

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 In the Matter of the)
4 Investigation into)
5 U S WEST COMMUNICATIONS, INC.'s) Docket No. UT-003022
6) Volume LIV
7 Compliance with Section 271 of) Pages 7549 to 7754
8 the Telecommunications Act of)
9 1996)
10 -----)
11 In the Matter of)
12 U S WEST COMMUNICATIONS, INC.'s) Docket No. UT-003040
13) Volume LIV
14 Statement of Generally) Pages 7549 to 7754
15 Available Terms Pursuant to)
16 Section 252(f) of the)
17 Telecommunications Act of 1996)
18 _____)

13 A hearing in the above matters was held on
14 May 13, 2002, at 10:00 a.m., at 1300 South Evergreen
15 Park Drive Southwest, Room 206, Olympia, Washington,
16 before Administrative Law Judge ANN RENDAHL and
17 Chairwoman MARILYN SHOWALTER and Commissioner RICHARD
18 HEMSTAD and Commissioner PATRICK J. OSHIE.

19 The parties were present as follows:
20
21 THE PUBLIC, by ROBERT W. CROMWELL, JR.,
22 Assistant Attorney General, 900 Fourth Avenue, Suite
23 2000, Seattle, Washington, 98164-1012, Telephone (206)
24 464-6595, Fax (206) 389-2058, E-Mail
25 robertcl@atg.wa.gov.

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

1 QWEST CORPORATION, by LISA ANDERL, Attorney
2 at Law, 1600 Seventh Avenue, Suite 3206, Seattle,
3 Washington 98191, Telephone (206) 345-1574, Fax (206)
4 343-4040, E-Mail landerl@qwest.com; and by JOHN L. MUNN,
5 1801 California Street, Suite 4900, Denver, Colorado
6 80202, Telephone (303) 672-5823, Fax (303) 298-8197,
7 E-Mail jmun@qwest.com; and by TODD LUNDY, 1801
8 California Street, Suite 4900, Denver, Colorado 80202,
9 Telephone (303) 672-2783, Fax (303) 298-8197, E-Mail
10 tlundy@qwest.com.

11 AT&T, by GARY B. WITT, Attorney at Law, 1875
12 Lawrence Street, Room 1502, Floor 15, Denver, Colorado
13 80202, Telephone (303) 298-6163, Fax (303) 298-6488,
14 E-Mail gwitt@att.com.

15 AT&T, by GREGORY J. KOPTA, Attorney at Law,
16 Davis, Wright, Tremaine, LLP, 1501 Fourth Avenue, Suite
17 2600, Seattle, Washington 98101, Telephone (206)
18 628-7692, Fax (206) 628-7699, E-Mail gregkopta@dwt.com.

19 WORLDCOM, INC., via bridge line, by MICHEL
20 SINGER-NELSON, Attorney at Law, 707 - 17th Street, Suite
21 4200, Denver, Colorado 80202, Telephone (303) 390-6106,
22 Fax (303) 390-6333, E-mail
23 michel.singer_nelson@wcom.com.

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

2 JUDGE RENDAHL: Good morning, let's be on the
3 record. We're here today before the Washington
4 Utilities and Transportation Commission this morning,
5 Monday, May 13th, for two days of hearing in Dockets
6 UT-003022 and UT-003040, which are U S West's Compliance
7 with Section 271 of the Telecommunications Act and
8 Qwest's Statement of Generally Available Terms or SGAT
9 pursuant to Section 252(i) of the Telecommunications
10 Act. I'm Ann Rendahl, the Administrative Law Judge
11 presiding over these proceedings with Chairwoman Marilyn
12 Showalter and Commissioners Richard Hemstad and Patrick
13 Oshie.

14 The focus of our hearings today and tomorrow
15 are first, the request to whether an application by
16 Qwest to enter the interLATA market in Washington is in
17 the public interest under Section 271(d)(3)(c) of the
18 Act, and second, whether Qwest's SGAT is in compliance
19 with Commission orders, specifically the 31st
20 Supplemental Order, which is an order on
21 reconsideration, or the final orders on the third and
22 fourth workshops. After we take appearances of the
23 parties and address any preliminary issues, which I
24 don't believe there are any, we will begin with argument
25 on compliance issues related to Section 272 of the Act.

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1 So first let's take appearances from the
2 parties. If you have previously appeared before the
3 Commission in this proceeding, please state your name
4 and who you represent. If you have not, please state
5 your full name, the party you represent, your full
6 address, telephone number, fax number, and E-Mail
7 address, so let's begin with Qwest.

8 MR. MUNN: John Munn appearing on behalf of
9 Qwest, and although I have participated in workshops, I
10 have never appeared before the Commission, so I will do
11 the longer version. I'm representing Qwest. My address
12 is 1801 California Street, Suite 4900, in Denver, 80202.
13 My phone number is (303) 672-5823. E-mail is
14 jmun@qwest.com, and unfortunately I could not tell you
15 what my fax number is, and I don't have a card, so I'm
16 sorry about that.

17 JUDGE RENDAHL: That's fine.

18 MR. MUNN: I so infrequently get faxes. But
19 also appearing today or at least tomorrow depending on
20 how the time goes on behalf of Qwest will be Lisa
21 Anderl, who is our attorney for the state of Washington,
22 who has appeared before you many times.

23 JUDGE RENDAHL: Thank you.

24 MR. MUNN: And also appearing before you will
25 be Todd L. Lundy on some issues a little bit later on

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1 today.

2 JUDGE RENDAHL: How do you spell his name?

3 MR. MUNN: It's T-O-D-D and then L-U-N-D-Y.

4 JUDGE RENDAHL: Okay.

5 MR. MUNN: He is at the same physical address

6 that I am. His phone number is (303) 672-2783.

7 JUDGE RENDAHL: Thank you.

8 MR. MUNN: And E-Mail is tlundy@qwest.com.

9 JUDGE RENDAHL: Thank you.

10 For AT&T today.

11 MR. KOPTA: Gregory Kopta of the law firm

12 Davis Wright Tremaine, LLP, on behalf of AT&T with

13 respect to Section 272 issues.

14 JUDGE RENDAHL: Thank you.

15 Also for AT&T.

16 MR. WITT: Good morning, my name is Gary

17 Witt, W-I-T-T, representing AT&T for the public interest

18 portion of these proceedings. My address is 1875

19 Lawrence Street, Lawrence is spelled L-A-W-R-E-N-C-E,

20 and I'm in room 1502, Denver, Colorado, and the zip code

21 is 80202. My phone number is (303) 298-6163, my fax

22 number is (303) 298-6488, and my E-Mail address is

23 gwitt@att.com. Good morning, thank you.

24 JUDGE RENDAHL: Thank you.

25 For Public Counsel.

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1 MR. CROMWELL: Good morning, Your Honor,
2 Robert Cromwell, Assistant Attorney General on behalf of
3 the Public Counsel section.

4 JUDGE RENDAHL: Thank you.

5 And on the bridge line.

6 MS. NELSON: Michel Singer Nelson appearing
7 on behalf of MCI WorldCom.

8 JUDGE RENDAHL: Thank you.

9 And is there anyone else appearing on the
10 bridge line?

11 Hearing nothing, while we were talking before
12 the hearing started, we have an exhibit list of exhibits
13 that were marked during the pre-hearing conference last
14 week, and they begin with Exhibit Number 1625 with
15 exhibits from Public Counsel and end at Exhibit 1675, an
16 exhibit from WorldCom, and the parties have indicated
17 that they do not object to admission of these exhibits;
18 is that correct?

19 Okay, hearing no objections, they will be
20 admitted, and I have given a copy to the court reporter,
21 and she will insert the list into the transcript.

22

23 (The following exhibits were identified in
24 conjunction with the testimony of PUBLIC COUNSEL.)

25 Exhibit 1625 is Appendix A - Qwest's Response

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1 to Data Request No. ATG 06-043. Exhibit 1626 is
2 Appendix B - Qwest's Response to Data Request No. ATG
3 06-044. Exhibit 1627 is Appendix C - Qwest's Response
4 to Data Request No. ATG 06-045. Exhibit 1628 is
5 Appendix D - Qwest's Response to Data Request No. ATG
6 06-046. Exhibit 1629 is Appendix E - Qwest's Response
7 to Data Request No. ATG 06-047. Exhibit 1630 is
8 Appendix F - Qwest's Response to Data Request No. ATG
9 06-048. Exhibit 1631 is Appendix G - Qwest's Response
10 to Data Request No. ATG 06-049. Exhibit 1632 is
11 Appendix H - Qwest's Response to Data Request No. ATG
12 06-050. Exhibit 1633 is Appendix I - Qwest's Response
13 to Data Request No. ATG 06-051. Exhibit 1634 is
14 Appendix K - Qwest's Response to Data Request No. ATG
15 08-PC-53. Exhibit 1635-C is Qwest's Response to Bench
16 Request No. 46, including Supplemental Responses.
17 Exhibit.

18

19 (The following exhibits were identified in
20 conjunction with the testimony of COVAD.)

21 Exhibit 1638 is Covad's Late Filed Exhibit -
22 FCC Filing in Response to Ex. 1657.

23

24 (The following exhibits were identified in
25 conjunction with the testimony of DIANE F. ROTH.)

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1 Exhibit 1640-T is Supplemental Affidavit of
2 Diane F. Roth on Behalf of AT&T Regarding Public
3 Interest, filed April 22, 2002. Exhibit 1641 is
4 Minnesota PUC Docket No. P-421/CI-01-391, Order Granting
5 Temporary Relief and Notice and Order For Hearing
6 (Exhibit A). Exhibit 1642 is Minnesota PUC Docket No.
7 P-421/CI-01-391, ALJ's Findings of Fact, Conclusions of
8 Law and Recommendation (Exhibit B). Exhibit 1643 is
9 Touch America Says Qwest Not Complying With FCC
10 Requirements - Press Release (Exhibit C). Exhibit 1644
11 is Touch America Says Qwest Selling Prohibited
12 Long-Distance Services in its Monopoly Region - Press
13 Release (Exhibit D). Exhibit 1645 is E-Mail message
14 from Linda Broberg to numerous recipients re: Covad Ch.
15 11 bankruptcy filing (Exhibit E). Exhibit 1646 is
16 Arizona 8/23/01 Special Open Meeting transcript pgs.
17 225-248 (Exhibit F). Exhibit 1647 is AT&T's Thirteenth
18 Set of Data Requests to Qwest (Exhibit G). Exhibit 1648
19 is BOC Long Distance Entry Does Not Benefit Consumers,
20 Lee Selwyn, 3/02 (Exhibit H). Exhibit 1649 is
21 Surrebuttal Affidavit of Diane T. Roth on Behalf of AT&T
22 Regarding Public Interest, filed May 8, 2002. Exhibit
23 1650 is SGAT Section 12.2.2.9.8, Excerpt from April 5,
24 2002 SGAT, Fourth Revision, Redlined Version (Ex. 1503).
25 Exhibit 1651 is AT&T Proposed SGAT Section 12.2.9.3.5

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1 re: Comprehensive Production Testing. Exhibit 1652 is
2 AT&T's Late Filed Response to Ex. 1657, filed with FCC.

3

4 (The following exhibits were identified in
5 conjunction with the testimony of DAVID L. TEITZEL.)

6 Exhibit 1655-T is Qwest Corporation's
7 Supplemental Rebuttal Affidavit of David L. Teitzel on
8 Public Interest Issues, 5/1/02. Exhibit 1656 is Ex. 1 -
9 Jerry A. Hausman, Gregory K. Leonard, J. Gregory Sidak,
10 The Consumer-Welfare Benefits from Bell Company Entry
11 into Long-Distance Telecommunications: Empirical
12 Evidence from New York and Texas. Exhibit 1657 is May
13 2, 2002 Letter from Mr. Nelson to Commission Secretary,
14 with Attachments. Exhibit 1658 is May 9, 2002 Letter
15 from R. Steven Davis to Commission Secretary. Exhibit
16 1659 is Qwest Corporation's Verified Answer to the
17 Complaint of the Minnesota Department of Commerce, March
18 1, 2002.

19

20 (The following exhibits were identified in
21 conjunction with the testimony of QWEST - COMPLIANCE.)

22 Exhibit 1665 is Qwest Corporation's Notice of
23 Updated Statement of Generally Available Terms and
24 Conditions and Notice of Procedures for Compliance with
25 Section 272(e)(1). Exhibit 1666 is Washington SGAT,

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1 Fifth Revision, April 19, 2002, with Exhibits. Exhibit
2 1667 is Washington SGAT, Fifth Revision, April 19, 2002.
3 Exhibit 1668 is Qwest Corporation's Supplemental
4 Comments on SGAT Compliance, May 10, 2002, with
5 Attachments A through K.

6

7 (The following exhibits were identified in
8 conjunction with the testimony of AT&T - COMPLIANCE.)

9 Exhibit 1670 is AT&T's Response to Qwest's
10 Demonstration of Compliance with Commission Orders as of
11 April 19, 2002. Exhibit 1671 is AT&T's Response to
12 Qwest's April 11, 2002 Filings Demonstrating Compliance
13 with the Commission's 28th Supplemental Order.

14

15 (The following exhibits were identified in
16 conjunction with the testimony of WORLDCOM -
17 COMPLIANCE.)

18 Exhibit 1675 is WorldCom's Response to
19 Qwest's Memorandum Regarding Remote Deployment of DSL.

20

21 MR. CROMWELL: Your Honor, maybe just to note
22 for the record that Exhibit 1635-C is continuing in
23 nature, and as I understand, Qwest will be supplementing
24 as we go.

25

JUDGE RENDAHL: That's my understanding, and

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1 it currently contains the original response as well as
2 two supplemental responses.

3 I distributed to all the parties an agenda
4 for the hearing which the parties agreed to during the
5 pre-hearing conference on May 8th. And for those of you
6 who don't have a copy, additional copies are available
7 on the side table. And the agenda indicates general
8 times for morning and afternoon breaks and a lunch
9 break. However, those actual times of the breaks may
10 vary due to where we are in the hearing.

11 Finally, I will ask everyone in the hearing
12 room to please turn off your cell phones or turn them to
13 vibrate and to refrain from holding side conversations
14 during the hearing so that we can keep the noise in the
15 hearing room to a minimum.

16 And if there's nothing else, I think we can
17 turn to the first issue, which is the discussion of
18 compliance on 272 issues. Before you go ahead, Mr. Munn
19 and Mr. Kopta, if you could just identify which exhibits
20 or which documents you might be referring to so we can
21 put our hands on them, that would be helpful.

22 MR. MUNN: I think for my part in my
23 presentation, I will be referring to Exhibit 1504
24 regarding the LCI/QCC merger. That was a submission
25 that Qwest made on April 10th. And for the 272(e)(1)

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1 discussions, I will be referring to the April 19th
2 submission that Qwest made, which is Exhibit 1665, and
3 also to a, very briefly, to an April 8th submission that
4 Qwest made to this Commission that was Qwest's response
5 to AT&T's petition for reconsideration of the 28th
6 Supplemental Order. I'm not sure that that has an
7 exhibit number.

8 JUDGE RENDAHL: No, it doesn't, but I think
9 copies have been distributed to the Bench.

10 MR. MUNN: Great. I think those are the only
11 exhibits that I'm referring to, other than possible
12 reference to orders.

13 JUDGE RENDAHL: Okay, thank you.

14 MR. KOPTA: The only additional exhibits that
15 I would be referring to would be the two exhibits that
16 are on the most recent exhibit list for AT&T, and they
17 would be Exhibits 1670 and 1671.

18 JUDGE RENDAHL: Okay, thank you.

19 Well, let's go ahead then starting with
20 should it be AT&T or Qwest?

21 MR. MUNN: It may make sense for AT&T to go
22 first on these issues since Qwest has submitted what we
23 believe to comply with, you know, what is necessary to
24 comply with the Commission's 28th and 31st Supplemental
25 Orders. So instead of me saying that what we submitted

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1 complies and then Mr. Kopta follow without any response,
2 probably makes sense for AT&T to start.

3 JUDGE RENDAHL: Do you have any objections to
4 that, Mr. Kopta?

5 MR. KOPTA: Certainly not, that's kind of
6 what we have done in the past, so we'll stick with that
7 same protocol.

8 JUDGE RENDAHL: Okay.

9 MR. KOPTA: The first Section 272 compliance
10 issue, this is on page 7 of the matrix, and there are
11 two issues, the first one has to do with the merger
12 between LCI and QCC. QCC, if you will recall, is the
13 Section 272 affiliate that Qwest has designated to be
14 the company that actually provides the interLATA long
15 distance service once Qwest has authority to provide
16 such services, and this came up in a subsequent review
17 by Mr. Cory Skluzak, AT&T's witness on Section 272
18 issue, in reviewing some transactions, additional
19 transactions, between the Bell operating company or BOC
20 that provides the local service and QCC, the 272
21 affiliate. There was an entry that discussed Section
22 272 issues with respect to LCI, and we had raised that
23 issue with the Commission saying, you know, there were
24 some concerns here. And Qwest provided some additional
25 information in response to the Commission's request for

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1 additional information, and as we stated in our
2 comments, that additional information raises more issues
3 than it resolves.

4 The merger, from what Qwest has said, between
5 LCI and QCC was initiated essentially in February of
6 2001 and not completed until the end of that year.
7 Meanwhile QCC had been designated as the Section 272
8 affiliate sometime around January of 2001. That was a
9 disputed issue, but for purposes of this discussion,
10 around the same time. So from our perspective, given
11 that LCI was being merged into QCC, any transactions
12 between the BOC and LCI or between QCC and LCI that
13 impacted the BOC should have been included in any
14 information that we had access to review to see what
15 kind of transactions were going on between those
16 companies, because for all intents and purposes, LCI was
17 going to be part of QCC. That didn't happen. We didn't
18 have access to that information.

19 And our concern is that Qwest's position is
20 that there was no need to report any of those kinds of
21 transactions, no need for any kind of scrutiny, because
22 those were not direct relationships between the BOC and
23 QCC. And that raises a concern in our minds with
24 respect to the use of or potential use of LCI to bypass
25 the requirements of Section 272 using an affiliate

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1 that's going to be merged into the 272 affiliate to
2 conduct transactions, business, whatever, that should,
3 would, and ought to be ordinarily subject to scrutiny
4 under Section 272 but that was not scrutinized because
5 it was not at that time technically part of QCC, it was
6 only going to be part of QCC.

7 So we still have the same concerns that we
8 had raised before and that the Commission had echoed in
9 its requirement that Qwest provide additional
10 information, and so we are asking that even more
11 additional information be provided so that the
12 Commission can determine the extent to which Qwest is
13 likely to be in compliance with Section 272 with its
14 dealings with affiliates that then have relationships
15 with the affiliate or the BOC. That's essentially what
16 our concerns are.

17 JUDGE RENDAHL: Thank you.

18 Mr. Munn.

19 MR. MUNN: Thank you. The Commission's 28th
20 Supplemental Order asked for information concerning the
21 merger with LCI into QCC to -- the words of the order
22 were to allow the Commission to assess the impact of the
23 merger on QCC. Qwest has complied with this requirement
24 by the submission that Qwest made, which is Exhibit
25 1504, which is our April 10th, 2002, filing. And in

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1 that filing, we have provided documents related to the
2 merger, the agreement of merger between these companies,
3 and this is not a new issue to this Commission.

4 In February of 2001, as we have laid out in
5 the pleading that we submitted to comply with your
6 order, QCC, which is Qwest Communications Corporation,
7 that's the 272 affiliate, entered into an agreement and
8 merger with LCI, and a copy of that was submitted to you
9 in our compliance filing. Section 4(d,) that was
10 Exhibit 1 by the way to our compliance filing, the
11 agreement of merger, and Section 4(d) of that agreement
12 provided that all of the assets of LCI would upon the
13 effectiveness of the merger be transferred to QCC.
14 Under Section 4(c) of the agreement, the merger was to
15 become effective only following approval by state public
16 service commissions and boards. You have looked at this
17 proceeding in Docket Number UT-010956. That was a June
18 29th, 2001, submission by Qwest to this Commission. And
19 on that date, we submitted an application on June 29th,
20 2001, to this Commission for approval of that merger, so
21 this was not a merger that, you know, has just come to
22 light to this Commission. This is not a new issue. The
23 application describes the nature of the transactions.
24 It identifies each of the relevant operating
25 certificates of those two companies, and that's already

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1 before this Commission.

2 On October 5th, 2001, the Commission staff,
3 we also submitted this with our compliance filing, it's
4 an E-Mail from Kathy Folsom of this Commission to Teresa
5 Jensen of Qwest, and the staff issued a statement
6 advising that the Commission's file on this application
7 for merger should be closed given that these companies
8 have been competitively satisfied and that that docket
9 then was subsequently closed. Shortly after that and
10 having received notice of that Commission action or
11 pleading, which is Exhibit 1504 before you, establishes
12 that QCC consummated the merger on December 31st, 2001.

13 I think that some of the things that are
14 important to remember, first of all, the impact of this
15 merger, as we say in our Exhibit 1504, the merger was
16 designed to avoid duplicative work to have LCI and QCC
17 be separate legal entities, but it had no other
18 financial impact. And this is particularly because, and
19 this is in our submission we made to you, because LCI's
20 financial results were already consolidated with those
21 of QCC prior to the merger.

22 An additional point as it relates to 272
23 compliance is that, as is self-evident here, LCI no
24 longer exists. So since 272 is kind of a forward
25 looking once the BOC receives 271 authority, will the

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1 272 affiliate carry out the requirements, the specific
2 requirements of 272, that is an issue that will occur
3 whenever Qwest receives 271 approval for the state of
4 Washington, LCI no longer exists, so there's no issue
5 going forward. Additionally, LCI was never QCC's 272
6 affiliate, in other words, never the BOC's 272
7 affiliate, so it was never subject to Section 272's
8 requirements. As the FCC has made clear, those
9 requirements do not apply to other BOC affiliates.

10 For example, in the BellSouth Louisiana II
11 order, the FCC said that, our rules require only public
12 disclosures of transactions between the BOC and its
13 Section 272 affiliate. There is neither evidence before
14 you nor any allegation that LCI was ever the 272
15 affiliate of the company. It was always a separate
16 legal entity, and I guess the fact that LCI was a
17 subsidiary of QCC doesn't change that fact. An example
18 would be Qwest Wireless is a subsidiary of the BOC, that
19 doesn't mean that Qwest Wireless has to comply with 271
20 requirements, it's a separate legal entity. And so just
21 because one separate legal entity, one separate
22 corporation, is a subsidiary of another doesn't just
23 blend these two together. At least that's something
24 that I took away from the pleadings that I saw about our
25 filing.

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1 Also, after the Qwest/U S West merger, LCI,
2 as we dictated here, is only providing out of region
3 long distance services. So I mean LCI couldn't provide
4 in-region long distance, that's what the 272 affiliate
5 will do. These are apples to oranges issues. So I
6 think that in addressing those, I just have a couple
7 more points that we submitted in our filing, then I will
8 be happy to answer any questions.

9 The FCC has prohibited joint ownership by the
10 272 affiliate and the BOC of transmission or switching
11 facilities, and all of the assets that were acquired by
12 LCI were actually acquired prior to the merger of QCC's
13 ultimate parent corporation, QCI, with U S West, so
14 there couldn't have been any jointly owned equipment
15 between the BOC and LCI. And if that's the case, then
16 there's not an allegation of that occurring either, so
17 there's no issues related to that point. And also as we
18 laid out in our submission that we made to you, there's
19 no Section 272(b)(4) issues either, which prohibit the
20 extension of credit to the 272 affiliate with recourse
21 to assets of the BOC.

22 And again, we tried to be very thorough in
23 our filing on April 10th, which is Exhibit 1504, to
24 address any conceivable issues or questions that we
25 could think of that you would have, and Qwest believes

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1 that our filing complies with the requirements of the
2 28th Supplemental Order.

3 JUDGE RENDAHL: Thank you, Mr. Munn.

4 Do you have any brief response comments,
5 Mr. Kopta?

6 MR. KOPTA: Yes, very briefly.

7 I think what the Commission needs to remember
8 here is that the record before you has to do with
9 transactions in the past. I mean we're trying to make,
10 the Commission is trying to make a predictive judgment
11 about whether Qwest will be in compliance with Section
12 272 by looking back to see if it was in compliance with
13 Section 272. Our concern is that LCI could have been
14 used as a vehicle to avoid some of those obligations
15 knowing that LCI was going to be merged into QCC. And
16 we're talking about a sizable operation here. Qwest
17 says that there were 2,300 LCI employees that were
18 merged into QCC. This is not some small outfit that
19 just was not a big deal, this was a large ongoing
20 concern. And throughout the entire year in which we're
21 talking, we reviewed and the Commission has reviewed the
22 results of an analysis of the transactions between the
23 BOC and QCC, there's nothing about what happened with
24 LCI. And so we're looking at only part of the picture.
25 The Commission is only looking at part of the picture.

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1 And there's no way to determine whether there
2 were other transactions that were going on between LCI
3 and QCC or between LCI and the BOC that should have been
4 scrutinized and maybe would have been, but for whatever
5 reason, Qwest decided to route it indirectly to avoid
6 scrutiny under Section 272, and that's what our concern
7 is, that we're going to have -- we have -- may have had
8 a situation.

9 We don't know because we don't have access to
10 those records, we have never had access to those
11 records, only a single entry that says that there was
12 some advice given by the BOC to QCC about Section 272
13 compliance with respect to any transactions between LCI
14 and QCC. So obviously Qwest thought that there was some
15 Section 272 ramifications, and yet we see no other
16 transactions, nothing that's happened between LCI and
17 QCC or LCI and the BOC, and we think that that's
18 something that is important for the Commission to be
19 able to review to determine whether Qwest used this
20 corporate restructure to shield some of its actions from
21 review by the Commission that should have been reviewed.

22 JUDGE RENDAHL: Thank you.

23 Any questions from the Bench.

24 COMMISSIONER HEMSTAD: Well, I will start.

25 I'm trying to get this in the context. Can you give me

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1 some history of QCC and LCI, when were they created and
2 what were their functions?

3 MR. MUNN: Well, QCC, which is the 272
4 affiliate today, is, a general sense, that would be like
5 the classic Qwest prior to the merger, they were a long
6 distance company nationwide. And after the merger, QCC
7 came into being, it was the classic Qwest part of the
8 business, which obviously then only operated in 36
9 states, you know, paring out the 14 traditional U S West
10 states, and that's what that company does.

11 LCI, and I guess to be clear, we need to be
12 specific with the LCI entity, as shown on Exhibit 2 of
13 our submission that we made to you on the Exhibit 1504,
14 Exhibit 2 to that shows that there's LCI International
15 Telecom Corp, which is exactly the company that we're
16 talking about, that's just another long distance company
17 that prior to the merger with U S West and the classic
18 Qwest company was -- I guess that company was merged
19 into the classic Qwest company, so there --

20 COMMISSIONER HEMSTAD: Well, was LCI a part
21 of the classic Qwest side?

22 MR. MUNN: And I misspoke, I apologize, they
23 weren't merged into classic Qwest, but they were a
24 subsidiary of that company.

25 COMMISSIONER HEMSTAD: So QCC is essentially

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1 the core of the, as you refer to it, the classic Qwest,
2 and LCI was a subsidiary that did what differently?

3 MR. MUNN: I think the main reason, as we
4 state in our filing, I don't think they did anything
5 particularly differently, they were just another long
6 distance company that existed. They were never actually
7 merged into QCC. It's a separate legal entity with
8 separate employees. And they decided why should we
9 maintain two separate companies. So last year, the
10 decision was made to merge that entity with the approval
11 of state commissions throughout the region back into
12 QCC.

13 COMMISSIONER HEMSTAD: And what is your
14 response to Mr. Kopta's argument that there could be
15 transactions, have little context to this, to what those
16 transactions might be, but there could be transactions
17 that we should be aware of but aren't?

18 MR. MUNN: Well, I think that what we have to
19 remember is that the purpose of this inquiry is to
20 assess compliance with Section 272, and the FCC has been
21 very clear that Section 272 requirements apply between
22 the BOC and the 272 affiliate. There's no evidence nor
23 allegation that LCI was a 272 affiliate of the BOC, so
24 those are things that are completely extraneous to 272.

25 COMMISSIONER HEMSTAD: But doesn't the

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1 argument say that there's no evidence, as I understand
2 Mr. Kopta's argument, is that there's no evidence
3 because we don't know what the transactions are that
4 would be "evidence".

5 MR. MUNN: I can tell you the background of
6 the context there. I mean LCI is a long distance
7 company that provides no local services in-region or out
8 of region, so I don't think that there would be -- let
9 me look this up real quickly, see if I have a note on
10 it. Yeah, following the merger, LCI and QCC were only
11 providing out of region long distance services, so I
12 don't think that there was transactions between the BOC
13 and LCI to even evaluate. But I guess the purpose of
14 our submissions in this part of the proceedings have
15 always been to establish compliance with Section 272,
16 and I think that it's important not to lose sight of the
17 fact that the FCC has said that that's not involved in
18 the inquiry that's before this Commission as it makes
19 its recommendation to the FCC or on the FCC's plate when
20 they evaluate the application.

21 JUDGE RENDAHL: Do you have a cite for that
22 FCC statement that you're making?

23 MR. MUNN: I can provide one, and I think
24 that there are certainly others, but let me find where
25 that was in my --

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1 JUDGE RENDAHL: If it's in your pleading
2 that's been filed, if you can just identify which
3 pleading you're looking at, then I can look at that.

4 MR. MUNN: Oh, sure, I think that that would
5 be Exhibit 1504.

6 JUDGE RENDAHL: Thank you.

7 MR. MUNN: And we can also make sure, as I
8 understand it, we have post hearing briefs, would that
9 also encompass this issue or not?

10 JUDGE RENDAHL: No, that's just on public
11 interest.

12 MR. MUNN: Well, here's one cite, and I'm not
13 sure if that's in 1504 or not, but the BellSouth
14 Louisiana II order, it's Paragraph 338.

15 JUDGE RENDAHL: Paragraph 338?

16 MR. MUNN: That's correct.

17 JUDGE RENDAHL: Okay, thank you.

18 MR. MUNN: And the FCC there said that:

19 Our rules require only public
20 disclosures of transactions between the
21 BOC and its Section 272 affiliate.

22 JUDGE RENDAHL: But does it say anything
23 about subsidiaries?

24 MR. MUNN: No, it doesn't state the negative,
25 but it tells you that -- and that's just an oft repeated

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1 theme throughout all the accounting safeguards order and
2 the non-accounting safeguards order as well. I mean
3 they're looking at transactions between the BOC and the
4 272 affiliate, not between the 272 affiliate and other
5 non-BOC affiliates or vice versa, between the BOC and
6 other affiliates that aren't the 272 affiliate. I would
7 imagine our briefing on this point that we have
8 submitted to the Commission just on 272 in general also
9 provides cites to that, which I could try to find at a
10 break today. Would that be helpful?

11 JUDGE RENDAHL: That's not necessary.

12 MR. MUNN: Okay, thank you.

13 JUDGE RENDAHL: I just have one brief
14 question, and it's directed to both of you, and that is
15 the issue about transactions being provided by Qwest,
16 Mr. Kopta, that's for the past, there would not be any
17 in the future, correct, given that LCI is now merged
18 with QCC?

19 MR. KOPTA: That's my understanding based on
20 Qwest's information that they have provided in response
21 to the Commission's order.

22 JUDGE RENDAHL: So you're asking for Qwest to
23 provide the transactions, any record of the transactions
24 that might have occurred in the past to make sure that
25 there are no issues about what?

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1 MR. KOPTA: Well, and this would be from the
2 point when the merger between LCI and QCC was announced.
3 That's the opportunity that Qwest had to use LCI,
4 transactions with LCI, to bypass its obligations to
5 provide information on its 272 affiliate transactions.
6 And these would be the same transactions that Qwest has
7 with QCC. They provide -- LCI and QCC provide or
8 provided the same type of services, the same -- I think
9 it was the same source of companies, so you've still got
10 a possibility of employee loans or employee exchanges,
11 you've still got services that may have been provided by
12 the BOC to LCI. The same kinds of transactions that we
13 reviewed with respect to the relationship between QCC
14 and the BOC would be the types of transactions that the
15 Commission should require Qwest to provide with respect
16 to LCI. So that's what we're -- I'm sorry, I didn't
17 mean to interrupt.

18 COMMISSIONER HEMSTAD: Well, assuming for the
19 purposes of this discussion that your suggestions of
20 what that might show were, in fact, occurring, what
21 would we do with that information?

22 MR. KOPTA: Well, I think there are two
23 things. Number one, there may be some transactions that
24 happened with LCI that were never recorded but still
25 remain in place after the merger, so there may be some

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1 ongoing transactions that there's no record of, and yet
2 LCI is getting a deal that other carriers are not, or
3 actually the now merged LCI QCC entity is, but it was
4 never recorded. And the other thing is, again in the
5 predictive sort of judgment that you need to make, is
6 Qwest using its other affiliates to bypass 272
7 transaction requirements, and that's something that the
8 Commission should take a look at and see if that's
9 occurring, could it also occur in the future.

10 MR. MUNN: May I briefly respond?

11 JUDGE RENDAHL: Yes.

12 MR. MUNN: I think it bears repeating again,
13 there's nothing in Section 272 that prohibits the BOC
14 from providing services to a non-272 affiliate. I mean
15 this is -- if LCI hadn't been merged, which is I guess
16 my second point, let's say they were still separate,
17 they could only provide long distance services out of
18 region. I mean they couldn't provide -- LCI wouldn't be
19 able to provide long distance services originating in
20 the state of Washington, interLATA long distance
21 services, originating in the state of Washington unless
22 they were 272 compliant. QCC, the BOC, has never
23 identified LCI as an entity that it wanted to provide in
24 region long distance services originating in Washington.
25 So what they're doing in the 36 other states is

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1 completely separate from the 272 requirements, and I
2 guess -- so there's no -- there's nothing in 272 at all
3 that addresses any relationship between a BOC and some
4 long distance company that's operating out of region.

5 And two, any deal that is ongoing today,
6 there was a lot of present tense that was just
7 mentioned, would be QCC, and QCC is decidedly under the
8 thumb of 272, and that's the compliance showing that we
9 have made to this Commission. That's the only Qwest
10 entity that can provide, once the BOC gets 271 approval,
11 can provide interLATA origination services out of this
12 state. If the company ever decided to have another
13 company offer interLATA originating services, we would
14 need to make a showing to you and the FCC that that
15 company was 272 compliant. But that's simply a
16 hypothetical that there are no facts before this
17 Commission to suggest, that I can tell you I'm aware of
18 absolutely no plans for that to occur.

19 JUDGE RENDAHL: Thank you.

20 Is there anything further from the Bench on
21 this issue?

22 Okay, let's move on to the next 272 issue,
23 and that's the last issue on page 7 of the matrix,
24 concerning Section 272(e)(1).

25 Mr. Kopta.

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1 MR. KOPTA: Thank you, Your Honor.

2 This issue arises from the Commission's 31st
3 Supplemental Order on Reconsideration, and it's the very
4 last ordering paragraph that requires Qwest:

5 To provide evidence of a procedure in
6 place to provide data to CLECs regarding
7 actual service intervals for exchange
8 access to affiliates and non-affiliates.

9 And I was quoting from Paragraph 85 of the
10 31st Supplemental Order.

11 And the concern here is that Section 272(e)
12 requires Qwest to provide exchange access service to
13 affiliates and non-affiliates using the same intervals,
14 essentially a parity requirement. And we have certainly
15 discussed related issues throughout this proceeding with
16 respect to performance that Qwest provides to CLECs as
17 opposed to the performance that Qwest provides to
18 itself. And what we had proposed to the Commission was
19 that Qwest be required to provide the kind of reports
20 that would allow the Commission to determine, as the
21 QPAP and performance reports that Qwest provides with
22 respect to unbundled network elements, that provides
23 that same type of comparative analysis, so that in this
24 case what we have is here are -- here's the performance
25 that Qwest gives to its Section 272 affiliate on the one

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1 hand, and on the other hand, we have the performance
2 that Qwest is giving to unaffiliated carriers. So that
3 it's sort of a stare and compare kind of analysis that
4 would allow the Commission and interested parties to
5 say, okay, we're getting the same treatment that Qwest
6 provides to its affiliate.

7 And the Commission required that Qwest
8 provide evidence of a procedure in place to be able to
9 do that. Well, Qwest didn't provide any evidence. All
10 Qwest provided was a little chart that's attached to
11 Exhibit 1665 and a representation that Qwest would
12 provide this information. We don't know how Qwest is
13 going to measure that information. We don't know the
14 standards that Qwest is going to use to determine what's
15 included, what's excluded. We don't really know
16 anything except that Qwest says that it will make
17 information available that would fill in this chart.
18 And from our view, that is woefully inadequate.

19 There has been an ongoing proceeding both at
20 the ROC and in discussions that have occurred in other
21 portions of this docket with respect to performance
22 indicator or PID definitions, what's included in a
23 measure, what's excluded from a measure, how things are
24 measured, how things are reported. And what we would
25 propose is that Qwest use those same definitions, those

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1 same measures, those same performance evaluations in
2 reporting its provisioning of service to its Section 272
3 affiliate.

4 And, in fact, Qwest is already measuring that
5 performance or presumably would be on into the future as
6 part of the reports that this Commission gets on a
7 monthly basis, the retail analog for unbundled network
8 elements, high capacity loops, or transport. Those
9 retail comparatives include special access that's
10 granted not only -- that's provided not only to other
11 interexchange carriers and other CLECs, but also to
12 Qwest's Section 272 affiliate. So all we would -- all
13 that would be required is a further disaggregation of
14 those existing reports to pull out the performance
15 that's given to the Section 272 affiliate so that that
16 stands alone and can be compared with the other results.

17 The only situation in which that wouldn't
18 provide the same type of information that Qwest has
19 provided in its chart here is with the percent of PIC
20 change requests, and PIC is P-I-C, processed by next
21 business day. So there isn't a measure in the existing
22 performance reports that deals with how quickly Qwest
23 will process a request from a customer to change from
24 one long distance carrier to another, whether it happens
25 to be the affiliate or the non-affiliate. And certainly

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1 we, you know, would like to see that information as
2 well.

3 But with respect to all of the other
4 categories, service categories that Qwest has provided,
5 those are all things that Qwest is already reporting
6 today and I believe Qwest has represented will continue
7 to report. So in order to have some meaningful
8 comparison to know that we're comparing the same type of
9 service quality in one hand with the service quality of
10 another, then the same PIDs and the same performance
11 measurements and the same performance reporting should
12 apply to the performance that Qwest has with respect to
13 its Section 272 affiliate. And that should be reported
14 separately from the other results so that both the
15 Commission and interested parties can do the comparison
16 and determine whether Qwest is actually providing the
17 same service to its Section 272 affiliate as it provides
18 to unaffiliated carriers.

19 JUDGE RENDAHL: Thank you, Mr. Kopta.

20 Mr. Munn.

21 MR. MUNN: Thank you.

22 In the 31st supplemental Order, this
23 Commission confirmed that the FCC does not require that
24 a BOC must report the Section 272(e)(1) data before
25 obtaining Section 272 approval. The FCC has made that

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1 point clear, and that's exactly the way that the other
2 applications with Verizon and SBC have proceeded to date
3 at the FCC as well. Mr. Kopta indicated that Qwest has
4 not provided any evidence but has only provided a chart
5 and a commitment to report pursuant to the chart. I
6 want to make sure you're aware, as we have explained in
7 our submissions, particularly Exhibit 1665, that that's
8 exactly what, and also the April 8th, 2002, filing that
9 Qwest made on Section 272(e)(1) as well, that's exactly
10 what the FCC has required. In fact, our showing is
11 based off of the FCC's non-accounting safeguards order
12 where they have indicated in that order what they want
13 to see reported for 272(e)(1). We have just tailored
14 our submission off of that.

15 We have also just based this off of what Bell
16 Atlantic did with New York when they submitted their
17 filing at the FCC, not even at the state level. They
18 didn't even provide this type of detail that we're
19 providing at the state level, but when they made their
20 filing at the FCC, they submitted a chart, a matrix that
21 is what we're reporting here with actually one primary
22 exception. All Bell Atlantic did in its successful
23 application is address the intervals or measurements for
24 services provided from the BOC to the BOC affiliates,
25 not to -- they didn't also report the BOC's provision of

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1 services to everybody else so you could actually compare
2 the two. Qwest's submission does that. I mean we have
3 added that to ours, which is in addition to what the FCC
4 has already allowed to be acceptable in prior
5 applications.

6 I would note, this is also consistent with
7 what both Verizon and SBC have done in their biennial
8 audits, and I think it's important to remember that
9 Section 272(e)(1) is an area that will be looked at
10 specifically in the biennial audit, which begins one
11 year after the BOC's 272 approval. And so they have
12 actually done what we have done, they have now added
13 that column just like we have that measures the BOC's
14 provision against everybody else, so you have a backdrop
15 to compare the BOC's provision of services to its 272
16 affiliate.

17 The FCC has required prior to 271 approval,
18 and this is quoting from the Bell Atlantic New York
19 order and it's in our submission, they required:

20 A commitment by the BOC to provide
21 accurate data regarding the service
22 intervals so that unaffiliated parties
23 can evaluate the performance the BOC
24 provides itself and its affiliates and
25 compare that performance to the rest of

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1 the world.

2 Qwest has made that commitment the FCC has
3 detailed. That is in initially in our, you know, our
4 testimony that's before this Commission, but then again
5 in the April 8, 2002, submission where we note:

6 Before receiving 271 approval, interLATA
7 or Qwest can only commit when it does so
8 it will maintain, update, and make
9 available the data on provisioning these
10 services to QCC pursuant to the FCC's
11 requirements.

12 And then it says:

13 Qwest commits to do so and is prepared
14 to keep such data in a format previously
15 deemed acceptable by the FCC.

16 And then in that submission we have cited you
17 to at least three different FCC orders that have
18 established that this submission is acceptable. And we
19 give you the cites. It's footnotes 15, 16, and 17 of
20 that April 8 submission.

21 And additionally, we didn't just submit the
22 chart, which I think is important, but we have also
23 submitted our procedure. And my understanding of what
24 the Commission wanted, and we are obviously -- you can
25 understand there's nothing in Qwest's interests to do

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1 something that's going to delay this process. I mean as
2 a 272 lawyer, I'm trying to give you what it is that you
3 wanted in your order, so I think that's -- obviously
4 that's our interest here, and we submitted our
5 procedure, and that procedure on page 4 is that we will
6 keep it in the format that we lay out in the chart. And
7 that addresses the percentage of circuits completed by
8 firm order commitment date, the percentage of firm order
9 commitments delivered within the published intervals,
10 the timeliness of PIC changes, the percentage of repair
11 intervals met, the mean time to restore service, and the
12 percent failure frequency. It addresses all of the
13 performance areas addressed by Bell Atlantic in its New
14 York application, and we have cited you to Bell
15 Atlantic's New York application and the actual paragraph
16 in their FCC application where it shows we do exactly
17 the same thing they do, and Qwest is committed to update
18 this information on a monthly basis.

19 We have committed that in writing in Exhibit
20 1665. We will post it on the 272 Web site so it's
21 available not only to carriers, but to anyone in the
22 public that wants to see it. We'll also keep it as the
23 FCC has said at Paragraph 369 of the non-accounting
24 safeguards order, we'll keep it in a regular principal
25 office of business and not only put it on the Net.

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1 Actually, they didn't even say you had to post it on the
2 Web. I reread it last night. They said we need to
3 consider in our notice of proposed rule making, which
4 hasn't been resolved, whether that would be a good idea.
5 Qwest is committing to put it on the Web just because we
6 think that's a good idea itself, so.

7 But we have also said that if we make any
8 material change, which is the wording of the FCC, in the
9 manner in which the data is made available, we will
10 notify the FCC within 30 days of any such change. And I
11 think another key point here is that these procedures
12 are consistent with those proposed but not yet adopted
13 by the FCC in the non-accounting safeguards order for
14 compliance with 272(e)(1). So the FCC has seen this
15 format many, many times and has granted applications
16 time and time again with the format.

17 Now Mr. Kopta mentioned the reporting that
18 occurs kind of as it relates to the PIDs that are
19 involved with local service. I think we need to make
20 sure we can make it a primary distinction here, as
21 Mr. Kopta had agreed last week. I mean I think this is
22 self-evident, I don't think this is a big aha, it's just
23 a point that, you know, the performance assurance plan
24 and the PIDs that are reported, you know, as examples to
25 provide to this Commission today through that, that

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1 those relate to the local exchange market. I mean the
2 focus of those measures is the local exchange market.
3 272(e)(1) is focused on the long distance market. This
4 is an apples to oranges comparison. What we need to do
5 is comply with 272(e)(1), and we do that. So since the
6 PAP measures the service the BOC provides to CLECs
7 against the service the BOC provides to itself, I mean
8 that focus is completely different from (e)(1), which
9 doesn't deal with CLECs at all. It deals with IXCs and
10 the services that the BOC provides to its 272 versus
11 other IXCs.

12 And in the written pleadings of AT&T, they
13 had, I think certainly for me when I had to read it a
14 couple of times, when they related to some testimony
15 that occurred here in Washington from Mr. Williams, and
16 I pulled the transcript and looked at that testimony,
17 and it's clear what he's saying there is dealing with
18 the local exchange market, I mean that he can't separate
19 out special access services that the BOC provides to QCC
20 for any type of local service that would be provided,
21 which is none, I mean that's what there's no ability to
22 do based on the past. Now that doesn't mean we couldn't
23 do that going forward, but that's a local issue, and
24 that's something that is dealt with elsewhere. Today
25 the 272 affiliate doesn't purchase any special access

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1 circuits obviously for local because they don't do any
2 local service, and we decidedly can today provide the
3 comparisons for these special access circuits in the IXC
4 market that we represent in our chart. That's not what
5 was discussed there on that stage, and that's something
6 that this company can do and will do as it has
7 committed, so I will --

8 JUDGE RENDAHL: Are you finished?

9 MR. MUNN: Yes.

10 JUDGE RENDAHL: Sorry to cut you off.

11 Mr. Kopta, do you have a brief response?

12 MR. KOPTA: Yes, just briefly, thank you.

13 A couple of points. Number one, the FCC has
14 never actually established any reporting standards for
15 Section 272(e)(1). I believe Mr. Munn just stated as
16 well as contains in Qwest's pleading the acknowledgment
17 that this is part of the notice of proposed rule making
18 that the FCC initially entered as part of its structural
19 or non-structural separations order back in 1997 and has
20 yet to establish any kind of reporting obligations. And
21 yes, there are some other companies that have proposed
22 to provide information on a particular format that the
23 FCC has allowed but has never, to my knowledge, endorsed
24 it as the appropriate way to do this. And so we're
25 still dealing with a situation in which the how is not

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1 answered. There's no FCC requirement on -- that goes
2 into any detail on how these reports are supposed to be
3 compiled or how the measures are supposed to be
4 undertaken. Whereas the ROC process obviously has spent
5 a long time dealing with the how's and the what's of
6 reporting, which brings me to the second issue, which is
7 this is not apples to oranges.

8 Now in fairness to Mr. Munn, he wasn't
9 involved in those proceedings, but certainly Qwest
10 argued that this Commission shouldn't require reporting
11 of special access because that's in the interstate
12 jurisdiction, it wasn't local. And now Mr. Munn is
13 saying, well, wait a minute, all of those reports have
14 to do with local service, not long distance. There's a
15 disconnect here. I believe it's clear from the
16 transcript and from prior discussions that the retail
17 analogs that Qwest uses to compare with high capacity
18 unbundled network elements, including loops and
19 transport, are long distance services, are provisioned
20 out of the interstate tariff that Qwest maintains with
21 the FCC. If you're providing a high capacity loop or
22 transport under that tariff, presumably you are routing
23 jurisdictionally interstate traffic over it, and
24 therefore you're talking about long distance traffic.
25 So this is an apples to apples comparison. Qwest is

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1 already measuring the types of services that it is or at
2 least will be providing to its Section 272 affiliate as
3 part of the retail analog, and all we need to do is lift
4 that out, or all Qwest needs to do is lift that piece
5 out and report it separately.

6 I never heard Mr. Munn say that Qwest has
7 ever described how it would provide all of the
8 information in this chart, how it would do the
9 measurements, whether they would be consistent with how
10 it's doing its other measures. And that leaves open the
11 possibility that you've got two different types of
12 measures and no real way for any meaningful comparison
13 to be made. You have to have the same base line, the
14 same types of measures, the same types of reports, so
15 that both the Commission and interested parties can do
16 the comparison. Otherwise, you've got data that we
17 don't know how it was collected that Qwest is reporting,
18 and there's no way to determine whether that is
19 comparable to the other data that they're also
20 reporting. So for consistency as well as to allow the
21 Commission to have the most meaningful information, we
22 think that Qwest ought to be required to simply
23 disaggregate its existing reports in order to provide
24 the type of information that Section 227(e)(1) requires.

25 Thank you.

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1 JUDGE RENDAHL: Thank you.

2 Any questions from the Bench on this issue?

3 Okay, hearing nothing, I think we have
4 concluded this part of it. Let's be off the record.

5 (Recess taken.)

6 JUDGE RENDAHL: Let's be back on the record
7 after our morning break. We're now turning to the main
8 portion of the hearing, which is concerning public
9 interest issues, and we're now joined by Mr. Lundy of
10 Qwest.

11 MR. LUNDY: Yes, good morning.

12 JUDGE RENDAHL: And Mr. Munn made an
13 appearance for you earlier, so you're on the record.

14 MR. LUNDY: Great, thank you very much.

15 JUDGE RENDAHL: And I understand you and
16 Mr. Munn are going to share your time on opening
17 statements.

18 MR. LUNDY: Yes, Your Honor, we are.

19 JUDGE RENDAHL: Mr. Cromwell has indicated he
20 only has about five minutes of an opening statement, and
21 Mr. Witt had indicated he is going to not make an
22 opening statement.

23 MR. WITT: I will waive an opening statement
24 if it please the Commission.

25 JUDGE RENDAHL: That's fine, and we do have

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1 briefs being filed at the conclusion, so you may also
2 make whatever arguments you wish to make in briefs.

3 And then Mr. Munn and Mr. Lundy will split
4 their time, so let's begin with Mr. Cromwell if you're
5 ready, let's go for it.

6 MR. CROMWELL: Thank you, Your Honor.

7 Good morning, Commissioners, Chairwoman
8 Showalter. The matter before you today is the question
9 of whether Qwest's application to enter the interLATA
10 long distance market is in the public interest under
11 Section 271(d)(3)(c) of the Telecommunications Act of
12 1996. As you know, last summer Public Counsel filed the
13 testimony of Dr. Mark Cooper and supported that
14 testimony through briefing. In short, we urge the
15 Commission to adopt a framework for analyzing the public
16 interest and to defer its determination of the public
17 interest until the Commission has before it the
18 following: A final approved performance assurance plan,
19 compliance with the 14 point checklist, an approved
20 operation support system, final cost based UNE pricing,
21 and 90 days of what we would call clean performance as
22 determined by the QPAP that this Commission would
23 approve.

24 We recommended in last fall's brief that the
25 Commission not find Qwest's application in the public

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1 interest at that time due to the significant matters
2 that were then unresolved. Public Counsel is now before
3 you once again approximately six months later, and
4 significant matters still remain unresolved. Qwest has
5 made progress in addressing many the issues we have
6 identified must be resolved prior to a public interest
7 finding by this Commission. Unfortunately, we are not
8 yet at a point where Public Counsel can support a
9 finding by this Commission that Qwest's application
10 under Section 271 is in the public interest.

11 We remain concerned that Qwest's local
12 markets are not fully and irrevocably open to
13 competition. We believe that 90 days of demonstrated
14 compliance with the QPAP that this Commission approves
15 without any statistically significant failures will be
16 the best evidence that Qwest is acting in a
17 pro-competitive manner desired by the consumers of this
18 state.

19 Public Counsel also remains concerned about
20 the range of incidents involving anticompetitive conduct
21 by Qwest, which we believe constitute "unusual
22 circumstances" as the Federal Communications Commission
23 has used that phrase and that these would weigh against
24 a public interest finding in this proceeding. We
25 identified a number of examples of alleged

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1 anticompetitive conduct as well as violations of state
2 and federal law in our brief filed last summer. Since
3 that time, this Commission has entered similar findings
4 regarding Qwest's marketing practices relating to
5 Centrex, and additional examples have come to light as
6 we have identified in the comments we filed last month.
7 It is Public Counsel's position that the allegations
8 surrounding Qwest's use of IRU agreements and the secret
9 agreements raise serious questions regarding how
10 widespread Qwest's anticompetitive conduct may be. We
11 believe that this Commission should exercise its
12 independent authority to investigate these allegations
13 and to reach its own determinations regarding the
14 allegations prior to reaching a conclusion regarding
15 whether Qwest has satisfied the public interest standard
16 of Section (d)(3)(c) of the Act.

17 Qwest has made progress since last summer.
18 We believe that Qwest's ability to satisfy the standards
19 we have encouraged this Commission to apply is well
20 within its grasp. Qwest must accept the QPAP and SGAT
21 provisions this Commission has ordered. Qwest must
22 finally complete its OSS and demonstrate that it is
23 capable of handling commercial volumes of traffic.
24 Qwest must also demonstrate that it is not attempting to
25 inhibit competition through improper anticompetitive

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1 actions with its competitors or with its customers.
2 Until such time, we believe Qwest's application to enter
3 the interLATA long distance markets will remain not in
4 the public interest.

5 Thank you for your time and consideration.

6 JUDGE RENDAHL: Thank you.

7 MR. WITT: And if I may offer one
8 clarification, AT&T supports the statements that the
9 Public Counsel has just made, thank you.

10 JUDGE RENDAHL: Thank you.

11 Mr. Munn.

12 MR. MUNN: Thank you.

13 I would like to briefly cover just the three
14 pronged public interest analysis, but very quickly then
15 Mr. Lundy will address some issues that have been
16 brought up in this proceeding by AT&T and Public
17 Counsel. But the public interest analysis is really a
18 three pronged analysis. First, that the local markets
19 are open to competition, which would benefit consumers
20 in both the local and long distance markets. Two,
21 assurance of future compliance, which primarily
22 addresses the QPAP and Section 271(d)(6), and thirdly,
23 that there are no unusual circumstances, in light of the
24 fact that the first two prongs have been met, there are
25 no unusual circumstances that would dictate a denial of

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1 a 271 application.

2 I think the focus of this proceeding, as I
3 understand it, is to address the unusual circumstances
4 and address those that had not been raised before.

5 Although AT&T in its direct supplemental filing has
6 challenged with no basis here the axiomatic point that
7 Qwest's entry into the interLATA long distance market
8 will benefit consumers if the local markets are open to
9 competition, I would just like to focus you on what the
10 FCC has said about that showing, because the FCC has
11 said that, and this is in the Bell Atlantic New York
12 order, Paragraph 428:

13 Once a BOC has demonstrated that it has
14 complied with the competitive checklist,
15 it is not required to make a substantial
16 additional showing that its
17 participation in the long distance
18 market will produce public interest
19 benefits.

20 And they have explained why that's the case
21 actually at that same paragraph, because they say that:

22 As a general matter, we believe that
23 additional competition in
24 telecommunications markets will enhance
25 the public interest.

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1 I think that that is axiomatic. I did not
2 want to overlook the fact that there was a challenge to
3 that point. And Mr. Teitzel in his testimony that's
4 before you for today's proceeding does address the local
5 and long distance benefits for that 271 approval.

6 And I think the only other thing that I would
7 like to point out, when you talk about increased
8 competition in the local market, a great example of that
9 that's recently occurred here in your state is MCI or
10 WorldCom's neighborhood, where now they're rolling out a
11 facilities based UNE-P residential service, which to my
12 knowledge has not, you know, heretofore been a large
13 target, certainly not on a facilities basis like UNE-P,
14 to target residential customers, that's occurring. We
15 think that's just another timely example of when the
16 BOC's interLATA entry is imminent that other
17 competitors, other IXCs will get their CLEC divisions
18 going trying to reach all customers so they can be one
19 stop shops, because they know that the BOC would soon be
20 able to do that.

21 With that, I would like to pass the baton to
22 Mr. Lundy.

23 JUDGE RENDAHL: Thank you.

24 Mr. Lundy.

25 MR. LUNDY: Thank you, Your Honor, and good

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1 morning commissioners, thank you for the opportunity to
2 talk to you this morning about an issue that's gotten a
3 lot of attention over the past couple of weeks, and that
4 is the Minnesota Department of Commerce's case in that
5 state regarding unfiled agreements and whether or not
6 Qwest has not complied with the standard under Section
7 252(a) of the Telecom Act. This morning I would like to
8 make three basic points about this issue. And first I
9 would like to define what the standard and what the
10 issue is and what it is not about and that, in fact,
11 there is not a definable legal standard that exists
12 today and that even several parties who are making
13 allegations regarding these agreements, they're unable
14 to state with any definition what the standard is and
15 what the standard is not. And then in light of the
16 absence of a standard and in light of a lot of the
17 controversy that's going on today, I would like to talk
18 to you about what Qwest is doing on a going forward
19 basis in order to resolve many of the questions that are
20 being raised by this issue.

21 COMMISSIONER HEMSTAD: If I could ask you,
22 when you say no legally defined standard, for what?

23 MR. LUNDY: No legally defined standard for
24 what constitutes a term or condition of an
25 interconnection service or network element that must be

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1 filed under Section 252(a).

2 And then third, I would like to address what
3 I think we're here today about, and that is the 271
4 implications of this issue.

5 First, as I mentioned, Section 252(a) does
6 require the filing of interconnection agreements with
7 the state commissions for approval, but these are
8 negotiated agreements, and the agreements at issue that
9 we have been talking about are negotiated ones. Because
10 they are negotiated agreements, that requires or that
11 has attached to it a 90 day approval period. It's not
12 the 60 day approval period that's attached to SGATs,
13 it's not the 30 day approval period that's attached to
14 arbitrations, it's a 90 day approval process. And that
15 90 day approval process is very important in terms of
16 trying to define what agreements come within and outside
17 of that standard.

18 Now there doesn't seem to be too much debate
19 that there are many CLEC-ILEC agreements that do not
20 have to be filed under 252(a). The AT&T pleading raises
21 the Minnesota Department of Commerce case. Well,
22 there's testimony in that case from the expert there
23 that settlements of past disputes, those are not 252(a)
24 agreements that need to be filed. The expert also
25 stated on cross that the payment of credits on a going

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1 forward basis in order to resolve past disputes, that
2 wasn't something that necessarily had to be filed under
3 252(a). There was testimony --

4 CHAIRWOMAN SHOWALTER: Who was this expert
5 that you're referring to?

6 MR. LUNDY: His name is clay Deanhardt. He
7 is the expert who testified at length in Minnesota.

8 JUDGE RENDAHL: And who is he an expert for?

9 MR. LUNDY: He was an expert on behalf of the
10 Minnesota Department of Commerce, who is bringing the
11 complaint in Minnesota:

12 JUDGE RENDAHL: Thank you.

13 MR. LUNDY: A representative of the CLECs
14 stated that an agreement to resolve a provisioning
15 issue, if there is a provisioning problem with the CLEC,
16 that an agreement as to how to resolve that quickly. He
17 stated that that didn't necessarily have to be filed
18 under 252(a) because that is something that needs to be
19 resolved on a relatively expedited basis and doesn't
20 really fall within, we would suggest, doesn't fall
21 within the 90 day approval standard.

22 Now, of course, there are many agreements
23 that do come within the 90 day approval standards such
24 as TELRIC rates for network elements, and there's no
25 debate that that's on the other side of the line. But

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1 where the line should be drawn between agreements, CLEC
2 agreements that need to be filed under 252(a) and the 90
3 day approval standard and those that do not has truly --
4 has truly not been defined by statute, rule, or case
5 law. In fact, the same Department of Commerce expert,
6 Mr. Deanhardt, he did propose a standard in Minnesota,
7 and I will try to paraphrase it. It was an agreement
8 that set a specific or concrete obligation such that
9 Qwest had to meet the obligations of Section 251. Those
10 types of agreements should be within the 252(a)
11 standard. But again, on cross, when we asked him could
12 he find the articulation of that standard in any
13 statute, rule, or case, the answer was no.

14 Now there are some allegations regarding
15 secrecy about CLEC agreements, and I believe there's
16 testimony, and I believe it's also a common business
17 practice, that when a CLEC enters into an agreement that
18 contains proprietary information, it is a common
19 business practice for that CLEC and Qwest to maintain
20 the confidentiality of that agreement from other
21 competitors. That's a common business practice, so that
22 if the agreement does not contain a term or condition
23 that has to be within 252(a), there's nothing wrong,
24 there's nothing uncommon about the parties wishing to
25 keep those agreements confidential.

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1 Now Qwest has an understanding as to what the
2 standard is under 252(a), and that comes from the
3 statute itself, which says that, and I quote:

4 The agreement shall contain a detailed
5 schedule of itemized charges for
6 interconnection and each service or
7 network element included in the
8 agreement.

9 CHAIRWOMAN SHOWALTER: Where were you just
10 reading from?

11 MR. LUNDY: That is from Section 252(a)
12 itself, Your Honor.

13 CHAIRWOMAN SHOWALTER: That's it, is there
14 any more elements?

15 MR. LUNDY: There is about two or three
16 sentences to that section, Your Honor, that's correct.
17 I don't have that exact rule before me, but I can get it
18 for you.

19 CHAIRWOMAN SHOWALTER: There's not a little
20 (i) or anything like that, just 252(a)?

21 MR. LUNDY: Correct.

22 CHAIRWOMAN SHOWALTER: Period?

23 MR. LUNDY: Yes.

24 CHAIRWOMAN SHOWALTER: Thank you.

25 MR. LUNDY: And, Your Honor, from that

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1 statement, it's our understanding of that standard that
2 the 90 day filing requirement requires a description of
3 the interconnection services and network elements and
4 the rates that should be applicable to each of those.
5 And we believe that under that standard that the
6 agreements at issue in Minnesota or that may be at issue
7 in other states did not have to be filed under 252(a).

8 But the point is that in order for a
9 commission to ascertain whether or not Qwest has been in
10 violation of the Telecom Act or is acting in an
11 anticompetitive fashion, the Commission would have to
12 come up with what is the standard for Section 252(a),
13 how close of a nexus does the agreement or the provision
14 or the term have to be to the network element or
15 interconnection service such that it has to be a 252(a)
16 element? Is an agreement to meet on a weekly basis to
17 try to resolve your problems, is that a close enough of
18 a nexus? Those kinds of issues, those have not been
19 resolved. But in order to say that we have acted in an
20 anticompetitive manner, that definition would have to be
21 produced. And as I think the briefing so far in
22 Minnesota and the questions so far in Minnesota
23 suggested, there's no statute, case, or rule that
24 suggest where that line needs to be drawn.

25 COMMISSIONER HEMSTAD: Well, I'm trying to

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1 follow where your point goes. Does that mean that no
2 standard can be created or just that none has been?

3 MR. LUNDY: The latter, Your Honor, that none
4 has been. And because none has been, that's I think the
5 primary -- and the controversy that's arisen over the
6 past several weeks, that's the reason that Qwest filed
7 with the FCC a petition for a declaratory ruling asking
8 the FCC to issue a ruling on what is the definitive
9 standard there. It's not a question of whether we're
10 asking for jurisdiction as to who has jurisdiction over
11 the issue. We are asking the FCC to actually provide
12 guidance on what that standard is. And the FCC has
13 issued a scheduling order in that docket, it is a WC
14 docket 0289, and I believe this petition has been marked
15 in this proceeding as Exhibit 1657. And I will also
16 represent to the Commission that the FCC has requested
17 opening comments on this substantive issue for May 29th
18 and reply comments due June 13th.

19 And in addition to the fact that there's
20 controversy that there's no standard, another reason we
21 have asked the FCC to look at this issue is because we
22 do believe it's important that there be some uniformity.
23 It is common practice for CLECs to enter into multistate
24 agreements with Qwest. This is a federal statute that's
25 issuing, I believe, a national standard under the

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1 Telecom Act, so we have asked the FCC in order to
2 present a national standard so that there is uniformity.
3 It's not simply a Qwest issue, it's an issue for
4 BellSouth or SBC as much as it is for Qwest.

5 So in addition to filing that petition to try
6 to get a standard, Qwest is trying to do its part such
7 that on a going forward basis there won't be any
8 question that it will be in compliance with any
9 reasonable potential standard under 252(a), at least
10 until the FCC issues its ruling. And I would like to
11 refer to what's been marked as Exhibit 1658 in this
12 proceeding. This exhibit has a cover letter dated May
13 19 from Lisa Anderl to Ms. Washburn, the executive
14 secretary. Attached to the cover letter is a second
15 letter from Steven Davis, Senior Vice President for
16 Policy and Law, also dated May 2nd, 2002. The relevance
17 of this letter especially in the context of this
18 proceeding here today is that on a going forward basis,
19 we're going to make sure that Qwest is going to be in
20 compliance with any standard, no matter, any reasonable
21 standard.

22 The guts of the letter starts, in terms of
23 the standard what we're going to do, starts in the last
24 paragraph of the first page, and it's the -- I will just
25 read from the letter itself of Mr. Davis.

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1 Meanwhile, however, Qwest is
2 implementing two new policies that will
3 eliminate debate regarding whether Qwest
4 is complying fully with applicable law.
5 First Qwest will file all contracts,
6 agreements, or letters of understanding
7 between Qwest Corporation and CLECs that
8 create obligations to meet requirements
9 of 251(b) or (c) on a going forward
10 basis. We believe that commitment goes
11 well beyond the requirements of Section
12 252(a).

13 And to interject, it's because we believe
14 that that standard is broader than the language that's
15 contained in Section 252(a) itself. Mr. Davis
16 continues:

17 However, we will follow it until we
18 receive a decision from the FCC on the
19 appropriate line drawing in this area.
20 Unless requested by the Commission,
21 Qwest does not intend to file routine
22 day-to-day paperwork, orders for
23 specific services, or settlements of
24 past distributes that do not otherwise
25 meet the above definition.

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1 And I will also interject that in order to
2 make sure that there is compliance, Qwest is willing to
3 work with the Commission or its staff personnel designee
4 on agreements that may be close to that standard or
5 other standards. We will offer them requests for some
6 guidance as to how to treat such agreements, and then,
7 of course, we'll take whatever suggestions there are in
8 terms of whether or not to file those for approval under
9 the 90 day requirement.

10 The second important policy is that Qwest is
11 providing more of a formalized structure, in other words
12 structure in the past, but I think by providing more
13 meat onto the structure to make sure that this standard
14 that we have articulated here and whatever structure or
15 standard that the FCC comes up with when they issue its
16 ruling that there's going to make sure that there's
17 compliance. And what Qwest is doing is it's formulating
18 a committee made of senior managers in organizations
19 that are affected by the entering into CLEC agreements.
20 That includes the wholesale business development
21 department, wholesale service delivery network, the
22 lawyers in the legal department as well as regulatory
23 lawyers, and public policy individuals. And this group
24 will be reviewing all the agreements with CLECs to
25 submit them to the state commissions if they're within

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1 that standard and also to track where we're working with
2 state commissions to see what kind of agreements they
3 want to have filed until the FCC rules.

4 Now in terms of how does this have a 271
5 impact or what are the 271 implications, well, I believe
6 these policies that we have articulated are very
7 important from a 271 context, and that is that until the
8 FCC rules, Qwest is willing to commit to conform with
9 what we believe to be a much broader standard than is
10 required, but we're willing to conform with that so that
11 there is no question, that we take out of the equation
12 as to whether on a going forward basis we're in
13 compliance under 252(a), and we're also going to be
14 working with the state commissions to see that that
15 happens. If there was to be an issue in 271, the
16 question is raised as to upon what standard. Again,
17 there's no definitive standard to judge the conduct of
18 Qwest in the past nor in the future at least until
19 Qwest, excuse me, until the FCC rules on the issue. And
20 our compliance with this very broad standard again takes
21 that question pretty much out of the equation.

22 Is this issue a barrier to 271, I would
23 suggest that it is not. Again, the FCC has taken up
24 this issue, they have scheduled it, yet with, I think we
25 can assume, with their understanding that it has not yet

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1 been defined. If there have been several states that
2 have been granted 271 relief, the lack of a definition
3 on this issue has not presented a barrier there. I'm
4 not privy to what Verizon or SBC may be doing, but I
5 think we can assume that they are also trying to settle
6 disputes with their CLECs, they're trying to work with
7 them in terms of provisioning things, they're trying to
8 work with them in terms of how they deal with the CLECs
9 on a day-to-day basis with their business issues. So I
10 don't believe that this would present any kind of 271
11 barrier.

12 And again, the fact that we are willing to
13 comply with an extremely broad standard I think suggests
14 that on a going forward basis there's no impediment to
15 any issue regarding whether we're complying with 252(a).

16 Thank you.

17 JUDGE RENDAHL: Thank you, Mr. Lundy.

18 Any questions?

19 Okay, I think we're now ready to turn to our
20 first witness, Ms. Roth, so let's be off the record for
21 a moment.

22 (Luncheon recess taken at 12:45 p.m.)

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1 A F T E R N O O N S E S S I O N

2 (1:20 p.m)

3 JUDGE RENDAHL: We'll be back on the record
4 for our afternoon session on public interest, and our
5 first witness is Ms. Roth from AT&T.

6 So you were, Ms. Roth, you were previously
7 sworn in in our July and August proceeding, but I think
8 for purposes of today we will have you be sworn in
9 again.

10 MS. ROTH: Okay.

11 JUDGE RENDAHL: So would you please state
12 your full name and address for the court reporter.

13 MS. ROTH: My name is Diane, middle initial F
14 as in Frank, Roth, R-O-T-H. My business address is
15 AT&T, 1875 Lawrence Street, 15th Floor, Denver, Colorado
16 80202.

17 JUDGE RENDAHL: Thank you.

18 Could you raise your right hand, please.

19

20 Whereupon,

21 DIANE F. ROTH,

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

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1 JUDGE RENDAHL: Thank you.

2 Let's go ahead, and you have, I understand, a
3 brief overview of your testimony, and then you will be
4 subject to cross-examination by Qwest. Please go ahead.

5 MS. ROTH: Thank you very much.

6 Chairwoman Showalter, Commissioners, Judge
7 Rendahl, thank you for having this additional hearing
8 today and for taking more input on the public interest
9 phase. I was here last January, or last January, excuse
10 me, last July for the initial hearing, and we're here
11 today to continue this hearing on whether or not it will
12 be in the public interest or would be in the public
13 interest for Qwest to enter the interLATA long distance
14 market.

15 I would like to begin my testimony by saying
16 to this Commission that I believe you have broad
17 discretion to identify and weigh all of the factors that
18 you consider relevant to a public interest finding. I
19 believe you're free to consider past and present
20 behavior of Qwest, you're free to consider state
21 regulatory action and cases here in Washington and also
22 at the federal level, as well as you're not just
23 confined to looking at the SGAT, that is the statement
24 of generally available terms, or the performance
25 assurance plan or the OSS test, for example, when as you

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1 make your record and make your findings on public
2 interest.

3 The theme of my supplemental affidavit and my
4 surrebuttal affidavit really picks up right where my
5 direct affidavit left off, and that is that I believe it
6 shows that Qwest and the pre-merger company, U S West,
7 has previously violated Section 271 and continues to do
8 so. I also show in my affidavits that Qwest has a past
9 and present pattern of anticompetitive behavior and an
10 attitude towards local competition that in many ways can
11 be characterized by sort of a catch me if you can
12 attitude, and this causes competitors to spend valuable
13 time and money doing things like filing complaints and
14 seeking dispute resolution. So the question that I
15 believe this Commission is faced with is how to
16 determine what is relevant to public interest, and I
17 would submit that the track record, the pattern, and the
18 current landscape should all be considered by this
19 Commission when it makes its final public interest
20 finding.

21 I will discuss very specific examples of
22 anticompetitive behavior and attitude that I believe
23 constitute unusual circumstances that this Commission
24 should consider in a public interest finding. In other
25 words, I recommend that you consider more than just the

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1 theory of an open market and instead look to the
2 reality, what has happened and what is currently
3 happening in the market. My supplemental affidavit
4 contains information and incidences that had -- that
5 occurred since the July 2001 hearing.

6 The first thing I would like to talk about is
7 the regionwide practice that shows Qwest's unlawful and
8 anticompetitive behavior concerning secret unfiled
9 interconnection agreements. This was uncovered after
10 about a six month investigation in Minnesota when the
11 Minnesota Department of Commerce gathered enough
12 information in order to file a complaint. And they
13 asked the PUC there to investigate these secret unfiled
14 interconnection agreements. And this filing just
15 occurred in February, and the hearing was held in early
16 May of this year. These agreements, and there are 11 of
17 them, I believe, were entered into between Qwest and
18 just certain competitive local exchange carriers or
19 CLECs. These agreements contain preferential treatment
20 for things like access to network elements and service
21 quality, also called direct measures of quality or
22 DMOQs. Another provision in at least one of these
23 agreements was that in return for the preferential
24 treatment, there was an agreement on the part of the
25 CLEC that it would not file complaints or I should say

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1 and it would not participate in the 271 proceeding.

2 Now I have heard Qwest say that these
3 agreements really aren't interconnection agreements,
4 that they're merely implementation terms or that maybe
5 they're just settlement agreements. And we recently --
6 and we learned this morning that Qwest has a new policy
7 of filing all agreements, and my reaction to that was it
8 really just seems like a promise of not to do it again,
9 and I think that the outstanding issue is it doesn't
10 cure the past discrimination, the fact of filing all new
11 agreements or all agreements heretofore. So my point is
12 that I believe that Qwest should not be tacitly allowed
13 to break a federal law, nor should they be allowed to
14 discriminate, nor should Qwest be allowed to use a
15 secret unfiled interconnection agreement to silence
16 opposition to the 271 case. My recommendation in this
17 instance, I believe the Commission should conduct --
18 should put the 271 public interest phase of the case on
19 hold or on pause and conduct a formal investigation of
20 these agreements.

21 Moving to a second area, the second area in
22 my supplemental affidavit, I discuss a case that
23 occurred in Minnesota, and it involves unbundled network
24 element platform or UNE-P testing. And the reason I
25 believe it's relevant to bring this up in the context of

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1 this Washington case is that Qwest's systems and many
2 times interconnection agreements are regionwide or they
3 cover multiple states, and I believe this incident that
4 occurred in Minnesota truly does show some
5 anticompetitive -- an anticompetitive mindset as well as
6 behavior. What occurred is that AT&T wanted to do a
7 test of unbundled network element platform. They wanted
8 to do a UNE-P test of significant volume, and there was
9 interconnection agreement language in place to provide
10 for cooperative testing between Qwest and AT&T. But
11 what happened, Qwest refused to do the test. So AT&T
12 had to file a complaint with the Minnesota Commission in
13 order to get the interconnection agreement language
14 enforced and to get the test done. And that case
15 documents that a Qwest executive issued a directive not
16 to conduct the test, instructed Qwest personnel not to
17 conduct the test. In fact, there are even notes that
18 are part of the case evidence where an employee, or it
19 was actually a contract employee of Qwest, had included
20 the statement in their notes that Qwest is not going to
21 allow AT&T into the residential market.

22 Well, the ALJ has ruled in Minnesota, and I
23 would like to just give one quote from that ruling, and
24 this is also contained in my pre-filed affidavit, and
25 the quote is:

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1 Qwest failed to act in good faith and
2 committed knowing, intentional, and
3 material violations of its obligation to
4 act in good faith under the
5 interconnection agreement and under
6 Section 251(c)(1) of the Act.

7 And that ends the quote. Further, the ALJ
8 found that Qwest refused to conduct the test despite the
9 interconnection agreement language and that Qwest
10 engaged in deceptive negotiations with AT&T for over
11 eight months and then openly refused to conduct the test
12 unless AT&T was able to demonstrate to Qwest's
13 satisfaction that it had business plans to enter the
14 market. This ruling in Minnesota characterized the case
15 as being a continuing pattern of conduct and that Qwest
16 deliberately fabricated evidence. And I bring this to
17 your attention to support the position in my testimony
18 that Qwest is showing, has shown and is showing a
19 pattern of anticompetitive behavior and that this falls
20 again into the category of unusual circumstances.

21 Now a topic that I covered in my surrebuttal
22 affidavit is directly applicable to cooperative testing
23 between CLECs and Qwest, and that is concerning the SGAT
24 language. I would like to correct an impression that I
25 think is a misimpression that is left in Mr. Teitzel's

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1 testimony, and there is a statement in his testimony
2 that says:

3 Qwest has always been willing to adopt
4 SGAT language clarifying when CLECs can
5 obtain individual tests, individualized
6 testing.

7 The mischaracterization I would like to
8 correct is that the language that Qwest proposed AT&T
9 did not think was fair, and as I explained in my
10 surrebuttal affidavit, the language that Qwest proposed
11 would actually force a competitor to disclose market
12 entry plans just in order to obtain the testing. We
13 think this is wrong, because we don't think that Qwest
14 ought to be in control of a competitor's entry plan, and
15 they shouldn't be in a position of deciding whether or
16 not they believe that entry plan is legitimate. Qwest's
17 role is to provide wholesale services, not to be the
18 gatekeeper of competitive entry through refusing
19 testing. So the other thing that I mention in my
20 testimony, and I actually attach the current SGAT, is
21 that the parties, including Qwest, WorldCom, and AT&T,
22 agreed to eliminate language on cooperative testing
23 because they couldn't agree on the language. But at the
24 same time, I would also point out that additional
25 negotiations on language concerning cooperative testing

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1 is still going on in Arizona.

2 Moving to the third issue, I would like to
3 draw your attention to the complaints filed by Touch
4 America with the FCC, and there are actually two. One
5 of them is about Qwest not complying with the terms of
6 the divestiture agreement, that is the divestiture of
7 the in-region long distance service that it sold to
8 Touch America. And the Touch America complaint says
9 that basically Qwest has reneged on the deal and didn't
10 really divest that long distance business. Now that
11 complaint to me is a bit of a surprise, because the very
12 company that you would expect an extreme amount of
13 cooperation with in terms of Qwest working with Touch
14 America would be Touch America, since it did sell that
15 in-region business, but the complaint is what it is.

16 And so moving to the second complaint that
17 Touch America has filed, it is more directly applicable
18 to this 271 case, because the second Touch America
19 complaint is about whether or not the IRU capacity is
20 really interLATA service and in violation of 271. In
21 other words, Qwest is selling this capacity, and while
22 Qwest maintains that this capacity is a network
23 facility, Touch America and my company believe that that
24 capacity really constitutes interLATA service,
25 therefore, it's a violation of Section 271. I believe

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1 this Commission should be concerned about any violation
2 of Section 271 and should want to look into these
3 complaints and perhaps even -- and follow these
4 complaints very closely and perhaps even become involved
5 with these complaints at the federal level. My
6 recommendation on this issue is that the Commission not
7 make any final finding on public interest until these
8 complaint proceedings have been resolved.

9 A fourth area of anticompetitive attitude
10 that I will just briefly mention is in my supplemental
11 affidavit, and it concerns an E-Mail that was sent out
12 when Covad, Covad is a dataLEC and a competitor, a
13 retail competitor of Qwest, when they claimed
14 bankruptcy. And when they filed bankruptcy, there was
15 an E-Mail, and this E-Mail from a Qwest employee said
16 the following:

17 Third batter down, end of the national
18 DLEC game.

19 The E-Mail went on to say:

20 Covad management was delusional, the
21 result of drinking too much Cool-Aid.

22 Now that's something that Qwest has dismissed
23 as being, well, this employee wasn't really a high level
24 management employee, and Qwest has apologized for this.
25 And while that all may be true, I think it shows that

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1 there is -- there is really a pervasive anticompetitive
2 attitude from either top to bottom or bottom to top
3 within the corporation, and I think it's very difficult
4 to separate that attitude from actual behavior and to
5 actually track that behavior in all aspects. A strict
6 code of conduct or better yet even a structural
7 separation would go a long way towards solving those
8 inherent conflicts that Qwest has as both a retail
9 provider of service and also a wholesale provider of
10 service.

11 Fifth and quickly, and I won't spend much
12 time on this one, there is a complaint pending before
13 this Commission filed by AT&T concerning local freezes,
14 and the anticompetitive aspects that trouble me the most
15 about that issue is the fact that customers could not
16 switch their local service from Qwest to AT&T Broadband.
17 So some of them didn't follow through. They didn't
18 persevere, they gave up. Some may have followed through
19 and even chosen to get new numbers, but we really can't
20 -- we really won't be able to totally track how many
21 people just gave up. And also customers didn't know
22 that they had a freeze. So I recognize that this
23 Commission will -- has a -- has this pending and will
24 follow that issue through, but my recommendation in this
25 case again would be a pause in the public interest

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1 proceeding until that complaint, since it does deal with
2 residential local competition, is resolved.

3 Finally, this Commission has two conflicting
4 or two studies that are at odds in front of it. One is
5 the Qwest study, I will call it the -- it's the Hausman
6 study, and it alleges that consumers would benefit by
7 Qwest being in the long distance business. But Lee
8 Selwyn on behalf of AT&T analyzed that study and found
9 -- he found it to be flawed because he couldn't
10 reproduce the research methods or the techniques, and he
11 found that the methods and the techniques were
12 deficient. His conclusion was that there are really two
13 reasons that long distance rates have declined. First,
14 the market is competitive. And secondly, access charge
15 reductions, notably Interstate as well as intrastate
16 reductions that occurred in the two states that are
17 being focused on in the Hausman study, namely Texas and
18 California, that the intrastate access reductions had
19 been ignored in the study. So in short, it's our
20 position that the Selwyn study discredits the Hausman
21 study and shows that consumers will not benefit from one
22 more long distance competitor in the market. So I think
23 it goes without saying that this case is about local
24 competition, not long distance competition. It's about
25 insuring that local markets are open and will remain so.

1 So to kind of wrap this up, I would like to
2 just briefly go through the three factors that Qwest has
3 proffered as being what you should -- what the FCC and
4 what this Commission should consider in terms of a
5 public interest finding. The first is the determination
6 of whether granting the application is consistent with
7 promoting competition. The second is assurances that
8 the market will remain open. The third is consideration
9 of any unusual circumstances.

10 And turning to the first, whether or not the
11 271 application is consistent with promoting
12 competition, well, I think this Commission will have to
13 -- has the hard job, to be real honest, of looking at
14 the record and making that determination. But I would
15 also just like to tell you briefly about what happened
16 in Texas. And after SBC entered the interLATA market in
17 the state of Texas, they entered that market with a long
18 distance price of 9 cents a minute and then also a long
19 distance price that was bundled with local services of 6
20 cents a minute. Those were the two entry prices.

21 About six months later, SBC was able to raise
22 its prices. The 9 cents a minute long distance rate
23 went up to 10 cents a minute, and the 6 cents a minute
24 rate went up to 8 cents a minute. And while that may
25 not sound like a lot, a penny or two a minute, when you

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1 think about it and do the math in terms of billions of
2 minutes, that is a lot of money. And so this kind of
3 rate increase really highlights the fact that SBC felt
4 like it was in control of the market and could set the
5 price. So in other words, I think this Commission
6 should be concerned about remonopolization of the long
7 distance market and the market power that Qwest may hold
8 if it is granted authority to enter the interLATA long
9 distance market.

10 Moving to the second item of looking at
11 assurances as to whether or not the market will remain
12 open, performance assurance plans I think are the --
13 that's the mechanism that Qwest is relying on in its
14 application. And I understand from talking with my
15 colleagues that what is happening here in Washington in
16 the performance assurance plan is very good work and
17 that the plan is a very good plan, but I have worked in
18 a number of states, and I have often heard Qwest say
19 that a performance assurance plan is purely voluntary,
20 so I expect you will have to be vigilant about that plan
21 remaining in effect and being something that can be
22 truly enforced, because it's very important that a
23 performance assurance plan not become just a cost of
24 doing business.

25 So I believe the performance assurance plan

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1 is essential, but it's imperfect as a mechanism, because
2 the measures or the dollar amounts, the penalties, the
3 fines, whatever you want to call them, they only
4 materialize after inferior quality service occurs. So
5 like all enforcement mechanisms, the performance
6 assurance plan occurs after the fact or after the damage
7 occurs. And it's far better to truly have the market
8 open than it is to rely on punitive kind of measures.

9 And another mechanism is, of course, the
10 complaint mechanism, but we all know that complaints
11 don't, excuse me, we all know that complaints aren't
12 resolved overnight. In fact, I was looking at a federal
13 complaint, and it was the complaint that occurred
14 pre-merger, and it was on the 1-800-call-USWEST issue,
15 and it's astounding that it took the FCC three and a
16 half years from when that complaint was actually filed
17 to when it actually ruled on that complaint. So again,
18 complaints, like other mechanisms, are -- are not -- are
19 very imperfect when it comes to assurances that the
20 market will stay open.

21 And finally, most of my testimony is really
22 spent on anticompetitive attitude and behavior, which I
23 would submit to you constitutes unusual circumstances.
24 I believe the track record is there on past 271
25 violations, it continues, as well as the anticompetitive

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1 behavior that is the subject of complaints and other
2 regulatory proceedings.

3 So I ask that the Commission consider these
4 items, and I thank you for being here today, and I will
5 be happy to answer your questions.

6 JUDGE RENDAHL: Thank you, I think we will
7 begin with cross-examination from Qwest, and then if we
8 have any questions, we will address them after that.

9 MS. ROTH: Okay.

10 MR. MUNN: Thank you.

11

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

13 BY MR. MUNN:

14 Q. Good afternoon, Ms. Roth.

15 A. Good afternoon.

16 Q. Ms. Roth, would you agree that the Touch
17 America IRU issues that you have just mentioned in your
18 oral summary and the ones that you have discussed in
19 your written testimony here, that they're currently
20 pending before the FCC in separate complaint
21 proceedings?

22 A. Yes, I agree they're pending at the FCC.

23 Q. With respect to the Minnesota UNE-P testing
24 complaint that you have mentioned, is it fair to say
25 that AT&T has not requested the UNE-P testing that was

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1 the subject of the Minnesota complaint here in
2 Washington?

3 A. That's my understanding.

4 Q. And would you agree that none of the
5 allegations that AT&T made against Qwest in the
6 Minnesota complaint occurred here in Washington?

7 A. They may not have occurred in Washington, but
8 I still think it's a useful example, and I also think
9 there's no guarantee that this situation couldn't occur
10 in Washington.

11 Q. Would you agree that this same UNE-P testing
12 issue, that this is the same issue that AT&T addressed
13 previously in Washington in the checklist 2, 5, and 6
14 workshops in March and April of 2001?

15 A. I don't know, I wasn't part of those
16 workshops.

17 Q. Okay. And so, for example, the April 25th
18 workshop of last year in this state, in Washington,
19 beginning around page 3563 of the transcript, it's your
20 testimony that you're not aware one way or the other
21 whether AT&T brought Michael Hydock into this state to
22 testify specifically regarding this issue?

23 A. I will have to look at those dates subject to
24 check, but you have refreshed my memory that the issue
25 of cooperative testing started with -- in the UNE -- in

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1 the UNE workshop with a proposal made by Michael Hydock.
2 But then as I explained in my surrebuttal affidavit --

3 JUDGE RENDAHL: There's somebody joining us
4 on the bridge line.

5 Who has joined us, please?

6 Please go ahead.

7 A. Okay. But as I explained in my surrebuttal
8 affidavit, the issue of and the language regarding
9 cooperative testing all of a sudden transferred over
10 into the general terms and conditions workshop, and
11 that's where -- that's the section now, the Section 12,
12 where the language has been struck by agreement between
13 the parties, including AT&T, WorldCom, and Qwest.
14 Because they couldn't agree on the language, they agreed
15 to take the language out.

16 BY MR. MUNN:

17 Q. So subject to check, would you also agree
18 that Mr. Hydock in the March 13th, 2001, workshop for
19 checklist item 2 addressed this issue, and the parties
20 addressed this issue starting around lines or page 3052,
21 subject to check?

22 A. Subject to check, but with also the
23 qualification that the topic has been continued to
24 Section 12 and into the general terms and conditions
25 section of the SGAT.

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1 Q. And that's an interesting point. So not only
2 has this been addressed, based on your own testimony,
3 this issue has been addressed in checklist items 2, 5,
4 and 6 workshops, it's also been addressed in the general
5 terms and conditions workshops, correct?

6 A. It was addressed in the general terms and
7 conditions workshop, and the language was struck through
8 in that workshop for lack of agreement, which to me does
9 not give finality to the issue. It just leaves the
10 issue open, because the SGAT then is devoid of
11 instruction and language about cooperative testing. And
12 if the Arizona negotiations are successful on this
13 topic, then I would be hopeful that that language would
14 then be brought to Washington to see if it would be
15 suitable to include in Washington rather than having the
16 situation that is here today, which is that the SGAT
17 doesn't address the cooperative testing.

18 Q. And, Ms. Roth, it was my understanding that
19 what we were doing today was to address new issues that
20 hadn't already been hashed out before the Washington
21 Commission, so would you agree this is the same
22 Minnesota UNE-P testing issue raised by AT&T in its June
23 7th, 2001, public interest testimony that I think it was
24 of Mary Jane Rasher that you adopted here?

25 A. I will agree in part, but not in full. The

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1 part I will agree about, that it was included in the
2 pre-filed testimony filed by Ms. Rasher that I adopted.
3 But what is different is that the case is in a different
4 point in time. At that point, and correct my
5 recollection here, at that point, the Commission in
6 Minnesota had merely ordered that the test occur. Now
7 the test has occurred since the time that we had the
8 hearing here last July, and there is also now an ALJ's
9 ruling in that case. And again, we didn't have that
10 ruling. And I will also mention that the Commission has
11 upheld that, the ruling of the ALJ, orally, although the
12 written order hasn't been issued yet, so that's the
13 difference.

14 Q. Is it fair to say, Ms. Roth, that relating to
15 this UNE-P testing issue that reasonable minds can
16 differ on the conclusion to be drawn from that record?

17 A. I don't think reasonable minds can differ on
18 the quote that I read from the ALJ's order. I think
19 that's fairly straightforward.

20 Q. Okay. Ms. Roth, you would agree with me --
21 or strike that.

22 Isn't it fair to say that the staff of the
23 Minnesota commission disagreed with the Minnesota ALJ's
24 order and submitted written recommendations finding that
25 both Qwest and AT&T acted in good faith, that no penalty

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1 should be awarded, and that the complaint should be
2 dismissed?

3 A. I will accept that subject to check, but I
4 will also add that the commission itself did uphold the
5 ALJ's ruling. They haven't issued their order, but in
6 an open meeting or in an oral setting, they did uphold
7 the order.

8 Q. And are you representing -- well, strike
9 that.

10 So I just need to know one way or the other,
11 do you -- when you say that you don't believe that
12 reasonable minds could differ, clearly the staff
13 recommendation that they submitted to the commission was
14 directly at odds with the ALJ's order on the issue of
15 bad faith or good faith for Qwest and whether penalties
16 should be issued, correct?

17 A. While that may be correct, I'm also pointing
18 out that the Commission has stuck with the ALJ's ruling.

19 Q. And so, Ms. Roth, is it your testimony that
20 the Minnesota staff of the Minnesota commission are
21 unreasonable?

22 A. That's not my testimony.

23 Q. Okay, so I will ask you the question again.
24 Is it fair to say that reasonable minds can differ as to
25 the conclusions to be drawn from this Minnesota UNE-P

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1 testing issue?

2 A. I think it's fair to say that the staff had a
3 different opinion from the ALJ, but that the Commission
4 agreed with the ALJ. I think that's a fair
5 characterization.

6 Q. And is it also fair to say that Mr. Antonuk
7 disagreed with the findings of the Minnesota ALJ
8 decision when he addressed this issue in his checklist
9 item 2, 5, and 6 reports and public interest reports?

10 A. I'm sorry, could you repeat the question?

11 Q. Sure. That Mr. Antonuk, the multistate
12 facilitator -- let me set a few foundational questions.

13 AT&T and Mr. Hydock also presented the same
14 Minnesota UNE-P testing that you're bringing to this
15 Commission in the multistate workshops, correct?

16 A. Yes.

17 Q. And Mr. Antonuk's orders addressed that
18 testing, correct?

19 A. That's correct.

20 Q. And is it fair to say --

21 MR. WITT: Counsel, excuse me, were they
22 orders or were they simply reports?

23 MR. MUNN: Reports.

24 MR. WITT: Thank you.

25 THE WITNESS: Thanks, that a good

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1 clarification.

2 BY MR. MUNN:

3 Q. And so the language -- based on that
4 presentation, did Mr. Antonuk order SGAT language to be
5 put into the SGAT or that he recommended in his
6 recommendation that Qwest put into its SGAT to address
7 this UNE-P testing issue?

8 A. The facilitator, Mr. Antonuk, did recommend
9 some language in his report.

10 Q. And in that report, didn't he find that
11 AT&T's testing proposal was inflexible and potentially
12 duplicative and that the OSS test would comprehensibly
13 address AT&T's stated concerns with Qwest's OSS?

14 A. Are you -- if you're reading from his report,
15 I will accept that subject to check.

16 JUDGE RENDAHL: Can you identify a date and
17 title for that report, Mr. Munn?

18 MR. MUNN: Yes, this would be the multistate
19 facilitator's report on checklist items 2, 4, 5, and 6,
20 and it was dated August 20th, 2001. I was particularly
21 referencing pages 29 and 30 of that report.

22 JUDGE RENDAHL: Thank you.

23 THE WITNESS: What was the date on that
24 again?

25 MR. MUNN: August 20th, 2001.

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1 BY MR. MUNN:

2 Q. And subject to check, isn't it also true that
3 Mr. Antonuk addressed this Minnesota UNE-P testing issue
4 again in the public interest report that he issued in
5 October of 2001?

6 A. I don't think it's fair to say that he
7 addressed the Minnesota UNE-P case directly. I think
8 you can say he addressed the topic, but I don't think
9 you can fairly say or accurately say that he addressed
10 the complaint and the specific instance of -- that then
11 constituted the Minnesota -- the Minnesota complaint and
12 the conduct of the test itself there.

13 Q. It is true that AT&T brought in Michael
14 Hydock, a specific witness, in the multistate proceeding
15 to address those issues before that tribunal, correct?

16 A. To address that language but to not address
17 the specific Minnesota complaint.

18 Q. So it's your testimony Mr. Hydock did not
19 testify about the Minnesota complaint, and his testimony
20 was just related to SGAT language?

21 A. My testimony is that what Mr. Antonuk issued
22 was specific to the multistate proceeding, not specific
23 to the Minnesota complaint itself, because he's not in a
24 position to adjudicate that complaint.

25 Q. Ms. Roth, who was AT&T's witness in front of

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1 the Minnesota commission on the Minnesota UNE-P testing
2 complaint?

3 A. I think it was Mr. Hydock.

4 Q. Thank you. Is it fair to say that
5 Mr. Antonuk ordered SGAT language regarding the
6 cooperative testing that you have just been discussing?

7 A. Yes.

8 Q. And would you agree that Qwest included that
9 language that Mr. Antonuk ordered in the multistate
10 proceeding, that Qwest included that language in its
11 April 2002 SGAT filing here in Washington?

12 A. I don't have that date and that specific --
13 that -- I can't correlate that date exactly, because I
14 don't have that documentation with me, but I will take
15 that as subject to check.

16 Q. So subject to check, the answer would be yes?

17 A. It's my understanding --

18 Q. Let me rephrase it.

19 A. It's my understanding --

20 JUDGE RENDAHL: Let's not talk over one
21 another. Please wait for each other to finish before
22 you continue.

23 A. It's my understanding that that may be where
24 the language began in the Washington SGAT, but that's
25 not where it ended, because the parties all agreed that

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1 -- they all agreed to strike the language, and I believe
2 that's primarily because there were additional
3 discussions about the language that went on in the
4 workshops here in Washington after the multistate, so
5 the issue continued to be discussed.

6 Q. Now you have characterized this language as
7 language that Qwest proposed, but a more accurate
8 depiction of that language would be the language that
9 Mr. Antonuk ordered Qwest to put in the SGAT or
10 recommended that Qwest put in the SGAT in the multistate
11 proceeding; is that correct?

12 MR. WITT: Counsel, which is it, is it a
13 recommendation or an order? I just ask.

14 MR. MUNN: I think we have already done that
15 drill, it's a recommendation.

16 JUDGE RENDAHL: I would ask that your
17 questions be directed through me as opposed to one
18 another.

19 MR. WITT: Thank you very much, I will.

20 JUDGE RENDAHL: Thank you.

21 MR. WITT: In that case, I guess I would put
22 it to the Administrative Law Judge that I would object
23 to the characterization of these as being orders.

24 JUDGE RENDAHL: I think the documents which
25 have been provided to the Commission will speak for

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1 themselves, and we will take counsel's comments on them
2 with and compare them with what we see in front of us.

3 MR. WITT: Thank you, Your Honor.

4 MR. MUNN: Just for expediency, if I refer to
5 something as an order from Mr. Antonuk, everything that
6 he has issued are reports, they're not orders.

7 JUDGE RENDAHL: Thank you.

8 MR. MUNN: It's just an inartful use of the
9 phrase order.

10 JUDGE RENDAHL: Thank you.

11 BY MR. MUNN:

12 Q. And -- go ahead.

13 A. Mr. Antonuk, while his job was to make
14 recommendations to the states as a result of the
15 multistate workshop, in the end, the state has the
16 discretion whether or not to accept that recommendation,
17 and that's -- I guess that's why we have had this
18 discussion about whether it's an order or a
19 recommendation. So I guess my point is that those
20 recommendations were not binding on the state, and the
21 states have the discretion whether or not to accept them
22 in full or in part.

23 Q. That's an interesting point, but my question
24 was, isn't it fair to characterize the language as what
25 Mr. Antonuk recommended that Qwest put in its SGAT, not

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1 something that Qwest itself proposed?

2 A. Sure, that may be true, but I would also
3 venture to guess that there are probably other aspects
4 of the SGAT that were recommended that Qwest didn't want
5 to put in. I mean this was a -- the workshop process
6 was a collaborative process, and again, nothing that
7 Mr. Antonuk recommended was final or binding on the
8 state.

9 CHAIRWOMAN SHOWALTER: Ms. Roth, can I
10 suggest that you will -- your counsel has an opportunity
11 to ask questions on redirect, and it would help me
12 anyway if you simply answer the question. If it needs a
13 complete answer, that's all right, but you don't need to
14 give a repartee to every question, because it slows down
15 the progression of the cross-examination, and you do
16 have an opportunity later if there are important points
17 to make.

18 THE WITNESS: Okay.

19 CHAIRWOMAN SHOWALTER: We're mostly
20 interested in what your answer to his question is.

21 BY MR. MUNN:

22 Q. Would you agree that, subject to check, that
23 on page 9 of the multistate facilitator's public
24 interest report, which is dated October 2001, that
25 Mr. Antonuk said that this very SGAT language that he

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1 recommended "should preclude such a dispute in the
2 future"?

3 A. I don't have that. I don't recall that
4 specific part of the report. Could you say that --
5 could you either read it or show it to me so I could be
6 more sure of what you're saying?

7 Q. Sure. My question is that subject to check,
8 would you agree that in addressing this SGAT language
9 that Mr. Antonuk in that report said that it "should
10 preclude such a dispute in the future"?

11 A. I will accept that subject to check.

12 Q. And AT&T requested that Qwest remove that
13 very SGAT language from the Washington SGAT, correct?

14 A. Not precisely, I can't agree with that in
15 full. It's my understanding that the parties agreed
16 that it would be fine to delete that language, so that
17 you can't just say -- what I object to is the
18 characterization that AT&T just wanted it deleted from
19 the SGAT. I think that's-- I don't think that's a fair
20 characterization.

21 Q. And maybe that's an interesting point, that
22 AT&T, WorldCom, and other carriers wanted the Antonuk
23 language, which he said is designed to prevent this
24 dispute from happening in the future, that generally all
25 companies that I'm aware of wanted Qwest to remove that

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1 language from the SGAT?

2 A. I think that's true, but I can't stop there,
3 and I apologize that I -- that I have to elaborate about
4 that, because it was language that was further
5 negotiated, was the topic of further discussions
6 because, and the heart of the matter is that, and let me
7 get that language in front of me, AT&T did have a
8 disagreement about being forced to show market entry
9 plans. We felt that was an important enough point to
10 continue the discussion.

11 Q. Ms. Roth, I would like to change gears for a
12 minute, and you brought up a white paper that someone
13 else, Dr. Selwyn, had written, and you have made
14 reference to that in your oral summary this morning,
15 correct?

16 A. Correct.

17 Q. And I think that I heard you say this, but I
18 actually have the wording from his paper here, is it
19 fair to say that Dr. Selwyn acknowledges in that
20 document you're referring to that:

21 The single most important source of the
22 enormous drop in long distance prices is
23 the succession of FCC required decreases
24 in access charges.

25 A. That sounds familiar. Can I just take a

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1 brief look?

2 Q. Sure, I will tell you that that is at page 3.

3 A. (Reading.)

4 That's correct.

5 Q. Is it also fair to say that AT&T's
6 approximately 23 million basic residential customers
7 just recently had their daytime calling rate increased
8 by 17% to 35 cents a minute?

9 A. AT&T did increase the basic schedule, but
10 many calling plans were not changed. And I also think
11 that AT&T acted very responsibly in that regard by
12 notifying customers.

13 Q. And I think this is sort of evident from your
14 testimony, I almost hesitate to ask this, but so I don't
15 want to sound like a smart Alec when I ask it, I just --
16 it is fair to say that the local service freeze issue
17 that you have addressed is -- there is a separate docket
18 in front of this Commission to address AT&T's criticisms
19 or issues as it relates to the LSF tariff, correct?

20 A. There is a separate docket, but it seems to
21 be a topic that to me is directly related to local
22 competition, which is why I brought it up in my
23 testimony, and also the public interest.

24 MR. MUNN: Your Honor, that concludes my
25 cross-examination. I think Mr. Lundy has a few

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1 questions on the discreet issue of the unfiled
2 agreements. He won't address any topics that I have.

3 JUDGE RENDAHL: Okay.

4 MR. LUNDY: Thank you, Your Honor.

5

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

7 BY MR. LUNDY:

8 Q. Good afternoon. I would like to turn to your
9 supplemental affidavit dated April 19th, Ms. Roth.

10 JUDGE RENDAHL: That's been admitted as
11 Exhibit 1649.

12 Q. Do you have it in front of you?

13 A. I do.

14 Q. Could you please turn to page 3 where you
15 start talking about what you call secret interconnection
16 agreements?

17 A. Yes, I'm there.

18 Q. And for that testimony that starts on page 3
19 and continues through page 4, you relied upon the
20 allegations contained in the Minnesota Department of
21 Commerce's complaint.

22 JUDGE RENDAHL: I'm sorry, are we talking
23 about the surrebuttal affidavit or the initial, the
24 responsive affidavit?

25 MR. LUNDY: I'm talking about the April 19th

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1 supplemental affidavit.

2 JUDGE RENDAHL: I'm sorry, that's 1640.

3 And we're looking at page 3?

4 MR. LUNDY: Yes, please.

5 JUDGE RENDAHL: Okay.

6 BY MR. LUNDY:

7 Q. Ms. Roth, are we talking about the same
8 document?

9 A. I'm sorry, would you repeat your question?

10 Q. Sure. The information that's contained on
11 page 3 and 4 of your testimony there, you're relying
12 upon the allegations that are made in the complaint
13 filed by the Minnesota Department of Commerce; am I
14 correct?

15 A. Yes, that's a publicly filed complaint.

16 Q. All right. And you don't in your testimony
17 present any standard under which an ILEC or Qwest must
18 or must not file an agreement as an interconnection
19 agreement under Section 252(a) in your testimony, do
20 you?

21 A. No, and that wasn't the purpose of my
22 testimony.

23 Q. Okay.

24 A. The purpose of my testimony was to --

25 JUDGE RENDAHL: Ms. Roth, if you could merely

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1 answer the question and give your attorney an
2 opportunity to bring issues up on redirect, that would
3 be helpful.

4 THE WITNESS: Okay.

5 CHAIRWOMAN SHOWALTER: I'm going to add that
6 the purpose of your testimony is not to challenge the
7 underlying question. The purpose of your testimony is
8 to answer the question, and the question is assumed
9 legitimate unless objected to. So you just need to
10 answer what that question is.

11 THE WITNESS: Okay, I'm sorry.

12 BY MR. LUNDY:

13 Q. And, Ms. Roth, am I correct then that you
14 also did not analyze the agreements that are at issue in
15 Minnesota according to a standard; am I correct?

16 A. That's correct.

17 Q. All right. You mentioned in your oral
18 summary an agreement with a CLEC, I don't know if you
19 mentioned that I believe your word was silenced with
20 regard to the 271 process. Do you recall that part --

21 A. Yes.

22 Q. -- of your oral summary?

23 A. Yes.

24 Q. You did not refer to that agreement in your
25 written testimony, did you?

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1 A. I did not.

2 Q. Okay. That agreement that you referred to,
3 do you know which CLEC is the other party to that
4 agreement?

5 A. Yes, I do.

6 Q. And that's a letter agreement that contains a
7 provision that -- well, I'm sorry, could you please
8 identify which CLEC that is?

9 A. The CLEC would be Eschelon.

10 Q. All right. And the letter agreement that
11 contains the agreement that Eschelon will not
12 participate in 271 proceedings, have you read that
13 letter agreement?

14 A. I have not.

15 Q. Okay. So is it fair to say then that you do
16 not know what the quid pro quo was for their decision or
17 agreement not to participate in 271; am I correct?

18 MR. WITT: At this point, I would like to
19 object. My understanding is that the document is in the
20 record before this Commission at this point, and it does
21 speak for itself.

22 JUDGE RENDAHL: In terms of what the contents
23 of the agreement are, I think it does speak for itself.
24 But I think the question, maybe he should -- if you
25 could ask your question again, Mr. Lundy.

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1 MR. LUNDY: Sure.

2 BY MR. LUNDY:

3 Q. My question was, are you aware of what the
4 quid pro quo is for Eschelon's agreement not to
5 participate in 271?

6 A. Well, it's my understanding that there were a
7 number of items that were part of the agreement and that
8 they included some service quality measurements as well
9 as some payment terms, and that the package, if you
10 will, the package of terms also contained that quid pro
11 quo that Eschelon would not file a complaint nor
12 participate in 271.

13 Q. But you're making those judgments without
14 reading the document; am I correct?

15 A. That's right, I read a transcript of another
16 proceeding.

17 MR. LUNDY: All right. It's my understanding
18 that this document is in the record. May I approach to
19 provide a copy of that document to the witness?

20 JUDGE RENDAHL: Yes, if you could identify
21 the document to the Bench.

22 MR. LUNDY: Certainly, it is --

23 JUDGE RENDAHL: Let's be off the record for a
24 moment.

25 (Discussion off the record.)

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1 JUDGE RENDAHL: Mr. Lundy, you may approach
2 the witness, and we're talking about Exhibit 3 in the
3 first set of responses in Exhibit 1635-C.

4 BY MR. LUNDY:

5 Q. Ms. Roth, I have placed before you what in
6 Minnesota was marked as Exhibit 3, and it's a part of a
7 compilation of exhibits in this case marked as 1635-C.
8 I take it from your previous responses you have not seen
9 that agreement before; am I correct?

10 A. That's correct.

11 Q. All right. I would like to turn your
12 attention to the last paragraph on that page, on the
13 first page, it starts with during development of the
14 plan.

15 A. Okay.

16 Q. Do you see that language?

17 A. Mm-hm.

18 Q. Will you please read that sentence into the
19 record.

20 A. (Reading.)

21 Q. Aloud please.

22 A. I'm sorry.

23 During development of the plan and
24 thereafter, if an agreed upon plan is in
25 place by April 30th, 2001, Eschelon

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1 agrees to not oppose Qwest's efforts
2 regarding Section 271 approval or to
3 file complaints before any regulatory
4 body concerning issues arising out of
5 the parties' interconnection agreements.

6 Q. Thank you. Now could you now move up to the
7 earlier paragraph where I will represent we talk about
8 what the capital P Plan is, could you please read into
9 the record starting with, by no later than December 31.

10 A. (Reading.)
11 By no later than December 31, 2000, the
12 parties agree to meet together via
13 telephone, live conference, or otherwise
14 and as necessary thereafter to develop
15 an implementation plan. The purpose of
16 the implementation plan (Plan) will be
17 to establish processes and procedures to
18 mutually improve the company's business
19 relations and to develop a multistate
20 interconnection agreement.

21 Q. Thank you. Will you agree with me then that
22 the quid pro quo for Eschelon not participating in 271
23 procedures was (1) to meet to establish processes and
24 procedures to mutually improve the companies' business
25 relations, and (2) to develop a multistate

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1 interconnection agreement; will you agree with me on
2 that?

3 A. Just based on the reading of those two
4 sentences, but I haven't been able to read the entire
5 agreement.

6 Q. But based upon that language, would you agree
7 with me on that?

8 A. Just based on those two sentences, I will
9 agree.

10 Q. All right. And will you agree with me that
11 meeting together to establish processes and procedures
12 to mutually improve the companies' business relations,
13 that's a pro 271 interest; would you agree with me on
14 that?

15 A. On its face, I would agree with that, and I
16 also think it should have been extended to every
17 competitor.

18 Q. Would you agree with me that meeting together
19 to develop multistate interconnection agreements, that
20 that is also an interest that furthers the 271 concept?

21 A. I think it's an obligation under the federal
22 law to have an interconnection agreement.

23 Q. But you would agree with me that that's not
24 contrary to 271 interests, to meet together to develop a
25 multistate interconnection agreement, would you?

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1 A. No, it's not contrary to any aspect of that
2 federal law.

3 Q. All right. Does AT&T participate in every
4 generic type docket such as a 271 docket or cost
5 dockets; does AT&T participate in all of those?

6 A. AT&T participates in as many dockets as it
7 can, but it can't -- it doesn't participate in
8 everything.

9 Q. There are dockets, generic type dockets, that
10 AT&T does not participate in, correct?

11 A. I think that's correct.

12 Q. For example, AT&T did not participate in the
13 recent Iowa cost docket; am I correct?

14 A. I don't know that.

15 Q. Okay. Assume --

16 A. I will accept that subject to check.

17 Q. Thank you, I appreciate that.

18 Assuming with me that AT&T did not
19 participate in the recent Iowa cost docket, is it your
20 understanding that that taints somehow the orders that
21 were issued and the rates that are finally established
22 in that docket?

23 A. No.

24 MR. LUNDY: Thank you, Ms. Roth, I have
25 nothing further.

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1 JUDGE RENDAHL: Okay, thank you.

2 Are there any questions -- sorry, go ahead,
3 Mr. Cromwell, if you have any cross-examination.

4 MR. CROMWELL: Thank you, Your Honor.

5 Actually, I just have two points of fact for the record
6 that I would like to make with Ms. Roth, if I may.

7 JUDGE RENDAHL: Please go ahead.

8 MR. CROMWELL: Thank you.

9

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

11 BY MR. CROMWELL:

12 Q. Good afternoon, Ms. Roth. My name is Robert
13 Cromwell with the public counsel section of the Attorney
14 General's Office. You referred a while back to the
15 Covad E-Mail from a Qwest employee to other Qwest
16 employees; is that correct?

17 A. I did.

18 Q. And it had a reference there to drinking the
19 Cool-Aid?

20 A. Too much Cool-Aid.

21 Q. And do you know what that reference or that
22 somewhat macabre humorous reference is referring to?

23 A. I think it was in reference to an unfortunate
24 event in Guyana where people drank Cool-Aid following
25 what I would characterize as a cult leader and died.

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1 Q. Thank you. And are you aware of the March 1,
2 2002, agreement between Qwest and Eschelon?

3 A. I have to say no.

4 MR. CROMWELL: Your Honor, for the record, on
5 May 2nd of this year, Qwest produced in response to
6 Public Counsel Data Request 52 its First Supplemental
7 Response. Included therein was a non-confidentially
8 designated agreement between Qwest and Eschelon dated
9 March 1, 2002. It has no Minnesota exhibit number.
10 Because it's not confidential, I'm just going to hold it
11 up.

12 JUDGE RENDAHL: Which date, what is the date
13 of the agreement?

14 MR. CROMWELL: The top line of the agreement
15 says March 1, 2002. It's titled settlement agreement.
16 May I approach the witness with this document, Your
17 Honor?

18 JUDGE RENDAHL: Yes, you may.

19 Let's be off the record for a moment.

20 (Discussion off the record.)

21 JUDGE RENDAHL: Mr. Cromwell, you're going to
22 share with Ms. Roth a settlement agreement between Qwest
23 and Eschelon; is that correct?

24 MR. CROMWELL: Yes, Your Honor. I have
25 approached the witness, and I have handed her the

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1 settlement agreement, which is dated March 1st, 2002.

2 BY MR. CROMWELL:

3 Q. I would ask Ms. Roth to turn to the second
4 page of the agreement, and there's a section numbered 3,
5 actions to be taken, a subsection (e) under 3, the
6 bottom sort of section of that page 2 of the six pages
7 of the agreement, which I believe is titled in parens
8 terminated agreements. Ms. Roth, could you identify for
9 me the first two agreements which this agreement between
10 Qwest and Eschelon terminated?

11 A. I'm sorry, you lost me on that one.

12 Q. Oh, okay. Section 3.

13 A. Okay, I see 3.

14 Q. Section b.

15 A. Mm-hm.

16 Q. And could you just read the introductory
17 sentence for B and then the first two agreements which
18 were terminated. Well, actually, I guess let's go
19 through -- well --

20 JUDGE RENDAHL: Why don't we just have her
21 read --

22 Q. Read the first sentence, please.

23 A. Okay, I'm reading under item number 3,
24 actions to be taken:

25 The parties shall undertake the

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1 following actions.
2 And then moving down to paragraph B.
3 For convenience and various reasons, the
4 parties hereby terminate the following
5 agreements (terminated agreements) as of
6 the effective date.

7 Number 1 --

8 Q. I'm sorry, maybe to shorten this, can you
9 tell me, do the first five entries there deal with
10 letters and agreements, confidential and apparently non,
11 between Qwest and Eschelon dated November 15 of 2000?

12 A. They appear to, and specifically contain the
13 implementation plan letter that Mr. Lundy showed me
14 earlier dated November 15th, 2000.

15 MR. CROMWELL: Thank you. Nothing further
16 for this witness.

17 JUDGE RENDAHL: Okay, thank you.
18 Are there any questions for this witness?

19 CHAIRWOMAN SHOWALTER: I have questions, but
20 can we take a five minute break.

21 (Recess taken.)

22 JUDGE RENDAHL: Let's be back on the record
23 after a brief break, and I think we're going to take
24 questions from the Bench, and then we will have redirect
25 for you, Mr. Witt.

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1 MR. WITT: Thank you.

2 JUDGE RENDAHL: Are there any questions from
3 the Bench?

4 CHAIRWOMAN SHOWALTER: Yes.

5

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

7 BY CHAIRWOMAN SHOWALTER:

8 Q. Ms. Roth, this may be in another part of your
9 testimony but I was focused on the supplemental, what is
10 your background; how long have you been working for
11 AT&T?

12 A. I have been with AT&T for over 20 years. I
13 began pre-divestiture with AT&T Longlines. I worked for
14 a short time for Mountain Bell and then ended up at AT&T
15 Communications in the external affairs department where
16 I have been for the past, oh, 12 years or so, and we're
17 now called government affairs.

18 Q. And what is your educational background and
19 training?

20 A. I have an undergraduate degree. I have a
21 Bachelor of Arts in Liberal Arts. I majored in
22 economics as well as music. And I also did some course
23 work toward an MBA at the University of Southern
24 California, but I did not complete it.

25 Q. And what is the scope of your duties?

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1 A. At the present time, I have multiple duties.
2 I am a policy witness for 271 proceedings, and I have
3 appeared in several states. I'm also the regulatory
4 advocate for the state of Colorado as well as the
5 legislative lobbyist for the state of Colorado for AT&T.

6 Q. All right. Can you turn to Exhibit 1635, and
7 specifically it's the hot pink section if your color
8 scheme is the same as mine.

9 A. Excuse me, but I don't have that.

10 CHAIRWOMAN SHOWALTER: Can counsel provide
11 it?

12 MR. CROMWELL: Actually, Your Honor, pursuant
13 to Qwest's request, I believe those are the highly
14 confidential documents that have not been provided to
15 parties other than the Commission and Public Counsel,
16 who originally requested them.

17 MR. WITT: I was embarrassed to say that I
18 don't have them, but now I'm not embarrassed to say that
19 I don't have them.

20 JUDGE RENDAHL: Let's be off the record for a
21 moment.

22 (Discussion off the record.)

23 JUDGE RENDAHL: Let's be back on the record
24 after a brief break. We determined that the first
25 agreement that was provided in the first supplemental

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1 set of responses to Bench Request Number 46 and provided
2 on May 2nd is, in fact, an agreement that has already
3 been made public here in Washington, and so that is no
4 longer highly confidential or confidential and can be
5 discussed on the record, so there are questions from the
6 Bench to Ms. Roth on this document.

7 BY CHAIRWOMAN SHOWALTER:

8 Q. Yeah, I would like to inquire more about your
9 statement earlier. I believe you made the general
10 statement that you objected to Qwest entering into
11 agreements where it gives allegedly preferential
12 treatment to a CLEC in exchange for some kind of
13 agreement by the CLEC not to oppose I think you said
14 271; is that right?

15 A. Yes.

16 Q. Is that the basic objection you have to these
17 agreements? In addition, I understand you think they
18 are terms and conditions that should be filed with the
19 appropriate commission.

20 A. That's right. I agree with your
21 characterization, and I also agree with the addition
22 that the agreements that we object to are really part of
23 the -- part of the interconnection requirements under
24 251 whatever, I think it's (c)(1) or something like
25 that. Maybe my attorney can correct me on that.

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1 Q. Well, then looking at the part of Exhibit
2 1635 that has a page number at the bottom beginning
3 Q110066, and it's labeled at the top, agreement between
4 AT&T, U S West, and Qwest; do you have that in front of
5 you?

6 A. I do.

7 Q. I'm wondering if you could turn to the second
8 page. It's item number 3 of the agreement.

9 A. Yes.

10 Q. Picking up on the second line there, it says:
11 AT&T agrees to cease and withdraw its
12 opposition to the U S West and Qwest
13 merger and the related divestiture of
14 Qwest's business activity that would be
15 prohibited by the Telecom Act and not to
16 support intentionally any conditions
17 being applied to the merger or denial
18 modifications or other adverse action
19 with respect to the divestiture.

20 Do you see that sentence?

21 A. I do.

22 Q. Then turning to the next page, item number 9,
23 do you see the sentence that says, the parties agree
24 that the specific terms of this agreement are
25 confidential?

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1 A. I do.

2 Q. And then on paragraph 10, do you see that:

3 The parties agree that if either party
4 materially breaches any part of this
5 agreement, the breaching party shall pay
6 to the other liquidated damages in the
7 amount of \$500,000 per breach.

8 A. Yes.

9 Q. I am having a hard time understanding your
10 point of view. This agreement appears to be exactly the
11 kind of agreement you say you're objecting to, that is
12 an agreement between Qwest and a CLEC, in this case your
13 own company, whereupon the parties agreed to refrain
14 from challenging each other in regulatory matters on
15 penalty of half a million dollars penalty payment. Do
16 you agree that from the paragraphs that I have read that
17 that's essentially what this agreement is about?

18 A. Yes, I do, and I certainly understand your
19 thought in that regard. And when I sit here and think
20 about it just for a couple of minutes, the difference
21 that I see is that the agreements that I am objecting to
22 involve interconnection, a duty under the federal act,
23 whereas this agreement that we're looking at on the hot
24 pink, well, this agreement about the Qwest/U S West
25 merger and AT&T's agreement not to oppose that merger is

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1 not part of the interconnection and interconnection
2 obligations under the federal act. But I certainly do
3 understand your initial reaction, but that's the
4 difference that I see is that there's a federal
5 interconnection obligation that is separate and apart
6 and makes the agreements that I am objecting to
7 different.

8 Q. So if an agreement need not be filed because
9 it's a term and condition, then you have no objection to
10 these kinds of quid pro quos that one element of which
11 is agreeing not to oppose each other in regulatory
12 matters?

13 A. Okay, I want to make sure I understand.

14 Q. Well, okay, I will repeat the question. I
15 understood your testimony to raise two objections. One
16 is these agreements need to be filed, but the other is
17 that these were secret agreements not to oppose each
18 other in a regulatory proceeding. So are you saying
19 that you have no objection to this kind of agreement
20 unless it is also the kind of agreement that must be
21 filed with the Commission?

22 A. I think in large part that's correct. The
23 reality of business is that there are negotiations,
24 there are settlements on issues, and a lot of times they
25 settle billing disputes as well as regulatory

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1 proceeding. But I think what makes these secret
2 interconnection agreements unique is the obligation
3 under the federal law to negotiate them and also to file
4 them publicly. And what I object to is then
5 intertwining that obligation with an agreement not to
6 file complaints or be involved in 271. So it's the
7 intertwining of the two, if you will, that I object to.

8 Q. So if these other agreements, not this one,
9 but if these other agreements need not be filed with the
10 Commission as an interconnection agreement, then you
11 have no objection to them and feel they don't
12 demonstrate anything one way or the other in the context
13 of 271?

14 A. I would agree with that, but I would also
15 have to focus on the if in your statement. If those
16 other agreements aren't interconnection agreements, then
17 I don't have the same kind of an objection as I do if
18 they are. And it's our company's position that they do
19 fall under the federal law in terms of the obligation to
20 negotiate for interconnection and the other elements
21 that are part of the federal law.

22 Q. In general, what distinguishes as a factual
23 matter those other agreements that you say need to be
24 filed because they are interconnection agreements from
25 this one; what are the sorts of things that cause an

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1 agreement to fall over into the category of agreements
2 that need to be filed?

3 A. Well, I think in short whether or not it's
4 required for -- if it's required under the federal law
5 as part of the Local Competition Act that envisions the
6 interconnection agreement in either the negotiation or
7 the arbitration of that agreement as forming the basis
8 for local competition occurring on a going forward
9 basis. What I would characterize as a business
10 agreement, which is what I view the Qwest/U S West
11 merger agreement that AT&T made with it, there are
12 business agreements that involve again billing disputes
13 is the first one that comes to mind because I have seen
14 some of those between AT&T and Qwest, and I think that
15 there is a difference between the basic business
16 agreement, if you will, and the obligation for an
17 interconnection agreement under the federal act, and I
18 think that those are two very distinct kinds of
19 agreements. And that is where my position comes into
20 play is that the agreement that's obligated under
21 federal law to facilitate local competition is a very
22 separate -- is a very -- is very special if you will, a
23 special, distinct, and unique kind of agreement separate
24 and apart from the business agreement.

25 Q. Your testimony, Exhibit 1640, page 2, says

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1 that your affidavit contains new information, and your
2 the last sentence on page 2 says:

3 These latest incidents have all occurred
4 after the previous hearing last summer.

5 And I wanted to ask you a little bit about
6 the timing, because it appeared to me that several of
7 these, of the underlying incidents, occurred before last
8 summer. Some facts may or may not have come to light
9 after last summer, but it's not clear to me reading the
10 testimony whether you intend that sentence to mean that
11 you're only focusing on incidents that occurred after
12 last summer.

13 A. Okay, the purpose --

14 Q. In the real world.

15 A. The purpose of that sentence was to focus on
16 information that became known publicly after the July
17 2001 hearings occurred here in Washington.

18 Q. All right. Then with respect to the
19 agreements that you cite or that are in our record, what
20 ones actually deal with incidents that occurred prior to
21 last summer as opposed to coming to light after last
22 summer?

23 A. Unfortunately, I can't answer your question,
24 because I'm not -- I don't have all of those agreements,
25 I believe there's 11 of them, and I apologize for not

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1 being able to answer your question, but we only became
2 aware of the existence of the agreements after the
3 department of Minnesota, the department of commerce in
4 Minnesota filed their complaint in February, so some of
5 the secret agreements may predate, well, they all do
6 predate the filing of the actual complaint.

7 Q. The filing of what complaint?

8 A. The department of commerce's complaint in
9 Minnesota, which was filed February of 2002.

10 Q. All right. I thought another point you made
11 was that there are quid pro quos about not opposing 271
12 application; am I right on that?

13 A. Yes, that was part of the letter agreement,
14 what is called the letter agreement dated November 15th,
15 2000, between Eschelon and Qwest.

16 Q. And can you point me to that document?

17 A. I don't know where it is in your order of
18 documents, but it is dated November 15th, 2000, and it's
19 a letter written to Richard Smith.

20 JUDGE RENDAHL: Does it also have an Exhibit
21 3 at the top?

22 THE WITNESS: I'm sorry, it has an Exhibit 3
23 in upper right-hand corner. Thank you.

24 CHAIRWOMAN SHOWALTER: That is the one we
25 were just looking at, I think.

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1 JUDGE RENDAHL: Yes.

2 BY CHAIRWOMAN SHOWALTER:

3 Q. Because it appeared to me that most of them,
4 I can't say I have read every word of every agreement,
5 but it appeared to me that most of them if they
6 mentioned some kind of quid pro quo at all it was about
7 the merger or not 271, that many of these were entered
8 into before or around the time of the merger.

9 A. I will accept that, and the one that we're
10 looking -- that I'm looking at here though, which is
11 your Exhibit 3, is very specific to 271.

12 Q. Well, just then before I leave that topic, is
13 it your view that only if it's an agreement that ought
14 to have been filed as an interconnection agreement
15 coupled with a quid pro quo that it then demonstrates
16 evidence that Qwest should not receive 271 approval?

17 A. If I may, it's -- the objection is that any
18 interconnection, first of all, is that any
19 interconnection agreement should be filed, because there
20 should be nondiscriminatory treatment and the ability to
21 pick and choose, so that is -- that's the base line for
22 me. And then secondly, some of those agreements have
23 also implicated, as in the case of the one that I'm
24 looking at that's dated November 15th, have also
25 implicated not appearing in 271. And so the fact that

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1 -- and so what's essential for me is first of all the
2 fact that there's an interconnection agreement that
3 wasn't filed. That in and of itself, putting the 271
4 agreement not to participate in 271 aside for the
5 moment, the fact that an interconnection agreement is
6 executed and not filed, that's the base line of what I
7 think is improper, unlawful behavior, because there's
8 some discrimination going on. Another CLEC might have
9 wanted to pick and choose an aspect of that
10 interconnection agreement that they weren't able to.

11 Q. All right, but then you are saying the fact
12 that an interconnection agreement was executed, but
13 isn't the fact a question of fact and, in fact, a
14 contested question of fact?

15 A. Yes, it appears that it is.

16 Q. And do you propose that we just accept what
17 the Minnesota commission found because it's the
18 Minnesota commission?

19 A. No, I do not, I propose that you conduct your
20 own investigation and that you have that authority and I
21 would hope that curiosity to know about secret
22 interconnection agreements in Washington. So I wouldn't
23 propose that you just merely accept the department of
24 commerce's complaint and whatever the Minnesota
25 commission rules. I certainly think that this

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1 Commission can conduct its own investigation.

2 Q. But other than bringing us information about
3 what's going on in the Minnesota commission, AT&T itself
4 did not bring these facts or contested facts before us,
5 did it?

6 A. With all due respect, I don't think we can.
7 I don't think we have that information. We don't know.
8 AT&T is not in a position to know where Qwest has
9 entered into a secret interconnection agreement or how
10 many there may be or where they may be. So what I
11 wanted to do was bring you an awareness of the issue
12 using Minnesota as an example, and in the end, I believe
13 it's your decision whether or not this is a topic that
14 you are going to -- that it's a topic that you care
15 about. I wanted to bring it to you, to discuss it, but
16 in the end, I think it's something that this Commission
17 can or can not decide they want to do.

18 Q. Okay. Well, turning to the UNE-P testing in
19 Minnesota that's part of your testimony on pages 4 and
20 5, what are we supposed to do with this information?
21 You have brought a complaint I gather in Minnesota that
22 resulted in a ruling by them on April 30th, 2001. If
23 the underlying facts are relevant to us in this state,
24 why hasn't AT&T brought it directly in front of us as a
25 contemporaneous event?

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1 A. That's a fair question. We have not
2 requested that same testing here in Washington, so in
3 terms of this actual UNE-P testing case in Minnesota,
4 there isn't anything that I am asking in the context of
5 that particular case. This was an issue that I wished
6 to bring to your attention that supported my testimony
7 that there is a multistate pattern of anticompetitive
8 behavior and attitude within the Qwest organization, and
9 that was the purpose of the testimony.

10 CHAIRWOMAN SHOWALTER: Okay, I have no
11 further questions.

12 COMMISSIONER HEMSTAD: I don't have any
13 questions.

14 COMMISSIONER OSHIE: No questions.

15 JUDGE RENDAHL: Okay.

16 Any redirect for this witness?

17 MR. WITT: No, thank you, Your Honor. I
18 would ask that the witness be excused at this time.

19 JUDGE RENDAHL: Okay, I think since we are
20 done with questioning, you are excused, Ms. Roth, and
21 let's take a ten minute recess while we bring
22 Mr. Teitzel on and be off the record.

23 MR. WITT: If I may, just to make certain,
24 it's not necessary for me to move the admission of any
25 of the witness's exhibits or her testimony, I understand

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1 that they have already been admitted into evidence; am I
2 correct there?

3 JUDGE RENDAHL: Correct, all of the exhibits
4 that we marked in the pre-hearing conference and
5 subsequently have been admitted this morning.

6 MR. WITT: Thank you very much.

7 JUDGE RENDAHL: Okay, we'll be off the
8 record.

9 (Recess taken.)

10

11

12

13 JUDGE RENDAHL: Mr. Teitzel, you were also
14 here in June or July, I guess July of last year, but I
15 will also swear you in for purposes of this proceeding.

16 MR. TEITZEL: Yes, Your Honor.

17 JUDGE RENDAHL: And so we're going to start
18 with cross by Mr. Cromwell and then proceed to Mr. Witt,
19 so we will be back on the record if we're not already.

20 And, Mr. Teitzel, if you could state your
21 full name for the record and your address as well.

22 MR. TEITZEL: Certainly. My name is David L.
23 Teitzel, that's spelled T-E-I-T-Z-E-L. I'm located at
24 Room 2904, 1600 Seventh Avenue in Seattle, Washington.
25 The zip code is 98191.

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1 JUDGE RENDAHL: Thank you.

2 Would you raise your right hand please.

3

4 Whereupon,

5 DAVID L. TEITZEL,

6 having been first duly sworn, was called as a witness

7 herein and was examined and testified as follows:

8

9 JUDGE RENDAHL: Go ahead, Mr. Cromwell.

10 MR. CROMWELL: Thank you, Your Honor. We had

11 scheduled time for Mr. Teitzel to provide an intro

12 summary if he desired. I didn't know -- I didn't want

13 to foreclose that if he would like to do that.

14 JUDGE RENDAHL: I'm sorry, I didn't mean to

15 foreclose that either, I jumped the gun there.

16 Please go ahead with your summary,

17 Mr. Teitzel.

18 MR. TEITZEL: Thank you, Your Honor, and

19 thank you, commissioners, and I will try to be brief

20 with the summary.

21 And by way of introduction, the summary will

22 follow the framework of my rebuttal and surrebuttal

23 testimony I filed in this docket. And I think the

24 overriding goal of this hearing today and the bottom

25 line of my public interest testimony is to determine

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1 whether or not customers in Washington here will benefit
2 from Qwest's interLATA entry. I think we presented
3 evidence that that certainly will happen, the customers
4 will see tangible benefits.

5 I would like to just quickly correct
6 something for the record, if I could, and I heard
7 Ms. Roth testify a moment ago relative to the three part
8 public interest test that the FCC has outlined, and she
9 did not completely cite the first prong. Let me read
10 this into the record. This is found at page 2 of my
11 supplemental rebuttal starting at line 3. The full cite
12 of the first prong of the public interest test is
13 determining whether granting the application:

14 Is consistent with promoting competition
15 in the local and long distance
16 telecommunications markets, giving
17 substantial weight to Congress's
18 presumption that when a BOC is in
19 compliance with competitive checklist,
20 the local market is open and long
21 distance entry would benefit consumers.

22 I think that's important. The Track E
23 requirements in 271 speak to local exchange market
24 openness. We presented evidence in this docket and
25 previously that, in fact, those markets are open. The

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1 public interest requirements clearly say that BOC entry
2 in the interLATA market should result in benefits to
3 consumers both in the local and long distance markets,
4 as that cite reads. That cite, by the way, can be found
5 in Kansas Oklahoma, Paragraph 268, the Bell Atlantic New
6 York Order, in that FCC application, Paragraph 427. It
7 can also be found in the Texas order at Paragraph 416.

8 The second requirement is looking for
9 assurances that the market will stay open after Section
10 271 application is granted. And then the third, once
11 again found at page 2 of my testimony, is considering
12 whether there are any remaining "unusual circumstances"
13 that would make entry contrary to the public interest
14 under the particular circumstances.

15 Relative to the first prong, as I mentioned a
16 moment ago, there is competition in this market right
17 now today. Washington is a competitive market both in
18 the local and the long distance arena. I presented
19 evidence earlier that there are tens of thousands of
20 resold lines and service in Washington. There are tens
21 of thousands of unbundled network elements in this
22 state. There are certainly tens of thousands of local
23 exchange bypass lines in service in this state.
24 Competition is availing itself of all of the forms of
25 entry envisioned by Congress. Keep in mind that the

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1 checklist compliance is viewed as being strong evidence
2 that markets are open and that the BOC's entry is in the
3 public interest. Again, checklist compliance,
4 compliance is important to keep in mind. Keep in mind
5 also that competition must be more than de minimus in
6 this state, and once again we demonstrate that. Those
7 all relate to the first prong of the public interest
8 inquiry.

9 Relative to the second prong, to the extent
10 this Commission is satisfied that the Qwest performance
11 assurance plan or QPAP is satisfactory, that should be
12 considered as strong evidence that compliance will be
13 assured into the future. I know the QPAP is not
14 directly a focus of this phase of this proceeding, there
15 is a separate stand alone proceeding going on relative
16 to QPAP that the Commission will consider at its
17 conclusion. But again, to the extent you do find the
18 QPAP is satisfactory, that is strong probative evidence
19 that compliance will be assured. Also Section 271(d)(6)
20 of the Act is another tool to assure future compliance.
21 Section 271(d)(6) confers upon the FCC the ability to
22 the extent they find that a BOC has not complied with
23 the requirements of the Act to impose fines, other
24 penalties, to suspend the BOC's interLATA authority, and
25 ultimately to revoke that authority if the violation is

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1 serious.

2 In relative to unusual circumstances, that's
3 the primary focus I believe of our discussion here
4 today. As I believe you heard previously, the FCC has
5 approved now 11 271 applications. They reviewed many
6 more, and in none of those applications have I seen any
7 evidence that the FCC has found unusual circumstances
8 that would warrant denial of the petition. And
9 certainly I would maintain there are no unusual
10 circumstances in this state either that would warrant
11 denial. I think it's not surprising in the competitive
12 environment, and clearly the Washington telecom market
13 is a competitive environment, that competitors will have
14 disputes, and they will raise disputes, and I suspect
15 that will continue in the future. But I don't think
16 those disputes if they're certainly just brought and if
17 they're not verified and if they're not litigated and
18 proven that those disputes should have a bearing, a
19 material bearing, on your deliberations here in this
20 state.

21 In Colorado, Commissioner Gifford, who is the
22 chairman of the Colorado commission, reviewed many of
23 these same "unusual circumstances" that were brought
24 before the Colorado commission. And, in fact, we were
25 in front of that commission last week discussing these

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1 issues. Chairman Gifford has issued an order saying
2 that the "unusual circumstance" requirement of the third
3 prong of the FCC's three part test is not, to use his
4 term, the et cetera at the end of the 14 point
5 checklist. And what he's saying is that public interest
6 unusual circumstances can be an extremely broad thought,
7 an extremely broad concept, and he does not believe it
8 was Congress's intent nor the FCC's intent to make that
9 so broad as to be unmanageable. And I think we're on
10 the verge of having that problem in this docket today.

11 In my rebuttal testimony, I address a number
12 of issues that were brought up by the attorney general
13 and AT&T, including the Touch America complaints
14 regarding IRUs or indefeasible rights of use. Very
15 briefly, those are contracts that provide fiber
16 capacity, both a dark fiber and lit fiber capacity, to
17 other providers. Qwest strongly maintains that engaging
18 in those sorts of contracts is not a form of carrying
19 interLATA traffic in any way. It is the end user, the
20 recipient of that contract, who is providing the
21 ultimate functionality. Having said that, the Touch
22 America complaints, as you heard earlier, are the
23 subject of existing ongoing proceedings at the FCC.
24 They're being considered separately. They're certainly
25 not anywhere near concluded. Qwest strongly maintains

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1 that we are not providing interLATA service in any way
2 through IRUs, and we think that the Touch America
3 complaint is without merit.

4 Another issue that was discussed today was
5 the Minnesota UNE-P testing dispute. That was a dispute
6 brought by AT&T regarding about 1,000 UNE-P circuits
7 that they approached Qwest to engage in a testing of
8 wholesale systems and processes to ensure that UNE-P was
9 provided fully and fairly and equitably in Minnesota.
10 Qwest's position very briefly was that if we were to
11 engage in UNE-P testing per the AT&T request, that was
12 really duplicative with the OSS testing process, which
13 was ongoing, which was designed to accomplish and test
14 and measure precisely the same thing as AT&T was asking
15 for. We disagreed that it was warranted. Obviously
16 there was a complaint brought. The Minnesota staff
17 agreed with the Qwest's position. You heard today that
18 the ALJ has issued a decision. Certainly Qwest would
19 not agree with that decision either, but having said all
20 of those things, it's a Minnesota dispute. UNE-P
21 testing has not been asked for by AT&T in this state. I
22 believe, as I testified in my written testimony and
23 rebuttal, that it's really a separate issue from
24 Washington, a stand alone issue, it should not have
25 bearing on this proceeding in this state.

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1 Relative to local service freezes, another
2 issue brought up by AT&T in their testimony, local
3 service freezes are a subject of an AT&T complaint
4 that's ongoing now. It has not been litigated, it has
5 not been decided. I think it's important to keep in
6 mind that local service freezes are required by law in
7 this state. Qwest implemented local service freezes
8 about one year ago. Until very recently, there have
9 been no complaints about local service freezes. I think
10 local service freezes and AT&T's complaint around those
11 here are simply nothing more than an effort to expand
12 the unusual circumstances scope extremely broadly and I
13 would maintain too broadly.

14 Relative to the E-Mail by a Qwest employee
15 relative to Covad that we heard discussed earlier, the
16 author of that E-Mail was a grade 5 manager. At Qwest
17 we have several grades of management. Grade 4 is we
18 call it a first level manager. A grade 5 is a second
19 level manager. This person was and is a grade 5
20 manager. She was in the competitive intelligence
21 organization when she wrote that memo. It was written
22 to a group of internal Qwest employees. As was heard
23 this morning, Qwest has apologized for the language used
24 in her E-Mail message. It was her opinion as a grade 5
25 manager, and I think it was somewhat written tongue in

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1 cheek. But once again, we think it was not appropriate,
2 we have apologized for it. But I would maintain to you
3 that it is not an indication of a systemic thought
4 process or set of opinions from lowest levels of
5 management through top levels of management. That just
6 is not the case.

7 We heard some issues discussed today by AT&T
8 regarding SGAT language. Again, I would suggest to you
9 that SGAT language is being considered in other phases
10 of this proceeding, of this 271 docket, specifically the
11 general terms and conditions phases. It's really a
12 non-issue, I believe, because ultimately you the
13 Commission have the final authority on what that SGAT
14 language says. To the extent that you're satisfied that
15 it's fair, that it's supportive of competition, I think
16 that resolves this concern, and it should not be a
17 public interest issue at all.

18 And finally, we heard some criticism of the
19 Dr. Hausman study. Dr. Hausman is an economist with
20 MIT. Qwest contracted with Dr. Hausman to do a study of
21 the effects of BOC interLATA entry in both New York and
22 Texas, and Dr. Hausman undertook that study on that
23 basis. It's interesting that I did not cite
24 Dr. Hausman's study in my testimony in this proceeding,
25 either in my direct or my rebuttal testimony. AT&T

1 perceived that we were using the Dr. Hausman study in
2 testimony in other states and imported that criticism
3 here even though that study wasn't on the record. At
4 page 23 of my supplemental rebuttal testimony, I list
5 several bullet points starting at page 23 running onto
6 page 24 as to why Dr. Hausman's study is reasonable, and
7 I won't belabor the record here with that detail now.

8 I would like to just say that simply what
9 Dr. Hausman did was select a sample of customer bills,
10 about 1,000 customer bills, in both New York and Texas,
11 preBOC entry into the interLATA market, and compared
12 those to customer bills post BOC entry. And he compared
13 -- he used California as a control state for Texas, did
14 the same bill sampling over the same period there. He
15 used Pennsylvania as a control state for New York and
16 did bill sampling on the same basis there. His
17 conclusions were that the impact of BOC interLATA entry
18 in New York and Texas on the customers' interLATA long
19 distance bill was anywhere between 10% and 20%. There
20 is an incremental 10% or 20% savings that he quantified.
21 And then he found that in those states there was an
22 incremental 4% savings in the local exchange bill.

23 I think it's interesting that Dr. Hausman's
24 conclusions line up closely with the conclusions by the
25 Telecommunications Research Action Center, and that

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1 acronym is TRAC, T-R-A-C. I did cite that in my
2 testimony, and TRAC also found that there were
3 comparable savings in those states. There are other
4 experts that have come to similar conclusions. Consumer
5 Federation of America is one that comes to mind. So
6 Dr. Hausman's methodology is well known, it's
7 reproduceable, it's based on a very reasonable, logical
8 analysis, and certainly Dr. Hausman stands by that
9 study, as does Qwest.

10 Let me just conclude my summary by saying the
11 fundamental concept about public interest is will
12 consumers benefit when a BOC enters the interLATA
13 market. Customers clearly want things from telecom
14 providers. They want convenience, they want simplicity,
15 they want to the extent they can get this one stop
16 shopping. We have done research that shows that
17 customers want that. I strongly suspect our competitors
18 have done the same research. In many instances today
19 customers get a bill from Qwest, a bill from an
20 interLATA carrier, possibly a bill from a DSL provider,
21 possibly a bill from a cable telephony provider, it's
22 very confusing, hard to sort out. We think that a very
23 tangible benefit from Qwest's entry into this interLATA
24 market will be another option of consolidation and
25 packaging for the customer.

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1 And also good value, we think customers
2 expect a good value, they want to see offers they think
3 are reasonable relative to the competition. In New York
4 when Verizon entered the market, they offered a any
5 time, any day, 10 cent an minute price for long
6 distance. We heard today that a similar price was
7 offered in Texas when SBC entered the market there. I
8 think you can expect those sorts of things in this state
9 as well, possibly not those specific price points, but
10 price points that customers are going to find
11 reasonable. And just logically Qwest is going to have
12 to offer reasonable prices and attractive prices if we
13 expect customers to be interested in our value
14 proposition. So certainly that's something we're
15 looking toward.

16 Mr. Munn mentioned briefly that WorldCom in
17 this state and in 35 other states in April announced
18 that they're rolling out the neighborhood package, as
19 they call it, which includes an access line, a
20 residential access line, a block of features, and
21 unlimited long distance. So once again, they have
22 identified this as a target market that they can have
23 success in, and they have aggressively rolled that out
24 in 36 states.

25 I think an important thing to keep in mind

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1 also is that we talked about AT&T's contention that this
2 proceeding is not about the long distance market. AT&T
3 would have you believe the long distance market is
4 already competitive enough. But I would tell you that I
5 have seen studies, and I'm sure many of you have too,
6 that show that the long distance market is held by AT&T,
7 WorldCom, and Sprint. I should say those three hold
8 about 60% to 70% of the interLATA market collectively.
9 I think when you reflect back on February of 2002 when
10 the big three raised interLATA long distance prices
11 virtually in lock step, it would suggest that another
12 large competitor like Qwest, keeping in mind that
13 currently Qwest is the fourth largest interLATA long
14 distance carrier in the country, would represent a form
15 of price constraining competition, would represent
16 another viable option for the customer to choose in that
17 long distance market. I think that's important.

18 And I would just, in summary, I would like to
19 remind you that there is evidence on the record that
20 markets are open in this state, there is evidence on the
21 record now before you that Qwest has been in compliance
22 with 271 and 271 requirements, and certainly and most
23 importantly I maintain in my testimony and maintain
24 before you today that customers will see benefits in the
25 form of new packages, increased competition, and greater

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1 value if Qwest is allowed into the interLATA market in
2 Washington.

3 That concludes my summary, thank you.

4 JUDGE RENDAHL: Thank you, Mr. Teitzel.

5 Mr. Cromwell.

6 MR. CROMWELL: Thank you, Your Honor.

7

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

9 BY MR. CROMWELL:

10 Q. Good afternoon, Mr. Teitzel. My name is
11 Robert Cromwell. I'm with the Public Counsel section of
12 the Attorney General's Office.

13 A. Good to see you again, sir.

14 Q. And you, it's been six months.

15 A moment ago you identified in your
16 introduction some research that Qwest had done on what
17 consumers want; is that true?

18 A. Yes.

19 Q. Can you identify for us what reports or what
20 papers you are referring to?

21 A. I don't have those with me on the stand
22 today. If you would like, we can certainly supply those
23 as a late filed exhibit.

24 Q. Maybe --

25 A. There have been several research pieces.

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1 MR. CROMWELL: Maybe what would be best then
2 is to make a records requisition request then at this
3 point, Your Honor, for Qwest to produce the research
4 papers, white papers, whatever documents or supporting
5 papers Mr. Teitzel has premised his testimony to this
6 Commission on.

7 JUDGE RENDAHL: Let's be off the record for a
8 moment.

9 (Discussion off the record.)

10 JUDGE RENDAHL: We will designate this Record
11 Requisition Number 8, Mr. Cromwell's request for the
12 TRAC study I believe you identified in your testimony
13 just now and any other studies or white papers that
14 Qwest has conducted on this issue. Does that
15 characterize your --

16 MR. CROMWELL: I think that's fine, Your
17 Honor.

18 THE WITNESS: Certainly.

19 BY MR. CROMWELL:

20 Q. Well, that actually raises another point. As
21 I recall, you did refer to TRAC in your pre-filed
22 testimony last summer; is that correct?

23 A. Yes, I did.

24 Q. And are you familiar with the principals of
25 TRAC, the individuals who formed that organization and

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1 run it?

2 A. I have reviewed on the Web the principals, to
3 use your term, at TRAC. I don't have that on the stand
4 with me, but certainly that's available on the Web, on
5 line.

6 Q. Are you aware of the fact that they have
7 received a number of contracts with various RBOCs over
8 the years?

9 A. Yes.

10 Q. Moving on to your testimony, you agree that
11 the FCC has expressed interest in any unusual
12 circumstances that would weigh against an RBOC's 271
13 application; do you not?

14 A. Yes, I'm aware of that.

15 Q. And in your opinion, what would constitute
16 such an unusual circumstance that the FCC would wish to
17 take note of?

18 A. As I testified a moment ago, I have never
19 seen the FCC find that an unusual circumstance exists
20 that would warrant denial of a petition. I have not
21 seen one, I can't give you an example of what they have
22 found to be unusual. I would be speculating as to what
23 they might find to qualify as one.

24 Q. Thank you. I'm not asking you to speculate,
25 I'm asking you for your opinion as to what you might

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1 believe would constitute an unusual circumstance; can
2 you state an opinion on that?

3 A. I'm somewhat reluctant to state an opinion.
4 Again, I think it's a form of speculation. I don't mean
5 to be evasive, it would have to be something truly and
6 extremely unusual and I would say egregious for the FCC
7 to find it unusual.

8 Q. Well, let me give you some hypotheticals,
9 maybe that would be one way to push this out. Again,
10 hypothetically speaking, let's start at the extreme, if
11 there were some extreme act of criminal conduct on
12 behalf of an RBOC's employees in furtherance of a 271
13 application, would that be the kind of thing that you
14 think might constitute unusual circumstance?

15 MR. MUNN: Mr. Cromwell, excuse me. I just
16 need a clarification, Your Honor, is this question
17 addressing what the FCC would find, or is he just asking
18 this witness's opinion just as an employee of the
19 company?

20 JUDGE RENDAHL: I understood the question,
21 and Mr. Cromwell you can correct me if I misheard you,
22 but you were asking Mr. Teitzel for his opinion.

23 MR. CROMWELL: Yes.

24 JUDGE RENDAHL: As to what constitutes an
25 unusual circumstance.

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1 MR. CROMWELL: Yes, it was my understanding
2 that Qwest has proffered Mr. Teitzel as an expert
3 witness in this proceeding, and as such, he is qualified
4 to provide opinion testimony. I was merely attempting
5 to obtain an idea of what Mr. Teitzel might in his
6 opinion believe an unusual circumstance would be.

7 MR. MUNN: And my only clarification, I was
8 probably inartful in voicing that, is, is it his opinion
9 as to what the FCC would do, which would be speculation,
10 or just his opinion? I mean he can't act on it, but I
11 mean --

12 MR. CROMWELL: I guess once again --

13 MR. MUNN: -- that's where I'm having a
14 disconnect.

15 JUDGE RENDAHL: Mr. Cromwell, why don't you,
16 if you could, restate the question in a way that's clear
17 what you're asking.

18 MR. CROMWELL: I will restate my question. I
19 guess you can tell me if I'm unclear.

20 BY MR. CROMWELL:

21 Q. Mr. Teitzel, in your opinion, what do you
22 believe would constitute an unusual circumstance
23 relevant to the inquiry that this Commission is making
24 at this time?

25 A. As I testified a moment ago, I think it would

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1 have to be something extremely unusual and something
2 extremely egregious to qualify under that definition. I
3 can fabricate an example to illustrate what my opinion
4 of that might be, and strictly this is an opinion and
5 illustrative by way of example. One action that might
6 come to mind would be, for example, our chief executive
7 officer makes a disparaging remark against a prominent
8 competitor in a particular market suggesting that that
9 competitor may not be able to survive in that market for
10 long, and that has a demonstrable and provable impact on
11 competition in that market, and that competitor loses
12 customers because of that. In my mind, that could be
13 something that would be truly unusual and egregious and
14 would qualify under that definition.

15 Q. So in that example, it would be sort of a
16 disparagement to a competitor's disadvantage in the
17 market; is that your example?

18 A. My example I think was our CEO, actually
19 someone with extreme authority, the utmost authority in
20 our corporation, making that kind of damaging remark
21 that can be proven as causing material damage.

22 Q. A speaking agent?

23 A. Yes.

24 Q. In parlance. That's fine.

25 Would you believe that violations of federal

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1 law would constitute unusual circumstances?

2 A. Could you expand your question a bit, federal
3 law relative to a 271 requirement or any federal law?

4 Q. Well, sure, let's walk through it. Would you
5 consider it an unusual circumstance if an RBOC violated
6 the provisions of Section 271 at the same time it was
7 seeking the benefit of Section 271, if that were proven
8 by say the FCC or the Commission, would that constitute
9 an unusual circumstance in your opinion?

10 A. Again, I would speak from my own opinion, I'm
11 not speaking for the FCC certainly or attributing my
12 conclusion to them at all, but if there were a clear
13 egregious violation brought that was litigated and
14 proven and Qwest was found clearly to be in
15 noncompliance, my opinion would be that that could be
16 considered an unusual circumstance. That's strictly my
17 opinion.

18 Q. Thank you. And maybe to follow up on your
19 sort of request, what about other violations of federal
20 law unrelated to Section 271, for example, the security
21 laws that are enforced by the Securities and Exchange
22 Commission?

23 A. Mr. Cromwell, I'm not an attorney, and so any
24 opinion I advance would be as a lay person. And I would
25 say that if there was a violation that was maybe a minor

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1 violation but could be technically a violation of a
2 particular law or statute, that might not weigh against
3 the 271 favorable finding. So I would say it would
4 probably depend on again how serious the violation was
5 relative to its weight as a 271 issue.

6 Q. Well, let's take that one step further, what
7 if the violation of the Securities Act regulation was
8 relative to a product offering of Qwest's that directly
9 implicated its conduct under Section 271?

10 A. Can you give me an example?

11 Q. Certainly. An infeasible right of use is
12 an agreement that Qwest enters into with other parties;
13 is that correct?

14 A. It is a contract, that's correct.

15 Q. And it is Qwest's position that that contract
16 exchanges a right of use over network facilities; is
17 that Qwest's position?

18 A. I think Qwest's position is that an IRU is
19 equivalent to a network element. It does not -- can not
20 be interpreted that Qwest is directly carrying interLATA
21 traffic. It is conveying that to a second party.

22 Q. And it is also correct that there are
23 currently complaint proceedings at the FCC regarding
24 whether Qwest's use of IRU agreements, in fact, are a
25 provision of telecommunications services or not?

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1 A. That is correct.

2 Q. And it is also true that there is currently
3 an SEC investigation of Quest's accounting treatments of
4 IRU agreements; is that correct?

5 A. That's also correct.

6 Q. Are you familiar with the -- strike that.
7 On page 4 of your testimony, Exhibit 1655-T,
8 which has been admitted here, you allude to Qwest's
9 opponents ginning up public interest issues; do you not?

10 A. Yes, I do.

11 Q. Are you asserting that Public Counsel has
12 ginned up the IRU issue?

13 A. Just so I have the comment in context, would
14 you refer me to the line number so I can read the full
15 sentence, please.

16 Q. Sure.

17 A. Page 4 of my supplemental rebuttal?

18 Q. It is, yes, page 4 of your supplemental
19 rebuttal that has been admitted as 1655-T beginning on
20 line 11, the sentence begins, any other ruling.

21 A. I have that.

22 Q. My question to you, sir, is, are you
23 asserting that Public Counsel has, to use your phrase,
24 ginned up the IRU issue?

25 A. I don't believe I had Public Counsel

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1 specifically in mind when I wrote this sentence. In
2 fact, let me read the full sentence into the record for
3 context.

4 Any other ruling would permit Qwest's
5 opponents to gin up public interest
6 issues simply by filing complaints,
7 however unmeritorious or
8 unsubstantiated, then pointing to the
9 mere existence of those complaints as a
10 reason to delay the Section 271 process.

11 And I believe, unfortunately, that's what's
12 happening in this proceeding. As I mentioned, the
13 complaints are extremely broad and I think very
14 tangential to 271.

15 Q. Well, let me ask you a predicate question.
16 Your testimony addresses the comments, or in the case of
17 Ms. Roth her testimony, the comments of Public Counsel
18 and the testimony of Ms. Roth and no other party; is
19 that correct?

20 A. That's correct.

21 Q. And in the sense that you read aloud you
22 referred to Qwest's opponents; is that correct?

23 A. I did.

24 Q. Then I will restate my question. Are you
25 asserting that Public Counsel has ginned up the IRU

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1 issue, yes or no?

2 A. I'm not attributing that comment to Public
3 Counsel. I'm suggesting that if the Commission were to
4 find in favor hypothetically of the full gamut of
5 unusual circumstances that have been brought up before
6 them in this proceeding, it would encourage even more of
7 these sorts of challenges to be brought forward, even
8 though they may be without merit, have not been
9 litigated, have not been found against Qwest. I think
10 that's the risk and the danger in this proceeding.

11 Q. So is your answer no?

12 A. My answer is -- my answer is no, I was not
13 thinking of the Attorney General specifically when I
14 wrote that sentence.

15 Q. Are you asserting that Public Counsel has
16 ginned up the secret agreements issue, yes or no?

17 A. That was not my thought process when I wrote
18 that sentence, no.

19 Q. Are you asserting that Public Counsel has
20 ginned up the local freeze issue?

21 A. Once again, that was not my thought process
22 when I wrote the sentence. My thought process was in
23 the broad context that there was risk, and a very real
24 risk, of the unusual circumstance component of public
25 interest being interpreted so broadly that it would be

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1 unmanageable in this proceeding.

2 Q. So is your answer no?

3 A. Is my answer no relative to the Attorney
4 General; was that your question?

5 Q. I will restate the question. Yes or no, are
6 you asserting that Public Counsel has ginned up the
7 local freeze issue?

8 A. Again, I didn't attribute that comment
9 specifically to any party. I suggested Qwest's
10 opponents.

11 Q. And were you referring to the Attorney
12 General when you used that phrase?

13 A. I don't mean to be evasive, but I wasn't
14 specifically targeting that statement at the Attorney
15 General, no.

16 Q. And are you asserting that Public Counsel has
17 in the past ginned up the Centrex customer loyalty plan
18 issue?

19 A. Could you clarify your question; I am not
20 certain that Public Counsel has brought Centrex loyalty
21 up as a direct 271 unusual circumstance.

22 Q. Well, are you --

23 A. Are you referring to another proceeding?

24 Q. I'm referring to the order of this Commission
25 in this proceeding that ordered the Commission staff to

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1 initiate an investigation into the Centrex customer
2 loyalty plan and Qwest's use of that program; are you
3 familiar with that proceeding?

4 A. I'm aware that there is a separate proceeding
5 underway on that issue, yes.

6 Q. Are you aware that that proceeding has
7 concluded pursuant to a settlement between Qwest and
8 Commission staff?

9 A. Frankly, I was not aware of that.

10 Q. Would you accept subject to check that that
11 proceeding has ended and that the Commission has entered
12 an order finding that Qwest did engage in improper
13 conduct in its use of the Centrex customer loyalty plan?

14 A. I'm not aware of that, but I would accept
15 that subject to check.

16 Q. Thank you. Also on page 4 of your testimony,
17 you criticize Ms. Roth's use of the Selwyn analysis, as
18 you did in your introduction, and I quote, "as unsworn
19 and unverified", do you not?

20 A. Yes, I did.

21 Q. Are Mistrs Hausman, Leonard, or Sidak
22 present here today?

23 A. They are not.

24 Q. Do you have any affidavits from those three
25 gentlemen to offer as exhibits with you today?

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1 A. I do not.

2 Q. Do you have any independent peer review
3 publications of their analyses to submit into the
4 record?

5 A. I do not.

6 Q. In fact, your exhibit there, white paper
7 Exhibit 1656, the Hausman, Leonard, and Sidak white
8 paper, is itself unsworn and unverified, is it not?

9 A. It is. And just for the record, I would say
10 that it's important to keep in mind that I did not
11 introduce the Hausman study in this proceeding through
12 my direct or rebuttal testimony. It was introduced
13 strictly in response to AT&T's challenges.

14 Q. Has Qwest asked Dr. Hausman or anyone else to
15 examine the degree of competition in Qwest's local
16 markets?

17 A. Not specifically, no, at least not that I'm
18 aware of.

19 MR. CROMWELL: Your Honor, may I make another
20 records requisition request to have Mr. Teitzel when he
21 is back in his office determine whether Qwest has, in
22 fact, retained Dr. Hausman or anyone else to examine the
23 degree of competition in Qwest's local markets and for
24 him to produce such a document, if it exists.

25 JUDGE RENDAHL: That would be Records

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1 Requisition Number 9.

2 THE WITNESS: I'm sorry, Your Honor, if I
3 could, could I clarify?

4 JUDGE RENDAHL: Please go ahead.

5 THE WITNESS: I believe I heard Mr. Cromwell
6 say has Dr. Hausman or anyone else. Is the request, is
7 the record request to look for any study done over any
8 period of time about local competition? That's fairly
9 broad.

10 MR. CROMWELL: Is there a parameter that you
11 would like to put around that? I don't know that
12 Dr. Hausman studied local competition reports, if that's
13 what you relied upon, but you certainly retained him for
14 other things.

15 JUDGE RENDAHL: Let's be off the record for a
16 moment.

17 (Discussion off the record.)

18 JUDGE RENDAHL: Mr. Cromwell, actually,
19 Mr. Munn, if you could restate your objection.

20 MR. MUNN: Sure, I guess I'm objecting to the
21 request as it stands because it's overly broad in that
22 it's looking for any person and any study that person
23 would have generated about the local exchange market in
24 the state of Washington since 1996. I think the task
25 of finding all things compliant back to 1996 would be

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1 incredibly difficult, records retention issues, things
2 like that.

3 But secondly, just the relevance of this
4 inquiry, I mean I think it's, for showing the
5 competitive landscape in the Washington market, I think
6 that Qwest has presented evidence that addresses that
7 topic. It's our burdon to show. If we haven't shown
8 additional evidence to support that, I don't see why
9 that is incumbent on us to go through this process. I
10 mean I don't think it's a relevant inquiry or one that
11 it's appropriate to pose on the applicant in the
12 proceeding.

13 JUDGE RENDAHL: Mr. Cromwell, can you explain
14 the relevance of what you're asking for and essentially
15 an offer of proof.

16 MR. CROMWELL: Sure, I think first the
17 purpose of the Commission's inquiry in the public
18 interest under 271(d)(3)(c) is whether or not Qwest has
19 fully and irrevocably opened its local markets to
20 competition. We have talked about the three pronged
21 test and other issues around that, but fundamentally
22 that's what is required of Qwest prior to its entry into
23 the interLATA long distance market. Mr. Teitzel has
24 certainly last summer presented evidence supportive in
25 his position of Qwest's position. I think what makes

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1 any study they may have had performed regarding the
2 degree of competition in their local markets, and
3 specifically the Washington market if you like, after
4 1996 is that it would bear directly on the question of
5 what degree of competition exists. And perhaps its
6 relevance is that if it was not brought before the
7 Commission, if it were in fact unfavorable to Qwest's
8 position, it would not be at all incumbent for them not
9 to produce such a study in support of their case. In
10 fact, I would expect it. I think it's equally
11 appropriate for me to request it. And Mr. Teitzel has
12 offered as his Exhibit 1656 the Hausman letter and Sidak
13 study, which essentially focuses on the consumer
14 benefits in the long distance market. I think our
15 inquiry has largely focused on the question of whether
16 Qwest has fully and irrevocably opened its local markets
17 to competition, and that is why I think it is relevant
18 to this proceeding and the public interest inquiry.

19 MR. MUNN: Your Honor, may I briefly respond?

20 JUDGE RENDAHL: Very briefly.

21 MR. MUNN: I've had a forest from the trees
22 moment. This is not -- the purpose of this proceeding
23 is not to address all three prongs of the public
24 interest analysis. The purpose of this proceeding is to
25 address unusual circumstances that have arisen since the

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1 workshops that have already been conducted. The record
2 developed for the competitive landscape was developed
3 and been briefed and is already before this Commission.
4 That's not relevant to this proceeding today. And the
5 only reason that Mr. Teitzel attached Hausman is because
6 AT&T's testimony, they spend a lot of time taking shots
7 at something that's not even in the record. So it's
8 only offered to allow you to know what they're throwing
9 their hands up about. But we're not addressing the
10 competitive landscape again, redoing what we have
11 already done in Washington here, so I think it's
12 irrelevant.

13 JUDGE RENDAHL: Okay, thank you.

14 Let's be off the record for a moment.

15 (Discussion off the record.)

16 JUDGE RENDAHL: Mr. Cromwell, I'm going to
17 deny your request for this record requisition. First of
18 all, Mr. Munn is correct that this proceeding is limited
19 to the issues of unusual circumstances that came up
20 after the July workshop. And it appears that the
21 question you're asking is so broad that in a sense it's
22 a discovery request that could have been asked and maybe
23 should have been asked during our workshop. And so at
24 this point in the proceeding, I do not see the relevance
25 or the appropriateness of that request at this time, so

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1 it's denied.

2 MR. CROMWELL: May I revise it to the period
3 since the August hearing?

4 JUDGE RENDAHL: I guess the question is does
5 that go to the unusual circumstances issue?

6 MR. CROMWELL: I think that would depend upon
7 the content of any such report, if one exists.

8 JUDGE RENDAHL: I think that the focus of
9 this proceeding is on the unusual circumstances, not on
10 the market opening issues that were discussed in the
11 summer, and so I don't think it's an appropriate
12 question at this time.

13 MR. CROMWELL: Okay, thank you.

14 BY MR. CROMWELL:

15 Q. Mr. Teitzel, on page 6 of your testimony at
16 line 12, you criticize the filings of Public Counsel and
17 AT&T as unsupported by factual proof; do you not?

18 A. Yes, I do.

19 Q. And at the bottom of that page and carrying
20 on to page 7, you assert that, and I quote:

21 As in any litigation, once the plaintiff
22 has established a prima facie case for
23 relief, the other side must prove and
24 may not simply allege a defense or
25 rebuttal.

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1 That is your statement, correct?

2 A. Yes, it is.

3 Q. Did you write that, or did you consult with
4 an attorney regarding that statement?

5 A. I consulted with an attorney, as I often do
6 in preparing my testimony.

7 Q. Fair enough. And yet this proceeding is not
8 a traditionally litigated proceeding, is it?

9 A. It is not traditionally litigated in the
10 sense of a contested court case, that's true.

11 Q. And you aware of any Commission order stating
12 that Qwest has established its prima facie case that its
13 application is in the public interest?

14 A. Just to clarify, are you asking the question
15 in the context of Washington or any other state in which
16 Qwest may be active with its applications?

17 Q. Thank you, that was imprecise of me. Let me
18 restate the question.

19 Are you aware of any Washington Utility and
20 Transportation Commission order stating that Qwest has
21 established its prima facie case that its application
22 pursuant to 271 of the Telecommunications Act is in the
23 public interest?

24 A. I don't recall those precise words in an
25 order, no.

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1 Q. And, in fact, the orders this Commission has
2 entered have essentially said that it's too soon to make
3 such a determination based on the record currently
4 before it; isn't that correct?

5 A. That's the general context of those orders,
6 yes.

7 Q. And that wasn't the position that Qwest was
8 urging upon the Commission last summer, is it?

9 A. That position was -- would you clarify,
10 please?

11 Q. Yes. Isn't it true that last summer Qwest
12 was urging the Commission to make a finding that its
13 application was in the public interest based on the
14 evidence Qwest was presenting to it last August?

15 A. I think our petition did request that there
16 be a finding that Qwest's application is in the public
17 interest, with the caveat certainly that we recognize
18 the Commission could not go to the FCC with a favorable
19 recommendation until all the elements of this
20 application were satisfied, including the QPAP,
21 including the 14 point checklist, including the OSS
22 testing, et cetera. We recognized that.

23 Q. Thank you. And going back to the question of
24 lack of factual proof, would you agree that it would be
25 logical for this Commission to complete all inquiries

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1 regarding alleged anticompetitive conduct prior to
2 making a public interest determination so that there is,
3 in fact, such factual proof for such a determination?

4 A. I would suggest that to the extent that all
5 of the requirements are satisfied in a 271 petition,
6 let's say Qwest's petition in this state, and there were
7 circumstance brought forward through the Commission
8 itself or through the court that might be characterized
9 as an unusual circumstance that might take a year or
10 possibly two years to battle through the system, I think
11 that would be unreasonable to place a hold on Qwest's
12 petition because there were those unlitigated and
13 unverified allegations out there. That's the position I
14 took in my surrebuttal testimony, and I stand by that.

15 Q. So is it your position that even if there
16 were an unusual circumstance being litigated, and let's
17 go back to your prior stated opinion, Mr. Nacchio makes
18 a statement disparaging a competitor --

19 A. I didn't say Mr. Nacchio --

20 Q. An unnamed RBOC chief executive officer then,
21 if you prefer, that it would be unreasonable to place a
22 hold on that RBOC's 271 application while that issue
23 were litigated; is that your position?

24 A. I think my position would be, Mr. Cromwell,
25 if there was an allegation of misconduct or misdoing out

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1 there that was being brought forward as in opposition to
2 Qwest's 271 application, just the mere fact that it had
3 been alleged and the party alleging may say that there
4 are facts behind that that have not been proven in any
5 forum, I think it's inappropriate that Qwest's
6 application should be held up in that event.

7 Q. On page 8 of your testimony, you discuss the
8 Touch America IRU complaint, do you not?

9 A. Yes, I do.

10 Q. And on page 9, you cite to a quote of the FCC
11 regarding a one time transfer of ownership and control,
12 do you not?

13 A. Yes, I do.

14 Q. Is it your opinion that a lease constitutes a
15 one time transfer of ownership and control?

16 A. To be frank with you, I'm not an attorney, I
17 think there is very heavily interlaced in your question
18 a legal interpretation, and any answer I give would be
19 strictly as a lay person, so I'm hesitant to issue an
20 opinion, a legal opinion, on your question.

21 Q. And I'm not asking you to do that, express a
22 legal opinion. Perhaps I should ask you some
23 foundational questions.

24 You testified regarding the IRU agreements
25 that are the subject of the Touch America complaint in

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1 your testimony here, didn't you?

2 A. Yes, I did.

3 Q. What is your understanding of what an IRU
4 agreement is?

5 A. An IRU is essentially a contract between
6 Qwest and another party in which the other party is
7 purchasing, for lack of a better term, some capacity,
8 some bandwidth, typically on fiber. And that might be
9 either dark fiber, which means that there's no
10 electronics associated with that, and the party
11 purchasing that bandwidth from Qwest would provide that
12 functionality itself, or it could be lit capacity
13 bandwidth, in which it's buying capacity from Qwest
14 that's functional, that has the electronics associated
15 with it.

16 Q. Is it your understanding that those contracts
17 are not transferring ownership and control over the
18 network facilities that are the subject of that
19 contract?

20 A. Boy, again, I apologize, I think there's a
21 legal connotation here, and I am reluctant to answer as
22 a non-attorney.

23 Q. Well, let me ask you, is it your
24 understanding that an IRU agreement gives the other
25 party the fiber, let's hypothesize that it's a dark

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1 fiber agreement, that the other party that has ownership
2 over that dark fiber, and they can light it, they can
3 leave it dark, they can tear it out of the ground?

4 A. My understanding is it gives the other party
5 rights and control of that fiber, that they are the
6 party then that's taking that fiber and using it for
7 whatever purpose they might want to use it for.

8 Q. And is it your understanding that the IRU
9 agreements have a -- typically have a termination date
10 associated with them?

11 A. That's my understanding.

12 Q. So it's more analogous to say a lease than it
13 is a purchase?

14 MR. MUNN: And I will object to this
15 question, Mr. Cromwell is asking whether a particular
16 legal transaction should be characterized as a lease or
17 a purchase, this witness has already testified he's not
18 an attorney, there's no foundation for this witness to
19 answer the question, so I object, it calls for a legal
20 conclusion.

21 JUDGE RENDAHL: Mr. Cromwell, can you
22 rephrase your question in a way that the witness can
23 answer it.

24 MR. CROMWELL: Sure.

25 BY MR. CROMWELL:

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1 Q. Mr. Teitzel, do you own your home?

2 A. I'm still paying the bank for my home and
3 will be for many years as a matter of fact, so in that
4 sense I don't "own" my home. I own a significant
5 portion of my home.

6 Q. Did you sign a mortgage agreement?

7 A. I did.

8 Q. And when you're done paying those payments
9 and you have a party to burn that particular document,
10 do you expect to own your home?

11 A. Even then it's a subjective term. There are
12 taxes to be considered and that sort of thing. But
13 certainly to the extent the mortgage was paid, the home
14 would belong to me entirely.

15 Q. And at another portion of your life have you
16 perhaps leased a home or an apartment?

17 A. I have rented a home at a previous point.

18 Q. And was your understanding of the rights you
19 had at that time that those rights were limited as to
20 that rented home?

21 A. Certainly the rights were limited. There's
22 certainly things that I would not be able to do under
23 the terms of the rent agreement for that particular
24 home, issues about damage, et cetera.

25 Q. And in your opinion, would an IRU agreement

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1 that Qwest might exercise with some third party be
2 similar to your lease of the home that you had at one
3 point in time or more similar to the mortgage purchase
4 that you have transacted on the home you currently have?

5 A. I believe the IRU agreements in many
6 instances can be a lot more complicated than a simple
7 rental agreement. In a very course sense, I suppose a
8 parallel could be drawn, but I think IRUs can be
9 transacted in other ways with large up front cash
10 payments and that sort of thing also.

11 Q. But they do typically have a termination date
12 associated with them?

13 A. That's my understanding.

14 Q. Thank you. Last summer, did you read
15 Dr. Cooper's pre-filed testimony submitted by Public
16 Counsel?

17 A. Yes, I did.

18 Q. And you were present and heard his oral
19 testimony and cross-examination at the fourth workshop
20 last August?

21 A. Yes, I did.

22 Q. And you read the brief Public Counsel filed
23 in September?

24 A. I did.

25 Q. And you read the comments we filed more

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1 recently, I believe last month?

2 A. I did.

3 Q. Can you point this Commission to any of those
4 documents or the transcript that would state that
5 Qwest's entry into the long distance market would be
6 harmful to consumers of long distance products?

7 A. To be honest with you, I don't have those
8 documents in front of me on the stand. I would have to
9 review them for those sorts of cites. I don't recall
10 the specific cite, but I'm not testifying as I sit here
11 that they don't exist.

12 Q. Will you accept subject to check that Public
13 Counsel has not taken the position in this proceeding
14 that Qwest's entry into the long distance market would
15 be harmful to consumers of long distance products?

16 A. I would accept that subject to check, and I
17 will check that.

18 Q. Isn't it true that Public Counsel's position
19 in this proceeding has been focused on the local
20 markets, specifically whether or not Qwest has fully and
21 irrevocably opened its local markets to competition and
22 any relevant anticompetitive conduct that may have
23 occurred in those markets; isn't that also true?

24 MR. MUNN: Your Honor, I will object at this
25 point. We're again going into workshop testimony, and

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1 we have been for many questions. That is not the scope
2 of this proceeding, which is to address new unusual
3 circumstances that are on the record, not the
4 competitive landscape discussion that occurred last
5 summer.

6 JUDGE RENDAHL: Mr. Cromwell, to the extent
7 that Public Counsel's submissions state what they state,
8 I think they will speak for themselves. I'm not sure we
9 need to get that through this witness.

10 MR. CROMWELL: Okay. Thank you, Your Honor,
11 I have no further questions.

12 JUDGE RENDAHL: Mr. Witt, it's your turn.

13 MR. WITT: Thank you, Your Honor, members of
14 the Commission, good afternoon.

15

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

17 BY MR. WITT:

18 Q. Good afternoon, Mr. Teitzel.

19 A. Good afternoon, sir.

20 Q. Mr. Teitzel, if I could begin on page 3 of
21 your supplemental rebuttal affidavit, which is
22 Exhibit --

23 JUDGE RENDAHL: 1655-T.

24 MR. WITT: Thank you, Your Honor.

25 BY MR. WITT:

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1 Q. On line --

2 JUDGE RENDAHL: Can you make sure that your
3 microphone is on. The button should be up.

4 MR. WITT: I think now it is on.

5 JUDGE RENDAHL: Okay, and close to your face,
6 thank you.

7 MR. WITT: Thank you very much.

8 BY MR. WITT:

9 Q. On line 7, you begin discussing the quality,
10 or excuse me, Qwest's performance assurance plan.

11 A. That's correct.

12 Q. Now in your previous testimony, you indicated
13 that this Commission should rely on the QPAP, on FCC
14 authority to revoke 271 authority and also to impose
15 other penalties. In fact, those are the two things that
16 you mentioned in your summary as providing this
17 Commission with assurances that the market, the local
18 exchange market, will remain open; am I correct?

19 A. You are correct.

20 Q. Did you previously testify that antitrust
21 liability and other civil liability might also be
22 something that the Commission should consider?

23 A. Quite frankly, I'm trying to recall. It
24 seems like an awfully long time ago now since I filed my
25 direct, but --

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1 Q. And, Mr. Teitzel, I don't mean to interrupt
2 you, but the whole purpose of my question is to
3 determine if anything has changed since you filed your
4 previous testimony, so that's the only thing that I'm
5 looking for here.

6 A. Nothing has changed since then.

7 Q. But you don't recall as to whether or not you
8 encouraged the Commission to rely upon civil liability
9 as one factor in making certain that the local exchange
10 market remained open?

11 A. Well, I think in that context, civil action,
12 if there is an action that Qwest would take, is always
13 going to be a possible course of action if someone is
14 harmed by Qwest or any other provider in this state.

15 Q. Do you regard civil liability, including
16 antitrust liability, to be a viable option for a lot of
17 CLECs in the event that they have a grievance with
18 Qwest?

19 A. I think certainly --

20 MR. MUNN: Your Honor, I'm going to object to
21 this question to the extent it's addressing issues that
22 are addressed by the QPAP, because this witness is not a
23 witness that's familiar with the QPAP nor its
24 implications on any type of antitrust or civil actions,
25 if any. So I guess I don't have an objection to him

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1 answering the question with that caveat in mind.

2 JUDGE RENDAHL: Well, let's --

3 MR. MUNN: But I don't want there to be some
4 misimpression on the record that Mr. Teitzel is
5 evaluating the effect of the QPAP or the proposed QPAP
6 that's been presented to this Commission as it relates
7 to any other types of cause of action.

8 JUDGE RENDAHL: Mr. Witt, if you can rephrase
9 your question to make clear what you're asking to the
10 witness. And I think in the interest of time, given the
11 discussions with Mr. Cromwell, please restrict your
12 questions to the extent that -- please restrict your
13 questions to the subjects in the testimony that was
14 provided to the hearing today. We are not here to
15 rehash anything from the past. I'm not suggesting that
16 that's what your question goes to, but I'm asking in
17 your questions if you can limit them to the discussion
18 today, that would be helpful.

19 MR. WITT: Thank you, Your Honor, I will
20 certainly do so.

21 BY MR. WITT:

22 Q. Mr. Teitzel, isn't it just a fact that
23 litigation of any kind is fairly expensive and may not
24 be a viable alternative for different CLECs in the event
25 that they have a grievance against Qwest?

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1 A. I'm reluctant to give just a yes or no answer
2 to that. It's a broad question. I think it would
3 depend on the type of litigation that was brought, what
4 the complaint is, how many facts are at issue. It may
5 or may not be an option in view of those things.

6 Q. I guess that's really my question, are there
7 circumstances under which it would not be an option, and
8 it sounds like you're saying yes?

9 A. Not knowing the particular example, it would
10 be difficult to say yes or no. If there were an
11 extremely slow start up, required to invest \$5 Million
12 in an investigation, that could be a problem for that
13 CLEC in that example.

14 Q. Thank you. Now let's focus for a minute now
15 on the QPAP, and also with regard to your testimony, one
16 of the things that you address are the what I call the
17 secret agreements and I think what you might call the
18 unfiled agreements. Is there anything in the QPAP that
19 you're aware of that would have either prevented those
20 unfiled agreements from becoming an issue or would have
21 imposed some kind of penalty for them once they did
22 become an issue?

23 MR. MUNN: Your Honor, I'm going to object at
24 this point that this witness provides no testimony about
25 the substance of the QPAP. There's no foundation that

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1 he has knowledge about the substance of the QPAP.
2 Additionally, this witness's testimony does not address
3 the 1 1/2 pages of factual recitation of the BOC's
4 complaint on unfiled agreements, so both prongs of this
5 question are beyond the scope of this witness's
6 pre-filed testimony.

7 JUDGE RENDAHL: Well, concerning the QPAP, I
8 was wondering the same question myself, Mr. Witt. Is
9 there some -- well, I guess maybe can you tell us where
10 you're going here with the QPAP. I'm not sure that it's
11 entirely relevant to this issue, unusual circumstances.

12 MR. WITT: Your Honor, I would be most happy
13 to do that. In fact, I'm not going that far.
14 Essentially my question, if I may, is, is there anything
15 in the QPAP that would have prevented these unfiled
16 agreements from having become an issue. In other words,
17 is there anything in the QPAP that deals with unfiled or
18 secret agreements.

19 JUDGE RENDAHL: And I guess I have heard from
20 Qwest that this is not the witness, he's not a QPAP
21 witness, per se, but --

22 CHAIRWOMAN SHOWALTER: Well, and that he
23 wasn't -- also didn't testify as to the agreement.

24 MR. MUNN: That's correct, so both prongs of
25 his question are beyond this witness's testimony.

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1 JUDGE RENDAHL: So I guess I'm not seeing the
2 relevance of the question for this witness.

3 MR. WITT: I will move on, Your Honor, thank
4 you very much.

5 BY MR. WITT:

6 Q. Mr. Teitzel, is it your position that the
7 Touch America complaint does not constitute or amount to
8 unusual circumstances which this Commission should
9 consider in the public interest portion of these
10 proceedings?

11 A. Mr. Witt, clearly it's Qwest's position that
12 we have done nothing wrong in that Touch America
13 complaint. Touch America has brought forward a series
14 of allegations, they're being considered by the FCC, we
15 think we have a strong position. I don't believe that
16 is an unusual circumstance that should have a bearing on
17 this proceeding or process.

18 Q. So your answer is no?

19 A. My answer is no.

20 Q. Okay. Is there any other RBOC that's being
21 -- that's subject to this kind of a complaint by any
22 other party that you're aware of?

23 A. If there is, I'm not aware of it personally.

24 Q. So could you characterize the Touch America
25 complaint as being unique?

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1 A. In the very narrow context of the Touch
2 America IRU complaint, I'm not aware of another one
3 precisely like that. But similarly I would say that
4 there are many complaints brought up in many BOCs across
5 the country and against many BOCs across the country
6 that may not apply to other BOCs elsewhere in the
7 country. Each complaint could be unique.

8 MR. WITT: Your Honor, I would like to take a
9 moment and ask the Commission to take administrative
10 notice of the existence of an SEC investigation into
11 Qwest and their reporting of various accounting and
12 securities matters. Is that appropriate at this time,
13 Your Honor?

14 JUDGE RENDAHL: Let's be off the record for a
15 moment.

16 (Discussion off the record.)

17 JUDGE RENDAHL: Mr. Witt, do you have a
18 document that you wish us to look at at this time?

19 MR. WITT: No, Your Honor. My intentions are
20 far simpler and not that extravagant. I'm simply aware
21 that there's been a very highly publicized SEC
22 investigation into the activities and the recording and
23 reporting activities of Qwest, and I'm simply asking if
24 the Commission will take administrative notice of the
25 existence of that investigation.

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1 MR. MUNN: Your Honor, may I respond?

2 JUDGE RENDAHL: Please.

3 MR. MUNN: The first point is relevance,
4 whether Qwest is required to restate its earnings for
5 investors, I don't see the relevance or connection to
6 this hearing dealing with Section 271. Secondly, it's
7 just a procedural matter. This issue, as I'm sure
8 hasn't escaped your notice, has not been raised by AT&T
9 in its April 19th filing, which is specifically designed
10 to address unusual circumstances so that Qwest can
11 provide a response if one is needed based on what they
12 filed, or they also didn't raise it in their rebuttal or
13 surrebuttal testimony either. So I mean clearly this
14 was an issue they were aware of and haven't raised, so
15 for relevance and this procedural issue, we object to
16 this request.

17 JUDGE RENDAHL: I think there is a timeliness
18 issue there, and I tend to agree, and that this is
19 something that is ongoing and could have been raised in
20 Ms. Roth's testimony. And without something concrete
21 for us to look at right now and for Qwest to look at and
22 be able to respond, right now I don't think it's
23 appropriate for the Commission to take administrative
24 notice of something like that for purposes of discussion
25 today.

1 MR. WITT: Very well, thank you.

2 BY MR. WITT:

3 Q. If I may then, perhaps I can couch this in
4 terms of a hypothetical. Mr. Teitzel, you responded to
5 Mr. Cromwell's questions with regard to exactly what
6 might be -- what might constitute an unusual
7 circumstance in the context of these proceedings. Do
8 you recall that question?

9 A. I do.

10 Q. Or those questions, excuse me.

11 A. I do.

12 Q. If a particular RBOC were the subject of an
13 SEC investigation into its reporting standards, do you
14 think that that would be an unusual circumstance that
15 this particular -- that this Commission should consider
16 in this particular case?

17 A. I don't think so. I think an SEC
18 investigation, using your hypothetical, and I would
19 stress that, speaks to accounting practices, how
20 revenues might be booked and recorded. There's no
21 indication hypothetically or otherwise that anything has
22 been certainly found incorrect or improper. I would
23 think that an accounting issue hypothetically like your
24 SEC investigation is really a stand alone issue. I
25 think it's separate and apart from a 271 consideration.

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1 Q. So it's your position that that kind of an
2 investigation would not have relevance to the truth and
3 veracity of the investigated company?

4 A. I think it's an issue of accounting
5 practices, using your hypothetical again, I would stress
6 that. I don't think it's subsumed within any 271
7 requirement, so I wouldn't testify today that I would
8 qualify that to be an unusual circumstance, if you will,
9 to use that term.

10 Q. Thank you, Mr. Teitzel. Now moving down to
11 the bottom of page 3 of your affidavit, the sentence
12 begins, however, that dispute is already being fully
13 addressed by the FCC, and I believe this is referring to
14 the Touch America complaint.

15 A. That's correct.

16 Q. And the Public Counsel, you continue, has not
17 identified any benefit to either duplicating the FCC's
18 inquiry here or delaying the Commission's public
19 interest determination until the matter is settled.
20 Have I read that correctly, sir?

21 A. Yes, you have.

22 Q. Would it not be advantageous to the
23 Commission to have a better idea of the facts of that
24 case prior to issuing a recommendation on 271?

25 A. Well, again, I don't think so. I think the

1 facts have been disputed. Qwest believes that we are
2 certainly conducting business in a reasonable and proper
3 manner and Qwest has done nothing wrong. I think to the
4 extent the Qwest 271 petition is delayed pending this
5 investigation, which could take some period of time, the
6 real loser is the consumer here in Washington, the
7 consumer that will realize tangible savings in both long
8 distance and local service.

9 Q. Mr. Teitzel, on page 4 of your testimony, you
10 discuss the local service freeze generally on that page;
11 am I correct?

12 A. I'm sorry, you're at page 4?

13 Q. Yes, approximately line 8 through perhaps
14 line 13.

15 A. Yes, I have that.

16 Q. Okay. Are you aware that Qwest has withdrawn
17 its local service freeze in New Mexico and Montana?

18 A. Yes, I am.

19 Q. Are you also aware that Qwest's local service
20 freeze has been denied or suspended in other states?

21 A. I am aware of that, yes.

22 Q. Can you tell me which other states?

23 A. I'm not sure I can accurately cite the states
24 off the top of my head. I would certainly be happy to
25 supply that if that's a requirement, a request that you

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1 had.

2 MR. WITT: I would so request, Your Honor, if
3 that's appropriate.

4 JUDGE RENDAHL: That is appropriate, that
5 would be Records Requisition Number 9, and your question
6 I understand is any other states in which Qwest has had
7 its local service freeze denied or withdrawn?

8 MR. WITT: Actually denied or suspended.

9 JUDGE RENDAHL: Or suspended. Did you
10 understand that, Mr. Teitzel?

11 THE WITNESS: Yes, I did, I noted that, and I
12 will supply that.

13 JUDGE RENDAHL: Thank you.

14 MR. WITT: Thank you, Your Honor.

15 Thank you, Mr. Teitzel.

16 BY MR. WITT:

17 Q. On page 5, line 10, your testimony reads:

18 The Public Counsel and AT&T have
19 principally used this latest round of
20 comments to throw out another set of
21 issues that they assert represent
22 instances of bad behavior by Qwest.

23 Have I read that accurately?

24 A. Yes, you have.

25 Q. Would you agree with me that Qwest is now on

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1 its best behavior prior to obtaining 271 authority?

2 A. I'm troubled by that characterization. It
3 implies that -- the contrary focus of that or the
4 contrary context would be that we have been on our worst
5 behavior up until that point, and that's not true.
6 Qwest has been consistently improving in a variety of
7 areas for years from pre-merger through merger and to
8 the current point in time. Certainly we're motivated to
9 see our 271 applications be approved, but our behavior
10 is not driven only by that. It's being driven by our
11 desire to serve the customer, and certainly we need to
12 do that well in the competitive market.

13 Q. Well, Mr. Teitzel, you've really read too
14 much into my question. Is there -- I guess I'm just
15 asking a simple question as to whether or not Qwest is
16 on its best behavior now, and as to when you were on
17 your worst behavior, I am not asking that. I would not
18 presume to ask that of you.

19 A. I don't mean to be evasive, Mr. Witt, but I
20 think the implication is that we are behaving well
21 simply to get 271 approval, and I would disagree with
22 you. I think we have motivations well beyond 271 to
23 compete fairly and fully.

24 Q. Motivations to compete fairly and?

25 A. Fully.

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1 Q. Fully. Could you explain that, please?

2 A. That may have been an inartful term, but my
3 response is that Qwest is being active, if you will, a
4 full competitor, Qwest is competing fairly, Qwest is
5 improving its service, as we certainly need to do to
6 retain customers on into the future as markets become
7 more competitive. Those things are all happening.
8 Certainly 271 is a motivation, but it's not the only
9 motivation for those things to happen.

10 Q. Thank you, Mr. Teitzel. Now your testimony
11 in several places seems to indicate that, well, in fact,
12 I believe your opinion is that, and I don't want to
13 misstate it so please correct me if I'm wrong, that AT&T
14 has presented a series of separate instances of bad
15 behavior, none of which are relevant to these
16 proceedings. Is that pretty accurate?

17 A. I think to extend your statement to fully
18 capture my thought, AT&T specifically has presented a
19 wide range of complaints, and these complaints involve
20 actions in other states that have been litigated
21 separately and are being litigated separately, in many
22 instances which are just allegations which have not been
23 proven, which don't relate to Washington in any way.

24 Q. Well, at what point, I guess let's assume for
25 a moment that AT&T's intention here is to establish a

1 pattern of behavior, Mr. Teitzel, at what point do you
2 think a, and you may not be able to answer this, and if
3 you can't, that's fine, but at what point does a series
4 of actions or a series of behaviors become a pattern in
5 your own mind?

6 MR. MUNN: And, Your Honor, I will object to
7 the question as it calls for a legal conclusion.

8 MR. WITT: Your Honor, if I may, I don't
9 think I'm calling for a legal conclusion here. I'm
10 simply asking when a series becomes a pattern.

11 MR. MUNN: And a pattern is a term of art
12 that's used in the case law that relates to this case,
13 and I can't see how a lay witness answering a question
14 about a legal term of art is going to assist the
15 Commission in moving this docket forward.

16 MR. WITT: Your Honor, if I may very briefly,
17 Mr. Teitzel's testimony is liberally sprinkled with
18 legal conclusions. If he can't answer the question,
19 then that's fine, but I would say that that's certainly
20 not consistent with the remainder of his testimony,
21 which presents legal conclusion after legal conclusion.

22 JUDGE RENDAHL: Given the context of where we
23 are in this case, if you can maybe make your question
24 more full in terms of context for asking the question,
25 that might help.

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1 MR. WITT: I will certainly try, Your Honor.

2 BY MR. WITT:

3 Q. Mr. Teitzel, if you have a company that such
4 -- an RBOC who shall remain nameless who has an SEC
5 investigation pending against it who has a multitude of
6 different complaints having been lodged against it by
7 different competitors, by regulatory agencies and
8 others, do you not -- do you disagree with me that at
9 some point, and perhaps that's a question that the
10 Commission should be answering, but at some point, don't
11 those -- doesn't that multitude of complaints from
12 various sources coalesce into a pattern of behavior at
13 some point?

14 A. I can answer --

15 MR. MUNN: Same objection.

16 MR. WITT: The witness has indicated he can
17 answer it.

18 THE WITNESS: I was going to say I can answer
19 as a lay person.

20 JUDGE RENDAHL: And that was what I was going
21 to ask you to do. Please just go ahead and answer it as
22 you do in your context as a witness in this proceeding,
23 an expert witness for Qwest, given your expert opinion
24 on the 271 process.

25 THE WITNESS: Certainly.

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1 A. I think it's important to keep in mind, as I
2 testified in my summary earlier today, that allegations
3 can be made by any party at any time. There may not be
4 foundation, they may not be proven, they may not be
5 litigated. That's important to keep in mind. I'm
6 suggesting, Mr. Witt, that allegations don't form any
7 pattern in my mind. In my mind, if a case has been
8 litigated and brought to conclusion with a clear finding
9 against company XYZ and that continued for some period
10 of time, then a pattern might emerge from that. But I
11 think what we're addressing here in this docket is
12 largely allegations and largely dockets in some cases
13 that are pending and may not be resolved for some period
14 of time where the facts are not proven either way.

15 BY MR. WITT:

16 Q. Thank you, Mr. Teitzel, but isn't it true
17 though that elsewhere in your testimony you insist that
18 once these different complaints have been resolved, they
19 have been resolved, and they don't at that point form a
20 pattern either?

21 A. I would suggest that if a particular
22 complaint, just a hypothetical complaint, was resolved
23 and, for example, resulted in a financial penalty, I
24 would suggest that that's been resolved to the fact
25 finder's satisfaction. I think at that point, it's the

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1 issue is closed, and I would think it's up to the
2 Commission, as you suggested a moment ago, to consider
3 the facts, consider what findings have been made, and
4 reach your own conclusion as to whether a pattern
5 exists. But I would appeal to you again to not consider
6 allegations as part of the pattern.

7 Q. Thank you, Mr. Teitzel.

8 On page 6, line 7, you argue that these other
9 proceedings should be kept separate from the 271
10 process. Would you agree with me that the 271 process
11 is by nature collaborative rather than adversarial?

12 A. I will answer the question I think I'm
13 hearing. If you're asking me, has the process been
14 typically a little bit less formal than formal hearings,
15 where workshops occur and parties meet to try to resolve
16 disputes and come to commonality, I think in that
17 respect it is more collaborative than a typical
18 proceeding.

19 Q. Well, in fact, we have had workshops instead
20 of hearings, correct?

21 A. Yes.

22 Q. And we have had military style testing
23 instead of simply a pass/fail; is that also correct?

24 A. That's also correct.

25 Q. Well, in the context of this collaborative

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1 process, I guess I'm wondering, shouldn't these
2 complaints have been addressed in that collaborative
3 process if it were indeed to work, if that process were
4 indeed to work?

5 A. I guess I would suggest that if there is a
6 complaint that has a legal overtone to it, if it's a
7 legal related complaint, I frankly am not sure how that
8 would have been handled in the workshop process. Again,
9 not being an attorney, I'm not sure how to precisely
10 answer the question. It could depend on the sort of
11 complaint that you're thinking of.

12 Q. Thank you, Mr. Teitzel.

13 On page 8, beginning on line 6 of your
14 testimony, your testimony reads, the complaints, and
15 you're again referring to the two Touch America
16 complaints here:

17 The complaints do not involve local
18 competition issues at all but rather
19 concern allegations that Qwest's
20 in-region dark fiber and lit fiber
21 capacity IRU transactions violate
22 Section 271.

23 Have I read that correctly?

24 A. Yes, you have.

25 Q. Is it your position that violations of 271

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1 are irrelevant to a 271 application?

2 A. I don't think that's what I'm saying at all.

3 Q. So they all --

4 A. As I testified a moment ago, excuse me, Qwest
5 maintains we have done nothing wrong in this Touch
6 America complaint. It's an allegation that's in the
7 process of being worked through at the FCC level. I was
8 suggesting simply that the Touch America complaint
9 involves an interLATA related complaint, it's not a
10 local complaint. But again, I was suggesting and I
11 suggest again that it's an allegation, it's not been
12 proven, Qwest has a position that's very clear here.

13 Q. Well, but wouldn't -- I guess I'm asking
14 wouldn't it be appropriate to address that kind of an
15 issue within the framework of 271?

16 A. I don't mean to be redundant, and I hope I'm
17 not being that way, but I would suggest again it's an
18 allegation, I don't think it's an appropriate use of
19 this Commission's time to bring allegations that are
20 unproven as a means of opposing a 271 application.

21 Q. Well, then in that case, I guess my bottom
22 line question on this is, how -- perhaps what you're
23 saying is that the 271 process is not appropriate
24 because it is collaborative? I guess I'm not quite
25 understanding your answer, and I apologize. Perhaps you

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1 can help me.

2 A. Well, I think my answer again, if I can just
3 reduce it to its essence, is that I think it's
4 inappropriate, and I think Qwest believes it's
5 inappropriate, to consider any possible range of
6 complaints that our competitors or other opponents may
7 bring to the fore that may be allegations that are only
8 loosely founded on alleged facts but which have not been
9 found for or against Qwest. I think it's a misuse of
10 the process. I do not believe that's what the Congress
11 when they enacted the Telecom Act nor the FCC had in
12 mind when they defined unusual circumstances.

13 Q. Maybe the best way for me to ask the question
14 is to say, if you have all of these complaints and you
15 have a collaborative process, isn't there something
16 wrong with the collaborative process if you have all of
17 these complaints?

18 A. I'm not quite sure how to precisely answer
19 your question. I won't try to belabor it. As I
20 testified during my summary, this is a competitive
21 market in Washington. It's competitive both in local
22 and in toll. I think it's not surprising that when
23 competitors are competing hotly and aggressively, the
24 complaints are going to arise. I think it's not
25 surprising at all. Now I think Qwest does certainly to

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1 the extent that we can work with other competitors to
2 try to resolve complaints. We certainly don't want to
3 go to litigation if we can avoid that clearly. We try
4 to work those things out and will.

5 Q. Thank you, Mr. Teitzel. Moving now to page
6 8, line 16 please, and again we're still on the Touch
7 America complaints, actually, the sentence begins at
8 line 15. With respect to Touch America's complaint
9 regarding Qwest's IRU transactions, the FCC has already
10 approved the Qwest conduct at issue. Have I read that
11 correctly?

12 A. Yes, you have.

13 Q. I note that the footnote 17 refers to Qwest's
14 answer in the complaint case. Am I correct there also?

15 A. Give me a moment, please. That is correct.

16 Q. I guess that cite troubles me, and let me
17 explain why. It seems to me, Mr. Teitzel, you're citing
18 Qwest's own statement to support something that is
19 Qwest's own statement. Do you understand what I'm
20 getting at?

21 A. I think so, but I think you have to read that
22 entire paragraph which follows on at page 9 entirely to
23 get the full context. I think the first part of the
24 paragraph starting at line 15 on page 8 talks about
25 Qwest's answer. But then following on page 9 toward the

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1 end of that paragraph at the top of that page, it talks
2 about the FCC subsequently approving the plan based in
3 large part on Qwest's answer. So I think the entire
4 paragraph needs to be read in full context.

5 Q. Well, it strikes me that the paragraph does
6 conclude with the notion that the FCC approved Qwest's
7 divestiture plan. What I'm looking for is specific
8 language, if you have any, that the FCC used in
9 expressly approving Qwest's conduct in the IRU
10 transactions.

11 A. The cites that I have shown on pages 8 and 9
12 are the cites available to me. That's all I have to
13 offer at this point.

14 Q. Okay. Mr. Teitzel, do you know if either
15 Qwest or U S West have ever represented to the FCC that
16 Touch America would not be dependent upon Qwest for
17 Touch America's provision of interLATA services after
18 the divestiture of customers to Touch America?

19 A. I'm sorry, that was kind of a compound
20 question, would you mind asking that again?

21 Q. I will try to simplify it on my way, sir,
22 thank you.

23 Did either Qwest or U S West prior to merger
24 approval represent to the FCC that Touch America would
25 not be dependent upon Qwest in the provisioning of

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1 interLATA services to its customers?

2 A. To be frank, as I sit here, I just don't
3 know.

4 Q. Thank you. Are you aware of any efforts by
5 Qwest to reacquire divested customers and provide them
6 with interLATA service after the merger was approved?

7 A. I'm not aware of any efforts to reacquire any
8 customers from Touch America and provide interLATA
9 services in-region after the merger.

10 Q. Do you know whether Qwest ever represented to
11 the FCC that it would provide Touch America with
12 sufficient access to Qwest's data bases so that Touch
13 America could support the customers being divested to
14 it?

15 A. Again, to be frank, I'm just not that close
16 to the details of that negotiation. As I sit here, I
17 just don't know.

18 Q. Do you know whether Qwest ever represented to
19 the FCC that Touch America would not be required to
20 purchase out of region capacity on a wholesale basis
21 from Qwest in order to provide service to customers
22 divested to Touch America?

23 A. Again, without reviewing the documentation, I
24 don't have it on the stand with me, I can't provide an
25 intelligent answer. I just don't know.

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1 Q. Are you aware that Arthur Anderson has
2 produced audit reports in connection with the Touch
3 America complaint?

4 A. Qwest has used Arthur Anderson as its auditor
5 for some period of time, I'm not surprised to hear that.
6 I can't swear that I know that from a certainty. I
7 would say I'm not surprised by your statement.

8 Q. But you're not familiar with the audit
9 reports?

10 A. I am not.

11 Q. Okay. Are you familiar with the June 26th
12 merger order approving the merger of Qwest and U S West?

13 A. I have reviewed it generally. It's been some
14 time.

15 Q. Do you recall whether that merger order
16 references IRU agreements at all?

17 A. I don't recall.

18 Q. You had a conversation with Mr. Cromwell
19 regarding the difference between leases and purchases,
20 if you will. I guess I'm oversimplifying it, and
21 obviously that conversation can stand as it is, but do
22 you recall the exchange you had with him in that regard?

23 A. Yes, I do.

24 Q. Are you aware that Qwest has conceded before
25 the FCC that the IRU agreements are, in fact, leases and

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1 not, as you have indicated in your testimony, the one
2 time transfer of ownership and control?

3 MR. MUNN: Your Honor, I will object to this
4 question as it assumes facts not in evidence, it's not
5 what Qwest has represented to the FCC, and this witness
6 is certainly not testifying that he is aware of that in
7 his testimony, and it assumes facts not in evidence.

8 MR. WITT: Your Honor, if I may respond.

9 JUDGE RENDAHL: Please do.

10 MR. WITT: Mr. Teitzel has represented the
11 exact opposite of that, and I can certainly -- I believe
12 that there are documents in the public record at the FCC
13 that perhaps would demonstrate something to the
14 contrary. Perhaps it would be the best approach here
15 would be for me to ask if this Commission would permit a
16 citation to FCC documents in response to this particular
17 point in the course of briefs.

18 JUDGE RENDAHL: Let's be off the record for a
19 moment.

20 (Discussion off the record.)

21 JUDGE RENDAHL: Mr. Munn, you have a
22 response?

23 MR. MUNN: Thank you, Your Honor. I think
24 that Chairwoman Showalter's question actually goes to my
25 point, which is that AT&T had an opportunity to address

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1 issues that were raised in Mr. Teitzel's testimony in
2 their written surrebuttal. That issue, the entire issue
3 itself is not addressed by AT&T in its surrebuttal, much
4 less a specific document or a better representation,
5 which, one, doesn't allow Qwest to be able to respond if
6 it chooses to to these types of allegations, but two,
7 it's just untimely. I mean my understanding of the
8 procedural order was that cross-examination exhibits
9 were to be submitted, and that wasn't done, or the
10 issues should be addressed in the written testimony, and
11 that wasn't done.

12 MR. WITT: Your Honor, if I may, the
13 documents that I would be seeking to introduce here are
14 statements that were made by Qwest, or excuse me,
15 documents filed by Qwest in these proceedings. I
16 believe that the notion that Qwest should have an
17 opportunity to rebut them is a little bit weak.

18 MR. MUNN: And, Your Honor, I guess to
19 clarify, when Mr. Witt says in these proceedings, it was
20 not submitted in these proceedings.

21 MR. WITT: Excuse me --

22 MR. MUNN: It was submitted on the other side
23 of the county in D.C. if what he's saying is true. I
24 don't know that to be the case, I've never seen the
25 document he's referring to, but I think that's just the

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1 point.

2 MR. WITT: And I apologize if I misspoke,
3 certainly they're not part of these proceedings, that's
4 why I'm asking.

5 JUDGE RENDAHL: Thank you, let's be off the
6 record.

7 (Discussion off the record.)

8 JUDGE RENDAHL: Mr. Witt, if you have this
9 with you today --

10 MR. WITT: I'm afraid I don't.

11 JUDGE RENDAHL: Okay, then I would say let's
12 go for it, let's do it. But we can't do it in the
13 future. We're here today, this is the time to do it,
14 and to the extent that AT&T had an opportunity in
15 surrebuttal testimony in the time the exhibits were due
16 to be filed for the pre-hearing and also today, I think
17 you have had ample time to do that, so I would say at
18 this point, let's move on.

19 MR. WITT: Thank you, Your Honor, I will.

20 CHAIRWOMAN SHOWALTER: I was just going to
21 make a comment, if there's something in written
22 testimony, that's what gives the parties notice of
23 what's in the written testimony, which means that those
24 parties have the opportunity to develop information to
25 cross examine. Sometimes if there's a statement by a

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1 witness on the stand that someone didn't know about, it
2 causes a reaction. But here the statement is in the
3 written testimony.

4 MR. WITT: Yes, Your Honor, and if I may
5 explain, my whole -- well, first of all, I became aware
6 of Qwest's statements on the FCC record just last night,
7 so I was not aware of these in time for these
8 proceedings, and that's what I mean when I say I didn't
9 have time. I hoped to provide them in the brief as a
10 part of an effort to impeach Mr. Teitzel's testimony.
11 However, if the Commission is not amenable to that
12 approach, I certainly understand.

13 JUDGE RENDAHL: I think our conclusion is the
14 time has elapsed for responding. If you didn't have
15 them with you today, then I think briefing is
16 inappropriate in that we're having simultaneous
17 briefing. And I think in order to give Qwest time to
18 respond to whatever it is you're providing, the time
19 would have been today at the very latest to do that.
20 And so let's move on.

21 I think you had allocated about an hour for
22 your cross, and we're just about there. Do you have an
23 estimate of about how much longer?

24 MR. WITT: Your Honor, thank you, maybe five
25 minutes.

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1 JUDGE RENDAHL: Okay.

2 BY MR. WITT:

3 Q. Mr. Teitzel, if you would turn briefly to
4 page 12 of your testimony.

5 A. I have that page.

6 Q. To the bottom, line 16, your sentence reads,
7 the facilitator also noted that:

8 AT&T presented no argument or evidence
9 that its near term market entry plans
10 require any such tests to be performed
11 immediately.

12 Have I read that correctly?

13 A. Yes.

14 Q. Is it Qwest's position that it is entitled to
15 review and evaluate the business plans of its
16 competitors?

17 A. I don't think that's specifically what Qwest
18 was asking for here. I think --

19 JUDGE RENDAHL: Mr. Teitzel, could you answer
20 the question.

21 A. No.

22 JUDGE RENDAHL: Thank you.

23 Q. Then perhaps you can help me with the SGAT
24 language that Qwest has proposed.

25 MR. MUNN: Just to clarify, we have already

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1 gone through this issue with Ms. Roth. This is the SGAT
2 language that Mr. Antonuk recommended, unless you're
3 talking about something different, Mr. Witt.

4 JUDGE RENDAHL: Well, there is some language
5 on page 14 of Mr. Teitzel's testimony; is that what
6 we're talking about?

7 MR. MUNN: Correct, that is the language that
8 Mr. Antonuk ordered in his August 2001 report on
9 checklist items 2, 4, 5, and 6.

10 MR. WITT: Thank you, Your Honor, that's
11 exactly the page I was looking for.

12 JUDGE RENDAHL: Okay.

13 BY MR. WITT:

14 Q. On page 14, line 20, it seems that that
15 language would require identification of business plans.
16 Is it Qwest's position that that language can be dropped
17 from this tariff language, excuse me, from this SGAT
18 language?

19 A. I'm not in a position nor do I have the
20 authority to represent that Qwest would drop this or
21 would not drop this. In fact, I'm not the witness that
22 deals with SGAT issues. That's Mr. Larry Brotherson
23 typically. I would just assert that I think the reason
24 this language is here in the form it is is to ensure
25 that there is a valid business reason for this testing,

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1 that it's not being suggested or requested simply to
2 create additional burdon or delay the proceeding in some
3 way, and I think that was Qwest's concern relative to
4 Minnesota.

5 Q. Well, Mr. Teitzel, if you will look further
6 down in that very same tariff or SGAT language, it reads
7 on line 23, page 14 of your testimony:

8 Absent a finding that the test's scope
9 and activities address issues of common
10 interest to the CLEC community, the
11 costs --

12 And I assume you're talking about the costs
13 of the test?

14 A. Yes.

15 Q. (Reading.)

16 The costs shall be assigned to the CLEC
17 requesting the test procedures.

18 Have I read that correctly?

19 A. Yes, you have.

20 Q. Well, I guess I don't understand how you can
21 assert on the one hand that you -- that a CLEC would
22 need to provide a business plan to Qwest for its review
23 and evaluation on the one hand, and yet the costs of any
24 testing that was not found to be, excuse me, not found
25 to address issues of common interest to the CLEC

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1 community, the cost of that test would be imposed
2 clearly on the requesting CLEC?

3 A. Mr. Witt, quickly this gets beyond my depth
4 and scope in the SGAT issues. As I mentioned, SGAT is
5 being addressed in other phases of this docket. SGAT
6 will be considered and approved by the Commission
7 ultimately. I'm not sure, to be frank with you, what
8 forum would review any plans the CLEC might have to
9 determine whether or not they meet these requirements.
10 I know from personal experience that CLEC business plans
11 are held in extreme confidentiality, and we're sensitive
12 to that. So as I sit here today, I'm just not sure,
13 this is one citation out of a broad SGAT, how the SGAT
14 processes would work, what kind of forum would be
15 brought together to review this. But certainly we would
16 honor and respect CLEC confidentiality throughout that
17 process.

18 Q. But you don't know how?

19 A. As I testified, I'm not the SGAT witness, my
20 depth in SGAT is as a generalist.

21 Q. Mr. Teitzel, if you could please turn now to
22 page 20 of your testimony toward the bottom. This is
23 referring to the E-Mail, the Covad E-Mail discussing
24 Cool-Aid and delusional managers.

25 A. Yes, sir.

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1 Q. On line 15, you quote the I believe he's an
2 administrative law judge as saying, if this is an
3 internal document, and there is an elision there, I
4 don't consider it problematic with respect to Qwest's
5 outside behavior, and there's another elision there.
6 Have I read that correctly?

7 A. Yes.

8 Q. Is that, in fact, a finding by this
9 particular ALJ?

10 A. I don't believe this was a finding. This
11 cite is from the transcript of that hearing, and that
12 was in Oregon in the public interest proceeding.

13 Q. And would you agree with me that the ALJ went
14 on to say that he would take the matter under
15 advisement?

16 A. I don't recall that citation specifically. I
17 would accept that subject to check, however.

18 MR. WITT: If I may, Your Honor, I'm
19 referring to the transcript which Mr. Teitzel has cited
20 here, and if I may, I will read this and ask for
21 Mr. Teitzel's response, if that's acceptable.

22 JUDGE RENDAHL: That's to refresh his
23 recollection?

24 MR. WITT: Precisely.

25 JUDGE RENDAHL: Please go ahead.

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1 MR. WITT: The paragraph begins on page 152.

2 JUDGE RENDAHL: Actually, I believe the
3 correct way to do this is to provide the witness a copy
4 of the statement and have him --

5 MR. WITT: If I may approach the witness,
6 Your Honor.

7 JUDGE RENDAHL: You may.

8 MR. WITT: Thank you.

9 Unfortunately, this is my only copy, so I
10 will stay here --

11 JUDGE RENDAHL: You may share the microphone
12 if you need to.

13 MR. WITT: Thank you very much.

14 THE WITNESS: Okay, I have the cite.

15 BY MR. WITT:

16 Q. Could you read the portion that immediately
17 follows the place where you have decided to elide that
18 or elide that quotation, please.

19 A. Starting at line 20, Mr. Witt?

20 Q. No, starting, well, even at line 17.

21 CHAIRWOMAN SHOWALTER: Perhaps you could have
22 the witness read starting with, you know, if this is an
23 internal document, so that we know how it all reads.

24 MR. WITT: Thank you.

25 A. I will read lines 13 through 19. Would that

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1 be satisfactory?

2 BY MR. WITT:

3 Q. Yes.

4 A. Okay.

5 I think if this is an internal document
6 where Qwest is just having an internal
7 sort of celebration, so to speak, about
8 the problems of their competitors, then
9 while you might find it distasteful, I
10 don't consider it problematic with
11 respect to Qwest's outside behavior,
12 although others might, and I can -- I
13 will listen to your argument about that
14 but . . .

15 Q. Thank you, Mr. Teitzel.

16 JUDGE RENDAHL: Thank you.

17 Q. So, Mr. Teitzel, would you agree with me that
18 that particular quote that's in your testimony does not
19 amount to a ruling on the issue?

20 A. It's not a ruling. I think it was his
21 opinion expressed during the workshop.

22 Q. But you add the sentence at the end there on
23 line 16 toward the end, I urge this Commission to find
24 likewise. Doesn't that imply that there is a finding by
25 that ALJ?

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1 A. I think I'm suggesting that the ALJ said what
2 he said. I think it's appropriate. As I discussed
3 earlier, I explained who this grade 5 manager was, what
4 her role was in the company, and I think it was internal
5 boosterism, if you will, to use that term, and I think
6 this Commission should find what the ALJ concluded in
7 Oregon.

8 Q. Thank you, Mr. Teitzel.

9 On page 23, line 4 of your testimony, can you
10 tell me what an econometrician is?

11 A. An econometrician is one who is highly
12 skilled and highly trained in running econometric models
13 such as regression analyses.

14 Q. Can you define it without using the word in
15 the definition?

16 A. Certainly. An econometrician would be one
17 who has advanced training and typically an advanced
18 degree in economics who would specialize in using
19 computerized modeling tools to take observed behaviors
20 in the marketplace, incorporate those behaviors into a
21 modeling tool, and develop forecasts and conclusions
22 from that model. I think that's a reasonable
23 description.

24 Q. Okay, thank you, Mr. Teitzel.

25 Now on line 12, you indicate that a trained

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1 econometrician can run the model upon which Dr. Hausman
2 based his report using standard econometric software.

3 Have I read that correctly?

4 A. Yes, you have.

5 Q. How do you know?

6 A. I have spoken with Dr. Hausman personally
7 about this, and in that conversation, it was very clear
8 that he has used standard modeling tools, and the
9 example is SAS software. It's a regression analysis
10 type of software to which you just input variables --

11 Q. So this is --

12 A. -- and run the model.

13 Q. I'm sorry, I didn't mean to interrupt you.

14 A. That's all right. And run the model.

15 Q. So this statement that you have in your
16 testimony is based on what Mr. Hausman, Dr. Hausman told
17 you?

18 A. It's based on my conversation with
19 Dr. Hausman.

20 Q. And what you heard him say?

21 A. It's based on the conversation, yes.

22 Q. Okay. Can the same be said of the other
23 bullet points here? I could go through them
24 individually if you would like, but can the same be said
25 of these other bullet points as well?

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1 A. These other bullet points were based upon
2 discussions I had with Dr. Hausman, both live and
3 electronically.

4 MR. WITT: If I may have one moment, Your
5 Honor.

6 I have no further questions, thank you, and I
7 apologize for running over the way I did.

8 JUDGE RENDAHL: Okay, let's be off the record
9 for a moment.

10 (Discussion off the record.)

11 JUDGE RENDAHL: There are no questions from
12 the Bench for this witness.

13 Mr. Munn, did you have redirect for this
14 witness?

15 MR. MUNN: Your Honor, may I take just one
16 minute to go over my notes.

17 JUDGE RENDAHL: Please do.

18 MR. MUNN: Thank you.

19 JUDGE RENDAHL: Let's be off the record.

20 (Discussion off the record.)

21 JUDGE RENDAHL: While we were off the record,
22 Mr. Munn determined he didn't have any redirect for this
23 witness, so we are done on the issues of public
24 interest. And, Mr. Teitzel, you are excused, and those
25 of you who have traveled to get here on public interest

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1 issues may go home tonight if you can do so, so let's be
2 off the record, and we'll see you all in the morning on
3 compliance issues. Thank you.

4 (Hearing adjourned at 5:35 p.m.)

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