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BEFORE THE WASHINGTON

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UTILITIES AND TRANSPORTATION COMMISSION

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In the Matter of the Second)
Six-Month Review of) UT-043007
QWEST CORPORATION'S) Volume IV
Performance Assurance Plan.) Pages 111-141

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A pre-hearing conference in the

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above-entitled matter was held at 10:32 a.m. on

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Wednesday, September 8, 2004, at 1300 South Evergreen

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Park Drive, Southwest, Olympia, Washington, before

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Administrative Law Judge ANN E. RENDAHL.

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The parties present were as follows:

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QWEST CORPORATION, by Douglas N. Owens,
Attorney at Law, 1325 Fourth Avenue, Suite 940,
Seattle, Washington 98101.

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COMMISSION STAFF, by Gregory J.
Trautman, Assistant Attorney General, 1400 S.
Evergreen Park Drive, S.W., P.O. Box 40128, Olympia,
Washington, 98504-1028.

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ESCHELON TELECOM, INC., by Ray Smith
and Karen Clauson, Attorneys at Law, 730 Second
Avenue South, Suite 1200, Minneapolis, Minnesota
55402-2456 (via teleconference bridge.)

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WORLDCOM, INC., d/b/a MCI, INC., by
Michel Singer Nelson and Chad Warner, Attorneys at
Law, 707 17th Street, Suite 4200, Denver, Colorado,
80202 (via teleconference bridge.)

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Barbara L. Nelson, CCR

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Court Reporter

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1 JUDGE RENDAHL: Let's be on the record.
2 Good morning. I'm Ann Rendahl, the Administrative
3 Law Judge presiding over this proceeding. We're here
4 before the Washington Utilities and Transportation
5 Commission on Wednesday, September the 8th, 2004, for
6 a pre-hearing conference in Docket Number UT-043007,
7 In the Matter of the Second Six-Month Review of
8 Qwest's Performance Assurance Plan.

9 I sent out a notice on August 31st with an
10 agenda for the pre-hearing conference, and on that
11 notice indicated that the parties should be able to
12 -- should be prepared to discuss scheduling a hearing
13 on the settlement, if necessary, as well as the
14 remaining procedural schedule necessary to address
15 the remaining issue in the proceeding, and whether
16 the Commission should initiate the next six-month
17 review proceeding.

18 At this point, I'm also -- I'd also like to
19 discuss the settlement and the SGAT filing that was
20 made. So why don't we take appearances from the
21 parties, beginning with Qwest, and then we'll move on
22 to the issues. Mr. Owens.

23 MR. OWENS: Thank you, Your Honor. Douglas
24 N. Owens, Attorney at Law. Business address, Box
25 24516, Seattle, Washington, 98165-2316, appearing on

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1 behalf of Qwest.

2 JUDGE RENDAHL: Thank you. And for MCI.

3 MS. SINGER NELSON: Thank you, Judge.

4 Michel Singer Nelson, appearing on behalf of MCI.

5 JUDGE RENDAHL: And for Eschelon.

6 MS. CLAUSON: Karen Clauson, C-l-a-u-s-o-n.

7 JUDGE RENDAHL: Thank you. And for Staff.

8 MR. TRAUTMAN: Greg Trautman, Assistant
9 Attorney General, for Commission Staff.

10 JUDGE RENDAHL: And then, is anyone from
11 Covad on the line? I'm aware that Ms. Frame, for
12 Covad, is in Washington, D.C. today and probably will
13 not be appearing today.

14 The first issue is the schedule -- is the
15 settlement that was filed and the scheduling. I have
16 consulted with the Commissioners and I can tell you
17 all that they do not need a hearing on the
18 settlement, so we do not need to schedule a hearing.
19 The 22nd, that was scheduled to address the hearing,
20 we do not need to hold that day, and I will endeavor
21 to work with the Commissioners to get an order out on
22 the settlement as soon as possible.

23 In that vein, is there anything else I need
24 to know from the parties about the settlement and the
25 SGAT filing before we proceed on that? Mr. Owens.

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1 MR. OWENS: From Qwest's standpoint, Your
2 Honor, we submitted the narrative, and in the
3 narrative, we offered to present a witness. I'm
4 assuming that that offer is essentially moot because
5 the Commission's determined not to take evidence at a
6 hearing.

7 We believe that the other portion of the
8 rule requiring counsel to appear and answer questions
9 and offer argument in support also, at least as to
10 the answering questions part, is moot. We put in the
11 narrative the support we believe is important to
12 inform the Commission and would recommend that the
13 Commission approve the settlement as submitted.

14 JUDGE RENDAHL: Okay. Is there anything --
15 okay. I guess I'd move -- do you have anything else
16 further on the settlement and the SGAT?

17 MR. OWENS: No, unless you have some
18 questions, Your Honor.

19 JUDGE RENDAHL: No, I don't, not at this
20 point. I just want to know if there's anything else
21 I need to know before I move on. Ms. Singer Nelson.

22 MS. SINGER NELSON: Your Honor, I don't have
23 anything additional to address.

24 JUDGE RENDAHL: Ms. Clauson.

25 MS. CLAUSON: Yes, Your Honor. When you say

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1 the SGAT, we did have some questions about Exhibit K
2 that Qwest filed. Would this be the appropriate time
3 to discuss that?

4 JUDGE RENDAHL: Yes, that would.

5 MS. CLAUSON: Thank you. We had -- we've
6 exchanged e-mails with Qwest on three issues. The
7 first one is that PO-20, Tier Two, was not in Exhibit
8 K, and that's still an open issue. My understanding
9 is that the Staff may be pursuing that issue, so I'll
10 leave that issue to them.

11 The second one was the aggregate reporting,
12 and Qwest has said that it has committed to the
13 aggregate reporting as outlined in the stipulation,
14 so it need not mention it in the Exhibit K. We
15 certainly felt Exhibit K would be clearer if they had
16 mentioned it. We would note that, while that may be
17 true for Washington, in other states, such as
18 Colorado, Section 13.2 is much more specific, and we
19 do expect it to be addressed in Exhibit K in some
20 states, but, obviously, you here in Washington don't
21 have to deal with that.

22 Again, what the issue is, the stipulation
23 requires certain aggregate reporting, but Qwest did
24 not mention that in its Exhibit K filing, and we
25 certainly thought it would be more clear if they had.

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1 And the third one is there is a footnote
2 regarding the burn-in period, and in the footnote in
3 Exhibit K, Qwest mentions when it does not have to
4 make payments; it does not include the portion of the
5 stipulation about when it does have to make payments.

6 And my understanding, and Mr. Owens can
7 correct me if I'm wrong, is that Qwest's position is
8 that they are required to make the payments by the
9 stipulation, and that really only an exception needs
10 to be noted in the document.

11 We do not believe that's clear from the
12 footnote that they included in Exhibit A, and our
13 proposal would be to add a cross-reference to the
14 stipulation, at a minimum, if they're not willing to
15 add the language from the stipulation to the
16 footnote, to make that clear that they do have to
17 make those payments in the burn-in period.

18 JUDGE RENDAHL: Which footnote is this?

19 MS. CLAUSON: This is Footnote C, as in cat,
20 and it's the second paragraph of that footnote, which
21 begins with the heading Stabilization Period.

22 JUDGE RENDAHL: Is this in Exhibit K?

23 MS. CLAUSON: Correct.

24 JUDGE RENDAHL: Okay. Mr. Trautman. I'm
25 sorry. Ms. Clauson, are you finished?

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1 MS. CLAUSON: Yes, thank you.

2 JUDGE RENDAHL: Okay. Mr. Trautman.

3 MR. TRAUTMAN: On the issues that were
4 raised as to the Exhibit K, I think on the first
5 issue, Staff, on the PO-20, Staff did not have any
6 problem with the language that was removed as to the
7 per-measurement payments, because that has been
8 changed.

9 As to what will be done with PO-20, whether
10 there will be per-occurrence payments, that can be
11 dealt with once the Commission decides the issue. On
12 the --

13 JUDGE RENDAHL: What issue is that?

14 MR. TRAUTMAN: Well, the PO-20. On the
15 PO-20, Tier Two.

16 JUDGE RENDAHL: So you're saying it can be
17 decided at a different filing or in a different
18 filing?

19 MR. TRAUTMAN: No, well, there hasn't been
20 -- that's the issue that's remaining in this -- in
21 the proceeding, whether they have --

22 JUDGE RENDAHL: The Tier Two payments.

23 MR. TRAUTMAN: Whether to have Tier Two
24 payments, whether to have Tier Two, and whether to do
25 it on a per-occurrence basis.

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1 JUDGE RENDAHL: Okay. Thank you.

2 MR. TRAUTMAN: On the second issue, which
3 dealt with the aggregate payments, Staff was also of
4 the opinion that it would be clearer if there was,
5 for instance, an additional section added to Section
6 14 that would deal with that reporting, and perhaps
7 14.5 or even in Section 13, but having a provision
8 that provided for the aggregate payments would make
9 it more clear.

10 On the burn-in period, Staff did not have a
11 -- does not have a -- any problem with what's been
12 proposed.

13 JUDGE RENDAHL: Okay. Mr. Owens, any
14 response to this?

15 MR. OWENS: Yes, Your Honor. Thank you very
16 much. With regard to the first issue, Qwest believes
17 it's important to understand that there are several
18 different Tier Two types of assignments in the QPAP.
19 There's a per-occurrence assignment that is reflected
20 in Attachment One, and there's a per-measurement
21 assignment that's reflected in Section 7.4 and Table
22 Five.

23 The old PO-20 is of the latter category, and
24 the terms of the settlement agreement specifically
25 provide for Qwest to submit amendments to Exhibit K

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1 deleting those very references because the old PO-20
2 is measured differently, it's for a smaller group of
3 products, and it essentially was adopted at a time
4 when it was not possible to record service order
5 errors by state or by CLEC, and therefore, it was
6 impossible to do a per-occurrence type of payment
7 modality for that.

8 It's therefore Qwest's view that the terms
9 of the settlement did require Qwest to submit the
10 deletion of the references to the old PO-20 in Table
11 Five, in Section 7.4, which is what Qwest did.

12 Now, the question of whether there should be
13 a new assignment for the expanded PO-20 in Attachment
14 One for Tier Two is a new issue. It's not the
15 question of deleting something that already exists.
16 Qwest did not delete a Tier Two, Attachment One
17 assignment for PO-20.

18 The question that Staff is raising is should
19 there be a new Attachment One, Tier Two assignment
20 for the expanded PO-20. So Qwest does not believe
21 that the first point raised by Eschelon requires any
22 correction to the filing Qwest made.

23 With regard to the second aggregate payment
24 -- or excuse me, the second issue about aggregate
25 payments, I've heard parties say that it would be

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1 clearer. I haven't heard anybody say that they
2 disagree that Qwest has committed to making these
3 reports in the same way outside of the specific
4 language of Section 14 or Section 13 that it makes
5 the reports to the Commissions, which it has now
6 agreed to publish on the Web site.

7 Am I making sense? You look perplexed.

8 JUDGE RENDAHL: So is it Qwest's position
9 that Sections 14.5 and Sections 13 that provide for
10 reporting to the Commission covers the aggregate
11 reporting agreement in settlement?

12 MR. OWENS: No, Your Honor.

13 JUDGE RENDAHL: I guess that's what I was
14 confused about.

15 MR. OWENS: There isn't a Section 14.5. I
16 think what Staff was saying is there could be a new
17 Section 14.5 added to Section 14. Qwest's view is
18 that Section 14 deals with performance reporting, not
19 payment reporting, and that it's really unnecessary,
20 since Qwest will be submitting this agreement in all
21 of the states, all 14 states, all 13, plus
22 Washington, and asking for its approval, that a new
23 paragraph or section be engrafted into either Section
24 13 or Section 14.

25 Qwest has agreed to make the reports that

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1 were requested by the CLECs, and that should satisfy.
2 And --

3 JUDGE RENDAHL: So the issue is whether it
4 should be memorialized in Exhibit K, as opposed to in
5 the settlement agreement?

6 MR. OWENS: That's correct, Your Honor. And
7 with regard to the third point, as to the footnote to
8 Attachment One, Qwest's position is that Section Six
9 of Exhibit K imposes a general obligation to make
10 payments on a PID as set forth in the applicable PID
11 definition and the tier association or the tier
12 assignment that that PID has in the QPAP, and if a
13 standard isn't met, then that payment follows from
14 the requirement of Section Six. The footnote
15 operates as a relief or an exception to that general
16 requirement, and therefore Qwest, again, believes
17 that it's not necessary to reiterate, in the footnote
18 to Attachment One, Footnote C, the circumstances
19 under which payments are required.

20 The purpose of the footnote was to
21 memorialize the parties' understanding and agreement
22 on when payments aren't required when they otherwise
23 would be required because of a miss of a particular
24 standard occurring during the burn-in period.

25 JUDGE RENDAHL: So Qwest's position is that

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1 Section Six covers its obligation to make payments
2 even in the burn-in period?

3 MR. OWENS: Well, it would cover it. It
4 would impose the requirement to make payments during
5 the burn-in period but for the effect of that
6 footnote, which operates to relieve the obligation.
7 We're saying that it's not necessary to state again
8 in that footnote that Qwest is obligated to make
9 payments for burn-in periods that -- after the
10 burn-in period has expired for the phases that are
11 covered by previous expired burn-in periods.

12 JUDGE RENDAHL: Okay.

13 MR. OWENS: Am I making things clear?

14 JUDGE RENDAHL: You are. My head is a bit
15 muddled, I'll admit. I've got a head stuffed with
16 cotton, it feels like today. So Ms. Clauson, can you
17 -- I'm sorry. Mr. Owens, are you done?

18 MR. OWENS: Yes, Your Honor.

19 JUDGE RENDAHL: Okay. Sorry. Ms. Clauson,
20 can you restate the issue, the first issue, and
21 whether Qwest's response satisfies -- and Staff's
22 response satisfies the issue?

23 MS. CLAUSON: Yes, Your Honor. As to the
24 first one, we were willing to defer to the Staff on
25 that, and my understanding of what the Staff said is

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1 they are willing to deal with that, you know, as part
2 of their issues, so you know, that's fine with us.
3 We were deferring to the Staff on that.

4 JUDGE RENDAHL: Okay. And on the second
5 issue, the aggregate payments, would you agree with
6 what Mr. Owens and I discussed, that this is an issue
7 as to whether the language in the settlement needs to
8 be memorialized in Exhibit K or not?

9 MS. CLAUSON: Your Honor, the one issue I
10 would just raise is that the stipulation is between
11 the stipulating parties, and it is not all CLECs. It
12 does refer in the stipulation to doing the aggregate
13 reporting, as Mr. Owens said, on the Web site and for
14 CLECs. I think it's helpful to have Qwest state on
15 this record that's what it's going to do. It would
16 not only be more clearer to have it in Exhibit K, but
17 it would be more clear that it's available to all
18 CLECs if it was there.

19 I will, however, if, for Washington, if
20 you're agreeable, rely on this report. I do just
21 point that out, that in addition to being clearer, in
22 terms that it's available, it would be clear it's
23 available to all CLECs. It seems like a benefit to
24 us, but in Washington, we'll rely on what Mr. Owens
25 has represented. But, again, we're a party to the

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1 stipulation. We can do that.

2 JUDGE RENDAHL: Now, will this issue be
3 raised in other states likely as this settlement is
4 -- and the SGAT filing is made in other states? And
5 I'll first address that to you, Ms. Clauson, and then
6 to Mr. Owens.

7 MS. CLAUSON: Yes, Your Honor. In
8 Washington, as I mentioned earlier, the language on
9 aggregate reporting is more general, and the point
10 that Qwest had made to me on that was that it doesn't
11 have this kind of detail, it doesn't really require a
12 reference to the aggregate reporting that we did in
13 the stipulation.

14 In other states, however, in Colorado, for
15 example, Section 13.2 is very specific about what
16 performance and payment reporting is to be done, and
17 we believe in Colorado, in Exhibit K, we need to have
18 a reference to the stipulation or to the language of
19 the stipulation. You know, it would be nice if we
20 could just agree on one version of Exhibit K and do
21 it in all the states, but if we have to go by state,
22 we'll have to do that.

23 JUDGE RENDAHL: Mr. Owens.

24 MR. OWENS: Well, Your Honor, I don't
25 represent the company in Colorado and have no real

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1 knowledge of what the Colorado -- the CPAP provides
2 on this point. It seems to me that Qwest has agreed
3 to provide the reports in all the states, and if it
4 files -- or when it files the settlement in Colorado,
5 if the Colorado Commission determines that an
6 amendment to the CPAP language is required, I assume
7 Qwest will comply with that determination at that
8 time, but it doesn't seem to us that that requires
9 an amendment to the Washington QPAP or necessarily
10 any other state QPAP given that, as a practical
11 matter, gearing up to provide this report is
12 something that's going to be done across the company,
13 and presumably it will be available to any CLEC.

14 It would be a lot more difficult for the
15 company to try to carve out areas and companies that
16 wouldn't have access to it, because it's an aggregate
17 report.

18 JUDGE RENDAHL: Okay. And Ms. Clauson, as
19 to the third issue on the footnote, you've now heard
20 Staff's and Qwest's position on that issue. Do you
21 have any reply?

22 MS. CLAUSON: Yes, Your Honor. We, again,
23 although we believe it would be more clear, we do
24 have Qwest stating on the record what it means, as
25 well as the stipulation. While our preference would

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1 certainly be to make the footnote clear so someone
2 who wasn't privy to this would understand it, we will
3 rely on the stipulation, as a party to that
4 stipulation if the footnote is not revised.

5 JUDGE RENDAHL: Okay. Are there any other
6 issues involving the settlement or the SGAT that I
7 need to know before I work with the Commissioners in
8 getting an order out on the settlement and the SGAT?

9 MR. OWENS: Maybe the only point that we
10 haven't discussed has to do with why we requested the
11 Commission to issue an order, if possible, by October
12 1st, and that was so that the dovetailing of the
13 ending of reporting of the old PO-20 under Exhibit
14 B-1 could occur simultaneously with the end of the
15 first burn-in period for the new expanded PO-20. And
16 it just seemed to us that it made a lot of sense to
17 try to have those two changes occur simultaneously,
18 if possible.

19 JUDGE RENDAHL: And I can state on the
20 record it won't be a problem, that this Commission
21 will issue an order by October 1st, so I think we
22 will resolve at least that -- the majority of the
23 issues that were pending in this proceeding by that
24 time.

25 Okay. So the next issue we need to talk

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1 about is scheduling for the remaining issue, which is
2 the Tier Two payment issue on PO-20. Commissioners
3 are happy to have me sit on that issue. They do not
4 feel the need to sit on that issue, so we have a bit
5 more flexibility in scheduling on that.

6 So I guess, Mr. Trautman, what would be
7 Staff's preference in terms of scheduling for the
8 Tier Two issue?

9 MR. TRAUTMAN: Well, Staff -- Staff does not
10 believe that a hearing is required for that single
11 issue. Staff believes that the issue can be decided
12 on submission of testimony and response testimony.
13 Now, we realize that, in the first round of
14 testimony, for example, some references were made to
15 testimony of other parties and, for example, Mr.
16 Spinks had made some references to -- I believe it
17 was the testimony of Mr. Smith, who's now one of the
18 stipulating parties, and so that testimony may or may
19 not be in the record.

20 We think -- therefore, we think that our
21 proposal would be to allow Staff to provide
22 supplemental testimony on the issue of PO-20, Tier
23 Two, and then allow -- certainly allow Qwest the
24 opportunity to respond, and have the last word on the
25 issue, and we believe that the Commission can decide

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1 the issue on the written testimony submitted.

2 JUDGE RENDAHL: And would the parties find
3 any benefit in briefing this in addition to the
4 testimony, or do you think the testimony is
5 sufficient? I'm just putting it out there.

6 MR. TRAUTMAN: At this point, I think filing
7 the testimony, which would also include the policy
8 positions of Staff, I think would be sufficient.

9 JUDGE RENDAHL: Okay. So Mr. Owens, do you
10 have any objection to the structure that Staff has
11 proposed?

12 MR. OWENS: Only to the omission of an
13 evidentiary process by which Qwest could test the
14 evidence of the Staff through cross-examination. And
15 I think Qwest would appreciate the opportunity to
16 submit a brief, as well. We don't think that, just
17 because the issues have been narrowed to a single
18 issue, that that means that the structure that the
19 Commission adopted for the six-month review of
20 allowing an evidentiary hearing is at all changed,
21 because if one examines the only statement that the
22 Staff has made to date on this point, which is Mr.
23 Spinks' testimony, which, as counsel reflected,
24 relies heavily and almost exclusively on the evidence
25 of Eschelon, Qwest really, at this point, doesn't

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1 know what it's facing and feels that it needs the
2 opportunity to have an evidentiary hearing in the
3 face of this.

4 So this issue was not identified by Staff as
5 one that it would litigate on the final issues list.
6 So the first time Qwest became aware of the Staff's
7 position was -- in writing, was on August 27th.

8 JUDGE RENDAHL: Okay. If it purely ends up
9 to be a policy issue, is there a need for evidentiary
10 hearings, or is this something that can be argued on
11 brief?

12 MR. OWENS: Well, policy is hard sometimes
13 to separate from the facts. The pre-filed testimony,
14 at any rate, relied heavily on anecdotal evidence of
15 Eschelon. I don't know, if the Staff comes up with
16 something that is not related to any factual
17 predicate and simply is stated as a matter of policy,
18 whether an evidentiary hearing is needed. I guess we
19 would have to look at it in that situation.

20 JUDGE RENDAHL: Mr. Trautman.

21 MR. TRAUTMAN: Well, I would take issue with
22 some of the characterizations of Staff's testimony in
23 saying that there's been no basis for Staff's
24 position. There clearly is a substantial basis.

25 I guess, again, certainly if Qwest wants

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1 briefing, then Staff would want briefing, as well,
2 but Staff -- again, Staff feels, first of all, we
3 haven't had the supplemental testimony, so I think we
4 should allow the supplemental testimony filing and
5 response testimony filing. Perhaps then, if Qwest
6 still believes they need a hearing, then the matter
7 could be addressed. We don't think a hearing will be
8 necessary.

9 JUDGE RENDAHL: Okay. Well, I think what
10 I'm going to do is schedule a half day of hearing on
11 this, which we can delete if there's no need for it,
12 and I will decide, based on the testimony that's
13 filed, whether, in fact, a hearing is necessary on
14 the testimony.

15 So Staff has filed direct, but needs to file
16 supplemental testimony. How much time does Staff
17 need to file that testimony?

18 MR. TRAUTMAN: Three to four weeks.

19 JUDGE RENDAHL: So you would propose filing
20 it at the end of September?

21 MR. TRAUTMAN: Today being?

22 JUDGE RENDAHL: Today is the 8th. So either
23 the end of September or the first week of October.

24 MR. TRAUTMAN: Yes.

25 JUDGE RENDAHL: How about the 4th or the

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1 5th?

2 MR. TRAUTMAN: That would be fine.

3 JUDGE RENDAHL: As I understand, Mr.

4 Trautman, you're in hearing the entire last week of
5 September, as am I.

6 MR. TRAUTMAN: Currently, I am, yes.

7 JUDGE RENDAHL: So why don't we schedule it
8 for the 4th. And then, how much time would Qwest
9 need in response?

10 MR. TRAUTMAN: Could we make it on the 5th,
11 just so it's not on the following Monday following
12 the hearing?

13 JUDGE RENDAHL: That's not a problem. So
14 Tuesday, the 5th?

15 MR. TRAUTMAN: Yeah.

16 MR. OWENS: I guess one question that we
17 have, Your Honor, is this is talked about as
18 supplemental testimony. It's unclear whether Staff
19 will be not offering the testimony that was
20 essentially denominated reply testimony in the round
21 that was submitted on August 13th. I guess I'm just
22 asking, are we facing both pieces of testimony or
23 just new testimony?

24 MR. TRAUTMAN: Well, you haven't -- you've
25 indicated that you don't believe there's much in the

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1 initial testimony. Now you seem to be quite
2 concerned with what's in it.

3 JUDGE RENDAHL: Well, I guess it would be
4 helpful for me to know, as well. Is the reply
5 testimony that was filed, are we starting new or
6 should we just chuck out what was already filed or
7 should we start again with this issue?

8 MR. TRAUTMAN: Well, the reason I raised the
9 issue of filing supplemental testimony, in part, was
10 because there were -- it was related to the Eschelon
11 testimony, and I don't know what the Commission
12 intends to do with that testimony in light of the
13 settlement. I mean, obviously, if that testimony is
14 not part of the record, then obviously we have to
15 file something completely in addition. And perhaps
16 that's -- perhaps that's the best way.

17 JUDGE RENDAHL: I think it might be cleaner
18 if we just start anew, and I guess the parties would
19 need to withdraw whatever testimony they had filed
20 previously.

21 MR. TRAUTMAN: That would be fine.

22 JUDGE RENDAHL: Given that the circumstances
23 have changed.

24 MR. OWENS: Well, an alternative, I guess,
25 would be that we would not object on the grounds of

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1 lack of foundation to the evidence on which Staff
2 relies. As long as we were able to cross-examine on
3 it, that would obviate Staff having to consume four
4 weeks in producing new testimony, and Qwest would
5 submit a brief response round of testimony to this
6 new evidence that we hadn't seen before, and we could
7 do that in probably a week.

8 MR. TRAUTMAN: No, we would prefer to have
9 four weeks to submit proper testimony.

10 JUDGE RENDAHL: Eschelon, as I understand,
11 won't be providing a witness, nor will any other
12 party who may have filed testimony in the direct or
13 the responsive round.

14 Maybe Qwest would have -- would be providing
15 the same witness, but I'm sure that any testimony
16 that Qwest filed in response to what Eschelon filed
17 would change substantially, as well, given the
18 settlement, so the issues would not be the same.

19 So I guess I'm questioning, having heard
20 what both of you are saying, the value of the
21 testimony that was filed in this case given the
22 settlement, or since starting -- there was some
23 discussion of the Tier Two issue, but that has since
24 been resolved by those other parties in settlement,
25 and now we have one remaining issue that needs to be

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1 fully fleshed out. So instead of calling it
2 supplemental testimony, we could just start anew and
3 call it direct testimony from Staff and not rely on
4 the prior testimony.

5 MR. OWENS: Very well, Your Honor.

6 JUDGE RENDAHL: If that works for all
7 parties?

8 MR. TRAUTMAN: That would be fine with
9 Staff.

10 JUDGE RENDAHL: So --

11 MR. OWENS: And then this is now the time
12 for us to respond to your question of how long does
13 Qwest need to respond to the testimony?

14 JUDGE RENDAHL: How long do you need? And
15 Staff has requested October 5th.

16 MR. OWENS: I beg your pardon, Your Honor?

17 JUDGE RENDAHL: Staff has requested October
18 5th, as opposed to the 4th.

19 MR. OWENS: Oh, the 5th, okay. Qwest could
20 respond within three weeks, Your Honor.

21 JUDGE RENDAHL: So October 26th?

22 MR. OWENS: Yes, Your Honor.

23 JUDGE RENDAHL: 25th or 26th, do you have a
24 preference?

25 MR. OWENS: Oh, the 26th.

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1 JUDGE RENDAHL: Okay. And then, how long
2 would Staff need to reply?

3 MR. OWENS: Seemed to me, Your Honor, I
4 heard Staff indicate they didn't require any reply.

5 MR. TRAUTMAN: We are going to have briefing
6 on it?

7 JUDGE RENDAHL: I think briefing might be
8 appropriate.

9 MR. TRAUTMAN: Well, if a reply is going to
10 be scheduled, we could -- probably 10 days.

11 JUDGE RENDAHL: So the 8th or the 5th of
12 November? Friday, the 5th -- or the 8th. Ten days
13 would be Saturday, the 6th, so Friday, the 5th, or
14 Monday, the 8th.

15 MR. TRAUTMAN: The 8th.

16 JUDGE RENDAHL: All right. And then, based
17 on that, I could schedule a hearing the week of the
18 15th. I would not want to schedule a hearing the
19 week of November the -- the week of Thanksgiving
20 week. We would just need a half day. And there's no
21 conflict that week. The Commissioners are out of --
22 they're in Tennessee for the NARUC meeting.

23 MR. OWENS: We might need to consult Qwest's
24 witness to determine whether any day the week of the
25 15th is unavailable. Dean, are you on the line?

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1 MR. BUHLER: Yes, I am, Doug.

2 MR. OWENS: Do you have any conflicts the
3 week of the 15th?

4 MR. BUHLER: I don't believe so. Hold on
5 for just one second. No, I do not.

6 MR. OWENS: Thank you. Buhler, B-u-h-l-e-r.

7 JUDGE RENDAHL: Thank you, Mr. Owens.

8 MR. TRAUTMAN: I think, with my schedule, I
9 think -- I know I've got some testimony and briefing
10 due at the early part of the week. I'm thinking
11 maybe the 18th would work the best for me. Is that
12 possible?

13 JUDGE RENDAHL: On Thursday?

14 MR. TRAUTMAN: Yeah.

15 JUDGE RENDAHL: Would you all prefer morning
16 or afternoon? If we schedule morning, we could
17 always go on, if we need to, into the afternoon. I
18 don't think we will, but we could schedule a 9:30
19 hearing and accomplish it in the morning. Does that
20 work for everyone, or would afternoon be preferable?

21 MR. OWENS: I don't know if our personnel
22 from Denver could get here for an afternoon start,
23 anyway. Do you know, Dean?

24 MR. BUHLER: That might be cutting it close,
25 so I'd be fine with --

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1 JUDGE RENDAHL: You'd be fine with a
2 morning?

3 MR. BUHLER: Yes.

4 MR. OWENS: Thank you.

5 JUDGE RENDAHL: So why don't we schedule a
6 9:30 start hearing on November the 18th. And then,
7 how about initial briefs two weeks following? So
8 that would be December the 2nd.

9 MR. TRAUTMAN: Could we have a little more
10 time, because of the Thanksgiving week? In fact, I
11 think I'm going to be gone that week.

12 JUDGE RENDAHL: What day would you need?

13 MR. TRAUTMAN: Perhaps December the -- how
14 about the 7th, the following Tuesday?

15 JUDGE RENDAHL: Okay. And then for
16 simultaneous responsive, 10 days?

17 MR. OWENS: That would be fine, Your Honor.

18 JUDGE RENDAHL: That would be the 17th.
19 Okay. So will that -- if, for some reason, we do not
20 need the hearing, we can bump up the briefing days
21 and we can work that out based on what I see in the
22 testimony.

23 I think the only -- is there anything else
24 we need to talk about in terms of scheduling the Tier
25 Two issue?

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1 MR. OWENS: No, Your Honor.

2 MR. TRAUTMAN: No.

3 JUDGE RENDAHL: All right. Hearing nothing
4 on that, the only remaining issue is whether the
5 Commission needs to initiate the next six-month
6 review proceeding, which technically should have
7 started at the end of June.

8 MS. CLAUSON: Your Honor, this is Karen
9 Clauson. I'm sorry, I didn't get to my phone soon
10 enough. On the last issue, the CLECs have said in
11 their narrative that they withdraw their testimony.
12 Do we need to file something formal withdrawing Ray
13 Smith's testimony, his direct, or will approval of
14 the stipulation effectively do that?

15 JUDGE RENDAHL: Approval of the stipulation
16 would do that, and I will make sure it's so noted in
17 the order.

18 MS. CLAUSON: Thank you. I'm sorry to have
19 interrupted.

20 JUDGE RENDAHL: No, I appreciate that.
21 That's helpful clarification. So on the issue of the
22 next six-month review, not that I'm anxious to
23 initiate another proceeding, but is it -- given the
24 status of LTPA proceeding, is there anything that's
25 -- any remaining issues that are pressing that this

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1 Commission needs to resolve in this next -- what
2 would be the next phase, or is it appropriate to skip
3 a phase and begin again in January? Mr. Owens, any
4 thoughts?

5 MR. OWENS: Qwest doesn't see any pressing
6 issues, Your Honor, and would support skipping a
7 phase.

8 JUDGE RENDAHL: And for MCI.

9 MS. SINGER NELSON: Chad, do you have any
10 issues that you'd like to raise before the Commission
11 in this six-month review?

12 MR. WARNER: I don't think so. I think we
13 could wait till January, as well.

14 MS. SINGER NELSON: Your Honor, MCI can wait
15 till January, as well.

16 JUDGE RENDAHL: All right. And Eschelon.

17 MS. CLAUSON: This is Karen Clauson, from
18 Eschelon. The CLECs have made a proposal in Arizona
19 with respect to OP-5B, and we have made that proposal
20 as to all states, and we would prefer that Washington
21 wait to decide if it needs a six-month review to see
22 if the CLECs and Qwest can work that out, because
23 that is an issue -- we've waited a long time already
24 on OP-5B to get something in place, and we need to
25 get a standard for that. That's something that, if

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1 we cannot resolve, we'd like Washington to take up
2 sooner than January.

3 If that issue -- if we can reach some kind
4 of stipulation in Arizona that applies to the states,
5 then part of what we have proposed in Arizona is that
6 would resolve the issues and not need anything until
7 January.

8 JUDGE RENDAHL: All right. Well, I guess
9 I'll -- at this point, let me hear from Staff, but it
10 sounds like there may not be a need to initiate a
11 proceeding until we hear from the CLECs as to OP-5B.
12 And Mr. Trautman?

13 MR. TRAUTMAN: At this point, Staff is --
14 thinks it would be okay to skip a phase.

15 JUDGE RENDAHL: All right. So in the
16 pre-hearing conference order from this pre-hearing,
17 I'll indicate the Commission will not be initiating
18 at this point a third six-month review proceeding,
19 but understands that there are discussions underway
20 concerning standards for OP-5B and will await
21 notification from the parties as to whether we need
22 to address that prior to January.

23 Is there anything else we need to address
24 this morning? Hearing nothing, is there any party
25 who wishes to order a transcript of this proceeding

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1 this morning, especially on the bridge line?

2 MR. OWENS: Qwest ordered one already.

3 JUDGE RENDAHL: All right That's helpful.

4 I do it mainly for those on the bridge, so that the

5 court reporter has the benefit of that. All right.

6 Well, hearing nothing, we are adjourned this morning.

7 Thank you very much for attending.

8 (Proceedings adjourned at 11:12 a.m.)

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