

00704

1                   BEFORE THE WASHINGTON UTILITIES AND  
2                   TRANSPORTATION COMMISSION

3

4 In re Application of US WEST, ) Docket No. UT-991358  
5 INC., and QWEST COMMUNICATIONS ) Volume VIII  
6 INTERNATIONAL, INC. for an ) Pages 704-934  
7 Order Disclaiming Jurisdiction, )  
8 or in the Alternative, )  
9 Approving the US WEST, INC. - )  
10 QWEST COMMUNICATIONS )  
11 INTERNATIONAL, INC. Merger. )  
12 \_\_\_\_\_ )

13

14                   A hearing in the above matter was  
15 held on March 16, 2000, at 9:08 a.m., at 1300  
16 Evergreen Park Drive Southwest, Olympia, Washington,  
17 before Administrative Law Judge DENNIS MOSS and  
18 CHAIRWOMAN MARILYN SHOWALTER, COMMISSIONER RICHARD  
19 HEMSTAD and COMMISSIONER WILLIAM R. GILLIS.

20

21                   The parties were present as  
22 follows:

23

24                   AT&T COMMUNICATIONS OF THE  
25 NORTHWEST, INC., NEXTLINK, and ADVANCED TELCOM GROUP,  
26 INC., by Gregory J. Kopta, Attorney at Law, Davis,  
27 Wright, Tremaine, 1501 Fourth Avenue, Suite 2600,  
28 Seattle, Washington 98101.

29

30                   US WEST COMMUNICATIONS, INC., by  
31 Lisa A. Anderl, Attorney at Law, 1600 Seventh Avenue,  
32 Room 3206, Seattle, Washington 98191, and James M.  
33 Van Nostrand and Mary Hobson, Attorneys at Law, Stoel  
34 Rives, 600 University Street, Suite 3600, Seattle,  
35 Washington 98101.

36

00705

1 THE COMMISSION, by Sally G.  
Johnston, Assistant Attorney General, 1400 S.  
2 Evergreen Park Drive S.W., P.O. Box 40128, Olympia,  
Washington 98504-0128.

3  
4 PUBLIC COUNSEL, by Simon ffitch,  
Attorney at Law, 900 Fourth Avenue, #2000, Seattle,  
Washington 98164.

5  
6 RHYTHMS LINKS, INC. and SBC  
TELECOM, INC., by Arthur A. Butler, Attorney at Law,  
Ater Wynne, Two Union Square, 601 Union Street, Suite  
7 5450, Seattle, Washington 98101.

8 QWEST, by Ronald Wiltsie, Mace  
Rosenstein, and Gina Spade, Attorneys at Law, Hogan &  
9 Hartson, 555 13th Street N.W., Washington, D.C.  
20004.

10  
11 McLEOD USA, by Mark Trincherro,  
Attorney at Law, Davis, Wright, Tremaine, 1300 S.W.  
Fifth Avenue, Suite 3200, Portland, Oregon, 97201.

12  
13 COVAD and METRONET, by Brooks E.  
Harlow, Attorney at Law, Miller Nash, 601 Union  
Street, Suite 4400, Seattle, Washington 98101.

14  
15 COVAD, by Clay Deanhardt, Attorney  
at Law, 2330 Central Expressway, Santa Clara,  
California, 95050.

16  
17  
18  
19  
20  
21  
22  
23

24 Barbara L. Spurbeck, CSR  
25 Court Reporter

00706

1

2

---

INDEX OF EXAMINATION

---

3

4

WITNESS:

PAGE:

5

THERESA A. JENSEN

6

Cross-Examination (Continuing) by Mr. Harlow

709

7

Redirect Examination by Mr. Van Nostrand

720

8

MARK REYNOLDS

9

Direct Examination by Ms. Anderl

724

10

Cross-Examination by Mr. Kopta

727

11

Cross-Examination by Mr. Trincherro

769

12

Cross-Examination by Mr. Harlow

773

13

Cross-Examination by Mr. Deanhardt

788

14

Cross-Examination by Mr. ffitich

834

15

Cross-Examination by Mr. Harlow

844

16

Redirect Examination by Ms. Anderl

860

17

MARK T. EVANS

18

Direct Examination by Mr. Wiltsie

866

19

Examination by Chairwoman Showalter

869

20

MARY FERGUSON LaFAVE

21

Direct Examination by Ms. Hobson

871

22

Voir Dire Examination by Ms. Johnston

872

23

Cross-Examination by Mr. Kopta

882

24

Cross-Examination by Mr. Deanhardt

886

25

Cross-Examination by Ms. Johnston

911

00707

1	Examination by Commissioner Hemstad	920
2	Redirect Examination by Ms. Hobson	925
3	Recross-Examination by Mr. Butler	928
4	Recross-Examination by Ms. Johnston	931
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

00708

1

2

---

INDEX OF EXHIBITS

---

3

4	EXHIBIT:	OFFERED:	ADMITTED:
5	Numbers 40-41	725	725
6	Numbers 370-374	769	769
7	Number 385	769	769
8	Number 389	769	769
9	Number C-391	771	773
10	Number C-394	771	773
11	Number 448	815	815
12	Number 433	832	832
13	Number 444	832	833
14	Nos. 414, 422, 427, 429	833	833
15	Number 45	845	846
16	Number 56	--	846
17	Number 46	853	853
18	Number C-150-RT	867	867
19	Numbers 365, 387	867	868
20	Number 100-RT	872	882
21	Number 101	908	909

22

23

24

25

00709

1 JUDGE MOSS: Let's go on the record. We  
2 are resuming our evidentiary hearing proceedings in  
3 the Docket Number UT-991358. Ms. Jensen remains on  
4 the stand, and of course, being familiar with this  
5 process, knows that she remains under oath, as well.  
6 And Mr. Harlow was cross-examining when we went into  
7 recess yesterday afternoon, and so we'll pick up with  
8 that this morning.

9 MR. HARLOW: Thank you, Your Honor.  
10 Whereupon,

11 THERESA JENSEN,  
12 having been previously duly sworn, was recalled as a  
13 witness herein and was examined and testified as  
14 follows:

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

16 BY MR. HARLOW:

17 Q. Good morning, Ms. Jensen.

18 A. Good morning.

19 Q. At page 44 of your testimony, you state  
20 that absent the merger, US West would find it  
21 increasingly difficult to offer a full portfolio,  
22 then you list a number of services, including video.  
23 Do you recall that testimony?

24 A. I do. I'm not seeing it on page 44. Could  
25 you point me to a line?

00710

1 Q. Well, as long as you recall it, we don't  
2 need to necessarily have it in front of you.

3 MR. BUTLER: Line 11.

4 Q. I have line number 13.

5 A. Yes, thank you.

6 Q. Is it correct that US West currently offers  
7 video services in Arizona?

8 A. In Arizona, but not in Washington.

9 Q. Isn't it correct that US West could offer  
10 those same video services here in Washington if it  
11 wanted to?

12 A. I'm not sure that that's necessarily  
13 correct. I think that there would need to occur some  
14 legal analysis before I could answer that question.

15 Q. What legal barriers are you anticipating?

16 A. Those associated with video service itself,  
17 such as licenses and franchises, so forth.

18 Q. What kinds of licenses are you referring  
19 to?

20 A. I don't have the details on that, Mr.  
21 Harlow.

22 Q. All right.

23 A. I just understand it's not a simple yes or  
24 no question.

25 Q. Would the merger remove any of those legal

00711

1 barriers?

2 A. I think potentially they could. It would  
3 depend on the capabilities of the merging entities.

4 Q. Can you give me any example of a legal  
5 barrier that might exist to US West offering VDSL  
6 that the barrier would somehow be different for the  
7 merged entity?

8 A. I believe I just did, Mr. Harlow. It  
9 depends on the specifics within a given state as to  
10 what a company has to go through to offer video  
11 service. That is the degree of my understanding on  
12 this subject. And one company may have some of those  
13 provisions that another company does not have. And  
14 I'm just not close enough to the subject to be able  
15 to give you any more detail.

16 Q. All right. So you wouldn't be aware of any  
17 licenses or franchises or other legal authorizations  
18 that Qwest has that US West presently does not have  
19 for providing video services?

20 A. I have no expertise on this service.

21 Q. Ms. Jensen, isn't it true that Covad and  
22 other CLECs lease from US West elements of the very  
23 same network that US West uses to provide its retail  
24 services?

25 A. That's my understanding.



00712

1 Q. And one of those retail services would be  
2 US West's Megabit service?

3 A. One service available to them would be US  
4 West's Megabit service, yes.

5 Q. And just so we're clear on the record,  
6 Megabit is US West's trade name for DSL service?

7 A. Yes, it is.

8 Q. If you could perhaps turn to page 18 of  
9 your rebuttal testimony. You note, at lines five  
10 through seven, that held orders as a percent of total  
11 orders are less than two percent of the total orders  
12 received in 1999. Do you see that?

13 A. Yes, I do.

14 Q. And that statistic is on the retail side;  
15 is that correct?

16 A. That's correct.

17 Q. Okay. Then, taking a look at footnote 10,  
18 you note that -- kind of give a snapshot at year-end  
19 1998. The snapshot showed 1,803 outstanding held  
20 orders in Washington?

21 A. That's correct.

22 Q. And the percentage of total orders received  
23 was less than one percent, at two-tenths of one  
24 percent?

25 A. That's correct.

00713

1 Q. And for 1999, the year-end number had  
2 dropped to 1,380, or less than .2 percent of the  
3 total?

4 A. That's correct.

5 Q. Again, these are the retail numbers?

6 A. That's correct.

7 Q. Do you know who Mike Goebels is?

8 A. I'm sorry, what was your question again?

9 Q. Mike Goebels, G-o-e-b-e-l-s. Are you  
10 familiar with Mr. Goebels?

11 A. Can you tell me a little more about Mr.  
12 Goebels?

13 Q. Would you accept, subject to check, that  
14 he's the account representative for Covad, my client  
15 in this proceeding?

16 A. Yes, I would.

17 Q. Thank you. I would like to hand you -- you  
18 should have available -- and for the rest of Counsel  
19 at the table, this is Exhibit 444 -- US West's  
20 response to Covad Data Request 02-022.

21 Before we do, let me ask you to turn to  
22 page 34 of your rebuttal testimony. In particular,  
23 starting at line eight. Again, further testimony  
24 about held orders, specifically in response to a  
25 question about orders held due to a lack of

00714

1 facilities. Do you have that testimony in front of  
2 you?

3 A. Yes, I do.

4 Q. And you state that over the last five  
5 years, US West has completed over 98 percent of its  
6 orders for access lines. Again, is this a retail  
7 statistic, Ms. Jensen?

8 A. Yes, it's in response to the testimony that  
9 had been filed by Ms. Stillwell and Mr. Brosch that  
10 was specific to that subject.

11 Q. Okay. You note that the other two percent  
12 have been delayed due to the need for additional  
13 facility deployment, and then, following up, in less  
14 than .05 percent, which is five-one-hundredths of a  
15 percent of US West's held orders -- of US West's  
16 orders are held at any given time due to a lack of  
17 facilities. Do you see that testimony?

18 A. Yes, I do.

19 Q. Again, just to confirm, this is a retail  
20 statistic?

21 A. Yes, as is the total amount of orders over  
22 700,000 is a retail statistic.

23 Q. So to develop a comparable statistic for  
24 wholesale, you would need, I assume, two numbers.  
25 First of all, you would need the total number of

00715

1 wholesale orders; is that correct?

2 A. I believe that those questions are better  
3 directed to Mr. Reynolds, who has detailed experience  
4 in this area. My responsibility is to monitor the  
5 retail performance, and so there may be other  
6 considerations that he would include in your question  
7 that I'm not familiar with.

8 Q. All right. Ms. Jensen, your testimony  
9 focuses on the retail, so why don't we then focus my  
10 question on the retail. In order to determine this  
11 statistic in your rebuttal testimony, you need to  
12 know the total number of retail orders; is that  
13 correct?

14 A. The calculation that I have done, yes. The  
15 calculation that I have done is to look at the total  
16 retail orders that US West received that involved a  
17 line, either an additional line or primary service,  
18 compared to the number of orders that US West was not  
19 able to satisfy because they were held due to a lack  
20 of facilities.

21 MR. HARLOW: All right. Let's just come  
22 back to 444, then, on Mr. Reynolds' cross. All  
23 right. Just give me a moment, Your Honor. The rest  
24 of the questions may be deferred to Mr. Reynolds,  
25 based on testimony we just received.

00716

1 MR. VAN NOSTRAND: If I could clarify, this  
2 document that's been distributed, does it include the  
3 confidential attachment and therefore should be  
4 C-444?

5 MR. HARLOW: At this time, we don't need to  
6 include the attachment, but since it's been  
7 identified as an entire data request, I'm not even  
8 sure we're going to offer it, but it probably should  
9 be marked C, just to be on the safe side.

10 JUDGE MOSS: Okay. I'm not going to mark  
11 it C unless it becomes necessary, because the  
12 handling of confidential materials creates certain  
13 administrative difficulties that I would just as soon  
14 avoid. So let's see what happens.

15 MR. HARLOW: Okay. Thank you, Your Honor.

16 Q. Ms. Jennings (sic), I'm going to refer you  
17 to page 24 of your rebuttal testimony. And at lines  
18 15 to 26, you testified that one of the advantages  
19 that US West brings to the table in this merger is,  
20 quote, experience in local markets, network  
21 management, and the service of a large customer base.  
22 Is that correct?

23 A. I'm sorry, I'm not finding that on page 24.  
24 Can you point me to lines?

25 Q. Fifteen to 26 -- oh, excuse me, 14 to 18 is

00717

1 where that quote should appear.

2 JUDGE MOSS: What page?

3 THE WITNESS: On page --

4 MR. HARLOW: I think we have a wrong cite.

5 We need a moment.

6 Q. Let me just ask it. Is that part of your  
7 testimony, that you believe that experience in local  
8 markets, network management, and service of a large  
9 customer base are advantages that US West brings to  
10 this merger?

11 A. Yes.

12 JUDGE MOSS: That's at page 44 of her  
13 testimony.

14 MR. HARLOW: Thank you, Your Honor.

15 Q. Who is the US West senior executive that's  
16 currently responsible for network management?

17 A. From an operations perspective, in terms of  
18 network facilities and functions, Greg Winn is the  
19 current officer responsible for that operation.

20 Q. And what's Mr. Winn's title?

21 A. Give me a moment. Executive vice  
22 president, operations and technology.

23 Q. And he currently reports directly to the  
24 CEO, Mr. Trujillo; is that correct?

25 A. That's correct.

00718

1 Q. Is Mr. Winn expected to stay on the senior  
2 executive team after the merger?

3 A. My understanding is he does not choose to  
4 stay on.

5 Q. So the answer would be no?

6 A. That's correct.

7 Q. And who would be responsible for the local  
8 network after the merger?

9 A. If you look at the data response to AT&T  
10 01-016S1, the announcement is that John Kelley will  
11 be the executive vice president for operations and  
12 engineering for the 14-state network.

13 Q. Does Mr. Kelley have any network  
14 operational experience at all?

15 A. I believe Mr. Kelley does, to some extent,  
16 in that he is currently the president of wholesale  
17 and was previously the vice president of large  
18 business and government accounts and president of  
19 federal services, and through those responsibilities,  
20 has been very closely tied to operations and  
21 engineering designed to address his marketplace  
22 needs.

23 Q. Aren't all of those positions that you  
24 referenced marketing and customer service positions,  
25 essentially?

00719

1           A.    That's correct, but a part of serving the  
2 customer is understanding what their network  
3 requirements are and how their services function.

4           Q.    Are you aware that Mr. Kelley has ever had  
5 any experience, rather than indirectly through a  
6 marketing position, directly in management of network  
7 operations?

8           A.    Directly responsible for network operations  
9 as it relates to his experience with US West, I'm not  
10 familiar.

11           MR. HARLOW:   Thank you.   No further  
12 questions.

13           JUDGE MOSS:   Thank you, Mr. Harlow.

14           MR. BUTLER:   I have no questions.

15           JUDGE MOSS:   Mr. Pena.

16           MR. PENA:    I don't have any questions.   No.

17           MR. FFITCH:   No questions, Your Honor.

18           JUDGE MOSS:   Ms. Johnston.

19           MS. JOHNSTON:  No.

20           JUDGE MOSS:   Redirect?   I'm sorry, I  
21 skipped the Bench again.   I've got to quit doing  
22 that.   I need to be sitting at the other end.   I'm  
23 always looking this way.   Anything from the Bench?

24           CHAIRWOMAN SHOWALTER:  No.

25           JUDGE MOSS:   Okay.



00720

1 MR. VAN NOSTRAND: I do have a few  
2 questions.

3 JUDGE MOSS: I was about to skip you again,  
4 too. I'm trying to move this thing along, Mr. Van  
5 Nostrand.

6 R E D I R E C T E X A M I N A T I O N  
7 BY MR. VAN NOSTRAND:

8 Q. Now that you have Exhibit 364 in front of  
9 you, which I believe Mr. Kopta distributed this  
10 morning, do you have that? I believe you were just  
11 referring to it.

12 A. Yes, I do.

13 Q. There's been some suggestion, references to  
14 how well the company has been keeping parties advised  
15 of changes in company management and the progress of  
16 the integration process. Has the company informed  
17 the parties in this case as certain announcements  
18 have been made regarding management appointments?

19 A. Yes, in fact, Exhibit 364 is not the most  
20 current version. That was supplemented on March 6th,  
21 and the supplement provided the news release that was  
22 issued with respect to the top executive team.

23 Q. And that news release was issued when?

24 A. On March 2nd, which was Thursday, and the  
25 supplemental response was provided to the parties on

00721

1 Monday, March 6th.

2 Q. And that news release is the one which  
3 lists the top 20 executive appointments?

4 A. Yes, it is.

5 Q. Okay. Do you recall the line of  
6 questioning from Mr. Kopta about penalties that may  
7 have been imposed by the Colorado Commission in  
8 connection with service quality?

9 A. Yes.

10 Q. And the suggestion that the magnitude of  
11 those penalties may have had some connection with the  
12 level of investment in Colorado in subsequent years?

13 A. The suggestion. I didn't agree with that  
14 statement, I believe, in the record.

15 Q. Correct. And do you recall the level of  
16 penalties which were imposed in Colorado?

17 A. If memory serves me right, I believe they  
18 were around \$12 million.

19 Q. And under the settlement agreement among  
20 Staff, the Public Counsel, and the companies, what's  
21 the maximum of exposure the company may face if it  
22 fails to achieve the service quality performance  
23 targets?

24 A. Well, it's difficult to really define the  
25 maximum exposure, because there's two components to

00722

1 that. If you were looking at something comparable to  
2 Colorado, you would look at the service program  
3 that's defined, and the maximum penalty there is \$20  
4 million a year during the period of this agreement,  
5 which is over a three-year period.

6 In addition to that, though, you would also  
7 have to include the customer-specific remedies, which  
8 could be very costly if the company were not  
9 performing adequately. The area of greatest concern  
10 are those remedies that are credits for a full month  
11 of local service for all customers served, for  
12 instance, by a given wire center. Some of our wire  
13 centers have 60,000 customers. That could add up  
14 rather quickly if the company were having problems  
15 complying with the standards it's agreed to in this  
16 agreement.

17 Q. Finally, if we could turn again to page 44  
18 of your rebuttal testimony, the discussion on lines  
19 11 to 13 about the portfolio of services offered by  
20 US West?

21 A. Yes.

22 Q. There seemed to be some confusion about  
23 what US West does and does not offer. Could you  
24 describe what it is that US West can and cannot  
25 offer?

00723

1           A.    Yes.  Specifically around the discussion  
2  that occurred on wireless services, we do offer  
3  interLATA long distance capability as a function or  
4  capability of our wireless service.  However, we are  
5  not able to offer interLATA service through our wire  
6  line product at this point in time, which I believe  
7  the Commission is most familiar with.  With respect  
8  to our wireless services, we do not have ubiquitous  
9  deployment of wireless service capability in the  
10 state of Washington or, to my knowledge, in any other  
11 state where US West operates.

12                So again, it's a fairly limited offering.  
13 And by merging with Qwest, we will have access to  
14 their interLATA network in not only Washington, but  
15 all US West states, that will provide service for  
16 both wireless and wire line customers.

17                MR. VAN NOSTRAND:  Thank you, Ms. Jensen.  
18 I have no further questions, Your Honor.

19                JUDGE MOSS:  All right.  Ms. Jensen, I  
20 believe, subject to being recalled, we'll be able to  
21 release you from the stand at this time.  Thank you  
22 very much for your testimony.

23                THE WITNESS:  Thank you.

24                JUDGE MOSS:  Please call your next witness.

25                MR. VAN NOSTRAND:  Applicants call Mark

00724

1 Reynolds.

2 JUDGE MOSS: Good morning.

3 MR. REYNOLDS: Good morning.

4 Whereupon,

5 MARK S. REYNOLDS,

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

7 herein and was examined and testified as follows:.

8 JUDGE MOSS: Please be seated. Ms. Anderl,

9 will you be examining this witness on direct?

10 MS. ANDERL: On direct, yes. Thank you,

11 Your Honor.

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

13 BY MS. ANDERL:

14 Q. Good morning, Mr. Reynolds.

15 A. Good morning.

16 Q. Will you please state your name and

17 business address for the record?

18 A. My name is Mark Reynolds. My business

19 address is 1600 Seventh Avenue, Room 3206, Seattle,

20 Washington, 98191.

21 Q. And did you file in this docket rebuttal

22 testimony, which has been marked as Exhibit 40-RT, as

23 well as an attachment to that testimony, which is

24 marked as Exhibit 41?

25 A. Yes, I did.

00725

1 Q. Do you have any changes or corrections to  
2 make to your testimony today?

3 A. No, I do not.

4 Q. If I were to ask you the questions  
5 contained in that testimony, would your answers be  
6 the same?

7 A. Yes, they would.

8 MS. ANDERL: Your Honor, I would move the  
9 admission of Exhibits 40 and 41.

10 JUDGE MOSS: Hearing no objection, they'll  
11 be admitted as marked.

12 MS. ANDERL: Mr. Reynolds is available for  
13 cross.

14 JUDGE MOSS: I'm just examining our exhibit  
15 list here. It appears to me we have a series of  
16 exhibits following Mr. Reynolds. I'm wondering if  
17 the confusion is an administrative confusion. What's  
18 been marked as 41-RT is actually just Exhibit 41,  
19 which is testimony, rebuttal testimony of Max A.  
20 Phillips before the Iowa Utilities Board.

21 MS. ANDERL: Yes.

22 JUDGE MOSS: And it appears that in  
23 organizing our exhibits, no doubt due to a failing on  
24 my part, the Staff has gone through that and treated  
25 that as if it were testimony that's going to be

00726

1 presented in this proceeding, and it's not.

2 MS. ANDERL: Yes, Your Honor. I just  
3 noticed the RT designation on Exhibit 41 myself.

4 JUDGE MOSS: So what we'll do is designate  
5 41 just by the number, and it is the sole exhibit.

6 And so we will strike from our exhibit list those  
7 items that are listed as Numbers 42 --

8 MS. ANDERL: No, Your Honor, those are  
9 proposed cross exhibits.

10 JUDGE MOSS: Oh, they are?

11 MS. ANDERL: Yeah.

12 JUDGE MOSS: Okay. I was concerned that  
13 those were attached to the Phillips.

14 MS. ANDERL: No, those were ones that  
15 otherwise would have been thrown into the 350 and  
16 above series, but which Mr. Harlow was able to  
17 identify specifically to Mr. Reynolds.

18 JUDGE MOSS: All right. I just wanted to  
19 make sure that we are clear on that. All right. We  
20 have straightened out the matter of Exhibit 41, but  
21 the C-42 and so forth are all potential cross  
22 exhibits. All right, fine.

23 With that, then, we have the witness  
24 available for cross-examination and we'll proceed as  
25 we have been, with Mr. Kopta going first.

00727

1 MR. KOPTA: Thank you, Your Honor.

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

3 BY MR. KOPTA:

4 Q. Good morning, Mr. Reynolds.

5 A. Good morning.

6 Q. I'm sure you're glad to finally be up and  
7 testifying.

8 A. I'm relieved.

9 Q. Mr. Reynolds, would you turn to page five  
10 of your testimony, please, specifically beginning  
11 with the question that starts on line 15 about other  
12 state proceedings that you contend deal with some of  
13 the issues that the intervenors have raised in this  
14 proceeding. Do you see that reference?

15 A. Yes, I do.

16 Q. Beginning on the following page, you  
17 discuss the Commission's carrier-to-carrier service  
18 standard rule-making in Docket UT-990261. Do you  
19 know when that docket was opened?

20 A. I'd venture a guess that it was  
21 approximately a year ago.

22 Q. Have there been any standards for wholesale  
23 service carrier-to-carrier service that have been  
24 developed as a result of that rule-making to date?

25 A. There have been none that have been adopted



00728

1 by the Commission. I think there's been many that  
2 have been presented in either comment cycle or during  
3 the workshops that have been held.

4 Q. And is there a timetable that's been  
5 established for proposing any rules or taking any  
6 action as far as presenting something to the  
7 Commission for its determination?

8 A. No, but then, that's the nature of a  
9 rule-making.

10 Q. Mr. Reynolds, you filed comments on behalf  
11 of US West in this docket on March 10th, 2000, did  
12 you not?

13 A. Yes.

14 Q. Do you have a copy of those comments with  
15 you?

16 A. I do not.

17 MR. KOPTA: May I approach?

18 JUDGE MOSS: Yes.

19 THE WITNESS: I might add one  
20 clarification, that even though the comments were  
21 filed under my name, I was not the entire genesis of  
22 the documents.

23 JUDGE MOSS: Has this been previously  
24 marked?

25 MR. KOPTA: No, it has not. This is simply

00729

1 for the witness' reference.

2 Q. And I will assure you, Mr. Reynolds, that I  
3 will not hold you personally responsible for this  
4 document. Would you turn to the last page, page six,  
5 and as a conclusion to the comments, it states, US  
6 West continues to believe that a carrier-to-carrier  
7 service quality rule-making is not necessary. Is  
8 that US West's position?

9 A. Yes, it is.

10 Q. So in essence, US West is recommending that  
11 the Commission not adopt any carrier-to-carrier  
12 service quality standards or remedies in this  
13 proceeding and also recommending that they not adopt  
14 them in the carrier-to-carrier service quality  
15 rule-making; isn't that correct?

16 A. Yes, that is correct, but I might add that,  
17 you know, we believe that the interconnection  
18 agreements between the parties were ample opportunity  
19 to discuss the issues associated with service quality  
20 standards, and they were reviewed in the negotiations  
21 and ultimately in some of the arbitrations before  
22 this Commission. And many, many service quality  
23 issues came before the Commission and are embodied in  
24 the existing interconnection agreements between the  
25 parties.

00730

1 I might also add that another forum that's  
2 also looking at service quality standards right now  
3 is the ROC collaborative in conjunction with the OSS  
4 testing that's taking place.

5 Q. And we will discuss all of those, as I'm  
6 sure you're pleased to find out. Let's start with  
7 the last one, since that's the next one in your  
8 testimony. You discuss that, I believe, on page  
9 eight. Specifically, this has to do with the  
10 technical advisory group, TAG, for the regional  
11 oversight committee, ROC, collaborative that you were  
12 just discussing.

13 Is it US West's position that service  
14 quality standards for the state of Washington should  
15 be established as part of the 14-state -- or excuse  
16 me, 13-state ROC collaborative?

17 A. I think that there are certain performance  
18 measures that are best established through the ROC  
19 collaborative, primarily because US West has  
20 region-wide systems that are probably more easily  
21 monitored on a regional basis. Obviously, each state  
22 is going to be interested in certain performance  
23 metrics on a state-by-state basis, but the overall  
24 guidelines and types of reporting and monitoring  
25 could probably more efficiently be done for all 14

00731

1 states on a regional basis.

2 Q. Well, I'm a little confused, because you  
3 also referenced interconnection agreements. Are you  
4 saying that there should be some standards set on a  
5 region-wide basis and some standards set for each  
6 individual carrier that negotiates an interconnection  
7 agreement with US West?

8 A. No, I think the company's position has  
9 always been twofold. I think, first, we support  
10 what's contained in the interconnection agreements,  
11 and we believe that is what was envisioned under the  
12 act. To the extent that regulators believe that we  
13 need to go beyond that, I think that we've offered a  
14 number of recommendations for how we proceed. And  
15 even in the context of carrier-to-carrier service  
16 quality we offer other recommendations, such as the  
17 filing of a statement of generally-available terms or  
18 recommending following what the ROC collaborative is  
19 doing.

20 So I think we've always been flexible, but  
21 we've always maintained that essentially the  
22 interconnection agreements do have and essentially  
23 were -- do have performance standards embodied in  
24 them, and those were explored by the Commission at  
25 one point in time.

00732

1 Q. Is it US West's position that any standards  
2 that are developed in the ROC TAG process would be  
3 subject to negotiation on an individual carrier  
4 basis?

5 A. I think there are a couple of ways that  
6 those rules could become effective in the state. I  
7 think certainly as amendments to agreements, yes,  
8 that's one way that could happen, that that could  
9 happen. Another way is for the states to take some  
10 form of action and to essentially embed those in a  
11 rule-making and rule those out as proposed rules. So  
12 those are a couple of the different ways that those  
13 could become effective.

14 Q. Well, I guess that's one aspect of the  
15 question that I asked. The other is let's assume --  
16 or maybe I should ask. Has the ROC TAG developed any  
17 standards or reporting requirements or remedies?

18 A. I don't know that. I'm not that close to  
19 the process.

20 Q. So you don't know if there's any timetable  
21 that's been established to develop those standards or  
22 remedies or reporting requirements?

23 A. You know, I remember reading that the  
24 timetable for the entire ROC is centered around the  
25 OSS testing and that there's a date in September of

00733

1 this year that is kind of a due date to complete many  
2 of the ROC activities, but I honestly don't know how  
3 the performance measures are integrated into that  
4 requirement.

5 Q. Well, assume for me, then, for purposes of  
6 this question, that there are some performance  
7 standards or reporting requirements established as  
8 part of the ROC collaborative. Is it US West's  
9 position that a carrier in an individual negotiation  
10 or arbitration with US West could change any of those  
11 standards, or would the carrier be bound by standards  
12 that were established during the ROC collaborative?

13 A. I think it would be dependent on how those  
14 were ultimately integrated into either state rules or  
15 statutes and what the requirements are on a  
16 state-by-state basis. I certainly think the parties  
17 are free to negotiate the types of terms and  
18 conditions they want in their individual agreements.

19 However, as we well know in this state,  
20 there are other requirements over and above the  
21 interconnection agreements that we're also required  
22 to comply with. So I believe that you could have  
23 another set of standards that would offer carriers,  
24 you know, another set of assurance, so to speak.

25 Q. On the following page of your rebuttal

00734

1 testimony, page nine, you discuss the possibility of  
2 raising these sorts of issues in a Section 271  
3 proceeding. US West hasn't made a Section 271 filing  
4 in Washington yet, has it?

5 A. No, but it plans to do so in the very near  
6 future.

7 Q. And we were just talking about the ROC  
8 collaborative. Is it US West's position that service  
9 quality issues would be one of the issues that's tied  
10 to the ROC collaborative in terms of evaluating a  
11 Section 271 application?

12 A. Yes, my understanding is is that part of  
13 the ROC's stated goals, in addition to sort of  
14 defining the necessary tests to ensure compliance  
15 with our OSS requirements, that they identify the  
16 performance measures necessary to track US West's  
17 quality of service, including performance benchmarks,  
18 and that they also define an oversight review process  
19 to ensure that US West is complying with the  
20 documented wholesale processes.

21 Q. Is it US West's position that individual  
22 carriers that have service quality complaints with US  
23 West can seek resolution of those complaints as part  
24 of the Section 271 review process?

25 A. I'm not sure that US West will have a lot

00735

1 of control over how the intervenors manage their part  
2 of the 271 case. Obviously, with experience in this  
3 merger, I'm sure that they will probably seek out  
4 that opportunity to do just that.

5 Q. I guess my question is, though, is it US  
6 West's position that that's an appropriate forum for  
7 CLECs to raise service quality complaints that they  
8 have with US West and seek resolution of those  
9 complaints in that forum?

10 A. I believe that US West envisions the  
11 intervenors will take the opportunity, to the extent  
12 that US West files an SGAT regarding its terms and  
13 conditions to support part of its binding legal  
14 obligations and in other instances we bring forward  
15 our interconnection agreements.

16 To the extent that the intervenors have  
17 evidence that we have not been living up to the terms  
18 of those interconnection agreements or our processes  
19 are not consistent with the statement of generally  
20 available terms that we're putting forward, I would  
21 fully expect them to question that and to try to work  
22 within that process to ensure that there's either  
23 terms available that US West will comply with to  
24 their satisfaction.

25 Q. Mr. Reynolds, you just mentioned a



00736

1 statement of generally available terms, or SGAT. Is  
2 it US West's intention to file such an SGAT either as  
3 part of the Section 271 process in this state or  
4 independently of that process?

5 A. Yes, it is.

6 Q. Have you reviewed the Commission's order  
7 and revised interpretive policy statement dealing  
8 with its Section 271 review in Washington?

9 A. Is it --

10 MS. ANDERL: Your Honor, may we have a date  
11 on that?

12 JUDGE MOSS: The witness --

13 MR. KOPTA: Yesterday.

14 THE WITNESS: I've been away from my  
15 office, so I haven't had an opportunity to see it.

16 Q. Did you participate in the discussions  
17 surrounding US West's motion to revise the previous  
18 interpretive and policy statement?

19 A. Yes, I did.

20 Q. And are you aware that US West's ability to  
21 use an SGAT was an issue of some contention?

22 A. Yes. I might add that I participated or at  
23 least was at the open meeting in which the Commission  
24 explored those opportunities with the parties, and my  
25 understanding was is that the Commission's decision,

00737

1 and I have not seen the order yet, was that US West  
2 would be allowed to use an SGAT as an adjunct to its  
3 case. That is, to provide information that was  
4 required that may be required to comply with terms  
5 and conditions that aren't included in the  
6 interconnection agreement.

7 Q. Does US West consider service quality  
8 standards, reporting requirements and remedies to be  
9 an element under the act?

10 MS. ANDERL: Your Honor, I would object to  
11 that question as vague and unclear. Could we get a  
12 clarification on what Counsel means by element?

13 MR. KOPTA: An unbundled network element.

14 THE WITNESS: My recollection is that it's  
15 not specifically identified as such, but I think that  
16 the body of interpretation that's come out of the FCC  
17 in many of the states since the act certainly  
18 envisions that there will be some sort of performance  
19 monitoring.

20 And certainly, many of the interconnection  
21 agreements between the parties, in most of the  
22 agreements that I'm familiar with, has a section  
23 about service performance, the types of reporting  
24 that the company commits to do, and remedial action.

25 Q. So US West doesn't consider service quality

00738

1 standards, reporting or remedies to be an unbundled  
2 network element. Does it consider service quality  
3 standards, reporting requirements or remedies to be a  
4 discrete service?

5 A. Let's go back and suggest that I think my  
6 answer to the prior question was is that I didn't  
7 recollect a specific element in the act. I don't  
8 think that you could jump to the conclusion that US  
9 West doesn't consider it from my prior statements. I  
10 just wanted to clarify that, because I think your  
11 next question was predicated on that assumption, and  
12 I think that would be incorrect. Maybe you could  
13 re-ask that question again.

14 Q. Sure. Well, let me first deal with this,  
15 which is, as I understand your answer, service  
16 quality standards, reporting and remedies would be an  
17 integral part of unbundled network elements, but not  
18 itself a discrete unbundled network element. Is that  
19 a fair characterization?

20 A. Yes.

21 Q. And my next question, then, was whether  
22 service quality standards, reporting and remedies  
23 would be considered a discrete service? And I  
24 assume, based on your prior answer, that it would be  
25 a similar response, that it's not a discrete service,

00739

1 but is, in fact, integrally related to provisioning  
2 of services?

3 A. I could agree with that, yes.

4 Q. Would you turn to page 12 of your  
5 testimony, specifically beginning on -- the sentence  
6 that begins on line 13. You discuss other fora in  
7 which wholesale customers or competitors would be  
8 able to raise concerns with US West's service  
9 quality. And the first of those is arbitration. Are  
10 you aware that CLECs have already tried to arbitrate  
11 the issue of service quality standards, reporting and  
12 remedies before this Commission?

13 A. I'm aware that the issues associated with  
14 performance measures and service standards have come  
15 before the Commission in arbitration proceedings, and  
16 the Commission has ruled on those.

17 Q. And the ruling has been not to impose  
18 service quality standards, reporting and remedies?

19 A. No.

20 Q. Are you familiar with the arbitration  
21 between TCG-Seattle and US West?

22 A. Not intimately, no.

23 Q. Are you familiar with the interconnection  
24 agreement between TCG-Seattle and US West?

25 A. I've probably reviewed it a time or two.

00740

1 Q. And would you agree with me that that  
2 agreement contains no service quality standards,  
3 reporting or remedies?

4 A. I'll accept that, subject to check. I know  
5 that we have a number of other agreements that are  
6 replete with service quality standards and reporting  
7 requirements, so I don't think I can accept the  
8 overall statement that this Commission has never  
9 ordered or acknowledged service quality standards in  
10 the context of interconnection agreements.

11 Q. Would you also accept, subject to check,  
12 that TCG-Seattle, in its arbitration, proposed  
13 service quality standards, reporting and remedies and  
14 that the Commission declined to adopt TCG-Seattle's  
15 proposal?

16 A. That I could agree with.

17 Q. Is it US West's position that service  
18 quality standards should be resolved in individual  
19 arbitrations?

20 A. I think I've already stated that, you know,  
21 it's generally US West's position that that is an  
22 element that could be negotiated and arbitrated, if  
23 necessary, and it has been before this Commission,  
24 yes.

25 Q. And has US West opposed -- well, let's step

00741

1 back a minute before saying that. Is arbitration of  
2 service quality standards, reporting requirements and  
3 remedies available when a carrier has an existing  
4 contract with US West still in effect?

5 A. I don't believe so. I don't know exactly  
6 the process that a carrier could go through to get  
7 their agreement amended and what their rights are  
8 subsequent to requests for an amended agreement are  
9 to arbitration. So I apologize, I don't know what  
10 that is.

11 I do know that carriers do have the  
12 opportunity to use the 252(I) provision to look at  
13 other agreements that may contain service quality  
14 provisions that they believe might suit their company  
15 and avail themselves of those provisions.

16 Q. As we sit here today, can you identify any  
17 interconnection agreement in Washington in which  
18 there are service quality standards, reporting and  
19 remedies?

20 A. Yes.

21 Q. And those would be?

22 A. US West-AT&T contract.

23 Q. Now, AT&T proposed rather extensive service  
24 quality standards, reporting and remedies, did it  
25 not?

00742

1 A. Yes, it did.

2 Q. And the Commission largely did not accept  
3 those, did it?

4 A. There is a section in the AT&T-US West  
5 contract that has service performance metrics and  
6 reporting requirements that US West must provide  
7 under the provisions of the contract, and there's  
8 remedial action required on behalf of US West if we  
9 don't comply with some of those terms.

10 Q. So there are bill credits available?

11 A. No.

12 JUDGE MOSS: Mr. Kopta, I'm going to  
13 interrupt you here. Sometimes the purposes for which  
14 cross-examination is conducted are admittedly opaque  
15 to the Bench until we receive the briefs and  
16 understand what it is you are up to, but I have to  
17 confess that I'm having a difficult time tying this  
18 level of detail in this line of questioning to the  
19 concern that is before us in this proceeding, which  
20 is the merger.

21 We have a fair body of testimony that's  
22 been prefiled, and which I fully expect to see in the  
23 record, since nobody accepted my invitation to file  
24 motions to strike. And I think that that certainly  
25 will establish the status quo, if you will, against

00743

1 which we will then measure the public interest or  
2 impact on the public interest of the proposed merger  
3 and decide what to do.

4           And so I just don't want to spend too much  
5 of our precious hearing time building that same body  
6 of evidence regarding the status quo with US West.  
7 And so I'm going to put you on the spot a little bit  
8 here and ask you how you're going to tie all this,  
9 other than as I've described it, to any impact the  
10 merger may have on a going forward basis.

11           MR. KOPTA: One of the issues that the  
12 Commission established to be inquired into in this  
13 proceeding is service quality, including wholesale  
14 service quality. The concerns that we have, at least  
15 with respect to this particular topic, which is  
16 wholesale service quality standards, reporting and  
17 remedies, is that no such effective standards,  
18 reporting requirements or remedies currently exist,  
19 and that there is little prospect of those being  
20 implemented as a result of the merger, despite  
21 whatever additional incentives there may be for Qwest  
22 to obtain Section 271 authority post-merger.

23           And our concern is that this is one of the  
24 issues that will be neglected as a result of the  
25 merger between these two companies, given that the



00744

1 focus of Qwest has historically been on matters  
2 outside of the local exchange area. And our concern  
3 is that that will continue to be the case and that  
4 the status quo will either remain or will worsen as a  
5 result of the merger.

6 JUDGE MOSS: Do we really need all this  
7 level of detail regarding individual interconnection  
8 agreements and that sort of thing in order for you to  
9 establish your point, or can we perhaps cut to the  
10 chase with some of the broader questions that appear  
11 to be implicated by the analysis you just gave?

12 MR. KOPTA: Well, I was prepared to move on  
13 to the next area in Mr. Reynolds' testimony in terms  
14 of the availability of the complaint process. So  
15 that may address your concerns in terms of individual  
16 interconnection agreement, specifically.

17 JUDGE MOSS: Okay. I think you understand  
18 my concerns, and I'll encourage you and the other  
19 parties, as well, to try to limit that sort of detail  
20 on the current situation to that which is somehow  
21 quite necessary to your advocacy regarding the impact  
22 of the merger on these various concerns. Thank you.

23 MR. KOPTA: Understood.

24 Q. So Mr. Reynolds, let's talk about  
25 complaints. That, I believe, is one of the

00745

1 opportunities that you reference that competitors  
2 have to deal with service quality issues; is that  
3 correct?

4 A. I don't recommend it, but it is noted, yes.

5 Q. Well, let's see. To the extent that there  
6 are no service quality standards or remedies in  
7 interconnection contracts or rules, is it -- how can  
8 a carrier file a complaint to address what they  
9 consider to be a violation of service quality  
10 standards?

11 A. Well, I can't agree with the premise of  
12 your question. I think I've stated before that there  
13 are service quality standards that are in those  
14 agreements and there are expectations that are  
15 contained in the agreements regarding service  
16 provisioning intervals. And certainly, if US West is  
17 outside the scope of reasonableness on how it's  
18 provisioning service to the companies, they can  
19 certainly bring that complaint before the Commission  
20 under the interconnection agreement enforcement rule  
21 or under a formal complaint. And certainly we've had  
22 both actions, I think, by your client.

23 Q. Well, let's talk about that. Does the  
24 Commission have a time frame in which it resolves  
25 complaints by carriers against other carriers?

00746

1           A.    I believe that under the interconnection  
2 agreement enforcement rule, there is a time frame  
3 that's associated with that rule.  As far as the  
4 formal complaint process, I believe that it's  
5 whatever the Commission's requirements are for a  
6 process of that nature.  And I apologize.  I don't  
7 know what that is.

8           Q.    Well, you referenced a complaint that, for  
9 example, Nextlink brought against US West.  Do you  
10 know how long it took from the time that Nextlink  
11 filed its complaint or petition for enforcement until  
12 the Commission resolved that petition?

13          A.    My best recollection was that it was a  
14 couple of months.

15          Q.    A couple of months?

16          A.    Yes.

17          Q.    Would you accept, subject to check, that it  
18 was more like four or five months?

19          A.    I would accept that, subject to check.

20          Q.    And if the complaint process takes four or  
21 five months, what is the customer that Nextlink is  
22 trying to serve, using a facility that it's having a  
23 problem with US West, supposed to do for that four or  
24 five months?

25          A.    I don't have an answer to that.  My

00747

1 testimony speaks to the fact that this proceeding is  
2 not the proceeding to resolve that. If your clients  
3 have a problem with the existing statutes or rules,  
4 then we ought to work to change those rules if they  
5 aren't timely enough for your clients. We can't  
6 examine the breadth and depth of testimony required  
7 to do that in the context of this merger proceeding,  
8 nor is there anything about this merger that will  
9 change those conditions. That's my testimony.

10 Q. I understand your testimony, and I'm  
11 examining your testimony, which is that if carriers  
12 have a problem, they can file a complaint and that  
13 they don't need self-executing remedies for service  
14 quality problems that will be an additional incentive  
15 for US West to provide adequate service quality.

16 And my examination has to do with the  
17 customer impact of requiring carriers to file a  
18 complaint if they have problems with US West's  
19 service quality. So is it true that the customer in  
20 that circumstance either has to wait until the  
21 resolution of the complaint or, if it's an existing  
22 US West customer, retain its existing service from US  
23 West?

24 A. I would have to know all the factors. As I  
25 say in my testimony, there are two sides to every

00748

1 story, and I would need to understand what the  
2 specific factors are regarding this customer and  
3 regarding the specific complaint.

4 Q. Well, let's talk about held orders. You  
5 and Ms. Jensen in the settlement agreement discuss  
6 held orders. If Nextlink has a problem with a held  
7 order from US West and files a complaint, how is the  
8 customer supposed to obtain service from Nextlink  
9 during the pendency of that complaint?

10 MS. ANDERL: Your Honor, I'm going to  
11 object at this point and interpose an objection  
12 similar to the concern that Your Honor raised on the  
13 previous line of questioning. And that is that  
14 there's quite a bit of detail being gotten into here  
15 in particular circumstances or hypothetical  
16 particular circumstances with no demonstrable nexus  
17 to the merger transaction. And I therefore believe  
18 that we're essentially beyond the scope of what the  
19 focus of this docket is or the witness' testimony.

20 JUDGE MOSS: The objection would be one of  
21 relevance, Mr. Kopta.

22 MR. KOPTA: Well, my response is that the  
23 settlement agreement, Exhibit 320, specifically  
24 addresses remedies for customers experiencing held  
25 orders from US West. And my exploration is simply to

00749

1 contrast what is in the settlement agreement with  
2 what is available to customers of CLECs that are  
3 attempting to use US West's facilities to serve those  
4 same customers.

5 JUDGE MOSS: I wonder if we can just cut to  
6 the heart of that and simply pose the question to the  
7 witness of whether the service quality standards or  
8 performance standards or what have you that are  
9 proposed via the settlement agreement are available  
10 to your clients, as CLECs, or not. Doesn't that get  
11 directly to the point and save us a lot of time?

12 MR. KOPTA: It may or it may not, but I  
13 will try and proceed along those lines.

14 Q. Mr. Reynolds, do you have Exhibit 320,  
15 which is the proposed settlement agreement, in front  
16 of you?

17 A. I do not.

18 MS. ANDERL: May I?

19 THE WITNESS: I have it now.

20 Q. Would you turn to page three of that  
21 document?

22 JUDGE MOSS: We're on Exhibit 320?

23 MR. KOPTA: Yes, Your Honor.

24 JUDGE MOSS: Which is the settlement  
25 agreement.

00750

1 Q. Specifically, paragraph 2(A)(3), subtitled  
2 Held Orders. Do you see where my reference is?

3 A. Yes.

4 Q. Are you familiar with what installation  
5 waiver is provided pursuant to this particular tariff  
6 reference?

7 A. I have a good idea.

8 Q. Is this the nonrecurring charge for service  
9 that's waived?

10 A. I believe that's correct.

11 Q. And is that credit also available to a CLEC  
12 that is attempting to use an unbundled loop from US  
13 West to provide local service to a customer?

14 A. No, they're different services.

15 Q. And under subsection four, which is missed  
16 appointments, referencing a \$50 credit for a missed  
17 appointment or a commitment, is that available to a  
18 CLEC obtaining an unbundled loop or attempting to  
19 obtain an unbundled loop from US West to provide  
20 local service?

21 A. No. Once again, they are different  
22 services.

23 Q. Now, these credits, as I believe Ms. Jensen  
24 testified, along with the additional credits that are  
25 included, are intended to provide US West with an

00751

1 incentive to maintain service quality, as opposed to  
2 compensating customers for service deficiencies?

3 A. I believe I heard Ms. Jensen testify that  
4 we view this as an incentive to perform and not pay  
5 credits, yes.

6 Q. Mr. Reynolds, on page 36 of your testimony,  
7 this begins your discussion of response to the merger  
8 conditions that Mr. Knowles attaches to his  
9 testimony. Do you see my reference?

10 A. Yes, I do.

11 Q. And beginning on line 20 of this page, and  
12 carrying over onto the next page, you give an example  
13 of an instance in which these proposed standards are  
14 more stringent than those that are contained in  
15 interconnection -- or at least this one  
16 interconnection agreement; is that correct?

17 A. That's correct.

18 Q. Do you have those standards or the proposed  
19 competition-related conditions in front of you?

20 A. I do not.

21 MS. ANDERL: I can provide the witness with  
22 a copy.

23 MR. KOPTA: Thank you.

24 MS. ANDERL: It's going to take just a  
25 moment, Your Honor.



00752

1 JUDGE MOSS: Does the witness need to have  
2 a copy of this? Do you have a copy for him?

3 MR. KOPTA: I don't have a copy for him. I  
4 can let him look at the one that I have.

5 JUDGE MOSS: It appears that he has been  
6 furnished a copy, so --

7 THE WITNESS: Are we talking about Exhibit  
8 RK-4?

9 Q. Yes. And I believe that your reference at  
10 this point in your testimony that we were just  
11 discussing has to do with the first condition, which  
12 is on pages one and two of this exhibit. Can you  
13 identify for me what other standards that are listed  
14 in the first condition are more demanding or exceed  
15 the levels that US West currently provisions service?

16 A. It's my recollection that the service  
17 provisioning intervals for the loops called for in  
18 (1)(A)(ii) and (iii) are, I believe, a bit more  
19 aggressive than what's called for in some of the  
20 interconnection agreements and in our service  
21 interval guide.

22 And I'm not exactly sure what the cutover  
23 out-of-service provision is in all the  
24 interconnection agreements, but I think it's fairly  
25 consistent with what's in here. I do know that the

00753

1 provision under (1)(A)(6) in most interconnection  
2 agreements regarding collocation provisioning, I  
3 believe, is longer than the period called for in  
4 these conditions.

5 Q. And if these were revised to be consistent  
6 with whatever's in an interconnection agreement or US  
7 West standard practices, would that resolve your  
8 concerns with this condition?

9 A. No, I believe that the -- that it goes  
10 beyond that. I believe that there's a requirement  
11 under (C) and (D) of this provision with some  
12 substantial penalties. There's absolutely no  
13 reliance on a provision that's in most of the  
14 agreements, which calls for the parties to try to  
15 negotiate and to resolve their differences before  
16 penalties kick in.

17 Q. So US West is unwilling or has a problem  
18 with any credits for service quality problems that  
19 CLECs have; is that correct?

20 A. I think US West presented its cases in  
21 those agreements that went before this Commission for  
22 arbitration, and I think this Commission decided in  
23 favor of US West regarding this level of penalties.  
24 Now, this Commission is reviewing service quality  
25 standards for carrier-to-carrier transactions in a

00754

1 rule-making. That is the appropriate place to  
2 address this issue; not in this merger proceeding.

3 Q. Has US West agreed to any service quality  
4 credits in any of its interconnection agreements in  
5 Washington?

6 A. Not to my knowledge, no.

7 Q. You lump the first and second conditions  
8 together in the question that begins on page 36, line  
9 13 of your testimony. So I'm wondering whether your  
10 concern, in terms of exceeding current standards,  
11 applies to the second condition. Is it your  
12 contention that an average 85 percent fill rate is a  
13 more demanding standard than US West currently  
14 maintains in its network?

15 A. To be honest with you, I don't know the  
16 exact standard that US West tries to maintain  
17 regarding the fill, but I can tell you that there are  
18 many, many factors that could impact a fill rate that  
19 US West has very little control over, and until we  
20 get adequate forecasting from all the parties that  
21 are using the network, it makes it very difficult to  
22 try to maintain a specific fill rate in our network  
23 with any degree of specificity.

24 Q. Mr. Reynolds, you provided testimony in the  
25 generic costing and pricing docket, UT-960369, et

00755

1 al., did you not?

2 A. Yes, I did.

3 Q. And that was having to do with the cost  
4 studies that US West uses to develop cost for  
5 unbundled loops and other network elements?

6 A. Yes.

7 Q. Do you recall the fill factor that US West  
8 uses in its cost studies?

9 A. I don't recall specifically. My  
10 recollection is that it was somewhere around 65  
11 percent.

12 Q. And so the loop prices that the Commission  
13 has established as part of that docket will take  
14 effect after its final order are based, at least in  
15 part, on US West's cost estimates that use a fill  
16 factor of approximately 65 percent?

17 A. That I can't recall. I know that the  
18 Commission had asked us to modify a number of inputs  
19 to our model and likewise for the other components of  
20 the ultimate unbundled loop, and I can't recall  
21 whether that was one of them that was required to be  
22 modified or not.

23 Q. Would you accept, subject to check, that in  
24 paragraph 181 of the Commission's Eighth Supplemental  
25 Order in the docket you were just discussing states

00756

1 that the Commission adjusted the RLCAP utilization to  
2 65 percent in running the US West cost model?

3 A. I can accept that subject to check, yes. I  
4 might also add, though, that the Commission made a  
5 number of other major modifications to US West's cost  
6 study in that docket that, you know, ultimately  
7 results in a number that was nowhere close to US  
8 West's initially-filed cost.

9 Q. On page 37 of your testimony, it's actually  
10 the sentence begins on line eight, but my reference  
11 begins at the end of line nine. And you state, Any  
12 penalties that the Commission ultimately assesses  
13 should be based on a factual record that  
14 substantiates violations. Do you see my reference?

15 A. Yes, I do.

16 Q. And is that the way the remedies in the  
17 settlement agreement are structured?

18 A. I believe that the remedies in the  
19 settlement agreement are structured on fairly  
20 objective standards, and I think what we're referring  
21 to here is an area where the evidence might not be so  
22 clear as to where the guilt actually lies on one  
23 party or another.

24 Q. So it's not your understanding that under  
25 the settlement agreement the Staff would be required

00757

1 to bring some kind of complaint or show cause  
2 proceeding in order to obtain the remedies that are  
3 in the settlement agreement?

4 A. That is not my understanding, that's  
5 correct.

6 Q. Turning back to page 16 of your testimony,  
7 the question and answer that begin on line 13, do you  
8 have the cross exhibits that have been identified in  
9 this docket with you?

10 A. Yes, I do.

11 Q. Would you turn to Exhibit 389?

12 A. I have it.

13 Q. Does this exhibit accurately reflect US  
14 West's and Qwest's response to this data request?

15 A. Yes, it does.

16 Q. And have US West or Qwest made any  
17 determinations with respect to the payment of  
18 reciprocal compensation for ISP-bound traffic since  
19 this data request was provided?

20 A. I think I heard the Qwest witnesses say  
21 that the new combined company would comply with all  
22 Commission orders, and I believe that this Commission  
23 has ordered the payment of reciprocal compensation on  
24 ISP traffic.

25 Q. And US West has litigated that issue

00758

1 several times in Washington, has it not?

2 A. Yes.

3 Q. Can we anticipate that the merged company  
4 will continue to litigate that issue in Washington?

5 MS. ANDERL: Objection, Your Honor. Calls  
6 for the witness to speculate.

7 JUDGE MOSS: Well, we are looking forward  
8 here to a future time, post-merger, so I think we  
9 have to allow some degree of that. You may answer  
10 the question.

11 THE WITNESS: I believe that US West's  
12 litigation of these issues have been to refine points  
13 of contention between the parties. We have not  
14 relitigated the same issue again and again, and I  
15 don't expect that we would do that in the future. To  
16 the extent that there are new issues that arise, I  
17 can't really speak on behalf of the combined company,  
18 but I can tell you that US West would continue to  
19 bring new issues before the Commission.

20 Q. So is US West or the merged company willing  
21 to pay reciprocal compensation for ISP-bound traffic  
22 without requiring a carrier whose agreement is  
23 expiring to arbitrate that issue?

24 A. Let me ask a clarifying question, if I  
25 could. This is a company that is not opting into

00759

1 another carrier's reciprocal comp as a part of the --

2 Q. If you like, yes.

3 A. Well, I think it matters. I mean,  
4 certainly the provisions of 252(I) allow companies to  
5 opt into other provisions, such as reciprocal  
6 compensation. And that is, in fact, what you were  
7 referring to when you said that the company had  
8 litigated several of these issues.

9 Regarding a negotiation from ground zero,  
10 the company is going to present its evidence and its  
11 position, and ultimately it would make it into  
12 arbitration before this Commission. Now, this  
13 Commission has already ruled, in the context of the  
14 generic docket, what its ruling is or it's already  
15 ruled on the disposition ISP traffic, so obviously  
16 the company would do any of that at its peril. And I  
17 don't know whether, in the context of negotiations, a  
18 company would assume that it's already been an issue  
19 that's been decided by this Commission. And so I  
20 guess my ultimate answer is I honestly don't know.

21 Q. On page 17 of your testimony, the sentence  
22 that begins on line 11, actually, my reference is on  
23 line 12, where you state that 92 percent of the  
24 negotiations in Washington have resulted in  
25 negotiated agreements. Do you see that reference?



00760

1 A. Yes, I do.

2 Q. Are you including opt-in agreements as  
3 among negotiated agreements?

4 A. Of course. That's probably the majority of  
5 the agreements in the state.

6 Q. And is this figure based on a chart that US  
7 West provided in response to a data request?

8 A. It's a back-of-the-envelope calculation.  
9 No, it was based on -- I believe at one point in my  
10 testimony I talk about the number of agreements that  
11 the company's negotiated, and I believe it's over  
12 100, and we merely took what percentage of those that  
13 were not arbitrated. My recollection is is that the  
14 number that we've negotiated is -- or the number of  
15 total agreements is in the neighborhood of 100, and  
16 there's roughly eight that were arbitrated, leaving  
17 92 percent.

18 Q. I am looking at a document that is labeled  
19 as US West proprietary, which is basically a  
20 compilation of the interconnection agreements in the  
21 state of Washington that US West has entered into,  
22 and I don't know why this is confidential, but I  
23 don't intend to challenge that. I just would ask  
24 you, before asking any questions, are you aware of  
25 any information with respect to the number or the

00761

1 nature of the interconnection agreements that you  
2 have in Washington to be considered proprietary?

3 MS. ANDERL: Your Honor, may we get an  
4 exhibit number?

5 JUDGE MOSS: Do you have an exhibit number  
6 for us?

7 MR. KOPTA: No, I don't have an exhibit  
8 number. This is a response to a data request.

9 JUDGE MOSS: Maybe you could show it to Ms.  
10 Anderl. It might save some time. Now, are we going  
11 to have questions with regard to some information  
12 that's been provided under the protective order?

13 MR. KOPTA: I don't think so, but Ms.  
14 Anderl may be able to clarify that. Essentially,  
15 what I want to ask is there is a breakdown in terms  
16 of the type of interconnection agreement, as well as  
17 the number, the raw numbers of each type. And that  
18 was all I was going to ask about. If that's not  
19 proprietary in any way, then I can ask that without  
20 running afoul of the restrictions of the protective  
21 order.

22 JUDGE MOSS: Think that poses any problem,  
23 Ms. Anderl? It sounds to me like that aspect, at  
24 least, would probably be available by going through  
25 the Records Center.

00762

1 MS. ANDERL: No, I think that's fine.

2 JUDGE MOSS: Okay. Go ahead, Mr. Kopta.

3 Q. Mr. Reynolds, have you seen this document  
4 before?

5 A. I don't believe so, no.

6 Q. Do you understand the designation of the  
7 type of interconnection agreement of wire line to  
8 refer to facilities-based provider of local exchange  
9 service?

10 A. Yes.

11 Q. And would you accept, subject to your  
12 check, that as of the end of November of 1999, that  
13 there were 54 such interconnection agreements in  
14 Washington between US West and a wire line carrier,  
15 as we've just defined them?

16 MS. ANDERL: Your Honor, I guess I would  
17 object to asking the witness to analyze this document  
18 at this point. Perhaps he could ask questions about  
19 this after the break, when the witness has had an  
20 opportunity to review it. Mr. Reynolds just admitted  
21 he had not seen the document before. It's not  
22 something he can't become familiar with in a short  
23 amount of time, but I do believe, since it was not  
24 identified as a cross exhibit, the witness ought to  
25 have at least more than 10 seconds to look at it.

00763

1 JUDGE MOSS: Well, personally, I'd like to  
2 have a cup of coffee, so I think this would be a good  
3 time for us to take our morning recess. We'll come  
4 back in -- I'm going to say 10 minutes, with the full  
5 expectation that we'll run over a little bit. But  
6 let's try to be back by a quarter of.

7 (Recess taken.)

8 JUDGE MOSS: Okay. Let's go back on the  
9 record.

10 Q. Mr. Reynolds, have you had an opportunity  
11 to take a look at the document we were discussing  
12 before the break?

13 A. Yes, I have.

14 Q. And would you accept, subject to your  
15 counting, as opposed to mine, that as of November or  
16 the end of November, 1999, that US West had entered  
17 into 54 interconnection agreements in Washington with  
18 wire line carriers, as we have used that term today?

19 A. Yes.

20 Q. And of those 54, six were arbitrated, 28  
21 were opt-ins, and 20 were negotiated, as opposed to  
22 opt-in?

23 A. Yes. I would just add, so the record is  
24 not unclear, that it's not inconsistent with the  
25 number I gave earlier. I think I had referenced a

00764

1 number around 100. And if you add the other  
2 agreements in, you come close to the number that I  
3 had actually referenced in my testimony.

4 Q. And the other agreements are for wireless  
5 and for resale?

6 A. That's correct.

7 Q. Would you turn to page 18 of your  
8 testimony, please. The sentence that begins on line  
9 11, my reference is actually on the following line.  
10 Shrill?

11 A. It's a lawyer word I heard one time.

12 Q. I was going to say, that doesn't sound like  
13 you, Mr. Reynolds. A little more seriously, has US  
14 West permitted any CLEC in Washington to opt into  
15 less than an entire interconnection agreement in  
16 Washington without also filing a petition for  
17 enforcement?

18 A. I don't know the answer to that.

19 Q. Turn to page 28 of your testimony, please.  
20 My reference is specifically the question and answer  
21 that begin on line 16 of that page. And I wanted to  
22 put these numbers in context. Did I hear Ms. Jensen  
23 correctly earlier that US West has 2.5 million access  
24 lines in Washington?

25 A. I think that's correct.

00765

1 Q. So 6,526 unbundled loops is something less  
2 than three percent of that total, if you'll accept  
3 that figure subject to check?

4 A. Yes.

5 Q. And in comments that US West filed in the  
6 Section 271 procedural docket that resulted in the  
7 Commission's order yesterday, I believe US West  
8 estimated total access lines for CLECs somewhere in  
9 the neighborhood of 70 or 71,000. Do you recall  
10 that?

11 A. I could accept that, subject to check.

12 Q. And I believe on page 23 of your testimony,  
13 beginning on line 16, you testify that CLECs are  
14 collocated in wire centers that provide access to  
15 approximately 90 percent of Washington's access  
16 lines; is that accurate?

17 A. Yes.

18 Q. So my question is, if CLECs are collocated  
19 in or have access to 90 percent of US West's 2.5  
20 million access lines, and yet they have only obtained  
21 a little more than 6,500 unbundled loops, is it  
22 possible that the quality of the loops or the  
23 availability of the loops is one of the reasons why  
24 there are so few unbundled loops in Washington that  
25 US West has provided to CLECs?

00766

1           A.    I don't know that for a fact.  There are a  
2  lot of other factors that could influence those  
3  numbers.  For example, our access lines don't  
4  encompass access lines that a facility-based carrier  
5  may have already constructed.

6           We have certainly many, many more orders  
7  and facilities in place for the exchange of traffic,  
8  local interconnection service trunks, than we do for  
9  loops, and certainly I think that that is because of  
10 the entry strategy of many of the competitors.

11          And so I couldn't necessarily agree with  
12 the proposition that the small number of loops that  
13 the competitors have purchased has to do with service  
14 quality issues.

15          Q.    So are you saying that it's not possible  
16 that that's even a factor?

17          A.    That's not what my testimony was.  I  
18 believe that certainly it could be a factor, but I'm  
19 just saying that there are a lot of other issues that  
20 you'd have to look at, as well.

21          Q.    Would you turn to page 30 of your  
22 testimony, please.  And with the question and answer  
23 beginning on that page and falling over to the next  
24 page, you're discussing VDSL service, which I believe  
25 stands for very high-speed digital subscriber line.

00767

1 Do you have a copy of Exhibit 359, which is a news  
2 report entitled US West Head to Leave After Qwest  
3 Merger?

4 A. Yes, I do.

5 Q. Would you turn to the second page of that  
6 exhibit, the fourth paragraph. Or actually,  
7 beginning on the fourth paragraph, the fifth  
8 paragraph is what I wanted to ask you about. At this  
9 point, the article states, US West wanted to expand  
10 its VDSL services to about 10 markets beyond its test  
11 market of Phoenix. Qwest was optimistic about the  
12 potential for the service but decided to wait before  
13 the US West deal closed before spending money on the  
14 VDSL expansion. Do you know whether that's an  
15 accurate statement?

16 A. No, I don't.

17 Q. So you don't have any personal knowledge  
18 about US West's deployment of VDSL?

19 A. No. I guess I should answer that I know  
20 that we have offered it in Arizona and I believe a  
21 couple of other states, but beyond that, I don't have  
22 any personal knowledge about any specific deployment  
23 schedule.

24 Q. So you're unaware of whether any city in  
25 Washington would have been subject to VDSL



00768

1 deployment?

2 A. No, I'm not.

3 Q. Would you turn to page 33 of your  
4 testimony, please, specifically beginning with line  
5 eight, discussing the collocation rates that US West  
6 charges to Nextlink. Do you know what those rates  
7 are?

8 A. Do I know what the rate elements are or the  
9 rate levels are?

10 Q. The rate levels?

11 A. I probably couldn't quote you every rate  
12 level, no, not sitting here now.

13 Q. And have you reviewed the invoices that US  
14 West has sent to Nextlink for collocation?

15 A. I may have reviewed several in conjunction  
16 with work on the generic docket.

17 Q. So if you don't know what the rates are,  
18 but you've reviewed the invoices, how do you know  
19 that US West is charging Nextlink what's in the  
20 contract?

21 A. It's just my assumption that we would  
22 charge in accordance with the contract.

23 Q. So you don't -- this is an assumption not  
24 based on your personal knowledge?

25 A. That's correct.

00769

1 MR. KOPTA: Those are all of my questions  
2 for Mr. Reynolds. We -- I should say Ms. Anderl and  
3 I discussed off the record, as a means of  
4 abbreviating the process, a stipulation to certain  
5 cross exhibits without walking through them with Mr.  
6 Reynolds. And those include Exhibit 370, 371, 372,  
7 373, 374 and 385. So I would move for the admission  
8 of those exhibits, as well as Exhibit 389, which I  
9 did discuss with Mr. Reynolds.

10 JUDGE MOSS: Okay. Any objection?

11 MS. ANDERL: No objection.

12 JUDGE MOSS: Hearing no objection, those  
13 exhibits will be admitted as marked.

14 MR. KOPTA: Thank you, Your Honor. Thank  
15 you, Mr. Reynolds.

16 JUDGE MOSS: And thank you, Mr. Kopta.

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

18 BY MR. TRINCHERO:

19 Q. Good morning, Mr. Reynolds.

20 A. Good morning.

21 Q. I have the good fortune of following Mr.  
22 Kopta, which means that my cross-examination will be  
23 much shorter, because he has been kind enough to  
24 cover most of the areas that I want to cover with  
25 you.

00770

1                   You had a discussion with Mr. Kopta about  
2 performance measures that US West records in the  
3 state of Washington currently. Do you recall that  
4 discussion?

5           A.    Yes.

6           Q.    And do you have copies of what have been  
7 marked as Exhibits C-391 and C-394 with you?

8           A.    Yes, I do.

9           JUDGE MOSS: Now, Trincherro, before we get  
10 into this --

11          MR. TRINCHERO: Yes.

12          JUDGE MOSS: -- is it your intention to  
13 inquire into the confidential portions of these  
14 responses or to simply have more generalized  
15 questions that will not require us to make any  
16 special provisions with regard to the hearing record?

17          MR. TRINCHERO: Well, Your Honor, I was  
18 hoping, actually, to seek admission of both of these  
19 once I get confirmation from the witness that these  
20 are accurate and correct copies of the data  
21 responses.

22          JUDGE MOSS: All right. Now, if we can  
23 simply do that without having any inquiry with  
24 respect to them, then I don't need to do anything  
25 particularly, except note that they are confidential

00771

1 and will be afforded that special treatment as  
2 exhibits.

3 MR. TRINCHERO: Thank you.

4 JUDGE MOSS: So let's -- I'm sure Ms.  
5 Anderl will jump in if there's any problems.

6 Q. Mr. Reynolds, can you turn to what has been  
7 marked as Exhibit C-391?

8 A. Yes, I have it.

9 Q. And is that an accurate copy of the  
10 response that was provided by US West to McLeod's  
11 Data Request 02-003S1?

12 A. Yes.

13 Q. And turning to Exhibit C-394, is that an  
14 accurate copy of US West's response to McLeod Data  
15 Request 02-006?

16 A. Yes.

17 Q. And these responses and their attachments  
18 show the type of performance measurements that US  
19 West keeps with regard to services provisioned to  
20 CLECs in the state of Washington; is that correct?

21 A. I don't have intimate familiarity with  
22 these, but I'm assuming that that's correct, yes.

23 MR. TRINCHERO: Your Honor, I would move  
24 the admission of Exhibits C-391 and C-394.

25 MS. ANDERL: Your Honor, we don't have any

00772

1 objection to their authenticity, but in terms of  
2 admissibility, I guess I would ask for what purpose  
3 they're being admitted.

4           If the sole purpose is to establish what  
5 performance measurements US West provided in response  
6 to these data requests, I don't have any problem with  
7 that. But there is a lot of other information in  
8 those data requests. And if the purpose of admitting  
9 the responses is to somehow on brief draw conclusions  
10 from some of the numbers that are contained in those  
11 documents and advocate that certain action ought to  
12 be taken from the conclusions drawn, then I suppose I  
13 do have an objection, because that would be more  
14 along the lines of something that should have been in  
15 McLeod's direct case in terms of what these numbers  
16 mean and what we should do about them. So if it were  
17 to be admitted for that purpose, I would object.

18           If it is to be admitted solely for the  
19 purpose to demonstrate the performance measures that  
20 US West has provided in discovery, I have no  
21 objection.

22           JUDGE MOSS: I'll give you a chance to  
23 respond to that, Mr. Trincherro.

24           MR. TRINCHERO: Your Honor, I actually have  
25 no objection to that qualification on the

00773

1 admissibility of these documents.

2 JUDGE MOSS: Saves me a lot of work.

3 MR. TRINCHERO: That's my goal in life.

4 JUDGE MOSS: All right. With that

5 understanding, then, as recorded in our record, we

6 will admit C-391 and C-394.

7 MR. TRINCHERO: Thank you. With that, Your

8 Honor, I have no further questions for Mr. Reynolds.

9 JUDGE MOSS: Mr. Harlow.

10 MR. HARLOW: Thank you, Your Honor.

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

12 BY MR. HARLOW:

13 Q. Good morning, Mr. Reynolds.

14 A. Mr. Harlow.

15 Q. Do you have available to you the MetroNet

16 exhibits which have been pre-marked as Exhibits 44

17 through, I think, 56?

18 MS. ANDERL: I believe it's 58.

19 Q. If not, I have an extra set for you.

20 A. I believe I have them all.

21 MS. ANDERL: May I seek a clarification as

22 to whether it's 58, instead of 56?

23 MR. HARLOW: Let me refer to our exhibit

24 list here.

25 JUDGE MOSS: Fifty-seven, at least, clearly

00774

1 is a response to a MetroNet Services Corporation data  
2 request.

3 MR. HARLOW: Through 58.

4 JUDGE MOSS: Through 58.

5 MR. HARLOW: I'd like to note we submitted  
6 MSC -- Data Request Response MSC 02-017 and 02-021,  
7 and apparently those got omitted. We may not need to  
8 mark those in any event, but if we stumble when we  
9 get there, that's why, is that they're missing  
10 numbers, but they should be in the package. Okay.  
11 Mr. Reynolds.

12 MS. ANDERL: Again, if I may seek a  
13 clarification, is it correct that numbers 17 and 21  
14 are not yet identified as exhibits?

15 MR. HARLOW: That's correct, and I'm not  
16 going to be asked that they be numbered at this time,  
17 because I'm not sure -- I'd say it's unlikely that  
18 we'll be offering those.

19 JUDGE MOSS: Okay.

20 Q. Mr. Reynolds, referring to -- and if you  
21 would just turn to page 27 of your rebuttal  
22 testimony.

23 While you're doing that, there's one other  
24 thing I wish to note for the record. I'm switching  
25 hats today, if you will. I'm crossing Mr. Reynolds

00775

1 on behalf of MetroNet Services Corporation, and Mr.  
2 Deanhardt will cross Mr. Reynolds on behalf of Covad.

3 On line 14, you refer to the resold Centrex  
4 and Centrex-like services, do you see that?

5 A. Yes.

6 Q. And the purpose of this testimony, as I  
7 take it, was to try to show this Commission that the  
8 amount of total service resale is actually higher  
9 than shown in Mr. Moya's table in his testimony by  
10 including resold Centrex and Centrex-like services?

11 A. Yes.

12 Q. It's a fair summary?

13 A. Yes.

14 Q. Are you familiar with MetroNet Services  
15 Corporation?

16 A. Remotely, yes.

17 Q. Okay. Would MetroNet fit in -- be  
18 something you would deem to be a reseller of Centrex  
19 or Centrex-like services?

20 A. Yes.

21 Q. And specifically, are you familiar with the  
22 fact that MetroNet purchases Centrex Plus service  
23 from US West?

24 A. I would accept that. I don't have a high  
25 degree of familiarity with MetroNet and the services



00776

1 they purchase.

2 Q. All right. If you wish to accept that  
3 subject to check, that would be fine. Are there  
4 other Centrex products or services that are resold,  
5 other than Centrex Plus, in the state of Washington?

6 A. I honestly don't know.

7 Q. All right. Now, the numbers at the bottom  
8 of the page, you stated that this column contains --  
9 this is starting on line 17. This column contains an  
10 additional 259,000 resale demand units that, when  
11 added to the 169,000 from the total sale column,  
12 brings US West's total percentage to 2.6 percent. Do  
13 you see that?

14 A. Yes, I do.

15 Q. And that 259,000 number is a region-wide  
16 number, I assume?

17 A. It's my understanding, yes.

18 Q. That encompasses all 14 states?

19 A. Yes.

20 Q. Okay. Mr. Reynolds, to what are you  
21 referring? What document?

22 A. I am referring to the local competition,  
23 August 1999 document, put out by the Industry  
24 Analysis Division, Common Carrier Bureau, Federal  
25 Communications Commission. It is the document that

00777

1 Mr. Moya used for his cite in his testimony and that  
2 I use to clarify my testimony.

3 Q. Okay. Does that document contain a  
4 Washington-specific number for resale demand units  
5 for Centrex-like services?

6 A. I don't know that offhand.

7 Q. Do you provide a Washington-specific number  
8 comparable to the number on line 18 of page 27 of  
9 your rebuttal testimony anywhere in your responsive  
10 testimony, your rebuttal testimony?

11 A. I don't believe I do.

12 Q. Do you know what the Washington-specific  
13 number is?

14 A. No.

15 Q. Who would you say the biggest reseller of  
16 Centrex and Centrex-like services is in US West's  
17 14-state region?

18 A. With my limited knowledge, I would probably  
19 say McLeod.

20 Q. And McLeod is generally most active where  
21 in your region?

22 A. My recollection is they have a big presence  
23 in the state of Iowa.

24 Q. Were you aware -- were you here, I believe  
25 it was yesterday, when a McLeod witness testified

00778

1 that they had -- effectively hadn't yet begun to  
2 operate in the state of Washington?

3 A. Yes.

4 Q. Now, MetroNet sent you a data request, and  
5 I guess I'll ask you to refer first to the data  
6 request response that's been marked Exhibit 44. Do  
7 you see that -- well, I want to give you a moment to  
8 read the question and answer.

9 A. Okay.

10 Q. Okay. Now, perhaps because of the use of  
11 the negative here, and we then have the answer a  
12 double negative, turning this around, does this mean  
13 -- is the impact of this answer that US West does  
14 effectively limit resale of Centrex-like services?

15 A. That wasn't the intent of my answer.

16 Q. All right. Well, could you -- let's go  
17 ahead and read a portion of the question into the  
18 answer. This is referring to, again, page 27 of your  
19 testimony, where you state, quote, Other companies  
20 have effectively limited resale of such service.  
21 There should actually be a close quotation mark  
22 there.

23 The question was, is the implication of  
24 this testimony that US West contends that it does not  
25 effectively limit resale? Is the answer accurate?

00779

1           A.    Yes, it still is.  That wasn't my  
2 intention.  I was speaking only to the other  
3 companies, and my response has to do -- and the word  
4 effectively I did not intend to be pejorative, but  
5 rather just an explanation that, for whatever reason,  
6 the types of Centrex services that they offer must  
7 not lend themselves to the ability to be resold.

8           Q.    Is the thrust of your testimony that US  
9 West does not, in fact, limit -- effectively limit  
10 resale, or its resale of Centrex is unlimited?

11          A.    I think I was speaking to US West, et al.

12          Q.    Yes, I'm speaking to US West.

13          A.    I don't know that.  I can't speak to it.

14          Q.    You don't know whether or not US West  
15 effectively limits resale of its Centrex services?

16          A.    Like I said, that's not my testimony here,  
17 and I can't answer your question.

18          Q.    All right.  Would you agree that, in order  
19 to compare or in order to include resold Centrex  
20 lines to determine the extent of effective  
21 competition based on resale for US West that it would  
22 only be appropriate to do so if there were no undue  
23 or unreasonable restrictions on resale of Centrex  
24 services?

25          A.    I guess I don't understand your question.

00780

1 Are you setting up a prequalification for what we  
2 take into account? Is there a special club or -- I  
3 don't understand.

4 Q. Well, I assume that the thrust of your  
5 testimony on page 27 is that the Commission needs to  
6 take into account in determining the extent of  
7 competition in this state that US West has a product  
8 called Centrex that that can be resold. Is that a  
9 correct assumption?

10 A. Well, no. My testimony at page 27 was  
11 meant to correct an oversight of Mr. Moya in the  
12 point he was trying to prove. All I was trying to  
13 say is that you need to take into account all of the  
14 demand units that the report took into account, and I  
15 actually quoted a specific section of the report that  
16 acknowledged that US West is a bit unique in that it  
17 has a lot of resold Centrex. Because of that, you  
18 needed to take a look at both columns. That's all I  
19 was trying to point out.

20 Q. Are the terms and conditions for Centrex  
21 service, the prices, terms and conditions uniform  
22 among all 14 states?

23 A. I honestly don't know. I don't believe  
24 that they are, but I don't know that for a fact.

25 Q. Would you accept, subject to check, that

00781

1 the prices, in particular, vary quite a bit among the  
2 14 states?

3 A. I can accept that.

4 Q. So in focusing on the 14 states in your  
5 rebuttal testimony at page 27, that's not necessarily  
6 reflective of the situation in Washington because of  
7 the pricing differences; isn't that correct?

8 MS. ANDERL: Objection, Your Honor. That  
9 reference to the pricing differences, I believe, is  
10 really without sufficient foundation.

11 JUDGE MOSS: I'm inclined to agree. He  
12 said he doesn't know.

13 MR. HARLOW: The witness just agreed that  
14 the pricing was different among the states. He  
15 agreed to accept that, subject to check.

16 JUDGE MOSS: That's right, but we don't  
17 have any data in the record or information in the  
18 record other than that the prices are different. I'm  
19 still looking for the foundation.

20 MR. HARLOW: The question didn't assume any  
21 quantity of difference, simply that because of the  
22 difference, the 14-state approach couldn't  
23 necessarily be translated into anything specific to  
24 Washington, Your Honor.

25 JUDGE MOSS: Well, try to -- rephrase your

00782

1 question for me.

2 MR. HARLOW: I'll have to try to recreate  
3 it, because it slipped my mind.

4 Q. The question, Mr. Reynolds, would be, based  
5 on your acknowledgement that the pricing of Centrex  
6 services varies between -- among states, and the lack  
7 of any state-specific -- Washington-specific data in  
8 your testimony, that you can't really say that  
9 Centrex resale is a viable and material competitive  
10 option in Washington?

11 A. I don't think I was trying to say that. So  
12 I can't agree one way or the other. But my testimony  
13 doesn't speak to that at all. All it does is correct  
14 Mr. Moya's use of a statistic from a government  
15 report.

16 Q. Are you familiar with how Centrex Plus is  
17 priced in Washington?

18 A. No, I'm really not.

19 Q. Is there any US West witness yet to come on  
20 the stand in this proceeding that is?

21 A. I don't know that.

22 Q. Do you have enough familiarity with Centrex  
23 Plus pricing to know that service has three pricing  
24 components consisting of the NAR, or network access  
25 register, the NAC, or network access channel, and

00783

1 features?

2 MS. ANDERL: And at this point, Your Honor,  
3 I'm going to interpose an objection to what I believe  
4 is the beginning of a line of cross related to the  
5 following -- the data requests that Mr. Harlow is  
6 going to be talking about, as well. The objection is  
7 this is way outside the scope of this witness' direct  
8 testimony to get questions specific as to Centrex  
9 Plus pricing in Washington.

10 JUDGE MOSS: Mr. Harlow.

11 MR. HARLOW: Your Honor, this witness has  
12 opened the door here with the rebuttal testimony.  
13 The witness has asked that this Commission consider  
14 it rebuttal to Mr. Moya's testimony and accept that  
15 there's more competition than Mr. Moya's data showed,  
16 and purports to, in his testimony, to make that  
17 relevant to the state of Washington. I think -- and  
18 that's based on a service called Centrex.

19 I think it's important for this Commission  
20 to understand that Centrex service is very  
21 restricted, that there are conditions on it that  
22 would be unacceptable if it were priced according to  
23 pricing rules for unbundled network elements, and  
24 we're entitled to make our record on that to address  
25 this point in Mr. Reynolds' rebuttal testimony.



00784

1 JUDGE MOSS: Isn't the only rebuttal  
2 testimony you're talking about this question and  
3 answer that we've already had several questions about  
4 on page 27 and carrying over to page 28? Is that the  
5 extent of it?

6 MR. HARLOW: No, Your Honor. That's the  
7 extent of the direct tie-in, but this line of  
8 questioning goes generally to the broader issues of  
9 the case, which is is the Washington market open to  
10 competition and are there competitive issues, are  
11 there restrictions or barriers to entry that US West  
12 has erected and maintains that the Commission may  
13 wish to consider tearing down as a condition of  
14 approving this merger.

15 The other possibility, I guess, is I might  
16 be able to short-circuit some of this if we could  
17 simply admit these data requests, as they do come  
18 from US West, and short-circuit some of the  
19 cross-examination here. Some, or maybe nearly all.

20 JUDGE MOSS: Well, I would certainly favor  
21 any approach that might shorten the  
22 cross-examination, and these are data responses,  
23 which we often are very liberal about allowing into  
24 the record. What do you say, Ms. Anderl, can we just  
25 admit those and skip this line of questioning?

00785

1 MS. ANDERL: Well, I wish I could agree to  
2 that, but the problem is the same problem that I  
3 brought up in the objection or potential objection to  
4 the McLeod data request responses, and that is that  
5 this information -- the only data requests I don't  
6 object to are -- the exhibits are 44, 45 and 56.

7 The other data requests, even though we  
8 answered them, we believe are irrelevant to this  
9 proceeding, are way outside the scope of Mr.  
10 Reynolds' direct testimony, and are, in essence,  
11 MetroNet's attempt to make its direct case without  
12 putting on a witness.

13 And we believe that these exhibits should  
14 not come in through Mr. Reynolds, even though we  
15 agree that they are accurate and authentic responses.  
16 They're simply not admissible on relevancy and on  
17 foundation grounds. There's no basis on which to ask  
18 Mr. Reynolds these questions on cross, and therefore  
19 these exhibits shouldn't come in either by  
20 stipulation or otherwise.

21 And I really -- you know, I think that Mr.  
22 Reynolds really provided the best explanation in his  
23 testimony that his question and answer on page 27 and  
24 28 is not intended to open up a whole inquiry into  
25 Centrex. It was simply meant to provide complete

00786

1 information to the partial information provided by  
2 another witness in this docket.

3 MR. HARLOW: Your Honor, I would not intend  
4 to offer, just to help us narrow the dispute here, I  
5 would not intend to offer 49, 50, the unnumbered data  
6 request response 02-17. Wouldn't intend to offer 51,  
7 52.

8 JUDGE MOSS: Tell me what you do want to  
9 offer, Mr. Harlow, instead of what you don't.

10 MR. HARLOW: Fifty-three. I should be  
11 making notes.

12 JUDGE MOSS: I'll tell you what. Instead  
13 of doing this now, we're pushing up against the  
14 luncheon hour here. What I want you to do is, during  
15 the luncheon recess, get a cogent set of what it is  
16 you want to admit. As I sit here now, I am  
17 relatively convinced that this witness is one who  
18 does not know a great deal about this and whose  
19 testimony on the point was for a very limited purpose  
20 in direct response to something in Mr. Moya's  
21 testimony. And so I think we frankly would be  
22 wasting a lot of time to pursue it with this witness.

23 Now, as to these data requests, that's not  
24 to say that they can't be admitted if we're satisfied  
25 that they have some relevance to the proceeding,

00787

1 independently of whether Mr. Reynolds is the witness  
2 who would be able to speak to them.

3 MR. HARLOW: I will be prepared to provide  
4 a list of exhibits I wish to offer at the end of the  
5 lunch break, Your Honor.

6 JUDGE MOSS: I'll ask you also to take  
7 advantage of that time to work with Ms. Anderl.  
8 Maybe we could save a lot of time and just cut  
9 through all this. If the list is far more limited,  
10 she's considering the full set right now and might  
11 not be as concerned if it's just two or three of  
12 them. Let's do that over the luncheon recess in a  
13 little bit here.

14 MR. HARLOW: Okay. Just to save time, I  
15 don't think I would have any other cross until we  
16 deal with that, so if I could just conclude, subject  
17 to perhaps having a few more questions based on the  
18 outcome of the ruling on the offer.

19 JUDGE MOSS: Of the exhibits?

20 MR. HARLOW: Yes.

21 JUDGE MOSS: You don't have any other lines  
22 of questioning for this witness, is what you're the  
23 telling me?

24 MR. HARLOW: I don't think I will,  
25 depending on Your Honor's ruling on the admission of

00788

1 the exhibits I offer after lunch.

2 JUDGE MOSS: Okay. We'll see how it goes  
3 with our other cross-examination and inquiry from the  
4 Bench. Let's see now. We're going to have Mr.  
5 Deanhardt for Covad; is that right?

6 MR. DEANHARDT: Yes, Your Honor.

7 JUDGE MOSS: Go ahead.

8 MR. DEANHARDT: May I take one second, Your  
9 Honor?: Thank you, Your Honor, I'm sorry. One thing  
10 I forgot to do during the break.

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

12 BY MR. DEANHARDT:

13 Q. Well, good morning again, Mr. Reynolds.

14 A. Good morning.

15 Q. Mr. Reynolds, earlier, when you were being  
16 examined by Mr. Kopta, I believe you said that it is  
17 difficult for US West to address concerns regarding  
18 the fill rate in its outside plant because of issues  
19 regarding CLEC forecasting; is that correct?

20 A. Yes.

21 Q. Okay. Let's, for a minute, make sure we're  
22 talking about the same thing. Would you tell me what  
23 it is that you're referring to when you're referring  
24 to the fill rate for the outside plant?

25 A. I believe it's a measure of the number of

00789

1 loops that are in service plus the number of the  
2 defective pairs that we have, divided by the total  
3 number of loops that are available.

4 Q. So that the result of that, then, is to  
5 give you a percentage of how many of the -- let's  
6 call them usable loops are in use; is that correct?

7 A. That's correct.

8 Q. And then from that you could subtract 100  
9 percent to determine how many other loops are  
10 available for use?

11 A. That's correct.

12 Q. Mr. Reynolds, in your testimony, you  
13 testify to the number of loops, of UNE loops, that  
14 have been purchased by CLECs in 1999. Do you recall  
15 that?

16 A. Yes, I do.

17 Q. Do you recall what that number is?

18 A. I believe I gave two numbers, one that was  
19 region-wide and one for the state of Washington.

20 Q. Let's focus on the number for the state of  
21 Washington. What number was that?

22 A. 6,526.

23 Q. And we just heard testimony -- or I believe  
24 you responded to another question that Mr. Kopta  
25 asked that there are roughly 2.5 million access lines

00790

1 in the state of Washington; is that correct?

2 A. It's plus or minus 100,000, yeah.

3 Q. So in determining how to -- in determining  
4 how to address fill rate concerns in 1999, US West  
5 would have had to consider approximately 6,000 loops  
6 out of 2.5 million; is that correct?

7 A. For which -- for 1999?

8 Q. Yes.

9 A. I guess I don't -- you mean for my concern  
10 about CLEC demand or forecast? I mean, obviously we  
11 have to consider all kinds of components about fill  
12 rate across all of our customer lines, including the  
13 CLECs.

14 Q. And so one of the concerns US West would  
15 have to deal with in trying to address fill rate in  
16 1999 would be a concern over 6,500 loops out of 2.5  
17 million?

18 A. That is true, but I might add that, you  
19 know, the CLECs tend to be concentrated in specific  
20 wire centers, so you're probably dealing with a  
21 smaller universe than the 2.5 million loops, so you'd  
22 have to look at a smaller universe there, as well.

23 Q. Mr. Reynolds, do you have Exhibit 444 in  
24 front of you? It's the exhibit that we were  
25 referring to earlier with Ms. Jennings (sic).

00791

1 A. Ms. Jensen?

2 Q. Ms. Jensen, I'm sorry.

3 A. That's okay.

4 Q. I apologize to Ms. Jensen.

5 A. Yes, I have it.

6 Q. Okay. Could you please read for me Request  
7 B -- and actually, let me set the stage for this.  
8 First of all, would you agree, based on reading  
9 Request A to yourself, that these data requests were  
10 related to orders for UNE loops placed by CLECs with  
11 US West?

12 A. Yes.

13 Q. Okay. Then would you please read Request B  
14 and US West's response to Request B?

15 A. Question, B: How many loop orders became  
16 held orders at any point during the provisioning  
17 process. Response: US West does not track the  
18 number of orders that become held at any point in the  
19 provisioning process. Based on the current pending  
20 order volumes in Washington as of March 7th, 2000,  
21 there were 808 orders, pending orders, that were past  
22 due.

23 Q. And just to be clear, this response is  
24 stating that on March 7th, there were 808 pending  
25 orders that were past due, not -- as opposed to



00792

1 saying that over the course of all of 1999, only 808  
2 orders went past due; correct?

3 A. I believe that that is the intent of the  
4 response, yes.

5 Q. Could you please read into the record  
6 Question C and US West's response to C?

7 MS. ANDERL: And Your Honor, I would  
8 object, just from an efficiency standpoint. I don't  
9 know if they're intending to offer this as an  
10 exhibit, but certainly these documents speak for  
11 themselves. It seems somewhat duplicative to have a  
12 potential exhibit read into the record.

13 MR. DEANHARDT: Your Honor, my only purpose  
14 here is I have several questions about the numbers  
15 themselves. I think it's easier if the Bench and the  
16 Commission understand the context of the questions  
17 and the numbers as I ask those question.

18 JUDGE MOSS: How many of these are you  
19 planning on having the witness read in?

20 MR. DEANHARDT: One more after this, Your  
21 Honor.

22 JUDGE MOSS: All right, go ahead.

23 THE WITNESS: C, question: How many loop  
24 orders became held orders at any point during the  
25 provisioning process because of lack of available

00793

1 facilities. C, response: Based on the pending past  
2 due orders as of March 7th, 2000, 407 of the 808  
3 orders went held for a lack of facilities.  
4 Eighty-six orders are held for a lack of facilities  
5 at this time.

6 Q. Mr. Reynolds, being held for a lack of  
7 available facilities means that there is not a loop  
8 that US West has available to provide to the CLECs so  
9 that it can provide service; is that correct?

10 A. That's my understanding, yes, sir.

11 Q. Mr. Reynolds -- and Your Honor, this will  
12 be the last one. Could you please read into the  
13 record question D, and the response to question D?

14 A. D, request: How many loop orders became  
15 held orders at any point during the provisioning  
16 process because of a lack of available F1 facilities.  
17 D, response: US West objects to this question on the  
18 grounds that it would require special study. US West  
19 does not track or identify held orders by F1 or F2  
20 separation.

21 MR. DEANHARDT: Thank you. Your Honor, I  
22 have a document that I'd like to hand to the witness,  
23 please.

24 JUDGE MOSS: What is the nature of the  
25 document? Has it previously been identified as a

00794

1 potential cross-examination exhibit?

2 MR. DEANHARDT: It is not. Well, I'm not  
3 going to ask that it be admitted. It is -- it's also  
4 information that we did not receive until after the  
5 exhibit list was prepared, as will be evident from  
6 the date on the document. And I just want to ask Mr.  
7 Reynolds some questions about it.

8 JUDGE MOSS: Show it to Ms. Anderl first.  
9 It appears to me that it's a confidential document,  
10 which raises special problems.

11 MR. DEANHARDT: At this point, Your Honor,  
12 we have designated it as confidential simply because,  
13 again, I received it quite late. And we may be  
14 removing the confidentiality designation, but I  
15 wanted to err on the side of caution. And it's  
16 Covad's data. I'm sorry. That's the important  
17 point.

18 MS. ANDERL: I'm going to need some time to  
19 review this document, Your Honor.

20 JUDGE MOSS: Yeah, the purpose of having  
21 all these exhibits exchanged in advance, of course,  
22 is to avoid this kind of delay during the hearing.  
23 So I'm going to ask you to move to another section of  
24 your cross-examination, and we'll deal with this  
25 after lunch. You all work it out over the lunch

00795

1 hour. I'm not going to spend hearing time on this  
2 sort of thing.

3 MR. DEANHARDT: Thank you, Your Honor. I  
4 apologize. This is a document received on March  
5 10th, so I apologize.

6 JUDGE MOSS: Just deal with it over lunch.

7 Q. Mr. Reynolds, could you please turn to page  
8 11 of your testimony? Do you see at the top of your  
9 testimony on page 11 that where you say that US West  
10 has no knowledge regarding a co-provider's intended  
11 use of unbundled loops? And I left out a  
12 parenthetical, but that's, in essence, what it says?

13 A. Yes.

14 Q. Now, US West has a product it calls the  
15 ADSL loop product, does it not?

16 A. As an unbundled loop, you mean?

17 Q. Yes.

18 A. Or a retail service?

19 Q. As an unbundled loop product?

20 A. I believe that that's correct.

21 Q. So if a provider's ordering an ADSL loop,  
22 you'd have a pretty good idea what that provider was  
23 going to use that for, would you not?

24 A. No, they could use it for anything they  
25 wanted to.

00796

1 Q. Okay. Does US West also have a product  
2 called a two-wire non-loaded loop product as an  
3 unbundled loop?

4 A. I believe we do.

5 Q. And are you familiar with how DSL works at  
6 all, Mr. Reynolds?

7 A. Somewhat, yes.

8 Q. And you're familiar with the notion that to  
9 work on a copper loop, that copper loop has to be --  
10 for DSL to work on the copper loop, that copper loop  
11 has to be non-loaded?

12 A. That's correct.

13 Q. And you're familiar with how voice service  
14 works on the network?

15 A. Somewhat.

16 Q. And so you're familiar with the notion that  
17 if -- that it is not required for a loop to be  
18 unloaded if you're going to provide only voice  
19 service across that loop?

20 A. Yes.

21 Q. So is it reasonable to assume, then, that  
22 it is more likely than not that a CLEC specifically  
23 requesting a two-wire non-loaded loop is purchasing  
24 that loop for the provisioning of advanced services,  
25 rather than for voice?

00797

1           A.    Or some other service that's not even under  
2 the advanced services umbrella. We honestly don't  
3 know. We don't ask and we don't know.

4           Q.    Are you aware of any company's purchasing  
5 two-wire non-loaded loops that are offering services  
6 other than DSL?

7           A.    I'm not aware of anything about the  
8 company's preferences for ordering those services and  
9 what types of services they provide over.

10          Q.    Could you please turn to page 13 of your  
11 testimony?

12           JUDGE MOSS: Let me interrupt you for half  
13 a second. Madam Reporter, is the pace appropriate?

14           THE REPORTER: It's quick.

15           JUDGE MOSS: Mr. Deanhardt, I'm going to  
16 ask you to moderate the pace of your speech a little  
17 bit, so as to allow our reporter to survive through  
18 the afternoon. Thanks.

19           MR. DEANHARDT: I will. Thank you for  
20 reminding me.

21           JUDGE MOSS: That's all right. I  
22 appreciate your trying to move things along. I  
23 appreciate that. But we have to strike a balance  
24 between the ability of the human hand.

25           MR. DEANHARDT: I will also stop drinking

00798

1 the caffeine.

2 Q. Mr. Reynolds, on page 13 of your testimony,  
3 you provide information regarding investments that,  
4 according to your testimony, US West has made in  
5 order to provide wholesale services; is that correct?

6 A. Yes.

7 Q. Now, these numbers that you provide on page  
8 13 are 14-state numbers, not Washington numbers;  
9 correct?

10 A. That is correct.

11 Q. And do you know comparable data for  
12 Washington?

13 A. I don't sitting here, but I know that in  
14 some of these categories, that comparable data  
15 exists. For example, on OSS, in our generic docket,  
16 we have a requirement to identify Washington-specific  
17 OSS for recovery purposes.

18 Q. So you could have provided some  
19 Washington-specific data in this testimony?

20 A. Yes, and I think I did in certain  
21 categories.

22 Q. Okay. Let's talk about some of these  
23 numbers for a moment. At lines eight and nine of  
24 your testimony, you state that US West has spent more  
25 than one billion dollars on providing CLECs with

00799

1 access to interconnection UNEs, resale, number  
2 portability and OSS; is that correct?

3 A. That's correct.

4 Q. US West recovers some, if not all of these  
5 costs, through charges for UNEs, resale, number  
6 portability and OSS; is that not correct?

7 A. We are seeking to recover costs. We don't  
8 always recover all of our costs.

9 Q. And by that, you mean that sometimes a  
10 Commission will decide that, for example, US West  
11 should not be able to recover for conditioning costs  
12 of a loop?

13 A. That hasn't happened in this state, but I  
14 suppose that that's a possibility.

15 Q. Now, the investment of this money benefits  
16 US West, as well; correct?

17 A. The benefits I can think to US West is it  
18 allows it to comply with its requirements under the  
19 act and ultimately will allow it to satisfy Section  
20 271 so that we can move forward into other markets.

21 Q. Mr. Reynolds, are you familiar with John  
22 Kelley?

23 A. Yes, I am.

24 Q. And who is Mr. Kelley?

25 A. Mr. Kelley is, I believe currently, the



00800

1 president of our wholesale markets division, soon to  
2 become the new leader of the network, the local  
3 network services for the combined company.

4 Q. Would you accept, subject to check, that  
5 Mr. Kelley has stated in various public forums that  
6 US West is working hard to provide wholesale services  
7 because it benefits US West in using elements of the  
8 network that would not otherwise be put into place by  
9 the retail side of the US West cost?

10 MS. ANDERL: I object, Your Honor. That's  
11 not an appropriate subject to check. I don't know  
12 how Mr. Reynolds would check it. If Covad wished to  
13 put in quotations from Mr. Kelley into the record,  
14 they have ample other methods to do so.

15 JUDGE MOSS: I think you can ask the  
16 witness directly what he knows about the subject,  
17 without relying on what Mr. Kelley may or may not  
18 know.

19 Q. Mr. Reynolds, in your opinion, is it a  
20 benefit to US West to have the ability to resale or  
21 to sell UNEs to wholesale -- I'm sorry, let me strike  
22 that, please, and rephrase.

23 Mr. Reynolds, in your view, is it of a  
24 benefit to US West to be able to sell UNEs to CLECs  
25 and thereby use facilities that might not otherwise

00801

1 be used solely by the retail side?

2 A. If US West is allowed to recover its costs  
3 and is entitled to a reasonable profit as has been  
4 allowed under the act, I would say yes.

5 Q. And currently --

6 A. That is not always the case, though.

7 Q. And currently, the act -- well, a  
8 foundational question first. Are you familiar with  
9 TELRIC pricing?

10 A. Yes, I am.

11 Q. Are you familiar with the concept that  
12 TELRIC pricing includes the cost of a forward looking  
13 network plus a reasonable profit?

14 A. At a high level, I can accept that.  
15 There's a lot of interpretation between that level  
16 and what actually gets applied.

17 Q. Certainly. Now, also on this one billion  
18 dollars, does that figure include investments made by  
19 US West to facilitate collocation?

20 A. Yes, it does.

21 Q. So that includes, for example, SPOT frames?

22 A. I don't know that for a fact.

23 Q. Okay. Well, then, let's try this. Where  
24 did you get this one billion dollar number from?

25 A. I got it from some of our interconnection

00802

1 financial people that keep track of these types of  
2 things.

3 Q. So you didn't even look at a specific  
4 document to get this number?

5 A. Yes, I did. I got the information from our  
6 financial group that --

7 Q. What document?

8 A. It's a breakdown of the expenses that we've  
9 had under the act. It includes subcategories  
10 regarding various expenditures.

11 Q. Can you tell us what those subcategories  
12 were?

13 A. Unbundled loop, CLEC trunking, local number  
14 portability, collocation, reciprocal comp, and other.

15 Q. Did the document that you obtained this  
16 information from disaggregate the information any  
17 farther than these broad categories?

18 A. No, it did not.

19 Q. So --

20 A. With the exception that it gave -- it  
21 actually gives the information by year and it gives  
22 it by expense and capital.

23 Q. So can you tell me, sitting here, whether  
24 that one billion dollars includes money, for example,  
25 for constructing a cage for collocation?

00803

1           A.     No, not at this level.

2                     MR. DEANHARDT:  Your Honor, I'd like to  
3 make a record request for the document that Mr.  
4 Reynolds relied upon to provide this testimony.

5                     JUDGE MOSS:  Do you have any problem  
6 furnishing the document?

7                     MS. ANDERL:  I believe it's proprietary,  
8 but otherwise, no.

9                     JUDGE MOSS:  So you can furnish it under  
10 confidential --

11                    MS. ANDERL:  Right.

12                    JUDGE MOSS:  Fine, it will be furnished to  
13 you.

14                    MR. HARLOW:  Is that number one, Your  
15 Honor?

16                    JUDGE MOSS:  I beg your pardon?

17                    MR. HARLOW:  We usually number these.  Is  
18 that record requisition number one?

19                    JUDGE MOSS:  We can call it that for the  
20 record, if you want.  I mean, I don't care about it  
21 if somebody doesn't offer it as an exhibit, but I'm  
22 hoping that we won't have much of this sort of thing.  
23 We've had extensive discovery in this case and quite  
24 a few documents provided already, so I'd like to keep  
25 this to a minimum.

00804

1 Q. Mr. Reynolds, could you please turn to page  
2 29 of your testimony?

3 A. I'm there.

4 Q. The first question and response on page 29  
5 relates to whether or not collocation is a barrier to  
6 competitive entry in the state of Washington, does it  
7 not?

8 A. Yes.

9 Q. And what is the usual interval found in  
10 most interconnection agreements for collocation in  
11 Washington?

12 A. I believe it's 90 days.

13 Q. And that 90-day interval comes after US  
14 West provides a feasibility response and a quote for  
15 the cost of the collocation; is that correct?

16 A. Yes.

17 Q. And do you know what the interval is for  
18 responding to a request for feasibility?

19 A. I have reviewed that information. I don't  
20 have it in my mind right now.

21 Q. Does 10 days sound about right?

22 A. Sounds about right.

23 Q. And do you know what the interval is for  
24 producing a quote for the price of a collocation?

25 A. I don't have it in my mind. I want to say

00805

1 15 days, but I don't know if that's correct.

2 Q. Does 25 days sound about right?

3 A. I could accept all this subject to check, I  
4 just don't have it in my mind, nor in front of me  
5 here.

6 Q. That's fine. So that under that --

7 A. And I might add, just -- I believe those  
8 vary by contract, to a certain extent.

9 Q. Yeah, and I think that's correct.

10 Actually, I was kind of asking for, if you know, what  
11 the most common intervals are?

12 A. I know that 90 is the most common. I know  
13 Covad, I think, has a 45-day. But to give it --

14 Q. Are you aware of how many interconnection  
15 agreements with US West have a 45-day collocation  
16 interval?

17 A. I do not know that.

18 Q. Do you know who Mike Williams is?

19 A. Yes, I know Mike.

20 Q. Would you accept, subject to check, that  
21 Mr. Williams has provided information to the ROC OSS  
22 that roughly 5.7 percent of US West's collocation  
23 intervals are 45 days?

24 MS. ANDERL: Your Honor, I again object to  
25 asking the witness to accept this kind of information

00806

1 subject to check.

2 JUDGE MOSS: Yeah, ordinarily, Mr.

3 Deanhardt, the type of information that a witness is  
4 asked to accept, subject to check, is a number or  
5 some sort of easily referenced statistic or something  
6 like that, rather than what somebody else said or  
7 believed or whatnot, somebody else's testimony. So  
8 to the extent you want to ask the witness directly  
9 what he knows about that, you can do that without  
10 referencing what somebody else said somewhere else.  
11 So I'll ask that you confine your question to that  
12 form.

13 MR. DEANHARDT: Your Honor, in this  
14 specific case, I think I am referencing a specific  
15 statistic, which US West has provided as a statistic,  
16 not as a personal statement.

17 JUDGE MOSS: It's the form of your  
18 question, Mr. Deanhardt. You're asking him to opine  
19 with respect to what somebody else said about  
20 something. If you want to ask him about the  
21 something, which is to say the statistic, you may do  
22 so, but you must ask him directly.

23 MR. DEANHARDT: Thank you, Your Honor.

24 Q. Mr. Reynolds, would you accept, subject to  
25 check, approximately 5.7 percent of US West's

00807

1 interconnection agreements have a 45-day interval for  
2 cageless collocation?

3 A. My only hesitation is that that's a heck of  
4 a check, given the number of interconnection  
5 agreements we have. And I just think it would take a  
6 great deal of time and effort to try and check that  
7 and to develop that statistic. I can say that it  
8 sounds in a reasonable ballpark.

9 Q. And I need to correct myself. I misspoke.  
10 9.7 is the number.

11 JUDGE MOSS: I'm going to just stop this  
12 questioning right here. If you want to check with  
13 Counsel during the break and see if you can get some  
14 figure here that's useful to you in some fashion,  
15 that's fine, but asking the witness to accept this  
16 subject to check under the circumstances appears to  
17 me to be a waste of time. So let's move on.

18 (Discussion off the record.)

19 (Lunch recess taken.)

20 JUDGE MOSS: Let's go back on the record.  
21 We've had some off-the-record discussion with Mr.  
22 Deanhardt regarding Exhibit Number -- was it 433?

23 MR. DEANHARDT: Yes, Your Honor.

24 JUDGE MOSS: That exhibit, as previously  
25 distributed, included quite a few pages. It has now



00808

1 been reduced to the letter dated April 26, 1999.  
2 It's a two-page letter, and the letter dated June 16,  
3 1999, which is a one-page letter. The June 16  
4 letter, for ease of reference, is on the backside of  
5 the sheet. So you all want to adjust your exhibit  
6 list accordingly, as I have done mine.

7           Okay. Now, there was some opportunity over  
8 the luncheon hour to resolve some concerns about  
9 various exhibits other than the one I just mentioned.  
10 May I have a report from Counsel on that?

11           MS. ANDERL: Your Honor.

12           MR. HARLOW: For MetroNet?

13           JUDGE MOSS: Let's take them up one at a  
14 time.

15           MR. HARLOW: We made an offer of a limited  
16 number of exhibits and were not able to reach  
17 agreement on that, so I guess we'll have to resume  
18 our cross and go through them one at a time.

19           JUDGE MOSS: Mr. Deanhardt, did you have  
20 any --

21           MS. ANDERL: If I could clarify, there are  
22 some exhibits in the ones that Mr. Harlow suggested  
23 that I do not object to.

24           MR. HARLOW: I believe some refers to  
25 Number 45.

00809

1 JUDGE MOSS: Okay. We'll get back to that.  
2 Mr. Deanhardt, did you have some discussions with  
3 Counsel over the luncheon hour with respect to any  
4 exhibits? I know Mr. Butler had some.

5 MR. DEANHARDT: Yes, Your Honor. We had  
6 the discussion regarding the exhibit that I wanted to  
7 ask Mr. Reynolds about, and I believe we've reached  
8 the resolution that I will be able to ask the  
9 questions that I want to ask on the document.

10 JUDGE MOSS: Okay, fine. And then, when we  
11 get to you Mr. Butler, we'll take up the matter as we  
12 previously discussed off the record concerning some  
13 exhibits and other material. Mr. Deanhardt, go  
14 ahead.

15 Q. Mr. Reynolds, I want to back up a second  
16 and cover the document that we're talking about. And  
17 first, I just want to have you please look again at  
18 Exhibit 444. And my apologies to the Bench for  
19 rehashing a question that I asked earlier, but I need  
20 to set it as a foundation for where we're going with  
21 the exhibit that we just discussed. Mr. Nickells,  
22 could you please just read again the response to  
23 question D?

24 MS. ANDERL: You mean Mr. Reynolds?

25 THE WITNESS: Mr. Reynolds will.

00810

1 Q. I apologize. Mr. Nickells is the other  
2 letter. Mr. Reynolds, please?

3 A. Yeah, the response to Part D for Exhibit  
4 C-444 reads, US West objects to this question on the  
5 grounds it would require a special study. US West  
6 does not track or identify held orders by F1 or F2  
7 separation.

8 MR. DEANHARDT: Your Honor, may I approach  
9 the witness?

10 JUDGE MOSS: Yes, you may.

11 Q. Mr. Reynolds, I'm handing you a two-page  
12 document. Could you please look under -- on the  
13 first page of this, under the heading, Original  
14 message?

15 A. I'm there.

16 Q. Okay. This document that I've handed you,  
17 at least the front page, is an e-mail; correct?

18 A. It appears to be so, yes.

19 Q. And under the heading original message, who  
20 is this from?

21 A. It says Mike Goebel.

22 Q. And what is his e-mail address?

23 A. Wgoebel@uswest.com.

24 Q. Do you know who Mr. Goebel is?

25 A. I heard him -- I know Mr. Goebel. I did

00811

1 not know that his recent assignment was as Covad  
2 account manager. But I heard that earlier today, I  
3 think, in testimony.

4 Q. He is an account manager with US West?

5 A. Like I say, it was new to me that he was an  
6 account manager, but I did hear it in testimony  
7 earlier today.

8 Q. He does work for US West?

9 A. He did the last time I talked with him,  
10 yeah.

11 Q. You'll understand why that's funny in a  
12 minute.

13 JUDGE MOSS: It's funny standing on its  
14 own.

15 Q. Mr. Reynolds, actually, if you could please  
16 flip to -- actually, let's do it this way. Can you  
17 -- well, I'm going to represent to you -- let me do  
18 it this way, actually. Can you please read the first  
19 paragraph of the e-mail, just to yourself. You don't  
20 need to read it out loud.

21 A. Where it says, See attachment?

22 Q. Yes.

23 JUDGE MOSS: While he's reading, are you  
24 intending to make this an exhibit?

25 MR. DEANHARDT: Well, I don't know yet.

00812

1 What I do want to establish is that the documents are  
2 authentic, you know, what they are, so that when I  
3 ask the questions, you know, we can go from there.

4 JUDGE MOSS: Well, it's customary, when you  
5 want to make a document an exhibit or think you  
6 might, to have copies available to the Bench to look  
7 at while the question is going on. I feel like I'm  
8 sitting in the dark a little bit in terms of what  
9 you're inquiring of this witness. Do you have copies  
10 for the Bench?

11 MR. DEANHARDT: I apologize. I had  
12 intended originally only to use it to elicit  
13 information on cross-examination. But I would be  
14 happy to give you my copy, so that you could look at  
15 it while I'm doing that.

16 JUDGE MOSS: That might be helpful to have.  
17 I just want to say generally that when Counsel intend  
18 to use a document during the course of the  
19 proceeding, that you have copies available not only  
20 for the Bench, but also for other Counsel, because we  
21 can't follow what's going on if we don't have  
22 anything to refer to. Thank you very much.

23 Q. Mr. Reynolds, based on your reading of the  
24 paragraph, I want to represent to you that the second  
25 page of the document that I've handed you is a copy

00813

1 of the attachment with respect to Bellevue,  
2 Washington, that's referenced on the e-mail. Can you  
3 accept that?

4 A. Yes.

5 Q. If you would please look at the attachment  
6 and look at the -- as you go across this, it has  
7 order number, PON, status, and status as of 3/9/2000;  
8 is that correct?

9 A. Yes.

10 Q. And under status, if you look down to rows  
11 -- if you counted them, they'd be 12 through 16. Do  
12 you see where it says F1 facilities engineering?

13 A. Yes, I do.

14 Q. Do you also see where, in the 17th row, it  
15 says F2 facilities engineering?

16 A. Yes, I do.

17 Q. Do you also see below that where it says  
18 local markets?

19 A. Yes.

20 Q. Do you know what that means?

21 A. Probably not from a held order perspective,  
22 no, I don't. I mean, I've heard the term used  
23 before, but I don't know the technical definition of  
24 exactly what that means.

25 Q. What is your understanding of what it

00814

1 means, having heard it used before?

2 A. Usually it's -- I've heard it in the  
3 context of an order that's being held for lack of  
4 facilities.

5 Q. Mr. Reynolds, could you please turn back to  
6 the first page of the document that I've handed you.  
7 And do you see the heading Bellevue, Washington?

8 A. Yes, I do.

9 Q. Could you please read into the record the  
10 information under the heading Bellevue, Washington?

11 MS. ANDERL: Well, again, Your Honor, I  
12 guess I would object at this point. Mr. Deanhardt  
13 and I had a discussion. I told him I would not  
14 object to him using this document, even though it had  
15 not been identified as a cross exhibit. We think it  
16 ought to be just identified as an exhibit and  
17 admitted and not necessarily take the time to again  
18 have the witness reading things into the record.

19 JUDGE MOSS: Yeah, I think that's probably  
20 a better procedure. If you want the information from  
21 this document in the record, I'll just let's make it  
22 an exhibit. It's not like it's going to be objected  
23 to.

24 MS. ANDERL: Well, I don't think Mr.  
25 Reynolds actually can lay a foundation for admission

00815

1 of this document, but we're not going to object to  
2 it.

3 JUDGE MOSS: Why don't we just do that, Mr.  
4 Deanhardt.

5 MR. DEANHARDT: Your Honor, I'm happy to  
6 admit it into the record. I do have a question about  
7 the last sentence here, so I'm going to ask that it  
8 be read or I can read it to him and we can ask a  
9 question about it, that ties to Mr. Reynolds'  
10 testimony.

11 JUDGE MOSS: It's on yellow, but you're  
12 waiving confidentiality, I take it?

13 MR. DEANHARDT: Yes, Your Honor.

14 JUDGE MOSS: All right. It will be Number  
15 448, and I'll just go ahead and admit it, based on  
16 the discussion we've had. Go ahead and ask your  
17 question, Mr. Deanhardt.

18 MR. DEANHARDT: I'm sorry, Your Honor.  
19 That was 448?

20 JUDGE MOSS: 448.

21 Q. Mr. Reynolds, the last -- well, first of  
22 all, this paragraph refers to local market held  
23 orders, doesn't it?

24 A. That's certainly what's represented here, I  
25 do believe, in the first line of that paragraph.



00816

1 Q. And the last sentence of this paragraph  
2 reads, Over the years, USW has spent construction  
3 dollars in the commercial areas of Bellevue, but we  
4 have not reinforced the facilities in these  
5 residential areas and do not have plans to do so; is  
6 that correct?

7 A. That's what it says.

8 Q. Would CLEC forecasting affect US West's  
9 decisions to construct facilities in residential  
10 areas that CLECs can use?

11 A. I guess I don't understand your question.

12 Q. Well, my question goes to your testimony  
13 earlier to Mr. Kopta that CLEC forecasts were an  
14 important part of determining how to address fill  
15 factor issues. And this appears to be a document  
16 that says there are no facilities available in the  
17 residential markets in Bellevue, Washington, because  
18 US West has not built such facilities in that area.

19 And so my question is, are the -- you know,  
20 would CLEC forecasts -- would US West use CLEC  
21 forecasts to reinforce facilities in residential, as  
22 opposed to commercial areas?

23 A. I think that US West would take into  
24 account all relevant information when it does its  
25 network planning. That's my understanding of how the

00817

1 process works.

2 Q. Okay. I can move on. I want to turn for a  
3 moment, Mr. Reynolds, to page 30 of your testimony.  
4 This is the testimony that talks about Mr. Zell's  
5 comments regarding allowing or not allowing CLECs  
6 access to the lines across which VDSL would be  
7 provisioned; is that correct?

8 A. Yes.

9 Q. And we established, I believe through Ms.  
10 Jensen's testimony, that one of the things that US  
11 West wants to be able to do as part of this merger is  
12 be able to offer video services; is that correct?

13 A. I believe I heard that this morning as one  
14 of the list of new services that the joint companies  
15 are looking forward to provide.

16 Q. To your knowledge, does US West have any  
17 means of providing video services other than through  
18 the use of VDSL?

19 A. I don't know that.

20 Q. I'm sorry, you don't know if it does or  
21 doesn't?

22 A. I don't know if it does or doesn't. I do  
23 know that we had a specific type of build in Omaha  
24 that I think a lot of people were aware of several  
25 years ago, and I don't think it uses a VDSL-type

00818

1 technology, and yet it provides video services to  
2 customers.

3 Q. Do you know what technology that does use?

4 A. I think it uses an analog technology, so  
5 it's not a digital technology.

6 Q. Have you heard any discussions within US  
7 West of bringing that technology to Washington?

8 A. No.

9 Q. Have you heard any discussions within US  
10 West about the possibility of bringing VDSL to  
11 Washington?

12 A. No, other than the general discussion that  
13 you were referencing about plans of the company.

14 Q. Now, the distinction that you draw in your  
15 testimony is that VDSL is a service; is that correct?

16 MS. ANDERL: Sorry, may we have a page and  
17 line reference?

18 MR. DEANHARDT: Certainly. Page 30, lines  
19 15 and 16. Also page 31, line one.

20 THE WITNESS: That's how I refer to it,  
21 yes.

22 Q. Okay. And the distinction that you're  
23 drawing here is that US West may not have an  
24 obligation to unbundle a service; is that correct?

25 A. I think it was a little different than

00819

1 that. I think I said that VDSL service, for purposes  
2 of regulation is treated like a cable service, and  
3 those have different requirements.

4 Q. So the difference here is the service and  
5 not the facilities?

6 A. I think that's the distinction I was trying  
7 to make, yes.

8 Q. So you would agree, then, that US West,  
9 under Section 251, would have an obligation to  
10 unbundle any facilities that carried VDSL, assuming  
11 they have been identified as UNEs, even though it  
12 might not have an obligation to provide video service  
13 to the CLECs?

14 MS. ANDERL: Objection, Your Honor, calls  
15 for a legal conclusion. And there's not a sufficient  
16 foundation upon which to ask the witness this  
17 question.

18 MR. DEANHARDT: Well, Your Honor, Mr.  
19 Reynolds is testifying that what Mr. Zell was saying  
20 was not actually evidence of an anti-competitive  
21 intent to prevent CLECs from obtaining access to  
22 facilities based on the service and facilities  
23 distinction. If Mr. Reynolds is the witness that  
24 they've offered to rebut that presumption, then I'm  
25 entitled to explore whether or not he's correct and

00820

1 what the distinction is.

2 JUDGE MOSS: All right. I'll allow the  
3 question.

4 THE WITNESS: Could I have that question  
5 again? I'm sorry.

6 MR. DEANHARDT: That's okay. Can I have it  
7 read back, please?

8 (Record read back.)

9 THE WITNESS: I guess I honestly don't know  
10 the answer to that question, what the requirements  
11 would be. What I was trying to point out here in  
12 this Q and A was I was trying to include a complete  
13 quote that Joe Zell made in the document. Mr. Moya  
14 only quoted a small portion of it, and I thought it  
15 was important for the Commission to have reference to  
16 the fact that Mr. Zell was actually talking about a  
17 service that has been classified, to my  
18 understanding, as a title six cable-type service and  
19 that he was making the distinction he was making  
20 because of that. So I thought that that was  
21 important for the record, rather than just have a  
22 small snippet of what Mr. Moya included in his  
23 testimony.

24 Q. Mr. Reynolds, could you look at your  
25 testimony, the language that you quote on lines 22

00821

1 through 25. Do you see that?

2 A. I don't have exactly the same line numbers,  
3 I don't think. Mine's on 19 through 24. Is it the  
4 quote?

5 Q. Sure. I'm just talking about -- I  
6 apologize. I'm just talking about the last sentence  
7 of that line, of that paragraph.

8 A. I guess I don't know where you are, Mr.  
9 Deanhardt.

10 Q. Okay. Bottom of page 30, the indented  
11 text.

12 A. Right.

13 Q. Do you see where it says, But this means  
14 that the telephone company doesn't have to sell  
15 access to the lines to competitors like Covad  
16 Communications, Rhythms Net Connections or other  
17 telephone companies?

18 A. Yes, I do see that.

19 Q. So Mr. Zell referred to the lines and not  
20 to the service; isn't that correct?

21 A. Yes, he did.

22 Q. Mr. Reynolds, could you please turn to page  
23 35 of your testimony. Now, beginning on the last  
24 line of page 35, that's line 21, and moving on to the  
25 top of page 36, you refer to US West proactive and

00822

1 collaborative efforts regarding the deployment of  
2 line sharing; is that correct?

3 A. Yes.

4 Q. Okay. I'd like for you to please look at  
5 what has been marked as Exhibit 433, and I'm -- since  
6 this is two letters, I'm referring to the June 16th,  
7 1999 letter.

8 A. I'm sorry, which letter?

9 Q. June 16th, 1999 letter?

10 A. I have it.

11 MR. DEANHARDT: Okay. This is a letter --  
12 Your Honor, we may be able to short-circuit some of  
13 this by determining whether there's going to be any  
14 objection to the admission of this as an exhibit. I  
15 would still have a couple questions, but it could  
16 prevent the foundation.

17 MS. ANDERL: I don't object.

18 Q. Mr. Reynolds, this is a June 16th, 1999,  
19 letter to Clay Deanhardt, who happens to be me, from  
20 Tom Maher; is that correct?

21 A. Yes, it is.

22 Q. And this identifies Tom Maher as a senior  
23 account executive for US West wholesale markets; is  
24 that correct?

25 A. Yes.

00823

1 Q. And if you would look, please -- if you  
2 could quickly please review this letter and just let  
3 me know when you've read it and are familiar with it?

4 A. I've read it.

5 Q. Okay. Now, in this letter, US West is  
6 telling Covad that US West will not provide line  
7 sharing, is it not?

8 A. Among other things. It gives a pretty  
9 lengthy explanation of the current status of  
10 regulation on the subject and US West's activities in  
11 regard to that regulation, as well. And it explains  
12 a little bit about what it would take, at least as  
13 far as our legacy systems, to accommodate line  
14 sharing.

15 Q. But ultimately it says no; correct?

16 A. I believe that the operative sentence is,  
17 As a result, US West believes it is premature to  
18 fully address your request at this time for technical  
19 and operational reasons, in addition to the pending  
20 FCC activities described above.

21 Q. Well, let's back up just a little bit from  
22 that line. Do you see the line that begins, At this  
23 time, however, in the middle of that paragraph? I'm  
24 sorry, in the middle of the paragraph above that, the  
25 first paragraph?



00824

1 A. Yes.

2 Q. Okay. This line reads, At this time,  
3 however, US West is not required to provide line  
4 sharing as an unbundled network element under the act  
5 or FCC rules; is that correct?

6 A. That's correct.

7 Q. Is it US West's position that it will not  
8 provide any kind of a new unbundled network element  
9 unless it is instructed to do so by either the FCC or  
10 the state Commission?

11 A. No, in fact, I believe we provided cageless  
12 collocation to Covad long before we were required to  
13 do so.

14 Q. And that was as a result of a settlement of  
15 an arbitration, was it not?

16 A. My answer stands.

17 Q. Well, and my question stands.

18 A. I wasn't involved in the arbitration, so I  
19 don't know.

20 Q. You are aware that there was an  
21 arbitration?

22 A. I was aware that there was a dispute  
23 between the parties, possibly a mediation. I don't  
24 know that it was a formal arbitration before the  
25 Commission.

00825

1 Q. So you were not aware whether or not Covad  
2 filed an interconnection arbitration with the  
3 Commission in order to obtain an interconnection  
4 agreement with Washington -- or with US West in  
5 Washington?

6 A. My recollection is they filed and then they  
7 withdrew it, but that's my recollection.

8 Q. Okay. Can you think of any other examples  
9 of unbundled network elements that US West has  
10 provided without being required to do so by the FCC  
11 or the state?

12 A. I think that reviewing the interconnection  
13 agreements would be helpful for me, but I believe  
14 that there are a number of elements in the  
15 interconnection agreement that aren't specifically  
16 required under either state or federal requirements  
17 that have been negotiated into agreements. I can't  
18 -- I mean, I don't have them here in front of me, but  
19 I think that there are, in my recollection.

20 Q. But you can't specifically identify one as  
21 you sit here today?

22 A. No, but, then, I didn't come prepared to do  
23 it, either.

24 Q. Okay. Now, Mr. Reynolds you refer again to  
25 US West's proactive approach to line sharing. Are

00826

1 you aware that the trial in -- well, let's back up.  
2 In your own testimony on page 35, don't you say that  
3 US West was required by the Minnesota Commission to  
4 engage in a trial with a number of interested CLECs?

5 A. Yes.

6 Q. So US West did not initiate those  
7 discussions of its own accord?

8 A. No, but I think that US West's conduct  
9 during that action, I think, bears out that US West  
10 worked collaboratively with the CLECs to reach a  
11 stipulated agreement and prioritize offices with the  
12 CLECs for deployment, and we carried those  
13 conversations forward after the FCC's order with the  
14 CLECs to try to prioritize the rest of the deployment  
15 in US West states. That's what I was referring to in  
16 this response.

17 Q. But in both occasions, that was after being  
18 ordered to do so either by a state commission or by  
19 the FCC?

20 A. Yes.

21 Q. Will you please turn to page 38 of your  
22 testimony? Do you see, at lines 14 and 15, where you  
23 say that US West currently considered CLEC forecast  
24 forecasted demand in the planning and deployment of  
25 its network?

00827

1 A. Yes.

2 Q. Okay. I'm going to ask you, please, to  
3 look at the other letter that is part of Exhibit 433,  
4 the April 26, 1999 letter. Do you have that in front  
5 of you, Mr. Reynolds?

6 A. Yes.

7 Q. And for the record, this is a letter from  
8 Mark Nickell, which is where I got the name earlier,  
9 to Mike Zulevic of Covad Communications; is that  
10 correct?

11 A. Yes, that's what it appears to be.

12 MR. DEANHARDT: Again, Your Honor, we may  
13 be able to avoid some foundational work if we could  
14 get a stipulation that this will be admitted into the  
15 record.

16 JUDGE MOSS: Ms. Anderl has already said  
17 she's not going to have any objection to 433. Go  
18 ahead.

19 MR. DEANHARDT: I apologize. Thought we'd  
20 only done the one part of it.

21 Q. I'll give you a moment, Mr. Reynolds, to  
22 please read through the letter.

23 JUDGE MOSS: Is there a question pending?

24 MR. DEANHARDT: I was giving the witness,  
25 Your Honor, an opportunity to review the letter.

00828

1 THE WITNESS: Okay.

2 Q. Are you finished reading the letter, Mr.  
3 Reynolds?

4 A. Yes.

5 Q. Okay. This is a letter about a request  
6 from Covad for interoffice transport at DS3 capacity  
7 between US West's Maple Valley and Renton central  
8 offices; is that correct?

9 A. That's what it appears to be, yes.

10 Q. And are you familiar with US West's  
11 collocation applications?

12 A. I guess I don't know what you mean by that.

13 Q. Have you ever seen one?

14 A. You mean the actual application to us?

15 Q. Yes.

16 A. I'm sorry, I thought you were speaking of  
17 different types. Yes, I have seen one before.

18 Q. Are you aware that the collocation  
19 applications ask CLECs to identify the number of DS3  
20 terminations that a CLEC requires in a particular  
21 central office?

22 A. I don't specifically recall that, but I can  
23 assume that that would be on there, or I can accept  
24 that it would.

25 Q. Are you aware that, in Washington, Covad

00829

1 purchases all of its interoffice transport from US  
2 West?

3 A. Am I aware of that?

4 Q. Yes.

5 A. No.

6 Q. Do you know if there are any other  
7 providers of transport between the Maple Valley and  
8 Renton central offices?

9 A. No, I do not know that.

10 Q. Now, this letter says that US West has  
11 fiber facilities between the Renton and Maple Valley  
12 central offices, does it not?

13 A. Yes.

14 Q. But it says that there are no electronics  
15 to light the fiber; correct?

16 A. That's what it says.

17 Q. So therefore, US West is saying that it  
18 will not provide Covad with central office -- with  
19 transport between these two central offices; is that  
20 correct?

21 A. I think it's an explanation that the  
22 current US West network doesn't essentially have the  
23 capacity to provide that, and it's based on exactly  
24 as you represented, that the lack of capacity is due  
25 to sufficient electronics on each end of the fiber.

00830

1 Q. Now, it does say that US West intends to  
2 add additional capacity to that fiber, does it not,  
3 if you look at the top of the second page?

4 A. I guess I don't see that.

5 Q. Actually, I've got a better place. If you  
6 look at the second paragraph on the first page. Look  
7 at the last sentence of the second paragraph.

8 A. You mean that they would do it in  
9 approximately two years?

10 Q. Yes.

11 A. I see that.

12 Q. And it talks there about forecasted demand,  
13 doesn't it?

14 A. Yes.

15 Q. That's forecasted retail demand, it  
16 appears, does it not?

17 A. I don't know that I could buy that. I  
18 think that we would take into account whatever demand  
19 that we had.

20 Q. Well, at the time that Covad sent this  
21 letter, we can probably assume that it was -- there  
22 was some demand for the transport at least for  
23 Covad's use, can we not?

24 A. There are other providers besides Covad, so  
25 obviously if there was other wholesale demand in the

00831

1 queue, we might be taking that into account, too.

2 Q. Until fiber is built or until US West  
3 lights up the fiber, no one -- no other CLEC could  
4 obtain the transport between those two central  
5 offices either, could it?

6 A. No, but then US West customers are also  
7 waiting, it appears. It's an economic decision on  
8 behalf of US West, taking a look at the demand for  
9 the facility and the potential return at being a  
10 fraction of what the cost of building the facilities,  
11 it appears. That's my reading of this letter.

12 Q. Now, where in this letter do you see it say  
13 that any US West retail customers are waiting for US  
14 West to light the fiber?

15 A. In the fourth paragraph down, it just says,  
16 US West has no way of anticipating orders and must  
17 make funding decisions based on demand forecast.  
18 Based on these forecasts, US West is planning to  
19 augment the capacity between Renton and Maple Valley  
20 central offices in 2001.

21 Q. But the letter doesn't say that any US West  
22 retail customers have been denied transport, does it?

23 A. No, that might be that we're considering  
24 other wholesale demand there, as well.

25 MR. DEANHARDT: I have one more thing.



00832

1 Your Honor, may I have just a minute?

2 JUDGE MOSS: Let's make it a brief one, if  
3 you can, Mr. Deanhardt. We need to move on.

4 MR. DEANHARDT: Your Honor, I believe I  
5 have finished my cross-examination of Mr. Reynolds.  
6 Thank you, Mr. Reynolds.

7 JUDGE MOSS: Do you want to move your  
8 exhibits?

9 MR. DEANHARDT: Yes, Your Honor. I'd like  
10 to move my exhibits into evidence, Exhibit 433,  
11 Exhibit 444.

12 JUDGE MOSS: Those are the two you referred  
13 to?

14 MR. DEANHARDT: Yes, Your Honor.

15 JUDGE MOSS: 433, any objections?

16 MS. ANDERL: No.

17 JUDGE MOSS: We've already had our waiver  
18 of objections on that one, haven't we? All right.  
19 That will be admitted as marked. And what about 444?

20 MS. ANDERL: No objection.

21 JUDGE MOSS: I have that as C-444.

22 MR. DEANHARDT: Your Honor, we're  
23 submitting the portion without the confidential  
24 attachment. We don't need the confidential  
25 attachment.

00833

1 JUDGE MOSS: All right. So without the  
2 confidential attachment, and that was not previously  
3 provided to me, either, so I'll just take the C  
4 designation off of it.

5 MR. DEANHARDT: Your Honor, also Exhibit  
6 448, the new documentd.

7 JUDGE MOSS: I think that's already been  
8 admitted.

9 MS. ANDERL: Yes, we would like a copy of  
10 that.

11 JUDGE MOSS: Yeah, I'll ask you to furnish  
12 copies of that to other counsel and additional few  
13 copies for the Bench.

14 MR. DEANHARDT: We'll take care of that.

15 MR. HARLOW: We'll copy those tonight.

16 JUDGE MOSS: Mr. Butler, I believe that  
17 brings us to you. And do you have some stipulated  
18 exhibits or --

19 MR. BUTLER: Yes, Your Honor. Ms. Anderl  
20 and I have agreed or stipulated admission of Exhibits  
21 414, 422, 427, and 429, and I would move their  
22 admission.

23 MS. ANDERL: Mr. Butler is correct.

24 JUDGE MOSS: All right. Hearing no other  
25 objection, 414, 422, 427 and 429 will be admitted.

00834

1 MR. BUTLER: Your Honor, I have no  
2 questions for Mr. Reynolds.

3 JUDGE MOSS: Thank you. Mr. Pena, do you  
4 have any questions for this witness?

5 MR. PENA: No, Your Honor. Anything I had  
6 was covered by Mr. Kopta.

7 JUDGE MOSS: Very good. Mr. Ffitch.

8 MR. FFITCH: Just a couple, I think, Your  
9 Honor.

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

11 BY MR. FFITCH;

12 Q. Good afternoon, Mr. Reynolds.

13 A. Good afternoon.

14 Q. Could I ask you to turn to page four of  
15 your rebuttal testimony, to line six, and there you  
16 state that it's your position, presumably US West's  
17 position, that the wholesale issues raised by the  
18 intervenors here have no bearing on this merger  
19 because there are other processes available; is that  
20 right?

21 A. Yes, it is.

22 Q. And that's your -- that is your position in  
23 this case, essentially that the Commission should not  
24 be considering these issues at all in this  
25 proceeding?

00835

1           A.     That's correct, and that's partly in  
2 response to what the intervenors have raised as their  
3 issues. I don't think they've raised any issues that  
4 truly should keep this merger from going forward. So  
5 I'm also responding to that in that the issues that  
6 they have raised, there are many places that the  
7 Commission either is already dealing with those  
8 issues or they have been dealt with at the FCC level.

9           Q.     Would you agree that that position has  
10 already been rejected by the Commission in this  
11 proceeding?

12          A.     I guess I don't understand that question.  
13 Just by allowing the intervenors in or --

14          Q.     Well, perhaps maybe the most helpful thing  
15 to do at this point is to -- I'm looking at the  
16 Commission's third supplemental order in this case  
17 outlining the scope of review, and I don't know if  
18 your Counsel can let you see a copy of that. I'll  
19 advise the Bench that I actually don't have multiple  
20 copies of this made.

21           JUDGE MOSS:   The order does not need to be  
22 made an exhibit.

23           MR. FFITCH:   I wasn't intending to make an  
24 exhibit, just to refer to it in this course of a  
25 couple of questions.

00836

1 JUDGE MOSS: I think the Bench at least is  
2 well familiar with the order, so --

3 MR. FFITCH: I want to -- perhaps it would  
4 be helpful for the witness to have a copy.

5 MS. ANDERL: We could provide him with a  
6 copy.

7 MR. FFITCH: I could perhaps borrow Ms.  
8 Johnston's and let the witness have mine if that's  
9 the quickest --

10 THE WITNESS: I think we have one coming  
11 quickly here. I have one.

12 Q. All right. That's the Commission order  
13 establishing a scope of review for this proceeding  
14 after a prehearing conference, is it not?

15 A. Yes.

16 Q. If you look at page four in the fourth  
17 paragraph, the first sentence, that is the -- in that  
18 sentence the Commission says that the issues  
19 identified by the intervenors, Public Counsel, and  
20 Staff are proper subjects for inquiry in this  
21 proceeding, doesn't it?

22 A. Yes.

23 Q. And if we go back to page three of the  
24 order, the preceding page, those specific issues,  
25 particularly the ones raised by intervenors, are

00837

1 listed in some detail in that paragraph, aren't they?

2 MS. ANDERL: Your Honor, I object to this  
3 line of cross. The order clearly speaks for itself.

4 JUDGE MOSS: Well, I don't think there's a  
5 good objection here, Ms. Anderl. He's referring to a  
6 specific assertion by the witness in the testimony  
7 and disputing that through this reference to this  
8 order, and I think it's a proper line. Go ahead, Mr.  
9 ffitich.

10 MR. FFITCH: Thank you, Your Honor.

11 Q. I'll allow you to read this, if you need  
12 to, but just to paraphrase the areas that are  
13 identified there, they include the impact on the  
14 level of charges for interconnection; secondly, the  
15 impact of Section 271 divestiture; thirdly, the  
16 issues related to the Federal Telecommunications Act;  
17 fourthly, a set of issues raised by other intervenors  
18 besides AT&T, which include the availability of  
19 facilities necessary for viable competition in local  
20 markets, OSS, and existing interconnection agreements  
21 with US West and other matters related to the general  
22 categories outlined by AT&T.

23 And again, the Commission has said that  
24 those are proper subjects for inquiry in this  
25 proceeding, has it not?

00838

1 A. Yes, it has, but I don't think that that's  
2 necessarily inconsistent with my statement.

3 Q. Okay.

4 A. My statement is --

5 Q. Well, I'm just trying -- first of all, I'm  
6 trying to get you to just answer my questions, all  
7 right, rather than explain. If your Counsel wants  
8 you to explain later on, that's fine. The next issue  
9 that's identified here by the Commission is whether  
10 the merger will promote the goal of -- this is the  
11 top of the next page, just to help you follow me  
12 here. Whether the merger will promote the goal of  
13 retail competition, particularly in the residential  
14 and small business market sectors.

15 A. I don't know where you are.

16 Q. Top of page four, sorry. And again, that's  
17 been identified by the Commission as a proper subject  
18 for inquiry in this proceeding. If you look at the  
19 last sentence of the third paragraph on page four,  
20 the Commission recites, does it not, that US West's  
21 proceeding at that time in that hearing was that none  
22 of these issues need be taken up because they could  
23 be properly addressed in other dockets?

24 A. I'm sorry, where are you again?

25 Q. Last paragraph -- excuse me, the last

00839

1 sentence of the third paragraph, page four.  
2 Applicants believe the issues identified by the other  
3 parties may be proper subjects for other dockets, but  
4 not for the present docket.

5 A. I see it.

6 Q. All right. So the Commission clearly did  
7 not accept that position at that time, did it?

8 A. Well, if I could answer this time, I would  
9 say that the Commission said that these are proper  
10 subjects for inquiry. My point is is that my  
11 testimony --

12 Q. Well, excuse me, that's a yes or no.

13 JUDGE MOSS: Mr. ffitch, please don't  
14 interrupt the witness when the witness is trying to  
15 answer. You can have follow up.

16 MR. FFITCH: Well, Your Honor, I had asked  
17 what I thought was a yes or no question.

18 JUDGE MOSS: We don't always get yes or no  
19 answers when we ask questions like that. I don't  
20 think witnesses should be interrupted when they're  
21 trying to conscientiously give an answer to the  
22 question.

23 MR. FFITCH: Thank you, Your Honor.

24 JUDGE MOSS: Go ahead.

25 THE WITNESS: I was just stating that I



00840

1 didn't think that my response was totally  
2 inconsistent with that. And in fact, my testimony  
3 responds to the subjects posed by the intervenors for  
4 inquiry. And my response is is that, after having  
5 reviewed those, I suggest that the more proper place  
6 for these to be taken up is the other proceeding that  
7 we initially presented, and that is my testimony.

8 Q. That's essentially the position that the  
9 company took and the joint applicants took in the  
10 prehearing conference, is it not?

11 A. I apologize. I wasn't in the prehearing  
12 conference.

13 Q. Let me ask you now to turn to page 12 of  
14 your rebuttal testimony, lines 13 through 15, and  
15 there you talk about the -- just to paraphrase, the  
16 wholesale customer's continued ability to resort to  
17 other means for resolving problems with the company:  
18 Arbitration, filing of complaints, filing of  
19 lawsuits, et cetera. That's a fair summary of your  
20 statement there?

21 A. Yes.

22 Q. Other remedies are available to retail  
23 customers, also, are they not, other than having  
24 issues be addressed in the context of a merger  
25 proceeding?

00841

1           A.    Yes, but I think they're harder for those  
2 customers to avail themselves of. I think there are  
3 many protections that are built into the laws by the  
4 act both at the federal level and the state level,  
5 and this Commission has passed very specific avenues,  
6 such as the interconnection agreement enforcement  
7 rule, that allow for companies to bring these  
8 problems forward before the Commission in an  
9 expedited manner.

10           And so I think that there is a lot that is  
11 available to these companies, and many of the issues  
12 that they bring up in this proceeding would be  
13 extremely difficult for this Commission to decide  
14 based on the evidence that's here before them. I  
15 mean, only, you know, in a complaint proceeding can  
16 you examine the breadth and depth of these types of  
17 issues. They're wholly inappropriate before the  
18 Commission in a merger docket.

19           Q.    A residential or small business customer  
20 can file a complaint with the Commission regarding  
21 service problems, can't they?

22           A.    Yes, they can.

23           Q.    The Commission can actually initiate a  
24 service quality complaint against the company, can it  
25 not, independent of a merger proceeding?

00842

1           A.    Yes, it can, but those customers don't have  
2 contracts that already specify remedies within those  
3 contracts.

4           Q.    But the customers do have -- are served  
5 pursuant to tariffs, are they not?

6           A.    Right, and in fact, I think those  
7 complaints remedies are covered in the tariff.

8           Q.    And the customers are served pursuant to  
9 service quality standards that are set in the  
10 Commission's WACs or Washington Administrative Code  
11 sections, are they not?

12          A.    Yes.

13          Q.    And the Commission's actually addressing  
14 service quality issues for retail customers in a  
15 telecommunications rule-making at the present time,  
16 is it not?

17          A.    That's my understanding, yes.

18          Q.    And Title 80 also allows the Commission to  
19 look at rate issues, earnings and revenue issues  
20 outside of a merger proceeding, doesn't it?

21          A.    I'd have to accept that. I don't know that  
22 for a fact.

23          Q.    But notwithstanding these kinds of tools  
24 or remedies that are available either to consumers or  
25 the Commission, joint applicants are agreeing to

00843

1 conditions on these issues for the benefit of retail  
2 customers in this proceeding, aren't they?

3 A. Yes.

4 Q. And in fact, some of those conditions go  
5 beyond the obligations that would otherwise apply  
6 under existing law, don't they?

7 A. That's correct.

8 MR. FFITCH: Those are all my questions.  
9 Thank you, Your Honor. Thank you, Mr. Reynolds.

10 JUDGE MOSS: Thank you. Ms. Johnston, are  
11 you going to have any questions? Or I guess we need  
12 to get back to Mr. Harlow. He had some outstanding  
13 -- was it just exhibits that you were concerned  
14 about?

15 MR. HARLOW: Well, given that we seem to be  
16 unable to agree on any, other than one exhibit --

17 MS. ANDERL: Two.

18 MR. HARLOW: Well, I think the second one  
19 is one I never intended to offer, so I think the best  
20 way to proceed is just to go, continue through my  
21 cross, exhibit-by-exhibit, and we'll just have to  
22 deal with the objections as they come up.

23 JUDGE MOSS: Well, if these exhibits are to  
24 be properly introduced through this witness, and that  
25 is what you're suggesting, is this is the witness for

00844

1 these exhibits?

2 MR. HARLOW: This is the witness. This is  
3 the only witness for whom MetroNet has any  
4 cross-examination.

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

6 BY MR. HARLOW:

7 Q. Okay. Mr. Reynolds, do you still have the  
8 MetroNet exhibits in front of you, starting with  
9 Exhibit 45?

10 A. Yes, I do.

11 Q. That data request asks whether MetroNet's  
12 lines were included in a figure you gave in your  
13 testimony, and the response was that they were not.  
14 Do you know why MetroNet's lines were not included in  
15 that figure?

16 A. I can only speculate. I don't know exactly  
17 why.

18 Q. Is MetroNet considered a retail customer of  
19 US West?

20 A. That would be my speculation, is that they  
21 don't buy their service with a wholesale discount,  
22 and so they aren't classified as a reseller, as  
23 resellers are typically classified under the act.

24 Q. If the proposed settlement with the Staff  
25 and Public Counsel were approved, would MetroNet be

00845

1 eligible for all the credits in that proposed  
2 settlement agreement?

3 A. I don't know that.

4 Q. Assuming that it is a retail customer,  
5 which is your speculation, would MetroNet be eligible  
6 for the credits?

7 A. I honestly don't know. It's probably a  
8 better question to ask Ms. Jensen.

9 Q. Too late on her. Can you think of any  
10 reason why MetroNet would not qualify as a retail  
11 customer?

12 MS. ANDERL: Objection, asked and answered.  
13 The witness just said he doesn't know.

14 JUDGE MOSS: It's a slightly different  
15 question. I'll allow it.

16 THE WITNESS: I don't know.

17 MR. HARLOW: We offer Exhibit 45, Your  
18 Honor.

19 MS. ANDERL: Your Honor, that is the one to  
20 which we do not object. However, the complete answer  
21 on 45 is not in the record unless you also admit  
22 Exhibit Number 56, so those are the two documents to  
23 which we do not object.

24 MR. HARLOW: Hold on, Your Honor, while I  
25 take a look at Exhibit 56. Sorry, I don't have an

00846

1 Exhibit 56.

2 JUDGE MOSS: Fifty-six is US West's  
3 response to MetroNet Services Corporation request MSC  
4 02-011S1.

5 MR. HARLOW: It looks the same to me as my  
6 45.

7 JUDGE MOSS: Appears to be --

8 MR. HARLOW: Supplemental response dated  
9 3/6/2000. Is there any difference --

10 MS. ANDERL: Your Honor, my copy has  
11 Exhibit 45 as the initial response and Exhibit 56 is  
12 the one that includes the supplemental response.

13 JUDGE MOSS: That's what my exhibits show,  
14 as well.

15 MR. HARLOW: Okay. I don't think we need  
16 to admit both, but I do intend to admit the one that  
17 has the supplemental response.

18 JUDGE MOSS: All right. Why don't we admit  
19 56, then. Ms. Anderl says she has no objection.

20 MR. HARLOW: That would be fine, Your  
21 Honor. Thank you.

22 Q. Mr. Reynolds, do you know a gentleman with  
23 the company by the name of Donald Mason?

24 A. I'm sorry?

25 Q. Donald Mason. Do you know Donald Mason?

00847

1 A. No.

2 Q. Would you be willing to accept, subject to  
3 check --

4 A. Don Mason?

5 Q. Don Mason?

6 A. I'm sorry.

7 Q. Do you know Don Mason?

8 A. If he's the same Don Mason that's a  
9 regulatory director in Oregon, I know of him.

10 Q. Yes, I believe he's the same --

11 A. I've never heard him called Donald before.

12 Q. Okay. Does Donald Duck work for your  
13 company? The bottom of page 31 of your testimony,  
14 beginning on line 18, is your rebuttal. You testify,  
15 quote, It is not credible to suggest that US West  
16 would consciously restrict competitive entry bringing  
17 on all manner of complaints and lawsuits and  
18 jeopardizing its chances of achieving market freedoms  
19 which it will ultimately need to effectively  
20 complete. Do you see that testimony?

21 A. Yes, I do.

22 Q. And do you recall that Covad asked you a  
23 data request regarding that particular testimony,  
24 asking you to identify basically the kinds of  
25 complaints that you refer to there?



00848

1 A. Yes, I do.

2 Q. And do you recall that US West identified  
3 only the Washington complaint and identified in  
4 excess of a half a dozen complaints against US West?

5 A. I can accept that.

6 Q. And one of those complaints was an  
7 antitrust lawsuit brought against US West by Electric  
8 Lightwave, Inc.; is that correct?

9 A. I think I recall that.

10 Q. And another one of those complaints was a  
11 provisioning complaint brought by MCI against US West  
12 before this Commission?

13 A. Yes.

14 Q. And in fact, a third complaint that was  
15 identified was an antitrust complaint that is now  
16 pending in the Federal District Court in the Western  
17 District of Washington, brought by MetroNet Services  
18 Corporation against US West; is that correct?

19 JUDGE MOSS: You need to answer verbally.

20 THE WITNESS: Yes.

21 Q. Are you familiar with the allegations of  
22 that pending complaint?

23 A. No.

24 Q. Turn, please, to Exhibit 58. Will you  
25 accept, subject to check, this is a transcript of

00849

1 sworn testimony by the Don Mason that we've just  
2 identified in Commission Docket Number UT-911488 --

3 MS. ANDERL: Your Honor, I object to  
4 attempting --

5 MR. HARLOW: I haven't finished my question  
6 yet.

7 Q. In which Mr. Mason is testifying regarding  
8 the Centrex Plus service?

9 JUDGE MOSS: Now we have an objection.

10 MS. ANDERL: Thank you. I apologize. I  
11 did not mean to cut Counsel off. I object to  
12 attempting to have this document authenticated in  
13 this manner. Additionally, I have a problem with the  
14 document because it is only a two-page document. The  
15 cover page appears to be a cover from a hearing  
16 transcript indicating it's Volume Eight, pages 660  
17 through 809. The page that's included is page 982.  
18 And we simply don't have really the desire to go to  
19 that kind of research to have this witness accept  
20 that subject to check.

21 JUDGE MOSS: What's the point you're trying  
22 to get to here, Mr. Harlow?

23 MR. HARLOW: The point I'm trying to get to  
24 is that Mr. Mason testified -- and he's with US West  
25 -- he testified under oath with regard to the design

00850

1 of the pricing of Centrex Plus that effectively was  
2 designed to restrict resale competition with US West.  
3 And this goes to rebut the testimony of Mr. Reynolds  
4 at the bottom of page 31 that it's not credible to  
5 suggest that US West would consciously restrict  
6 competitive entry, and it also goes to rebut the  
7 testimony of Mr. Reynolds on page 27, in which he  
8 claims that the Commission should look to Centrex  
9 resale in determining the overall level of  
10 competition that US West faces in evaluating the  
11 competitive impact of this merger on the public  
12 interest in Washington.

13 And MetroNet, through the remainder of my  
14 cross, assuming we can get through all the  
15 objections, intends to demonstrate that the Centrex  
16 Plus product is priced in a way that restricts its  
17 utility as a resale, that its pricing doesn't comply  
18 with the provisions of the act, and therefore it  
19 can't be relied upon as a substitute for the kind of  
20 competition that was referred to in Mr. Moya's  
21 testimony, and finally to suggest -- to support our  
22 argument on brief that, as a condition of this merger  
23 at this time, that the kinds of competitive  
24 restrictions on resale of US West's Centrex services  
25 should be eliminated.

00851

1 JUDGE MOSS: Well, typically, when we have  
2 a portion of a transcript from another proceeding, we  
3 would want to have a certified copy, and then it  
4 would be self-authenticating, I believe. Is there  
5 anything else in the rules of evidence that would  
6 make this a self-authenticating document, Mr. Harlow?

7 MR. HARLOW: Actually, I don't think we  
8 need to authenticate it, since it's -- in fact, we  
9 could switch this, I guess, to a request for official  
10 notice of the Commission's own records. This is the  
11 Commission's own transcript. It's not the transcript  
12 from another body.

13 JUDGE MOSS: So this is a Commission  
14 proceeding transcript? I guess I was a little  
15 concerned. Ms. Anderl points out that the cover page  
16 does not appear to cover the transcript page 982.

17 MR. HARLOW: This was prepared by someone  
18 else in our office, and it's entirely possible that  
19 they copied the wrong cover page. The intent of  
20 having the cover page was simply to provide everyone  
21 with a ready reference to the name of the proceeding  
22 and the docket numbers.

23 JUDGE MOSS: Okay. Well, of course the  
24 Commission can take notice of its own proceedings and  
25 --

00852

1 MR. HARLOW: I'm confident that this page  
2 is in that docket, so I'm comfortable to switching to  
3 a request for official notice of this page to the  
4 transcript.

5 JUDGE MOSS: All right. I think we can do  
6 that. And Ms. Anderl, if you go look and find out  
7 this isn't the page from an official transcript of a  
8 Commission proceeding, then we'll strike it. But  
9 subject to that, I'll let him ask his question.

10 MS. ANDERL: Okay. Your Honor, I guess I  
11 would like to still interpose a relevancy objection.  
12 Even if this document is what it purports to be, it's  
13 eight years old, and I don't believe is probative of  
14 or relevant to the matter at hand here today.

15 JUDGE MOSS: Okay. I think its age  
16 certainly goes to its weight, but not to its  
17 relevancy. So go ahead with the question, and maybe  
18 we can get beyond this.

19 Q. The next question relates to Exhibit 46.  
20 And if you'd take a look at that, the response as  
21 well as the attached document.

22 JUDGE MOSS: I think we all have that, Mr.  
23 Harlow.

24 Q. Okay. A minute ago you testified that you  
25 thought that other resellers that were referred to in

00853

1 your rebuttal testimony were counted in the number  
2 you gave, the 259,000 figure, because they apparently  
3 had wholesale contracts and obtained a wholesale  
4 discount. Do you recall that?

5 A. Yes.

6 Q. Would those other resellers of Centrex  
7 services nevertheless be subject to the same terms  
8 and conditions, contractual terms and conditions that  
9 a company such as -- or a retail customer such as  
10 MetroNet would be subject to?

11 MS. ANDERL: Objection. There's no  
12 foundation for that question.

13 JUDGE MOSS: I'll overrule that. Go ahead.

14 THE WITNESS: I don't know.

15 MR. HARLOW: Your Honor, I'll offer Exhibit  
16 46, based on its authenticity, since it's from US  
17 West. Its relevance to the proceeding is that,  
18 again, it goes to the question of whether the Centrex  
19 services are, in fact, kinds of resold competitive  
20 services that this Commission should consider as  
21 establishing that US West has competition in this  
22 state, as suggested in Mr. Reynolds' testimony, I  
23 believe at page 27, and I simply want to be able to  
24 argue regarding the terms and conditions of the  
25 offering based on this response and attached to a

00854

1 contract.

2 MS. ANDERL: As we earlier stated, Your  
3 Honor, we do object to this document. It's outside  
4 the scope of the very limited testimony Mr. Reynolds  
5 gave on page 27. Mr. Harlow is attempting to  
6 establish a case on direct without having put a  
7 witness on, and we do not believe that this is an  
8 appropriate document to be admitted in this case. It  
9 is not relevant.

10 MR. HARLOW: Your Honor, could I respond to  
11 this argument that Ms. Anderl keeps making about the  
12 fact that we don't have a witness?

13 JUDGE MOSS: Well, I think I will let you  
14 respond, because I must say I'm beginning to get the  
15 impression, too, that this material does not seem to  
16 relate in a way that I can fathom to this witness'  
17 testimony. And while it may very well relate to what  
18 you want to prove in this case, I'm wondering if this  
19 is the appropriate way to get this material into the  
20 record, so I will let you respond.

21 MR. HARLOW: Thank you, Your Honor. Ms.  
22 Anderl alluded to that same objection before lunch  
23 this morning, and the Commission needs to realize, as  
24 I think it does, that smaller parties such as  
25 MetroNet have limited resources. It's very expensive

00855

1 to sponsor a witness. MetroNet has chosen not to go  
2 to that expense. Nevertheless, it's not only  
3 appropriate, but MetroNet has in the past brought a  
4 great deal to light in front of this Commission to  
5 enable it to make decisions, and I refer the  
6 Commission back to the most recent US West rate case,  
7 Docket Number UT-950200.

8 In that docket, MetroNet did not sponsor a  
9 witness. MetroNet crossed witnesses in the very same  
10 fashion as I am doing today. In response to that,  
11 the Commission ordered US West to change the pricing  
12 of Centrex Plus, a matter that resulted in a revenue  
13 reduction to US West of \$8.6 million. The Commission  
14 found it proper then.

15 US West appealed that decision and, in  
16 fact, argued very vociferously, all the way up to the  
17 Supreme Court of this state, that somehow because  
18 MetroNet did not sponsor a witness, it could not  
19 prove its case on cross-examination of the company's  
20 witnesses. Supreme Court rejected that argument and  
21 affirmed the Commission's decision in 950200.

22 It's not only proper to establish evidence  
23 to make your argument for a certain outcome of a case  
24 through the opposing parties' witnesses, it's  
25 efficient. It's much more efficient for me to cross



00856

1 Mr. Reynolds for what would have been 15 or 20  
2 minutes, but for the objections, than to sponsor a  
3 separate witness. It's efficient for the parties and  
4 it's efficient for the Commission and it's totally  
5 proper, as the Supreme Court in the state has found.

6 JUDGE MOSS: Well, I don't disagree with  
7 any of the principles that you have just spoken to,  
8 Mr. Harlow. In fact, in my early career, I have done  
9 it many times myself. So it's not something that's  
10 unfamiliar to anyone in this room, I think, to build  
11 one's case through cross-examination.

12 But that begs the question of whether the  
13 cross-examination is appropriate to the witness. And  
14 it seems to me that this witness' testimony is solely  
15 rebuttal testimony to a point that was raised by  
16 another witness in a direct case and is very limited  
17 on this issue of Centrex Plus.

18 So what I'm going to do is this. I'm going  
19 to allow you to put together a set of these somewhat  
20 related exhibits that you might want to put in,  
21 whether it's this one or two or three or a half a  
22 dozen on this subject matter, and file with that a  
23 brief memorandum asking the Commission to accept this  
24 into the record without a sponsoring witness. And  
25 I'll give US West an opportunity to respond to that.

00857

1 And we'll make a decision based on the arguments that  
2 the two of you pose on this point.

3 MR. HARLOW: All right.

4 JUDGE MOSS: I think that's the best way to  
5 proceed.

6 MR. HARLOW: I think that will work, Your  
7 Honor, given the witness' inability to authenticate  
8 these data request responses, these exhibits. I  
9 would ask for one clarification before I move on from  
10 this witness, and that is, I believe in the past that  
11 we have not been required to request official notice  
12 of company tariffs and price lists that are on file  
13 with the Commission. Assuming that practice still  
14 holds true, I can narrow somewhat our request for  
15 such tariffs and price lists to be identified as  
16 exhibits and admitted as such.

17 JUDGE MOSS: Yeah, again, the official  
18 records of the Commission are available to it in its  
19 deliberative processes. So if you want to refer to  
20 those, you may do so.

21 MR. HARLOW: No further questions.

22 MR. KOPTA: Your Honor, excuse me for  
23 interrupting. May I have a clarification on that?  
24 Would that include interconnection agreements that  
25 the Commission has approved in the course of its

00858

1 obligations under the Telecommunications Act of 1996?

2 JUDGE MOSS: When you say that would

3 include, what do you mean?

4 MR. KOPTA: That the Commission

5 automatically takes notice so that we can cite to

6 those agreements as part of the Commission's records?

7 JUDGE MOSS: Well, I don't want to take the

8 time to do it right now, but I'll take a look at the

9 rule and -- the Commission's rule on its official

10 records and give you an answer. But my general

11 impression is that all of the official records of the

12 Commission are available to it, and there isn't

13 really any controversy about those records being made

14 part of the record.

15 So to the extent these interconnection

16 agreements are part of the official records of the

17 Commission, then I would think they would fall within

18 that, but recognize that I'm doing this off the top

19 of my head as I sit here right now. And I would like

20 to have the opportunity myself to review the

21 Commission's rules pertinent to this point and get

22 back to you on that, and I will do so.

23 MR. KOPTA: Thank you, I appreciate that.

24 JUDGE MOSS: Although probably not this

25 evening.

00859

1 MR. KOPTA: We just wanted to make sure, in  
2 case there was some issue with that, whether we could  
3 present some additional considerations for taking  
4 such notice if it's not automatic.

5 MR. HARLOW: There is one other  
6 housekeeping matter, Your Honor. That is, one of the  
7 data request responses I was intending to offer by  
8 this memo process apparently didn't get numbered, so  
9 we need a number for US West Data Request response to  
10 MSC 02-017.

11 JUDGE MOSS: That would be 449.

12 MR. HARLOW: Thank you, Your Honor.

13 JUDGE MOSS: And give me that number again.

14 MR. HARLOW: MSC 02-017.

15 JUDGE MOSS: Let's see. I believe we had  
16 made it through all of our Counsel. This time I'm  
17 actually going to remember to ask if the Bench has  
18 any inquiry of this witness before we consider any  
19 redirect.

20 CHAIRWOMAN SHOWALTER: No.

21 JUDGE MOSS: It appears there is none.

22 CHAIRWOMAN SHOWALTER: It's only when you  
23 don't look at us.

24 JUDGE MOSS: Any redirect?

25 MS. ANDERL: Just a few, Your Honor.

00860

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

2 BY MS. ANDERL:

3 Q. Mr. Reynolds, let me direct your attention  
4 back to Exhibit 433, which are the two letters that  
5 Mr. Deanhardt inquired about.

6 A. I have them.

7 Q. Would you look at the April 26th letter,  
8 please?

9 A. Yes.

10 Q. Can you tell, from reviewing that letter,  
11 whether or not Covad's need for a DS1 between Maple  
12 Valley and Renton had been forecast to US West prior  
13 to the time that Covad requested that facility?

14 A. Actually, I might correct your question. I  
15 believe it's a DS3.

16 Q. Did I say DS1?

17 A. Yes.

18 Q. I'm sorry, it's DS3.

19 A. Actually, I think the fourth paragraph  
20 maybe speaks to that. It says, Since Covad does not  
21 provide forecasts of future interconnection needs for  
22 interoffice transport, US West has no way of  
23 anticipating orders. So I would say probably not.

24 Q. You were asked some questions by Mr. ffitich  
25 as to whether or not your testimony in this docket is

00861

1 inconsistent with the Commission order establishing  
2 the scope of review. Do you remember those  
3 questions?

4 A. Yes.

5 Q. Do you still have a copy of the Commission  
6 order establishing the scope of review?

7 A. Yes, I do.

8 Q. Were you able to complete your explanation  
9 as to why you do not believe that your testimony is  
10 inconsistent with what the Commission required in  
11 that order?

12 A. I believe so. The point that I wanted to  
13 make is that obviously the Commission found that the  
14 topics were germane to this proceeding and that they  
15 were subjects for inquiry. The only point I was  
16 trying to make is that my testimony had reviewed the  
17 subject matter that the intervenors filed, responded  
18 to it and found that there were other more applicable  
19 proceedings to address these issues in. So both  
20 statements could be consistent.

21 Q. Do you believe that one of the things that  
22 the competitors were required to do was to establish  
23 a nexus between their concerns and the merger  
24 transaction itself?

25 A. Yes.

00862

1 Q. And in your testimony, do you describe  
2 whether or not you believe that they've done that?

3 A. I think I believe that they have not. They  
4 bring up all manner of anecdotal evidence on certain  
5 issues that are very hard to respond to. I've tried  
6 to respond to as many as I could, and then they bring  
7 up a lot of issues that really have already been  
8 resolved at the FCC and that this Commission is  
9 already embarking upon, such as line sharing,  
10 sub-loop unbundling, many of those issues this  
11 Commission has already taken jurisdiction over and  
12 has implemented or started the implementation process  
13 through their generic docket.

14 I also point out that they do have  
15 rule-makings going addressing many of the  
16 intervenors' issues, and so I think that many of the  
17 subject matter has been covered. And yet I don't  
18 find, you know, the areas about exactly how the  
19 merger impedes any of these processes. I don't find  
20 that in any of the intervenors' testimony.  
21 Otherwise, I would have responded to those pieces.

22 Q. Mr. Reynolds, let me direct your attention  
23 back to the two exhibits that Mr. Deanhardt asked you  
24 about. Exhibit 444, which is a US West response to a  
25 data request, and Exhibit 448, which is the two-page

00863

1 e-mail that was identified and admitted, but for  
2 which copies were not available yet to distribute to  
3 all Counsel. It is the e-mail to --

4 A. Yes.

5 Q. Thank you.

6 Q. At the very top, it indicates it's from Mr.  
7 Deanhardt to Mr. Harlow. Do you see that?

8 A. Yes.

9 Q. That's Exhibit 448. Looking at Exhibit  
10 444, you responded that US West does not track or  
11 identify held orders by F1 or F2 separation. Do you  
12 recall that?

13 A. Yes.

14 Q. And indicated that responding to the data  
15 request as stated would require a special study?

16 A. Yes.

17 Q. If you look at Exhibit 448, and you see  
18 designations on that document showing F1 facilities  
19 in connection with the held orders --

20 A. Yes.

21 Q. -- do you believe that the Exhibit 448,  
22 which shows designations of F1 facilities, is  
23 inconsistent with US West's response to the data  
24 request, sub-part D?

25 A. No, because it's my understanding that we



00864

1 don't provide that type of information on a state  
2 basis. And this information was requested that way.  
3 I have been informed that we are providing F1 and F2  
4 information for companies, but it's typically  
5 region-wide for their particular companies.

6 Q. So to the extent that the request in the  
7 data request was to identify any of the 808 held  
8 orders or any of the orders that have been held all  
9 year for F1 or F2 facilities, is it still US West's  
10 position that it would have had to conduct a special  
11 study to provide that information to be specific --

12 A. Yes, that's right.

13 Q. -- to Washington state?

14 A. Yes, that's what I've been told.

15 Q. Mr. Reynolds, there's the paragraph at the  
16 bottom of the first page of Exhibit 448, which  
17 discusses reinforcement of facilities in residential  
18 areas. Do you see that?

19 A. Yes.

20 Q. Are you aware of whether or not Covad or  
21 any other CLEC provides US West with forecast  
22 information specific to residential or commercial  
23 areas within a particular wire center?

24 A. My understanding is is that we don't  
25 receive any type of unbundled loop, if that's the

00865

1 element you've been referring to. We don't receive  
2 any type of unbundled loop held order that's specific  
3 to the specificity that we need in order to help us.  
4 For example, the distribution area or a specific wire  
5 center.

6 Q. You said unbundled loop held order. Did  
7 you mean unbundled loop forecast?

8 A. Yes.

9 MS. ANDERL: That's all that I have on  
10 redirect.

11 JUDGE MOSS: All right. It appears that we  
12 have completed our examination of Mr. Reynolds, and  
13 we thank you for your testimony.

14 We had planned a break at 3:00, and it  
15 appears that it is perhaps more convenient to the  
16 Bench that we break now, before we start our next  
17 witness, and then, instead of trying to be back here  
18 at 3:30, let us come back here at 3:15. So we will  
19 take that half an hour that is needed by the Bench,  
20 and we'll do it now. So we're in recess.

21 MS. ANDERL: Thank you, Your Honor.

22 (Recess taken.)

23 JUDGE MOSS: We're on the record. We had  
24 some discussion off the record during the break and  
25 it appears that efficiency would best be served if we

00866

1 take Mr. Evans before Ms. LaFave, and I understand  
2 that the parties are all in agreement with that, that  
3 that won't disrupt anybody's plans for  
4 cross-examination. So certainly the interests of  
5 efficiency are paramount at this point, and we'll do  
6 that.

7 Whereupon,

8

MARK T. EVANS,

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

11 DIRECT EXAMINATION

12 BY MR. WILTSIE:

13 Q. Good afternoon, Mr. Evans. Would you  
14 please state your full name for the record?

15 A. It's Mark T. Evans.

16 Q. By whom are you employed?

17 A. Qwest Communications.

18 Q. And what's your position with Qwest?

19 A. Vice president of corporate finance.

20 Q. Have you caused to be filed in this docket  
21 rebuttal testimony that has been marked C-150-RT?

22 A. Yes.

23 Q. Do you have any corrections to that  
24 rebuttal testimony?

25 A. No, I don't.

00867

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

3 A. Yes, I would.

4 MR. WILTSIE: Your Honor, we move the  
5 admission of Exhibit C-150-RT.

6 JUDGE MOSS: Hearing no objection, it will  
7 be admitted as marked. And I do note that this has  
8 the C designation, indicating that there are some  
9 portions of this testimony that are confidential. If  
10 Counsel venture into that area, let's be alert to  
11 that, so that we can follow the appropriate  
12 procedures, mark the transcript, and do the necessary  
13 things in connection with that.

14 MR. WILTSIE: Your Honor, we tender Mr.  
15 Evans cross-examination.

16 JUDGE MOSS: Sorry. Did I cut you off  
17 before you said that?

18 MR. WILTSIE: No.

19 JUDGE MOSS: Mr. Kopta, go ahead.

20 MR. KOPTA: Thank you, Your Honor. I don't  
21 have any questions for Mr. Evans. However, I do have  
22 two cross exhibits that I have discussed with Mr.  
23 Wiltsie and understand Qwest will stipulate to their  
24 admission. They are Exhibits 365 and 387.

25 MR. WILTSIE: We have no objection, Your

00868

1 Honor.  
2 JUDGE MOSS: 365 and --  
3 MR. KOPTA: 387.  
4 JUDGE MOSS: Thank you. And without  
5 objection, those would be admitted.  
6 MR. KOPTA: Thank you, Your Honor.  
7 JUDGE MOSS: All right, Mr. Trincherero, did  
8 Mr. Kopta steel your thunder again? Not this time,  
9 eh?  
10 MR. TRINCHERO: I can name that tune in  
11 less time. I have no questions for Mr. Evans.  
12 JUDGE MOSS: Mr. Harlow.  
13 MR. HARLOW: MetroNet has no questions.  
14 MR. DEANHARDT: Mr. Trincherero stole my  
15 thunder.  
16 JUDGE MOSS: Mr. Butler, we're on a roll.  
17 MR. BUTLER: No questions.  
18 MR. PENA: Who am I to disagree.  
19 JUDGE MOSS: Mr. ffitch.  
20 MR. FFITCH: No, Your Honor.  
21 JUDGE MOSS: Ms. Johnston.  
22 MS. JOHNSTON: No, Your Honor.  
23 JUDGE MOSS: Does the Bench have any  
24 questions for this witness?  
25 CHAIRWOMAN SHOWALTER: I've got one.

00869

1 JUDGE MOSS: I think that's out of order.

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

3 BY CHAIRWOMAN SHOWALTER:

4 Q. Mr. Evans, on page seven of your rebuttal  
5 testimony, line 14, you say the merger will realize  
6 gross revenue synergies at 12 billion and net  
7 synergies at 10.5 billion to 11 billion. Can you  
8 just put this word synergies in a little more context  
9 for me? Just describe, in lay terms, what you mean  
10 by that.

11 A. Okay. We identified in certain areas of  
12 operation places where we thought either our  
13 initiatives would be accelerated through our  
14 combination with US West or certain expenditures  
15 could be avoided or reduced, and that would apply  
16 both in operating expenses or capital expenses.

17 Q. And the difference between gross and net in  
18 this context means what?

19 A. In the case of revenue synergies, we've  
20 identified the top line or gross amount, which would  
21 be before reduction for any applicable expenses to  
22 generate service or support the revenue. Net would  
23 be net of those expenses. So if it's 12 billion  
24 gross, it was, if I remember correctly, 4.1 billion  
25 net.

00870

1 Q. 10.5 billion net; right? Are you not --  
2 are we on the same page?

3 MR. WILTSIE: I believe page eight is the  
4 -- page eight, line 12.

5 THE WITNESS: Oh, yes. I'm sorry. Twelve  
6 billion of gross synergies -- Let me backtrack for a  
7 second.

8 Q. Okay.

9 A. There are three areas of synergies:  
10 revenue, operating, and capital. On the revenue  
11 synergies, when they're grossed, they're before  
12 expense, as I mentioned. The revenue synergies that  
13 are net and are included in that number are 4.1  
14 billion. So the revenue were 4.1, the expense were  
15 4.3, and the capital was 2.2, to total up to the 10  
16 and a half to \$11 billion range. If that makes  
17 sense.

18 CHAIRWOMAN SHOWALTER: Thank you.

19 THE WITNESS: Okay.

20 JUDGE MOSS: Anything else? Well, Mr.  
21 Evans, you almost hold the record for briefest  
22 testimony in this proceeding. Thank you very much  
23 for appearing.

24 THE WITNESS: Thank you.

25 JUDGE MOSS: Applicants please call your

00871

1 next witness.

2 MS. ANDERL: Applicants call Mary LaFave,  
3 and Ms. Hobson will handle that on direct.  
4 Whereupon,

5 MARY LaFAVE,  
6 having been first duly sworn, was called as a witness  
7 herein and was examined and testified as follows:

8 JUDGE MOSS: Please be seated.

9 THE WITNESS: Thank you.

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

11 BY MS. HOBSON:

12 Q. Would you please state your name for the  
13 record?

14 A. Mary Ferguson LaFave, L-a-F-a-v-e.

15 Q. What is your business address?

16 A. I've just moved across the street, so  
17 unlike my testimony, it is now 1801 California  
18 Street, Denver, Colorado.

19 Q. What is your capacity with US West?

20 A. I'm currently director regulatory for the  
21 Enterprise Networking organization within US West  
22 Communications.

23 Q. And in connection with your work with US  
24 West, did you prepare and cause to have filed with  
25 this Commission certain rebuttal testimony, which has



00872

1 previously been marked as Exhibit 100-RT?

2 A. Yes.

3 Q. Do you have any changes or corrections to  
4 that testimony at this time?

5 A. No.

6 Q. If I were to ask you the same questions  
7 that are contained in that prefiled testimony, now  
8 that you've been sworn, would your answers be the  
9 same?

10 A. Yes.

11 MS. HOBSON: Thank you. Your Honor, we  
12 would move the admission of Exhibit 100-RT, and  
13 tender Ms. LaFave for cross-examination.

14 JUDGE MOSS: Hearing no objection to the --

15 MS. JOHNSTON: Your Honor, excuse me. I do  
16 have an objection, and I request permission to voir  
17 dire the witness, please.

18 JUDGE MOSS: All right. Go ahead.

19 MS. JOHNSTON: Thank you.

20 V O I R D I R E E X A M I N A T I O N

21 BY MS. JOHNSTON:

22 Q. Good afternoon, Ms. LaFave.

23 A. Good afternoon.

24 Q. I'd like to ask you a few questions about  
25 your education and experience.

00873

1 CHAIRWOMAN SHOWALTER: Can you speak into  
2 the microphone?

3 MS. JOHNSTON: There's so much stuff here,  
4 it's hard to.

5 Q. Now, am I correct that you hold a B.A. in  
6 history from Dennison University?

7 A. Yes.

8 Q. And when did you obtain that degree?

9 A. 1972.

10 Q. And you also are a lawyer?

11 A. I currently refer to myself as a recovering  
12 lawyer. I have not officially practiced law since I  
13 left the law department of US West in March of -- I  
14 believe 1991.

15 Q. When did you obtain your law degree from  
16 the University of Nebraska?

17 A. I graduated in 1978.

18 Q. Okay. I think you just stated that you  
19 worked in the law department for US West, and you  
20 assumed that position in September of 1972?

21 A. If it says that, that would be a typo.

22 Q. Oh.

23 A. I apologize. Let me just look, because I  
24 began practicing there in September of 1978. I have  
25 21 years with the company. And yes, that's a typo.

00874

1 Sorry.

2 Q. That's fine. I'll just amend that to read  
3 1978, then.

4 JUDGE MOSS: So that's at line 16, that  
5 should say September 1978?

6 CHAIRWOMAN SHOWALTER: No, line 17.

7 THE WITNESS: Both places.

8 Q. Okay. As an attorney in the law department  
9 of US West, you focused on labor employment law?

10 A. Principally, yes.

11 Q. And then, in March of '91, you drew upon  
12 your experience in labor and employment law and  
13 became the director of labor relations for the  
14 company?

15 A. Yes.

16 Q. And in your role as director of labor  
17 relations, you served as a bargaining agent for the  
18 company?

19 A. Yes.

20 Q. Okay. And then you held that position  
21 until March of 1998; is that right?

22 A. Correct.

23 Q. Okay. In your current assignment, I think  
24 you described your current duties as, quote, ensuring  
25 that appropriate tariffs and notices are filed with

00875

1 regulatory agencies. Do you recall that?

2 A. Yes.

3 Q. And in this particular assignment you have  
4 held almost exactly two -- two years?

5 A. Correct.

6 Q. Okay. In your testimony, you spent a fair  
7 amount of time discussing competition and  
8 competition-related issues, such as the competitive  
9 landscape in Washington and, in fact, whether or not  
10 advanced services are, in fact, competitive today.

11 So I would like to ask you about your background in  
12 economics, if I may. Have you received any  
13 specialized training in the field of economics?

14 A. I took a course in my senior year of high  
15 school and I believe I had one course in college.

16 Q. Do you recall the title of the course you  
17 may have taken in college?

18 A. I imagine it was 101. I can't recall.

19 Q. Okay. So it's safe to say that you've  
20 never taught in the field of economics?

21 A. Taught?

22 Q. Yes.

23 A. That is correct.

24 Q. Or published in the field of economics?

25 A. That is correct.

00876

1 Q. And safe to say that you don't belong to  
2 any professional organizations in the field of  
3 economics?

4 A. That is correct.

5 Q. Okay. Also in your testimony, would it be  
6 fair to say that you drew upon your experience as an  
7 attorney of many years to render a legal opinion  
8 concerning the Commission's authority to order the  
9 company to create a separate subsidiary for its  
10 advanced services?

11 A. I don't believe that I drew upon a legal  
12 background. Rather, I was drawing on my experiences  
13 in my current position of working with the product  
14 team within Interprise, as well as the law  
15 department, with regard to developing advocacy as it  
16 relates to various proceedings.

17 Q. Okay. But you would agree, would you not,  
18 that in your testimony, you do render legal opinions  
19 concerning the scope of the Commission's authority?  
20 I could direct your attention to specific lines, if  
21 that would be helpful to you.

22 A. That would be helpful.

23 Q. Okay. Let's begin with page eight, lines  
24 four through 13 of your Exhibit 100-T.

25 A. Okay.

00877

1 Q. Did I say page eight or page four?

2 A. You said page eight.

3 JUDGE MOSS: You said page eight.

4 Q. Oh, good. Page eight, lines four through  
5 13, that's the correct reference. Let's just focus  
6 on lines 11 through 13. There you state that Staff's  
7 request that this Commission impose such a  
8 requirement, that is the requirement for the separate  
9 advanced services sub, is, in your opinion, asking  
10 this Commission to go far beyond its authority. Do  
11 you see that?

12 A. Yes.

13 Q. And then, at lines seven through 10, you  
14 again state, It's my understanding that the  
15 Washington Commission does not have the authority to  
16 establish the sub. Do you see that?

17 A. Yes.

18 Q. Okay. And you would not characterize those  
19 statements as your rendering a legal opinion on the  
20 scope of the Commission's authority to order such a  
21 sub in this docket?

22 A. I believe I state that's simply my opinion.  
23 I'm not a member of the law department currently and  
24 do not believe that I could render a legal opinion,  
25 therefore, on behalf of the company.

00878

1 Q. And then, the purpose section of your  
2 testimony at page two, you state that the purpose is  
3 to present reasons why the Commission should not  
4 impose creation of an advanced services subsidiary as  
5 a condition of approval of the Qwest-US West merger;  
6 is that right?

7 A. Right. I'm responding to Dr. Blackmon's  
8 testimony, which suggests that, in fact, the  
9 Commission should.

10 MS. JOHNSTON: Thank you. Those are all  
11 the questions I have for you. I do have some  
12 comments, however, to direct to the Bench.

13 JUDGE MOSS: Go ahead.

14 MS. JOHNSTON: Your Honor, I move that this  
15 witness' testimony be stricken from the record. The  
16 whole purpose of Evidence Rule 7(R)(2) is to offer  
17 witnesses that have specialized knowledge in a given  
18 area that would benefit the fact-finder. I don't  
19 believe that situation is present here. This witness  
20 has exceeded the scope of her expertise and she's not  
21 sufficiently qualified to express an expert opinion  
22 on economic issues, particularly the wisdom of  
23 ordering the creation of an advanced services  
24 subsidiary in the docket.

25 An additional reason for striking the

00879

1 testimony is that it contains legal conclusions. A  
2 witness may not testify to legal conclusions. So I  
3 would ask at least -- I could march through specific  
4 references and ask that those specific references be  
5 stricken as containing legal opinion, if that's  
6 necessary, although I would believe that the Bench  
7 and the attorneys in the room are quite capable of  
8 identifying legal argument and so disregard it, if  
9 you should so order.

10 JUDGE MOSS: I'm curious, Ms. Johnston, if  
11 you wanted to strike this testimony, why you did not  
12 respond to the notice that I issued in this  
13 proceeding requiring that any motions to strike be  
14 filed by the Tuesday of last week?

15 MS. JOHNSTON: Well, that may pertain to  
16 the motion to strike for legal opinion, but certainly  
17 I did not have the ability to voir dire the witness  
18 until this very moment.

19 JUDGE MOSS: So that your objection was  
20 dependent on your ability to voir dire the witness;  
21 is that correct?

22 MS. JOHNSTON: That's correct.

23 JUDGE MOSS: All right. Let's have a  
24 response.

25 MS. HOBSON: Thank you, Your Honor. With



00880

1 regard to the question of the witness'  
2 qualifications, I believe that the information which  
3 sponsored this inquiry was prefiled with this  
4 Commission on February 22nd of this year. I don't --  
5 I am unfamiliar with any requirement that one has to  
6 have formal education in economics courses in order  
7 to be able to render an opinion about the work that  
8 one does day in and day out as a professional working  
9 for one of the major telecommunications companies.

10 I don't believe that there is any intent  
11 that Ms. LaFave's testimony be offered for the  
12 purpose of giving expert economic testimony, but is  
13 really making observations about subjects that she  
14 knows very well, which are the manner in which  
15 services are offered by her employer of some over 20  
16 years and the technical capabilities of other  
17 entities and the kinds of services that are available  
18 to them to be able to offer similar services.

19 With regard to the questions of legal  
20 opinions, I believe that if the Commission would take  
21 a look at the testimony that has at least been  
22 highlighted for this, you will note that Ms. LaFave's  
23 opinions relate to the Commission's ability to have  
24 an effect, to render an order, if you will, on a  
25 regional basis. I don't know that one has to be a

00881

1 member of the bar of the state of Washington or, in  
2 fact, a lawyer to question the Commission's ability  
3 to act outside the scope of the state of Washington,  
4 and I think that is the gist of her testimony in this  
5 particular section.

6           So I believe that this is very similar to  
7 any amount of lay testimony that we've heard so far  
8 on these proceedings where various witnesses, based  
9 upon their experience in their professional jobs,  
10 have rendered opinions about what FCC orders require  
11 US West to do, for example, and the kinds of  
12 opportunities that they believe the company should  
13 have before this Commission.

14           I think it's very similar kind of testimony  
15 to that which has been given by any number of other  
16 lay witnesses in this case.

17           JUDGE MOSS: Okay. Of course, lay  
18 witnesses in this type of proceeding is sort of a  
19 qualified term. We're talking about company  
20 witnesses.

21           MS. JOHNSTON: Your Honor.

22           JUDGE MOSS: I'm sorry?

23           MS. JOHNSTON: Sorry to interrupt you. I  
24 was just going to make the observation that they're  
25 not lay fact witnesses. They're expert witnesses.

00882

1 JUDGE MOSS: And their expertise, as I was  
2 about to say, is based on their experience as  
3 employees of the companies they are here to  
4 represent. I do not understand this witness being  
5 tendered as an economist or an expert in the field of  
6 economics or, as would be most unusual, a legal  
7 expert, although there are circumstances where we  
8 might have a legal expert on the stand.

9 All right. The motion to strike is denied.  
10 Any other objections? All right. Then the prefiled  
11 rebuttal testimony, the exhibit marked as 100-RT,  
12 will be admitted. And I believe the witness is ready  
13 for cross-examination.

14 MS. HOBSON: That is correct.

15 JUDGE MOSS: Okay. We'll follow our usual  
16 process and see if Mr. Kopta is going to start a  
17 trend again.

18 MR. KOPTA: Maybe a brief trend. Thank  
19 you, Your Honor.

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

21 BY MR. KOPTA:

22 Q. Good afternoon, Ms. LaFave.

23 A. Good afternoon.

24 Q. Would you turn to page 16 of your  
25 testimony, specifically line nine, where you state US

00883

1 West has fully opened up its local markets in this  
2 state. And I'm assuming by this state, you mean the  
3 state of Washington?

4 A. Correct.

5 Q. By this statement, are you saying that US  
6 West has complied with the requirements in Section  
7 271?

8 A. I'm not saying that we have fulfilled all  
9 the points of the 14-point checklist or whatever else  
10 has been added on to it. What I was doing was just  
11 adding onto and really adopting this small portion of  
12 Mr. Reynolds' testimony to indicate the degree to  
13 which competitors have been able and have, in fact,  
14 entered into Washington to engage in competitive  
15 services with US West evidenced by the collocation,  
16 use of UNEs, et cetera.

17 Q. So you don't have any independent knowledge  
18 of the extent to which US West has complied with  
19 Section 271 or opened up its local markets fully to  
20 competition?

21 A. No, other than the testimony, for example,  
22 I've heard here this week.

23 Q. At the bottom of this page, I believe you  
24 were referencing also collocation. And with a  
25 sentence that begins on line 21 and carries over to

00884

1 the following page, you state that, Based on the  
2 number and location of collocations by competitors in  
3 US West's central offices, that 90 percent of the  
4 access lines could easily be served by a provider  
5 other than US West. Do you see my reference?

6 A. Yes.

7 Q. Is your statement based solely on the  
8 ability of -- or the -- actually, not ability, but  
9 the fact that competitors have collocated in the  
10 central offices, that collocation alone renders those  
11 lines easily used by competitors to provide service?

12 A. The intent of this particular sentence is  
13 to indicate that by having collocated in a central  
14 office, which presumably they put equipment, et  
15 cetera, means that they have access now to 90 percent  
16 of the total number of access lines in the state of  
17 Washington. So they have the potential, the  
18 capability, to serve all but 10 percent of the  
19 exchanges in which US West does business in the state  
20 of Washington.

21 Q. But you would agree with me that there's  
22 more required than simply collocation to be able to  
23 access US West's lines?

24 A. Yes.

25 Q. And do you have any personal knowledge as

00885

1 to whether any of those additional requirements could  
2 be completed or can be undertaken easily?

3 A. You'd have to define the term easily, and I  
4 understand that that is my term, so that you would  
5 ask me to do it. And I would say that easily is  
6 within the time frames that have been established,  
7 for instance, through interconnection agreements.

8 Q. And do you know, from your personal  
9 knowledge, that US West is complying with the time  
10 frames within any interconnection agreement?

11 A. I rely principally on a data response that  
12 US West gave with respect to -- and I'm just going to  
13 talk from memory, because I honestly don't know the  
14 number, but there was a question posed to the company  
15 about the interval in the state of Washington that it  
16 took to provision to competitors various kinds of  
17 loops, and it all seemed to be a reasonable period of  
18 time, in particular compared to the time it took us  
19 to provision, for instance, our DSL service.

20 Q. So this is based on documents that you've  
21 seen, not your own personal experience in terms of  
22 processing orders or being involved in day-to-day  
23 relationships with CLECs and their ordering and  
24 provisioning of unbundled network elements from US  
25 West?

00886

1           A.    I have not worked on the wholesale side of  
2 the house.

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

4           JUDGE MOSS:  Thank you, Mr. Kopta.  Mr.  
5 Trincherero.

6           MR. TRINCHERO:  I have nothing for this  
7 witness, Your Honor.

8           JUDGE MOSS:  Mr. Harlow.

9           MR. HARLOW:  MetroNet has nothing for this  
10 witness, Your Honor.

11          JUDGE MOSS:  Mr. Deanhardt, Covad.

12          MR. DEANHARDT:  Thank you, Your Honor.  I  
13 do have something for this witness.

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

15 BY MR. DEANHARDT:

16          Q.    Good afternoon, Ms. LaFave.  How are you?

17          A.    Good, thanks.

18          Q.    I want to start by establishing a little  
19 bit first exactly what !nterprise is and what it  
20 does.  !nterprise is one of US West's retail arms;  
21 correct?

22          A.    It is an operating division, !nterprise  
23 Networking, that covers a portion of the regulated  
24 products within US West C, and then also certain  
25 products and offerings by a separate sub that's a

00887

1 wholly owned sub of US West, Inc., entitled US West  
2 !nterprise America.

3 Q. !nterprise America is a CLEC; is that  
4 correct? Well, let me rephrase. Does !nterprise  
5 America operate outside the US West territory?

6 A. Yes.

7 Q. And outside the US West territory, it  
8 operates as a CLEC?

9 A. It has filed and has CLEC status in, I  
10 believe, 36 jurisdictions.

11 Q. Is it actually offering service anywhere?

12 A. Yes.

13 Q. Now, within US West's territory, !nterprise  
14 offers retail advanced services; is that correct?

15 A. That is correct.

16 Q. And advanced services include, among other  
17 things, Megabit; is that correct?

18 A. Advanced services that -- and I would just  
19 use what the FCC has continually used. It's  
20 basically packet switched products that run at a  
21 speed I think above 200 kilobits. So for our -- for  
22 !nterprise's purpose, their key offerings are  
23 Megabit, as you noted, which is an ADSL product, as  
24 well as frame relay services and ATM service.

25 Q. And ATM services are similar to frame relay



00888

1 services, in that they --

2 A. It's packetized switching, packet switched.

3 Q. Now, could you please turn to your

4 testimony at page 10, at lines seven and eight there.

5 At page 10, lines seven and eight, you testified that

6 Covad and Rhythms have adopted a business model which

7 targets the lucrative advanced services market while

8 ignoring the less lucrative residential voice market.

9 Do you see that?

10 A. Yes.

11 Q. Now, were you in the room this morning when

12 Mr. Reynolds was testifying?

13 A. Not all the time.

14 Q. Were you in the room when Mr. Reynolds was

15 testifying that US West does not know what CLECs do

16 with its loops?

17 A. I did hear him say that, yes.

18 Q. Mr. Reynolds is on the wholesale side of US

19 West; correct? He works for US West's wholesale

20 division?

21 A. I could swear he's in public policy. Do

22 you want to recall him?

23 Q. Nope, I just wanted to point you to -- I

24 just wanted to point you to his testimony, and I --

25 what exhibit number is it?

00889

1 MR. HARLOW: Forty.

2 Q. Exhibit 40, where he is -- his title is  
3 director, Washington wholesale regulatory affairs?

4 A. Right, and I'm -- I don't know anything  
5 about the modifiers, but I've always considered  
6 regulatory affairs as being part of public policy, so  
7 it's more of a staff function, as opposed to  
8 wholesale or retail.

9 Q. I'm just curious how it is that if Mr.  
10 Reynolds works for wholesale, he doesn't know what  
11 the wholesale CLECs are doing, and if you work for  
12 retail, you do?

13 A. I just said that I didn't think he worked  
14 for wholesale, number one. And secondly, my reliance  
15 in this statement comes from representations that  
16 have been expressly made from time to time by Rhythms  
17 and Covad.

18 Q. So this is not based on any knowledge  
19 within US West?

20 A. This is based on my personal knowledge from  
21 Minnesota.

22 Q. Okay. I want to turn in your testimony to  
23 pages three through six, where you discuss advanced  
24 service affiliates. Is it correct to say that in  
25 your testimony, on pages three through six, that you

00890

1 are arguing that the advanced services affiliates  
2 that have been created to date by Bell Atlantic and  
3 by SBC were both voluntary ventures?

4 A. Yes.

5 Q. Now, there's a proceeding that I saw  
6 missing from this. Are you familiar with the  
7 Pennsylvania Public Service Commission's order  
8 compelling Bell Atlantic to create a completely  
9 separate subsidiary dividing wholesale and retail  
10 operations?

11 A. I have heard that that order came out. I  
12 don't know the status of it and I have not read it.

13 Q. Okay. And at page four of your testimony,  
14 you state, at lines 21 and 22, that -- you state that  
15 Dr. Blackmon's characterization of the SBC-Ameritech  
16 separate subsidiary requirement as a merger condition  
17 is incorrect?

18 A. Wait. Where are you?

19 Q. Page four, lines 21 and 22?

20 A. Oh, yes, okay.

21 Q. Is that correct?

22 A. Yes, I believe that is totally correct.

23 Q. Have you ever read the document that  
24 creates the need for SBC and Ameritech to create a  
25 separate subsidiary?

00891

1           A.    I skimmed the initial part and I read -- I  
2 think it's Appendix C that talks in terms of certain  
3 conditions that SBC had agreed to.

4           Q.    Are you aware, then, that these were merger  
5 conditions that the FCC required, or else it would  
6 not have approved the SBC-Ameritech merger?

7           A.    I think what is fundamental here is that  
8 the FCC -- as a matter of fact, I believe in the  
9 order approving our merger condition that was just  
10 issued I guess the end of last week, they recognized  
11 that creation of a separate sub is voluntary and that  
12 the reason that they were talking to SBC and that SBC  
13 voluntarily agreed to the creation of the separate  
14 sub was because when they initially weighed the  
15 benefits versus the adverse consequences to the  
16 consumers, given the fact that it was a horizontal  
17 merger of an enormous company, that now is going to  
18 comprise three of the RBOCs that have been created  
19 after divestiture, they said, absent coming to some  
20 agreement, they would not be in a position to approve  
21 that merger.

22          Q.    Okay. Now, could you please answer my  
23 question? Is it correct that the FCC would not have  
24 approved the merger, based on the document that you  
25 read, without SBC and Ameritech creating the separate

00892

1 subsidiary?

2 A. What I'd like to do is -- let me just look  
3 at the FCC order from last week, because I think they  
4 may have stated it fairly well.

5 Q. I can appreciate that, but I'm not asking  
6 you about the order from last week. You've testified  
7 as to the contents of the order regarding the  
8 SBC-Ameritech merger, and I'm asking you about that  
9 document.

10 A. Right, but I believe that when you and I  
11 were just talking, I was stating what the FCC had  
12 said in its March 10th order, and that's what I was  
13 asking to refer to.

14 Q. But I'm not asking you about that order.  
15 I'm asking you about its SBC-Ameritech order that you  
16 testified to in your testimony well before the order  
17 of last week came out?

18 A. And my answer is that SBC voluntarily  
19 agreed to set up a separate sub in connection with  
20 seeking approval of its merger.

21 Q. So as far as you're aware, the FCC's  
22 approval of the merger was not conditioned on the  
23 separate subsidiary?

24 A. I kind of feel like we're dealing with  
25 semantics here. My position is that they voluntarily

00893

1 opted to agree to certain things.

2 Q. You state in your testimony that Ameritech  
3 already had a separate affiliate. Did SBC?

4 A. Not to the best of my knowledge.

5 Q. And at that time, SBC included Pacific Bell  
6 and SWBT and SNET; is that correct? I'm sorry, I'm  
7 used to calling it SWBT. Consisted of Pacific Bell,  
8 Southwestern Bell Telephone, and SNET; correct?

9 A. Southern New England Tel?

10 Q. Yes.

11 A. Yes.

12 Q. And in none of those areas did SBC have a  
13 separate affiliate for advanced services; is that  
14 correct?

15 A. I don't know about the PacTel or Southern  
16 New England. I do know that SBC, Southwestern Bell,  
17 did not.

18 Q. I'd like for you to turn to your testimony,  
19 please, at page 11, beginning on line 21 and  
20 continuing through page 12, line two. You were  
21 testifying here that it is not correct to say that US  
22 West currently has an inappropriate competitive  
23 advantage in the provision of advanced services or  
24 that the merger with Qwest will allow the combined  
25 company to monopolize the advanced services market or

00894

1 stifle advanced services competition; is that  
2 correct?

3 A. Yes.

4 Q. Okay. Is it correct that Megabit services  
5 are offered over a US West customer's existing phone  
6 line?

7 A. Yes, the tariff says that they must have --  
8 the FCC tariff states that they must have a telephone  
9 number and facilities associated with it prior to  
10 ordering Megabit services.

11 Q. So that if they have voice service from US  
12 West, then they can order Megabit service?

13 A. Yes.

14 Q. And it will be -- the Megabit service will  
15 be provided over the same line to that residential  
16 customer that their voice service is provided across?

17 A. Yes, unless they order it differently or  
18 want a separate line with Megabit on it.

19 Q. Does US West offer Megabit services on a  
20 stand-alone loop?

21 A. I'm not certain.

22 Q. Do you have a copy, again, of -- I'm sorry,  
23 Your Honor. I need to ask that the witness be handed  
24 a copy, again, of Exhibit 448. That's the exhibit we  
25 marked this morning that I'm afraid we have just the

00895

1 one copy of.

2 JUDGE MOSS: To which there's a paucity of  
3 copies.

4 MR. DEANHARDT: A paucity of copies that I  
5 promise to correct, Your Honor.

6 MS. HOBSON: We have only one between us  
7 here, Counsel.

8 MR. DEANHARDT: You can hand it to her.

9 MS. HOBSON: I'll have to stand behind you.

10 JUDGE MOSS: You want to use my copy? I  
11 think I've got it in mind.

12 MS. HOBSON: You've got it memorized. I  
13 haven't seen it yet. Thank you.

14 Q. Ms. LaFave, if you could please look at  
15 Exhibit 448, at the text under the heading Bellevue,  
16 Washington?

17 A. Mm-hmm, yes.

18 Q. We established earlier that Exhibit 448 is  
19 an e-mail regarding held orders for Covad in a  
20 residential area of Bellevue. Do you recall that?

21 A. Yes.

22 Q. And the very last sentence of that  
23 paragraph in Exhibit 448 indicates that US West has  
24 invested in developing the infrastructure to  
25 commercial areas of Bellevue, but not to residential



00896

1 areas; is that correct?

2 A. It says we have not reinforced facilities  
3 in the residential areas and do not have plans to do  
4 so.

5 Q. And because Covad is already receiving  
6 responses that there are no facilities there, isn't  
7 it correct that that is an entire segment of  
8 customers to which US West can provide Megabit  
9 service that Covad cannot?

10 A. It all depends on what facilities are  
11 there. If there's a DLC, then none of them can get  
12 the service.

13 Q. You are aware, are you not, that Covad  
14 provides a service called IDSL?

15 A. I know that's one of the services you  
16 provide, yes.

17 Q. And you are aware that IDSL can be  
18 provisioned across a digital loop carrier system?

19 A. Yes, but it can't ride over any voice.

20 Q. But you are also aware that -- well, just  
21 to make the record clear, a digital loop carrier  
22 system is the DLC that you referred to just a moment  
23 ago?

24 A. Yes.

25 Q. So if there was a spare digital loop

00897

1 carrier, a spare line across a digital loop carrier  
2 system, then Covad could provide IDSL across that  
3 line; correct?

4 A. If you had the appropriate electronics, I  
5 would imagine. I'm not that technical, but I do know  
6 that you can serve IDSL over a DLC.

7 Q. So if that was the case and those  
8 facilities were available, then would Covad expect to  
9 get a no facilities response from US West?

10 A. This is purely hypothetical, because I have  
11 no idea what the infrastructure is, is it copper, is  
12 it DLC, et cetera, and I have no idea where your held  
13 orders are. So I simply can't answer that.

14 Q. Let's try this a different way, then. If  
15 there is only one copper loop to a residence, and it  
16 is being used for voice service and US West cannot  
17 provision a second copper loop to that facility, to  
18 that customer premise, then US West could provide  
19 Megabit service to that customer, but Covad could  
20 not; correct?

21 A. Only if there were no load coils, bridged  
22 taps, it wasn't too far away from the central office.  
23 There are a variety of conditions that are going to  
24 determine whether or not someone could receive  
25 Megabit services.

00898

1 Q. Sure. So let's clean it up some. I mean,  
2 assuming that it is a home whose -- the copper  
3 facility to that home fits the technical parameters  
4 that allow DSL service to be provided, then US West  
5 could provide service, but Covad could not; correct?

6 A. If they opted to do it over copper  
7 facilities, I would say that's correct, unless they  
8 built their own facilities.

9 Q. And if it's a copper facility that, when  
10 the technical parameters do not meet the  
11 specifications for DSL, then neither US West nor  
12 Covad could provide service; correct?

13 A. I believe that's correct.

14 Q. So in the circumstance where the facility  
15 will allow service, only US West has access to that  
16 customer; correct?

17 A. Or cable modem service that offered  
18 competing service.

19 Q. Except that I'm not asking about cable  
20 modem service; I'm asking across US West's network?

21 A. Using US West's network, if there's a  
22 single copper loop that is being used by voice for  
23 the end user and it meets all the other  
24 specifications, then US West would be able to offer  
25 Megabit service to that customer and anyone else --

00899

1 when line sharing is implemented, then, in the state  
2 of Washington, then if you were doing ADSL  
3 technology, Covad would be, as well.

4 Q. But line sharing doesn't exist now, does  
5 it?

6 A. It is my understanding that there is a  
7 docket on line sharing, but we have not currently  
8 implemented line sharing in Washington. That's  
9 correct.

10 Q. And line sharing didn't exist for any of  
11 1999, did it?

12 A. No, I can't -- oh, in the state of  
13 Washington?

14 Q. In the state of Washington?

15 A. That's correct.

16 Q. Now, approximately how many Megabit  
17 subscribers did US West have in the state of  
18 Washington as of January 31st, 2000?

19 A. You know, we have a -- I know we answered  
20 it as of -- I want to say February 15th.

21 Q. You're right, I got my dates back. As of  
22 February 15th, 2000?

23 A. Have you got the answer in front of you by  
24 any chance?

25 Q. I do. Would you agree that the answer is

00900

1 26,532?

2 A. Subject to check, yes.

3 Q. And as of January 31st, 2000, would you  
4 also agree that the total aggregate number of UNE  
5 loops being provided to DLECs, as shown in US West's  
6 CRIS billing system, is 3,755?

7 MS. HOBSON: Counsel, can you help the  
8 witness with your reference?

9 Q. Certainly. This is Exhibit 101, and it's  
10 going to have to be -- we're going to have to  
11 substitute the exhibit, because this is the  
12 supplement S2, that we received just yesterday, and I  
13 do have copies for the Bench this time, so -- I  
14 believe the attorneys all already have them.

15 JUDGE MOSS: All right.

16 MR. DEANHARDT: May I approach the Bench,  
17 Your Honor?

18 JUDGE MOSS: Yes, please do.

19 MR. HARLOW: For the benefit of other  
20 Counsel, Ms. Anderl told me she passed these around  
21 to the other attorneys yesterday.

22 JUDGE MOSS: All right. So what you're  
23 handing up to the Bench is a substitute Exhibit 101?

24 MR. DEANHARDT: Yes, Your Honor.

25 Q. Ms. LaFave, the number that I was referring

00901

1 to is on the second page of the substitute Exhibit  
2 101.

3 A. Yes.

4 Q. Now, would you accept, subject to check,  
5 that that means that, as of approximately the time  
6 period between January 31st, 2000, and February 15th,  
7 2000, that US West had approximately 88 percent of  
8 the DSL market in the state of Washington?

9 A. No, I would not.

10 Q. Okay. Then we'll do the math. Back up.  
11 Would you accept, subject to check, that US West had  
12 approximately 88 percent of the DSL market within its  
13 territory within the state of Washington?

14 A. I still wouldn't agree, because I don't  
15 know that the only way that people are providing DSL  
16 service in competition with US West is over our  
17 facilities.

18 Q. But you know how Covad and Rhythms provide  
19 DSL within US West's territory in the state of  
20 Washington, do you not?

21 A. I know that you buy unbundled loops, but I  
22 don't know if that's the only way you do it.

23 Q. Well, you testified that you know about our  
24 business model?

25 A. I know about your business model, but you

00902

1 have said, We only intend to offer data only and we  
2 are not seeking to do analog voice service.

3 Q. Now, you're aware that -- if you're aware  
4 of your competitors, do you know that Qwest is a  
5 competitor of US West's within US West's region right  
6 now?

7 A. I understand, from having been sitting in  
8 this hearing room, that Qwest resells -- I believe  
9 that they have a contract with Covad to resell its  
10 DSL service.

11 Q. Qwest also provides frame relay service in  
12 Washington, doesn't it?

13 A. I'm not aware of that.

14 Q. Okay. Are you aware of whether or not  
15 Qwest provides any other advanced services in the  
16 state of Washington?

17 A. I honestly am not.

18 Q. Okay. But you are aware that Qwest resells  
19 Covad DSL in the state of Washington; correct?

20 A. I understand they have a contract with you.  
21 I simply don't know the extent of which they do.

22 Q. Now, when Qwest and US West merge, what is  
23 -- how is the merged entity going to treat the  
24 current Qwest customers of Covad DSL, if any exist?

25 A. I don't know.

00903

1 Q. Has the company discussed that?

2 A. Not with me.

3 Q. Okay. Now, you have testified, I believe,  
4 you know, that US West is not going to have an  
5 inappropriate competitive advantage and that the  
6 merger with Qwest is not going to allow the combined  
7 company to stifle advanced services competition;  
8 correct?

9 A. Correct.

10 Q. What affirmative steps are you aware of  
11 that US West and Qwest have taken to ensure that  
12 Qwest will not inappropriately use Covad customer  
13 information to help stifle competition with Covad?

14 MR. WILTSIE: Objection, Your Honor. The  
15 question's ambiguous. The use of the word Qwest  
16 could refer to current Qwest or it could refer to the  
17 merged company, in which case he's asking how the  
18 merged company will not interfere with itself, which  
19 doesn't seem to make much sense.

20 JUDGE MOSS: That would be a separate  
21 question, I think. I understood the question to be  
22 what steps have been taken in the planning of this  
23 merger. Was that the question?

24 MR. DEANHARDT: That is the question, Your  
25 Honor.



00904

1 JUDGE MOSS: Do you understand the  
2 question?

3 THE WITNESS: I do, and I don't know the  
4 answer.

5 Q. I'm going to -- do you know if there have  
6 been any discussions between Qwest and US West about  
7 what to do with the confidential information  
8 disclosed to Qwest by Covad as part of the contract  
9 after the entities -- as part of Covad's contract  
10 with Qwest after US West and Qwest merge?

11 A. I don't know.

12 Q. Do you know if the merged entity will  
13 continue to resell Covad DSL?

14 A. I don't know.

15 Q. At page 12 of your testimony, lines 14  
16 through 15, you state that there's no basis to argue  
17 that US West has a potential competitive advantage  
18 over other providers of telecommunications and  
19 advanced services; is that correct?

20 A. Yes.

21 Q. Now, are you familiar -- or do you know who  
22 Joe Zell is?

23 A. Yes.

24 Q. And do you know who Greg Winn is?

25 A. Yes.

00905

1 Q. And Joe Zell is the president of the  
2 !nterprise division; correct?

3 A. Correct.

4 Q. And Mr. Winn is the executive vice  
5 president of operations and technology, I believe; is  
6 that correct?

7 A. I think that's correct.

8 Q. And Mr. Winn has responsibility for  
9 building out US West's network; is that correct?

10 A. Yes.

11 Q. And both the !nterprise division and US  
12 West's wholesale customers use that same network to  
13 provide services; is that correct?

14 A. I don't believe that that is correct. And  
15 the reason I say that is !nterprise has its own  
16 network operating system -- or own network operating  
17 center with respect to the ATM and the frame relay  
18 services network, so that we may use Greg Winn's  
19 technicians, for example, or networks technicians to  
20 build it out, but we do all of the network  
21 monitoring, planning, engineering, et cetera, within  
22 !nterprise.

23 Q. So to clarify, the network operations  
24 center is kind of the computer brain of the network  
25 that manages the network; correct?

00906

1 A. Yeah, it's a monitoring group, to ensure  
2 that the network's up and running for digital  
3 services.

4 Q. So the network operating center is  
5 managing, for example, the data flow, making sure  
6 that the equipment is running, et cetera?

7 A. On a very high level, I would say yes.

8 Q. I will agree with you that that's a very  
9 high-level description. Now, so I will be more  
10 precise in my point, then. Isn't it correct that  
11 both Interprise and US West's wholesale CLECs'  
12 customers provide services across the same outside  
13 plant facilities?

14 A. I think it depends on the services being  
15 offered.

16 Q. Could you clarify?

17 A. I don't believe CLECs' services run across  
18 our ATM infrastructure.

19 Q. Well, we're going to get into a real  
20 technical conversation, so let me try to --

21 A. We don't want to go there.

22 Q. Let me try and simplify this. Is it  
23 correct that US West's Megabit service, and we'll  
24 take, for an example, Covad's DSL service, run across  
25 the same local loops to the customer premise that are

00907

1 part of the outside plant managed by Greg Winn?

2 A. They would, yes, run across the same local  
3 loop from the end user back to the CO.

4 Q. And if Mr. Zell was having trouble with  
5 provisioning Megabit services across loops in a  
6 particular part of US West's territory in Washington,  
7 he could walk down the hall at 1801 California Street  
8 in Denver and talk with Mr. Winn about that, couldn't  
9 he?

10 A. Nope.

11 Q. He's not in 1801?

12 A. He's in 1801, but his office is down with  
13 the rest of the senior team. He's not on the  
14 executive floor.

15 Q. But he could take the elevator up to the  
16 executive floor?

17 A. He could.

18 Q. And he and Mr. Winn could have a  
19 conversation about how the network could be funded to  
20 better provision Mr. Zell's services, could they not?

21 A. I mean, that's purely hypothetical. I  
22 don't know.

23 Q. And Interprise has access to US West's  
24 customer list, does it not?

25 A. We are -- we use the existing retail sales

00908

1 channels, so if that is access to customer lists,  
2 then yes, that would be the case.

3 Q. So Interprise could, for example, direct  
4 market Megabit services to US West customers through  
5 their telephone bill, through inserts to the  
6 telephone bill?

7 A. I don't know anything about the rules  
8 around inserts. I honestly don't.

9 Q. So you don't know if US West has a  
10 competitive advantage in that it is able to use US  
11 West's customer list to direct market its services?

12 A. I believe that it could direct market. I'm  
13 just saying I don't know that it uses a bill insert  
14 to do the direct marketing.

15 MR. DEANHARDT: Okay. Your Honor, I may be  
16 able to move through this quickly if I can ask if  
17 there are any objections to Exhibit -- is this 435?  
18 If there are any objections to the introduction of  
19 Exhibit 101?

20 JUDGE MOSS: 101?

21 MR. DEANHARDT: This is the one that I  
22 previously questioned the witness about, just whether  
23 or not I need to establish a foundation or not.

24 MS. HOBSON: No objection on 101.

25 JUDGE MOSS: All right. You're moving its

00909

1 admission, then?

2 MR. DEANHARDT: Yes, Your Honor. If I can  
3 have one more second just to double check my list.

4 JUDGE MOSS: There being no objection, I'll  
5 admit 101 as marked.

6 MR. DEANHARDT: Your Honor, I have finished  
7 my cross-examination. Thank you very much, Ms.  
8 LaFave.

9 THE WITNESS: Thank you.

10 JUDGE MOSS: Thank you. Mr. Butler has  
11 nothing.

12 MR. PENA: I don't have anything, Your  
13 Honor.

14 JUDGE MOSS: We've lost Mr. ffitch. Do you  
15 have some cross-examination, Ms. Johnston?

16 MS. JOHNSTON: I do have a few questions.

17 JUDGE MOSS: All right. Well, let's pause  
18 just a moment to see if Mr. ffitch is just  
19 momentarily away or --

20 MR. FFITCH: I apologize, Your Honor. I  
21 don't have any cross-examination.

22 JUDGE MOSS: Thank you, Mr. ffitch. Ms.  
23 Johnston does.

24 MS. JOHNSTON: Thank you.

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

00910

1 BY MS. JOHNSTON:

2 Q. Ms. LaFave, I'd like to follow up on a  
3 couple questions asked of you by Mr. Deanhardt, if I  
4 may.

5 A. Sure.

6 Q. In your testimony here this afternoon and  
7 also in your pre-filed written rebuttal, I believe  
8 it's been marked as Exhibit 100-RT, you emphasize  
9 repeatedly your belief that SBC voluntarily agreed to  
10 the formation and creation of a separate subsidiary;  
11 is that correct?

12 A. Yes.

13 Q. In fact, SBC only very reluctantly agreed  
14 to the creation and formation of an advanced services  
15 sub, wouldn't you agree?

16 A. I did not follow all the steps of the FCC  
17 proceedings relating to the approval of the merger.  
18 I simply saw the outcome.

19 Q. Would you accept, subject to check -- and  
20 actually, your check will be very easy, because I  
21 would just invite your attention to Dr. Blackmon's  
22 Exhibit 260, which is, in fact, the FCC's memorandum,  
23 opinion and order in the SBC-Ameritech merger case.

24 A. I don't have it with me.

25 Q. That's CC Docket 98-141.

00911

1 JUDGE MOSS: Do you have a particular page?  
2 That's a pretty lengthy document.

3 MS. JOHNSTON: Well, pages five through  
4 seven at the moment, but, Your Honor, I just want to  
5 focus on dates and the timing of events. So it isn't  
6 particularly necessary that the witness have it  
7 available to her.

8 JUDGE MOSS: Oh, okay.

9 Q. So Ms. LaFave, would you accept, subject to  
10 check, that the merger application itself, that is  
11 the SBC-Ameritech merger application, was filed with  
12 the FCC on July 24th, 1998?

13 A. Yes.

14 Q. Would you also accept, subject to check,  
15 that on July 1st, 1999, the applicants supplemented  
16 that application by offering a different set of  
17 commitments?

18 A. Yes.

19 Q. And would you also accept, subject to  
20 check, that subsequent to that July 1st revision,  
21 they substantially revised, to use the words of the  
22 FCC, substantially revised their commitments on  
23 August 27th, 1999?

24 A. Yes, you're reading from the document?

25 Q. Yes, I am.



00912

1 A. Mm-hmm.

2 Q. And would you also accept, subject to  
3 check, that the applicants continued to refine those  
4 commitments, not once, but three times on September  
5 7th, September 17th, and September 29th,  
6 respectively?

7 A. Yes.

8 Q. And so the final set of revisions and  
9 refinements occurred on September 29th, 1999, more  
10 than a year after filing of the initial application;  
11 is that right?

12 A. Correct.

13 Q. On page five of your rebuttal testimony,  
14 Exhibit 100-RT, at line 26.

15 A. Yes.

16 Q. Also, actually at line 21, you again  
17 emphasize your belief that Bell Atlantic volunteered  
18 to offer advanced services out of a separate  
19 subsidiary?

20 A. Correct.

21 Q. Or chose to. I believe you have that in  
22 italics down there at line 26?

23 A. Yes.

24 Q. Would you also accept, subject to check,  
25 that in the CC Docket Number 98-184, that being the

00913

1 GTE Corporation and Bell Atlantic Corporation merger  
2 filing with the FCC, that the filing itself was dated  
3 July 27th, 1998?

4 A. Yes.

5 Q. And would you also accept, subject to  
6 check, that the companies made a supplemental filing  
7 with the FCC on January 27th of this year, 2000?

8 A. Yes.

9 Q. And in the supplemental filing, the company  
10 -- I don't know if I would use the characterization  
11 volunteered to or chose to, but in fact proposed the  
12 separate affiliate advanced services sub. Would you  
13 accept that, subject to check?

14 A. Yes.

15 Q. Mr. Deanhardt also asked you some questions  
16 concerning the FCC's order in the SBC-Ameritech  
17 merger. Do you recall that line of questioning?

18 A. Yes.

19 Q. And if I recall your testimony correctly,  
20 it was your testimony that it was not your belief  
21 that the FCC would have not approved the merger, but  
22 for the creation of the advanced services sub; is  
23 that right?

24 A. What I believe that I -- that was not my  
25 testimony, or I don't believe that that's what I

00914

1 said. What I said, and I was relying on the FCC's  
2 order in approval of the Qwest and US West merger,  
3 was that they had talked in terms of assessing the  
4 public interest, and that when the proposal of the  
5 SBC-Ameritech merger first came in front of them,  
6 that they said the harms outweighed the public  
7 interest. And then their language is, With the  
8 addition of, quote, unquote, voluntary conditions,  
9 that shifted the balance and that's what, you know,  
10 got them over the edge, but the FCC itself used the  
11 term voluntary conditions.

12 Q. And so your testimony pertained to the  
13 FCC's approval of the Qwest-US West merger?

14 A. No, but I'm saying that the FCC's most  
15 recent order reinforces what I've been saying before,  
16 that I believed that the FCC has never compelled  
17 someone -- and this goes back to whatever came out of  
18 the 706 order when we were seeking data relief. They  
19 talk in terms of you can opt in and get certain  
20 benefits from a separate sub, but I don't believe  
21 it's ever been compelled.

22 Q. But you used the words most recent order,  
23 and by that, you mean the FCC's approval of the  
24 merger here?

25 A. I --

00915

1 Q. Let's just not waste time there. Would you  
2 accept, subject to check, that in the FCC's very  
3 recent order approving the Qwest-US West merger, that  
4 at page 23, first -- well, paragraph 42, you will  
5 find the words, quote, with respect to discrimination  
6 against competitive LECs, we note that the creation  
7 of a separate subsidiary for advanced services would  
8 ameliorate any such problem by making it easier to  
9 identify discrimination, close quote?

10 A. Yes, and the following sentence says that a  
11 separate sub is not necessary to sustain that burden.

12 Q. Is it Enterprise or Interprise?

13 A. Oh, it's !nterprise, with an exclamation  
14 point instead of an I or an E.

15 Q. Okay. Does !nterprise --

16 JUDGE MOSS: Only the Bushmen Hottentot  
17 people can actually pronounce that.

18 THE WITNESS: Well, I'll tell you, spelling  
19 will not learn it on Microsoft Word.

20 Q. Does !nterprise have interconnection  
21 agreements with US West Communications?

22 A. !nterprise America, US West's !nterprise  
23 America has CLEC status only outside of the 14-state  
24 region, with the exception, I believe, of Nebraska.  
25 And in Nebraska, I do not believe that it has an

00916

1 interconnection agreement.

2 Q. Does !nterprise obtain collocation space in  
3 US West C's central offices?

4 A. !nterprise America, no.

5 Q. No, !nterprise?

6 A. It places equipment in US West  
7 Communication's central offices, yes.

8 Q. Does !nterprise pay US West C collocation  
9 quote preparation fees?

10 A. They don't have an interconnection  
11 agreement, so they pay for the installation of the  
12 facilities.

13 Q. How about construction charges for  
14 collocation space?

15 MS. HOBSON: I'm going to object. I  
16 believe that the question assumes that there is a  
17 collocation arrangement when, in fact, the witness  
18 has testified that there is not such an arrangement.

19 JUDGE MOSS: I think her testimony was that  
20 there's not an interconnection agreement, but that  
21 the facilities are physically located in the US West  
22 Communications' facilities. So I think the question  
23 is a good one, and I'm going to overrule the  
24 objection.

25 THE WITNESS: Could you restate the

00917

1 question again, please?

2 Q. Does !nterprise pay construction charges  
3 for collocation space?

4 A. The term collocation space is throwing me  
5 off, simply because I always think of that in terms  
6 of something that's provided to an interexchange  
7 carrier or a CLEC. So all I can say is they pay to  
8 have their equipment installed.

9 Q. Does !nterprise provide DSL service over  
10 the same loop facility that US West Communications  
11 uses to provide local exchange service?

12 A. It provides over, you know, suitable 1FR  
13 and 1FB voice lines.

14 Q. So the answer's yes?

15 A. Yes.

16 CHAIRWOMAN SHOWALTER: Can you back up for  
17 one question? You said, All I can say is they pay to  
18 have their equipment installed. Who is the they  
19 there?

20 THE WITNESS: The they is the regulated  
21 section of !nterprise Networking, which is part of  
22 the regulated US West Communications entity.

23 CHAIRWOMAN SHOWALTER: So !nterprise pays  
24 US West to have its equipment installed; is that what  
25 --

00918

1 THE WITNESS: It pays for its own. So  
2 !nterprise is simply a working division within the  
3 whole regulated entity of US West C, and that portion  
4 of !nterprise networking offers all regulated  
5 products. So I don't know what to say, other than  
6 !nterprise has a budget, and it does its own kind of  
7 planning on the extent to which and where it is going  
8 to deploy its services and what capital that will  
9 take and what expenses and then budgets for that  
10 accordingly.

11 CHAIRWOMAN SHOWALTER: Sorry to interrupt  
12 you.

13 MS. JOHNSTON: No, that's fine.

14 Q. Would you agree that !nterprise has a  
15 special relationship with US West Communications?

16 A. !nterprise is a part of US West  
17 Communications and operates on a fully-integrated  
18 basis. The regulated portion of it does. The  
19 unregulated portion, like .net, does not. It  
20 operates on an arm's length basis.

21 Q. So in your opinion, does !nterprise obtain  
22 any advantage in marketing or provisioning of  
23 advanced services by virtue of its relationship with  
24 US West C?

25 A. It is expressly permitted to and does joint

00919

1 market with -- you know, uses the existing sales  
2 channels. So if you see our sales channels as a  
3 plus, then the answer would be yes.

4 Q. Are there any other areas that come to  
5 mind?

6 A. In terms of what?

7 Q. Well, in terms of if there are advantages.  
8 I mean, you referred to marketing. Is there anything  
9 else that comes to mind?

10 A. You've given that as an example, so I was  
11 responding to that.

12 Q. Is my list exclusive? I mean, do you have  
13 anything else that you can add? I mentioned  
14 marketing and provisioning of advanced services. Any  
15 other areas that come to mind?

16 A. Are we talking -- I mean, it's a pretty  
17 general question. Who do we have advantages over?

18 Q. Other providers of DSL?

19 A. I wouldn't say so automatically, no.

20 Q. Okay. I want to go back to clarify one of  
21 your earlier responses to my prior questions when I  
22 asked you whether or not it was your belief that  
23 Enterprise obtains an advantage in marketing. I  
24 believe your answer was if I view marketing as an  
25 advantage, then yes.



00920

1                   So would you answer the question yes or no?  
2 Does !nterprise obtain any advantage in marketing or  
3 provisioning of advanced services by virtue of its  
4 relationship with US West C?

5           A.    I don't quite know how to answer that,  
6 because I honestly don't know how to compare it to  
7 what Covad and Rhythms do with respect to marketing.  
8 I'm not trying to be coy; I'm just not quite  
9 understanding this.

10           MS. JOHNSTON: That's all we have. Thank  
11 you.

12           THE WITNESS: Thank you.

13           JUDGE MOSS: Anything from the Bench?

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

15 BY COMMISSIONER HEMSTAD:

16           Q.    I'd like to pursue the questions about the  
17 structure of !nterprise Networking. I think that's  
18 the correct term, isn't it?

19           A.    That is, yes.

20           Q.    So this is -- well, maybe it's not the  
21 right terminology, but could be described as some  
22 kind of joint venture between the separate  
23 subsidiary, !nterprise America, is that its name?

24           A.    Mm-hmm.

25           Q.    -- Incorporated, and US West

00921

1 Communications?

2 A. !nterprise America is a wholly-owned  
3 subsidiary of US West, Inc. So they're -- I guess  
4 you call them sister corporations. And the reason  
5 that it -- I mean, what I call !nterprise Networking  
6 is just kind of this umbrella over a segment of US  
7 West Communications on the regulated side with  
8 respect to its high-speed data services, like ATM,  
9 frame relay, Megabit, the DSL offering, and then  
10 complementary services also related in some respect  
11 to the data world, the Internet world, but which have  
12 a different status. They aren't regulated and/or  
13 they're an enhanced or information service.

14 So like, take US West.net that is US West's  
15 information service provider. It has a very  
16 different working relationship, has to account for  
17 any services facilities that it gets from US West C,  
18 although the FCC expressly allows the information  
19 services side of the house to joint market with our  
20 data products that are regulated.

21 Q. Does !nterprise Networking have a separate  
22 set of books?

23 A. !nterprise America has a separate set of  
24 books, separate from US West Communications, yes.

25 Q. But does the venture !nterprise Networking

00922

1 have a set of books?

2 A. No, basically, its accounting is going to  
3 be done on two separate books, depending on the  
4 nature of the service provided, either on the books  
5 of !nterprise America or on the books of US West  
6 Communications for the regulated products.

7 Q. Well, this is a pretty broad question, but  
8 then how are the expenses attributable to US West  
9 Communications on one side or to !nterprise America  
10 calculated?

11 A. I don't know how they're calculated. All I  
12 know is that we have to follow very specific FCC  
13 accounting rules, that those get audited from time to  
14 time. So that the people that work on the  
15 unregulated side of the house do track and account  
16 for their time, expenses, to ensure that the  
17 regulated side is not in any way, shape or form  
18 underwriting or subsidizing the unregulated side.

19 Q. And I take it you're an employee of US West  
20 Communications?

21 A. Yes.

22 Q. And who is the manager, if that's the right  
23 term, of !nterprise Networking?

24 A. Joe Zell is the president of !nterprise  
25 Networking.

00923

1 Q. Okay. And how is his salary allocated?

2 A. You know, I don't know.

3 Q. But --

4 A. I'm certain there is an allocation, though.

5 Q. Page eight of your testimony, this was  
6 inquired into on voir dire by Ms. Johnston, but I  
7 read this and, as a lawyer, I don't understand it.  
8 But first, let me ask a preliminary question. Is it  
9 your position that it would be beyond the authority  
10 of this Commission to order within the state of  
11 Washington the creation of a separate affiliate for  
12 advanced services? Let me ask that question first.

13 A. To the extent that the advanced services  
14 are interstate services, then I believe that that  
15 would be beyond the Washington State Commission's  
16 authority. And Megabit, for example, is interstate  
17 in nature, a hundred percent.

18 Q. Okay. But would such a separate affiliate  
19 encompass, from your understanding of what the Staff  
20 is proposing, all of the operations of Interprise  
21 Networking?

22 A. Well, certainly, I mean, the principal  
23 focus of peoples' testimony seemed to be on the DSL  
24 offering as an advanced service, not so much on frame  
25 and ATM. And 100 percent of our DSL service in the

00924

1 state of Washington are sold out of our federal  
2 tariff and not out of a state tariff.

3 Q. So it's the company's position that even if  
4 we thought it were a good idea, we couldn't do it, or  
5 it would be beyond our jurisdiction in the federal,  
6 state --

7 A. To the extent it involved federally  
8 tariffed services, yes.

9 Q. But beyond that, you say, I suppose, even  
10 though it could be done, it's impractical. Is that a  
11 fair way of summarizing your views?

12 A. Yes.

13 Q. That having been said, just very narrowly,  
14 starting at line seven on page eight, the sentence  
15 there, In addition, it is my understanding that the  
16 Washington Commission does not have the authority to  
17 establish that the separate advanced services  
18 subsidiary is not a, quote, successor or assign of US  
19 West, which is a benefit US West should receive from  
20 disintegrating its business (which would be the one  
21 benefit US West could obtain by such an order.)

22 A. Right.

23 Q. I don't understand that sentence?

24 A. This goes back to go the FCC's order  
25 related to all the 706 -- trying to get faster, more

00925

1 rural deployment of advanced services. And when they  
2 came out with their rule-making, they never had an  
3 order as it related to the separate sub, but the one  
4 thing that they had said is, if a company like US  
5 West were to elect to put its advanced services -- so  
6 that would be the frame, the ATM, the Megabit, DSL --  
7 into a separate sub, then it could get out from under  
8 any obligation under the act to resell its advanced  
9 services at a discount and/or to unbundle them. So  
10 that was kind of the quid pro quo there.

11 And I believe that they had also said,  
12 Well, the net effect of that is they wouldn't be a  
13 successor or assign of US West C that would still  
14 carry 251 unbundling obligations. I'm sorry if it  
15 was confusing.

16 COMMISSIONER HEMSTAD: I think that's all I  
17 have.

18 JUDGE MOSS: Okay. Redirect.

19 MS. HOBSON: Thank you.

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

21 BY MS. HOBSON:

22 Q. Ms. LaFave, Ms. Johnston asked you several  
23 questions about !nterprise's integrated status  
24 conferring an advantage on it, as compared with the  
25 CLECs. Do you recall that line of testimony?

00926

1 A. Yes.

2 Q. When we speak of !nterprise offering  
3 services within the state of Washington or within US  
4 West's 14-state region, are we talking about a  
5 separate corporate entity or are we talking about US  
6 West Communications?

7 A. It's US West Communications for the  
8 regulated services.

9 Q. And the regulated services would include  
10 DSL?

11 A. Yes.

12 Q. Okay. Is there any difference, then, from  
13 a regulatory standpoint, between US West  
14 Communications offering something called DSL or  
15 !nterprise offering something called DSL?

16 A. No.

17 Q. And is there any difference from a  
18 standpoint of integration between US West offering  
19 DSL service that competes with a CLEC DSL service and  
20 US West offering a lFR, a residential line that would  
21 compete with a CLEC offering a residential line?

22 A. No.

23 Q. Okay. Is there anything that is presently  
24 preventing a DLEC or a CLEC from using a single loop  
25 for both voice and data, to your knowledge?

00927

1 A. I don't believe so.

2 Q. And you were asked several questions about  
3 the SBC-Ameritech merger, the FCC decision on that,  
4 that point, and the voluntary nature of what was  
5 eventually the outcome of that decision. Do you  
6 recall that line of questioning?

7 A. Yes.

8 Q. The FCC just entered an order on March 10,  
9 2000, relating to the US West-Qwest merger; is that  
10 correct?

11 A. Yes.

12 Q. Did the FCC, in that order, compare the US  
13 West-Qwest merger to the SBC-Ameritech merger?

14 A. Yes.

15 Q. Would you explain to the Commission what  
16 the comparison in that regard resulted in?

17 A. Let me find it here. On page -- the copy I  
18 have, page 31, it's the second half of paragraph 61  
19 of the order. It states, in addition to the  
20 discussion that I had with Ms. Johnston, it states  
21 that the addition of voluntary conditions to  
22 applicants' proposals in the SBC-Ameritech merger,  
23 however, changed the public interest balance, and we  
24 then found that assuming their ongoing compliance  
25 with the conditions, the proposed transfer of



00928

1 licenses and lines served the public interest.

2 Q. And how did that compare with the FCC's  
3 decision with regard to the need for a separate  
4 advanced subsidiary for US West-Qwest?

5 A. They found that -- and I believe they were  
6 relying principally on -- ours is a vertical merger,  
7 not a horizontal, but the same considerations were  
8 not in play when assessing the Qwest-US West merger.  
9 So they found that the separate sub was not  
10 necessary.

11 Q. And it was not asked to present that as a  
12 voluntary condition in order to get an approving  
13 order; is that correct?

14 A. That's my understanding.

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

16 JUDGE MOSS: Okay. Mr. Butler.

17 MR. BUTLER: Yes. I have brief follow-up.

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

19 BY MR. BUTLER:

20 Q. Ms. LaFave, I was intrigued by your answer  
21 that 100 percent of the Megabit services are  
22 interstate and all of those services are sold out of  
23 the FCC tariff. Megabit services has two components,  
24 Mega Subscriber Service, where the customer is an end  
25 user and the connection is between the end user

00929

1 location and the central office, and the Mega Central  
2 service, where the connection is from the central  
3 office to the customer, which, in this case, would be  
4 either an Internet service provider or perhaps a  
5 corporation; is that correct?

6 A. Right.

7 Q. Now, on the latter case, where the Mega  
8 Central customer is a corporation and it orders a DSL  
9 service, Megabit service for, for example, a  
10 telecommuting application, so employees can then use  
11 the service to access the corporate network and main  
12 corporate headquarters, something like that. If, in  
13 fact, those two end points of the communication are  
14 within the same state, wouldn't, in fact, that  
15 service be an intrastate service in which -- would  
16 you agree?

17 A. We had this debate down in the state of New  
18 Mexico, and as a matter of fact, what we testified  
19 is, hypothetically, in a tele-working situation,  
20 you're absolutely right. But it is just not likely  
21 at all, simply because in order to have access to the  
22 LAN and to have that kind of interconnection between  
23 Mega Central and the Mega Subscriber, that means none  
24 of your teleworkers could access the Internet over  
25 that facility, they couldn't send e-mails that went

00930

1 out to the Internet or, you know, across interLATA  
2 boundaries.

3 And while it's feasible, I just don't think  
4 it's economically practical to think that a  
5 corporation would enable telecommuters to stay home  
6 and be credibly resourceful and then cut them off  
7 from all the resources that are available on the  
8 Internet. So it's possible, but it's just not  
9 likely.

10 Q. You don't have any customers that have an  
11 application like that?

12 A. Not to the best of my knowledge.

13 Q. But in fact, in the FCC's orders, they do  
14 contemplate the possibility that a Megabit service or  
15 a DSL service would be an intrastate service;  
16 correct?

17 A. My recollection is they said, you know, it  
18 could be, but they made it clear that if you were  
19 going to the Internet, it was interstate in nature.

20 Q. But if the customer is a corporation and  
21 not an ISP, then clearly, and that corporation was  
22 located in the same state as the Mega Subscriber is  
23 located, you would have an intrastate application;  
24 correct?

25 A. No, because that's what I was just talking

00931

1 about. The moment that they -- that the people  
2 hooked up to that system go out and access the  
3 Internet, et cetera, it has lost its intrastate  
4 character.

5 Q. Excuse me. Again, my question was if the  
6 Mega Central customer is a corporation, not an ISP,  
7 so that you are not going through the Internet, you  
8 would have an intrastate application; correct?

9 A. Right, but most corporate --

10 Q. That's just my question. Is that correct?

11 A. If their LAN has no access to any Internet,  
12 et cetera, which I've never heard of, then that would  
13 be absolutely correct.

14 JUDGE MOSS: I believe, then, that that  
15 completes our --

16 MS. JOHNSTON: Well, Your Honor, may I just  
17 have one follow-up? I'll be very --

18 JUDGE MOSS: If you can do it in a minute  
19 and 30 seconds.

20 MS. JOHNSTON: I can do it in less than  
21 that, if Barbara will cooperate.

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

23 BY MS. JOHNSTON:

24 Q. I just have one final question for you.  
25 I'm asking you, I'm going to direct your attention

00932

1 once again to Dr. Blackmon's Exhibit 261, which is,  
2 in fact, the FCC order pertaining to the  
3 SBC-Ameritech merger. Would you accept, subject to  
4 check, at page 151, the FCC states -- this is  
5 paragraph 348 of the document, We conclude above that  
6 the proposed merger of SBC and Ameritech poses  
7 significant potential public interest harms by,  
8 colon, and then it goes on, A and B. I'm only going  
9 to read C into the record here. Poses significant  
10 potential public interest harms by increasing the  
11 incentive and ability of the merged entity to  
12 discriminate against rivals, particularly with  
13 respect to advanced services. We also conclude that  
14 these concerns are not mitigated by the proposed  
15 transaction's potential public interest benefits.  
16 Thus, if our analysis ended at this point, we would  
17 have to conclude that the applicants have not  
18 demonstrated that the proposed transaction on balance  
19 will serve the public interest, convenience, and  
20 necessity. Would you be willing to accept that,  
21 subject to check?

22 A. Yes, I've got it right here in front of me.  
23 MS. JOHNSTON: Great, thank you. That's  
24 all I have.

25 JUDGE MOSS: All right. That will conclude

00933

1 our examination of Witness LaFave. Thank you very  
2 much for appearing.

3 THE WITNESS: Thank you.

4 JUDGE MOSS: That will bring us to the  
5 conclusion of our evidentiary proceedings today.  
6 Now, we do have the public comment proceedings that  
7 commence in one hour, and of course you all are  
8 welcome to come observe, participate as appropriate,  
9 and thank you all for your time today.

10 Tomorrow, I believe we are returning to our  
11 9:30 schedule. My recollection is there were some --  
12 the Commissioners are committed about 23 and a half  
13 hours a day during the course of this week, and I  
14 believe that half an hour was committed, too, so  
15 we'll start at 9:30 tomorrow and see how far we get.

16 MR. FFITCH: Your Honor, I have a court  
17 appearance at 9:00. I believe I'll be able to get  
18 back, but I'm comfortable with, with the leave of the  
19 Tribunal, I may be a little bit late, and it's okay  
20 with me if it's all right with the Tribunal.

21 JUDGE MOSS: I think you're a statutory  
22 party, so we can't throw you out under any  
23 circumstances.

24 Everyone will have to clean up their  
25 materials this evening so we can accommodate the

00934

1 needs of the public.

2 (Proceedings adjourned at 5:02 p.m.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25