14 MS. JOHNSTON: It appears we have the same
15 issue which was raised when Public Counsel and Tracer
16 sought the highly confidential responses to the
17 Commission's June 22nd, 2000 letter.

18 JUDGE CAILLE: And that was not -- and
19 isn't that covered by the protective order?

20 MS. JOHNSTON: The protective order
21 resolved that issue. The protective order explicitly
22 stated that only the Commission Staff would have
23 access to that information, but to the extent we're
24 talking about data that was submitted to the
25 Commission on a highly-confidential basis by those

00895

1 not parties to the docket, that issue remains.

2 MR. FFITCH: Your Honor, perhaps I can ease
3 the resolution of this. Ms. Rackner's advised that
4 she's comfortable not requesting view of the
5 documents if we -- if my office can look at them and
6 discuss them with our expert, Dr. Sarah Goodfriend.
7 They will not be shared with Counsel for Tracer.

8 JUDGE CAILLE: Do the parties have any
9 problem with what Mr. ffitch has just suggested?

10 MR. KOPTA: We do not, although, as Mr.
11 Owens properly points out, I don't represent all of
12 the parties whose data would be disclosed, but for
13 those whom I do represent, we have no objection to
14 what Mr. ffitch has proposed on behalf of Public
15 Counsel.

16 CHAIRWOMAN SHOWALTER: Does it make any
17 sense to provide notice to the companies who are not
18 parties that this is what we're planning to do, as
19 limited, and see if they have an objection? Does
20 that make any sense or does that --

21 MR. KOPTA: I don't know that it makes that
22 much sense if it's only going to be disclosed to
23 Public Counsel, since it is a division of the
24 Attorney General's Office, and therefore, an agency
25 of the state. If it were going to go beyond that, I

00896

1 would tend to agree with Mr. Owens that that does
2 cause some concern, if it's going to a private party.
3 But since that's not the proposal here, it seems to
4 me that's the limit of the disclosure, that that
5 should be fine.

6 CHAIRWOMAN SHOWALTER: Dr. Goodfriend would
7 be under a restriction not to divulge the information
8 to anyone other than discussing it with Public
9 Counsel; is that correct?

10 MS. JOHNSTON: I believe the protective
11 order would require Counsel and Dr. Goodfriend to
12 sign an affidavit or declaration stating that she
13 will not use it in a certain fashion for a period of
14 five years. That's all set forth in the protective
15 order itself.

16 MS. RACKNER: And we will inform you that
17 in this case, with respect to this document, that she
18 cannot share its contents with any counsel or
19 representatives of Tracer.

20 CHAIRWOMAN SHOWALTER: That sounds like a
21 good plan.

22 JUDGE CAILLE: All right. I know everyone
23 is ready to rush off, but I have a little item to
24 take care of. As far as the record requests, we have
25 one that's been admitted into the record. Do the

00897

1 parties expect to be offering the other -- I only
2 have two others, because Record Request Number Two
3 was not allowed. So I have Record Request Three,
4 which I believe was asked of Mr. Hooks regarding the
5 equipment designations. Is that something that you
6 will be -- I'm just trying to take care of this so
7 that you folks can write your briefs with exhibit
8 numbers in mind, if you need it. Is that something
9 that will be offered into the record?

10 MR. OWENS: Here it is.

11 MS. RACKNER: Yes, I believe Public Counsel
12 and Tracer will be offering it into the record,
13 although we should probably take a look at it first
14 and make sure. Yes, we will be offering this
15 document into the record.

16 CHAIRWOMAN SHOWALTER: Thank you, everyone.

17 MR. HARLOW: Thank you. Good night.

18 MR. OWENS: Thank you, Your Honor.

19 JUDGE CAILLE: Is there any objection from
20 anyone -- we will mark that as Exhibit 160.

21 MS. ANDERL: There already is --

22 JUDGE CAILLE: There is already a 160?

23 MS. ANDERL: Yes, I think it goes through,
24 like, 162 or 163 with Mr. Hooks. There were some
25 late --

00898

1 MR. OWENS: That's right. This should be
2 163, I believe.

3 JUDGE CAILLE: That's right. It should be
4 163. And that does not have a confidential
5 designation, does it?

6 MS. RACKNER: No.

7 JUDGE CAILLE: All right. And then we have
8 -- is there any objection to the admission of that
9 exhibit? Hearing none, then it is admitted. And
10 then there is Record Request Number Four, which was a
11 request of Dr. Goodfriend to identify the Tracer
12 members in Exhibit 166-T.

13 MS. JOHNSTON: Yes, let's admit that, as
14 well.

15 JUDGE CAILLE: Is there any objection?

16 MS. RACKNER: None.

17 JUDGE CAILLE: That will be designated, I
18 believe, 184. And that -- hearing no objection, that
19 will be admitted.

20 MR. HARLOW: Has that been distributed?

21 MS. RACKNER: It has not. It hasn't been
22 created or distributed.

23 MR. HARLOW: Okay. To come.

24 JUDGE CAILLE: I don't know that I have
25 gotten the first or the second -- 163. Is that the

00899

1 one you just distributed?

2 MR. OWENS: I just handed it out, Your
3 Honor. I used up all my copies.

4 MS. JOHNSTON: Here, you can have mine.
5 I'll get another one.

6 JUDGE CAILLE: If I can just have one, I
7 can make copies from it. All right. And as far as
8 the bench requests, this -- I'm going to mark them
9 sequentially as follows, with a 900 series. So Bench
10 Request One will be 901; Bench Request Two, 902;
11 Bench Request Three, 903; Bench Request Four, 904;
12 and Bench Request Five is 905. Now, having said
13 that, 904 is the one with the masked --

14 MS. JOHNSTON: Unmasked data.

15 MS. ANDERL: 4-HC or something.

16 JUDGE CAILLE: So does that need an HC?

17 MR. OWENS: Yes.

18 JUDGE CAILLE: Does anyone know if any of
19 the others need a confidential designation?

20 MS. ANDERL: Yes, Your Honor. We have
21 Bench Request Responses Number One and Two to
22 distribute. Number one is not confidential. Number
23 two is.

24 JUDGE CAILLE: Okay.

25 MS. ANDERL: And I can bring you those.

00900

1 JUDGE CAILLE: Thank you.
2 MS. ANDERL: You want seven?
3 JUDGE CAILLE: Please. Can I have -- just
4 one more question for Ms. Rackner.
5 MS. RACKNER: Yes.
6 JUDGE CAILLE: Do you remember that Exhibit
7 72, or --
8 MS. RACKNER: Are you referring to the one
9 that referenced highly confidential?
10 JUDGE CAILLE: The one that was 70, and we
11 were holding it.
12 MS. RACKNER: Oh, no, that's withdrawn.
13 JUDGE CAILLE: Withdrawn.
14 MS. RACKNER: Yeah.
15 JUDGE CAILLE: All right. My plan is to
16 get a current exhibit list out to everyone as quickly
17 as possible and --
18 MS. RACKNER: Excuse me, Your Honor. There
19 was one document, a bench request, and I wasn't sure
20 which number it was, but I believe Chairwoman
21 Showalter had asked for the highly confidential
22 information that was listed in Exhibit 180. It was
23 to a request from WUTC to Tracer to identify the
24 Tracer members that are using services other than
25 Qwest. Was that among --

00901

1 JUDGE CAILLE: That wasn't the --

2 MS. JOHNSTON: I don't remember her
3 requesting it. I remember her referencing it.

4 JUDGE CAILLE: Isn't that the record
5 request?

6 MS. JOHNSTON: That would probably be
7 included as part of the unmasked data, wouldn't it?

8 MR. OWENS: No, unmasked data wouldn't have
9 Tracer members who are using other companies. The
10 unmasked data would just show the UNES and so forth
11 by CLEC.

12 JUDGE CAILLE: No, I think I do see this.

13 MS. RACKNER: Could I refer you -- perhaps
14 my memory is failing me, but I thought that I heard,
15 and did not jot down, that with respect to 180 and
16 the reference to highly confidential information,
17 that Chairwoman Showalter had asked whether that
18 information was available. No, maybe it was another
19 party.

20 MR. FFITCH: No, I concur with Ms.
21 Rackner's recollection. I made a note at the time
22 that we had a request, and I believe that the
23 Chairwoman said something like, you know, Will we,
24 will the Bench be able to see that information, and I
25 think asked us to think about it. It was dealt with

00902

1 a little less formally. And she moved on, I think,
2 to other matters, and we didn't really note it as a
3 formal bench request at this time, I don't think.

4 JUDGE CAILLE: Let me see if this is the
5 one you're talking about. I have, as Bench Request
6 Number Four, a request -- well, this was a request by
7 Commissioner Gillis for Exhibit H and the unmasked
8 version of that portion.

9 MR. FFITCH: That's not it. This is a
10 response.

11 MR. OWENS: I think Mr. ffitch is correct,
12 that it was sort of let drop, but I think there was a
13 pretty clear indication that the Chairwoman wanted to
14 see it.

15 MS. RACKNER: I agree, and if I recall
16 correctly, she had asked us to discuss how it could
17 be produced. Yeah, I have some concern. I'm taking
18 Mr. Butler's place, but obviously he, in discussing
19 it with the client, viewed the information as highly
20 confidential. And while I am certain that he would
21 have no objections to the Staff Public Counsel or,
22 obviously, the Commissioners to see the information,
23 if the other parties will not waive or agree not to
24 view the information, we may have to have a few more
25 discussions. And it may be that it is not a problem

00903

1 for me to produce it. I would like the opportunity
2 to discuss it with the client, though, first.

3 JUDGE CAILLE: All right. Now, was this
4 given a record request number? I do recall this now.

5 MR. OWENS: I don't believe it was.

6 MR. HARLOW: I think it was part of an
7 exhibit, though. I think it could just be a
8 supplement to that exhibit.

9 MR. FFITCH: It is an exhibit. It's
10 Exhibit 180.

11 JUDGE CAILLE: Exhibit 180.

12 MR. FFITCH: It's a -- the exhibit itself
13 is Tracer's response to WUTC Data Request 01-01. So
14 it's just a supplement to the exhibit.

15 MS. RACKNER: Right. We would just need to
16 see it in its unredacted form.

17 JUDGE CAILLE: Right.

18 MS. RACKNER: Well, let me just ask the
19 parties now. If we can agree right now that it can
20 simply be produced to the Commission and Commission
21 Staff and Public Counsel, I think we can designate it
22 right now and I can agree to produce it. If there
23 are parties who object to it being produced only to
24 those folks, then I'll need to get back to people.

25 MR. HARLOW: We don't need to see it, Your

00904

1 Honor.
2 MR. KOPTA: Nor do we. I'll go out on a
3 limb and say that AT&T doesn't, either.
4 MR. FFITCH: Which one, which AT&T?
5 MR. KOPTA: There's only one right now.
6 MS. JOHNSTON: I don't think it should be a
7 supplement to this exhibit.
8 JUDGE CAILLE: It should be a separate?
9 MS. RACKNER: I agree.
10 JUDGE CAILLE: I think it would be clearer
11 if we did make it a bench request.
12 MS. RACKNER: I agree.
13 JUDGE CAILLE: So let's make it number six,
14 which would be 906, and somehow I missed that on my
15 -- so is that clear for everyone?
16 MR. HARLOW: 906-HC.
17 MS. JOHNSTON: Yes.
18 JUDGE CAILLE: HC, thank you. Okay. Is
19 there anything else?
20 MS. RACKNER: I'm sorry. So Qwest had no
21 objection with that?
22 MR. OWENS: That's right.
23 MS. RACKNER: Thank you.
24 MR. FFITCH: I have one other matter, Your
25 Honor.

00905

1 JUDGE CAILLE: Yes, Mr. ffitch.

2 MR. FFITCH: The well-beloved public
3 exhibit.

4 JUDGE CAILLE: Oh, yes.

5 MR. FFITCH: I have communicated with
6 Commission Staff and there are, I believe,
7 approximately 25 customer letters in this docket.
8 And what I would propose to do is to have a public
9 exhibit prepared and distributed to parties, and it
10 will be -- I believe it would be the beginning of
11 next week, we'd attempt to have that to people by
12 Tuesday, at the latest, filed with the Commission as
13 an exhibit number, as an exhibit.

14 JUDGE CAILLE: Let's give it Exhibit Number
15 400.

16 MR. FFITCH: Four hundred, okay.

17 JUDGE CAILLE: Is there anything more about
18 the exhibits?

19 MS. JOHNSTON: No, nothing more about the
20 exhibits.

21 JUDGE CAILLE: Okay. Yes, Ms. Johnston.

22 MS. JOHNSTON: I just have a proposal
23 concerning the issue outline for the brief.

24 JUDGE CAILLE: Go ahead.

25 MS. JOHNSTON: My proposal is that the

00906

1 respective parties submit their own to you for
2 consideration and you meld them as you and the
3 Commissioners so desire, and then let us know your
4 preferred outline.

5 JUDGE CAILLE: That sounds fine. I like
6 it.

7 MR. HARLOW: When would you like that, Your
8 Honor?

9 JUDGE CAILLE: Let me just -- well, I would
10 love to have it by Monday, if that's possible. Early
11 Monday. Let's say by noon Monday.

12 MS. JOHNSTON: Okay.

13 JUDGE CAILLE: And in your outlines, I
14 don't know if you heard what the Chairwoman
15 suggested, but she would like to see the standard
16 that you would be relying on and the evidence to
17 support that, but also your discussion of other
18 standards and the evidence supporting that.

19 And one more thing that came up today,
20 about the cost. Any suggestions about where to put
21 -- you know, in the statute where it says that the
22 Commission has to find the floor?

23 MR. HARLOW: I think that's a separate
24 section. I envisioned having one.

25 JUDGE CAILLE: Okay. That's as much as I

00907

1 know right now. All right. Thank you. Is there
2 anything further?

3 MS. JOHNSTON: That means we have until
4 Monday to file the brief?

5 JUDGE CAILLE: The briefs?

6 MR. KOPTA: Never say die, Sally.

7 JUDGE CAILLE: Oh, you mean --

8 MS. JOHNSTON: Monday, November 20th,
9 perhaps.

10 MS. RACKNER: She's got to have something
11 big happening.

12 JUDGE CAILLE: I have to -- you know,
13 really, let's try to -- let's keep it at the 17th,
14 because I have people who are leaving town and I've
15 got to get it to them. All right.

16 MR. HARLOW: Probably not going to leave
17 town till about 5:30, I think. Some could slip under
18 the door.

19 JUDGE CAILLE: Let's go off the record.
20 Thank you, everyone. We are adjourned.

21 (Proceedings adjourned at 6:12 p.m.)

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