

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 VII
 INC. for an Order Disclaiming) Pages 497 - 703
 5 Jurisdiction, or in the)
 Alternative, Approving the)
 6 U S WEST, INC., - QWEST)
 COMMUNICATIONS INTERNATIONAL,)
 7 INC. Merger.)

8

9 A hearing in the above matter was held on
 10 March 15, 2000, at 9:40 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.

15

The parties were present as follows:

16

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 17 RONALD J. WILTSIE, II, MACE J. ROSENSTEIN and GINA
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U S WEST COMMUNICATIONS, INC., by JAMES M.
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U S WEST COMMUNICATIONS, INC., by LISA A.
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 3206, Seattle, Washington 98191.

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LEVEL THREE COMMUNICATIONS, INC., by ROGELIO
 24 E. PENA, Attorney at Law, Nichols and Pena, 2060
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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,
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9 COVAD COMMUNICATIONS COMPANY and METRONET
SERVICES CORPORATION, by BROOKS E. HARLOW, Attorney at
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12 WASHINGTON INDEPENDENT TELEPHONE ASSOCIATION,
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13 98502.

14 PUBLIC COUNSEL, by SIMON J. FFITCH, Assistant
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15 Seattle, Washington 98164.

16 THE WASHINGTON UTILITIES AND TRANSPORTATION
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17 General, 1400 South Evergreen Park Drive Southwest,
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25 Kathryn T. Wilson, CCR
Court Reporter

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

2 JUDGE MOSS: We are back on the record in our
3 proceeding concerning the merger application, U S West
4 and Qwest, Docket UT-991358, and we are going to
5 continue this morning with our examination of the panel
6 presented for purposes of discussing the partial
7 settlement agreement.

8 I have a couple of housekeeping matters to
9 take care of. I have requested that the parties, of
10 course, review the exhibit list and bring any changes
11 that need to be made to my attention, and I have a
12 couple of those this morning. Exhibit 42 should be
13 marked as a confidential exhibit, so it will bear the
14 designation C-42, and the same is true with Exhibit
15 399, so mark that on your exhibit list, and when we get
16 to those, if we get to those, please remember that we
17 will need to treat those with the respect we afford
18 confidential documents.

19 In addition, I have been handed another
20 exhibit. This will be marked as C-446, and it's a
21 response to Data Request CVD USW02-02051, and I believe
22 Mr. Kopta has copies for everybody. I don't know if
23 those have been distributed, but certainly you can get
24 a copy from him, and that, probably wouldn't come up
25 before Mr. Reynolds anyway.

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1 MR. HARLOW: I'd also like to note that we
2 are expecting a supplemental response to that data
3 request this morning from U S West, and we'll probably
4 have to substitute that for the one Mr. Kopta handed
5 out when we received it from U S West.

6 JUDGE MOSS: We'll handle that as we get to
7 it then. I appreciate the parties' diligence in
8 keeping up with that and we don't want any errors. We
9 are going to continue with our panel this morning, and
10 spoke with Mr. Davis yesterday afternoon about his not
11 being available today, and apparently, that's not going
12 to present any difficulty for anyone, so we did excuse
13 him from the panel yesterday. I'll remind the
14 panelists that they remain under oath. We allowed
15 Mr. Butler to interrupt with one question with
16 subparts, and I think that brings us back to
17 Mr. Harlow.

18 MR. HARLOW: Good morning, Your Honor. I
19 went through this morning and crossed out a lot of
20 questions, but I would like to take up where we left
21 off last night, and I'll paraphrase as best I can,
22 Ms. Jensen, but I asked a question about something to
23 the effect of with regard to Page 5, Subsection 8,
24 about clearing up the held orders. I asked something
25 to the effect of isn't it possible that attrition would

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1 allow this goal to be met, and your response was
2 something to the effect the company doesn't do business
3 that way. Do you want do you recall that question and
4 answer?

5 MS. JENSEN: Yes, I do.

6 MR. HARLOW: Do I take it then that your
7 answer reflects that US West does plan to meet this by
8 reinforcing this outside loop plan?

9 MS. JENSEN: Yes, we did do.

10 MR. HARLOW: What plan specifically do you
11 have in mind?

12 MS. JENSEN: The orders that fall within this
13 category require work other than what would typically
14 be done by an outside technician, so these jobs are
15 types of jobs that require typically engineering design
16 work in order to complete what might, in fact, be a
17 plain old telephone service line, a pots line. They do
18 require a number of different facilities to be
19 provisioned, some local loop, some maybe as far back as
20 the central office; in other words, it may require
21 feeder plant work as well.

22 I don't have the specifics for each order,
23 but each order is being analyzed with the understanding
24 that that work must be complete by October 1st, and to
25 meet that commitment, the company could not afford to

00505

1 sit back and simply wait to see if it might gain some
2 lines through attrition.

3 MR. HARLOW: Does the company have any
4 documentation that reflects these orders or plans or
5 reinforcement of a loop plan?

6 MS. JENSEN: I don't know from a standpoint
7 that there is probably some preliminary information
8 with respect to each order from the point in time when
9 it was actually first designated as a held order due to
10 facilities. What work has occurred since that time or
11 since the company signed the agreement, I'm not aware
12 of.

13 MR. HARLOW: Is there any budget for this
14 work?

15 MS. JENSEN: Definitely. Again, this is a
16 commitment, assuming the Commission accepts this
17 settlement agreement, but we are moving forward on the
18 assumption that the Commission will find this
19 settlement agreement meets their need.

20 MR. HARLOW: How much is the total budget?

21 MS. JENSEN: We don't have a specific budget
22 identified for this particular area.

23 MR. HARLOW: Do you have any documents that
24 would assist us or the Commission in evaluating more
25 specifically what type of work is anticipated to meet

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1 this commitment, a records requisition or a Bench
2 request?

3 MR. VAN NOSTRAND: Objection. I believe this
4 question has been asked or answered, Your Honor.

5 JUDGE MOSS: Let's go ahead. I'm not sure;
6 go ahead.

7 MS. JENSEN: Every order needs to be looked
8 at individually, and there isn't a program that
9 combines all this information in a single document.
10 Each order is being addressed on an individual case
11 basis, and every order would have different
12 circumstances depending on where it is and what the
13 requirements are. Suffice it to say, if we could
14 satisfy the order, it would have been satisfied.

15 MR. HARLOW: What I'm really trying to get
16 at, is there any basis here or could you respond to a
17 record requisition for documents that would provide us
18 with some specificity as to what is contemplated to
19 meet this, or would the response be, We have no
20 documents.

21 MS. JENSEN: I think we have documents. To
22 what extent or what level of detail, they aren't
23 organized as a single program, to my knowledge, at this
24 time, but for each order, there is documentation that
25 follows that order.

00507

1 MR. HARLOW: Your Honor, I would like to make
2 a record requisition for any documents that reflect or
3 show the budget or the actual work that is projected to
4 do done to meet this Commitment No. 8.

5 MR. VAN NOSTRAND: Your Honor, I will object.
6 I'm not sure in the first instance what a record
7 requisition at this point has given. There is no basis
8 upon which to have that introduced as an exhibit if
9 it's provided after the close of hearings. Second, to
10 the extent the company has performed any analysis
11 regarding what the cost of -- would have been done so
12 in the context of litigation strategy evaluating the
13 impact to the settlement, and thus is a privileged
14 document.

15 JUDGE MOSS: Well, the document doesn't
16 exist. I don't know that we have any claim of
17 privilege with respect to it. As I understand the
18 testimony, it is that such no such document that would
19 encompass this particular set exists. There may be or
20 there is testimony that there is information regarding
21 held orders, but it's my view that the information
22 requested would not advance, the record would not
23 contribute materially to the Commission's consideration
24 of this particular provision, so I'm going to sustain
25 the objection.

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1 MR. HARLOW: One more question here,
2 Ms. Jensen. In making plans for reinforcing the loop
3 plant to meet this commitment, are CLEC demands or
4 needs for loop plant being included?

5 MS. JENSEN: Any that are known to the
6 company and that have been provided, anytime we do a
7 job, be it repair or installation, we look at not just
8 the specific needs of that individual customer but what
9 other requirements we might be able to satisfy in the
10 future based on forecasted and known projections of
11 demand.

12 MR. HARLOW: If you would please turn to Page
13 7, Subsection 5 at the top of the page. It provides
14 the company make a petition for mitigation of credit
15 amounts. This is apparently something the company can
16 do every year; is that correct?

17 MS. JENSEN: That's correct.

18 MR. HARLOW: So potentially, the company and
19 the staff and consumers could have to fight for these
20 credits every year against the company?

21 MS. JENSEN: I don't think it's a matter of
22 fighting for the credits, Mr. Harlow. I think the
23 intent here is to recognize that there may be events
24 that occur that were not instances for which the
25 company was able to satisfy its objectives or goals as

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1 part of this agreement but took every reasonable effort
2 to do so.

3 Something, for instance, such as a work
4 stoppage that may have prevented us from accomplishing
5 goals, or even something that I don't think anyone
6 anticipated in terms of the WTO conference this year.
7 We just don't know what may occur, and there was a
8 recognition that there may be instances that prevent
9 the company, even though it has exhausted all efforts,
10 to meet some of the standards set forth in this
11 agreement.

12 MR. HARLOW: Moving down to Subsection Roman
13 numeral 3 on Page 7, the whole section, Other Service
14 Commitments, is there any provision that deals with the
15 potential that the company doesn't meet these
16 commitments? Is there any penalty or remedy provided
17 for?

18 MS. JENSEN: Within the agreement, there is
19 not a specified penalty spelled out with respect to
20 these commitments. I think it would be a violation of
21 the agreement, which I would defer to an attorney for a
22 legal opinion.

23 MR. HARLOW: The first Subsection A under
24 that refers to Attachment A, and Attachment A is a
25 schedule for replacement of analog switches, and it's

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1 true, is it not, that that attachment is nearly
2 identical to Exhibit TAJ-2, which has been marked as
3 Exhibit 4?

4 MS. JENSEN: I believe it is identical.

5 MR. HARLOW: I believe there is one
6 difference that Spokane Walnut is not shown in your
7 testimony.

8 MS. JENSEN: That's because the date is past.

9 MR. HARLOW: Does this reflect that the
10 switches that are listed on Attachment A to the
11 settlement would have been replaced regardless of the
12 settlement.

13 MS. JENSEN: I believe what my testimony
14 indicates is that the company had made this commitment
15 to the Commission staff through some earlier
16 discussions. I believe what the parties to the
17 settlement agreement wanted to insure is that under the
18 merged company or the post-merged company that these
19 commitments would continue to be met.

20 MR. HARLOW: These switches, they are not
21 something that you just get off the shelf, are they?
22 They are custom ordered, built to order; is that
23 correct?

24 MS. JENSEN: Yes.

25 MR. HARLOW: How far in advance does a LEC

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1 have to order these switches of this size and
2 complexity.

3 MS. JENSEN: I'm not familiar with what the
4 current process is on that. I know typically the
5 planning encompasses six to ten months in terms of
6 replacement of an office.

7 MR. HARLOW: Does that indicate that
8 typically a switch would have been ordered six to ten
9 months before its installation date, or could it even
10 been further in advance?

11 MS. JENSEN: Both.

12 MR. HARLOW: Is it fair to say that at least
13 as to the switches scheduled for replacement in 2000
14 that orders for those had already been placed before
15 this settlement was reached?

16 MS. JENSEN: Yes, that's fair to say.

17 MR. HARLOW: Is it fair to say that at least
18 as to the switches listed in 2000 that they were going
19 to be replaced even regardless of this merger docket
20 altogether?

21 MS. JENSEN: I think the company is always
22 free to change its plans with respect to changes in the
23 market, so the dates, the time lines, could have been
24 altered based on a change in market conditions, perhaps
25 even a change in the type of switch replacement or

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1 whether a switch was replaced could occur. They occur
2 all the time.

3 MR. HARLOW: Let's turn to Page 8, please,
4 Sub D regarding maintenance of the historic capital
5 investment levels. Maybe Dr. Blackmon will want to
6 jump in here. Is that term, capital investment, is
7 capital used in the sense of gap or generally accepted
8 accounting principles or based on USOA terms?

9 DR. BLACKMON: I'm sorry. What is USOA?

10 MR. HARLOW: Uniformed System of Accounts.

11 DR. BLACKMON: I still don't know the answer.

12 MR. HARLOW: What do you mean by "capital"
13 there? What do you think this means?

14 DR. BLACKMON: I think it means telephone
15 network infrastructure.

16 MR. HARLOW: We need an accounting witness
17 here, perhaps. Ms. Jensen, do you have a concept in
18 mind to distinguish between capital investment on the
19 one hand and expenses on the other?

20 MS. JENSEN: I think there is investment in
21 the network that falls into both categories. Maybe you
22 could ask your question a little differently and I
23 might be able to answer it.

24 MR. HARLOW: Maybe we could key it into the
25 historic level, the 335-million-dollar figure. Is it

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1 your understanding of this settlement that the
2 forward-going, the measure of the achievement of the
3 commitment would be the same as the historic measure
4 that developed the 335-million-dollar figure?

5 MS. JENSEN: That is the intent with one
6 exception. There was a recognition in this agreement,
7 as noted in Footnote 4 on Page 8, that because there
8 are many suppliers at this point in time of network
9 capabilities, fiber optic capabilities, including
10 co-carriers or other carriers as well as other business
11 entities, perhaps PUD's, that the company may not
12 build. It may lease facilities from other providers
13 which may be more cost efficient.

14 MR. HARLOW: So in other words, if you were
15 to lease fiber from Level Three, let's say, at the cost
16 of a million dollars a year along a particular route,
17 you would consider that expense to me the capital
18 investment requirement of Subpart D on Page 8?

19 MS. JENSEN: It would be included in the
20 review of that, yes.

21 MR. HARLOW: Turn, please, to Page 9, and I
22 have a question for Dr. Blackmon. This is regarding
23 limitations on general rate case filings. What was the
24 trade-off here, or I guess who was viewed as
25 benefitting by this rate moratorium? Was this viewed

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1 as a benefit for the public or for the applicants?

2 DR. BLACKMON: I believe that this provision
3 benefits both the company and the customers of U S
4 West.

5 MR. HARLOW: Let me try and narrow the
6 question a little bit. I believe Mr. Twitchell in his
7 prefile testimony indicated that merger synergies that
8 should be passed through to Washington ratepayers was
9 around 234 million dollars; do you recall that?

10 DR. BLACKMON: I recall it as being 233
11 million.

12 MR. HARLOW: Close enough. Did you view that
13 there were potentially merger costs that could approach
14 or exceed that level and cause great increases to be
15 needed?

16 DR. BLACKMON: I'm not sure what you mean by
17 "merger costs."

18 MR. HARLOW: Well, the settlement refers to,
19 in Page 9, Roman numeral 4, Sub A, This Agreement does
20 not require the Company to reduce any rate or charge in
21 order to pass through any synergies that may occur in
22 connection with the merger, and then on Page 10 at the
23 bottom of the page, Sub C, it provides, The Company
24 shall absorb and customers shall not bear, the
25 transaction costs of the merger, so those are the costs

00515

1 I'm referring to or the ones referred to in that
2 subsection of the settlement.

3 DR. BLACKMON: I assume by "merger costs,"
4 you mean the costs that are listed in Paragraph C.

5 MR. HARLOW: Yes.

6 DR. BLACKMON: Your question presumes that
7 there could be a rate case where -- when I allow the
8 company to pass through merger costs and a rate case, I
9 guess the same rate case in which we would require that
10 the company pass through cost savings, and that no
11 other factors or facts would be considered, and I don't
12 consider that assumption to be a valid assumption, so I
13 have difficulty answering the question.

14 MR. HARLOW: Let me approach it from a
15 different angle. When you say both the company and the
16 applicants benefit from the rate, what I call a rate
17 moratorium, does that mean that basically the
18 trade-offs within, I guess all of Subsection 4, that in
19 your opinion they balance each other out just within
20 that section Roman numeral 4?

21 DR. BLACKMON: I would not testify to that,
22 no. We never attempted to settle Subsection 4 issues
23 on a stand-alone basis.

24 MR. HARLOW: Do you have any opinion or
25 expectation as to whether the company's regulated costs

00516

1 are going to increase or decrease over the next four
2 years?

3 DR. BLACKMON: I think it's very difficult to
4 predict that one way or the other.

5 MR. HARLOW: Suppose hypothetically the
6 company's costs increase dramatically and return
7 decreases dramatically. Would you think it would be in
8 the public interest to have the rates frozen in spite
9 of those circumstances?

10 DR. BLACKMON: I think your hypothetical
11 would have to get a lot more specific about the reason
12 for that increase in cost and what alternatives might
13 exist for that base of customers. In the old days
14 where we really only had one company, we had to be, I
15 think, very careful about making sure they always had
16 the ability to provide service and attract capital.
17 These days, we have a lot of companies who clearly are
18 able to attract capital, so I think that makes the
19 traditional concern about rate freezes, perhaps,
20 harming customers less important as a concern.

21 MR. HARLOW: Dr. Blackmon, let me try one
22 more shot at this. What is the benefit to the public
23 interest of freezing rates for four years?

24 DR. BLACKMON: It provides customers with a
25 level of certainty that their overall rates will not

00517

1 increase over the next -- until 2004, yet also provides
2 the company with certainty, and certainty that their
3 rates won't be decreased in response to higher earnings
4 which might come from being more innovative or
5 efficient, and that second part actually benefits
6 customers, because if we can set up a regulatory
7 structure that increases the incentives of the
8 companies to be efficient and innovative, that ends up
9 benefitting the customers.

10 MR. HARLOW: If the market becomes
11 competitive and competitive providers offer lower
12 rates, the company can voluntarily come in and lower
13 rates under this provision; is that correct?

14 DR. BLACKMON: That's correct. Not only can
15 they lower rates under this agreement, but under your
16 scenario where the market becomes more competitive, we
17 can still classify services as competitive under this
18 arrangement, so we can end up giving pricing
19 flexibility in any segment of the market where
20 effective competition emerges.

21 MR. HARLOW: On the other side of the coin,
22 if the market does not become effectively competitive,
23 then the company should start overearning from
24 traditional ratemaking analysis, this Commission would
25 be powerless to order the company to reduce rates; is

00518

1 that correct?

2 DR. BLACKMON: I'm sorry. Did you say the
3 company should start overearning?

4 MR. HARLOW: If the market does not become
5 effectively competitive within the next four years,
6 should the company find itself in an overearning
7 situation on a traditional basis, this Commission would
8 be powerless to reduce the rates; is that correct?

9 DR. BLACKMON: That's correct. The
10 Commission is powerful now in choosing to restrain its
11 power over the next four years for some very good
12 reasons.

13 MR. HARLOW: Thank you, Your Honor. That's
14 all the questions I have.

15 JUDGE MOSS: Thank you. I omitted to
16 consider the possibility of new appearances this
17 morning. I did notice that we do have a new face at
18 counsel table this morning, so if you could enter your
19 appearance briefly.

20 MR. ROSENSTEIN: It's Mace Rosenstein from
21 Hogan and Hartson for Qwest.

22 JUDGE MOSS: Do we have any other new
23 appearances this morning? I know not everybody can
24 necessarily fit up here at the table despite its
25 length. I believe, Mr. Butler, did you have something

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1 else?

2 MR. BUTLER: Yes. I'll resume with the
3 questions of the other panelist. I guess I'll start
4 with Dr. Blackmon. The question that I asked yesterday
5 with respect to Page 8, Section D, could you explain
6 for me your understanding of the term "telephone
7 network infrastructure"; what is included in that?

8 DR. BLACKMON: As I recall, there was some
9 distinction that you and Mr. Davis developed. Was
10 there some particular distinction that you were trying
11 to get at?

12 MR. BUTLER: Specifically, what I was
13 interested in was whether that term was confined in any
14 respect to investment related to the provision of
15 switched services versus dedicated services, for
16 example; whether it would include investment in DSLAMS
17 and packet switches.

18 DR. BLACKMON: My view is that it would
19 include any type of telephone plants, including
20 multiplexers of which DSLAMS are one example, so it
21 certainly is not limited to switched services. You
22 could essentially telecommunications facilities, so
23 this provision would -- it's sort of at the -- it
24 captures all the different types of investment in
25 telephone or telecommunications investment that the

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1 company has made over the last five years, and that
2 would certainly include DSL related equipment.

3 MR. BUTLER: Ms. Jensen, could you answer the
4 same question? Would you agree with that?

5 MS. JENSEN: Yes, I agree with it.

6 MR. BUTLER: Is there any restriction or
7 targeting of the investment in network infrastructure
8 contemplated in this agreement?

9 DR. BLACKMON: Do you mean specifically under
10 Paragraph D?

11 MR. BUTLER: Yes, apart from the specific
12 projects.

13 DR. BLACKMON: A, B, and C are specific, and
14 then D is an overall. In theory, the company could
15 spend the entire amount on one particular type of
16 equipment and still meet this commitment. It's at that
17 level of detail, because at this point, we are doing
18 dealing with consumer issues. I think there is still
19 work to be done on the competitive issues in this area.

20 MR. BUTLER: I didn't mean to neglect
21 Mr. Steuerwalt. Could you answer the previous
22 question? Does that reflect your understanding of
23 network infrastructure?

24 MR. STEUERWALT: It does.

25 MR. BUTLER: Is there some reason why you

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1 chose to refer to the average investment per access
2 line in a generic sense as opposed to specifying the
3 specific dollar amount? Did you intend that that
4 average be a rolling average over time, or is it fixed
5 as of a certain date?

6 DR. BLACKMON: As I recall, we decided that
7 we would capture the concept here to try to measure the
8 specific numbers and report it would complicate the
9 settlement, would complicate resolution of this, and we
10 were able to reach agreement that this was the right
11 way to capture this concept of a baseline commitment to
12 network investment.

13 MR. BUTLER: Is there mutual understanding of
14 the settling parties that the measure for this
15 provision of the agreement will be 133 dollars per
16 access line? Is that what you will compare it to, that
17 figure?

18 DR. BLACKMON: I don't know that we've
19 checked the source of that figure. It certainly sounds
20 reasonable to me consistent at a general level with
21 what we understand the baseline amount to be. The 335
22 million is a number that I'm very familiar with and I
23 think is exactly what we are trying to capture. So I
24 guess what I'd say is we would want to check the
25 division on that point, but I think it's generally

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1 correct.

2 MR. BUTLER: So once you have your additional
3 sessions, you will reach agreement on a figure that's
4 either 133 or pretty close to it, and that will be the
5 measure for the duration of the agreement's term; is
6 that correct?

7 DR. BLACKMON: Yes.

8 MR. BUTLER: That's all I have. Thanks.

9 JUDGE MOSS: Mr. Pena?

10 MR. PENA: Your Honor, I do have one question
11 for Dr. Blackmon. Could I direct your attention to
12 Paragraph 10 on Page 5 addressing the annual service
13 quality report.

14 DR. BLACKMON: Yes.

15 MR. PENA: That second sentence in that
16 paragraph states that these reports will include
17 specific monthly results where the performance was
18 below the level required in current and future roles,
19 and my question is, would this provision apply to any
20 rules relating to the company's performance in
21 providing services to competitive local exchange
22 carriers, and I'm talking again about future rules the
23 Commission may adopt.

24 DR. BLACKMON: That was not my understanding,
25 no. A report to consumers would be on the consumer --

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1 in compliance with consumer service quality rules.

2 MR. PENA: So the one paragraph talks about
3 "customers," you are referring to consumers or end-user
4 consumers, not CLEC's.

5 DR. BLACKMON: That's correct.

6 MR. PENA: Is that your understanding,
7 Ms. Jensen?

8 MS. JENSEN: Yes, but I might add that I
9 believe the CLEC's within their interconnection
10 agreements also get reports of this nature specific to
11 their services.

12 MR. PENA: I understand that; thank you.
13 That's all I have.

14 JUDGE MOSS: Thank you. I believe that
15 brings us to the completion of our examination by the
16 intervening parties; am I correct? It appears that I
17 am. Let's turn back to the Bench and see if there is
18 some follow-up from the Bench at this point.

19 CHAIRWOMAN SHOWALTER: I have a quick
20 follow-up. Dr. Blackmon, you caught my attention when
21 you mentioned competitive classification and stated
22 that this settlement agreement does not affect the
23 Commission's ability to order competitive
24 classifications. I just want to be clear, on the
25 bottom of Page 9, again, the sentence that is

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1 concerning me, is it your view that an order of
2 competitive classification is not an action that would
3 change retail prices or access rates within the meaning
4 of this settlement agreement?

5 DR. BLACKMON: I believe that the settlement
6 parties have recognized that that sentence is not the
7 best sentence we might have come up with. I just don't
8 know whether that sentence is consistent or not.

9 CHAIRWOMAN SHOWALTER: Let me ask it a
10 different way --

11 DR. BLACKMON: If I could just -- if you look
12 at the second paragraph, the No. 2 on Page 10, where we
13 attempted to be very clear on this point about
14 competitive classification was that paragraph which
15 constrains the company applies to tariffed rates and
16 changes, and then as these things tend to do, it comes
17 up; it's stated again in E that price listed services
18 are excepted from that provision, but I still
19 understand you have a good question about the
20 Commission's action.

21 CHAIRWOMAN SHOWALTER: If we were to accept
22 this settlement agreement and include in our order
23 accepting it a clarification that this sentence on the
24 bottom of Page 9 does not pertain to orders of
25 competitive classification, would that be within the

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1 meaning of what you intended as the settlement
2 agreement?

3 DR. BLACKMON: Yes.

4 CHAIRWOMAN SHOWALTER: Let me ask the same
5 question of Ms. Jensen.

6 MS. JENSEN: Yes, it would.

7 CHAIRWOMAN SHOWALTER: And Mr. Steuerwalt.

8 MR. STEUERWALT: Indeed.

9 COMMISSIONER HEMSTAD: I have a couple of
10 areas I would like to explore a bit further. This is
11 initially addressed to Mr. Steuerwalt and Dr. Blackmon
12 and perhaps counsel. Mr. Brosch in his testimony
13 raised the issue of Yellow Page imputation and whether
14 that should be addressed in this proceeding. It is not
15 addressed, at least explicitly, in any way in the
16 settlement agreement. We have pending in front of us
17 for a decision an application from U S West pertaining
18 to that. Is there anything in this settlement
19 agreement that in any way implicates or cuts across the
20 issue of imputation of revenues from U S West
21 subsidiaries or in the merged company?

22 MR. STEUERWALT: I believe during the course
23 of negotiations, we discussed the Yellow Pages and the
24 opinion, and you are correct; it's not in this
25 proposal.

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1 DR. BLACKMON: Just to add to that, with this
2 limitation on general rate case filings, it's our
3 intents that whatever the outcome of the Yellow Pages
4 case, if that outcome would normally be an issue that
5 would be taken up in a rate case, to either no longer
6 impute revenues or to determine the effects of a rate
7 base adjustment, however that case may come out. It
8 wouldn't happen until 2004 at the earliest as a result
9 of this settlement agreement.

10 COMMISSIONER HEMSTAD: Ms. Jensen, do you
11 agree with that?

12 MS. JENSEN: Yes. I might have add a
13 clarification. In response to your question, the
14 effect is that the imputation continues through 2003 as
15 a result of this agreement, regardless of a Commission
16 decision with respect to that.

17 COMMISSIONER HEMSTAD: But after the 2003,
18 there is nothing in this document or in this merger
19 proceeding that would implicate that issue; is that a
20 fair statement?

21 DR. BLACKMON: That's correct. This does not
22 purport to settle the Yellow Pages case at all. It
23 just delays the day at which that decision could be
24 translated into consumer rates.

25 COMMISSIONER HEMSTAD: The rest of the panel

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1 degrees with that statement?

2 MS. JENSEN: Yes, we do.

3 MR. STEUERWALT: Yes.

4 COMMISSIONER HEMSTAD: My second area of --
5 just to explore a bit further, there was a lot of
6 discussion on Subparagraph D on Page 8 with maintaining
7 historic capital investment levels. In 1995 rate case,
8 the evidence with respect to the test year in that
9 proceeding was that the level of depreciation exceeded
10 the amount of capital investment that was occurring
11 during that period, so that was, in fact, the company,
12 this investment occurring on a net basis.
13 Subsequently, depreciation rates have been further
14 increased.

15 Dr. Blackmon, I'd appreciate your comments on
16 the relationship between the commitment to make capital
17 investment and depreciation levels and the significance
18 of the commitment to maintain those capital investment
19 levels. I realize a period of rapid change and cost
20 and cost relationships perhaps may be changing
21 measurably, but how significant is this commitment to
22 maintain historic capital investment levels when the
23 larger issue is, I guess, whether there is net
24 investment coming into the state or not?

25 DR. BLACKMON: We don't view this particular

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1 commitment as the big protection for consumers in this
2 agreement. We see it more as a backstop that in all
3 likelihood we will never become a binding constraint on
4 the company anyway. As I said yesterday, the approach
5 that's reflected in this agreement is one to measure
6 the company's performance, not how much money it pumps
7 into the network, but we still felt like even though
8 that was going to be our overall approach, we ought to
9 have a backstop there and say at a minimum, the
10 historic baseline level investment ought to be
11 maintained. It certainly isn't our first line of
12 defense in our effort to make sure that customers get
13 good service and new services.

14 COMMISSIONER HEMSTAD: That's all I have.

15 COMMISSIONER GILLIS: Just a quick question
16 for Ms. Jensen on measures of performance. The service
17 quality report that you committed to and the various
18 reporting requirements, has there been discussion yet
19 of whether or not there will be any -- the reporting
20 will have any geographic granularity to it, and in
21 maybe broad numbers where discussion is at this point?

22 MS. JENSEN: Let me ask a clarifying
23 question, if I may. Were you referring to the
24 commitment on Page 5, the annual service quality
25 report?

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1 COMMISSIONER GILLIS: Initially, and if there
2 are any other reporting commitments that you've made.

3 MS. JENSEN: I believe there would be in most
4 instances, and probably the best reference would be to
5 look at what I think is Attachment B where we would
6 expect to report against these measures, and many of
7 these measures are either on an exchange basis or
8 wire-center basis. In those circumstances, we would
9 envision our report would address probably at a general
10 level, but again, we agreed to work with the parties on
11 what the actual report states or includes in it.

12 The monthly reports will be at that level of
13 detail. There is other reports such as repair
14 intervals, answer time and Commission complaints that
15 aren't necessarily recorded on a geographic specific or
16 location specific basis, so it most likely will be a
17 combination of both.

18 COMMISSIONER GILLIS: Thank you.

19 CHAIRWOMAN SHOWALTER: I should have asked
20 one more question, and I'm going over some ground from
21 yesterday, but if the Commission were to accept the
22 settlement agreement but clarify that the sentence on
23 the bottom of Page 9 does not preclude the Commission
24 from conducting and ordering an AFOR, would that be
25 within the contemplation of the parties to this

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1 agreement?

2 DR. BLACKMON: I don't believe so, no.

3 CHAIRWOMAN SHOWALTER: That's what I thought
4 you said, and then I thought I heard a didn't answer
5 from the Qwest representative, so explain to me what --
6 you need to explain what the provisions about AFOR mean
7 with respect to this sentence. Why would the parties
8 be talking about an AFOR if it couldn't be done, I
9 guess?

10 DR. BLACKMON: I can think of plenty of
11 AFOR's that would not require any violation of that
12 Paragraph B, so we could come up within an alternative
13 form of regulation that didn't require any change in
14 those two paragraphs. If after the discussions occur
15 that are outlined in Paragraph did, if it seems that
16 the best alternative form of regulation is one that is
17 not consistent with Paragraph B, then the Commission
18 would need to consider that not just on its own terms,
19 not just whether that AFOR is good or bad, but whether
20 it's so good that it warrants you going back and
21 changing your order in the merger case, and we believe
22 that is a higher standard and one that involves more
23 parties, the interests of more parties than would occur
24 with a typical alternative form of regulation decision.

25 CHAIRWOMAN SHOWALTER: So the first category

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1 is AFOR's that don't require a change in retail prices
2 or access rates, so that would be within the settlement
3 agreement, but the second one would require us to
4 change our order approving this settlement agreement;
5 is that correct?

6 DR. BLACKMON: I believe so, yes.

7 CHAIRWOMAN SHOWALTER: So then I'm back to
8 the question of whether nonparties to the agreement,
9 nonparties to the settlement agreement have a claim to
10 make that we would be bound by our agreement not to
11 change prices or access rates?

12 DR. BLACKMON: Every potential party had to
13 make a decision about whether to intervene in this
14 case. I have trouble imagining a party credibly
15 arguing that they had no idea that a rate freeze might
16 be part of the Commission's ultimate decision in this
17 case, so I think potential parties got notice that this
18 was going forward. They should reasonably have
19 expected that a rate freeze might be part of this, so
20 from sort of the layman's view that I have is they
21 wouldn't have any reason to feel like they have been
22 deprived of their right to object to a rate freeze.

23 CHAIRWOMAN SHOWALTER: Thanks.

24 JUDGE MOSS: I want to follow-up on this line
25 by asking if there has been any discussion among the

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1 parties in light of the record as it developed
2 yesterday with respect to the idea of revising portions
3 of the settlement agreement, particularly Section 4-B,
4 to perhaps better capture the intent of the parties.
5 The only question is whether there has been such
6 discussion.

7 MS. JOHNSTON: There was some limited
8 discussion yesterday concerning this, and we are
9 endeavoring to clarify this language.

10 JUDGE MOSS: So there will probably be a
11 supplemental exhibit at some point during the hearing
12 proceedings?

13 MS. JOHNSTON: That's our hope. Would you
14 agree, Mr. Van Nostrand?

15 MR. VAN NOSTRAND: I would agree, Ms.
16 Johnston.

17 JUDGE MOSS: Do you have any sense of when
18 that might be available to the Bench so we could help
19 manage the proceeding with that knowledge?

20 MR. VAN NOSTRAND: Before the end of the
21 week. It depends upon our chance to get together and
22 discuss it among the signing parties. I've got a
23 proposal this morning that we'll talk among ourselves.

24 JUDGE MOSS: So when we take our morning
25 break, you will no doubt be able to finalize that.

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1 MR. VAN NOSTRAND: With some persuasion, I
2 hope so. I would hope by tomorrow morning.

3 JUDGE MOSS: I'm trying to get some sense of
4 what we might expect, and I'm sure these witnesses will
5 remain available to the extent the Commission may have
6 some additional inquiry on the point once the revised
7 language is suggested, so that's my only concern.

8 Anything further from the Bench? Not at this
9 point. We've followed the procedure here of allowing
10 the intervenors to have questions, and, of course,
11 we've had considerable inquiry from the Bench as well.
12 Although I would be hopeful that there is not too much,
13 I think I need to provide an opportunity for any
14 clarifying redirect that might be appropriate, so let
15 me do that, and I think perhaps we should turn to the
16 applicants last, so since this the public counsel and
17 staff are also signatories to this agreement, let me
18 ask if you have any clarifying redirect, a few
19 questions perhaps, Mr. ffitich?

20 MR. FFITCH: I don't have any additional
21 questions.

22 MS. JOHNSTON: I'd like to follow up on a few
23 questions as to Dr. Blackmon by Mr. Kopta yesterday, if
24 I may?

25 JUDGE MOSS: Please do.

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1 MS. JOHNSTON: Dr. Blackmon, you were asked
2 some questions yesterday concerning access charges. Do
3 you recall those questions?

4 DR. BLACKMON: Yes.

5 MS. JOHNSTON: In the proposed settlement
6 agreement, the agreement does not provide for or
7 require the company to reduce its overall rates; is
8 that correct?

9 DR. BLACKMON: That's correct.

10 MS. JOHNSTON: As you know, it is AT&T's
11 position in the context of this merger docket that the
12 Commission should reduce U S West switched access rates
13 to forward-looking cost. In your opinion, would it be
14 appropriate for the Commission to reduce those access
15 charges in this case yet not reduce rates for
16 consumers?

17 DR. BLACKMON: No, it would not be.

18 MS. JOHNSTON: Did you want to elaborate more
19 on that response?

20 JUDGE MOSS: I don't think she got what she
21 wanted, Dr. Blackmon.

22 DR. BLACKMON: As a general matter, I think
23 the Commission should not reduce the retail and access
24 rates of the company. The Commission should instead
25 accept this agreement, but if it were to choose to

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1 reduce rates, I think it would be inappropriate to
2 reduce access charges independently from the retail
3 rates, and we view access charges ultimately as being
4 paid by consumers, and in the particular case of U S
5 West, there is a good balance today between the rates
6 that consumers pay through the long-distance companies
7 for access and the rates that consumers pay for local
8 service, and that balance would be disrupted if we were
9 to take so drastic a step as to reduce access charges
10 to forward-looking economic costs.

11 MS. JOHNSTON: To your knowledge, has the
12 Commission had occasion to consider AT&T's argument
13 that access rates should be reduced to forward-looking
14 costs?

15 DR. BLACKMON: Yes. That's been considered
16 as least two times that I know of. In the 1995 general
17 rate case, AT&T made that argument. The Commission
18 went about halfway in that direction, reduced access
19 charges about 45 percent. That argument was made begin
20 in the access charge reform rule making. Again the
21 Commission sort of went halfway, because the Commission
22 decided that it would be appropriate to reduce the
23 terminating access charge to forward-looking economic
24 costs but decided that, in fact, it would be better not
25 to do that on the originating side, and, in fact, it

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1 would promote local competition to keep originating
2 access charges above forward-looking economic costs.

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

4 JUDGE MOSS: Thank you. And for the
5 applicant, Mr. Van Nostrand?

6 MR. VAN NOSTRAND: I just have one area to
7 clarify with Ms. Jensen. Do you recall the questions
8 from Mr. Butler regarding this Paragraph 3-D on
9 historic capital investment levels?

10 MS. JENSEN: Yes, I do.

11 MR. VAN NOSTRAND: In particular, the
12 reference to the \$133 per access line figure, the
13 question he had of Dr. Blackmon on that point?

14 MS. JENSEN: Yes, I do.

15 MR. VAN NOSTRAND: Do you have any additional
16 comments or understanding that you might want to share
17 regarding the significance of that \$133 figure?

18 MS. JENSEN: Yes. Perhaps a qualification,
19 and around the discussion about why a specific amount
20 was not included in the agreement, I concur with what
21 Dr. Blackmon said with respect to that. I think an
22 additional element is that there are some other
23 recommendations before this Commission in this
24 proceeding that could affect that number, dependent
25 upon some of the competitive related issues still

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1 pending, that would adjust the historic investment
2 level based on considerations with respect to
3 separation of assets or change in where assets are
4 accounted for, so we felt it best to leave it undefined
5 based on a lack of clarity as to the final outcome of
6 this proceeding before the Commission and the effect
7 that would have on this number.

8 DR. BLACKMON: If I could just add there that
9 I agree. I forgot to mention that because staff and
10 the two companies are not at all in agreement about
11 this question of a separate affiliate for advanced
12 services, it made it essentially impossible to define
13 that baseline number until we knew what the decision
14 would be about the spin-off of the affiliate. Because
15 some of that historical investment, as I told
16 Mr. Butler, is for things that would be done by the
17 advanced services affiliate. So it made it impossible
18 to calculate that number independently of the decision
19 about whether we will do the advanced services
20 affiliate.

21 MR. VAN NOSTRAND: That is all I have, Your
22 Honor. Thank you.

23 JUDGE MOSS: Mr. Rosenstein?

24 MR. ROSENSTEIN: I have no questions, Your
25 Honor.

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1 JUDGE MOSS: I believe then that that brings
2 us to the conclusion of our discussion with the
3 panelists, and, of course, I've indicated several times
4 I'm sure they will remain for the duration of the case
5 in case something further should come up, but with
6 that, I'd like to thank you all for appearing and being
7 responsive to the questions that have been posed, and
8 you are all released for the time being, at least;
9 although, Ms. Jensen, you may keep your seat.

10 I think this would be a good time to take
11 about a 10-minute break, so why don't we come back
12 around five before the hour by the wall clock.

13 (Recess.)

14 JUDGE MOSS: We're ready for our first
15 witness. We have had some off-the-record discussion
16 with respect to the order of witnesses, and we are
17 going to have Mr. Pitchford up first. I have a couple
18 more emendations to the exhibit list in case these
19 should come up. Exhibit 405 should be marked as C-405.
20 It is confidential or includes confidential material.
21 The same is true with respect to Exhibit 438, 443, and
22 444. Those numbers again are 405, 438, 443, and 444.
23 Mr. Pitchford, will you please rise, sir.

24 (Witness sworn.)

25 JUDGE MOSS: Mr. Wiltsie, will you be

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1 conducting the direct.

2 MR. WILTSIE: Yes, Your Honor.

3

4 DIRECT EXAMINATION

5 BY MR. WILTSIE:

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

8 A. It's Mark Pitchford, P-i-t-c-h-f-o-r-d.

9 Q. By whom are you employed?

10 A. I'm with Qwest Communications Corporation.

11 Q. What is your business address?

12 A. 555 17th Street, Denver, Colorado, 80202.

13 Q. What position do you hold with Qwest?

14 A. I'm the senior vice president of consumer
15 markets for Qwest.

16 Q. In that position, what are your
17 responsibilities?

18 A. I'm responsible for all of the residential
19 side of Qwest, including the marketing sales and
20 service.

21 Q. Mr. Pitchford, do you have before you the
22 Exhibits 130-T and C-131-RT?

23 A. I do.

24 Q. And respectively, those are the direct
25 testimony of Mr. Paul Gallant and the rebuttal

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1 testimony of Mr. R. Steven Davis?

2 A. Correct.

3 Q. Have you reviewed those exhibits?

4 A. Yes.

5 Q. Do you have any corrections to those
6 exhibits?

7 A. I do have a few corrections to Exhibit 130-T.
8 The first of those would be on Page 3, Line 3. Qwest
9 is now traded on the New York Stock Exchange instead of
10 NASDAQ under the symbol "Q" instead of "Qwest." That's
11 actually also repeated on Page 7, and I think it's
12 Lines 12 and 13. The second change I have is on
13 page --

14 CHAIRWOMAN SHOWALTER: Could you slow down
15 for a minute?

16 THE WITNESS: I'm sorry. The second change I
17 have is on Page 5, Line 5. I stated it was subject to
18 shareholder, and it is now being approved by the
19 shareholder of both companies.

20 COMMISSIONER HEMSTAD: How should it read?

21 THE WITNESS: I think we can probably just
22 have it subject to regulatory and other approvals since
23 that shareholder side is being completed, so you could
24 probably just cross out "shareholder."

25 And then finally, on Page 6, beginning at

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1 Line 15, this section describes the office of the
2 chairman and as is being publically announced,
3 Mr. Trujillo has chosen to leave the company as the
4 merger occurs, so he would no longer be listed here as
5 parted of that group.

6 JUDGE MOSS: So we have a clear record, I
7 need some precision with respect to the words to be
8 stricken. Mr. Wiltsie, could you help out there?

9 MR. WILTSIE: Yes, Your Honor. I believe if
10 we removed on Line 15 at Page 6, the phrase beginning,
11 "and Solomon D. Trujillo, currently the chairman and
12 chief executive officer of Qwest-US West will be the
13 chairman of Qwest, Inc., and president of the broadband
14 local and wireless business of Qwest, Inc." Also at
15 Line 19, if Mr. Trujillo's name was struck, I believe
16 that will accurately reflect the current situation.

17 JUDGE MOSS: Then again at Line 23?

18 MR. WILTSIE: Yes.

19 JUDGE MOSS: Or is that correct? So we would
20 strike Mr. Trujillo's name at 23 as well.

21 THE WITNESS: That concludes the changes.

22 Q. (By Mr. Wiltsie) Mr. Pitchford, with those
23 corrections, do you adopt the testimony embodied in
24 Exhibits 130-T and C-131-RT?

25 A. Yes, I do.

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1 Q. If asked those same questions, would you give
2 the same answers today?

3 A. Yes, I would.

4 MR. WILTSIE: Your, Honor, we tender
5 Mr. Pitchford for cross-examination.

6 JUDGE MOSS: Thank you. I think we should
7 just follow the same order we have been following, so
8 we'll start down here with Mr. Kopta.

9 MR. KOPTA: Thank you, Your Honor.

10

11 CROSS-EXAMINATION

12 BY MR. KOPTA:

13 Q. Mr. Pitchford, I have some questions about
14 some of the cross-examination exhibits. Do you have
15 copies of those?

16 A. I don't in front of me.

17 MR. KOPTA: May I approach?

18 JUDGE MOSS: Yes.

19 Q. (By Mr. Kopta) I forgot to wish you good
20 morning, Mr. Pitchford.

21 A. Good morning.

22 Q. I wanted to first follow up on your
23 discussion of Mr. Trujillo. I believe on the following
24 page -- assuming I have the correct page numbers, which
25 in some instances I don't -- there is a discussion of

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1 the office of the chairman that previously included
2 Mr. Trujillo, Mr. Anschutz, and Mr. Nacchio.

3 CHAIRWOMAN SHOWALTER: What is the question
4 on the page that is being answered?

5 MR. KOPTA: The question is on a previous
6 page. It says, "Please discuss the management of the
7 post merger company," and it's the second full
8 sentence.

9 MR. BUTLER: It's on our Page 6.

10 MR. KOPTA: And I must be working off an
11 electronic copy which is always confusing.

12 Q. (By Mr. Kopta) Mr. Pitchford, would you turn
13 to what's been marked for identification as Exhibit
14 359, which is a Reuters' report with the headline, "US
15 West head to leave after Qwest merger." Do you see
16 what I'm looking at?

17 A. I do.

18 Q. Specifically, on the second paragraph of the
19 first page of that article, there is a quote from a
20 prepared statement from Mr. Trujillo. Have you seen
21 that statement before?

22 MR. WILTSIE: Your Honor, we have an
23 objection to this exhibit, at least to the exhibit
24 itself that is to be tendered into evidence. It's
25 hearsay as a newspaper article, and there is no

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1 foundation for it. To the extent he wishes to use it
2 to direct his questioning, we would reserve further
3 objection.

4 JUDGE MOSS: We haven't had it moved for
5 admission at that point; however, I'll go ahead and
6 pause once, and I'm only going to do this once in this
7 proceeding. As we all know, in administrative
8 litigation, we relax the rules of evidence and do allow
9 hearsay into the record. There is a well established
10 body of case law and the treatment and handling of
11 hearsay that discusses the fact that in these type of
12 proceedings we do consider the hearsay quality of a
13 document as to the weight to be afforded the exhibit
14 and do not rely exclusively on hearsay for any
15 decision. This is not to say that you should not ever
16 make a hearsay objection, marks the record, and you can
17 do that, but we do admit such evidence into these
18 records, so at this juncture, I'm going to let
19 Mr. Kopta go ahead with his question with reference to
20 this document.

21 MR. KOPTA: Thank you, Your Honor. I'm going
22 to go ahead and repeat the question.

23 Q. In the second paragraph on the first page of
24 Exhibit 359, are you familiar with this statement
25 attributed to Mr. Trujillo?

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1 A. I haven't seen the article before, but I have
2 seen the statement before.

3 Q. Do you know what leadership appointments --
4 and I'm looking at the second line of that paragraph --
5 were a point of disagreement between Mr. Trujillo and
6 officers of Qwest?

7 A. No, I don't.

8 Q. What about what issues with respect to the
9 structure of the organization were in dispute?

10 A. I'm not aware.

11 Q. The same with issues with respect to the role
12 of office of the chair.

13 A. Correct, yes.

14 Q. So you don't have any personal knowledge of
15 what issues there may have been between Mr. Trujillo
16 and other officers of Qwest?

17 A. No, I'm not aware of any.

18 Q. Are you aware that the respective companies,
19 Qwest and U S West, had some disagreement on policy
20 issues prior to the merger?

21 A. Specifically, I know there were some
22 different positions on certain regulatory policy.
23 That's about all I'm aware of.

24 Q. Would you turn to what's been marked for
25 identification as Exhibit 380?

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1 A. I have that.

2 Q. Is this one of those issues?

3 A. If I could just have a moment to read it.

4 Q. Please. This is one of the policy issues on
5 which Qwest and U S West did not agree prior to the
6 merger?

7 A. It certainly appears to be.

8 Q. Has there been any resolution of these types
9 of issues or this issue in particular?

10 A. Not that I'm aware of, no.

11 Q. Is there a process in place for resolving
12 those types of issues?

13 A. I don't know if there is a specific process
14 or not.

15 Q. Similarly with respect to Exhibit 381.

16 A. I don't know if there were any differences of
17 opinion on this one, but I'm not aware of any specific
18 policy decisions made.

19 Q. Would you turn please to your rebuttal
20 testimony, specifically Page 18.

21 A. I have that.

22 Q. At this point in your testimony, you were
23 discussing the incentives that U S West will have post
24 merger -- maybe I should say the merged company as
25 opposed to US West, but the merged company will have to

00547

1 maintain good service quality for retail customers; is
2 that correct?

3 A. This was specific about the concern that
4 Qwest would ignore the combined companies local
5 telephone operations?

6 Q. Correct. So at this point, you are exploring
7 an incentive that the merged company will have to
8 maintain or improve service quality for retail
9 customers?

10 A. Specifically, clearly as part of the merger,
11 the benefits of being able to offer a broader portfolio
12 of products to our customers is a key part of that, so
13 clearly, in order to be able to do that successfully,
14 you are going to need to have a good reputation with
15 those customers.

16 Q. The merged company, or maybe I should say
17 Qwest and U S West, nevertheless entered into a
18 settlement agreement with Commission staff and public
19 counsel that includes some safeguards for retail
20 service quality, did they not?

21 A. They did, that's correct.

22 Q. On Page 4 of this same testimony,
23 specifically beginning with the question that starts on
24 Line 3, you discuss the incentives that the combined
25 company will have to maintain or improve wholesale

00548

1 service quality or service quality to competitors in
2 order to satisfy Section 271.

3 A. Certainly, there are significant market
4 incentives for us to achieve 271 approval; that's
5 correct.

6 Q. But at least as we sit here today, there is
7 no agreement or no proposal by either Qwest or U S West
8 to adopt conditions on wholesale service quality?

9 A. None that I'm aware of. I don't think we
10 felt they were necessary at this point.

11 Q. I'm sort of exploring the difference between
12 incentives for retail service and incentives for
13 wholesale service. In light of the settlement, was
14 there some concern that the incentives were
15 insufficient for retail customers, and therefore, some
16 conditions were appropriate?

17 A. I don't believe that we felt that the
18 incentives weren't sufficient for retail or wholesale.
19 I think we felt it was appropriate in reaching that
20 resolution, which I think was a reasonable compromise
21 to address some specific issues or concerns.

22 Q. Is there a reason why Qwest is unwilling to
23 agree to or propose any wholesale service quality
24 conditions?

25 MR. WILTSIE: I have to object, Your Honor.

00549

1 Without violating the privilege, there are settlement
2 discussions going on. I'm not sure what this line of
3 questioning is designed to prove. He's talking about
4 why we haven't agreed to a settlement with them.
5 That's an inappropriate line of questioning for this
6 witness at this hearing.

7 MR. KOPTA: I will rephrase the question to
8 take out the "agreed." I wasn't intending to explore a
9 settlement. I'm assuming as we sit here today there is
10 no agreement and that we are in the position of
11 litigating these issues, so my question would be more
12 properly phrased as is there a reason why Qwest is
13 unwilling to include wholesale service quality
14 conditions or wholesale service quality standards,
15 guarantees, as part of the conditions on this
16 Commission's approval of the merger?

17 THE WITNESS: I think what I would go back to
18 say is I think we feel comfortable that both the market
19 incentives and the regulatory proceedings associated
20 with achieving 271 approval and the oversight of that
21 going forward are more than sufficient, so that's why
22 we feel there are additional ones necessary or
23 appropriate as part of this proceeding.

24 Q. (By Mr. Kopta) Would you turn to Exhibit
25 350, which is, again, one of the cross-examination

00550

1 exhibits I handed to you earlier. Specifically, on the
2 third page, fifth paragraph down on that page that
3 begins, "In an interview last week"?

4 A. Okay.

5 Q. In that paragraph, Mr. Nacchio is quoted as
6 stating, quote, I'm as committed to the merger as my
7 merger docket would have me committed. He said, we
8 will still have to go through regulatory approval.
9 There is a point and price we wouldn't pay, closed
10 quote. Does that accurately reflect Qwest's position?

11 A. I couldn't speak specifically as to what
12 Mr. Nacchio was referring to in this specific
13 statement. However, in the merger agreement, there is
14 a band of outside of which regulatory requirements are
15 greater than that, that then we would have to look at
16 that.

17 Q. Does that include wholesale service quality
18 conditions?

19 A. I don't believe it's that specific. I
20 believe it's a financial amount.

21 Q. Would you turn to your rebuttal testimony on
22 Page 9, and I believe on this page you are discussing
23 one of the sources of the incentive that we were
24 talking about before that satisfies Section 271 that if
25 I may paraphrase, the merged company will be able to

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1 make more money in the interLATA market than U S West
2 would be able to alone, at least in the short term. Is
3 that a fair characterization of your testimony here?

4 A. I think specifically it does show that the
5 cost structure of the combined company will be better
6 than U S West alone, correct.

7 Q. What steps has U S West taken to satisfy
8 Section 271 since the merger has announced that U S
9 West would not have taken absent the merger?

10 A. I'm not specifically aware of what steps
11 they've taken. Clearly now they've filed for 271
12 approval in all of their 14 states, which they had not
13 done prior to the merger being announced.

14 Q. As part of the review prior to the merger,
15 did Qwest investigate the extent to which U S West had
16 satisfied the requirements of Section 271?

17 A. I'm not sure whether that was done or not as
18 part of the due diligence.

19 Q. Would you turn to your rebuttal testimony on
20 Page 15, please. Specifically, the question that
21 begins on Line 6.

22 CHAIRWOMAN SHOWALTER: Mr. Kopta, I think
23 you've got to identify the question because you've got
24 a different document, I think.

25 MR. KOPTA: Still on the rebuttal testimony,

00552

1 the question begins, "Mr. Ward claims that the merged
2 company will retain Qwest's facilities." My copies are
3 a little bit off. I apologize.

4 Q. In your response, you state that the assets
5 retained by the merged company will be used for local
6 or intraLATA service to the extent allowed by state and
7 federal law; is that correct?

8 A. Correct.

9 Q. Would you look at what's been marked for
10 identification as Exhibit 362. Are these the
11 facilities to which you were referring?

12 A. Just in reading through this data request, I
13 can't tell here whether these ones would be
14 specifically potentially used for local or intraLATA
15 services, or whether they would be potentially used,
16 for example, somewhat terminating intraLATA services,
17 so I couldn't split these, specifically.

18 Q. You actually anticipated my question. Do you
19 know which affiliate within the merged company will
20 provide local or intraLATA services using these
21 facilities?

22 A. I don't. I don't know that determination has
23 been made yet.

24 Q. Would you turn, please, to Page 16, with the
25 hope that I can identify the proper place.

00553

1 JUDGE MOSS: This will be in the rebuttal
2 testimony?

3 MR. KOPTA: Yes, Your Honor.

4 Q. (By Mr. Kopta) This is in your response to
5 the question of AT&T notes that Qwest will provide
6 unspecified customer service support. After
7 divestiture, how will this work. Do you see where I
8 am?

9 A. Yes.

10 Q. In response, you discuss what Qwest will make
11 available to the potential buyer of its inregion
12 InterLATA services; is that correct?

13 A. Yes. I specifically address what functions
14 we would be or support services that we would be
15 willing to provide if the buyer so requests.

16 Q. Is this an exclusive offer for just the
17 buyer, or would these same facilities and services be
18 available to other interexchange companies?

19 A. My understanding is the specifics of this
20 were specific to the buyer. I don't know whether the
21 decision has been made to open that up to others or
22 not, but my understanding is it's for the buyer
23 specifically.

24 Q. On the following page in your rebuttal
25 testimony, specifically with reference to the next

00554

1 question, which is, is Qwest continuing to market and
2 sign up new customers for interLATA services within the
3 U S West region. You are discussing both residential
4 and business customers, and my question is whether you
5 are informing business customers prior to their signing
6 a contract that their provider will not be Qwest upon
7 completion of a merger.

8 A. I'm not positive whether those -- we are
9 directly informing them or not on the business side.
10 Certainly, the contracts that we have will assign the
11 ability to transfer that contract to the buyer, but I'm
12 not sure how much of that up-front conversation is
13 going on at this point. Obviously, it's hard to do
14 that until you can say who the buyer is, when that's
15 going to happen, and where you are going to go.

16 Q. But are business customers being informed at
17 this point that there is some uncertainty as to who
18 their service provider will be in the next six months?

19 A. I don't know whether they are or not. It's
20 out in the marketplace and press, but I don't know
21 specifically or not.

22 Q. Do you know whether customers who have signed
23 long-term contracts with Qwest for interLATA services
24 would be given an opportunity to cancel those contracts
25 if the new provider is not acceptable to them?

00555

1 A. My understanding is that all of the business
2 contracts that we have, we have a clause in there that
3 allows us to assign the contract to another carrier,
4 assuring that they would maintain the same rates and
5 services and that kind of thing, so I don't believe
6 those are therefore being opened up at this point.

7 Q. As I recall, on Page 14 of your rebuttal
8 testimony, again, at the top of the page I have
9 discussing whether customers will be responsible for
10 the primary interchange carrier or pick charge?

11 A. Right.

12 Q. And that Qwest is offering to or will offer
13 to reimburse customers for that charge but -- and I'm
14 looking specifically at Line 8 of mine, but it's the
15 last part of that answer -- provided that Qwest and or
16 buyer will not reimburse charges separately paid or
17 reimbursed by another carrier.

18 A. Right.

19 Q. How will Qwest know whether a customer is
20 being reimbursed by another carrier?

21 A. By the customer telling us that that's the
22 case.

23 Q. So if a customer says to Qwest, Gee, I've got
24 to take service from AT&T instead of going with the new
25 buyer, is it your intent to ask the customer whether

00556

1 they are being reimbursed the pick charge?

2 A. I believe the current plan, since it's
3 generally the practice of the carriers to do that
4 reimbursement, we would probably do it in the reverse
5 of that; in other words, assume they are going to get
6 reimbursed, and if they aren't, contact us and we will
7 reimburse them.

8 Q. So if a \$5 line charge appears on their bill,
9 they call Qwest and say, Here's a \$5 charge. I want to
10 get it back.

11 A. Correct.

12 Q. Are you going to include that in the
13 information that you provide to customers in terms of
14 notice of the availability to change carriers without
15 charge?

16 A. I haven't seen the final wording of that
17 notice, but I will expect us to.

18 Q. On Page 22 of your rebuttal testimony --
19 actually, both Page 22 and Page 23 of the copy that I
20 have in which you are discussing statements of
21 Mr. Nacchio that are referenced in other testimony; do
22 you see where I'm referring?

23 A. I do see is the questions, yes.

24 Q. Did you attend the regional or oversight or
25 ROC meeting at which Mr. Nacchio spoke?

00557

1 A. No, I did not.

2 Q. So you don't have any personal knowledge of
3 what Mr. Nacchio said at that meeting?

4 A. No, I don't.

5 Q. Would you turn, please, to Exhibit 375. I'll
6 let you review that, and let me know when you are
7 finished.

8 A. Okay.

9 Q. I'm referring specifically to the second
10 paragraph of the response in which it stated, Subject
11 to their objections, Qwest and U S West state that in
12 general, the merged companies' focus will be different
13 on many issues, including local competition than that
14 of U S West today; for example, the merged company will
15 have an added incentive for achieving relief under
16 Section 271 to enable it to provide end-to-end
17 broadband connectivity to its customers.

18 Are there other examples of issues on which
19 the merged companies' focus will be different with
20 respect to local competition?

21 A. With respect to local competition, I'm not
22 sure whether there will be or not. Obviously, the
23 incentives that we have to gain 271 approval clearly
24 causes you to look out what all of your positions, and
25 in being a combined company with a new set of services,

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1 you are going to have to relook at your positions as
2 well for that says, what makes sense for that combined
3 company, so there may well be ones, but I'm not aware
4 of any specifics.

5 MR. KOPTA: Thank you, Mr. Pitchford. Your
6 Honor, I would like to move for the admission of some
7 of the exhibits, some of which I have not specifically
8 addressed with Mr. Pitchford on cross, but can, if
9 necessary. I believe I've discussed this with
10 Mr. Wiltsie, and I don't know if he has an objection to
11 doing that, but I will need it subject to his objection
12 on the specific data requests or the specific exhibits
13 I'm going to seek to offer, all of which are data
14 request responses. I'm not seeking the admission of
15 either of the news reports that I have used in my
16 questioning of Mr. Pitchford. I'm not sure how you
17 would like to proceed on this, whether you would like
18 to do it individually by exhibit number.

19 MR. WILTSIE: I might suggest if we could get
20 together briefly after the testimony. I believe what
21 he is talking about I do not have an objection. I just
22 want to confirm those are the numbers, and we can
23 stipulate them in at that point.

24 JUDGE MOSS: That sounds like the most
25 efficient way to proceed. We're pushing up against the

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1 luncheon hour so that would be a good opportunity to do
2 that, and the witness will remain available, if
3 necessary. Mr. Trincherero?

4 MR. TRINCHERO: Thank you, Your Honor.

5

6 CROSS-EXAMINATION

7 BY MR. TRINCHERO:

8 Q. Good morning, Mr. Pitchford. Do you have a
9 copy of the McLeod cross-examination exhibits?

10 A. I do not.

11 MR. TRINCHERO: May I approach?

12 JUDGE MOSS: Sure. Are these going to be in
13 those numbered 350 and higher?

14 MR. TRINCHERO: Yes.

15 Q. (By Mr. Trincherero) And don't worry,
16 Mr. Pitchford, I'm not going to ask you about that
17 entire pack of documents.

18 A. We might be here awhile.

19 Q. I know you have a plane to catch, and we'll
20 try to get you out of here quickly. I've left it
21 turned open for you what has been marked for
22 identification at Exhibit 440; do you see that?

23 A. I do.

24 Q. In your rebuttal testimony, at least on my
25 copy, which is it's on Page 13, and I think all of the

00560

1 counsel sitting here at the CLEC end of the table have
2 the same pagination, so I apologize for that, but it's
3 starting at Line 13, Page 13, states, The sale of these
4 services will be final and irrevocable with no
5 obligation or duty for the buyer to allow Qwest to
6 reacquire the customers at any point. Do you see that
7 testimony?

8 A. I do.

9 Q. Since the time that this testimony was filed,
10 isn't it true that the FCC has issued an order in the
11 merger docket?

12 A. Yes, that's correct.

13 Q. In fact, the FCC is now requiring the joint
14 applicants to make a subsequent filing that shows
15 definitively that Qwest will have no preferential
16 rights to reacquire that customers redivest.

17 A. I believe that's correct.

18 Q. In large part, the FCC is requiring this
19 additional report because it had received some evidence
20 that disclosed that Qwest's desire to sell the
21 271-implicated assets to a friendly buyer so that the
22 assets could be reacquired in the future; isn't that
23 correct?

24 A. I don't know whether that was their
25 motivation or not.

00561

1 Q. I'm not going to have you read from the
2 order, but if you could assume with me as a
3 hypothetical that, indeed, that was one of the FCC's
4 concerns, and also assume with me that at Footnote 61
5 of the FCC order, it refers to an ex parte letter filed
6 by Mr. Phil Verveer on behalf of McLeod?

7 A. I do recall that.

8 Q. If you could take a quick look at Exhibit
9 440, have you seen this document before?

10 A. I have not.

11 Q. Would you agree with me that it is a copy of
12 an ex parte letter filed with the FCC in the merger
13 case?

14 MR. WILTSIE: Your Honor, I object. First of
15 all, my Exhibit 440 is not a letter, and second of all,
16 to the extent that we are relying on a letter that has
17 not been authenticated in this proceeding by a lawyer
18 who purports to be writing on behalf of McLeod, we have
19 no basis for acknowledging that fact.

20 JUDGE MOSS: Let's first of all get the
21 exhibit straight. My exhibit premarked 440 is a
22 response to a data request.

23 MR. TRINCHERO: I apologize, 404.

24 JUDGE MOSS: So let's take a look at 404.
25 Your objection again, Mr. Wiltsie?

00562

1 MR. WILTSIE: My packet of exhibits does not
2 have 404 in it; however, my understanding is it
3 purports to be a letter from a lawyer writing the FCC
4 on behalf of McLeod USA. There is no foundation for
5 that letter. We don't know that a lawyer for McLeod
6 wrote it. We don't know that it was Mr. Verveer, and
7 we don't know anything more about it than what it
8 purports to be.

9 JUDGE MOSS: I think you will need to
10 establish some foundation for questioning this witness
11 about this letter because I don't see his name or the
12 name of any of the witnesses whose testimony he's
13 adopting on here, so if you have some foundation so we
14 can link this somehow, we'll take it from there.

15 MR. TRINCHERO: Since I have him looking at
16 the wrong document, I'll reask the question. Now
17 looking at Exhibit 404, are you familiar with this
18 letter?

19 THE WITNESS: No, I'm not.

20 MR. TRINCHERO: I have nothing further, Your
21 Honor. Thank you, Mr. Pitchford.

22 JUDGE MOSS: Mr. Harlow?

23

24 CROSS-EXAMINATION

25 BY MR. HARLOW:

00563

1 Q. Good morning, Mr. Pitchford.

2 A. Good morning.

3 Q. I represent Covad Communications, among
4 others. It's correct, isn't it that Qwest currently
5 resells Covad's DSL service in Washington?

6 A. I believe that's correct, yes.

7 Q. After the merger, Qwest will no longer be
8 selling Covad DSL service in Washington?

9 A. My expectation is that is correct, yes.

10 Q. And the reason for that would be it will have
11 effectively merged with and acquired the megabit
12 service of U S West?

13 A. Clarify the question; that we will have
14 merged with U S West. Obviously, they do provide DSL
15 service. The only part I'm not sure about is for
16 existing customer base. That service looks different
17 than Covad, so I don't know if we would continue to
18 maintain those customers.

19 Q. In terms of going forward, however, Qwest
20 will no longer be a competitor of U S West megabit DSL
21 service?

22 A. I wouldn't expect to be, no.

23 Q. On Pages 10 to 11, again, that's the
24 pagination of my copy I was served.

25 JUDGE MOSS: We are in the rebuttal

00564

1 testimony?

2 MR. HARLOW: We are in the rebuttal testimony
3 of Mr. Davis. I'll look up the exhibit number if I
4 have to.

5 JUDGE MOSS: It's 131.

6 Q. (By Mr. Harlow) According to Mr. Davis's
7 testimony, one of the purported benefits of this merger
8 is that Washington consumers will have a greater choice
9 in the local telephone market. Do you see that
10 testimony?

11 A. Sorry. Which line was that?

12 JUDGE MOSS: Maybe you could read the
13 question for us and that will cue us to the appropriate
14 place in the testimony.

15 MR. HARLOW: I can, but it may take a moment
16 to find it. I need a moment, Your Honor.

17 JUDGE MOSS: Okay.

18 Q. I'm sorry. I meant to refer to Page 4, Lines
19 10 to 11, not Page 10 to 11. The question is, Will the
20 merger itself create incentives for U S West to satisfy
21 Section 271?

22 A. I see it.

23 Q. Let me repeat the question now with the right
24 page in front of you. Mr. Davis has testified to the
25 effect that one of the alleged benefits of the merger

00565

1 is that Washington consumers will have greater choice
2 in the local telephone market. Do you see that?

3 A. I do.

4 Q. It is correct, is it not, that U S West
5 already provides local telephone service in Washington?

6 A. I believe that's correct, yes.

7 Q. Likewise, it's correct that U S West does not
8 provide local telephone service in Washington?

9 A. Excuse me?

10 JUDGE MOSS: I think you want to restate.

11 Q. Likewise, it's correct that Qwest does not
12 provide local telephone service in Washington?

13 A. Yes, I believe that's correct.

14 Q. Qwest could provide local telephone service
15 in Washington without merging with U S West, could it
16 not?

17 A. I believe that's a possibility to come in as
18 a CLEC. I'll not sure about where that would be in our
19 decision as to whether we would really do that.

20 Q. Do you have any knowledge as to why Qwest
21 does not offer local telephone service in Washington?

22 A. Not specific to Washington, no.

23 Q. On that same page, Page 4, another purported
24 benefit of the merger is that Washington consumers will
25 have a greater choice in the long-distance telephone

00566

1 markets more quickly than they would absent this
2 merger. Do you see that testimony?

3 A. I do.

4 Q. U S West already supplies intraLATA
5 long-distance in Washington, does it not?

6 A. I believe so you, yes.

7 Q. Qwest already sells interLATA long distance
8 in Washington; correct?

9 A. Yes, it does.

10 Q. Would you agree that U S West could obtain
11 Section 271 approval and sell interLATA long distance
12 in Washington without the Qwest merger?

13 A. It could. I think that's why --
14 specifically, I state here also we believe, based on
15 the incentives we have, that can happen more quickly as
16 a merged company, and I think that the merged company
17 can be a more effective competitor in that market
18 versus AT&T and others.

19 Q. Qwest does not market residential long
20 distance in Washington, does it?

21 A. Qwest provides a residential long-distance
22 service in Washington. It does not currently do target
23 marketing because of the pending merger, so things like
24 outbound telemarketing or direct mail, but if a
25 customer were to call up today to sign up in

00567

1 Washington, we would take the order.

2 Q. Qwest could specifically market to the
3 residential market in Washington if it wanted to,
4 couldn't it?

5 A. I believe that the reason we no longer market
6 the interLATA services in residence is as part of our
7 work with the FCC on the divestiture that that was an
8 expectation that we would stop doing that in the
9 interim.

10 Q. To your knowledge, if the Qwest-U S West
11 merger were not to occur, would U S West withdraw from
12 the pending Section 271 proceedings, including the
13 actual filings as well as the preparatory filing in
14 Washington?

15 A. I don't know. I couldn't speak for U S West.

16 MR. HARLOW: That's all the questions I have.
17 Thank you, Your Honor. Thank you, Mr. Pitchford.

18 JUDGE MOSS: Mr. Butler?

19 MR. BUTLER: Just a few questions.

20

21 CROSS-EXAMINATION

22 BY MR. BUTLER:

23 Q. Mr. Pitchford, it is correct, isn't it, that
24 Qwest plans to deploy a national CLEC operations in
25 approximately 25 cities out of the U S West service

00568

1 region?

2 A. That is our current plan, yes.

3 Q. Is it correct that none of those 25 cities
4 are located within the states in which U S West
5 currently provides service?

6 A. I believe that's correct, yes.

7 Q. Does Qwest have any plans to utilize people
8 who are currently employed by U S West in that national
9 CLEC operation?

10 A. I'm not aware of any specific plans one way
11 or the other.

12 Q. Does Qwest have any plans to use people who
13 are currently employed by U S West to deploy DSL
14 services in any of those 25 cities that are out of the
15 U S West service territory?

16 A. Again. I'm not aware of plans one way or the
17 other.

18 Q. When you say you are "not aware of plans,"
19 does that mean you do not know whether there are plans
20 one way or the other in that respect?

21 A. That would be an okay restatement as well.

22 JUDGE MOSS: Mr. Butler, let me interrupt.
23 How much do you have in terms of time?

24 MR. BUTLER: Just a couple of minutes.

25 JUDGE MOSS: Mr. Pena, do you have any?

00569

1 MR. PENA: Just a couple.

2 JUDGE MOSS: How about staff and public
3 counsel?

4 MS. JOHNSTON: No questions.

5 MR. FFITCH: I might have one or two.

6 Q. (By Mr. Butler) If I could direct you to
7 Page 19 of your rebuttal testimony, Lines 16 through
8 19.

9 A. I see that.

10 Q. There, you are referring to obtaining Section
11 271 approval insures that DSL competitors, so-called
12 DLEC's, have the building blocks they need to compete
13 aggressively against the combined company in the
14 provision of DSL service. Do you know what the
15 expected schedule is for obtaining 271 approval for the
16 merged company?

17 A. Obviously, that's dependent on each of the
18 state regulatory proceedings and the federal level, so
19 I don't know that there is a specific time expectation.

20 Q. Would you be surprised if it took 18 to 24
21 months?

22 A. Depending on the state, that could be an
23 outside potential.

24 MR. BUTLER: I have no further questions.

25 JUDGE MOSS: The Bench has some prior

00570

1 commitments during the noon hour. That means we are
2 going to take a recess, so we will need this witness
3 after lunch. We'll be in recess until 1:15.

4 (Luncheon recess at noon)

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AFTERNOON SESSION

(1:25 p.m.)

JUDGE MOSS: We're ready to resume the questions for Mr. Pitchford, and frankly, I have lost track a little bit. Mr. Pena?

CROSS-EXAMINATION

BY MR. PENA:

Q. Good afternoon, Mr. Pitchford. Mr. Kopta asked you some questions regarding, I believe, it was Exhibit 375, and the gist of the discussion was that the merged company will have different views as a result of the need to achieve 271 approval. Do you recall that?

A. I do.

Q. I'd like to explore that a little bit with you, just the idea of the company having different views. Mr. Reynolds in his rebuttal testimony testifies that after the merger, all existing interconnection agreements will remain in effect and that the Commission will continue to have the authority to enforce those agreements, and I was just wondering if that would be Qwest's position as well.

A. I believe that's our expectation, yes.

Q. Along those same lines, Mr. Reynolds also

00572

1 testifies that in addressing the payment of reciprocal
2 compensation for ISP-bound traffic, again, Mr. Reynolds
3 testified that U S West pays compensation for that
4 traffic in accordance with the Commission in FCC court
5 rulings. Would that also be Qwest's position?

6 A. I don't know what the position is, but I will
7 obviously abide by whatever the FCC or corporate wants.

8 MR. PENA: That's all I have, Your Honor.

9 Thank you.

10 JUDGE MOSS: Mr. ffitch?

11

12 CROSS-EXAMINATION

13 BY MR. FFITCH:

14 Q. Thank you, Your Honor. Good afternoon,
15 Mr. Pitchford. I just have a couple of questions,
16 really following up on an area covered by Mr. Kopta way
17 back this morning on the transfer of your existing
18 customers to other companies. This may actually be in
19 the joint applicant's testimony somewhere. How many
20 residential long-distance customers do you have in
21 Washington state?

22 A. It depends on how we define it. In the
23 testimony here, it shows 198,000. That would include
24 for than just our one-plus customers because that would
25 include things like dial-around customers and those

00573

1 kinds of things. If we were to focus on just one-plus
2 residential customers picked to us with usage, it's
3 around 40,000 or so.

4 Q. You testified that you were not now marketing
5 to increase that because of the pending merger and the
6 FCC, the 271 issue.

7 A. That's correct, yes.

8 Q. I'm looking at Page 12 of Mr. Davis's
9 rebuttal testimony, which is Exhibit C-131-RT. The
10 question is, what are the details of the plan -- it's
11 Page 12, Line 10 -- and there, you say that Qwest and
12 the purchaser will take the necessary steps to make the
13 transition smooth and uneventful for customers;
14 correct?

15 A. Right.

16 Q. Can you tell me what particular steps will be
17 taken for the residential long-distance customers as
18 they have to be transitioned away or divested?

19 A. The final details of how that will work will
20 be dependent upon the buyer, but certainly the goal
21 from Qwest's point of view is that you absolutely
22 minimize disruption, which would include things like
23 the ability to -- that the buyer would guarantee to
24 maintain rates for a period of time so the customers
25 don't see a change in price and would have the same

00574

1 kind of quality of service accessibility, those kind of
2 things, as well as, obviously, the communication we
3 talked about earlier today of how do we notify and the
4 fact that they don't have to do anything as part of
5 that. The customer themselves doesn't have to do
6 anything as part of that transition.

7 Q. Do you have any specific period of notice
8 established advising these customers there will be a
9 change?

10 A. Obviously, we'll look at each jurisdiction,
11 what the requirements are for that jurisdiction. I
12 know it will be minimum of a full billing period or 30
13 days.

14 Q. Have you established a process or procedure
15 for advising them of their alternative provider they
16 can select?

17 A. I don't believe there is anything that --
18 let's say I'm not sure but the question do I list the
19 alternative providers or something like that, but
20 certainly didn't plan on doing that.

21 Q. The testimony slightly further down, Line 14,
22 on Page 12, there is the reference to the commitment
23 not to raise rates.

24 A. Correct.

25 Q. How long will that commitment last?

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1 A. That's one of the terms under negotiation
2 with the buyer. Obviously, from a Qwest perspective in
3 support of the customers, the longer the better would
4 be great, but that's under negotiation.

5 Q. Without asking you to divulge matters that
6 are in negotiation, is there a range of time, a minimum
7 of time the company has in mind for this commitment?

8 A. I don't know. I haven't been close enough to
9 negotiations itself where that is. It certainly,
10 obviously, we would look to it to be multiple months,
11 at least.

12 Q. I guess I'm gleaning from your testimony that
13 this process has not actually occurred in any state to
14 date. Is it correct that this has not occurred in any
15 state to date?

16 A. Sorry, which?

17 Q. The divestiture of -- I'm using this sort of
18 loosely -- divestiture of the residential long-distance
19 customers?

20 A. That's correct. We haven't yet reached
21 agreement. We expect to reach agreement very soon with
22 the buyer for all of the states.

23 JUDGE MOSS: Let me just ask you. You say
24 you do expect?

25 THE WITNESS: Yes. We do expect to reach

00576

1 agreement in the very near future.

2 Q. (By Mr. ffitch) What is the purpose of the
3 commitment to not raise rates for the tariffed
4 customers for a certain time period?

5 A. It would be back to the statement at the
6 beginning of that, which was to minimize the impact on
7 the customers as a result of the transition.

8 Q. Has Qwest contemplated submitting any of the
9 notice materials that would be provided to its
10 customers for review by regulators in this state or in
11 any state? That's a two-part question, I guess.

12 A. I'm not sure whether we have or not. I
13 believe that there may have been some discussions with
14 staff in a number of states around that, at least
15 drafts at this point.

16 Q. Is that something that Qwest would be willing
17 to do if Commission ordered it?

18 A. Definitely. That's an easy answer, yes.

19 Q. Let me rephrase that. Is that something the
20 company would be willing to do?

21 A. I don't see any reason why we wouldn't. We
22 would be comfortable sharing whatever communication we
23 would be sending to our customers.

24 MR. FFITCH: Those are all the questions I
25 have, Your Honor. Thank you.

00577

1 JUDGE MOSS: Thank you. Ms. Johnston?

2 MS. JOHNSTON: No questions, Your Honor.

3 JUDGE MOSS: Any redirect?

4 MR. WILTSIE: Briefly, Your Honor.

5 JUDGE MOSS: We have some questions from the
6 Bench, and I think we should those first before you do
7 your redirect

8

9

CROSS-EXAMINATION

10 BY CHAIRWOMAN SHOWALTER:

11 Q. You may have submitted your personal
12 background, but I haven't seen it so I'm going to ask a
13 couple of questions. How long have you been with the
14 company Qwest?

15 A. I've actually been with Qwest about five
16 months. Came and joined in early November.

17 Q. Where were you before that?

18 A. I ran the consumer markets groups for
19 Southwestern Bell, SBC in San Antonio. I'd been with
20 Pacific Bell for about 15 years doing operations
21 engineering and marketing, and then when SBC came in
22 and acquired Pacific Bell, I ran their 272
23 long-distance subsidiary, and then I went to run
24 Southwestern Bell's consumer group.

25 Q. What is your educational background?

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1 A. My undergraduate was at Harvey Mudd College
2 in California in electrical engineering, and then I did
3 an MBA at Santa Clara University.

4 Q. In what years did you get those degrees?

5 A. Harvey Mudd was in '84 and Santa Clara was in
6 '93.

7 Q. You have talked about incentives that the
8 merger will bring about, incentives to gain 271 status.
9 You've talked a little bit about the cost structure,
10 and we had a panel earlier on consumer issues and the
11 settlement agreement. I'm interested in another aspect
12 of this proceeding, which is managerial fitness. What
13 the Commission is looking at is U S West versus the
14 merged company and how that merged company will be
15 different than, and at least as good as the current
16 structure.

17 A. Right.

18 Q. Are you the witness to speak to managerial
19 fitness issues?

20 A. I'd be happy to try.

21 Q. Let me begin with the incentives you
22 mentioned. An incentive to achieve 271 status only
23 occurs through individuals who take steps in a company
24 to achieve something, so can you connect the dots for
25 me. I understand what you feel the incentives are, but

00579

1 how does that translate to the merged company gaining
2 271 status more quickly than the nonmerged company?

3 A. As you said, it does come down a lot to
4 people and how they implement things. Qwest as a
5 company has set some very focused goals and is very
6 driven behind making sure that those occur, and
7 clearly, achieving 271 is going to be one of those.

8 If I look at the public announcement that has
9 already been made of kind of the top 15 or 20 senior
10 managers of the proposed combined company, I think you
11 will see there is a good blend both of the U S West
12 experience, but also within Qwest, you will see where
13 Afshin Mohebbi has been named to head all the
14 operations and engineering side. He's currently
15 president and COO of Qwest, and he has extensive
16 experience in both ILEC's, the RBOC's, and at British
17 Telecom prior to this role.

18 Q. What is his experience in ILEC's?

19 A. He was also with Pacific Bell for about 15
20 years in operations engineering and sales and
21 marketing. And clearly in having that operations and
22 engineering role, that will be a key part of the
23 service delivery we do and how we achieve 271, making
24 sure that we are meeting all of the commitments there,
25 and he will be very focused in doing that and has the

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1 experience on both sides to make that happen. I think
2 you will also see working for him -- I have to remember
3 all the names -- Greg Casey, I believe, is working for
4 him doing the wholesale side.

5 CHAIRWOMAN SHOWALTER: Maybe we could just
6 interrupt at this point and Judge Moss can tell me what
7 the right mode is, but I do have a press release that
8 names a bunch of people, and it's not, as far as I
9 know, in the record.

10 JUDGE MOSS: We can mark it as a Bench
11 exhibit. I'm just going to mark it as Exhibit No. 447,
12 and I'm going to hand the witness a copy that I happen
13 to have. What this is a news or press release. It
14 appears to be -- actually, maybe I should ask you,
15 Mr. Pitchford, if you recognize this. Is this a press
16 release by the company?

17 THE WITNESS: Yes.

18 JUDGE MOSS: And you are familiar with the
19 information it contains regarding the corporate
20 executive appointments it discloses?

21 THE WITNESS: Yes.

22 Q. (By Chairwoman Showalter) Of the people
23 listed in this press release who are appointed to top
24 positions in the merged company, can you tell me which
25 ones have some background with an ILEC? You've

00581

1 mentioned already Mr. Mohebbi?

2 A. I'll do my best.

3 Q. And I think you just mentioned Mr. Casey; I'm
4 not sure.

5 A. Let me start at the top is probably the
6 easiest then. Betsy Bernard is already the head of the
7 retail side of U S West and has experience there as
8 well as with Pacific Bell. Steve Jacobson had his
9 career primarily with AT&T. I believe he was also with
10 MFS for a period and then with Qwest, and Steve was
11 with AT&T pre breakup, so he did also have local
12 experience at the time. Lewis Wilks has had experience
13 with GTE. Jim Smith is coming from U S West.

14 COMMISSIONER HEMSTAD: Could I interject?
15 Where did Mr. Wilks, who is he employed with now?

16 THE WITNESS: He is employed with Qwest, and
17 he has the data and IP side of Qwest. Jim Smith is
18 currently with U S West as is Pete Mannetti. Afshin
19 Mohebbi we mentioned. John Kelley, who will be running
20 the network operations and engineering, is with U S
21 West currently in running the network operations role.

22 David Boast, who is currently Qwest's head of
23 their network and operations. I'm not positive of his
24 background. I know he's been with data network
25 companies. I'm not sure what else. Greg Casey, who

00582

1 has the wholesale side, he has been running the
2 wholesale side of Qwest, so his focus has been in a
3 very competitive environment, keeping wholesale
4 customers happy and managing those relationships. I
5 believe he was with MCI previously. I'm not sure of
6 who else he has been with.

7 Augie Cruciotti, who will head the broadband
8 local services, Augie was also with Pacific Bell for
9 probably 14 or 15 years in the network and operations
10 side. He ran the Southern California operations for
11 Pacific Bell before joining Qwest. Cliff Dodd, who is
12 the CIO, most recently, before taking this role, was
13 the CIO with Ameritech, and then prior to that, I
14 believe he's been with a number of companies. I'm not
15 sure all of them. He is currently a joint employee.
16 He was actually hired on by both companies as part of
17 the merger.

18 Robert Woodruff will be the CFO who is
19 currently the CFO of Qwest. I'm not sure on Robert's
20 background. Janet Cooper and Sean Foley are both
21 currently with U S West, and I believe in somewhat
22 similar roles as these. Robin Szeliga, who is
23 currently with Qwest on their finance side, her
24 previous background had been primarily with TCI on the
25 cable side prior to joining Qwest a couple of years

00583

1 ago, and then Lee Wolfe, who will head investor
2 relations, is also the past investor relations with
3 Qwest too.

4 Q. We may as well finish up on the next page of
5 the legal counsel positions.

6 A. Drake Tempest, who is currently general
7 counsel for Qwest, came from private practice into
8 that. Robert Connelly, I believe, is currently with
9 U S West. I'm not sure the current role. Steve Davis,
10 who I think you saw on the stand yesterday, came from
11 AT&T. Tom Matthews, who heads human resources, is the
12 current human resources head for Qwest. Most of his
13 experience and background was with the railroads,
14 Southern Pacific and others.

15 Mike Tarpey, who heads communications
16 currently has that role with Qwest. I know Mike came
17 from AT&T, but I'm not sure what other roles he's had,
18 and then Mark Weisberg heads corporate development or
19 business development mergers, and I actually don't know
20 Mark's background as well.

21 Q. Thank you. So you have given some insight
22 into the ILEC backgrounds of some of these people, and
23 you have mentioned that there would be a strong focus
24 on 271, so then tell me, what are the concrete steps
25 that focused competent people take in order to make

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1 this happen faster? What gives you the confidence that
2 this merged corporation will, in fact, achieve that
3 status sooner? I think that was your assertion.

4 A. In that area, I'm not as -- the U S West
5 people who are already working in that area are very
6 focused and competent and can make that happen. That's
7 not an issue. I think what the merger brings is
8 actually an added financial incentive to make that
9 happen quickly and for our customers, which to me then
10 drives -- do you put additional resources there to make
11 it happen quicker? How do you prioritize other
12 projects? And so those, I think, become the more
13 physical steps that we need to take as the merged
14 company comes together. How do we prioritize what's
15 being worked on and where do you put resources to make
16 sure that happens, so it clearly -- there may be other
17 things that, let's say, were going on within Qwest
18 already that you say, Let me put that on hold right now
19 to make sure we can have the most impact here.

20 CHAIRWOMAN SHOWALTER: I think that's all the
21 questions I have for now.

22 COMMISSIONER HEMSTAD: I don't have any
23 questions.

24 COMMISSIONER GILLIS: No questions.

25 JUDGE MOSS: I want to follow up on a couple

00585

1 of things.

2

3

CROSS-EXAMINATION

4 BY JUDGE MOSS:

5 Q. You indicated a couple of things the company
6 can do as to additional resources, and I want to ask
7 you if there are concrete plans either in place or
8 under active consideration to devote additional
9 resources from the U S West side of the companies to
10 achievement of the 271 process, relative to what was in
11 place prior to the merger discussions.

12 A. Not that I'm aware of. I don't think we are
13 that far into that planning process yet.

14 Q. Similar question with respect to project
15 priorities, has there been any active realignment of
16 project priorities that would place the achievement of
17 271 and any individual state or in the 14 states
18 collectively higher, let's say, on the list of
19 priorities than what might previously have been the
20 case?

21 A. Again, I don't know of any specific plans
22 that have gone forward with doing that, our actual
23 actions that I've directly been involved with. I know
24 that those discussions are certainly going on and how
25 do we do that and achieve that quicker.

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1 It actually goes back to an earlier question.
2 It's clear that the sooner we can achieve the 271, the
3 faster we achieve both the financial benefits to us and
4 the customer. So there is clearly a focus around that.
5 It's just, obviously -- pre merger occurring, it's hard
6 to get into some of those detailed plans as to how much
7 you can share between each other.

8 Q. What I'm trying to do is draw some connection
9 between what I would characterize as the theoretical
10 assertions regarding increased incentives and concrete
11 steps that are being taken to actually enjoy the
12 benefits of those increased benefit incentives. I
13 wonder if you know whether the current state of U S
14 West 271 filings or intentions to file is in any way
15 related to the merger, or if that is something that was
16 implemented independently of the merger.

17 A. It's hard to be completely certain about
18 cause and effect, but I would certainly say that prior
19 to the merger being announced, U S West had only filed,
20 I think, in three of their fourteen states. Since
21 that, it has now filed in all fourteen. I think there
22 is clearly movement in working with the ROC on the OSS
23 testing and financing that and a number of other areas
24 where there is clearly movement towards getting 271.
25 It's hard to directly correlate cause and effect,

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1 though.

2 JUDGE MOSS: I'll assume, unless I hear
3 something to the contrary right now, that there would
4 be no objection to the admission of the exhibit that I
5 identified as Bench Exhibit 447.

6 MR. WILTSIE: Joint applicants have no
7 objection.

8 JUDGE MOSS: Hearing no objection, that will
9 be admitted as marked.

10 MR. FFITCH: What is the date of the press
11 release?

12 JUDGE MOSS: I don't know that it's dated.

13 CHAIRWOMAN SHOWALTER: March 3rd.

14 THE WITNESS: March 3rd, 2000.

15 JUDGE MOSS: We will make copies available at
16 the close today, or if anybody needs one now, we will
17 share one of our copies.

18 MR. HARLOW: Your Honor, I have a bit of
19 follow-up to Chairwoman Showalter's questions.

20 JUDGE MOSS: That would normally be out of
21 order, Mr. Harlow.

22 MR. HARLOW: Normally, we wouldn't have three
23 witnesses shoved down our throats and out of order
24 because this witness had to leave town, and I'd ask for
25 a little leeway here since we've been preparing on the

00588

1 fly, and this witness came up out of order much sooner
2 than we expected, Your Honor.

3 JUDGE MOSS: I'll give you a few minutes,
4 Mr. Harlow, but let's keep this sort of thing down to a
5 minimum because we are moving more slowly than we need
6 to be.

7 MR. HARLOW: Appreciate that, Your Honor.

8

9

CROSS-EXAMINATION

10 BY MR. HARLOW:

11 Q. This is with regard to that Exhibit 447, or
12 at least that might help you for reference purposes.
13 John Kelley, who is to be the executive vice president
14 for all 14 states of network operations and
15 engineering --

16 A. Yes.

17 Q. -- do you know who would have held that
18 position previously with U S West or the comparable
19 position?

20 A. Currently, I think the network and operations
21 side was Greg Winn, subject so check.

22 Q. I'll accept that subject to check. I think
23 that's correct. Mr. Kelley of the network operations
24 is the person basically responsible for inside and
25 outside local telephone plant, things like loops and

00589

1 local switches and so forth?

2 A. That is correct, yes.

3 Q. That network position provides the network to
4 both wholesale and the retail side; is that correct?

5 A. Yes, I believe that's correct.

6 Q. Mr. Winn currently reports directly to the
7 CEO, Mr. Trujillo; is that correct?

8 A. I believe so.

9 Q. Mr. Kelley, however, will not report directly
10 to CEO Mr. Nacchio; is that correct?

11 A. That's correct, because I think really
12 because you are now expanding --

13 Q. I just asked whether that was correct. I
14 didn't ask the follow-up yet. Ms. Betsy Bernard, who
15 is executive vice president of consumer and small
16 business markets, that's basically the retail local
17 side of U S West; is that correct?

18 A. It would really be the combination of Betsy
19 for consumer and small business, Steve Jacobson for
20 large business, global business, and government
21 business accounts, and then Lou Wilks for the Internet.

22 Q. All three of those people you just named
23 report directly to the CEO, Mr. Nacchio; is that
24 correct?

25 A. That is correct.

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1 MR. HARLOW: Thank you. No further
2 questions.

3 JUDGE MOSS: I think that will bring us back
4 to you, Mr. Wiltsie.

5

6

REDIRECT EXAMINATION

7 BY MR. WILTSIE:

8 Q. Mr. Pitchford, Mr. Harlow cut you off what
9 you were discussing the reporting relationship between
10 Mr. Kelley and Mr. Mohebbi. Would you complete your
11 answer?

12 A. Certainly, yes. Obviously, Mr. Mohebbi is
13 now responsible for the network and operations of the
14 entire company and is a direct report to Mr. Nacchio,
15 and he will have similar but expanded responsibilities
16 to what Mr. Winn had, now on a national global basis.

17 Q. I believe in response to a question from
18 Mr. Butler, there was some time periods thrown out
19 about how long it would take to get 271 approval. When
20 the merger was announced, did Qwest have in mind a
21 certain time in which it would achieve 271 approval?

22 A. Yes. In the merger planning documents, it
23 was expected that we would have approval in all 14
24 states by the end of 2001.

25 Q. Is that still Qwest's intention?

00591

1 A. That is.

2 Q. Mr. Harlow questioned you on the certain
3 contracts for Qwest to resell Covad and Rhythms DSL
4 service. Post merger, will those contracts still be
5 honored?

6 A. Absolutely, yes, we will continue to honor
7 those.

8 Q. Finally, Mr. Trincherro indicated there had
9 been some allegations made to the FCC concerning
10 Qwest's desire to reacquire from the buyer the long
11 distance interLATA service it is to provide. Do you
12 know, to your knowledge, did Qwest respond to those
13 allegations of the FCC?

14 A. Qwest did, and it's very clear that we would
15 not have any ability to reacquire those customers at
16 any point, and I believe the FCC -- I remember the
17 wording in their argument in their order, they actually
18 reaffirmed. They felt we had responded appropriately.

19 MR. WILTSIE: I have no further questions,
20 Your Honor.

21 JUDGE MOSS: I don't imagine that spawned any
22 recross, did it? Good. Mr. Pitchford, we thank you
23 very much, and we have announced earlier that all
24 witnesses are being released subject so recall, but
25 that doesn't mean you need to stay in town. I'm sure

00592

1 your counsel will get you back here if we need you.

2 MR. WILTSIE: Your Honor, I believe Mr. Kopta
3 wanted to move some exhibits in.

4 JUDGE MOSS: Mr. Kopta, did we get that all
5 worked out?

6 MR. KOPTA: I believe we did. Also as a
7 housekeeping matter, did we admit Mr. Pitchford's
8 testimony?

9 JUDGE MOSS: Let me cut to the chase. Any
10 objection to 130-T, C-131-RT, or 132, which is a
11 prefiled direct rebuttal testimonies pertinent to this
12 witness? Hearing no objection, they will be admitted
13 as marked. Now we are to the cross exhibits.

14 MR. KOPTA: We are, and what I would like to
15 do is read a list of the exhibit numbers, and
16 Mr. Wiltsie and I have discussed this off the record,
17 and I believe that Qwest is willing to stipulate to the
18 admission or have no objection to the admission of
19 these cross exhibits. They are 362, 378, 379, 380,
20 381, 382, 383, and 388.

21 JUDGE MOSS: Does any party have any
22 objection to the admission of any of these exhibits
23 into the record? Hearing no objection, they will be
24 admitted as marked.

25 MR. KOPTA: Thank you.

00593

1 JUDGE MOSS: Are there any other matters
2 pertaining to Mr. Pitchford that we need to take up?
3 He's already on the way to the airport.

4 Now, we've had some off-the-record
5 discussions about the order of witnesses, and if I can
6 find my list here. I believe the plan that the parties
7 have put forward and have had some discussion among
8 themselves about, and I'm sure you will jump in and
9 correct me if I'm wrong, I believe well have Mr. Inouye
10 next, and then we would have Mr. Knowles, and following
11 that, Stewart. It appears that's acceptable to
12 everyone.

13 After Stewart, I'm operating under the belief
14 that we will go back to the order that was established
15 at the outset, and I'm going to ask that we try to
16 stick to that, and if witnesses have made plans that
17 make that difficult, I'm going to ask that they try to
18 change those plans because I'd like to not have to keep
19 doing this. People prepare for a cross-examination,
20 and we can't be changing this. We can't be having
21 moving targets on a daily basis. I sense you wish to
22 say something, Mr. Harlow.

23 MR. HARLOW: Yes, and you kind of caught me
24 by surprise. I thought we were take being Ms. Jensen
25 before Mr. Inouye. Is Mr. Inouye the next one up?

00594

1 JUDGE MOSS: Yes.

2 MR. HARLOW: We are not prepared to cross
3 Mr. Inouye.

4 JUDGE MOSS: He was already scheduled to
5 follow Ms. Jensen.

6 MR. HARLOW: He was scheduled to follow Ms.
7 Jensen, but we assumed Ms. Jensen would take most of
8 the afternoon; that we would have this evening to do
9 some prep for Mr. Inouye.

10 JUDGE MOSS: If it becomes a matter that you
11 feel prejudices your participation, then we may have to
12 make some special arrangement, but let's see how it
13 goes, and if we need to call Mr. Inouye back.

14 MR. HARLOW: I guess I am noting an
15 objection. If we are not prejudiced, I will ignore it,
16 and if we are, I'll ask to recall Mr. Inouye.

17 JUDGE MOSS: I expect you to bring that to
18 the Bench's attention, and we will accommodate you.
19 Above all, our interest is in affording all parties due
20 process, and we will do what we need to do.

21 MR. HARLOW: Thank you, Your Honor.

22 JUDGE MOSS: So with that, I believe we will
23 ask Mr. Inouye to approach the witness box and remain
24 standing.

25 (Witness sworn.)

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1 MR. VAN NOSTRAND: Your Honor, I note that
2 the exhibits that accompanied Mr. Inouye's rebuttal
3 testimony are not included on the exhibit list, and he
4 had Exhibit CTI-1 through CTI-5, and I'll just propose
5 to number those as 32 through 35.

6 JUDGE MOSS: I'm not with you yet. This is
7 the rebuttal testimony. CTI-1 will become 32, and then
8 the rebuttal testimony, there are 28 pages of prefiled
9 rebuttal testimony and then we have CTI-2, which will
10 be Exhibit 33 and that's a collection of data
11 responses, I gather, composite exhibit. Following
12 that, we have CTI-3, which will be 34, CTI-4 will be
13 35. There is a CTI-5, which will be 36. Is that all
14 of them?

15 MR. VAN NOSTRAND: That's all of them, Your
16 Honor.

17 JUDGE MOSS: I apologize those didn't get
18 premarked. I don't know how that slipped through.

19 MR. VAN NOSTRAND: It was all stapled as one
20 document, Your Honor.

21

22 DIRECT EXAMINATION

23 BY MR. VAN NOSTRAND:

24 Q. Do you have before you what has been marked
25 for identification as Exhibit 30-T and 31-RT?

00596

1 A. Yes.

2 Q. Do you recognize those as your prefiled
3 direct and rebuttal testimony in this case?

4 A. Yes.

5 Q. Do you have any additions or corrections to
6 make to those documents?

7 A. No, I do not.

8 Q. If I asked you the questions set forth
9 therein, would your answers be the same as set forth
10 therein?

11 A. Yes.

12 Q. You also have before you what has been marked
13 for identification as Exhibits 32 through 36?

14 A. Yes.

15 Q. Are those the exhibits which accompanied your
16 prefiled direct testimony and prefiled rebuttal
17 testimony?

18 A. Yes.

19 Q. Are they true and correct to the best of your
20 knowledge?

21 A. Yes.

22 MR. VAN NOSTRAND: Your Honor, I move the
23 admission of 30-T, 31-RT and 32 through 36.

24 JUDGE MOSS: Any objection? Hearing none,
25 they will be admitted as marked.

00597

1 MR. VAN NOSTRAND: And Mr. Inouye is
2 available for cross-examination.

3 JUDGE MOSS: Mr. Kopta?

4

5 CROSS-EXAMINATION

6 BY MR. KOPTA:

7 Q. Good afternoon, Mr. Inouye.

8 A. Good afternoon.

9 Q. I only have a couple of questions, and they
10 are focused on some responses to data requests that
11 have been marked as cross-examination exhibits. Do
12 you have any of those before you?

13 A. No, I do not.

14 MR. KOPTA: May I approach.

15 Q. The first exhibit is Exhibit 361, if you
16 would review that.

17 A. (Witness complies.) I notice that the
18 supplemental response refers to confidential documents.
19 I can't tell if I'm just looking at this confidential
20 document it's referring to.

21 Q. Then that's a fair statement. I wanted to go
22 into that after you had had a chance to review the
23 response.

24 A. I'm generally familiar with this response.

25 Q. I will represent that in a supplemental

00598

1 response, U S West provided highly confidential
2 documents, and those are not attached per the agreement
3 that we had, and if U S West certainly wants to attach
4 them, then they may, but I was concerned about having
5 any highly confidential information included in the
6 record unless absolutely necessary.

7 JUDGE MOSS: Appreciate that, Mr. Kopta.
8 That's a very useful way to proceed when you can.

9 Q. Mr. Inouye, does Exhibit 361 reflect
10 accurately U S West's response to this data request?

11 A. Yes.

12 Q. Would you turn to Exhibit 390.

13 A. I'm familiar with this, yes.

14 Q. Does Exhibit 390 accurately reflect U S
15 West's response to this data request?

16 A. Yes, it does; although, I know there is an
17 objection about it in this response. I'll leave it to
18 counsels to work that out.

19 MR. KOPTA: Thank you. That's all I have and
20 would move the admission of Exhibits 361 and 390.

21 JUDGE MOSS: Any objection? Hearing no
22 objection, they will be admitted as marked.
23 Mr. Trincherro?

24 MR. TRINCHERO: Mr. Kopta covered the ground
25 I was going to cover.

00599

1 JUDGE MOSS: Mr. Harlow?

2 MR. HARLOW: I'm prepared to either ask some
3 questions now and then probably would want to recall
4 Mr. Inouye. I think there is some question about
5 fairness, I guess, in having two cracks at a witness a
6 day apart, so I'm also prepared simply to stand by and
7 recall Mr. Inouye once we are better prepared.

8 JUDGE MOSS: When can Mr. Inouye be made
9 available again, because we did have some changes in
10 our plans that perhaps have taken some counsel a little
11 bit by surprise. We were expecting to have Ms. Jensen
12 up this afternoon.

13 MR. VAN NOSTRAND: I believe we did say
14 yesterday at the close of hearings that Mr. Inouye had
15 to be off the stand today because he was unavailable
16 Thursday and Friday, so if he needs to be recalled,
17 then that will be Monday, I guess.

18 JUDGE MOSS: Or Tuesday, actually.

19 THE WITNESS: If I could say something? For
20 me to be available in the early part of next week, we
21 would have to do that via telephone because I will be
22 out of the state.

23 MR. HARLOW: We wouldn't have any objection
24 to that, Your Honor.

25 JUDGE MOSS: I think what we are going to do

00600

1 instead -- the original schedule called for Jensen to
2 be followed by Mr. Inouye, and I was expecting that to
3 be today, frankly, and I think counsel needed to be
4 prepared for that also.

5 MR. HARLOW: We were prepared to be after the
6 break.

7 JUDGE MOSS: That's what we are going to do.
8 We are going to let the other counsel and anybody else
9 finish up with the witness now. We will move on to our
10 other witnesses, and late this afternoon, we will
11 recall Mr. Inouye to the stand and you will conduct
12 your examination then, and we will not need to recall
13 him on another day.

14 MR. HARLOW: Thank you.

15 JUDGE MOSS: How much cross do you have for
16 this witness; Mr. Butler, Mr. ffitch, cross for this
17 witness?

18 MR. FFITCH: It would just be two or three
19 minutes, Your Honor.

20 JUDGE MOSS: Ms. Johnston?

21 MS. JOHNSTON: None.

22 JUDGE MOSS: I'm sorry, I went through that
23 so quickly. Did you have a couple, Mr. Pena?

24 MR. PENA: No.

25 JUDGE MOSS: Mr. ffitch, you have a few?

00601

1 MR. FFITCH: I don't have any questions, Your
2 Honor.

3 JUDGE MOSS: Any redirect?

4 MR. VAN NOSTRAND: No, Your Honor.

5 JUDGE MOSS: We will keep Mr. Inouye here
6 until, let's say, 4:30, something like that, five
7 o'clock. How much do you anticipate; do you have an
8 idea?

9 MR. HARLOW: It looks like it's going to be
10 maybe 10 minutes, 15 minutes. It depends on how much I
11 get at the break.

12 JUDGE MOSS: We'll do that toward the end of
13 the day, and there is a need to take a brief recess
14 now. We'll take 15 minutes until 2:30. We are in
15 recess.

16 (Recess.)

17 JUDGE MOSS: Mr. Knowles, please rise.

18 (Witness sworn.)

19 JUDGE MOSS: Mr. Kopta, your witness?

20

21 DIRECT EXAMINATION

22 BY MR. KOPTA:

23 Q. Mr. Knowles, would you state your name and
24 business address for the record, please?

25 A. My name is Rex Knowles, and my business

00602

1 address is 111 East Broadway, Suite 1000, Salt Lake
2 City, Utah, 84111.

3 Q. Mr. Knowles, do you have before you what has
4 been marked for identification as Exhibit 180-T, which
5 is the direct testimony of Rex Knowles on behalf of
6 Nextlink Washington, Inc.

7 A. I do.

8 Q. Was this document prepared by you or under
9 your direction or control?

10 A. It was.

11 Q. Do you have any corrections or changes to
12 make to this document?

13 A. I have a couple. First, on Page 1, Line 2,
14 my title has since changed to vice president
15 regulatory, and I have an update with relationship to
16 the information discussed on Page 9 and Page 10 of my
17 docket with respect to interconnection trunking. Since
18 we filed testimony, Nextlink and U S West have resolved
19 the issue.

20 JUDGE MOSS: Are we making amendments to the
21 testimony, or are we just having a little supplemental
22 information here?

23 MR. KOPTA: Whatever your preference is. We
24 simply wanted to update the information to reflect that
25 this is something that has been resolved, and we didn't

00603

1 mean to make any specific changes to the document
2 itself as opposed to simply adding some additional
3 information, and we had discussed this earlier with
4 counsel for U S West.

5 JUDGE MOSS: I don't mind. I just need to
6 know if we actually need to physically change this
7 exhibit.

8 MR. KOPTA: No.

9 Q. (By Mr. Kopta) With those changes, Mr.
10 Knowles, if I asked you the questions contained in
11 Exhibit 180-T, would your answers be the same as those
12 contained in that document?

13 A. They would.

14 Q. Do you have before you also what has been
15 marked for identification as Exhibits 181 through 184,
16 which are labeled as Exhibits RK-1 through RK-4?

17 A. I do.

18 Q. Did you cause these exhibits to be attached
19 to your testimony?

20 A. I did.

21 Q. Are these exhibits true and correct to the
22 best of your knowledge?

23 A. They are.

24 MR. KOPTA: Your Honor, at this time, I would
25 move for the admission of Exhibits 180-T, 181, 182, 183

00604

1 and 184.

2 JUDGE MOSS: Hearing no objection, they will
3 be admitted as marked.

4 MR. KOPTA: Thank you, Your Honor.
5 Mr. Knowles is available for cross-examination.

6 JUDGE MOSS: I suspect the only parties would
7 be U S West and Qwest. I'll let you all determine your
8 own orders. Who would like to go first?

9 MR. VAN NOSTRAND: I will.

10 JUDGE MOSS: Go ahead.

11

12 CROSS-EXAMINATION

13 BY MR. VAN NOSTRAND:

14 Q. Good afternoon, Mr. Knowles. I assume
15 congratulations are in order for that correction on
16 Page 1?

17 A. Thank you.

18 Q. Tell me what the service quality issues you
19 raise in your testimony at Page 6, in particular you
20 refer to a number of Nextlink customers experiencing
21 outages from November '99 through January 2000. Do you
22 see that on Lines 11 through 13?

23 A. I do.

24 Q. Just to put those figures into context, could
25 you give us some idea how many customers Nextlink

00605

1 serves in Washington using U S West facilities?

2 A. I do not know that number and so I don't know
3 how to respond. I don't know that number.

4 Q. I notice your testimony discusses some
5 particular problems that Nextlink has had with service
6 quality. I was wondering if you could point to me in
7 your testimony where it describes what impact the
8 merger in and of itself would have on these service
9 quality issues that you describe in your testimony.

10 A. Certainly. If you look on Page 2, when you
11 talk about the purpose of my testimony, starting on
12 Line 12, what we talk about is the experiences that we
13 have with the problems in provisioning and maintenance
14 of facilities with U S West and how that affects the
15 development of local exchange competition and U S West
16 devoting the adequate resources to local exchange
17 market in this state.

18 That combined with the statements that are
19 later on talking about the lack of plans with respect
20 to how competition issues will be addressed by the
21 merged company, the lack of specificity related to
22 Mr. Nacchio's statements to the ROC last September, I
23 believe that was, talking about the fact that we don't
24 have any assurances here whatsoever, from what I can
25 tell, that U S West and Qwest, the merged company, will

00606

1 put together the amount of investment that is required
2 to help improve the service quality that CLEC's are
3 experiencing and the provisioning problems that we are
4 experiencing.

5 Q. You would agree with me, wouldn't you, that
6 the FCC for its part found in the order that the merger
7 in and of itself would neither create nor exacerbate
8 any problems with U S West's performance?

9 A. I have not read the FCC order. I've seen the
10 news releases; however, I would venture to say that the
11 FCC probably looked at the service performances from
12 the FCC's jurisdictional perspective. I think that the
13 state commissions each have to look at that from their
14 own perspective and make sure they can justify that
15 there will not be any harm, or hopefully, that there
16 will be some improvements.

17 Q. You turn to another point that you make in
18 year testimony, when you discuss the incentive of 271,
19 you indicate on Page 11, Line 13, that Section 271
20 certainly has not provided much of an incentive to
21 date. Do you see that in your testimony?

22 A. I do.

23 Q. Wouldn't you agree that U S West's incentives
24 to comply with 271 increase after the Qwest
25 transaction?

00607

1 A. I'm not certain. One thing I can be sure of
2 is that the incentive to have 271 approval may
3 increase, but I don't know if that necessarily
4 corresponds with the desire to comply with the
5 requirements. The ability to joint market in the
6 things that should be currently prohibited is something
7 that the company should want to do, but whether that
8 means there will be a compliance with the requirements
9 that we need to be able to provide competitive services
10 is the real issue.

11 Q. So is it your testimony that U S West could
12 achieve approval without achieving compliance?

13 A. My concern is that that type of an effort may
14 be undertaken as U S West and Qwest tried to do in
15 their previous marketing attempts.

16 Q. What does that have to do with the actions
17 that U S West and Qwest will have to do to achieve 271
18 compliance?

19 A. That's the very point. It doesn't have much
20 to do with those actions required for 271. It's an
21 attempt to go in and around and not comply and still
22 get the benefits of 271 approval.

23 Q. Would you suspect that Nextlink would have an
24 opportunity to express its views as to whether or not
25 they are complying for approval as granted?

00608

1 A. To the extent that a 271 application was put
2 in front of the appropriate jurisdictional bodies and
3 went forward, we would have that kind of opportunity,
4 but as many will recall, when the U S West - Qwest
5 marketing attempt went through, many customers were
6 already converted over before there was an opportunity
7 to get that activity stopped, and then it went to the
8 courts and took a substantial amount of time to get
9 resolved.

10 Q. I'd like to look in your testimony at the
11 bottom of Page 10. You discuss some of the other
12 remedies which Nextlink may have rather than imposing
13 conditions in this merger. One of the things you note
14 that Nextlink has an ability to bring a service quality
15 complaint against U S West; isn't that right?

16 A. That is correct.

17 Q. You also note that another remedy would be if
18 the Commission established carrier-to-carrier service
19 quality rules; is that correct?

20 A. That's another potential remedy.

21 Q. There is such a proceeding ongoing in front
22 of this Commission?

23 A. That is my understanding that there is a
24 proceeding going. We've had workshops discussing the
25 need to have a docket opened. I believe it was last

00609

1 summertime frame, and to my knowledge, I haven't seen
2 anything further proceed other than having a docket
3 open on that issue.

4 Q. Is Nextlink participating in that docket?

5 A. Yes.

6 Q. I take it the point you are making here is
7 that if the Commission would have established
8 carrier-to-carrier service quality rules, you wouldn't
9 be proposing that as a condition in this merger.

10 A. What we are looking for is to make sure we
11 have appropriate carrier-to-carrier service quality and
12 remedies to help enforce those carrier-to-carrier rules
13 to make sure that U S West will invest in the network
14 and provide services that will be adequate for
15 competing companies to provide. If that had already
16 been done and they were adequate, obviously, we
17 wouldn't want to be redundant here, but it hasn't been
18 done to date, and I don't have a time frame for when it
19 will be.

20 Q. Wouldn't that be a better form, to engage in
21 discussions rather than imposing conditions on two
22 particular parties?

23 A. The problem that I have is the same one we
24 have with the Section 271 authority approval. We don't
25 have any time frames for when U S West is actually

00610

1 going to be getting 271. It's been four years since
2 the '96 act has been approved. There hasn't been
3 substantial progress -- at least U S West has not
4 obtained 271 approval in any state that I'm aware of,
5 and I don't know what time frame that will actually be
6 dealt with, so I don't know when that will be complied
7 to.

8 The same kind of problem would be associated
9 with service quality rules. Is that a six-month time
10 frame, 12 month, two years? I don't know. What I do
11 know is that in the meantime, we continue to have
12 considerable concerns about the quality of service and
13 are concerned that we want to make sure it doesn't get
14 any worse and hopefully will improve with the merger.

15 Q. You also make the point at the bottom of Page
16 10 that it's the Commission that has refused to impose
17 any but the most general requirements when arbitrating
18 interconnection agreements. Do you see that in your
19 testimony?

20 A. I do.

21 Q. So your claim there seems to be directed more
22 at what the Commission has done in its decision
23 arbitrating interconnection agreements. Is that fair
24 to say?

25 A. In this particular case, that is the case.

00611

1 Q. What does that particular complaint have to
2 do with the issues in this merger proceeding?

3 A. I think my answer is the same as it has been
4 before, which is there are no adequate performance
5 standards nor remedies in place to assure that the
6 merged company will invest in the network and provide
7 adequate service quality to competitors after the
8 companies are merged.

9 Q. Could you look at your Exhibit 184, which are
10 these CLEC proposed competition related conditions.

11 A. Yes.

12 Q. Turning to No. 1, Part C and D, it's correct,
13 isn't it, that these conditions would impose liquidated
14 damages and competitive incentive penalties?

15 A. Yes.

16 Q. In developing this proposal, did you consider
17 whether or not the Commission has the authority to
18 impose liquidated damages?

19 MR. KOPTA: Objection; calls for a legal
20 conclusion.

21 JUDGE MOSS: Overruled.

22 THE WITNESS: I personally did not look at
23 the Commission's authority with respect to liquidated
24 damages when coming up with this.

25 Q. (By Mr. Van Nostrand) Are you aware of

00612

1 whether the Commission has ever taken a position on its
2 ability to collect damages?

3 MR. KOPTA: Same objection.

4 JUDGE MOSS: Same ruling.

5 THE WITNESS: I'm not aware.

6 Q. Turning to No. 5, the region-wide
7 most-favored-nation provision, has there been any
8 specific provision that Nextlink would identify from
9 interconnection agreements outside of Washington that
10 it would seek to include in a Washington
11 interconnection agreement?

12 A. There are a variety of issues that I think we
13 would want to look at. I have not done the specific
14 analysis of each interconnection agreement. An example
15 would be perhaps in Utah, we have an arbitrated
16 decision that allows Nextlink to get what essentially
17 is an extended loop, and that would be one of the
18 things that we would like to incorporate in all the
19 states. We don't have to go through and arbitrate that
20 in each and every state.

21 Q. No. 7 of your proposed condition would
22 require a structural separation of retail and wholesale
23 services; is that correct?

24 A. Yes.

25 Q. Is it true, did Nextlink make this very same

00613

1 proposal in its comments in the FCC proceeding
2 regarding the merger?

3 A. I don't recall what we put in our FCC
4 comments.

5 Q. Would you accept subject to check that in a
6 document dated October 1, 1999, entitled, The Joint
7 Comments of Nextlink Communications, Inc.; Advanced
8 Telecom Group, Inc.; GST Telecommunications, Inc., and
9 First World Communications, Inc., there is a discussion
10 on Page 18 entitled, The Commission should require
11 Qwest and USWC to agree to a complete structural
12 separation of the merged entity and its wholesale and
13 retail units. I can provide this document for you if
14 you want to check it.

15 A. That would be great.

16 MR. VAN NOSTRAND: May I approach the
17 witness, Your Honor?

18 JUDGE MOSS: Yes.

19 THE WITNESS: Yes.

20 Q. (By Mr. Van Nostrand) Didn't the FCC reject
21 this proposed requirement to require a structural
22 separation?

23 A. As I mentioned earlier, I did not read the
24 FCC order so I'm not personally aware if they rejected
25 or accepted or how they ordered anything.

00614

1 MR. VAN NOSTRAND: May I approach the
2 witness, Your Honor?

3 JUDGE MOSS: Yes, you may.

4 MR. VAN NOSTRAND: I'm handing the witness a
5 copy of the FCC order opened to Page 30.

6 MR. KOPTA: I would object at this point.
7 Mr. Knowles has already testified he hasn't read the
8 order. It speaks for itself to the extent that U S
9 West wants to deal with what the FCC did, the
10 appropriate places in its legal argument and its brief
11 as opposed to having the witness read the document.

12 JUDGE MOSS: Well, I think this falls within
13 the subject matter of the witness's testimony, and
14 whether or not he has read this document, perhaps we
15 should have the foundation question, and I'll just ask
16 myself, Mr. Knowles, whether you have any knowledge of
17 whether the FCC accepted or rejected any proposal to
18 require structural separation into the wholesale and
19 retail components?

20 THE WITNESS: I have no knowledge.

21 JUDGE MOSS: Then I think this is probably
22 not the right witness, and that will stand as it will.

23 MR. VAN NOSTRAND: I have no further
24 questions, Your Honor.

25 JUDGE MOSS: Mr. Wiltsie?

00615

1 MR. WILTSIE: No questions.

2 JUDGE MOSS: I had earlier expressed the
3 thought that no one would have cross-examination for
4 this witness. Does the Bench have anything?

5 CHAIRWOMAN SHOWALTER: I have one question.

6

7

CROSS-EXAMINATION

8 BY CHAIRWOMAN SHOWALTER:

9 Q. Mr. Knowles, on Page 16 of your testimony,
10 which is Exhibit 180-T, I think you are summarizing
11 your testimony when you say the bottom line is that
12 without conditions, the ratepayers will get exactly
13 what U S West and Qwest have promised, which is
14 nothing. My question to you is that it seemed to me
15 that much of your testimony or complaints about U S
16 West and your desire to have assurances that things get
17 better.

18 A. Correct.

19 Q. And that without conditions, you are worried
20 they won't get better.

21 A. And perhaps even might get worse.

22 Q. That's my question. I didn't see much in
23 your testimony that would indicate that with the
24 merger, things would get worse. What's before us is
25 merge or don't merge, and what is your basis for saying

00616

1 that a merged company would perform in a less desirable
2 or more adverse way to you on these issues you are
3 complaining about?

4 A. The basic concern stems around where U S West
5 is going to invest their money. U S West and Qwest, as
6 a combined company, have outlined plans for what I
7 understand are some substantial data deployment in a
8 variety of markets outside of U S West territory; at
9 least that's my understanding. I'm concerned they are
10 going to potentially take the money, revenue, from the
11 regulated areas and not put it back into the states or
12 not necessarily focus on the states, but rather focus
13 their investments outside of the areas where they have
14 local service issues, so that's my biggest concern is
15 that we make sure we have the investment required and
16 that the resources towards improving service
17 performance is addressed by the combined company,
18 rather than putting those resources elsewhere.

19 CHAIRWOMAN SHOWALTER: Thank you.

20 JUDGE MOSS: It appears we have nothing
21 further for this witness then.

22 MR. KOPTA: I have a couple of questions on
23 redirect.

24 JUDGE MOSS: Go ahead.

25

00617

1 REDIRECT EXAMINATION

2 BY MR. KOPTA:

3 Q. Mr. Knowles, you discussed the complaint
4 process as an alternative with Mr. Van Nostrand. Would
5 you explain why the complaint process does not address
6 or does address your concerns?

7 A. We have some concerns with the way the
8 complaint process is currently structured in that it's
9 on the a self-executing remedy for individual problems
10 that come up. When we have a held order or we have a
11 maintenance problem, the customer is affected, and the
12 customer is in each and every one of the problems
13 affected at that point.

14 What the remedy needs to be is one that is
15 appropriate to the harm at the time that the incident
16 is occurring. Nextlink, as a matter of business, in
17 order to keep their customers happy and with us is
18 required on many occasions to go to the customer and
19 try to remedy the situation ourselves, even if it's not
20 our fault, and the problem that we have with that is
21 that the customer is out of service; we may try to
22 remedy that situation after the fact. Nextlink is the
23 one providing the remedy but the person or entity that
24 is causing the problems is not subject to any kind of
25 self-executing type of penalty.

00618

1 If you looking at trying to get an aggregate
2 of an entire group of performance to be able to come to
3 the Commission with, we've got a couple of problems.
4 One is, as you go through a complaint process for a
5 group of services, obviously the facts change as you go
6 through the complaint process due to the nature of the
7 timing of that. By the time you get to the specifics
8 of a particular customer, the situation very well could
9 have been resolved, so your facts change.

10 The other issue is we, at this point, do not
11 have adequate performance reporting from U S West on
12 what they are doing so we don't have information that
13 we need to continue to provide, the Commission
14 information we need to support from both sides the data
15 we would want to put in a performance complaint. With
16 that aside, if it is still an opportunity on a
17 case-by-case basis to come to the Commission for
18 remedies, but what we are looking at in this docket is
19 what kind of overall incentives are required to help
20 push forward an improvement in the service performance
21 and quality.

22 MR. KOPTA: Thank you. That's all I have.

23 JUDGE MOSS: Nothing further? Mr. Knowles,
24 you've probably heard me say before we are releasing
25 witnesses from the stand subject to recall. So thank

00619

1 you very much. I believe our next witness is to be
2 Stewart for McLeod USA.

3 (Witness sworn.)

4

5 DIRECT EXAMINATION

6 BY MR. TRINCHERO:

7 Q. Can you please provide us your name and
8 business address?

9 A. Stacey Stewart with McLeod USA, 6400 C
10 Street, Cedar Rapids, Iowa.

11 Q. Do you have in front of you what has been
12 marked as Exhibit 190-T, your direct testimony on
13 behalf of McLeod USA previously filed in this docket?

14 A. Correct.

15 Q. Do you have any corrections to that
16 testimony?

17 A. Yeah, just one correction. On Page 11, Line
18 11, "following has failed, in roughly 80 percent." 80
19 should be changed to 20 percent.

20 Q. Do you have any other changes?

21 A. No, that's all.

22 MR. TRINCHERO: Your Honor, I'd move the
23 admission of Exhibit 190-T and tender Mr. Stewart for
24 cross-examination.

25 JUDGE MOSS: Hearing no objection, the

00620

1 exhibit will be admitted as marked. Have you entered
2 an appearance previously?

3 MS. HOBSON: I'm Mary Hobson from the Stoel
4 Rives law firm representing U S West.

5 JUDGE MOSS: Welcome to the counsel table.
6 Go ahead.

7

8

CROSS-EXAMINATION

9 BY MS. HOBSON:

10 Q. Good afternoon, Mr. Stewart. I address your
11 attention to Page 19, Line 10 of your testimony.

12 There, you state that McLeod USA is just beginning to
13 provide telecommunication services in Washington; is
14 that correct?

15 A. Sort of. It should probably read better at
16 local telecommunications services. We are a provider
17 of long-distance services in the State of Washington.

18 Q. I wanted to focus on your local service
19 provision. When were you certified by the Washington
20 Commission to do that; do you know?

21 A. I'm afraid I'm not going to be able to answer
22 that one. I don't know exactly.

23 Q. It's been within the last few months; is that
24 correct?

25 A. Yes.

00621

1 Q. Is McLeod presently serving any local retail
2 customers in the State of Washington?

3 A. To the best of my knowledge, no.

4 Q. Has McLeod purchases any services from U S
5 West in Washington in connection with the provisional
6 services to retail customers?

7 A. I'm thinking about this one because we are
8 very close to ordering services. I just don't know if
9 we have or not.

10 Q. I direct your attention back to Page 3 of
11 your testimony at Lines 10 through 12. I take it that
12 one of McLeod's chief concerns in this docket is the
13 absence, in your view, of a commitment by U S West to
14 wholesale service quality standards; is that correct?

15 A. Absolutely correct.

16 Q. As a result of this concern, you are
17 recommending that the Commission impose wholesale
18 service quality standards; is that right?

19 A. Absolutely.

20 Q. Are you aware that this Commission is
21 presently in an active carrier-to-carrier service
22 quality docket?

23 A. I was made aware that there is a proceeding.
24 We are not active in that proceeding but will become
25 active in that proceeding.

00622

1 Q. Were you aware that the parties that are
2 active in that proceeding were asked to file comments
3 last week, Friday of last week?

4 A. I'm not aware of that, no.

5 Q. Are you aware that there was a workshop
6 coming up in that docket later this month?

7 A. I found that out today.

8 Q. Is it your expectation that McLeod will be
9 participating in that workshop forum?

10 A. If at all possible, we will make ourselves
11 available and participate as we have in other states.

12 Q. Are you aware of who that docket covers; in
13 other words, that there are ILEC's other than U S West
14 involved in that docket; is that correct?

15 A. Yes.

16 Q. Are you also aware that there are CLEC's
17 participating in this docket that are not participating
18 in the present docket?

19 A. No.

20 Q. You don't know?

21 A. I'm unaware of that.

22 Q. You don't know which CLEC's are
23 participating?

24 A. No.

25 Q. Fair enough. Can you explain why, in your

00623

1 view, this merger docket is a preferable form to the
2 carrier-to-carrier service docket for McLeod to raise
3 its concerns about the wholesale service quality
4 standards?

5 A. Yes. As I heard in the previous comments,
6 our real concern is that one of the stated facts or one
7 of the stated objectives of Qwest is to address a lot
8 of these issues in 271 proceedings. However, there is
9 no really light at the end of the tunnel with 271, I
10 believe, and our company does not believe, and it will
11 be years down the road before a lot of our
12 quality-of-service issues are addressed in those
13 proceedings.

14 Short of that, I believe and we believe that
15 these proceedings are instrumental and opportunistic
16 for the state commissions to take a stand for quality,
17 which is evident in the settlement agreement that has
18 been put before this Commission on the retail side.
19 There is every reason in the book to get those for the
20 wholesale side as well, and that's what we would
21 promote, and that's why this merger is an excellent
22 opportunity to do that, just like it was an excellent
23 opportunity to it on the retail side.

24 Q. I think you misunderstood my question. The
25 question was specifically directed to why I felt this

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1 merger docket was superior to this Commission's
2 carrier-to-carrier service quality docket, which, as
3 you've already testified, is proceeding as we speak.

4 A. Again, there is no -- I'm sure there has been
5 CLEC's in the State of Washington for awhile without
6 quality of service parameters, and I guess we could be
7 hopeful that those get put in place, and we could also
8 be hopeful that they are stringent enough to satisfy
9 the needs of the CLEC, but again, there is nothing in
10 place today, and I guess we could leave it to chance
11 they get done in the foreseeable future.

12 Q. Is it your view that participating in this
13 Commission's proceedings on carrier-to-carrier service
14 quality is leaving the question to chance?

15 A. The time frame, yes. It could be a month; it
16 could be a year. We don't know. I've never been
17 before this Commission nor our company. That aside as
18 well, these kind of proceedings could take awhile.

19 Q. As I understand your testimony, you are not
20 here, at least for the most part, because of issues
21 that you've experienced in connection with dealing with
22 U S West in the State of Washington; is that correct?

23 A. U S West is in 14 states. We look at them as
24 one supplier, and no, we don't have issues in
25 Washington yet.

00625

1 Q. Are you then anticipating that you will
2 encounter issues with U S West in the future?

3 A. We are not profits, but it has been our
4 experience that other states that we have expanded into
5 we've had problems, and history tells us that these
6 problems exist in every single state in U S West
7 territory. Washington will be no different.

8 Q. You expect those issues to arise whether or
9 not U S West and Qwest complete this merger; is that
10 correct?

11 A. That is correct.

12 Q. I direct your attention to Page 6 of your
13 testimony. There, at Lines 4 through 7, you state, As
14 both supplier of essential inputs to McLeod USA's
15 operations and a competitor of McLeod USA, U S West has
16 the incentive to withhold these inputs or to provide
17 them to McLeod USA on discriminatory terms and
18 conditions. Is that your testimony?

19 A. Yes, it is.

20 Q. Isn't that exactly why congress enacted the
21 requirements of Sections 251 and 271, and isn't that
22 why the FCC has entered orders and enacted rules, to
23 govern how RBOC's like U S West will be required to
24 open their networks and provide access to their
25 competitors?

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1 A. I believe the FCC's orders and the
2 Telecommunication Act does cover a vast majority of
3 that, yes.

4 Q. I direct your attention now to Page 26, and
5 there, beginning on Line 3, you state that there can be
6 little doubt that the service provided by U S West will
7 get worse if the merger is approved and that, in your
8 words, "The incentives for U S West to engage in an
9 anticompetitive conduct will only be exacerbated." Do
10 you see that testimony?

11 A. I do.

12 Q. Are you familiar with the positions that
13 McLeod has taken with the FCC on this merger?

14 A. I am.

15 Q. Are you familiar with the petition to deny
16 that was filed by McLeod on October 1st, 1999, with the
17 FCC concerning this merger?

18 A. Familiar with it, yes.

19 Q. Are you aware that some of the language
20 contained in that petition to deny is very similar to
21 the language contained in your testimony filed with
22 this Commission?

23 A. Yes.

24 Q. Did you consult that document in preparing
25 your testimony?

00627

1 A. Yes.

2 Q. In your petition to deny that was filed with
3 the FCC last October, didn't McLeod make the same
4 argument regarding the effect of the merger
5 exacerbating the anticompetitive incentives of U S West
6 and Qwest?

7 A. Yes.

8 Q. Have you reviewed the FCC's order of March 10
9 of this year?

10 A. I have not.

11 Q. Have you read the order?

12 A. I have not, sadly, I have not.

13 Q. Have you seen or heard accounts in the press
14 as to what that order provided?

15 A. Yes.

16 Q. Have you been briefed internally on what the
17 belief your company has as to what that order provided?

18 A. Really only in informal conversations, but
19 not an official briefing from the company, no.

20 Q. Are you aware that the FCC rejected the
21 argument that the incentives presented by the merger
22 cut against the company's likely compliance with 251
23 and 271?

24 A. I'm not aware of that language.

25 Q. Are you aware of what the FCC, what you

00628

1 understand the FCC ruled with regard to the merged
2 companies' incentives for compliance with 251 and 271?

3 A. Short of knowing that they approved it, I
4 don't know much more about the order.

5 Q. Your testimony catalogs a number of things
6 you claim U S West has done, in your word, to act on
7 disincentives to the disadvantage of McLeod. That
8 testimony appears on Page 6 of your exhibit. The first
9 of these, as I understand it, was the attempted
10 withdrawal and grandfathering of the Centrex problem.
11 Do you recall that?

12 A. Yes.

13 Q. Whether did that occur?

14 A. I think there were several instances where it
15 happened at state levels, but I believe it happened at
16 the federal level a week after the Telecommunications
17 Act was passed, I believe, somewhere in that vicinity.

18 Q. So it was in 1996?

19 A. I believe so.

20 Q. Early 1996? That issue, whether or not U S
21 West will be permitted to withdraw Centrex so it cannot
22 be resold has been resolved, has it not?

23 A. I believe it has, yes.

24 Q. You've gotten decisions from state regulatory
25 commissions, and some have allowed that withdrawal and

00629

1 others have not; isn't that correct?

2 A. After a lot of money, time, and effort, yes,
3 those are the type of decisions that we have, yes.

4 Q. Likewise, your concern about access to
5 nonblocking NARS, that was resolved in 1998, was it
6 not?

7 A. Access says to those NARS, yes. Pricing of
8 those NARS are still in question today.

9 Q. Do you happen to remember when McLeod and U S
10 West were involved in the assumed dial-9 issue that you
11 refer to in your testimony?

12 A. Yes.

13 Q. When was that?

14 A. I believe it was in the '96 time frame as
15 well, probably '97. I'm not sure. It's in my
16 documents.

17 Q. Would it surprise you that that issue
18 appeared to arise prior to the passage of the
19 Telecommunications Act of '96 in February?

20 A. With so many issues, it could have been then,
21 yes.

22 Q. Is that an issue between McLeod and U S West
23 today?

24 A. To the best of my knowledge, no.

25 Q. In fact, isn't the case, Mr. Stewart, that

00630

1 you yourself characterize much of the supporting
2 evidence that you've provided to this Commission as
3 past history?

4 A. History, yes.

5 Q. Past history.

6 A. Past history.

7 Q. Directing your attention to Page 9, you are
8 talking about what you term U S West's tactics that
9 continue to the present day, and you mention McLeod's
10 ability to deploy collocation. That's on Line 21; do
11 you see that testimony?

12 A. Page number again?

13 Q. Page 9.

14 A. Question again?

15 Q. My only question is, is that an issue for you
16 in Washington?

17 A. I don't know.

18 Q. To the best of your knowledge, has McLeod
19 been blocked in any effort to collocate in Washington?

20 A. Again, I do not know.

21 Q. To the extent that that issue has not arisen
22 in Washington, is this one of the things you expect you
23 will see coming down the pike?

24 A. I think there is strong likelihood, given the
25 performance of our collocation deployment in other

00631

1 states, yes.

2 Q. So this is, in a sense, a future problem you
3 anticipate with U S West.

4 A. Near term, yes.

5 Q. Shifting gears a little bit, at Page 25 of
6 your testimony -- and I apologize for jumping back and
7 forth -- there, you are discussing mechanisms or
8 remedies that may be able to McLeod to resolve its
9 service quality issues. You admit, do you not, that
10 you could utilize the dispute resolution provisions of
11 your interconnection agreement with U S West?

12 A. That is one option we have at our avail, yes.

13 Q. You also admit there is a state regulatory
14 complaint process.

15 A. In most states that's correct, yes.

16 Q. Do you have any reason to believe that isn't
17 the case in Washington?

18 A. I know it's the case here.

19 Q. Aren't there also state regulatory
20 rule-makings and policy dockets, such as the Washington
21 carrier-to-carrier service quality docket, that would
22 give you a forum to raise these issues?

23 A. I don't know what kind of forum is presented
24 with carrier-to-carrier docket, but I'm certain there
25 are other forums that we could do that at the state

00632

1 level. My concern or real reason for bringing this up
2 in this setting is that those type of processes can
3 take a long time. When you have customers that are out
4 of service, customer impacting issues, that's where we
5 need to have a quick turnaround and some kind of
6 expedited process to take care of those issues.

7 Q. You mentioned collocation. Are you also
8 aware that the Washington Commission is currently
9 conducting a rule-making on collocation?

10 A. I'm not aware of that.

11 Q. On OSS issues that you've also raised in your
12 testimony, are you aware that there is a ROC testing
13 initiative that is taking place that's addressing that
14 issue?

15 A. Yes. We are currently on the committee and
16 on the tag group, yes.

17 Q. Referring back to your testimony on Page 25,
18 you state that the complaint proceedings are not your
19 first choice because, as you stated there at Line 9,
20 "they are expensive for CLEC's which do not have the
21 legal or financial resources comparable to U S West."
22 Do you see that testimony?

23 A. I do.

24 Q. It isn't really a difference of legal and
25 financial resources so much as the rules of the game,

00633

1 isn't it, Mr. Stewart?

2 A. It certainly is the expense and legal
3 wranglings that occur at the state level, and it takes
4 a lot of time and resources from a start-up CLEC to
5 invest their time and resources to take care of what
6 could be perceived as small issues to some parties, but
7 they are very, very big issues to the CLEC's.

8 Q. But I'm trying to focus for the moment on the
9 type of forum that you are talking about, and isn't it
10 the case that state regulatory commissions before they
11 make decisions on things like service quality standards
12 and so forth develop evidentiary records?

13 A. Yes, I suppose so, yes.

14 Q. They ask to be briefed on the applicable law,
15 and they can attempt to consider the validity of the
16 all the arguments that are presented to them. Isn't
17 that what commissions do?

18 A. Yes.

19 Q. While we're on the subject of participating
20 in state regulatory proceedings, I want to direct your
21 attention over to Page 13 of your testimony. There, at
22 Line 14, you stated, "U S West has engaged in general
23 abusive process by doing such things as making tariff
24 filings and advancing arguments that it knows will be
25 rejected because they have already been rejected in

00634

1 other states. All just to impose on McLeod USA and
2 other competitors the waste of expense participating in
3 unnecessary regulatory proceedings." That is your
4 testimony?

5 A. It is.

6 Q. By offering that testimony, Mr. Stewart, are
7 you suggesting that there is something wrong with the
8 party offering up a legal position before a regulatory
9 body once that position has been rejected by other
10 commissions or other jurisdictions?

11 A. I think what I'm trying to say in my
12 testimony is that as a CLEC, we treat U S West as a
13 single entity, and to try to battle the giant in 14
14 different states is incredibly expensive and a complete
15 waste of our resources, if, in fact, there is a ruling
16 that says, this is the way business should be done,
17 whether that's at the federal level or state level.
18 That's what I'm trying to portray in my testimony here.
19 We as CLEC's do not have the type of resources
20 necessary to fight in every state commission.

21 Q. So it is your testimony that once a decision
22 has been made by one state regulatory commission, that
23 ought to be binding across the various commissions; is
24 that your view?

25 A. No. Each Commission has a different set of

00635

1 rules and different set of circumstances for their
2 state. What I'm saying is that the practices in my
3 testimony are particularly related to a particular
4 product or service or offering that U S West just chose
5 not to want to provide it across the board, and they
6 take opportunity to address this on a state-by-state
7 proceeding, and that's where we have our problem.

8 Q. As a matter of fact, with regard to the
9 Centrex product, taking it on a state-by-state level,
10 some of the states agreed with McLeod's position and
11 some of them agreed with U S West's position; isn't
12 that correct?

13 A. That is correct.

14 MS. HOBSON: Thank you. That's all the
15 questions I have.

16 JUDGE MOSS: Mr. Wiltsie?

17

18

EXAMINATION

19 BY MR. WILTSIE:

20 Q. I just wanted to be sure; what is your
21 position with McLeod?

22 A. Vice president of ILEC relations.

23 Q. As vice president of ILEC relations, you
24 would be familiar with the ongoing regulatory
25 proceedings that involve the various ILEC's.

00636

1 A. Most of our regulatory initiatives and
2 functions are handled by our law group. I primarily
3 have responsibility for the business to business
4 relationships of the ILEC's.

5 Q. So you wouldn't necessarily then need to know
6 that there was a carrier-to-carrier docket in this
7 state.

8 A. Not necessarily, no.

9 Q. But in your normal course of your business,
10 you would know that such a docket was open.

11 A. I hope I would, yes.

12 Q. And you didn't know that for Washington.

13 A. Primarily because --

14 MR. TRINCHERO: Objection, Your Honor. That
15 mischaracterizes the earlier testimony in which he said
16 he was aware that there was a docket opened in the
17 state, I believe.

18 MR. WILTSIE: The testimony will speak for
19 itself, Your Honor. I believe he said he found out
20 today.

21 Q. (By Mr. Wiltsie) Mr. Stewart, you testified
22 in Iowa.

23 A. I did.

24 Q. McLeod is a very large employer in Iowa;
25 correct?

00637

1 A. Correct.

2 Q. I believe it's the largest employer in the
3 state.

4 A. Not correct.

5 Q. How many employees does it have in Iowa?

6 A. 3,500, perhaps.

7 Q. The testimony you filed here is pretty
8 similar to the testimony you filed in Iowa, isn't it?

9 A. Very similar, yes.

10 Q. And the Iowa board ruled last week to not
11 disapprove the merger; is that correct?

12 A. They agreed not to disapprove the merger.

13 Q. And that is the statutory standard in Iowa?

14 A. Correct.

15 MR. WILTSIE: I have no further questions.

16 JUDGE MOSS: Any redirect, Mr. Trincherro?

17 Any questions from the Bench.

18 CHAIRWOMAN SHOWALTER: I have one.

19

20 CROSS-EXAMINATION

21 BY CHAIRWOMAN SHOWALTER:

22 Q. Mr. Stewart, I'm going to ask you a similar
23 question that I asked the previous witness. You've
24 cataloged a list of complaints against U S West, and
25 then on Page 26, you say in Line 3, There can be little

00638

1 doubt that both retail and wholesale service provided
2 by U S West will only get worse if the merger is
3 approved, and where in your testimony is support for
4 that proposition, that things will get worse with the
5 merger?

6 A. I think it's in here. Our concern is the
7 potential of the revenues being funneled off and not
8 being reinvested in the infrastructure within the
9 states, and I believe I address that in my testimony.
10 Our real concern is that Qwest, being a multi-national
11 company, we stand to find that revenues could be
12 funneled off of the investment in the local communities
13 and the local states into other states that are not in
14 the footprint or in the international marketplace.

15 Q. So you have answered with a potential adverse
16 consequence of the merger. Your statement here that
17 you have little doubt that it will get worse is a bit
18 stronger than saying you have a fear of a potential
19 adverse consequence.

20 A. From our viewpoint, it's very, very apparent
21 that won't might just happen; that will happen; that
22 there is much more incentive in -- Dr. Bridger Mitchell
23 (phonetic) outlines it very well in his testimony.
24 There is much more than incentive for Qwest to funnel
25 off those revenues; thus, taking away valuable

00639

1 resources from U S West that could be in support of the
2 wholesale carriers in the retail customers as well.

3 CHAIRWOMAN SHOWALTER: Thank you.

4 JUDGE MOSS: Any redirect?

5 MR. TRINCHERO: None, Your Honor.

6 JUDGE MOSS: Thank you very much,
7 Mr. Stewart. We release you from the stand subject to
8 being recalled, and we thank you very much for your
9 testimony.

10 I was looking to find Mr. Harlow to see if we
11 could perhaps proceed.

12 MR. TRINCHERO: He indicated to me he had to
13 make a very quick phone call. I'll check for you.

14 JUDGE MOSS: Let's go off the record for a
15 few minutes.

16 (Discussion off the record.)

17 MR. HARLOW: Your Honor, could I have five
18 more minutes?

19 JUDGE MOSS: Let's take a five-minute recess.

20 (Recess.)

21 JUDGE MOSS: Mr. Inouye, I remind you that
22 you remain under oath.

23 MR. HARLOW: Thank you, Your Honor. I
24 apologize for being so ill prepared. It's kind of a
25 situation where ordinarily we would have expected the

00640

1 staff to cover a lot of this ground, but because of the
2 settlement, naturally, some of that is taken out.
3 Thank you for coming back, Mr. Inouye.

4

5

CROSS-EXAMINATION

6 BY MR. HARLOW:

7 Q. First of you all, on Page 12 of your rebuttal
8 testimony, you see the financial analysis in the middle
9 of the page there?

10 A. Yes, I do.

11 Q. Is there anything in that financial analysis
12 in any of the numbers that reflects depreciation
13 expenses?

14 A. No, there is not. The Line 14 less operating
15 expenses are only those operating expenses other than
16 depreciation.

17 Q. I just want to try to get a better feel for
18 what's included in this analysis when you talk about
19 regulated operations. What would be included in
20 regulated operations?

21 A. It's what the Commission regulates in this
22 state. I believe it's the testimony, which this is
23 rebuttal to staff testimony. Staff's testimony was
24 referring to the revenues of the regulated customers.

25 Q. It would include interstate revenues?

00641

1 A. No. This is only intrastate. It's within
2 the jurisdiction of this Commission.
3 Q. Are the expenses also jurisdictionally
4 allocated?
5 A. Yes.
6 Q. And capital expenditures as well?
7 A. Yes. I think I explained that.
8 Q. What about vertical switching features that
9 may have been competitively classified?
10 A. Those revenues are considered part of
11 regulated revenues by this Commission.
12 Q. Do you know what U S West's total regulated
13 and unregulated cash flow derived from Washington is?
14 A. Are you asking me what the total revenues
15 are?
16 Q. Total of regulated and unregulated.
17 A. The total of regulated and unregulated
18 revenues in this state?
19 Q. Yes.
20 A. I couldn't tell you that offhand.
21 Q. Do you know if it's a positive or negative
22 number?
23 A. Revenues are always a positive number.
24 Q. No, your cash flow.
25 A. The cash flow?

00642

1 Q. Yes.

2 A. I'd have to go look. I don't know. I'd have
3 to go out and look.

4 Q. On Page 13 in the introduction to your
5 section on the Advanced Services Subsidiary, your
6 testimony addresses planning, financial, and accounting
7 issues associated with such a requirement. Do you
8 recall that?

9 A. Yes.

10 Q. You haven't done any kind of a detailed
11 financial analysis of creation of such a subsidiary,
12 have you?

13 A. No.

14 Q. Have you done any accounting analysis of such
15 a subsidiary?

16 A. No.

17 Q. You talk at great length, two or three pages
18 here, about staff's showing or lack thereof about the
19 need for advanced services subsidiary. Is that a fair
20 statement?

21 A. Yes.

22 Q. Are you aware that Covad and other
23 intervenors in this docket have also proposed an
24 advanced services or data subsidiary?

25 A. Yes, I am.

00643

1 Q. You are aware that they provided testimony in
2 support of that recommendation?

3 A. Yes.

4 Q. Correct me if I missed it, but I didn't see
5 anywhere in your testimony where you presented the
6 evidence by the intervenors; is that correct?

7 A. I think I may have made reference to, but if
8 you ask me in I asked the same types of data requests
9 of the other intervenor witnesses on the subject
10 matter, the answer is no, I did not.

11 Q. On Page 15 of your testimony, you noted that
12 the parties proposing the establishment of an advanced
13 services subsidiary --

14 A. Where are you reading from?

15 Q. Page 15, starting on Line 9.

16 A. Yes.

17 Q. You noted that the parties proposing advanced
18 services subsidiary haven't addressed how a subsidiary
19 would be given operations?

20 A. Yes, I see that.

21 Q. Could U S West accomplish the creation of
22 such an advanced services subsidiary?

23 A. I think eventually that that could be
24 accomplished.

25 Q. Are you aware that SBC and Ameritech created

00644

1 such a subsidiary in connection with their proposed
2 merger?

3 A. I have heard that they were going to. I
4 don't know if they have, in fact, done that.

5 Q. Indeed, your testimony proposes your own set
6 of conditions to creation of such a subsidiary?

7 A. Yes.

8 Q. So that reflects that under at least some set
9 of conditions, such a subsidiary could be created
10 successfully?

11 A. I don't believe I said that. In all
12 circumstances one could not be created. The point of
13 my testimony here is that unless these kind of issues
14 that I raised in my testimony are resolved quickly, I
15 would doubt very seriously if the company could set up
16 such a subsidiary in the time frame that I think in
17 particular was specified in staff's testimony, which
18 was a very short time period.

19 Q. Is there any reason that the general
20 condition of creation of an advanced services
21 subsidiary couldn't be ordered as a condition of this
22 merger and the details and the implementation of that
23 subsidiary would be worked out at a later time?

24 A. I think my point to the Commission is that if
25 such were done, that it would be a very long time

00645

1 before all the issues were resolved, and that in doing
2 so, U S West and Qwest, the merged company, would be
3 highly disadvantaged, and I stated as a basis for my
4 testimony, it's my experience in the kind of dockets
5 that would subsequently fall, as Mr. Harlow is
6 suggesting, there would be considerable disputes as to
7 the kind of issues I raised in my testimony as to how
8 do you accomplish such a thing, especially removal of
9 customers, business records, assets, employees and all
10 the like and move that over in a manner that would not
11 be disadvantageous to the merged company.

12 Q. Could we start with the SBC Ameritech example
13 as a starting point and then build from there; would
14 that save sometime?

15 A. Other than knowing about it, I don't know the
16 details of them.

17 Q. Do you think it would be prudent for the
18 Commission to look at that experience with SBC and
19 Ameritech as a potential starting point?

20 A. I don't know what they have done. I don't
21 know the circumstances.

22 Q. Are you aware of whether or not U S West is
23 considering for its own purposes the establishment of
24 an advanced services subsidiary?

25 A. I don't know what's being considered right

00646

1 now.

2 Q. I'm not sure whether you intended to speak to
3 specifics or generalities. Are you generally aware
4 that the company is or may be considering creation of
5 an advanced services subsidiary?

6 A. I think the company is considering a lot of
7 different options. Whether or not they are considering
8 that one, I can't tell you from firsthand knowledge.

9 Q. Can you tell us from having heard this from
10 your colleagues at U S West?

11 A. Are they looking at an advanced service sub?

12 Q. Yes.

13 A. I don't know.

14 Q. Who would be the witness who could address
15 that question with knowledge?

16 A. I don't know.

17 MR. HARLOW: Counsel, do you have any
18 witnesses?

19 JUDGE MOSS: Mr. Harlow, I'm going to ask you
20 to direct all your comments to the Bench, please, when
21 we are on the record.

22 MR. HARLOW: I guess we will try with the
23 other witnesses then.

24 Q. (By Mr. Harlow) Starting on the bottom of
25 Page 16 and then continuing onto the top of Page 17,

00647

1 you talk about the terms under which U S West should
2 be -- terms that it should apply if U S West were to
3 establish an advanced services subsidiary, and you talk
4 about transfer of various assets. Do you see that
5 testimony?

6 A. Yes, I do.

7 Q. I'd like to go through some of those broad
8 elements and get a little more detail for the record.
9 Existing intrastate customers, is there a distinction
10 between intrastate and interstate customers?

11 A. There is in my testimony. I believe that as
12 I explained in my testimony, what would be relevant to
13 this Commission would be the customers who subscribe to
14 interstate services.

15 Q. Can you give us examples of those interstate
16 services?

17 A. I can't name specifically the interstate
18 services. I don't believe, at least in the staff
19 testimony that I recall, that a specific definition of
20 what the advanced services was given in that testimony.

21 Q. What about interstate services; can give
22 examples of interstate customers? Excuse me?

23 A. Subscribers to megabit service, which, I
24 believe, is an interstate service.

25 Q. Why haven't you included transfer of

00648

1 interstate customers?

2 A. Because it's not subject to the jurisdiction
3 by this Commission.

4 Q. Are you giving an opinion that the Commission
5 cannot establish as a condition of the merger transfer
6 of an interstate service?

7 A. I'm stating my belief based upon my
8 experience.

9 Q. Are you an attorney, Mr. Inouye?

10 A. No, I'm not.

11 Q. The next thing would be customer contracts,
12 which I assume would be the contracts with the
13 transferred customers?

14 A. I'm sorry. I was thinking that I wasn't
15 finished with my last answer.

16 JUDGE MOSS: Do you want to complete your
17 last answer? Go ahead.

18 THE WITNESS: I would. I would like to point
19 out to the Commission that the question that Mr. Harlow
20 is posing is exactly the kind of question that if this
21 were left, the whole subject were left for a later
22 proceeding, it's illustrative of the disputes, the
23 legal issues, and the financial issues that would be
24 the subject of that docket.

25 This would not be a very clean theme for the

00649

1 company to proceed on. I think what Mr. Harlow is
2 pointing out is that the possibility of a party arguing
3 that the transfer of interstate services-related
4 revenues that a party will argue, that has to have the
5 approval and be subject to conditions placed by the
6 this Commission.

7 The company would not agree with that
8 position, traditionally. Jurisdictional split between
9 state and interstate would apply here. I would expect
10 that would be an issue before this Commission. It's
11 just an illustration that doing what the parties are
12 asking and just ordering advanced service sub and
13 leaving the details until later would cause this, I
14 think, the merged company to have to head down a road
15 that would take years to get resolved, potentially, in
16 court.

17 JUDGE MOSS: Does that complete your answer?

18 THE WITNESS: Yes.

19 Q. (By Mr. Harlow) More complete than I hoped
20 for. The follow-up question then was transfer of all
21 customer contracts. I assume that would be the
22 contracts for the customers that would be transferred?

23 A. Yes, for interstate services.

24 Q. What about business records, would that
25 include CPNI or non advanced services customers?

00650

1 A. I'm not real familiar with CPNI, so I'm not
2 quite sure if I'm qualified to answer that.

3 Q. Would that include information about
4 customers that, let's say, just local exchange
5 customers who would not have subscribed or not
6 transferred customers?

7 A. My reference there was very generally, Mr.
8 Harlow, that an advanced service sub cannot start
9 operations that become an ongoing concern without the
10 business records upon the related business records of
11 the customers, which they now have the responsibility
12 to provide service for, so some records -- and I can't
13 tell you exactly which records. Some business records
14 would have to be transferred over.

15 Q. Were you around when the publishing arm of
16 U S West was transferred to DEX?

17 A. I was employed by the company, yes.

18 Q. Are you familiar with what had to be
19 transferred to accomplish that?

20 A. Generally, yes.

21 Q. Was that accomplished in due course, or was
22 that problematic in some way?

23 A. That is problematic to this day.

24 Q. I think we probably know the issue to which
25 you are referring.

00651

1 A. I'm sure the Commission is very much aware.
2 We spent a very long docket recently on that matter.

3 Q. But you got the employees transferred over
4 successfully, I assume?

5 A. Yes.

6 Q. And contracts with the subscribers to the
7 Yellow Pages ads transferred?

8 A. Yes.

9 Q. And the business records that were needed
10 were transferred?

11 A. Yes.

12 Q. And the company is operating successfully, I
13 assume?

14 A. The company is operating successfully. Never
15 the less, there are still regulatory issues around all
16 those things that you just mentioned.

17 Q. Are the commissions of the various states
18 dealing with those from time to time?

19 A. This Commission is currently dealing with
20 that.

21 Q. What were the assets transferred at? Were
22 they transferred at net book value as you urge on Page
23 16 of your rebuttal testimony or some other value?

24 A. Physical assets were -- I can describe the
25 accounting that took place at that time, and that is

00652

1 that the physical assets were transferred at net book
2 value. Primarily, the physical assets consisted of
3 cash.

4 Q. How about the intangible assets?

5 A. That is subject to dispute before this
6 Commission.

7 Q. Would that dispute continue to exist had the
8 -- let me just stay away from that. We've gone far
9 enough down that road. Let's come down to the middle
10 of Page 16, Line 15, and you also urge that U S West
11 should be allowed to transfer, quote, "the physical
12 telephone plant." Do you see that testimony?

13 A. Yes, I do.

14 Q. What does this include, in your
15 contemplation?

16 A. I don't know since the parties are
17 advocating, the moving parties, on this suggestion.
18 I've not seen the parties articulate clearly what it is
19 this advanced subsidiary that they are advocating the
20 Commission order.

21 Q. Would you be willing not to transfer the
22 telephone plant at all if that did not prove to be
23 necessary for creation of the subsidiary?

24 A. The answer to that is no.

25 Q. So what do you think would necessarily or

00653

1 ought to, in your opinion, be transferred, what part of
2 the telephone plant? Should I walk you through it?

3 A. You may. As far as I'm aware of, I believe
4 in staff's testimony they refer to the -- it slips my
5 mind right now. There would be -- maybe it would be
6 best if you walk me through it because I'm drawing a
7 blank right now on some of the services that were
8 mentioned by staff.

9 Q. Do you feel loops would have to be
10 transferred?

11 A. I can't answer that.

12 Q. What about interoffice fiber or other
13 broadband interoffice facilities?

14 A. It's a possibility.

15 Q. How about remote terminals?

16 A. I'm not sure what you mean by remote
17 terminal.

18 Q. I'm not sure either. Mr. Deanhardt isn't
19 here. How about DSLAMS? I do know what those are.

20 A. That would be my expectation, yes.

21 Q. How about ATM switches?

22 A. Yes.

23 Q. If the DSLAMS were transferred to a separate
24 advanced services subsidiary, do you have any
25 understanding as to whether or not the subsidiary would

00654

1 make those available as an unbundled network element to
2 CLEC's?

3 A. I don't think I could answer that with any
4 certainty.

5 Q. Are you aware that for purposes of
6 divestiture of interLATA toll that the applicants are
7 proposing to divest the customers but retain the
8 physical assets used to provide the interLATA
9 long-distance services?

10 A. I am not familiar with the Qwest testimony.
11 I couldn't answer that.

12 Q. Assume that as a hypothetical. If that's
13 hypothetically true, could U S West in creating an
14 advanced services subsidiary essentially do the same
15 thing; that is, transfer the customers, I suppose the
16 business records and contracts by retaining the
17 telephone plant with the parent?

18 A. That would not be my advice to the company.

19 Q. Could that structure be accomplished,
20 however, if the Commission so ordered?

21 A. I'm not going to speculate on what the
22 Commission might order. I think, again, that's
23 illustrative of the issues that would cloud this whole
24 subject of being required to set up an advanced service
25 sub.

00655

1 Obviously, what your client is asking,
2 Mr. Harlow, is for a decision to be made and all
3 particulars of that decision to be left for later, and
4 what I'm cautioning the Commission on is that doing so
5 will not accomplish anything very quickly. Mr. Harlow,
6 your questions are illustrative of the kinds of issues
7 that would have to be resolved later and the degree of
8 contentious that those issues will attract.

9 MR. HARLOW: Your Honor, I believe I asked a
10 direct yes or no question, and I heard the explanation,
11 but I don't think we got a direct yes or no answer as
12 part of that.

13 JUDGE MOSS: Try your question again.

14 Q. (By Mr. Harlow) At the risk of being
15 repetitive, if, assuming hypothetically, the Commission
16 were to order U S West as a condition of the merger to
17 create an advanced services subsidiary, could the
18 company transfer the customers and the customer
19 contracts and the business records to the subsidiary
20 but retain in the parent the telephone plant; would
21 that be feasible?

22 A. When you say it's feasible, are you asking me
23 if that's technically feasible, financially,
24 economically feasible?

25 Q. All of the above, but if you have a different

00656

1 answer for different elements, we may need to go
2 through each individually.

3 A. I can tell you in my position in the company
4 my advice to the company would be that that is not
5 financially feasible; that that subsidiary will not be
6 able to live in the marketplace without the ability to
7 control its own facilities just as your client does.

8 Q. Would it be technically feasible?

9 A. I couldn't tell that you.

10 Q. You advocate at Page 16 of your rebuttal
11 testimony that these assets to be transferred at net
12 book value. Do CLEC's get charged net book value for
13 using collocation space and telephone plant, UNE's, I
14 guess?

15 A. My understanding is those prices are set
16 according to TSLRIC, which in essence is a
17 forward-looking cost on the current technology, and
18 that is, in essence, what embodies something very
19 similar to what you are saying, net book value, but
20 it's not the net book value in the accounting sense
21 that I'm familiar with.

22 Q. Net book value is essentially a depreciated
23 historic cost, isn't it?

24 A. Yes. That's what I was referring to in my
25 previous answer.

00657

1 Q. So if the plant transferred or a piece of the
2 plant transfer had been appreciated to zero, then under
3 your proposal, the affiliate would get the plant for
4 zero; is that correct?

5 A. In the hypothetical, but I doubt very
6 seriously if it's been depreciated to zero.

7 Q. If the company were to hypothetically retain
8 that asset and awarded to be purchased by the CLEC as
9 an unbundled network element, the CLEC would pay TELRIC
10 for that same asset; is that correct?

11 A. It's my understanding of how UNI's are set is
12 based upon TSLRIC, not based upon the imbedded cost,
13 the cost that the company is actually carrying on its
14 book.

15 Q. In the analysis of your testimony then, the
16 CLEC's payment of that TELRIC rate would become an
17 inappropriate subsidy to basic change; is that correct?

18 A. I don't agree with that.

19 MR. HARLOW: Thank you, Mr. Inouye. That's
20 all the questions I have.

21 JUDGE MOSS: Any redirect?

22 MR. VAN NOSTRAND: No.

23 JUDGE MOSS: There are some questions from
24 the Bench.

25

00658

1 CROSS-EXAMINATION

2 BY COMMISSIONER HEMSTAD:

3 Q. I want to pursue one point that Mr. Harlow's
4 questioning raised with me, and that's on Page 12 and
5 the description of cash flow from Washington. He made
6 the point that a negative cash flow does not include
7 depreciation flow at all, does it?

8 A. No, it doesn't. You wouldn't charge
9 depreciation expense. You do have a net cash flow
10 analysis as I've done here. You don't charge or reduce
11 that cash flow by depreciation because depreciation is,
12 of course, a noncash expense, so you only subtract from
13 your revenues cash expense, expenses you incur that you
14 also pay out the cash at the same time.

15 Q. I'm not an accountant, and I will quickly be
16 over my head here, but the depreciation represents
17 dollars in hand, does it not?

18 A. Yes, they do. In a ratemaking sense, it
19 represents dollars in hand because you set rates to
20 incorporate in that depreciation, but where I've done
21 that is on Line 13. When you look at the revenues from
22 the regulated customers, that reflects the ratemaking
23 that this Commission has done in the embodiment of that
24 depreciation in the revenue flow or in the cash flow.

25 Q. So is it the thrust of this testimony that

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1 taking into account depreciation, that there is a
2 negative cash flow in Washington?

3 A. Yes.

4 Q. These figures, since it references regulated
5 operations, it doesn't take into account imputed
6 revenue from Yellow Pages; is that correct?

7 A. That's correct.

8 Q. If that were taken into account, this figure
9 would be substantially different, would it not.

10 A. It would be zero. Direct imputation is
11 approximately one hundred million. That would cancel
12 out the zero, which is still the point I was making in
13 my testimony that the parties are claiming that there
14 is the threat of taking huge cash flow out of the
15 state. Well, there is no huge cash flow to take out of
16 the state. Even at zero, there is no cash flow.

17 COMMISSIONER HEMSTAD: Thank you. That's all
18 I have.

19 JUDGE MOSS: I think I'm right this time.
20 Mr. Inouye, thank you very much. Appreciate it. Well,
21 we still have ample time to begin our next witness, so
22 please call your next witness.

23 MR. VAN NOSTRAND: We call Theresa Jensen.

24 JUDGE MOSS: Ms. Jensen, you have been
25 previously sworn in this proceeding so we won't repeat

00660

1 that. If you will please get seated, we will get
2 started. Thank you.

3

4 DIRECT EXAMINATION

5 BY MR. VAN NOSTRAND:

6 Q. Ms. Jensen, do you have before you what has
7 been marked for identification as Exhibit 1-T and 2-RT?

8 A. I do.

9 Q. Do you recognize those documents as your
10 prefiled direct testimony and your prefiled rebuttal
11 testimony?

12 A. I do.

13 Q. Do you have any additions or corrections to
14 make to either of those exhibits?

15 A. Yes, I do.

16 Q. Would you proceed, please?

17 A. In Exhibit 1-T, Page 5, Lines 20 to 22,
18 should be corrected to state that the proposed merger
19 has been approved by the shareholders of both companies
20 by the Department of Justice, by the FCC, by the
21 Colorado Regulatory State Commission, the Iowa
22 Commission, and a number of states outside of the
23 14-state U S West region.

24 I have a second change at Page 6 of my direct
25 testimony or Exhibit 1-T, beginning with Line 12. The

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1 question concerning the leadership of the merged
2 company, which goes through Line 10 on Page 7, I would
3 simply eliminate.

4 JUDGE MOSS: You want to eliminate beginning
5 with the question?

6 MS. JENSEN: Yes, at Line 12 through Line 10
7 or Page 7. I believe those are the only changes.

8 Q. (By Mr. Van Nostrand) No changes to your
9 Exhibit 2-RT, your rebuttal testimony?

10 A. No.

11 Q. If I asked you the questions set forth in
12 those documents, would your answers be the same as set
13 forth therein?

14 A. Yes, they would.

15 Q. Do you also have before you what's been
16 marked for identification as Exhibits 3 through 11?

17 A. Yes, I do.

18 Q. Do you recognize those documents as the
19 exhibits which have accompanied your prefiled rebuttal
20 testimony?

21 A. Yes.

22 Q. Are they true and correct to the best of your
23 knowledge?

24 MR. VAN NOSTRAND: Your Honor, I move the
25 admission of Exhibit 1-T, 2-RT, and 3 through 11.

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1 JUDGE MOSS: Hearing no objection, they will
2 be admitted as marked. Let me jump in here for half a
3 second though. I notice on our exhibit list that we
4 don't have a description for Exhibit 4, and I'll just
5 ask the witness. I wrote down Table of Switch Upgrade
6 Dates; is that a reasonable description of what that
7 displays.

8 THE WITNESS: Yes.

9 JUDGE MOSS: That's what we'll call that
10 then, Table of Switch Upgrade Dates. Other than that,
11 the exhibits are identified as previously distributed.

12 MR. VAN NOSTRAND: Your Honor, Ms. Jensen is
13 available for cross-examination.

14 JUDGE MOSS: Thank you, and we'll follow our
15 usual order, Mr. Kopta.

16 MR. KOPTA: Thank you, Your Honor.

17

18 CROSS-EXAMINATION

19 BY MR. KOPTA:

20 Q. Good afternoon, Ms. Jensen.

21 A. Good afternoon.

22 Q. I have some cross-examination exhibits that
23 were previously provided. Do you have copies of those,
24 or should I provide you with those?

25 A. I may, if you could tell me which ones they

00663

1 are.

2 Q. Would you like to know now, or should we do
3 it as we go through?

4 A. Whatever your preference.

5 JUDGE MOSS: If you have a list, let's just
6 see if the witness has those so we can take care of it
7 all at once.

8 MR. KOPTA: They are Exhibits 359, 360, 363,
9 364, 369, and 386.

10 THE WITNESS: If I might have a moment, Your
11 Honor.

12 JUDGE MOSS: Sure.

13 THE WITNESS: I believe I have them all.

14 Q. (By Mr. Kopta) Ms. Jensen, you made some
15 corrections to your testimony to delete a question and
16 answer concerning the discussion of the leadership of
17 the merged company, but you didn't explain why you
18 deleted that. Would you let me know why that is that
19 you deleted that question and answer?

20 MR. VAN NOSTRAND: I'm going to object.
21 That's prefiled testimony. I guess it really isn't
22 filed until this witness sponsors it and is willing to
23 stand cross-examination on it. The fact that she
24 should have made or withdrawn it is really not within
25 scope of the question.

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1 JUDGE MOSS: If there is some other testimony
2 by this witness on the subject matter, then certainly
3 you could inquire as to the subject matter, but as to
4 the specific testimony that hasn't been offered, that
5 wouldn't be in the scope of direct.

6 MR. KOPTA: My concern is if we have had this
7 testimony for several months now, and it's only on the
8 day of hearing that it's altered substantially by
9 taking out virtually a page of it without an
10 explanation as to why.

11 I would like to know; does she no longer have
12 personal knowledge with respect to that, or is there
13 some other witness that is prepared to address the
14 leadership of the merged company? Certainly, as
15 Chairwoman Showalter discussed with Mr. Pitchford, one
16 of the issues is the managerial competence of the
17 company, and if Ms. Jensen is not prepared to talk
18 about that, I'd like to know if there is another U S
19 West witness who is.

20 JUDGE MOSS: I'm not foreclosing the subject
21 matter. I'm just saying you can't question her with
22 respect to testimony that hasn't been offered or
23 proffered, and it's not unusual for witnesses to amend
24 their prefiled testimony on the stand; it happens all
25 the time. You can go into the subject matter. You can

00665

1 ask the very questions that were just implied.

2 Q. (By Mr. Kopta) Ms. Jensen, are you familiar
3 with the leadership of the proposed merged company?

4 A. I'm familiar with the announcement of the
5 leadership that has occurred to date.

6 Q. Would you look at Exhibit 359, specifically,
7 the second paragraph on the first page of that article
8 entitled, "U S West Head to Leave After Qwest Merger,"
9 and this is a quotation from a prepared statement from
10 Mr. Trujillo that states, "Even though we have agreed
11 on a wide range of issues, we have not found agreement
12 on key strategic issues, including leadership
13 appointments, the structure of the organization, and
14 the role of the office of the chair."

15 Is that a public announcement that you are
16 familiar with?

17 A. Yes.

18 Q. Do you know what leadership appointments
19 there were disagreements over?

20 A. No, I do not.

21 Q. Do you know what issues of disagreement were
22 raised by the structure of the organization?

23 A. No, I do not.

24 Q. How about the role of the office of the
25 chair?

00666

1 A. No, I do not. What I would share with you is
2 this the same statement that Mr. Trujillo made to the
3 employees.

4 Q. And on the second page of this exhibit, the
5 fourth paragraph down, there is a representation that
6 there was a disagreement between Mr. Trujillo and
7 Mr. Nacchio with respect to the time frame for
8 expansion of very high-speed digital subscriber line or
9 VDSL services. Are you familiar with the nature of
10 that dispute or if there was such a dispute?

11 A. The answer to both of your questions is no.
12 This is not a quote of either Mr. Trujillo or
13 Mr. Nacchio. It's a reporter statement, and it is not
14 a statement that Mr. Trujillo has made with the
15 employees.

16 Q. So you have no knowledge one way or the other
17 whether this is true?

18 A. That's correct; other than Mr. Trujillo
19 himself has not represented that, so therefore, it may
20 not be accurate.

21 Q. Do you know what impact on the management of
22 the merged company will result from the departure of
23 Mr. Trujillo?

24 A. Maybe you could be more specific with your
25 question.

00667

1 Q. As I understand it, as the merger document or
2 merger agreement established, there would be an office
3 of the chair that would be occupied by three persons:
4 Mr. Nacchio, Mr. Anschutz, and Mr. Trujillo, and that
5 office would have final authority over certain
6 corporate actions, including investment and strategy
7 and those sorts of issues. Are you familiar with that
8 aspect of the merger agreement?

9 A. Yes, I am.

10 Q. My question is, if Mr. Trujillo is not going
11 to be part of that management group, will that have any
12 impact on the management of the merged company?

13 MR. VAN NOSTRAND: Your Honor, I'd like to
14 object. I don't believe that's a fair characterization
15 of the merger agreement, which does not mention
16 Mr. Trujillo by name.

17 JUDGE MOSS: I think I'll overrule the
18 objection. I think the witness can understand the
19 question.

20 THE WITNESS: If memory serves me correctly,
21 there is also the presence of the board, which would be
22 potentially involved in key strategic decisions, so the
23 absence of Mr. Trujillo from the office of the chair,
24 in my view and understanding, does not affect the fact
25 that the board will be equally represented by U S West

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1 and Qwest members.

2 Q. Doesn't the office of the chair have final
3 authority on key strategic issues?

4 A. It's my understanding the board has final
5 authority on key strategic issues should there be a
6 disagreement.

7 Q. Do you have Mr. Pitchford's testimony?

8 A. No, I don't.

9 Q. Let me read a portion of Mr. Pitchford's
10 testimony to you and let me ask you if this sounds
11 familiar. And I'm reading from what I have as Page 7
12 of his direct testimony, which I apologize I don't have
13 the correct exhibit number for, and I also apologize
14 that it is probably different pagination.

15 It's in response to the question, "Please
16 discuss the management of the post merger company."
17 It's the second complete paragraph following that
18 question. Mr. Pitchford testifies, "Post merger Qwest,
19 Inc., also will establish an office of the chairman
20 whose members will be Misterys Anschutz, Nacchio and
21 Trujillo. The office of the chairman will act by
22 majority vote and will have final authority with
23 respect to enumerated corporate actions, including,
24 among others, material acquisitions and dispositions,
25 the allocation of capital resources, termination of

00669

1 certain senior executives, and the setting of general
2 corporate strategy."

3 Is that your understanding of the role of the
4 office of the chairman under the merger agreement?

5 A. With respect to the role of the office of the
6 chair, that language is familiar to me, yes.

7 Q. So it's your testimony that without
8 Mr. Trujillo, there will be no impact on the office of
9 the chairman with respect to its final authority over
10 the enumerated actions?

11 A. I don't believe that's my testimony, no.

12 Q. Then what is the impact of Mr. Trujillo's
13 departure?

14 MR. VAN NOSTRAND: Is this under the merger
15 agreement? Can we have the question clarified?

16 JUDGE MOSS: I think the question relates to
17 the testimony Mr. Kopta read, Mr. Pitchford's
18 discussion of the structure. I don't know where
19 Mr. Pitchford drew that from. Do you have the
20 question?

21 THE WITNESS: Could you repeat the question?

22 Q. What is the impact of the departure of
23 Mr. Trujillo on the office of the chairman as it
24 relates to that office's final authority with respect
25 to the enumerated corporate action?

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1 MR. VAN NOSTRAND: Objection. Calls for
2 legal conclusion as to the interpretation of the merger
3 agreement.

4 JUDGE MOSS: To the extent of your knowledge,
5 you may answer the question.

6 THE WITNESS: Where I'm struggling,
7 Mr. Kopta, is the merger agreement itself, because the
8 discussion that you referenced from Mr. Pitchford is
9 also included in the merger agreement, and there is a
10 further discussion with respect to the role of the
11 board. Based on that total discussion, it is unclear
12 what the effect of Mr. Trujillo leaving will be or if
13 it will be different, based on the fact that the
14 board -- there is a discussion of the board's role as
15 it relates to issues.

16 I believe the intent -- my understanding, and
17 I will qualify it to that -- of this language is truly
18 the board shouldn't have to be involved in every
19 decision made by the office of the chair, but I do
20 believe the office of the chair will obviously consult
21 with the board with respect to key strategies of the
22 business.

23 Q. (By Mr. Kopta) Would you consider the
24 departure of Mr. Trujillo to be significant in terms of
25 its impact on the merged company or the proposed

00671

1 merger?

2 A. I don't know that that's clear at this point
3 in time.

4 Q. So you wouldn't consider this as additional
5 information that the applicants should have provided to
6 the Commission in the context of its review of the
7 proposed merger?

8 A. I believe the information was widely known by
9 any individual that followed the media upon the
10 announcement of his decision.

11 Q. So it's your view that with respect to
12 details of the proposed merger that the Commission
13 should gather information from the press in terms of
14 what impacts are going to be on the merged company?

15 A. No, that was not my response at all. I think
16 that all entities learned of that decision at roughly
17 the same time. I think Mr. Trujillo in his
18 announcement explained why he felt that that was a good
19 decision for the application with respect to this
20 application.

21 Q. Would you turn, please, to what I have as
22 Page 16 of your direct testimony, and it may not be the
23 direct correct page, but it's the question and answer
24 directly beneath the headline, "Customer Impact." It
25 may be on a previous page. I'm not sure. Do you see

00672

1 where my reference is?

2 A. I'm on Page 16. Which question are you
3 looking at?

4 Q. It's the question directly beneath the
5 heading, "Customer Impacts."

6 A. Yes.

7 Q. The first line of the answer states, "The
8 merger is expected to produce a more customer focused
9 and efficient company for consumers"; do you see that?

10 A. Yes.

11 Q. Is U S West not currently sufficiently
12 customer focused and efficient?

13 A. U S West is customer focused and efficient.
14 There will be benefits provided by this merger that
15 will enable it to be more efficient and provide
16 additional services to customers that it could not
17 easily provide at this time.

18 Q. What actions does U S West plan to take to be
19 more customer focused?

20 A. The result of the merger that will enable the
21 company to be more customer focused is once it receives
22 271 relief, it will have a network in place ready to
23 utilize to provide our customers with a full set of
24 services that it currently is unable to do. In that
25 respect, we believe that it is a more customer focused

00673

1 approach in that we can meet all of their needs, where
2 today we cannot meet all of their needs based on
3 certain legal requirements that we have yet to obtain
4 approval.

5 Q. Are you saying that U S West as a merged
6 company cannot be sufficiently customer focused because
7 they can't offer every possible service?

8 A. I believe that that creates a problem in
9 dealing with customer-specific issues or responding to
10 customer-specific needs, and that there are certain
11 restrictions with respect to what the company can or
12 can't do, and as a result of that, the company is
13 limited in its customer focus, solely by the fact that
14 it cannot be a complete end-to-end service provider,
15 and therefore, it has to focus on the services it can
16 provide.

17 Q. Does U S West consider competitors such as
18 competing local exchange companies to be customers?

19 A. I believe we consider them to be carriers as
20 well as customers, dependent on the services they
21 purchase.

22 Q. In the second sentence on that same page, you
23 state, "Naturally, the merged company will seek to take
24 advantage of the best practices of each company." What
25 are the best practices of each company?

00674

1 A. I don't believe that we have a full
2 understanding of that. That's what we are currently
3 exploring as we look at the future company. If we knew
4 those best practices today, they would probably -- if
5 we knew Qwest's best practices today, they would
6 probably be incorporated into U S West, if we believe
7 they had a better approach than what U S West has at
8 this time.

9 Q. I'm a little confused, because the next
10 sentence says, "U S West does not expect that
11 implementing those best practices will reflect any
12 substantial change in the way the local operating
13 company provides service."

14 If you don't know what the best practices
15 are, how do you know that they will not reflect any
16 substantial change in the way the local operating
17 company provides service?

18 A. I think they are two separate subjects. In
19 the way we provide service, we've also stated that we
20 expect the merger transaction to be transparent to
21 customers who want to continue to purchase the services
22 that they purchase from U S West today that U S West
23 offers.

24 For customers that would like to purchase new
25 services and advance services or services that U S West

00675

1 cannot offer yet but that Qwest offers, there will be a
2 benefit but not necessarily a change, so in other
3 words, we would complement or enhance our product line,
4 as well as our technology and as well as our network
5 infrastructure to enhance or improve on upon what we
6 offer today, but it will not change what we offer today
7 from a customer perspective if they choose not to take
8 advantage of those services.

9 Q. So do I understand your answer that best
10 practices doesn't include anything that Qwest may do in
11 terms of providing local telecommunications service?

12 A. I'm not familiar with Qwest's local exchange
13 service at this point in time so I really can't answer
14 that question. If they have best practices there, it
15 may include that. It may include them in such a way
16 that it doesn't change the way we provide service to
17 customers.

18 Q. But it may change, depending on what those
19 best practices are that you aren't familiar with at
20 this point.

21 A. I think it depends on what your
22 interpretation of providing service is. I think from
23 an end-user perspective, it may be transparent.

24 Q. Or it may not.

25 A. I think from our perspective, what we would

00676

1 do would be to improve service to customers where
2 improvements can be made. We are certainly not going
3 to adopt practices that are not customer focused or
4 efficient.

5 Q. The last sentence of this -- before we get to
6 that, will you turn to Exhibit 386? Does this exhibit
7 accurately reflect U S West's response to this data
8 request?

9 A. Yes, it does.

10 Q. The supplemental response provided on
11 December 10th was provided by you, was it not?

12 A. Yes, it was.

13 Q. In that response, you also used the term best
14 practice; is that correct?

15 A. That's correct.

16 Q. Would that term have the same meaning in this
17 data request response that you and I have just
18 discussed here today?

19 A. I believe so.

20 Q. That's fine. I'm just wanting to make sure
21 we are talking about the same terms.

22 JUDGE MOSS: In case this should be offered
23 into the record, I want to be sure it is accurate. I'm
24 looking at the very last sentence, and I notice you
25 prepared the supplemental response, so I'm wondering if

00677

1 that very last sentence is completely accurate of if
2 there is a word missing, perhaps.

3 THE WITNESS: Thank you. There is a word
4 missing. It should say, "However, no specific
5 decisions or work has begun in this area to date."

6 JUDGE MOSS: Go ahead, Mr. Kopta.

7 MR. KOPTA: Thank you, Your Honor. Funny how
8 those important words like "no" and "not" are a
9 frequent typo.

10 Q. (By Mr. Kopta) Back to the portion of your
11 direct testimony that we were discussing, the last
12 sentence of that paragraph provides, "At this time, the
13 merger will not require any change in the rates, terms,
14 or conditions for the provision of any
15 telecommunications services provided in Washington."
16 My focus is on the phrase "at this time." Does U S
17 West anticipate future changes in rates, terms, or
18 conditions as a result of the merger?

19 A. At this point in time, no.

20 Q. So there may be future unknown impacts.

21 A. There could be, yes, based on actions taken
22 elsewhere.

23 Q. Would you turn to your rebuttal testimony,
24 please, specifically Page 7. Hopefully, we are back in
25 sync on page and line numbers. My reference is the

00678

1 question and answer beginning on Line 18. My question
2 is, what are the planned improvement to U S West's
3 systems network and or operations to which you are
4 referring to in this question?

5 A. There are several planned improvements to
6 systems, network, or operations, including those that
7 we discussed yesterday and this morning in terms of the
8 agreement that we obtained. There are several system
9 changes that are occurring as a result of our
10 obligations under the Telecommunications Act. There
11 are continued network improvements scheduled to replace
12 facilities with more current technology. We are
13 continually looking in our operations to be more
14 efficient.

15 Q. So if I may characterize your last statement,
16 this was intended to be a general reference, not a
17 reference to any specific plans that are included in
18 any of the materials presented to the Commission for
19 its review of this merger?

20 A. It's specific in the sense that the opposing
21 parties have suggested in a very general sense that
22 improvements will be delayed without specifying what
23 those improvements or with respect to systems, network,
24 or operations that they assume will be delayed if there
25 are no specifics on that. It's in direct response to

00679

1 that.

2 Q. So no specifics on either side; is that what
3 you are saying?

4 A. It's a little hard to respond to the
5 allegation without further definition around it, but
6 what I am testifying to here is that there are no
7 delays caused by the merger to current plans as it
8 relates to these improvements.

9 Q. Would you turn to Page 8 of your rebuttal
10 testimony. Specifically beginning on Line 7, and you
11 are talking about investment. We discussed this quite
12 a bit in connection with the settlement agreement, but
13 what I wanted to ask you in connection here was whether
14 you were familiar with U S West's announced plans for
15 increased network investment for the year 2000, region
16 wide?

17 A. In a general sense, yes, I tend to focus on
18 Washington matters.

19 Q. No doubt why you are here today. Would you
20 turn to Exhibit 360, please? This is the article from
21 the Denver Post on January 27th, 2000, with the
22 headline, "U S West Increasing Spending," and the first
23 paragraph of this article states, "U S West will spend
24 between 4.5 billion dollars and 4.7 billion dollars
25 this year -- a seven percent to twelve percent increase

00680

1 over last year -- to improve its network, product
2 offerings, and service quality within its 14-state
3 region, the company said Wednesday." Is this accurate?

4 A. It's my understanding it is, yes.

5 Q. Are the investment figures for Colorado in
6 the second paragraph accurate?

7 A. I believe they are.

8 Q. Would you turn to Page 26 of your testimony,
9 please?

10 A. Of my rebuttal testimony.

11 Q. Yes, excuse me. Beginning on Line 16, you
12 reference that U S West's commitment to invest more
13 than four billion dollars to upgrade its network in
14 1999. Do you see my reference?

15 A. Yes.

16 Q. Is there a similar commitment from U S West
17 to invest to upgrade its network in 2000?

18 A. I believe you just referenced the
19 announcement that the company made in Exhibit 360.

20 Q. That's the same commitment? Perhaps I should
21 focus on the word "commitment." "Announcement" is
22 equivalent to "commitment" as you use the word, or
23 committed, in your testimony?

24 A. What the company has done is announced that
25 it is going to spend an increase over 1999 to upgrade

00681

1 its network, as my testimony also states; that it
2 announced an investment commitment in 1999, and if I
3 may, Your Honor, the amount that the company is
4 announcing is reflective of different commitments
5 across various states.

6 Washington, based on my personal knowledge,
7 happens to have a number of advances in its network
8 that you would not find in other states, so there is
9 some catch-up that needs to occur in Colorado as well
10 as other states to mirror the capabilities currently
11 present in Washington. Those largely result from
12 Commission orders that have occurred over the last five
13 to ten years with respect to either commitments on the
14 company's part to install various technologies as
15 matters of other proceedings, as we will as directives
16 by the Commission through various proceedings with
17 respect to single party service in the state, single
18 party universal service in the state, E-911
19 requirements that are either passed by law or by rule
20 making, as well as the company's commitments, for
21 instance, to provide class or what we think of as
22 signaling system seven type architecture and associated
23 features in every central office switch where it
24 provides service to end-user customers, so it would not
25 be proper to look at the varies investment from state

00682

1 to state without understanding the starting point of
2 each state and its relationship to services available
3 as they are in Washington.

4 JUDGE MOSS: I think you got a little ahead
5 of us there, but maybe it saves some questions.

6 MR. KOPTA: No, it actually generates some.

7 Q. (By Mr. Kopta) As I understand, the Colorado
8 Commission also recently fined U S West somewhere in
9 the neighborhood of 12 million dollars for poor service
10 quality in Colorado, did they not?

11 MR. VAN NOSTRAND: Objection, Your Honor.
12 There is no relevance shown to the merger transaction
13 by the line of questioning with past service quality,
14 particular in the State of Colorado.

15 MR. KOPTA: Ms. Jensen just gave us a long
16 recitation why things might be different in Colorado
17 than in Washington. I'm simply exploring that last
18 testimony. If she would like to withdraw it, then I'll
19 withdraw my question.

20 JUDGE MOSS: I'll just overrule the objection
21 and we will go ahead.

22 THE WITNESS: I'm not sure I can agree with
23 your characterization, that the Colorado Commission
24 just did take some action. I'm not familiar with the
25 specific details.

00683

1 Q. Would that action, if it were a fine in the
2 magnitude of 12 million dollars, have any impact on the
3 extent to which U S West would devote more investment
4 in Colorado than in other states?

5 A. Without knowing the specifics, I really can't
6 answer that question. I can tell you that as it
7 relates to the settlement agreement that we've
8 discussed, there is clearly an incentive for the
9 company to look at many approaches to minimize the
10 amount of credits that are contained in our agreement,
11 which may include increased investment, but not
12 necessarily.

13 Q. Back to the reference in your testimony, to
14 the historic commitment in 1999, is it your position
15 that what U S West has done in the past or is doing
16 currently is an indication of what U S West or the
17 merged company is likely to do in the future?

18 A. I think that's a difficult question, and I
19 only struggle with it from the standpoint that the
20 market is changing, and it's unclear what investment
21 commitments will be required going forward.

22 If U S West loses large portions of customer
23 access lines that it has traditionally received, it may
24 or may not require the same degree of investment that
25 it currently requires. It largely depends on where

00684

1 those access lines are. If they are in urban areas,
2 and if we've traditionally directed a good deal of
3 investment to urban areas, then the investment for
4 those particular locations could decrease. If it's in
5 areas where there does not result available network
6 capacity as a result of the change in the provider of
7 those customers, then the investment requirement may be
8 the same or may need to increase, and it's just so
9 volatile to be able to look at the current market
10 place, as well as the change of cost in technology, to
11 know what investment requirements will be necessary in
12 order to provide the quality of service that U S West
13 would like to provide its customers.

14 Q. Based on that last response, you give a rough
15 or a large dollar figure, but is there any effort on
16 the part of the company to target any of that
17 investment to any particular facilities or portion of
18 the network?

19 A. U S West files its annual budget as required
20 by Commission rule in the State of Washington, and it
21 identifies projected projects for the planned year with
22 respect to how a large portion of its budget will be
23 spent. I can tell you from my personal experience that
24 to date, about 75 percent of the capital budget or the
25 -- I shouldn't say construction, but capital budget in

00685

1 the State of Washington is a direct result of growth
2 that has occurred in terms of customer demand or
3 rehabilitation of the existing network, combination of
4 both, so it is largely driven by consumer demand.

5 Q. Driven by consumer demand, and in that
6 context are competitors considered consumers in terms
7 of driving demand for U S West services and facilities?

8 A. Co-carriers or other providers have also
9 increased our investment requirements due to our
10 obligations for collocation and their request for
11 services as well, and operating system changes that are
12 required.

13 Q. Would you turn to Page 44 of your rebuttal
14 testimony? Specifically with the sentence beginning on
15 Line 11 where you state, "Absent the merger, U S West
16 would find it increasingly difficult to offer a full
17 portfolio of voice, data, video, IP, long distance, and
18 wireless services to its Washington customers."

19 Doesn't U S West offer a package of services
20 that includes at least voice, Internet, wireless, and
21 long-distance services?

22 A. I believe U S West recently introduced a
23 package of services that includes those components. We
24 do offer the services that you mentioned today in
25 Washington. What this statement is the representing is

00686

1 that on a going-forward basis, absent the ability to
2 offer a customer a full portfolio, and by that, not
3 limited to intraLATA services, U S West will lose
4 customers to providers who can offer the full
5 portfolio, including interLATA services.

6 Q. Correct me if I'm wrong, but doesn't this
7 package that U S West currently offer include interLATA
8 toll when it's provided over the cellular component of
9 the service?

10 A. I'm not as close to our wireless service
11 offering; again, because it's a nonregulated service,
12 so I really can't answer that question. It may; I
13 don't know that U S West is the provider of the
14 service.

15 Q. Would you accept it subject to check that as
16 part of the bundled package that we are just discussing
17 that --

18 A. Yes.

19 Q. Is there anything -- let me rephrase that.
20 Would U S West be unable to offer a similar package
21 absent the merger?

22 A. It's a matter of timing, and the answer to
23 your question is no, U S West would -- well, yes. At
24 this time, U S West cannot offer a similar package. At
25 some point in time, we believe U S West will be allowed

00687

1 to. The issue is how quickly, and absent the merger,
2 U S West will find it increasingly difficult to offer
3 the portfolio of services discussed in my testimony,
4 and will, in fact, be at a disadvantage as a result of
5 that.

6 Q. The current bundled service offering that we
7 were discussing, the merger doesn't affect U S West's
8 ability to offer that bundled package of services, does
9 it?

10 A. With its limitation, no.

11 Q. Would you turn to Exhibit 363. Are you
12 familiar with this response to the data request?

13 A. Yes.

14 Q. Is Exhibit 363 an accurate depiction of U S
15 West's and Qwest's response to this data request?

16 A. As of the point in time that this response
17 was prepared, I would have to assume, yes.

18 Q. If you would take a look at Exhibit 364, I
19 will represent to you that U S West has provided a
20 supplemental response to this data request that came
21 after the time when I designated exhibits for cross, so
22 I am not sure how or whether U S West would want to
23 include the supplemented response, but rather than risk
24 an objection for an untimely exhibit, I thought I would
25 pursue asking you whether, again, this exhibit

00688

1 accurately reflects U S West's response as
2 supplemented, if necessary.

3 MR. VAN NOSTRAND: Your Honor, I think in the
4 interest of a complete and accurate record, we should
5 use the supplemental response, and we will not object
6 to it being a late-filed exhibit.

7 JUDGE MOSS: Why don't we just substitute it?

8 MR. KOPTA: That would be fine with me.

9 JUDGE MOSS: Do you have copies?

10 MR. KOPTA: I do not.

11 JUDGE MOSS: Furnish them tomorrow, please.

12 MR. KOPTA: I will do that.

13 JUDGE MOSS: We'll just substitute. The one
14 with the supplemental response will be 364.

15 Q. (By Mr. Kopta) I won't ask you about it
16 since we have to wait for the supplemented version.
17 Perhaps counsel can shortcut that and agree that it can
18 be included.

19 JUDGE MOSS: Are you just trying to prove it
20 up at as an accurate response?

21 MR. KOPTA: Yes.

22 JUDGE MOSS: There is not going to be any
23 objection, is there?

24 MR. VAN NOSTRAND: No.

25 JUDGE MOSS: There is not going to be any

00689

1 objection.

2 MR. KOPTA: Good.

3 Q. Finally, with respect to Exhibit 369, does
4 that exhibit accurately reflect U S West's response to
5 this data request?

6 A. Yes, it does.

7 MR. KOPTA: Thank you, Ms. Jensen. Those are
8 all my questions. I would move the admission of
9 Exhibit 363, 364, as supplemented, 369 and 386.

10 MR. VAN NOSTRAND: No objection, Your Honor.

11 JUDGE MOSS: And hearing no objection, they
12 will be admitted as marked. Mr. Trincherro, go ahead.

13 MR. TRINCHERO: Your Honor, if I could have
14 one moment, I think Mr. Kopta may have covered all the
15 questions I have.

16 JUDGE MOSS: I'm glad you two sat together.

17 MR. TRINCHERO: Your Honor, I have no
18 questions.

19 JUDGE MOSS: Thank you very much.

20 Mr. Harlow, can you we hope for the same from you.

21 MR. HARLOW: No, Your Honor. I think I will
22 take us to the end of the session today, and we will
23 have to resume tomorrow, actually. So let me know when
24 you are ready to break.

25 JUDGE MOSS: We appreciate the fair estimate.

00690

1 I believe we are scheduled to break at about 5:30 this
2 afternoon, unless my colleagues on the Bench tell me
3 they wish to press ahead to a later hour. We'll end
4 today at 5:30, and while we are on the subject, we'll
5 start tomorrow at 9:00, and we do have a scheduled
6 break tomorrow from 3:00 to 3:30, but then we will
7 resume at 3:30 and press on until 5:00, and then we
8 have the evening session at 6:00, for those who wish to
9 participate, and then on Friday, I believe we'll be
10 back to our 9:30 scheduled start, so with that
11 housekeeping out of the way, let's press ahead,
12 Mr. Harlow.

13

14

CROSS-EXAMINATION

15 BY MR. HARLOW:

16 Q. Good evening, Ms. Jensen. I guess I'll start
17 with the question that Mr. Inouye could not answer,
18 which is, is U S West considering forming an advanced
19 services subsidiary for its own reasons?

20 A. Well, Mr. Harlow, I think I would answer it
21 as Mr. Inouye did. We are looking at several options.
22 No decisions have been made, and the one thing I can
23 assure you is that we are not looking at forming a
24 separate subsidiary for advanced services for
25 Washington only.

00691

1 Q. Do I imply from that that you are considering
2 a 14-state or maybe a nationwide advanced services
3 subsidiary?

4 A. As I mentioned, we are looking as a variety
5 of options. No decisions have been made.

6 Q. Are you looking at the possibility of
7 transferring what Mr. Inouye referred to as telephone
8 plant facilities such as DSLAMS and ATM switches to
9 such a subsidiary?

10 A. I don't know any specifics of any planning
11 that may be going on.

12 Q. In your testimony and in the proposed
13 settlement, I observed a lot of commitments and
14 discussions with regard to quality of service issues,
15 including such things as dial tone, handling of
16 Commission complaints, trouble reports, and so forth.
17 I didn't see anything. Is there any specific to
18 addressing issues regarding the accuracy of outside
19 loop plant?

20 A. I believe the settlement agreement as it
21 states supersedes my testimony with respect to service
22 quality issues, and clearly, the investment commitment
23 contained therein addresses outside plant as one of the
24 many investment areas.

25 Q. Is there anything specific to loops, to

00692

1 copper loops in particular?

2 A. Specific to what?

3 Q. Are there any specific investment commitments
4 or plans addressed in your testimony or in the
5 settlement agreement that goes to copper loops?

6 A. The overall investment commitment would
7 include copper loops.

8 Q. As I understand your earlier testimony, you
9 haven't broken out a specific number of that overall
10 commitment that would be targeted for loops.

11 A. No, we haven't.

12 Q. At Page 4 of your testimony, your prefiled
13 rebuttal, you stated that the Commission will continue
14 to have the same regulatory oversight that it has today
15 over the regulated aspects of U S West operations. I
16 assume that would be superceded by the settlement and
17 no longer true?

18 A. What line are you looking at, Mr. Harlow?

19 Q. Lines 3 and 4 on the top of Page 4.

20 A. Of my rebuttal testimony?

21 Q. Yes.

22 A. There is nothing in the settlement agreement
23 that changes the Commission's authority, absent their
24 agreement to do so.

25 Q. Wasn't there significant discussion about the

00693

1 Commission being unable to order any rate changes or
2 overall revenue requirement changes for a period of
3 four years?

4 A. Up to January of 2004, that's correct,
5 assuming they approve the settlement agreement.

6 Q. The next question and answer, you address the
7 benefits that you believe will accrue to Washington
8 customers from the merger. Do you have that testimony
9 in front of you?

10 A. Yes.

11 Q. You talk about being able to offer customers
12 more choices and greater access to next-generation
13 telecommunications and broadband Internet. Isn't it
14 true that U S West already connects to the Internet
15 through its uswest.net or subsidiary?

16 A. Yes, we do.

17 Q. Then further on down in that answer, you talk
18 about the merged company will create an increased
19 ability to rapidly meet the evolving needs of both
20 residential and business customers. There is no
21 mention here of the network. Do you know what I mean
22 when I talk about "network"?

23 A. I'm not sure I know what you mean,
24 Mr. Harlow.

25 Q. I'm talking about telecommunications network.

00694

1 I'm referring specifically to the division of U S West
2 that currently -- now I've lost the name. I believe
3 Mr. Kelley heads up now, or is it Mr. Winn?

4 A. They both head up organizations. Which one
5 would you like to talk about?

6 Q. Let me take a moment to look up the right
7 name. Mr. Winn is currently responsible for network;
8 is that correct?

9 A. That's correct.

10 Q. And that consists of the local switches,
11 interoffice transport facilities, and local loops?

12 A. That's correct; that would be included.

13 Q. Are there any specific benefits to network as
14 opposed to the general overall investment commitment
15 that this merger will offer?

16 A. Yes, there are.

17 Q. What are the specific?

18 A. Qwest brings to us an interLATA network, and
19 also a network that extends beyond the 14 existing U S
20 West states where it operates. Our customers are not
21 constrained by our 14-state boundaries today, and, in
22 fact, would like to buy service from U S West that
23 extends beyond those 14 states. We believe they will
24 view that as a significant benefit.

25 Q. Let me turn your attention then to Page 5 of

00695

1 your testimony. The question starting on Line 9 and
2 the answer starting on Line 12, and you note that
3 Washington customers will benefit from merger synergies
4 because U S West is still under rate-of-return
5 regulation. Again, I assume because of the proposed
6 settlement, assuming that's accepted, that that
7 wouldn't be true at least through 2004?

8 A. I would disagree with that assumption.

9 Q. How would the ratepayers between now and the
10 termination of the rate case moratorium benefit from
11 the financial synergies that you project the merger
12 will result in?

13 A. Those synergies may enable the post merger
14 company to offer services at prices lower than what it
15 could offer absent the merger.

16 Q. But the synergies wouldn't be passed through
17 because of rate of return regulation, as you stated on
18 Lines 12 and 13 in your rebuttal testimony; isn't that
19 correct?

20 A. As a result of rate of return regulation or
21 some action based on rate of return, for that period
22 through 2003, that's correct. As a result of that
23 specific item, it does not mean that benefits and
24 savings will not be passed on to customers.

25 Q. If the services that you have in mind that

00696

1 where there might be a savings passed on were not
2 subject to effective competition during this 2000 to
3 2004 time period, would there be any strong financial
4 incentives for the company to pass those savings on to
5 Washington customers?

6 A. I believe so yes, to retain the customer.

7 Q. But assuming the customers don't have viable
8 competitive alternatives, would the company need to do
9 anything to retain the customer?

10 A. I believe the company always has to address
11 customer needs, and a part of that may include
12 addressing the customers' need for lower prices.

13 Q. Let's move on to Page 6, and on Line 14 of
14 your rebuttal on Page 6, you stated that, U S West
15 alone cannot offer a full service solution to its
16 customers. Are you referring to the fact that U S West
17 does not have Section 271 approval at this time?

18 A. Yes.

19 Q. Does U S West need to do this merger in order
20 to obtain Section 271 approval?

21 A. No, it does not; however, the merger will
22 enable it to enter a market it's currently not in a
23 more efficient and in a faster manner that it could
24 otherwise.

25 Q. Are you aware that Bell Atlantic obtained

00697

1 Section 271 approval in New York?

2 A. I believe so, yes.

3 Q. Are you aware that Bell Atlantic has entered
4 the interLATA market in New York pursuant to that
5 approval?

6 A. I believe they have, yes.

7 Q. Let's go back to the first sentence of your
8 answer on Line 14, which is no, in response to the
9 question, "Will the merger distort or impair the
10 developement of competitive markets?" I assume you
11 mean in Washington?

12 A. Yes.

13 Q. Is Qwest a competitor in Washington, a
14 competitor of U S West?

15 A. I believe they are as a long-distance
16 provider, yes.

17 Q. Are they also a competitor for DSL services?

18 A. I'm not directly aware of whether they are or
19 not.

20 Q. Will you accept subject to check that Qwest
21 is a competitor of megabit by reselling Covad to DSL
22 services in Washington?

23 A. Subject to check, though I'm not sure I would
24 have a means of checking that. I would have to go to
25 Qwest or Covad to find out if they have customers in

00698

1 Washington.

2 Q. I guess maybe you were out of the room when I
3 asked the same question of the Qwest witness, but as I
4 understand, you are accepting that subject to check?

5 MR. VAN NOSTRAND: I object that the witness
6 is not on the basis for checking the answer. She
7 really can't accept this subject to check.

8 MR. HARLOW: I think it's established by the
9 record here.

10 JUDGE MOSS: We had Mr. Pitchford's testimony
11 on the subject. Were you absent when Mr. Pitchford
12 testified.

13 THE WITNESS: I may not have been listening,
14 not necessarily absent, but I think Mr. Pitchford, Your
15 Honor, is the best party to respond to that. I have no
16 direct knowledge of it, nor do I think U S West does.

17 JUDGE MOSS: You can ask it as a
18 hypothetical. That's probably the best we can do under
19 the circumstances.

20 MR. HARLOW: I think I will just move on.
21 The record establishes it and there hasn't been any
22 rebuttal to that evidence.

23 Q. (By Mr. Harlow) Let's move on to the next
24 question, which is, is Qwest a potential competitor for
25 other services in Washington without being a competitor

00699

1 of U S West?

2 A. I think any provider of services in
3 Washington is a competitor of U S West, assuming we
4 offer similar services or in the future would offer
5 similar services.

6 Q. Could Qwest potentially, instead of deciding
7 to merge with U S West, could it potentially have
8 instead decided to use what resources it has to form
9 CLEC's in Washington to compete with U S West?

10 A. If you are asking me a hypothetical, I would
11 say yes.

12 Q. And I would assume that you don't expect that
13 anything like that to occur after the merger takes
14 place, assuming it does.

15 A. I think there is a variety of approaches that
16 could be taken to the market in Washington. I wouldn't
17 necessarily rule an option other than the regulated
18 entity out, but I have no direct knowledge of that.

19 Q. After the merger, isn't it a fact that this
20 wouldn't make any sense whatsoever for Qwest to come in
21 and seek to compete in any way with the merged entity
22 or the U S West operating entity?

23 A. I think it depends on the environment in
24 Washington, quite honestly.

25 Q. What market conditions can you imagine that

00700

1 would cause Qwest, after the merger, to come in and
2 compete with its subsidiary, U S West Communications,
3 Inc?

4 A. I think it depends upon the obligations of a
5 regulated entity and what may result out of this
6 Commission's decision in this state that will
7 ultimately determine decisions that are made by Quest
8 as to how it operates in Washington on a going-forward
9 basis.

10 Q. Let's move on to Page 13 of your rebuttal
11 testimony.

12 A. I'm sorry, what page?

13 Q. Page 13 starting on Line 7.

14 A. Yes.

15 Q. You state, a requirement to invest 500
16 million dollars over five years in a competitive
17 market; do you see that?

18 A. Yes.

19 Q. What indication do you have that -- first off
20 of all, what market are you referring to there?

21 MR. VAN NOSTRAND: Your Honor, we would
22 object to questions in this portion of the testimony.
23 This is directed on the rebuttal of the staff
24 testimony, and it's no longer necessary. It's offered
25 for this whole purpose of rebutting staff testimony,

00701

1 and the agreement is that testimony is really not
2 necessary.

3 JUDGE MOSS: The problem that we face is that
4 the testimony has been, indeed, not just offered but
5 admitted as a whole. It was not segregated with
6 respect to those portions that relate, perhaps, to the
7 settlement agreement or the issues that would be
8 resolved by the settlement agreement, were it to be
9 approved, as opposed to the competitive issues.

10 Moreover, Mr. Harlow may be able to
11 demonstrate some relationship between the two,
12 particularly insofar as an investment is concerned.
13 Under those circumstances, I think while we have
14 Ms. Jensen on the stand, I'm not going to try to limit
15 on a question-by-question basis those areas of her
16 testimony into which intervenors may inquire, unless I
17 become concerned that that inquiry is overly extensive
18 under the circumstances; in which case we may elect to
19 defer it, but given the lateness of the hour and the
20 circumstances as I have just described them, let's see
21 where Mr. Harlow goes with this in a few minutes.

22 Q. (By Mr. Harlow) The question was, to what
23 market were you referring on Line 8?

24 A. The Washington market.

25 Q. For local services?

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1 A. For all services.

2 MR. HARLOW: Your Honor, at this point I have
3 a line of questioning that involves identifying an
4 exhibit, and it's going to take longer than through
5 5:30, so this would be a good time to break if it would
6 be as well for the Bench.

7 MR. KOPTA: Before we break, I had one
8 housekeeping matter. I did not offer Exhibit 360,
9 which is an article from the Denver Post, but it
10 occurred to me that we had referred to the second
11 paragraph in this article, and Ms. Jensen has agreed it
12 was accurate without actually saying what was in that
13 paragraph, so if I might simply read that paragraph so
14 that that portion could be in the record, I wouldn't
15 need to try and get the exhibit into the record so that
16 it's understandable what the reference was to.

17 JUDGE MOSS: Or perhaps there is simply no
18 objection to having that article admitted for the
19 limited purpose of clarifying the testimony at the
20 point at which it was referred; in other words, we will
21 not be letting a newspaper article in for the truth of
22 the matters asserted therein, but only as a means to
23 clarify the testimony of the witness that was made in
24 reference to that newspaper article.

25 MR. VAN NOSTRAND: With that clarification,

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1 we would have no objection, Your Honor.

2 JUDGE MOSS: So we will admit 360 as marked.

3 Are there any other housekeeping matters that we need

4 to attend to before we go into our recess? We are

5 starting at nine o'clock tomorrow morning, so we will

6 be in recess until that hour and place. Thank you.

7 (Hearing recessed at 5:30 p.m.)

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