

0142

1 BEFORE THE WASHINGTON STATE
2 UTILITIES AND TRANSPORTATION COMMISSION
3 In the Matter of the Second)
4 Six-Month Review of) DOCKET NO. UT-043007
5)
6 QWEST CORPORATIONS'S) Volume V
7) Pages 142 to 214
8 Performance Assurance Plan)
9 _____)

7
8 A hearing in the above matter was held on
9 November 18, 2004, from 9:35 a.m to 11:45 a.m., at 1300
10 South Evergreen Park Drive Southwest, Room 206, Olympia,
11 Washington, before Administrative Law Judge ANN RENDAHL.

12
13 The parties were present as follows:

14 THE COMMISSION, by GREGORY J. TRAUTMAN,
15 Assistant Attorney General, 1400 South Evergreen Park
16 Drive Southwest, Olympia, Washington 98504-0128,
17 Telephone (360) 664-1187, Fax (360) 586-5522, E-Mail
18 gtrautma@wutc.wa.gov.

19 QWEST CORPORATION, by DOUGLAS N. OWENS,
20 Attorney at Law, 8028 Crest Drive Northeast, Seattle,
21 Washington 98115, Telephone (206) 748-0367, Fax (206)
22 748-0369, E-Mail dnowens@qwest.net; and by LAUREL BURKE,
23 Attorney at Law, 1801 California Street, Suite 4900,
24 Denver, Colorado 80202.

25 Joan E. Kinn, CCR, RPR
26 Court Reporter

0143

1 -----

2 INDEX OF EXAMINATION

3 -----

4 WITNESS: PAGE:

5 THOMAS L. SPINKS

6 Direct Examination by Mr. Trautman 148

7 Cross-Examination by Mr. Owens 156

8 Redirect Examination by Mr. Trautman 194

9 MARK S. REYNOLDS

10 Direct Examination by Mr. Owens 200

11 Cross-Examination by Mr. Trautman 202

12 Redirect Examination by Mr. Owens 209

13

14

15

16

17

18

19

20

21

22

23

24

25

0144

1 -----
2 INDEX OF EXHIBITS
3 -----

5	EXHIBIT:	MARKED:	ADMITTED:
6	THOMAS L. SPINKS		
7	1T	146	156
8	2	146	156
9	3	146	156
10	4	146	156
11	5	146	156
12	6	146	156
13	7	147	156
14	8	147	156
15	9RT	147	213
16	MARK S. REYNOLDS		
17	10T	147	213

18
19
20
21
22
23
24
25

0145

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

2 JUDGE RENDAHL: We're here before the
3 Washington Utilities and Transportation Commission on
4 Thursday, November the 18th, 2004, for a hearing in
5 Docket Number UT-043007, captioned in the Matter of the
6 Second Six-Month Review of Qwest Corporation's
7 Performance Assurance Plan. We're here to address the
8 remaining issue in the Six-Month Review Proceeding or
9 this second Six-Month Review Proceeding, and we'll hear
10 testimony and cross-examination from Mr. Spinks from
11 Commission Staff and Mr. Reynolds for Qwest.

12 Before we go any farther, let's take
13 appearances from counsel beginning with Qwest.

14 MR. OWENS: Thank you, Your Honor, Douglas N.
15 Owens, Attorney at Law, business address Post Office --

16 JUDGE RENDAHL: Well, you don't -- since you
17 have already stated an official appearance in the
18 numerous prehearings we have had in this case so far, I
19 think that's sufficient.

20 MR. OWENS: Appearing on behalf of Qwest
21 Corporation.

22 JUDGE RENDAHL: Thank you. And any other
23 counsel here with you?

24 MR. OWENS: Laurel Burke, in-house counsel
25 for Qwest Corporation of Denver, 1801 California Street,

0146

1 Denver, Colorado 80202.

2 JUDGE RENDAHL: Thank you.

3 Good morning, Ms. Burke.

4 MS. BURKE: Good morning.

5 JUDGE RENDAHL: And for Staff.

6 MR. TRAUTMAN: Greg Trautman, Assistant

7 Attorney General for Commission Staff.

8 JUDGE RENDAHL: Thank you.

9 And while we were off the record, we marked
10 the few exhibits that we have in this proceeding.
11 Marked as Exhibit 1 is the direct testimony of Thomas L.
12 Spinks, which is Exhibit TLS-1T. Then there are several
13 exhibits to that direct testimony. Marked as Exhibit 2,
14 which is TLS-2, is Mr. Spinks' qualifications. Marked
15 as Exhibit 3 is Exhibit TLS to Mr. Spinks' direct
16 testimony which is labeled Observation 3086 - Second
17 Supplemental Response, this is from the Qwest OSS
18 evaluation. Marked as Exhibit 4 or TLS-4 is a one page
19 document titled Steering Committee Comments on
20 Observation 3086. Marked as Exhibit 5 or TLS-5 is a
21 seven page document titled Qwest Manual Order Entry
22 Performance Indicator Description, Adequacy Study by
23 KPMG Consulting, dated June 11th, 2002. Exhibit 6 or
24 TLS-6 to Mr. Spinks' direct testimony is a 12 page
25 document captioned Qwest's Response to KPMG's Manual

0147

1 Order Entry PID Adequacy Study of April 30th, 2002,
2 dated May 24th, 2002. Exhibit 7 identified as TLS-7 is
3 a three page letter dated August 9th, 2002, from Yaron
4 Dori of Hogan & Hartson to Marlene H. Dortch, who is the
5 Secretary of the FCC. Marked as Exhibit 8 or TLS-8 is a
6 one page excerpt from Qwest's Performance Results dated
7 September 21st, 2004, concerning PID PO-20 Expanded for
8 the 14 State or Regional Results. Marked as Exhibit 9
9 is the reply testimony of Mr. Spinks. And marked as
10 Exhibit 10 -- I'm sorry, marked as Exhibit 9RT is
11 Mr. Spinks' reply testimony, and marked as Exhibit 10T
12 is the response testimony of Mark S. Reynolds, Qwest
13 Corporation.

14 Okay, so with that, having taken care of
15 those administrative details, Mr. Trautman, are you
16 ready to take care of the preliminaries with your
17 witness?

18 MR. TRAUTMAN: Yes, Your Honor.

19 JUDGE RENDAHL: Okay, go ahead.

20 MR. TRAUTMAN: Has the witness been sworn
21 yet?

22 JUDGE RENDAHL: No, I didn't swear him in
23 yet, thank you.

24 Mr. Spinks, can you state your full name for
25 the record and your work address, please.

0148

1 MR. SPINKS: I'm Thomas L. Spinks, my
2 business address is 1300 South Evergreen Park Drive
3 Southwest, P.O. Box 47250, Olympia, Washington.

4 JUDGE RENDAHL: Thank you, would you raise
5 your right hand, please.

6 (Witness Thomas L. Spinks was sworn.)

7 JUDGE RENDAHL: Okay, please go ahead,
8 Mr. Trautman.

9 MR. TRAUTMAN: Thank you, Your Honor.
10

11 Whereupon,

12 THOMAS L. SPINKS,
13 having been first duly sworn, was called as a witness
14 herein and was examined and testified as follows:

15

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

17 BY MR. TRAUTMAN:

18 Q. Good morning, Mr. Spinks.

19 A. Good morning.

20 Q. Could you please give your name and spell it
21 for the record.

22 A. My name is Thomas Spinks, S-P-I-N-K-S.

23 Q. And what is your position with the
24 Commission?

25 A. I'm a regulatory consultant.

0149

1 Q. For the case before us today, have you filed
2 the exhibits that have been marked as T1 through Exhibit
3 RT9?

4 A. I have, yes, I did.

5 Q. And as to Exhibits T1 and RT9, were those
6 prepared by you or under your supervision?

7 A. Yes, they were.

8 Q. And have you also prepared the Exhibits 2
9 through 8 that are attached to your testimony?

10 A. I did.

11 Q. And were those prepared by you or under your
12 supervision?

13 A. Yes.

14 Q. Are Exhibits T1 through RT9, including the
15 accompanying exhibits, are they true and correct to the
16 best of your knowledge?

17 A. Yes.

18 Q. And are there any changes or additions you
19 need to make to that testimony at this time?

20 A. No.

21 MR. TRAUTMAN: Thank you.

22 Your Honor, I would move for the admission of
23 Exhibits T1 through RT9.

24 MR. OWENS: A couple of points, Your Honor.

25 Am I correct in assuming that that offer excludes the

0150

1 material that was stricken in Order 12 on page 7 of
2 Exhibit T1, the sentence beginning line 14 and going
3 through line 16 and the sentence on page 5 of Exhibit
4 RT9 beginning, the portion of the sentence beginning on
5 line 4 with the word and and ending on line 5 with the
6 word business?

7 JUDGE RENDAHL: Mr. Trautman, was that your
8 intent?

9 MR. TRAUTMAN: Well, Staff is aware of the
10 ruling of the Administrative Law Judge, so yes, our
11 intent is to be consistent with the ruling.

12 MR. OWENS: Okay.

13 I do have a couple of objections, Your Honor,
14 to portions of Exhibit RT9. On page 4 beginning line
15 19, the sentence beginning, in the 30th and ending that
16 sentence, page 5, line 2, and the ground of that is that
17 it is not responsive. The question asks with regard to
18 Mr. Reynolds' testimony that none of the direct
19 testimony or exhibits of Mr. Spinks provides any
20 supporting documentation or rationale regarding any type
21 of payment designation for PO-20 expanded, whether he
22 agrees nothing in Mr. Reynolds' prefiled testimony
23 mentions the 30th Supplemental Order or PO-2B, and so
24 that portion of that answer is not responsive.

25 I also would like you to reserve ruling on

0151

1 the material on page 5 beginning at line 9 and running
2 through line 20 on the basis that in Qwest's motion to
3 strike we indicated that Qwest would not be offering the
4 portion of Mr. Reynolds' testimony to which this answer
5 purports to respond. In the event that the offer, or
6 excuse me, that the motion described is granted, we
7 intend not to offer that, and we ask that you withhold
8 ruling until after Mr. Reynolds takes the stand and his
9 testimony is offered. And the basis of the objection at
10 that point would be that it is not proper rebuttal
11 because it responds to testimony that doesn't exist.

12 And finally, I object to on page 6 beginning
13 at line 8 the sentence concluding at line 11 on the
14 basis that it states what the CLECs believe, and the
15 basis of the objection is that Mr. Spinks is not
16 competent to testify as to what the CLECs believe.

17 JUDGE RENDAHL: Mr. Trautman.

18 MR. TRAUTMAN: Well, as to the first
19 objection, it's simply a -- certainly a reference to the
20 30th Supplemental Order. The 30th Supplemental Order is
21 a matter of public record. It could be cited at any
22 time by the parties, and it does relate to the overall
23 issue to which Mr. Spinks has testified to and to which
24 Mr. Reynolds has responded, which is the CLECs' ability
25 to compete. That issue is the essence of Mr. Spinks's

0152

1 testimony.

2 And as to the -- now the -- as to the last
3 objection on page 6, Mr. Spinks had referred to -- had
4 referred earlier on page 2 that the CLECs had indicated
5 that Tier II payments were still an open issue.
6 Certainly Ms. Clauson of Eschelon had said so, she said
7 so on the record in a prehearing conference at which
8 Mr. Owens attended, so that statement is part of the
9 record in this case.

10 And your other objection was on page 5?

11 JUDGE RENDAHL: I believe it's relating to
12 the testimony beginning on line 9 of page 5 responding
13 to Mr. Reynolds' testimony that responds to Staff's, and
14 so do you see that point, Mr. Trautman?

15 MR. TRAUTMAN: Mm-hm.

16 JUDGE RENDAHL: I guess my understanding is
17 if Qwest chooses to remove that from its offer of the
18 exhibit and consistent with the motion to strike, is
19 there a need to have that in the testimony?

20 MR. TRAUTMAN: Well, how much are you asking
21 to strike, Mr. Owens?

22 MR. OWENS: Well, the entire question and
23 answer beginning at line 9 and ending, I'm sorry, yeah,
24 beginning at line 9 and ending at line 20. And this, of
25 course, is an artifact of the way we present these cases

0153

1 with the direct and the rebuttal being offered at the
2 same time rather than the direct being offered, then the
3 response witness responding to that, and then the
4 rebuttal coming after that. I'm just asking that you
5 withhold ruling on accepting that part of the testimony
6 until such time as Mr. Reynolds' testimony is concluded,
7 and you will then have a record of what Qwest offers to
8 which this responsive testimony would be directed.

9 MR. TRAUTMAN: Well, Your Honor, my
10 difficulty with this is that Mr. Spinks is raising
11 rather large policy questions, and I have -- and I don't
12 agree with Mr. Owens that it is not appropriate to
13 discuss whether an issue that might be relevant for one
14 CLEC is or is not relevant for all 137 CLECs and whether
15 as a policy matter the Tier II measures should be
16 included for those broad policy reasons. It appears
17 that Mr. Owens is saying that that's not proper to
18 discuss in the context of this case.

19 MR. OWENS: Your Honor, that totally
20 misapprehends the nature of the objection. The
21 objection is it's not proper response when the testimony
22 to which it purports to respond doesn't address the
23 issue. It represents in effect a reopening of the
24 direct testimony.

25 JUDGE RENDAHL: Okay, well, as I understand

0154

1 the issue, Mr. Owens, is that you would like me to
2 withhold ruling on that portion of what's been marked as
3 Exhibit RT9 until after Mr. Reynolds has testified so we
4 see whether there is actually an issue that was
5 responded to.

6 MR. OWENS: That's correct, Your Honor.

7 JUDGE RENDAHL: Okay. At the time that the
8 testimony was responded to, there was something in
9 Mr. Reynolds' testimony, but the issue is what's
10 actually admitted into the record.

11 MR. OWENS: That's correct, Your Honor. And
12 in Mr. Reynolds' testimony, the prefiled, he states that
13 Qwest had filed an objection and that he's offering this
14 testimony in essence in the event that the objection is
15 not sustained. We did not want to be silent in the
16 event that the Commission admitted the testimony over
17 our objection. But once the Commission agreed that the
18 testimony should be stricken, we stated in our motion
19 that we would consent to the withdrawal of the testimony
20 that responded, because we don't want to testify about
21 settlement negotiations either.

22 JUDGE RENDAHL: Okay.

23 Did you wish to respond to anything else
24 Mr. Trautman said?

25 MR. OWENS: Yes, Your Honor. With regard to

0155

1 the objection again on page 4 line 19 and continuing
2 over onto page 5, it isn't a question of relevance, Your
3 Honor, it's a question that it's not responsive. The
4 question specifically directs the witness whether he
5 agrees with the statement attributed to Mr. Reynolds
6 that none of his testimony or exhibits provide any
7 supporting documentation or rationale. None of
8 Mr. Spinks's testimony or supporting exhibits or
9 Mr. Reynolds' testimony mentions the 30th Supplemental
10 Order or PO-2B. If counsel wants to cite the 30th
11 Supplemental Order in his brief, he can certainly do
12 that. The ground of the objection is that the answer is
13 not responsive to the question.

14 And similarly the objection on page 6 also is
15 not as to whether or not the earlier quote by Mr. Spinks
16 of the transcript of the prehearing conference was
17 accurate, it is as to his statement of what the CLECs
18 believe. I don't believe he has the competence to
19 testify to what they believe. He can say what they
20 said.

21 JUDGE RENDAHL: Okay, well, at this point I'm
22 going to allow you to inquire -- I'm not going to strike
23 these portions from the testimony at this time. I'm
24 going to allow you to inquire with Mr. Spinks as to
25 these statements, and I will withhold ruling on the

0156

1 issue of the testimony on page 5 starting at line 9 and
2 ending at line 20 until after Mr. Reynolds has testified
3 and at the end of the proceeding. But at this point,
4 I'm not persuaded that they should be removed from the
5 testimony at this time.

6 So why don't I withhold ruling on Exhibit RT9
7 as a whole until after Mr. Reynolds has testified, but
8 at this point you don't have any objections to the
9 exhibits marked as T1 through 8 subject to the motion to
10 strike, I mean subject to the order on the motion to
11 strike?

12 MR. OWENS: That's correct, Your Honor.

13 JUDGE RENDAHL: Okay, well, those exhibits
14 will be admitted.

15 Why don't you go ahead and inquire with
16 Mr. Spinks.

17 MR. OWENS: Thank you, Your Honor.

18

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

20 BY MR. OWENS:

21 Q. Good morning, Mr. Spinks.

22 A. Good morning.

23 Q. Directing your attention to Exhibit 2, your
24 qualifications.

25 JUDGE RENDAHL: Mr. Owens, just one thing, is

0157

1 the button on your microphone up or down?

2 MR. OWENS: It's up, Your Honor.

3 JUDGE RENDAHL: And if you can move it
4 closer, that will be helpful. Thank you.

5 MR. OWENS: Thank you, Your Honor.

6 BY MR. OWENS:

7 Q. I notice, Mr. Spinks, your education and
8 regulatory experience and your expert Staff witness
9 testimony, but I don't notice any employment experience
10 operating a CLEC. Is that because there isn't any in
11 your background?

12 A. That's correct, I have never operated a CLEC.

13 Q. Or operated as an employee of a CLEC?

14 A. No, I have not.

15 Q. Now in your direct testimony on page 2,
16 you --

17 JUDGE RENDAHL: That's referring to Exhibit
18 T1?

19 MR. OWENS: Exhibit T1, yes, Your Honor,
20 thank you.

21 BY MR. OWENS:

22 Q. Beginning on line 13 you state:

23 As late as January 2002, KPMG and HP
24 continued to identify observations and
25 exceptions that related to the need for

0158

1 additional training for service delivery
2 coordinated personnel and interconnect
3 service center.

4 And you're referring there to what's been
5 marked as Exhibit 3, the observation 3086; is that
6 right?

7 A. I believe so, yes.

8 Q. Now when you say as early as January 2002,
9 you're referring to the initial release date that
10 appears on what's marked as page 1 of 18, January 29,
11 2002?

12 A. You used the word as early as January, and
13 it's as late as January.

14 Q. As late as, thank you for the correction, but
15 that's the date you're referring to?

16 A. I'm not sure I understand, are you relating
17 that to observation 3086, the exhibit?

18 Q. Well, is that what you had in mind when you
19 said:

20 However, as late as January 2002, KPMG
21 and HP continued to identify O&E's by
22 describing corrective actions it would
23 take in responding --

24 Excuse me.

25 -- continued to identify O&E's that

0159

1 related to the need for additional
2 training.

3 Is that what you --

4 A. Yes.

5 Q. And is it correct that the date at the bottom
6 of each page of this document that is Exhibit 3 of
7 9-17-2004 represents the date you apparently printed
8 this from some electronic source?

9 A. Yes.

10 Q. And there are events described in this
11 exhibit that occurred even later than January 29th of
12 2002; is that correct?

13 A. Yes, it was in January 2002 that they issued
14 the observation initially. Qwest then responds to it,
15 they respond back. If you page through the history of
16 the observation, you can see it's a process that took
17 some time. But they had again in January of 2002 got to
18 the point where they issued the observation explicitly
19 identifying this what I would say is a new problem with
20 something that we weren't aware of.

21 Q. And so over this period of two and a half
22 months or so in early 2002, it's fair to say that Qwest
23 made changes in its training and added processes to
24 address the concerns that were identified by KPMG and
25 HP; is that correct?

0160

1 A. It had been attempting to address concerns
2 raised by the testers in the I would say at least six
3 months prior to that. I didn't follow that early
4 history of other observations and exceptions that were
5 raised which related to in part -- part of the problem
6 with being raised was this issue of training, and so in
7 these others, the other observations and exceptions that
8 led up to this one where they had identified part of the
9 problem with these prior ones being the training issue,
10 so it had been going on before January, and Qwest had
11 been --

12 Q. Sir, that wasn't my question. My question
13 was, is it true that during the two and a half month
14 period between January 29, 2002, and the date identified
15 on page 1 of the second supplemental response date,
16 April 12th, that Qwest made changes in its training and
17 processes to address the concerns raised by KPMG and HP
18 in the observation; is that true?

19 A. I'm not certain. They were making changes or
20 they were telling the vendors that they were making
21 changes in terms of providing additional training prior
22 to that, and I believe they continued to provide such
23 assurances that the training was given once observation
24 3086 got underway.

25 Q. To the extent that what is printed on your

0161

1 exhibit indicates a finding by KPMG that Qwest did in
2 fact make changes to its training and processes to
3 address the concerns that KPMG and HP had identified, do
4 you have any knowledge that those findings are
5 incorrect?

6 A. Is there a finding in the observation that
7 you're referring to?

8 Q. There are several, but I'm asking you, to the
9 extent that the document that you have introduced as an
10 exhibit in this case indicates that KPMG and HP
11 determined that Qwest had made changes in its training
12 and processes to address the concerns raised in this
13 observation by your previous answer, do you have any
14 knowledge that those statements are incorrect?

15 A. Well, I would like to know which statements
16 you're referring to. As a general matter I believe that
17 the -- when Qwest issued a supplemental response to this
18 and said we're providing additional training and we're
19 going to do A, B, C, on top of that, that Qwest meant
20 what it said. I'm not sure what you're looking for
21 here.

22 Q. And, in fact, on page 18, isn't it true that
23 KPMG indicates in its summary paragraph that it
24 conducted interviews with Qwest training staff and ISC
25 managers and verified that the training and quality

0162

1 assurance procedures described by Qwest are in place and
2 are followed, and based on that they found that these
3 procedures sufficiently addressed the concerns raised in
4 this observation?

5 A. Yes.

6 Q. Thank you.

7 Now on page 2 of your direct testimony at
8 line 10, you state:

9 The need for training was identified as
10 a remedy for errors that occur in the
11 manual handling of orders.

12 Now is that a statement that you attribute to
13 KPMG in Exhibit 3?

14 JUDGE RENDAHL: Can you direct me to where
15 you're referring again, please?

16 MR. OWENS: Thank you, Your Honor, it's line
17 10 on page 2 of the direct, that is Exhibit T1.

18 JUDGE RENDAHL: Why don't you restate your
19 question.

20 MR. OWENS: Thank you, Your Honor.

21 BY MR. OWENS:

22 Q. Is this statement where you say, the need for
23 training was identified as a remedy for errors that
24 occur in the manual handling of orders, is that a
25 statement that you attribute to KPMG in Exhibit 3?

0163

1 A. Not directly. The subject of Exhibit 3 had
2 to do with the errors that personnel were making in the
3 service delivery, interconnect service center and the
4 service delivery coordinator areas of the way the
5 company processed orders as well as other matters. It
6 wasn't strictly orders. Again, some of the errors that
7 were involved in this that led to this observation had
8 to do with matters that weren't orders is my
9 understanding.

10 Q. And, in fact, it included things such as the
11 help desk and erroneous LSR rejection; would that be
12 true?

13 A. Yes.

14 Q. And neither of those have anything to do with
15 measurements undertaken by expanded PO-20; is that true?

16 A. Yes.

17 Q. And, in fact, the statement that you quote
18 twice in your testimony on page 2 of 18 under impact
19 specifically refers to the inadequacy of Qwest's ISC and
20 SDC personnel training may impede a CLEC's ability to
21 obtain consistent and effective assistance, thereby, and
22 then the portion that you quote, negatively impacting
23 its ability to conduct business operations. Is that
24 correct?

25 JUDGE RENDAHL: Okay, you're referring to

0164

1 page 3 of the testimony?

2 MR. OWENS: I'm referring to that and also
3 page 7, line 13.

4 A. Yes, observation 3086 encompassed more than
5 the question of manual service order entry. It had to
6 do with human error generally, and encompassed within
7 the scope of that was errors made in manual service
8 order entry.

9 BY MR. OWENS:

10 Q. That's your conclusion, isn't it?

11 Did the KPMG --

12 MR. TRAUTMAN: Was that a question?

13 JUDGE RENDAHL: Is there a question?

14 Q. That's your conclusion, isn't it?

15 A. That's based on my recollection of
16 discussions we on the steering committee had with KPMG
17 about the nature of observation 3086.

18 Q. I see. But none of these discussions are
19 memorialized in the document that you included in your
20 evidence in this case; is that correct?

21 A. I believe that the exhibit that the steering
22 committee sent to Qwest may have discussed explicitly
23 concern about -- let me review that, please.

24 JUDGE RENDAHL: And which exhibit are you
25 looking at, Mr. Spinks?

0165

1 THE WITNESS: The one page letter from the
2 steering committee to Qwest.

3 JUDGE RENDAHL: I believe it's Exhibit 4.

4 THE WITNESS: Exhibit 4, thank you.

5 JUDGE RENDAHL: Let's be off the record for a
6 moment.

7 (Discussion off the record.)

8 THE WITNESS: Could I have the question
9 again.

10 JUDGE RENDAHL: Mr. Owens.

11 BY MR. OWENS:

12 Q. Well, I believe the question was, in response
13 to your statement that KPMG had established or had
14 determined that its statement here in the impact
15 paragraph on page 2 applied to manual service order
16 errors that I asked you if that was your conclusion, and
17 you said you thought that it was discussed between
18 members of the steering committee and KPMG. And I asked
19 you if any of those discussions were memorialized in
20 documents that you had introduced in evidence in this
21 case, and you asked to refer to Exhibit 4.

22 A. Right, well, there's something in Exhibit 4
23 that explicitly refers to the manual service order entry
24 issue.

25 Q. Thank you. And, in fact, isn't it true that

0166

1 nothing in Exhibit 3 explicitly makes a connection
2 between manual service order errors and any impediment
3 to a CLEC's ability to obtain consistent and effective
4 assistance?

5 A. Well, again in observation 36 subsumed within
6 that were a whole series of different sorts of manual
7 issues.

8 MR. OWENS: Your Honor, this question can be
9 answered yes or no.

10 JUDGE RENDAHL: Mr. Spinks.

11 A. May I have the question again?

12 BY MR. OWENS:

13 Q. Isn't it true that nothing in Exhibit 3
14 explicitly makes a connection between manual service
15 order errors and any impediment to a CLEC's ability to
16 obtain consistent and effective assistance?

17 A. Well, it does not include an explicit --
18 well, I think the observation language speaks for
19 itself. If you read through it, there's language here
20 about LSR's being rejected as a measure that Qwest would
21 put in. I don't believe that the observation focused on
22 manual service order entry. It was the observation
23 which brought to the attention of the steering committee
24 that there was an issue with manual transactions of all
25 sorts that Qwest was -- that Qwest personnel were doing

0167

1 and that as a general matter they were being corrected
2 by training.

3 Q. Would you agree that the help desk would be
4 the place where a CLEC would look to obtain consistent
5 and effective assistance from Qwest?

6 A. The help desk was where they went when they
7 needed assistance. If that had been consistent and
8 effective, I don't think observation 3086 would have
9 been issued.

10 Q. Now directing your attention to Exhibit 4,
11 there's a number in the upper left corner that's 2/12;
12 is that intended to mean that this document was produced
13 on February 12th?

14 A. I would assume so.

15 Q. Of 2002?

16 A. I think it may have been drafted on that
17 date. I would have to go back to check.

18 Q. And so juxtaposing the time of this document
19 with the range that we previously discussed of events in
20 Exhibit 3, it's fair to say that this document was
21 produced about two weeks after the initial observation
22 but about two months before the end of the process that
23 culminated in the document that's been introduced as
24 Exhibit 3; is that right?

25 A. Yes.

0168

1 Q. Now directing your attention to Exhibit 5,
2 and on page 1, paragraph 4 or the 4th paragraph, they're
3 not numbed but the 4th paragraph down under background,
4 it says:

5 However, due to a decision taken by the
6 ROC steering committee, no transaction
7 retesting was performed on the changes
8 and improvements made by Qwest.

9 So would the Commission correctly understand
10 from that statement that the steering committee refused
11 an opportunity to have the vendors test by submitting
12 new transactions to see whether the concerns that had
13 been identified with regard to manual order processing,
14 if any, had been corrected?

15 A. No, I don't think that's a correct
16 interpretation. What we did --

17 Q. That's fine, if it wasn't, I will ask you a
18 follow-up question.

19 Are you saying that there was not an
20 opportunity presented to the ROC steering committee to
21 have the vendors perform transaction retesting to
22 determine whether the changes and improvements that
23 Qwest had made with regard to manual transactions had
24 addressed the concerns?

25 A. There was a -- at this point of the test

0169

1 where it was coming to a close and there was a enormous
2 amount of pressure on all the parties I think to try to
3 facilitate the completion of the testing, we, rather
4 than hold on --

5 MR. OWENS: Your Honor, again, this question
6 can be answered yes or no without saying what the
7 parties were engaged in. I simply asked whether there
8 was an opportunity --

9 MR. TRAUTMAN: Your Honor --

10 MR. OWENS: -- to present it.

11 MR. TRAUTMAN: -- the witness is allowed to
12 explain his answer.

13 MR. OWENS: But he wasn't, he didn't give an
14 answer and then explain it. He went into a digression
15 without indicating whether it was true or untrue that an
16 opportunity for retesting was presented.

17 JUDGE RENDAHL: Okay, Mr. Spinks, can you
18 give an answer to the question and then give your
19 explanation.

20 THE WITNESS: Certainly.

21 A. There may have been an opportunity to demand
22 a retest and -- but we felt that that would
23 unnecessarily impede the completion of the testing and
24 instead chose to pursue the issue through this adequacy
25 study.

0170

1 BY MR. OWENS:

2 Q. Directing your attention to page 5 of Exhibit
3 T1, you make reference to an August 9, 2002, ex parte
4 filing with the FCC and this Commission which has been
5 introduced in evidence as Exhibit 7; is that right?

6 A. Yes.

7 Q. It's true, isn't it, that on August 9, 2002,
8 Qwest did not have the capability to measure the
9 original PO-20 on a state or CLEC specific basis?

10 A. Yes.

11 Q. And so the only alternative by which the
12 original PO-20 could have been included in the
13 performance assurance plan was as a Tier II per
14 measurement item; is that correct?

15 A. No, a Tier II aggregate measure. Or yes, if
16 you meant aggregate, that's correct.

17 Q. As opposed to per occurrence?

18 A. That's correct.

19 Q. The terminology is correct, you use aggregate
20 as opposed to per occurrence?

21 A. Yes.

22 Q. Okay. So that was the only option available
23 to Qwest in order to obtain some recognition in the PAP
24 of the manual service order accuracy measurement that
25 was then submitted as original PO-20; is that correct?

0171

1 A. That's correct.

2 Q. Now on page 6 of Exhibit T1, you state that,
3 and beginning at line 16:

4 Qwest and the CLECs subsequently
5 resolved all of the PO-20 issues except
6 for the matter of whether the measures
7 should be subject to Tier II payments.

8 To the extent that the Commission found in
9 the 10th Order that the settlement specifically provided
10 for no Tier II assignment for the expanded PO-20, would
11 you disagree with the Commission's finding on that?

12 A. Well, not being an attorney, I don't think I
13 can render an opinion about the meaning of the
14 Commission's orders in terms of what they accepted.

15 Q. I'm just asking you --

16 MR. TRAUTMAN: Your Honor, do you have a
17 reference that you could give to the witness and to me?

18 Q. It's on page 6, bullet point starting issue
19 number 5. It says:

20 Qwest will in all states in Qwest's
21 local service region except Colorado
22 file to add expanded PID PO-20 to Tier I
23 medium, in Minnesota Tier I(b) and
24 without a Tier II assignment in
25 attachment 1 to Exhibit K.

0172

1 The Commission described the settlement in
2 that fashion; are you saying that the Commission was
3 wrong?

4 A. No.

5 Q. Thank you.

6 On page 7 of the direct, Exhibit T1, your
7 answer beginning at line 11, you include a quoted
8 section where you say, negatively impacting a CLEC's
9 ability to conduct business operations. I just wanted
10 to confirm that that's simply a portion of the same
11 sentence that you quoted on page 3; is that right?

12 A. Well, I would have to go back through the
13 observation to confirm that, but I --

14 Q. Well, please do it.

15 JUDGE RENDAHL: So, Mr. Owens, your question
16 is whether the statement on page 7, line 13 and 14 of
17 Exhibit T1 was the same as that on page --

18 MR. OWENS: Page 3, Your Honor.

19 JUDGE RENDAHL: -- page 3.

20 MR. OWENS: That it's simply a portion of
21 that sentence and is not intended to refer to some other
22 portion of the document that's been introduced as
23 Exhibit 3.

24 A. Well, they appear to be -- I'm not sure
25 whether I was paraphrasing. I quoted it, so I have

0173

1 quotes around it, so I am thinking that both statements
2 came out of observation 3086.

3 BY MR. OWENS:

4 Q. My question was --

5 A. Oh, and it would be the same, yes, I see what
6 you're saying, yes.

7 Q. Thank you.

8 And similarly when you, and it's on the same
9 page, quote a sentence from the Department of Justice's
10 evaluation, that's also a sentence that you previously
11 quoted in the long quote on page 5; is that right?

12 A. Yes, this question and answer summarizing
13 what I have previously presented.

14 Q. And on page 8, actually beginning on the
15 bottom of page 7 when you say, Qwest itself after
16 discussion with the FCC believed it necessary to add
17 PO-20 to the QPAP as a Tier II measure, and that's the
18 same determination we discussed a few moments ago with
19 regard to Exhibit 7 where you agreed that there was no
20 alternative at the time based on the inability to
21 measure the original PO-20 on other than a regional
22 basis to adding that as a Tier II measure; is that
23 correct?

24 A. Yes, we're talking about the same addition of
25 PO-20.

0174

1 Q. Now you also refer in this same answer, this
2 is now on page 8, to a statement by the Commission in
3 the 43rd Supplemental Order, and the 43rd Supplemental
4 Order was served September 26th of 2002; is that
5 correct?

6 A. Yes.

7 Q. And therefore the statement that the
8 Commission refers to when it indicates that it requested
9 the FCC give lesser weight to performance data for OP-4
10 was in reference to Qwest's first application for
11 interLATA relief that was filed in the spring of 2002;
12 is that correct?

13 A. I'm not certain.

14 Q. Are you aware that Qwest filed more than one
15 application for 271 relief that would apply to the state
16 of Washington?

17 A. I recall that Qwest filed a initial
18 application, I don't believe Washington was included on
19 it, which I believe was withdrawn and then subsequently
20 refiled and shortly after that was approved. It filed
21 the second batch which included Washington. Now that's
22 my recollection.

23 Q. You can't think of a reason why this
24 Commission would request the FCC to give lesser weight
25 to performance data for OP-4 if the application that

0175

1 Qwest filed did not involve Washington; is that correct?

2 A. Yes, the statement is referring to the
3 application that included Washington, that's correct.

4 Q. And can you accept subject to check that
5 Qwest filed an application in approximately during the
6 spring of 2002 and withdrew that application on or about
7 September of 2002 and then filed another application
8 also involving Washington in December of 2002?

9 A. Yes.

10 Q. And isn't it true that this Commission did
11 not submit a comment in response to the second Qwest
12 application that affected Washington referring to manual
13 service order accuracy or asking the FCC to reduce the
14 weight given to any PID on account of that?

15 A. I think I'm confused.

16 Q. Well, let's see if we can --

17 JUDGE RENDAHL: Why don't you rephrase your
18 question maybe in a little bit shorter pieces.

19 MR. OWENS: Thank you.

20 JUDGE RENDAHL: That might assist the
21 witness.

22 MR. OWENS: Thank you, Your Honor, I will
23 certainly do that.

24 BY MR. OWENS:

25 Q. You have agreed to accept subject to check

0176

1 that Qwest filed two applications, one in the spring of
2 2002 and one in December of 2002, affecting requests for
3 271 relief for Washington, correct?

4 A. Yes.

5 Q. And the service date of the 43rd Supplemental
6 Order that you refer to was in between the filing of the
7 first application and the filing of the second
8 application, correct?

9 A. It would have been.

10 Q. And the Commission could only then have been
11 referring in the statement that you refer to in your
12 testimony about causing the Commission to request the
13 FCC to give lesser weight to performance data for OP-4
14 to the application that was then pending or at least had
15 been filed in the spring of 2002, correct?

16 A. Yes.

17 Q. Now my question to you is, did this
18 Commission in response to Qwest's second application on
19 or about December of 2002 file any comments with the FCC
20 or any requests to the FCC similar to what you recount
21 in your testimony with regard to manual service order
22 accuracy?

23 A. I simply don't recall.

24 Q. Can you accept subject to check that the
25 Commission did not?

0177

1 A. I will.

2 Q. Thank you.

3 JUDGE RENDAHL: Mr. Owens, just as a point of
4 reference, I think the FCC approved the second
5 application in December 2002. That triggered the six
6 month review proceedings. My understanding it was
7 December 23rd, 2002.

8 MR. OWENS: Okay.

9 JUDGE RENDAHL: Was when the FCC approved.

10 MR. OWENS: I think it was approved on a
11 fairly short calendar, Your Honor. I think it was filed
12 in the early part of the month and approved at the end
13 of the month, because there was already a good amount of
14 documentation on hand.

15 JUDGE RENDAHL: That could very well be, I
16 just wanted to make sure that we understood that date.

17 MR. OWENS: Yes.

18 JUDGE RENDAHL: Okay.

19 MR. OWENS: Thank you.

20 BY MR. OWENS:

21 Q. And it's true, isn't it, that the Department
22 of Justice submitted comments in response to Qwest's
23 second application that affected Washington that
24 indicated that conditions had changed favorably with
25 regard to the issue of manual service order accuracy

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1 compared to the conditions that existed at the time of
2 the first application?

3 A. Yes.

4 Q. Directing your attention now to Exhibit RT9,
5 page 2, the answer beginning on line 3, you say you do
6 not agree with Mr. Reynolds' statement with regard to
7 the reason why the CLECs agreed to settle with no Tier
8 II payment designation for expanded PO-20 because you
9 believe the CLECs did not consider the question of a
10 Tier II payment designation to be their issue to
11 advocate for or against in the context of settlement
12 discussions. Is that your testimony?

13 A. I see that, yes.

14 Q. Isn't it true, and I would ask at this time
15 official notice be taken of the final issues list, Your
16 Honor, that in the final issues list the CLECs stated
17 with regard to this issue, that is what tier should be
18 assigned to this new PID:

19 The treatment of the PO-20 measure in
20 the PAP needs to be changed to Tier I
21 high and Tier II medium to be consistent
22 with the treatment of the companion
23 measure OP-5.

24 And I will show you the document.

25 JUDGE RENDAHL: Okay, let's be off the record

0179

1 for a moment.

2 (Discussion off the record.)

3 JUDGE RENDAHL: While we were off the record,
4 we confirmed that the joint issues list that Mr. Owens
5 is referring to and has handed to the witness is a
6 document that was filed with the Commission on June
7 25th. It's in the Commission's records in the file, and
8 he's referring to page 9 of that document.

9 Mr. Spinks, have you found that location?

10 THE WITNESS: Yes.

11 JUDGE RENDAHL: And I consider this to be a
12 pleading in the proceeding and therefore can be referred
13 to. It doesn't need to be made an exhibit.

14 MR. OWENS: Thank you, Your Honor.

15 BY MR. OWENS:

16 Q. Do you agree --

17 MR. TRAUTMAN: Could you repeat your question
18 again.

19 MR. OWENS: I just asked Mr. Spinks whether
20 it was true that the CLECs in the final issues list
21 stated their position as I read it to him and that that
22 position was that the treatment of PO-20 should be Tier
23 I high and Tier II medium to conform to the treatment of
24 the companion measure OP-5.

25 A. And my response is yes, it does say that, and

0180

1 the issues list at that time was being prepared in the
2 context of filing testimony to litigate these issues.
3 What my sentence here -- what my statement says here at
4 the end says in the context of settlement discussions.

5 BY MR. OWENS:

6 Q. But you weren't a party to the settlement
7 discussions, correct?

8 A. Staff could not attend the settlement
9 discussions on the date that Qwest set.

10 Q. And so your belief is based on your inference
11 with regard to the CLECs' position that you draw from
12 the statement you quote out of the transcript of the
13 prehearing conference that appears on page 2, line 10 of
14 your rebuttal testimony; is that right?

15 A. It's not entirely based on that, but in part.

16 Q. What else is it based on?

17 A. Well, I had discussions with the CLECs after
18 the settlement to understand what had been agreed to.

19 Q. Did the CLECs ask you to pursue Tier II
20 designation for PO-20?

21 A. No.

22 Q. Was Qwest invited to any of these
23 discussions?

24 A. No, it wasn't a -- it wasn't a meeting per
25 se. It was my own individual effort to understand from

0181

1 the CLECs' perspective what had transpired during the
2 settlement discussions.

3 Q. Directing your attention now to page 3 of
4 your rebuttal, have you presented any evidence, and this
5 is in reference to your testimony beginning on line 4
6 with regard to what Staff is pursuing, have you
7 presented any evidence that the local market would not
8 remain open without Tier II payments for PO-20 expanded?

9 A. No.

10 Q. Isn't it true that no other state in Qwest's
11 region has sought to impose Tier II payment obligations
12 on the expanded PO-20?

13 A. I don't know.

14 Q. Are you aware of any that has?

15 A. Well, since the measure was just recently put
16 into place and brought before other state commissions
17 would be my understanding according to the settlement
18 agreement, I don't think there's probably been an
19 opportunity for other states to consider.

20 Q. That wasn't my question.

21 Are you aware of any that has?

22 A. I think I already answered that.

23 MR. OWENS: Well, Your Honor, I don't think
24 the question was answered.

25 JUDGE RENDAHL: I heard the witness say he

0182

1 did not know, that was my understanding of his answer,
2 and then went on to explain.

3 Mr. Spinks, is that what you stated?

4 THE WITNESS: That was my recollection.

5 BY MR. OWENS:

6 Q. Have you inquired as to whether any state
7 other than Washington has sought to impose Tier II
8 obligations on PO-20?

9 A. No.

10 Q. Beginning on page 4 on line 2 of page 4 where
11 you state what you believe the DOJ was expressing with
12 regard to the ability to detect and sanction poor
13 performance as it occurs, it's true, isn't it, that the
14 settlement provides for a sanction for poor performance
15 for the errors measured by PO-20?

16 A. I'm sorry, I didn't quite get the question.

17 Q. I'm sorry. It's true, isn't it, that the
18 settlement that assigns a Tier I medium payment
19 obligation to the CLECs for the errors measured by
20 expanded PO-20 provides a sanction against poor
21 performance for the efforts measured by that PID?

22 A. Yes, it provides some sanction, yes.

23 Q. And have you presented any evidence that the
24 sanction that's presented or that is provided by Tier I
25 medium is insufficiently strong to deter poor

0183

1 performance by Qwest with regard to the manual service
2 order accuracy?

3 A. No, that's -- there is -- well, I will just
4 leave it at that, no.

5 Q. Thank you.

6 At the bottom of page 4 of Exhibit RT9 you
7 recite the 30th Supplemental Order, and this is in
8 answer to a question that asks whether any of your
9 testimony or exhibits provides any supporting
10 documentation or rationale regarding any type of payment
11 designation for PO-20 expanded. It's true, isn't it,
12 that you didn't mention the 30th Supplemental Order or
13 PO-2B in your direct testimony or in Exhibits 2 through
14 8?

15 A. Yes, but that wasn't --

16 Q. Now the Commission didn't find --

17 MR. TRAUTMAN: Your Honor.

18 JUDGE RENDAHL: Can the witness finish,
19 Mr. Owens.

20 MR. OWENS: Thank you, Your Honor.

21 JUDGE RENDAHL: Mr. Spinks.

22 THE WITNESS: Thank you.

23 A. In responding to Mr. Reynolds' statement, I
24 responded to it in -- up through line 19 directly, and
25 in -- and I'm trying to explain here in the context of

0184

1 providing supporting documentation or rationale that
2 it's not a process that is -- that there's not a simple
3 formula for determining when a payment should be
4 designated for Tier II or not. And by way of explaining
5 that, I provide an example that in the case of the PO-2
6 measure that there wasn't -- the Commission didn't use a
7 formula in its order, you know, it was a -- based on the
8 perception of the importance of a CLEC's ability to
9 compete. And so I think it's responsive to
10 Mr. Reynolds' statement that there is no support or
11 rationale while there isn't support or rationale per se
12 with respect to PO-2B either beyond the statement that
13 it's important to a CLEC's ability to compete.

14 BY MR. OWENS:

15 Q. So you're saying the Commission made the
16 determination in the 30th Supplemental Order without any
17 evidence; is that correct?

18 A. No, that's not what I'm saying.

19 Q. The Commission didn't in the 30th
20 Supplemental Order say that all PO measures should be
21 Tier II measures, did it?

22 A. No, it said when a measure is important to a
23 CLEC's ability to compete it should be a Tier II
24 measure.

25 Q. And it didn't say that all Tier II measures

0185

1 were important to a CLEC's ability to compete, did it?

2 A. That's correct.

3 Q. So if the selection of measures for Tier II
4 is a subjective process, reasonable people could
5 disagree on whether a particular measure should be in
6 Tier II; is that correct?

7 A. Yes.

8 Q. And it's fair to say that there is no
9 consensus between the parties with regard to this issue
10 with regard to PO-20 in this case; is that correct?

11 A. That's why we're here this morning.

12 MR. OWENS: Your Honor, I have reached the
13 point in my cross where I'm going to ask questions with
14 regard to the material that we have objected to and as
15 to which you have indicated you would withhold ruling
16 until Mr. Reynolds' testimony is concluded. I would
17 offer these questions subject to being stricken in the
18 event that you sustain the objection to that material.

19 JUDGE RENDAHL: And this is in reference to
20 the testimony on page 7 beginning on line 9 of RT9?

21 MR. OWENS: Page 5 beginning on line 9, Your
22 Honor.

23 JUDGE RENDAHL: I'm sorry, page?

24 MR. OWENS: Page 5.

25 JUDGE RENDAHL: Oh, I'm looking at the wrong

0186

1 exhibit, that would be the problem.

2 Yes, okay, page 5, line 9.

3 Go ahead.

4 MR. OWENS: Thank you.

5 BY MR. OWENS:

6 Q. Now you say at page 5 beginning at line 13
7 that Staff's knowledge, Eschelon is the only CLEC in
8 Washington that has such a process, and you're referring
9 to the preorder review process in Mr. Reynolds'
10 testimony; is that right?

11 A. That's my -- yes.

12 Q. And is that reference intended to describe
13 what is known as the PSON or pending service order
14 notification process?

15 A. I do not know.

16 Q. Well --

17 A. My knowledge is gained from listening to
18 discussions between Qwest and CLECs about the various
19 processes, and through listening to those discussions I,
20 again, I'm simply saying the only one I'm aware of is
21 Eschelon, who appears to have created, as I understood
22 the discussions, a specific preorder or preconnection
23 review process in order to preclude problems on the
24 connection date for their customers. But I did not hear
25 any of the other CLECs indicate that they had such a

0187

1 process.

2 Q. So how many CLECs have you talked to about
3 whether they have or do not have such a process?

4 A. Well, I'm referring to the CLECs that
5 participated in the LTPA.

6 Q. So which ones are those?

7 A. That would be Covad, MCI, Eschelon. I don't
8 know if there is a fourth one, another one, or not.

9 Q. Isn't it true -- oh, I'm sorry, had you
10 finished?

11 A. Yes.

12 Q. Isn't it true that at the request of the
13 CLECs and particularly Eschelon, Qwest created the
14 pending service order notification process to provide
15 the CLECs with information constituting an advance
16 comparison of their local service request or LSR with
17 the information that Qwest was inputting to its systems
18 for those orders?

19 A. I don't know.

20 Q. Well, wouldn't it make a difference --

21 A. I am not aware of that.

22 Q. Wouldn't it make a difference to your
23 testimony with regard to the burden and cost on the
24 CLECs if Qwest was responsible for creating that process
25 and not the CLECs?

0188

1 A. No, the -- my understanding from listening to
2 these discussions was --

3 MR. OWENS: Your Honor, that isn't my
4 question. I asked him if it would make a difference to
5 his testimony about the burden if it turned out that it
6 was Qwest that was responsible for creating that process
7 and not the CLECs, and he's testifying as to what his
8 understanding of the facts are. I asked him a
9 hypothetical.

10 JUDGE RENDAHL: Mr. Trautman.

11 MR. TRAUTMAN: Well, Mr. Spinks had answered
12 the question, and he was proceeding to explain it when
13 he was interrupted by Mr. Owens.

14 MR. OWENS: He didn't --

15 JUDGE RENDAHL: Well, I'm not sure I heard a
16 direct answer before he gave the explanation.

17 So, Mr. Spinks, can you give your answer to
18 the question please again.

19 THE WITNESS: Certainly. Could I have the
20 question reread to me.

21 JUDGE RENDAHL: Let's be off the record for a
22 moment.

23 (Discussion off the record.)

24 (Record read as requested.)

25 A. My answer is no, and the reason is that the

0189

1 process -- my understanding of the process that Qwest
2 created was to make available information that a CLEC
3 had to create such that a CLEC had to create a process
4 on its own end to avail itself of the notification
5 system.

6 BY MR. OWENS:

7 Q. Oh, so you are aware that it is Qwest that
8 created the system that makes the information available
9 to the CLECs with regard to potential problems between
10 the LSR information and the pending order information;
11 is that right?

12 A. No, I'm not aware explicitly of how it works.
13 My -- I am recalling that there were a number of
14 discussions about who does what on that. I didn't
15 particularly pay a lot of attention to it as these went
16 on, and so what I'm saying here is what I did recall
17 explicitly about Eschelon in particular describing what
18 they had to do.

19 Q. Did you inquire of Qwest before writing your
20 testimony whether there was, in fact, another CLEC
21 besides Eschelon that subscribes to that process in
22 Washington?

23 A. No, and I don't believe that that's a process
24 I'm referring to. I mean that's Qwest's end of it.
25 What I'm referring to here is CLECs can't avail

0190

1 themselves of it to the extent whatever it is that Qwest
2 did do without incurring additional cost on their part,
3 and I assume that not all CLECs were willing -- are
4 willing to do that.

5 Q. Well, my question was not what you just
6 answered. My question was, did you inquire of Qwest
7 whether any CLEC besides Eschelon avails itself of the
8 process you described, that is of Qwest providing
9 information to the CLECs about their orders and
10 potential problems with the LSR's and the manual service
11 orders?

12 A. No.

13 Q. Would it surprise you to know that 21 CLECs
14 subscribe to that service in Washington?

15 A. No. I was only aware of the one though.

16 Q. Did you ask any CLECs besides Eschelon
17 whether they used that process?

18 A. No. Again, as I stated earlier, the basis
19 for my understanding was the LTPA discussions that only
20 included three CLECs.

21 Q. So you didn't attempt to determine how many
22 CLECs in Washington actually use the process that you
23 described in your testimony?

24 A. That's correct.

25 JUDGE RENDAHL: Let's try to avoid talking

0191

1 over one another.

2 Q. Would you agree that Qwest has an incentive
3 to avoid making Tier I payments to its competitors?

4 A. Yes, it would have some.

5 Q. And it has an incentive to minimize errors in
6 manually handled orders so as to minimize those payments
7 to its competitors under PO-20; is that correct?

8 A. Well, I don't believe it has sufficient
9 incentive, it has some incentive.

10 MR. OWENS: That wasn't my question, Your
11 Honor. I asked him if Qwest has an incentive to
12 minimize errors in order to avoid making payments to its
13 competitors under Tier I of PO-20.

14 JUDGE RENDAHL: And, Mr. Spinks, you can
15 respond, and then you can explain.

16 A. To the extent that there is a Tier I payment,
17 a medium payment in place, Qwest has some incentive,
18 although it may not be adequate, to avoid payments.
19 That is, if the economic benefit of not losing a
20 customer would exceed the incentive, for instance, Qwest
21 wouldn't have adequate incentive to not make the error.

22 BY MR. OWENS:

23 Q. Have you presented any evidence, any
24 mathematical studies or determinations of any kind, that
25 in fact the Tier I medium payment opportunity is not a

0192

1 sufficient incentive to minimize errors in manually
2 handled orders?

3 A. No, I haven't, but I would point out that the
4 process of setting the Tier I and Tier II designations
5 for PIDs wasn't one that involved any mathematical
6 calculation either. It was a before the fact process,
7 not knowing what performance was going to be like. It
8 was done outside of any actual performance.

9 Q. But your answer a moment ago as to whether or
10 not -- that you qualified that Qwest may not have a
11 sufficient incentive to minimize its errors based on the
12 cost benefit relationship of losing or not losing a
13 customer, that's a mathematical determination, isn't it?

14 A. That would be, but that's only one example of
15 why you don't have adequate incentive.

16 Q. So you presented no evidence to support the
17 example that you gave in that answer with regard to the
18 circumstances under which Qwest's incentive to minimize
19 errors might not be sufficient; is that correct?

20 A. Yes.

21 Q. On page 6 of your rebuttal testimony, Exhibit
22 RT9, beginning at line 8 you state, the CLECs believe
23 the issue was not addressed in the settlement and was
24 still an open issue. And is that based on the hearsay
25 statement that you referred to previously?

0193

1 A. I'm sorry, what hearsay?

2 Q. I asked you previously whether your testimony
3 about the CLECs' position on whether the settlement
4 covered Tier II was based on the transcript reference
5 from the prehearing conference, and you said, not
6 completely, it was based on conversations you had with
7 the CLECs to which Qwest wasn't invited. And is that
8 statement here of what the CLECs believe based on those
9 same conversations?

10 A. No, it -- well, the cite there is from the
11 transcript, Ms. Clauson, and that's -- it relies on both
12 that, their statement in the -- at the prehearing
13 conference as well as my earlier understanding that I
14 sought to get from them as to what the settlement
15 agreement had encompassed.

16 Q. Are you aware of the CLECs that you talked to
17 raising the issue of including PO-20 in Tier II in any
18 other state?

19 A. I didn't understand that question.

20 Q. Well, you just referred in your answer to
21 your conversations with the CLECs as to what they
22 believed about the issue not being settled, and I'm
23 asking you, those CLECs that you talked to, do you know
24 whether any of them have raised in any of Qwest's other
25 states the issue of including PO-20 in Tier II?

0194

1 A. No, I don't know, and I would assume that
2 they wouldn't, because the settlement agreement that
3 they agreed to, they agreed to not pursue the Tier II.

4 MR. OWENS: Thank you, that's all I have.

5 JUDGE RENDAHL: Okay, thank you.

6 Any redirect, Mr. Trautman?

7 MR. TRAUTMAN: I do want, yes, I do want a
8 redirect.

9

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

11 BY MR. TRAUTMAN:

12 Q. On the question Mr. Owens raised first in
13 conjunction with your testimony at the top of page 2 in
14 RT9, and this is the question or this is your statement
15 that you believe the CLECs did not consider the question
16 of a Tier II payment designation to be their issue to
17 advocate for or against in the context of the settlement
18 discussions, do you see that?

19 A. Yes.

20 Q. And as I recall, you -- first of all, you
21 emphasized that that was in the context of settlement
22 discussions and not in the context of litigation; is
23 that correct?

24 A. Yes.

25 Q. And Mr. Owens then also asked you about your

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1 conversations with the CLECs on this issue, and you
2 indicated this -- and that those conversations were part
3 of the basis for your conclusion on this; is that
4 correct?

5 A. Yes.

6 Q. What did the CLECs tell you?

7 MR. OWENS: Your Honor, I'm going to object,
8 this is hearsay and we can't cross examine the CLECs to
9 find out what they said in its entirety. Hearsay may be
10 admissible, but it's not the kind of information that,
11 especially as it relates to settlement negotiations,
12 that prudent people use in the conduct of their normal
13 business affairs.

14 MR. TRAUTMAN: Well, Your Honor, this is an
15 issue that Mr. Owens raised himself directly, and he
16 asked specific questions about the conversations that
17 Mr. Spinks had with the CLECs, and I am simply following
18 along that same line of questioning, and I'm asking what
19 did the CLECs tell him.

20 MR. OWENS: The only question I asked was
21 whether Qwest was invited to the discussions. I didn't
22 ask any substantive questions about what was said.

23 MR. TRAUTMAN: Mr. Owens indeed did ask
24 questions about what the CLECs told him.

25 JUDGE RENDAHL: Well, as I indicated in my

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1 order on Qwest's motion, I am quite wary about getting
2 into the issue of what was in fact discussed in
3 settlement discussions other than what we have on the
4 record from the prehearing conference which discussed
5 the settlement itself. That was discussed in the
6 Commission's order on the settlement, the Commission's
7 understanding of what happened in the settlement. I
8 think in some ways it's a bit of a red herring in this
9 case. I mean the issue here is a policy issue as to
10 whether or not PO-20 ought to be a Tier II issue or not.
11 And so I'm going to sustain the objection, and maybe you
12 can rephrase your question. I do understand that
13 Mr. Owens did ask some particular questions as to what
14 Mr. Spinks inquired into, but I don't think he asked
15 what the CLECs said, so that might be the distinction,
16 and it doesn't get into hearsay as to what other parties
17 stated. So maybe you can rephrase your question in such
18 a way to get the information that you want without
19 referring to the CLECs.

20 MR. TRAUTMAN: Well, my understanding was
21 that he had asked questions about whether the CLECs had
22 asked him certain things, but --

23 JUDGE RENDAHL: I think the transcript will
24 probably bear that out. But as I stated, I think this
25 in a sense, you know, certain testimony on this issue

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1 has already been stricken, I really don't want to create
2 more of a morass in this record as to what's been
3 stricken and what's been not, it makes it difficult to
4 figure out, so I'm loathe to strike more at this point
5 from the testimony. So why don't you try again, and
6 we'll see if this bears any fruit.

7 BY MR. TRAUTMAN:

8 Q. Did you ask the CLECs about this particular
9 issue in your discussions about the settlement, and this
10 issue being the Tier II payments?

11 A. Yes.

12 Q. And based on their responses to you, that was
13 part of your conclusion that this remained an open
14 issue; is that correct?

15 A. Yes.

16 Q. And the other basis for your conclusion is
17 the statement of counsel on the record in the prehearing
18 conference on the matter; is that correct?

19 A. Yes.

20 Q. And is it also based on the CLECs' statement
21 that if Staff, that notwithstanding the settlement,
22 Staff could continue to pursue the issue?

23 MR. OWENS: This is leading on redirect.

24 JUDGE RENDAHL: Well, I think in the interest
25 of time I'm going to allow it. I think it's been

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1 covered as well.

2 But, Mr. Spinks.

3 A. There was a statement in the settlement
4 agreement, I believe a footnote indicating that if the
5 parties had agreed that if Staff pursued the PO-20 Tier
6 II designation that the rest of the settlement would go
7 forward as agreed to. And that, of course, was part of
8 my understanding too of the positions of the parties
9 coming out of that settlement.

10 MR. TRAUTMAN: All right, that's all I have,
11 thank you.

12 MR. OWENS: Your Honor, I would like to
13 correct that when I said I didn't ask any questions, I
14 did ask one question about whether the CLECs in essence
15 tried to subvert the settlement. I don't think that
16 was --

17 JUDGE RENDAHL: I don't recall the question
18 in that way, but as I stated, I really am loathe to
19 strike more from the record at this point.

20 MR. OWENS: That's fine, I just wanted to
21 correct, to the extent Mr. Trautman said that I asked a
22 question, I did ask a question, but only to that extent.

23 JUDGE RENDAHL: Okay.

24 Do you have anything further?

25 MR. OWENS: No, Your Honor.

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1 JUDGE RENDAHL: And I don't have any
2 questions for the witness, but I am prepared to address
3 one of the objections you had, Mr. Owens, to RT9, and
4 that had to do I understand on page 4 of RT9 beginning
5 on line 19, the reference to the 13th Supplemental
6 Order. In reviewing Exhibit T1, if you look at page 7
7 beginning at line 1, I believe Mr. Spinks addresses in
8 his testimony the circumstances for subjecting
9 performance measures to Tier II payments, and so
10 although his answer addresses PO-2B in RT9, I think
11 there's sufficient basis in his testimony for including
12 that reference in the reply, and so I'm going to in a
13 sense deny your objection as to that statement, I think
14 it's appropriate. And so as to that one issue, I'm
15 going to resolve it now.

16 MR. OWENS: Thank you, Your Honor.

17 JUDGE RENDAHL: Is there anything further we
18 need to do before we move on to Mr. Reynolds' testimony?

19 MR. OWENS: No.

20 JUDGE RENDAHL: Okay, why don't we take a ten
21 minute break at this point, and then we will be back.

22 Is there any objection to moving through and just
23 finishing Mr. Reynolds and then just concluding the
24 testimony?

25 MR. OWENS: I have none.

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1 JUDGE RENDAHL: We'll take a ten minute break
2 and then come back and finish with Mr. Reynolds and then
3 be done. We will be off the record until 11:20.

4 (Recess taken.)

5 JUDGE RENDAHL: Mr. Reynolds, could you state
6 your full name and work address for the record, please.

7 THE WITNESS: Yes, my name is Mark Reynolds,
8 my work address is 1600 Seventh Avenue, Room 3206,
9 Seattle, Washington 98166, I'm sorry, 98191.

10 JUDGE RENDAHL: Thank you. And if you would
11 raise your right hand, please.

12 (Witness Mark S. Reynolds was sworn.)

13 JUDGE RENDAHL: Okay, please go ahead,
14 Mr. Owens.

15 MR. OWENS: Thank you, Your Honor.

16

17 Whereupon,

18 MARK S. REYNOLDS,
19 having been first duly sworn, was called as a witness
20 herein and was examined and testified as follows:

21

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

23 BY MR. OWENS:

24 Q. Good morning, Mr. Reynolds.

25 A. Good morning.

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1 Q. Please state your name for the record.

2 A. Mark Reynolds.

3 Q. Are you the same Mark Reynolds who has caused
4 to be prefiled the document entitled Response Testimony
5 of Mark S. Reynolds, Qwest Corporation, October 25th,
6 2004, that's been marked for identification as Exhibit
7 10T?

8 A. I am.

9 Q. And was this document prepared by you or
10 under your direction and supervision?

11 A. Yes, it was.

12 Q. Do you have any additions, changes, or
13 corrections to make to this document?

14 A. No, I do not.

15 Q. As filed, are the statements in this document
16 true and correct to the best of your knowledge and
17 believe?

18 A. Yes, they are.

19 MR. OWENS: Thank you.

20 Your Honor, I would offer Exhibit 10T, and
21 Mr. Reynolds is available for cross-examination.

22 JUDGE RENDAHL: And are you offering it in
23 full, or are you offering it with the --

24 MR. OWENS: Oh, I'm sorry, Your Honor, yes --

25 JUDGE RENDAHL: -- with the condition that

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1 you discussed earlier?

2 MR. OWENS: -- except for the material
3 beginning on page 11, line 10, through page 12, line 19.

4 JUDGE RENDAHL: Mr. Trautman.

5 MR. TRAUTMAN: No objections.

6 JUDGE RENDAHL: Okay, I'm going to reserve
7 ruling on the exhibit although you both agree to its
8 admission because of the issue of the testimony that
9 we're sort of weighing in the balance, and so --

10 MR. OWENS: I understand, Your Honor, thank
11 you.

12 JUDGE RENDAHL: So I will withhold ruling on
13 that exhibit as well as Exhibit RT9 just until we
14 finalize this issue.

15 Okay, go ahead, Mr. Trautman.

16 MR. TRAUTMAN: Thank you, Your Honor.

17

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

19 BY MR. TRAUTMAN:

20 Q. Good morning, Mr. Reynolds.

21 A. Good morning.

22 Q. Do you believe that if Qwest performs poorly
23 with respect to manual service order entry that it
24 affects the CLEC's ability to compete?

25 A. That's actually yes and no. It's hard to

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1 answer it with either a yes or a no, because it actually
2 depends on whether any errors that occur in the service
3 order entry on a manual basis actually impact the CLEC
4 in their relationship with their customer. I believe to
5 the extent that those errors impact the relationship
6 with their customer, then they could impede the CLEC's
7 ability to compete.

8 Q. Now turning to page 13 of Exhibit 10, on
9 lines 14 to 16 you state that you believe Staff is
10 entitled to pursue an issue if it has a distinct issue
11 such as a public policy concern that has not been
12 addressed by a settlement agreement between the other
13 parties; is that correct?

14 A. Yes.

15 Q. Is the goal of ensuring that Qwest has
16 sufficient incentive to continue meeting its performance
17 obligations once it receives Section 271 approval a
18 public policy concern?

19 A. Yes, I would agree with that, yes.

20 Q. Do you believe the State has an interest in
21 ensuring the development of telecommunications
22 competition in Washington?

23 A. Yes.

24 Q. Who among the settlement parties represented
25 the interests of the State of Washington in the

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1 settlement discussions?

2 A. I would say to the extent it was represented,
3 it was probably represented by Staff. To the extent
4 that Staff was not available during the settlement
5 negotiations however, the issues that I think are a part
6 of this proceeding were settled out between Staff and
7 the CLECs, and I believe that the one narrow issue that
8 we're discussing now, and that is whether Qwest needs
9 additional incentive to perform which I think is
10 something that you just referenced, it's my testimony
11 that I can't think of anyone that would be in a better
12 position to determine that than the CLECs.

13 Q. You're not -- are you saying that the CLECs
14 represented the interests of the State of Washington on
15 that issue?

16 A. I'm saying that by representing their own
17 self interests, they represented the interests of
18 competition, which I believe is the pursuit that Staff
19 has also in this proceeding. And I think the public
20 policy issue of fostering competition, I can't think of
21 a party better suited to represent that issue than the
22 CLECs themselves.

23 Q. So are you saying that the CLECs' interests
24 are exactly aligned with the interests of Staff who
25 represents the State?

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1 A. I'm saying in this narrow issue, which to me
2 has to do with providing Qwest incentive to perform, and
3 the performance that we're talking about is Qwest's
4 performance in serving CLECs and subsequently their
5 customers, definitely is a CLEC interest, but it's also
6 part of the State's responsibility under 271 to ensure
7 that Qwest continues to perform in accordance with its
8 271 obligations. The point of my testimony is I can't
9 think of a better party to argue what they require in
10 order to compete than the CLECs themselves, and
11 certainly they were party to the settlement discussions
12 that we had and that we reached conclusion on.

13 Q. How many CLECs participated in the
14 settlement?

15 A. There were three.

16 Q. Do they represent necessarily the interests
17 of all 137 CLECs in the state?

18 A. You know, I can't -- I don't have any direct
19 knowledge that they represent all the other CLECs. My
20 experience in these matters after attending multiple
21 cost dockets and seeing a limited number of CLECs
22 actually participate and others not is that generally
23 the CLECs know what the other CLECs want, and those
24 CLECs that are represented in the particular docket tend
25 to represent the consensus view of the CLECs community

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1 as a whole. That's my experience.

2 Q. But you said you don't know for a fact?

3 A. That's correct, I do not know for a fact.

4 JUDGE RENDAHL: Mr. Trautman and
5 Mr. Reynolds, if you will both wait until the other is
6 finished it will create a clearer record and make it
7 easier for the court reporter. Thanks.

8 BY MR. TRAUTMAN:

9 Q. Turning back to page 3 of your Exhibit 10, am
10 I correct that you indicated that -- that you indicate
11 one of the reasons for filing the initial PO-20 PID with
12 a Tier II measurement was because it wasn't suitable for
13 a Tier I payment?

14 A. That is correct. We did not have the
15 software in our systems to be able to track the service
16 orders on a CLEC by CLEC basis, and so a sampling
17 process was used, and by the very nature of a sampling
18 process we couldn't ascribe performance to any
19 particular CLEC, rather we had to do it on a sort of a
20 per state basis.

21 Q. And so am I correct that it's your view that
22 once you can establish Tier I payments, once you can
23 make those types of payments, in your view in this case
24 that removes the need to have a Tier II payment?

25 A. No, that was not my logic, nor do I believe

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1 that that's what's presented in my testimony. I believe
2 the basis for not needing a Tier II in this particular
3 case is really multifold. First, I believe that Qwest
4 is performing exemplary in this area. I don't believe
5 that Staff has proven that there's any need at all for a
6 Tier II matric in this area, and so that's one respect.
7 The other one I just addressed a minute ago, and that
8 has to do with the CLECs themselves, and they were more
9 than willing to settle for a higher Tier I matric and a
10 Tier I medium payment rather than to have Qwest maybe
11 have a low Tier I and a medium or a low Tier II. They
12 thought that that would be more incentive to Qwest to
13 perform than having a Tier II as well. And like I
14 already said, I think the CLECs are probably in the best
15 position to know what will foster competition.

16 Q. Is the presence of Tier II payment
17 designations in the QPAP one of the ways that the State
18 can ensure that Qwest continues to provide CLECs with a
19 level of service comparable to the level of service it
20 provides to its own customers?

21 A. I believe that it is a tool that the State
22 can use. I would not argue with that. I think my
23 argument here is, is the tool required in this
24 particular case, and I don't believe that it is. I
25 don't believe that there's been any showing that it's

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1 required.

2 Q. Are you aware that in the QPAP in Exhibit K
3 or would you accept subject to check that of the 24
4 measurements that have per occurrence payments, and I'm
5 excluding PO-20, that of those 24, 16, so that would be
6 of the 24 that have Tier I payments per occurrence,
7 would you accept subject to check that 16 of them also
8 have Tier II payments?

9 A. Yes, I would accept that.

10 Q. And would you also accept that 4 of those
11 measures also have Tier II high payments?

12 A. Yes, I would accept that. I might add one
13 thing, that the initial calibration of levels of tier
14 designation for PIDs took into account the very same I
15 guess policy issues that we're taking into account here,
16 and that is to give Qwest incentive to perform and CLECs
17 the ability to compete. In the workshops that led up to
18 developing whether these measures indeed would be Tier I
19 or Tier II, those were taken into account. And so the
20 questions that you just asked me, you know, essentially
21 were answered in the context of those workshops and
22 Qwest working collaboratively with the CLECs and with
23 commission staffs from around the region to determine
24 what would be the most appropriate designations for
25 payment, Tier I or Tier II. I think in this case I

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1 think it's important to note that we did work
2 collaboratively with the CLECs in the settlement
3 discussions that we had, and we came to an agreement
4 that Tier II was not required here.

5 Q. You were referring to the initial workshops,
6 correct?

7 A. That is correct.

8 Q. And PO-20 was not a part of that, correct?

9 A. That is correct, yes.

10 MR. TRAUTMAN: That's all I have, thank you.

11 JUDGE RENDAHL: Mr. Owens, do you have any
12 redirect for your witness?

13 MR. OWENS: Briefly, Your Honor, thank you.

14

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

16 BY MR. OWENS:

17 Q. Mr. Reynolds, you were asked whether if Qwest
18 performs poorly with regard to manual service order
19 entry that that could affect a CLEC's ability to
20 compete, and you said that yes and no, it could in the
21 event that the error had an effect on the CLEC's
22 customer. Is there a PID that captures manual service
23 order entries that have an effect on the customers
24 primarily?

25 A. Well, I know that there are -- I know that

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1 there are PIDs that measure whether Qwest delivers its
2 service within a specified interval and whether it
3 delivers the service by the due date. So I don't
4 understand the nature of your question, but there are
5 PIDs that measure virtually all aspects of the service
6 delivery process.

7 Q. Does OP-5 capture manual service order errors
8 that are customer or CLEC customer affecting?

9 A. It's my understanding that it does, yes.

10 Q. And does OP-5 already carry a Tier II
11 designation?

12 A. I believe it does.

13 Q. Thank you.

14 JUDGE RENDAHL: Are you through, Mr. Owens?

15 MR. OWENS: Just a moment, Your Honor.

16 BY MR. OWENS:

17 Q. There was a question that you answered with
18 regard to your testimony that the original PO-20 was not
19 suitable for Tier I, and you said that because of the
20 need to do a sampling process the calculation had to be
21 done by state. Did you mean by state or something else,
22 were the results reported on a state basis?

23 A. That's a good question, they may have been
24 reported on a regional basis. I honestly don't, you
25 know, it seems to me that they probably would be

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1 regional given that we have regional service order
2 processing centers.

3 MR. OWENS: Thank you, that's all.

4 JUDGE RENDAHL: Mr. Trautman, anything in
5 recross?

6 MR. TRAUTMAN: No, Your Honor.

7 JUDGE RENDAHL: Okay.

8 Thank you, Mr. Reynolds, you can step down.

9 So the only remaining issue today is what to
10 do with Exhibits RT9 and 10T, and having considered
11 Mr. Owens' objections to portions of RT9 and the portion
12 of Mr. Reynolds' testimony Exhibit 10T, consistent with
13 my order on the motion to strike, I think it's
14 appropriate to strike the portion of the testimony in
15 Exhibit 10T on page 11 beginning on line 9 through page
16 12 ending on line 19 and for that reason also to strike
17 the portion of Mr. Spinks' testimony in Exhibit 9RT
18 beginning on page 5, line 9, and ending on line 20.

19 Concerning the testimony that was given in
20 this hearing on that portion, I guess I would also
21 strike the questions and answers with the exception of
22 at the very end of your questioning, Mr. Owens, you
23 asked some questions of Mr. Spinks concerning whether
24 the Tier I assignment that has been given in the
25 expanded PO-20 is sufficient and why or why not it is

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1 sufficient, and I believe those questions and answers
2 should remain in the record, but everything else should
3 be stricken. Is that an acceptable ruling on this
4 issue?

5 MR. TRAUTMAN: Yes, Your Honor.

6 MR. OWENS: Yes, Your Honor. I intended to
7 withdraw only the questions that related to those
8 questions and answers that responded to Mr. Reynolds'
9 testimony and not to the sufficiency issue.

10 JUDGE RENDAHL: Well, it sort of segued
11 because of the last sentence there in Exhibit 9RT, the
12 last few lines address whether there is sufficient
13 incentive, and so I wanted to make clear that I thought
14 that there was enough of a difference between the
15 questions and answers made today as opposed to the
16 statement made in the testimony that I believe it's
17 appropriate to include in the record.

18 MR. OWENS: Thank you, Your Honor.

19 JUDGE RENDAHL: And so the only remaining
20 issue was your objection, Mr. Owens, to a statement made
21 on page 6 of 9RT.

22 MR. OWENS: I will withdraw that, Your Honor.
23 The basis of the objection was that at the time I made
24 the objection it appeared that the statement was made
25 only on the basis of an interpretation of the statement

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1 in the prehearing conference and that the witness stated
2 it was based on hearsay statements, and I assume that if
3 the CLECs told him what they believe that that's a basis
4 that he can testify as to what they believe.

5 JUDGE RENDAHL: Well, I was going to deny
6 your objection, because I thought there was sufficient
7 in the record to explain the basis for his statement and
8 that I didn't find it objectionable, and it can be
9 argued in brief, which I'm assuming you all will do.

10 So with that, is there any other remaining
11 issue? I will admit, with the changes we had noted on
12 the record, I will admit Exhibits 9RT and 10T into the
13 record, is there anything further we need to address
14 this morning?

15 All right, and the schedule we have for
16 briefing --

17 MR. OWENS: December 7th, Your Honor.

18 JUDGE RENDAHL: Yes, I will expect to see
19 initial briefs on December 7th, and then the responding
20 briefs are on December 17th, and we will endeavor to
21 have an order out by the end of the year or the very
22 beginning of the year in this matter.

23 MR. OWENS: Thank you.

24 JUDGE RENDAHL: So thank you all for your
25 time this morning, and we're done before lunch, so let's

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1 be off the record.

2 (Hearing adjourned at 11:45 a.m.)

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