

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 In re Application of)
 U S WEST, INC., and QWEST) DOCKET NO. UT-991358
 4 COMMUNICATIONS INTERNATIONAL,) Volume VI
 INC. for an Order Disclaiming) Pages 323 - 496
 5 Jurisdiction, or in the)
 Alternative, Approving the)
 6 U S WEST, INC., - QWEST)
 COMMUNICATIONS INTERNATIONAL,)
 7 INC. Merger.)

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9 A hearing in the above matter was held on
 10 March 14, 2000, at 10:39 a.m., at 1300 South
 11 Evergreen Park Drive Southwest, Olympia, Washington,
 12 before Administrative Law Judge DENNIS MOSS,
 13 Commissioners RICHARD HEMSTAD, WILLIAM R. GILLIS, and
 14 Chairwoman MARILYN SHOWALTER.

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The parties were present as follows:

16

17 QWEST COMMUNICATIONS INTERNATIONAL, INC., by
 RONALD J. WILTSIE, II, MACE J. ROSENSTEIN and GINA
 SPADE, Attorneys at Law, Hogan and Hartson, 555
 18 Thirteenth Street Northwest, Washington, D.C., 20004.

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U S WEST COMMUNICATIONS, INC., by JAMES M.
 VAN NOSTRAND and MARY S. HOBSON, Attorneys at Law,
 20 Stoel Rives, 600 University Street, Suite 3600,
 Seattle, Washington 98101-3197.

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22 U S WEST COMMUNICATIONS, INC., by LISA A.
 ANDERL, Attorney at Law, 1600 Seventh Avenue, Suite
 3206, Seattle, Washington 98191.

23

24 LEVEL THREE COMMUNICATIONS, INC., by ROGELIO
 E. PENA, Attorney at Law, Nichols and Pena, 2060
 Broadway, Suite 200, Boulder, Colorado 80302.

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1 AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST,
INC., NEXTLINK WASHINGTON, INC., ADVANCED TELECOM
2 GROUP, INC., by GREGORY J. KOPTA, Attorney at Law,
Davis Wright Tremaine, 1501 Fourth Avenue, Suite 2600,
3 Seattle, Washington 98101-1688.

4 RHYTHMS LINKS, INC., and SBC TELECOM, INC.,
by ARTHUR A. BUTLER, Attorney at Law, Ater Wynne, 601
5 Union Street, Suite 5450, Seattle, Washington
98101-2327.

6
7 MCLEOD USA TELECOMMUNICATIONS SERVICES, INC,
by MARK P. TRINCHERO, Attorney at Law, Davis Wright
Tremaine, 1300 Southwest Fifth Avenue, Suite 2300,
8 Portland, Oregon 97201.

9 COVAD COMMUNICATIONS COMPANY and METRONET
SERVICES CORPORATION, by BROOKS E. HARLOW, Attorney at
10 Law, Miller Nash, 601 Union Street, Suite 4400,
Seattle, Washington 98101-2352.

11
12 WASHINGTON INDEPENDENT TELEPHONE ASSOCIATION,
by RICHARD A. FINNIGAN, Attorney at Law, 2405 Evergreen
Park Drive Southwest, Suite B-3, Olympia, Washington
13 98502.

14 PUBLIC COUNSEL, by SIMON J. FFITCH, Assistant
Attorney General, 900 Fourth Avenue, Suite 2000,
15 Seattle, Washington 98164.

16 THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION, by SALLY G. JOHNSTON, Assistant Attorney
17 General, 1400 South Evergreen Park Drive Southwest,
Post Office Box 40128, Olympia, Washington 98504-0128.

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25 Kathryn T. Wilson, CCR
Court Reporter

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

2 JUDGE MOSS: Let's go on the record. Good
3 morning, everyone. We are now on the record in the
4 Docket No. UT-991358 proceeding styled, In re
5 Application of U S West, Inc. and Qwest Communications
6 International, Inc., for an Order Disclaiming
7 Jurisdiction, or in the Alternative, Approving the
8 Merger. Our basic agenda today will be to take
9 appearances in the short form; that is to say, name and
10 whom you represent unless it is your first appearance
11 in the proceeding, in which case I will ask you for
12 more complete information.

13 We have carried with the case from yesterday
14 a certain motion for continuance to reopen discovery
15 and permit supplemental testimony. We will hear
16 something about that this morning. We will discuss our
17 process and schedule a little bit, and then the next
18 order of business will be our panel presentation
19 regarding the partial settlement agreement. If any
20 time remains, then we will launch into the
21 cross-examination beginning with the applicant's
22 witnesses in the order that we established yesterday in
23 which you now all have before you in the form of an
24 exhibit. I will ask today that to the extent you refer
25 to exhibits you use the premarked numbers that we

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1 established through yesterday's proceedings. And, of
2 course, you may supplement that with some other
3 reference that will help your witness, if needed.

4 Let's go ahead and start with the
5 appearances. Let's just start on this end, Mr.
6 Wiltsie.

7 MR. WILTSIE: For Qwest, Ronald Wiltsie, Mace
8 Rosenstein, and Gina Spade with the law firm Hogan and
9 Hartson.

10 MR. VAN NOSTRAND: For U S West, James Van
11 Nostrand and Mary Hobson from Stoel Rives.

12 MS. ANDERL: Lisa Anderl representing U S
13 West Communications, Inc.

14 MR. FINNIGAN: Rick Finnigan representing the
15 Washington Independent Telephone Association.

16 MR. PENA: Rogelio Pena representing Level
17 Three Communications.

18 MR. BUTLER: Arthur A. Butler for Rhythms
19 Links, Inc., and SBC Telecom, Inc.

20 MR. HARLOW: Brooks Harlow for Covad
21 Communications and Metronet Services.

22 MR. TRINCHERO: Mark Trinchero for McLeod USA
23 Telecommunications Services, Inc.

24 MR. KOPTA: Gregory Kopta on behalf of AT&T
25 Communications of the Pacific Northwest, Inc., Advanced

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1 Telecom Group, Inc., and Nextlink Washington, Inc.

2 MR. FFITCH: Simon ffitch, assistant attorney
3 general for public counsel.

4 MS. JOHNSTON: Sally Johnston, assistant
5 attorney general representing Commission staff.

6 JUDGE MOSS: Do we have anyone on the
7 teleconference bridge who wishes to enter an
8 appearance? Hearing nothing, I take it that all those
9 that choose to participate in our evidentiary hearing
10 phase and our settlement discussion are present. I
11 would note for the record that there is no one present,
12 apparently, for Telecommunications Resellers
13 Association, which is the only other party I have on my
14 list.

15 We had some discussion off the record
16 yesterday with respect to our process, and I want to
17 confirm this morning on the record some of the
18 substance of that discussion before we launch into the
19 process matters that remain open. As I understand,
20 there is no objection to introducing by stipulation and
21 without cross-examination the prefiled testimony and
22 exhibits that relate only to the issues proposed to be
23 resolved by means of the settlement agreement. This
24 would include the prefiled material from U S West
25 Witness Cummings, public counsel Witness Brosch, and

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1 staff Witnesses Stillwell, Folsom, Griffith, Twitchell,
2 and all of Dr. Blackmon's testimony except Pages 3
3 through 15. Are there any exhibits related to that
4 testimony, Ms. Johnston, that I should note?

5 MS. JOHNSTON: No.

6 JUDGE MOSS: I also understand that these
7 witnesses will be available today. Mr. Brosch by
8 telephone, if necessary, if the inquiry requires their
9 participation. They can also be made available later
10 if we need them. Have I accurately stated our
11 understanding from yesterday? Hearing nothing, it
12 appears that is the case. With that then I think we
13 can turn to at least preliminary consideration of the
14 outstanding motion for continuance to reopen discovery
15 and to permit supplemental testimony. Who wishes to
16 speak for the movement?

17 MR. KOPTA: I will speak on behalf of the
18 movement. Thank you, Your Honor, Madam Chairwoman,
19 Commissioners Hemstad and Gillis.

20 We have brought this motion on behalf of
21 several of the parties to this case based on concerns
22 that we have about access to information that relates
23 directly to the Commission's consideration of the
24 issues regarding the proposed merger between U S West
25 and Qwest. We have propounded numerous data requests

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1 to the joint applicants and have gone through discovery
2 disputes and have obtained some information from the
3 joint applicants, only to read more in the newspapers
4 than we have received in response to our data requests.
5 Continuously, the joint applicants respond to data
6 requests saying they have no plans; that they have not
7 done anything yet with respect to many of the issues
8 that are of concern to the joint movements. Yet, there
9 are news reports that Mr. Trujillo will no longer be
10 part of the merged company because of, in the reported
11 words of Mr. Trujillo, disagreements over strategic
12 decisions.

13 This is in direct contrast to the lack of any
14 such decisions that supposedly the joint applicants
15 have made, at least in their representations to us in
16 response to our data requests, and indeed, in the Utah
17 merger review hearings that have just concluded, the
18 witnesses in that case were unaware of any strategic
19 decisions or the strategic decisions that Mr. Trujillo
20 was citing for his reason in deciding not to stay with
21 the company, so we have a situation where it appears as
22 though there are decisions that have been made. Yet,
23 they are decisions that have not been communicated to
24 the parties in this case or to the Commission nor to
25 the witnesses that are providing testimony to

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1 Commissioners.

2 We don't think that's appropriate. There are
3 changes being made on a daily basis that apparently are
4 not being disclosed that are critical to the
5 Commission's ability to evaluate this merger. In fact,
6 I understand that this morning, U S West sent a letter
7 to Deutsche Telekom saying that it was willing to
8 discuss possible merger with Deutsche Telekom, in
9 contrast to the latest news report which was that they
10 weren't, so on a daily basis we seem to be in shifting
11 sands. At one minute, this is the merger. The next
12 minute, maybe we're going to have a different merger,
13 followed by, No, this is the merger, and now,
14 apparently, maybe there will be a different merger.

15 This obviously is a very resource intensive
16 case. We are concerned that we not spend a great deal
17 of time discussing this merger when there may not be
18 this particular merger going on and when there is
19 information to which we have not had access that will
20 bear directly on the issues that this Commission needs
21 to consider.

22 Another example of information that we have
23 not been provided is the designation that U S West has
24 used or continues to use for wire centers of gold,
25 silver, and bronze to determine where investment will

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1 be directed in its wire centers. We asked a general
2 data request, along with our original request for AT&T,
3 Nextlink, and ATG, of any documents, a description of
4 how U S West funds construction of facilities in the
5 state of Washington. In response to that, U S West
6 initially objected but provided some information
7 without any reference to gold, silver, or bronze
8 designations of wire centers. It was only when the
9 Minnesota Public Service Commission directed the
10 applicants specifically to address those issues that
11 substantial information about that practice came to
12 light. Unfortunately, this was right at the discovery
13 cutoff for the last possible opportunity to have
14 discovery in this case.

15 Mindful of that, we asked a data request that
16 simply requested that we be able to get the same
17 information that was produced in Minnesota and follow
18 that up with a call to counsel asking if we would
19 simply be able to use information that we had already
20 obtained through the Minnesota proceeding since it was
21 confidential, and we did not want to breach the
22 confidentiality agreement, but that was refused. We
23 have not been provided any information nor have the
24 joint applicants given us permission to use information
25 that we already have. Again, this is an example of an

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1 apparent attempt on the point of the joint applicants
2 to minimize the information that they are providing to
3 the other parties.

4 Another basis of our motion is that there are
5 currently settlement discussions between the
6 intervenors and the joint applicants dealing with
7 competitive issues. These are discussions that are
8 going on not only here in Washington but also in
9 Minnesota, and an attempt to resolve the other issues
10 that remain in this case, and certainly, we think that
11 the best resolution of those issues would be through a
12 settlement, indeed, a settlement of the entire case as
13 opposed to only a portion of the case, and there simply
14 has not been the opportunity to be able to conduct
15 those negotiations in light of the emphasis, at least
16 so far, on the part of joint applicants to settlement
17 discussions with Commission staff and public counsel,
18 and finally, we realize that the joint applicants want
19 to act with haste in terms of trying to get all of the
20 necessary approvals for their merger. However, there
21 have been adjustments to schedules in other states,
22 including Arizona and Minnesota in which hearings are
23 not scheduled until April, and with possible resolution
24 as late as August or September, at least in Minnesota,
25 so a 30-day delay, for example, in the state of

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1 Washington, would only put this state in the same
2 position as at least two other states in terms of
3 reviewing the merger, so there will not be any
4 prejudice to the joint applicants if the Commission
5 grants the motion, allows us to give the joint
6 applicants more targeted discovery so that perhaps we
7 can get additional information and allows us the
8 opportunity to provide any supplemental testimony
9 that's necessary to address whatever additional
10 information we get, as well as to determine whether or
11 not this is going to be the merger ultimately that the
12 Commission is required to approve. Thank you.

13 JUDGE MOSS: Mr. Kopta, I note that your
14 written motion states as an additional basis for your
15 request the pending partial settlement. Is it your
16 intention to no longer advocate this motion on that
17 basis?

18 MR. KOPTA: No, that is not. I think that
19 that is a basis for our request. We have had some
20 amount of time since the partial settlement was filed
21 about 10 days ago, but there are some questions that we
22 have about them. Our preference, obviously, would be
23 not to conduct oral discovery at this point, but if
24 that's the procedure that the Commission wants to take,
25 then we will certainly do what we can. Unfortunately,

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1 that was the procedure that was undertaken in Utah, and
2 it raised as many questions or more than it answered,
3 and I think that particularly given the importance of
4 the issues here that we also be given an opportunity,
5 to the extent necessary and to the extent that there
6 are questions raised, particularly after the panel
7 discussion, to determine the impact of the proposed
8 settlement on the competitive issues.

9 Although there has been representation they
10 are discreet, I think that there are certainly some
11 overlaps between the issues that have about been
12 resolved for this settlement discussion and the issues
13 that we have raised in our testimony, and we would
14 certainly want the opportunity to try and explore not
15 only the full meaning of the settlement, how it would
16 be implemented, but also the impact on competitive
17 issues as they have arisen in this case.

18 JUDGE MOSS: I understand that the procedure
19 followed in Utah was to have inquiry of live witnesses
20 with respect to the settlement. I didn't understand
21 that part.

22 MR. KOPTA: Yes, that's correct. There was a
23 settlement reached between the Division of Public
24 Utilities, which is the Commission staff equivalent in
25 Utah, and the joint applicants dealing with, again,

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1 retail customer issues, and the Utah Commission
2 determined to have a panel of witnesses from all of the
3 parties discuss the settlement and be available for
4 questioning on the meaning of the settlement, how it
5 was to be interpreted and implemented, so that was,
6 again, similar to what has been proposed here, the
7 initial order of business, and then the Commission went
8 on to conduct the remainder of the hearing with
9 cross-examination of the remaining witnesses.

10 JUDGE MOSS: I think in terms of what has
11 been proposed here, I really haven't had any sort of
12 formal proposal from anyone with respect to how we
13 conduct this, other than in the fashion that we have
14 conducted several recent cases in which there has been
15 a partial settlement submitted, and in those cases, we
16 not have inquiry from the parties of the panel. Is
17 there a suggestion to the contrary in this case?

18 MR. KOPTA: I would think that if the
19 Commission grants our motion and we have an opportunity
20 to conduct discovery and follow that up with any
21 supplemental testimony, then it may not be necessary
22 for us to have the opportunity to ask questions. If
23 that is not what the Commission intends to do, then I
24 certainly think we should be given the opportunity to
25 try and explore what the meaning of this settlement

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1 agreement is. Otherwise, we are left with a document
2 that has many questions but no answers and no
3 reasonable way for us to determine how it's going to be
4 interpreted, how it's going to be implemented, and how
5 that is going to impact the interests of my clients and
6 the other joint movement.

7 CHAIRWOMAN SHOWALTER: Can you just be a
8 little more specific about the types of concerns that
9 you have with the settlement agreement and its overlap
10 on competition? I don't mean it to be elaborate, but
11 what are you trying to get at just in terms of subject
12 areas; what are your concerns?

13 MR. KOPTA: Others may be able to answer this
14 as well, but I think certainly one of the primary
15 issues from our perspective is direction of investment.
16 There are specific points in the settlement agreement
17 that the joint applicants undertake to maintain a
18 certain level of investment and direct that investment
19 to specific locations and specific facilities.

20 One of our primary concerns is that U S West
21 in the past has not devoted sufficient resources to
22 facilities needed by competitors, as well as by retail
23 customers, so our concern is, are these resources going
24 to be devoted to areas other than those at which
25 competitors need facilities, and essentially settling

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1 issues to the benefit of retail customers but to the
2 detriment of wholesale customers, and certainly, there
3 are comparisons between the service quality standards
4 and remedies in the settlement agreement as well as in
5 the existing Commission rules as opposed to the lack of
6 any standards or remedies for wholesale service
7 quality, and those are the two areas that immediately
8 come to mind in terms of the interrelationship between
9 the settlement agreement and the issues that we have
10 raised.

11 CHAIRWOMAN SHOWALTER: Thanks.

12 JUDGE MOSS: It seems to me that Mr. Kopta
13 has covered the movement's position rather thoroughly,
14 but I note that Mr. Harlow and Mr. Butler are on the
15 motion. Anything to add, no need to repeat.

16 MR. HARLOW: I will not repeat. I would like
17 to make a more impassioned plea. Mr. Kopta has made a
18 very reasoned analysis. But frankly, I'm concerned
19 that the public interest is getting pushed aside by the
20 schedule here. Decisions made in haste and without
21 full scrutiny and due consideration often times turn
22 out to be bad decisions, and bad decisions are maybe
23 less than ideal decisions that could have been better
24 had the parties stepped back, taken some breathing
25 space, and adequately reviewed the issues.

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1 This case reminds me very much of the AFOR
2 case a little over ten years ago, a lot of
3 similarities. There was a partial settlement that
4 didn't involve all the parties, and the case was pushed
5 through with incredible speed, and I think in
6 hindsight, a lot of people look back and say, Gee,
7 maybe we should have listened a little harder to the
8 intervenors. Maybe we should have given them a little
9 more time to develop their positions. Maybe the public
10 interest might have been served had we not rushed this
11 case through.

12 So why do we rush the case through? Is it
13 because this Commission is here to meet the applicants'
14 schedule? Absolutely not. This Commission is here to
15 protect the public interest. Clearly, it would not be
16 in the public interest for this Commission to
17 jeopardize a merger that might be in the public
18 interest solely for schedule reasons, but this
19 Commission is no longer in that box. I'm not sure it
20 ever was, but the Commission adopted a schedule that
21 was extremely, extremely difficult. It became doubly
22 so when this partial settlement was announced and with
23 the new developments that Mr. Kopta referred to.

24 We frankly aren't ready, not to the extent
25 that's our fault, that's our problem, but it's not our

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1 fault. We have legitimate new developments. We have
2 on the eve of hearing the strategic decisions that are
3 critical to determining whether the merger is in the
4 public interest or what conditions might be needed to
5 protect the public interest. These decisions are being
6 made right now or they've just been made, and there is
7 not time to develop them again before the Commission.

8 Yes, we have competing competitive interests.
9 The applicants are on one side. Clearly, they want to
10 close it, and that's in their interest to close it as
11 quickly as possible with as few as questions as
12 possible. Clearly, it's in our interest as opponents
13 to try and get conditions that will improve the state
14 of competition in this state, but by fully developing
15 those competing interests, full factual development
16 allowing the parties adequate time, the Commission can
17 come down in the middle and protect the public
18 interest. If we let the schedule drive this case, the
19 public interest will not be as well protected as it
20 could be. Thank you.

21 JUDGE MOSS: Thank you, Mr. Harlow.
22 Mr. Butler, anything to add?

23 MR. BUTLER: Yes. I just have one point to
24 address, and that is with regard to the possibilities
25 of a complete settlement of this case. We believe that

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1 it's always advisable to offer up a proposed solution
2 in which every party can agree on reasonable
3 compromises that will address the full range of
4 concerns presented. We have not had an opportunity to
5 adequately explore settlement of the competitive issues
6 because of the schedule in this case and the way in
7 which the settlement discussions have progressed.

8 Some time ago, we did present U S West with a
9 proposal from all of the competitive intervenors. We
10 just recently received a counterproposal Thursday, I
11 believe it was, last week, and we have been working
12 diligently within the very limited amount of time
13 that's available to come back with a response to that.
14 We believe firmly that some reasonable additional
15 period of time in the motion -- we asked for a month.
16 Even a couple of weeks would help to try to have an
17 opportunity to explore the possibility of reaching a
18 compromise on the full range of issues.

19 As a practical matter, if we proceed ahead
20 with the hearings as currently scheduled, it is my
21 belief that a settlement of the other issues will not
22 be possible in this case. If there is to be one, we
23 need some additional time to do it. Thank you.

24 CHAIRWOMAN SHOWALTER: I've got a question on
25 that point. If there were use for the next few days on

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1 some matters -- I'm not sure there is, but if there
2 is -- but we did not conclude this week and instead
3 scheduled another set of days, two weeks a month or
4 whatever, hence, would that serve some of the same
5 function or not?

6 MR. BUTLER: From my perspective, and I'll
7 let others answer from theirs, we think there could be
8 some use in going ahead with the panel on the consumer
9 issue of the proposed stipulation, with some additional
10 opportunity, if need be, to get additional information,
11 but not go forward with the hearings on the case in
12 chief. If we have to do that, to devote the time and
13 resources to that and spend money from our clients to
14 do that, I think the possibility of a settlement
15 evaporates. We don't have the time and people don't
16 have the resources to devote to it, but I think it
17 would be a constructive thing to go ahead with
18 questioning of the panel on the issues that there has
19 been a stipulation on with the possibility if there
20 needs to be additional information discovered or
21 presented at a later time, should that be necessary,
22 then have a hiatus to try to explore the possibility
23 for reaching a compromise on the other issues.

24 CHAIRWOMAN SHOWALTER: Are there any other
25 issues or parts of the case that you think could be

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1 addressed this week if there was another set of
2 hearings on the issues that couldn't? I guess what I'm
3 asking is if we did set up another set of hearings,
4 what is it, other than the settlement, that we could
5 accomplish this week, if anything?

6 MR. BUTLER: Mr. Harlow is whispering in my
7 ear, Perhaps cross of the staff witnesses, but my view
8 is I think the time would be better spent trying to
9 explore whether it's possible to reach a compromise on
10 the competitive issues in the case rather than proceed
11 with the hearings, because I think what we are talking
12 about from the exchanges that we've seen are true
13 compromises between positions that have been presented
14 in the testimony of both sides.

15 COMMISSIONER HEMSTAD: This question may be
16 premature, but what posture will the intervenors take
17 with regard to the so-called retail issues with respect
18 to its partial settlement? Would it be your intention
19 to litigate those issues directly or try to acquiesce
20 in the settlement arrangements?

21 MR. BUTLER: From my perspective, Mr. Kopta,
22 summarized our position pretty clearly. The concern
23 isn't one that we are opposed, necessarily, to anything
24 in there. The concern is what implications are for the
25 wholesale customers, and there are some admitted vague

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1 areas in that agreement, which we'd like to know the
2 detail of because that might have implications one way
3 or the other, but on principle, we are certainly not
4 opposed to resolving those.

5 We think the staff and public counsel have
6 done a good job of developing those interests. We are
7 just worried about the fact that it wasn't a
8 comprehensive settlement, so we have the concerns of
9 other parties that have not yet been addressed, and we
10 don't know how they impacted.

11 COMMISSIONER HEMSTAD: Back to Mr. Kopta,
12 with regard to your reference to strategic differences
13 and Mr. Trujillo's public statement, would it be your
14 intention with more time to depose Mr. Trujillo or
15 Mr. Nacchio?

16 MR. KOPTA: We would hope that it would not
17 come to that point. Our concern is that we have
18 haven't been getting information based on what we have
19 tried to get in more or less general data requests.
20 Apparently, we need to be more specific. We are
21 willing to go down that road and try to get the
22 information that we can through that course, but
23 certainly, we hold out the possibility if we are unable
24 to get that information, then we may seek the
25 Commission's assistance in other forms of discovery,

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1 which may include a deposition of someone who knows
2 what's going on with the company.

3 The office of the chairman is set up to be
4 the final and ultimate authority on some very crucial
5 issues, including network investment, so what's going
6 to happen with that position, which the witnesses in
7 Utah were not able to answer? What has been happening
8 that has led Mr. Trujillo, who was an enthusiastic
9 supporter of the merger and I gather still is, to
10 decide he doesn't want to be part of the merged
11 company? We think that those are some vital concerns
12 to the merged company and, obviously, vital concerns to
13 us if there is such agreement that one of the major
14 participants no longer wishes to participate.

15 COMMISSIONER HEMSTAD: I can surely imagine
16 in the ongoing discussions about strategy direction and
17 the like in any corporation, there can be ongoing
18 discussions or crystallized decisions. There could
19 also be personality differences and the like. I guess
20 I have some questions just as to how specific or
21 crystallized a response you could reasonably expect to
22 obtain?

23 MR. KOPTA: We have that same concern, but
24 we'd like to try. The newspaper article that we have
25 as a cross exhibit lists one example of a disagreement

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1 on the point of VDSL services; that there is apparently
2 a difference of opinion among U S West and Qwest as to
3 how rapidly that service should be deployed.
4 Obviously, given the representations in this case that
5 the merger will result in more rapid deployment of
6 advanced services, including DSL type services,
7 decisions that are being made in terms of how rapidly a
8 particular service is to be rolled out, and obviously,
9 disagreements over that kind of issue, bear directly on
10 the evidence that the joint applicants have presented
11 in this case and that we have tried to address in the
12 testimony that we have, based on what is obviously
13 limited and incomplete information.

14 JUDGE MOSS: Who wishes to speak for the
15 joint applicants on this?

16 MR. WILTSIE: I will, Your Honor. In
17 addressing what Mr. Kopta just said, if there is
18 limited and incomplete information flowing to the
19 intervenors, it is their own fault. This is
20 essentially a motion to compel dressed up as a motion
21 to continue. At least half of their written paper and
22 I would say three quarters of what has been argued
23 before this Commission today deals with discovery
24 issues. What has not been said is that this focusing
25 on AT&T, they propounded over 100 data requests, which

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1 included something like 250 questions.

2 They asked a level of granularity that was
3 astonishing. We have been supplementing data requests
4 up through last week, specifically concerning the
5 integration process, which is what their concern is.
6 This Commission ruled in the protective order that if
7 AT&T did not ask a specific question to which highly
8 confidential materials were responsive, we did not have
9 to give it to them. We have been supplementing to the
10 extent that highly confidential materials have been
11 flowing to staff because they asked the question.
12 Staff has seen it. AT&T and the intervenors have not,
13 but never the less, Your Honor, we are fully complying
14 with all the supplementation requirements of this board
15 and have been through last week.

16 The issue is not one of specificity. It is
17 perhaps one of generality. What AT&T was interested in
18 were the specific integration decisions for certain
19 systems. Strategic differences in the office of
20 chairman do not necessarily imply that those decisions
21 have been made. They have questioned the people who
22 have knowledge of those details, and we have been
23 giving them answers as to those details as they become
24 available. Strategic decisions will continue to be
25 made up through and through the time of the merger

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1 closes. What the intervenors are essentially saying,
2 Your Honor, is we can't close this merger until we make
3 all those strategic decisions, and that is not the way
4 that mergers happen.

5 Turning to specifics, Your Honor, the gold,
6 silver, bronze information that Mr. Kopta mentioned
7 was a wire center designation used by U S West several
8 years ago. AT&T is fully aware of that. In Docket
9 UT-991292 that AT&T filed before this Commission in
10 September of 1999, they specifically asked questions in
11 September seeking information on gold, silver, bronze
12 wire center designations. That was during the first
13 discovery period in this matter, which closed on
14 November 30th.

15 Shortly after November 30th, in Minnesota,
16 AT&T attended a deposition in this merger proceeding in
17 which gold, silver, bronze, was discussed and documents
18 were produced and their lawyer asked questions
19 concerning it and reviewed those documents. In
20 February in the Iowa proceeding, Mr. Kopta and I sat in
21 the room while Mr. Stoffregan, McLeod's attorney, asked
22 U S West witnesses about gold, silver, bronze, wire
23 center designations.

24 They then waited until two days after
25 discovery closed in this matter to propound a data

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1 request to us seeking Minnesota information. The
2 information they seek is irrelevant to this proceeding.
3 They were neglectful in seeking it early and they were
4 late, just plain late in asking us for it. They have
5 no basis to seek that information, and it provides no
6 grounds for continuance of this matter.

7 As to the settlement agreement, Your Honor,
8 the settlement agreement specifically excludes the
9 competitive issues, which are for the most part what
10 the intervenors are concerned with. We would strongly
11 urge that no delay is warranted in stopping this
12 proceeding from going forward to let the CLEC's attempt
13 to settle this matter. While in many cases it is
14 preferable that a settlement occur rather than a ruling
15 be imposed, what will happen is that the delay will
16 work to enable the CLEC's to seek to strike a better
17 bargain. They are themselves seeking a strategic
18 position here. If they wish to settle it, we are
19 willing to discuss settlement during this week while
20 this hearing is in progress, and if we can reach a
21 settlement, we may be able to end this proceeding
22 early. However, we are here; we are ready to proceed,
23 and a delay will only inure to the benefit of the
24 CLEC's so they can put more pressure on us in an
25 attempt to extract further gains. There is no reason

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1 to do that we. We, unlike as Mr. Harlow confessed, we
2 are ready to proceed. Our witness are here. Our
3 cross-examinations are ready. We do not believe a
4 delay is warranted.

5 Finally, Your Honor, as we said in our
6 papers, this Commission can only consider the merger
7 that is before it. I heard reference to a letter that
8 U S West has apparently sent to Deutsche Telekom. I
9 have no knowledge of that letter. We are fully aware
10 of any obligation that we have to inform this
11 Commission if a material change in the application has
12 occurred. I can categorically state none has occurred.
13 This procedure is ripe for decision, and we ask this
14 board to proceed.

15 JUDGE MOSS: Thank you. I extended the
16 opportunity to the joint movements to have more than
17 one spokesperson, and since we have joint applicants, I
18 suppose I should allow that opportunity; although, I
19 don't necessarily encourage anything.

20 MR. VAN NOSTRAND: Consistent with that, Your
21 Honor, we have nothing further to add.

22 CHAIRWOMAN SHOWALTER: I have a question.
23 One of the issues with the merger is managerial fitness
24 and what is the management of the merged company going
25 to look like and is it capable of performing the job of

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1 the merged company, and I realize that testimony has
2 been filed on this question; that I note that those who
3 have filed it have since left the company. Do the
4 joint applicants have evidence and witnesses who now,
5 if we go forward this week, who can testify on this
6 subject of what the management structure or the
7 managerial fitness of the merged company will look like
8 or be like and get to the issue of -- well, I guess
9 provide enough evidence to the Commission on that issue
10 that we can make a determination on managerial fitness.

11 MR. WILTSIE: Yes, I believe we do. The
12 person you're referring to, Mr. Gallant, has left
13 Qwest. Mr. Davis, who was to adopt his testimony has
14 not and will actually appear this morning in the panel.
15 He cannot unfortunately appear later in the week for
16 substantive testimony. His testimony is being adopted
17 by Mr. Pitchford, who can address the questions you
18 have on that area.

19 CHAIRWOMAN SHOWALTER: Thank you.

20 MR. TRINCHERO: Your Honor, if I might just
21 address that last point. Mark Trincherro on behalf of
22 McLeod USA. Mr. Kopta and I just came from the Utah
23 hearings, at which time we had the opportunity to
24 cross-examine Mr. Pitchford on these very issues, and
25 he did not have answers for us, so if that's the

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1 witness that the joint applicants intend to put on to
2 answer those questions, I would submit that we won't
3 get the answers that we need and that we would perhaps
4 need discovery instead.

5 JUDGE MOSS: Do staff or public counsel wish
6 to place an oar into these waters?

7 MS. JOHNSTON: No way. Commission staff is
8 taking no position on the motion for continuance in
9 this docket.

10 MR. FFITCH: By contrast, Your Honor, we are
11 going to put an oar in. We do support the request for
12 a continuance by the joint intervenors. We continue to
13 support the Commission's adoption of the settlement
14 agreement. We are prepared to proceed with the
15 settlement panel today. However, as I stated, we do
16 support the motion, particularly if we go ahead and
17 proceed with the settlement panel today and then allow
18 for a continuance of some reasonable duration before
19 the competitive issues are taken up.

20 We agree with Mr. Harlow's expressed concern
21 about the effect of undue haste on decision making.
22 There have been significant new developments since the
23 schedule was adopted in this case.

24 COMMISSIONER HEMSTAD: What do you mean? Do
25 you mean the present discussion about Deutsche Telekom?

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1 Is that your point about significant new developments?
2 MR. FFITCH: That is one of the developments
3 which is very recent and creates some uncertainty,
4 undoubtedly, about this proposal.

5 COMMISSIONER HEMSTAD: What if there is
6 another proposal from X, Y, Z who now wants to buy
7 these two companies next week?

8 MR. FFITCH: I think it's a matter of
9 judgment for the Commission to determine in part how
10 significant those are. There is a difference between,
11 I suppose, mild trade rumors, trade press rumors versus
12 the kind of activity we've seen on the Deutsche Telekom
13 front, which has been fairly substantial. I'm just
14 suggesting that there have been a number of
15 developments, and really the intervenors, I think, have
16 laid out the reasons for their concern, and, in our
17 view, are part of a reasonable basis for an extension
18 to have a chance to at least evaluate what's going on.

19 The second area is the managerial area that's
20 been mentioned already. I think the primary reason why
21 a public counsel is speaking in support of the motion
22 is that we have from the beginning favored a
23 comprehensive settlement to this case if settlement is
24 appropriate and possible, and we believe that under the
25 circumstances here there appears to be some significant

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1 likelihood of settlement on the competitive issues as
2 well as the issues that have already been resolved, and
3 we tend to support full rather than partial settlement
4 of cases. We think that it does appear that an
5 extension of time would be conducive to that. We don't
6 see the prejudice to the joint applicants here,
7 particularly in view of the Minnesota and Arizona
8 scheduling decisions and in view of the FCC decision
9 last Friday, which set up a set of follow-up procedures
10 regarding 271, which have the effect, I think, of
11 postponing any final FCC decision for several months,
12 so there really does seem to be some time for some
13 reasonable extension to deal with competitors'
14 concerns, in our view.

15 So those are the reasons why we don't have
16 any objection to this request, and, in fact, support
17 it. Again, I think the reasonable approach here,
18 perhaps the most reasonable approach is to proceed with
19 a settlement panel today with the questioning of the
20 settlement panel, and then if there is to be a
21 continuance to have that applied to competitive issues.
22 I guess one final observation I have, and one of the
23 concerns, I think, that always arises with partial
24 settlements, is that we not minimize the significance
25 of unresolved issues in this case. Public counsel has

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1 not addressed those issues directly in its testimony.
2 However, the Commission's early procedural orders,
3 particularly the Third Supplemental Order in this case,
4 specifically discussed significance of competitive
5 issues as one of the areas that the Commission wants to
6 look at, and I think that those issues should not be
7 given short shrift, and I think that's what the
8 competitors are suggesting here is that with some more
9 time, those could be better addressed and perhaps
10 resolved as well. That completes my comments.

11 COMMISSIONER HEMSTAD: I really have a
12 question for Mr. Wiltsie. I haven't had an opportunity
13 to read the FCC decision. Do you agree with the
14 statement just made that their approval with conditions
15 will result in further proceedings in front of the FCC
16 and therefore delaying their ultimate decision?

17 MR. WILTSIE: I don't believe there will be a
18 tremendous delay. The order provides that once -- this
19 issue was about the divestiture of 271 that Qwest must
20 undergo to avoid providing interLATA service within the
21 U S West region. Once the deal with the buyer is
22 closed, we have to file with the FCC the details of
23 that deal, but it has not yet been promulgated, is any
24 understanding, but we anticipate doing so shortly.
25 Once that is done, the FCC will put out for notice and

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1 comment the filing that we make, and then they will
2 rule within 45 days after the notice and comment period
3 closes. We do not anticipate this taking very long,
4 perhaps the end of May, so it's not a significant
5 delay.

6 CHAIRWOMAN SHOWALTER: I have a question for
7 Mr. Wiltsie as well. You said you are well aware of
8 your obligations to inform the Commission of a material
9 event affecting the application. Could you just
10 elaborate on that a bit since I'm not sure what the
11 threshold is, but if, for example, U S West were now
12 speaking to Deutsche Telekom about some kind of merger
13 or something that would take effect after this merger,
14 and I really do mean I'm speaking hypothetically, is
15 that the kind of event that you would have to inform us
16 of or not?

17 MR. WILTSIE: Madam Chairwoman, not
18 necessarily. It would depend on the form of the
19 discussions, but as we have said, you can only deal
20 with the merger that is before you on the application.
21 As long as that merger is pending and as long as that
22 merger has not changed, we would go forward in this
23 proceeding. The companies talk all the time. The
24 discussions -- and again, all Qwest has acknowledged is
25 that it is in discussions with a major

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1 telecommunications carrier. If those discussions reach
2 a point where this merger were not go forward,
3 basically, if there was a signed agreement doing away
4 with this merger, we would have an obligation to inform
5 this board, but it could easily be that the discussion
6 would be to complete this merger and then we will have
7 another merger, in which case that would have no impact
8 at all on this proceeding.

9 CHAIRWOMAN SHOWALTER: But if the discussions
10 were such that the reverse of your first example that
11 upon completion of the U S West - Qwest merger, the
12 following events will then occur, when we are looking
13 at whether the U S West - Qwest merger is in the public
14 interest, don't we need to look at the various
15 consequences of that merger; that is, what the
16 management structure is going to look like, what effect
17 this may have on retail customers, competitive
18 customers, et cetera, but if the U S West merger were,
19 in fact, a trigger for some other set of mergers -- I'm
20 not saying it is, but wouldn't we have to take that
21 into account?

22 MR. WILTSIE: If there were a signed deal, I
23 believe we would have an obligation to tell you, but if
24 there were just discussions as to that point, no ma'am.
25 The discussions between companies proceed all the time.

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1 Companies are approached frequently to test the waters
2 of whether a merger should go forward, even while, as
3 in this case, another merger is pending, so it comes to
4 the point as to when is a legal commitment made that
5 would force us to bring to this Commission's attention
6 that further proceedings may be necessary.

7 CHAIRWOMAN SHOWALTER: When we look at a
8 merger where we are looking at the future, which means
9 we can't see the future precisely so we are saying,
10 what do we think the effect of this merged company will
11 be on a set of factors, is the likelihood of yet
12 another merger something that we should be taking into
13 account? Not the certainly of it, but just this is the
14 type of company that looks as if it might merge with
15 yet another company or not?

16 MR. WILTSIE: No, ma'am, I'd argue not
17 because you'd be placing the board in what I call a
18 Catch 22. You would essentially be saying, We can't
19 give regulatory approval until the merger closes, but
20 you can't close a merger until you receive the
21 appropriate regulatory approvals. The only way out of
22 that dilemma is to deal with the application that is
23 before you. If there is a further legal commitment
24 that would have impact on the application, it is our
25 duty to bring it to you, but to the extent they are

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1 just discussions, and the discussions have gotten to
2 the stage where the CEO's have gone to dinner and there
3 is a 99 percent certainty that is going to happen, we
4 still don't have an obligation at that point. It is
5 only when the CEO's have signed on the dotted line.
6 They may wake up in the morning and have buyer's
7 remorse and not sign the papers. It's only at that
8 point where there are legal commitments made that we
9 would have to go forward.

10 CHAIRWOMAN SHOWALTER: I started my question
11 by saying, What is your obligation to inform us, and I
12 think you are answering in those terms, but I think I
13 shifted in my questioning to asking whether factors,
14 such as potential future mergers as well as potential
15 investment and other things are factors that we should
16 be looking at when we decide whether the U S West -
17 Qwest merger is in the public interest.

18 MR. WILTSIE: I'm sorry. I understood you.

19 CHAIRWOMAN SHOWALTER: You had a reason for
20 misunderstanding my question.

21 MR. WILTSIE: No, ma'am. It would go back to
22 what I said before. This Commission should only deal
23 with the application that is currently before it.
24 Otherwise, you are engaging in speculation on events
25 that may not happen. All we know sitting here today is

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1 that U S West and Qwest have a signed merger agreement
2 and are asking this Commission for regulatory approval
3 to proceed with that merger. If those facts change
4 with some level of legal effect, then we have an
5 obligation to inform this Commission, and then this
6 Commission has, I would argue, a duty to take into
7 account those changes, but merely because there is some
8 likelihood -- there is always some likelihood that
9 there will be a further merger, especially in the
10 telecommunications industry. In fact, looking down
11 this row at all the intervenors' counsel, I suspect
12 they will be sitting in joint applicants' chairs in the
13 not so distant future, so I don't think we can say
14 based on that that they have no right to oppose this
15 merge, and we certainly have right to seek approval of
16 the merger at this stage.

17 CHAIRWOMAN SHOWALTER: Thanks.

18 MR. HARLOW: A brief reply, Your Honor?

19 JUDGE MOSS: I think we probably heard enough
20 on this, Mr. Harlow. After all that interesting
21 discussion, there is one more mundane matter that I
22 wish to raise with the parties before we take a brief
23 recess to permit the Bench to consider some of this,
24 deliberate on some of this. A process question we left
25 open yesterday concerns the matter of exhibits that

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1 some parties wish to put in the record without a
2 sponsoring witness, and by those, I'm referring to some
3 of the proposed cross-examination exhibits -- I suppose
4 that should be in quotes -- those with the numbers 350
5 and higher on your exhibit list. That proposal
6 provoked certain controversy yesterday, given some
7 uncertainty with respect to whether there might be
8 objections to some or all of those exhibits, and I
9 wonder if the parties have made any progress on that or
10 if we need to consider what procedure we will adopt
11 from the Bench to handle those particular exhibits.
12 Anybody?

13 MR. WILTSIE: There have been no further
14 discussions among the parties.

15 JUDGE MOSS: So the way things stand on that
16 point then, the way things stand is that U S West would
17 wish to and Qwest would wish to preserve their
18 opportunity to object to each of these individual
19 exhibits at the time they are proposed to be
20 introduced; is that correct?

21 MS. ANDERL: Yes, Your Honor.

22 JUDGE MOSS: The Bench will consider the
23 request. Any of the intervenors want to speak to this
24 before we retire?

25 MR. KOPTA: Just briefly, Your Honor, with

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1 respect to responses to data requests that AT&T,
2 Nextlink, and ATG have proposed to the joint
3 applicants, both in Iowa and in the Utah merger
4 proceedings, the parties have been able to stipulate to
5 entry of those exhibits without foundation and without
6 a sponsoring witness. We would simply ask that the
7 same thing be extended here. I have yet to hear any
8 reasoned explanation for why Washington is different
9 and why the responses in Washington somehow require an
10 individual witness to sponsor as opposed to simply
11 being able to stipulate and shorten the hearings if the
12 Commission decides to go ahead with them, which is the
13 sole purpose of our seeking to having them simply
14 entered into the record.

15 JUDGE MOSS: While I'm unfamiliar with the
16 procedural rules in Utah and Iowa, I think it is an
17 option that is open to this Commission if it chooses,
18 and I think we will consider that and decide how to
19 proceed on that. I think it would also be a good idea
20 for the parties to take advantage of the time while we
21 are off the Bench to perhaps discuss among themselves
22 whether some set can be identified to which there is no
23 controversy, and that will at least narrow the field.

24 MR. WILTSIE: Your Honor, briefly, we do not
25 object -- just a point of clarification. We do not

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1 object to foundation on authenticity as to our data
2 request responses. It is purely relevance at this
3 point.

4 MR. KOPTA: That's the only concern.

5 MS. ANDERL: That is our position as well.

6 Additionally, that all of these from 350 up have not
7 been identified to a witness for cross, and it would
8 help us if we had that clarification. We would be
9 happy to speak with AT&T's counsel on a break.

10 JUDGE MOSS: And I think another option that
11 develops in light of what you've said is that we can
12 simply work through these at the appropriate point in
13 time and take your objections on relevance without the
14 necessity of having a witness on the stand and that
15 sort of thing, so that would be, I think, perhaps a
16 third option to what I was considering before.

17 Anything further on these process issues
18 before we take a recess? Hearing no indication, then
19 we will take a.... It is 11:35. We'll be in recess
20 until one o'clock this afternoon. Enjoy your lunch.

21 (Lunch recess at 11:35 a.m.)

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1 that period of time, of course, the settlement
2 discussions can continue. The Commission's overriding
3 interests in this, as in every proceeding, is to make a
4 careful decision based on a full and complete record.
5 The Commission has not allowed this process to be
6 rushed and will not do that. Nevertheless, the
7 Commission must make the best use of the time available
8 to it. Thus, we will go forward this week as planned,
9 but with two caveats. One, all witnesses will be
10 released from the stand subject to recall; and two, the
11 Commission will carry the intervenors' motion with the
12 case and may reopen the questions it raises once we see
13 how things develop through the course of the hearing.

14 With respect to the other process matters we
15 discussed, the Bench has decided that the parties will
16 be allowed to inquire of the panel. That process
17 should follow the Benches inquiry. We'll see where
18 things stand at that point. The other process question
19 concerns the matter of exhibits that have not at this
20 juncture been identified to particular witnesses, call
21 those loosely the cross-examination exhibits. The way
22 we will proceed on that is to go forward with the
23 witnesses, and to the extent those exhibits are
24 identified to particular witnesses as we go along, of
25 course, we'll take up any objections at that point in

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1 time. To the extent there remain such exhibits at the
2 conclusion of the witnesses and parties wish to have
3 those be part of the record, then we will take those up
4 at that time, again, subject to any objections, which
5 will be limited to relevance and such, and not the
6 objections as to lack of foundation, authenticity, and
7 that sort of thing that a witness will be required for.
8 And in the meantime, I want to ask the parties with
9 respect to those exhibits to please work cooperatively
10 together to narrow the list to the minimum number
11 possible as to which we will have to hear argument on
12 objections, whether it be relevance or something else,
13 so if we could narrow that down, that will help a lot.

14 I believe that covers the process issues,
15 which subject to someone telling me to the contrary, I
16 believe brings us to the point where we will want to
17 have our panel. Seeing no indication that there is any
18 other business we need to attend to first, let's have
19 our panel of witnesses take the stand.

20 (Panel sworn.)

21 JUDGE MOSS: The process we have followed in
22 some prior cases when we have a panel present to speak
23 with us regarding the proposed settlement agreement is
24 to give each panelist an opportunity to make a brief
25 statement about the settlement, and I think that we

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1 will follow that process here, and perhaps you have
2 selected among yourselves who will be the first
3 spokesperson; is that the case? Ms. Jensen, you seem
4 to be reaching for the microphone.

5 MS. JENSEN: Yes, but I believe counsel is
6 going to be making opening remarks.

7 MR. VAN NOSTRAND: I was going to provide
8 some brief introductory remark before we moved on to
9 the panel, if that's okay, Your Honor.

10 JUDGE MOSS: Are all counsel going to wish to
11 have the same opportunity?

12 MS. JOHNSTON: No, Your Honor.

13 JUDGE MOSS: Then we'll allow that. Go
14 ahead, Mr. Van Nostrand.

15 MR. VAN NOSTRAND: Thank you, Your Honor. We
16 are pleased to be able to present this partial
17 settlement agreement among the joint applicants and
18 staff and public counsel. If the Commission will
19 recall, we adopted a somewhat extended hearing schedule
20 in December to allow settlement discussions to occur,
21 and there was a very intensive period in January, three
22 weeks, where there was a very intensive settlement
23 negotiations among these parties. There are also
24 three sessions with the intervenor parties as well. A
25 settlement was not reached during that period.

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1 Opposing testimony was filed on February 1. Rebuttal
2 testimony was filed on February 22, and upon further
3 reflection, the parties were able to reach agreement on
4 the settlement agreement which you have before you, and
5 as among these parties, it settles those issues set
6 forth in the agreement, which are most but not all of
7 the issues, and as Judge Moss mentioned this morning,
8 as a result of this settlement, a number of the pieces
9 of testimony of staff, public counsel, and some of the
10 rebuttal testimony of the joint applicants will not be
11 subject to cross-examination and will just be admitted
12 by stipulation, so we think the settlement has removed
13 a number of the issues remaining to be litigated.

14 Briefly, the scope of the settlement relates
15 to service quality issues. There are other service
16 commitments which these applicants are undertaking.
17 There are certain rate matters and other related
18 issues. As far as service quality, I think the key
19 aspect of the settlement agreement is certainly
20 customer specific credits, which are covered in Section
21 2-A of the document, and those deal with credits to
22 individual customers and the circumstances where the
23 company's performance falls short of prescribed levels.
24 Along with that and an additional component in the
25 service quality section is this service quality

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1 performance program which is where the applicants are
2 agreeing to eight service quality measures and
3 subjecting themselves to potential annual credits of up
4 to 20 million dollars in the event their performance
5 falls below the levels prescribed in the document.

6 We think these provisions represent the
7 applicants' commitment to these service quality issues
8 and it represents a lot of effort on the part of staff
9 and public counsel to have really productive
10 discussions with the company in terms of addressing
11 these issues and listening to the company's perspective
12 on that and producing a document which the applicants
13 can live with but which also produce some meaningful
14 benefits for the applicants' customers, and the
15 document in Section 3 also includes other service
16 commitments, including the replacement of analog
17 switches, installing fiber optic in rural areas. There
18 is a commitment to extend service in unserved
19 territories, and there is a commitment to maintain a
20 baseline level of investment.

21 Section 4 of the document governs certain
22 rate issues and includes, among other things, a
23 limitation on general rate case filings by the
24 post-merger company until January 1 of 2004. There is
25 also in that section a limitation on the recovery of

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1 merger cost, which the Commission is used to seeing in
2 other similar such stipulations where the transaction
3 costs and such will not be borne by ratepayers but will
4 be borne by the merging companies.

5 Included in the other matters of Section 5 of
6 the document is provision to access to books and
7 records, whereby the joint applicants commit the merger
8 will not do anything to limit the access which the
9 staff and public counsel otherwise has. So with that,
10 I'd like to introduce the members of the panel. On
11 behalf of public counsel is Matt Steuerwalt. On behalf
12 of Commission staff is Dr. Glenn Blackmon. On behalf
13 of Qwest is R. Steven Davis, and on behalf of U S West
14 is Theresa Jensen. Thank you, Your Honor.

15 JUDGE MOSS: Welcome to you all. Did I speak
16 too hastily? Mr. Van Nostrand, do the panelists intend
17 to make opening statements?

18 MR. VAN NOSTRAND: I believe in words with
19 the Commission's custom, I think a brief statement as
20 to each parties' perspective in executing the
21 settlement agreement is what they are going to do.

22 JUDGE MOSS: Did you wish to speak first,
23 Ms. Jensen?

24 MS. JENSEN: Yes, thank you. What I'd like
25 to share with you is that we are pleased that we

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1 believe we've pulled together an agreement that
2 addresses the major issues raised in the early
3 testimony and throughout the case concerning the public
4 interest. Specifically, to give you the confidence
5 that there will be no harm to consumers with respect to
6 number a number of issues that have been raised. One
7 was alluded to is that the company will not move
8 forward during this merger period and the changes that
9 will occur to increase rates as the result of a general
10 rate increase, so there are some protections around
11 rates. There are also some acknowledgments within the
12 agreement as we go through the details of certain
13 instances that may require adjustments to rates, but
14 overall, the company would not be filing a general rate
15 case before the Commission, regardless of its current
16 earning situation.

17 In addition, there will be no risk to
18 ratepayers in that the applicants have agreed to bear
19 the transaction costs associated with this merger.
20 Further, with respect to concerns that have been raised
21 about the quality of service and investment in this
22 state, the company has committed to continue investment
23 in this state, and also, the applicants has stepped up
24 to some very stiff requirements with respect to service
25 quality and performance if the company fails to meet

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1 certain standards specified by the Commission or as a
2 part of this agreement.

3 There is a balance in this agreement for both
4 the applicants as well as the interests of the consumer
5 in this state. It's basically a three-year agreement
6 that commences upon merger closing. We anticipate that
7 it will cover the year 2001 through 2003. It allows
8 the company over the period of merger closing until
9 2001 to make the transitions necessary as a result of
10 the merger, to incorporate the best practices of both
11 Qwest and U S West, and also to make progress in
12 obtaining 271 relief. There is also a balance for the
13 applicants in that the parties have agreed to work with
14 us on uses of our alternative technology to meet
15 service requests where we don't have current facilities
16 available, and as I mentioned earlier, preserves
17 affordable, efficient, reliable, and available service
18 for our customers.

19 The customers will benefit from the
20 investment commitment in many ways. You've heard some
21 discussion this morning with respect to investment.
22 The parameters around this agreement that deal with
23 specific customer service remedies or the customer
24 service guarantee program that's included in this
25 commitment do not enable the company to respond when we

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1 receive demand, but rather the investment commitment
2 guarantees that we will be prepared to meet demand as
3 it occurs. That's not specific to any customer class.
4 It's a commitment to continue to expand our central
5 office capability and our outside facilities to meet
6 demand from all customers.

7 We also believe that the penalties are
8 severe, and it's a demonstration by the applicants that
9 we are committed to maintain service quality in the
10 state of Washington and to continue to improve upon our
11 performance in all areas. The company has also
12 committed as part of this agreement or the applicants,
13 to provide an education program for customers on what
14 they can expect from the merged company with respect to
15 privacy, accuracy of information provided, courtesy,
16 good service, confirmation in terms of orders they
17 place so they can interact with the company in a more
18 efficient fashion, and we've also agreed to explore
19 options to educate customers on availability of the
20 telephone assistance program in the state of
21 Washington.

22 We have committed as well to the Commission
23 that the complaint response process where customers do
24 voice a concern to the Commission will be handled in a
25 more expeditious and efficient matter. The applicants

00374

1 have committed to continued existing service quality
2 programs, and we've added, in addition to that, three
3 new customer specific features: Those dealing with
4 customers who have out-of-service conditions where they
5 are not able to get service due to some type of
6 defection within the network itself. Those customers
7 who experience trouble obtaining dial tone, and
8 customers who have a high incidence of trouble reports
9 in their given serving wire center.

10 In addition, the company has made several
11 investment commitments as part of this agreement in the
12 promotion of moving the advanced technology along in
13 the state of Washington. That is to clear all held
14 orders by October 1st of this year that were pending as
15 of the end of February; to complete fiber interoffice
16 connectivity across the state so that every office is
17 connected by September of 2002; to replace every analog
18 central office with a digital central office technology
19 by June of 2001, and again, to maintain our historic
20 average investment in the state of Washington, which we
21 will share with the Commission staff and public counsel
22 through quarterly reports and annual meetings before
23 the Commission as well as those parties.

24 With that, I've given you a brief overview.
25 I'm sure you'd like to go into more detail.

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1 JUDGE MOSS: Mr. Davis?

2 MR. DAVIS: Thank you. My name is Steve
3 Davis and I'm with Qwest. I would like to say up front
4 that Qwest has been an active party in these
5 negotiations. They've been difficult negotiations, and
6 I think both parties have done their very best to
7 represent their interests, and it's resulted in a
8 document that we can all stand behind, and I would like
9 to assure you that Qwest has been a participant and
10 stands behind this document and pledges its compliance
11 with the terms of this document on a going-forward
12 basis if it's adopted by the Commission.

13 I would like to also say that I think this
14 merger of Qwest and U S West is in the public interest
15 without this document. I think the combination of
16 these two companies, the increased service and
17 availability, increased competition, the dedication
18 that the new company will have to comply with 271 on a
19 going-forward basis on a much more expeditious basis
20 than I think has existed in the past, the ability to
21 roll out advanced services, both in Washington as well
22 as throughout the rest of the country, not just in the
23 region, and those are the reasons cited by the FCC this
24 week when it approved the merger, without imposing the
25 types of conditions that you've seen previously in SBC,

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1 Ameritech -- or those types of mergers, but with this
2 document, it becomes even more in the public interest
3 that this merger go forward.

4 The reason I support this document and the
5 settlement is because it's consistent with the
6 principles that we intend to pursue as the new company
7 going forward, as the new Qwest: Dedication to
8 improving customer service, actually taking steps and
9 making investments to improve customer service, and
10 also investing in more advanced facilities and
11 features, so we agree with the document. We agree to
12 comply with the documents approved by the Commission
13 and agree that without the document, it is in the
14 public interest, but with the document, it is even more
15 so, and I would be happy to answer any questions you
16 have today.

17 JUDGE MOSS: Before we go on to you,
18 Dr. Blackmon, I'm going to ask that electronic
19 communications devices be put in their silent mode
20 during the course of our on-the-record proceedings.
21 Thank you very much. Go ahead, Dr. Blackmon.

22 DR. BLACKMON: Thank you. When the
23 Commission staff filed its testimony on the first of
24 February, we said that we wanted to make sure that
25 Qwest was acquiring U S West for the right reason, to

00377

1 serve the customers in the state of Washington and the
2 other U S West states, and we said that to get that
3 level of surety, we needed to have certain conditions
4 and protections for the existing customers of U S West.
5 We believe that we have met those objectives with
6 respect to the consumer issues in this settlement. We
7 feel that with these conditions, Qwest will have
8 undertaken the obligations that it needs to in order to
9 protect consumers so that we can still let the company
10 go forward with this merger and to do so without it
11 harming the public interest, so we recommend that you
12 approve this settlement.

13 JUDGE MOSS: Than you, Dr. Blackmon.
14 Mr. Steuerwalt?

15 MR. STEUERWALT: Thank you. With this
16 background, I think I will just touch on the pro
17 consumer elements of the proposed settlement. First, I
18 would draw your attention to the continuance and the
19 expansion of the customer service guarantees that
20 Ms. Jensen hit upon: The improved information that
21 will be flowing to customers in the form of order
22 confirmation numbers and annual reports from the
23 company on its service quality performance. The
24 company's digital and fiber infrastructure investment
25 commitments. Perhaps most importantly the service

00378

1 quality performance program, which we believe provides
2 a significant incentive to the company to provide
3 excellent service and will provide customers with the
4 right compensation if that goal is not achieved. The
5 increased rate certainty that is inherent in this
6 agreement is a definite benefit, in our opinion, and I
7 think, finally, I would be remiss if I didn't mention
8 the telephone assistance program, which was an
9 important piece to us, given our concern with the
10 continued affordability and access to
11 telecommunications for low-income customers in this
12 state.

13 JUDGE MOSS: Thank you very much. We've
14 proceeded with these in the past by simply going
15 through them a page at a time and pausing for questions
16 at the appropriate spots, and I think that's probably
17 the most efficient way we can proceed again today. So
18 with that, I am turning, at least, to Exhibit No. 320.
19 It's been premarked as that, and this is the type of
20 exhibit that doesn't really require a sponsoring
21 witness. I'm willing to assume there is no objection,
22 but I'll pause long enough to hear any. Hearing
23 nothing, then Exhibit No. 320 will be admitted as
24 marked, and that is our proposed settlement agreement.
25 I'm including the cover letter that was transmitted as

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1 part of the exhibit.

2 Do we have anything -- there is a background
3 section on Page 1, and then we get into some discussion
4 regarding the scope and support for the agreement. We
5 should probably go ahead and move onto Page 2.

6 CHAIRWOMAN SHOWALTER: My only question is
7 this is the first time the word "merger synergies"
8 comes up on Page 2 in Paragraph 1-A. As I recall, this
9 word is used a few times. I have a sense of what the
10 word "synergy" means, but when it's used as a term,
11 like, "this takes care of merger synergies," I'm just
12 wondering what the parties mean by it. Does anybody
13 want to answer that?

14 MR. DAVIS: Generally, what it's speaking to
15 is that both the revenue enhancement opportunities and
16 cost saving opportunities of the company going forward
17 by combining the efforts, so to the extent there is
18 duplication or a better, for example, in systems, being
19 able to use one firm's systems versus another, but also
20 the ability to combine the DSL capability of U S West
21 and expertise and knowledge with the Internet broadband
22 capabilities and facilities of Qwest to create a new
23 opportunity that's greater than what either company
24 acting alone could do.

25 CHAIRWOMAN SHOWALTER: So this agreement is

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1 addressing merger synergies in the sense that it's
2 settling that issue of how we should account for or
3 require the parties to distribute these cost savings
4 and enhancements of some kind.

5 MR. DAVIS: That's exactly right, Your Honor.

6 CHAIRWOMAN SHOWALTER: Thanks.

7 JUDGE MOSS: Move on to Page 3.

8 CHAIRWOMAN SHOWALTER: I have one on Page 3.

9 In the customer bill of rights is required to be filed
10 under a tariff revision, and it said it will include
11 statements of customer rights, such as privacy and
12 accuracy, et cetera, as well as the specific service
13 credits. I understand those service credits are
14 covered in another part of the agreement, 2-A, but as
15 to the privacy, accuracy, et cetera, am I right there
16 is no content to what that consumer bill of rights must
17 require in this agreement, just that something will be
18 filed with those elements; am I right on that?

19 MS. JENSEN: Yes. Those subjects will be
20 addressed in the tariff that is filed, and we will work
21 with public counsel and Commission staff on that too.

22 COMMISSIONER GILLIS: As a clarification, is
23 there anywhere in the direct testimony that's been
24 filed that you can reference this to that describes
25 what has been talked about from the consumer bill of

00381

1 rights?

2 MS. JENSEN: With respect to privacy,
3 accuracy, and courtesy, not in specific detail. I
4 think the intent of that language was to clarify what
5 the customer should expect when they do business with
6 the merged company, and it was a tariff that we
7 envisioned would evolve out of this process. The
8 primary purpose, of course, is to help customers be
9 aware of the customer-specific remedies that are
10 included in this agreement or already offered by the
11 company, as well as the new guaranteed service program.

12 COMMISSIONER GILLIS: A question probably for
13 Dr. Blackmon, is there any concern or should the
14 Commission have any concern of initiating a consumer
15 bill of rights, which is fairly sweeping, for a single
16 company?

17 DR. BLACKMON: I don't believe so, no. I
18 think that the question of how sweeping it is remains
19 to be decided when you rule on the tariff filing that
20 comes after this. There are legal rights that
21 customers of U S West have today that we believe are
22 not well communicated to them, and there are also other
23 rights that are not necessarily legal rights, things
24 like courtesy and accuracy, that we would like for
25 Qwest to step forward and say, Here's what we intend to

00382

1 do for you as our customers.

2 We think it's a good thing to have the
3 company put that into one package with the legal rights
4 and the other rights that they believe that they should
5 afford to their customers and to communicate that with
6 their customers, and we think that's a good thing,
7 regardless of whether other companies do that or not.

8 COMMISSIONER GILLIS: Thank you.

9 COMMISSIONER HEMSTAD: I'd like to pursue.
10 Dr. Blackmon, what is your understanding of what the
11 legal authority of the Commission would be upon the
12 filing of that tariff? Is it broadly to accept,
13 reject, or modify, or is it more limited to that?

14 DR. BLACKMON: My thinking on it was that it
15 would be a tariff filing that the Commission could
16 accept or suspend.

17 COMMISSIONER HEMSTAD: So this is not like a
18 new service, but it's a new tariff. There isn't any
19 tariff currently covering that subject matter, is
20 there?

21 DR. BLACKMON: Consumer protection
22 provisions do exist within the tariff today, the
23 existing ones. The ones that are new with this
24 agreement aren't there now, so to some extent, it's not
25 even a new tariff. It's a revision to an existing

00383

1 tariff.

2 JUDGE MOSS: Dr. Blackmon, you mentioned a
3 couple of times communicating this consumer bill of
4 rights to the customers, and I was just looking through
5 here. How is that intended to be done and with what
6 frequency, whether customers be informed that they have
7 this statement of rights that they should review?

8 DR. BLACKMON: I don't know that that's been
9 resolved yet. We've envisioned that as -- this tariff
10 filing would fall under the general notice requirements
11 for tariff filings. There is some discretion on the
12 Commission's part about this sort of notice that's
13 required for different types of tariff files, so that
14 question notice would be addressed at the time the bill
15 of rights itself is submitted.

16 MS. JENSEN: I might comment on that, Your
17 Honor in that the company currently does an annual
18 notice of its current service guarantee programs to
19 customers and that that would be a logical place to
20 acknowledge that the company has certain commitments to
21 its customers in its tariff and to detail the specifics
22 of the customer guarantee programs that we offer.

23 JUDGE MOSS: Do you have any sense of how
24 successful that annual mailing of customers is? Do you
25 have a lot of customers calling up and saying, Gee, we

00384

1 never heard of this.

2 MS. JENSEN: Hopefully, we don't have a lot
3 of customers that require a service guarantee in lieu
4 of service that we provide. The percent of customers
5 that actually do not obtain services they requested or
6 where the company has been unable to meet a commitment
7 for a specific reason, those are the customers that are
8 eligible. In those instances, generally, the company
9 is proactive in reaching those customers and letting
10 them know of these alternatives, in addition to a
11 notice. So it's a real timed event if for some reason
12 we are unable to satisfy that customer's request, we're
13 calling them and negotiating a new due date and
14 advising them of the options that are available to them
15 as well as credits.

16 We also do that frequently at the time of the
17 order if we are aware there may be a potential that we
18 can't get that service installed, we hope to, so there
19 is not just an annual notice. There is many
20 opportunities where we have a chance to tell the
21 customer about this, and it's really our effort to
22 retain that customer's business.

23 JUDGE MOSS: Would the proposed tariff filing
24 include the mechanism by which customers would be
25 regularly informed that they have this set of rights?

00385

1 MS. JENSEN: We could certainly include that
2 in the letter that we file with the tariff explaining
3 how customers are advised of this. It's not a problem.

4 JUDGE MOSS: Thank you. Anything further on
5 3? Let's move to 4.

6 COMMISSIONER GILLIS: I just have a general
7 question. There is a number of references and terms
8 that include bill credits, and I'm curious, the
9 experience of, I suppose, staff, on bill credits, have
10 they been effective in changing the company's behavior
11 in service quality, or are they looked at more as a
12 compensation in case service is not provided?

13 DR. BLACKMON: My sense is that they
14 accomplish both objectives. One of the reasons why we
15 recommend an expansion of the existing set of
16 customer-specific remedies is that we think the ones
17 that we have today have been successful. That's not to
18 say that there are no longer missed appointments, no
19 longer held orders, but we think it makes a difference
20 to the individual customer that they are being
21 compensated, and it's our sense that it makes a
22 difference to the company that they face the prospect
23 of these. The threat of a Commission fine is remote,
24 but it's very real to know that if the technician
25 doesn't show up on time, there is \$50 out of the pocket

00386

1 of the company.

2 COMMISSIONER GILLIS: Ms. Jensen, do you
3 agree with that?

4 MS. JENSEN: Yes, I do. I can share with you
5 that since this provision has been in place in terms of
6 commitments meant for repair, there has been an
7 improvement of up to seven percent from where we are at
8 the time this was initiated in increased appointments
9 met, and on the provisioning side, our improvement has
10 been up as much as eight percent or greater.

11 The customers, obviously, their first
12 preference is to get their service when they ask for
13 it, but there is also an acceptance and an appreciation
14 for the company to compensate them if that doesn't work
15 out for the time that they missed in waiting for the
16 technician to show up, and for the company, clearly,
17 there is an incentive with or without the credit to
18 meet our customer's expectations, so we view it as a
19 tool in that process, but our performance has improved
20 as well, not solely due to this, but to changes we've
21 made in the business.

22 JUDGE MOSS: Does that bring us to Page 5
23 then?

24 COMMISSIONER HEMSTAD: On Paragraph 8 with
25 regard to hearing existing held orders, the company

00387

1 shall by October 1 clear all pending orders from
2 February 29th. That's seven months. Would you comment
3 on why it's going to take that long to clear existing
4 orders?

5 MS. JENSEN: Yes, Commissioner Hemstad.
6 There are several factors. These are orders where the
7 company does not have facilities today. In some areas
8 of the state, such as in Eastern Washington, there are
9 restrictions that do not allow the company to plow
10 through roads or open trenches, to do construction
11 during certain months of the year due to weather
12 conditions and the effect it has on other situations.

13 In addition, there is a large number of
14 orders between both the private line and the local
15 exchange orders that the company will need to complete
16 during that type frame, so there is a permit process,
17 the right-of-way negotiation issues, as well as just
18 the physical resources to complete the orders that are
19 in this backlog, as well as our current demand, which
20 is roughly fifty thousand orders a month.

21 COMMISSIONER HEMSTAD: I'm sorry, what is the
22 number?

23 MS. JENSEN: Current demand is about fifty
24 thousand orders a month that we receive for new lines.

25 COMMISSIONER HEMSTAD: And what is the

00388

1 magnitude of held orders up to be several months?

2 MS. JENSEN: That would be a part of this
3 commitment?

4 COMMISSIONER HEMSTAD: I'm just trying to get
5 an idea of the magnitude of the problem of numbers of
6 orders that have been held for seven months.

7 MS. JENSEN: I would say roughly around 1,500
8 orders would be involved in this kind of event. That's
9 a combination of both private line and local service,
10 and again, these are orders for service where the
11 company does not have current facilities. They will
12 actually need to be built.

13 JUDGE MOSS: Let me interrupt and ask if
14 those in the back are able to hear all right. The
15 microphones are not picking up as well as they could.
16 Maybe everybody can pull their microphones forward a
17 little bit.

18 COMMISSIONER HEMSTAD: In switching the
19 subject with the same paragraph, would you give me some
20 content to the phrase in the last line, "... that would
21 be unreasonably expensive to complete."

22 MS. JENSEN: The parties were open to a
23 process where you might have a customer where to
24 complete a single order might be \$50,000, \$100,000, and
25 the recognition that the company still operates under

00389

1 rate-of-return regulation in this state, it may not be
2 the best utilization of the company's resources, both
3 financially and employees, to satisfy particular order
4 at the expense of the general rate payer if it were
5 extraordinary in cost, so it's basically a process by
6 which the parties are free to discuss that and consider
7 alternatives.

8 COMMISSIONER HEMSTAD: Dr. Blackmon, do you
9 have any comments on that.

10 DR. BLACKMON: We'll know it when we see it.

11 COMMISSIONER HEMSTAD: I believe that
12 somebody would.

13 JUDGE MOSS: Unlike pornography, it is
14 possible to establish some threshold values, and I
15 wonder if there has been discussion, would it be useful
16 to establish some threshold value or amount beneath
17 which the Commission would not be expected to entertain
18 a petition? Ms. Jensen mentioned \$50,000 or \$100,000.
19 Those sound like big numbers to me, but I don't know if
20 they are or not.

21 MS. JENSEN: Quite honestly, Your Honor, we
22 really would have to look at the specifics of an
23 individual order, and that's why we put the June 1st
24 deadline in this paragraph; that the company will have
25 between now and June 1st to identify any orders they

00390

1 believe to be unreasonably expensive, and if there are
2 some, then we would visit with public counsel and the
3 Commission staff, and in essence, present our case as
4 to what would be involved in provisioning that single
5 order. We don't know we will have any. We need this
6 period of time to do that research.

7 CHAIRWOMAN SHOWALTER: Am I correct that this
8 paragraph presumes that these orders will be taken care
9 of and the burden is on the company to petition the
10 Commission to be relieved of any particular order?

11 MS. JENSEN: That's correct, and you will
12 also notice that this commitment is made, and while the
13 agreement overall is conditioned on the merger closing,
14 obviously, we are proceeding with this assuming the
15 merger will close and the Commission will find we've
16 met the burden in the state of Washington. Work will
17 start now.

18 CHAIRWOMAN SHOWALTER: You raised a point I
19 haven't thought of. This deadline occurs before this
20 settlement will become effective.

21 MS. JENSEN: And it's a good-faith
22 demonstration on the part of the applicants.

23 JUDGE MOSS: Let's move on to 6.

24 COMMISSIONER GILLIS: On Paragraph 10,
25 referring to the annual service quality report, is it

00391

1 likely that all the information within that report will
2 be public information?

3 MS. JENSEN: If you will give me a minute to
4 look at the paragraph. The intent is that we would
5 provide this to the customers. That would be a report
6 of how the company did in that given calendar year, so
7 we would distribute it similar to other utility
8 companies that have comparable programs to the customer
9 base, yes.

10 JUDGE MOSS: Did anybody have anything on 6?
11 It looks like we are up to 7 then.

12 COMMISSIONER GILLIS: A general question.
13 Are we on Section 3 yet?

14 JUDGE MOSS: That begins on the bottom of
15 Page 7, yes.

16 COMMISSIONER GILLIS: A general question on
17 the investment commitments. How would you characterize
18 the investment commitments? Is it something that's
19 additional investment that would not otherwise occur,
20 completing the investments that you intended to
21 accomplish anyway, and I suppose the broader question
22 is, is there a limited budget for investments in
23 Washington, and is this a redirection of investment or
24 not?

25 MS. JENSEN: This program, all of Section 3,

00392

1 is incremental to what was planned for the State of
2 Washington. There are portions of it that were in the
3 plan where I believe the parties wanted some assurance
4 that plans into the future would continue to be met
5 once the merger occurred, and there are several
6 elements that were not in the company's plans at this
7 point in time. That does not mean they may be two or
8 three years from now, but at the time that this
9 agreement was negotiated, they were not, for the most
10 part, something the company envisioned doing in its
11 priority of its investment direction.

12 The commitment to maintain investment was a
13 difficult commitment for the company, recognizing the
14 changes that are occurring in the industry with the
15 introduction of AT&T competition in the residence
16 marketplace, some of the proposals made as part of this
17 proceeding. It was difficult for the company to
18 determine with certainty what type of investment it
19 will require going forward based on the number of
20 customers it may or may not serve, but the company is
21 willing to commit to continued investment in the State
22 of Washington at the average historic level.

23 COMMISSIONER GILLIS: What does "average
24 historic level" mean?

25 MS. JENSEN: What we've done is looked at

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1 five years average investment for what we considered to
2 be business as usual. Over that period of time, the
3 company on a statewide average perspective has invested
4 335 million into the State of Washington. The bulk of
5 that investment is directed at our outside plant as
6 well as our central office equipment, switches and so
7 forth.

8 CHAIRWOMAN SHOWALTER: I'm just confused.
9 Are we really still talking about the bottom of Page 7,
10 or are we talking about the bottom of Page 8, maintain
11 historic capital investment levels, and just what does
12 that 335 million go to?

13 MS. JENSEN: That goes to D on Page 8. I was
14 kind of talking about Section 3 total.

15 CHAIRWOMAN SHOWALTER: That's per year?

16 MS. JENSEN: Yes, per year.

17 COMMISSIONER HEMSTAD: I believe you started
18 your remarks by saying that the items defined in Roman
19 numeral 3 are incremental in the state of Washington,
20 but then so D talks about maintaining historic capital
21 investment levels. How do those two interplay?

22 MS. JENSEN: D, if you will notice, commits
23 that the company will maintain those levels following
24 merger closing. Again, in A and B, there are some
25 events that will actually occur prior to merger closing

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1 and subsequent to merger closing, in terms of the
2 analog switch replacement program and the expansion of
3 the fiber optic inneroffice capability.

4 Some of those programs were in the budget,
5 for instance, for the year 2000 or future years.
6 Others, such as the fiber optic, inneroffice capability
7 was not in the planned budget, so you will actually see
8 a different amount of investment contingent or what is
9 required to meet these commitments and to maintain the
10 network as we have in the past.

11 COMMISSIONER HEMSTAD: Is it fair to say that
12 those specifics in A and B and C, in fact, are
13 subordinated to the overall commitment as compared to
14 D?

15 MS. JENSEN: Yes and no. They would be
16 included in D, but some of these will actually occur
17 before the merger closes. Some of the expenditures
18 will occur before merger closing.

19 COMMISSIONER HEMSTAD: In Subparagraph E,
20 with the specific list of routes, is that timetable
21 driven by the capacity of the company to deliver
22 resources in dollars, or is it driven by physical
23 layoff problems? In other words, could that be
24 accelerated if we were prepared to commit the dollars
25 sooner?

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1 MS. JENSEN: What we requested, Commissioner
2 Hemstad, is because of the commitment to clear the held
3 orders, which are all over the State of Washington,
4 which will primarily occur in the year 2000, that was
5 not something in the 2000 budget. Likewise, the routes
6 that are identified in Paragraph B were not in the 2000
7 year budget and are incremental to what we were
8 actually envisioning for 2001, so what we have
9 attempted to do is take the incremental investment
10 commitments associated with this agreement and spread
11 them over more than one year so that the company can
12 continue to do what it had already planned to do in
13 terms of its average historic investment, so in many
14 instances, this will be incremental to the 335 million.
15 In some instances, it would be a part of the normal
16 planning process. For instance, the switch
17 replacements are part of the normal planning process.

18 CHAIRWOMAN SHOWALTER: Still on D, it says,
19 "... investment shall be measured by the average
20 investment per access lines served." What is that
21 amount, and what's the benchmark for this?

22 MS. JENSEN: The amount per access line has
23 historically been 133 dollars per line served. That's
24 the average historic amount. That covers a five-year
25 period based on the 335 million dollars based on

00396

1 current access lines, which is roughly 2.5 million
2 residence and business access lines in the State of
3 Washington.

4 The assumption with respect to those numbers
5 or the recognition per access lines served is, again,
6 in the interests of the ratepayer to recognize that if
7 we don't have growth in areas where we've traditional
8 experienced access line growth due to the advent of
9 alternative suppliers, that the investment per access
10 line requirement may change. There may be available
11 capacity where in the past that capacity has not been
12 there, but again, the company has continued to make
13 this commitment to maintain it on a per access line
14 basis, and that is in recognition of the changes
15 occurring in the market, and the parties were willing
16 to work with us, recognizing those changes are
17 occurring.

18 JUDGE MOSS: I guess I want to be sure the
19 record is clear with respect to that mechanism. What
20 if the number of access lines goes down? What if we
21 have a lot of good successful competition, and U S West
22 ends up serving fewer than 2.5 million access lines?
23 Would the amount of investment go down correspondingly?

24 MS. JENSEN: It could. It wouldn't
25 necessarily, but the recognition of this agreement is

00397

1 that it would be based on the average amount per access
2 line, so with respect to the company's commitment, if
3 the company actually had fewer access lines, the
4 commitment would be less.

5 JUDGE MOSS: So the 335 million figure would
6 be smaller.

7 MS. JENSEN: Correct.

8 JUDGE MOSS: I think in similar vein, since
9 we are looking at this whole Section 3 as reflected on
10 Pages 7 and 8, looking at C, this million dollars,
11 that's incremental to what is currently being spent?

12 MS. JENSEN: The commitment in C, Your Honor
13 of two million dollars?

14 JUDGE MOSS: One million, as I read it.

15 MS. JENSEN: Yes. Most likely, the majority
16 of it would be increment.

17 COMMISSIONER GILLIS: You said up to a
18 million dollars. Is it no less than one million
19 dollars?

20 MS. JENSEN: Yes.

21 COMMISSIONER GILLIS: Where did the million
22 dollars come from?

23 DR. BLACKMON: It's a product of this
24 negotiation.

25 COMMISSIONER GILLIS: So you have reason to

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1 think it's a good number?

2 DR. BLACKMON: We do. We think that it is
3 sufficient to extend service to the areas that we have
4 been able to identify where customers are within the
5 U S West service area but not receiving service.

6 COMMISSIONER HEMSTAD: It's a good round
7 number.

8 JUDGE MOSS: How does that relate to the
9 amount of investment the company is committing on a
10 current basis, on sort of an annual average basis to
11 tie it back to D, for this type of project to extend
12 service to underserved or unserved areas? Is this a
13 dramatic increase, a doubling a tripling, a
14 quadrupling, or is this just a tenth more than you
15 currently spend?

16 MS. JENSEN: For this particular provision,
17 Your Honor, I would say it's incremental. This is an
18 incentive to the company to find mechanisms to serve
19 these areas that may not be in place today.

20 JUDGE MOSS: When you say "incremental," I
21 guess the question that always pops into my mind is
22 incremental to what: Incremental to zero or
23 incremental to 100 million?

24 MS. JENSEN: Incremental to the current
25 budget. It would be part of the average investment

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1 calculation, but the reality is that it's targeted for
2 a very specific application that might not otherwise
3 occur absent this provision.

4 JUDGE MOSS: I think you've made it clear, in
5 my mind, at least. I want to ask you with respect to
6 A, replacing the analog switches, my recollection of
7 the testimony is that there was some testimony that we
8 will later introduce as part of the record by
9 Mr. Griffith of Commission staff talking about the
10 relationship between the schedule for replacing analog
11 equipment and some activity in, I guess it was the last
12 completed depreciation case, which I suppose was for
13 the '96 year, and then you had some rebuttal testimony
14 on that same point. How does this schedule compare
15 with the schedule that was put forth as part of that
16 '95 or '96 study?

17 MS. JENSEN: It was actually a '94
18 depreciation study that was dealt with over a period of
19 years. With respect to this schedule, it is a revised
20 schedule with what was in that original '94 study.

21 JUDGE MOSS: Anything else on 7 or 8?

22 COMMISSIONER HEMSTAD: Yes. This is directed
23 to Dr. Blackmon. I realize this is a settlement
24 agreement, but in the staff's filed testimony, staff
25 was urging that increased investment of 100 million

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1 dollars per year for five years occur, the premise
2 behind which it would have to be; that would be
3 required to meet certain quality standards, but now
4 that's gone in this settlement arrangement. The
5 question generally is, will the movement for capital
6 investment resolve the seemingly unresolvable service
7 quality and capital shortfall investment problems that
8 we've been struggling with for a considerable number of
9 years?

10 DR. BLACKMON: Thank you for that question.
11 I think it's probably the single biggest question that
12 we faced in deciding whether to sign onto this
13 agreement was whether we could back away from those
14 additional investment commitments that we have
15 advocated. I have to start by saying that our first
16 preference going back before this case was ever filed
17 to the years of work that we've done on investment and
18 service issues, our first choice has never been to
19 mandate investment by the incumbent companies. We have
20 a lot of concern about doing that, the concern about
21 its effect on competitive markets and also concern
22 about whether it's going to be effective. A company
23 can spend a lot of money and still not get anything for
24 it, in some cases.

25 So we have believed that performance was the

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1 right place to look to try to measure the performance
2 of the company. Where we've been stymied in that
3 performance approach is that the tools that we had to
4 do that didn't seem to be very workable; that if we
5 were to take a performance approach outside of an
6 agreement like this, we would have to do it through
7 enforcement action with the Commission, complaints and
8 penalties, and that process, we believed, was so
9 cumbersome, and in many cases was insufficient, that
10 could you end up proving multiple violations of service
11 quality performance rules, and it still wouldn't amount
12 to much money under our penalty provisions, and yet we
13 didn't feel like we could impose a sort of service
14 quality performance program in this agreement; that the
15 Commission couldn't impose something like that on the
16 company without its consent.

17 Not to say that we were sure about that, but
18 it certainly seemed problematic to try to advocate some
19 sort of provision that wasn't a statutory penalty but
20 that was based on their performance, so what we were
21 able to do through an agreement is to reach that result
22 that we think is really the preferable result to let
23 the company make its own decisions within some
24 parameters about how it spends its money, how much it
25 spends on investment versus maintenance, things like

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1 that, and then we will measure it based on its
2 performance afterwards, and if their performance falls
3 short of the standards, they will pay the customers up
4 to 20 million dollars a year for that inadequacy.

5 JUDGE MOSS: And that's in addition to the
6 \$50 penalties for late appointment and that sort of
7 thing?

8 DR. BLACKMON: That's correct.

9 CHAIRWOMAN SHOWALTER: I guess before we
10 leave this topic, this settlement agreement is a
11 settlement of the consumer issues, not the competitive
12 issues, so do I take it that this settlement agreement
13 does not preclude either settlement or later
14 proceedings on investments that affect the competitive
15 side of business; am I correct on that?

16 DR. BLACKMON: That's certainly my view,
17 yes.

18 JUDGE MOSS: Does anybody have a different
19 view?

20 MS. JENSEN: Maybe just a clarification that
21 might be helpful. Chairwoman Showalter, the reality is
22 that the standards set forth in this agreement and in
23 the current Commission rules require us to make that
24 investment, and it's not specific to a given class of
25 customers, so the carriers will benefit from that

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1 investment as well as consumers benefit from that
2 investment, because the company will be building the
3 network to respond to future demand in order to meet
4 the tight parameters here. We would much rather take
5 the potential 20 million dollars and invest it in the
6 network to provide services to the customers than to
7 pay it as a credit to customers, so the reality of this
8 agreement is it insents the company to look at not only
9 it's investment but its practices, its forecasts, its
10 planning, to attempt to minimize what it pays in the
11 form of service programs or credits and provide better
12 service to the customer in the end, and everyone will
13 benefit from that, not just consumers.

14 CHAIRWOMAN SHOWALTER: What I understand you
15 to say is there may be a spillover effect of this
16 investment term in this settlement agreement, but do
17 you agree that all this promise of investment does in
18 this agreement is settle the consumer issues in this
19 case, or do you think that this investment agreement or
20 term in this agreement goes beyond that set of issues?

21 MS. JENSEN: I believe this relates to the
22 investment commitment made by the joint applicants. It
23 goes beyond just consumers. Consumers, regardless of
24 carrier, will benefit as it relates to --

25 CHAIRWOMAN SHOWALTER: I'm not saying whether

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1 it benefits. I'm saying legally. Maybe this is a
2 question better directed to your counsel at a later
3 stage.

4 MS. JENSEN: Thank you.

5 DR. BLACKMON: If I could just add, I
6 definitely agree with Ms. Jensen's point about the
7 investments here will benefit anyone who uses the U S
8 West network, whether they are a competitor or
9 customer. In particular, the digital switches and the
10 fiber optic capabilities will make it easier for
11 competitors to offer advanced services in areas are
12 where today it would be very expensive for them to do
13 so; for instance, for them to offer something like DSL
14 service in Coulee Dam might be impractical to a
15 competitor today because of Coulee Dam's isolation from
16 the rest of the world, or relative isolation, but once
17 they are connected to this fiber network, it makes it a
18 lot easier for just not U S West to offer DSL there,
19 but any other competitor as well, and I definitely have
20 the view that this set of commitments resolves the
21 consumer issues, but if the Commission feels that
22 additional investments in areas such as operational
23 support systems or unbundled loops would be appropriate
24 to resolve the coemptive issues that we have not
25 precluded that by this agreement.

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1 CHAIRWOMAN SHOWALTER: I think we can get off
2 Page 8.

3 COMMISSIONER HEMSTAD: I have a question.
4 Sections E and F seem to be in play with one another.

5 CHAIRWOMAN SHOWALTER: Are you on Page 9?

6 JUDGE MOSS: I think that is good time for
7 your question.

8 COMMISSIONER HEMSTAD: Maybe others come
9 first. We've had a lot of discussion in consideration
10 of the issue of the obligation to serve for all
11 companies. It's the intention here now in this context
12 of alternative technologies to carve that out and deal
13 with that specific to U S West or its successor. Is
14 that the point here?

15 DR. BLACKMON: Commissioner Hemstad, if I
16 could describe staff's process with regard to
17 obligation to serve. Over the last few years, it's
18 been to avoid trying to address that comprehensively,
19 trying to envision every possible circumstance and to
20 find obligation within every circumstance. We have
21 consistently advocated a case-by-case approach that
22 will lead us to, we hope, a comprehensive policy
23 eventually, and we see this provision in Paragraph F as
24 another specific example where we can reach a point
25 where the Commission can make some decisions in some

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1 specific fact situations about obligation to serve.

2 COMMISSIONER GILLIS: On that same paragraph,
3 the paragraph refers to obligations with respect to
4 competitive ETC's that are using wireless or cable TV
5 technology. Did you mean to exclude traditional wire
6 line ETC's as well in that discussion?

7 DR. BLACKMON: I guess we did. Essentially,
8 the agreement here is that U S West will not ask us to
9 look at what their obligation to serve might be where
10 there is a competing wire line carrier, so it's a
11 narrower question they intend to bring to us.

12 COMMISSIONER GILLIS: That's curious. Can
13 you expand upon that more or maybe Ms. Jensen can
14 expand why that is?

15 MS. JENSEN: I think Dr. Blackmon gave an
16 earlier answer that it was a product of negotiation.
17 This represents a good deal of discussion around this
18 subject, and this is where we ended up at the
19 conclusion of those discussions.

20 COMMISSIONER GILLIS: Well, maybe a question
21 for you is, Ms. Jensen, is that your large bolus that
22 you made in your opening remarks were that you saw this
23 agreement, generally, as it provides some assurances of
24 service quality and investment commitment after the
25 merger would be consummated. It's not clear to me what

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1 this provision has to do with either one of those.

2 MS. JENSEN: You are talking specifically.

3 COMMISSIONER GILLIS: The obligation to
4 serve.

5 MS. JENSEN: It was important that there be a
6 recognition that we are in an evolving market place.
7 This has been an issue of concern, particularly as it
8 relates to investment commitments where the company has
9 typically been held to a certain obligation and new
10 obligations that have fallen out of the
11 Telecommunications Act and so forth, and so we continue
12 to have pressure on where our investment dollars are
13 directed, and this is one area where it provides a
14 balance to our shareholder in terms of merger approval
15 process, where if another provider has been designated
16 as an eligible telecommunications carrier by this
17 Commission, and through that process is authorized to
18 receive universal service funding, assuming there is
19 funds available from either the state or the FCC, then
20 we are simply asking the parties to discuss in good
21 faith the possibility of eliminating our obligation if
22 we are not designated ETC and another company has
23 volunteered for that designation.

24 In other words, that we could, in fact,
25 direct customers to that alternative provider who is

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1 receiving subsidy funding from some source, and it was
2 truly in the interest of balancing all of the
3 requirements that we have for investment with the
4 recognition that there is more than U S West in the
5 marketplace or Qwest in the marketplace.

6 COMMISSIONER GILLIS: You are making it very
7 curious why you are excluding the traditional wire line
8 from that discussion. You don't have to say. I'm just
9 curious, given your logic.

10 CHAIRWOMAN SHOWALTER: I have a question on
11 E, which talks about using alternative technologies for
12 additional lines at a residential location. Can you
13 just tell me the situation in which this comes up? I
14 take it it means there is a line, the first line, so
15 what situation are we talking about here?

16 MS. JENSEN: What we wanted to do,
17 recognizing the scope of this agreement in the period
18 of time that it encompasses, is we wanted to recognize
19 that technology is evolving very rapidly, and there
20 will be other sources available to provide service.

21 One of the things we recognize is that many
22 customers that call to order an additional line in many
23 cases are ordering that for data service purposes, for
24 some kind of data communications, and there is an
25 education process or an informative process required to

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1 change the mind-set to help them to recognize that the
2 line that they already have might be the best line to
3 use for data purposes, and for voice communication, an
4 alternative technology may be suitable or even
5 preferred. Wireless is quickly replacing wire line
6 service both for data and voice as well as
7 long-distance, so it was just a recognition that we
8 need to evolve, and the company will be looking at
9 alternative technologies to provision additional lines,
10 but not to limit this.

11 CHAIRWOMAN SHOWALTER: This may be a legal
12 question, but it says the company may file a tariff
13 revision. I take it that doesn't preclude the
14 Commission from acting in whatever way it can usually
15 act on a tariff revision; that is, we are not
16 committing ourselves to whatever revision you file. It
17 just said says the company may file.

18 MS. JENSEN: That's correct.

19 CHAIRWOMAN SHOWALTER: I have some on the
20 rate issues, but I don't know if we are there yet.

21 JUDGE MOSS: I have a follow-up on this last
22 point. Is the contemplation with respect to this
23 alternative technologies that this will be an expansion
24 of opportunities available to consumers or an ability
25 on the part of the company to say, If you want a second

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1 line, you have to buy wireless service from us, or, If
2 you want a second line, you have to call AT&T, TCI and
3 get it through your cable, or whatever, or maybe
4 neither way. I'm just wondering if there is some
5 contemplation or both.

6 MS. JENSEN: I think I can safely assure you
7 it wouldn't be the latter. The concept is to enable
8 both the company and the consumer to have alternatives
9 available, and that will be dealt with within the
10 construct of tariff.

11 JUDGE MOSS: The concern I have, just
12 thinking through the situations that are available
13 today, is you probably don't want to see a situation
14 where a customer who wants a second line only has the
15 option of subscribing to a \$30-a-month wireless service
16 as opposed to a \$17-a-month wire line service. That's
17 the concern I was getting to, and if I understood you
18 correctly, that would not be the thrust of this.

19 MS. JENSEN: That was not the intent behind
20 this, and the reason for the tariff filing will be to
21 formalize under what circumstances the company can use
22 alternative technologies.

23 JUDGE MOSS: Thank you. Anything else on
24 Subpart 3? I guess we've sort of gone back and forth
25 on Pages 7, 8, and 9 for Subpart 3. Is there anything

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1 else on that?

2 CHAIRWOMAN SHOWALTER: Ready for the rate
3 issues.

4 JUDGE MOSS: Let's move on to the rate issues
5 beginning on Page 9 then.

6 CHAIRWOMAN SHOWALTER: I guess the sentence
7 that jumps out at me is the last one on the page, which
8 seems to bind the Commission, that the Commission may
9 -- the first sentence talks about what the parties can
10 do, and they cannot initiate or support any third party
11 request regarding the overall revenue or earnings level
12 of the company, but the second sentence says, "... the
13 Commission may not otherwise take any action that would
14 change the retail prices or access rates of the
15 Company."

16 Am I to read by that that the intention is
17 that this Commission in approving this settlement
18 agreement would be binding itself not to approve any
19 change in retail prices or access rates of the company
20 through January 1, 2004?

21 MS. JENSEN: I'd be glad to answer it. The
22 intent of this is that the Commission would not take an
23 action that would have the effect of changing retail
24 prices or access rates, switch access rates, and more
25 so in the scope of revenues that the Commission

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1 wouldn't through some order or rule-making process
2 order something that would have the effect of
3 significantly reducing U S West or Qwest's revenues as
4 a result of the Commission's action, not a tariff
5 filing or proposal initiated by the company.

6 CHAIRWOMAN SHOWALTER: So the first point is
7 the intention is to bind the Commission, not just the
8 parties?

9 MS. JENSEN: Correct.

10 CHAIRWOMAN SHOWALTER: But then in terms of
11 what... I guess I'll just throw out a few questions:
12 Does this preclude retail deaveraging?

13 MS. JENSEN: No, it does not.

14 CHAIRWOMAN SHOWALTER: Wouldn't that change
15 the retail prices of the company?

16 MS. JENSEN: And I think that's where we had
17 some challenges as well. It would not change the
18 overall revenues associated with those services, but it
19 may change specific rates, and this provision was not
20 intended to be a rate freeze, but rather an overall
21 revenue cap, so to speak, that would still allow the
22 company, for instance, to respond to changes that may
23 occur, so, for instance, the Commission could have a
24 rule similar to its current rule on switched access
25 charges that changed the rates of switched access

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1 charges but did not result in a change of revenues to
2 the company. That would not fall into this sentence
3 that you referred to.

4 CHAIRWOMAN SHOWALTER: It might not fall into
5 you're characterization, but what I'm concerned about
6 is the words on the page; Dr. Blackmon?

7 DR. BLACKMON: I think the words on the page
8 under Subsection B are the ones that permit retail or
9 wholesale rate deaveraging.

10 CHAIRWOMAN SHOWALTER: Not withstanding the
11 foregoing, it's okay to, and then Sub B affect revenue
12 rate rebalancing. So the structure is you cannot
13 change retail prices except that you can if it's retail
14 rate rebalancing.

15 DR. BLACKMON: And the other exceptions here
16 too, and again, to point out that this applies only to
17 retail and access. Unbundled network elements,
18 interconnection charges, things like that, are not
19 subject to this Paragraph B at all.

20 CHAIRWOMAN SHOWALTER: What about alternative
21 form of regulation, is that precluded by this agreement
22 for the next three years or not? Is that in here?

23 MS. JENSEN: On Page 11-D, that would --

24 CHAIRWOMAN SHOWALTER: I saw that, and I
25 said, How does this fit with the other one because it

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1 says, "... discuss in good faith," but again, would it
2 be allowed under one of the exemptions. As I read the
3 bottom of Page 9, we can't change retail prices unless
4 it's A, B, C, or D. Am I right or wrong on that.

5 MR. DAVIS: My understanding is that the
6 company could agree to or seek to change prices
7 downward, and in some part of that -- change prices or
8 reduce prices, presumably the company would be the one
9 to actually make that application.

10 CHAIRWOMAN SHOWALTER: Supposing some party
11 in an AFOR objected to whatever the arrangement was and
12 said, Wait a minute, Commission, you approved a
13 settlement that said you cannot change the rates for
14 the next three years unless it falls under A, B, C, or
15 D.

16 MS. JENSEN: The intent of D was that as part
17 of an AFOR discussion, the purpose of the statement
18 that the parties shall seek to include other interested
19 parties and consider all issues related to any proposed
20 AFOR, and Jamie, maybe you can add to this, but the
21 intent was that if the parties agreed to an AFOR where
22 there was consensus in a proposal before the Commission
23 that the parties could agree, if it made sense, to
24 change provisions within this agreement.

25 CHAIRWOMAN SHOWALTER: Right. The parties to

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1 this agreement, I think, but what about people who are
2 not parties to this agreement who might have a strong
3 view about an AFOR and maybe wouldn't like it and would
4 say that the Commission had bound itself not to change
5 prices unless it's little A, B, C, or D. Now, maybe
6 the Commission is only binding itself vis-a-vis the
7 parties to this agreement, but I'm not sure.

8 MS. JENSEN: And our recognition is that for
9 the parties to bring a different proposal before the
10 Commission, say, two years from now, a year from now,
11 six months from now, that obviously, there would need
12 to be a component of that AFOR agreement that would
13 gain the support of other parties, because you are
14 absolutely correct, it would be more than just public
15 counsel, Commission staff, and the companies.

16 So it's just intended to not preclude it, but
17 there is a recognition of the challenge before us
18 because of the provisions within this agreement, but D
19 is very specific to acknowledge that it may be
20 appropriate to revisit some of these issues in the
21 context of an AFOR, but clearly, that is something that
22 would have to be addressed at that point in time.

23 CHAIRWOMAN SHOWALTER: In speaking of other
24 parties, that is, not parties to this agreement, I have
25 the general question of what it means to have a

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1 settlement of the parties to this settlement agreement
2 but have the Commission approve a rate freeze, in
3 effect, subject to certain exceptions, that could be
4 the interest of other parties. I think this came up in
5 the GTE merger too. It's the question of whether the
6 settlement goes beyond the interests of the parties
7 here.

8 Supposing somebody else out in the world
9 thinks that we are in an area of declining costs or
10 things that some rate is unjustified, and wants to
11 bring before us on a fairly narrow grounds, maybe, a
12 complaint. Are we precluded from entertaining that
13 issue because of this agreement?

14 MS. JENSEN: I don't believe so. If there is
15 an issue with respect to a specific rate for specific
16 service, just as we will continue to file tariffs and
17 propose changes and so forth before the Commission,
18 this commitment is very specific to the overall
19 revenues of the company as it relates to the earnings
20 of the company, so it was really intended, as I
21 understand it, and others are free to join in, like the
22 GTE-Bell Atlantic merger to address some predictability
23 for customers that there wouldn't be a major rate case
24 proceeding over the next three years, and it's fairly
25 tight in scope in that it defines what kind of major

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1 rate changes could be included.

2 There is also recognition that the parties
3 have agreed to continue to look at alternative forms of
4 regulation, and there may be some benefits that all
5 parties could support in the context of some potential
6 future agreement, but for the purposes of this
7 agreement, it does envision, absent some incentive or
8 value to some other arrangement, this is the commitment
9 that the parties are making.

10 MR. DAVIS: Your Honor, just to add. The way
11 I read this was that the Commission's commitment not to
12 change retail prices or access rates of the company are
13 subject to the following sub paragraphs relating to
14 what staff may propose to do and what the company may
15 propose to do on a going-forward basis, so within that,
16 if there was a proposal to modify a retail price for a
17 particular reason, it would generally be done on a
18 revenue neutral basis, or similarly, if the company and
19 the staff and the public counsel were in agreement on
20 an AFOR, they might come in with a proposal, and among
21 them, what's permitted under this paragraph is for the
22 company to propose revenue negative rate changes, and
23 so I think the flexibility among the parties to reach
24 an agreement on the broad range of an AFOR would be
25 covered by what is permitted under this agreement.

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1 Similarly, I think staff, should they want to, could
2 come in with rate changes that would be either revenue
3 neutral or would even increase the revenues of the
4 company if it so wished.

5 CHAIRWOMAN SHOWALTER: My concern isn't to
6 the parties to the agreement because you know what
7 you've agree to, but we are signing the agreement with
8 a fairly broad statement. Maybe Mr. Butler when he
9 gets a turn, but there might be other customers or
10 other people out there who would have concern about
11 this commitment of the Commission's that you are asking
12 us to make not to take any action.

13 MR. DAVIS: I understand your concern. I
14 think what this document would say would be that the
15 rates overall of the company are generally correct that
16 if there is a rate that's outs of whack for whatever
17 reason and needs to be addressed by the Commission, the
18 Commission can't do that subject to doing it generally
19 on a revenue-neutral basis, so if a particular rate
20 needs to be adjusted one way or the other, then we try
21 to do that in a way that is revenue neutral, and I
22 think that's what these sub paragraphs permit.

23 MR. STEUERWALT: To address your point, we
24 did take some time and effort to canvas other parties
25 that we have traditionally seen in the rate proceedings

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1 for U S West on their feelings on rate stay-out
2 periods, and I think I'm comfortable saying that there
3 is not a lot of opposition to provisions that limit the
4 company's ability to raise rates from other customer
5 groups.

6 JUDGE MOSS: How about provisions that limit
7 the Commission's ability to lower rates?

8 COMMISSIONER HEMSTAD: There are competing
9 values here: On the one hand, wanting certainty; on
10 the other hand, also wanting flexibility, and there is
11 a certain conflict, but ultimately, the Commission has
12 a statutory dispute to see that rates are fair, just,
13 reasonable, and sufficient. I guess the legal issue is
14 whether to what degree -- on the one hand, the parties
15 can make commitments among themselves and accept
16 questions to what degree the Commission can bind itself
17 for a substantial period of time in such a way that is
18 foreclosed from examining that question. It's an
19 interesting legal issue for the lawyers to think about.

20 JUDGE MOSS: The question I was asking before
21 is the other direction. Doesn't this also preclude the
22 Commission from having an investigation on its own
23 complaint and lowering rates? Is that something that
24 is acceptable to the groups you have canvassed?

25 MR. STEUERWALT: I don't think we've seen

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1 that happen in recent time, and I think the consensus
2 is right now that the pressures are otherwise, and so
3 there is a trade-off there.

4 COMMISSIONER HEMSTAD: We went through a
5 rather major momentous rate case with that consequence.

6 DR. BLACKMON: Commissioner Hemstad, I will
7 point out that while that was the outcome, it wasn't
8 how the case got started. It wasn't that the
9 Commission brought a complaint on its own.

10 CHAIRWOMAN SHOWALTER: Just as a matter of
11 drafting, this binding statement on the Commission is
12 in Subsection 1 subject to these exceptions of 1-A,
13 1-B, 1-C, 1-D, and that's it as far as the Commission
14 is concerned. Then Sub 2 talks about what the company
15 can do, and the company can bring a case before us on
16 the very same ones, A, B, C, and D, and that tracks,
17 but then there is E, so my reading is that you can come
18 in for a minor rate adjustment, but unless that falls
19 within one of the exception of 1-A, B, C, or D, we, the
20 Commission, cannot change a retail rate. Is that your
21 reading?

22 DR. BLACKMON: It's my understanding.

23 MS. JENSEN: That's correct, but I think
24 under 1-B that there is latitude with respect to
25 revenue-neutral rate rebalancing; for instance, the

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1 Commission could make a decision that would affect a
2 rate of a specific service as long as there was a
3 recognition that revenues would shift, and in essence,
4 the Commission would be bound to address mechanism by
5 which that change would be revenue neutral, so it
6 really is specific to the revenues of the company.

7 DR. BLACKMON: Chairwoman Showalter, 2-E
8 does not necessarily conflict or is not necessarily
9 constrained by that provision, because there are many,
10 many examples of rate changes that happen without
11 Commission action, and we have a no-action agenda at
12 every open meeting, so the sort of things that happen
13 in E could be items that come up that go into effect
14 just under operation of law without any action by the
15 Commission.

16 COMMISSIONER HEMSTAD: I'd like to go back to
17 Paragraph A. With Ms. Jensen's characterization of the
18 Sub B in mind that this is a revenues cap on the rate
19 freeze, I read A then as, in effect, saying that all of
20 the savings from the merger for the period within which
21 rates are capped will go to the benefit of the
22 shareholders. In a certain sense, this is, is it not,
23 sort of an equitable of the Puget arrangement whereby
24 there is a period of time in which any cost savings
25 benefits or revenue enhancements and the like are for

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1 the benefit of the company and not its ratepayers.

2 Then the second sentence really means that
3 after January 2004, at that point, those benefits could
4 be taken into account in the next proceeding that would
5 be characterized by the rate case or whatever there
6 would be. If there is a need for that it would come
7 into place. Is that a fair characterization?

8 MR. DAVIS: I think that's fair subject to
9 all of the other things that the company is committed
10 to doing in the document.

11 COMMISSIONER HEMSTAD: Do you agree, Dr.
12 Blackmon?

13 DR. BLACKMON: I think Mr. Davis is more
14 diplomatic than I am because I don't think that's a
15 fair characterization at all. I think the consumers
16 here in the State of Washington are getting substantial
17 benefits, a substantial portion of the efficiencies
18 that come from these companies merging. It's that we
19 are choosing not to take them in the form of rate
20 reductions. We are choosing to take them in the form
21 of performance credits and investment commitments, and
22 to some extent, this provision is in here sort of in
23 the wake of the GTE-Bell Atlantic settlement where we
24 did have very specific rate reductions that were built
25 in, and Item A is sort of going to highlight and make

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1 sure that nobody will have any misunderstanding about
2 the fact that unlike with GTE, we are not taking any of
3 our benefits in the form of rate reductions.

4 COMMISSIONER HEMSTAD: In turn, with the
5 application of Sub A, then we have the availability of
6 an AFOR. Whatever structural or substantive
7 requirements or limitations upon the Commission are at
8 that point when offered could end up with the
9 elimination to recap. Wouldn't that follow?

10 MS. JENSEN: That, Commissioner Hemstad, was
11 the intent of D on Page 11 is to allow for an open
12 negotiation process as part of an AFOR proceeding,
13 recognizing the findings that the Commission will
14 establish as a result of proving or disapproving this
15 settlement agreement, so there is full recognition by
16 the parties that this agreement is to aid the
17 Commission in its determination as to whether the
18 public interest issue has been resolved or adequately
19 addressed.

20 At the same time, the companies are very
21 interested in moving forward to an alternative form of
22 regulation, and there may be additional benefits that
23 fall to consumers as a result of an AFOR settlement
24 that would encompass more than just the parties to this
25 agreement. It doesn't preclude it.

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1 COMMISSIONER HEMSTAD: As a broad
2 generalization, that can be lots of details, but the
3 company is always free to lower its rates. For
4 example, we have made very clear in our earlier orders
5 to meet competitive entry or the like, but what we have
6 here is a rate cap that provides, I suppose, the point
7 of which is to provide some comfort or certainty to
8 ratepayers, but that can be rather dramatically
9 changed, however, then with the filing of an AFOR.

10 MS. JENSEN: But only subject to your
11 approval and to the parties' agreement. I believe
12 there is full recognition that there would have to be a
13 benefit associated with any change that might be
14 proposed.

15 CHAIRWOMAN SHOWALTER: Following up on that
16 very point, if you read into this agreement or, in
17 fact, changed the agreement to have -- I'm in B-1(e) on
18 Page 10 -- you would allow changes to E, implement an
19 AFOR effect. Is that what you mean here or not? While
20 I'm thinking about words, hold that on your head for a
21 minute, but it also says, "Notwithstanding the
22 foregoing, Commission staff and Public Counsel may at
23 any time seek changes," but it doesn't actually give
24 the Commission authority to approve those changes
25 because you've just precluded the authority of the

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1 Commission in the previous sentence, so I take it there
2 wouldn't be any objection to reading in, "Staff and
3 Public Counsel may at any time seek and the Commission
4 may approve rate changes to..." and then there is A,
5 B, C, and D, but then my question is, is E an AFOR
6 another exception to this or not? Dr. Blackmon is
7 shaking his head.

8 DR. BLACKMON: We certainly don't consider E
9 to include an AFOR --

10 CHAIRWOMAN SHOWALTER: I'm making up the E in
11 1(a). There is no E. I'm in B-1, and then there is A,
12 B C, D; these are the reasons that the Commission can
13 change a rate, and I'm saying, is there, in effect, an
14 E there that's an AFOR or not?

15 DR. BLACKMON: I think there is not. In
16 this capital D paragraph, the parties have agreed to
17 consider all issues, and I think that means that we've
18 agreed to consider the possibility of coming back to
19 the Commission and asking the Commission to relax this
20 rate cap. It's not even clear to us exactly how that
21 would happen or what parties would be involved in that.
22 It could be substantially harder to do that than it
23 would be simply to approve an AFOR, because it would be
24 within this merger case and various parties. There are
25 probably more parties here than would be in an AFOR

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1 discussion, certainly a different set of parties.

2 CHAIRWOMAN SHOWALTER: So if that's not
3 included, then I guess I just get back to the question
4 of does this mean that any party that does not want an
5 AFOR but is not a party to your settlement agreement
6 can come back at us and say, "You can't do anything for
7 the next three years. Don't you know you signed a
8 statement that said you can't take any action that
9 would change retail prices?" It's probably a legal
10 question.

11 DR. BLACKMON: I think I would agree with
12 that. The question of the circumstances under which
13 you could change your order accepting this merger with
14 conditions is beyond me.

15 JUDGE MOSS: Why don't we take five minutes.
16 Everybody back at three o'clock.

17 (Recess.)

18 JUDGE MOSS: We are still discussing the
19 matters under Roman numeral 4, which begins on Page 9
20 and extends over to Page 11, and I think there are
21 still perhaps questions from the Bench on those.

22 COMMISSIONER HEMSTAD: I'm exhausted.

23 CHAIRWOMAN SHOWALTER: I guess the last
24 question I want to focus on is this term, "access
25 rates." This is at the bottom of Page 9. Does someone

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1 want to tell me how this binds the Commission with
2 respect to access rates. I take it we cannot take any
3 action to change access rates unless we find it in 1A,
4 B, C, or D; is that correct, any access rates?

5 MR. DAVIS: The way I would read it is
6 anything within that subparagraph, so 1-A, B, C, D, or
7 2-A, B, C, D, E.

8 CHAIRWOMAN SHOWALTER: What about 2, because
9 I guess 2 is parallel to 1 anyway, but the sentence
10 that's binding the Commission is in Sub 1, so...

11 MR. DAVIS: I see your point. I was just
12 trying to read that provision as being consistent with
13 the remainder of Subparagraph B, but you are right,
14 there is no such restriction applicable to the
15 Paragraph 2.

16 CHAIRWOMAN SHOWALTER: Dr. Blackmon, do you
17 agree there is no action by the Commission on access
18 rates for the next three years, unless we find a reason
19 to do it in 1-A, B, C, or D?

20 DR. BLACKMON: I do.

21 COMMISSIONER HEMSTAD: Now that I've
22 revived... Dr. Blackmon, the last time there has been
23 a full-blown rate case with U S West, it was completed
24 in 1995, I believe, and then with a partial further
25 update in '97, was it? Under this arrangement, there

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1 would not be the opportunity for that until 2004, or
2 approximately eight years, I think, and the prospect of
3 an AFOR in whatever form it would take. In the Bell
4 Atlantic-GTE merger and settlement, the rate structure
5 was updated, in effect, at the time of this decision.
6 This whole industry is changing very rapidly. That's a
7 lone time, isn't it, without a full-blown review of the
8 rates of a company of this size and scope?

9 DR. BLACKMON: It is a long time. I think
10 the right way to count it is from 1998 when the most
11 recent rate case was completed. I think that that was
12 a thorough review that led to an abbreviated
13 proceeding, but the review itself, you know, was a
14 complete review on the part of staff, and by the time
15 this period runs, it will have been six years.

16 I also think that in our making a
17 recommendation today about this provision that that
18 reflects the ongoing review that we do of the company's
19 financial performance, so while I don't have a rate
20 earnings review to present to you today, I can say that
21 we monitor the company's financial performance
22 regularly and feel that provision A, 4-A, no rate
23 reduction, is a reasonable part of this agreement.

24 I also think that the fact that the telecom
25 industry is changing rapidly is a reason to include a

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1 stay-out provision such as this; that sort of our
2 traditional method of keeping everything on balance, a
3 rate case, is not necessarily what we need to do over
4 the next few years.

5 COMMISSIONER HEMSTAD: One final question:
6 With all of the various provisions in this agreement,
7 I'm at a bit of a loss to grasp what an AFOR would
8 accomplish that this isn't doing here. Isn't this
9 just, in a practical consequence, a form of an AFOR?

10 DR. BLACKMON: There are certainly issues in
11 here that, prior to this merger negotiation, we have
12 been talking about to the company about AFOR type
13 issues. I'm not going to promise you an AFOR following
14 this; that we intend to look at an AFOR; that there are
15 no promises that we will bring an AFOR after this
16 merger is completed.

17 We also recognize that there may well be
18 improvements that could be made in how we regulate U S
19 West or Qwest, so I think we will just have to wait and
20 see what results from those AFOR discussions to see
21 whether some improvements can be identified and brought
22 to.

23 CHAIRWOMAN SHOWALTER: Can I follow up on
24 that one but with the attorneys? I still don't really
25 understand if we approve this settlement agreement,

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1 which says the Commission may not take any action to
2 change the retail prices or access rates of the company
3 unless it's 1-A, B, C, or D, what is your view of the
4 company -- and anybody else, but the company for
5 starters -- coming to the Commission with an AFOR that
6 would in any way change retail prices or access rates?
7 Do you think that this Commission can entertain such a
8 thing or not, if we sign this settlement agreement?

9 MR. VAN NOSTRAND: I think as clarified by
10 the testimony of Dr. Blackmon and Ms. Jensen today as
11 to the meaning of the provisions regarding AFOR
12 discussions alongside the meaning of the rate issue
13 limitation that an AFOR proposal could be entertained.

14 CHAIRWOMAN SHOWALTER: And I guess are you
15 saying because this language in this settlement
16 agreement permits it or because this language in this
17 settlement agreement doesn't quite get at what was
18 intended? Point to me why the Commission could approve
19 an AFOR that changes a retail price or access rate in
20 the next three years, if we approve this settlement
21 agreement? Ms. Johnston, you can jump in too.

22 MR. VAN NOSTRAND: I view that provision as
23 being responsive to anything else that anybody else may
24 do. This whole section has to do with what the staff,
25 what public counsel, and what the Company can do, and

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1 unless it's authorized here, the Commission can't do
2 it, and so I don't see that as precluding something
3 that staff, public counsel, and the company would bring
4 forward under the AFOR discussion provision on Page 11.

5 CHAIRWOMAN SHOWALTER: Actually, if this
6 sentence were not here, if there was nothing in the
7 settlement agreement about the Commission itself, then
8 it seems to me that you would have what you maybe think
9 you have, which is the parties can't initiate anything.
10 That is, the staff can't initiate a price increase; the
11 company can't. No one can initiate anything to get
12 before us, and that seems to me would probably mean
13 that for the next three years, nothing like that would
14 happen because you would not have initiated it, but the
15 second this sentence in is in here that is binding us,
16 then it seems to me it gets outside what -- it says
17 what it says, and only as exceptions are provided to it
18 would we be able to get outside of its provisions, and
19 the only exceptions I see are A, B, C and D. I guess
20 that's my concern.

21 MR. VAN NOSTRAND: I think you could perhaps
22 be clearer in terms -- if we want to refine the
23 agreement to reflect the discussion we've had today and
24 how the AFOR interacts with that, but on the broader
25 question, I do think this is the form of a rate plan

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1 where there is some finding that there won't be any
2 adjustment of general rates for the next three years.

3 COMMISSIONER HEMSTAD: Speaking for the
4 drafters, if you take that sentence out, the Commission
5 could initiate a complaint, if that's what I assume the
6 parties to the agreement are wanting to include.

7 CHAIRWOMAN SHOWALTER: I guess it would have
8 to be one of our own motions because the staff couldn't
9 prompt us to.

10 COMMISSIONER HEMSTAD: But we could issue --

11 CHAIRWOMAN SHOWALTER: You've at least seen
12 what the issue here is, and it may be after this
13 discussion among you, you will see a way to modify this
14 language a little bit, if it's for the purpose of
15 clarifying what your intentions were without raising
16 some of the questions, but I don't want to change the
17 nature of the agreement, if that's what the agreement
18 is.

19 MR. DAVIS: I always read this as trying to
20 read this consistent with the following paragraph, so
21 the way I read it was basically to include after that
22 sentence that prior to January 1, the Commission may
23 not sentence, subject to the provisions of this
24 paragraph and Paragraph 4-D.

25 CHAIRWOMAN SHOWALTER: But that was the

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1 question I asked earlier about whether there was
2 actually a little E there for an AFOR.

3 MR. DAVIS: In order to read all of these
4 paragraphs consistently, you've got to recognize that
5 that particular sentence would be subject to those
6 provisions.

7 CHAIRWOMAN SHOWALTER: That is exactly what
8 why I asked whether there wasn't really a hidden E,
9 1-E, called AFOR, and Dr. Blackmon objected, so I'll
10 leave it at this, and if you could figure out how it
11 could be clarified satisfactorily to all the parties,
12 maybe you could do that.

13 JUDGE MOSS: Shall we leave the rate section
14 for now? I believe that will then take us up to Page
15 11 of the proposed settlement agreement, other matters,
16 and general provisions, and that carries over to Page
17 12.

18 MR. VAN NOSTRAND: Your Honor, if I could
19 interpose, on Section 5-A, books and records, there was
20 an agreement reached with response to a request of
21 public counsel which didn't get reflected in this
22 document and had to do with the issue of whether or not
23 access would be provided in Washington if it were
24 feasible, and the agreement reached in principle was
25 that if access in Washington is not feasible, the

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1 company will reimburse reasonable expenses incurred by
2 staff and public counsel for travel to inspect such
3 books and records, and we have not yet reduced that to
4 writing. I think Ms. Johnston has some concerns about
5 the legal ability for those expenses to be reimbursed,
6 so I wanted to at least put that out there that that
7 was the concept agreed upon in principle, and I wanted
8 to get that on the record, but we are still working on
9 what the language will look like.

10 JUDGE MOSS: I think that would raise some
11 interesting ethical issues for counsel.

12 CHAIRWOMAN SHOWALTER: Put them up by the
13 Motel 6.

14 MR. FFITCH: We are permitted by law, kind of
15 a proviso, but I believe there is some precedent in the
16 regulation or travel in certain cases the oddity-based
17 expenses. We will look into that and make sure we are
18 not skirting those or overstepping those lines.

19 JUDGE MOSS: I hate to see you disbarred.
20 Are there any other questions from the Bench with
21 respect to the proposed settlement agreement?

22 COMMISSIONER HEMSTAD: I have just one
23 question under other matters, Roman numeral 5,
24 Subsection B, with the sale of exchanges. This is a
25 rather sweeping statement at the end that as sellers,

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1 the company "shall require as a condition of the sale
2 or transfer that the successor be bound by all
3 requirements of this Agreement."

4 What is that intended to cover, issues about
5 the one million dollars for expansions of coverage?
6 There are a lot of things in this agreement. I suppose
7 it depends in part on who the buyer is. At any rate,
8 perhaps you could elaborate on that. What is intended
9 by that language?

10 DR. BLACKMON: I think our intent is that the
11 provisions agreed to here would carry over to any
12 successor or anyone who purchased some portion of this
13 operation. Clearly, there are parts of this where the
14 obligation would need to be divided between the old and
15 the new company, if there were, say, for instance, a
16 partial sale of the business within the state, but some
17 of these obligations would need to be split between the
18 old company, the new company. There are other
19 provisions in here where they don't need to be split;
20 in other words, the customer-specific remedy can apply
21 equally well for the old company and the new company
22 because they will each have their own customers.

23 COMMISSIONER GILLIS: But in the case of
24 Company X buying 10 exchanges from U S West for Qwest,
25 then does -- it's fairly clear in terms of the

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1 obligation with respect to some of the investment
2 issues. Maybe its switches need to be upgraded or
3 things like that, but with respect to the service
4 quality guarantees, which is a provision of this
5 agreement, does that mean that Company X also needs to
6 accept all the provisions of the service quality
7 agreement for its entire customer base or how they
8 separate that out for just the ten exchanges, or how
9 does that play out?

10 DR. BLACKMON: I don't think we had
11 envisioned that it would cause them to take on some new
12 obligation for a customer base that they had before
13 they entered into this agreement, so it wouldn't cause
14 the provisions of this agreement to expand to a larger
15 base, but that they would get the pro rata share of the
16 obligations that U S West and Qwest are undertaking in
17 this one.

18 It reminds me somewhat of the example where
19 Century Tel, or at that time, PTI, purchased a set of
20 U S West exchanges, and as a result of that, they've
21 had sort of a different treatment, different rates
22 within the State of Washington for the customers in
23 those different areas, their legacy PTI areas and their
24 legacy U S West areas, so something like that would
25 probably happen here too if there was a sale of

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1 exchanges.

2 JUDGE MOSS: That would appear to complete
3 the questioning from the Bench, at least for this time.

4 COMMISSIONER HEMSTAD: Now the questioning
5 gets tough.

6 JUDGE MOSS: I don't have any particular
7 order in mind, so unless you all have established a
8 particular order among yourselves -- everybody is
9 pointing to you, Mr. Kopta. I was going to start with
10 Mr. Pena and go the other way. We'll start with you.

11 MR. KOPTA: Thank you, Your Honor. The first
12 question that I have is on Page 2, Section 1-A. In the
13 first sentence, there are a list of issues that are
14 apparently being addressed in this settlement
15 agreement, and if you would look at the third line, and
16 I suppose this is primarily for Dr. Blackmon, it states
17 toward the end of that line, refers to issues regarding
18 quality of service. Am I correct that that's issues
19 regarding issues of retail service?

20 DR. BLACKMON: I would refer you back to the
21 individual sections of the agreement. The word
22 "retail" is used in some places and in some places it's
23 not, so where it says "retail," it only applies to
24 retail.

25 MR. KOPTA: That sort of leads to two

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1 questions. The first is, are you intending by this
2 agreement to resolve wholesale service quality issues
3 that have been raised by the intervenors?

4 DR. BLACKMON: No, I'm not. I believe those
5 are issues that are referred to later in that
6 paragraph.

7 MR. KOPTA: I suppose the companion question
8 is, if it's not specifically for retail service, are
9 these provisions also applicable in some measure to
10 wholesale services and perhaps as an example for resold
11 services? Do the credits and standards that are
12 applied in this agreement also apply to lines, for
13 example, served by resellers of U S West services?

14 DR. BLACKMON: I don't have a straight,
15 clear answer to that question one way or the other. I
16 think it depends upon the provisions of the agreement
17 under which a reseller is reselling service. Our view
18 is that where the agreement doesn't say retail -- if a
19 provision says all orders for local service, then it
20 would mean all orders for local service, and exactly
21 how that is translated through to a reseller wouldn't
22 be addressed in this document. It would be addressed
23 in a tariff or in an interconnection agreement.

24 MR. KOPTA: Ms. Jensen, would you give me
25 your understanding of that issue?

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1 MS. JENSEN: I would concur with
2 Dr. Blackmon. The intent of the items addressed in
3 this agreement are specific within each section. The
4 customer-specific remedies are specific to the local
5 exchange tariff. As Dr. Blackmon pointed out,
6 resellers, as we think of them, negotiate
7 interconnection agreements with U S West at this time,
8 and they have specific items within those agreements
9 that address standards, measures, intervals that may
10 differ from the specifics of this agreement, so they
11 would, in essence, be subject to whatever they agreed
12 to with the company, either through negotiation or
13 arbitration.

14 MR. KOPTA: So is my understanding correct
15 that this settlement agreement would not have any
16 impact upon interconnection agreements between U S West
17 and any reseller of U S West services?

18 MS. JENSEN: The intent of this was not to
19 apply to an interconnection agreement mutually
20 negotiated or arbitrated between parties.

21 MR. KOPTA: On Page 5, specifically Paragraph
22 8, this seems to be one of the paragraphs in which
23 there is a specific reference to retail orders and
24 retail intraLATA intrastate private line service, so
25 this would be one of those instances, Dr. Blackmon, in

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1 which there is a limitation to retail customers.

2 DR. BLACKMON: That's correct.

3 MR. KOPTA: As I read this paragraph, it's
4 only addressing orders that were held for over 60 days
5 as of the end of February of this year; is that
6 correct?

7 DR. BLACKMON: That's correct.

8 MR. KOPTA: So if an order was held on March
9 1st for more than 60 days, that could be any time that
10 that would be cleared not necessarily by October 1st of
11 this year?

12 DR. BLACKMON: This paragraph would not
13 apply to an order that on February 29th had been held
14 59 days.

15 MR. KOPTA: Is there a reason why you set
16 this up the way that you did? For example, is this a
17 particularly bad set of circumstances in which there
18 are more held orders as of February 28th that were
19 longer than that 60 days that needed to be cleared up
20 and future held orders would be not as much of a
21 problem?

22 DR. BLACKMON: I think there are a lot of
23 reasons why the parties came together and agreed to
24 this provision, and I think the parties recognize the
25 need to A, that it would be a really good thing to give

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1 Qwest sort of a clean slate from which to operate in
2 the State of Washington, and that we needed to do that
3 with a lot of specificity to say exactly how the
4 backlog would be defined, and so what this agreement
5 reflects is that we would take a snapshot in time, and
6 that on February 29th, we would define the backlog of
7 held orders as being those that on that date had been
8 held for more than 60 days. Once an order has been
9 held for that long, I think it's pretty clear that's
10 not just part of some sort of routine holdup, that
11 there must be something fairly seriously short for them
12 not to be able to fill that order, and those were the
13 ones that we felt most important that it be eliminated,
14 and by doing that, we can give Qwest something of a
15 fresh start when it takes over the company.

16 MR. KOPTA: So there is nothing in the
17 agreement as it is currently structured to deal with
18 other existing or future backlogs of held orders.

19 DR. BLACKMON: I don't think that's true at
20 all. I think the agreement has refund provisions if
21 the company in each individual exchange doesn't meet
22 five-day and ninety-day held-order levels.

23 MR. KOPTA: Those would be applicable to
24 these same held orders referenced to in Paragraph 8,
25 wouldn't they.

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1 DR. BLACKMON: They would applicable to the
2 local exchange orders, but not the private line orders.

3 MR. KOPTA: As far as backlogs on held orders
4 for unbundled network elements of other facilities that
5 have been requested by competitors, there is no time
6 limit in which those facilities would need to be
7 provided under the settlement agreement.

8 DR. BLACKMON: That's right. The settlement
9 agreement doesn't include any issues relating to
10 unbundled network elements.

11 MR. KOPTA: Would you turn to Page 8, please,
12 specifically Paragraph D at the bottom of the page?
13 Ms. Jensen, I believe, I recall your discussion with
14 the commissioners on the amount of the average
15 investment, and if I recall correctly, that was 335
16 million dollars; is that correct.

17 MS. JENSEN: Correct.

18 MR. KOPTA: And I believe in your rebuttal
19 testimony on Page 8, you state that U S West invested
20 560 million dollars in Washington in 1999; is that
21 correct?

22 MS. JENSEN: That's correct.

23 MR. KOPTA: So has U S West's investment in
24 Washington been increasing as a historical matter?

25 MS. JENSEN: I would say overall, it has

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1 increased.

2 MR. KOPTA: So under the settlement
3 agreement, U S West has committed to a floor that's
4 substantially lower than what it's currently investing;
5 is that correct?

6 MS. JENSEN: Not necessarily. The commitment
7 that the company has made is based on its average
8 historic investment, and 1999 was a most unusual year
9 in terms of the amount that U S West invested in
10 Washington that was not based on what the average had
11 been.

12 MR. KOPTA: So was the investment for 1998
13 below the average?

14 MS. JENSEN: No, it was not.

15 MR. KOPTA: I'm not sure I understand exactly
16 the per access line calculation. Is that per retail
17 access line?

18 MS. JENSEN: For business and residence,
19 basic exchange access line.

20 MR. KOPTA: So that would exclude unbundled
21 network elements, like an unbundled loop.

22 MS. JENSEN: Yes, it would.

23 MR. KOPTA: Would it also exclude residence
24 or business exchange lines in which a company is
25 reselling U S West service to retail customers?

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1 MS. JENSEN: If they are reselling based out
2 of the local exchange tariff, those lines would be
3 included.

4 MR. KOPTA: So am I correct that under this
5 agreement, if competitors are able to capture larger
6 market shares using U S West unbundled network elements
7 that U S West's corresponding commitment to invest
8 would decrease unless its growth offset the amount of
9 unbundled network elements U S West was providing?

10 MS. JENSEN: Could you repeat your question?

11 MR. KOPTA: It's a little complicated. I'm
12 trying to capture the notion that I'm assuming that
13 this goes both ways; that if U S West serves more
14 customers and increases the number of access lines
15 beyond the 2.5 million that it currently serves, then
16 the investment level would go up.

17 MS. JENSEN: That's correct.

18 MR. KOPTA: So if U S West had a net decrease
19 in retail access lines but a substantial increase in
20 the number of unbundled loops it provides to
21 competitors, then the investment would go down.

22 MS. JENSEN: It doesn't necessarily mean that
23 the investment would go down. It would be specific to
24 this commitment that we would maintain our average
25 investment for residence and business access lines

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1 served.

2 The company, may, in fact, have an investment
3 level greater than the 335 million. It would depend on
4 what its investment requirements are, but the intent of
5 this is that the commitment would be based on the
6 average per access line based on the number of access
7 lines served by U S West.

8 MR. KOPTA: Would you turn to Page 9, please,
9 specifically Section 4-B(1), and I'd like to follow up
10 on some of the questions about the undertaking that the
11 Commission will not change retail prices or access
12 rates, not surprisingly. Does a change, as that term
13 is used in this agreement, include credits that the
14 Commission might adopt for poor service quality for
15 access? How about you, Ms. Jensen.

16 MS. JENSEN: Well, this is very specific to
17 prices or rates. I think what you are talking about is
18 something other than the price or a rate.

19 MR. KOPTA: I'm simply trying to understand
20 how this is intended to work.

21 MS. JENSEN: That was not part of the
22 discussion.

23 MR. KOPTA: Access is a wholesale service,
24 isn't it, Dr. Blackmon?

25 DR. BLACKMON: I don't know that it can be

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1 characterized in any meaningful way of retail versus
2 wholesale.

3 MR. KOPTA: So there are retail customers
4 that obtain switched access from U S West?

5 DR. BLACKMON: There are retail customers
6 that obtain service, and access is used in the
7 provision of their service. I think your question
8 wades into this area of who is providing the service
9 when there are more than one company involved in it and
10 one of them is providing access to the other one, and I
11 don't know the answer to that. I just am not prepared
12 to agree that it's a wholesale service.

13 MR. KOPTA: But you would agree with me that
14 interexchange carriers pay access rates, as that term
15 is used in this agreement, to the company.

16 DR. BLACKMON: Yes, I would.

17 MR. KOPTA: So Commission staff agreed on
18 behalf of long-distance companies to freeze access
19 rates as part of this agreement?

20 DR. BLACKMON: That's correct.

21 MR. KOPTA: Were those companies consulted in
22 terms of that agreement and willing to agree that the
23 freeze was appropriate for the next three-and-a-half
24 years?

25 DR. BLACKMON: There are more than 400

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1 long-distance companies in the state, and I'm certainly
2 not going to say we consulted all of them. I think
3 that those companies that intervened in this case and
4 that provide toll service have been consulted, and I
5 certainly don't represent that they agree to the
6 provisions of this settlement.

7 MR. KOPTA: I believe in the course of
8 questioning from the Commissioners that you represented
9 that the settlement agreement was not intended to
10 foreclose any of the issues that the intervenors had
11 raised in this proceeding. Is that the correct
12 characterization of your statements?

13 DR. BLACKMON: I recall that I said that the
14 competitive issues are not foreclosed by this
15 settlement agreement.

16 MR. KOPTA: Have you reviewed Mr. Ward's
17 testimony on behalf of AT&T?

18 DR. BLACKMON: Yes, I have.

19 MR. KOPTA: Are you aware that Mr. Ward is
20 recommending as a condition of the merger that the
21 Commission reduce switched access rates to
22 forward-looking costs that AT&T has about a merger
23 between an incumbent local exchange company and a
24 long-distance company, the fourth largest in the
25 country?

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1 DR. BLACKMON: I am.

2 MR. KOPTA: And if the Commission adopted the
3 settlement agreement that the position of AT&T's would
4 be foreclosed, would it not?

5 DR. BLACKMON: Yes.

6 MR. KOPTA: Is the genesis of this rate
7 freeze, for lack of a better and more precise term,
8 from the GTE-Bell Atlantic merger settlement agreement?

9 DR. BLACKMON: At least speaking on behalf
10 of staff, no. It's a very common provision in a merger
11 settlement to agree to a rate stability period. In
12 part, one reason for doing that is that the traditional
13 method of reviewing the reasonableness of the company's
14 rates, i.e., to examine their financial records. In
15 the period immediately before and after the merger,
16 those books tends to have many unusual items on them,
17 and it becomes very hard to measure in any meaningful
18 way what the company's rate of return may be during
19 that period, so some period of stay-out is very common
20 and highly recommended as part of a merger agreement.

21 MR. KOPTA: As part of the GTE-Bell Atlantic
22 merger settlement agreement, the company in that case
23 agreed to a seven million dollar annual reduction in
24 switched access charges, didn't it?

25 DR. BLACKMON: It's a seven-million-dollar

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1 reduction per year. It's a one-time reduction in the
2 amount of seven million dollars per year.

3 MR. KOPTA: Were there any service quality
4 conditions agreed to in the Bell Atlantic-GTE merger
5 that are similar to or the same as the conditions in
6 this agreement?

7 MS. JOHNSTON: I'm going to object on
8 relevancy grounds. The settlement agreement that we've
9 proposed to the Commission pertains to U S West and
10 Qwest, not GTE and Bell Atlantic.

11 JUDGE MOSS: Mr. Kopta, we are straying a
12 little bit from focus on the settlement agreement that
13 is before us, so unless you wanted to tie that up very
14 quickly with the form of the question, I'm going to
15 sustain the objection to the line of inquiry.

16 MR. KOPTA: My only tie was that in the
17 GTE-Bell Atlantic agreement there appears to have been
18 some trade-off in that access rates were frozen but
19 they were reduced seven million dollars, and my next
20 area of inquiry was the extent to which any of the
21 service quality conditions in this merger agreement
22 apply to long-distance companies that obtain access
23 services to explore whether or not there is any similar
24 offset that was intended by this agreement, as the
25 company gets a rate freeze for four years, but the

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1 long-distance companies that the purchasers of access
2 get something in turn.

3 JUDGE MOSS: I think you can focus properly
4 on any trade-offs in disagreement in that respect, but
5 let's don't stray afield to the GTE-Bell Atlantic.

6 MR. KOPTA: Dr. Blackmon, are any of the
7 service quality guarantees in the settlement agreement
8 applicable to long-distance companies as purchasers of
9 access service from the company?

10 DR. BLACKMON: I'm sorry. Are any of the
11 what?

12 MR. KOPTA: Any of the service quality
13 conditions or standards or remedies included in the
14 this agreement applicable to long-distance companies
15 obtaining access service from the company?

16 DR. BLACKMON: I think that most of the
17 provisions benefit long-distance companies. They are
18 not the direct recipient of the credit, but they tend
19 to benefit from the application of those provisions.

20 MR. KOPTA: Would you identify those
21 provisions for me?

22 DR. BLACKMON: The order confirmation number
23 -- I'm looking here in Roman numeral No. 2, Paragraph
24 or Section A, 1 and 2, the maintenance of the existing
25 provisions for held orders and missed appointments, the

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1 credit for the out-of-service condition, the dial tone
2 credit, the trouble report rate credit, the clearing
3 existing held orders, and the improved complaint
4 response provision, and then I think the same would be
5 true for the service quality performance program that's
6 in Paragraph B.

7 MR. KOPTA: But none of these apply directly
8 to the long-distance company that's obtaining the
9 access services, do they?

10 DR. BLACKMON: No. They all benefit the
11 long-distance companies, but they apply to their shared
12 end-use customer, which I think goes back to our
13 earlier discussion about whether access is a wholesale
14 service or not and reflects my unwillingness to agree
15 it's wholesale service.

16 MR. KOPTA: So is it Commission staff's view
17 that the benefits that you've just described justify a
18 freeze on access rates for a period of almost four
19 years?

20 DR. BLACKMON: Yes, it is. I think this
21 settlement taken as a whole is good for the customers
22 of U S West, including its access customers.

23 MR. KOPTA: Would you turn to Page 10 for me,
24 please, specifically Subsection C on the bottom of that
25 page titled, Merger Costs? Does the term "customers"

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1 as used in that paragraph refer to both wholesale and
2 retail customers? Dr. Blackmon, your view.

3 DR. BLACKMON: I think the term should read
4 just the way it is there on the paper. It's the
5 customers of U S West. It doesn't have any modifiers
6 to it.

7 MR. KOPTA: So in your view, are competing
8 local exchange companies that obtain unbundled network
9 elements from the customers within the meaning of this
10 paragraph?

11 DR. BLACKMON: No, that would be would not
12 be my view, and I think I learned that from the
13 competitive local exchange companies. I made that
14 mistake early on to call them a customer. I was
15 quickly informed that they are not. They are a
16 co-carrier.

17 MR. KOPTA: So under this settlement
18 agreement, the company would be free to impose merger
19 costs on competitors; is that what I'm hearing you say?

20 DR. BLACKMON: I'm not sure what you are
21 hearing me say, but this settlement agreement does not
22 resolve any of the competitive issues, and I think it's
23 a very valid and important competitive issue about
24 whether co-carriers should bear any of the merger
25 costs, and I, speaking on behalf of staff, don't think

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1 they should.

2 MR. KOPTA: Ms. Jensen, is that the way you
3 interpret this agreement?

4 MS. JENSEN: I think the agreement speaks for
5 itself. The issue of how we recover costs is addressed
6 through rates, and the rates are approved by the
7 Commission.

8 MR. KOPTA: So you would agree with
9 Dr. Blackmon that customers, as it's used in this
10 paragraph, does not include wholesale customers.

11 MS. JENSEN: I think wholesale rates are set
12 different than, at least traditionally have been set
13 different than rates based on the rate of the return of
14 the company where such costs may or may not typically
15 be addressed. What the company is committing is that
16 its customers shall not bear the transaction costs of
17 the merger. With respect to wholesale rates, there are
18 certain costs the Commission allows to be recovered and
19 there are others they don't.

20 MR. KOPTA: I'm not sure I'm getting an
21 answer to my question, which is, does the term
22 "customers" in this paragraph include competing local
23 exchange companies?

24 MS. JENSEN: I think Dr. Blackmon adequately
25 responded to the question.

00454

1 MR. KOPTA: What about interexchange carriers
2 that obtain switched access from U S West?

3 MS. JENSEN: Typically, switched access rates
4 have been set as part of a rate case proceeding.
5 Recently, those rates were reduced, in fact, in 1998,
6 by 30 million dollars. They were further reduced in
7 1999, based on a Commission rule making specific to
8 switched access charges. They are part of the set of
9 services that can be adjusted based on a rate case.
10 This agreement does not allow a rate case proceeding
11 through 2003.

12 MR. KOPTA: So may I characterize your answer
13 that "customers" in this paragraph does not include
14 interexchange companies?

15 MS. JENSEN: I don't think that's what I said
16 at all.

17 MR. KOPTA: Well...

18 MS. JENSEN: As Mr. Blackmon addressed, this
19 is intended to deal with the issue of what costs are
20 recovered through rates, and the rates that are
21 typically set by the Commission as a result of either
22 an earning's investigation or rate proceeding, those
23 rates have not included wholesale rates or units.
24 Those rates are set by a different process.

25 MR. KOPTA: Also on that page, there are two

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1 instances in which there are exceptions, Subparagraph
2 C, the third paragraph, I suppose, from the top of the
3 page, and then also under 2-C in which there may be
4 adjustment for revenues for changes in reciprocal
5 compensation. Dr. Blackmon, could you explain to me
6 what is intended to be included within those exceptions
7 and how they are to be applied?

8 DR. BLACKMON: Reciprocal compensation is
9 the payments that interconnecting local exchange
10 carriers make to one another for a transport and
11 termination of their calls in interconnected network.
12 The settling parties agreed that there was enough
13 uncertainty about the size of those payments in the
14 future that we each wanted to reserve the right to
15 bring those forward to the Commission if circumstances
16 warranted.

17 The company, if they see a large increase in
18 reciprocal compensation payments, they have the option
19 to ask the Commission to reflect those in rates in some
20 way. Conversely, if there is a decrease in those,
21 staff and public counsel have the right to ask the
22 Commission to reflect that decreased expense in some
23 way in the rates of the company, and in either case
24 does the party that makes that request have any
25 automatic right for it to be granted, and in both

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1 cases, the parties not making that request have the
2 right to oppose it for whatever reason they may feel is
3 appropriate.

4 MR. KOPTA: Is there a reason that reciprocal
5 compensation was singled out?

6 DR. BLACKMON: I think it's just a result of
7 the negotiation among the parties.

8 MR. KOPTA: The last question I have is on
9 Page 12. It's really more of a clarification than
10 anything else. It's part of the carryover sentence
11 from the previous page but essentially reflects the
12 concept that each party reserves the right to withdraw
13 from the agreement if the Commission imposes additional
14 conditions with respect to the issues addressed in this
15 settlement agreement; is that an accurate
16 characterization, Dr. Blackmon?

17 DR. BLACKMON: I don't know if it's an
18 accurate characterization or not.

19 MS. JOHNSTON: The document speaks for
20 itself. If you want him to read that particular
21 sentence...

22 MR. KOPTA: I'm simply trying to set up the
23 question, which is, does additional conditions in that
24 sentence include wholesale service quality conditions
25 that the Commission might adopt?

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1 DR. BLACKMON: I think to answer that
2 question, you would go back to the earlier paragraph
3 that stated what the scope of this agreement is, and I
4 would look to the part of that earlier paragraph that
5 says that without limitation, this agreement does not
6 cover the competitive issues, and so I think that any
7 competitive issue or any condition that's intended to
8 address competitive issues would not relieve any of the
9 parties from their obligations under this agreement.

10 MR. KOPTA: I guess I'm trying to get some
11 clarification, because I thought in our earlier
12 discussion that you seemed to indicate that there was
13 some interrelationship between retail and wholesale and
14 were uncomfortable with that distinction, at least in
15 some circumstances, so I'm trying to understand what
16 limitations the Commission would be under were it to
17 adopt this settlement agreement in terms of adopting
18 some or all of the conditions that the other
19 intervenors have raised in this proceeding.

20 DR. BLACKMON: I think one of the reasons why
21 our questions and answers have sometimes gone past each
22 other is that your questions intended to be about
23 wholesale and my answers have intended to be about
24 competitive issues, and I'm unwilling to equate those
25 two, so when you ask me a question about what would

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1 happen if the Commission did something with regard to
2 wholesale issues, I have to say I don't know, because
3 for me the question would be, is it a
4 competition-related issue, not is it a
5 wholesale-related issue.

6 MR. KOPTA: But there are wholesale issues --
7 let me put it differently. Do you see a distinction
8 between wholesale issues and competitive issues?

9 DR. BLACKMON: Yes, I do. I'm just not sure
10 what someone means when they refer to wholesale issues.
11 Does that mean that you are buying a lot of -- I guess
12 I think of wholesale, traditionally, as buying in large
13 quantity, in volume, but essentially buying the same
14 product that's being offered at retail, and I don't see
15 interconnection and the provision of unbundled network
16 elements as wholesale in that sense.

17 MR. KOPTA: We earlier discussed switched
18 access, which you characterize as apparently both
19 having retail and wholesale or competitive aspects. So
20 that's, I guess, the source of my confusion because
21 this agreement does address switched access, which
22 competitors of U S West need to provide competing
23 long-distance service, for example, intraLATA toll, and
24 whether you refer to that as a wholesale issue or a
25 competitive issue -- I'm not so much hung up with the

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1 label as the impact. I want to know what the
2 Commission is agreeing to if it agrees to adopt this
3 settlement agreement and what conditions or other
4 recommendations that have been put forth by the
5 intervenors are precluded if the Commission adopts this
6 settlement agreement, and I'm just asking you if you
7 could provide me with that information.

8 DR. BLACKMON: It seems to me that comes
9 down to a question of access, access services, because
10 to me, it seems very clear that things like
11 interconnection and unbundled network elements are
12 outside the scope of this agreement. I believe that
13 there are examples where access service is properly
14 thought of as being a competition-related issue.
15 Access charges definitely affect competition, the
16 ability of companies to compete with the incumbent, so
17 I believe that at least to some extent those issues are
18 still on the table. I also think that at least with
19 respect to these four parties that we've agreed to
20 support a freeze with some exceptions on the rates,
21 including access rates, so to that extent, I think
22 that's within the scope of this agreement.

23 MR. KOPTA: Does that reflect U S West's and
24 Qwest's view?

25 MS. JENSEN: Yes, it does.

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1 MR. KOPTA: Thanks. That's all I have.

2 JUDGE MOSS: Thank you, Mr. Kopta.

3 Mr. Trincherro.

4 CHAIRWOMAN SHOWALTER: Can I just ask a
5 follow-up question to that last one? You said in your
6 view, access charges as they relate to competitive
7 issues are still on the table; is that right?

8 DR. BLACKMON: That's what I said, yes.

9 CHAIRWOMAN SHOWALTER: And you pointed out
10 that the parties to the settlement agreement have
11 agreed to abide by the settlement agreement as far as
12 access charges are concerned; is that right?

13 DR. BLACKMON: Yes.

14 CHAIRWOMAN SHOWALTER: Here is the
15 Commission, because the settlement agreement also binds
16 the Commission on access charges, so my question is, do
17 you think the Commission is bound by the access charge
18 freeze for all respects or not for competitive
19 respects?

20 DR. BLACKMON: This is only my view, but that
21 certainly it's not that you are bound by it now, but
22 that --

23 CHAIRWOMAN SHOWALTER: If we were to approve
24 it.

25 DR. BLACKMON: If you were to approve it,

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1 then you would be saying, "Yes, we agree that access
2 charges should be frozen," and the provision that
3 Mr. Kopta was asking me questions about was our ability
4 to walk away from the agreement, and the way I would
5 understand that provision, and I don't pretend to
6 understand it in all its legal effects, but if you were
7 to take out the access charge freeze and say, "We are
8 going to approve everything but," that that would give
9 each of these four parties the right to walk away from
10 this agreement.

11 CHAIRWOMAN SHOWALTER: Is there room in this
12 hearing in the next several days on competitive issues
13 to be talking about access charges; that is, assuming
14 it's relevant to the merger proceeding, but that is
15 that we are not precluded from -- wait a minute. I'll
16 back up. We can talk about anything that is relevant
17 in the hearings, but if we approve the settlement at
18 the end, are you saying that there is not, I think I
19 heard you say, room for the Commission to modify this
20 provision on access charges without the parties to the
21 settlement having an ability to walk away?

22 DR. BLACKMON: To have the option to walk
23 away.

24 CHAIRWOMAN SHOWALTER: Right. Thanks.

25 JUDGE MOSS: Go ahead.

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1 does not speak to the eventuality that you raise.

2 MR. TRINCHERO: Thank you. There was some
3 discussion earlier on the consumer bill of rights in
4 the tariff that would be filed, and if I understood
5 your testimony correctly, Dr. Blackmon, the Commission
6 would have the ability to either accept or suspend that
7 tariff filing; is that right?

8 DR. BLACKMON: That's my understanding.

9 MR. TRINCHERO: And when you use the term
10 "suspend," would that allow the Commission to
11 investigate and perhaps recommend a modified version of
12 the tariff.

13 DR. BLACKMON: Yes, after due process.

14 MR. TRINCHERO: What if the Commission orders
15 changes to that tariff filing that the merged company
16 deems unacceptable; how does that relate to the
17 continuing validity of the settlement agreement itself,
18 and I guess I'd ask both the companies and staff.

19 MR. DAVIS: I don't think it would have any
20 bearing on the continuing validity of the agreement. I
21 think the question then would be whether or not the
22 changes for the scope of the Commission's authority,
23 and I can't speculate as to that.

24 MR. TRINCHERO: What I hear you saying is so
25 long as the changes are within the Commission's

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1 authority to make, U S West, Qwest would be bound by
2 that, regardless of whether or not you think they are.

3 MR. DAVIS: We are going to file the tariff,
4 and the Commission has the authority to do whatever it
5 does, and to the extent of the Commission's authority,
6 we're bound by that. I'm not sure I understand your
7 question.

8 MR. TRINCHERO: Dr. Blackmon?

9 DR. BLACKMON: I agree with Mr. Davis.

10 JUDGE MOSS: I think the hour is late and
11 people are tired because voices are fading. I'm going
12 to ask that everybody make an effort to speak up and
13 use the microphones.

14 CHAIRWOMAN SHOWALTER: That will wake
15 everyone up.

16 MR. TRINCHERO: Ms. Jensen, you were asked
17 some questions regarding improvement to U S West's
18 held-orders problems, and you indicated that since the
19 credit program went into effect, you had noted
20 improvements. How long has that credit program been in
21 effect?

22 MS. JENSEN: First of all, I think my comment
23 was specific to Item 4 on Page 3, the missed
24 appointments, as opposed to held orders. The missed
25 commitment program, I believe, started either in '97 or

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1 '98. It was a result of Docket 970766, and I'm trying
2 to recall when we actually put those in. I don't
3 recall if it was February of '98 or perhaps of '97.
4 I'd have to check that, but I would also suggest that
5 the company service has continued to improve since
6 1995.

7 MR. TRINCHERO: You indicated in some
8 questions, actually, in some responses to questions by
9 Commissioner Gillis, that there were currently about
10 1,500 held orders that would need to be cleared under
11 this agreement; is that correct?

12 MS. JENSEN: Approximately, yes.

13 MR. TRINCHERO: You said that applied to both
14 private line and local service?

15 MS. JENSEN: Correct.

16 MR. TRINCHERO: What's the breakdown between
17 those two?

18 MS. JENSEN: If memory serves me right, the
19 number of held orders that would meet this provision,
20 it was around 800 for local service, 800 to 850, the
21 remainder being various private line orders. It's kind
22 of a moving target, quite honestly. Every day, orders
23 clear.

24 MR. TRINCHERO: If I might have a moment.

25 JUDGE MOSS: Sure.

00466

1 (Pause in the proceedings.)

2 MR. TRINCHERO: I believe Mr. Kopta has been
3 kind enough to ask a great number of my questions.

4 Ms. Jensen, you were asked some questions
5 regarding Paragraph 3-F, regarding the obligation to
6 serve in high-cost areas. I just wanted to explore
7 your response. You had indicated that what this would
8 allow the company to do in a situation where a customer
9 wanted a second line that you might be apt to recommend
10 to the customer that they don't actually need a second
11 line because it was just for data. Would this permit
12 U S West, upon receiving a call for a second line
13 order, to then sell megabit service to that customer?

14 MS. JENSEN: I believe the provision you are
15 referencing is E on Page 9?

16 MR. TRINCHERO: I'm sorry; E not F.

17 MS. JENSEN: The sole purpose her is to
18 enable the company to offer a customer alternative
19 technologies other than wire line to satisfy a request
20 for an additional line. That would be subject to a
21 tariff revision that the company would file and the
22 Commission would ultimately be asked to approve. It
23 simply enables the company to utilize alternative
24 technologies and not necessarily always a wire line
25 approach.

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1 MR. TRINCHERO: I'm hearing two different
2 things then, because I know that you did indicate that
3 you were talking about a non wire line approach as
4 being one of the possible alternatives, but what I'm
5 wondering is if you are also talking about a quote
6 unquote, wire line approach that is an alternative that
7 would be some sort of extended DSL service.

8 MS. JENSEN: We didn't specifically discuss
9 that in the context of this provision. That may be an
10 application that's appropriate for specific customer
11 circumstances.

12 MR. TRINCHERO: Mr. Kopta asked some
13 questions about Section 4, B-1, Sub c, Page 10. Then
14 he also briefly raised Subparagraph D, adjust revenues
15 for changed in mandated costs. I don't see the term
16 "mandated costs" to find anywhere in the agreement.
17 What is the intent of the parties as to the definition
18 of "mandated costs"?

19 DR. BLACKMON: With respect to staff, we
20 view that as an expense that the company is required by
21 some government agency to incur.

22 MS. JENSEN: We would concur with that.

23 MR. TRINCHERO: Such as taxes?

24 DR. BLACKMON: I'm not sure. It might or
25 might not be.

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1 MR. TRINCHERO: There was considerable amount
2 of discussion regarding Paragraph 4-B(1), and I'll give
3 you a page number, Page 9, that this is exclusively a
4 revenue neutrality provision; however when I read it,
5 it does include more earnings level? Can you explain
6 to me the significance of using the words "or
7 earnings"? That's in the first paragraph of B-1.

8 DR. BLACKMON: Generally, when a general rate
9 case complaint is brought, and that's what this
10 paragraph is opposed to, the second one addresses, the
11 complaint would ask the Commission to reduce the
12 overall revenue of the company based on its earnings
13 model.

14 MR. TRINCHERO: On Page 8, there was some
15 discussion with Mr. Kopta about the investment per
16 access line served. I believe the answer was that you
17 are talking about business and residence access lines
18 and that we were excluding unbundled network elements,
19 but if I understand Ms. Jensen's response, you said
20 that it would include resold lines if those were
21 purchased out of the retail tariff, and I just want to
22 get some clarification on that. If that resold line
23 were actually purchased, however, subject to an avoided
24 cost discount, would it be included or excluded?

25 MS. JENSEN: I need Mark Reynolds to help me.

00469

1 No, I think I can answer this. I believe the discount
2 is based on the tariffed rate, so traditionally, those
3 historic levels have been based on access lines served,
4 and the resellers that we've traditionally dealt with
5 have not negotiated interconnection agreements.
6 They've simply resold services straight out of our
7 tariff, so when we calculated the amount per access
8 line and historic average investment, it was based on
9 the traditional market we serve, which would include
10 those resellers that purchased out of the basic
11 exchange tariff and did not purchase at a discount but
12 just resold our services at their current prices.

13 MR. TRINCHERO: So you would include the
14 investment amounts if -- let's say, for example, there
15 was a company out there that was reselling Centrex out
16 of your tariff with no voided cost discount under the
17 Telecommunications Act of '96.

18 MS. JENSEN: I think what is important is
19 what was the commitment, and the commitment is to
20 obtain average historic investment based on that access
21 line served.

22 MR. TRINCHERO: I understand that. What I'm
23 trying to get at is how your commitment may change over
24 time, so if you take those same companies that may have
25 been reselling directly out of the tariff with no

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1 voided cost discount, and they shift those services and
2 start reselling under an interconnection agreement that
3 is subject to an avoided cost discount, then those
4 lines would be excluded just like a UNE; is that right?

5 MS. JENSEN: I don't believe they would,
6 because as we make the investment, we don't know how
7 it's going to be used, and for purposes of this
8 calculation, we would look at basic exchange access
9 lines, residence and business. I don't know if they
10 are tracked separately or distinctly. Today, I believe
11 they are all tracked as either residence or business
12 access lines, so we report them.

13 MR. TRINCHERO: Wouldn't that logic apply
14 equally to a loop that you invest in? At the front
15 end, you don't know that that loop is going to be used
16 as an unbundled network element or whether it's going
17 to be used for your own retail service; isn't that
18 correct.

19 MS. JENSEN: In terms of the investment,
20 that's correct, but in terms of commitment we are
21 making, it's based on the access lines we serve, which
22 is a full service finished product, as opposed to a
23 loop, which is not a complete service.

24 MR. TRINCHERO: Those are all my questions.
25 Thank you.

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1 JUDGE MOSS: Thank you very much.
2 Mr. Harlow.

3 MR. HARLOW: I never accept a speaking
4 engagement this late in the afternoon, but I don't get
5 a choice on cross-examination. This is a question for
6 the entire panel. Does the entire panel feel that the
7 agreement as a whole is in the public interest?

8 DR. BLACKMON: Yes.

9 MR. DAVIS: Yes.

10 MR. STEUERWALT: Yes.

11 MS. JENSEN: Definitely.

12 MR. HARLOW: Now I'd like to get more
13 specific to each individual element of the agreement,
14 and let's start with Ms. Jensen. Ms. Jensen, is there
15 any provision of the agreement standing alone that you
16 felt is not standing alone in the public interest?

17 MS. JOHNSTON: Before we go down this road, I
18 wanted to make my objection for the record that whether
19 or not the public interest standard is met or satisfied
20 by virtue of this settlement agreement is, in fact, a
21 legal question and a legal conclusion.

22 JUDGE MOSS: Go ahead with your question.

23 MR. HARLOW: Do you recall the question?

24 MS. JENSEN: I believe so. The best way I
25 can respond to that is there is no individual element

00472

1 of this proposal that was considered on a singular
2 basis. The proposal is a package, and only as a
3 package would we say that it meets the objectives that
4 we had for this agreement, which was to resolve those
5 issues that were raised as concerns.

6 MR. HARLOW: Can you identify any element
7 that you might think would not be in the public
8 interest standing alone?

9 MS. JENSEN: It wasn't approached on that
10 basis. It's always been approached as a package.

11 MR. HARLOW: Would your answer then be no?

12 MS. JENSEN: I would literally have to go
13 through it. It wasn't negotiated on that basis.

14 MR. HARLOW: Are you expecting the
15 possibility that there might be elements of this
16 agreement that the Commission likes and doesn't like?

17 MS. JENSEN: I wouldn't choose to speculate
18 on behalf of the Commission.

19 MR. HARLOW: Is there any element of this
20 agreement that the Commission could take out that you
21 would then say, "Without that provision, this agreement
22 is no longer in the public interest"?

23 MS. JENSEN: There may be. This agreement
24 represents a compromise amongst the parties.

25 MR. HARLOW: Would you please identify for

00473

1 the Commission what elements of the agreement that if
2 the Commission were to remove them it would not longer
3 be in the public interest?

4 MS. JENSEN: I believe the agreement as a
5 whole addresses resolution of issues raised as concerns
6 with respect to the public interest. I cannot identify
7 what modifications the Commission might make or
8 speculate as to how that would change the agreement.
9 Again, we would look at the total agreement, the total
10 package.

11 MR. HARLOW: Mr. Davis, can you identify any
12 elements of the agreement that if the Commission were
13 to not include them or approve them in the final order?

14 MR. DAVIS: I just need a clarifying
15 question. Are you asking me whether the merger in
16 combination with the agreement absent one element or
17 the merger with one element or just a document standing
18 alone without the merger?

19 MR. HARLOW: I'm asking hypothetically if the
20 Commission were to approve the merger, subject to
21 conditions, the conditions being some but not all of
22 the conditions set forth in this agreement, what, if
23 any, of those conditions that the Commission might
24 decline to adopt or exclude would render the agreement
25 no longer in the public interest?

00474

1 MR. DAVIS: I'll give you a long answer but I
2 will get there. I think the merger is in the public
3 interest with or without the document. I think the
4 document represents a negotiated series of puts and
5 takes by both parties, any one or several of which if
6 you take out would not necessarily render the document
7 itself contrary to the public interest, but it might
8 render the document unacceptable to any of the four
9 parties sitting here, so the answer to your question
10 is, would the document or would the merger with the
11 document absent one particular provision now all of a
12 sudden be contrary to the public interest? I don't
13 know that I can say that, but I can say that it might
14 then be unacceptable to any one of the parties here
15 that have agreed to it.

16 MR. HARLOW: I appreciate the distinction,
17 and that was exactly the point I was trying to make.
18 Dr. Blackmon, would you like to comment on the same
19 question I posed to the applicants?

20 MS. JOHNSTON: I'll object, Your Honor. It
21 calls for speculation and assumes facts not in
22 evidence. To have this witness opine on unknown
23 additional conditions and what impact those conditions
24 may have on this settlement agreement that is before
25 the Commission is purely speculative.

00475

1 MR. HARLOW: I need to clarify. I'm not
2 asking about hypothetical additional conditions. I'm
3 asking about provisions in this agreement that might be
4 stricken or not accepted by the Commission.

5 MS. JOHNSTON: That would, in fact, be an
6 additional condition to remove any one of the
7 conditions ranging from Page 1 through Page 12. Is it
8 counsel's proposal to march through every one of these
9 and say if we were try to strike Line 1 of Page 2 and
10 Paragraph 10 of Page 5? I think it's an impossible
11 question you are asking.

12 MR. HARLOW: The applicants just answered it,
13 and I didn't have to go through section by section with
14 them, so it really depends upon the answer, Your Honor,
15 but what I'm trying to distinguish is between the
16 parties interest on the one hand and the ultimate
17 public interest, which is what this Commission is to
18 decide.

19 JUDGE MOSS: Right, and I think that gets to
20 be argumentative and I think you've made the point, so
21 why don't you move on to another.

22 MR. HARLOW: Let's see, let me start with the
23 applicants. I assume that the agreement has been
24 executed by a couple of vice presidents. Was the
25 agreement approved at some higher level within each of

00476

1 the companies? Ms. Jensen, would you like to start?

2 MS. JENSEN: The agreement was approved by
3 those that required review on behalf of U S West
4 Communications.

5 MR. HARLOW: Did you have to review this with
6 the people to whom you report, perhaps Mr. Trujillo?

7 MS. JENSEN: Oh, yes. I reviewed it with
8 several individuals representing the varieties of
9 interests.

10 MR. HARLOW: Did you provide any kind of a
11 briefing to the individuals who authorized you to
12 approve the agreement?

13 MS. JENSEN: We were in daily discussions
14 based on the progress of the negotiation discussions.

15 MR. HARLOW: Were you asked to prepare or
16 provide any kind of financial analysis of the impact of
17 the agreement?

18 MS. JENSEN: No I wasn't.

19 MR. HARLOW: Did you offer to prepare a
20 financial analysis to the agreement?

21 MS. JENSEN: No, I didn't.

22 MR. HARLOW: How about you, Mr. Davis, did
23 you have to obtain approval from superior executives?

24 MR. DAVIS: I guess it depends on what you
25 mean by "approval." I approved the document on behalf

00477

1 of Qwest. I would say that there are other people in
2 Qwest who were knowledgeable about some aspects of the
3 document.

4 MR. HARLOW: Did you have any discussions
5 with the people in Qwest as to the overall impact or
6 perhaps the impact of any of the specific provisions of
7 the agreement, the financial impact?

8 MR. DAVIS: I'm pausing for one second. I'm
9 also deputy general counsel for Qwest, so I'm trying to
10 differentiate privileged conversations versus -- can
11 you ask me your question one more time?

12 MR. HARLOW: It basically goes to whether
13 there have been any analyses or discussions either
14 within Qwest, or I would like to encompass as well
15 between the two parties regarding the financial impact
16 of the proposed settlement?

17 MR. DAVIS: No, not that I recall.

18 MR. HARLOW: Does anyone with either of the
19 applicants have any knowledge or understanding or
20 belief as to the overall financial impact of the
21 settlement on the company?

22 MR. DAVIS: With respect to Qwest, I would be
23 the only person that might.

24 MS. JENSEN: Would you repeat your question?

25 MR. HARLOW: The reporter can read it back.

00478

1 (Discussion off the record.)

2 JUDGE MOSS: We had some brief discussion off
3 the record regarding where this particular line of
4 testimony is going, and Mr. Harlow indicates that he
5 wishes to pursue some information regarding the
6 financial impacts of this settlement as it might relate
7 to precluding resolution of issues on the intervenors'
8 behalf; is that a fair characterization?

9 MR. HARLOW: That's a summary, yes.

10 (Question on Page 477, Lines 18 through 21,
11 read by the reporter.)

12 MS. JENSEN: Yes.

13 MR. HARLOW: Let's start with you,
14 Ms. Jensen. What is your understanding or belief or
15 knowledge of the overall financial impact?

16 MS. JENSEN: It cannot be specifically
17 quantified because there are so many variables
18 contained within the agreement. It does require the
19 company to -- in order to minimize the
20 customer-specific credits as well as the additional
21 customer credit program, the service guarantee program
22 may require some investment not otherwise scheduled or
23 forecast to occur. There are investment commitments
24 contained within the agreement as well, and the company
25 is looking at a variety of options in which to satisfy

00479

1 those agreements. Clearly, there is a cost associated
2 with this settlement agreement to the business that it
3 would not otherwise incur, but we haven't come up with
4 a specific amount. It could be an extensive range.

5 MR. HARLOW: Have you come up with a range?

6 MS. JENSEN: I struggle with that a bit.

7 There were discussions anywhere from 60 million to 300
8 million, depending on the elements.

9 MR. HARLOW: Mr. Davis, does Qwest have any
10 different understanding of a range or a more specific
11 number in mind?

12 MR. DAVIS: I don't think I've ever heard the
13 number 300 million before. That caused me to sit up.
14 I'm thinking more in the 60 million range is what I was
15 thinking.

16 MR. HARLOW: That would be the high end of
17 your range?

18 MR. DAVIS: That would be the high end of my
19 range.

20 MR. HARLOW: What would be the low end of
21 your range?

22 MR. DAVIS: I think the numbers I've heard
23 have been more in the 40 to 60 million range, but I
24 don't have independent knowledge of that.

25 MR. HARLOW: Dr. Blackmon, have you prepared

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1 or considered any estimates of what this might
2 realistically cost the company, not potentially, but
3 what your expectation might be?

4 DR. BLACKMON: No.

5 MR. HARLOW: Did the staff have any number in
6 mind that it felt might reflect the synergies that
7 should be flowed through to Washington ratepayers
8 either in the form of rate reductions or the form of
9 the approach you took in the settlement?

10 DR. BLACKMON: No. We supplied the
11 Commission with a calculation of the expense savings
12 that were properly attributable to Washington state
13 operations. We didn't have in mind a specific number
14 that should be flowed through to customers in this
15 state.

16 MR. HARLOW: What did you think the expense
17 savings would be?

18 DR. BLACKMON: I don't recall the number.
19 It's in Mr. Twitchell's testimony.

20 MR. HARLOW: I'll look for it tonight. As
21 long as I've got you, Dr. Blackmon, would the staff
22 feel that U S West was performing well as an ILEC if it
23 just barely made all the performance goals that are
24 reflected in the agreement?

25 DR. BLACKMON: There are more dimensions to

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1 its performance as an ILEC than are captured in this
2 agreement. With respect to the specific dimensions
3 that are captured in this agreement, I think that for
4 some of them, if they meet the terms of this agreement
5 that that is good enough. There are others where that
6 is not true. Particularly, I think about the switch
7 blocking or the no dial tone provision, which we chose
8 to use a weaker performance standard in this agreement
9 than is provided for in the rule, and to couple with
10 that what we think is a very substantial consequence,
11 so we are cutting the company some slack under the
12 terms of this specific agreement, but then the company
13 is agreeing that if they don't at least perform to that
14 level, they will face some pretty substantial financial
15 penalties.

16 MR. HARLOW: Turning to the historic
17 investment, do you have any opinion as to whether or
18 not the historic investment is -- the same five-year
19 measure that's in the agreement -- whether or not that
20 has been sufficient to provide adequate service?

21 DR. BLACKMON: In general, I think that the
22 connection between the level of investment and the
23 adequacy of the service is tenuous, so I can think of
24 specific examples where service has suffered because of
25 inadequate investment in that specific area, but to go

00482

1 from that back to the overall level, for me, it's very
2 hard to make that connection at the aggregate level.

3 MR. HARLOW: I believe it was Mr. Trincherro
4 was asking about kind of comparing the last year's
5 investment, which was '99, of 500 some million to what
6 might happen under this agreement. I want to take that
7 a step further. Do you know what the company's capital
8 budget is for 2000?

9 DR. BLACKMON: I don't.

10 MR. HARLOW: Ms. Jensen, do you have that
11 number in mind?

12 MS. JENSEN: Yes, I do. For 2000, projected
13 to be comparable to '99, and that is based on the
14 inclusion now, of an assumption that these commitments
15 that we've just made will go forward.

16 MR. HARLOW: Does a lot of that have to do
17 with the replacement of the analog switches?

18 MS. JENSEN: Yes, it does.

19 MR. HARLOW: Do you know how much of that is
20 due to the replacement of the analog switches?

21 MS. JENSEN: I don't for the year 2000. I
22 know that in 1999, over 90 million was based on central
23 office switch replacements.

24 MR. HARLOW: Do you know whether the
25 replacements are accelerating in 2000 compared to '99?

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1 MS. JENSEN: I don't recall. I didn't look
2 at that specifically.

3 MR. HARLOW: Do you know how much of the
4 capital expenses deals with the provision agreement
5 that provides for fiber between all CO's?

6 MS. JENSEN: None of that is in the 2000 plan
7 because the commitments begin in 2001.

8 MR. HARLOW: Do you know what impact that
9 will have on your investments then?

10 MS. JENSEN: Not at this point in time
11 because we're still exploring the best way to meet that
12 commitment.

13 MR. HARLOW: Have you got a range on that?

14 MS. JENSEN: Not really. There is a
15 recognition that the company may lease those facilities
16 from other providers.

17 MR. HARLOW: I'll come back to that. Let me
18 start going through -- I guess let me ask a question of
19 Mr. Steuerwalt. Had you heard of this what's been
20 referred to as this gold, silver, and bronze program at
21 the time you were engaged in settlement negotiations
22 with U S West?

23 MR. STEUERWALT: No.

24 MR. HARLOW: Have you since heard of the
25 gold, silver, and bronze program.

00484

1 MR. STEUERWALT: This morning in Mr. Kopta's
2 oral argument.

3 JUDGE MOSS: Mr. Harlow, I don't see how this
4 relates to our settlement in any way. I'm going to ask
5 you why you are going down this path.

6 MR. HARLOW: Had he not indicated that he
7 knew anything about it, my follow-up would of been is
8 that something you would have wanted to take into
9 account in negotiating the settlement, so that's the
10 tie-in.

11 JUDGE MOSS: We're not going to go there
12 anyway. What we've got is a settlement agreement
13 before us, and that's the settlement agreement we're
14 considering, not the one that might have been.

15 MR. HARLOW: Mr. Steuerwalt, have you seen
16 the changes that have been announced for the management
17 of U S West?

18 MR. STEUERWALT: I have seen the announcement
19 of Mr. Trujillo's departure. I have seen the
20 announcement that some executive positions have been
21 determined, but I have not seen the particulars of who
22 is going where.

23 MR. HARLOW: Do these announcement give you
24 any reason to be concerned about the company's
25 abilities to perform the settlement agreement?

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1 MR. WILTSIE: Your Honor, I object to the
2 relevance of this. What does that have to do with the
3 settlement agreement?

4 MR. HARLOW: The question speaks for itself.
5 The question was, did you have any reason to be
6 concerned that the changes would give the company
7 problems in performing the settlement agreement.

8 JUDGE MOSS: I think there is a valid concern
9 here, Mr. Harlow. This is our settlement panel. We
10 will have an opportunity to have the company's
11 witnesses on the stand and various other witnesses who
12 are going to appear in the case. You can tie your
13 question to the settlement in the sense of the
14 performance of the settlement, but again, what we are
15 concerned with here today is whether the settlement is
16 in the public interest, and I don't know how
17 Mr. Steuerwalt's speculation about whether the newly
18 appointed executives at U S West and Qwest will be able
19 to care out its provisions.

20 It helps us know whether the settlement is
21 going to be in the public interest or not. Frankly, I
22 don't know that the Commission cares a great deal
23 whether Mr. Steuerwalt thinks that down the line, some
24 set of executives may or may not do this or that, so I
25 just don't want is to go there. I want the questions

00486

1 during this part of our proceeding to stay focused on
2 the settlement agreement, its terms, what they mean,
3 what they imply for your clients would be the main
4 point of interest.

5 MR. HARLOW: We'll save those for later, Your
6 Honor.

7 JUDGE MOSS: They may have an appropriate
8 place later.

9 MR. HARLOW: For the panel, I'm on Page 3,
10 subparagraph 2, order confirmation number. I think
11 this is for Ms. Jensen. Does U S West currently
12 internally use some kind of order confirmation numbers?

13 MS. JENSEN: I'm a little confused by your
14 question with respect to confirmation numbers.

15 MR. HARLOW: Do you track orders under some
16 kind of a number?

17 MS. JENSEN: We typically track orders by
18 telephone number. We consider that an order
19 confirmation number in most instances.

20 MR. HARLOW: Is this the same number you are
21 going to provide to the customer under the provision of
22 this agreement?

23 MS. JENSEN: In many cases, yes.

24 MR. HARLOW: I guess what I'm getting at, is
25 there any kind of new number that has got to be created

00487

1 in your systems, or is this just an existing number
2 that will be given to the customer?

3 MS. JENSEN: This does not require a new
4 system or new numbering scheme.

5 MR. HARLOW: With regard to Subparagraph 3 on
6 this page -- this question is for Dr. Blackmon -- was
7 there any reason for the staff to believe that the
8 Commission would have allowed this existing
9 held-order-guaranteed program to be withdrawn or expire
10 anytime during the term of this agreement?

11 DR. BLACKMON: Did you phrase that in the
12 past tense; was there any reason?

13 MR. HARLOW: Yes.

14 DR. BLACKMON: At what point?

15 MR. HARLOW: Did you negotiate this provision
16 because staff was concerned that that program might
17 expire soon or be terminated?

18 DR. BLACKMON: I guess I'm confused by your
19 question. Are you asking why we negotiated a
20 particular provision in the agreement?

21 MR. HARLOW: Let me rephrase it. Were you
22 aware of any cause for that program to have been
23 terminated that's imposed as of 950200?

24 DR. BLACKMON: I was aware that the company
25 imposed it at the time it was proposed in that case.

00488

1 Similar to the missed appointments, the company argued
2 against it, and the rate case went with its practices
3 imposed.

4 MR. HARLOW: Ms. Jensen, turning to Page 4,
5 Subparagraph 5, the out-of-service credit, does the
6 company have any estimate for what the overall costs of
7 this program will be, say, in the first year?

8 MS. JENSEN: No, we don't. Out-of-service
9 conditions are caused by a number of factors, none of
10 which are predictable.

11 MR. HARLOW: Not all of which are covered by
12 this program; is that correct?

13 MS. JENSEN: There are exceptions to this
14 program as the agreement specifies.

15 MR. HARLOW: Do you know how much this
16 program would have cost had it been in effect in 1999?

17 MS. JENSEN: In 1999, I know that -- well,
18 no, I really don't.

19 MR. HARLOW: Can you think about that?

20 MS. JENSEN: I don't know specifically what
21 it would cost.

22 MR. HARLOW: Would that data be available to
23 you if I made a records requisition?

24 MS. JENSEN: No, because we didn't monitor
25 for the exceptions contained in this provision. I know

00489

1 we cleared in 1999 about 85 percent of our
2 out-of-service conditions within 48 hours. I don't
3 know how many of those would have been excluded based
4 on this exception because we didn't track it.

5 MR. HARLOW: Do you know how many
6 out-of-service conditions you had in '99.

7 MS. JENSEN: Over a million, three quarters.

8 MR. HARLOW: What about with regard to
9 Subparagraph 6, dial Tone, same questions really, an
10 estimated cost, or do you know what this would have
11 cost had it been in effect in 1999?

12 MS. JENSEN: No.

13 MR. HARLOW: Could you obtain that data if I
14 made it a records requisition?

15 MS. JENSEN: No, I couldn't.

16 MR. HARLOW: There is an exception for
17 offices currently served by analog switches. Do you
18 know if you had any digital switches that didn't meet
19 this standard last year?

20 MS. JENSEN: We were not tracking this
21 standard the full year. I don't recall if we've had
22 digital offices that have exceeded the 98 percent
23 standard or not.

24 MR. HARLOW: Dr. Blackmon, had the Commission
25 been receiving complaints that relate to this dial tone

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1 standard, people complaining they couldn't get dial
2 tone within three seconds?

3 DR. BLACKMON: Yes, we have received some
4 complaints on that question.

5 MR. HARLOW: Are you aware of whether any of
6 those complaints came from a central office served by a
7 digital switch?

8 DR. BLACKMON: In some answer instances they
9 did, yes.

10 MR. HARLOW: How did it break down? Was it
11 like 90-10, 50-50, as between the digital and analog
12 switches? How did it break down .

13 DR. BLACKMON: I think that most of the
14 complaints have related to customers served by analog
15 switches. I don't have a specific number to offer.

16 MR. HARLOW: Moving down to Subparagraph 7,
17 Ms. Jensen, the same line of questioning here, do you
18 know what this will cost or what it would have cost in
19 1999?

20 MS. JENSEN: Again, trouble is something that
21 varies based on a number of factors. In 1999, I
22 believe we had seven exchanges that may have been out
23 of compliance. I do know that that data had been --
24 with respect to this issue, that data has been provided
25 in response to interrogatories in this docket.

00491

1 MR. HARLOW: I don't suppose you can give me
2 a cite.

3 MS. JENSEN: No, I can't.

4 MR. HARLOW: Do you know how many lines were
5 in those seven exchanges?

6 MS. JENSEN: No, I don't.

7 MR. HARLOW: Do you know what your average
8 exchange size is?

9 MS. JENSEN: It's all over. There are some
10 as small as 10,000, some greater than 60,000.

11 MR. HARLOW: Let's move on from that. Turn
12 to Page 5, please. Is there any kind of penalty or
13 provision in the agreement that states what will happen
14 if the company doesn't meet this October 1 deadline?

15 MS. JENSEN: The company plans on meeting the
16 October 1 deadline.

17 MR. HARLOW: Are there any consequences
18 provided for in the agreement if the company does not?

19 MS. JENSEN: I think the agreement speaks for
20 itself. There are no specific issue here, other than
21 that would be a violation of the agreement.

22 MR. HARLOW: I think in reading your
23 testimony, it looked to me like 1,000 or 1,500 lines
24 fell within this 60-day held-order category; have I got
25 roughly the right number in mind?

00492

1 MS. JENSEN: That's what I've testified to
2 today.

3 MR. HARLOW: Do you know how many of those
4 are held due to lack of loops?

5 MS. JENSEN: Most of them.

6 MR. HARLOW: Are they pretty well evenly
7 distributed among all the central offices, or are they
8 concentrated in a few central offices?

9 MS. JENSEN: They are distributed throughout
10 the state. There are some offices that may have more
11 than others. I don't know which offices they are
12 specifically at this time.

13 MR. HARLOW: Let me just make sure I
14 understand how this provision works. I guess as I
15 understand it, as you clear up these held orders as of
16 this February 29th date, they will drop off, but no new
17 held orders will drop off, will they? They will come
18 and qualify under the provisions of this subsection; is
19 that correct?

20 MS. JENSEN: This is a one-time agreement.

21 MR. HARLOW: Am I restating it correctly
22 though?

23 MS. JENSEN: This program commits to clear
24 orders over 60 days old as of a specific date. I think
25 that's the clearest way to express it.

00493

1 MR. HARLOW: So hypothetically, if I were to
2 have an order held due to the lack of a loop, first of
3 May, that's the 60-day time period, there is no
4 commitment in this agreement to clear up my order by
5 any particular day; is that correct?

6 MS. JENSEN: I think it goes back to what
7 Mr. Blackmon said earlier. This specific commitment
8 deals with orders held as of February 29th. There are
9 other elements in this agreement that deal with orders
10 held based on the provisions addressed within the
11 agreement.

12 MR. HARLOW: I guess I would like a yes or no
13 answer. Let me ask you this, Dr. Blackmon. Given the
14 way this mechanic works, isn't it quite possible that
15 these held orders could be cleared up simply by
16 attrition rather than by the company adding new
17 facilities?

18 DR. BLACKMON: I don't know what
19 attrition --

20 MR. HARLOW: Is the contemplation of this
21 agreement that the company will actually build new loop
22 facilities so that these orders can be filled?

23 DR. BLACKMON: That's my contemplation. I
24 don't really know how they are going to do it.

25 MR. HARLOW: Given the rather long time

00494

1 period, is it also possible that the company can simply
2 wait until one customer discontinues service and then
3 transfer that loop to the held-order-status customer?

4 DR. BLACKMON: I'm not sure if that would be
5 possible or not. My sense is that it would be unlikely
6 for them to meet this requirement in that way because
7 of the -- if that were true, I think they would have
8 already cleared this.

9 MR. HARLOW: Ms. Jensen, is that a way this
10 commitment could be met, simply wait for a customer to
11 discontinue service and grab that loop?

12 MS. JENSEN: We don't manage our business
13 that way.

14 DR. BLACKMON: If I could interrupt for a
15 second, I need to take a break.

16 (Discussion off the record.)

17 JUDGE MOSS: We'll wrap up for this evening.
18 Everyone is tired, so we'll carry this process over
19 until 9:30 in the morning, and we'll stand in recess
20 until that hour.

21 MR. WILTSIE: Your Honor, Mr. Davis is not
22 available tomorrow. That's why he was here today.

23 (Discussion off the record.)

24 MR. DAVIS: Are there questions for me
25 tomorrow? I understand the importance of this

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1 proceeding. If I have to be here, then I have to be
2 here, but if there aren't any questions for me, or if
3 there are only a couple and I could answer them now,
4 I'd appreciate the consideration

5 JUDGE MOSS: Go ahead with your question,
6 Mr. Butler.

7 MR. BUTLER: I'll just ask it of you,
8 although, I make may ask the same question of others.
9 If I could direct your attention to Page 8, Paragraph
10 D, I was curious about what your understanding was of
11 the term "investment for telephone network
12 infrastructure." What qualifies as telephone network
13 infrastructure.

14 MR. DAVIS: You are asking the wrong guy
15 here, but I would assume all aspects of the company's
16 transmission, switching, the facilities utilized to
17 provide communications service within the state.

18 MR. BUTLER: It would not be restricted to
19 investments for infrastructure used to provide switched
20 services; is that your understanding?

21 MR. DAVIS: That's correct.

22 MR. BUTLER: So what investment in DSLAMS or
23 packet switching qualify for this?

24 MR. DAVIS: Definitely.

25 MR. BUTLER: That's all I have. Thank you.

00496

1 JUDGE MOSS: Thank you. Appreciate that, and
2 with that, we do have the understanding that we won't
3 have Mr. Davis with us tomorrow, but we will carry over
4 the panel. Was there any other matter of housekeeping
5 that we needed to attend to.

6 MR. VAN NOSTRAND: Can I confirm that U S
7 West witness Pete Cummings will not need to be called.
8 I believe his testimony relates only to the settled
9 issues.

10 JUDGE MOSS: That was part of my discourse
11 this morning regarding witnesses. His testimony would
12 be admitted by stipulation, so nobody objected to that
13 so that is my understanding.

14 MR. FFITCH: Do you wish us to have
15 Mr. Brosch available in the morning by phone?

16 JUDGE MOSS: I don't think that's going to
17 be necessary. I think if we need him, we will give you
18 plenty of lead time for that. Anything else? We are
19 off the record.

20 (Hearing recessed at 5:30 p.m.)

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