

1                   BEFORE THE WASHINGTON UTILITIES AND  
2                   TRANSPORTATION COMMISSION

3   In the Matter of the                    )  
4   Investigation into                    )  
5   U S WEST COMMUNICATIONS, INC.'s   ) Docket No. UT-003022  
6    ) Volume LVII  
7   Compliance with Section 271 of   ) Pages 7877 to 8121  
8   the Telecommunications Act of    )  
9   1996                                    )  
10  -----)  
11  In the Matter of                    )  
12  U S WEST COMMUNICATIONS, INC.'s   ) Docket No. UT-003040  
13  Statement of Generally                ) Volume LVII  
14  Available Terms Pursuant to        ) Pages 7877 to 8121  
15  Section 252(f) of the                )  
16  Telecommunications Act of 1996    )  
17  \_\_\_\_\_)

13

14                   A hearing in the above matters was held on  
15 June 5, 2002, at 9:30 a.m., at 1300 South Evergreen Park  
16 Drive Southwest, Room 206, Olympia, Washington, before  
17 Administrative Law Judge ANN RENDAHL and Chairwoman  
18 MARILYN SHOWALTER and Commissioner RICHARD HEMSTAD and  
19 Commissioner PATRICK J. OSHIE.

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25 Court Reporter

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

2 JUDGE RENDAHL: Good morning, everyone.

3 We're here before the Washington Utilities and  
4 Transportation Commission this morning, Wednesday, June  
5 5th, to begin three days of hearing in Dockets UT-003022  
6 and 003040, which is the investigation into U.S. West,  
7 now Qwest's, Compliance with Section 271 of the  
8 Telecommunications Act of 1996 and Qwest's Statement of  
9 Generally Available Terms or SGAT pursuant to Section  
10 252(f) of the Act. I'm Ann Rendahl, the Administrative  
11 Law Judge presiding over this hearing with Chairwoman  
12 Marilyn Showalter and Commissioners Richard Hemstad and  
13 Patrick Oshie.

14 So the focus of our hearings today and  
15 tomorrow will be first Qwest's compliance with the  
16 Commission orders on the performance assurance plan or  
17 QPAP and any other SGAT compliance issues, which I  
18 believe the parties have indicated there are none, and  
19 the final report on Qwest's OSS testing, which will  
20 begin hopefully this afternoon. I do understand that  
21 the power is out in the north terminal, which is the  
22 United terminal, which parties are flying into today, so  
23 we may have to address this later. Hopefully the  
24 vendors will be here.

25 So let's begin by taking appearances from the

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1 parties beginning with Qwest.

2 MS. STANG: Thank you. Good morning, Lynn  
3 Stang from Qwest in Denver.

4 JUDGE RENDAHL: Thank you.

5 MS. ANDERL: Lisa Anderl representing Qwest.

6 MR. KOPTA: Gregory Kopta of the law firm  
7 Davis Wright Tremaine, LLP, on behalf of ELI and Time  
8 Warner Telecom.

9 JUDGE RENDAHL: Thank you.

10 MR. WEIGLER: Steven Weigler on behalf of  
11 AT&T Corporation.

12 JUDGE RENDAHL: Thank you.

13 MS. SINGER-NELSON: Michel Singer-Nelson on  
14 behalf of WorldCom.

15 MR. CROMWELL: Robert Cromwell on behalf of  
16 the Public Counsel section of the Attorney General's  
17 Office.

18 JUDGE RENDAHL: Thank you.

19 Is there anyone calling in on the bridge  
20 line, any attorney calling in on the bridge line who  
21 needs to make an appearance?

22 Hearing nothing, let's go forward. Are there  
23 any preliminary issues we need to talk about besides  
24 marking of exhibits before we go into the QPAP issues?

25 Okay, at a pre-hearing conference yesterday

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1 the parties identified exhibits and pre-marked them for  
2 this morning's hearing. You all should have a copy of  
3 that exhibit list. It begins with Exhibit Number 1680,  
4 which is Qwest's QPAP compliance filing, and goes  
5 through Exhibit Number 1794. We have identified another  
6 exhibit this morning, which is Exhibit 1687, which is  
7 Qwest's proposed SGAT and QPAP language for sections  
8 12.1 and 11.2 of the QPAP and section 20 of the SGAT.

9 Are there any objections to those exhibits  
10 being admitted into the record?

11 Hearing no objection, they will be so  
12 admitted.

13 I don't know if we set a record, but close to  
14 1,800 exhibits is pretty good.

15 CHAIRWOMAN SHOWALTER: How many?

16 JUDGE RENDAHL: Close to 1,800 exhibits.

17 Okay, so I think we're ready to begin with  
18 the QPAP issues. All of you should have a copy of a  
19 matrix of issues for the QPAP as well as a list of QPAP  
20 SGAT compliance issues, which we have -- there are 14 of  
21 them, which we have managed to whittle down this morning  
22 to 7. Those issues are the revenue cap, the tier 2  
23 payment trigger, service quality payments, special  
24 access reporting, changes to measure waiting, 6 month  
25 review process, and the multistate audit. Given that we

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1 have approximately 2 hours to address this in hearing  
2 time, that's about 120 minutes, why don't we take no  
3 more than 5 minutes per side on the issue. And so if  
4 there are different CLECs that need to address the  
5 issue, you may have to coordinate your time. And if we  
6 don't need all the time on a particular issue, let's  
7 save it for other issues.

8 And, Ms. Stang, I think you have first before  
9 you go forward a summary of the resolutions this  
10 morning.

11 MS. STANG: That's right.

12 Good morning, Chairwoman Showalter,  
13 Commissioners. I would like to go through that summary  
14 and then to address just a minute the timing issue and  
15 maybe an alternative way to deal with that, but first  
16 the issues that we were able to come here prepared to  
17 have dealt with.

18 The first one is on this list the number 2 of  
19 the compliance issues list dated June 5th, the ARMIS  
20 data. We have in Exhibit 1687 to which Judge Rendahl  
21 referred provided language that does address the CLEC  
22 concern, does provide that we will be updating the ARMIS  
23 information beginning with this filing, and all the  
24 parties agreed with that language.

25 The second issue we addressed today was, let

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1 me take a little bit out of order, the adding new UNES  
2 to the -- well, actually, I'm going to drop down to  
3 payment method, because also on page 1687 or Exhibit  
4 1687 we have proposed language that again addressed some  
5 concerns a CLEC had in terms of what -- how we had dealt  
6 with the use of electronic fund transfers to CLECs.  
7 Everyone has agreed that that language is appropriate.

8           The next one, again I'm taking this a little  
9 bit out of order because of what's on Exhibit 1687,  
10 going back up to number 7 on this list, adding new UNES,  
11 the concern there was that the parties were not certain  
12 or knowledgeable in terms of how we were going to  
13 incorporate our commitment to add measures that had --  
14 sub measurements that had gotten a standard. What we  
15 did was a couple of things. First was refer them to the  
16 actual PID 4.1, which does show those standards there,  
17 and then refer them to Section 20 of the SGAT, which  
18 says the PIDs are incorporated by reference into the  
19 SGAT. And so we now have both Exhibit k and Exhibit B  
20 in the SGAT. Exhibit K, the PAP, refers to Exhibit B,  
21 and they are now all satisfied that those measures are  
22 reflected in Exhibit B. So what you have here is  
23 language that we will be filing in the SGAT in Section  
24 20 of the SGAT, but this ties the loose ends together,  
25 and there was agreement on that.

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1           The other issue I guess was sort of partially  
2 resolved. We talked about collocation. We indicated  
3 that we intend to file, well, the concern was that we  
4 had not filed in another section of the SGAT language  
5 clarification, language the Commission had wanted us to  
6 file on collocation. We have indicated to Judge Rendahl  
7 that we will be filing another updated SGAT on June  
8 11th, and we will be including that in that filing. And  
9 I think that piece of it then is acceptable to everyone.  
10 I'm not sure if there is -- it appears there may be  
11 another issue on collocation, but at least as to that  
12 part of the SGAT, we have resolved those issues.

13           And then just as an administrative detail,  
14 well, maybe partially and partially not, with respect to  
15 the, have to find out which one this is, an issue around  
16 the special fund, there was a concern that Qwest had  
17 left in provisions that related to both the process and  
18 the funding of the multistate audit when it also had  
19 incorporated the Commission's language on auditing, and  
20 we are going to eliminate those sections that relate to  
21 the funding and the process of the multistate audit.

22           Then we also, there's a kind of a separate  
23 issue in that in some additional language we proposed in  
24 Section 16 there's a reference to special funds. It's  
25 really a reference to the Colorado special fund, and the

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1 objection there is just not applicable, and we agree,  
2 and we're going to revise that. But that's more on the  
3 lines of cleanup.

4 And I think with that, that is -- those take  
5 -- those cover the issues that we have been able to  
6 eliminate this morning.

7 One last thing I guess, and maybe we can  
8 eliminate this quickly, is should I address special  
9 access now, or would you like to wait?

10 JUDGE RENDAHL: Well, is this something,  
11 Mr. Kopta, you would like to still address?

12 MR. KOPTA: Just briefly, I think, if I can  
13 take a little bit of discussion, we might as well do it  
14 in order.

15 JUDGE RENDAHL: Why don't we just keep it in  
16 order.

17 MS. STANG: Okay.

18 JUDGE RENDAHL: And then just I will note  
19 that the parties indicated that there were no  
20 consistency issues with the SGAT other than the  
21 collocation issues that need to be -- but I guess  
22 there's maybe one remaining collocation issue that needs  
23 to be addressed.

24 MS. SINGER-NELSON: If you're referring to  
25 Section 6.3 of the QPAP, I don't think we need to

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1 discuss that. I think the bigger concern was really the  
2 consistency of the SGAT with the Washington collocation  
3 rule. And once we look at what Qwest proposes in its  
4 revised SGAT, then we can provide any comments if we  
5 believe that it's not consistent with the Commission  
6 order on that issue.

7 JUDGE RENDAHL: Okay, thank you.

8 So there are no consistency issues, and the  
9 parties have not raised any issues with the SGAT that  
10 was filed, so those issues on this list, 13 and 14, are  
11 also removed.

12 And, Ms. Stang, you had a suggestion for  
13 timing.

14 MS. STANG: Yes, if I might, Judge Rendahl.  
15 We talked about earlier three main issues that are very  
16 important, at least to Qwest, and I would propose  
17 particularly one, I think the six month review, will be  
18 of the most interest to the parties and to Qwest to talk  
19 about live, and I would ask that or ask that we be  
20 allowed to spend a little more time on that.

21 I would like to go through all of these and  
22 mainly because obviously what we are most interested in  
23 having the Commission ask questions of us, which is why  
24 we have oral argument, but I'm also prepared that if we  
25 run out of time, I don't know that some of these issues



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1 can't be addressed in some writing if we get to that  
2 point, you know, in lieu of trying to take a specified  
3 time for each side.

4 To summarize, I'm asking for a little more  
5 time to address particularly the six month review issue  
6 and perhaps the critical value issue. I think those do  
7 bear some discussion, and then hopefully some of these  
8 other ones can be, if necessary, be addressed in some  
9 proposed hearing writing.

10 JUDGE RENDAHL: Well, then why don't we take  
11 first the six month review issue. Each side will have  
12 ten minutes. Will that work better?

13 MS. STANG: Better, thank you.

14 JUDGE RENDAHL: And also on the tier 2  
15 payment issue, ten minutes per side.

16 MS. STANG: Okay.

17 JUDGE RENDAHL: And then we'll go back in  
18 order on each of the issues and take them up with we'll  
19 just see how far we can go.

20 MS. STANG: Thank you, I appreciate that.

21 JUDGE RENDAHL: Why don't we get started with  
22 the six month review process, and given that Qwest has  
23 made a new proposal in this filing, maybe we ought to  
24 hear from Qwest first and then hear from the other  
25 parties.

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1 MS. STANG: Thank you.

2 JUDGE RENDAHL: And which let's look at the  
3 matrix just so we're on the right page here, the six  
4 month review issues are reflected on page --

5 MS. STANG: You're referring to our SGAT  
6 filing?

7 JUDGE RENDAHL: I'm referring to the matrix  
8 of issues. It should be page 6 of the compliance  
9 matrix, this document.

10 MS. STANG: Okay, thank you.

11 JUDGE RENDAHL: Okay.

12 MS. STANG: And I just would also say if we  
13 have our --

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

16 (Discussion off the record.)

17 JUDGE RENDAHL: While we were off the record,  
18 we determined we need to be looking at Exhibit 1680  
19 which is Qwest's QPAP compliance pleading, 1681 which is  
20 the Exhibit K, the compliant SGAT that was filed, and  
21 1682, which is a document describing the PEPP  
22 collaborative summary. And in terms of 1681, the six  
23 month review sections are reflected in Section 16, which  
24 is page 24, beginning at page 24 of Exhibit 1681. And  
25 our focus here is (a) to talk about whether what Qwest

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1 has submitted is compliant, and secondly, if it is not,  
2 is there merit to that proposal.

3 Go ahead, Ms. Stang.

4 MS. STANG: Thank you, Judge Rendahl.  
5 Chairwoman Showalter, Commissioners. The answer to  
6 whether this is compliant and whether it's appropriate  
7 is probably involved in the same discussion. We took a  
8 look at the order and the basis for the order and the  
9 ordering language and those -- the basis on page 40, I'm  
10 sorry, 38 I think at 39 and 40 of the Commission's 30th  
11 order talks about three reasons for the ordering  
12 language. Number one, a belief, and I think based on  
13 AT&T's pleadings, that other plans in some ways directed  
14 the BOC to somehow cede control to the Commission for  
15 changes to the plan. Secondly, that the Colorado plan  
16 had actually followed suit and that there was specific  
17 language in the Colorado plan and the operation of the  
18 Colorado plan was to do so. In fact, the language that  
19 the Commission ordered to be inserted in the Qwest --  
20 the QPAP for Washington came out of the Colorado plan,  
21 at least as it had been filed with this Commission at  
22 the date of that order or I think the last decision on  
23 the motion to modify by Chairman Gifford. And then  
24 lastly, that other plans in the other -- the Qwest  
25 region and elsewhere had the same sort of approach. All

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1 those things are I think -- either have -- either the  
2 situation has changed, or I can point out for you why  
3 those are not the case any longer.

4 I'm not going to go into great detail, but I  
5 do think there's a misconception in terms of the New  
6 York plan and the Massachusetts plan and their change  
7 control, and I can talk about that, what that language  
8 says. You should have those in front of you, but it  
9 does not in any way have a concession by the BOC that  
10 the Commission would be directing changes and that that  
11 -- those changes would be made. Our concern with the  
12 Commission's language, as we were concerned in Colorado,  
13 it's really the language that says the Commission will  
14 direct changes at the six month review and we will put  
15 them into the S -- into our PAP is the concern that what  
16 that is is somehow saying that those changes are going  
17 to be done without any kind of opportunity for  
18 challenge, without -- and that go even further in terms  
19 of asking us to concede authority to the Commission  
20 distinct from a situation where a commission may have  
21 whatever authority it does have under state law. A PAP  
22 does nothing to impede that authority.

23 This in our view goes the other way and says,  
24 whether or not we have that authority, you're going to  
25 concede it in this plan, and that's our concern. It was

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1 our concern in Colorado. And what happened after the  
2 document that this Commission relied on was that the  
3 Colorado proceeding went back to remand on this very  
4 issue. We were very concerned, and Chairman Gifford  
5 gave us the opportunity to go back to special master  
6 Phil Weiser on this and some other issues to talk about  
7 a way that we could get to an acceptable plan. And part  
8 of this Commission's rationale in the language they  
9 ordered was that it was something that we had conceded  
10 to or had agreed to include in the Colorado plan, and I,  
11 you know, what we are doing is bringing to the  
12 Commission's attention that that has changed, and what  
13 we have accepted in Colorado is the language basically  
14 with some modifications I need to explain to you so that  
15 what we have agreed to is what you're seeing now and not  
16 what is in your order, which was I think this  
17 Commission's conception was in the Colorado order.

18 CHAIRWOMAN SHOWALTER: Just trying to follow,  
19 I take it then you are conceding whatever it is you have  
20 agreed to in Colorado, or you are agreeing here to  
21 whatever you agreed to in Colorado. Now did you agree  
22 to something different earlier in Colorado, or did we  
23 misunderstand what you had agreed to or did not agree to  
24 earlier?

25 MS. STANG: I think it was probably a

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1 misunderstanding, although I'm not quite sure how that  
2 came up in terms of what we had consented to. But what  
3 -- the process was as follows. I think this  
4 Commission's initial order came out on the 3rd of April,  
5 the 30th, and the remand order came out on the 27th of  
6 -- the 10th of April in terms of it was the mail date, I  
7 think it was actually issued in March. So there was a  
8 process that was going on, and we had obviously since we  
9 went back to remand, it was a big issue for us, we  
10 hadn't agreed to the PAP in that form with that -- with  
11 that operation, with that language in it as it was. We  
12 have now accepted the PAP, and that's the language we're  
13 bringing to you today is the revised language that  
14 resulted from remand there.

15 CHAIRWOMAN SHOWALTER: So does that mean that  
16 from our point of view what we're dealing with is what  
17 you have agreed to in Colorado, which is reflected in  
18 your latest filing, versus should we find that  
19 insufficient for our purposes, something else, in which  
20 case we need to address whether we have authority to  
21 require whatever it might be that's different from what  
22 you have consented to? Is that where the tension is in  
23 this argument?

24 MS. STANG: We -- I guess I would say we're  
25 bringing you Colorado because it is something -- because

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1 it seemed to be what this Commission was looking to.  
2 It's something we have agreed to. I don't know that  
3 that's the only option, and I'm trying to tee up what  
4 the main issue is, which is what we see in the  
5 Washington order is language that seems to say and the  
6 operation of which would be this Commission at the six  
7 month reviews will make a determination of what the  
8 outcome should be and the changes will be made in the  
9 PAP, and that would seem to then eliminate a challenge,  
10 you know, by Qwest that there was a -- that that  
11 particular change exceeded their authority.

12           And there are -- the other thing I wanted to  
13 tell you was that AT&T or I think a part of what this  
14 Commission based their decision on were some plans that  
15 had been in our jurisdiction or some decisions that had  
16 been rendered, and we are going back to those  
17 commissions asking to try and get to some language like  
18 we did in Colorado that's acceptable or at least that we  
19 can all go forward on.

20           And I would point out that also there's a  
21 North Dakota decision that has now, you know, and I  
22 think AT&T has attached that, we can talk about that  
23 language, it also like Colorado has this collar included  
24 in it, which I know is a new concept for the Commission,  
25 but it's one now that many of our jurisdictions are

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1 looking at as a way to sort of get, you know, a part of  
2 some comfort level on this issue.

3           So I'm not saying it's the only language, but  
4 we read from this order that you wanted the Colorado  
5 process. There was a -- or language. There was a -- we  
6 at your request imported the termination provisions from  
7 Colorado. There was, you know, a lot of references, and  
8 I don't want to belabor that too much, but that's --  
9 that's why we think this is in the spirit of compliance.  
10 I agree, this was not the exact language, but we felt  
11 like we needed to let the Commission know things had  
12 changed, and on the rationale, this is what we were  
13 going to bring them and hopefully to be accepted as  
14 compliance.

15           JUDGE RENDAHL: Just a --

16           MS. STANG: I will point out we didn't put  
17 into the -- I'm sorry.

18           JUDGE RENDAHL: Just a quick clarification  
19 though, is the language that Qwest has included in its  
20 filing the exact language from Colorado, or has it been  
21 modified?

22           MS. STANG: It has been modified in our  
23 filing, and I would like to briefly tell you what those  
24 are and -- or how this operates generally and then what  
25 those changes are. As you can see, there's what



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1 Professor Weiser came up with was a concept of what's on  
2 the table and what's off the table to try and address  
3 some concerns that not everything in the plan would be  
4 up for grabs at the six month review. I think that gave  
5 their commission actually some comfort that they weren't  
6 going to be talking about statistics every six months,  
7 and to, you know, identify things that would be more  
8 appropriately considered for change.

9           One of the things that the special master  
10 came up with as a way of making change easier was this  
11 concept of a collar, and this collar operates so that at  
12 every six months, you would look at the changes, and we  
13 keep on a going forward basis two sets of books, and we  
14 would assess our performance and liability under one set  
15 and then a set that represented the changes to the plan,  
16 old way, new way, and then the liability to Qwest would  
17 be limited to 10% of that. And this was to keep there  
18 from being, you know, just a really bizarre and, well,  
19 very demanding changes financially on the plan. We --  
20 and you will see that incorporated into the plan.

21           And I think the reason for some of the off  
22 the table thoughts were, when you have a voluntary plan  
23 going in but anything can be changed, then doesn't it  
24 get to a point, at least by agreement, I mean again I  
25 want to stress none of this is precluding the Commission

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1 from independent authority to change it, it's just  
2 saying what is this plan sort of addressing in terms of  
3 what the voluntary commitments were and can things  
4 spring from that.

5           Let me -- and so that's basically the  
6 scenario, off the table, on the table, and then a  
7 description of a collar which gives them some financial  
8 certainty that changes will evolve, but they won't be  
9 such that the financial liability of the plan to Qwest  
10 goes off the chart or becomes imbalanced.

11           The changes that we made, and number one,  
12 AT&T points out that certain things that we incorporated  
13 here as off the table were not off the table in  
14 Colorado. We did our best just to try, you know,  
15 they're different plans, and we tried to find the right  
16 sections. I disagree with them except on two provisions  
17 that I think that we need to perhaps address if this  
18 Commission is interested in this language going forward,  
19 and it is true that in the Colorado plan auditing or  
20 reporting really isn't on the table, off the table  
21 actually, and so I'm happy to make that change there.  
22 And the payments in terms of the timing of the payments  
23 are not off the table. There is a section of our  
24 auditing that is the effective date, and we need to  
25 carve that out, because that obviously should be off the

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1 table. But I'm happy to make those appropriate changes,  
2 and I won't go into more detail unless we need to since  
3 my time is limited.

4 One of the other things that AT&T complained  
5 about was not in compliance with Colorado was we  
6 adjusted it because in the C -- QPAP in front of  
7 Washington, there is a two year review, a biennial  
8 review. In Colorado, there is a three year review. I  
9 think that they operate similarly for a lot of reasons,  
10 but we made the change just to try and -- we didn't get  
11 that direction from the Commission that we should change  
12 that about the plan, so we made some adjustments. I'm  
13 also, if this Commission is interested in the Colorado  
14 plan on that aspect, I have no objections to making that  
15 change so that you -- we use the same language as in  
16 Colorado. It makes the review a little bit different,  
17 but I have no objections to that.

18 The last issue is one that we think really is  
19 an apples and oranges concern, and we want to identify  
20 that for you. In Colorado, part of the Section 16 --

21 CHAIRWOMAN SHOWALTER: I think Commissioner  
22 Hemstad has a question.

23 MS. STANG: Oh, I'm sorry.

24 COMMISSIONER HEMSTAD: (Shaking head.)

25 CHAIRWOMAN SHOWALTER: Well, I do, I find

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1 that I'm being distracted from listening to you because  
2 I've got this earlier question.

3 MS. STANG: Please ask.

4 CHAIRWOMAN SHOWALTER: And I can't get it out  
5 of my head. That is, I think maybe one of the problems  
6 is we have already asserted in the 30th order and  
7 elsewhere that we believe we do have authority, and if  
8 we have authority, then we can after due process change  
9 certain PIDs and other things, but I think your premise  
10 is you haven't conceded that we have that authority. So  
11 (a) you're looking for a way out, you know, what would  
12 you agree to even if you don't believe we have the  
13 authority, but then if we don't agree with what you have  
14 consented to, it's right back to the issue, which we  
15 have already asserted. That's the problem here,  
16 because, you know, you have, of course, you have the  
17 right to appeal certain things later, but it seems to me  
18 that in searching for alternatives to what you have  
19 consented to, you aren't confronting the fact that we  
20 have asserted we have independent authority to do this.  
21 Is that part of the problem?

22 MS. STANG: Well, I thought I addressed that,  
23 but let me take another stab at it in terms of the -- to  
24 us, the question really is, if the Commission believes  
25 it has authority, there is nothing Qwest can do to

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1 change that, and it really does come down to a question  
2 of does this -- have -- are we trying to do that, is  
3 there something in the PAP that impedes the Commission's  
4 authority. And conversely, if you have the authority,  
5 do you need us to then conversely concede authority.  
6 And I think that's really the issue.

7           If the Commission believes they have  
8 authority to change the PAP, first of all I would think  
9 that whether or not there's authority depends on the  
10 change. I mean we can't know now whether, you know,  
11 there is authority or not until we -- the Commission  
12 issues an order saying here's -- do this, and then we'll  
13 all know what the this is, and we will be able to assess  
14 it. So number one, I think it's premature for us to  
15 somehow concede that.

16           And second, I'm not -- it's -- I don't think  
17 it's appropriate for us to concede it. Nowhere is there  
18 a requirement that the BOC somehow say we agree the  
19 Commission has this authority and we won't challenge it.  
20 Now maybe that wasn't the Commission's intention, but it  
21 goes down to the language that the Commission has asked  
22 us to include in the PAP, a contract, a pleading, you  
23 know, some document binding Qwest which says, we will do  
24 this if the Commission says do it rather than saying the  
25 Commission -- nothing in this contract, and I have

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1 proposed this language too, nothing in this contract  
2 impedes the Commission's authority to act under its  
3 state and federal, you know, its ability to act under  
4 state and federal law.

5 CHAIRWOMAN SHOWALTER: And I'm really  
6 thinking out loud here, but you could reverse that too,  
7 you could say nothing in this SGAT gives the Commission  
8 jurisdiction where it doesn't have it.

9 MS. STANG: Well, I mean I think that -- but  
10 we're talking now about what our concerns are in terms  
11 of saying there is a process here that's -- is there a  
12 balance, can we strike a balance. We're not trying to  
13 impede authority, but we certainly don't want to have  
14 and would not concede authority, particularly in advance  
15 of an order. So is there a balance we can strike, and I  
16 think that's in many ways what these commissions that  
17 we're working with are trying to go back and do.

18 CHAIRWOMAN SHOWALTER: But aren't we trying  
19 in part anyway to have some kind of appropriate process.  
20 I mean there are different levels of this. One is what  
21 does this Commission have authority to do. And let's  
22 for the purpose of argument say that there's some  
23 qualifier somewhere that says this SGAT or this PAP,  
24 QPAP, does not give the Commission authority to do  
25 something it doesn't have to do, already have authority

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1 to do. Now, you know, now that we have that qualifier,  
2 what process are we talking about that's fair or unfair  
3 or good or bad, because we want -- don't we want to talk  
4 at that level as well. And that's where I'm having a  
5 problem, because I think here's something that you have  
6 consented to, but in order -- but if we want to  
7 entertain alternatives, you could throw up your  
8 argument, well, you don't have authority. But I would  
9 hope that maybe that question maybe will never arise,  
10 but we want to be able to entertain on the merits or  
11 procedural merits what kind of post process are we going  
12 to have.

13 MS. STANG: Well, I think that that's  
14 addressed in a couple ways. I think it's addressed in  
15 the fact that we have identified a six month review  
16 process on certain things that are appropriate for  
17 discussion there. I believe that the collar, which has  
18 been now adopted in Colorado and in North Dakota  
19 actually in their order, is another way to get to that.  
20 Because I think that financial certainty reduces the  
21 challenges. I mean and I think then you're probably,  
22 you know, left to clearly things like, and I would say  
23 special master Weiser hit on this in his supplemental  
24 order, which was, you know, we may get to a point where  
25 there's an issue of, you know, and we aren't going to

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1 argue this now, for instance, special access, you know,  
2 and it's clear jurisdictional issue. There are going to  
3 be, you know, potentially some challenges, but I think  
4 that the collar really does say, you know, is it worth  
5 it because the financial aspect of this is clearly  
6 accounted for.

7           And that to us is the BOC's biggest concern  
8 in terms of saying there's a voluntary aspect of what  
9 you own up to do, and then there is a Commission  
10 oversight, but I don't think the FCC has ever said  
11 anything, but you have it under state and federal law.  
12 We'll all maybe have different discussions here in court  
13 about what that is. I think every BOC is in that  
14 situation but -- and that may evolve, that authority may  
15 evolve as we go through, you know, court cases. But it  
16 isn't to constrain it. So as to process, I think we can  
17 still talk about process, but our concern is that again,  
18 with the language that this Commission said to do, first  
19 of all, take out language that did have us consenting to  
20 modifications to the PIDs. And let me explain where  
21 this kind of came from and we --

22           JUDGE RENDAHL: You should take another  
23 minute or two, and then we need to give AT&T a chance to  
24 respond --

25           MS. STANG: When we --



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1 JUDGE RENDAHL: -- and other counsel.

2 MS. STANG: Thank you, Judge Rendahl.

3 When we took out the language that says that  
4 we can consent to changes to the base of the plan, we  
5 opened up a great deal of liability, because once you  
6 start changing standards or things about 700  
7 measurements, 700 payment opportunities -- this language  
8 about consent came from Texas. Texas said mutual  
9 agreement, but the real issue is parties -- one of those  
10 parties was SBC, and they got to consent in terms of  
11 whether that plan -- the base of those measures changed.  
12 Our view of it was, well, I'm not going to go into what  
13 the -- why there was a difference, but the fundamental  
14 diff -- similarity was they got to consent. That was in  
15 their agreement, in their contract.

16 What we did is you -- you have asked us to do  
17 is take that away. And I think the collar, this is  
18 where we have negotiated this collar in other pro -- in  
19 other jurisdictions, because now you're going from just  
20 having the Commission resolve disputes over new measures  
21 to potentially changing or making changes based on, you  
22 know, 700 basically payment opportunities, and that can  
23 change the plan significantly. So I think that it  
24 really comes down to trying to find a way to devise this  
25 plan which doesn't have us conceding that language that

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1 we had identified has -- that's the concern we have with  
2 it. And we thought the Colorado, the interest in this  
3 Commission in the Colorado plan and that, because that  
4 had happened subsequently, was something we would bring  
5 to your attention as potentially compliant.

6           One last thing because I know AT&T is going  
7 to raise this, there was a provision in Section 16 of  
8 Colorado that said that the PIDs could be changed if it  
9 went to the special master or to the independent monitor  
10 of the Commission outside the six month review. As you  
11 can see, we have -- we have submitted an alternative,  
12 which we have also submitted to other states, and it is  
13 in North Dakota, which lets agreements from this ROC  
14 process flow into the PAP without a Commission review.  
15 I don't think this -- Qwest has any real concern if the  
16 Commission wants the Colorado language on changes to the  
17 PIDs outside the six month review if they, you know,  
18 upon a Commission approval, and that would be a disputed  
19 issue obviously. But again, I think it has to be  
20 something that would be subject to this potential  
21 collar, and it would -- we want to make sure it wasn't  
22 inconsistent with this second provision that said things  
23 could flow through upon agreement, because that too is a  
24 good, I think, you know, provision allows that, you  
25 know, sort of consensus and cooperation to affect the

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1 PAP. That's really where we were just going with that.

2 I would like to reserve some time for  
3 rebuttal if I could.

4 JUDGE RENDAHL: Well, we'll see.

5 MS. STANG: I know I have nothing to reserve.

6 JUDGE RENDAHL: We'll see how much time we  
7 have.

8 Mr. Weigler and Mr. Cromwell, I know you both  
9 wish to speak on this.

10 MR. WEIGLER: Thank you. This is an issue we  
11 have been debating vigorously for many months, and I  
12 feel like I could talk all day on this but -- so I'll  
13 keep trying, instead of that, I'll try and keep my  
14 comments very brief.

15 Basically the FCC said that this is a plan  
16 for the states to create, for the states to change, for  
17 the states to monitor. I brief -- and I see it in your  
18 orders and I briefed it extensively, there's extensive  
19 FCC language that you're supposed to be able to monitor  
20 and sanction discriminatory service and build plans  
21 throughout time, while looking at what other states are  
22 doing, build your plan to make sure that the -- that you  
23 can monitor and sanction discriminatory performance.  
24 That's why -- and I provided the language.

25 Take -- if you look at other plans, other

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1 plans give the commission the clear authority to usurp  
2 change control. And Qwest asked, is there something in  
3 the PAP that limits authority. That's what Ms. Stang  
4 said. We have to look at this, is there something in  
5 the PAP that limits the state's authority. Well, look  
6 at -- you have to look very carefully because it's  
7 really reading contractual language, but if you look  
8 really carefully at this new Colorado concept that Qwest  
9 has come up with, first of all, it's not the Colorado  
10 plan. There's substantial differences. I have briefed  
11 those differences. But one difference, huge difference,  
12 is look at what's precluded from six month review.

13 CHAIRWOMAN SHOWALTER: Can you focus us on  
14 what part of Exhibit 1681 you're talking about?

15 MR. WEIGLER: I'm looking at page 25, 16.7.

16 CHAIRWOMAN SHOWALTER: All right.

17 MR. WEIGLER: Ask yourself, is there  
18 something in the PAP that limits the authority, and it  
19 says:

20 The following areas of the QPAP will not  
21 be eligible for review at the six month  
22 review.

23 And then if you put those numbers in order,  
24 you're talking about Sections 4, Sections 5, Section 6,  
25 Section 7, Section 8, 9, 10, 11, 12, 13, 14, 16.12, and

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1 any proposal that does not directly relate to the  
2 measuring and/or providing payments for  
3 nondiscriminatory wholesale performance. Now it clearly  
4 says they are not eligible for review at the six month  
5 review, and there's no provision in the rest of the QPAP  
6 that you look at that ever makes those -- puts those  
7 elements on the table. If you take away basically  
8 Sections 4 through 14, 16.12, and any proposal that does  
9 not directly relate to measures and/or providing  
10 payments for nondiscriminatory wholesale performance --

11 JUDGE RENDAHL: You'll have to slow down just  
12 a bit for us and the court reporter.

13 MR. WEIGLER: Sure, just trying to get  
14 through that in one breath.

15 I proffer to the Commission and I looked at  
16 it, you don't have anything left. You have -- you have  
17 an enabling -- you have an introduction section, you  
18 have, let me get there, you have a Section 2 directly  
19 references Sections 6 and 7, and 6 and 7 are off the  
20 table, Section 3 is a declaration section, Section 15.0  
21 relates exclusively to audit, Section 16 is the section  
22 that's usurping the Commission's ability to do all the  
23 rest of these things, and Section 17 merely indicates  
24 that the plan is voluntary, and 18 indicates that there  
25 should be dispute resolution pursuant to the SGAT, which

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1 really has nothing to do with this Commission's  
2 authority or lack thereof.

3 CHAIRWOMAN SHOWALTER: So you're saying  
4 basically anything substantive is off the table.

5 MR. WEIGLER: Off the table.

6 CHAIRWOMAN SHOWALTER: I don't know if that  
7 was the right word to use in this context.

8 MR. WEIGLER: It's completely off the table.

9 Now Colorado, you have to do a side by side  
10 comparison if you're even contemplating looking at the  
11 Colorado language. Colorado certainly doesn't take all  
12 of these things off the table. Plus Colorado has this  
13 three year review where the things that are off the  
14 table get put on the table at the three year review.  
15 Well, if you look at Qwest's language, the two year  
16 review deals with exclusive language or exclusively what  
17 you can do and can't do in the two year review, and  
18 there's no back on the table.

19 So this is a facade, and I don't know if I  
20 even need to go that much further because you don't have  
21 -- Qwest asked, is there something in the PAP that  
22 limits authority? Their new language, this is the most  
23 limiting authority I have seen yet. It's the worst. So  
24 as far as is this the right solution, I would proffer to  
25 you if you look at the Massachusetts plan, if you look

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1 at the New York plan, and more importantly you don't  
2 even have to look at other plans, you look at what the  
3 FCC has said, and you look at your state law authority,  
4 and you look at your authority under the  
5 Telecommunications Act of 1996, which has been briefed  
6 extensively by the parties, you look that you have the  
7 ability to enact the language in the 30th and 33rd  
8 Order.

9 Now if you look at what Qwest did in North  
10 Dakota, they have basically that section that says what  
11 you asked, ordered in the 30th and 33rd order. I don't  
12 know -- and but they have this provision on the collar.  
13 This Commission said, you know, maybe we will entertain  
14 the collar, I think it was in the 33rd Order, they said  
15 maybe we will take a look at that, but we will do so at  
16 the six month review, and I think that's prudent because  
17 we have to see how the plan goes but --

18 JUDGE RENDAHL: Mr. Weigler, before you go  
19 forward, did AT&T attach or the joint CLECs attach the  
20 North Dakota language?

21 MR. WEIGLER: I put it in --

22 JUDGE RENDAHL: That's Exhibit 1690; is that  
23 correct?

24 MR. WEIGLER: That's correct.

25 JUDGE RENDAHL: Okay, so if we want to look

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1 at what North Dakota has done, that's Exhibit 1690 in  
2 the record.

3 CHAIRWOMAN SHOWALTER: And are you saying  
4 that in general you find 1690 without the collar to be  
5 appropriate?

6 MR. WEIGLER: 1690.

7 CHAIRWOMAN SHOWALTER: Which is North Dakota.

8 MR. WEIGLER: Right, well, 1690, Section  
9 16.1.

10 CHAIRWOMAN SHOWALTER: All right. And what  
11 about 1690 with a collar, recognizing that it was not  
12 anticipated in our previous orders.

13 MR. WEIGLER: 1690 with a collar, we have one  
14 concern, and that's in the Colorado plan, the collar has  
15 a 10% provision that has a prophylactic in case the  
16 CLECs over -- go over -- the amount that's due to the  
17 CLECs goes over that 10% collar, and Qwest omitted that.  
18 I was present in North Dakota, I argued it, they didn't  
19 seem to care. But, you know, taking away that  
20 prophylactic, keep in mind that the CLECs are basically  
21 waiving various contractual remedies, and we need to  
22 have that prophylactic.

23 CHAIRWOMAN SHOWALTER: So what about Exhibit  
24 1690, which is the North Dakota plan, with the Colorado  
25 collar, is that getting closer to what you think would



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1 be acceptable? I'm just trying to test, I don't --

2 MR. WEIGLER: You don't --

3 CHAIRWOMAN SHOWALTER: You don't have to  
4 commit yourself.

5 MR. WEIGLER: Sure.

6 CHAIRWOMAN SHOWALTER: And it's not exactly  
7 what the issue in front of us is, which is this is a  
8 compliance proceeding, but it is helpful to know where  
9 the line is in terms of what you would find to be  
10 workable.

11 MR. WEIGLER: You know, the issue of the  
12 collar came up, and we didn't really have the  
13 opportunity -- it was kind of like here it is, and then  
14 they had a compliance filing, and we really didn't have  
15 much of a chance to really input, give any input. In  
16 fact, we had no chance. So we saw it for the first time  
17 after the Commission ordered it. But with that being  
18 said, I mean it's not terrible language. I think it  
19 takes care of some of Qwest's concerns. Well, our huge  
20 concern is Commission change control and making sure  
21 that the Commission can monitor the plan. The only  
22 thing I worry about on the collar, and I don't mean to  
23 pontificate, is that you're supposed to come up with a  
24 plan that monitors and sanctions discriminatory service,  
25 and I worry that with the collar the sanctioning is --

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1 could be somewhat limited. However, it doesn't seem to  
2 be terribly alarming.

3 CHAIRWOMAN SHOWALTER: The sanctions would be  
4 limited by the collar?

5 MR. WEIGLER: Right, they would.

6 CHAIRWOMAN SHOWALTER: But not within the  
7 collar?

8 MR. WEIGLER: Right, we just hope that we  
9 never get there. But it's not, let's put it this way,  
10 it's not the part of the Colorado plan or any plan that  
11 we have been jumping up and down about. But we are  
12 jumping up and down that all of a sudden that sentence  
13 is gone, you know, with the CLEC prophylactic, oh, no,  
14 inexplicably we let go on that one. And that's  
15 basically -- I think this Commission has to look very  
16 carefully at the differences between what Colorado  
17 ordered and what Qwest has come up with, and I have  
18 listed them in my pleading. There's a mandatory sunset,  
19 this Commission never contemplated a mandatory sunset.  
20 There's a stay provision, and the way it's written in  
21 Washington, every stay -- I'm sorry, I should refer to  
22 the plan so you know what I'm talking about.

23 JUDGE RENDAHL: Mr. Weigler, I do have a  
24 question, the mandatory sunset, which is the six year  
25 termination, that was discussed here in Washington,

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1 wasn't it?

2 MR. WEIGLER: I don't know.

3 JUDGE RENDAHL: I mean the question of --

4 MR. WEIGLER: I've gone to 14 states, I'm not  
5 sure.

6 JUDGE RENDAHL: Okay.

7 MR. WEIGLER: I don't remember Qwest  
8 discussing -- I could look back at the Washington  
9 record.

10 JUDGE RENDAHL: Okay.

11 MR. WEIGLER: But I will stand --

12 JUDGE RENDAHL: I suggest you do that about  
13 the issue of termination and when and how the QPAP would  
14 terminate, but I think that was discussed here in  
15 Washington.

16 MR. WEIGLER: Then maybe I should stand mute  
17 on that issue, because I just don't remember if it was  
18 discussed or not. But there is a -- this -- at least  
19 the Commission's order that I read didn't contemplate  
20 it, didn't discuss that you should add a six year  
21 sunset, and yet the new language has a six year sunset.

22 There's also the way -- a very important  
23 thing, I went through all the things that this  
24 Commission couldn't change, and then there's this stay  
25 provision under 16.8, and it says if any of these things

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1 are discussed in the six month review, then it would be  
2 stayed until you go through the full court judicial  
3 process. Well, the way it's written, all that Qwest  
4 would have to do is say, well, it's not -- it wasn't --  
5 it -- the Commission contractually gave it up. Because  
6 in 16.7, they say, the following areas of the QPAP won't  
7 be eligible for review at the six month review, and  
8 that's, under this language, it's clearly there, all  
9 Qwest would have to do is go to a court of competent  
10 jurisdiction and say, yeah, 16.7 says that it's not  
11 eligible for review, so what would there really be to  
12 review.

13 CHAIRWOMAN SHOWALTER: Well, wouldn't it just  
14 be those other things that weren't on this list, some  
15 procedural issues maybe?

16 MR. WEIGLER: Sure, but I doubt we would be  
17 in court on the introduction section. I mean it would  
18 be if you tried to change anything in Sections 1 through  
19 6. And the way the Colorado plan is, at least the way I  
20 read it, it's not -- it says that they shall be  
21 deferred, and if it's not deferred, then it's subject to  
22 -- it's deferred to the three year review. And if it's  
23 not deferred, then this judicial stay comes into play.  
24 But the way Qwest wrote it here, this stuff just isn't  
25 going to be changing, and it's not going to survive

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1 judicial challenge.

2           That's again my huge concern is that this  
3 Commission have, and you have expressed it in your 33rd  
4 and 30th orders, you want to have the control that the  
5 FCC and the state legislature has mandated and the Act  
6 has mandated that this Commission have, and I haven't  
7 seen any language from Qwest that gives you that type of  
8 authority except for the paragraph 16.1 in South Dakota  
9 where, I'm sorry, in North Dakota, where that commission  
10 saw this Colorado language and said no thanks.

11           COMMISSIONER HEMSTAD: I would like to hear  
12 from Ms. Stang with regard to your reading of 16.7.

13           JUDGE RENDAHL: Commissioner Hemstad, can we  
14 give Public Counsel an opportunity, or would you like to  
15 go first to Ms. Stang?

16           COMMISSIONER HEMSTAD: I think we can hear  
17 from Public Counsel. We'll give them a shot.

18           JUDGE RENDAHL: I just didn't want to leave  
19 you out of the loop.

20           COMMISSIONER Hemstad: No, I'm sorry.

21           MS. STANG: I will be looking at 16.7.

22           MR. CROMWELL: I appreciate that, and I'm  
23 perfectly comfortable waiting and letting the issue  
24 resolve while it's still fresh.

25           JUDGE RENDAHL: Okay, why don't we do that.

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1 Let's look at 16.7.

2 MS. STANG: Of what we have proposed for  
3 Colorado in our compliance filing?

4 CHAIRWOMAN SHOWALTER: No, what you proposed  
5 to us.

6 JUDGE RENDAHL: In 1681.

7 CHAIRWOMAN SHOWALTER: Page 25, Exhibit 1681.  
8 I mean the question is, does this list in fact exclude  
9 virtually everything substantive from review?

10 MS. STANG: What this list does, it  
11 identifies the, I don't know what you would call  
12 substantive, that we might disagree on what substantive,  
13 but it does structural issues around the PAP. And it  
14 was the clear intent to have more -- focus on the things  
15 that are in 16.6 or 5 in this -- on this page for  
16 review. It is true the Colorado commission said it's  
17 fair to say that these things will be subject to a stay  
18 if we try and change them, but it wasn't to say they  
19 don't -- to concede they didn't have any authority to  
20 change them. It was we will have to go establish some  
21 independent authority, and that's the purpose of the  
22 stay. I mean the whole concept involves a challenge and  
23 process, so it's not as if this, contrary to what  
24 Mr. Weigler was saying, I don't think Chairman Gifford  
25 would admit that this in any way is him conceding he has

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1 no authority. It's just talking about what the contract  
2 says in terms of things that could be changed.

3 CHAIRWOMAN SHOWALTER: Well, I guess,  
4 interrupting Commissioner Hemstad, but I think I have  
5 the same question. There is a list of things here, 1  
6 through 6, and it says, the following areas of the QPAP  
7 will not be eligible for review, items 1 through 6. So  
8 do you agree (a) that those things may not be reviewed  
9 at the six month review, and if that's the case, (b)  
10 what is left, what is not on this list? In other words,  
11 what can be reviewed at the six month review?

12 MS. STANG: In Section 16.5 the six month  
13 review process will focus on revising, shifting,  
14 relative weighting, deleting and adding the PIDs.

15 CHAIRWOMAN SHOWALTER: And those are not  
16 included, that is something that is not in 1 through 6  
17 here?

18 MS. STANG: Right.

19 CHAIRWOMAN SHOWALTER: In 16.7?

20 MS. STANG: Right, and anything -- and then I  
21 think the catch all is in number 6 of 16.7 that says,  
22 any proposal that does not directly relate to measuring  
23 or providing payments for nondiscriminatory wholesale  
24 service. So the converse of that is things that do are  
25 on the table at the six month review. I think it's the

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1 purpose was trying to get to the evolution of the plan  
2 focusing more on the performance measurements rather  
3 than the things that change.

4 But again, that's the confines of this  
5 contract and we -- I'm sure judge or Chairman Gifford  
6 doesn't believe that this is in any way impeding his  
7 ability to suggest or make other changes, but it's just  
8 going to be a process that is going to give us some  
9 certainty that there's going to be a stay, and the  
10 Commission's going to establish that independent  
11 authority that they believe they have to make those  
12 changes.

13 CHAIRWOMAN SHOWALTER: I'm not very concerned  
14 with what Commissioner Gifford thinks, I'm concerned  
15 with these words and what they actually mean to us.

16 I'm sorry, you were distracted there but --

17 MS. STANG: Yes, I was, I'm sorry.

18 CHAIRWOMAN SHOWALTER: The question is, with  
19 this language that's in front of us, forget about what  
20 Colorado thinks, with this language in front of us, what  
21 is the meaningful substantive review that we would be  
22 doing; what is the scope that is left? Give some  
23 scenarios of what we might be talking about in six  
24 months.

25 MS. STANG: Adding new measurements, deleting



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1 old measurements, modifying a measurement. Say the  
2 bench mark is not right or the standard is not right,  
3 the definition is not right, talking about whether the  
4 classification of a measurement is appropriate. Maybe  
5 there's a measurement that's been rated as low in our  
6 PID and that drives the payment amounts. This  
7 Commission may decide that that has become a more  
8 critical service to CLECs, and they may want to make it  
9 a high measurement, and so that would be one of the  
10 fundamental parts of the changes at the six month  
11 review. I mean I think that that's what we're talking  
12 about in terms of the kinds of areas where the plan  
13 should evolve, and those are things that based on  
14 changes over time you might want to address, adjust.

15           Conversely, things that are more fundamental  
16 to the plan, which we have reviewed ad nauseam over two  
17 years, which are, you know, a critical value of 1.04  
18 versus 2.0 or, you know, the legal operation of the plan  
19 is another area, I mean we -- you now have the Colorado  
20 language, I would imagine you're satisfied with that in  
21 terms of how this plan would operate for liquidated  
22 damages, those kinds of things are listed here. Payment  
23 amounts and caps would not change.

24           JUDGE RENDAHL: Ms. Stang, can I ask a  
25 question about in terms of Section 16.7 in the Colorado

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1 plan, it's not eligible for review at six month review,  
2 but is there an opportunity later to look at these  
3 issues?

4 MS. STANG: Well, I think that raises what  
5 happens at the three year review, and I think what the  
6 language in the Colorado plan provides is that to the  
7 extent that the Commission is agreeing or that the  
8 parties in their contract agree that they would have a  
9 process that focuses on these particular PIDs, the three  
10 year review would be something that's more open for  
11 discussion in terms of changing the structure of the  
12 plan. And there that's reflected in the fact that  
13 Chairman Gifford did not provide any kind of a stay if  
14 he were to order a changed plan that was, you know,  
15 changing these off the table kinds of things. I think  
16 the concept is we're going to live with this for three  
17 years, but then in three years there might be reason for  
18 me to revise this plan based on my independent authority  
19 that might spring from whatever I have and I'm going to  
20 order it, but you're not going to get the benefit of a  
21 stay that you would have at the six month reviews if I  
22 were to make that same direction to you.

23 JUDGE RENDAHL: Okay. And understanding  
24 that's the Colorado plan, and that's not what your  
25 proposal is, but I just wanted to clarify that.

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1                   MS. STANG:  And as I said before, if this  
2   Commission is happy or is interested in this Colorado  
3   plan as it exists with some of these tweaks we're  
4   talking about, that's one I'm -- I think the company is  
5   happy to incorporate.  If you want all the language  
6   including the language that is -- addresses a three year  
7   plan and then you have how that's specified here in  
8   terms of, you know, the scope and everything, we're not  
9   opposed to that.  We just saw it as not something the  
10  CLEC -- in fact, if the Commission had directed us to  
11  keep the biennial plan provisions from the QPAP, so it  
12  was just trying to mix and mash and mesh.  It wasn't us  
13  trying to, you know, change the impact of how Colorado  
14  worked.

15                   JUDGE RENDAHL:  Okay.

16                   Mr. Cromwell.

17                   MR. CROMWELL:  Good morning, Commissioners,  
18  Chairwoman Showalter.  It's Public Counsel's position  
19  that this fundamentally is not a compliance filing.  It  
20  is in essence a misnamed motion for reconsideration of  
21  the 33rd Order.  We believe that the Commission should  
22  reject this filing on this basis and further order Qwest  
23  to comply with its orders, period.

24                   As to substance matters, to avoid repetition  
25  I would simply state that Public Counsel supports the

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1 Commission's findings in the 30th and 33rd orders. We  
2 object to Qwest's proposed changes which are found  
3 throughout Exhibits 1680 through 1686. At its heart,  
4 this Commission should preserve its authority, and we  
5 oppose Qwest's proposals here which would limit or  
6 vitiate those, that authority.

7           As to scope, the Commission's six month  
8 review should not be limited in scope. We believe that  
9 the highly exigent standard that the Commission has  
10 articulated would be effective in limiting frivolous  
11 issues from coming up at the six month review period.

12           Maybe to take a step back, what we're really  
13 talking about here are the rules of the game. As this  
14 Commission is well aware in the energy arena, rules can  
15 be gamed. No one creating the California ISO did so  
16 with the intent to create the arbitrage opportunities  
17 that eventually resulted. Setting aside the ongoing  
18 questions of criminalized conduct, it's quite clear that  
19 people were able to game that system to their economic  
20 benefit. What this Commission needs to do is create a  
21 system or a set of rules that limit the opportunity for  
22 gaming and that provide in six month intervals the  
23 ability to correct the rules of the game, to eliminate  
24 gaming that becomes apparent.

25           Our concern is not and I will not address

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1 here the specifics as to the penalties or what should or  
2 should not be in any specific PID, nor have we. Our  
3 concern is purely with the establishment, creation, and  
4 maintenance of a competitive market in Washington and  
5 assuring that this Commission retains its authority to  
6 preserve the competition that does exist and with some  
7 hope encourage the fruition of further competition in  
8 these marketplaces is the goal that we have been trying  
9 to serve in this process.

10 Our concern with 16.5 at page 25 as it's been  
11 discussed is that it's essentially rearranging the deck  
12 chairs. While there's certainly important issues that  
13 can be found and PIDs that may need to change, you don't  
14 move the deck chairs on a ship that's sinking, and 16.7  
15 would prohibit you from turning on the sump pumps and  
16 pumping out your boat. If you're taking off the table  
17 for review the issues that you may very well need to  
18 address, and critically, we don't know what the issues  
19 you will need to address in six months are, that  
20 fundamentally is the risk. Are you willing to accept  
21 the risk not knowing what the issues that will arise in  
22 6, 9, 12, 18 months, that you will be forgoing your  
23 opportunity to exercise authority to correct problems  
24 that may result.

25 I think it's probably universal that no one

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1 in this room hopes that problems will result, and no one  
2 has the expectation that you're going to see the kind of  
3 gaming that we saw in the energy markets, but you need  
4 to be aware that that possibility exists, and the rules  
5 of the game that you establish here are going to be  
6 critically important to limiting those opportunities for  
7 gaming, and that's why we encourage you to maintain the  
8 authority that you have, to make it explicit, and to  
9 order Qwest to comply with your 30th and 33rd orders.  
10 And if it chooses not to do so, then it can choose to go  
11 to the FCC without your approval of its 271 application,  
12 and it can see what kind of result it achieves. But we  
13 believe that a QPAP is a critical element to this  
14 Commission's approval of Qwest's application and that  
15 this Commission should not approve Qwest's application  
16 without a strong QPAP that will sanction potential abuse  
17 and that preserves the Commission's authority to make  
18 changes as necessary as the future develops.

19 JUDGE RENDAHL: Thank you.

20 Let's hear very briefly from Ms. Stang, and I  
21 think we need to take a break in a few minutes after we  
22 hear from Ms. Stang, and then we'll take it from there.

23 Ms. Stang.

24 MS. STANG: Thank you.

25 Chairwoman Showalter, Commissioners, just

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1 responding to Mr. Cromwell's statement, you do have a  
2 very strong PAP and one that has been reviewed for two  
3 years and strengthened from an FCC approved plan. The  
4 question really is coming down to, I think, whether as a  
5 -- does this Commission in order to have the PAP that it  
6 wants that's comparable to PAPs in other states or at  
7 least as good if not well better, it needs to somehow  
8 have a concession from Qwest that changes will be made  
9 at a six month review at the direction of the Commission  
10 and some sort of a concession that that's what's going  
11 to happen. No other plan that I know of, and I have  
12 reviewed them all, does that, although we have some  
13 disputes with some of our commissions in terms of some  
14 language, I would agree.

15           But in terms of FCC plans, approved plans,  
16 and the plans that are being finalized in our  
17 jurisdiction, they don't do that. Even the New York  
18 plan that Mr. Weigler talks about says -- it does allow  
19 -- it actually allows the staff, it says the staff and  
20 BANY will determine what may need to be changed at the  
21 six month review. It allows the Commission to resolve  
22 those disputes, but nowhere is there any language that  
23 could even come close to or represent what Mr. Weigler  
24 would have you believe, and that is that somewhere in  
25 these plans you're supposed to assert authority that you

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1 may not have or ask Qwest to concede authority that you  
2 may not have.

3 COMMISSIONER HEMSTAD: I don't think, well,  
4 in the first place, we could not assert authority that  
5 we don't have, if we don't have the jurisdiction, the  
6 parties and we can't come to some agreement that grants  
7 us that jurisdiction, that's fundamental, and so I don't  
8 think you need to make that argument.

9 MS. STANG: Thank you, and I was responding  
10 to Mr. Weigler's argument, not necessarily the position  
11 the Commission has taken on this.

12 But let me now go to the North Dakota plan if  
13 I could just spend a few minutes, because I haven't been  
14 able to talk to that issue. You know, we did agree, we  
15 put that North Dakota SGAT, the plan in our SGAT so that  
16 the North Dakota provision if this Commission is  
17 interested in that variety of Section 16, you know,  
18 we're not going to contest that. But I think that it is  
19 -- there's some key issues. And one is it is in its  
20 entirety what we have agreed to, including the collar.  
21 And let me say for one thing that Mr. Weigler and AT&T  
22 when we were contesting this issue in North Dakota threw  
23 in the entire Colorado provisions of Section 18, which  
24 is now he's saying is unacceptable here, so it's a bit  
25 of a shell game in terms of where they stand. But we



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1 did agree to incorporate the mechanics of the Colorado  
2 collar. That is in North Dakota. What's missing is  
3 fundamental and what -- to what Mr. Weigler was  
4 referring.

5           In Colorado, in that section that talks about  
6 the collar, there's a provision that anything that would  
7 be over the collar comes out of tier 2 funds, and that  
8 was -- and not necessarily -- and that if there -- and  
9 that the issue there is that tier 2 funds are -- it's  
10 the special fund in Colorado, and that fund is very  
11 different than tier 2 funds under the PAP, and here's  
12 why. The Colorado plan again is a different plan, and  
13 part of what's most -- very different about it is that  
14 in Colorado there's a portion of the tier 1 payments, a  
15 significant, not a -- I'm not going to say significant  
16 because I don't really -- but a portion of the tier 1  
17 funds that goes to the special fund, it is in Section  
18 8.3 of the Colorado plan, and it's 50% of what  
19 escalates. So in other words, you have a base payment,  
20 and you have escalating payments in the Colorado plan,  
21 and 50% of that goes to the special fund. In Colorado  
22 -- in Washington under the QPAP, all the tier 1 payments  
23 go to the CLECs immediately. They don't get diverted  
24 into this fund, so you have a first of all more likely  
25 scenario that, you know, you're going to have money

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1 there in Colorado, and secondly, it's the CLEC money to  
2 begin with. So there's a very different scenario, and  
3 you have to, you know, to have a comparable situation,  
4 the whole payment structure would need to be different  
5 in terms of the QPAP.

6 AT&T did make this argument to North Dakota  
7 in terms of saying, well, we really need that for the  
8 collar, and that was rejected, and we made these  
9 arguments as well. It's not an importable kind of a  
10 thing. And the intention is -- so I think the collar,  
11 the mechanics we did import, but the piece that we have  
12 identified here and the reason we're not importing it is  
13 that you can't really, the rationale that Colorado had  
14 for putting it in and for us agreeing to it doesn't  
15 exist in the QPAPs because of the difference in the  
16 structure.

17 JUDGE RENDAHL: I think we're going to have  
18 to wrap up, because we have spent close to an hour on  
19 this issue. We're really blowing out on other time.

20 Mr. Weigler, you have 30 seconds.

21 MR. WEIGLER: That's all I need --

22 JUDGE RENDAHL: -- and then we're going to  
23 take a break.

24 MR. WEIGLER: That's all I need.

25 Ms. Stang indicated that no plan requires the

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1 BOC to give us any kind of challenging authority. In  
2 paragraph 42 of the I-5 California order, it says:

3 In offering this plan to the CLECs, as  
4 part of the showing that it is in the  
5 public interest, Pacific, which is SBC,  
6 will need to agree that this Commission  
7 retains jurisdiction over the plan,  
8 including the authority to modify any  
9 provision and that the plan will  
10 continue in effect until terminated by  
11 the Commission.

12 That's in the Colorado PUC's ruling adopting  
13 the SBC plan.

14 CHAIRWOMAN SHOWALTER: You said California.

15 MR. WEIGLER: California.

16 CHAIRWOMAN SHOWALTER: Just now you said  
17 Colorado.

18 MR. WEIGLER: California, California Public  
19 Utilities ruling adopting SBC's plan, Paragraph 42.  
20 It's on an interim basis subject to review of the entire  
21 plan and the Commission rewriting the entire plan in six  
22 months.

23 CHAIRWOMAN SHOWALTER: What's the date of  
24 that order?

25 MR. WEIGLER: I have my California co-counsel

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1 here.

2 MR. HOFFMAN: This is Greg Hoffman on behalf  
3 of AT&T, it was mailed on March 7, 2002.

4 JUDGE RENDAHL: All right, thank you.

5 With that, we will be off the record until 5  
6 after 11:00. We will come back and address the other  
7 issues.

8 Let's be off the record.

9 (Recess taken.)

10 JUDGE RENDAHL: Let's be back on the record.  
11 We're going to start back in on QPAP issues, but before  
12 we do that, I wanted to address the Touch America  
13 petition to intervene and motion to reopen issues. That  
14 petition and motion was filed yesterday with the  
15 Commission, and the Commission has had an opportunity to  
16 review that petition. And this morning before we had  
17 gotten started, I had talked briefly with the parties  
18 about the possibility of responses. Having reviewed the  
19 petition, the Commission is going to deny the petition  
20 to intervene and the motion. It is simply too late in  
21 the process. Touch America has had an opportunity to  
22 bring this petition to intervene and raise the issues  
23 earlier and even as close as May in addressing the  
24 public interest issues, and so the motion is denied.

25 So let's go now to the first QPAP issue,

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1 which is the revenue cap.

2 MS. STANG: Would you like me to start on  
3 those?

4 JUDGE RENDAHL: Why don't we hear the CLECs'  
5 concern and then go to you.

6 Mr. Weigler, is this your issue?

7 MR. WEIGLER: It is, thank you.

8 Reviewing the Commission's 30th order, it  
9 wasn't referenced in the 33rd Order, the Commission  
10 indicated that there should be a 36% cap, and reviewing  
11 Qwest's language, it's more than a 36% cap on the plan.  
12 It's a 36% cap on Qwest's total liability for wholesale  
13 services that are included in the cap. For example, and  
14 it's found on page 15, Section 12.1, starting:

15 CLEC agrees that this amount constitutes  
16 a maximum annual cap that should apply  
17 to the aggregate total of tier 1  
18 liquidated damages, including any such  
19 damages paid pursuant to this agreement,  
20 any other interconnection agreement, or  
21 any other payments made for the same  
22 underlying activity or omission under  
23 any other contract, order, or rule.

24 And then it says in tier 2 assessments or  
25 payments made by Qwest. Well, if you look at that

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1 language --

2 CHAIRWOMAN SHOWALTER: I was trying to track  
3 with you on page 15.

4 MR. WEIGLER: Sure.

5 CHAIRWOMAN SHOWALTER: And you are reading  
6 non-underlined language, but then I think you continued  
7 reading with some language that had been struck through,  
8 so maybe I'm just not reading right, but are you at  
9 12.1?

10 MR. WEIGLER: It's consistent language. It  
11 starts at CLEC and ends at Qwest, CLEC agrees.

12 CHAIRWOMAN SHOWALTER: All right, I'm sorry.

13 MR. WEIGLER: I might have skipped back and  
14 forth.

15 CHAIRWOMAN SHOWALTER: No, I think you -- I  
16 see what you're reading now.

17 But what does it mean that you're reading  
18 non-underlined language?

19 MR. WEIGLER: Well, it means that it's not  
20 language that Qwest added in this round of changes. It  
21 wasn't added. It's something that was there, I don't  
22 know, from a previous version.

23 CHAIRWOMAN SHOWALTER: All right.

24 MR. WEIGLER: But anyway, that language, if  
25 you read it, that means that, for example, if Qwest was

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1 -- if the CLEC didn't opt into the QPAP and they decided  
2 to sue Qwest and -- because it says under -- for the  
3 same underlying activity or omission under any contract,  
4 order, or rule, for example, say that that CLEC gets \$36  
5 Million in a court of law, that would be part of this  
6 cap in the QPAP. And the cap is supposed to be the cap  
7 on the plan, not a cap on Qwest's total -- 36% of  
8 Qwest's total liability. And not only -- I mean I read  
9 this, the language is so convoluted, but how I read  
10 this, that's what it does, it makes it a complete 36%  
11 cap.

12           If you look at -- there's two different plans  
13 that you can look at to see what they have done.  
14 Colorado, it's just a 36% plan, period, a 36% cap on the  
15 plan, and I think that's what this Commission wanted.  
16 But the other version is in Texas, they say it's a 36%  
17 cap of all liquidated damages. And so, for example, in  
18 Qwest's -- I mean I will let Qwest make their own  
19 arguments, but 36% of all liquidated damages including  
20 damages for CLECs that don't opt into the QPAP.

21           AT&T's concern, and I think it's a concern of  
22 the joint CLECs, is we're opting into a plan and we're  
23 giving up our contractual remedies to opt into this  
24 plan. If Qwest cuts side deals with other CLECs where  
25 there's damages or gets sued by another CLEC that's not

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1 part of the QPAP, why should the CLECs' remedies at the  
2 36% cap be put at risk because of things going on  
3 outside of the QPAP. And so that's why the CLECs would  
4 argue that the 36% -- it's very easy, it says there  
5 should be a 36% on tier 1 and tier 2 damages under this  
6 plan instead of this convoluted language, which I could  
7 read it a couple of different ways, but that's how I see  
8 it.

9 JUDGE RENDAHL: Okay, thank you, Mr. Weigler.  
10 Ms. Stang.

11 MS. STANG: Well, I think Chairwoman  
12 Showalter's question goes to the heart of this, and that  
13 is that there is not a redlining in there because that  
14 aspect of this plan has never been challenged. This  
15 language has been in there from day one, this Commission  
16 reviewed the language, they ordered some changes to that  
17 language which we did incorporate into the plan. If you  
18 look at the Commission's 30th order at page 28, the  
19 ordering paragraph 108, the Commission directs Qwest to  
20 make changes to 11.2 and 13.8.

21 JUDGE RENDAHL: I'm sorry, can you direct me  
22 to the paragraph number you're looking at.

23 MS. STANG: Paragraph 109, I'm sorry, 108 and  
24 109, and that says to, like about the third line down:

25 Changes to allow the Commission to



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1            assess penalties where necessary, to  
2            address service quality issues, but to  
3            allow Qwest to dispute any payments it  
4            believes are duplicative.

5            That -- that -- we made the changes to 13.8  
6 of the plan to address that, and we made the changes to  
7 11.2 to take out of the provision from which Mr. Weigler  
8 was just reading any ability for us to apply tier 2  
9 payments, I'm sorry, assessments from the State by --  
10 for service quality issues against the cap. Again, as  
11 to -- so in terms of whether we are compliant, we are  
12 compliant, and AT&T is not even alleging that we are not  
13 compliant with that ordering paragraph. Their argument  
14 is they would like you to consider rejecting additional  
15 provisions which were not a part of that ordering  
16 paragraph.

17            We believe that the rest of this is perfectly  
18 appropriate for a couple of reasons. As I said, no one  
19 has ever contested this as long as this PAP has been  
20 reviewed and by the multiple parties that have been  
21 reviewing it in the multistate process. Moreover, it is  
22 in the Texas plan, albeit not the exact language, but it  
23 is in the Texas plan, and conceptually it's the same,  
24 and that is there is a good reason for allowing payments  
25 that we might make under other interconnection

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1 agreements to count towards a cap liquidated damages,  
2 and that's what it envisions, payments. And it is  
3 because down the road there is an incentive for the  
4 RBOC, Qwest, to negotiate with CLECs to do a, you know,  
5 maybe a different remedy plan for that CLEC, something  
6 that is more tailored to that CLEC's needs. Obviously  
7 as a part of that interconnection agreement, it's going  
8 to come before this Commission, and the Commission can  
9 accept or deny it based on any concerns they may have  
10 with its relationship to the PAP. But what's important  
11 here is the incentive that it provides to the BOC to  
12 address individual CLEC concerns on a going forward  
13 basis.

14           Again, it's in the Texas plan, it is in the  
15 North Dakota order, and I just realized that the North  
16 -- I don't think AT&T has ever, while they have filed  
17 everything else, not the whole North Dakota order. And,  
18 Judge Rendahl, I would like to mark it as an additional  
19 exhibit, because I don't think that is in front of the  
20 Commission.

21           JUDGE RENDAHL: And which exhibit, what is it  
22 you're intending to provide?

23           MS. STANG: It is the decision from North,  
24 the QPAP decision in North Dakota. They provided you  
25 with the Section 16 of our SGAT related to that, but

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1 what I realized as we were discussing this is that the  
2 North Dakota decision had not been filed with this  
3 Commission, and it might be of interest, particularly on  
4 this issue. It incorporates the language relating to  
5 that issue.

6 JUDGE RENDAHL: Mr. Weigler, I note that AT&T  
7 has filed numerous supplemental authority on the QPAP  
8 with this Commission. Has AT&T filed as supplemental  
9 authority the most recent decision on North Dakota from  
10 North Dakota?

11 MR. WEIGLER: I don't know. I mean I have a  
12 list of what I have filed and what I haven't. I don't  
13 know. I would intend -- I don't have an issue of  
14 submitting it.

15 JUDGE RENDAHL: Okay, well, we have space in  
16 the exhibit list, let's mark it as Exhibit 1688, and you  
17 can distribute it later unless you need to discuss it  
18 now.

19 MS. STANG: No, I would just want to note  
20 that this provision was discussed there, AT&T raised the  
21 same concerns, but, you know, and it does exist in the  
22 Texas plan, it does exist in the North Dakota plan. It  
23 really does represent, I think, good policy reasons to  
24 allow that to be a consideration. Again, any  
25 interconnection agreement that would be applicable would

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1 be before this Commission, and the Commission would  
2 certainly have the ability to approve or deny a  
3 substitute, if you will, remedy plan with a particular  
4 CLEC.

5 JUDGE RENDAHL: Ms. Singer-Nelson, very  
6 briefly.

7 MS. SINGER-NELSON: In response to the  
8 statement that this hasn't been really argued before now  
9 or it's not -- I think Ms. Stang said that AT&T doesn't  
10 articulate a certain ordering paragraph from the  
11 Commission's order that addresses this issue, and I  
12 think in a related argument, it really is a service  
13 quality payment argument, there is some language from  
14 the Colorado PAP that excludes liquidated damages under  
15 another interconnection agreement, interest payments,  
16 and any damages in an associated action from the cap.  
17 And this was argued by the joint CLECs in a later  
18 section of its comments, but I think it does directly  
19 relate to this issue.

20 So we did ask the Commission, in fact this  
21 Commission ordered in paragraph 109 that Section 11.2 of  
22 the CPAP be incorporated into the QPAP, and that is the  
23 section that I just quoted from. So I think this issue  
24 is before the Commission, and the CLECs have asked the  
25 Commission to incorporate the same CPAP language into

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1 the QPAP. The Commission has ordered it, it would be  
2 consistent with the Commission's previous orders.

3 MS. STANG: May I just respond to that,  
4 because Ms. Singer Nelson, what paragraph 109 says is  
5 that:

6 Qwest must modify Sections 13.8 and 12.1  
7 to be consistent with Section 11.2 of  
8 the QPAP to allow the Commission to  
9 assess penalties where necessary, to  
10 address service quality issues, but to  
11 allow Qwest to dispute any payments it  
12 believes are duplicative.

13 I don't agree with you that this ordering  
14 paragraph does what you claim it does, although I  
15 concede you arguing that we should make the change, I  
16 don't think that's what the Commission's ordering  
17 paragraph reflects.

18 JUDGE RENDAHL: Thank you.

19 Mr. Cromwell, one minute, and then we need to  
20 move on.

21 MR. CROMWELL: 30 seconds, just briefly, the  
22 same issue, Your Honor. We, in fact, did address these  
23 issues. I believe it was our November comments on the  
24 QPAP report this Commission received, Section 2, direct  
25 your attention to pages 3 through 8 of our comments

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1 then. Clearly we articulated a position in favor of a  
2 soft procedural cap versus the hard cap. Clearly this  
3 Commission did issue the 30th and 33rd Order  
4 establishing a 36% cap of this nature, but I think it is  
5 a misrepresentation to the record that these issues have  
6 not been before -- been contested by other parties  
7 before the Commission. They clearly have been on the  
8 record.

9 MS. STANG: And I guess I have to ask to  
10 respond to the claim I have misrepresented the record.  
11 Mr. Cromwell, the cap, whether it's a soft or hard cap,  
12 is very different. We're talking about precise language  
13 change here that is at issue, and I do not believe that  
14 I would be -- if you would like to point to the --  
15 somewhere in the record, if I'm mistaken, I'm happy to  
16 look at it, but I don't think that has ever been raised  
17 with this Commission as opposed to the cap.

18 JUDGE RENDAHL: Okay, well, I'm not sure, I  
19 think Mr. Cromwell has done that, and I think we can  
20 move on unless there are questions on this issue.

21 I would first like to know, is there someone  
22 who has called in on the bridge line?

23 Okay, the next issue is the tier 2 payment  
24 trigger. We now have half an hour to finish the  
25 remaining issues, so I know this is a larger issue, but,

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1 Ms. Stang, you have two minutes, and, Mr. Weigler and  
2 whoever else, you have two minutes. So let's address  
3 this issue, and if we need to later, we will leave open  
4 the opportunity for supplemental written comments, but  
5 let's try and get through these issues.

6 Ms. Stang.

7 MS. STANG: What we proposed in our  
8 compliance filing was, well, really just brought to the  
9 Commission's attention, was that in implementing the  
10 Commission's directive to take the triggers off of the  
11 tier 2 payments, we would be reverting then back to a  
12 scenario that we had agreed to in the ROC PEP  
13 collaborative. When we filed our QPAP with Mr. Antonuk  
14 and engaged in that process, we indicated that the QPAP  
15 that we were filing was going to be proposed without  
16 these critical values that we negotiated applied to the  
17 tier 2 payments. And the reason was everyone agreed in  
18 the PEP collaborative as far as we were concerned, and I  
19 don't see any evidence otherwise, that those would apply  
20 to the tier 2 payments.

21 When we went to the FCC, as we do from time  
22 to time, to talk to them about our plan, they suggested  
23 that we not apply both a range of critical values and  
24 three month triggers because of potential benefits that  
25 might be seen towards Qwest. We, heeding that thought,

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1 made a filing with the multistate that took out the  
2 application of the tier -- the range of critical values  
3 to the tier 2 payments because -- and we did that  
4 conditionally on there being the three month trigger,  
5 because that's the position we were going in with. Now  
6 when one is taking off the three month trigger and now  
7 going to a one month trigger, it makes sense for us to  
8 be able to go back and apply the range of critical  
9 values that we are applying to tier 1 payments, because  
10 those too start on the one month -- upon one month of  
11 non-conforming service. AT&T did not object to this in  
12 their pleading, so I don't think that there really is an  
13 issue about whether this is or is not an appropriate  
14 application of that concession that arose out of the PEP  
15 workshop.

16 JUDGE RENDAHL: Okay.

17 Mr. Weigler.

18 MR. WEIGLER: So just so I'm clarified,  
19 you're talking about sections, Ms. Stang, what section  
20 are you talking about? Are you talking about --

21 MS. STANG: I'm talking about the tier 2  
22 trigger issue that Judge Rendahl identified.

23 CHAIRWOMAN SHOWALTER: Is this Section 9.0?

24 JUDGE RENDAHL: Section 8 and 9.

25 MS. STANG: Right, identified in our filing.



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1                   MR. WEIGLER: I think what Ms. Stang said is  
2 fine. What our concerns are are the --

3                   JUDGE RENDAHL: The primary concern I guess  
4 is do you have an objection to changing the critical  
5 value as Qwest has stated is appropriate?

6                   MR. WEIGLER: No, we don't have a problem  
7 with that.

8                   JUDGE RENDAHL: Okay. And what are the other  
9 concerns that you have?

10                  MR. WEIGLER: Well, there's a tier 2 payment  
11 trigger in 9.2.2.3, 9.4.1.1.2, and that's what AT&T,  
12 meaning the joint CLECs, agree.

13                  JUDGE RENDAHL: And that you believe it's  
14 missing, that some of the changes were made to Section 8  
15 and 9, but not all the necessary changes made?

16                  MR. WEIGLER: Right.

17                  JUDGE RENDAHL: Okay.

18                  MR. WEIGLER: And we briefed at page 21 and  
19 22 of our brief.

20                  MS. STANG: Yeah, and I should have raised  
21 that when we were talking about the issues earlier on,  
22 if those are just typographical or, you know, editorial  
23 changes, then they will be fixed.

24                  JUDGE RENDAHL: And so Qwest agrees to make  
25 those changes?

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1 MS. STANG: Yeah.

2 JUDGE RENDAHL: Okay.

3 MR. WEIGLER: That's why I was getting  
4 nervous because my argument wasn't bearing with what she  
5 was talking about.

6 JUDGE RENDAHL: Okay.

7 But, Mr. Cromwell, I think you did raise this  
8 issue in your filing, and do you have concerns about the  
9 change in the critical value?

10 MR. CROMWELL: I don't have a concern about  
11 the critical value issue simply because my expert on  
12 that is not available to me due to the press of energy  
13 matters, so I'm mute on that point, I do not have a  
14 position I can take.

15 My concern was that what was filed with the  
16 compliance did not seem to reflect the requirements of  
17 the 30th Order in terms of the trigger, et cetera. If  
18 those were simply scribner errors and Qwest will make  
19 those sections comport with the requirements of the  
20 order, then we would have no issue with that.

21 JUDGE RENDAHL: Okay, well, that's good to  
22 know. Thank you all, let's move on.

23 Now are there any remaining collocation  
24 issues?

25 MS. SINGER-NELSON: No, Judge, at this point

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1 in time we don't have any issues. We will just wait and  
2 see what the SGAT language looks like after the  
3 Commission's order is incorporated into the SGAT  
4 language, and then we will provide our comments at that  
5 time.

6 JUDGE RENDAHL: Thank you.

7 The next issue is service quality payments,  
8 but have we sufficiently discussed that in conjunction  
9 with the revenue cap discussion, or is there more that  
10 needs to be said?

11 MR. WEIGLER: I think we have put  
12 sufficiently on the record.

13 CHAIRWOMAN SHOWALTER: Where is this?

14 JUDGE RENDAHL: Number 5 on the compliance  
15 list is service quality payments, and it was somewhat  
16 discussed in conjunction with the discussion on revenue  
17 cap concerning importing language from CPAP Section  
18 11.2.

19 MS. SINGER-NELSON: And it's addressed at  
20 page 16 of the CLEC comments.

21 JUDGE RENDAHL: And so we don't need to  
22 address it further?

23 MS. SINGER-NELSON: No.

24 JUDGE RENDAHL: Okay. The next issue is  
25 special access reporting, and maybe we ought to hear

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1 from Mr. Kopta on this one first and then Qwest's  
2 response.

3 MR. KOPTA: Thank you.

4 And very briefly, this issue is similar to  
5 the one that the Commission dealt with on Section  
6 272(e)(1), Qwest's representation that it would provide  
7 special access performance measurements in reporting.  
8 We don't have any idea of what Qwest is actually going  
9 to provide. They say that they will provide the same  
10 thing that they're going to provide in Colorado, or the  
11 Commission has ordered them to provide special access  
12 reporting to the same extent and on the same time  
13 schedule as in Colorado. But again, we have the  
14 Colorado order I suppose, but we don't know things like  
15 the format that it's going to be in, the services that  
16 are going to be included, if CLECs have to designate  
17 certain circuits to be included how they go about doing  
18 that, whether there is going to be a disaggregation  
19 report provided to individual CLECs on their measures  
20 along with the joint CLEC measures. These are the sorts  
21 of things that we would like to see Qwest identify and  
22 have in some kind of a filing with the Commission so  
23 that we know when we get this first report what's in it,  
24 how it was put together, and whether it complies with  
25 what this Commission has ordered.

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1 JUDGE RENDAHL: Ms. Stang.

2 MS. STANG: This Commission ordered us to do  
3 what Colorado did, and that's on page 26 of the April  
4 10th decision, which was I assume in front of the  
5 Commission when they made that direction or gave us that  
6 direction. It is about as explicit I guess as I can be  
7 at this point. It is -- directs us -- tells us which  
8 PIDs to measure, tells us to, you know, what exclusions  
9 to take. I'm specifically looking at paragraphs A, B,  
10 and C on page 26.

11 CHAIRWOMAN SHOWALTER: Page 26 of what; is  
12 this an exhibit that we have?

13 MS. STANG: I don't know if this was actually  
14 marked as an exhibit because I don't think we have been  
15 marking orders. Judge Rendahl, I may be wrong.

16 JUDGE RENDAHL: No, orders from other states  
17 we're taking administrative notice of them.

18 MS. STANG: It's the Colorado order, yes.

19 JUDGE RENDAHL: It's the most recent Colorado  
20 order.

21 MS. STANG: It's the order on remand in  
22 Colorado.

23 JUDGE RENDAHL: It's not in your books, but  
24 we do have a copy of it.

25 And which page is that?

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1 MS. STANG: Page 26, and I think it's -- it  
2 was in previous orders as well, but this is the last I  
3 guess direction in terms of what we're going to be  
4 doing. It specifies the PIDs, it specifies that we're  
5 to make the filings in the same ways that we, it's not  
6 really a filing, provide the information to CLECs. And  
7 I mean other than that, I guess I don't have a lot of  
8 detail in terms of what will be provided.

9 I do know that or it's my understanding  
10 anyway that the -- any process changes that need to be  
11 implemented in order to get the measurements underway  
12 will be handled through the CMP process. In other  
13 words, if there are things that CLECs need to know in  
14 terms of identifying the order as, you know, in lieu of  
15 a UNE, that will be handled through the CMP process.

16 So I mean I think the order is about as clear  
17 as we -- as I know right now in terms of our compliance,  
18 and that's what this Commission ordered us to do. And I  
19 think it's pretty explicit. I mean it just -- it tells  
20 you which measurements, how they're going to get them,  
21 and when. I think it talks about the time frame, and we  
22 have already had that discussion with this Commission as  
23 well.

24 JUDGE RENDAHL: Now this reference you have  
25 though to the CMP process, is that also in the Colorado,

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1 since I don't have that in front of me --

2 MS. STANG: No, but I think it's, and I'm not  
3 the CMP expert and I'm not the one that's been really  
4 involved with getting the measurements together, but my  
5 understanding is that it's, you know, that's something  
6 that the CLEC has to know, hey, there's a change, it  
7 would go through that process. And I think that's how  
8 we're letting them know that they need to identify that  
9 it's in lieu of a UNE so that on the intake side we can  
10 measure it. So in other words, that's a detail that we  
11 have to pursue anyway, because if we want to comply,  
12 we've got to let people know they need to make this  
13 election, be assured that we are doing it, and I'm  
14 telling you I think it's through the CMP process. When  
15 and how, I'm not the person to tell you that.

16 MR. KOPTA: And if I might just briefly,  
17 that's part of our concern is that I don't know to the  
18 extent that Colorado has dealt with this issue, whether  
19 it's set up any informal processes or whether CLECs that  
20 are participating in Colorado know this, but we're in  
21 Washington, and I've got at least one client who is not  
22 in Colorado and has not been involved in the process,  
23 and I think CLECs in Washington need to know what they  
24 need to do to participate, to provide information to  
25 Qwest if they need to, and then how to get these reports

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1 if they need to get them, and what's going to be in the  
2 reports. I mean it's just a Washington specific  
3 detailing of what Qwest is going to file and what's  
4 going to be in it.

5 MS. STANG: I'm happy to have a discussion  
6 with Mr. Kopta off line. I mean this is kind of a  
7 business issue. I don't think that in terms of what's  
8 been ordered is really a question. He seems to have  
9 process issues, and I'm happy to pursue off line  
10 whether, you know, those notices have been made in  
11 Washington. I mean obviously we're the ones who are  
12 going to have to report, and if something is not being  
13 done, I will follow up. But my suggestion was that  
14 maybe we can resolve some of this by allowing me some  
15 time to talk to our people about what they have done to  
16 implement Washington and make sure that he has any  
17 necessary information if, in fact, it hasn't been  
18 handled through the CMP process as I was under the  
19 impression it had.

20 JUDGE RENDAHL: Any comments or questions?

21 CHAIRWOMAN SHOWALTER: The only comment I  
22 have is that if we order something, you know, like  
23 Colorado's or, you know, as in somewhere else, I think  
24 we've got to have in our record from you the substance  
25 of what it is that you think complies with our order,



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1 and I'm not clear that we have that. It seems to me in  
2 this case, those portions of that Colorado order should  
3 be filed as an exhibit so it's -- we're not really using  
4 it as a legal precedent, this becomes evidence in this  
5 case, and it's evidence that I think the parties need to  
6 see, and so does the Commission for both the substance  
7 and then I suppose is it the same as Colorado's.

8 MS. STANG: Well, with all due respect, I  
9 guess we were under the impression that it was this -- I  
10 mean we were told to do exactly what Colorado did, and  
11 so it is certainly in the record, and that's what we  
12 have been operating on. We have no problem, I mean I  
13 assume the Commission has already taken judicial notice  
14 of it, if you want to mark it as an exhibit, we're happy  
15 to do that after the break. I can tell you that that is  
16 the framework of what we're operating from, and so I  
17 don't have any more specifics today to tell you about.

18 CHAIRWOMAN SHOWALTER: I just want a piece of  
19 paper in front of me which is Qwest saying here it is,  
20 and I don't think saying there it is somewhere is  
21 sufficient. And it's a small point, but it makes it  
22 very difficult for me to know what we're really talking  
23 about.

24 MS. STANG: We will be happy to mark these  
25 pages as an exhibit.

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1                   JUDGE RENDAHL: Well, let me propose an  
2 alternative, which is that including the CMP discussion  
3 that Ms. Stang just proposed, something that excerpts  
4 the provision of the Colorado plan plus how CLECs here  
5 in Washington will have access to those, some type of a  
6 late filed exhibit that describes the process I think  
7 might be helpful.

8                   CHAIRWOMAN SHOWALTER: Yeah, I think that's  
9 good.

10                   Just as an aside, I think there seems to be a  
11 custom that we don't file orders as exhibits, which is  
12 all right, but I think either we rely on them or refer  
13 to them often, it's very helpful to have them as an  
14 exhibit. But in particular this is a little different.  
15 This is actually incorporating something substantive  
16 into our proceeding, so that's why I think we need to  
17 get it in our record.

18                   MS. STANG: We will be happy to file it, make  
19 that filing.

20                   MS. ANDERL: Your Honor, Lisa Anderl, from a  
21 process standpoint, perhaps if we set this up as a Bench  
22 request, that would provide a vehicle for us to respond,  
23 and I think we're at --

24                   JUDGE RENDAHL: I think 53, but I'm just  
25 checking to see if that's the --

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1 MS. ANDERL: 54.

2 JUDGE RENDAHL: 54, correct, 53 was the last.  
3 So as Bench Request 54, and I'm going to set a filing  
4 deadline of the 14th, or maybe it should be consistent  
5 with the 11th, the compliance filing.

6 MS. ANDERL: (Shaking head.)

7 JUDGE RENDAHL: Well, I'm just thinking to  
8 give an opportunity for everyone to respond to that. If  
9 possible, the 11th. If you need to seek an extension,  
10 we'll discuss it, raise the issue with us. But let's  
11 set a filing deadline of the 11th consistent with the  
12 other compliance filing for a summary of how Qwest will  
13 make the special access reporting here in Washington  
14 consistent with Colorado, in addition, whatever change  
15 request process there is associated with it as you have  
16 described this morning, Ms. Stang.

17 Okay, with that, I think are we done with  
18 special access.

19 MR. KOPTA: Yes, thank you.

20 JUDGE RENDAHL: Okay, thank you.

21 The next issue I have, I have two more issues  
22 on my list, and one is the changes to measure weighting,  
23 which I understand is a joint CLEC concern over  
24 modifications to Table 2(a) in the QPAP that Qwest  
25 filed, and that would be, if I can find my Exhibit 1681,

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1 that table 2(a) appears on page 6 of Exhibit 1681.

2 Mr. Weigler, why don't you go ahead and  
3 describe the concern here.

4 MR. WEIGLER: The concern that the joint  
5 CLECs have is the Commission in paragraph 135 and 346 of  
6 its 30th supplemental order indicated that higher  
7 payment levels for high value services create a more  
8 appropriate incentive for Qwest to provide  
9 non-discriminatory service because they most closely  
10 correlate with one another and that Qwest should amend  
11 the QPAP to include the payment table for high value  
12 services proposed in Exhibit 1205 at page 12. And what  
13 Qwest did is they did that, but then they also reduced  
14 payments for other services as a balance, and they  
15 argued that there should be a balance, and I think the  
16 Commission was -- indicated to change the high value  
17 services. It didn't indicate to change any other  
18 services to lower values. For example, UBL 2-wire or  
19 4-wire analog, which is loop, was originally, and this  
20 is on page 6 of the Qwest compliance filing, which is  
21 Exhibit --

22 JUDGE RENDAHL: 1680.

23 MR. WEIGLER: -- 1680, you can see that when  
24 you go to UBL 2-wire, and it's on page 6, when you go to  
25 UBL 2-wire analog --

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1                   JUDGE RENDAHL: Oh, I'm sorry, you're right,  
2 it is 1681. I was thinking it was the pleading. It's  
3 the QPAP itself, 1681, page 6.

4                   MR. WEIGLER: Of the actual QPAP, that's  
5 right, page 6. Go down to UBL 2-wire analog, that now  
6 reads 75, it used to read 150. Residence resale reads  
7 25, that used to read 150. Business resale 75, it used  
8 to read 150. And UNE-P is still 150. But there's been  
9 a -- the con -- there's been an increase in the high  
10 value services, and there's also been a decrease in some  
11 lower value services. The CLECs are concerned because  
12 as you see, one of those is loop, and CLECs are  
13 concerned that they're going to need those type of  
14 services. And we discussed in the record the  
15 appropriateness of having those at the particular level.  
16 Nothing has changed in the record that appropriate  
17 should be less, to lower them, and that's our concern.

18                   JUDGE RENDAHL: Thank you.

19                   Ms. Stang.

20                   MS. STANG: When we -- the Commission's 30th  
21 order at page 36, ordering paragraph 134 and -- well,  
22 actually, I should say 133 through 135 discusses this  
23 issue. They were explicit in saying that Qwest should  
24 amend the PAP to include the table from or a specific  
25 page from its exhibit in the record 1205, in the

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1 multistate record, and that is exactly what we did.  
2 That exhibit talks about this high valued services, the  
3 changes being made to increase them as well as the  
4 balance for the lower valued services, moving some of  
5 those to a lower categorization.

6 CHAIRWOMAN SHOWALTER: Yeah, but that  
7 sentence had two parts. One was to raise the, your  
8 sentence, said yes you raised them, and then you said as  
9 well as to lower, but where does our order say to lower  
10 the other values?

11 MS. STANG: Well, we -- our understanding was  
12 when we referred to the exhibit, the exhibit contained a  
13 -- all of those changes, both the high and the low. And  
14 the discussion that the Commission had above seemed to  
15 indicate that they were aware of those, the balance. So  
16 by reference to the exhibit, we understood that's what  
17 the Commission intended. It does include high, but we  
18 didn't read that as excluding the other parts of that  
19 exhibit, which are the low, particularly in light of the  
20 earlier discussions where the Commission was aware that  
21 there were two parts to that exhibit.

22 CHAIRWOMAN SHOWALTER: But our discussion of  
23 what we say as opposed to recounting what the other  
24 parties say I believe is limited to Paragraph 135. Am I  
25 right?

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1                   MS. STANG: That's true, but again I think --  
2 and if we are misinterpreting the Commission's decision,  
3 that's I guess is what you're telling us, but that's not  
4 how we read it. And our compliance filing and our -- we  
5 obviously didn't move for reconsideration based on a  
6 misunderstanding of what the Commission's order was  
7 then, and we, you know, we do believe there are good  
8 reasons for all the reasons we set forth and that  
9 Mr. Antonuk ordered in terms of having a balance to  
10 those services.

11                   JUDGE RENDAHL: Okay, with that, is there  
12 anything more on this issue?

13                   MR. WEIGLER: Not from AT&T.

14                   JUDGE RENDAHL: Ms. Stang.

15                   MS. STANG: No.

16                   JUDGE RENDAHL: Nothing further?

17                   And the last issue addresses the multistate  
18 audit language in Section 15.1, and why don't we start  
19 with Qwest in terms of why the additional language was  
20 included in 15.1.

21                   MS. STANG: What we proposed was modest  
22 language in terms of the ability to have audits on a  
23 going forward basis that may be duplicative on a 14  
24 state basis. AT&T has clearly argued that or conceded  
25 that our processes are done on a 14 state basis. The

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1 multistate language that had been in lieu of or a part  
2 of the PAP before did talk about having the processes  
3 not be duplicative or constraining beyond what would be  
4 a reasonable thing to ask Qwest to do in terms of, you  
5 know, 14 different audits. The proposal we think is  
6 very modest in terms of trying to allow the Commission  
7 the authority, or I should say the ability to conduct  
8 its own audits but in a way that we are not being overly  
9 imposed upon in terms of what we can handle. If you  
10 break up a regional audit and you break it into 14 state  
11 audits without any kind of a goal at least in terms of  
12 trying to keep them duplicative, we could end up not  
13 being able to comply with anybody's request for an audit  
14 because we don't have the resources, or we could also be  
15 in a situation where we might be producing incorrect  
16 results because of the demands of auditing.

17           And that's our only concern is that there be  
18 some statement, and I think the language is what was in  
19 the multistate proposal, in terms of, you know, how  
20 these might be planned on a going forward basis. And  
21 that would be, you know, consistent with the Commission  
22 chose to engage in a multistate audit, the multistate  
23 would be employing this kind of an approach, so we  
24 thought it was a reasonable addition and inclusion in  
25 the audit provision.



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1 JUDGE RENDAHL: Mr. Weigler.

2 MR. WEIGLER: Yes, thank you.

3 This was actually a portion that was actually  
4 drafted by Ms. Doberneck, but I can take a good stab at  
5 it. I think this is another state's rights issue. The  
6 Commission clearly ordered, I mean it's clear and  
7 unambiguous in their 30th and 33rd Order, that they  
8 wanted certain language that either number one, they  
9 could be part of the multistate audit, and they're not  
10 going to determine it at this time, or they can do their  
11 own audits. And if you look at these audits, the  
12 language that Qwest came up with, they said, well, you  
13 can do your own audit if, number one, it doesn't -- if  
14 it will never -- it must coordinate with any other  
15 audits, it must be planned and conducted so to ensure  
16 that there's no duplication of issues.

17 CHAIRWOMAN SHOWALTER: Where are you reading  
18 just so I know?

19 MR. WEIGLER: I'm reading --

20 JUDGE RENDAHL: The language is in Exhibit  
21 1681 at page 23, and it's the fourth, beginning the  
22 fourth sentence down, second line up from the bottom,  
23 any audit requested, that's where the language begins,  
24 and it ends on the next page, third line down, within  
25 the reasonable course of Qwest's business.

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1                   Is that the language we're discussing?

2                   MS. SINGER-NELSON: Yes.

3                   JUDGE RENDAHL: Okay.

4                   MR. WEIGLER: So it must be coordinated with  
5 other audits, it shall be planned and conducted to avoid  
6 duplication, and here's the killer, it shall be of the  
7 nature and scope that it can be conducted within the  
8 reasonable course of Qwest's business. All Qwest really  
9 has to do is say, Commission, because this is in the  
10 QPAP of course, this isn't -- Commission says, we want  
11 to audit this particular PID, well, that's not in the --  
12 because of this, this, and this, this isn't in the --  
13 with the reasonable course of Qwest's business. I mean  
14 that's the biggest out paragraph language I ever saw,  
15 so.

16                   CHAIRWOMAN SHOWALTER: But they might raise  
17 that as a dispute, but I don't see this language per se  
18 as prohibiting us from finding, well, it is within the  
19 course of your business or we find it's not a very big  
20 deal or -- I don't see this as ceding our authority. It  
21 may or may not be what we ordered, I just --

22                   MR. WEIGLER: Respectfully, Chairwoman  
23 Showalter, it says that any audit shall be coordinated.  
24 There's shall, there's -- it's not discretionary  
25 language on this Commission.

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1 CHAIRWOMAN SHOWALTER: Yes.

2 MR. WEIGLER: And so and shall be of the  
3 nature and scope, that it can be conducted within the  
4 reasonable course of Qwest's business, so --

5 CHAIRWOMAN SHOWALTER: Right, but isn't that  
6 -- I grant the limitation, but isn't it as determined --  
7 well, by whom I guess is the question, by us or by a  
8 court later or both?

9 MR. WEIGLER: All Qwest would have to say is  
10 you ordered something that's outside the scope or the  
11 parameters of the QPAP.

12 CHAIRWOMAN SHOWALTER: And we would say,  
13 well, no, we didn't.

14 MR. WEIGLER: And my big point is then it's  
15 tied up, and you're not being able to conduct that  
16 audit.

17 CHAIRWOMAN SHOWALTER: Well, I suppose it  
18 gets to how this document is enforced over time and  
19 interpreted. Anyway, I'm not -- I was really just  
20 following up on one point that you were making, and I  
21 think there's other issues you're raising here.

22 MR. WEIGLER: Sure, and the concern is that  
23 the language we look at, you're not really going to have  
24 an ability to be outside the multistate process. This  
25 language has put you either you're in the multistate

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1 process or you're not, and you're not going to be doing  
2 -- have very much authority to do anything related to  
3 audit because it has to, under 15.1, it has to meet  
4 those parameters. Otherwise you're in the same states'  
5 rights issues that we talked about before.

6 CHAIRWOMAN SHOWALTER: So just so I  
7 understand, back on page 23, the language that begins  
8 before the sentence you were reading, which says, the  
9 Commission may at its discretion conduct audits through  
10 participation in a collaborative process with other  
11 states, that I take it you don't have a problem with.  
12 And without more, that's what it would be. We have  
13 discretion to determine when we do and don't want to  
14 coordinate with other states. So you're concerned that  
15 that following sentence has put a limitation on that.

16 MR. WEIGLER: Right. Well, and our big  
17 concern is, and it's really more is this compliant or  
18 not, is that the Commission wanted either to determine  
19 at the six month review or at any time they deemed fit  
20 that they either are part of the audit process in the  
21 multistate that hasn't been created yet or is in the  
22 process of being created or if they want to do their own  
23 audits. And you were going to -- your language is  
24 clear, I mean it's very unambiguous, and the language  
25 that you ordered is unambiguous, and what we have is

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1 that language with a bunch of preemptions, and we just  
2 want to see the language that the Commission -- we  
3 believe that the Commission's language, there's no  
4 reason to change it, and there's certainly no reasons to  
5 have these out clauses, and they're very broad.

6 JUDGE RENDAHL: Thank you.

7 Mr. Cromwell.

8 MR. CROMWELL: Thank you, Your Honor.

9 My first point is that this is not the  
10 language that this Commission ordered Qwest to provide  
11 in this compliance filing. It clearly is not. Second,  
12 the risk we identify is that you are opening the door to  
13 ancillary litigation regarding what the term coordinated  
14 means, regarding who will end up being the decision  
15 maker on that type of decision in ancillary litigation  
16 rather than going to the substance of it, which is this  
17 Commission's conduction of an audit of certain PIDs or  
18 other elements that may come before it and the related  
19 question of whether in that context it would be  
20 deficient and laudable for this Commission to  
21 participate with other state commissions in such an  
22 audit.

23 We certainly do not contest that there are  
24 administrative efficiencies to be gained by that type of  
25 coordination. Our concern, as we have expressed in

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1 previous comments, is first the ability of state  
2 specific parties to participate in multistate processes  
3 is constricted. And second, the specific language that  
4 Qwest is proposing here just raises too many concerns  
5 regarding arguing about the language rather than getting  
6 to the substance of what we should be doing. And on  
7 that basis, we would recommend that if the Commission  
8 were to go forward and consider this language in the  
9 revised 15.1, we would suggest striking anything past  
10 the third sentence and just leave it that this  
11 Commission may at its discretion.

12 Thank you.

13 COMMISSIONER HEMSTAD: How do you read the  
14 final sentence in that paragraph, is that just  
15 unnecessary language, or does it have some substantive  
16 context?

17 MR. CROMWELL: To be quite honest,  
18 Commissioner Hemstad, I have not reviewed that language  
19 in relation to the reporting language that's elsewhere,  
20 and I think I would have to do so. I think that  
21 including language that requires Qwest to report the  
22 results of other audits to this Commission and in fact  
23 all its commissions probably does indeed serve the  
24 purpose of avoiding duplication. If, for example,  
25 Colorado is on a six month review cycle that's three

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1 months ahead of Washington, then it makes sense to take  
2 advantage of that. Is that where you were going?

3 COMMISSIONER HEMSTAD: Well, then maybe I  
4 will address it to Ms. Stang. Is that language  
5 necessary? I mean obviously Qwest is going to provide  
6 whatever information is going to be useful to the  
7 Commission.

8 MS. STANG: We certainly would do that. I  
9 think it was trying and giving -- just as we're asking  
10 the Commission I guess here to provide us with some  
11 intent to employ reasonable, non-duplicative, and, you  
12 know, focused audits, that we would make a commitment to  
13 provide the, you know, to provide on a going forward  
14 basis the results of any other audits.

15 And if I might -- oh, go ahead, let me  
16 address my rebuttal when Mr. Cromwell is through.

17 MR. CROMWELL: I'm not --

18 JUDGE RENDAHL: Are you finished?

19 MR. CROMWELL: I'm finished, thank you.

20 JUDGE RENDAHL: I think you're on.

21 MS. STANG: You know, I listen to this, and I  
22 guess I keep asking myself, where is, you know, where is  
23 the harm in this, and I think it's an outlandish comment  
24 to say that this somehow restricts the Commission  
25 unduly. We have parties agreeing that our systems

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1 operate on a 14 state basis. We would be terribly  
2 constrained if 14 different states decided to audit us.  
3 The audit provisions that the Commission has asked us to  
4 employ and which we have employed in -- included in our  
5 SGAT give them the rights that they seek. All we are  
6 asking is some statement that in the process that the  
7 Commission employs will take into consideration what is  
8 going on by other commissions on these same  
9 measurements. It's just an attempt to have a clause  
10 that says we're going to try and work together with  
11 these other audits. Otherwise we have, you know, no --  
12 we don't set that expectation up in advance. I think  
13 it's very reasonable and modest, but.

14 CHAIRWOMAN SHOWALTER: Well, on that point,  
15 your sentence asking for a sentiment that we should try  
16 and work together is quite different than we shall  
17 coordinate the audits. If you want a sentence like  
18 that, it might be appropriate to write one, or that  
19 might be the kind of thing that would be appropriate out  
20 of an order on our part expressing that sentiment. I  
21 mean there are obvious efficiencies to be gained by  
22 coordinating on a multistate basis, which we have done  
23 in this process, but you can't subject state authority  
24 to efficiency. It has to -- efficiency has to be in the  
25 name of furthering the state goals, and I think the



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1 problem is that from Qwest's point of view they're  
2 serving 14 states and, you know, we get in the way of  
3 that efficiency, but you're serving 14 states or more,  
4 and you need to follow whatever the rules are. If  
5 you've got audits going on in 14 states, I think that  
6 would be difficult, but it could be valid. So the issue  
7 is who decides and when in the name of efficiency to try  
8 to coordinate with the other states, and I think -- I  
9 don't think an order or language expressing a sentiment  
10 like that would be very difficult to obtain from this  
11 Commission, but this kind of language is a little  
12 different.

13 MS. STANG: Well, I think it's -- I guess it  
14 raises the question about whether audit language at all  
15 should be in the contract versus, you know, something  
16 that's an order of the Commission. And I would also  
17 just say that I think that the statement that the  
18 coordination, that there shall be coordination only is  
19 that. Coordination doesn't restrict the Commission in  
20 and of itself. It just says that there's going to be  
21 the act of coordinating. It doesn't limit what will  
22 happen, and that's why I think that it's, you know, it  
23 is a statement of an intent to cooperate, but it's -- it  
24 is only a -- the shall only goes to the coordination.

25 CHAIRWOMAN SHOWALTER: Well, then there's

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1 another shall later. And, in fact, there's yet another  
2 shall, three shalls in that sentence, each with their --

3 JUDGE RENDAHL: I guess the question is, is  
4 this an aspiration, or is this a requirement, and I  
5 think that's what -- and I pose that question to you.

6 MS. STANG: The language can be tweaked.  
7 We're not trying -- I mean if the shall is a concern,  
8 again, we've got other language in this contract that  
9 are obligatory language, and so that's the reason that  
10 there are -- there's obligatory language in our  
11 proposal, because it all sits in a contract. What we  
12 are trying to get here is to have the Commission in  
13 their -- this audit language is going to sit in the  
14 contract, to have some balance to it to say that what  
15 they order, it will take into consideration and be  
16 planned without -- to avoid duplication.

17 I mean I'm not going to tell you that if we  
18 don't have the exact words that it's a drop dead issue  
19 for the company, but we also think that it's an  
20 important issue just in terms and we thought one people  
21 had mutual, you know, aspirations towards. And I  
22 realize there are 14 different states, but we also  
23 believe that the Commission has a concern about us being  
24 able to handle reasonably the requests that we might get  
25 from the various commissions. So the words are not --

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1 I'm not married to the words. I would like it to be  
2 that we have -- since we are going to put this, the  
3 other obligations in the contract, we also indicate that  
4 how these audits will be conducted will also be included  
5 to avoid duplication and a train wreck, if you will,  
6 with other audits.

7 JUDGE RENDAHL: Are there any other questions  
8 from the Bench on this issue?

9 Any other comments by the parties on QPAP  
10 compliance?

11 Okay, I think we're done on this issue.  
12 Thank you very much. Let's be off the record.

13 (Luncheon recess taken at 12:05 p.m.)

14

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

16 (1:35 p.m.)

17 JUDGE RENDAHL: Good afternoon, everyone.  
18 We're here before the Washington Utilities and  
19 Transportation Commission. We have a new set of folks  
20 here this afternoon for our hearings in Dockets  
21 UT-003022 and 3040, which is Qwest's Compliance with  
22 Section 271 of the Telecommunications Act and Qwest's  
23 Statement of Generally Available Terms or SGAT pursuant  
24 to Section 252(f) of the Act. I'm Ann Rendahl, the  
25 Administrative Law Judge presiding over this proceeding,

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1 here with Chairwoman Marilyn Showalter and Commissioner  
2 Patrick Oshie. Commissioner Richard Hemstad will be  
3 joining us shortly. This afternoon and the next two  
4 days we're going to be addressing the final report on  
5 OSS testing. We're going to begin with presentation of  
6 vendors and questions to the vendors and then move on to  
7 the parties' presentations.

8 Let's take appearances from the parties given  
9 that we have a somewhat new set of folks here this  
10 afternoon. All of you have appeared before the  
11 Commission before, so please just state your name and  
12 who you represent for the record beginning with Qwest.

13 MR. CRAIN: This is Andy Crain on behalf of  
14 Qwest. We also have Lisa Anderl here today as well who  
15 will also be appearing on behalf of Qwest.

16 JUDGE RENDAHL: Thank you.

17 I understand Ms. Tribby is on her way for  
18 AT&T. Is that correct, Mr. Finnegan?

19 MR. FINNEGAN: That's correct.

20 JUDGE RENDAHL: Thank you.

21 CHAIRWOMAN SHOWALTER: I saw on the Internet  
22 that the power was restored and only one plane was  
23 diverted as a result of the electricity problem, so I  
24 don't know if it was her.

25 JUDGE RENDAHL: And for WorldCom.

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1                   MR. DIXON: My name is Thomas Dixon, and I'm  
2 here on behalf of WorldCom as an attorney.

3                   JUDGE RENDAHL: Good, this time?

4                   MR. DIXON: Yes.

5                   JUDGE RENDAHL: Good.

6                   And Ms. Singer-Nelson, are you also going to  
7 be representing WorldCom?

8                   MS. SINGER-NELSON: Yes I, am.

9                   JUDGE RENDAHL: Ms. Singer-Nelson for  
10 WorldCom.

11                   And for Covad?

12                   MS. DOBERNECK: Megan Doberneck, attorney,  
13 Covad Communications Company.

14                   JUDGE RENDAHL: Thank you.

15                   Before we go ahead, just a note to everyone  
16 about noise in the hearing room. If anyone has a cell  
17 phone, please turn it off or the sound off or to vibrate  
18 please. And please refrain from holding side  
19 conversations or using your computer if you can. It's  
20 fairly distracting, there's a lot of people in the room,  
21 and it's helpful to be able to listen to what people are  
22 saying.

23                   With that, we have an additional exhibit from  
24 MTG, Mr. Robert Center will be presenting for MTG, and  
25 he has an overhead or a set of materials marked as 1695.

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1 And with no objections, we will admit that. Are there  
2 any objections to that exhibit?

3 Hearing none, it will be admitted.

4 And so the agenda this afternoon is to start  
5 with Mr. Center. I understand there's about a 15 minute  
6 presentation and then questions by Qwest, WorldCom, and  
7 there may be some questions from the Bench. And if we  
8 go according to the agenda, we'll take a break at that  
9 point. If we're done quicker, we may start into the  
10 presentation by KPMG.

11 So let's begin with you, Mr. Center. And  
12 since you are going to be a witness here, I'm going to  
13 have to swear you in as a witness. So if you would  
14 please stand and state your full name and address for  
15 the record, please.

16 MR. CENTER: My name is Robert Center. I'm  
17 representing MTG. And my address is 17094 Arrow Point  
18 Place, Grass Valley, California.

19 JUDGE RENDAHL: Thank you.

20

21 Whereupon,

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

25

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1                   JUDGE RENDAHL: Okay, please sit down and go  
2 forward with your presentation.

3                   MR. CENTER: Okay.

4                   Good afternoon, folks. My purpose here today  
5 is to provide an overview of the background,  
6 organization, and process that was used in the original  
7 oversight committee or ROC third party tests of Qwest's  
8 operational support systems.

9                   And so if you could turn to page 2, please.  
10 The formative steps towards the ROC Qwest OSS testing  
11 project were taken during 1999. Prior to the ROC test,  
12 all OSS tests had been conducted on a state by state  
13 basis. And experience in other states, particularly in  
14 New York, had shown that OSS testing is a very large  
15 undertaking. And in various discussions, the ROC states  
16 came to believe that it would be in everybody's -- to  
17 everybody's benefit to pursue testing collectively  
18 rather than on a state by state basis. And pursuant to  
19 that, Commissioner Bob Rowe of Montana in March of 1999  
20 proposed a regional OSS testing approach or process to  
21 Qwest, which was then U S West. In the fall of 1999,  
22 Qwest signed a letter of agreement agreeing to pursue a  
23 regional test, so that was the first important step  
24 towards putting together a regional test on a 13 state  
25 basis.

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1                   MTG then negotiated with Qwest following a  
2 letter of opportunity that the ROC put out, and MTG was  
3 hired as the project manager for the ROC OSS test in  
4 October of 1999. The first technical advisory group  
5 meeting, and I will explain what the TAG or the  
6 technical advisory group was, the first meeting was held  
7 I believe on November 4th, 1999, and then the first  
8 collaborative session that had the subject matter of  
9 principles and scope that were to govern the test was  
10 held in December of 1999.

11                   If you could go to page 3, please. This  
12 slide provides kind of a busy overview of the overall  
13 schedule of the ROC OSS test, which was conducted in  
14 more or less four phases with various aspects of the  
15 performance measure auditing process running  
16 concurrently through all of the phases. Phase I, which  
17 could be called test planning, set up a broad framework  
18 for the test, and vendors were also selected during  
19 Phase I. And the bulk of my remarks will have to do  
20 with the results of Phase I, because what I intend to  
21 discuss is the principles and the scope and the various  
22 governing documents that went into setting up and  
23 governing the ROC test. So Phase I was test planning,  
24 and once again a broad framework was set up and the  
25 testing vendors were hired in Phase I. Phase II could



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1 be called test preparation and setup, and Phase II was  
2 conducted with the vendors on board and focused on the  
3 establishment of the testing infrastructure. Phase III  
4 in most people's minds was really the heart of the  
5 testing effort, and it focused on feature function  
6 testing that was driven by transactions that were  
7 submitted by the vendors to Qwest systems. And finally,  
8 Phase IV focused on analysis and presentation of the  
9 results.

10           If you could go to page 4, please. The first  
11 real substantive step in the project itself was the  
12 setup of a task management organization to provide a  
13 structure for the planning, design, and oversight of the  
14 test. The regional oversight committee was the umbrella  
15 organization under whose auspices the test was  
16 conducted, and you can see in the diagram here how the  
17 various components of the regional oversight committee  
18 testing organization were put together. The executive  
19 committee provided executive authority over the entire  
20 test and met once a month to address various issues that  
21 came up as the test progressed. The steering committee  
22 guided the test -- the steering committee guided the  
23 conduct of the test on a week to week basis and met  
24 every week. The project administrator, which was NRRI  
25 or the National Regulatory Research Institute had the

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1 primary function of assuring effective communication  
2 among the various regulatory bodies, and they also  
3 maintained the Web site, which was both a ready  
4 reference as to what was going on with the test and also  
5 was a repository in which the record of the test was  
6 built. The project manager was my company, MTG, and our  
7 responsibility was the day-to-day on the ground testing  
8 management. We were the owner's engineer or the straw  
9 boss for the test.

10           Go to page 5, please. Really the most  
11 important component or the most important organization  
12 overall that was involved with the test was the ROC  
13 technical advisory group or the TAG, and the TAG served  
14 as the primary collaborative forum for the testing  
15 effort throughout the testing life cycle. The TAG was  
16 made up with ourselves. We were the project manager or  
17 the chair of the ROC TAG. My colleague Denise Anderson  
18 chaired all of the TAG meetings except for when she very  
19 occasionally was out or went on vacation, in which case  
20 either Marie or I attempted to substitute for her.

21           The CLECs were an important component of the  
22 ROC TAG. There were several dozen CLECs in the  
23 formative stages. That number decreased over time for  
24 various reasons. But the CLECs participated in the  
25 day-to-day execution of the test, of testing activities

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1 starting with the initial planning and design and  
2 extending through participation in discussions regarding  
3 observations and exceptions and the resolution of  
4 observations and exceptions. We had some industry  
5 association participation, for example the Association  
6 of Local Telephone Service Providers was active for some  
7 time during the test and contributed to, in a lesser  
8 way, to the design and execution of the test. Of  
9 course, the ROC steering group committee, which we have  
10 already discussed, and then Qwest of course was the key  
11 player. It was Qwest systems that were the subject of  
12 the test, and additionally Qwest provided major elements  
13 of the testing infrastructure, particularly the test  
14 bed.

15           The vendors we -- in the first phase of the  
16 test, the ROC steering committee with MTG's assistance  
17 selected three test vendors. KPMG was the test  
18 administrator, HP was the pseudo CLEC, and Liberty  
19 Consulting was the performance measure auditor. And I  
20 won't go into detail on their roles since they are, KPMG  
21 and HP are here, and I believe you have already heard  
22 from Liberty Consulting.

23           If you could go to page 6. Early planning  
24 for the ROC was conducted in a top down manner based on  
25 the idea that if we reached consensus on the large

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1 items, the rest of the planning and structuring of the  
2 test would follow. And these early planning efforts  
3 resulted in four key documents which defined the  
4 concepts, the principles, and the processes that guided  
5 the entire testing effort. Just briefly, those guiding  
6 documents, the first was a set of 20 collaboratively  
7 developed principles that defined the testing  
8 philosophy, the scope of the test, and defined the  
9 communications environment and what sorts of  
10 communication among parties was allowed and what sort  
11 was not allowed.

12           The performance measures, the PMs, which are  
13 more commonly known as the performance indicator  
14 descriptions or the PIDs, were the subject of a large  
15 portion of the effort that went into the test overall.  
16 In the early planning phases prior to transaction  
17 testing, the effort that went into the PIDs may have  
18 been as much as 20% to 40% of the overall effort that  
19 was consumed in the test. Two important principles that  
20 guided the formulation of the PIDs were that they --  
21 that the PIDs be agreed upon in advance, in other words  
22 how the test was to be measured was to be defined prior  
23 to beginning testing. And all of the performance  
24 indicator descriptions were to be audited prior to  
25 testing the particular subject area that pertained to a

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1 particular PID.

2           The master test plan evolved out of an  
3 earlier document which was called the test requirements  
4 definition, and the master test plan was the overall  
5 blueprint for how the test was to be conducted. The  
6 request for proposals had the testing requirements  
7 document as part -- incorporated as part of the RFP, and  
8 the RFP defined three roles with the preference -- with  
9 the ROC's preference that the three roles be executed by  
10 three separate vendors, and those roles were defined as  
11 the test administrator, the pseudo CLEC, and the  
12 performance measure auditor.

13           In putting together these documents in the  
14 initial planning phases and prior to bringing the three  
15 test vendors on board, the ROC conducted five workshops  
16 that shaped the definition of the organic documents  
17 through broad TAG participation, and in the early -- in  
18 the early workshops, we had as many as 45 to 65 people  
19 in attendance from the various parties. The first  
20 workshop in December of '99 focused on the testing  
21 principles and scope, and then there were two  
22 performance measures workshops which we thought at the  
23 time largely defined the performance measures. But come  
24 to find out as late as yesterday, we were discussing  
25 performance measures, and the discussion and

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1 modification of performance measures inevitably will go  
2 on into the future. We had a TRD workshop, which dealt  
3 with the technical requirements definition. And then  
4 finally in June of 2000, we had a statistics workshop,  
5 which once again we thought defined the statistical  
6 approach. But as it turned out, there were lots of  
7 changes and modifications and refinements to the  
8 statistical approach that was used.

9           Once the vendors were brought on board, we  
10 had additional workshops. One important workshop was  
11 focused on the master test plan, and that had to do with  
12 modifying and extending the test requirements document  
13 to become a more detailed and a more thorough document  
14 for the definition of the test itself and the processes  
15 that were to govern the test. And, let's see,  
16 additionally I think we had another work -- another  
17 statistics workshop also after the vendors had been  
18 hired.

19           If you would go to page 8, please. The  
20 management of the test was accomplished largely through  
21 regularly scheduled and as needed meetings. And I think  
22 most of you probably can recall times when you wondered  
23 when there was any time to do any work because there  
24 were so many meetings. And there were a lot of  
25 meetings, but there really wasn't much of a way around

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1 it. There, of course, was the ROC executive committee  
2 meeting which took place monthly dealing with overall  
3 executive level and policy decisions. The ROC steering  
4 committee meeting, which provided week by week oversight  
5 of the test. And then the next four, the next four  
6 meetings, the TAG meeting, the project managers meeting,  
7 observation and exception meetings and there were  
8 several varieties of those, and the pseudo CLEC and  
9 Qwest account managers meetings.

10 All of these meetings were open to the TAG.  
11 And I emphasize this because it really is a very  
12 important aspect of the ROC third party test. The  
13 guiding principle regarding openness and access to all  
14 of the information and participation in all of the  
15 various meetings was one of the guiding principles, and  
16 the principle was that meetings and discussions should  
17 be open unless there were strong reasons for them not  
18 being open such as keeping aspects of the test blind to  
19 Qwest or keeping Qwest blind to aspects of the test so  
20 that there wouldn't be any opportunity to game or alter  
21 results or so on.

22 If you would turn to page 9, please. Early  
23 in the ROC test, one of the most important -- probably  
24 one of the most important aspects of the test was  
25 established and agreed to, and that was that the ROC

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1 testing process was governed by a strong governance  
2 process. And in general the way that worked was that in  
3 the collaborative process, parties would do their best  
4 to come to agreement on various issues, and once again  
5 performance indicator definitions were often the thing  
6 that was at issue. If the parties couldn't come to  
7 consensus, a consensus as to the resolution of the  
8 issue, the position statements were written up for the  
9 steering committee, and the steering committee would  
10 then make its decision as to which way the decision  
11 should go. If the parties didn't agree with the  
12 steering committee's decision, then it was escalated to  
13 the executive committee.

14           And strong governance meant that the  
15 executive committee's decision was final, and there was  
16 no further appeal, and this had a number of very  
17 positive effects throughout the test. Its main -- one  
18 of its main reasons for being established was that it  
19 allowed the test to move on towards a definable end.  
20 And the other, the other result of strong governance was  
21 that through the test there came to be -- resolving  
22 issues in a collaborative manner became a point of pride  
23 and a point of honor with the various parties to the  
24 test. And so of the dozens and dozens of issues that we  
25 dealt with, I believe this number is right, 14 issues



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1 came to the steering committee, were escalated to the  
2 steering committee for a decision, and I think that the  
3 score was that the CLECs won 8 of the issues, Qwest won  
4 5, and 1 I think was sort of a draw. I think KPMG won,  
5 and that had to do with which release we were to use for  
6 EDI feature function testing.

7           And the score may seem by Qwest lost on the  
8 one hand, but on the other hand, the score isn't wildly  
9 out of line, and the numbers are small. I mean it would  
10 have been a reasonable baseball game, which I don't  
11 think you could say that it proves that the process was  
12 fair and even handed, but I think it gives a strong  
13 indication that at least it was not unfair or  
14 unbalanced. And once again, the strong governance and  
15 the back stop of the ultimate decision of the executive  
16 committee did move the test along and I believe fostered  
17 a spirit of genuine collaboration throughout the test  
18 and made the whole thing possible.

19           CHAIRWOMAN SHOWALTER: Excuse me, you  
20 testified that only 14 issues went to the steering  
21 committee, did you mean the executive committee?

22           MR. CENTER: No, I think that there were only  
23 14 issues that were escalated from the collaborative to  
24 the ROC, and of those 14, I'm not sure how many went to  
25 the executive committee, but I think it was 2 if I'm not

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1 incorrect. It was 1 -- I know that the -- I know that  
2 the vendor technical conference schedule went to the  
3 executive committee, and I believe there was one other  
4 that -- one other issue that went to the executive  
5 committee.

6           The other not major activity but significant  
7 activity that the TAG engaged in was that the TAG  
8 conducted regular briefing sessions for state regulatory  
9 bodies, the FCC, the DOJ, and in one case the National  
10 Congressional Staff. The ROC meets twice a year, and  
11 the OSS collaborative, the TAG, presented to, let's see,  
12 five of those ROC twice yearly meetings over the past  
13 two years, two and a half years. And additionally we  
14 have briefed the FCC and/or the DOJ on five occasions,  
15 and we have one more briefing planned on June 20th, I  
16 believe.

17           If you would turn to page 11, please. All of  
18 this activity was captured in a great deal of detail in  
19 the ROC Qwest information repository, which is a Web  
20 site that is maintained by the NRRI, and the various  
21 categories are administration, project management, the  
22 TAG, and the master test plan. This Web site has all of  
23 the organic documents that governed the test. It has  
24 the PIDs, it has all of the impasse arguments and  
25 resolutions, and also it has minutes to the major

7991

1 meetings. All of the TAG minutes and project manager  
2 meeting minutes are contained in the ROC Qwest  
3 information repository, which served us well throughout  
4 the test in terms of being able to refer back to what  
5 had happened. When issues came up, we could refer back  
6 to what had happened in the past. And additionally it's  
7 a ready made body of material from which Qwest can  
8 extract the material that they need for their filings in  
9 the various states.

10                   And that's the -- that concludes my formal  
11 remarks. There's a couple of other slides here which  
12 just show who participated, who were the -- what the  
13 composition of the executive committee was, and if  
14 anyone is interested about the regarding the vendor  
15 selection process, that's depicted in slide 14. That  
16 concludes my remarks, and I would be glad to answer any  
17 questions that the parties may have.

18                   JUDGE RENDAHL: Thank you.

19                   Mr. Crain, did you have any questions for  
20 Mr. Center? You had reserved some time, it doesn't mean  
21 you have to use it.

22                   MR. CRAIN: And no, I don't.

23                   JUDGE RENDAHL: Okay.

24                   Mr. Dixon, do you have any questions for  
25 Mr. Center?

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1                   MR. DIXON: Thank you, yes, I just have a  
2 couple very brief questions.

3

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

5 BY MR. DIXON:

6           Q.     Mr. Center, looking at page 12, was that  
7 intentionally left blank?

8           A.     Page -- I should have put that note that you  
9 see in technical manuals, this page intentionally left  
10 blank.

11          Q.     I was assuming that.

12          A.     Actually, it was intended just to be a header  
13 page for additional detail, so it was intentionally left  
14 blank.

15          Q.     Thank you. Mr. Center, you may recall that  
16 on March 28th the executive committee entered a decision  
17 regarding the role MTG should play, and I will quote:

18                   The executive committee and the steering  
19                   committee direct MTG to continue taking  
20                   an aggressive role in identifying and  
21                   resolving issues in open observations  
22                   and exceptions.

23                   Do you recall that ruling by the executive  
24 committee?

25          A.     Yes, Mr. Dixon, I do.

7993

1 Q. And after March 28th, 2002, did MTG take such  
2 a role?

3 A. MTG took the role of the project manager in  
4 the attempt to move the process along and to move the  
5 project along and did take the role of trying to see  
6 that the procedural aspects of the observation and  
7 exception resolution process were executed in a timely  
8 and an effective manner.

9 Q. But after March 28th, 2000, did MTG's role in  
10 that regard change in any fashion from your perspective  
11 or observation?

12 A. My recollection is that MTG's role in  
13 resolving observations and exceptions really didn't  
14 change much from start to finish with the exception that  
15 towards -- well, let me back up for a second. The  
16 initial approach to resolving observations and  
17 exceptions was that the testing vendors would put forth,  
18 when they would find something that didn't seem exactly  
19 as it should be, they would put forth an observation  
20 which was just that, more of a questioning of what does  
21 this really mean, or an exception in which the vendor,  
22 the testing vendor, would say this thing that we  
23 observed in this test is clearly wrong because it  
24 conflicts with Qwest's documentation, for example. And  
25 so for -- from early in the test, from April or May of

7994

1 last year until October, September or October of last  
2 year, the resolution process for observations and  
3 exceptions consisted of this exchange of paper back and  
4 forth.

5           The change, and this was partly at MTG's  
6 behest but everyone really agreed to it, the change was  
7 that we instituted observation and exception focus  
8 meetings in which the parties got together and discussed  
9 the differences that were represented in the paper that  
10 was going back and forth. And it was thought that this  
11 would make the process more efficient in that the paper  
12 cycle didn't have to go -- the paper cycle didn't have  
13 to go on and on, and people in direct conversation with  
14 one another could understand the nuance of one another's  
15 positions. And so it was a, we believe, a very  
16 effective project management technique in making the O&E  
17 process move along more effectively.

18       Q.     And maybe just so I can summarize your answer  
19 if I understood it correctly, other than instituting  
20 focus meetings on observations and exceptions after  
21 March 28th, your role stayed basically the same from  
22 start to finish?

23       A.     That's my understanding is that our role  
24 stayed basically the same.

25           MR. DIXON: Thank you, I have no further

7995

1 questions.

2 JUDGE RENDAHL: Thank you.

3 Ms. Doberneck, you had not asked for time for  
4 this witness, do you have any questions for this  
5 witness?

6 MS. DOBERNECK: I actually just had one, a  
7 question about the presentation.

8

9 C R O S S - E X A M I N A T I O . H E

10 BY MS. DOBERNECK:

11 Q. And that's at page 4, and it's the second  
12 bullet point under MTG managed overall schedule and  
13 quality. I understand the management of the overall  
14 schedule. Can you tell me though what you mean by  
15 managed quality?

16 A. We particularly in the early -- in the early  
17 stages of the test, we would look at a particular piece  
18 of output or deliverables from the various testing  
19 vendors and look at them and compare them to what we  
20 thought the MTP intended that they be and work with the  
21 various vendors to try to bring them in line with what  
22 we thought the ROC and the TAG believed the particular  
23 deliverables should look like.

24 Q. Was that based then on MTG's interpretation  
25 alone, or did you seek guidance or consultation either

7996

1 from the ROC or the steering committee or the executive  
2 committee in making that decision?

3 A. All of those on occasion, and there were  
4 times when it was just a matter of, for example, looking  
5 at some aspect of the MTP and looking at some  
6 deliverable document and saying this is missing. It's  
7 just an almost a clerical function. At other times  
8 there would be discussions with the TAG regarding the  
9 what was actually delivered and what was meant to be  
10 delivered.

11 Q. Can you just briefly give then for us for the  
12 more substantive quality issues that you addressed,  
13 could you just give a brief example so I could ground it  
14 in reality?

15 A. Let's see, with respect to the various pieces  
16 of the final report, KPMG had a structure that they had  
17 laid out and had used in other tests, and one aspect of  
18 that structure was that for each test they had a set of  
19 testing criteria or criteria for passing a test that  
20 were as objective as they could make them. Because of  
21 HP's role and because of their dual role, both as the  
22 test -- as a tester and the P-CLEC and also partly  
23 because of the fact that they had parts of their role  
24 were new to them, their structure for testing criteria  
25 was perhaps not as robust initially as KPMG's was, and



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1 we all worked together and brought that to a level that  
2 everyone agreed was appropriate.

3 Q. And when you say everyone, you mean the  
4 testers and MTG and --

5 A. Right, correct.

6 MS. DOBERNECK: Thank you, I have no further  
7 questions.

8 JUDGE RENDAHL: Are there any questions from  
9 the commissioners?

10 Okay, and I have no questions.

11 MS. TRIBBY: Your Honor, I have a question.

12 JUDGE RENDAHL: I am so sorry, I did not mean  
13 to overlook you, Ms. Tribby.

14 MS. TRIBBY: That's okay, I was late.

15 JUDGE RENDAHL: Welcome, we're glad you're  
16 here, and go ahead.

17 MS. TRIBBY: Thank you.

18

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

20 BY MS. TRIBBY:

21 Q. Mr. Center, would you consider the TAG calls  
22 to be equivalent to the observation and exception calls,  
23 or were those different in some way?

24 A. Well, certainly they were different in that  
25 the TAG calls covered the broadest possible range of

7998

1 issues having to do with the test, whereas the  
2 observation and exception calls focused on -- focused  
3 very narrowly in fact on an issue by issue basis on  
4 observations and exceptions that had been brought forth  
5 by the vendors and their resolution.

6 Q. And if a decision was made on an observation  
7 and exception call, would you consider that to be a  
8 decision of the TAG if it weren't also discussed on the  
9 TAG call?

10 A. Decisions on observations and exceptions, the  
11 decisions per se were really the purview of the vendors,  
12 so they weren't TAG decisions first of all. Secondly, I  
13 don't believe that the CLECs, although these -- the TAG  
14 -- although the O&E calls were open, I believe that  
15 participation by the CLECs was -- there wasn't routine  
16 and consistent participation, so it would be difficult  
17 to call, anything that came out of the O&E calls, it  
18 would be difficult to call them TAG decisions when the  
19 CLECs weren't present.

20 MS. TRIBBY: Thank you, that's all I have.

21 JUDGE RENDAHL: Okay, thank you, Mr. Center,  
22 unless, Mr. Crain, you have anything to follow up on.

23

24

25

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

2 BY MR. CRAIN:

3 Q. I guess I would have one follow-up question,  
4 which was those O&E calls, observation and exception  
5 calls, were open to CLEC participation, weren't they?

6 A. Yes, sir, they were.

7 MR. CRAIN: That's all the questions I have.

8 JUDGE RENDAHL: Okay.

9 All right, Mr. Center, I think you are now  
10 excused, and why don't we take a couple of minute break.  
11 We will be off the record while KPMG gets set up here.  
12 Thank you, Mr. Center. Let's be off the record.

13 (Recess taken.)

14 JUDGE RENDAHL: We are going to now turn to  
15 the presentation by KPMG. I understand we have  
16 Mr. Weeks and Mr. Dellatorre from KPMG Consulting.  
17 Could you please in turn state and spell your name for  
18 the court reporter with your address, and then I will  
19 swear the two of you in, and then we will proceed with  
20 the presentation.

21 MR. WEEKS: Yes, I am Michael W. Weeks,  
22 W-E-E-K-S, of KPMG Consulting, Inc., and I reside at  
23 11217 Summerdale Street in Westchester, Illinois.

24 MR. DELLATORRE: I'm Joe Dellatorre with KPMG  
25 Consulting, and I'm at 18 Meyer Court, M-E-Y-E-R, West

8000

1 Orange, New Jersey.

2 JUDGE RENDAHL: And could you spell your last  
3 name, please.

4 MR. DELLATORRE: Certainly,  
5 D-E-L-L-A-T-O-R-R-E.

6 JUDGE RENDAHL: Thank you, and would you both  
7 please stand and raise your right hand, please.

8

9 Whereupon,

10 MICHAEL WEEKS and JOE DELLATORRE,  
11 having been first duly sworn, were called as witnesses  
12 herein and were examined and testified as follows:

13

14 JUDGE RENDAHL: Okay, please be seated.

15 And please go ahead, Mr. Weeks. Before you  
16 do though, you have distributed a handout which I have  
17 marked as Exhibit 1700. Are there any objections to  
18 admission of this document?

19 Hearing nothing, it will be admitted. And I  
20 assume that even though the cover says final report,  
21 this is not the final report, this is a handout  
22 discussion of the final report; is that correct?

23 MR. WEEKS: That is correct. Exhibit I  
24 believe Number 1697 is the report itself, a very large  
25 document. What we're prepared to do here today is give

8001

1 you a summary or an overview of that document.

2 JUDGE RENDAHL: Thank you.

3 MR. WEEKS: And this information was pulled  
4 from the cover of that document.

5 JUDGE RENDAHL: Thank you, please go ahead.

6 MR. WEEKS: Thank you.

7 We appreciate the opportunity to be here  
8 today and to discuss with you a summary of the OSS  
9 testing report for the ROC. I have a handout in front  
10 of you. For those of you who received a black and white  
11 version of the document, you can tell that by looking on  
12 page 2 under test report section 12, if the horizontal  
13 line is blank and you can't read the numbers, then  
14 you're a victim of the copier, and I will fill in those  
15 numbers for you as we go along, so there are several for  
16 which that is the case. If you have the color copy,  
17 then you should hopefully be able to read the numbers.

18 What I would like to do briefly this  
19 afternoon is to describe a bit about the testing that we  
20 did, how we organized the test, how we evaluated Qwest's  
21 performance as we conducted the test, some of the areas  
22 in the test in which Qwest met expectations that we  
23 established, some of the areas in the test where Qwest  
24 failed to meet the expectations and some of the  
25 reasonings behind those failed expectations, and to

8002

1 suggest maybe some areas of focus as you look at the  
2 records so that you can hopefully be in a position to  
3 take this report, which was done in the abstract for all  
4 14 states in theory, at least 13 of them, and find a way  
5 to apply that record to your proceedings here and your  
6 docket here. Because it's not at all the case that  
7 necessarily the results of the test apply evenly in the  
8 same way in each of the potential jurisdictions.

9           So I will move forward if that's okay. The  
10 way that the test was organized per the master test plan  
11 was by what we call domain or group or functional area  
12 within the OSS operations of all the ILECs, Qwest in  
13 particular. Those domains were what we call POP or  
14 preorder, order, and provisioning. These are the  
15 domains or this domain contains these three areas where  
16 CLECs interact with Qwest's wholesale systems and  
17 representatives to try to determine what sort of  
18 facilities are in place to support a potential CLEC  
19 customer, to communicate with Qwest the desire to either  
20 migrate that customer from Qwest perhaps to the CLEC in  
21 whole or in part, or to change the facilities that that  
22 customer has, for example change the features to add  
23 call waiting on their home telephone or something, to  
24 acquire new facilities, to install a second line say for  
25 a fax line or something like that at home, to disconnect

8003

1 or make other changes such as directory listing changes  
2 and so on, and to have those things ordered through the  
3 ordering interfaces, whether those be electronic or  
4 otherwise, and to have Qwest then go provision or do the  
5 background set of activities that it takes to bring the  
6 network and its elements into conformance with the  
7 requirements as articulated by the CLEC in their orders  
8 that they placed through the wholesale interfaces.

9           We then broke the POP domain down into a  
10 series of individual tests, each of which had a subtly  
11 different purpose in life. If you will look at page 2  
12 in your materials, down the left-hand side is an  
13 enumeration of report sections with a number such as 12,  
14 which would have been test 12 per the master test plan,  
15 a brief description taken from the master test plan of  
16 what the purpose or objective or subject matter of that  
17 particular test was, and then a set of columns that talk  
18 about the results. And for the black and white, the  
19 numbers in the cells which I will read to you now  
20 represent the number of evaluation criteria that fell  
21 into each of these categories, and we will discuss some  
22 of these in turn. So the satisfied for line 12 is 52,  
23 not satisfied is 2, unable to determine is 3, and  
24 diagnostic is 11. I might explain a little bit about  
25 evaluation criteria.

8004

1                   CHAIRWOMAN SHOWALTER: Can you first, there's  
2 no key to what the color means. What is the -- what  
3 does dark blue on the color mean?

4                   MR. WEEKS: The dark blue was a hint to me  
5 that the results between the interim or the draft final  
6 report that we produced and the final report changed in  
7 some way, shape, or form. So in the tests that have the  
8 blue, one or more of the evaluation criteria changed its  
9 category either from unable to determine to satisfied or  
10 not satisfied or something like that is the significance  
11 of the color.

12                   Not all evaluation criteria, there were  
13 hundreds and hundreds of criteria that were used to  
14 evaluate Qwest's performance during the course of the  
15 test, not all of those evaluation criteria are created  
16 equal. Some of them are very small and looked at very  
17 discreet elements. Others were rather broad in scope  
18 and had a number of areas that some areas that fit under  
19 that in order to get an overall score in that. So a  
20 simple mathematical averaging or numbering or something  
21 is a dangerous exercise, because we are not dealing with  
22 things that are all the same size, so I would sort of  
23 caution one against doing that sort of thing.

24                   And as we looked at the evaluation criteria,  
25 we assigned by agreement in advance of the test sort of



8005

1 categories that they would fall in. If Qwest  
2 performance met the standard, and we'll talk about  
3 standards in a moment, met the standard, then we  
4 assigned that a satisfied result. If they failed to  
5 meet the standard, then we assigned that a  
6 non-satisfied. If through one reason or another, and  
7 there were two primary reasons to give examples of as we  
8 move forward, we couldn't tell, we couldn't develop  
9 enough information, we couldn't tell from our testing  
10 whether or not Qwest's performance would meet the  
11 standard or not, then we assigned that an unable to  
12 determine category.

13           And there were in this test, unlike some  
14 other tests, performance measures, and you heard  
15 Mr. Center speak about performance measures earlier,  
16 that were labeled by the TAG collaborative on  
17 performance measures as being diagnostic in nature.  
18 These would be situations where the pseudo CLEC and KPMG  
19 Consulting working together would collect information  
20 about Qwest's performance during the course of the test,  
21 but we would simply report that without making an  
22 evaluation as to whether Qwest's performance was  
23 acceptable or unacceptable, and so there was no standard  
24 per se attached to those and therefore no satisfied or  
25 not satisfied, so those are the diagnostic criteria that

8006

1 fall into those. And so for those it's important for  
2 you to look at the record and understand what Qwest's  
3 performance was there and apply your own standards to  
4 the extent that you feel it's important to do that to  
5 try to assess for yourselves whether or not you believe  
6 the level of service delivered by Qwest during the test  
7 to the pseudo CLEC was acceptable or not.

8           So test 12, 12.7, 12.8, 13, 14, 14.7 and 14.8  
9 as well as 15, that body or that group of tests  
10 constitute the tests that were done in the pre-ordering,  
11 ordering, and provisioning area, the ability of a CLEC  
12 to acquire services from the wholesale operations at  
13 Qwest and get what they ordered. Test 14, which is the  
14 provisioning evaluation, I will read the numbers there  
15 for those of you that have black and white, satisfied  
16 was 33, not satisfied was 4, unable to determine was 5,  
17 and diagnostic was 2.

18           Now in these materials, the first three pages  
19 or so are the sort of the summary by area. We can then  
20 begin to look behind those, and if you go to page 5, you  
21 will see, for example, the two not satisfiers from page  
22 2 for test 12 were, in fact, two specific evaluation  
23 criteria, 12-9-4 and 12-9-5. These were the specific  
24 evaluation criteria that received a not satisfied in the  
25 test. And on page 5, you have a description or a

8007

1 rewording restatement of the evaluation criteria itself.  
2 For example, 12-9-4 says Qwest systems or  
3 representatives provide timely jeopardy notices for  
4 resale products and services. And then you see in  
5 italics underneath that a very brief statement as to the  
6 reason why that received a not satisfied.

7           In this case, it's probably a good time,  
8 12-9-4, to talk about one of the other principles, if  
9 you will, of the test, which was that for many of the  
10 measures, performance indicators, the nature of those  
11 performance indicators was that there was some sort of  
12 comparison between the level of service delivered in  
13 wholesale and the level of service delivered to the  
14 retail operation. And in those so called parity type  
15 standards, it was agreed ahead of time in the  
16 statistical collaboratives, and there's an appendix in  
17 the master test plan that describes all of the  
18 statistical decision making framework that was decided  
19 upon, it was decided that we would test both the  
20 hypothesis that there was no difference between  
21 wholesale and retail and the hypothesis that there was  
22 in fact a difference between wholesale and retail to  
23 some statistically significant difference and that we  
24 would conduct both of those statistical analysis, and if  
25 both of them indicated, if both of the hypothesis tests

8008

1 indicated that Qwest passed, then they passed. If both  
2 indicated that Qwest failed, then Qwest failed. But if  
3 one of the tests said they passed and the other said  
4 that they failed, then that tie, if you will, would be  
5 broken by the steering committee, or not the steering  
6 committee, I'm sorry, the TAG. If the TAG was unable to  
7 reach consensus, then it would escalate to the steering  
8 committee. If the steering committee could not reach  
9 consensus, then it would escalate to the executive  
10 committee, so much as Mr. Center described, the general  
11 process that we used for decision making.

12           These so called dual tests, which were only  
13 done for parity type measures, would sometimes and in a  
14 couple of cases did result in this no decision where the  
15 results of the test were such that either the universe  
16 was very small and we couldn't tell or we got this no  
17 decision out of the dual test that we then took that,  
18 and you can see that in both cases in 9-4 and 9-5 the  
19 steering committee made a determination that they would  
20 assign a fail result to these two evaluation criterias.  
21 Both of these have to do with the timeliness of jeopardy  
22 notices. One of them is for resale, and one is for  
23 UNE-P.

24           We might stop and talk about jeopardy notices  
25 for a moment. Jeopardy notices are those notices

8009

1 provided by Qwest to the CLECs when they are not going  
2 to be able to do the provisioning activities on time in  
3 the way that they had said that they would and had  
4 communicated previously to the CLEC. Qwest finds itself  
5 many times in a situation where it can know ahead of  
6 time that they're going to be in this situation. For  
7 example, they try to find facilities to meet and they  
8 can't find facilities, and so they will notify the CLEC  
9 we don't have facilities, and they will work with the  
10 CLEC to try to set a new date and resolve that issue.  
11 Other times they're not sure given the workload whether  
12 or not they're going to be able to meet all the  
13 appointments for the day, so they load up the work queue  
14 with all the things they believe they're going to have  
15 to get done today, and sometimes they guess correctly  
16 and sometimes they don't.

17           And so sometimes there are appointments that  
18 aren't met, and Qwest if they had sent a jeopardy notice  
19 out ahead of time and then subsequently had enough field  
20 force to do everything would have prematurely told  
21 everyone they had a problem that they in fact did not  
22 have. The opposite can happen. If they don't send the  
23 jeopardy notice out and they don't send it out on time  
24 and they actually miss the appointment, then the CLECs  
25 have a customer that may not be too happy with them. So

8010

1 Qwest is kind of between a rock and a hard place here as  
2 to whether to send jeopardy notices out or not send  
3 jeopardy notices out under certain circumstance.

4           And then the question is if they're going to  
5 send out, how early should they send them out and are  
6 they -- so that they can be considered timely. You  
7 wouldn't want to send one out, you know, a matter of  
8 minutes before the appointment was due. That probably  
9 wouldn't be timely. So this is a kind of a good  
10 news/bad news thing in the course of the test. As a  
11 pseudo CLEC, HPC saw very few jeopardy notices actually  
12 generated, which is a good thing, which means most of  
13 the provisioning actually took place as scheduled. But  
14 in those cases where we did get the handful of jeopardy  
15 notices that we got, the results of the test were  
16 inconclusive as to whether those were timely or not,  
17 primarily because of the small sample size. And that's  
18 why these two were taken to the steering committee and  
19 ultimately were assigned a failed status in the test.

20           Questions about that or we're not taking  
21 questions now, right, we're moving on?

22           JUDGE RENDAHL: Well, I think if --

23           CHAIRWOMAN SHOWALTER: I think he was looking  
24 at me as if I was about to ask a question.

25           MR. WEEKS: That was my presumption, and it

8011

1 was wrong, I think.

2 CHAIRWOMAN SHOWALTER: No, it was right.

3 Well, I just didn't want to leave this confused. It was  
4 unclear to me. Were both of these failures cases where  
5 there was a dual test and one way of the dual test was  
6 positive and the other was a negative?

7 MR. WEEKS: Correct.

8 CHAIRWOMAN SHOWALTER: All right. But then I  
9 heard you at the end say we didn't have very much data.  
10 Was it a positive and a negative or the negative or  
11 reason it was up to the steering committee was there  
12 wasn't sufficient data to tell?

13 MR. WEEKS: It was some of both actually.  
14 The dual tail test by its nature if there are small  
15 sample sizes and the results are close, you can get  
16 situations where sort of if you look at it one way it  
17 looks like a pass, and you look at it the other way it  
18 looks like a fail, and you kind of can't tell. The  
19 larger the sample size in general for statistical type  
20 tests, the more definitive the answer tends to be unless  
21 again the standard and the actual delivered level of  
22 performance are extremely close to each other. So if  
23 the standard, let's say retail in this case was I will  
24 make up a number, you know, 95% on time and the actual  
25 measured performance was 94.6%, you know, if you just do

8012

1 what we call the stare and compare, which we did with  
2 bench marks, well, 94.6 is less than 95, so you would  
3 have given a fail in that case. But when you get into  
4 doing the dual tail test, sometimes even with large  
5 sample sizes you can get these indeterminate results  
6 where it's kind of close to call.

7 JUDGE RENDAHL: Thank you, please go ahead.

8 MR. WEEKS: So as we move through the  
9 pre-ordering, ordering, provisioning kinds of tests  
10 here, the 12 through 15 scenarios, what you see if you  
11 look at the numbers is the preponderance of the  
12 evaluation criteria are satisfied. We talked about the  
13 2 not satisfied on test 12, we probably ought to talk  
14 about the 4 not satisfie~~s~~d on test 14, which are also  
15 found on page 5, and talk about those because they  
16 illustrate some other points that we would like to make  
17 about the test and its results.

18 14-1-10 and 14-1-14, one deals with unbundled  
19 dark fiber, the other deals with EEL circuits, were both  
20 situations where we did some initial testing, we wrote  
21 some initial exceptions because we found some problems  
22 that we wanted to bring to Qwest's attention. But when  
23 we went back to try to retest whether or not things had  
24 been sufficiently well fixed, in many cases we could  
25 demonstrate that methods and procedures had been



8013

1 revised, people could explain to us when we talked to  
2 them and did interviews with them that they understood  
3 the new processes and how things were supposed to work,  
4 and so on. But when we do the kind of the last part of  
5 the testing, which is looking for adherence in the real  
6 world by Qwest to what they have stated their new and  
7 changed systems, policies, procedures, documentation,  
8 whatever needed to be triaged as a result of our  
9 exception, we find ourselves in a couple of cases in  
10 this test where we couldn't collect enough data through  
11 commercial observations in order to determine whether or  
12 not, in fact, Qwest is following their revised process,  
13 systems, policies, and so on.

14           In this test, much as you will hear of what  
15 we did in terms of collecting a record was collected  
16 through the pseudo CLEC through actually submitting  
17 transactions and doing things. However, for anything  
18 that involved facilities, because the pseudo CLEC was  
19 not a facilities based carrier, we used actual live  
20 commercial CLEC observations. And in those cases, and  
21 these are two examples of that, there just wasn't enough  
22 commercial activity during the course of the test for us  
23 to really get to the bottom as to whether things had  
24 been fixed or not. So the reason that it's a not  
25 satisfied is because we had originally found problems

8014

1 and we couldn't prove conclusively that they had been  
2 fixed. That's as opposed to an unable to determine, and  
3 we'll talk about some of those, where we just couldn't  
4 develop enough evidence at all to determine whether  
5 things were right or wrong.

6 Now if we look at 14-1-34 and 14-1-36, these  
7 have to do with one of the PID performance measures  
8 called OP-4-C. There are quite a few of the performance  
9 indicators, and each one of them has a number or a  
10 label, if you will, and this one has to do with  
11 installation intervals, one for business POTS and the  
12 other for UNE-P. These two evaluation criteria are  
13 situations where we did some initial testing, found some  
14 problems, Qwest chose to take a closed unresolved, and I  
15 might stop and explain what that means for a moment.

16 The general process and philosophy of the  
17 test was a military style test, test until you pass.  
18 There were situations in this test, and these are a  
19 couple of examples, where Qwest would look at what we  
20 had to say, make some revisions or not, make some  
21 changes or not, we would do some retesting or not, and  
22 there might be a residual set of issues or  
23 disagreements, if you will, between us as the test  
24 evaluators and Qwest. And Qwest would determine that  
25 either they didn't feel it was a significant enough

8015

1 problem to merit the investment of a lot of time and  
2 money and energy to put into it or for some other reason  
3 that wasn't apparent to us decide that they didn't want  
4 to proceed with making whatever fix it would have taken  
5 for us in order to be able to perform a complete retest  
6 and close the issue down as having been fixed. So that  
7 was a decision made by Qwest to bring something else to  
8 the table, put something else on the record in lieu of  
9 the OSS test results in this area. And so per the rules  
10 of the test, that was legal, and they did that.

11           And these cases, there was a closed  
12 unresolved on exception 3086, and then we had a  
13 subsequent exception where we were comparing our data,  
14 the individual values for individual transactions that  
15 we developed, HPC captured and we analyzed, to the  
16 individual data about individual transactions as  
17 captured by Qwest, and we found differences in exception  
18 3120. That's what the issue is talking about. That led  
19 to a retest, and when we executed a retest, then we  
20 found that there were still some examples of situations  
21 where the underlying calculation of manual orders  
22 intervals was not within the standard, and so these two  
23 wound up then with a not satisfied report. The  
24 preponderance of the rest of the evaluation criteria in  
25 this area either fall into the satisfied, there are --

8016

1 or unables except for the diagnostics that I have talked  
2 about.

3           Let's talk about a couple of the unables to  
4 determines just so you get a feel for what that sort of  
5 thing is like. The unable to determine if you go to  
6 page 7 of the presentation materials, for section 12  
7 there were actually three, 12-9-1, 12-9-2, and 12-11-4.  
8 12-9-1 and 12-9-2 are all, for instance, jeopardy  
9 notices where we just didn't get enough data in the test  
10 in order to even form an opinion here. And 12-11-4 is a  
11 situation again where we raised observation 3110 very  
12 literally in the last week of the test, and Qwest made  
13 the decision that they just did not want to do a retest  
14 on that, and so the record was as it stood. And the  
15 record as it stood was we didn't have enough information  
16 in order to make a determination as to what the results  
17 should be because we hadn't had a chance to thoroughly  
18 retest it. So those are two examples there.

19           If you go to 12-8, there is one unable there.  
20 This was a situation where 12-8-2, how electronically  
21 submitted orders are supposed to flow through. When  
22 they don't flow through, they fall out. When they fall  
23 out, they get handled manually, and there were --  
24 there's a suggestion there may have been problems in  
25 manual handling, but because of the small number of

8017

1 orders that were involved in the retest, we didn't have  
2 a large enough sample size to draw a definitive  
3 conclusion in that area, and we didn't do a retest, so  
4 we're stuck with an unable.

5           The provisioning evaluation unables are  
6 largely to do with insufficient data from the tests.  
7 14-1-37, 38, and 39 are OP-6-A measures, and we just  
8 didn't develop enough data during the test on delay  
9 days. It's kind of a good news thing, the orders  
10 weren't delayed, so we didn't have enough instances of  
11 that in order to measure against the PID. And 43 was a  
12 similar thing for OP-15, and then 14-1-44 is related  
13 again to the inability of us to retest 3110 and  
14 therefore the insufficiency of the information for us to  
15 draw a conclusion. So those are those.

16           The diagnostic PIDs, there is a list of those  
17 in the back. They're in the report as well, but I  
18 pulled them out into this summary for you as well.  
19 Those start on page 12, and what I have given you is the  
20 actual criterion 12-3-11, for example, the description  
21 of the criteria and in parentheses the value we measured  
22 during the test. So those would be the ones that we  
23 didn't ever decide whether those numbers were good or  
24 bad. We were making no comment on whether those are  
25 satisfied or not satisfied, we're just reporting them to

8018

1 you. That's kind of the POP, preorder, ordering,  
2 provisioning domain set of tests and results.

3           Starting with test 16 continuing through 17,  
4 18, 18.7, and 18.8 are what we call the maintenance and  
5 repair or M&R tests. And in these you will see as you  
6 scan sort of the results, again a vast majority of the  
7 evaluation criteria were satisfied. If we look at the  
8 not satisfiees, test 16 had a single not satisfied. If  
9 you look at page 6, you will see that there was a  
10 question during the volume test on the ability to go in  
11 and do a modify trouble report transaction in the bench  
12 mark time. So all of the other types of transactions  
13 that we ran during the regular testing were the  
14 transactions. The other transactions that we ran on the  
15 volume test met their bench marks except for this one,  
16 and because of that, because this was the only  
17 transaction that didn't meet its bench mark, Qwest chose  
18 not to pursue that or retest in that matter and took a  
19 closed unresolved on exception 3107.

20           The two not satisfiees in test 18 are listed  
21 on page 6, 18-6-1, 18-7-1. 18-6-1, when a field tech  
22 finishes the work of a repair, he or she codes things  
23 into the work order in effect that they were working on  
24 a closeout code that says where was the problem located  
25 and what was the nature of the problem. Well, what we

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1 found was that Qwest's values that they were coding in  
2 those didn't always agree with the expectations that we  
3 had set by reading their documentation and looking at  
4 things, and so this was a case where Qwest and KPMG  
5 Consulting chose to agree to disagree on the import of  
6 that, and Qwest chose not to -- to take a closed  
7 unresolved on exception 3055. The 18-7-1 was a case of  
8 where we had introduced troubles into circuits. We  
9 expected a certain repair outcome. We didn't always get  
10 the repair outcome that we expected to get. Qwest in  
11 looking at their books and records felt that they had  
12 properly closed the trouble, we didn't agree, so it was  
13 an agree to disagree again on exception 3058. That is  
14 kind of the M&R section.

15           There was an unable to determine on test 18.  
16 I'm trying to find the page here, page 8, it's  
17 evaluation criteria 18-6-3. It's again related to the  
18 closeout codes, closed inconclusive. We did some  
19 testing, and at the end of the test, the retest, we just  
20 weren't sure what the results were there, so we left it  
21 as an unable to determine.

22           The tests starting with test 19, 19, 19.6,  
23 20, and 20.7 are in the billing area. This is the  
24 ability of Qwest to produce what are called daily usage  
25 feed files, DUF files, which is the information that's

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1 in effect the call detail record information that came  
2 off the switch and gets accumulated and passed on to the  
3 correct CLEC, and then the CLEC can use that information  
4 as they need to to bill their end customers if they're  
5 doing a billing based on usage. And then the other part  
6 of it was the ability of Qwest to produce bills for the  
7 CLECs of the facility and things that the CLEC UNEs and  
8 resale and the like that they're actually consuming  
9 through the wholesale operations. So those tests again  
10 were completed. Most of the evaluation criteria are  
11 satisfied there as you can see. We had several unables  
12 there, and I might talk about the unables -- oh, yeah,  
13 thank you. On 20.7, the satisfied count is 17, and the  
14 unable to determine count is 4. While I'm there, I will  
15 go ahead and say the change management test 23, the  
16 satisfied count is 11, and the unable is 7.

17           If we look at the unables on some of the  
18 billing work, this was a case where we were looking for  
19 certain characteristics or controls built into their  
20 process for producing bills and ensuring the accuracy of  
21 bills prior to them being delivered to the CLECs. And  
22 as we talked to folks at Qwest and did our interviews,  
23 what we discovered is that many of those controls that  
24 we were looking for were actually embedded in software.  
25 Because they were embedded in software, it's very, very



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1 difficult to prove when they work, very easy to uncover  
2 when they don't work. If you look at the output, if you  
3 look at the bill and the bill is wrong, it's fairly easy  
4 to say those quality control mechanisms must not be  
5 working. But if you look at the bills and the bills are  
6 correct, it's very difficult to say, well, did the bill  
7 manufacturing process that creates bills create correct  
8 bills, or did the control process that was looking for  
9 bad bills operate and feed back and cause the bill to  
10 get fixed and repaired. You can't tell.

11           And so the unables in this area are largely  
12 stemming from the fact that we could talk to people  
13 about what controls exist, we could have them walk us  
14 through what they believed were happening. We could and  
15 did find examples of where the controls appeared not to  
16 work, and we put exceptions out to that effect. But  
17 once those exceptions were fixed, the bills now became  
18 correct. We couldn't definitively say they were correct  
19 because the controls worked, they may have just been  
20 manufactured correctly. So that's the unables in those  
21 areas for the most part. So it's just an artifact of  
22 testing electronic systems, you can't always answer  
23 every question you would like to answer.

24           JUDGE RENDAHL: And those comments refer to  
25 the test 20.7?

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1 MR. WEEKS: Yes.

2 JUDGE RENDAHL: Thank you.

3 MR. WEEKS: The next set of tests that you  
4 see there starting with 22 through 24-10, a couple of  
5 these actually fall or fell into the other domains or  
6 they were executed as part of those other domains, but  
7 they're really sort of a family of tests where now we're  
8 not so much testing Qwest's wholesale interfaces, sort  
9 of the CLECs view of the world. We're leaving that  
10 world and sort of a sometimes I will refer to it as a  
11 black box sort of test where we're standing on the  
12 outside pretending to be a CLEC, can't really see behind  
13 the curtains what's going on over there. We don't know.  
14 We just know that we give them something, they give us  
15 something back, it's right, it's wrong.

16 We now leave as we move those tests into  
17 tests that are more what I call white box tests or tests  
18 where we walked inside of Qwest, and we did walk  
19 throughs, we did interviews, we looked at documentation,  
20 we looked at the artifacts of the output of a process  
21 that worked. These are behind the scenes things that no  
22 CLEC would ever see that looked at how well formed  
23 Qwest's internal processes and mechanisms worked to do  
24 certain of these kinds of activities. Because how well  
25 formed those are and how well they operate ultimately

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1 has an effect on Qwest's wholesale systems and  
2 interfaces, but they're not directly testable from the  
3 outside. So not to, you know, denigrate them in any  
4 way, if I could sort of go through those, they're just  
5 kind of a different kind of test.

6           One that always gets a lot of attention and I  
7 want to talk about in particular is the change  
8 management test, test number 23. As you all know, this  
9 is a hotly discussed area. It's a particular hot button  
10 of our friends in Washington, the other Washington, the  
11 one on the Potomac, and 11 of the criteria were  
12 satisfied in this case, and 7 were unable to determine.  
13 When we started change management review, there was a  
14 process in place. Partly as a result of just ongoing  
15 dialogue between Qwest and the CLECs and partly in  
16 reaction to some of the comments that we were making in  
17 observations and exceptions, there was a very long  
18 involved process started that is still ongoing to  
19 replace the original change management process with a  
20 new change management process.

21           In many cases, KPMG Consulting has had the  
22 opportunity to observe aspects of this new process in  
23 place. Some of those parts of that process are well  
24 formed, they're well documented, they're well  
25 understood, they're operating, and we have seen them

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1 work. Other parts of that process are still going  
2 through the definition process and/or have not yet been  
3 through an entire full life cycle so that we could see  
4 the whole process work from beginning to end and say  
5 with certainty not only does it look like it's well  
6 formed on paper, but we've seen it work in operation and  
7 it's good. So many of the unables in the change  
8 management tests come from the fact that we just haven't  
9 been able to see the thing work all the way through, or  
10 it's just not quite soup yet in a couple of areas.

11           Now there are actually two parts to change  
12 management. There's a systems change management  
13 process, and then there's a product and process change  
14 management process. The systems change management  
15 process has fewer unables in it than the process and  
16 procedures change management process. So if you go back  
17 and look at this record in a little more detail, I think  
18 you will see our comments which are summarized on I  
19 think it's page 10. Yeah, starting on page 10 of the  
20 handout, what you can see as you just sort of look at  
21 the italicized things as you go down through there,  
22 there is some closed inconclusives, not fully  
23 implemented, and so on through there or, you know, no  
24 events were observed, that sort of thing. So change  
25 management has made great strides. Qwest has -- Qwest

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1 -- all the parties, not just Qwest, CLECs as well,  
2 regulators as well, put a lot of energy into trying to  
3 come up with a revised change management process that  
4 will meet the industry needs.

5           And the timing of the maturation of that  
6 process and the timing of the end of the test just  
7 didn't coincide very well. Account establishment and  
8 management review is sort of the whole process that  
9 CLECs use to get established as a CLEC and build a  
10 relationship with their account team and so on. Most of  
11 the criteria were satisfied there except for some  
12 changes made very late in the process which we just  
13 weren't able to observe. The CLEC forecasting and CLEC  
14 training areas, all of those evaluation criteria were  
15 met there. The OSS interface development review is  
16 another important area that gets a lot of attention  
17 because it's a companion area in many ways to the change  
18 management test. 24.6 looks at all of the environment  
19 and facilities and so on that CLECs have to either get  
20 certified initially to do electronic monitoring of one  
21 form or another or as that interface morphs to go in and  
22 test new releases and so on. And there are two not  
23 satisfieds in that area. Both of those are on page 6,  
24 24.6, 1-8, 24.6, 2-9.

25           The stand alone test environment, S-A-T-E or

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1 sometimes referred to as SATE is the environment for the  
2 ordering interface that is set up as one of the ways in  
3 which CLECs can test with Qwest. There's also the  
4 ability called interrupt to test more actively in the  
5 production environment. And there were certain things  
6 about the SATE environment that we felt fell short of  
7 the sort of textbook definition of what you would expect  
8 in a stand alone test environment, that it's isolated  
9 from production, that it's a mirror image of production,  
10 that it works and behaves exactly like production would  
11 behave. While there's a lot of things that you can do  
12 in SATE, there's some things that you can't and some  
13 things -- some ways in which it doesn't behave exactly  
14 like the production environment. So those are  
15 documented in the exceptions 3077 and 3095, and in 2-9,  
16 this is the MEDIACC EB-TA, which is an electronic  
17 monitoring, the ability to have a trouble reporting  
18 system inside the OSSs of the CLEC report trouble  
19 reports and check on the status of trouble reports in  
20 the OSS trouble management systems that are at Qwest, so  
21 it's computers to computers talking. And there is not a  
22 full blown development test environment for that type of  
23 thing. Not too many CLECs are currently using that  
24 interface, but our findings in that area are documented  
25 in exception 3109.

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1                   The wholesale systems help desk is a help  
2 desk that provides support to CLECs as they're trying to  
3 do their interconnection activities on the technical  
4 side of things. The interconnect service center support  
5 review was the review of the help desk that help CLECs  
6 answer questions about how to fill out orders, how to  
7 follow up on an order, and to some extent the manual  
8 order processing of orders that either are submitted  
9 electronically and then fall out or are submitted  
10 manually. The 2410 is the billing help desk for people  
11 that have questions about billing and so on.

12                   So that's a not real brief but somewhat brief  
13 for the size of the report summary of what we found as  
14 we went through it, how to think about the results,  
15 maybe some areas that you might want to take a good  
16 close look at to make sure you understand the record on  
17 it. And if we tested something and it works, that's  
18 great, everybody is happy. And if it doesn't, then the  
19 question is what does that mean. And I think the answer  
20 to what does that mean is very context sensitive. What  
21 might be a big deal to one CLEC is not to another. What  
22 might be important in one state might not be important  
23 in another. And that's why we are very much just  
24 reporters of fact. We did what we did, we saw what we  
25 saw, we reported what we saw. What it means is the

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1 solemn and light job that you guys have in front of you,  
2 and I'm glad it's you, not me.

3 JUDGE RENDAHL: Thank you. I think this is  
4 an appropriate time to take our official afternoon  
5 break, so we will be off the record until 3:25, thank  
6 you.

7 (Recess taken.)

8 JUDGE RENDAHL: Before we broke this  
9 afternoon for the afternoon break, Mr. Weeks had just  
10 finished KPMG's presentation, and according to our  
11 agenda, Qwest, Mr. Crain, you have some  
12 cross-examination for Mr. Weeks and Mr. Dellatorre; is  
13 that correct?

14 MR. CRAIN: Yes.

15 JUDGE RENDAHL: Please go ahead.

16

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

18 BY MR. CRAIN:

19 Q. I was tempted to go through all the or lots  
20 of the things that we did pass and were satisfied, but  
21 Lynn convinced me not to take the time doing that. So I  
22 will go to, if I could ask you, Mr. Weeks, to turn to  
23 page 5 of Exhibit 1700, which is the list of the not  
24 satisfiees during the test. The first two criteria,  
25 12-9-4 and 12-9-5, relate to jeopardy notices and are



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1 the result of an inconclusive determination on the dual  
2 test. And I just wanted to clarify one thing. I think  
3 you stated that it was agreed that the dual test would  
4 be used for analysis of parity measures, and isn't it  
5 correct that actually Qwest didn't agree to that, but  
6 that was one of the impasse issues that was presented to  
7 the steering committee, and the steering committee ruled  
8 against Qwest and decided to use the dual test?

9 A. (Mr. Weeks.) Yes, the agreement was less  
10 than unanimous.

11 Q. Very well put. Can you explain the  
12 difference between the dual test and the test that was  
13 used in other tests you had done, for example in New  
14 York?

15 A. (Mr. Weeks.) I am not a statistician, so I  
16 won't pretend to give a statistical answer. As a  
17 practical matter, in most of the other testing, OSS  
18 testing that has been done, we would set up the  
19 evaluation criteria with a single hypothesis that would  
20 test that there was no difference between retail and  
21 wholesale, and then we would conduct that test and get  
22 the results. And as long as the values that we measured  
23 for the wholesale operation as delivered to the pseudo  
24 CLEC was at parity with the level of service delivered  
25 as reported for the retail operations, then in those

8030

1 tests and in those criteria we would give a satisfied.  
2 We did not have the second hypothesis which we tested  
3 here in the dual test was that, in fact, there was a  
4 difference and we -- so we didn't test that second  
5 hypothesis in the other jurisdictions.

6 Q. Referring to these particular criteria on  
7 12-9-4 and 12-9-5, on the issues of jeopardy notices as  
8 a -- and these particular not satisfied, we had a  
9 hearing in Nebraska earlier this week where you  
10 testified that you wouldn't get I believe the word you  
11 used is fussy about the fact that -- about the jeopardy  
12 notices issues. Can you explain to the Commission what  
13 you meant by that?

14 A. (Mr. Weeks.) Well, as I tried to indicate in  
15 my previous remarks today, jeopardy notices are sort of  
16 a two edged sword for both the ILEC and the CLEC. Qwest  
17 or any ILEC sets an expectation that once they deliver  
18 an FOC to a CLEC that the date that's communicated back  
19 on that FOC that what was ordered by the CLEC will be  
20 done on that date or before that date. And that if  
21 they, if Qwest or the ILEC can not meet that commitment  
22 or that expectation that was set, that they would notify  
23 on a timely basis the CLEC so that the CLEC can inform  
24 the end customer that there has or may be a delay in  
25 what's going on.

8031

1                   And all of that sounds good, that's kind of  
2 the way you would want business to work. The situation  
3 that we often find ourselves in, well, there's really  
4 two situations that are common. There are many more  
5 that can occur but two that are very common. One is  
6 that in attempting to satisfy the requirements of the  
7 CLEC's order, Qwest would discover that it can not do it  
8 because it doesn't have the facilities, it doesn't have  
9 the wherewithal, there's not the electronic circuitry  
10 and so on in place to fulfill the order on a timely  
11 basis, and the CLEC and the ILEC need to engage in a  
12 dialogue, in a conversation of some sort, in order to  
13 resolve the issue to their mutual satisfaction. So in  
14 that case, it's still fairly clear that a jeopardy  
15 notice is meaningful, and whether an actual jeopardy  
16 notice is given or whether the ILEC just picks up the  
17 phone, as they often do, and calls the contact that's  
18 listed on the order and talks to the CLEC, that's the  
19 functional equivalent of a mechanical notification. The  
20 CLEC is well aware that there's a problem with the order  
21 and that the customer's needs may not be met. So in  
22 those cases, I think whether there is or isn't a  
23 jeopardy notice is less important. What is very  
24 important is that the CLEC is aware of the status of the  
25 order.

8032

1                   The second case that often happens is the  
2 case of where because of the ebb and flow of the normal  
3 course of business, the ILEC, in this case Qwest, isn't  
4 always certain whether it's going to be able to do on  
5 any given day all of the work it had scheduled for that  
6 day. Some appointments may take longer than had  
7 originally planned, some appointments may take less time  
8 than was originally planned. It's not unusual to try to  
9 show up for an appointment and the customer is not even  
10 there and you can't do anything and you have to leave.  
11 So there is a lot of ebb and flow in the normal course  
12 of business in trying to do provisioning, so it's  
13 extremely difficult for the ILEC to understand ahead of  
14 time and be extremely precise with respect to how much  
15 work it can actually accomplish on any given day. So if  
16 it's that sort of situation where an order just wasn't  
17 gotten to today on a timely basis, it's very unlikely  
18 that the ILEC would know that with sufficient time in  
19 advance to notify the CLEC and for the CLEC to be able  
20 to notify their customer, especially if you're relying  
21 on electronic notifications, jeopardy notices and the  
22 like.

23                   So all of the CLECs and all of the ILECs are  
24 kind of in this catch 22, because if, in fact, the work  
25 can be done today and had a jeopardy notice been sent

8033

1 out suggesting that the work isn't going to get done  
2 today, then you've gotten everybody all upset for no  
3 real good reason. The opposite happens and you don't  
4 meet your commitment, then people do get upset, and they  
5 get surprised, and they don't like to get surprised, and  
6 that's I think the whole idea behind the jeopardy  
7 notices.

8           So I think the issue of whether jeopardy  
9 notices get generated or not and whether or not those  
10 are jeopardy -- jeopardy notices are generated on a  
11 timely basis or not is a really complicated issue about  
12 this, and I think my comments about this the other day  
13 were that if you never got a single jeopardy notice,  
14 that would be an extremely good thing probably, that or  
15 there's very conservative scheduling going on.

16       A.     (Mr. Dellatorre.) If you never needed one.

17       A.     (Mr. Weeks.) It is the case where, the first  
18 case that I talked about, where there's a problem with  
19 the order and the CLEC needs to be communicated with I  
20 think are the cases where it's most important to get  
21 some early warning that things aren't going to happen.  
22 The sooner the ILEC knows that and communicates that to  
23 the CLEC, I think the better off everybody is for the  
24 whole transaction.

25       A.     (Mr. Dellatorre.) One additional

8034

1 consideration or extenuating circumstance in the receipt  
2 and submission of jeopardies is the interval. If it's a  
3 zero day interval or a one day interval, that is an  
4 additional circumstance to consider in the timely  
5 submission of jeopardies by Qwest. If the order comes  
6 in and is supposed to be provisioned in a much shorter  
7 time period, less than a day or a day, then the  
8 opportunity to send a jeopardy back and the usefulness  
9 of that jeopardy is certainly less than if there is a  
10 three, four, five day interval where there's time to  
11 understand if the staff is there, if the facility is  
12 there, if the order is likely to be provisioned on time.

13 Q. And do you have your report with you?

14 A. (Mr. Weeks.) Yes.

15 Q. Can you turn to what I have as page 91. It's  
16 the jeopardy notification section starting with section  
17 12-9.1.

18 A. (Mr. Weeks.) I have that.

19 Q. If you look at section 12.9.3, this is the  
20 evaluation criteria for whether or not Qwest provides  
21 jeopardy notices in advance of the due date for  
22 unbundled loop products.

23 JUDGE RENDAHL: Mr. Crain, I'm going to stop  
24 you. You're at page 91 of the report?

25 MR. CRAIN: Yes, it's actually page 92.

8035

1                   JUDGE RENDAHL: Okay, and it's a chart that  
2 we're looking at?

3                   MR. CRAIN: Yes.

4                   JUDGE RENDAHL: Okay, thank you.

5                   MR. WEEKS: And it's evaluation criteria  
6 12.9.2.

7                   MR. CRAIN: 12.9.3 actually.

8                   MR. WEEKS: Okay.

9                   JUDGE RENDAHL: And this is Exhibit 1697 for  
10 the record.

11                   MR. CRAIN: Yeah.

12                   JUDGE RENDAHL: Okay, please go ahead.

13 BY MR. CRAIN:

14           Q.       For loops, you actually did have enough  
15 jeopardy notices and misses to come to a statistically  
16 significant conclusion; isn't that correct?

17           A.       (Mr. Weeks.) Yes, I believe the report  
18 reflects that there were 25 in the eastern region, 12 in  
19 the central, and 12 in the western.

20           Q.       And for let's just talk about the western  
21 region here because it's where Washington is, for that,  
22 you found that this category was satisfied and we did  
23 provide jeopardy notices, and the difference in delivery  
24 before the due date was 6.3 days for the pseudo CLEC  
25 versus 3.6 days for retail; isn't that correct?

8036

1           A.     (Mr. Weeks.) That is what the report says,  
2     yes.

3           Q.     And once again, criteria on the next page,  
4     12-9.6 for timely jeopardy notices for unbundled loop  
5     products, that also was satisfied for the western  
6     region; isn't that correct?

7           A.     (Mr. Weeks.) The overall evaluation criteria  
8     was satisfied in the western region. There were 12 in  
9     advance and the same -- basically it was the same as  
10    between wholesale and retail.

11          Q.     Moving on then back to Exhibit 1700, page 5,  
12    we will move from the jeopardy notices issues to the  
13    provisioning evaluation. And the first two criteria for  
14    provisioning that were not satisfied were 14-1-10 and  
15    14-1-14, which relate to dark fiber and EELs. And first  
16    on issue 14-1-14, I would ask you to turn to page what I  
17    have as page 191 and 192 of Exhibit 1697, the final  
18    report. The EEL loop provisioning chart, the criteria  
19    14-1-14, which is Qwest provisions EEL circuits by  
20    adhering to documented methods and procedure tests. If  
21    you look at the last paragraph.

22          A.     (Mr. Weeks.) Getting there, hold on a  
23    second.

24          Q.     Sure.

25                 JUDGE RENDAHL: Can you repeat the page in



8037

1 1697, please.

2 MR. CRAIN: Sure, it is pages 191 and 192.

3 JUDGE RENDAHL: Thank you.

4 A. (Mr. Weeks.) Sometimes graphite based  
5 technology is better. It's just taking it a while to  
6 page through this large document. Go ahead and ask your  
7 question, and then I will see if I can answer it without  
8 looking.

9 BY MR. CRAIN:

10 Q. During -- in that paragraph, it states KPMG  
11 Consulting also formally identified, and I guess to  
12 clarify, this comes after a description of exception  
13 3104 and an explanation of how 3104 was closed. It then  
14 moves on to what looks like a different observation or  
15 exception, and it says, states KPMG Consulting also  
16 formally identified inconsistencies that exist in  
17 Qwest's enhanced extended loop, EEL, DS1 provisioning  
18 documentation. These issues were subsequently closed  
19 unresolved. I believe, and correct me if I'm wrong,  
20 that this related to observation 3054 on Qwest's EEL  
21 documentation.

22 JUDGE RENDAHL: Mr. Crain, which page are you  
23 reading from?

24 MR. CRAIN: 192.

25 JUDGE RENDAHL: And which issue?

8038

1 MR. CRAIN: At the top, 14-1-14.

2 CHAIRWOMAN SHOWALTER: We're on different  
3 pages.

4 MR. CRAIN: Oh, 187 and 188 it may have  
5 printed.

6 MR. DELLATORRE: Those are the pages that I  
7 see also, 187 and 188.

8 BY MR. CRAIN:

9 Q. My question is, this appears to relate to  
10 exception 3054, which at the time the draft report was  
11 issued was closed unresolved. Subsequently before the  
12 final final was issued, it was closed resolved, and I  
13 was wondering if this paragraph just hadn't been updated  
14 to reflect that?

15 A. (Mr. Weeks.) So you're suggesting the last  
16 paragraph?

17 Q. Yes.

18 A. (Mr. Weeks.) (Reading.)  
19 Formally identified inconsistencies in  
20 existing Qwest enhanced extended loop  
21 DS1 provisioning documentation. These  
22 issues were subsequently closed  
23 unresolved.

24 You're suggesting that that is an error, that  
25 it should say closed resolved, because that's in

8039

1 reference to 3054?

2 A. (Mr. Dellatorre.) Observation.

3 A. (Mr. Weeks.) Or observation 3054?

4 Q. Yes.

5 A. (Mr. Weeks.) Sounds correct.

6 Q. Okay. On these observations, I mean these  
7 two criteria, 14-1-10 and 14-1-14, you explain that  
8 changes had been made, and processes, et cetera, had  
9 been changed by Qwest, and then during retesting you  
10 couldn't get enough volume to reach a conclusive result.  
11 Can you explain some of the efforts KPMG went through to  
12 get enough volume?

13 A. (Mr. Weeks.) Yes, we had even at the time of  
14 the development of the master test plan a lot of  
15 discussion about the fact that there were certain  
16 products in this test for which we would not be able to  
17 submit transactions and make our record, make our  
18 evaluations based upon the results and the activities of  
19 the pseudo CLEC. We would have to go into the CLEC  
20 community into what we call commercial observations and  
21 to look for real orders that were taking place. And  
22 what we asked in many cases, and this is an example of  
23 one, we made broadcast type appeals to the CLEC  
24 community through the TAG and also through direct phone  
25 calls in some cases between MTG and others attempting to

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1 get participants or folks from the CLEC community to  
2 assist us in this.

3           And then we also even asked Qwest to produce  
4 for us reports on a weekly basis that described their  
5 understanding of the types of orders that they had  
6 received in this area that they were going to be  
7 provisioning in the future so that we could then even  
8 though people hadn't volunteered, stepped forward with  
9 that information. We could use the fact that Qwest knew  
10 about those orders because they had to provision them,  
11 and we could go out and try to get the cooperation of  
12 the CLECs that were involved in those orders to help us  
13 in allowing us to observe those real commercial orders  
14 taking place.

15           So there was a flurry of activity in a couple  
16 of these areas where we made I think pretty reasonable  
17 attempts to get as much assistance as possible and just  
18 fell short for lack of real commercial volume.

19       Q.     And when you say fell short, isn't it correct  
20 you were able to only observe two EEL circuits being  
21 provisioned and ten dark fiber circuits?

22       A.     (Mr. Weeks.) I would have to look those  
23 numbers up in the report. If you have a specific  
24 reference, I will confirm it.

25       Q.     Sure, the EEL circuit number is in 14-1-14,

8041

1 which is on page what is it, 187?

2 MS. TRIBBY: 187.

3 Q. 187 of the final report.

4 A. (Mr. Weeks.) That is correct, I confirm  
5 that.

6 Q. And then two pages back or one page back at  
7 section 14-1-10, the number of dark fiber circuits is  
8 listed as 10 in that section.

9 A. (Mr. Weeks.) That was during the retest.  
10 During the initial test, we saw 23 unbundled dark fiber  
11 circuits, and then we issued exception 3010. And during  
12 retest, we saw 10 unbundled dark fiber circuits.

13 Q. And for these two exceptions, the ones that  
14 relate to these two criteria, these were not closed  
15 unresolved by Qwest, that was done by agreement of the  
16 TAG; isn't that correct?

17 A. (Mr. Weeks.) That is a correct statement.

18 Q. Moving on then, on page 5 of Exhibit 1700,  
19 criteria 14-1-34 relates to OP-4-C for business POTS,  
20 and I would ask you to turn then in the final report to  
21 what I have as page 201, but it's probably --

22 A. (Mr. Weeks.) 196, does that conform to --

23 JUDGE RENDAHL: Page 196 is what I see on the  
24 Bench.

25 Q. Page 196, which is the criteria for 14-1-34,

8042

1 this was not satisfied for the eastern region of Qwest's  
2 14 state region but was actually satisfied for the  
3 western region; isn't that correct?

4 A. (Mr. Weeks.) Let me look at it. Yes, the  
5 original test failed to meet it in both eastern and  
6 western. We did exception 3086. And on retesting, the  
7 western region was passed, and the eastern region  
8 continued to fail.

9 Q. Even though we -- well, I will move on from  
10 that then, thanks.

11 Moving on then to exception, not exception,  
12 but criteria 14-1-36, which should be on the next page,  
13 which would be page 197, I believe.

14 JUDGE RENDAHL: It's actually 198.

15 Q. 198. In this, in the western region Qwest  
16 took an average of, in first tests, in the first round  
17 of testing, the difference in the average interval was  
18 2.9 days for the pseudo CLEC versus 2.2 days for retail;  
19 isn't that correct?

20 A. (Mr. Weeks.) That is correct for the western  
21 original test, yes.

22 Q. If you turn back then two more pages to  
23 criteria 14-1-33, which is Qwest meets the performance  
24 bench mark for PID OP-3-C, installation commitments met  
25 for UNE-P services.

8043

1 A. (Mr. Weeks.) Yes.

2 Q. What was the provisioning rate for Qwest or  
3 how -- what percentage of pseudo CLEC orders did Qwest  
4 meet in the first round of testing?

5 A. (Mr. Weeks.) Overall or just in the western  
6 region?

7 Q. In the western region.

8 A. (Mr. Weeks.) In the western region, 100% of  
9 273 orders met the -- were on the committed due date,  
10 and retail for that same period for the western region  
11 was 97.6%.

12 Q. So even though there was some difference in  
13 the average interval on these orders, Qwest did  
14 provision 100% of them by the due date for the pseudo  
15 CLECs?

16 A. (Mr. Weeks.) On the committed due date,  
17 that's correct.

18 Q. Thank you.

19 JUDGE RENDAHL: Mr. Crain, I'm just going to  
20 ask you, we had discussed in the pre-hearing conference  
21 that if you didn't use your time for a prior witness,  
22 that you had allocated an hour for all of the vendors,  
23 so I'm assuming you're continuing to use time you didn't  
24 use for Mr. Center; is that correct?

25 MR. CRAIN: That is correct.

8044

1 JUDGE RENDAHL: Okay.

2 MR. CRAIN: And I probably will possibly use  
3 some that I would be using for HP, because I probably  
4 don't have many questions for them either.

5 JUDGE RENDAHL: Okay.

6 BY MR. CRAIN:

7 Q. Moving on then on the not satisfieds to page  
8 6 of Exhibit 1700 for 16-3-5, this was a missed criteria  
9 that came out of the capacity test for the CEMR  
10 interface, which is the M&R interface; isn't that  
11 correct?

12 A. (Mr. Weeks.) One of the M&R interfaces, yes.

13 Q. How many -- there were three stages of that  
14 capacity test, the normal test, the stress test, and  
15 the, no, normal, peak, and stress; isn't that correct?

16 A. (Mr. Weeks.) That's correct.

17 Q. And how many criteria did -- were set for  
18 Qwest to meet in each of those tests?

19 A. (Mr. Weeks.) I would have to count them; I  
20 don't know.

21 JUDGE RENDAHL: Mr. Dellatorre, if you have  
22 comments, you need to state them into the microphone.

23 A. (Mr. Dellatorre.) I believe we had 13  
24 individual bench marks. It may have been 14.

25 Q. I believe it's 13.



8045

1 MR. CRAIN: That's me testifying, I guess.

2 JUDGE RENDAHL: Happens a lot around here.

3 MR. CRAIN: I was going to say, in this case  
4 that's nothing new.

5 BY MR. CRAIN:

6 Q. Qwest met all 13 in the first round of  
7 testing the normal day testing; isn't that correct?

8 A. (Mr. Weeks.) That's correct.

9 Q. And met 12 out of 13 for the peak day; isn't  
10 that correct?

11 A. (Mr. Weeks.) That's correct.

12 Q. And then for the stress test, no bench marks  
13 were actually set, they were diagnostic?

14 A. (Mr. Weeks.) That's correct.

15 Q. But Qwest performed at the same level for the  
16 stress test where it would have met 12 of those 13 bench  
17 marks; isn't that correct?

18 A. (Mr. Weeks.) Subject to check, I believe  
19 that's correct. That's my recollection.

20 Q. Okay, then we'll move on. Back to Exhibit  
21 1700 on page 6, the next criteria is criteria 18-6-1,  
22 which is closeout codes for M&R repair. If I were to  
23 ask you to turn to section 18.8-1-9 of the final report.

24 A. (Mr. Weeks.) 18, I'm sorry, could you say  
25 that reference again?

8046

1 Q. It's on what I have is page 405, so I bet  
2 it's around page 400 for you. It's 18.8-1-9.

3 CHAIRWOMAN SHOWALTER: 399.

4 MR. CRAIN: Thank you.

5 A. (Mr. Weeks.) 18.8-1-9?

6 Q. Yes, and is this the --

7 A. (Mr. Weeks.) I'm there.

8 Q. -- procedural analysis that you did for  
9 Qwest's coding of trouble tickets?

10 A. (Mr. Weeks.) The criteria says M&R trouble  
11 ticket coding procedures are repeatable and consistent  
12 between wholesale and retail. This was a comparison of  
13 retail to wholesale methods and procedures and the  
14 extent to which those methods and procedures were  
15 repeatable and consistent.

16 Q. And that criteria was satisfied?

17 A. (Mr. Weeks.) That's correct.

18 Q. And does the final paragraph of that section  
19 state that KPMG Consulting observed Qwest's retail and  
20 wholesale work center personnel code trouble tickets,  
21 these activities were accurately and consistently  
22 practiced as defined in the documents referenced above?

23 A. (Mr. Weeks.) For those closeouts that we saw  
24 in the center as opposed to the ones done by the field  
25 test, that's correct.

8047

1 Q. So is this a difference between -- okay,  
2 thank you.

3 Moving on then to criteria 18-7-1 of the not  
4 satisfied list on page 6 of Exhibit 1700, I guess the  
5 only question I would ask you about this is you stated  
6 that Qwest and KPMG had a difference of opinion about  
7 whether or not certain things were accurately or I  
8 suppose accurately repaired. Wasn't there also a  
9 difference between the two companies about what criteria  
10 ought to be used; Qwest asserted that it should have  
11 been a retail parity standard pursuant to MR-7, and KPMG  
12 used instead a 95% bench mark?

13 A. (Mr. Weeks.) Yeah, let me explain a little  
14 bit about why we had this disagreement, I don't know if  
15 it's a disagreement, that may be too strong a word, but  
16 difference of opinion. What we were attempting to do  
17 was introduce repairs, or excuse me, introduce problems  
18 into circuits and determine whether or not Qwest could  
19 fix those problems accurately and well and report what  
20 they did accurately and well. Our activity there that  
21 we were trying to measure and monitor was sort of the, I  
22 hesitate to use the word quality, but the effectiveness  
23 of Qwest's maintenance and repair activities in a  
24 controlled environment, in a controlled situation where  
25 we knew what the problem was, we knew what the solution

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1 should be, and we knew how that should be fixed, how it  
2 should be reported. So we were trying to do a  
3 controlled test that was part of where the variables  
4 were under our control.

5           The performance measure that you referred to  
6 looks at repeat troubles within 30 days, and while that  
7 is a reasonably straightforward measurement to make for  
8 PID and performance reporting purposes because it's  
9 based upon information logged and recorded in the Qwest  
10 systems, and certainly if Qwest weren't regularly fixing  
11 its problems well and accurately the first time,  
12 ultimately that problem would show itself in performance  
13 problems with that measurement. We weren't trying to  
14 make an assessment of repeat troubles in 30 days. We  
15 were trying and we had the unique ability to collect  
16 data that you could never collect for performance  
17 purposes, which says what was the real problem, and what  
18 was the real fix, and did it get coded right. So we  
19 were evaluating something that in our professional  
20 opinion was a little bit different than what the PID was  
21 attempting to measure, because we didn't try to measure  
22 repeat troubles within 30 days as an evaluation  
23 criteria, so that's the fundamental difference that we  
24 had of opinion.

25           Q.     And I apologize, I am now trying to find that

8049

1 criteria. I've got it. Turning to where I have is page  
2 360 of the final report, so I bets it's around 355,  
3 criteria 18-7-1.

4 A. (Mr. Weeks.) Yes.

5 Q. Although Qwest didn't meet your 95% bench  
6 mark, even with the differences we had with whether or  
7 not certain things weren't accurately repaired, even  
8 under KPMG's analysis, Qwest hit a 92%?

9 A. (Mr. Weeks.) That's correct, 259 troubles  
10 were submitted, 239 were successfully repaired by the  
11 definition I gave earlier.

12 JUDGE RENDAHL: And is this on page 363 of  
13 the report?

14 MR. WEEKS: This is on page 355 I believe.  
15 Yes, 355, it's evaluation criteria 18-7-1.

16 JUDGE RENDAHL: Thank you.

17 BY MR. CRAIN:

18 Q. Moving back then to Exhibit 1700, the last  
19 two exceptions or not satisfied criteria to discuss are  
20 criteria 24-6, actually 24.6-1-8 and 24.6-2-9. The  
21 first of those criterion, 24.6-1-8, relates to Qwest's  
22 stand alone testing environment for EDI and, well, for  
23 billing to EDI preorder and order; isn't that correct?

24 A. (Mr. Weeks.) It would be EDI for preorder  
25 and order, that's correct.

8050

1 Q. And KPMG had two fundamental issues with that  
2 interface. The first, well, we had numerous issues to  
3 begin with after repairs and verifications. There are  
4 two essential issues left. One is what is called real  
5 world testing by KPMG, and I believe that relates to  
6 implementation of flow through for the test environment  
7 and also the number of products supported by that  
8 environment; is that correct?

9 A. (Mr. Weeks.) I think that's a fair  
10 characterization. Fundamentally the difference between  
11 -- in the first case, in production, the orders that are  
12 designed to flow through do flow through to the service  
13 order processor without human intervention. Whereas in  
14 SATE in the test environment, flow through orders  
15 actually fall out and are processed by human beings, and  
16 the responses to those get sent back to the CLEC in this  
17 test environment. They have been manufactured. The  
18 FOC, for example, has been manufactured by a human being  
19 instead of by a computer as it's done in the production  
20 environment, so that's the first issue. And then the  
21 second issue is sort of the breadth of coverage of the  
22 different types of products and services that can be  
23 tested in SATE versus what can be tested in or what you  
24 will actually have available to you in production.

25 Q. And for those products that are not available

8051

1 in SATE, they are available in the interoperability  
2 environment?

3 A. (Mr. Weeks.) That's correct. You can,  
4 because the interoperability environment is  
5 fundamentally just testing and production in a  
6 controlled fashion, anything that's available to you, my  
7 understanding is anything that's actually in the  
8 production system is testable through interop.

9 Q. Moving on then to exception 24.6-2-9, this  
10 relates to the EB-TA interface.

11 A. (Mr. Weeks.) That's correct.

12 Q. I believe you testified that it's a --

13 JUDGE RENDAHL: Can you state what EB-TA is  
14 just to refresh our memory.

15 MR. CRAIN: Sure, it is electronic bonding  
16 trouble administration. It is a computer to computer  
17 interface that is used by CLECs, more often used by  
18 IXCs, long distance companies, to submit trouble  
19 reports. It is different from the other electronic  
20 interface for repair, which is called CEMR.

21 JUDGE RENDAHL: C-E-M-R.

22 MR. CRAIN: C-E-M-R, and I don't know what  
23 that stands for actually, and that's the GUI interface,  
24 the graphical user interface, for repair.

25 JUDGE RENDAHL: Thank you.

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1 MR. CRAIN: Thanks.

2 BY MR. CRAIN:

3 Q. I believe you stated that this was an  
4 interface that's little used by CLECs?

5 A. (Mr. Weeks.) That's our understanding.

6 MR. CRAIN: Okay, I think that's all I have  
7 on the not satisfied criteria. Going through the unable  
8 to determine, I guess those are all the questions I have  
9 at this point.

10 JUDGE RENDAHL: Thank you, Mr. Crain.

11 MR. CRAIN: Thank you.

12 JUDGE RENDAHL: Ms. Tribby.

13 MS. TRIBBY: Thank you, Your Honor.

14

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

16 BY MS. TRIBBY:

17 Q. Good afternoon, Mr. Weeks.

18 A. (Mr. Weeks.) Good afternoon. Joe's here  
19 too.

20 Q. And Mr. Dellatorre.

21 Do you know what percentage of test  
22 transactions that were run were done for the state of  
23 Washington?

24 A. (Mr. Weeks.) No.

25 Q. Is that in your report anywhere?



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1 A. (Mr. Weeks.) No.

2 Q. Do you recall the regional differences  
3 assessment that you performed early on in this process?

4 A. (Mr. Weeks.) Yes.

5 Q. Do you recall that there was some  
6 disagreement about whether that should be performed and  
7 the scope of how that should be performed among the  
8 parties to the test?

9 A. (Mr. Weeks.) I don't have a specific  
10 recollection of what the differences were, but I recall  
11 that in trying to get an agreement in the TAG as to how  
12 that would be done, there was a lot of discussion about  
13 it. I couldn't tell you any of the details about what  
14 the various positions were.

15 Q. Based on what you did early on for purposes  
16 of that regional differences assessment, your  
17 determination as I recall it was that Qwest's sub  
18 regions and the systems that served those sub regions  
19 were relatively the same and could be viewed the same  
20 for purposes of the test. Is that accurate?

21 A. (Mr. Weeks.) The work that we did suggested  
22 to us that there were fundamentally three instances of  
23 service order process, interfaces, service order  
24 processors, and billing systems that all cooperated on  
25 what I call a region basis, eastern, western, central,

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1 but that within a region, all the states served by that  
2 region, say the western region, fundamentally the CLECs  
3 doing business in those states used a single image of  
4 the system. So if Oregon and Washington are in the same  
5 region, the service order processor for that western  
6 region is the same for both Oregon and Washington.

7 Q. Did you find significant differences between  
8 the sub regions in your regional assessment?

9 A. (Mr. Weeks.) By sub region, you mean?

10 Q. Eastern, western, and central.

11 A. (Mr. Weeks.) I don't think in the -- in that  
12 particular report, what we found were that the features  
13 and functions that the systems were designed to deliver  
14 were the same, but that the actual software images were,  
15 in fact, different and not necessarily mirror images of  
16 one another.

17 JUDGE RENDAHL: Before you go ahead, when you  
18 say that particular report, what are you referring to?

19 MR. WEEKS: There is on the Web site, which I  
20 don't know if it's been put in evidence, there was a  
21 requirement from the master test plan or actually  
22 requirement from the TRD that there be a regional  
23 assessment done by KPMG Consulting. And in formation of  
24 the master test plan, as one of the predecessor  
25 activities to building the master test plan, we were

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1 supposed to go in and look at, to the extent that we  
2 could determine that, by looking at documentation and  
3 conducting interviews, we were to determine what  
4 differences existed on a state to state or region to  
5 region basis. That is Exhibit Number 1734 is the output  
6 or the work product of that regional assessment, and  
7 that is the basis for the questions that are being  
8 asked.

9 JUDGE RENDAHL: Thank you.

10 CHAIRWOMAN SHOWALTER: What is the TRD?

11 MR. WEEKS: That's the technical requirements  
12 document that was produced by the ROC TAG. It was a  
13 hybrid document that I would classify as both a request  
14 for proposal and a draft master test plan.

15 JUDGE RENDAHL: And that is Exhibit 1732.

16 MR. WEEKS: 1732, yes, thank you.

17 JUDGE RENDAHL: Thank you, I'm sorry to  
18 derail your questions there.

19 BY MS. TRIBBY:

20 Q. Based on the findings now that you have  
21 concluded the test, and those made by Liberty if you're  
22 aware of those or any of the other vendors, would you  
23 change any of the conclusions that you reached prior to  
24 starting testing about the regional differences for  
25 sameness between the sub regions or between the states?

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1           A.     (Mr. Weeks.) I think I would still maintain  
2     that at a functional level the systems are designed and  
3     intended to operate in the same way, but in their  
4     implementation we did find evidence in a few cases where  
5     there appeared to be differences in the actual  
6     implementation of those and that we -- because of the  
7     nature of the transaction testing because it's black box  
8     testing, we're constrained to putting inputs and getting  
9     outputs, and what we saw is in certain cases there would  
10    be differences in behavior in the results or the  
11    performance from one region to the other, which would  
12    suggest there's subtle differences between the two in  
13    the actual either the programming or the operation of  
14    those systems, but the -- but that the definition of the  
15    interface to the CLEC, the definition of what an order  
16    needs to look like is fundamentally the same from region  
17    to region.

18           Q.     Thank you. On page 4 of your final report in  
19    the second paragraph, there's a statement, the last  
20    sentence in the second paragraph, that says:

21                   All results and conclusions contained  
22                   herein are subject to change based on  
23                   additional work performed by KPMG  
24                   Consulting or additional information  
25                   that is provided to KPMG Consulting.

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1                   Is there additional work going on by KPMG  
2 after the final report?

3           A.     (Mr. Weeks.) No, that's probably a leftover  
4 from the draft final report that just didn't get edited  
5 out in producing the final. We have no other work that  
6 we have been asked to perform in connection with this  
7 test.

8           Q.     And in the second to the last paragraph on  
9 page 4, there's a statement that says:

10                   Certain information and assumptions have  
11                   been provided to KPMG. KPMG has relied  
12                   on this information in its analysis and  
13                   in preparation of the report and has not  
14                   independently verified the accuracy or  
15                   completeness of the information  
16                   provided. Can you tell me what that  
17                   means?

18           A.     (Mr. Weeks.) Yes, I can give you the context  
19 for why that's in there, and I can tell you what as a  
20 practical matter it means. It's a very common thing  
21 when one does any kind of testing or auditing to seek  
22 and get from the subject of the test, or in this case  
23 because we had CLECs participating in a number of our  
24 testing activities, to get information from those  
25 parties and to use that information in the course of our

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1 work. An example of a representation by Qwest might be  
2 something said to us in an interview about the way that  
3 something works. Or in talking with a CLEC, they might  
4 give us a forecast of their future business volumes that  
5 we use to design the size of the test. We didn't go  
6 back in to the CLEC in those cases and try to audit in  
7 any way, shape, or form or prove the accuracy of their  
8 forecast. We just used it and moved forward in the work  
9 that we did.

10 Q. Is there any way for the Commission to know  
11 based on the contents of the report what information  
12 that was provided to you was verified and what  
13 information was not, or should the assumption be that if  
14 it says Qwest told us or someone told us that that was  
15 not verified?

16 A. (Mr. Weeks.) I think the --just the  
17 shorthand to sort of break through that is if we say we  
18 sent or if we say the pseudo CLEC sent 237 transactions,  
19 it sent 237 transactions. We're making an assertion  
20 about something we've seen. When we have conducted  
21 interviews I think we have -- and that that's the basis  
22 for some or part of our opinion, we have identified that  
23 in the comments section of the report. Same thing would  
24 be true if we said we conducted interviews with CLECs  
25 and they represented things to us and that was part of

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1 the basis for what we did. So I think you can look at  
2 the comments section of the report and reasonably easily  
3 determine those things that are statements of fact  
4 versus those things that are representations by other  
5 parties to us. We have tried to label that as carefully  
6 as we can.

7 Q. I have heard you testify on a number of  
8 occasions and I think again today cautioning the  
9 Commission against counting up criteria that are  
10 satisfied versus those that are not satisfied, correct?

11 A. (Mr. Weeks.) That is correct.

12 Q. And yet you do go through and give numbers  
13 for each test about what's satisfied and what wasn't  
14 satisfied, right?

15 A. (Mr. Weeks.) That is correct.

16 Q. Do you have an opinion that you can give the  
17 Commission about which criteria you consider to be most  
18 important or most significant?

19 A. (Mr. Weeks.) No, because that would  
20 presuppose facts not in evidence to me, which would be  
21 what is the competitive landscape here in Washington,  
22 what are the objectives that the Commission has in  
23 trying to exercise its responsibilities as a regulator,  
24 what other parties might be able to bring to the table  
25 in the way of evidentiary matter that we were not privy

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1 to. Deciding which of these are most and least  
2 important and whether the results are good or bad really  
3 requires a context that just is not within the scope of  
4 this test.

5 Q. You have made a number of statements both in  
6 your written materials and when you have testified about  
7 diagnostic PIDs and the fact that KPMG was not asked to  
8 evaluate whether those were satisfied or not satisfied  
9 and that that was different than what you have done in  
10 other tests; is that fair?

11 A. (Mr. Weeks.) That's mostly fair, yes. There  
12 may be one or two examples of whether there have been  
13 one or two diagnostics, but the level of diagnostics  
14 here was -- there are criteria here that were diagnostic  
15 that were clearly not diagnostic in other tests.

16 Q. Are you troubled professionally by being  
17 hindered in this test from giving an opinion about  
18 diagnostic criteria? I should ask, are you troubled by  
19 it, and also is it your opinion that information is  
20 lacking that the Commission might otherwise rely upon in  
21 forming its conclusion?

22 A. (Mr. Weeks.) No, I don't think there's any  
23 information missing. The TAG, the whole master test  
24 plan, what was to be tested, what was not to be tested,  
25 how it was to be measured, all of that was



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1 collaboratively agreed to by the stake holders. Qwest  
2 was at the table, CLECs were at the table, the  
3 regulators were at the table, and those decisions about  
4 what to test and how to measure those things were done  
5 in a very open framework. And certainly there was not  
6 unanimous agreement on everything, but at the end of the  
7 day, the parties agreed ahead of time to participate in  
8 a collaborative process, and that collaborative process  
9 produced a deliverable, and its testers, that was our --  
10 those were our marching orders, and that's what we did.

11           So in those areas where the PIDs are  
12 diagnostic, my intent for making those comments about  
13 make sure you look at the diagnostic measures is just to  
14 ensure that they're not passed over or treated as not --  
15 as trivial or in some way, shape, or form. They're just  
16 as much a part of the test as anything else, and that  
17 there are some important measures, in my opinion they're  
18 important measures, that fall into the diagnostic  
19 category. And that's not to suggest Qwest's performance  
20 was good or bad or anything else. It's just I think  
21 it's -- it was because it was different, because the  
22 level of diagnostic PIDs was so different in this test,  
23 I felt compelled to highlight that to everyone's  
24 attention.

25           Q.     Are there particular categories that were not

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1 diagnostic in other regions that were diagnostic here,  
2 or are you saying simply that you didn't have diagnostic  
3 type measures in other tests?

4 A. (Mr. Weeks.) There may have been one or two  
5 other tests where one or two other measures were  
6 articulated as being diagnostic. I don't think I  
7 participated in those tests personally, but that's what  
8 I have been told. But I think for the most part most of  
9 the performance measures when they have been agreed to  
10 ahead of time in a collaborative fashion have not been  
11 diagnostic.

12 In terms of trying to highlight which of the  
13 diagnostics are more important than others, again, I  
14 would just say that it's very important that all of them  
15 be looked at. And, you know, if one looks at the other  
16 issues raised during the test and then where the  
17 performance may or may not have been as good as everyone  
18 would like it to be, those might be areas where you  
19 might want to go look and see, are there other  
20 diagnostic type measures, and is the company's  
21 performance in those diagnostic measures up to snuff.

22 And again, it's the reason that we have  
23 always put our standards out there, whether it's a PID  
24 standard that's been given to us or a KPMG Consulting  
25 established standards is so that parties are free to

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1 disagree with our standards and therefore free to  
2 disagree with our evaluation result. If we say  
3 something is 95% satisfied as a standard and the company  
4 makes a 94, then, you know, at a stare and compare basis  
5 that's a failure to meet the standard we established.  
6 Others may look at that and say, gee, 94, that's really  
7 pretty good, and that was pretty close, you know, we're  
8 going to say that's good enough. Others may look at it  
9 and say, you know, 95, that's not an acceptable  
10 standard, the standard ought to be 99, not 94. So  
11 that's why we try to put all the facts out there. What  
12 did we measure, what did we actually see, what standard  
13 did we use, and what result did we get so that parties  
14 are free to agree and disagree with everything except  
15 the facts, but the interpretation can be left to the  
16 reader.

17 Q. Would you turn to page 146 of your final  
18 report, please.

19 A. (Mr. Weeks.) Okay.

20 Q. I'm looking at evaluation criterion 12.8-3.

21 A. (Mr. Weeks.) Yes.

22 Q. The criteria says:

23 Performance measures and process

24 improvement practices for manual orders

25 are defined, tracked, reported, reviewed

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1 and applied.

2 Do you see that?

3 A. (Mr. Weeks.) I do.

4 Q. And manual orders, the definition of manual  
5 orders includes the electronic submission of non-flow  
6 through orders, correct?

7 A. (Mr. Weeks.) That's correct.

8 Q. Now KPMG found that this evaluation criterion  
9 was satisfied, correct?

10 A. (Mr. Weeks.) That's correct.

11 Q. You also issued observation 3110, which  
12 discusses human errors in Qwest's manual orders that you  
13 found to be greater than what was acceptable, correct?

14 A. (Mr. Weeks.) I think that's a fair  
15 characterization.

16 Q. Did KPMG consider changing the result of this  
17 evaluation criterion based on the findings in  
18 observation 3110?

19 A. (Mr. Weeks.) No, and the reason for that is  
20 as follows. What 1283 is about is fundamentally what we  
21 call a process style test or a white box test where what  
22 we're looking for is the existence of and the well  
23 formedness of fundamental business processes, management  
24 type controls that are in place. And we found that  
25 those controls that deal with measuring the performance

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1 of this group, which is a control feedback loop, does it  
2 exist to evaluate the people and the efforts and the  
3 performance of that group and some kind of continuous  
4 commitment to process improvement, were those things  
5 there, and those things we did find that were there.

6           What we find in the observation that you're  
7 describing is not a failure of the performance measures  
8 to operate or a failure for a continuous performance  
9 improvement process to exist and to work, but actually a  
10 failure in the execution of the operational process that  
11 the management control feedback loop sits on top of. So  
12 they're unrelated to each other.

13           A.     (Mr. Dellatorre.) And just as an additional  
14 statement of fact, we did, in fact, change criterion  
15 12.8-2 to reflect the manual order processing that was  
16 identified in observation 3110.

17           Q.     Isn't criteria 12.8-3 intended to get at the  
18 application of the processes, not just the existence of  
19 the processes?

20           A.     (Mr. Weeks.) Yeah, let me explain a little  
21 bit more closely what I'm trying to say, and I will use  
22 the sort of manufacturing analogy here. There's an  
23 assembly line that produces widgets. The question is,  
24 did the widgets that come off the end of the assembly  
25 line, are they well formed or not. That's what criteria

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1 1282 is about, and that's why because we found problems  
2 and it created questions in our mind and we wanted to do  
3 retesting and we were not able to do retesting, we  
4 weren't able to come to a final conclusion as to whether  
5 or not the manufacturing process was producing accurate  
6 widgets or not.

7 1283 is about the existence of the management  
8 control and feedback loops that sit on top of the  
9 manufacturing process that look at defect rates per  
10 month or look at continuous improvement programs that  
11 try to find ways to improve the manufacturing process.  
12 So in point of fact, if the performance management and  
13 performance improvement practices that we're describing  
14 in 1283 were working properly, they would detect the  
15 failures that we're describing in 1282 and kick in to  
16 make changes to the underlying manual order processing  
17 process.

18 A. (Mr. Dellatorre.) Over time.

19 A. (Mr. Weeks.) Over time.

20 Q. So to sort of summarize then, there can be an  
21 excessive rate of humor errors in the application of the  
22 processes but still a finding that the processes  
23 themselves are adequate?

24 A. (Mr. Weeks.) No, not that the processes,  
25 that the performance measurement process is. So I will

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1 put it this way, the teacher is in charge of looking at  
2 the student's performance. The student is responsible  
3 for taking the test. The student can flunk every test,  
4 and still the teacher can do a great job of measuring  
5 the student's performance and recording faithfully that  
6 they're failing every test.

7 Q. So it's a recording, this goes to accuracy of  
8 recording rather than accuracy of practice?

9 A. (Mr. Weeks.) It's that there is a mechanism  
10 in place that measures the performance of the  
11 manufacturing process. So if I never counted, ever  
12 counted how many bad orders I had, that would be a bad  
13 thing, and you would fail 1283.

14 A. (Mr. Dellatorre.) It's the difference  
15 between performance monitoring and performance.

16 Q. So if the operation is successful but the  
17 patient dies, that's a similar analogy?

18 A. (Mr. Weeks.) No, that's not a good analogy.  
19 I think that maybe a better analogy in this case would  
20 be the process could be working very well, and if you  
21 never ask the question, is the process working well, you  
22 would still be okay. You could have the opposite case  
23 where the process is working very poorly, and if you  
24 didn't ask the question, is the process working well,  
25 you would be oblivious, and the process would continue

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1 to be bad, because you would never try to fix it,  
2 because you never tried to figure out if it was working  
3 or not.

4           It's kind of like, maybe I will use another  
5 analogy, you have the OSSs that process orders all day  
6 long, you have the metric system, the PID system that's  
7 monitoring the company's performance. So the OSSs, the  
8 pre-ordering, ordering, provisioning activities that I  
9 do all day every day are 1282, and the PID process that  
10 measures and reports the company's process and tries to  
11 fix it if it's broken is what we're talking about in  
12 1283.

13       A.     (Mr. Dellatorre.) And, in fact, performance  
14 measures and process improvement practices can apply to  
15 a wide variety of underlying business processes. And in  
16 this case, it happens to be referring to manual order  
17 processing. But the concept of performance measures and  
18 process improvement practices can apply to any manual  
19 based work flow.

20       Q.     Let me ask this. Are there process  
21 measurements or criteria that you looked at that would  
22 capture the problems that were causing the human errors  
23 that led to observation 3110?

24       A.     (Mr. Weeks.) I think the answer is that  
25 there are -- it is our belief that there are performance



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1 monitoring mechanisms that exist that should detect and  
2 correct manual order problems, and those include not  
3 only Qwest's internal checklists and quality measures  
4 and things that they have in place, but the external  
5 measures that would include PIDs.

6 A. (Mr. Dellatorre.) And, in fact, the shorter  
7 answer to your question I believe is yes.

8 Q. So there was a failure of certain evaluation  
9 criteria that had to do with processes that failed  
10 because of the excessive human errors that you  
11 identified in observation 3110?

12 A. (Mr. Weeks.) No, the errors are the failure  
13 to execute the manual ordering process correctly. Those  
14 are the failures. The control feedback loop that sits  
15 over on the top of that that says how many errors did we  
16 have in manual processing last month is the piece that  
17 we're talking about in 1283.

18 Q. You also issued observation 3086, which is  
19 actually Exhibit 1784 in this case. And that had to do  
20 with excessive human errors and Qwest coming back in  
21 their responses to problems that were found and blaming  
22 the problems on human errors. Do you recall that?

23 A. (Mr. Weeks.) Yes, I do.

24 Q. And your observation that there was excessive  
25 human errors in 3086 was found through transaction

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1 testing; is that correct?

2 A. (Mr. Weeks.) Maybe I could say a little bit  
3 more expansively what happened. We were monitoring the  
4 activities, the ongoing activities of the pseudo CLEC.  
5 The pseudo CLEC was actually executing the transactions.  
6 They were the ones that were submitting the orders,  
7 finding problems or things that they didn't expect,  
8 calling the help desk, and subsequent writing their own  
9 observations and exceptions. We stood back as test  
10 administrators in one of our roles and looked over that  
11 entire landscape, and it appeared to us to be the case  
12 that there were a very large number of cases where the  
13 explanation/resolution of HPC's observations and  
14 exceptions, the explanation being human error and the  
15 sort of solution being some sort of retraining or  
16 something like that, there seemed to be a pattern there  
17 which caused us to write 3086, which is kind of an  
18 omnibus exception, if you will, over the whole issue of  
19 manual order processing and human errors and so on.

20 Q. So is it your testimony that that was  
21 identified through transaction testing plus?

22 A. (Mr. Weeks.) Well, the genesis for 3086 was  
23 the large number of O's and E's in the area of manual  
24 order processing produced by HPC, which was in turn set  
25 off by transaction testing, so it's a second level

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1 effect. We weren't looking -- we weren't monitoring the  
2 transaction processing, we were monitoring the O's and  
3 E's is the point I'm trying to make.

4 Q. And that --

5 A. (Mr. Weeks.) For this purpose.

6 Q. -- occurred during HP's transaction testing?

7 A. (Mr. Weeks.) That's correct.

8 Q. And observation 3086 was ultimately closed by  
9 KPMG based on, as I read the report, document reviews,  
10 interviews with Qwest personnel, and observations at  
11 Qwest centers, including Qwest's promises of additional  
12 training and documentation improvements and system  
13 enhancements, correct?

14 A. (Mr. Weeks.) Yes, because if you look at  
15 3086, the way the problem is written up, it is not a  
16 problem with manual order processing per se, it's a  
17 problem with training of reps in the center. So the way  
18 we figured out whether or not Qwest had addressed its  
19 training problem was by looking at how they had remedied  
20 the training problems. So what we're saying -- what we  
21 have tried to say in 3086 is that the orders in error  
22 were the symptom, not the problem. The symptom appeared  
23 to be that orders were not being handled correctly. The  
24 problem in our inference or our assertion was that there  
25 must be some sort of training problem at Qwest if these

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1 reps continually don't get these orders right over time.

2 Q. In the adequacy study that KPMG did, which is  
3 Exhibit 1699, the manual order entry PID adequacy study,  
4 you make the statement that, this is in the fourth  
5 paragraph on page 1:

6 KPMG Consulting conducted a review of  
7 Qwest's enhanced rep training and became  
8 satisfied that if properly executed the  
9 revised training machine could operate  
10 to reduce the likelihood of rep error.  
11 However, by agreement of the ROC TAG,  
12 the testing performed was not designed  
13 to permit KPMG Consulting to conclude  
14 that the changes and improvements had  
15 been effective in actually reducing the  
16 number of rep errors.

17 Do you recall that?

18 A. (Mr. Weeks.) I do recall that.

19 Q. What agreement of the ROC TAG are you  
20 referring to?

21 A. (Mr. Weeks.) The discussion about whether we  
22 would execute transaction -- a broad sweeping  
23 transaction retest of manual order processing.

24 Q. And it's your opinion that that was discussed  
25 and that the TAG agreed that there would not be a broad

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1 sweeping --

2 A. (Mr. Weeks.) That's in the TAG minutes, and  
3 I don't have them in front of me, but we could find  
4 that. If it wasn't in the TAG, it was in the steering  
5 committee, and I get those two confused over time, so.

6 Q. Was it KPMG's view that because the human  
7 error problem was found in transaction testing that it  
8 should be additional transaction testing that was used  
9 to verify the effectiveness of the improvements that led  
10 to the closure of 3086?

11 A. (Mr. Weeks.) Well, the original problems  
12 with the manual order processing were surfaced through  
13 transaction testing and the O's and E's that HPC wrote  
14 against that. So it seemed logical to us that if you  
15 wanted to build a conclusive record that the retraining  
16 had had its effect, probably the most direct way to do  
17 that would be to reissue a large number of manual orders  
18 and see that those orders were processed with an  
19 acceptable error rate.

20 Q. And, in fact, when you did additional  
21 transaction testing in other contexts, you found that  
22 excessive rates of human errors still existed, which  
23 then led to exception 3120, correct?

24 A. (Mr. Weeks.) No, 3120 was not about that.  
25 There were -- some of the orders executed as part of

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1 3120, which was a PID performance, not a PID  
2 performance, a data integrity retest over certain cut  
3 off dates and times, some of the orders that were  
4 designed we believe to flow through -- that whole test  
5 was designed for orders that would flow through. Some  
6 of the orders, in fact, did not flow through in that  
7 retest, and it is those orders that fell out for manual  
8 handling that got talked about in 3120 and subsequently  
9 got brought up in observations 3109 and 3110.

10 Q. And there were human errors in the manual  
11 processing of those orders that fell out, correct?

12 A. (Mr. Weeks.) With respect to sticking  
13 certain dates on those orders.

14 Q. Mr. Crain talked to you about jeopardy  
15 notices, and he has referred a couple of times to your  
16 testimony previously, which I don't recall, but  
17 apparently occurred where you said you wouldn't get  
18 fussy about jeopardy notices. Do you recall that?

19 A. (Mr. Weeks.) I recall him saying that. I  
20 don't recall saying it in the hearing, but I will trust  
21 his reading of the transcript.

22 Q. Now in discussing that statement with him,  
23 you distinguished between jeopardies that occur -- that  
24 the -- that Qwest knows about early on like where  
25 there's a lack of facilities and jeopardies that may not

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1 occur until the day the order is due. Do you recall  
2 that?

3 A. (Mr. Weeks.) Yes, I do.

4 Q. Did you look at or do you have any  
5 information to indicate what percentage of jeopardies  
6 occur for one or the other of those reasons with Qwest?

7 A. (Mr. Weeks.) No, we didn't examine the  
8 record on that. Fundamentally as part of the  
9 transaction testing, we were attempting to submit  
10 orders, and to the extent that we actually observed  
11 orders during the course of or jeopardies during the  
12 course of the test, we would have evaluated the  
13 company's performance in that dimension. We as outside  
14 independent testers can't cause jeopardies to happen.  
15 There's no way to design a test to make jeopardies  
16 happen inside of Qwest, because we would have to violate  
17 blindness to do that. So you're kind of at the mercy of  
18 the test to determine whether or not you get any  
19 jeopardies back, and if you do, is that a large enough  
20 volume to do anything with and make any conclusions  
21 about. The issue that we would have as outside testers  
22 in trying to look at a record on real jeopardies, it  
23 would be very problematic to go back after the fact and  
24 determine what the real facts were and what was really  
25 going on, and there was no mandate in the MTP to conduct

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1 such an analysis, and we had no reason to do it  
2 ourselves.

3 Q. So you don't know sitting here today that  
4 where there is an order that's in jeopardy at Qwest,  
5 what percentage of the time that's because of a lack of  
6 facilities and what percentage of the time that's  
7 because an installer finds someone not home on the day  
8 of installation; is that correct?

9 A. (Mr. Weeks.) I wouldn't have any way to know  
10 that, no.

11 Q. And you would agree with me, wouldn't you,  
12 that a CLEC's ability to communicate with their customer  
13 or let them know whether a due date is going to be met  
14 or not may make jeopardy notices important, particularly  
15 if Qwest knows about them early on?

16 A. (Mr. Weeks.) I testified to that earlier.

17 Q. You also testified in your discussion with  
18 Mr. Crain that maybe jeopardy notices aren't so  
19 important if an ILEC calls a CLEC instead of notifies  
20 them electronically. Do you recall that?

21 A. (Mr. Weeks.) I would consider that just  
22 another form of notification.

23 Q. Do you know whether that occurs at Qwest?  
24 Did you ever observe Qwest calling a CLEC instead of  
25 notifying them electronically about a jeopardy, or were



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1 you simply speculating about that today?

2 A. (Mr. Dellatorre.) We did observe that  
3 through contacts made to the P-CLEC.

4 Q. That Qwest was calling the P-CLEC?

5 A. (Mr. Dellatorre.) Yes.

6 Q. Instead of notifying them electronically?

7 A. (Mr. Dellatorre.) I don't know if instead  
8 of, but we were aware of calls made by Qwest to the  
9 P-CLEC or, in fact, to us when we served as the direct  
10 point of contact.

11 Q. Did you observe any phone calls being made to  
12 actual CLECs operating in Qwest territory with respect  
13 to jeopardy notifications?

14 A. (Mr. Dellatorre.) I don't believe so.

15 Q. Are you aware of any M&P at Qwest that talks  
16 about calling a CLEC instead of sending them an  
17 electronic jeopardy notification?

18 A. (Mr. Dellatorre.) I am not aware.

19 JUDGE RENDAHL: Can you clarify what an M&P  
20 is for the record.

21 MS. TRIBBY: Sorry, method and procedure.

22 A. (Mr. Dellatorre.) I am not aware of that.

23 A. (Mr. Weeks.) I'm not aware either way. I'm  
24 not aware that there is or is not.

25 BY MS. TRIBBY:

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1 Q. Thank you. You had a discussion with  
2 Mr. Crain about EELs and dark fiber; do you recall that?

3 A. (Mr. Weeks.) Yes.

4 Q. And he asked you whether it, in fact, was the  
5 case that the CLECs agreed that the test on EELs and  
6 dark fiber could be concluded; do you recall that?

7 A. (Mr. Weeks.) I recall the question, yes.

8 Q. Is it your recollection that the TAG didn't  
9 actually approve the quantities for EELs and dark fiber,  
10 but the TAG agreed that you were having -- recognized  
11 that you were having difficulty getting to a certain  
12 quantity and agreed that as of a date certain that that  
13 would be the cut off date for looking for additional  
14 instances?

15 A. (Mr. Dellatorre.) That is correct.

16 A. (Mr. Weeks.) I believe that's fair, yes.

17 A. (Mr. Dellatorre.) That is correct.

18 CHAIRWOMAN SHOWALTER: That's the dual test.

19 A. (Mr. Weeks.) And we actually said the same  
20 thing.

21 Q. You performed a secret deal study; I'm trying  
22 to think of what the name of it is.

23 A. (Mr. Weeks.) That might not be how I would  
24 have characterized it.

25 Q. The CLEC participation, Qwest 271 OSS

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1 evaluation, and I believe that is Exhibit 1717; do you  
2 recall that?

3 A. (Mr. Weeks.) I do.

4 Q. In looking at some questions that you  
5 responded to by WorldCom, and those are Exhibit 1718, I  
6 was surprised to see that where your study indicated  
7 substantial reliance on the three CLECs in question you  
8 actually responded that the data was gathered 100% from  
9 those three CLECs; is that correct?

10 A. (Mr. Weeks.) I would have to look at the  
11 document, but I will subject to check, yes.

12 Q. So I guess we can --

13 MR. DIXON: If I can approach the witness,  
14 Your Honor, it's attached to the WorldCom comments, and  
15 I would be happy to provide them to the witnesses.

16 JUDGE RENDAHL: Please do so.

17 CHAIRWOMAN SHOWALTER: And if you're  
18 referring to something in an exhibit, a page number  
19 would help us to tell us where it is.

20 MS. TRIBBY: I am looking at Exhibit 1718,  
21 page 3, and it's question and answer J.

22 BY MS. TRIBBY:

23 Q. Do you have that in mind?

24 A. (Mr. Weeks.) Yes, I do, the question reads:

25 What percentage of the total UNE-P

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1 installation transaction used by KPMG in  
2 each of the states came from the three  
3 CLECs referenced.

4 As indicated in the parity answer, my answer  
5 was, the parity answer question, a practically 100% of  
6 the resale UNE-P observations came from one of the CLECs  
7 referenced in the report.

8 Q. And the next question on that same page, K,  
9 says:

10 Further clarify the definition of  
11 substantial reliance.

12 And your answer is that:

13 100% of the data KPMG Consulting  
14 gathered when conducting commercial  
15 observations came from the participating  
16 CLECs.

17 Do you see that?

18 A. (Mr. Weeks.) Yes, I see the question that  
19 you read part of and the answer.

20 Q. So you had in your study, which is Exhibit  
21 1717, you had certain criteria where you indicated that  
22 there was partial reliance on the three CLECs who had  
23 entered into undisclosed deals with Qwest?

24 A. (Mr. Weeks.) Correct.

25 Q. And you have evaluation criteria where you

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1 indicated that there was substantial reliance, correct?

2 A. (Mr. Weeks.) Correct.

3 Q. And in some or all of the cases, substantial  
4 reliance actually meant complete reliance; is that  
5 correct?

6 A. (Mr. Weeks.) I think no. The 100% goes to  
7 the data, not to the reliance. In other words, we did  
8 other things other than accumulate data. We analyzed  
9 data, but we also conducted interviews, talked to  
10 people, did other activities in the test. So the  
11 question was formed in terms of what percentage of the  
12 data, data being, you know, information about individual  
13 transactions or individual events that took place, so  
14 our opinion is based oftentimes on more than just a  
15 piece of data.

16 CHAIRWOMAN SHOWALTER: Before you leave that  
17 question, the word participating CLECs, that term, does  
18 that -- what does that mean?

19 MR. WEEKS: This would mean a CLEC who  
20 provided information to KPMG Consulting during the  
21 course of the test that helped form the basis in any  
22 part or way, shape, or form for one or more of the  
23 evaluation criteria.

24 BY MS. TRIBBY:

25 Q. If we look at page 5 of Exhibit 1717, which

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1 is your study and a page that talks about substantial  
2 reliance, if I look at the criterion 14-1-21, 14-1-25,  
3 and 14-1-27, those are data review criterion, correct?

4 A. (Mr. Weeks.) These particular three are  
5 getting at Qwest's performance, and the vast majority if  
6 not all of the information that would have gone into  
7 that would have been based on data, yes.

8 Q. So would there have been anything else other  
9 than looking at data from the three CLECs that KPMG did  
10 with respect to at least those evaluation criteria?

11 A. (Mr. Weeks.) In these three evaluation  
12 criteria, they would be primarily data based, and other  
13 than having follow-up questions or conversations with  
14 the CLECs that provided us the information that might  
15 have been amplification explanations or just general  
16 trying to help understand what we were looking at, those  
17 conversations would have been part of the record, but  
18 when it comes to calculating performance, that would  
19 have been based on the data.

20 Q. And at least for those criterion, the data  
21 that you gathered came either solely or primarily from  
22 the three CLECs who have been identified as having been  
23 involved in these undisclosed agreements, correct?

24 A. (Mr. Weeks.) Yeah, I mean the whole purpose  
25 for this analysis was to identify those criterion in

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1    which one or more of the three CLECs participated, so  
2    the answer would be for those criteria for these  
3    particular CLECs because of the nature of the evaluation  
4    criterion, the data gotten from those CLECs, obtained  
5    from those CLECs is what was used to do the  
6    calculations.

7           A.     (Mr. Dellatorre.)  Certainly there was a --  
8    in any of the PID calculations, there's data provided by  
9    Qwest as well.

10          Q.     AT&T had sent to you a list of other CLECs  
11    other than these three that were involved in previously  
12    undisclosed agreements; do you recall that?

13          A.     (Mr. Weeks.)  That's right.

14          Q.     Did you do an analysis to determine whether  
15    KPMG had received any data or information from those  
16    other CLECs?

17          A.     (Mr. Weeks.)  Yes, we have, and that will be  
18    produced -- distributed next week.

19          Q.     Will that be a revised study or --

20          A.     (Mr. Weeks.)  It will just be updated.  It  
21    will be the same format, the same content.  We will just  
22    revise the tables to add any evaluation criteria that  
23    are required or change any evaluation criteria that are  
24    required to reflect the additional CLECs that were not  
25    included in the original list.

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1 Q. Did you find either partial reliance,  
2 substantial reliance, or other reliance on any of the  
3 additional identified CLECs?

4 A. (Mr. Weeks.) I have not had the opportunity  
5 to review the report yet, so I don't know the answer.

6 Joe, do you?

7 A. (Mr. Dellatorre.) At this point, the  
8 analysis is not complete yet, but I don't believe there  
9 is any that fall into the substantial reliance category.  
10 I believe it is zero. There are, if I recall, there are  
11 a few partial reliance. But again, this is a work in  
12 progress, and it probably wasn't be available until late  
13 next week.

14 Q. You're anticipating end of the week next  
15 week?

16 A. (Mr. Weeks.) Yes.

17 JUDGE RENDAHL: I'm going to request that  
18 this be, this report be filed with the Commission as a  
19 Bench request, and that would be Bench Request 55, and  
20 so if you can provide that when it's available to the  
21 Commission and all the parties.

22 MR. WEEKS: Judge, we normally put these  
23 things on the ROC Web site as our technique or our  
24 mechanism for distribution. Would you like us then in  
25 addition to doing that direct it to you?



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1                   JUDGE RENDAHL: Well, to the secretary, and I  
2 can provide you that information once you're off the  
3 stand.

4                   MR. WEEKS: Very well, thank you.

5                   JUDGE RENDAHL: There's a format for  
6 providing it to the Commission. And if you could do so,  
7 that would be helpful.

8                   MR. WEEKS: Certainly.

9                   JUDGE RENDAHL: And that will be response to  
10 Bench Request 55.

11                   MR. WEEKS: We will do so.

12                   MS. TRIBBY: Could I also make a Bench  
13 request.

14                   JUDGE RENDAHL: Well, you can make a record  
15 requisition, we can make a Bench request.

16                   MS. TRIBBY: Thank you. If you could provide  
17 for the record the source of the statement that I read  
18 to you on page 1 of the manual order entry PID adequacy  
19 study, which is Exhibit 1699. That was the statement  
20 that said that the ROC TAG agreed that further  
21 transaction testing would not be done on the human error  
22 issue, and you said it was either a TAG meeting or a  
23 steering committee; could you provide that?

24                   MR. WEEKS: We can attempt to do that if it's  
25 -- if there's a record there, we will find it and

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1 provide it to you. Those things are all readily  
2 available to you as well. We don't have anything you  
3 don't have.

4 MR. DELLATORRE: My recollection is that it  
5 was a steering committee meeting and therefore wouldn't  
6 be available in the TAG notes. But we will confer with  
7 MTG in an attempt to, after the conclusion of this,  
8 attempt to recreate that history.

9 MS. TRIBBY: And I appreciate that, Joe. If  
10 there's not minutes or something documented, I guess if  
11 it was a steering committee decision as opposed to a TAG  
12 decision, then I would ask that this be changed in your  
13 manual order entry PID adequacy study.

14 JUDGE RENDAHL: And that would be Records  
15 Requisition Number 10. And again, those are documents  
16 provided to the requester and are not automatically made  
17 a part of the record unless a party requests that it be  
18 made a part of the record.

19 BY MS. TRIBBY:

20 Q. Maybe you will tell me that your answer is  
21 the same with respect to the difference between process  
22 testing and transaction testing and what is intended to  
23 be accomplished through those, but it's true, isn't it,  
24 that Qwest failed its -- your tests of DUF, daily usage  
25 file, which is a billing test, accuracy and completeness

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1 five different times before it finally passed; correct?

2 A. (Mr. Weeks.) DUF is actually daily usage  
3 feed, and it comes in the form of a file, and yes, there  
4 were original test and five retests conducted.

5 Q. Does five failures of the DUF test indicate  
6 to you that there are problems or that there are  
7 criterion that maybe should have a finding of  
8 unsatisfactory, for example test 20.7, which relates to  
9 DUF production, distribution, and returns process?

10 A. (Mr. Weeks.) The problems that did exist,  
11 had there and were there, and I would have to go back  
12 and look, discreet reports on that section prior to the  
13 resolution of those O's and E's would have, in fact, not  
14 have had -- would have not -- would have had not  
15 satisfieids in them had they been done that. But as with  
16 all areas, whether you pass the test the first time or  
17 the 20th time, if the final result is satisfied, the  
18 final result is satisfied regardless of how many times  
19 it took you to get there.

20 Q. Now am I correct that in the DUF test  
21 failures that Qwest had, they were having problems with  
22 the accuracy and completeness of the DUF records and  
23 didn't realize that that was happening. In other words,  
24 their internal systems weren't telling them that there  
25 were problems with their DUF files; isn't that correct?

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1           A.     (Mr. Weeks.) We were evaluating the accuracy  
2 of the DUF. I don't know that we were actively looking  
3 at what their internal systems were telling them about  
4 those files, so that would be speculation on my point.  
5 We definitely were looking at the files. The files were  
6 definitely not accurate. So whatever mechanisms were in  
7 place to ensure accuracy by definition were failing, but  
8 I can't tell you what Qwest knew and didn't know about  
9 those files.

10          Q.     Well, test 19.7 was a test of their  
11 processes, correct?

12          A.     (Mr. Weeks.) Yes, it was a separate test of  
13 their process, yes.

14          Q.     And it was when you brought to their  
15 attention missing records and missing files and missing  
16 calls that they realized that those systems were failing  
17 or processes were failing, correct?

18          A.     (Mr. Weeks.) I would believe -- I don't know  
19 when the first time they knew that, but I think that's a  
20 fair -- that's a fair guess, but I can't say it is a  
21 fact.

22          Q.     Would that cause you then to change your  
23 criterion 20.7, which relates to the DUF production  
24 distribution and returns process, at least during the  
25 time that they were failing the test?

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1           A.     (Mr. Weeks.) Had we produced at that time a  
2 final report and we were in a situation where the DUF  
3 files were still in error, then yes, they would have  
4 gotten a not satisfied on they have a well formed  
5 process that knows how to manufacture DUFs correctly.

6           A.     (Mr. Dellatorre.) And I believe the result  
7 of that specific criteria did change over time.

8           Q.     Do you know when it changed?

9           A.     (Mr. Dellatorre.) I do not. Likely at the  
10 conclusion of the last DUF retest.

11          A.     (Mr. Weeks.) It wouldn't have been before.

12                 JUDGE RENDAHL: Ms. Tribby, about how much  
13 more do you have?

14                 MS. TRIBBY: Oh, less than ten minutes I  
15 would say.

16                 JUDGE RENDAHL: Because you may not have any  
17 time for HP.

18                 MS. TRIBBY: That's fine.

19                 JUDGE RENDAHL: Okay.

20                 MS. TRIBBY: I don't intend to -- I maybe  
21 have one question for HP.

22                 JUDGE RENDAHL: Okay.

23                 MS. TRIBBY: Thank you.

24                 JUDGE RENDAHL: I just wanted to let you know  
25 about your time.

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1 MS. TRIBBY: Thank you, I appreciate it.

2 BY MS. TRIBBY:

3 Q. Did KPMG evaluate the auditability of Qwest  
4 wholesale bills?

5 A. (Mr. Weeks.) No, I believe the evaluation  
6 criteria were all around whether the bills were well  
7 formed and followed the applicable rules for how they  
8 should be formed but not -- I don't recall an evaluation  
9 criteria that specifically talked about how auditable a  
10 bill might be.

11 Q. For example, did you evaluate and comment on  
12 how much a CLEC was paying or a pseudo CLEC was paying  
13 or being charged for a particular item or for a  
14 particular feature?

15 A. (Mr. Weeks.) We looked to determine whether  
16 the charge that appeared on the bill was appropriate and  
17 consistent with whatever tariffs or whatever rating  
18 mechanism controlled that particular line item.

19 A. (Mr. Dellatorre.) And those were scaled in  
20 dollar terms as to the total amount that the bills were  
21 off by, under or over charged.

22 Q. Did you look both at if there was a number  
23 there whether it was accurate and also whether there was  
24 a line item there or should have been a line item there  
25 for particular elements, particular features, those

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1 kinds of things?

2 A. (Mr. Weeks.) Yes, the design of the test was  
3 such that we knew in advance what charges should and  
4 should not appear on the bill and looked for both types  
5 of cases in the sense that if we expected a particular  
6 nonrecurring charge and it wasn't there, we would have  
7 raised that as an issue. And if we saw charges on the  
8 bill that we didn't understand the origin of, we would  
9 have investigated that as well.

10 Q. If you could turn to page 92 of your final  
11 report, which is Exhibit 1697, and this is the things  
12 that we have discussed earlier about Qwest's failure to  
13 provide timely jeopardy notices for resold products and  
14 services and UNE-P. Do you recall those discussions?

15 A. (Mr. Weeks.) Yes, 12-9-2 is the evaluation  
16 criteria, is that the one you're referring to?

17 Q. I'm looking at 12-9-4 and 12-9-5.

18 A. (Mr. Weeks.) I find those to be on page 93,  
19 nope 92, you're correct, I'm sorry, can't read my own  
20 document.

21 Q. And I thought that when you were discussing  
22 these in your initial comments, you said that the reason  
23 these were not satisfied or part of the reason and the  
24 reason that they went to the steering committee was  
25 because of a lack of volume or a lack of a sufficient

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1 number of samples; was that your testimony?

2 A. (Mr. Weeks.) That may have been how my  
3 testimony came across. I think on these two evaluation  
4 criteria specifically, these are results, well, 12-9-4  
5 specifically says that the dual statistical test for  
6 PO-9 PID resulted in a no decision. Per MTP guidelines,  
7 we submitted this issue to the attention of the TAG and  
8 so on. So on that one, there are two not sats, and I  
9 believe there are two unables. And for the not sats,  
10 they were due to the dual tests, and on the unables,  
11 they were due to volume issues.

12 Q. Okay. But for these two that related to  
13 PO-9, there was not a problem with volumes?

14 A. (Mr. Dellatorre.) Well, I think the point  
15 Mike was making earlier, which I will reinforce here, is  
16 that the dual test is likely -- is more likely to come  
17 out with a no decision when the sample size is small.  
18 And a sample size of 8 and a sample size of 11 qualifies  
19 as small in the sense that it is more likely to get a no  
20 decision from performing the dual test when you have  
21 less than a dozen observations.

22 Q. And certainly although that's true, you can  
23 come up with that same conclusion with much larger  
24 sample sizes as well, correct?

25 A. (Mr. Dellatorre.) Absolutely correct.



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1           A.     (Mr. Weeks.) I tried to explain that  
2 earlier, and as I said, I'm not a statistician, so I may  
3 not have done that so well.

4           Q.     And KPMG's conclusion was that there was a no  
5 decision?

6           A.     (Mr. Weeks.) No.

7           Q.     And then it went to the executive committee  
8 or the steering committee who decided a not satisfied?

9           A.     (Mr. Weeks.) I don't want to call it a  
10 decision. I said no because I was reacting to your word  
11 decision. We didn't have to make a decision. The dual  
12 tail test statistical test, the result was no decision.  
13 There was no -- there was nothing for us to decide.  
14 There were no subjective evaluation criteria. By design  
15 of the test, as soon as the results of the statistical  
16 test said no decision, there was no decision for us to  
17 make. We had to take it to the TAG.

18          Q.     So in other situations like on the next page,  
19 on page 93, 12-9-6, where there is a finding of  
20 satisfied even though you only are using two orders or  
21 12 orders, that's because you didn't end up with the  
22 inconsistency in the dual statistical test; is that  
23 correct?

24          A.     (Mr. Weeks.) I've got to read, but I believe  
25 that's correct. Yeah, that would have been correct,

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1 because again we were comparing wholesale and retail,  
2 that's a PID parity measure, which means the dual tail  
3 test would have been executed. And in this case,  
4 instead of being a no decision, it was both sides of the  
5 test indicated a pass.

6 MS. TRIBBY: Thank you, that's all I have.

7 MR. WEEKS: You're welcome.

8 JUDGE RENDAHL: Thank you, Ms. Tribby. I  
9 think we'll take a short break at this time, and so we  
10 will be off the record until 20 after 5:00.

11 (Recess taken.)

12 JUDGE RENDAHL: Mr. Dixon, you have some  
13 cross questions for the witnesses?

14 MR. DIXON: Yes, I do, Your Honor.

15

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

17 BY MR. DIXON:

18 Q. Just to start briefly, Mr. Weeks, could you  
19 just very briefly describe your experience in the  
20 telecommunications field prior to being involved in this  
21 test so we have some sense of your background.

22 A. (Mr. Weeks.) Certainly. I started off  
23 bouncing on the knee of chief operators all over the  
24 state of Oklahoma as a kid. I feel like I'm part of the  
25 Bell system, but that's a separate matter. My

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1 experience, the work experience that I have in the  
2 telecom industry is about -- it's about eight years  
3 prior to starting this test, all doing consulting work,  
4 some of it in the United States, a great deal of it  
5 abroad as well in other nations doing work with various  
6 telecoms in Taiwan and other places as well as South  
7 America and Central America.

8 Q. Does some of your experience have to do with  
9 consumer impact of the matters we're discussing, for  
10 example, in this test process?

11 A. (Mr. Weeks.) My personal experience is not,  
12 and this is probably the point at which I should give  
13 recognition of the over 100 plus people that worked on  
14 this project. Joe and I are here today as spokesmen  
15 representing what happened in the report, but we had  
16 literally over 100 people that worked on this project  
17 during the course of it. I will point out people like  
18 Bob Falconey and others who have, you know, 20 and 30  
19 and 40 years of CLEC experience, ILEC experience, IXC  
20 experience, and all of these folks have a tremendous  
21 amount of industry knowledge and have walked in the  
22 shoes of both the ILECs and the CLECs and know a lot  
23 about what the impact of a lot of these issues are. And  
24 we have tapped into those people all throughout the  
25 course of this test. Whenever we said, you know, what

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1 should we test, how should we test it, what are the  
2 consequences of what we see to others, you know, Joe and  
3 I were just walking on the backs of a whole lot of  
4 people that have been there, done that a long, long  
5 time.

6 Q. So that would be your basis for perhaps  
7 determining the impact something might have on Qwest,  
8 the impact something might have on competitive local  
9 exchange carriers, the impact something might have on  
10 consumers?

11 A. (Mr. Weeks.) That plus having participated  
12 in OSS testing in numerous other jurisdictions and heard  
13 hours and hours of testimony from all sorts of parties  
14 on some of these same issues.

15 Q. Thank you.

16 Mr. Dellatorre, I would like to ask you just  
17 to do the same, give a brief reference of your  
18 experience for this process.

19 A. (Mr. Dellatorre.) Certainly. Telecom in  
20 general approximately 6 years. 271 specific in the auto  
21 management domain testing with Verizon, I was the  
22 engagement manager for the Massachusetts test. I  
23 actually led our order management domain for all of our  
24 tests including BellSouth, Ameritech, and Verizon at  
25 that time. Non-271 testing experience, project

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1 experience, and consulting, I have worked with AT&T,  
2 Southwestern Bell, Frontier or actually Global Crossing  
3 I suppose. And then prior to consulting experience, I  
4 worked with Nortel at their U.S. switch manufacturing  
5 center in North Carolina.

6 Q. Thank you. And to both of you, it's pretty  
7 common knowledge, I believe, that Afshin Mohebbi is a  
8 member of the board for KPMG at some level?

9 JUDGE RENDAHL: I'm sorry, you will have to  
10 repeat that name and maybe spell it.

11 MR. DIXON: I believe Afshin, and I'm sure  
12 the Qwest people can correct me, is A-F-S-H-I-N,  
13 Mohebbi, M-O-H-E-B-B-I.

14 JUDGE RENDAHL: That's correct.

15 BY MR. DIXON:

16 Q. And I understand he's the chief operating  
17 officer of Qwest Corporation?

18 A. (Mr. Weeks.) I don't know his exact title.  
19 I would defer to the Qwest folks on that. I will take  
20 that as subject to check.

21 Q. Fine. I was asking it's pretty common  
22 knowledge he is a member of the KPMG Board of Directors;  
23 is that correct?

24 A. (Mr. Weeks.) It's my understanding that, I  
25 don't attend those meetings, but it's my understanding

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1 that when we went public a little over a year ago, he  
2 was chosen as one of the members of our board.

3 Q. And that's the point I wanted to get at. He  
4 had no contact or influence with anything you have done  
5 in this test process in spite of his role as a member of  
6 the board?

7 A. (Mr. Weeks.) No. In fact, it is a matter of  
8 public record that when he made a telephone call to our  
9 chairman trying to express his interest in having the  
10 test move right along, that was brought to the attention  
11 of MTG and the other parties to the test. So I think  
12 it's very fair to say that he had not had any influence  
13 whatsoever on the conduct of this test.

14 Q. Thank you. I would like to turn -- I handed  
15 to you the exhibit list for this proceeding, and I want  
16 you to turn to page 2 through 8 and just look at that  
17 list very quickly.

18 JUDGE RENDAHL: Which exhibit was that again?

19 MR. DIXON: This is the actual exhibit list  
20 itself for the proceeding, and I'm referring Mr. Weeks  
21 and Mr. Dellatorre to pages 2 through 8.

22 BY MR. DIXON:

23 Q. All right. I will represent to you that  
24 those are the exhibits that have been pre-filed and  
25 admitted into evidence in this proceeding by Qwest, and

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1 those are Exhibits 1721 through 1794, AT&T exhibits are  
2 1705 through 1709, and WorldCom exhibits are 1715  
3 through 1718. And with that understanding, have you had  
4 an opportunity to review any of those exhibits that make  
5 up pages 2 through 8 of the exhibit list?

6 A. (Mr. Weeks.) Many of these exhibits as we  
7 scan the list were documents or deliverables created as  
8 a result of some portion of the process here. I see  
9 examples of the master test plan, observations and  
10 exceptions, disposition reports associated therewith,  
11 and so on. And so most of this, if not all of it,  
12 appears to be some kind of work product in conjunction  
13 with this test.

14 Q. And then I will represent to you that Exhibit  
15 1705, for example, are AT&T comments regarding a summary  
16 of closed and unresolved observations and exceptions.  
17 Have you reviewed that particular document prior to  
18 today?

19 A. (Mr. Weeks.) As I sit here today, I don't  
20 have a specific recollection of having reviewed that  
21 document.

22 Q. And likewise Exhibit 1715 are the joint CLEC  
23 comments filed by WorldCom and Covad on June 4th; have  
24 you had an opportunity to review those?

25 A. (Mr. Weeks.) No, we have not.

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1 A. (Mr. Dellatorre.) I did briefly review that.

2 Q. Thank you, Mr. Dellatorre. And with respect  
3 to Exhibit 1721, I will represent those are the comments  
4 of Judith Schultz, Lynn Notarianni, and Christopher  
5 Viveros, have you had an opportunity to review that?  
6 That's about a 147 page document.

7 A. (Mr. Weeks.) No, I have not.

8 Q. All right. I want to turn to the WorldCom  
9 comments I put in front of you just to identify some  
10 matters for the record and kind of show where they fit  
11 in. To the WorldCom comments there is an Attachment B,  
12 which has been designated Exhibit 1717, which Ms. Tribby  
13 discussed with you earlier in her cross-examination. Do  
14 you see that document?

15 A. (Mr. Weeks.) Yes.

16 Q. Is that report, Exhibit 1717, contained  
17 somewhere in the final report, which I believe, I'm not  
18 sure I know the number, I think it's 1700.

19 JUDGE RENDAHL: 1697.

20 MR. DIXON: I'm sorry?

21 JUDGE RENDAHL: I believe it's 1697.

22 MR. DIXON: Thank you.

23 BY MR. DIXON:

24 Q. Has that been included in Exhibit 1697, which  
25 is your final report?



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1 A. (Mr. Weeks.) No, it has not.

2 Q. Also there is an Exhibit C, which is marked  
3 as Exhibit 1718, and those are the responses to the  
4 WorldCom questions that Ms. Tribby made reference to.  
5 Are those included anywhere in the final report, Exhibit  
6 1697?

7 A. (Mr. Weeks.) No, they are not.

8 Q. All right. You have indicated you're going  
9 to respond to the Bench Request 55 by filing apparently  
10 an update to the Exhibit 1717 report?

11 A. (Mr. Weeks.) Yes.

12 Q. Would that become part of the final report,  
13 or will that be a separate report?

14 A. (Mr. Weeks.) It will also be a separate  
15 report as the original was.

16 Q. Will the response to Bench Request 55 include  
17 both Exhibits 1717 and 1718 as well as any updates  
18 because of other companies that you have investigated or  
19 agreements between other companies?

20 A. (Mr. Weeks.) It was our understanding that  
21 we were asked to read -- to produce a replacement for  
22 1717. We have not yet received a request to revise  
23 1718.

24 Q. Would it be your intent though to include the  
25 material in 1717 and 1718 in your response to Bench

8102

1 Request 55 and that update? You talked about replacing,  
2 and that's what I'm trying to figure out.

3 A. (Mr. Weeks.) My understanding based on the  
4 dialogue that I heard take place was that we had agreed  
5 to replace 1717 with an updated version, which we agreed  
6 to do. And we believed at the time the dialogue took  
7 place here earlier this afternoon that that satisfied  
8 Bench Request 55. We did not have -- no one has asked  
9 us to update or revise 1718, and we had no intention of  
10 doing that.

11 Q. Could KPMG, is KPMG capable of responding to  
12 the questions that were posed in 1718 as it relates to  
13 any other CLECs?

14 A. (Mr. Weeks.) We certainly could revise the  
15 answers to 1718 in a similar manner to the revisions we  
16 will make to 1717.

17 MR. DIXON: Your Honor, would it be  
18 inappropriate to request that that be provided? Since  
19 they're updating the report, it would also seem  
20 appropriate to update answers to the questions.

21 JUDGE RENDAHL: Yes, and I think, thank you  
22 for prompting that, and as Bench Request 56, could you  
23 provide an update to Exhibit 1718.

24 MR. WEEKS: Yes, we will.

25 JUDGE RENDAHL: Thank you.

8103

1 MR. DIXON: Thank you very much, Your Honor.

2 BY MR. DIXON:

3 Q. Ms. Tribby stole my thunder, I really wanted  
4 to read your quote from the transcript about the  
5 weighing of the various criteria. Are there any  
6 criteria or any information in your opinion in the  
7 report that should be disregarded by the Commission?

8 A. (Mr. Weeks.) No.

9 Q. I would like to turn to preorder to order  
10 integration more in the nature of foundation. Are you  
11 familiar with the concept of preorder to order  
12 integration?

13 A. (Mr. Weeks.) Intimately.

14 Q. Would you provide us the intimate details of  
15 what that is.

16 A. (Mr. Weeks.) Perhaps --

17 Q. In layman's terms.

18 A. (Mr. Weeks.) -- a summary will suffice.  
19 What one is attempting to do in preorder order  
20 integration is to take information obtained through a  
21 preorder query and use that information combined with  
22 other information that a CLEC collects during the sales  
23 cycle with a customer and to merge those together and to  
24 prepare an order, usually an LSR, it could be an ASR,  
25 and submit that through one of the interface mechanisms

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1 to Qwest. And there are a variety of different  
2 techniques for accomplishing that, but the general  
3 purpose is to be able to use information obtained  
4 through one or more preorder queries to fill out usually  
5 one but possibly more than one order.

6 Q. You indicated an LSR, is that a local service  
7 request?

8 A. (Mr. Weeks.) That is correct.

9 Q. And an ASR is an access service request?

10 A. (Mr. Weeks.) Yes.

11 Q. All right. Now when a competitive local  
12 exchange carrier customer representative is discussing  
13 matters with a prospective customer, is this when that  
14 customer service rep would be looking at preorder data  
15 and hopefully populating the order to sign that customer  
16 up, for example, WorldCom?

17 A. (Mr. Weeks.) My experience is that there's  
18 two or three different ways that the sales process works  
19 and two or three different ways that preorder, order,  
20 and integration takes place. There is certain  
21 information that one gets about the customer and what  
22 facilities they have installed and so on. This normally  
23 is some sort of CSR, customer service record, type of  
24 inquiry. That information would be very useful and  
25 helpful in dialoguing with the customer about what they

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1 have, what features they have, what's installed, and so  
2 on. So during the presales or during the preorder  
3 activity, one might request a CSR query.

4           What I have seen happen most often in  
5 business and certainly what I would do if I were in  
6 business is store the information I obtained from that  
7 CSR inquiry in my proprietary customer data base, the  
8 information I'm going to know about that customer on a  
9 going forward basis. Depending on the type of order I  
10 was going to place for that customer, the information I  
11 obtain there is certainly necessary but usually not  
12 sufficient in order to place the order. There is  
13 usually other pieces of information that I might need.  
14 I might need to reserve a telephone number if I'm doing  
15 a new circuit. That's a separate type of preorder  
16 query. I may or may not have the customer involved in  
17 that process. I might have to make an appointment and  
18 have to do an appointment availability type query so I  
19 can see when I might be able to provide the services  
20 that the customer is looking for, and that information  
21 or some derivative of that information might find itself  
22 on the way to the order.

23           So certainly there are pieces of information  
24 that I get through the preorder queries that I do. I  
25 can do many of those interactively with the customer,

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1 although I have seen CLECs who have operations where  
2 they try to get the customer I won't say off the phone,  
3 but they try to minimize how much time they consume if a  
4 customer is on the phone, they collect the basic  
5 information, and then oftentimes they will do these  
6 other types of activities after the fact without the  
7 customer on the phone.

8 Q. That's probably complete unless you have a  
9 lot more.

10 A. (Mr. Weeks.) Well, there is a lot more that  
11 I can discuss about it. That's why I say I will give  
12 you the summary.

13 Q. Well, we had a choice of going on until 6:00  
14 or -- so if you really feel compelled, otherwise I think  
15 you have answered the question. Let me take one step  
16 further. Is there preorder to order integration within  
17 the retail, that is for Qwest representatives, is there  
18 an equivalent?

19 A. (Mr. Weeks.) There does not need to be.

20 Q. And why is that?

21 A. (Mr. Weeks.) Because the information that I  
22 need is already there stored in the systems, and it's  
23 available to me, and I don't have to do the same  
24 extract, store, load, submit kind of process on the  
25 retail side.

8107

1 Q. So is preorder to order integration for CLECs  
2 an effort to give some sense of parity between what the  
3 retail service representative has in terms of data  
4 versus what the CLEC customer service representative has  
5 in terms of data on a customer?

6 A. (Mr. Weeks.) I wouldn't characterize that as  
7 the intent. I think the intent, there's multiple types  
8 of preorder query, they each have their own business  
9 intent. So I think while one has to do a certain basic  
10 number of functions in order to get an order placed,  
11 whether that's in the retail or wholesale, and there are  
12 analogs in each of those to the respective activities, I  
13 wouldn't characterize the preorder, order, integration  
14 as having an intent of parity.

15 Q. All right. Did KPMG evaluate Qwest's  
16 preorder to order integration?

17 A. (Mr. Weeks.) No, the activities associated  
18 to that were given to HP Consulting in this test, so  
19 they executed those activities, and those activities and  
20 the results of those are contained in their reports.

21 Q. Do you happen to know if there are any  
22 performance indicator definitions, also known as PIDs,  
23 that address preorder to order integration?

24 A. (Mr. Weeks.) I would have to look at that.  
25 I don't know of any off the top of my head.

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1 Q. All right, thank you. Let's turn to another  
2 subject, that would be the use of commercial data  
3 provided by Qwest in performance reports, and I'm  
4 talking the monthly reports that they have been sending  
5 to the ROC in general. Does KPMG receive that data?

6 A. (Mr. Weeks.) We receive -- we had access to  
7 that data during the course of the test for performing  
8 certain of our activities.

9 Q. As a general rule, did KPMG rely on that data  
10 to cross check any findings or conclusions that you made  
11 in the final report?

12 A. (Mr. Weeks.) In those parity calculations  
13 that we were required to do, we needed to get the retail  
14 information that Qwest reported for that time period and  
15 compare it to the results that were developed for the  
16 pseudo CLEC. So in that sense, we took data and we used  
17 and analyzed data. The objective of that wasn't to  
18 validate what we had. It was to compare and contrast  
19 retail to wholesale.

20 Q. I guess the answer is you had the data, you  
21 had a specific purpose you used it for, but that data  
22 was not used as a cross check on your findings, meaning  
23 KPMG's findings or conclusions?

24 A. (Mr. Weeks.) The reports that go directly to  
25 the commissions and so on, not really. What we did do



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1 that's a different activity I mentioned earlier was the  
2 data comparison activity that we did where we got from  
3 Qwest special files that had information about the  
4 transactions that the pseudo CLEC had submitted as  
5 viewed by Qwest, and we compared and contrasted that  
6 data to the data on those same transactions we had  
7 recorded ourselves. A CLEC wouldn't normally have that.  
8 It's not the sort of data that normally goes to a  
9 Commission.

10 Q. Thank you. I want to turn to the issue of --  
11 I'm sorry, Mr. Dellatorre, did you --

12 A. (Mr. Dellatorre.) Yeah, there was actually  
13 another comparative assessment that we did, and that was  
14 looking at the performance results of the P-CLEC as  
15 compared to the CLEC aggregate just to ensure that there  
16 was some alignment in those numbers.

17 Q. Thank you. I would like to turn to the issue  
18 of human error. There was some discussion of two  
19 criterion, evaluation criterion 12-11-4 that assessed  
20 whether Qwest produced measures of preorder to order  
21 performance results for HP transactions and whether they  
22 were consistent with KPMG produced HP measures. This  
23 resulted in observation 3110, just to give you a base,  
24 and related to PO-5-B. That's a preorder when it refers  
25 to PO I believe. Then there was also criterion 12-8-2

8110

1 that assessed Qwest's procedures for manual order  
2 processing, which you discussed at length I think with  
3 Ms. Tribby and again had some relevance to observation  
4 3110. In Exhibit 1721, I will represent to you that  
5 matter being on record, that Qwest asserts that the  
6 manual order processing errors associated with the late  
7 retest of section 3120 are within reasonable tolerance  
8 for these criteria. Do you agree with that assessment?

9 A. (Mr. Weeks.) I think our testimony would be  
10 that because of the small number of observations, I'm  
11 talking eight or ten, that we didn't feel that that was  
12 a sample size that was large enough for us to draw a  
13 conclusion that we would be willing to live with as a  
14 satisfied, not satisfied and feel comfortable about.  
15 And so that was our -- that was our issue there. I  
16 mean, you know, one out of eight if you do the math  
17 doesn't look really good, but we don't think that's a  
18 big enough sample size to make an inference on.

19 A. (Mr. Dellatorre.) Furthermore, the scope of  
20 that retest was not nearly as comprehensive as one that  
21 we would design to specifically detect manual order  
22 processing problems.

23 Q. Can you help me with what you mean by the  
24 scope just so I understand; you mean the number of  
25 transactions?

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1           A.     (Mr. Dellatorre.) The type and variety of  
2 orders submitted.

3           A.     (Mr. Weeks.) Let me explain a little bit  
4 more. The retest for 3120 were intended to be flow  
5 through orders, 100% flow through orders. There were no  
6 orders inserted into that order stream that we believed  
7 would or desired to have fall out. The ones that did  
8 fall out fell out for a reason that was unanticipated.  
9 And as Joe indicated, we did not design 3120 to have  
10 anything to do with manual order handling. It was  
11 really about an issue of system provided dates for  
12 receipt of orders across weekends and time frames during  
13 the day.

14          Q.     To continue with human error, it's my  
15 understanding Qwest has agreed to develop a new  
16 performance indicator definition addressing manual  
17 processing order accuracy. Are you familiar with that  
18 commitment?

19          A.     (Mr. Weeks.) I think we believe that that's  
20 true. I don't know that I can tell you a whole lot  
21 about what it is they have committed to do.

22          Q.     And that was --

23          A.     (Mr. Dellatorre.) If you're referring to  
24 their response to the observation, in the response to  
25 that specific observation, Qwest does make those

8112

1 assertions, yes.

2 Q. That's what I am referring to, and that was a  
3 foundation question. Do you know the status of that  
4 proposed performance indicator definition at this point  
5 in time?

6 A. (Mr. Weeks.) I do not.

7 A. (Mr. Dellatorre.) Neither do I.

8 JUDGE RENDAHL: Just to clarify the record, a  
9 response to which observation?

10 MR. DIXON: 3109 or 3110, is that one of the  
11 two?

12 MR. DELLATORRE: No, I think it was 3084 or  
13 3086. Which was the training?

14 MR. DIXON: Maybe rather than taking up --

15 MR. DELLATORRE: Observation 3086 is the  
16 correct answer.

17 MR. DIXON: Thank you.

18 JUDGE RENDAHL: Let's please not talk over  
19 one another, and that applies to everyone.

20 MR. DIXON: I apologize.

21 JUDGE RENDAHL: So it is Qwest's response to  
22 observation 3086?

23 MR. WEEKS: That's our testimony subject to  
24 check.

25 JUDGE RENDAHL: Thank you.

8113

1                   Go ahead, I'm sorry.

2   BY MR. DIXON:

3           Q.     I'm just trying to move through some  
4   questions so we don't take as much time.  If I were to  
5   ask you about, for example, assertions made by Qwest in  
6   Exhibit 1721 on maintenance, repair, billing, unbundled  
7   dark fiber, or EELs where they effectively respond to  
8   your findings of perhaps not satisfied or unable to  
9   determine, would you be able to provide any assertions  
10  at this time whether you agree with their assertions?

11          A.     (Mr. Weeks.)  We have not reviewed that  
12  document.

13          Q.     Okay, that cuts through a lot of questions,  
14  that's why I did it that way.

15                   Let's turn to the issue of OSS interface  
16  development, which was associated with Qwest test, I'm  
17  sorry, with KPMG test 24.6.  Did KPMG conduct any  
18  transaction testing of Qwest's stand alone test  
19  environment also known as SATE?

20          A.     (Mr. Weeks.)  No, we did not submit any  
21  transactions.

22          Q.     Did KPMG observe the pseudo CLEC, HP, or any  
23  CLEC perform any transaction testing of Qwest's stand  
24  alone test environment?

25          A.     (Mr. Weeks.)  It's my recollection, and this

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1 would be a follow-up question for HPC, I don't believe  
2 HPC formally sent transactions through the SATE  
3 environment for the purposes of evaluation. We did  
4 during this evaluation work with several CLECs and one  
5 other provider, consolidator if you will, to talk with  
6 them about their experiences of having sent transactions  
7 through that interface.

8 Q. And who were those CLECs?

9 A. (Mr. Weeks.) That is -- I would be happy to  
10 give that information to the Commission under seal, but  
11 we as a matter of course, we have not disclosed the  
12 names of any of the participants for any of the CLEC  
13 related activities anywhere in the report or anywhere  
14 during the course of the test to protect confidentiality  
15 and all of these other things.

16 Q. Would KPMG in its offer to provide this  
17 information to the Commission be willing to identify  
18 them on this record, for example, as CLEC 1, CLEC 2, and  
19 CLEC 3, for example, to describe their experience as you  
20 understand it and then provide to the Commission, the  
21 Chairwoman and the Commissioners, the names of the  
22 CLECs?

23 A. (Mr. Weeks.) Not -- I don't have that level  
24 of detail of information that I could provide to you.  
25 So unless there are specific comments in the report

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1 which is helpful to you to answer detailed questions  
2 about what CLEC 1, 2, or 3 did or didn't do or saw or  
3 didn't see, I would have to bring in other people who  
4 actually did that work.

5 Q. Mr. Weeks, just so it's clear for the record,  
6 would you be able to tell if you conducted -- had any  
7 contact with a CLEC that, for example, tested stand  
8 alone test environment version 9.0; would you know that?

9 A. (Mr. Weeks.) I couldn't answer that off the  
10 top of my head, no.

11 Q. And if I were to ask you the same about  
12 whether you have any comments regarding CLECs testing  
13 any other versions of SATE, for example 8.0 or 7.0 or  
14 even what are known as point releases, 8.1, 8.2, for  
15 example, would you be able to recollect any of that  
16 information at this time or their comments?

17 A. (Mr. Weeks.) No, I would not, I would have  
18 to rely on the folks that did that work.

19 Q. Would you have any recollection whether any  
20 of these CLECs conducted regression testing with respect  
21 to the various versions of the stand alone test  
22 environment?

23 A. (Mr. Weeks.) I would give you the same  
24 answer, I don't recall that unless it's in the report.

25 Q. And if it's in the report, it's already in

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1 the record.

2 A. (Mr. Weeks.) That's correct.

3 Q. I'm asking your recollection.

4 A. (Mr. Weeks.) That's correct.

5 Q. So I won't spend time searching the report.

6 And just so it's clear for the record, when we're  
7 talking about -- when I'm talking about regression  
8 testing and you're responding to that, as I understand  
9 that, that would be, for example, if the competitive  
10 local exchange provider tested version 9.0 of the stand  
11 alone test environment but has previously implemented  
12 earlier versions such as 8.0 or 7.0, it's my  
13 understanding regression testing is where you ensure  
14 that the updated version doesn't adversely impact coding  
15 and activity taken by the competitive local exchange  
16 carrier using earlier versions; is that a fair  
17 representation?

18 A. (Mr. Weeks.) Our definition of regression  
19 testing, which is somewhat different than how Qwest uses  
20 that same phrase, is that a regression test attempts to  
21 say that for things that have not changed from one  
22 release to another, they continue to operate in the way  
23 they previously operated. That's it.

24 Q. That's greet. Do you know whether any of the  
25 CLECs that tested the stand alone test environment were



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1 satisfied that it mirrored the production environment by  
2 providing the CLEC with a testing environment that  
3 performs the same key functions as the production  
4 environment; would you know that?

5 A. (Mr. Weeks.) I don't recall the details of  
6 what individual CLECs represented to us. I think it was  
7 our finding that there were differences between the  
8 production environment and the SATE environment, but I  
9 couldn't tell you specifically what a specific CLEC  
10 found or what they represented to us that they found.

11 A. (Mr. Dellatorre.) And my recollection is  
12 that there, in fact, only was one CLEC operating in the  
13 SATE environment during the test.

14 Q. So if I understand your statement,  
15 Mr. Dellatorre, to the extent a CLEC was involved, it  
16 was only one for all the CLECs that might be operating  
17 in Qwest territory?

18 A. (Mr. Dellatorre.) Again specifically  
19 defining a CLEC, because as Mike pointed out, there was  
20 another entity application provider that was also  
21 testing.

22 Q. Is that a service provider, is that what  
23 you're talking about?

24 A. (Mr. Dellatorre.) I believe they are some  
25 form of service bureau clearing house.

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1 Q. And just so for the record, I don't want the  
2 name, I understand the concern, can you tell us what a  
3 service bureau clearing house is?

4 A. (Mr. Dellatorre.) They would be -- they  
5 develop software applications to perform the same  
6 ordering, pre-ordering functions that a CLEC would  
7 typically do and then outsource that functionality.

8 A. (Mr. Weeks.) So that a CLEC doesn't have to  
9 develop their own interfaces, especially if they're  
10 small, medium sized, they contract with this company,  
11 this company builds and operates interfaces on behalf of  
12 multiple CLECs.

13 Q. Thank you. Are you familiar with the virtual  
14 interconnect center knowledge initiator, also known as  
15 VICKI?

16 A. (Mr. Weeks.) Familiar with that concept,  
17 yes. We described that in our report.

18 Q. And just for the record, did KPMG test VICKI?

19 A. (Mr. Weeks.) No.

20 Q. And can you tell us what VICKI, what the  
21 intent of VICKI is?

22 A. (Mr. Weeks.) Well, I would have to refer to  
23 the report, because I don't recall off the top of my  
24 head.

25 Q. Do you happen to know if the pseudo CLEC used

8119

1 VICKI?

2 A. (Mr. Weeks.) No.

3 A. (Mr. Weeks.) No, they did not.

4 Q. Thank you. Did you happen to have any  
5 recollection whether any CLECs used VICKI?

6 A. (Mr. Dellatorre.) I don't know the answer to  
7 that. I believe that it was a functionality added  
8 fairly late in the time period of the test evaluation.

9 Q. Did you review Qwest's "white paper on the  
10 virtual interconnect center knowledge initiator"?

11 A. (Mr. Weeks.) Yes, we did.

12 JUDGE RENDAHL: Mr. Dixon, is that an  
13 exhibit?

14 MR. DIXON: I'm going to have to ask Your  
15 Honor to let me check, because I don't know, I have not  
16 had an opportunity to peruse the entire exhibit list.

17 JUDGE RENDAHL: Would that be white paper on  
18 SATE VICKI dated December 7, 2001?

19 MR. DIXON: That sounds like the one from my  
20 perspective, perhaps Qwest can help me.

21 JUDGE RENDAHL: That's Exhibit 1741 if that's  
22 what we're talking about.

23 MR. CRAIN: That is the same.

24 JUDGE RENDAHL: Thank you.

25 MR. DIXON: Thank you very much for that

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1 assistance.

2 BY MR. DIXON:

3 Q. Would that document to your knowledge  
4 describe VICKI's functions? By that document, I'm  
5 talking about the white paper we just identified as  
6 Exhibit 1741 I think you said.

7 A. (Mr. Weeks.) We assume so. I mean that --  
8 we're not looking at that document, so I would assume  
9 that's what it -- by its title, that's what it looks  
10 like it represents, yes.

11 Q. Did KPMG observe the pseudo CLEC or any CLEC  
12 using Qwest's interoperability testing to construct an  
13 EDI interface?

14 A. (Mr. Weeks.) Yes.

15 Q. And do you --

16 A. (Mr. Weeks.) Oh, to construct.

17 A. (Mr. Dellatorre.) I believe the pseudo CLEC  
18 developed the capability to send transactions through to  
19 interop, yes.

20 Q. So probably a better question to direct to  
21 them?

22 A. (Mr. Weeks.) I think it would, yes.

23 Q. Part of why I'm asking the question is to  
24 make sure when you're gone I haven't missed you.

25 A. (Mr. Weeks.) That's fine.

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1 Q. Let me move on to one matter on  
2 interoperability testing. I believe, and I don't recall  
3 which of you said this and I'm paraphrasing, that  
4 interoperability testing is effectively testing in  
5 production and is therefore not separate testing.

6 A. (Mr. Weeks.) I said that, yes.

7 Q. And is that an accurate paraphrase of what  
8 you said?

9 A. (Mr. Weeks.) Yes, I believe that's an  
10 accurate paraphrase.

11 MR. DIXON: All right.

12 Your Honor, I notice it's now the hard stop,  
13 and that's probably a good point for me to stop if  
14 that's appropriate for the Commission.

15 JUDGE RENDAHL: Okay, well, then we will be  
16 off the record until tomorrow morning at 9:30.

17 (Hearing adjourned at 6:00 p.m.)

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