

00157

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3

4 In the Matter of the Continued) Docket No. UT-003013
5 Costing and Pricing of)
6 Unbundled Network Elements and) Volume IV
7 Transport and Termination.) Pages 157-384
8 _____)

7

8 A hearing in the above matter was
9 held on August 21, 2000, at 9:00 a.m., at 1300
10 Evergreen Park Drive Southwest, Olympia, Washington,
11 before Administrative Law Judge LAWRENCE BERG,
12 Chairwoman MARILYN SHOWALTER, Commissioner RICHARD
13 HEMSTAD and Commissioner WILLIAM R. GILLIS.

14

15 The parties were present as
16 follows:

17 QWEST, by Lisa A. Anderl, Attorney
18 at Law, 1600 Seventh Avenue, Room 3206, Seattle,
19 Washington 98191.

20 THE COMMISSION, by Shannon Smith,
21 Assistant Attorney General, 1400 S. Evergreen Park
22 Drive, S.W., P.O. Box 40128, Olympia, Washington
23 98504-0128.

21

22 NEXTLINK WASHINGTON, ELECTRIC
23 LIGHTWAVE, INC., ADVANCED TELCOM, INC., NEW EDGE
24 NETWORKS, INC., NORTHPOINT COMMUNICATIONS, McLEOD
25 USA, AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST,
and TCG SEATTLE, by Gregory J. Kopta, Attorney at
Law, Davis, Wright, Tremaine, LLP, 2600 Century
Square, 1501 Fourth Avenue, Seattle, Washington
98101-1688.

00158

1 VERIZON, by Jennifer McClellan, W.
2 Jeffery Edwards, and Gregory Romano, Attorneys at
3 Law, Hunton & Williams, 951 E. Byrd Street, Richmond,
4 Virginia, 23219.

5 TRACER, RHYTHMS LINKS, INC., and
6 TELIGENT SERVICES, INC., by Arthur A. Butler,
7 Attorney at Law, Ater Wynne, Two Union Square, Suite
8 5450, 601 Union Street, Seattle, Washington 98101.

9 COVAD, by Clay Deanhardt and Sarah
10 Bradley, Attorneys at Law, 4250 Burton Drive, Santa
11 Clara, California 95054.

12 WORLDCOM, INC., by Ann E.
13 Hopfenbeck, Attorney at Law, 707 17th Street, Suite
14 3600, Denver, Colorado, 80202.

15 RHYTHMS LINKS, INC., by Doug
16 Hsiao, Attorney at Law, 9100 E. Mineral Circle,
17 Englewood, Colorado 90112.

18 PUBLIC COUNSEL, by Simon ffitch,
19 Assistant Attorney General, 900 Fourth Avenue, Suite
20 2000, Seattle, Washington 98164.

21
22
23

24 Barbara L. Nelson, CCR
25 Court Reporter

00159

1

2

INDEX TO EXAMINATIONS

3

4

WITNESS:

PAGE:

5

WILLIAM L. FITZSIMMONS

6

Direct Examination by Ms. Anderl

171

7

Cross-Examination by Mr. Deanhardt

174

8

Cross-Examination by Mr. Butler

222

9

Cross-Examination by Ms. Hopfenbeck

228

10

Examination by Dr. Gabel

229

11

Examination by Chairwoman Showalter

250

12

Examination by Commissioner Hemstad

275

13

Redirect Examination by Ms. Anderl

281

14

Recross-Examination by Mr. Deanhardt

284

15

Recross-Examination by Mr. Butler

312

16

Examination by Dr. Gabel

315

17

Examination by Chairwoman Showalter

310

18

Recross-Examination by Ms. Hopfenbeck

328

19

JERROLD L. THOMPSON

20

Direct Examination by Ms. Anderl

365

21

Cross-Examination by Mr. Kopta

340

22

23

24

25

00160

1

2

INDEX TO EXHIBITS

3

4	EXHIBIT:	MARKED:	OFFERED:	ADMITTED:
5	Exhibit T-1	166	173	173
6	Exhibit T-2	166	173	173
7	Exhibit T-3	166	173	173
8	Exhibit 4	166	189	189
9	Exhibit T-10	166	338	338
10	Exhibit E-11	166	338	338
11	Exhibits 12-14	166	338	338
12	Exhibit 15, C-15	166	338	338
13	Exhibit T-16	166	338	338
14	Exhibit 17	166	338	338
15	Exhibit T-18	166	338	338
16	Exhibit 19	166	338	338
17	Exhibit T-20	166	338	338
18	Exhibits 21-22	166	338	338
19	Exhibits 23-27	166	169	169
20	Exhibit C-28	166	169	169
21	Exhibit 29, C-29	166	169	169
22	Exhibit 30	166	169	169
23	Exhibit 31, C-31	166	169	169
24	Exhibit 32, C-32	166	169	169
25	Exhibit 33	166	169	169

00161

1	Exhibits 34-35	166	201	201
2	Exhibit 36, C-36	166	--	--
3	Exhibits 37-42	167	--	--
4	Exhibit 43, C-43	167	--	--
5	Exhibit 44, C-44	167	--	--
6	Exhibit 45, C-45	167	--	--
7	Exhibit 46-47	167	--	--
8	Exhibit 48, C-48	167	--	--
9	Exhibit 49	167	--	--
10	Exhibit 50, C-50	167	--	--
11	Exhibits 51-56	167	--	--
12	Exhibit 57, C-57	167	--	--
13	Exhibit 58, C-58	167	--	--
14	Exhibit 59, C-59	167	--	--
15	Exhibit 60, C-60	167	--	--
16	Exs. C-61, C-62	167	--	--
17	Exhibit C-63	167	--	--
18	Exhibit 64, C-64	167	--	--
19	Exhibits 65-66	167	--	--
20	Exhibit C-67	168	--	--
21	Exhibit 68	336	338	338
22	Exhibit 69	336	--	--
23				
24				
25				

00162

1 JUDGE BERG: All right. This hearing will
2 please come to order. This is a hearing in
3 Commission Docket Number UT-003013, referred to as
4 the New Generic Proceeding, also referred to as Phase
5 IV, before the Washington Utilities and
6 Transportation Commission. It's being held at
7 Olympia, Washington, on August 21st, the year 2000,
8 before the Commissioners. My name is Lawrence Berg.
9 I'm the presiding Administrative Law Judge.

10 As our first order of business today, let's
11 take appearances from the parties and just go around
12 the table, beginning with Verizon. I'm going to ask
13 each of the parties to identify yourself and the
14 client you represent, and also state your business
15 address and whether you have any co-counsel appearing
16 with you during the proceeding.

17 MS. McCLELLAN: Thank you, Your Honor.
18 Jennifer McClellan, representing Verizon Northwest,
19 Inc. Business address is Hunton and Williams, 951
20 East Byrd Street, B-y-r-d, Richmond, Virginia, 23219.
21 With me as co-counsel is W. Jeffery Edwards, also of
22 Hunton and Williams, and Gregory Romano, also of
23 Hunton and Williams.

24 JUDGE BERG: Could you spell Mr. Romano's
25 name for me?

00163

1 MR. ROMANO: Yes, it's R-o-m-a-n-o.

2 JUDGE BERG: Thank you, Mr. Romano.

3 MR. ROMANO: Thank you.

4 MS. ANDERL: Thank you, Your Honor. Lisa
5 Anderl, representing Qwest Corporation. Business
6 address, 1600 Seventh Avenue, Room 3206, Seattle,
7 Washington, 98191.

8 MR. BUTLER: Arthur A. Butler, of the law
9 firm Ater Wynne, L.L.P., representing Tracer, Rhythms
10 Links, Inc., and Teligent Services, Inc. Business
11 address is 601 Union Street, Suite 5450, Seattle,
12 98101-2327. With me is Douglas Hsiao, H-s-i-a-o,
13 in-house counsel for Rhythms Links.

14 MR. DEANHARDT: Good morning, Your Honor.
15 Clay Deanhardt, D-e-a-n-h-a-r-d-t, for Covad
16 Communications Company. Appearing with me is also
17 Sarah Bradley from Covad Communications Company. Our
18 business address is 4250 Burton, B-u-r-t-o-n, Drive,
19 Santa Clara, California, 95054.

20 MR. KOPTA: Gregory J. Kopta, of the law
21 firm Davis, Wright, Tremaine, L.L.P., 2600 Century
22 Square, 1501 Fourth Avenue, Seattle, Washington,
23 98101-1688, appearing on behalf of Nextlink
24 Washington, Inc., Electric Lightwave, Inc., Advanced
25 TelCom Group Inc., McLeod USA Telecommunications

00164

1 Services, Inc., New Edge Networks, Inc., NorthPoint
2 Communications, AT&T Communications of the Pacific
3 Northwest, Inc., and TCG Seattle.

4 MS. HOPFENBECK: Good morning, Your Honor.
5 Ann E. Hopfenbeck, H-o-p-f-e-n-b-e-c-k, appearing on
6 behalf of WorldCom, Inc. Business address is 707
7 17th Street, Suite 3600, Denver, Colorado, 80202.
8 Telephone (303) 390-6106.

9 MR. FFITCH: Good morning, Your Honor.
10 Simon ffitch, Assistant Attorney General, appearing
11 for the office of Public Counsel. Do you want the
12 full address, Your Honor?

13 JUDGE BERG: Yes, please.

14 MR. FFITCH: 900 Fourth Avenue, Suite 2000,
15 Seattle, Washington, 98164.

16 MS. SMITH: Shannon Smith, for Commission
17 Staff, 1400 South Evergreen Park Drive, S.W., P.O.
18 Box 40128, Olympia, Washington, 98504-0128.

19 JUDGE BERG: All right. Thank you,
20 Counsel. As I indicated before we began, I will be
21 giving counsel an opportunity to introduce themselves
22 to the Commissioners as they take the bench.

23 At this time, I'd like to go ahead and, on
24 the record, identify exhibits to be referred to
25 during the examination of Qwest witness Fitzsimmons

00165

1 and Qwest witness Thompson.

2 The direct testimony of Mr. Fitzsimmons is
3 Exhibit T-1. Response testimony of Fitzsimmons, T-2.
4 Fitzsimmons rebuttal testimony is T-3. DR Number RLI
5 03-001 is Exhibit 4.

6 The direct testimony of Thompson is T-10.
7 The errata to direct testimony, Exhibit E-11.
8 Revised JLT-1 is 12. JLT-2 is 13. JLT-3 is 14.
9 JLT-4 is Exhibit 15 and C-15. JLT-5 is T-16. JLT-6
10 is 17. JLT-7 is T-18. That's the response testimony
11 of Thompson. JLT-8 is 19. The rebuttal testimony of
12 Thompson is T-20. JLT-10 is 21. JLT-11 is 22.

13 Cross-examination exhibits for the CLECs --
14 we'll be referring to those parties represented by
15 Mr. Kopta as either the CLECs or the joint CLECs,
16 understanding that there are other CLECs who are
17 represented in this proceeding. 01-002 is 23.
18 01-003 is 24. 01-004 is 25. 01-006 is 26. 01-007
19 is 27. 01-009, Confidential Attachment C, is Exhibit
20 C-28. 01-010 is 29 and C-29. 01-011-1 is 30.
21 01-018 is 31 and C-31. 01-020 is 32 and C-32.
22 01-021 is 33.

23 Covad cross-examination exhibits begin with
24 Covad 01-021, Exhibit 34. Covad 01-022 is Exhibit
25 35. Covad 01-014 is 36 and C-36. Covad 01-031 is

00166

1 Exhibit 37. Covad 01-030 is 38. RLI 006 in the
2 Minnesota proceeding is 39. Covad 01-024 is 40. FCC
3 Transmittal Number 985 is 41. FCC Transmittal Number
4 997 is 42. Covad 01-013 is 43 and C-43. Covad
5 01-045 is 44 and C-44. RLI 03-011 is 45 and C-45.
6 Covad 01-040 is 46. RLI 03-013 is 47. Covad 01-033
7 is 48 and C-48. Covad 01-036 is 49. Covad 01-018 is
8 50 and C-50.
9 Rhythms' cross-examination. Covad 01-019
10 is 51. RLI-03-012 is 52. RLI 04-021 is 53. Covad
11 01-037 is 54.
12 Teligent cross-examination. Teligent
13 01-001 is Exhibit 55. Teligent 01-002 is 56. MCW
14 02-015 is 57 and C-57.
15 WorldCom cross-examination. WUTC 01-008 is
16 58 and C-58. WUTC 01-014 is Exhibit 59 and C-59.
17 CLEC 01-009 Confidential Attachments A and B are
18 Exhibits 60 and C-60. Contract Invoice Number 8678
19 is C-61. 8687 is C-62. Job costs by category and
20 FRCs is C-63.
21 Staff cross-examination. The supplemental
22 response to WUTC 01-018 is Exhibit 64 and C-64.
23 Depreciation rates from Fifth Supplemental Order in
24 UT-951425 is Exhibit 65. And WUTC 01-037 is Exhibit
25 66.

00167

1 Let me ask the parties if they have
2 anything to add or correct? Ms. Smith.

3 MS. SMITH: Yes, Your Honor. Prior to
4 going on the record, we had marked as Exhibit C-67
5 the page that Staff had included in its response to
6 data request to Qwest Number 14, that is also similar
7 to C-59.

8 JUDGE BERG: That's correct. Thank you.
9 Exhibit C-67 is Staff cross, consisting of one page
10 --

11 MS. SMITH: Yes, that's correct.

12 JUDGE BERG: -- from WUTC 01-014. Also
13 identified, 01-014 was also part of an exhibit
14 identified and marked for WorldCom cross-examination.
15 I'll indicate that this is Attachment A to WUTC
16 01-014. And I believe, Ms. Smith, this has some
17 markings that Staff has made to Attachment A; is that
18 correct?

19 MS. SMITH: That's correct, Your Honor.

20 JUDGE BERG: All right. Thank you.
21 Anything else, including any stipulations by parties
22 for admissions of the exhibits that have been
23 identified and marked?

24 MR. KOPTA: Yes, Your Honor. In
25 discussions off the record with Counsel for Qwest, I

00168

1 believe we have a stipulation for the joint CLEC
2 cross-examination exhibits, Exhibits 23 through 33,
3 so that they may be admitted into the record at this
4 time.

5 JUDGE BERG: All right. Exhibits 23
6 through 33 are admitted. Anything further?

7 MS. SMITH: Your Honor, just one more point
8 on Staff's Exhibit 67. I would like the record to
9 reflect that that exhibit was distributed to the
10 parties at the prehearing conference, but because it
11 was also -- the other pages were offered by another
12 party, it just didn't get into the list, but it was
13 distributed before the prehearing conference.

14 JUDGE BERG: That's correct, Ms. Smith.

15 MS. ANDERL: Your Honor, one of the things
16 that we maybe didn't talk about explicitly, but was
17 whether or not we needed to do the foundational type
18 of questions with the witness, as well, or if the
19 stipulation goes both ways -- in other words, T-10
20 through 22. I'm thinking it does.

21 JUDGE BERG: Well, I'm just concerned, to
22 the extent that other parties may have something to
23 say about that, Ms. Anderl.

24 MS. ANDERL: Oh, that's fine.

25 JUDGE BERG: I would prefer to go through

00169

1 with the foundation with the witnesses. Mr.
2 Fitzsimmons, if you would come on up and take the
3 witness stand.

4 Go ahead and have a seat, Mr. Fitzsimmons.
5 Before I swear you in at this time, even though
6 Counsel have entered their appearances on the record,
7 I'd like to go around the room and allow counsel an
8 opportunity to introduce themselves and co-counsel
9 who are present and may be participating in this
10 proceeding to the Commissioners, and we'll just start
11 with Verizon and go around the room.

12 MS. McCLELLAN: Good morning. Jennifer
13 McClellan, of Hunton and Williams, representing
14 Verizon. With me is Jeffery Edwards, also of Hunton
15 and Williams, and Greg Romano, also of Hunton and
16 Williams.

17 MS. ANDERL: Thank you, Your Honor. Good
18 morning, Commissioners. Lisa Anderl, representing
19 Qwest Corporation.

20 MR. BUTLER: Arthur Butler, representing
21 Tracer, Rhythms Links, Inc., and Teligent Services,
22 Inc. And with me is Douglas Hsiao, representing
23 Rhythms Links.

24 MR. DEANHARDT: Good morning, Your Honor,
25 and good morning, Commissioners. Clay Deanhardt,

00170

1 representing Covad Communications. And with me,
2 also, is Sarah Bradley, who is representing Covad
3 Communications.

4 MR. KOPTA: Greg Kopta, representing too
5 many CLECs to mention. And I apologize in advance.
6 I'm struggling with getting over a cold that my
7 year-and-a-half-old daughter shared with me.

8 MS. HOPFENBECK: Good morning, Your Honor.
9 Good morning, Commissioners. Ann Hopfenbeck,
10 representing WorldCom, Inc.

11 MR. FFITCH: Simon ffitch, Public Counsel.

12 MS. SMITH: Good morning. I'm Shannon
13 Smith, representing Commission Staff.

14 JUDGE BERG: And I'll just let all parties
15 know that, in addition to myself, Dr. David Gabel and
16 Mr. Thomas Wilson of Commission Policy section are
17 advising the Commissioners on this case. With that,
18 Mr. Fitzsimmons, would you --

19 MR. DEANHARDT: Your Honor.

20 JUDGE BERG: Yes.

21 MR. DEANHARDT: I'm sorry, Clay Deanhardt,
22 with Covad. My apologies, Your Honor. While Ms.
23 Anderl is doing the preliminary matters with Dr.
24 Fitzsimmons, I'm going to step out for a short health
25 break, and I will be right back, but I'll be back in

00171

1 time to do my cross.

2 JUDGE BERG: All right. I'll swear Mr.

3 Fitzsimmons in very slowly.

4 Whereupon,

5 WILLIAM L. FITZSIMMONS,

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

7 herein and was examined and testified as follows:

8 JUDGE BERG: Thank you. Please be seated.

9 MS. ANDERL: Thank you, Your Honor.

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

11 BY MS. ANDERL:

12 Q. Good morning, Dr. Fitzsimmons.

13 A. Good morning.

14 Q. Could you please state your name and your
15 business address for the record?

16 A. My name is William Fitzsimmons. My address
17 is 2000 Powell Street, Suite 600, Emeryville,
18 California.

19 Q. And by whom are you employed?

20 A. I work with LECG.

21 Q. Dr. Fitzsimmons, do you have before you the
22 testimonies that have been marked as Exhibits T-1,
23 T-2 and T-3?

24 A. Yes.

25 Q. And did you file or cause to be filed that

00172

1 testimony in this docket?

2 A. Yes.

3 Q. If I were to ask you the questions
4 contained in those testimonies today, would your
5 answers be the same?

6 A. Yes, they would.

7 MS. ANDERL: Your Honor, I would move the
8 admission of Exhibits T-1, T-2 and T-3.

9 JUDGE BERG: Are there any objections?
10 Exhibits T-1, T-2, and T-3 shall be admitted into the
11 record.

12 MS. ANDERL: Thank you, Your Honor.

13 JUDGE BERG: Off the record for a moment.

14 (Discussion off the record.)

15 JUDGE BERG: All right. We'll be back on
16 the record. There's one last administrative detail I
17 want to take care of before the witness is presented
18 for cross-examination. And that is, there are
19 parties who have entered appearances in this
20 proceeding, but have notified the Commission that
21 they do not intend to participate in Part A. Those
22 parties are MPower, letter MPower, one word, Inc. And
23 ICG Telecom Group, Inc., represented by Mr. Harlow,
24 of Miller Nash, and the Washington Independent
25 Telephone Association, and SBC Telecom, represented

00173

1 by Mr. Richard Finnigan. Also, Public Counsel has
2 made it known that while Public Counsel's present
3 today, that Mr. ffitch may not participate in the
4 entire Part A proceeding.

5 MR. FFITCH: Thank you, Your Honor.

6 JUDGE BERG: All right. Ms. Anderl, would
7 you go ahead and present your witness.

8 MS. ANDERL: Thank you, Your Honor. I
9 believe I offered the exhibits and you received them.
10 The witness is available for cross.

11 JUDGE BERG: All right. Mr. Deanhardt, my
12 understanding is that you're going to lead
13 cross-examination. I'll just remind all counsel to
14 please pace your questioning and to be sure a witness
15 has fully answered before asking a successive
16 question.

17 And for all counsel and all witnesses
18 present, the Commission's expectation is that
19 questions that are presented for a yes or no answer
20 will be answered yes or no before further explanation
21 is offered. And with that, Mr. Deanhardt, proceed.

22 MR. DEANHARDT: Thank you, Your Honor. And
23 thank you for your indulgence for a break.

24 C R O S S - E X A M I N A T I O N
25 BY MR. DEANHARDT:

00174

1 Q. Good morning, Dr. Fitzsimmons.

2 A. Good morning, Mr. Deanhardt.

3 Q. Dr. Fitzsimmons, you have been at LECG
4 since 1994; is that correct?

5 A. That's correct.

6 Q. And since 1994, except for two proceedings
7 where you testified for Ameritech, you've only
8 testified on behalf of US West, or what is now Qwest;
9 correct?

10 A. Yes.

11 Q. Now, you're not a lawyer, are you?

12 A. No.

13 Q. Now, your testimony -- well, actually,
14 let's back up a step. First, I want to see if we can
15 have some agreement on some general economic
16 principles. Now, you would agree with me, wouldn't
17 you, that an appropriate goal of economics is to
18 encourage efficient allocation of resources?

19 A. Well, the application of economics. The
20 goal of economics is really to understand, explain,
21 and, to the extent of our abilities, predict. But,
22 certainly, how that is applied would comport with
23 your question, yes.

24 Q. Okay. And you would agree with me,
25 wouldn't you, that a policy that results in an

00175

1 inefficient allocation of resources is a bad policy,
2 from an economic standpoint?

3 A. Well, no, I wouldn't agree with you on
4 that. There are public policy reasons for making
5 decisions that allocate resources somewhat
6 differently than would be the most efficient from a
7 pure economic standpoint, and economists really don't
8 have much to say about whether that's good or bad.
9 We can help understand what you're paying, what price
10 you're paying in terms of efficiency. But if there's
11 a public policy goal to support universal service,
12 for instance, and that may not lead to the most
13 efficient use of the resources from a purely economic
14 standpoint.

15 Q. But my question, and let's go back into
16 your answer, but my question was, from an economic
17 standpoint only, ignoring other public policy
18 concerns, isn't it correct that a policy that results
19 in inefficient allocation of resources is a bad
20 policy, strictly from an economic perspective?

21 A. Well, economics isn't really a pejorative
22 in that sense, but to move things along, I'll grant
23 you that, yes, from an efficiency perspective, which
24 is, I think, what you're referring to as a strictly
25 economic perspective, that would be the right

00176

1 direction.

2 Q. Now, in an economically-efficient,
3 competitive market, you would agree, wouldn't you,
4 that the price of goods or services will be driven
5 towards the economic cost of those goods or services?

6 A. In a -- yes.

7 Q. Now, you would agree with me, also, that in
8 any market, that prices are going to be set by a
9 competitor that wants to stay in business above their
10 cost of producing the product or service?

11 A. I'm not sure that that was a question. I
12 think I get the gist that any firm that wants to stay
13 in business has to earn revenues in excess of its
14 cost or equal to its cost. I would agree with that.

15 Q. And to do that, they're going to set prices
16 that are in excess of their cost; correct?

17 A. Or equal to their cost, yeah.

18 Q. Or equal to, correct. Thank you.

19 A. You're welcome.

20 Q. Now, your testimony focuses on the price
21 that you recommend that the Commission should set for
22 the HUNE; correct?

23 A. Correct.

24 Q. And the HUNE is the unbundled
25 high-frequency spectrum network element on an

00177

1 existing copper link; correct?

2 A. Correct.

3 Q. So -- and I apologize, HUNE is H-U-N-E.

4 What I want to do is I want to focus on -- so we can

5 set up for the Commission and be exactly clear on

6 what we're talking about. So what we're talking

7 about here, then, is the high frequency on the copper

8 loop; correct?

9 A. That is correct.

10 Q. And so we're talking about the piece of

11 copper that extends from the network interface device

12 at a customer premise to the distribution frame, or

13 to the central office; correct?

14 A. That's correct.

15 Q. So your testimony, then, is not advocating

16 prices for anything that happens on the customer

17 premise side of a network interface device; correct?

18 A. That's correct.

19 CHAIRWOMAN SHOWALTER: Mr. Deanhardt, can

20 you slow down your questions just slightly, both for

21 the court reporter and -- because sometimes I'm not

22 catching every word that you're saying.

23 MR. DEANHARDT: Yes, ma'am. I will do my

24 best. Thank you. Hard to believe I was raised in

25 the South, isn't it? Tomorrow, I'll skip Starbucks.

00178

1 Q. And your testimony also does not address
2 the costs that occur inside the central office after
3 the loop is terminated; correct?

4 A. Correct.

5 Q. Now, you are not recommending, are you,
6 that the Commission set the price of the HUNE to
7 recover the cost of a POTS splitter, are you?

8 A. I believe in my testimony I say that if
9 there are other costs caused by DLECs wanting to use
10 the high-frequency spectrum unbundled element, that
11 they should pay for those. Now, whether they're paid
12 for inside of the UNE for the high frequency of the
13 loop or in separate elements, I'm somewhat
14 indifferent.

15 Q. And that's why I'm focusing on these
16 questions, because you've proposed a price for the
17 HUNE of 50 percent of the cost of the loop; correct?

18 A. That is correct.

19 Q. Now, you aren't saying, are you, that that
20 HUNE price should include the cost of the splitter,
21 are you?

22 A. No, that 50 percent would not include the
23 cost of the splitter.

24 Q. And you're not saying, are you, that the
25 price of the HUNE should include the cost of OSS

00179

1 upgrades, are you?

2 A. No, I'm not.

3 Q. And you also are not saying that the cost
4 -- or that the price of the HUNE should be set to
5 recover the cost of some piece of USF, are you?

6 A. The reason I'm pausing is I'm trying to
7 understand if I'm answering no or yes to sort of a
8 negative question, I am not. So I'm trying to make
9 sure that I'm following that and not giving you two
10 negatives, which makes a positive.

11 Q. I can try to rephrase the question.

12 A. Thank you.

13 Q. You are not recommending that the price of
14 a HUNE be set to recover some contribution to the
15 universal service fund, are you?

16 A. No, not directly.

17 Q. Not indirectly, either; correct?

18 A. No.

19 Q. Dr. Fitzsimmons, you would agree with me,
20 wouldn't you, that under current FCC rules, the price
21 of the HUNE cannot be based on the opportunity cost
22 to Qwest of not being able -- or Verizon of not being
23 able to use the HUNE, wouldn't you?

24 A. No, I would not agree with you on that. If
25 I may explain a little further. The direct cost

00180

1 that's considered in this proceeding is the cost of
2 the loop. Now, once we have line sharing, that cost
3 is recast as a common cost to the two dedicated
4 connections on the loop. So the question before us
5 is how do we allocate a portion of the loop for
6 recovery in the price of the high-frequency spectrum
7 UNE. And I believe one of the things that will help
8 us consider that allocation is to consider how a
9 competitive firm would make that allocation. And a
10 competitive firm certainly would consider the value
11 of that asset to itself. So I'm not trying to
12 establish the overall cost of the loop based on
13 value, but I think it does give us some insights as
14 to how it may be allocated.

15 Q. You are aware, are you not, that the FCC's
16 local competition order that set the rules for
17 pricing unbundled network elements expressly rejected
18 the notion that network elements can be priced based
19 on lost opportunity costs?

20 A. Yes. I'm also aware, however, that the FCC
21 recognized quite explicitly that it's a challenge to
22 allocate joint and common costs. And they came up
23 with certain suggestions on how that could be done,
24 but, really, what they were pointing to is you have
25 to determine what is most reasonable for doing an

00181

1 allocation, since cost causation does not help you in
2 that instance.

3 Q. Now, focusing again on what we have
4 described as the loop, the piece of copper between
5 the network interface device and the central office,
6 isn't it correct that there are no additional costs
7 to the loop itself when a CLEC provides DSL service
8 using the HUNE?

9 A. That's correct. When you provide a shared
10 line, all of the direct costs become common costs,
11 but there are not any additional costs.

12 Q. Now, you are aware, aren't you, that a CLEC
13 cannot provide the HUNE across a loop that the ILEC
14 is not already providing voice across?

15 A. Well, the CLEC can lease a loop and it can
16 go into negotiations with another CLEC that leases a
17 loop to provide DSL service over the high-frequency
18 spectrum. Qwest is not the only source of loops any
19 longer.

20 Q. That wasn't my question.

21 A. Okay. Sorry.

22 Q. Because that's not a HUNE, is it?

23 A. No, and you asked specifically about the
24 UNE, the answer would be yes. I hope I got it right.
25 Let me make sure I make my yes clear. Maybe it's no.

00182

1 Q. Let me try and re-ask the question. And
2 again, I want you to focus on the HUNE.

3 A. Okay.

4 Q. Okay. You are aware, are you not -- well,
5 I'll actually do it a different way, rather than the
6 you are aware part.

7 A. Thank you.

8 Q. Isn't it correct that a CLEC cannot
9 purchase the HUNE on a loop unless the ILEC is
10 already providing voice service across that loop?

11 A. Correct.

12 Q. And if the CLEC ceases to provide DSL
13 across the loop, then Qwest -- well, the ILEC does
14 not save any loop cost, does it?

15 A. No.

16 Q. If the Commission orders that the HUNE
17 should be priced at some cost or at some price above
18 zero, Qwest is not proposing an offsetting adjustment
19 in loop prices, is it?

20 A. No.

21 Q. And Qwest is not proposing an offsetting
22 adjustment in its retail rates, is it?

23 A. No.

24 Q. Dr. Fitzsimmons, in your testimony, and I
25 have to apologize, because my copy of your testimony

00183

1 doesn't have the exact -- the right line and page
2 numbering, because mine is printed off an electronic
3 copy, but I'll see if you remember, and if not, we'll
4 find it. In your testimony, you cite the line
5 sharing order from the FCC for the principle that we
6 can --

7 CHAIRWOMAN SHOWALTER: Mr. Deanhardt, it
8 helps us a lot if we know where the testimony is.

9 MR. DEANHARDT: I apologize, Your Honor.

10 CHAIRWOMAN SHOWALTER: If you can even get
11 to the approximate page and line number and say it's
12 under the question in bold.

13 MR. DEANHARDT: It's in the direct
14 testimony of William Fitzsimmons, Exhibit T-1, under
15 heading number three, and it's the one, two -- the
16 third question under heading number three.

17 CHAIRWOMAN SHOWALTER: What's your page
18 number, for example?

19 MR. DEANHARDT: Page nine.

20 MR. BUTLER: Beginning with line 14, with
21 the question.

22 CHAIRWOMAN SHOWALTER: Okay.

23 MR. DEANHARDT: And I apologize. This is
24 the problem with electronic service.

25 CHAIRWOMAN SHOWALTER: Actually, we're all

00184

1 going to go to Word pretty soon, and I think that
2 might help matters.

3 MR. DEANHARDT: Mr. Gates is taking over
4 the world near you, along with Starbucks.

5 Q. Dr. Fitzsimmons, in your testimony, you
6 cite the FCC for the principle that we conclude that
7 states may require that the incumbent LECs charge no
8 more to competitive LECs for access to shared loops
9 and the amount of loop costs the incumbent LEC
10 allocated to ADSL services. Do you recall that?

11 A. Yes, but I don't think that's the cite that
12 we just went to.

13 JUDGE BERG: I'm going to ask that parties,
14 when they use documents, the documents that the
15 Commissioners have assembled for their books and that
16 I'm using as control documents for the record are not
17 electronically-transmitted documents. There is a
18 requirement the parties file certain exhibits
19 electronically if they're not serving a paper copy
20 that day, but I would like counsel to be mindful and,
21 to the greatest extent possible, to use the hard copy
22 served exhibit, which has been distributed while
23 working with witnesses. And I'd also like counsel to
24 make sure that the exhibits that their parties, their
25 witnesses bring to the table are in fact the copies

00185

1 of the hard paper copies served and not electronic
2 copies. That is a problem that's occurred in the
3 past and may be what's happening here now.

4 MR. DEANHARDT: Your Honor, I apologize. I
5 will say, in my defense, we never were served with
6 paper copies of anything, despite the efforts of my
7 counsel to have us so served, but I will do my best
8 and I'll see what I can do tonight to try and remedy
9 the solution.

10 JUDGE BERG: If you let me know about that
11 situation earlier, early in a proceeding, then I can
12 do something about that.

13 MR. DEANHARDT: Thank you, Your Honor.

14 Q. Actually, Dr. Fitzsimmons, that is the
15 place, it's page nine of your testimony, beginning
16 with line 20, continuing to page 10 of your
17 testimony, and terminating on line one. And I'm
18 sorry, in this case, your testimony is the direct
19 testimony marked as Exhibit T-1.

20 A. Would you please read to me the cite again
21 that you quoted?

22 Q. We conclude that states may require that
23 the incumbent LECs charge no more to competitive LECs
24 for access to shared loops than the amount of loop
25 costs the incumbent LEC allocated to ADSL services.

00186

1 CHAIRWOMAN SHOWALTER: Let's see.

2 THE WITNESS: Do you have it?

3 CHAIRWOMAN SHOWALTER: You need to make
4 sure your own testimony is like ours, as well.

5 THE WITNESS: I think so.

6 CHAIRWOMAN SHOWALTER: On ours, it's page
7 nine, line 20.

8 THE WITNESS: Okay, I see it. Thank you.
9 I'm on the same line, same page.

10 CHAIRWOMAN SHOWALTER: Good.

11 THE WITNESS: Okay. Thank you. We're
12 there.

13 Q. Okay, great. You would agree, wouldn't
14 you, that strict application of that test in this
15 docket would result in a zero dollar price for the
16 HUNE for Qwest?

17 A. In the absence of doing what makes sense,
18 yes.

19 Q. We're supposed to do the yes before the
20 editorial comments.

21 A. Sorry. I apologize.

22 Q. So then the answer to the question is yes?

23 MS. ANDERL: Well, Your Honor, I object.

24 It's been asked and answered. It's yes, with an
25 explanation.

00187

1 JUDGE BERG: We understand the answer, Mr.
2 Deanhardt.

3 MR. DEANHARDT: Okay. I'm going to find
4 something else to alleviate the problem, Your Honor,
5 if you'll hold on one second.

6 Q. Dr. Fitzsimmons, beginning on page 15 of
7 Exhibit T-1, you begin discussing the chicken breast
8 and wings scenario. Do you recall that?

9 A. Yes, I do.

10 Q. I'd like for you to turn, please, if your
11 counsel's given you a copy of what has been
12 previously marked as Exhibit 4 in this docket. Do
13 you have that?

14 A. This is line sharing, pricing the loop?

15 Q. That's correct.

16 A. Yes, I have it.

17 Q. Now, in your testimony regarding this
18 chicken scenario, you refer in footnote nine to a
19 presentation. Is Exhibit 4 the presentation that
20 you're referring to?

21 A. Yes.

22 Q. And you've seen Exhibit 4 before?

23 A. Yes.

24 Q. And this is a correct copy of Exhibit 4?
25 I'm sorry, this is a correct copy of what you

00188

1 described in footnote nine?

2 A. I assume so.

3 MR. DEANHARDT: Your Honor, we'd move for
4 the admission of Exhibit 4.

5 MS. ANDERL: No objection.

6 JUDGE BERG: Exhibit 4 is admitted.

7 Q. Dr. Fitzsimmons, would you please turn to
8 the second from the last page of Exhibit 4? And I
9 apologize, these pages are not numbered. It has the
10 heading "Summary." Do you see that?

11 A. Yes.

12 Q. Now, it's correct that, in this
13 presentation, the summary states that, under FCC
14 assumptions, the DSL portion of the loop should be
15 zero, doesn't it?

16 A. Yes.

17 Q. Now, you spend some time talking about
18 chicken breasts and chicken wings, and I'd like to
19 walk through that. As I understand it -- let's do it
20 this way. I'm going to walk you through a series of
21 hypothetical questions and I'm going to ask you to
22 assume some things for me. Can you do that?

23 A. Yes.

24 Q. Okay. Now, let's assume that there's a
25 competitive market for the producers of chicken

00189

1 parts. Can you assume that for me?

2 A. Yes, I assume you're saying all parts?

3 Q. All parts.

4 A. Yes.

5 Q. We can say a competitive market for the
6 producer of a chicken?

7 A. Okay.

8 Q. Now, under the analogy drawn in your
9 testimony, you have assumed that, at first, there is
10 only a market for chicken breasts and that wings are
11 a by-product that no one uses; correct?

12 A. Correct.

13 Q. And that, at some point, I think you cite
14 the advent of Buffalo wings. Chicken wings suddenly
15 have -- suddenly, the chicken farmer can start
16 selling chicken wings; correct?

17 A. Correct.

18 Q. Now, let's assume that at the time that the
19 chicken farmer can only sell the chicken breast, the
20 price of the chicken is \$10. Can you do that?

21 A. Yes.

22 Q. Now, when the chicken farmer starts to be
23 able to sell chicken wings, the -- oh, back up. One
24 more assumption. Let's assume that the cost of
25 producing the chicken that sells for \$10 is \$9.50.

00190

1 Will you do that?

2 A. Yes.

3 Q. So we have a price that's set above cost;
4 correct?

5 A. Correct.

6 Q. But it's reasonably close to cost, which is
7 what you would expect the result to be in a
8 competitively efficient market; correct?

9 A. Assuming that it is not some sort of
10 superior chicken that the people love one chicken
11 farmer's chicken more than other chickens. But yeah,
12 I think your assumption is correct.

13 Q. So we're going to assume ubiquitous
14 chickens. Nobody can produce steroid-enhanced,
15 better chickens.

16 A. I'm not sure ubiquitous is the correct word
17 there. Certainly.

18 Q. Now, when the farmer who is selling her
19 chicken for \$10 is suddenly able to sell chicken
20 wings, she may be able to get a price for chicken
21 wings that would increase the total price that she
22 can get for the chicken; correct?

23 A. For some period of time, possibly, but the
24 competitive market that you spoke of will make
25 adjustments to that and the prices for breasts, let's

00191

1 say, and wings will both be adjusted, because then
2 they are joint products. And the way you determine
3 what the price will be for joint products is to look
4 at the relative strengths and elasticities of demand.

5 Q. But, ultimately, as you've said, the price
6 for the combined breasts and chicken wings will, in a
7 competitive market, move back to \$10, won't they?

8 A. Somewhere in that neighborhood, yes.

9 Q. Because at that point, because the cost of
10 producing the chicken hasn't changed; correct?

11 A. That's correct, so if \$10 is recovering
12 your cost of being in the business, then indeed you
13 will go back towards trying to recover those costs
14 and the market will drive you down towards \$10;
15 correct.

16 Q. And the way that will happen is that the
17 price of one -- either the breast or the wings will
18 be reduced over time; correct?

19 A. Sure.

20 Q. Or you could just decide to give away the
21 wings in order to, you know, as a freebie to try and
22 sell the breasts; correct?

23 A. You could certainly do that.

24 Q. Now, Dr. Fitzsimmons, you talk quite a bit
25 in your testimony about a dedicated connection. What

00192

1 is that?

2 A. It's when a product is dedicated to your
3 use, then that is a product that is dedicated to you.
4 In the case we're talking about here, a loop that
5 goes to my house or anybody's house here, that loop
6 is dedicated to me. Now, whether I ever use that
7 loop or not, that loop is dedicated for my use.

8 I think the example I use in my testimony,
9 which is easier for some people, I think, to
10 envision, is a car. If I go out and lease a car, I
11 have to pay a price for that lease that reflects the
12 cost of the car. Now, one person may lease a car and
13 drive it 30,000 miles a year and another not drive it
14 at all, but it's a dedicated facility to that person.

15 Q. So then, in your testimony, you're talking
16 about the dedication of the facility to the end user?

17 A. I'm talking about the dedication of, in
18 this case, it was nice when it was as clear as that,
19 that there was a dedication of a facility. Because,
20 as with automobiles, it's much easier when you can
21 think of here's a copper loop, we can imagine it
22 running along the poles and going down in the ground
23 and getting there, and it's one facility that's
24 dedicated. But, actually, what is sold is a
25 dedicated connection between the end user and the

00193

1 supplier of services.

2 So now, what the FCC has done is said we
3 have two dedicated connections. It's nowhere near as
4 easy to envision, but indeed it's the dedicated
5 nature of those connections that causes the cost of
6 the loop whether either of those connections are ever
7 used.

8 Q. So it's your testimony, then, that the
9 dedicated nature of those connections causes -- that
10 each one individually causes some portion of the cost
11 of the loop?

12 A. Well, the unfortunate part here is when you
13 have joint products, it doesn't make any sense. It
14 doesn't lead you to a better understanding to think
15 of them as separately being required; right. They
16 are both produced and they are both used. So they're
17 not sort of additive and somehow I can tell one and
18 add the other. The market will end up with some kind
19 of an additive -- an algorithm to that, but you can't
20 predetermine that.

21 Q. Well, Megabit has two dedicated
22 connections, doesn't it?

23 A. Could you explain that a little more for
24 me?

25 Q. Are you familiar with Qwest's Megabit

00194

1 product?

2 A. I'm familiar that they offer DSL service
3 with the Megabit product, yes.

4 Q. And that DSL service is also carried across
5 a shared line. It's across the same line that has
6 voice service; correct?

7 A. Correct. I understand.

8 Q. So Megabit also has a dedicated connection;
9 correct?

10 A. That's correct. Well, in that case, it's
11 correct, but it's a little different from a market
12 standpoint when you have one company establishing two
13 uses on a dedicated connection. But, certainly,
14 there are two dedicated connections, but in this
15 case, they're both to the same supplier.

16 Q. Two dedicated connections, but to the same
17 supplier?

18 A. Mm-hmm.

19 Q. Now, if both caused the cost of the loop,
20 then the costs should be allocated between them;
21 correct?

22 A. Yes, in a sense that they, then, are
23 jointly used, but they're not really a product,
24 because they are sold, I mean, in that sense. The
25 loop itself, we have to make sure we're talking the

00195

1 difference between a loop and a service. Qwest
2 doesn't sell a loop to itself, so it's not really a
3 product in any kind of formal sense.

4 Q. But it sells two services, correct, over
5 that loop?

6 A. Right, you can get the DSL service over the
7 high-frequency portion of the loop and the voice, as
8 it stands today, over the low frequency.

9 Q. And both of those services have costs
10 associated with them; correct?

11 A. Yes, they would have an allocation of costs
12 associated with them; correct.

13 Q. So if both, as you say in your testimony,
14 cause the cost of the loop, then the cost should be
15 allocated between the two different services;
16 correct?

17 A. Well, should be covers a lot of ground
18 here. So I will say, from an economics perspective,
19 I can tell you that it will be. As we move into
20 competition, the cost will find its way into the
21 price of each, but when you are a firm such as Qwest
22 in this, you don't really typically formally allocate
23 your costs. And I believe that's in my testimony, as
24 well. I have a cite in there from Alfred Kahn. But
25 indeed, the prices for these services will each

00196

1 recover a portion of the loop.

2 Q. Well, Qwest did allocate the cost of the
3 loop, did it not, and it allocated that to basic
4 service?

5 MS. ANDERL: Objection, Your Honor.

6 There's no foundation for that question.

7 MR. DEANHARDT: If he knows, Your Honor.

8 THE WITNESS: It's a very interesting
9 question, with or without foundation. It's become
10 somewhat central. I originally was thinking this
11 kind of an issue didn't really belong in this
12 proceeding, but there's no keeping it out. The
13 problem today is we don't know how end users pay for
14 a loop. The loop itself is part of the service. If
15 a residential customer buys basic local service, the
16 loop connection is part of that service, and to show
17 that we don't actually know how you collect the
18 revenue to cover that loop, the price of basic local
19 service in this state, I believe, is \$12.50. If we
20 add on a subscriber line charge to that, we're up
21 somewhere in the neighborhood of \$16.85. We've
22 already determined that the loop cost in this state
23 is \$18. Now, basic local service would include the
24 loop and other elements, such as switching,
25 transport, signaling, which may bring us up to

00197

1 somewhere around \$24.

2 Now, within that, it's pretty clear that
3 basic local service isn't paying for the cost of the
4 loop. It can't be. It's below the cost of the loop.
5 So where are we getting the money to pay for the
6 loop. Well, the answer is, for individual customers,
7 you're either getting it from other services or from
8 other customers. Now, do we know, going forward, how
9 that's going to change? No, we don't.

10 MR. DEANHARDT: Your Honor, I'm going to
11 ask that that answer be stricken. I asked about
12 Qwest's allocation of loop costs; not about recovery
13 of loop costs. Those are two different issues, and
14 that was not the question that I asked.

15 MS. ANDERL: Your Honor, I believe that the
16 discussion that Dr. Fitzsimmons just had was by way
17 of explanation as to what he could and couldn't
18 answer about that question and why. I think it's
19 perfectly responsive in the open-ended nature of the
20 question, and Mr. Deanhardt's suggestion that the
21 witness be allowed to answer, if he could.

22 MR. DEANHARDT: Your Honor, my question was
23 not open-ended. It was about allocation, not about
24 recovery. Those are two very different issues. I
25 can even ask Dr. Fitzsimmons, and he will have to say

00198

1 that those are two different issues, but that is a
2 non-responsive answer to the question that I asked.

3 JUDGE BERG: Dr. Fitzsimmons started out by
4 pointing out the difficulty in addressing the
5 question without placing it in context, and I regard
6 the comments as contextual and appropriate, but if
7 you feel that there are other questions to focus in
8 on this very difficult question you're asking, go
9 ahead and follow up.

10 MR. DEANHARDT: Your Honor, I'm going to
11 ask that we take an exhibit out of order here, since
12 I now need it to impeach the last response, and I'm
13 going to ask that counsel please present Dr.
14 Fitzsimmons with Exhibit Number 35.

15 JUDGE BERG: All right.

16 MS. ANDERL: If I might have a moment, Your
17 Honor. I have my copy. I'll need to obtain two.

18 MR. DEANHARDT: I'm happy to give him my
19 copy.

20 JUDGE BERG: Why don't you hold on to your
21 copy, Mr. Deanhardt.

22 MR. DEANHARDT: Ms. Anderl, why don't you
23 also give him Exhibit 34 and --

24 THE WITNESS: May I leave my spot?

25 JUDGE BERG: Did you find that, Ms. Anderl?

00199

1 If not, I have copies of each that I can give the
2 witness, and we can go forward.

3 MS. ANDERL: He can have mine. I don't
4 need them.

5 JUDGE BERG: All right. Thank you.

6 Q. Dr. Fitzsimmons, let's start with Exhibit
7 34.

8 MS. ANDERL: However, if I might interrupt,
9 given that this witness was not told that these might
10 be used on his cross, if he might have a moment to
11 read them.

12 MR. DEANHARDT: I was going there.

13 Q. Dr. Fitzsimmons, if you would, please, read
14 Exhibit 34 to yourself, and please indicate to me
15 when you've done so.

16 A. I have read it.

17 Q. Now, do you recognize Exhibit 34 as being a
18 data request?

19 A. Yes.

20 Q. And in US West or Qwest's response to this
21 data request, isn't it correct that Qwest says that
22 the costs in the retail service environment for
23 Megabit service, the cost of the loop is attributed
24 to basic service?

25 A. Yes.

00200

1 Q. Would you please turn to Exhibit 35?
2 Please read that to yourself and please indicate to
3 me when you have completed reading that.

4 A. Yes, I have read it.

5 Q. And do you also recognize this as being a
6 response to a data request?

7 A. Yes.

8 Q. And isn't it correct that in Qwest's -- in
9 the first line of Qwest's response that is contained
10 on Exhibit 35, Qwest states that the cost of the
11 local loop is attributed to the basic service?

12 A. Yes.

13 MR. DEANHARDT: Thank you. I may as well
14 go ahead, Your Honor, and move for admission of 34
15 and 35.

16 MS. ANDERL: We have no objection.

17 JUDGE BERG: Exhibits 34 and 35 are
18 admitted.

19 Q. Dr. Fitzsimmons, let's take your car
20 example that you were just referring to. Now, assume
21 that I run a -- that I'm Hertz. I rent cars to
22 consumers. Can you do that for me?

23 A. Yes.

24 Q. Now, let's assume that I purchased my car
25 -- I think in your testimony you refer to Chryslers.

00201

1 We'll pick Chryslers. Let's say that I purchased my
2 cars for rental purposes from Chrysler. Can you do
3 that for me?

4 A. Yes.

5 Q. Now, Hertz, when it purchases a car from
6 Chrysler, pays one cost or one price for that car;
7 correct?

8 A. Correct.

9 Q. And at the time it purchases the car, it
10 intends to use that car for rental purposes; correct?

11 A. I assume so.

12 Q. And let's assume that now Hertz decides
13 that, in addition to renting out its cars, when its
14 cars are not being used for rental purposes, it's
15 going to use them for a taxi service. Can you do
16 that?

17 A. Yes.

18 Q. Should Hertz pay more to Chrysler for the
19 price of that car now that it's using it for two
20 different purposes?

21 A. No.

22 Q. I also want you to assume -- let's take a
23 famous legal and economic example. Let's talk about
24 widgets. I want you to assume that I have two
25 companies making widgets of equal quality and equal

00202

1 -- they can get it to you at the same time, all other
2 things are equal. Can you do that for me?

3 A. Yes.

4 Q. Now, by the way, I just want to make sure
5 that the court reporter can hear you, since you're
6 not speaking into the microphone.

7 CHAIRWOMAN SHOWALTER: Oh, you should speak
8 into the microphone, so the rest of us can hear you,
9 as well, who are further away.

10 THE WITNESS: Okay.

11 Q. Now, if Company A is using a technology to
12 create those widgets and can create the widget for a
13 cost of \$5, can you assume that for me?

14 A. Yes.

15 Q. Okay. Let's assume that Company B is
16 making the same widget using a different technology
17 and that the cost to Company B for producing that
18 widget is \$8. Can you assume that for me?

19 A. Yes.

20 Q. Okay. Now, if the government were to tell
21 Company A that it is required to charge an additional
22 \$4 in costs to the production of its widgets so that
23 the total cost of the widget now to Company A is \$9.
24 Do you have that?

25 A. Yes.

00203

1 Q. Now --

2 A. Excuse me, let me make sure. Is it the
3 cost to Company A or the price that Company A is
4 going to have -- the cost that they're going to have
5 to recover? I mean, their costs don't change; right?

6 Q. Well, okay. Their actual cost doesn't
7 change, but they're going to have to increase their
8 prices in order to recover a total of \$9; correct?

9 A. Fine.

10 Q. That's correct?

11 A. Well, that would be correct. You're
12 assuming -- we haven't talked about their prices yet.
13 We don't know what they're pricing. I assume they're
14 not pricing at \$5, or Company B probably wouldn't
15 exist. So I'm assuming they're charging -- they're
16 pricing at more than \$5 at the go down.

17 Q. If the cost to Company A -- actually, one
18 more assumption. Let's assume that anybody who uses
19 the technology -- Company C decides to enter the
20 market and it's going to use the same technology as
21 Company A, but the government has declared that
22 anybody who uses that technology has to price its
23 goods in order to recover the actual cost, plus this
24 extra \$5. Can you do that?

25 A. Is it \$5 now or four?

00204

1 Q. I'm sorry, it was four.

2 A. It was four. Yes, I could do that.

3 Q. Okay. And let's assume that that extra \$5
4 is actually -- I'm sorry, that extra \$4 is actually
5 paid to a third party. It's paid to a fund, for
6 example, okay, so it becomes now a direct cost of
7 actually using that technology. Can you do that?

8 A. Okay. Yes.

9 Q. Do you have that assumption?

10 A. Yes.

11 Q. Okay. Then, under those assumptions, the
12 effect of the government order to pay a higher price
13 for the use of that technology into some fund will be
14 to encourage competitors that want to enter the
15 market into using the technology of Company B, that
16 costs less for production; correct?

17 A. Correct.

18 Q. From an economic perspective, however,
19 that's not an efficient allocation of real resources,
20 is it? Again, setting aside public policy concerns.

21 A. Well, that's a big thing to set aside. I'm
22 assuming our government is not acting to collect \$4
23 on each widget, and then dump it into the ocean. I
24 assume that there's some productive use for that \$4.
25 But let's abstract from that and follow your

00205

1 hypothetical. Yes.

2 Q. Now, you were aware -- your testimony talks
3 to a great extent about competitive services coming
4 from, for example, wireless providers and cable
5 broadband, doesn't it?

6 A. Yes, it does.

7 Q. Okay. Now, you are aware, are you not,
8 that AT&T and other cable providers are developing
9 technology to provide local telephone service across
10 the cable plant; isn't that correct?

11 A. That's correct. As a matter of fact, I was
12 just on Long Island, my sister just changed to the
13 cable company to use for her telephone service.

14 Q. Now, I want you to assume for me that the
15 cost of providing a telephone service across a cable
16 plant is higher than the cost of providing telephone
17 service across traditional telephone copper or
18 fiber-based facilities. Can you do that for me?

19 A. Yes.

20 Q. Should the Commission order the local
21 telephone company to increase its prices so that AT&T
22 can better compete for voice services despite their
23 higher cost?

24 A. No, and that one I would like to offer a
25 little broader explanation. It's been a longstanding

00206

1 goal of regulation to bring forward, as Mr. Deanhardt
2 has been suggesting, conditions that will promote
3 more efficient investment and innovation, with the
4 end goal being to bring consumer benefits. Now, we
5 have now cast the die on how we intend to do that
6 going forward, and that die was cast four years ago,
7 four plus years ago. We have now chosen competition
8 as the method that we're going to use to bring
9 forward efficient investment and innovation.

10 To do that, our job now is to set forward
11 conditions that replicate and are therefore conducive
12 to the development of efficient competition. It's
13 not our role to get in and try to micro-manage the
14 process. Thank you.

15 Q. Now, in your testimony, you say that
16 there's no meaningful evidence that more or less than
17 50 percent of the loop costs should be allocated to
18 either voice or to the HUNE; correct?

19 A. Correct.

20 Q. You would also agree with me, wouldn't you,
21 that there's no meaningful evidence to show that one
22 percent of the loop cost would not be a reasonable
23 price for the HUNE, is there?

24 A. I'm trying to decide if I answer that yes
25 or no before I explain.

00207

1 Q. Well, the Commission asked you to, so --

2 A. I'm trying. In this case, let me, I hope,
3 take a liberty and not answer that directly yes or
4 no, and say that what we were trying to do here is
5 come up with a reasonable position. And what we
6 would like to do is come up with the most reasonable
7 initial price that we can. If we set a price for
8 this UNE as the initial price at 50 percent of the
9 loop cost, that's going to be \$9.08, I believe. If
10 it turns out that the market price, if we were to let
11 this market roll forward, and I'm sure we're going to
12 get into maybe what it means to let this market roll
13 forward, because I would say that Qwest is not the
14 only provider of loops with unbundling out there and
15 high-frequency spectrum run loops.

16 If we let the market roll forward and the
17 market-driven price would be \$10, we will never know
18 that, because we put a ceiling on what the price is.
19 Now, Qwest, as a competitor, is willing to state the
20 going in price, the price ceiling in this case, would
21 be 50 percent of the loop. If we set the price at
22 one percent of the loop, which -- let me see, one
23 percent would be less than two cents, or is that 20
24 cents -- anyway, some small amount of money, we
25 preclude the operation of the market to give us what

00208

1 the market price would be. So no, I don't believe
2 one percent would be reasonable. Thank you.

3 Q. Okay. Now that you've restated your direct
4 testimony, my question is, you would agree with me,
5 wouldn't you, that there is no meaningful evidence to
6 show that one percent of the loop cost -- meaningful
7 evidence, not your opinion, but meaningful evidence
8 to show that one percent of the loop cost would not
9 be a reasonable price for the HUNE?

10 A. It would not be the most reasonable.

11 Q. Okay. So we'll try again. It may not be
12 the most reasonable in your testimony, but you would
13 agree with me, wouldn't you, that there is no
14 meaningful evidence to show that one percent of the
15 loop cost would not be a reasonable price for the
16 HUNE?

17 A. Presented in this proceeding, there really
18 hasn't been evidence on what the market would drive
19 us to, which is actually what we would say is the
20 reasonable cost. Could the market drive us that
21 close to zero? I do not believe that that's
22 reasonable, no. I mean, if you're asking me, as an
23 expert, do I believe that that position is
24 reasonable, I do not believe that position is
25 reasonable.

00209

1 Q. I think, actually, when you said that
2 there's no evidence in this proceeding on that topic,
3 that you finally answered my question, so I'm going
4 to move on. A zero dollar price for the HUNE would
5 be competitively neutral as between Covad and Qwest,
6 wouldn't it?

7 A. Sure.

8 Q. Okay. Now, under principles of cost
9 causation that you've testified about in your
10 testimony, the entity that causes the cost to be
11 incurred should pay the cost; correct?

12 A. Correct.

13 Q. Okay. Should the price of UNE loops,
14 unbundled loops, be priced based on the cost of cable
15 coax?

16 A. No.

17 Q. In your rebuttal testimony, I believe you
18 talk about this notion proposed by Qwest of imputing
19 loop costs to its Megabit service; isn't that
20 correct?

21 A. That it's in my rebuttal testimony? I know
22 I talk about the imputation. I believe I talk about
23 that in my direct and response. I may talk about it
24 in rebuttal, but I don't recall it.

25 Q. That's fine. The notion behind an

00210

1 imputation is that if Qwest imputes a certain amount
2 to its Megabit service, that it cannot offer its
3 service for a price below the sum of direct costs
4 plus the imputation; correct?

5 A. Correct.

6 Q. So if the imputation is set, for example,
7 at \$10, and the direct cost of providing the service
8 is \$10, then Qwest could not offer a price for its
9 service below \$20; correct?

10 A. That's correct.

11 Q. So even if a competitive market would drive
12 -- back up. So even if the consumers could get DSL
13 service from Qwest for less than \$20 in a market
14 where there is no imputation, they will not be able
15 to get that service for less than \$20 in a market
16 where there is imputation; correct?

17 A. Their market doesn't have imputation.
18 Imputation is there to prevent Qwest from placing the
19 DLECs into a price squeeze. So that is a real cost
20 recognized by Qwest, is an imputed cost for the
21 recovery of the price of a loop.

22 Q. If the rules for the market are set -- if
23 the rules for the market for DSL are set such that
24 Qwest must impute \$10 for the cost of the loop over
25 and above the direct cost of providing DSL, then the

00211

1 consumer will not be able to obtain DSL service for
2 less than \$20, under the assumptions that I asked you
3 to make earlier; correct?

4 A. That's correct, as an initial position;
5 right.

6 Q. And you state -- let's explore initial
7 position, because I think I know what you mean.
8 Let's assume that a broadband provider, through a
9 cable, could provide the equivalent broadband service
10 to DSL at a price of \$15.

11 A. Okay.

12 Q. But Qwest's imputation creates a situation,
13 does it not, where it can't, as we discussed earlier,
14 where it can't provide service for under \$20;
15 correct?

16 A. That's correct.

17 Q. Okay. What happens then?

18 A. Well, I would assume it would be an impact
19 of some sort on the demand for the high-frequency
20 spectrum UNE at that price. As I said, there are
21 other ways that DLECs can purchase high-frequency
22 spectrum, in negotiations or any kind of alliance
23 with someone who wants to lease the whole loop. Then
24 the market would start to reveal to us that the
25 allocation that we've established is not a correct

00212

1 allocation, is my assumption. And we may find that
2 the market clears closer to a price of \$7 for that
3 high-frequency spectrum than otherwise. And I assume
4 at that point that Qwest would have to ask this
5 Commission if it could reestablish the price floor
6 based on what's been revealed in the market.

7 Q. So the short version, then, Qwest still
8 could not reduce its prices; correct?

9 A. That's correct.

10 Q. If Qwest wanted to reduce its prices, then
11 it would have to come to the Commission; correct?

12 A. It would have to in some way. I'm not sure
13 what the mechanism would be in this state, but I
14 assume that the Commission would be involved in that,
15 yes.

16 Q. You're aware that the Commission does not
17 regulate DSL -- retail DSL prices to consumers; is
18 that correct?

19 A. I agree with that.

20 Q. Now, the way you just described it, then,
21 the party that gets to decide how much imputation
22 there should be and what the price of DSL should be
23 to the consumer, then, is Qwest; correct?

24 A. No. What's the market force? The market
25 force here is not going to be brought on by Qwest;

00213

1 the market force is going to be brought on by DLECs
2 such as the client that you represent, who would say
3 \$10 seems awful high. I'll bet you I can go offer \$7
4 to AT&T and convince them to take that customer on as
5 their customer, and they save \$7 over that \$18 for
6 the loop.

7 Q. Well, now, wait a minute. Let's go back to
8 my hypothetical, because I haven't at all talked
9 about unbundled loops or CLECs. I'm talking about
10 Qwest versus cable broadband. Okay. Do you have
11 that in your mind?

12 A. Sure.

13 Q. Okay. Now, the \$10 imputation that Qwest
14 has on its Megabit service, that's still \$10 that
15 goes in Qwest's pocket; right?

16 A. Well, the money from the retail service is
17 what goes into Qwest's pocket; not the imputation.

18 Q. So if you set that imputation at 10, and so
19 Qwest has to charge 21, then the \$10 that it
20 receives, the \$11 -- well, actually, the \$10 that it
21 receives between the direct cost and the sum of the
22 direct cost plus the imputation is money that Qwest
23 keeps; correct?

24 A. Qwest will keep the entire \$21; correct.

25 Q. Okay. It doesn't pay it to anybody else.

00214

1 It gets to take that money, and that's additional
2 profit over the direct cost of providing the service?

3 A. Well, here's where I think that that's
4 somewhat misleading, so I'll answer that no. Qwest
5 is continually faced, in a competitive market, with
6 finding ways to contribute to the overall cost that
7 it incurs, including the cost of a loop. And no
8 matter what was said here in Exhibits 34 and 35,
9 there are contributions to the cost of that loop that
10 are far from certain. So no, it's not clear that
11 that will lead to profit. That's a misleading
12 statement.

13 Q. But in that sense, then, if Qwest is
14 pricing at 21, then one can assume that it's
15 recovered all those other costs; correct?

16 A. If it wants to be a sustainable player in
17 that market, yes.

18 Q. And the difference between the recovery of
19 those costs and the end of the imputation, the \$10,
20 \$10 minus whatever portion is appropriately allocated
21 to the recovery of those additional costs, that's
22 still money that Qwest gets to keep; correct?

23 A. Yes, Qwest gets to keep the entire \$21,
24 yes.

25 Q. And in a competitive market, if the HUNE

00215

1 was priced at zero and there were no imputation and
2 Qwest wanted to maintain -- continue to be a player
3 in the broadband market, then Qwest would, in fact,
4 set its prices to recover the direct costs plus this
5 allocation of other kinds of costs that you referred
6 to; correct?

7 A. That was a pretty long question, but I
8 think I agree with you, yes.

9 Q. All of these kind of future market
10 conditions that you're talking about that could come
11 together to determine some kind of value for the
12 HUNE, all that's speculation, isn't it?

13 A. That there will be a market is speculation?
14 No, that's not speculation.

15 Q. Not that there will be a market; that -- if
16 the Commission were to try to set a price for the
17 HUNE based, as you recommend, on trying to determine
18 what a competitive market would be for that HUNE, it
19 would have to project into the future and speculate
20 as to what a market would do; correct?

21 A. No, that's the beauty of it. We've been
22 here for over four years. As I was telling somebody
23 just the other day, you know, I've watched my
24 daughter go from nine to 14 since the Telecom Act. I
25 mean, a lot's happened. There really is a market out

00216

1 there.

2 The idea that we're still in a world where
3 Qwest is the only one who has access to loops, that
4 we have some monopoly stranglehold on the loop,
5 that's a fantasy. If we're going to go forward and
6 set prices that make sense here, we're going to have
7 to look at the reality. The reality is loops are
8 available out there for other people to use.

9 Now, to get to your question about whether
10 that's arbitrary or not or how we go about it, what
11 I'm saying is let's set a price that allows the
12 market that we've worked so hard to set up operate.
13 That's what we need to do here and back away from it.
14 We have a situation here -- you've noted that we have
15 a competitive product. It's not price-regulated
16 here. Let it work. We've got a situation now, we
17 said we want competition to do its job. Let's let it
18 do its job.

19 Q. You would assume, wouldn't you, that in a
20 market where you can get recovery for a valuable
21 asset, that a company would enter into arrangements
22 so as to be able to sell that asset; correct?

23 A. Yes.

24 Q. You're aware, however, that ILECs,
25 including Qwest, had to be forced to put the HUNE on

00217

1 the market; correct?

2 A. I don't know if they had to be forced. I
3 wouldn't be surprised. I think -- personally, I'm
4 not a person that supported going forward and making
5 this into a separate UNE.

6 Q. You've read the line sharing order;
7 correct?

8 A. That would be the Third Report and Order, I
9 believe?

10 Q. Yes.

11 A. Yes, I have.

12 Q. And so you recognize the fact that it took
13 that order to compel the ILECs to provide the HUNE?

14 A. Yes, I do.

15 Q. Now, I want to go back to this
16 conversation. You know, first of all, when you say
17 that there's a market, that there are other sources
18 for loops, you're referring to the notion that a CLEC
19 could purchase a loop and then resell that loop;
20 correct?

21 A. Yes.

22 Q. So but the bottom line cost of that loop is
23 going to have been established by Qwest, correct, or
24 the Commission in a cost docket?

25 A. We know the price of that loop; correct.

00218

1 It's \$18.16.

2 Q. And the price of that loop was set by the
3 Commission in a cost docket; right?

4 A. That's correct.

5 Q. But the ultimate source for that loop, in
6 either event, is, in Qwest's territory, is Qwest;
7 correct?

8 A. For that loop. There's nothing stopping
9 CLECs from building their own loops, either, and I'm
10 sure that they are.

11 Q. Well, that's true, but, you know, what you
12 were saying a minute ago was that there's all these
13 loops out there that I can go buy.

14 A. That's correct.

15 Q. The only person that I can ultimately buy
16 them from in Qwest's territory is Qwest; correct?

17 A. As an unbundled loop, sure. They're the
18 only ones that are forced to make their productive
19 assets available to competitors.

20 Q. But, again, I just want to go back, because
21 you keep saying over and over, and you said this in
22 your direct testimony and some of your other
23 testimony, that there's this great new market for
24 loops out there. The source of that market,
25 ultimately, in Qwest territory is Qwest loops;

00219

1 correct?

2 A. No, I think I just said anybody who wants
3 to can build a loop in Olympia. Just have to be
4 certified to do so.

5 Q. Your testimony isn't that I can build a
6 loop; your testimony is that such loops are
7 available. And what I'm asking you is, Are there any
8 such loops available in Qwest territory that aren't
9 Qwest loops?

10 A. I don't know the answer to that. I assume
11 that there are.

12 Q. And what is that assumption based on?

13 A. The fact that I've been working in
14 telecommunications for a long time and I've looked at
15 what's been done in other territories and other
16 cities. I haven't looked specifically at these, but
17 it would be my very strong expectation that if we
18 were to go out and look, we would find someone else
19 has a facility that connects an end user to their
20 office.

21 Q. Copper facility?

22 A. I'm not sure what kind of facility. A loop
23 is a loop. It's not necessarily you have a copper
24 facility. I assume so.

25 Q. But you have, as you just said, you have no

00220

1 evidence and are aware of no evidence that that
2 exists in Washington?

3 A. And I'm not sure that it bears a whole lot
4 of meaning for me to give you a hard time about this,
5 so I'll agree with you, for practical purposes, the
6 loops are built and owned by Qwest.

7 JUDGE BERG: I'll let the parties know that
8 we'll be taking a break at approximately 10:44 and
9 resuming again at 11:00. The Chairwoman has a 10:45
10 phone call, and that gives her a whole minute to get
11 down the hall. Mr. Deanhardt, I did have you down on
12 paper for one hour of cross-examination. Any
13 possibility you'll conclude in the next five minutes?

14 MR. DEANHARDT: Actually, I think so, Your
15 Honor.

16 MR. BUTLER: Your Honor, I will say that
17 he's taken a lot of what I was going to ask, so if
18 we're looking for total time allotments, he's welcome
19 to take a part of mine.

20 JUDGE BERG: Thank you. I appreciate that
21 heads up.

22 MR. DEANHARDT: Actually, if Your Honor
23 will give me one second, I think I am finished, but I
24 just want to double check.

25 Q. Dr. Fitzsimmons, in your response

00221

1 testimony, do you recall citing to the decision of
2 the arbitrator in the California Commission to set a
3 loop price?

4 A. Yes, I do. That would be on page four,
5 line nine.

6 Q. Thank you for that cite.

7 A. You're welcome.

8 Q. Are you aware that three other commissions
9 that have considered whether or not to charge a loop
10 price for the HUNE have determined that the
11 appropriate price for the HUNE is zero dollars?

12 A. No, I'm not aware of that. Would that be
13 -- I guess you're asking the questions.

14 MR. DEANHARDT: And actually, I'm through
15 asking the questions, so we can both be happy.

16 THE WITNESS: Thank you.

17 MR. DEANHARDT: Thank you, Your Honor.

18 JUDGE BERG: You're welcome. Let's go
19 ahead and take our break now. There will be several
20 extra minutes. I want to emphasize for all counsel
21 to please be back in your seats, ready to go at 11:00
22 a.m. We'll be off the record.

23 (Recess taken.)

24 JUDGE BERG: We'll be back on the record.
25 Dr. Fitzsimmons, I'll just remind you that you're

00222

1 still under oath. Mr. Butler, would you please
2 conduct cross-examination of the witness at this
3 time?

4 MR. BUTLER: Yes. And I'm pleased to
5 advise the bench that there are a lot of checkmarks
6 on my paper, so Mr. Deanhardt has covered a lot of
7 territory I intended to cover.

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

9 BY MR. BUTLER:

10 Q. Good morning, Dr. Fitzsimmons.

11 A. Good morning.

12 Q. I have just a few follow-up questions for
13 you. You provided, in response to some questions
14 from Mr. Deanhardt, that you thought there was about
15 a \$24 cost associated with providing the loop. Local
16 switching, access services, et cetera. Do you recall
17 that?

18 A. Yes, I do.

19 Q. Have you done any analysis of the revenues,
20 average revenues per line that Qwest receives from
21 its residential customers?

22 A. No, I have not.

23 Q. So you do not know, sitting here today,
24 whether, in fact, Qwest recovers more than the \$24
25 per line from a residential customer, on average?

00223

1 A. No, I do not.

2 Q. It is correct, isn't it, that at least with
3 respect to the recovery of embedded costs, in this
4 country we have a system of dual jurisdiction, so
5 some of those costs are recovered from the interstate
6 jurisdiction and some are recovered from the
7 intrastate jurisdiction. Would you agree with that?

8 A. Yes.

9 Q. And specifically with respect to loop
10 costs, embedded loop costs, a percentage of I believe
11 approximately 25 percent of those loop costs are
12 allocated, if that's a term you'd use, to the
13 interstate jurisdiction; is that correct?

14 A. I know historically that that was correct.
15 To be honest, I'm not sure if what's been going on
16 with the calls plan in Washington is changing that
17 and what the percent -- how it sits right today, I'm
18 not sure, really.

19 Q. Well, would you agree that DSL services
20 that are provided by Qwest are considered to be
21 interstate services? They're sold out of the Qwest
22 interstate tariff?

23 A. That's my understanding.

24 Q. Given that, let's assume, for purposes of
25 the question, that we're still allocating

00224

1 approximately 25 percent of the loop costs to the
2 interstate jurisdiction, and given that DSL service
3 is considered to be an interstate service, why did
4 you not propose that one-half of that 25 percent be
5 allocated to the HUNE?

6 A. That's a fair question. What we've been
7 about for the last four years is coming up with
8 prices for unbundled elements to -- and think of
9 these, these are assets of the ILEC that it is
10 required to make available for its competitors. And
11 what the FCC did, in its First Report and Order, said
12 let's get away from looking at embedded costs, let's
13 get away from looking at separations, and let's get
14 towards something that would replicate prices for
15 these assets that could prevail in a competitive
16 market.

17 Now, those prices are based on the
18 underlying cost of the facilities. So the loop, for
19 instance, of \$18, that is what it is. It's set quite
20 separate from any consideration of separations of
21 embedded cost. As a matter of fact, the FCC, I
22 believe, is very clear that embedded costs are not an
23 issue when we set the prices for unbundled elements.
24 So following that, and I believe that's the right
25 position, I did not bring into the separations issue

00225

1 into my consideration of how you then allocate a
2 TELRIC cost for an unbundled element.

3 Q. And am I correct that you are not proposing
4 -- Qwest is not proposing to make any adjustment in
5 any retail rate in this proceeding, whether it be
6 intrastate or interstate rate?

7 A. That's my understanding.

8 Q. Okay. And nothing that we do in this
9 proceeding would affect Qwest's ability to change
10 prices for retail services, other than the -- any
11 retail service from which they are currently
12 generating revenue; is that correct?

13 A. I'd make the exception to that, that if
14 Qwest stands forward and agrees to set a price floor
15 for its retail service that we're calling Megabit,
16 based on an imputation that would prevent the
17 occurrence of price squeeze, that something we were
18 doing in this proceeding would then have an impact on
19 that.

20 Q. With respect to your reference to a price
21 floor, do I understand correctly that the price floor
22 means that is a price below which Qwest may not price
23 its retail Megabit service?

24 A. Yes. So in this case, it would be the
25 direct cost plus the imputed cost that Qwest, we can

00226

1 say, would not price below that level.

2 Q. And I believe in response to questions from
3 Mr. Deanhardt, you agreed that if the Commission were
4 to adopt the \$9.08 price for the HUNE that you
5 recommend, that that \$9.08 would be available as
6 revenue to Qwest?

7 A. That's correct.

8 Q. But it would also represent a cost that is
9 faced by a CLEC, such as Rhythms?

10 A. That's correct.

11 Q. So in effect, would you agree that, by
12 setting that price floor, Qwest would have locked in
13 that contribution of \$9.08 to itself?

14 A. It's a difficult question to answer on a
15 generality. For a specific customer that buys the
16 DSL service from a DLEC, that is indeed paying for
17 the UNE, then yes, but there are other options for --
18 where DLECs can get access to high frequencies on
19 loops.

20 Q. When you say there are other options,
21 you're referring to presumably other facilities-based
22 carriers who built their own loop facilities; is that
23 correct?

24 A. To follow up on a discussion I had with Mr.
25 Deanhardt, we're primarily talking about the access

00227

1 to Qwest's unbundled loops.

2 Q. Just to summarize, then, the situation that
3 it would obtain if the \$9.08 were charged for the
4 HUNE would mean that Qwest would have the \$9.08
5 contribution to its revenues, a CLEC would face that
6 \$9.08 cost, and that, barring any change in any other
7 retail price charged by Qwest for any of its other
8 services, that Qwest's total revenue would increase;
9 is that correct?

10 A. No, that's not correct. For one, consider
11 the second line issue. Right now in my house I have
12 one line each for voice and one line I have hooked up
13 to my computer for Internet access. If I was to go
14 to using line sharing of some sort, I would
15 disconnect my second line. So there's one revenue
16 difference.

17 There are also lots of other revenue
18 impacts that could happen, and matter of fact, it's
19 fairly certain that they will happen, and there are
20 contributions today for the cost of loop, and you
21 mentioned one, which has to do with interstate. Say
22 switched access contributes to the cost of the loop.
23 And other services that don't cause the loop cost
24 contribute to paying for the loop. All of those
25 services are subject to competition, and customers

00228

1 who make above-average contributions are more subject
2 to competition, because competitors are rational.

3 Q. Do you have any evidence about the rate at
4 which second lines are being ordered in the Qwest
5 territory?

6 A. No, I do not.

7 Q. Also, you do not know, in fact, whether
8 second line demand is growing at this time?

9 A. I would assume that second line demand is
10 growing if Washington is similar to other places in
11 the country.

12 MR. BUTLER: I think that's all the
13 questions I have. Thank you.

14 JUDGE BERG: Ms. Hopfenbeck.

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

16 BY MS. HOPFENBECK:

17 Q. Dr. Fitzsimmons, I just have a couple
18 questions to clarify something. In answers to both
19 Mr. Butler's and Mr. Deanhardt's questions, you
20 referenced, I think a couple of times, the fact that
21 there are a number of providers of high-capacity
22 loops out there other than Qwest; is that right?

23 A. With -- maybe restating it, there are
24 available to any provider loops, unbundled loops,
25 upon which they could, if they choose to, offer the

00229

1 high frequency to a DLEC; correct.

2 Q. And the way you see that happening is,
3 essentially, is that those entities that are leasing
4 unbundled loops from Qwest have access to the
5 high-capacity portion of that loop, as well as the
6 voice grade; is that -- did I understand your
7 testimony correctly?

8 A. Yes, you did, that a CLEC who leases the
9 loop leases the entire loop, and that has on it the
10 capacity of using the low and the high-frequency
11 spectrums.

12 MS. HOPFENBECK: Thank you. That's all I
13 have.

14 JUDGE BERG: All right. Staff.

15 MS. SMITH: No questions.

16 JUDGE BERG: Public Counsel.

17 MR. FFITCH: No questions, Your Honor.

18 JUDGE BERG: Dr. Gabel.

19 E X A M I N A T I O N

20 BY DR. GABEL:

21 Q. Good morning, Dr. Fitzsimmons. Let me
22 begin by asking, do you have a copy of the FCC's
23 Third Report and Order with you, the FCC's line
24 sharing order?

25 A. Only the pages that I cite.

00230

1 Q. Does that include paragraphs 157 of that
2 order?

3 A. Do you know where I cite that, by any
4 chance?

5 Q. No. All right. Well, let me read to you a
6 paragraph from that order, since you said you were
7 familiar with it, and I'll just ask you to address
8 the subject if you can.

9 At paragraph 157, the order states, quote,
10 We reject US West's value-based pricing methodology.
11 As we stated in the local competition First Report
12 and Order, the price for an unbundled network element
13 should be based on forward-looking cost. Setting the
14 price for an unbundled network element based upon the
15 competitive value that the facility confers upon
16 another party does not conform with the TELRIC
17 principles set forth in this order and in the local
18 competition First Report and Order. End of quote.

19 A. No, I understand what you said.

20 Q. All right. Could you explain what
21 distinguishes your proposal in this proceeding from
22 what US West proposed to the FCC, what the FCC refers
23 to as a value-based pricing methodology?

24 A. Okay. What the FCC is also referring to
25 are TELRIC principles. So TELRIC is really a direct

00231

1 cost concept. So if there is an issue of what does
2 it cost to provide the loop, then TELRIC comes into
3 play. We look at cost causation as to what the loop
4 price should be if it's cost-based price.

5 TELRIC has little or nothing to say about
6 how we allocate joint or common costs. And the FCC
7 recognized that explicitly in their First Report and
8 Order that in the process of coming up with prices
9 for assets that reflect what competitive prices would
10 prevail, they recognized that common and joint costs
11 are a different kind of animal. Those are functional
12 definitions. A joint cost is a functional definition
13 in terms that it helps us understand, explain and,
14 you know, predict how these products will be sold.

15 So where I start is the TELRIC has helped
16 us come up to \$18.16. That's not value based at all.
17 That's, here it is, \$18.16. Now we have to determine
18 what we do with that when we have two dedicated uses
19 of the loop.

20 Now, the FCC also recognized that this is a
21 difficult process, and that there is no correct,
22 quote, unquote, way of doing that. The way we
23 allocated common costs in the earlier proceedings was
24 we let the cost follow the investment and the
25 maintenance costs and other expenses. That wasn't

00232

1 really correct, either, but it sufficed. We deemed
2 it to be the most reasonable and practical solution.
3 So what we need to do now is search for new
4 reasonable and practical solutions, and I would say
5 the best way to do that that comports with
6 competition we're trying to get to is set a price
7 that allows the market to work. Now, within that,
8 you're going to have to recognize that the market may
9 value this differently than we set the initial price.
10 So if you set an initial price at zero, you give the
11 market no chance to express its activity.

12 Q. Dr. Fitzsimmons, could you explain what was
13 the value-based pricing proposal made by US West to
14 the FCC and how you see your proposal differs from
15 what US West initially proposed to the FCC?

16 A. I cannot, because I don't know the details
17 of Qwest's initial proposal.

18 Q. So you're -- all right.

19 A. Sorry.

20 DR. GABEL: Well, Ms. Anderl, would Mr.
21 Thompson be the correct person to pose that question
22 to?

23 MS. ANDERL: No, although I think, at a
24 minimum, we could certainly provide a copy of our
25 comments to the FCC, if that would help, you know,

00233

1 flesh out for you what our proposal was over and
2 above what the FCC says in its order. And because of
3 the length of the hearing, if you wanted to explore
4 it with a Qwest witness, we may be able to make
5 someone available.

6 DR. GABEL: Well, I just wanted to make
7 sure I understood what distinguished your proposal
8 here from what the FCC said could not be a basis for
9 setting prices. So do you think it would be possible
10 for Mr. Thompson to review that matter and speak to
11 it, since he'll be testifying tomorrow?

12 MS. ANDERL: Yes.

13 DR. GABEL: So Ms. Anderl, just so that I'm
14 clear about this, what I'd like Mr. Thompson to be
15 able to do tomorrow is to be able to identify what
16 aspect of his and Dr. Fitzsimmons' pricing proposal
17 is different from what was rejected by the FCC.

18 MS. ANDERL: We understand.

19 Q. Dr. Fitzsimmons, do I understand your
20 testimony correctly that you do believe that it is
21 sensible to subject Qwest Megabit retail service to
22 an imputation test?

23 A. I don't believe that it's entirely
24 necessary -- I do not believe that it's entirely
25 necessary to subject Qwest to an imputation test.

00234

1 One of the requirements for needing an imputation
2 test is that one firm truly does control that input
3 that's being used by its competitors. As I've stated
4 repeatedly in this proceeding, that's no longer true.
5 So is it absolutely required? No, I would say it's
6 not required. Does it offer some comfort? Yes, it
7 does.

8 Q. Thank you. Am I correct, Dr. Fitzsimmons,
9 that what you have done in your imputation evidence,
10 presented in your direct testimony, is you've taken
11 one-half of the price established by this Commission
12 in Phase Two of Docket 960369, and you have imputed
13 one-half of that price as an imputed cost to the
14 Megabit retail service?

15 A. Jerrold Thompson would be the better person
16 to make sure you have the details. But my
17 understanding is what Qwest has done is looked at its
18 region-wide average of its loop costs and come up
19 with a number of \$10, and said that that's what they
20 would impute above their direct costs, since this is
21 an interstate service that applies to the tariff,
22 applies to all states in the region, and I believe
23 that's approximately \$10.

24 Q. I'm going to ask you to accept a
25 hypothetical here, Dr. Fitzsimmons. Let's assume

00235

1 that the current margin between the retail price of
2 Megabit service and its direct cost is \$12. Are you
3 following my hypothetical?

4 A. Yes, I am.

5 Q. So under that hypothetical example, when
6 you impute a \$10 UNE loop sharing to Megabit service,
7 Megabit service passed the imputation test; is that
8 correct?

9 A. That's correct.

10 Q. Would you accept, subject to change, that
11 US West contended in Docket 960369 that the
12 appropriate loop rate, which was cost-based,
13 according to US West witnesses, was \$33.14, not
14 \$18.16?

15 A. As a hypothetical? I assume that that's
16 accurate.

17 JUDGE BERG: That would be subject to
18 check.

19 Q. That would be subject. And so Dr.
20 Fitzsimmons, if we then applied one-half of this US
21 West cost estimate of \$33.14, and we add one-half of
22 33.14 to the direct cost of Qwest's Megabit service,
23 would Qwest's Megabit service still pass the
24 imputation test?

25 A. No.

00236

1 Q. In that situation, what would you propose
2 occur? Is it appropriate to order changes -- well,
3 for example, is it appropriate to order changes to
4 Megabit's retail price, and does this Commission have
5 the authority to do that?

6 A. Let me start at the back of that. I don't
7 know this Commission's authority on Megabit retail.
8 I suspect, since that was filed with the FCC, that's
9 where the price change would have to pass muster.

10 As far as the imputation, I believe that
11 this Commission would be correct to say that you
12 wouldn't pass an imputation test under the
13 hypothetical that you gave if we had accepted a
14 TELRIC of \$33 versus \$18. Fortunately, we're not in
15 that situation.

16 Q. Dr. Fitzsimmons, I'd also like to make sure
17 I understand the basis for saying that half of the
18 price of the loop should be recovered through the UNE
19 -- the high-frequency UNE price?

20 A. Okay.

21 Q. Am I correct that it's your proposition
22 that, effectively, we have two types of services
23 being provided over the loop? One is the voice and
24 the other is the high-speed data?

25 A. I would reword that to say that there are

00237

1 two dedicated connections provided over the loop.
2 Whether customers use those dedicated connections or
3 not is really not the most relevant part of that.

4 Q. Let me move on to another area. Thank you.
5 Mr. Deanhardt asked you about the decision of the
6 administrative law judge in California. Has the
7 commission itself ruled on this issue, or is this
8 still at the point of just a ruling being made by the
9 administrative law judge? This is in your responsive
10 testimony at page four.

11 A. Right. I'm trying to think of the exact
12 words. I believe this was the opinion of the
13 administrative law judge, not a decision by the
14 commission.

15 Q. Do you know if the commission has ruled?

16 A. I do not believe they have. Maybe that's
17 one of the three of Mr. Deanhardt, but I don't think
18 so.

19 Q. I'd now like to ask you to turn to your
20 rebuttal testimony, page 11, line 17. Am I correct
21 here, Dr. Fitzsimmons, that at this portion of your
22 rebuttal testimony, you discuss how there are
23 auctions that set the price of wireless spectrum?

24 A. That is correct.

25 Q. And am I correct, did you contend that

00238

1 charging a positive price on wire line spectrum is
2 conducive to the development of efficient
3 competition?

4 A. Yes.

5 Q. Since no auction would be held under your
6 proposal, how do you know that your rate proposal of
7 one-half of the cost of the UNE loop is closer to the
8 outcome that would occur in an auction than a zero
9 price?

10 A. The answer to that is I do not know which
11 will be closer to the competitive outcome, but I do
12 know that we have set the conditions in place that we
13 can find a competitive outcome at 50 percent of the
14 loop cost or \$9, but we will preclude finding that
15 competitive outcome at zero.

16 Q. Dr. Fitzsimmons, are you familiar with
17 another economic expert who testifies on behalf of
18 Qwest, Dr. William Taylor?

19 A. I know his work, yes, sir.

20 Q. As you know, from having seen me in New
21 Mexico, I'm also an adviser to the New Mexico
22 Commission, and on Friday, Dr. Taylor testified -- or
23 submitted some testimony on behalf of Qwest, and I'd
24 like to show you this testimony, because he deals
25 with, I think, very much the same issue that you're

00239

1 dealing with here. And I'd like to point out certain
2 sections of the testimony and then ask you to comment
3 on Qwest's position on loop recovery in New Mexico
4 and juxtapose that with what's being said here in
5 Washington. So just so the other parties in the room
6 are aware of what Dr. Taylor's saying, could I just
7 ask you to --

8 CHAIRWOMAN SHOWALTER: Just a minute. Do
9 the Counsel need copies of this to follow the
10 argument?

11 MS. ANDERL: It might be helpful. I don't
12 know how far Dr. Gabel's going to go with this.
13 Needless to say, I hadn't reviewed the New Mexico
14 testimony that Dr. Taylor filed.

15 JUDGE BERG: What I'm going to require is
16 that any references to any specific sections that Dr.
17 Fitzsimmons is to comment on be read into the record.

18 CHAIRWOMAN SHOWALTER: Well, what I'm
19 wondering is if -- I don't know how long your
20 questioning's going to go on, but if it matters to
21 people to have copies of this in front of them or
22 not, we could do it after lunch. I think it's
23 helpful to have people, including the Commissioners,
24 be prepared to follow the questioning. It's very
25 hard to follow it all orally.

00240

1 JUDGE BERG: Madam Chair, this would be
2 similar to possible impeachment testimony, and in
3 those situations, often it would not be the case
4 where parties will have copied and distributed
5 versions to all parties. In this instance, I think
6 for the sake of time and for consistency and clarity
7 in the record, if, in fact, those sections which are
8 to be referred to are read into the record in whole,
9 it would certainly accomplish or meet the due process
10 concerns that I think you're also concerned about.

11 Q. Dr. Fitzsimmons, if I could ask you to turn
12 to the executive summary, and if I could ask you to
13 slowly read into the record the second and third
14 paragraph of that executive summary, please?

15 A. Okay. I'll begin. The local loop is a
16 facility that enables an end user to gain access to
17 the public switched telephone network. It may
18 alternatively be characterized as a network access
19 service. The access or connectivity gained by use of
20 this facility is a pre-condition for being able to
21 receive various forms of usage services, e.g., local
22 calling, long distance (toll) calling, Internet
23 calling, call waiting, and other custom features,
24 voice messaging, et cetera. That is, the local loop
25 is the single delivery vehicle used by various

00241

1 providers of usage services to bring their services
2 to the end user. This attribute of the loop often
3 leads observers to conclude that the local loop is a
4 shared facility and, hence, a source of shared cost.
5 This testimony explains why, from an economic
6 perspective, the local loop or network access service
7 is an output service that is demanded in its own
8 right. Therefore, regardless of its many uses or
9 benefits, it cannot be thought of as an input and,
10 most importantly, must be identified with the full
11 cost that is added to the network when a local loop
12 is placed in service.

13 Second paragraph: Economists generally
14 disagree with the view that the local loop is a
15 shared facility because it conflicts with the
16 fundamental principle of cost causation, which, in
17 economics, attributes a cost to the source (an
18 economic decision or activity) that gave rise to it.
19 According to this principle, the costs associated
20 with the loop are caused by a customer gaining access
21 to the network. That is, whether that access is
22 gained as part of a standard bundled offering, like
23 residential, basic exchange service, or, in the new
24 environment, by purchasing an unbundled loop. Once
25 the loop is provisioned, the cost is incurred. The

00242

1 way in which it is used (if at all) does not change
2 that cost. This is a subtle but important point. A
3 customer that purchases (or leases) the loop
4 essentially acquires the right to access the network
5 and receive services of her choosing. Actual usage
6 of the loop does not matter for cost causation. The
7 loop has been provisioned and the cost incurred
8 regardless of whether the customer uses the loop at
9 all, accesses only one service or accesses multiple
10 services. The cost of that loop should be
11 recoverable regardless of the actual use. The
12 contrary position that the loop's cost should depend
13 on how it is used is based on a fallacy that confuses
14 the cost causer (namely, the consumer or purchaser of
15 the loop) with the entity that incurs and needs to
16 recover the cost (namely, the supplier of the loop).
17 That's it.

18 Q. Thank you, Dr. Fitzsimmons. I'm just going
19 to ask you to read two or three more short parts of
20 this submitted testimony from New Mexico into this
21 record. Next is at page four, lines one to four, the
22 question beginning, Do you accept.

23 A. Just the question?

24 Q. And just the beginning of the answer, or
25 the whole answer.

00243

1 A. Question: Do you accept the premise that
2 the local loop is a shared facility whose costs
3 should be allocated to different services? Answer:
4 No. This premise is contrary to sound economic
5 principles and based on an incorrect approach to cost
6 recovery processes. Is that sufficient?

7 Q. Yes, thank you. And then, lastly, page 18,
8 lines 23 to 27.

9 A. Beginning with "In addition?" Okay. In
10 addition, there is little economic justification for
11 any allocation mechanism that recovers the same
12 proportion of the shared and common cost from a set
13 of designated services. Such an allocation is no
14 more or less arbitrary than one which relies on
15 minutes of use. In fact, any allocation not based on
16 cost causation is arbitrary and, therefore, without
17 any economic basis.

18 Q. Dr. Fitzsimmons, you said you were familiar
19 with Dr. Taylor's writings; is that correct?

20 A. I have read some of his testimony, yes.

21 Q. And what I've just asked you to read into
22 the record, is that consistent with things that
23 you've seen Dr. Taylor write previously about
24 recovery of loop costs?

25 A. Yes, it is.

00244

1 Q. Do you disagree with his assertions here
2 and do you see it in any way inconsistent with your
3 own statements about recovering the costs of the
4 loop?

5 A. No, I do not. My statements are actually
6 growing out of the same economic opinion as Dr.
7 Taylor's statement. In Dr. Taylor's case, what he's
8 looking at is arguments that suggest that we should
9 allocate some of the loop cost to services that do
10 not cause the cost of that loop.

11 Example: Person A and Person B each have a
12 loop. Person A decides that they like to use this
13 loop a lot for services. They like to use it for
14 voice mail, they have their call waiting, they make
15 lots of long distance calls on that loop. Customer B
16 never uses it. Wants it, has it, never uses it.
17 Both of them equally cause the dedicated connection
18 to them to the network. I believe that's what Dr.
19 Taylor is saying. And therefore, on a cost causitive
20 basis, the loop should bear -- I'm sorry, the service
21 that includes the loop should bear the cost of the
22 loop.

23 Now, as I explained in my direct testimony,
24 the FCC, by requiring us to call the high-frequency a
25 separate unbundled element, has put us in a position

00245

1 of having to consider this loop somewhat differently.
2 Now we have two dedicated connections that are both
3 very much like the example I just gave for Customers
4 A and B, and on the high-frequency dedicated
5 connection, when a customer takes DSL service from
6 any provider, it causes a dedicated connection to
7 occur. Whether it ever uses that dedicated
8 connection or not, it causes that connection to
9 occur. It needs the loop to cause that connection,
10 right.

11 It's very different, in kind, and as Dr.
12 Taylor said, it's caused hours and hours of debate in
13 proceedings because the subtle difference between a
14 dedicated connection that causes a cost and a use for
15 a dedicated connection that does not.

16 Q. Well, imagine I'm the lonely guy in that
17 movie that was produced some years ago and nobody
18 ever calls me, but I'm hoping some day somebody will,
19 so I order voice mail service. How does that differ
20 from what you've just said about xDSL service? In
21 both cases, that could -- the capacity to receive a
22 voice mail message is there and you said, in that
23 case, that doesn't impose any costs on the loop and,
24 therefore, it shouldn't be responsible for recovering
25 any of the costs of the loop. How does that differ

00246

1 from xDSL service, where just because I order, there
2 are no costs incurred? Isn't it a similar situation?

3 A. No, I would say that the situation is much
4 more similar to you ordering a loop in the first
5 place to access the voice network, the public
6 switched network. That's similar in kind, because
7 what you are truly doing is ordering a dedicated
8 connection.

9 And let me address your voice mail piece.
10 The voice mail does not really necessarily -- was it
11 voice mail? I think it was voice mail -- require
12 that loop. You can get voice mail on your cellular
13 phone, you can get voice mail now elsewhere. It does
14 not cause the cost of that loop being into your
15 house.

16 Q. All right. I'd like to turn to one last
17 area, Dr. Fitzsimmons, and may begin this line of
18 questioning by asking do you consider the xDSL market
19 to be competitive?

20 A. Unfortunately, competitive is a bit of a
21 matter of degree. It is certainly somewhat
22 competitive today and growing more so, and it depends
23 somewhat on what region of the country you are in
24 today, to a large degree.

25 Q. Do you consider it to be competitive in the

00247

1 state of Washington?

2 A. Well, it's certainly emerging to be so.
3 It's my understanding that you can buy Sprint's Ion
4 service, for instance, in Seattle, and that offers a
5 DSL. I believe that ART is in the process of putting
6 a product forward. I don't know the status of the
7 cable industry's competitive position right now in
8 Washington, but if it's not here now, it's certainly
9 coming.

10 Q. Are you familiar with Section 254(k) of the
11 1996 Telecommunications Act, which deals with subsidy
12 of competitive services and the prohibition?

13 A. If I could be refreshed, it would be
14 appreciated.

15 Q. Okay. I'll read you that section of the
16 act. Subsidy of competitive services prohibited. A
17 telecommunications carrier may not use services that
18 are not competitive to subsidize services that are
19 subject to competition. The Commission, with respect
20 to interstate services, and the states, with respect
21 to intrastate services, shall establish any necessary
22 cost allocation rules, accounting safeguards and
23 guidelines to ensure that services included in the
24 definition of universal service bear no more than a
25 reasonable share of the joint and common costs of

00248

1 facilities used to provide those services.

2 A. Okay.

3 Q. Now, do you consider the loop as an example
4 of a facility where it has the properties of having
5 joint or common costs?

6 A. I agree with Dr. Taylor, that in the
7 nonshared line, the loop is not, not a common cost or
8 a joint cost. The loop is an incremental cost
9 directly caused by that connection. On a shared
10 line, I believe that the loop has been recast as a
11 joint cost of two different outputs.

12 Q. And if one was, therefore, to accept your
13 characterization on a shared loop, it has the
14 properties of a joint cost, do you see that this
15 section of the act has any relevance to determining
16 the degree to which the shared loop should make a
17 contribution to recovering the cost of the loop?

18 A. I believe that the FCC's interpretation of
19 the act in its First Report and Order of August '96
20 is accurate in this one place, at least, in that what
21 we're trying to do is offer conditions that are
22 conducive to the development of efficient
23 competition, that indeed allocating a joint cost in a
24 reasonable fashion is consistent with the act. And I
25 believe that an allocation of 50 percent and allowing

00249

1 the market to work is a reasonable allocation.

2 Q. And when you say the act, are you saying
3 the 50 percent allocation would be consistent with
4 254(k)?

5 A. I'd really have to study 254(k) a little
6 more closely to give a definitive answer, but from
7 what I've listened to and what I know about how that
8 has been interpreted by the FCC and how a market
9 would tend to price a joint product, I believe it is
10 consistent.

11 DR. GABEL: Thank you.

12 THE WITNESS: You're welcome.

13 JUDGE BERG: Madam Chair, Commissioners.

14 CHAIRWOMAN SHOWALTER: I'd rather take a
15 lunch break, and then, if I've got any questions, I
16 can try and digest this information over the lunch
17 hour.

18 THE WITNESS: All right.

19 CHAIRWOMAN SHOWALTER: Why don't we take an
20 earlier lunch break.

21 JUDGE BERG: We'll go to redirect now.

22 CHAIRWOMAN SHOWALTER: No, they want me to
23 go.

24 MS. ANDERL: Yeah. Usually it's better if
25 I do my redirect to follow on the Commissioners.

00250

1 JUDGE BERG: All right. We'll take a lunch
2 break now, 11:45, and we'll want to be back ready to
3 start work promptly at 1:15. That means counsel in
4 their seats and ready to go. We'll be off the
5 record.

6 (Lunch recess taken.)

7 JUDGE BERG: We'll be back on the record.
8 Mr. Fitzsimmons, after every break where a witness'
9 testimony continues, I always remind them that they
10 remain under oath.

11 THE WITNESS: Thank you.

12 JUDGE BERG: All right. At this time,
13 we're going to take questions from the Commissioners
14 before proceeding to redirect of this witness.

15 CHAIRWOMAN SHOWALTER: Thanks.

16 E X A M I N A T I O N

17 BY CHAIRWOMAN SHOWALTER:

18 Q. Dr. Fitzsimmons, I think one of my problems
19 is that it's very hard for me to digest all the
20 information that I hear, and I have a feeling for
21 what I want to ask, but often I can't articulate it
22 very well, and I find that the lunch hour didn't help
23 me too much. But I am going to ask questions, and if
24 you think you can articulate what I'm getting at
25 better than I have, feel free to try to redefine the

00251

1 question. I'm not concerned as to whether you answer
2 my question specifically or not so much as I'm just
3 understanding what it is you're testifying to.

4 You caught my attention when I think you
5 said that what we ought to be doing is imposing
6 conditions that replicate and are therefore conducive
7 to competition. And I wondered about that statement.
8 That is what you said. I wrote it down.

9 A. That is what I said.

10 Q. And does that mean that, in your opinion,
11 if we simply institute the prices that -- or costs
12 that would be present if we had competition, that
13 that will bring about competition?

14 A. In general, I would say yes, that's the
15 right direction, but prices of what, I think, is a
16 way to clarify that question. What we're doing now
17 is making the assets of incumbent telephone companies
18 available to their competitors, and the really
19 essence of what the FCC did correctly in its First
20 Report and Order is say let's look at these elements
21 and consider what would be a price for them that
22 could prevail in a competitive market. And that's
23 how we got to TELRIC, because their notion is that in
24 a competitive market, prices for these assets as
25 offered to the competitors would come down fairly

00252

1 close to some measure of incremental cost plus a
2 reasonable allocation of common cost. That's the
3 purpose behind TELRIC.

4 Q. It seems to me, in general, that depending
5 on where we are along the spectrum of competition, we
6 might want different rules. That is, if you're in a
7 wholly monopoly situation, then instantly going to
8 what would apply in a competitive situation might not
9 bring it about, but I'm speaking generally there.

10 But maybe the easiest way to explore it is
11 let's assume that within this state in different
12 areas we have highly-competitive situations and very
13 uncompetitive situations, so let me take the
14 highly-competitive situation first. I'm not sure
15 this actually exists, but let's assume it does.

16 A. Okay.

17 Q. Let's say we've got an area where we have
18 the ILEC, we have cable, we have some alternative
19 facility-based provider and we have quite a few CLECs
20 anxious to lease from the ILEC. In that situation,
21 we've got all the ingredients. In fact, we'll add in
22 wireless, as well. We really do have competition.

23 A. Correct.

24 Q. I'm talking about wireless Internet
25 provision.

00253

1 A. Sure.

2 Q. In that situation, tell me how the 50
3 percent rule that you suggest will work?

4 A. Okay. In that situation, users of the wire
5 line network provide DSL service -- and I'm assuming
6 we want to focus now on DSL service?

7 Q. Right.

8 A. They would be competing with each other,
9 like Qwest would compete with Covad, and they would
10 also be then competing with wireless providers, maybe
11 Teligent is in that mix, maybe TCG providing cable
12 modem service is in that mix. So that in the
13 broadest sense, then, that would be the market for us
14 to consider. All sort of viable substitutes for
15 providing high-speed Internet access.

16 Now, the 50 percent would be the input, an
17 input cost to Covad if they chose to buy the high
18 frequency from Qwest. If Covad and other players in
19 the market considered that price to be too high, then
20 they have the option of going themselves to Qwest and
21 purchasing the entire loop and trying to recover all
22 the contributions it needs to pay for that loop in
23 any way it chooses to, including DSL-type service, or
24 it can go to another CLEC and negotiate some sort of
25 an agreement where I could see the agreement

00254

1 proceeding as follows:

2 You, as a CLEC, are considering serving
3 this neighborhood, but right now you think that
4 \$18.16 for a loop to provide the services that you're
5 planning to provide, it's really not viable for you.
6 Well, we'd like to also serve that neighborhood, and
7 we'll give you \$5 for every customer that you sign up
8 if you let us use the high frequency. Well, in that
9 case, a CLEC may say, Fine, at 13.16, that's a better
10 deal for us and we're willing to go out there and
11 play in that neighborhood in that situation.

12 In that case, Qwest will then be hard
13 pressed to say, Geez, \$9 that we're imputing here or
14 \$10 that we're imputing here isn't really
15 sustainable. The market is starting to show us that
16 that doesn't work, that there's a demand function
17 that's being revealed by the market to suggest that
18 the \$9 is too high. On the other hand, it may be
19 that when DLECs try to do that, no one's interested,
20 in which case, they say, Well, I guess the market
21 reveals that the price is either \$9.08 or even
22 higher.

23 Q. Okay. But stick on your first example.

24 A. Okay.

25 Q. The ILEC says, Hmm, I guess the \$9 is too

00255

1 high. Then what is it going to do? How does the
2 market evolve from that 50/50 split that you had?

3 A. Well, I would think, in that case, the
4 ILEC, Qwest, in this case, or Verizon, would have to
5 come back to the Commission and say, you know, as an
6 initial price, we think the most reasonable price was
7 \$9.08, in Qwest's perspective. I know Verizon has
8 different perspectives on that. And that doesn't
9 really work once we're starting to see how the market
10 is revealing. Because on joint products, there is
11 really no cost basis for allocating. What you really
12 need is revealed demand functions from end users to
13 determine what they are willing to pay, you know, for
14 something. And it's revealed demand function in a
15 market that allocates not necessarily the cost, but
16 it sets the prices in such a way that the two
17 products together cover the cost.

18 Q. So in that case, it would have been
19 revealed that 50 percent is too high and that you
20 would be coming back to us and saying, Let's impute
21 this differently, let's impute only 40 percent?

22 A. Right, the -- exactly, yes.

23 Q. So now, then, take the other example that
24 you gave. Or wait a minute. Back on the first
25 example, you would know it was too high because

00256

1 nobody was wanting to buy your service and,
2 meanwhile, you could see that other competitors were
3 building their services. Is that how you would
4 understand that?

5 A. You would see Covad, Rhythms, NorthPoint,
6 other DLECs in the business using line sharing and
7 using other providers of loop, people who are leasing
8 the loops from you or self-providing the loops as
9 their input provider.

10 Q. Okay. Now, give me the other example of it
11 turns out it's not high enough?

12 A. Well, if it turns out it's not high enough,
13 we will not know, because if Covad goes to, for
14 instance, a CLEC and the CLEC says, No, you have to
15 give me at least \$12 for me to give you the
16 high-frequency spectrum on the loop, because let's
17 say this is a year from now and most people are
18 delivering voice service, as a hypothetical, on the
19 loop, on the high-frequency portion of the loop, in
20 that case, Covad wouldn't leave Qwest. Covad would
21 come back to Qwest and say \$9 look like the right
22 price to us.

23 Q. Because internally they would have asked
24 themselves, Is there a way we can do better, and they
25 would have decided there's no way we can do better,

00257

1 so let's stick with the Qwest option?

2 A. Correct.

3 Q. All right. Now, switch to a different part
4 of the state. And let's assume that only Qwest is
5 present. There's no cable, no wireless, the only
6 thing that gets out to some residential areas is the
7 old telephone line. Now, how does the 50 percent
8 work in that case? And let's say we have one CLEC
9 who might be interested in getting out that way.

10 A. Well, the first question I guess we'd have
11 to ask ourselves is why aren't competitors going to
12 those customers. If the economic signals were
13 correct, then it may just be a matter of time.
14 There's a certain phase out to any competitor's entry
15 and expansion pattern. On the other hand, it's
16 caused by there is truly not enough contribution to
17 cover the cost that you need to serve those
18 customers; i.e., those are mainly below-cost
19 customers.

20 Well, there's different ways you may want
21 to consider how you bring competition out to those
22 areas. I don't think you'd want to start by saying
23 these are below-cost customers, let's give them
24 something else that doesn't bear the cost that we
25 would expect in other areas, because that's not then

00258

1 going to improve the competitive situation in those
2 areas.

3 Q. All right. But aren't you proposing that,
4 for all areas, we adopt this 50/50 division?

5 A. Correct.

6 Q. I'm just wondering, in the short run, then,
7 how does it work out there, while we're waiting for
8 the next phase?

9 A. Well, I would first say that what is
10 revealed in markets where there is competition should
11 be applicable in markets where there is perhaps less
12 competition. I sympathize with what I think you're
13 asking me, which is how do we implement this UNE and
14 put a price on it in such a way that we don't leave
15 people behind. And I think that's a very valid
16 concern.

17 The question is how do we pay for that
18 concern. Do we pay for that concern by expecting the
19 ILEC to somehow fund that delivery of advanced
20 services out to high-cost areas if indeed there isn't
21 the revenue out there to really entice a rational
22 competitor to play. And I have some hesitation about
23 that. I think subsidies in this market should be
24 moving towards being explicit subsidies. If we're
25 going to do that, it's probably not fair to have one

00259

1 provider bear all the costs of doing that. There
2 should be some similar sort of contribution across
3 providers to fund services that really aren't going
4 to cover the costs.

5 Q. You may have identified something I ought
6 to be concerned about, but, actually, I really am
7 just trying to understand at this point just how it
8 would work. In other words, if there is a remote
9 area where Qwest is the only provider and there's
10 this 50/50 split, what would happen, or what are the
11 dynamics out there?

12 A. Well, if we're looking to the market to
13 provide the dynamics, which is really what I'm here
14 to testify to, is that we need to have the market
15 provide the dynamics where the market can provide the
16 dynamics. And I am not precluding -- I don't think
17 your question precludes the ability of the market to
18 help us with the solution, even in the short run.
19 But if it does, if it's the fact that incentives are
20 wrong for competition in those rural areas, then
21 truly we have to address that as something of a
22 market failure. And maybe it's a market failure
23 caused by social policy goals, or there could be
24 other reasons that don't come to me at the moment.

25 But if we do, if we say that the market is

00260

1 failing there, then how do we then promote the
2 advanced services there? Now, I realize what you're
3 asking me, and I'm not quite hitting it, is
4 mechanically what do we do with this \$9.08 to those
5 areas. Well, and I guess the problem maybe we're
6 having here is I'm talking about a statewide average.
7 And maybe if we start talking more about a deaveraged
8 loop cost, that may help us some here, too. Because
9 it's my understanding that Qwest's proposal, and this
10 may go back to a question you asked me earlier, Dr.
11 Gabel, is that the maximum amount you would impute
12 would be \$10.

13 I'm not aware, as I sit here, what you
14 would consider as your deaveraged loop rate in your
15 rural areas, which I think probably most comport with
16 your question, but I suspect 50 percent of that is
17 greater than \$10.

18 Q. Well, let's -- okay. Let's say we have
19 deaveraged and I'm going to make these numbers up,
20 and forgive me if they're wildly off, but let's say
21 we have three zones and \$9 in one and \$25 in another,
22 and I'm trying to get it up there, let's say 40, \$40
23 in the most high-cost areas.

24 A. Right.

25 Q. All right. So we're in a high-cost area

00261

1 and we have only Qwest, and the deaveraged retail
2 price is \$40?

3 A. Right.

4 Q. Now, what is the Qwest proposal and how
5 would it work in that situation?

6 A. For the absolute details on this, I turn to
7 Jerry Thompson. But I think, from what I understand,
8 we can get there from here. In that case, the amount
9 that would be allocated to the high-frequency
10 spectrum price for recovery would be 25 percent,
11 okay, in the high-cost area, because it's a \$40 loop
12 rate. And my understanding is that Qwest would cap
13 the imputation at \$10. So already there is something
14 of a differential that helps the situation that
15 you're referring to.

16 Q. So in that situation, as you describe it,
17 it would be relatively attractive, you're saying, for
18 a CLEC to sign up for the \$10?

19 A. Mm-hmm.

20 Q. Why, though? I'm not sure why.

21 A. Well, it's somewhat going to depend, I
22 guess, on what happens once we deaverage the loop
23 cost. If you were truly going to say it cost \$40 in
24 the high-cost areas for a loop and basic local
25 service is still going to cost \$12.50, and there's

00262

1 not going to be some explicit subsidy to make up now
2 what has become sort of a glaring underrecovery of
3 cost, then it may not help at all. But I'm assuming
4 that we're going to move, in time, at least, if we're
5 going to deaverage the loop, to making some
6 adjustments, as well, to either retail prices or
7 explicit subsidies.

8 Q. All right. Well, and one other situation,
9 see if it creates any other dynamics. Supposing we
10 have an area where there's AT&T cable and Qwest.
11 That might -- that's my neighborhood, for example.

12 A. Okay.

13 Q. But that's it, at the moment. Now, how
14 will your proposal work in that situation with that
15 degree of competition?

16 A. I'm going to assume for a moment that your
17 neighborhood probably also has a collocated CLEC
18 going to your wire center. The reason I'm assuming
19 that is that 92 percent of Qwest's access lines are
20 in wire centers that have a collocated CLEC. Now,
21 you may be in the other eight percent. I can't say
22 for sure about that. But if you are in a wire center
23 that has today a collocated CLEC, and you may be in a
24 wire center that has multiple collocated CLECs, that
25 means that these CLECs have already made investments

00263

1 that makes your loop addressable. They have now a
2 collocation cage where all they need to do is call
3 you and say, We would like to provide your service,
4 we would like to be your local phone company. And if
5 you said, That's fine, go ahead, sign me up, they
6 then would go to Qwest, assuming you're in Qwest
7 territory, and I think you said you were, and ask for
8 that loop, at which point Qwest would disconnect the
9 loop from their switch and shunt it over to that
10 CLEC's cage, and you were then provided service by
11 that CLEC.

12 And that CLEC could then contact Covad, for
13 instance, and say, I have a customer here I'd also
14 like to sell DSL service on a high-frequency portion
15 of the loop. How about we do this together. I'll
16 give you the loop for \$8. It's a dollar less than
17 you have to pay right now. And Covad maybe says \$4,
18 and they say \$7. I don't know how exactly it would
19 work. But it's not necessarily the amount of
20 customers signed up to competitors that measures
21 competition. It's the ability and the investments in
22 place to do so that's equally important.

23 Q. Okay. Mr. Deanhardt questioned you a lot
24 about the chicken wings and breasts, and I was hoping
25 all along we'd find a better metaphor, but we

00264

1 haven't, so I think we're in for this one. I think
2 he posited that if the price of the chicken that sold
3 for breasts only was \$10 and the cost was \$9.50, then
4 what would happen if suddenly wings became
5 marketable, valuable.

6 And I think you said that -- or you agreed
7 with him that, over time, the price of both of them
8 would come back in the neighborhood of \$10 or so,
9 because cost was about \$9.50 for both of them?

10 A. That's correct.

11 Q. But I'm trying to inject the regulated
12 price into this equation, and I'm not sure if my
13 analogy is going to hold. But if the customers are
14 paying \$10 for the chicken breast and that's the
15 price that they have to pay, there isn't competition
16 at the moment, because it's a regulated price, and
17 then we have this new value of wings, why shouldn't
18 there be, in essence, an offset? That is, the
19 regulators figure out a cost of the wings, and I'll
20 just make it \$2.

21 A. Okay.

22 Q. And they say, All right, you can buy just
23 chicken breasts for \$10 or you can buy chicken
24 breasts and wings for \$10, but if you want to buy
25 them from separate people, it's \$2 and \$8. But in

00265

1 the end, the price is the same to the chicken farmer,
2 but it's just going to make a difference whether this
3 is being used for two purposes or one.

4 A. Okay. That goes right to the heart, I
5 think, of a lot of these issues, and how do we take
6 this into a regulated world. Well, unfortunately,
7 there is no nice way that covers all the bases.
8 There is no real right-on analogy. The chicken wings
9 one isn't the one I would probably go with today, but
10 it will serve. If you'd like, we can stay on that
11 one or we can propose a new one, if you'd like.

12 The issue now is, in the phone business,
13 which may help us understand why this doesn't hit on
14 the money, there is a large investment up front,
15 maybe somewhat different than chickens, but maybe
16 similar. Maybe you have to invest in the entire farm
17 of chickens, and you don't recover the cost of your
18 chickens necessarily directly by those chickens,
19 right. There's --

20 Q. It's the chicken feathers that I forgot to
21 mention that are bringing in some extra income.

22 A. Right. Or you can give people different
23 ways they can use their chicken. You can say, you
24 know, Here's -- you can sell coloring kits. Maybe
25 people want to color their chickens. Or as Amelia

00266

1 Bedelia was one of my favorite characters in
2 children's books, you can dress your chickens and
3 really mean it, and really sell them with little
4 skirts and everything.

5 So there's lots of different ways you can
6 do this, but the fact is you have to recover your
7 up-front investment and your continued investment in
8 growing chickens with periodic payments for chickens.
9 That's sort of a key that we have to keep in mind.
10 And it's not going to be just from the chickens
11 themselves. You're relying on contributions from
12 other uses of the chicken that don't really cause the
13 chicken to be grown. And now we're going to go into
14 a market where it's not clear you'll be able to rely
15 on those contributions going forward. And I think
16 that's the situation we're in.

17 Now, I'm a chicken farmer. I'm looking
18 forward, saying, I know the competition is here in
19 the chickens. I know that someone can come in and
20 buy the chickens at cost and they can provide all the
21 little coloring and dresses and everything else they
22 want. There's a legitimate concern that I can't
23 maintain the contribution from all those add-ons to
24 the base price of my chickens.

25 Now I've come up with a way of considering

00267

1 a direct cost into a part of the chicken, right, the
2 wings, that I believe I'm justified in getting a
3 contribution from. As a matter of fact, I see that
4 as a way to replace some of the contribution I was
5 getting in the past under this regulated world. And
6 a little difference in chickens is chicken farmers
7 that aren't regulated, that they have to provide
8 their competitors with chickens for cost, at their
9 cost. So that makes it, I think, quite a bit
10 different.

11 And now, bring in the last item, that it's
12 not to the end user that you're selling the chicken
13 wings, but it's another firm. Another firm who can
14 buy your whole chickens at cost and pay the entire
15 \$10 or 9.50 for that chicken now just wants the
16 wings, and they want those wings free, and they want
17 to sell those wings in competition with you. That, I
18 think, is the situation we're in. And I'm saying
19 that, in a market, that would not happen. You would
20 not find the chicken producer giving its wings to
21 another firm to sell in competition with that chicken
22 producer.

23 Q. Okay. Now, but your explanation that you
24 really weren't recovering whole cost of the chicken
25 than just the breast and the wings changed the

00268

1 hypothetical, and maybe to be more parallel with
2 telephone situation, but that's a factual issue. So
3 I'm still trying -- just let's say, for purposes only
4 of this hypothetical, that the \$10 for the chicken
5 breasts really did cover all the costs of the whole
6 chicken and now we have this boon of a new use for
7 the wings.

8 A. Sure.

9 Q. And that the price is regulated. So assume
10 for the moment that \$10 really does cover -- it's a
11 regulated price and it really does cover the costs.
12 Would it then be appropriate to say the breast costs
13 \$10 alone and the wings cost \$10 alone, but if
14 somebody's going to buy both of them, they can pay
15 \$10 for the both of them. And here's how we'll
16 divide it up, both as to price and the wholesale
17 cost, so that we know if you want to sell your wings
18 wholesale, you can do that, too, and still get your
19 costs back. I'm saying, is that appropriate, under
20 the assumptions of that hypothetical?

21 A. Okay. I would say that it's inappropriate,
22 and for this reason. We have chosen our method to
23 help us search for the efficient prices of eventually
24 services and I would say the most efficient
25 competitive environment to bring forward the

00269

1 innovation that we're looking for and the investment
2 that we're looking for, and that method is
3 competition. I mean, that's what we have decided.

4 At that point, I think we have to step back
5 and say we don't want to be in the game of being
6 price setters whenever we don't have to be, because
7 it's too rigorous. I mean, we have seen that it
8 doesn't work. Not necessarily only in
9 telecommunications, but we've seen in managed
10 economies it doesn't work as well as letting the
11 market come to the right answer. So what we've done
12 here is say how do we set up a situation that allows
13 the market to help us get to the right answer. And
14 if we have, then I think it's time to take our hands
15 off and say, Good job, now let's see what the market
16 can do, rather than us coming in and trying to play
17 sort of omniscience and say we think we know what the
18 market answer would be.

19 What the key is, we'd like to see how that
20 \$10 gets divvied out at some point. And it's not
21 going to be clear unless we let the market work on
22 that.

23 Q. So you're saying if we allocate the two and
24 the eight, that that -- well, why can't the market
25 work on that, as well? In other words, I understand

00270

1 that you say we might as well do 50/50, because we
2 don't know what the right answer is, but is it
3 possible to take a guess and have the market work on
4 whatever is produced, aside from maybe the zero and
5 one percent that you addressed earlier?

6 A. Certainly.

7 Q. I think what I'm getting to is the offset
8 for the -- why wouldn't the sum of the retail price
9 for both -- I don't know. Well --

10 A. Just in your hypothetical?

11 Q. Yes.

12 A. Just in the hypothetical?

13 Q. Right.

14 A. It will. If you set the price, if you
15 force a price of \$2, then, in your hypothetical,
16 competition will, if you hold one thing fixed, try to
17 drive the other to the \$8. You don't have to set the
18 \$8. I mean, we're fortunate, because we're really
19 here to talk about the joint product that we're
20 making available to competitors in this situation,
21 right. So what you're saying is if you set that at
22 \$2, what will happen in our market elsewhere. And if
23 indeed it's a competitive market and there's not all
24 this kind of regulatory problems and social policy
25 problems, it will move towards the \$8. That's

00271

1 consistent with the conversation that Mr. Deanhardt
2 and I had.

3 Q. Okay. Then bringing it back to the
4 situation at hand, your comment is that the \$10 of my
5 hypothetical in fact turns out not to cover the cost
6 of either the chicken or the loop, and that's why --
7 or at least it's a reason why you don't want to have
8 that cost allocation?

9 A. Right. And possibly the example of a
10 residential customer who pays \$16.85 for the loop and
11 subscriber line charge helps understand that, because
12 going towards competition, you want the service that
13 includes the loop to pay for that loop. Otherwise,
14 you're sending wrong signals into the competitive
15 marketplace. It clearly does not. So the idea is it
16 would be in the wrong direction to say we're going to
17 put some price on here, let's lower a price that's
18 already below cost. It's just in the wrong
19 direction.

20 Q. All right. Then another issue is how, if
21 at all, does voice over Internet affect this? That
22 is, right now we're posing the situation where you
23 have voice only and suddenly now you can have voice
24 and Internet, but we do know that now, even, and
25 surely in the future, we'll be able to have voice

00272

1 over Internet, at which case you don't have a shared
2 line anymore, or you may not have a shared line.

3 A. Right.

4 Q. Or you have some use, say long distance on
5 voice over Internet and local calls on the other one.
6 But just how do you think that phenomenon affects
7 this decision?

8 A. Well, I had somebody the other day talk to
9 me about it and called this a flash-cut perspective.
10 Say today that a company such as Rhythms leases the
11 high-frequency portion of the loop to provide
12 high-speed Internet service. And then, within the
13 next six months, they go to meet their customer,
14 Well, we'd like to also offer you voice service, like
15 to offer you your voice mail, and we'll give you all
16 these things at a slightly discounted price from what
17 you're paying for them today. But they keep doing
18 line sharing.

19 So it gets to some point where the ILEC
20 pretty much provides E911 on that line, and that's
21 about it. Then, at some point, the DLEC says, I
22 might as well just take the whole loop, I'll take the
23 whole customer off. At that point, flash-cut to all
24 of a sudden going to paying the whole \$18.16 for that
25 loop. That's the way I see that would play out.

00273

1 But if you think about it, if we're relying
2 -- if Qwest is relying on contributions from voice
3 mail and intraLATA toll and other types of services
4 to pay for the price or the cost of that loop, well,
5 as these services move over onto the high frequency,
6 the contribution goes over to whoever's providing
7 service over the high-frequency, as well.

8 Q. But, then, if that's the case, is that a
9 problem with how we assign the line sharing cost, or
10 is that a problem with just the fact that long
11 distance services or other things contribute to the
12 cost of the local loop and they will be lost, those
13 contributions will be lost for anybody who starts
14 using those services over the Internet?

15 A. Well, the beauty, or the -- whatever the
16 opposite word of that is -- the ugly aspect of this,
17 but I think it's the beauty, really, is that this
18 particular issue starts bringing all of that
19 together. And once this whole issue of double
20 recovery or single recovery has been raised, now we
21 are faced with how we re-examine the way services are
22 priced. So they're not totally dissociated, these
23 issues.

24 Now, what you can be guaranteed, and I
25 think your question about providing voice service

00274

1 across this line goes right to this, is that the way
2 the high-frequency spectrum of the loop is used and
3 perceived by customers, and therefore the demand that
4 will be revealed for that, will change in time as the
5 types of services that are delivered across the
6 high-frequency change in time. So one of the things
7 that we would like to do here is maintain some
8 flexibility. And that's why I think if we set a
9 price of \$2, our flexibility, then, is there between
10 zero and two.

11 You know, maybe the right price is let
12 Qwest charge whatever they want for it. I mean,
13 that's one-way of looking at it, and let the market
14 -- but that's not where we're going, obviously. But
15 I think you want to have some flexibility to account
16 for the dramatic change in how these loops are going
17 to be used.

18 CHAIRWOMAN SHOWALTER: I think that's all
19 the questions I have. Thank you.

20 THE WITNESS: Thank you. It was very
21 interesting.

22 JUDGE BERG: Ms. Anderl, any redirect?

23 CHAIRWOMAN SHOWALTER: I think we have some
24 more.

25 JUDGE BERG: I'm sorry.

00275

1 COMMISSIONER HEMSTAD: I had two or three
2 questions.

3 E X A M I N A T I O N

4 BY COMMISSIONER HEMSTAD:

5 Q. Dr. Gabel read you the testimony from the
6 Qwest witness in New Mexico, and I understand your
7 answer was that you essentially agreed with his
8 assertions that the loop is not a shared facility?

9 A. That's correct.

10 Q. But now, in this environment here, your
11 position is that it is a shared facility, or at least
12 you will share the cost on it?

13 A. That's correct.

14 Q. And is that because that difference from
15 the generic situation now with this, is that because
16 of the technology, that this is a shared spectrum?
17 Is that the point?

18 A. In essence. What my point is is that what
19 the loop really provided in the world that I think
20 Bill Taylor, who was the witness for Qwest, was
21 talking about, was a dedicated connection, a single
22 dedicated connection that, like or dislike your car,
23 that that's your car, and whether you use it or don't
24 use it, you still should pay for it, because the fact
25 that you want it in your garage has caused Chrysler

00276

1 to build it. So you should pay for that. Now,
2 unfortunately, when we use electronics to generate
3 now two different dedicated uses, no real world car
4 example hits the point. And that leaves us without a
5 nice metaphor or analogy that just is going to just
6 all of a sudden make all this make sense to us.

7 The fact is, though, that the key to why
8 Bill Taylor says you should not share the loop to
9 usage type services is that they don't cause the cost
10 of the loop, right. They're like driving your car or
11 not driving your car, okay. But now we have a sort
12 of an unusual situation, where we have two dedicated
13 connections, one that goes from end user to Qwest,
14 for instance, and one that goes from end user to
15 Rhythms, and that's -- they're both dedicated.
16 They're different in kind than voice mail.

17 Q. Okay. Well, then, and I think someplace in
18 your testimony this is addressed, but assuming that
19 at the current time Qwest or Verizon is at least
20 earning its authorized rate of return. Is it your
21 view, then, that the company then would be
22 overearning if we accepted your recommendation of the
23 cost base of \$9.16 or whatever, \$9.08, I guess.

24 A. Yes, \$9.08. Well, the issue of overearning
25 to me needs to move away from what we were

00277

1 considering in a rate of return environment. Things
2 were in balance in a rate of return environment and
3 they will be in balance in a competitive environment,
4 but the balance in a rate of return environment was
5 that this Commission could guarantee the ILEC that it
6 would get its return.

7 Q. Well, have the opportunity to make a
8 return?

9 A. Well, I think in a rate of return
10 environment, it may be even a little stronger than
11 that, all right, that over the next several years,
12 numbers of years it takes to recover a large
13 investment of periodic payments, that if you were
14 underrecovering, there can be an adjustment for that,
15 and if you're overrecovering, you certainly would
16 expect an adjustment for that, as well, in time, and
17 you don't have to do that on a daily basis,
18 obviously. We're not in that environment any longer.

19 Q. But we are in a rate of return environment
20 at the present time in this state.

21 A. I misstated. We are not in a monopoly
22 franchise environment, in which the rate of return
23 now that we speak of is a guarantee or even close to
24 a guarantee. If Qwest can't sustain itself in a
25 competitive market, there is very little that

00278

1 anybody's going to be able to do to change that fact.
2 In a competitive environment, the contributions that
3 today pay for the loop are certainly at risk.

4 Q. Well, still my question was if, at the
5 present time, hypothetically, US West is earning at
6 least its authorized rate of return and we were to
7 adopt the recommendation here, would that mean that
8 they would then be -- earnings would rise?

9 A. And I beg your pardon. I really didn't
10 answer your question very well before. In a
11 competitive environment, it becomes more important
12 and even necessary for firms to consider a stream of
13 revenues and contributions that they can capture in
14 order to pay from investments. And it becomes more
15 Qwest's responsibility to be looking forward and to
16 be putting forward services and uses of their assets
17 that will help them with that stream it recovers, so
18 the element of time becomes much more important when
19 we look into a competitive environment than it is in
20 a rate of return monopoly franchise environment.

21 So will they overrecover? Well, that's a
22 question that we don't know, whether they'll
23 overrecover. Is there a very legitimate concern that
24 Qwest will not recover the cost of its loop
25 investment, I think there's a very legitimate concern

00279

1 there.

2 Q. Well, let me, in a certain sense, answer my
3 own question.

4 A. Okay.

5 Q. Assuming, then, if we adopted your
6 recommendation and the consequences were that US West
7 earnings would then -- certainly would rise, I take
8 it that it would follow, wouldn't it, that that would
9 have to be adjusted in a general rate case and
10 looking at all of their rates for services and some
11 of them adjusted downwards?

12 A. That would be the appropriate place.

13 Q. So I understand, and this may have been
14 covered in your testimony or in cross, it's your
15 testimony that the position of the CLECs, or Covad,
16 at least, that it doesn't meet a common sense test to
17 charge zero for the upper end of the spectrum.

18 A. That is my testimony, yes.

19 Q. Then what is your understanding of what US
20 West or Qwest or Verizon imputes to itself with this
21 service when it provides it?

22 A. Well, what Qwest does is sets itself a
23 price floor that imputes a maximum of \$10, or \$10 and
24 no more, to its Megabit service. Now, so I don't
25 know exactly what the price of Megabit service is. I

00280

1 think it's in the \$29 range, so --

2 Q. So the \$9.08 essentially reflects that
3 price floor that Qwest charges to itself?

4 A. Correct.

5 Q. And is that how you arrived at the figure
6 of \$9.08, or is that just coincidental?

7 A. Well, my understanding, and once again,
8 Jerry Thompson will probably give you the mechanics
9 of this better, is that the \$10 is 50 percent of the
10 average loop price in its region, since this is an
11 interstate service, they came to at that. And as it
12 turns out, the loop price in Washington is fairly
13 close to the average of \$18.16, clearly close to an
14 average, which would probably then be close to \$20.

15 COMMISSIONER HEMSTAD: That's all I have.

16 THE WITNESS: Thank you.

17 COMMISSIONER GILLIS: No questions.

18 JUDGE BERG: Let's go to redirect.

19 MS. ANDERL: Thank you, Your Honor.

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

21 BY MS. ANDERL:

22 Q. Dr. Fitzsimmons, you were asked a question
23 by Mr. Deanhardt about whether or not if cable costs
24 were greater than copper costs, in other words, if
25 the cost of providing telephony over cable were

00281

1 greater than the costs of providing telephony over
2 copper, should the Commission order ILECs to raise
3 rates so that cable companies could compete, and you
4 said no to that.

5 My question for you is, even assuming that
6 to be true, just because cable telephony costs would
7 be more, does that mean cable will not be able to
8 compete against telephony over copper?

9 A. Not necessarily. But first, I'm not
10 certain that the hypothetical is true. I don't know
11 the relative cost positions of a CATV company
12 providing cable modem service versus a DLEC or Qwest
13 providing DSL service on a shared line. But no, even
14 then, it's not necessarily true. There are lots of
15 different ways that people compete. You compete on
16 your bundles of service, on your quality of service.
17 There are other ways. It would certainly make it
18 more difficult for cable to compete if it wasn't
19 cost-competitive with other forms of delivering
20 high-speed Internet access.

21 Q. You answered a question from Mr. Deanhardt
22 about whether or not a zero price for the
23 high-frequency spectrum would be competitively
24 neutral between Covad and Qwest. Do you recall that
25 question?

00282

1 A. Yes, I do.

2 Q. Would a \$9 price for the high-frequency
3 loop and an imputation for Qwest of that same amount
4 into the price of its Megabit service be
5 competitively neutral between Covad and Qwest?

6 A. Yes, it would.

7 Q. You were asked some questions by Mr.
8 Deanhardt, again, about whether or not the Commission
9 would be speculating if it were to set a positive
10 price for the high-frequency loop. Do you remember
11 that?

12 A. Yes, I do.

13 Q. If the Commission were to set a price of
14 zero for the high-frequency loop, would the
15 Commission, in that instance, be speculating about
16 what a competitive market would produce in terms of
17 pricing?

18 A. Yes, it would be speculating and it would
19 also be precluding the opportunity for a market to
20 help us determine what the price should be.

21 Q. Can you explain that last part?

22 A. Well, whatever price we set out there for
23 high-frequency spectrum UNE will be a ceiling, as we
24 discussed a little while ago.

25 Q. You were asked some questions, again by Mr.

00283

1 Deanhardt, about the direct testimony that you gave
2 about whether or not there was meaningful evidence
3 that more or less than 50 percent of the loop cost
4 should be allocated to the high-frequency spectrum.
5 Do you remember that?

6 A. Yes.

7 Q. In your opinion, what is the reasonable or
8 the most reasonable amount of the high frequency --
9 or of the loop cost which should be allocated to the
10 high-frequency spectrum?

11 A. In my opinion, the 50 percent is the most
12 reasonable offering price for the high-frequency
13 spectrum UNE.

14 Q. And is zero reasonable?

15 A. No, it is not. Beyond reasonable. It's
16 somewhat of an affront to common sense.

17 MS. ANDERL: That concludes my redirect.

18 JUDGE BERG: Mr. Deanhardt, re-cross.

19 MR. DEANHARDT: Thank you, Your Honor.

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

21 BY MR. DEANHARDT:

22 Q. Dr. Fitzsimmons, if the unbundled -- if the
23 deaveraged unbundled loop price is, as Commissioner
24 Showalter hypothesized, \$40 in a rural part of
25 Washington, then, according to your testimony, the

00284

1 most reasonable price for Qwest to charge for the
2 HUNE in that area is \$20; correct?

3 A. On a statewide average basis, I agree that
4 what I am proposing is 50 percent is reasonable. I
5 don't disagree with Qwest that putting a cap on that
6 is also reasonable. I think the other idea would put
7 a cap on that of 10 percent. That makes walking
8 around sense to me.

9 Q. Well, the cap is \$10; right?

10 A. Ten dollars. Thank you very much.

11 Q. Now, but going back in this, and again,
12 both to clarify a response to Ms. Anderl's question
13 and Commissioner Showalter's, isn't that exactly how
14 Qwest then gets to determine the price of the HUNE?
15 I mean, let me rephrase.

16 If Qwest says that the maximum that we're
17 going to impute is \$10, and so, therefore, regardless
18 of how much the actual loop cost is, we're never
19 going to charge more than 10 percent, even though we
20 say --

21 A. Ten dollars.

22 Q. I'm sorry, \$10, thank you -- even though we
23 say 50 percent is the right way to do this. Then
24 hasn't Qwest just decided, in these other areas, we,
25 Qwest, don't want to raise our prices to cover 50

00285

1 percent imputation, so we're going to cap it at 10?

2 A. Well, you'll have to ask Jerry Thompson
3 what the rationale is behind that. But part of what
4 we do in these proceedings is try to come up with
5 something that seems most reasonable. In Qwest's
6 perspective, that's a reasonable approach.

7 Q. So if the statewide average for a loop rate
8 in Washington was, say, \$30, if that was a statewide
9 average, would 50 percent still be the most
10 reasonable allocation of loop cost?

11 A. Well, the way we'd have to look at that is
12 that Qwest is offering this service across its
13 region, and Qwest has come forward and said that 50
14 percent of the regionwide loop cost is the maximum
15 amount they will request to allocate this service.
16 If Washington's happens to be on the high end of
17 that, they will still only say let's allocate \$10 to
18 this service.

19 Q. So in other words, if the loop -- the
20 average loop cost in Washington was \$30, then 50
21 percent would not be the reasonable allocation of the
22 HUNE?

23 A. In that case, I'm saying that, yeah, Qwest
24 would say it should be 33 percent, \$10, and I'm
25 saying that's within the realm of reason, yes.

00286

1 Q. Now, Ms. Anderl also asked you about
2 whether the Commission would be speculating if it set
3 a price for the HUNE at zero dollars; is that
4 correct? Do you recall that question?

5 A. I believe that was your question initially,
6 yes.

7 Q. No. Well, either way. Now, you agreed
8 with me earlier, however, that in a competitive -- in
9 a competitive market, that prices tend toward costs;
10 correct?

11 A. That's correct.

12 Q. And you also agreed with me that there is
13 no additional cost for providing the HUNE on an
14 unbundled -- or on a loop; correct?

15 A. Correct. What I said is then, when you
16 have a shared line, the loop cost is recast as a
17 joint cost. But it doesn't change. I've already
18 answered that.

19 Q. Well, let's back up a second.

20 A. Okay.

21 Q. There is -- in a competitive market, the
22 total -- the prices will tend towards economic cost;
23 correct?

24 A. Could you repeat that? I missed --

25 Q. Sure. In a competitive market, the price

00287

1 for a product will tend towards -- will go towards
2 economic cost of providing the product; correct?

3 A. Correct.

4 Q. The economic cost to Qwest of providing the
5 HUNE on a loop that already provides voice service is
6 zero; correct?

7 A. No, that's not correct. There is no
8 incremental loop cost on a shared line. The shared
9 line becomes a common cost to the two dedicated
10 connections, so there's no incremental cost on that
11 shared line from perspective of the loop. It's a
12 joint cost.

13 Q. And in a competitive market, the full price
14 that an end user would pay for that loop would tend
15 towards the cost of the loop; correct?

16 A. That's correct.

17 Q. But Qwest is not suggesting in this docket
18 that we should change the price of an unbundled loop
19 to -- is it?

20 A. No, Qwest is not suggesting we change the
21 price of an unbundled loop. The unbundled loop is
22 not really the same issue here.

23 Q. And Qwest is not suggesting that we should
24 change the underlying -- the embedded cost of the
25 loop that is used to determine the rate of return in

00288

1 Washington, is it?

2 A. No, Qwest is not asking to change embedded
3 costs, no.

4 Q. So then, in either of these situations, if
5 the economic -- if, in a competitive market, the
6 price would tend towards cost, and in both
7 situations, the cost of both the UNE and the rate of
8 return regulation, the costs of the loop have, A,
9 been determined, and, B, how they're recovered will
10 be determined, isn't it correct that the price would
11 tend towards the incremental cost of the new service?

12 A. No. One of the reasons that we have
13 economists come to these proceedings, and you may be
14 wondering that sometimes, why we have economists come
15 to these proceedings, you know, economists have
16 looked at behavior of producers and consumers in
17 markets for hundreds of years and have come up with a
18 construct that helps us understand, explain, and
19 predict how products are purchased, how they're
20 produced, and how they're priced. That's what
21 economics really is.

22 Now, within that there's a functional
23 taxonomy and there is something called a joint
24 product. That is when you have two outputs produced
25 by the same process. Now, those products behave

00289

1 differently in a market. And what I'm saying is we
2 have to recognize that we have joint products now on
3 a shared line, and therefore, we have to consider how
4 those would be produced, priced, and purchased in a
5 competitive marketplace. And it would not be
6 happening in a competitive marketplace where someone
7 would give away a productive asset, a joint product,
8 and not expect something in return. It will be
9 revealed by the demand functions.

10 Q. A CLEC -- no one can provide DSL over a
11 loop that is not connected to a DSLAM; correct?

12 A. That's a little more technical than I can
13 handle. No, you have to have Qwest providing the
14 service on the low frequency in order for Qwest to be
15 required to provide the high frequency as an
16 unbundled element. I hope that gets to your
17 question.

18 Q. That was the next question. Let's back up
19 a step and let's make it more simple. DSLAM, by the
20 way, is D-S-L-A-M. You do understand, don't you,
21 that in order to provide DSL service across a loop,
22 the loop has to be connected to equipment that
23 actually provides a service?

24 A. Certainly.

25 Q. And have you seen the testimony of Mr.

00290

1 Thompson in this case?

2 A. No, I have not read his testimony.

3 Q. Are you familiar with the concept of a POTS
4 splitter?

5 A. No.

6 Q. You would accept, subject to check, that a
7 POTS splitter is another one of those pieces of
8 equipment that has to be placed in order to provide
9 DSL across a loop that also carries voice?

10 A. I would accept that, subject to check;
11 correct.

12 MS. ANDERL: And Your Honor, I guess at
13 this point I'd like to interject a preliminary
14 objection. I don't know where Mr. Deanhardt's going
15 with this, but the nature of the questions and
16 answers are such that it's fairly clear that there's
17 very little foundation for these questions and that
18 they're outside the scope of really any questions
19 that this witness has had on either cross or direct
20 to date. If he's trying to set up a hypothetical, I
21 guess that's fine, but it seems to me that we're
22 really outside the scope.

23 MR. DEANHARDT: Your Honor, I'm getting
24 there, but I'm also following up on what he said
25 earlier about joint products, which he just gave in

00291

1 response to the question I asked previously. That's
2 where I'm going.

3 JUDGE BERG: Well, I am looking for the
4 line to be derivative of the redirect and of the
5 cross. Continue.

6 Q. Now -- I need to catch up to where I was.
7 Give me just a second. Okay. You understand that,
8 as you just said, the HUNE cannot be provided unless
9 the ILEC is already providing the voice service on
10 that loop; correct?

11 A. Yes.

12 Q. Okay. So if additional work has to be done
13 to the loop at the central office, the new connection
14 has to be made in order to provide DSL service across
15 that loop, then the ability of the loop itself to
16 carry the DSL service was not created when the
17 original voice line was connected to the house, was
18 it?

19 A. I'm not sure about all the technology we're
20 talking about here, but I do know and agree with
21 statements in this exhibit that came forward earlier,
22 from George Forward of MCI, that when you have -- one
23 more voice loop implies one more DSL loop. The loop
24 itself, when you create it, has the capability of
25 providing services on the low and high frequency.

00292

1 Q. Let me try this a different way, then.
2 Would you agree with me that if it's necessary to add
3 additional equipment to a loop in order to make it
4 capable of carrying DSL, that at the time that the
5 original loop is installed, that loop is not a joint
6 product of both services?

7 A. No, not necessarily. I mean, you may have
8 to buy a pair of shears to get the wool off a sheep,
9 but that doesn't mean that the wool and the mutton
10 aren't joint products.

11 Q. Now, you testified, in response to a
12 question from Ms. Anderl, that a \$9 price is
13 competitively neutral as between Qwest and the CLECs.
14 Do you recall that?

15 A. Yes, I do.

16 Q. Now, if the CLEC pays \$9 to Qwest, that's a
17 direct cost to the CLEC; correct?

18 A. Correct.

19 Q. And so the CLEC, therefore, no longer has
20 that money; correct?

21 A. Well, I assume that it's going to then
22 include that in the price of its service and it's
23 going to recover that money; correct.

24 Q. But the CLEC is not going to keep that \$9;
25 it's going to give that away to Qwest; correct?

00293

1 A. Sure. It's going to pay Qwest \$9.

2 Q. And then Qwest has that \$9 and Qwest can
3 take that and put it in its revenue pile over here?

4 A. Right. Qwest also has costs that it needs
5 to recover; correct.

6 Q. Now, it has costs, but it's correct that
7 Qwest can take my \$9 and put it in its revenue pile?

8 A. Sure. Any time somebody leases something
9 from somebody else, it's a cost to one person and a
10 revenue to the other.

11 Q. Now, for Megabit service, if Qwest imputes
12 \$10, then Qwest is still going to have the revenue
13 from that \$10 to put in its revenue pile; correct?

14 A. Sure.

15 Q. And it's not going to give that revenue to
16 anybody else; correct?

17 A. No, it's not giving it to anybody else.
18 Well, to the extent that it has owners of its
19 capital, that's who it's giving it to.

20 Q. And wouldn't you agree that generally it is
21 better to make more money than less money?

22 A. As a general proposition, I think money has
23 problems that come along with it. I'm not sure how
24 general you want to be with that question, Mr.
25 Deanhardt.

00294

1 Q. Actually, that's the best dodge I ever
2 heard. Let's try it again. As a general rule, a
3 company's going to try to make more money rather than
4 less money; correct?

5 A. That would be a good rule.

6 Q. Okay.

7 A. In the long run.

8 Q. I want to clarify a couple of things that
9 you said in response to some of the questions that
10 the Commissioners were asking. Commissioner Hemstad
11 was asking about the imputation of \$10. Now, when
12 Qwest set the price for its Megabit service, it did
13 not impute \$10 to the cost of the loop in setting
14 that price, did it?

15 A. You'll have to ask someone else that
16 question. I don't know. I wasn't really working on
17 the issue when Qwest set its price for Megabit
18 service. But if it did or it didn't, I don't
19 necessarily find that particularly -- well, I'll
20 leave it there.

21 Q. Okay. And Qwest, to your knowledge, has
22 done nothing -- filed nothing at the FCC to say, I,
23 Qwest, am going to impute \$10 to my loop and my price
24 cannot be set below direct cost plus \$10, has it?

25 A. No, no, it has not. Furthermore, the FCC

00295

1 wouldn't know what to do with that information if you
2 gave it to them, I would think.

3 Q. There are FCC imputation rules for other
4 kinds of services, aren't there?

5 A. Not that I'm aware of as I sit here today.

6 Q. Okay. So you don't know if imputation
7 rules or even anything that in the regulatory arena
8 are considered have had the imprimatur of any
9 Commission or the FCC of being a reasonable way to
10 regulate telecommunications, do you?

11 A. That's not correct. One of the first
12 places I came up against imputation had to do with
13 how some of the ILECs priced their intraLATA toll
14 service. The way that was done is there was concern
15 that the ILECs had to set a price that passed an
16 imputation test, so that that price was the price
17 floor, was equal to the direct cost plus the price
18 that they were charging others for switched access.
19 So yeah, imputation has a long history.

20 I don't recommend jumping into imputation
21 unless there's a real need for it because it can be
22 something you have to administer, but it certainly
23 has a long history. I just don't know that the FCC
24 has ever looked at imputation on a service such as
25 this.

00296

1 Q. In response to one of the questions that
2 Commissioner Hemstad asked, you referred again to the
3 notion of there being a dual dedicated connection, or
4 two dedicated connections. Do you recall that?

5 A. Yes, I do.

6 Q. Are you familiar with Qwest's -- I don't
7 know what they call it -- the Qwest Megabit service
8 that is not always on?

9 A. No, I'm not. I mean, I've heard it talked
10 about in a proceeding in Minnesota, but that's my
11 only familiarity with it.

12 Q. So I'd like for you to assume for a moment
13 that DSL can be provided in a configuration that
14 allows -- that is not always on. In other words,
15 that you could try to connect through DSL and not be
16 able to, because someone else was using the service
17 at that time, the way, for example, a modem bank can
18 be filled up and you can't dial in. Can you assume
19 that for me?

20 A. Sure.

21 Q. Is that a dedicated connection at that
22 point?

23 A. Well, not knowing more about it, I mean, it
24 may be a connection that would be dedicated for use
25 among some small BOC. I really don't know. But it's

00297

1 certainly not a dedicated connection in the same vein
2 that I'm speaking of, a car, for instance, that's
3 yours and yours alone to use any way you want. It
4 sounds like not quite at that level.

5 Q. If the CLECs shut down their service for
6 one hour every night -- actually, let's make it
7 between 8:00 and 9:00 p.m. every day, you couldn't
8 use that service, is that still a dedicated
9 connection?

10 MS. ANDERL: Your Honor, I object. The
11 question, as asked, is vague to me. If I could get
12 some clarification. I believe Mr. Deanhardt stated
13 if the CLECs shut down their service between 8:00 and
14 9:00 at night, and I'm not clear whether we were
15 still talking about Megabit or DSL over a shared line
16 or DSL over a dedicated line.

17 MR. DEANHARDT: I'll clarify it.

18 Q. In the context of a CLEC providing DSL
19 service across a shared line, if that CLEC, every
20 night at 8:00, shut off the ability of the end user
21 to use DSL between 8:00 and 9:00 every night, is that
22 connection still a dedicated connection?

23 A. Well, first, I'm not sure you'd ever get
24 any of those connections, because that would be
25 somewhat of an inferior service for people to use.

00298

1 Now, the dedicated connection is -- therefore, you're
2 saying you can have a dedicated connection 23 hours a
3 day, so it's still a dedicated connection. You're
4 just denying the consumer the car. You're going to
5 come into the garage every night at 2:00 and remove
6 the car. You know, it's a weird situation to get
7 into. I'm not sure why you would do it. But, sure,
8 for the other 23 hours, it's that person's car and
9 it's dedicated to them alone.

10 Q. Does that mean I should pay 23/24ths of the
11 HUNE price for that day?

12 A. No, it probably means you should go buy a
13 car from somebody else, I would think.

14 Q. I've got a response to that, but I'm being
15 nice today.

16 A. Thank you.

17 Q. You've talked over and over again about
18 markets, and in response, again, to Commissioner
19 Showalter's questioning, you were discussing the
20 markets that the Commission should try to emulate.
21 Which market are we talking about? Are we talking
22 about the market for loops or the market for
23 services?

24 A. Well, that's why I began my answer earlier
25 with let's define the broad market first. And the

00299

1 broad market dealt with providers of high-speed
2 Internet service. Because once you start then
3 carving down into submarkets within that, there is
4 still influences within the broader market. But the
5 market I think you're referring to right now is who
6 could your client buy high-frequency spectrum usage
7 from.

8 Q. Well, let me rephrase the question. You
9 are encouraging the Commission to try to emulate a
10 competitive market in setting the price for the HUNE;
11 correct?

12 A. I'm suggesting that this Commission allow
13 Qwest to set the initial price here that Qwest
14 believes comports with its entry into this
15 competitive market and allow, then, the conditions
16 that we've set forward for the market to operate.

17 Q. Was that a yes, because you just confused
18 me? Actually, I mean, I'm really asking this time.

19 A. You'll have to read the question. It's
20 getting late in my day here.

21 Q. Here's the thing I'm trying to get to. Let
22 me try this a different way, and maybe that will
23 help. If you were encouraging the Commission to look
24 at competitive markets to set the price for the HUNE,
25 which market are we talking about?

00300

1 A. That would be the market for, in the
2 broadest sense, high-speed Internet access. And the
3 reason I come back to that is I think it's -- we
4 already had the discussion somewhere today about the
5 -- it's the shape of the demand curves for the
6 high-frequency spectrum versus users on the
7 low-frequency spectrum that a market would then use
8 to set the price. And those demand curves are
9 influenced not just by what goes on in the wire line
10 service, but what goes on with wireless providers and
11 other.

12 But really, what I'm suggesting here is
13 when a DLEC is looking to buy from someone, lease
14 from someone a high-frequency spectrum, they have
15 options that they can go to, and those options to me
16 constitute the market that I was talking about.

17 Q. Okay. I think you just said both markets,
18 because I think, at the beginning of your answer, if
19 I understood it correctly, you were saying the market
20 for broadband or high-speed data, which is the
21 services market, but then at the end of your answer,
22 it sounded like you shifted to me, and you said the
23 market for loops, where can the CLEC go to get the
24 HUNE. So now I'm confused again. Which market is
25 it?

00301

1 A. There aren't walls in markets. I mean,
2 there are cross-effects that are going to occur
3 within markets, okay. So let me answer your question
4 in a way that may get us able to move on here a
5 little faster. Really what I'm talking about I think
6 for your question is does Covad, Rhythms, NorthPoint,
7 do they have options as to where they can buy the
8 high-frequency spectrum UNE. And the answer to me is
9 yes.

10 Q. So we're focused on the market, then, for
11 transmission paths?

12 A. For the high-frequency spectrum on the
13 loop, on a copper loop.

14 Q. Then do you know if DSL can be provided
15 across wireless technology?

16 A. I don't think it would properly be called
17 DSL. I know you can provide high-speed Internet
18 access across wireless.

19 Q. But do you know if DSL can be provided
20 across wireless technologies?

21 A. I think DSL stands for subscriber line. L
22 is for line. And wireless is not a line, so I think,
23 just by definition, it's not a technology that you
24 would necessarily call a wireless technology.

25 Q. So as a DSL provider, then the wireless

00302

1 spectrum is not available to me as an alternative for
2 loops for providing DSL service?

3 A. If indeed you want to put yourself into a
4 box that says the only way you're going to provide
5 high-speed Internet access is with DSL, that would be
6 true, but I don't think that would be a very smart
7 position to take. I think you'd want to look at your
8 options for providing what the consumer sees as its
9 product, which is high-speed Internet access.

10 Q. You said that the market we need to look at
11 is the market for the HUNE. So I'm trying to figure
12 out how many places I can get the HUNE from?

13 A. Okay.

14 Q. Okay. Now, so I can't get it from
15 wireless?

16 A. No.

17 Q. And I can't provide DSL service over cable,
18 can I?

19 A. It's not called DSL service over cable,
20 right.

21 Q. So I can't get the HUNE from cable, either?

22 A. No, you can't get the HUNE from anybody
23 who's not using a copper loop, because it's a copper
24 loop technology.

25 Q. You also, in response to Commissioner

00303

1 Showalter's questions, got into the subject of
2 subsidies. Now, as an economic concept, the notion
3 of subsidies is that you use the price you can
4 generate from the provisioning of one product or
5 service to subsidize the cost of providing a good or
6 service where you can't obtain a sufficient price to
7 cover that cost; correct?

8 A. Correct. If we turn it around, I think it
9 makes more sense, in my understanding of what a
10 subsidy is. The first thing you need to do is
11 identify a need for a subsidy. So you have to
12 identify a service or something else that does not
13 capture the revenue to cover the cost. Therefore,
14 you've established a need for a subsidy. Then the
15 source of that subsidy is the next step.

16 Q. If the cost of a product is actually zero,
17 then charging zero for that product isn't a subsidy,
18 is it?

19 A. Yeah, I guess if you could find a product
20 at a cost of zero, yeah.

21 Q. You also talked about subsidies for paying
22 for the loop. Isn't it correct that the universal
23 service fund, when it's working appropriately, is the
24 explicit subsidy that, under current law, is supposed
25 to pay for the cost of a loop in an area where

00304

1 implicit subsidies have been removed?

2 A. Well, we've kind of slipped back and forth
3 into present tense and future tense and past tense
4 there. I mean, is the universal service fund today
5 providing the proper amount of explicit subsidies
6 that we do not even need implicit subsidies? No.

7 Q. But under the current law, once we get
8 there, that's the place to go for the subsidy;
9 correct?

10 A. Well, the law. I'm not sure which law
11 exactly we're referring to here. Laws that try to
12 squeeze subsidies out are sometimes tricky to
13 implement. What law? Possibly, if you could let me
14 know what law?

15 Q. That's okay. Since I don't actually have a
16 particular one in mind, I will simply move on. It's
17 easier than trying to find it. In response to
18 Commissioner Showalter's questions about the
19 potential competitive market for HUNE, you refer to
20 the notion of a CLEC, let's say an AT&T or someone,
21 that could purchase the unbundled loop and then, in
22 essence, resell the HUNE. Do you recall that?

23 A. Yes, I do.

24 Q. Again, if there was, in fact, a competitive
25 market for the HUNE, then you would expect that the

00305

1 price that AT&T could recover both for the cost of
2 whatever services it sold across the voice spectrum
3 combined with a HUNE would migrate towards the
4 original cost of the unbundled loop; correct?

5 A. It's not that I'm sort of pausing too much
6 over the answer; I'm just trying to remember the
7 question. Could you read it to me one more time?

8 Q. You think I write these things?

9 A. Oh, I'm sorry.

10 Q. That's okay. In your example, if there was
11 a competitive -- actually, I'll make this a little
12 easier by taking it in chunks.

13 A. Okay.

14 Q. I'm going to call the market where CLECs
15 purchase a UNE and try to resale the HUNE the
16 secondary market for the HUNE. Can you accept that?

17 A. Yes.

18 Q. Okay. Now, in your hypothetical, or the
19 discussion you were having with Commissioner
20 Showalter, in the secondary market, AT&T would sell
21 some services across the voice spectrum and then
22 resell the HUNE to CLECs; correct?

23 A. Correct.

24 Q. Now, in that situation, isn't it a correct
25 economic principle that, over time, the combined

00306

1 pricing for the retail services provided by AT&T
2 across the voice spectrum and the HUNE would tend
3 toward the unbundled loop cost plus whatever direct
4 cost AT&T incurs to provide the other direct cost it
5 provides or it incurs to provide that service?

6 A. That would be correct.

7 Q. Commissioner Showalter was also asking you
8 about how your proposal for 50 percent of the HUNE
9 price would reflect a competitive market, and you
10 suggested that if the price was too high, that we
11 wouldn't know that, because no one would be ordering
12 the HUNE, and so therefore, in a competitive market,
13 the price would be reduced so that people -- to the
14 point that people started ordering the HUNE. Is that
15 basically correct?

16 A. I'm saying people would go elsewhere for
17 that, so I guess that's basically what you're saying.

18 Q. People would go elsewhere and then, as a
19 result, we would know that the price for the HUNE was
20 too high and that it would need to be reset; correct?

21 A. Essentially, yes.

22 Q. And I think that you suggested that at that
23 time, Qwest would come back to the Commission and
24 suggest that the price for the HUNE needs to be
25 reset. Do you recall doing that?

00307

1 A. Right, and the way that that would work is
2 Qwest is committing to not put its competitors into a
3 price squeeze. Qwest would see that its price for
4 Megabit service with the \$10 allocation was not
5 sustainable in developing market and it would then
6 request for a change so that it could lower that
7 price.

8 Q. So then, I think you just added a piece.
9 If I understand what you're saying now, the lack of
10 retail demand for Qwest's Megabit would bring it back
11 to the Commission to suggest that it wants to lower
12 the price of the HUNE so that it could reduce its
13 imputation. Is that what you're saying?

14 A. No, I'm essentially saying that if indeed
15 that there would be a ready market for DLECs out
16 there for the high frequency that is much less in
17 some fashion than what is being imputed, then I would
18 assume that the DLECs would also be flowing that into
19 their prices. And that would put Qwest at a
20 difficult position in that case on its retail
21 service.

22 Q. Assume for a second a company that fault
23 against having to provide a certain product or
24 service. Can you have that assumption in your head?

25 A. Sure.

00308

1 Q. Okay. Now, if it, in fact, provides that
2 service at a price where there is no demand for that
3 service, would you then expect the original company
4 to actually reduce its prices in order to stimulate
5 demand for a product it didn't want to sell in the
6 first place?

7 A. Well, I believe that's why I took us
8 towards how the markets would work, right, which is
9 you're looking at trying to earn revenue on your
10 assets. If you find yourself in a position where --
11 and this is for any competitive firm. If you find
12 yourself in a position where your initial pricing
13 structure is not working within the competitive
14 market, then the competitive market will force you to
15 make adjustments. That's what competition's all
16 about.

17 Q. So the answer to my first question is you
18 wouldn't expect them to come and ask to reduce the
19 price in order to stimulate demand for the HUNE;
20 right?

21 A. No, I wouldn't necessarily look at them
22 doing that.

23 Q. But at the end of the day, isn't what
24 you're really saying that if Qwest feels that the
25 market is such that it needs to reduce the price of

00309

1 the HUNE in order to impute less and compete in the
2 market, it can do so; correct?

3 A. Yeah, if Qwest believes that the market is
4 showing that the joint products, the pricing to
5 recover the joint cost is misaligned, then they would
6 do as any other competitor firm and try to get into
7 alignment; correct.

8 Q. Okay. I really want to put this in plain
9 speak, because all the misalignment stuff --

10 A. All right.

11 Q. If Qwest determines that it cannot compete
12 at the price of direct plus the imputation of the
13 HUNE, that's the point at which it will come back and
14 say we need to reprice the HUNE; correct?

15 A. That's what I would expect.

16 Q. Okay. But the CLEC who has to pay the
17 direct cost of that HUNE doesn't have the option,
18 does it?

19 A. It has the option of buying the UNE from
20 someone else.

21 Q. It has the option of following Qwest on the
22 HUNE, but it doesn't have the option of lowering the
23 cost of the HUNE in order to better compete, does it?

24 A. No, it has the option of substituting for
25 the UNE.

00310

1 Q. Have the option of substituting for the
2 HUNE, but for the HUNE itself, let's assume that the
3 HUNE is the only way I can do this, I have no way of
4 reducing that cost myself, do I?

5 MS. ANDERL: I object, Your Honor, that the
6 assumption has not been supported in the record, the
7 assumption that Mr. Deanhardt is asking the witness
8 to make, that the HUNE is the only way that he can
9 compete doing this. The witness has just testified
10 that that assumption is incorrect.

11 JUDGE BERG: My concern is that, Mr.
12 Deanhardt, you and Mr. Fitzsimmons are sort of
13 talking past each other, and that you're talking
14 about the HUNE as being something, by definition, is
15 only available from Qwest, and Mr. Fitzsimmons,
16 you're talking about a substitute that is available
17 somewhere else in the market. So I am a little
18 confused about what's --

19 MR. DEANHARDT: I can rephrase it, Your
20 Honor, in a way that I think will handle it and will
21 also handle Ms. Anderl's concerns.

22 JUDGE BERG: All right. I'm looking to try
23 and be sure the questions and the answers are in sync
24 with each other.

25 Q. We'll do this as a hypothetical, then I can

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1 go back and do the other pieces later. Let's assume
2 for the moment that the only source for the HUNE is
3 Qwest in Qwest's territory, and that there is no
4 alternative means of providing DSL service. Do you
5 have that assumption in mind?

6 A. My assumption is there are no unbundled
7 loops; is that right?

8 Q. No. I'm sorry, there is no alternative to
9 the HUNE -- yeah, for purposes of the hypothetical,
10 let's just assume that I can't go buy a second loop
11 and provide service across that. Let's assume I'm
12 providing service, all I want is the HUNE, there is
13 no alternative to the HUNE and no alternative
14 provider. Can you assume that for me?

15 A. Okay.

16 Q. Then, in that situation, under the
17 imputation proposal that Qwest has put on the table,
18 Covad cannot actually act, react to the market to
19 reduce its price by lowering the cost of the HUNE,
20 but Qwest, in response to market forces, could, and
21 then Covad would have to follow; correct?

22 A. If that indeed is the only place where
23 Covad can go to get those, that's correct.

24 MR. DEANHARDT: Thank you, Your Honor.
25 I've concluded my re-cross.

00312

1 JUDGE BERG: All right. Mr. Butler.

2 MR. BUTLER: I just have a few questions.

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

4 BY MR. BUTLER:

5 Q. Dr. Fitzsimmons, you discussed with
6 Chairwoman Showalter the fact that what Qwest was
7 doing was trying to, in effect, find a new source of
8 contribution to replace the old sources of
9 contribution recovering the costs of the loop with
10 this proposal. Do you recall that?

11 A. Yes, I do.

12 Q. And if one were to assume that the old
13 sources of contribution continued to generate the
14 same level of revenue as they do presently, adding
15 the new source of contribution without an offset
16 would result in an increase in revenue or
17 contributions to Qwest; isn't that correct?

18 A. Yes.

19 Q. Do you know or have a recommendation as to
20 how the new revenues or contributions would be
21 accounted for between the federal and the intrastate
22 jurisdictions?

23 A. No, you're out of my depth there.

24 Q. If the DSL service is an interstate
25 service, would the revenues achieved or the margins

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1 achieved from selling DSL be considered interstate
2 revenue and not subject to inclusion by this
3 Commission in a rate case that might be conducted in
4 the future?

5 A. I'm sorry, it's just -- I don't know the
6 answer to that.

7 Q. Do you have any recommendation as to
8 whether any of the costs of the loop should be
9 reallocated from intrastate to the interstate
10 jurisdiction if your recommendation were to be
11 adopted?

12 A. I think the first thing you need to do is
13 try to establish a distinction here between setting
14 the prices for UNEs and jurisdictional separations.
15 As far as I know, all UNE costs that have been
16 considered and prices have been considered without
17 any regard to jurisdictional separations. As a
18 matter of fact, that's one of the purposes of going
19 to the TELRIC perspective. So we get away from all
20 kinds of -- any kinds of separations here and just
21 get -- do a cost causation.

22 So for the matter at hand first, which is
23 how do we set the price for this UNE, I believe that
24 needs to be considered totally outside of the whole
25 issue of separations. And the reason I make this

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1 point is we need to set up conditions that replicate
2 and are conducive to competition and we shouldn't be
3 distracted from that purpose by other considerations.

4 Now, given that, I think what you've
5 brought up actually would take a little more careful
6 consideration than I would feel adequate to give it
7 just sitting here on the stand right now, what is a
8 reasonable way to look at the separations issue.
9 It's not an issue I've thought about at all, really.

10 Q. So when you responded to the question from
11 Commissioner Hemstad about the availability of a rate
12 case as the place to reduce other retail rates to
13 accommodate new sources of revenue, you weren't
14 necessarily expressing an opinion that, in fact, that
15 would be an easy task; is that correct?

16 A. Oh, I don't believe rate cases have ever
17 been expected to be easy tasks, no.

18 Q. And are you aware whether there is a
19 moratorium on rate cases that is in effect for two or
20 three years in this state as a result of the approval
21 of the merger for US West and Qwest?

22 A. I'm not aware of that.

23 MR. BUTLER: That's all I have. Thank you.

24 JUDGE BERG: All right.

25 MS. HOPFENBECK: No questions.

00315

1 JUDGE BERG: Ms. Smith.

2 MS. SMITH: None, thank you.

3 JUDGE BERG: No questions for Public
4 Counsel. Dr. Gabel.

5 E X A M I N A T I O N

6 BY DR. GABEL:

7 Q. Dr. Fitzsimmons, I want to make sure I
8 understand the distinction you're making in the
9 recovery of loop costs between retail services and
10 the UNE. And you've had some questions presented to
11 you this afternoon about recovering the cost of the
12 loop. And in fact, in response to one question from
13 Mr. Deanhardt, you referred to how the ILECs recover
14 their costs through access charges. Do you remember?

15 A. Yes.

16 Q. And am I correct, as part of the access
17 charge regime, there's an access charge element
18 called the common carrier line charge, the CCLC?

19 A. Well, I'm familiar with it. I'm just not
20 sure -- you know, things are changing fairly rapidly
21 among the different components of access charges.
22 But I'll grant you --

23 Q. When you worked on this issue previously --

24 A. Yes.

25 Q. -- there was an access element called a

00316

1 common carrier line charge element; is that correct?

2 A. That is correct.

3 Q. And the purpose of the common carrier line
4 charge element was to recover from the interexchange
5 carriers a portion of the cost of the local loop?

6 A. I believe that's correct.

7 Q. And you would characterize the loop as a
8 nontraffic-sensitive cost?

9 A. That's correct.

10 Q. And that means, in a sense, that when the
11 interexchange carrier used the loop, it was already
12 -- it was always there, it was ready for them to use,
13 because it was not a traffic-sensitive item?

14 A. That's correct.

15 Q. All right. Then, with that little bit of
16 background, my question, Dr. Fitzsimmons, is what --
17 well, let me ask one more question. Did you believe
18 it was appropriate to charge interexchange carriers a
19 common carrier line charge, or were you more in line
20 with the testimony that you've read and you said
21 you're familiar with the work of William Taylor, that
22 the loop is a cost that's incurred when a customer
23 orders a service, and all that cost of the loop
24 should be recovered up front from the customer when
25 they order basic exchange service?

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1 A. I am not a proponent of recovering
2 dedicated costs, such as a loop, from usage based
3 cost. I realize, however, that there have been
4 public policy reasons for us to go in that direction.
5 As an economist, I really don't have a position
6 whether those public policy reasons were beneficial
7 enough to overcome the cost. You know, as an
8 economist, I'm not in the position that I'm allowed
9 to really make those decisions. My position is to
10 try to help people understand what it costs to make
11 those kind of decisions.

12 Q. Then let me present my questions. I'm
13 having a hard time envisioning what's the difference
14 between asking an interexchange carrier to pay a
15 common carrier line charge, because that's a right to
16 use that loop, which is always ready for them to use,
17 it's a nontraffic-sensitive cost. If you didn't
18 support doing that, why is it appropriate for a DLEC,
19 who always has the right to use that shared loop, why
20 is it appropriate to recover a cost of the shared
21 loop from them, but not from the interexchange
22 carrier?

23 A. Well, this is -- we talked about this a
24 little earlier, Dr. Gabel. And it's my opinion,
25 expert opinion, and I think -- obviously, I believe

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1 it's the correct opinion -- that what causes the cost
2 of the loop is the dedicated nature of the loop. And
3 that's different than using the loop or not using the
4 loop. If you want to be able to offer dedicated --
5 DSL service on that loop, you need to establish that
6 dedicated connection. Now, whether your end user
7 ever uses that DSL connection or not, it's the
8 establishment of the connection that causes the cost,
9 which is different than switched access.

10 Switched access causes an actual cost. It
11 causes it because somebody picks up the phone and
12 uses it. To me, that's a real distinction and an
13 important distinction in this case.

14 DR. GABEL: Thank you.

15 THE WITNESS: You're welcome.

16 JUDGE BERG: Commissioners.

17 CHAIRWOMAN SHOWALTER: I just want to
18 follow-up that for a minute.

19 E X A M I N A T I O N

20 BY CHAIRWOMAN SHOWALTER:

21 Q. Supposing we had sort of the opposite of
22 what we do have. Right now we have voice over
23 Internet, and it's sort of an invitation to make all
24 your long distance calls on the Internet and use your
25 voice for 911, I guess. But what if it were the

00319

1 opposite? What if -- how would this work? It was in
2 my mind. I've lost my train of logic. Maybe I
3 didn't have one.

4 A. I wasn't on board at the time.

5 Q. You were saying that you think that use is
6 different than the sort of the stand ready to serve
7 function?

8 A. Right.

9 Q. But somebody's -- in order to make a long
10 distance call -- all right, this is it. Supposing I
11 could make my -- well, let's just say I could make my
12 local calls over the Internet. For whatever reason,
13 it will work locally, but it won't work for long
14 distance. So the only way I can get my long distance
15 is to use my telephone, but I can make local calls on
16 my AT&T cable system. I don't really need my local
17 calls. Would that change your -- if the only reason
18 to have the phone line were to make long distance
19 calls, would that mean that that's what that's for,
20 and therefore, that's the cost causer?

21 A. So if I follow you, that would mean that
22 only people that make long distance calls would have
23 loops?

24 Q. Right.

25 A. All right. So that would be the only

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1 reason --

2 Q. Right.

3 A. -- to have a loop.

4 Q. Right.

5 A. Would be for your long distance calls. And
6 so -- and you're saying that if you just make one
7 call or make a thousand calls, you still need that
8 loop.

9 Q. That's right.

10 A. And you only need that loop. Hmm. There's
11 no voice mail, there's no call waiting, there's
12 nothing. This is it. You got me there. I think
13 it's hard pressed, in that case -- and that's the
14 only way you can make long distance calls. I can't
15 make long distance calls any other way. That's the
16 only way I can make them. I can't pick my wireless
17 phone and make them -- okay, or anything else. But
18 then, maybe that's not even relevant.

19 What the point here, I think you're saying,
20 that is the only avenue, that's the only reason
21 that's there, then, sure, I can see that you could
22 say that that loop cost is caused by long distance
23 calling, but then you should pay for that in a
24 dedicated sense. In other words, the person who
25 wants that loop only to make one call should pay for

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1 that loop in the same way the person who wants it to
2 makes a thousand calls. Then, the person that makes
3 a thousand calls should pay for those calls on top of
4 that for the cost, the extra cost that they caused.
5 Otherwise, they will cause a thousand calls worth of
6 switching costs and the other person would cause no
7 cost for the switching -- no calls worth of switching
8 cost, and the person with none will end up
9 subsidizing the person with more. So you want to pay
10 the connection first.

11 So it wouldn't be that dissimilar, I guess.
12 It's the connection you want to pay still separate
13 from the usage. You cause a cost.

14 Q. But why isn't this very similar, then?

15 A. You caused the cost. As soon as you say I
16 want to make one long distance call, you caused the
17 cost of that loop being connected to your house.

18 Q. But when you have multiple uses of the loop
19 -- that is, we have Internet, we have local calls, we
20 have long distance, all these other services -- why
21 aren't they all, quote, cost causers? How do you
22 assign -- the one, it seems like in the discussion
23 about local call versus Internet, you make the point
24 that you really can't say which is which, especially
25 nowadays.

00322

1 A. Sure.

2 Q. Because there are a lot of people who would
3 probably just rather have Internet and maybe use a
4 wireless or maybe not have a phone or who knows what,
5 or just call on the Internet, as you can do. 911
6 might be a problem, but maybe they could just bank on
7 not needing it. So there, we really don't know why
8 people use the service, and in that sense, we don't
9 really know who causes the cost. And isn't it the
10 same with long distance or anything else that might
11 come along over these lines -- who knows what's next.
12 You know, electricity, maybe. They're all using
13 something that's got to get into the house or into
14 the business, and aren't they all using that loop in
15 some way? Well, it's in between use and causing, I
16 suppose.

17 A. It is, it is. Let's say -- think of a
18 television. You have a television, or maybe you have
19 a television. You want to have a television, so you
20 go out and purchase a television. Now, whether you
21 purchase that because you like to watch TV or you
22 like to run your DVD player or you just like having a
23 television, it doesn't make any difference. The fact
24 is, when you decided you wanted to have that
25 television, you caused the cost of that television.

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1 It's the fact that you wanted to pay for it and bring
2 it home that causes the cost.

3 Now, how you decide to use it doesn't cause
4 Sony the cost of making that television. And if you
5 think about it, then, how the market works, let's go
6 back to the loop for a minute. If you say, Let's
7 allocate some of the costs of the loop to the usage
8 services, and someone else can come in and offer that
9 usage service without having to install a loop,
10 intraLATA toll, for instance, then they can offer
11 that service based on their cost, right, which
12 doesn't include the loop. They can offer that
13 service based on their cost of switching around these
14 intraLATA calls. And you create inefficiencies in
15 the market that way, because they may not be the most
16 efficient provider, but by the fact that they don't
17 have this dedicated cost of the loop or part of the
18 TV somehow allocated into their service, they'll be
19 able to beat the price of the provider that does have
20 to also cover the cost of loop in a usage-based
21 service. Either that wasn't said clearly or it's
22 getting late.

23 Q. Probably that it's getting late. I think
24 what we're talking about is is there or isn't there a
25 difference between use and causation, and in some

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1 ways, I think what you're saying is it's the consumer
2 that, quote, causes the cost in a sense that the
3 consumer that goes out and buys the TV. We don't
4 know why. Internet might have been the reason why,
5 as well. But in a competitive world, we wouldn't
6 really care. Whoever's producing has got to cover
7 their costs.

8 But we're not in a competitive world; we're
9 in a regulated world. At least we're partly in a
10 regulated world. So once we're partly in a regulated
11 world, don't we have to look at all those aspects and
12 aren't all the uses -- all the uses of the local
13 loop, I don't know if they're cost causers, but they
14 are users. And so either they're freeloading off the
15 local loop, which is borne by just the local price or
16 local plus Internet access, or we assign some other
17 contribution to all of those, because they do all use
18 it and they can't survive without it.

19 A. The difficulty, though, is once you start
20 saying that usage has to -- can't ride free on the
21 loop -- and you have various ways that people can get
22 their usage. They can get their usage with a cable,
23 telephone company that comes in, and they can get it
24 from wireless. Once you start trying to collect or
25 charge for a fixed, dedicated type of use or

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1 dedicated facility into usage facilities, then you're
2 setting up a situation where there will be
3 opportunities for competitors to come in and game,
4 game the system. That's really where the problem
5 comes in here.

6 And that's why I think, when we went to
7 unbundled elements, we made it very clear that the
8 loop is its own unbundled element and the costs that
9 are part of that are all part of providing this
10 dedicated connection into an end user's house. When
11 you look at what other services there are that
12 include, for instance, switching or transport, those
13 are different. They have their own cost. And you
14 have to have the price based on that cost.

15 You can't -- now, let's think about
16 competitors that come in and could use these UNEs.
17 If a competitor wants to come in and provide a
18 usage-based service, it can lease the switching
19 capacity, for instance, if it wanted to, at a
20 cost-based price. And if you're going to then say
21 that Qwest or someone else has to allocate loop cost
22 into that, as well, that's going to create
23 inefficient pricing and signals to competitors.

24 CHAIRWOMAN SHOWALTER: Thanks.

25 THE WITNESS: You're welcome.

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1 JUDGE BERG: Dr. Gabel.

2

3

E X A M I N A T I O N

4 BY DR. GABEL:

5 Q. I just have to sort of follow-up on
6 Chairwoman Showalter's questions to you and your
7 response. You used the example of the television,
8 and you said, Well, maybe the Chairwoman doesn't have
9 a TV. Isn't it the case that a person wouldn't have
10 a TV if the products, different products that you
11 mentioned, if the value to the customer of those
12 different products was less than the cost, that's
13 when the customer doesn't buy the TV?

14 A. That's somewhat a different question than
15 should the cost of the TV be somehow allocated --

16 Q. No.

17 A. -- to the use of the TV.

18 Q. I'm just asking a question.

19 A. Okay.

20 Q. I mean, you talked about some people have
21 TV, some people don't have TV. Wasn't the point of
22 your example was that if the value of the different
23 services that can be provided by the TV exceeds the
24 cost of buying the TV, then the person will buy the
25 TV?

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1 A. Sure, that's the rational thing to do.

2 Q. So the analogy which I think the Chairwoman
3 was getting at is somebody does or doesn't -- and
4 maybe I'm misspeaking for her, but I understood her
5 question to be that somebody either does or doesn't
6 buy an access line, depending upon does the value
7 from all the services provided over the access line
8 exceed the cost of access line? Isn't that the
9 correct parallel to your example with a television
10 set?

11 A. Right. Now, and one of the values could be
12 that I like people to be able to call me. But you
13 know, I may not want to use it for my own purpose,
14 right. So yeah, I would assume no one would get a
15 line, or very few people would get a line who don't
16 perceive some value from having that line. And the
17 value comes through using it, just like a TV. Just
18 like a TV, if you want the TV, you've got to pay the
19 price it costs to create it. And it's just the same
20 for a loop. If you want the loop to do these other
21 things, you should pay the price to create it.

22 DR. GABEL: Thank you.

23 THE WITNESS: You're welcome.

24 JUDGE BERG: Ms. Anderl.

25 MS. ANDERL: No, thank you.

00328

1 JUDGE BERG: Mr. Deanhardt, anyone else?

2 MS. HOPFENBECK: Can I just follow up, just
3 a couple questions?

4 JUDGE BERG: Yes, Ms. Hopfenbeck. Please
5 go ahead.

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

7 BY MS. HOPFENBECK:

8 Q. Dr. Fitzsimmons, you've had a lot of
9 discussion about Dr. Taylor's environment that he
10 referred to in New Mexico, and I just want to ask you
11 a couple more questions about that. In responding to
12 Commissioner Hemstad's questions, I believe I heard
13 you say that in Dr. Taylor's environment, the cost
14 causitive event was the decision of the consumer to
15 subscribe to the network access, the basic network
16 access; is that right?

17 A. That was my statement.

18 Q. And in that context, it is your view that
19 the entire cost of that access connection or the loop
20 would be borne by the basic service retail rate; is
21 that right? Should be?

22 A. That's correct.

23 Q. And then, in elaborating on those answers,
24 you referred to other services that the customer
25 might subscribe to, such as voice mail, call waiting,

00329

1 call forwarding; correct?

2 A. Correct.

3 Q. And none of those services, in your view,
4 should bear any cost associated with that loop cost;
5 right?

6 A. That's correct.

7 Q. Now, it is true that in this new digital
8 age, Qwest has the ability, in many instances, to
9 provide that customer that's made the decision, that
10 initial decision to have basic service with a DSL
11 service over that same loop; is that right?

12 A. That's correct.

13 Q. And in that retail context, is it your view
14 that US West should not recover any portion of that
15 loop cost from its charge for Megabit service?
16 Excuse me, Qwest.

17 A. Qwest. No, I think if you have two
18 dedicated connections, in this case, two both the
19 same, then I would expect that there'd be some -- it
20 becomes a joint product, as I kind of explained in my
21 testimony, as I do explain in my testimony. And for
22 joint products, the combined revenue should cover the
23 cost. Now, whether that's all one or all the other,
24 it would be unusual. To both have a positive demand,
25 you would expect the price of each to recover some

00330

1 portion of the cost of the underlying loop.

2 Q. So -- and if you're looking at the
3 recommendation that you're discussing today, then I
4 guess what you would say is that the portion of the
5 loop cost that would be borne by the Megabit service
6 would be the imputed loop cost, in this case, the \$10
7 loop cost; is that right?

8 A. That's correct.

9 Q. Okay. I just want to talk about imputation
10 a little bit, just to flesh the rest of this out.
11 Would you agree that imputation, as traditionally
12 used in regulatory settings, has really been a device
13 to ensure that Qwest does not price squeeze
14 competitors who are purchasing inputs from US West,
15 or from Qwest?

16 A. Yes, that's the purpose, is to prevent a
17 price squeeze.

18 Q. Okay. If we were talking about the
19 environment that imputation comes up in most
20 regularly, that being the switched access
21 environment, you would agree that that's the context
22 in which imputation has been most frequently
23 discussed in regulatory -- telecommunications
24 regulatory settings?

25 A. To my knowledge, that's correct.

00331

1 Q. Now, do you agree that the reason why
2 imputation -- well, first of all, do you agree that
3 the rates for switched access that Qwest charges for
4 switched access have historically exceeded the cost
5 that Qwest confronts in providing that switched
6 access service?

7 A. Well, that gets a little bit hard to answer
8 yes or no. As Dr. Gabel said, traditionally Qwest
9 has been required to recover other costs, costs for
10 basic local service, for instance, within a switched
11 access. So if your question is is the switched
12 access price above the incremental cost of switching,
13 then I would agree to that. Does it make a
14 contribution to other costs? Yes, it does, as well.

15 Q. Okay. Now, going back to what we were
16 talking about before in terms of the customer that's
17 not subscribing to Megabit service, but just basic
18 service and other services, you would agree that toll
19 service -- I mean, in your view -- is not a service
20 that should appropriately recover loop costs. That
21 loop cost should be recovered from the basic service;
22 isn't that right?

23 A. That's correct.

24 Q. Okay. Would you also agree that in the
25 context of the switched access toll debate,

00332

1 imputation would not be an issue and would not need
2 to be discussed at all if the price that Qwest
3 charged its competitors for the switched access
4 inputs were equal to the cost that Qwest confronts in
5 providing that switched access service?

6 A. So in that case, what we're saying is the
7 direct costs are all the costs. And since imputation
8 is meant to have your direct cost plus anything
9 that's a regulated input that you're selling, the
10 price of that, that's essentially not an issue. Now
11 all the costs are direct costs. So we would say that
12 as long as they're pricing above the direct cost,
13 that's fine. And if they price below their direct
14 costs, that's not a price squeeze issue; that's a
15 predatory pricing issue. So I think I'm with you on
16 this, yes.

17 Q. Well, wouldn't you go even as far as to say
18 that there's advocacy that's been -- that
19 interexchange carriers have advocated in a number of
20 states -- I'll just throw this out as a hypothetical
21 -- that switched access prices should be set equal to
22 a TELRIC for those comparable switched access
23 elements. I mean, that one way of pricing switched
24 access service would be to price them comparable to
25 the unbundled network elements that serve the same

00333

1 functions. Wouldn't you agree that if you set
2 switched access prices equal to a TELRIC for
3 switching and a TELRIC for terminating calls, that
4 imputation wouldn't be an issue in that context?

5 A. Sure, though I think it's important that we
6 don't just jump into this without giving at least a
7 nod to why those prices are the way they are, you
8 know.

9 Q. I guess I just don't want to go that far
10 afield. I guess what I want to say is that, isn't it
11 true that imputation is a concern here in this
12 context, because US West doesn't, in fact, confront a
13 \$10 loop cost in providing Megabit service?

14 A. Well, US West confronts the entire loop
15 cost. I mean, US West incurs the entire cost of
16 loops.

17 Q. And it incurs that cost when it provides
18 that initial network access connection from the
19 customer to its central office; isn't that right?

20 A. If there's not line sharing, then the loop
21 itself is an incremental cost that's a stand-alone
22 type cost. But when there is line sharing, then it
23 becomes a joint cost. And I don't necessarily like
24 being out here trying to make sense out of all this.
25 I think, you know, the FCC set up a situation here

00334

1 that's very difficult for us all to work our way
2 through, but that's what they've done. They said
3 there's two dedicated uses of that loop, and
4 therefore, though I don't think they realized the
5 full impact of this when they did it, therefore,
6 that's a joint cost of the loop.

7 MS. HOPFENBECK: I don't have anything
8 further. Thanks.

9 JUDGE BERG: All right. That looks like
10 we've concluded examination of this witness. Dr.
11 Fitzsimmons, I want to thank you very much for being
12 here and for being so attentive and responsive to the
13 questions that were asked to you.

14 THE WITNESS: Thank you.

15 JUDGE BERG: We'll be off the record.

16 (Recess taken.)

17 JUDGE BERG: Let's be back on the record.

18 Before we begin with the testimony of Jerrold L.
19 Thompson, there are two additional exhibits to be
20 marked. The Exhibit Revised JLT-1, page one of five,
21 shall be identified as Exhibit 68. Also, the Exhibit
22 Data Request Number WUTC 04-041 shall be marked as
23 Exhibit 69.

24 Mr. Thompson, at this time, would you
25 please stand and raise your right hand.

00335

1 Whereupon,

2 JERROLD L. THOMPSON,
3 having been first duly sworn, was called as a witness
4 herein and was examined and testified as follows:

5 JUDGE BERG: Thank you very much. Ms.

6 Anderl.

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

8 BY MS. ANDERL:

9 Q. Good afternoon, Mr. Thompson.

10 A. Good afternoon.

11 Q. Would you please state your name and your
12 business address for the record.

13 A. My name is Jerrold L. Thompson. My
14 business address is 1801 California Street, Denver,
15 Colorado.

16 Q. And by whom are you employed?

17 A. Qwest Corporation.

18 Q. Mr. Thompson, earlier today the
19 Administrative Law Judge read into the record the
20 exhibit numbers which had been given to the direct
21 testimony, response testimony, rebuttal testimony and
22 various exhibits that you filed, and those exhibits
23 are identified as T-10 through 22, inclusive. Do you
24 have those documents before you?

25 A. Yes, I do.

00336

1 Q. Do you also have what's been identified as
2 Exhibit Number 68?

3 A. Yes.

4 Q. Okay. With the revisions shown in Exhibit
5 Number 68, are the questions and answers contained in
6 the testimony that you've prefiled true and correct?

7 A. Yes.

8 Q. And would your answers to those questions
9 be the same if I were to ask you those today?

10 A. Yes.

11 MS. ANDERL: Your Honor, I'd like to offer
12 all of the exhibits. I would also like to ask, as I
13 had in an earlier filed letter with the Commission,
14 for a very brief opportunity for Mr. Thompson to do
15 some supplemental oral direct testimony to explain
16 the revisions contained in Exhibit Number 68.

17 JUDGE BERG: All right. Let's take this as
18 two separate issues. First, are there any objections
19 to the admission of T-10 through 22 and 68? Hearing
20 none, those exhibits are admitted.

21 Are there any objections to the brief
22 supplemental direct to explain the revisions to
23 JLT-1? And hearing no objections, you may conduct
24 that supplemental direct at this time, Ms. Anderl.

25 MS. ANDERL: Thank you.

00337

1 Q. Mr. Thompson, if you would look at Exhibit
2 Number 68, did you cause that document to be prepared
3 as revised?

4 A. Yes, I did.

5 Q. Can you explain what the revisions to that
6 exhibit are?

7 A. Yes. On the original exhibit, JLT-1, there
8 was a footnote at the bottom of that page that
9 explained that for the entrance facility, that the
10 rates proposed were in conformance with paragraph 319
11 of the Commission's 17th Supplemental Order of Docket
12 Number UT-960369.

13 Q. And Mr. Thompson, just so that everyone's
14 tracking, those entrance facility rates are under
15 Section 1.2 on that exhibit, on page one?

16 A. That's correct.

17 Q. Okay.

18 A. I noted that these two originally-filed
19 rates were inconsistent -- were consistent with that
20 order in that the Commission asked US West at that
21 time, now Qwest, to file rates to assume that the
22 CLECs would be entering the central office through an
23 entrance facility that was shared at Manhole One. To
24 the extent that Qwest could identify congestion in
25 Manhole One and require the construction of any

00338

1 separate entrance facility, then Qwest would be
2 allowed to charge for the construction of that new
3 facility, but only based on the existence of
4 congestion in Manhole One. And that gave cause to
5 the two different rates.

6 As I was preparing for this hearing, I
7 noted that the two other types of entrance facility,
8 which are optional services, rather than the
9 standard-type entrance facility, what are labeled as
10 cross-connect and express, were not done in that same
11 fashion as the standard entrance facility.

12 I went back and looked at the Commission's
13 order and concluded that they probably should be
14 consistent with that order, as well. So I asked that
15 new costs be developed to reflect that same decision
16 from the Commission in 319 so that the assumption of
17 a new -- what we call point of interface facility was
18 not required with those two services, but that those
19 two were under the same kind of situation for
20 congestion as the standard entrance facility.

21 And therefore, that results in two new
22 rates in Exhibit 68, which is a new page one of five.
23 In that the two new rates are the ones called --
24 there's one cross-connect with a footnote one, which
25 is a sort of a shared entrance facility. Then

00339

1 there's a cross-connect POI, or the point of
2 interface, which is sort of a stand-alone POI
3 facility, and then there's express shared, which is,
4 again, assuming a shared entrance facility in Manhole
5 One, and then the second option is the POI, which is
6 the two new elements that I've added here.

7 Q. So the two new rate elements are the
8 cross-connect that is identified with a footnote
9 number one, and the express shared, which is also
10 identified with a footnote number one?

11 A. Yes.

12 Q. Are those the only changes to that page?

13 A. No, there was -- in the cross-connect POI,
14 the number changed slightly, because of the
15 assumptions that were required under a full entrance
16 facility on the POI, but other than that, those were
17 the only changes.

18 MS. ANDERL: Thank you, Your Honor. That
19 concludes the witness' direct testimony on that
20 issue.

21 JUDGE BERG: All right.

22 MS. ANDERL: And I will tender the witness
23 for cross.

24 JUDGE BERG: Mr. Kopta.

25 MR. KOPTA: Thank you, Your Honor.

00340

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

2 BY MR. KOPTA:

3 Q. Good afternoon, Mr. Thompson.

4 A. Good afternoon.

5 Q. Might I ask, since we're following up on
6 Exhibit 68, by way of a record request, for the same
7 kind of backup for how those rates were developed
8 that you just described as are contained in -- I
9 believe it's Exhibit C-15, which is attached to your
10 direct testimony and demonstrates how the other rates
11 were -- or at least many of the other rates were
12 broken out, including general inputs and assumptions
13 and cost values and that sort of thing.

14 JUDGE BERG: Ms. Anderl, is that something
15 you can provide?

16 MS. ANDERL: If Mr. Thompson has a
17 sufficient enough explanation of what is to be
18 provided, sure, we can. Is that enough?

19 THE WITNESS: My understanding is you'd
20 like the work papers that show the calculations of
21 these numbers?

22 Q. Well, it may be work papers, but it may
23 also be something I'm assuming that you would have in
24 the same form as Exhibit C-15, which is the
25 collocation model interconnection TELRIC results?

00341

1 A. Yes.

2 Q. Something in that format, so that there's a
3 way to compare the rates that were existing and then
4 the ones that you just added?

5 A. Yes.

6 JUDGE BERG: And just to be clear on the
7 Record Request Number One for Mr. Thompson, the
8 particular data points that these go to are the new
9 rates for cross-connect, including the cross-connect
10 and POI, and express shared; is that correct?

11 THE WITNESS: Yes.

12 JUDGE BERG: But not the express shared in
13 POI?

14 THE WITNESS: I was with you till that last
15 --

16 JUDGE BERG: I see actually four rates, and
17 I'm confused.

18 THE WITNESS: One of them is the same. The
19 express POI is the same as it was originally.

20 JUDGE BERG: Okay, all right. Thank you
21 for that clarification. I think we all understand
22 the three rate points that Mr. Kopta is referring to.
23 Are there any questions?

24 MS. SMITH: Yes, Your Honor. This is
25 Shannon Smith, and I guess I see -- with the express

00342

1 POI, I see that the nonrecurring, or the 90-day
2 initial charge hasn't changed, but the monthly rate
3 has changed.

4 JUDGE BERG: That's on express POI?

5 MS. SMITH: Yes.

6 THE WITNESS: I stand corrected. You're
7 right. On the recurring, that has changed, as well.
8 I was focusing on the nonrecurring.

9 JUDGE BERG: All right. So let's add that
10 to the list. Any changes on the rates from JLT-1 to
11 Revised JLT-1 will -- backup similar, same form as
12 Exhibit C-15, is requested.

13 MS. ANDERL: We'll provide that, Your
14 Honor.

15 JUDGE BERG: All right.

16 JUDGE BERG: Mr. Kopta.

17 MR. KOPTA: Thank you.

18 Q. Mr. Thompson, I wanted to start with a
19 clarification on assumptions. I believe in your
20 rebuttal testimony you state that Qwest assumes six
21 collocators per central office, three caged and three
22 cageless; is that correct?

23 A. Yes, for many of the elements. Maybe not
24 all of those.

25 Q. And that's what I wanted to follow up on.

00343

1 Would you turn to your direct testimony, which is
2 Exhibit T-10, specifically page 24, beginning on line
3 eight.

4 A. I'm there.

5 Q. Because I have a cold and I'm trying to
6 save my voice, would you read the first two sentences
7 of that reference?

8 A. Yes. US West cost studies assume an
9 average of three collocators in each central office.
10 This assumption means that those costs related to
11 construction are divided by three in cases where a
12 facility (e.g., a cable rack) is used only by CLECs.
13 Where facilities are assumed to be shared by CLECs
14 and US West, the cost recovery is assumed to be
15 limited to recurring charges and is determined on a
16 shared basis with all users.

17 Q. Thank you. As I review the cost studies,
18 it seems to me that this statement in your direct
19 testimony is correct that where there is a facility
20 that is dedicated to CLECs, the costs of that
21 facility are divided by three. So I guess my
22 question is the cost studies themselves do not divide
23 any costs by six, do they?

24 A. No, they do.

25 Q. Would you point me to a location where they

00344

1 do?

2 A. Yes, I can give you one example. There may
3 be others, but -- give me a moment.

4 MS. ANDERL: And Your Honor, if I might
5 just interject, Mr. Thompson and I had a conversation
6 before he went on the stand. It may be that his cost
7 study is off by pagination by maybe one from where we
8 are, so I will ask him to identify the page that he
9 wants us to turn to by reading the heading at the
10 top, as well as a page number that will get us in the
11 right direction.

12 THE WITNESS: What I'm looking at is in the
13 cost model. It's Tab E.

14 CHAIRWOMAN SHOWALTER: Is this C-15?

15 THE WITNESS: C-15. It's around page 131.
16 It's the Tab E, 2.1 and 3.1, aerial support.

17 MS. ANDERL: I have it on pages 132 and
18 133, which is what I believe represents as filed, as
19 well as page 134.

20 THE WITNESS: This section starts there. I
21 would direct down to line 83. It's on my page 132,
22 and it says average number of collocators in an
23 office. In the column headed Cageless Major Jobs,
24 the number is three, and in the column headed Caged
25 Major Jobs, the number is three.

00345

1 The way that calculation works is that, for
2 cageless costs, there's assumed to be three cageless
3 collocators, so the cageless costs are divided by
4 three. And for caged, there are assumed to be three,
5 so the caged costs are divided by three, so --

6 Q. And that -- I'm sorry, go ahead.

7 A. Well, looking at that, assumed in this
8 example, in an office, there are six collocators,
9 three cageless and three caged.

10 Q. And that is specifically for the element of
11 aerial support?

12 A. Right. Where you'll see it is where there
13 are cageless costs, there's assumed to be three
14 cageless collocators. Where there are caged costs,
15 there's assumed to be three caged collocators.

16 Q. And I suppose my point is that when there
17 are costs that are going to be for an element used by
18 both caged and cageless, that they're divided by
19 three, rather than six; isn't that correct?

20 A. I couldn't say in every case, but I know,
21 in some cases, that's true.

22 Q. Well, actually, I'd like to talk about one
23 of those. What a surprise, I'm sure. First, let's
24 start with the illustrative exhibit that I passed
25 out. And I will represent that this is a copy of

00346

1 what was admitted into the record in Docket
2 UT-960369, et al., as Exhibit 624. And it's a sample
3 central office diagram.

4 And although I realize that there are some
5 diagrams of cageless or collocation elements in the
6 testimony that was filed in this docket, I think this
7 one will be a little more helpful in terms of getting
8 a picture of what we're talking about. And
9 specifically what I wanted to talk about, at least
10 initially, is the element of entrance facilities. So
11 I want to walk through this so that we all understand
12 or have some common language when we're talking about
13 this.

14 Starting in the lower right-hand corner,
15 with the arrow that says CLEC fiber cable. See where
16 I'm pointing?

17 A. Yes, I do.

18 Q. Okay. Fiber from a CLEC's network enters
19 into a manhole that's either a manhole that's
20 dedicated to all CLECs, which you've referred to as a
21 POI, or Manhole One; isn't that correct?

22 A. Yes.

23 Q. Now, there's a core drill into that
24 manhole, which means that there's just a hole bored
25 into the side of it so that a conduit can come into

00347

1 that hole containing the fiber; correct?

2 A. Yes.

3 Q. And then there's a hole drilled -- another
4 core drill in the other side of the manhole for it to
5 exit and go to Manhole Zero; correct?

6 A. Yes.

7 Q. And again, there's another hole in the side
8 of Manhole Zero, another core drill, and more conduit
9 that carries the cable through another core drill
10 into the central office vault, where the fiber goes
11 to, at least in the case of the nonexpress elements,
12 to a fiber distribution panel, which is an FDP in
13 this diagram, on the lower left-hand corner; correct?

14 A. Yes.

15 Q. And then the fiber goes from the FDP up to
16 the collocation area via cable racking that, in your
17 studies, approximately half of it is shared with
18 Qwest and half of it is dedicated to CLECs. Is that
19 also correct?

20 A. I believe that's true.

21 Q. Now, in your cost studies, and it might be
22 helpful to look at Exhibit C-15, beginning on page
23 81, which is the standard shared entrance enclosure,
24 Section E.1.2. And under Assumptions, line number
25 three, it's identified as -- the assumption is that

00348

1 there are three collocators per central office -- let
2 me say it in order. Collocators per utility hole,
3 conduit, central office are three for this element;
4 is that correct?

5 A. Yes, that's line five on that?

6 Q. I have it as line three, but if it says
7 what I just said, then it may be line five on yours,
8 for some reason.

9 CHAIRWOMAN SHOWALTER: I'm a little lost.
10 Can you please --

11 MR. KOPTA: Sure. It's page 81 of Exhibit
12 C-15. There's a direct expenses/investment in bold
13 at the top as a category, and then lines one, two,
14 three, all the way down to 19, and then there's
15 assumptions in bold. Again, the lines are
16 renumbered.

17 CHAIRWOMAN SHOWALTER: Right.

18 MR. KOPTA: If you look under assumptions,
19 line number three.

20 CHAIRWOMAN SHOWALTER: I see.

21 THE WITNESS: I'm with you, too. I wasn't
22 down below on assumptions, sorry.

23 Q. It's a little confusing, because the lines
24 start renumbering under the new headings, but I'll
25 try and keep that in mind as I ask my questions. And

00349

1 at least with respect to the POI manhole, all six
2 collocators would use that POI manhole, wouldn't
3 they?

4 A. Not necessarily.

5 Q. So you would have separate POI manholes for
6 caged and cageless collocation?

7 A. No, as a matter of fact, the reason that we
8 use three here is based on their analysis of the jobs
9 that we used as a basis of the study, we found that
10 at least on our best guess, is the entrance method
11 used by collocators is not to use an entrance
12 facility from collocation, but to rather use a retail
13 offering from our private line tariffs, and thereby
14 using a different method of entrance into the
15 collocation office.

16 Q. And that was a study of cageless
17 collocation only; is that correct?

18 A. That's right.

19 Q. So you did no study of caged collocation to
20 determine whether those CLECs that chose that form of
21 collocation would use an entrance facility as you've
22 outlined it here, versus the tariff?

23 A. Well, we know that there are three, on
24 average, collocators that provide caged collocation.
25 We didn't find any study for cageless, so we assumed

00350

1 three in the entrance facility.

2 Q. So you assumed that no CLEC that uses
3 cageless collocation would use an entrance facility,
4 as you've outlined it here under the collocation cost
5 studies?

6 A. That's our assumption.

7 Q. Are you familiar with the Bellevue
8 Glencourt central office in Washington?

9 A. No.

10 Q. Would you accept, subject to check, the
11 only physical collocation available in that central
12 office is cageless collocation?

13 A. I'll accept that, subject to check.

14 Q. Was that one of the central offices in your
15 study?

16 A. I don't recall.

17 Q. So you don't know whether, in that central
18 office, any of the collocators are using an entrance
19 facility out of your collocation offering or
20 interconnection agreement, as opposed to out of the
21 tariff?

22 A. I don't know.

23 Q. Did you undertake any study of the
24 collocations in Washington to determine the extent to
25 which carriers that use cageless collocation, other

00351

1 than your 41 central office study, that used that
2 entrance enclosure out of the collocation offering,
3 as opposed to the tariff?

4 A. I know of no study.

5 Q. And on page 82, there are additional
6 calculations based on the assumptions that are
7 identified on page 81. And I'm specifically looking
8 at innerduct. Perhaps to make it simple, because --
9 well, no, we'll go ahead and use it. On page 82,
10 there's an underscored heading, Innerduct-POI. It's
11 about halfway down on the page.

12 A. I see it.

13 Q. Now, I don't see any line here that
14 identifies capacity of the innerduct. Do you know
15 what the capacity of an innerduct is on a
16 number-of-fibers basis?

17 A. I don't know what the capacity is. I know
18 the assumption that was used was assumption two,
19 based on the average order by CLECs, there were 18
20 fibers assumed.

21 Q. And you assume that each innerduct would
22 have only 18 fibers; isn't that correct?

23 A. That's the assumption.

24 Q. Would you accept, subject to check, that
25 Mr. Sobieski, who's an engineer for Nextlink,

00352

1 provided testimony in Docket UT-960369, that the
2 capacity of an innerduct is as much as 144 fibers?

3 A. I would accept that. I don't have any
4 reason to disagree with that. I would just point out
5 that this is based on what we're actually
6 experiencing, not what optimally could be done.

7 Q. So you don't disagree that more than 18
8 fibers can go into an innerduct?

9 A. I'm not an engineer, but I don't have any
10 information that would disagree with that.

11 Q. In contrast to innerduct, under utility
12 holes, let's turn to page 85, if you would.
13 Specifically, the category underscored Manhole One,
14 which is near the top of that page. It's line five,
15 and it lists capacity. I'm assuming that's a
16 confidential number. But would you tell me what the
17 capacity is? How many of this number are we -- what
18 is it that we're talking about that fit into Manhole
19 One?

20 A. Assume these are cables, number of cables.
21 Is that responsive to your question?

22 Q. Well, would it be cables or would it be
23 conduit?

24 A. I'd have to guess at this point, without
25 doing some investigation, but I think you're probably

00353

1 right. I guess my best guess would be conduit, but
2 I'd have to check it.

3 Q. Okay. And it's the same inquiry for
4 Manhole Zero, which is on the previous page, page 84,
5 down at the bottom, third line from the bottom, which
6 shows a larger capacity than Manhole One, which tends
7 to make me think that what we're talking about here
8 is conduit, as opposed to --

9 A. Could you point me to that reference,
10 please?

11 Q. Sure. It's page 84, the third line up from
12 the bottom, which is actually number five under the
13 bolded category Investment, and the first category
14 under that is Manhole Zero, underscored.

15 A. Okay.

16 Q. And there's a correspondence between
17 conduit, as we discussed before, and core drills; is
18 that correct?

19 A. Yes.

20 Q. So the assumption here is that, for the
21 entrance facility, there's one core drill and a
22 conduit coming into the manhole and another conduit
23 and core drill going out of each manhole?

24 A. Yes.

25 Q. There is also on page 84 a category that's

00354

1 underscored, it's the third underscored category on
2 the left-hand side of the page, about a quarter of
3 the way down, called attenuator. Do you see that
4 reference?

5 A. I do.

6 Q. Would you describe for me what an
7 attenuator is and does?

8 A. Again, I'm not an engineer. Maybe Mr.
9 Hubbard could enlighten us. But from an accountant,
10 a cost accountant's point of view that's listened to
11 some engineers, it has to do with improving the
12 quality of the signal.

13 Q. And are you involved in the collocation
14 workshops in Utah?

15 A. No.

16 Q. Would you accept, subject to check, that
17 the cost category for attenuators was removed in the
18 cost study as those are being reviewed in workshops
19 in Utah?

20 A. Removed by whom?

21 Q. By Qwest?

22 A. I'm surprised. No, I didn't know that, but
23 subject to check, I'll take that.

24 MS. ANDERL: May we understand how we would
25 -- how Mr. Kopta will enable us to check that?

00355

1 MR. KOPTA: Mr. Robert Brigham is the cost
2 person for Qwest that is involved in Utah, and it's
3 my understanding that during workshops there, since I
4 was there, that there was some discussion about this
5 element in terms of whether it was actually being
6 deployed, and that Qwest had removed it. But perhaps
7 I should put it as a record request.

8 JUDGE BERG: I think so. My understanding
9 of a subject to check is subject to check some
10 information that exists in this case. You know, we
11 can liberally construe that to include subject to
12 check in 960369, if necessary, but I am very
13 reluctant to set up a subject to check outside of
14 this proceeding.

15 MR. KOPTA: I understand, Your Honor, and I
16 think Mr. Thompson and I are both a little bit
17 hobbled, because neither of us is an engineer and
18 there's not an engineering witness for any party on
19 collocation in this particular docket, and so I was
20 hoping to just try and nail that down, and perhaps
21 through a record request might be the easiest way to
22 do it.

23 And perhaps I would do it, rather than
24 referring to Utah, just a request of whether Qwest
25 actually deploys attenuators when providing this

00356

1 element, and if not, whether Qwest would be willing
2 to remove the costs associated with attenuators.

3 JUDGE BERG: Say that once more, please,
4 Mr. Kopta.

5 MR. KOPTA: Sure. Whether Qwest is
6 actually deploying attenuators when providing
7 entrance facilities to collocated CLECs, and if not,
8 whether Qwest would be willing to remove the costs
9 associated with the attenuator from this cost
10 element.

11 JUDGE BERG: All right. Also my
12 understanding of a records request is that posing a
13 question is appropriate. Is that right, Ms. Anderl?

14 MS. ANDERL: Your Honor, I think we have a
15 question in mind here that we could respond to as
16 Record Requisition Number Two.

17 JUDGE BERG: Okay. And let me just ask
18 you, Ms. Anderl, with regards to Records Requests One
19 and Two, when do you think you would be able to
20 estimate when you will be able to provide responses?
21 Not necessarily when you would provide responses, but
22 when would you know when you could make those
23 available?

24 MS. ANDERL: Tomorrow.

25 JUDGE BERG: All right. I'm ready. Thank

00357

1 you, Mr. Kopta.

2 MR. KOPTA: Thank you, Your Honor.

3 Q. Changing subjects to electricity,
4 specifically, the element of grounding, which, as I
5 understand it, basically allows for grounding as you
6 would in your house, having a line dedicated to a
7 ground bar that goes into the ground to take off
8 spikes in electricity and that sort of thing; is that
9 correct?

10 A. I think it's primarily a safety feature, as
11 I understand.

12 Q. Right. And on page 146 of Exhibit C-15,
13 there's some information about the costs on which
14 Qwest has relied to develop its proposed price for
15 grounding, and it looks as though there are five
16 central offices in which Qwest has estimated costs
17 and then averaged them; is that correct?

18 A. Yes.

19 Q. And only one of those is Seattle; correct?

20 A. Yes.

21 Q. Do you have what is identified as Exhibit
22 C-31, which is -- well, excuse me. It's not C-31;
23 it's C-32, which is a confidential attachment to
24 Nextlink Data Request 01-020.

25 A. Yes, I have that.

00358

1 Q. And I apologize. These pages are not
2 numbered, but if you would turn to the eighth page in
3 of the yellow pages. Excuse the copyright
4 infringement.

5 A. Yes.

6 Q. Is this the information for the Seattle
7 central office that is cross-referenced in Exhibit
8 C-15 that we were just discussing?

9 A. Yes.

10 Q. And this is for the Seattle Main central
11 office, the eighth floor; is that correct?

12 A. Yes.

13 Q. Qwest does not allow collocation in the
14 Seattle Main central office, does it?

15 A. I don't know.

16 Q. Would you accept that, subject to check?

17 A. Yes.

18 Q. If these are not derived from actual
19 collocation cost jobs, how were these numbers
20 estimated?

21 A. Could you repeat that question for me?

22 Q. Sure. If these costs did not come from
23 actual jobs when Qwest was providing collocation,
24 since we've established that there wasn't any or
25 isn't any collocation in the Seattle Main central

00359

1 office on the eighth floor, how were these costs
2 developed?

3 A. They were developed from jobs that added
4 power. We don't add power in the kind of levels that
5 are shown in these studies very often, and so there's
6 a limited number of actual jobs available to
7 determine what the costs are. So these jobs were
8 based on a recent experience with power additions of
9 this nature that were able -- allowed us to be able
10 to identify their cost. So it isn't necessarily
11 there because of collocation.

12 Q. So these may have been costs that Qwest
13 incurred in installing its own equipment on the
14 eighth floor of the Seattle Main central office; is
15 that correct?

16 A. That's correct.

17 Q. And did Qwest have costs in each of these
18 categories for the different sizes of -- for lack of
19 a better term -- wire used in the grounding?

20 A. I'm not certain exactly what was involved
21 with this job. I'd have to take the specifics of the
22 job and line it up with what was done here.

23 Q. With respect to another power element,
24 which is AC power, rather than walking through the
25 same exercise, would you agree with me that the

00360

1 backup information provided by Qwest demonstrates
2 that AC power is an average of five central offices,
3 one of which is the Seattle Main central office?

4 A. I might, if you could clarify what AC power
5 you're talking about.

6 Q. Yeah, sure. Let's go to Exhibit C-15, page
7 107. And you were perfectly correct to ask which
8 type of AC power. This is backup AC feed.

9 A. Yes, okay. In that regard, yes, I would
10 agree with you. The differentiation, if I may, just
11 to clarify in the AC power, this is a particular type
12 of a -- it's an optional service that we call
13 emergency power. If the power goes out from the
14 utility company that provides electric power, this is
15 backup power that is provided on an optional basis
16 for those kinds of emergencies. But we differentiate
17 that from the kind of AC power that's in an outlet in
18 the cage that just has the normal 120-volt power.

19 Q. Thank you for that explanation. That made
20 it easier. Fewer questions. We all have to like
21 that. Let's move to DC power, which, if I'm correct,
22 is generally the type of power that collocated
23 equipment and generally transmission equipment that
24 Qwest deploys in its central offices use for its
25 electricity?

00361

1 A. Yes.

2 Q. If you would turn to Exhibit C-15, page
3 144. And does this page of the cost study
4 demonstrate how Qwest developed its prices for at
5 least -- I won't say prices, because Qwest does not
6 have a separate element for DC power, but the
7 component of the price for the site building?

8 A. Yes.

9 Q. And here two central offices from
10 Washington were used. And assuming that their
11 identity is not confidential; is that correct?

12 A. I don't have a problem.

13 Q. Are you familiar with the Bellevue Sherwood
14 and Seattle Duwamish central offices?

15 A. No, I'm not.

16 Q. I kind of figured you might not be. And
17 again, in each of these central offices, did US West
18 experience costs in each of the categories listed,
19 from 20 amps up to 400 amps?

20 A. And my answer would be similar to the prior
21 one. I would -- the only way I could be able to tell
22 for sure, I don't know offhand, but I would need to
23 look at the jobs and compare these to the actual
24 experience in those jobs.

25 Q. And if you would keep a finger on this page

00362

1 and turn back to page 126 of Exhibit C-15?

2 A. Yes.

3 Q. This is information used for cageless and
4 virtual collocation; correct?

5 A. Yes.

6 Q. And I again notice that the same central
7 offices again, Bellevue Sherwood and Seattle
8 Duwamish, are listed here. And under the 90-day
9 category, which is what I'm assuming we're talking
10 about, also on page 144, if you compare the cost
11 estimates on page 126, for example, for 20-amp for
12 Bellevue Sherwood, it's different on pages 126 than
13 page 144?

14 A. Yes.

15 Q. Is there a reason for that?

16 A. Yes. I believe the reason has to do with
17 the installation assumptions and/or the material
18 assumptions. I'd have to go through the list of
19 those, but I think some of the assumptions, some of
20 the material prices would be different. I believe
21 what the power engineer did when he put this together
22 was compare the material prices, lengths and
23 installation labor amounts to what we experienced on
24 the 41 cageless jobs, used the relationships of the
25 different amperages on his basic study that we

00363

1 discussed earlier, took those inputs and modified
2 them to reflect the actual experience on the 41 jobs.

3 Q. Well, let me make sure I understand. So
4 these two central offices and the costs on page 126
5 were derived from the 41 central office study that
6 you referred to; is that correct?

7 A. Yes. What the problem was we ran into was
8 the 41 cageless jobs all used and requested by the
9 CLECs 40-amp power. What we wanted to reflect was
10 the ability for the CLECs to order different levels
11 of different amperages of power, 20 amps, 40 amps, 60
12 amps, 80 amps, so forth, and give them a choice of
13 different amperages. But the actual study results we
14 had were just 40-amp. So we had to find a way of
15 reflecting the different amperage requirements and
16 the different cost characteristics of that, but use
17 the information that we had in the 40-amp jobs. So
18 the engineer took our experience in the study for the
19 five offices and they had information for the
20 different amperages and applied that to the
21 information and experience we had in the 41 jobs.

22 Q. There are collocators in Washington central
23 offices that have asked for power other than in
24 40-amp loads, are there not?

25 A. I don't know for a fact, but I would

00364

1 imagine they have.

2 Q. And did Qwest undertake a review of those
3 jobs to use those in any way in estimating the cost
4 or to validate the assumptions that were used in
5 developing the power costs?

6 A. The engineer that put this together had
7 experience with almost every job that we've
8 undertaken for the CLECs, and it was his experience
9 and judgment that was used in developing these
10 numbers.

11 Q. But not invoices or any other documentation
12 that was relevant or used in terms of actual
13 collocation jobs in Washington; correct?

14 A. Nothing other than what we've seen here.

15 Q. I want to turn to the element of
16 terminations, specifically your rebuttal testimony,
17 which is Exhibit T-20 on page 15, one-five.

18 A. Excuse me just a second. It's rebuttal,
19 and the page again, please?

20 Q. It is page 15.

21 A. Okay. I'm there.

22 Q. Now, beginning near the top of this page,
23 you clarified Qwest's proposal as pricing this
24 element on either a per-block or a per-termination
25 basis. So you don't add them together, as Mr.

00365

1 Knowles had done; that's correct?

2 A. Yes.

3 Q. And if you would keep a -- well, I guess
4 you don't need to keep a finger there, but if you
5 would turn to Exhibit C-15, page two, and actually,
6 at that point, I think it's just Exhibit 15.

7 A. Yes.

8 Q. There are four different aspects, and let's
9 focus on DSO for terminations. There's cable
10 placement, cable blocks and block placement, and I'm
11 reading down below DSO along the left-hand side. If
12 a CLEC is going to order 100 terminations, wouldn't
13 all four of these be required?

14 A. Yes, I would expect if they needed 100,
15 then they would have the choice of doing it per block
16 or per termination per block would be the better
17 price.

18 Q. So you would add the nonrecurring charges
19 for each of those four, \$319 plus \$340 plus \$587 plus
20 \$612; isn't that correct?

21 A. That's to the extent the CLEC needed all of
22 those. The reason we have four is so that they have
23 the option of supplying their own cable, for example,
24 in avoiding that cost or supplying their own blocks
25 or utilizing blocks they've already secured. It

00366

1 gives them several different options, but if they
2 needed all of those things, then yes, all of those
3 would apply.

4 Q. Okay. Well, then, that sort of raises
5 another question for me, which is CLECs are able to
6 self-provision the cable and the blocks for
7 terminations. Did I hear you correctly?

8 A. This would be in terms of the placement?

9 Q. In terms of the cable and the blocks
10 themselves first?

11 A. I'm not clear what you mean by
12 self-provisioned. You mean provided themselves?

13 Q. Right. As I understand what you were just
14 explaining is that a CLEC would be able to provide
15 their own cable?

16 A. That's my understanding.

17 Q. And then the next aspect is would CLECs be
18 able to avoid the cable placement charge by placing
19 their own cable or is that something that Qwest would
20 be required to do?

21 A. And I'm not sure about the placement. My
22 understanding is that we allow CLECs to provide the
23 cable and avoid that cost if they choose. I'm not
24 sure about the placement.

25 Q. And the same would be true for the blocks?

00367

1 A. Honestly, I'm not clear about the blocks,
2 either, but --

3 Q. As far as providing the blocks or the block
4 placement?

5 A. Either one of those on the blocks. I've
6 heard that we allow them to provide the cable. I
7 don't know about what the position is on the blocks
8 or the placement. Mr. Hubbard or Mr. Brotherson
9 might be able to amplify on that.

10 Q. Okay. That's not addressed in either of
11 their testimony, and I don't know whether it would be
12 better to simply ask for a record requisition at this
13 point, so that we could clarify it, rather than
14 asking them. I'll ask Ms. Anderl. Whatever her
15 preference is is fine with me.

16 MS. ANDERL: Let's make it a record
17 requisition, and then if the witness can answer that
18 orally on the record, maybe that would be acceptable.

19 MR. KOPTA: That would be fine. I just
20 seek the information in terms of which of the four
21 elements under different types of terminations,
22 whether it's DSO, DS1, or DS3, are CLECs able to
23 self-provision.

24 JUDGE BERG: So you'd be addressing all of
25 those connections in 1.1 on page two?

00368

1 MR. KOPTA: Yes, Your Honor.

2 JUDGE BERG: All right. Thank you.

3 MR. KOPTA: Thank you.

4 Q. This line may also go to the same sort of
5 issue, which is, again, back on page 15 of Exhibit
6 T-20, you discuss cable splicing. And if we look at
7 the sample central office diagram that we have for
8 illustrative purposes, am I correct that at least one
9 cable splice at least for the entrance facility
10 element other than express fiber would take place
11 either in the POI or Manhole One?

12 A. That's my understanding.

13 Q. And would US West allow CLECs to
14 self-provision those splices in those manholes?

15 A. Again, I'm not clear on that.

16 MR. KOPTA: And might I ask for my fourth
17 record requisition?

18 JUDGE BERG: All right. Can CLECs
19 self-provision cable splicing in Manhole One or
20 Manhole Zero?

21 MR. KOPTA: It would be in Manhole One or
22 the POI. I don't believe that it's spliced in
23 Manhole Zero, is it, Mr. Thompson?

24 THE WITNESS: No.

25 JUDGE BERG: All right. Manhole One or the

00369

1 POI.

2 Q. Believe it or not, I don't have any more
3 questions on collocation, but since our topic of the
4 day happens to be line sharing, I felt very left out
5 not asking Mr. Fitzsimmons anything, so I thought I'd
6 ask you a couple questions. In your rebuttal
7 testimony, which is Exhibit T-20, on page 19,
8 specifically beginning on line 14, you testified that
9 Qwest commits to prices for its Megabit service that
10 will not create a price squeeze for its competitors.
11 Other than this statement in your testimony, what
12 kind of commitment is Qwest undertaking?

13 A. Well, we've said it in a number of public
14 proceedings. I think it's a matter of public record,
15 number one. That's one of the things that this does
16 here. I think I've also talked to -- the FCC has
17 certainly expressed an interest in issues around
18 price squeeze, specifically around our Megabit or DSL
19 service and the issue of line sharing. It's
20 certainly available for anyone that feels that there
21 is -- if there is an issue on price squeeze, to raise
22 that issue with the FCC.

23 Q. And that would essentially be competitors'
24 ways of enforcing this commitment, would be some kind
25 of a proceeding at the FCC; is that correct?

00370

1 A. I'm not sure whether the FCC would have a
2 proceeding or not.

3 Q. But it wouldn't be at this Commission, I
4 guess, is the question?

5 A. Oh, I understand your question. That's
6 correct. The US West Megabit offering is an
7 interstate service.

8 Q. And it's your position that, under the
9 pricing proposals that you have made here, that if
10 the Commission accepts them, that that would not
11 create a price squeeze for competitors; is that
12 correct?

13 A. Yes.

14 Q. Would you turn to Exhibit JLT-8, which is
15 Exhibit 19, which I believe is the pricing -- list of
16 prices for line sharing.

17 A. Those were the original ones.

18 Q. Well, perhaps you can point me to the most
19 recent ones, since those probably would be the ones
20 we would want to talk about.

21 A. The Exhibit 22. It was part of my rebuttal
22 testimony.

23 Q. Okay. As I recall your testimony, the
24 \$9.08 recurring charge that you had proposed for a
25 shared loop UNE was developed through my term, not

00371

1 yours, over a reverse imputation analysis, in which
2 you determined how much could be imputed in the
3 Megabit rate and established a ceiling of \$10; is
4 that accurate?

5 A. If I may -- maybe I can put it in my words.

6 Q. Please go ahead.

7 A. Okay. US West, at the time the FCC's line
8 sharing order came out, we read the FCC's position on
9 line sharing and the price of the use of the loop
10 vis-a-vis our Megabit service. And based on that
11 reading, we needed to conduct an analysis of what
12 level of imputation would be allowed or pricing for
13 the use of the loop would be allowed in the current
14 price of the Megabit offering without a price change
15 in that service. And based on that analysis, we
16 decided that it was up to a maximum of around \$10.

17 Q. If Qwest were to add the \$3.75 that Qwest
18 has proposed for OSS cost recovery per line, per
19 month, to those costs, would Qwest's Megabit service
20 still pass the imputation test?

21 A. I'm not sure.

22 Q. Did you include any of the other costs that
23 are listed on --

24 CHAIRWOMAN SHOWALTER: Mr. Kopta, I just
25 didn't understand your previous question. Where was

00372

1 the \$2 added?

2 MR. KOPTA: It was actually \$3.75. If you
3 look on the left-hand column, it says OSS cost
4 recovery per line per month. It's about the fifth
5 entry down.

6 CHAIRWOMAN SHOWALTER: Yes, I see. And
7 then what was your question?

8 MR. KOPTA: The question was if that amount
9 were added to the costs included in the imputation
10 analysis, would the price for Megabit service still
11 pass the imputation analysis.

12 CHAIRWOMAN SHOWALTER: I see. Thank you.

13 Q. Are any of the other recurring or
14 nonrecurring costs listed on this exhibit, other
15 than the shared loop UNE per month, included in an
16 imputation analysis for your Megabit service
17 offering?

18 A. No, but they probably shouldn't be. Many
19 of these costs would be equivalent to the direct
20 costs that US West would have as the base for the
21 imputation.

22 Q. And that was really what my question was
23 derived -- or not derived -- was aimed at, was are
24 there corresponding costs that are listed here that
25 Qwest incurs with respect to the direct costs -- its

00373

1 direct costs for Megabit service?

2 A. I wasn't expecting that question at the end
3 of it, I'm sorry. Could you repeat that for me?

4 Q. Sure. I'm just trying to determine from
5 this exhibit which costs a CLEC would incur that
6 Qwest would not incur when providing Megabit or a
7 similar xDSL type service for purposes of imputation
8 so that there isn't a double counting, if you will
9 understand where I'm getting. So my assumption is
10 that Qwest does not incur an OSS cost recovery
11 charge.

12 A. That's true.

13 Q. Are there any other recurring or
14 nonrecurring charges in this exhibit that Qwest does
15 incur when it provides Megabit or xDSL, whatever the
16 service is?

17 A. As I understand your question, of the list
18 that I show here, are there any of these that Qwest
19 -- and I'm not sure of this -- does incur that the
20 CLECs do not, or it does not incur that?

21 Q. I'm assuming that this exhibit shows all of
22 the costs that Qwest would impose on CLECs requesting
23 line sharing?

24 A. Yes.

25 Q. My question is, among all of these costs,

00374

1 are any of them costs that Qwest actually incurs to
2 itself to provide xDSL Megabit service?

3 A. Let me go down the list. It certainly
4 would incur costs of -- some installation costs for
5 the DSL service. They wouldn't be exactly the same
6 as those that are shown here, but there are costs
7 associated with processing service orders and so
8 forth. So there's similarities. It may or may not
9 be close to the numbers that are here shown for the
10 installation of this connection. It would incur some
11 engineering related to the provision of DSL service.
12 Again, I don't know whether it's, you know, equally
13 comparable to the engineering here, but there would
14 be engineering. There is the construction of the bay
15 end connections. There would not be a splitter cost
16 other than the splitter cost that's inherent in the
17 DSLAM, D-S-L-A-M, that Qwest would have.

18 Currently, US West is not offering DSL
19 service where it would incur a cost for conditioning
20 the line. So it would not incur those because we
21 would not qualify the line. To the extent we
22 incurred labor costs for trouble isolation or
23 installation of equipment or repair, we would incur
24 similar costs.

25 Q. One other question I have, and it's not

00375

1 addressed specifically in your testimony, nor did I
2 see it in Mr. Hubbard's testimony, but Dr.
3 Fitzsimmons spent a good deal of time discussing
4 alternative sources of loops for line sharing and
5 proffered, I believe, the notion that CLECs could
6 obtain an unbundled loop from Qwest and then share
7 that line with an xDSL provider. Is that accurate?
8 Am I correct that Qwest will allow a CLEC that
9 obtains an unbundled loop from Qwest to share that
10 line with a data CLEC?

11 A. I'm not aware of a company position on it,
12 on the issue.

13 Q. So at this point, you're not -- there's
14 nothing in the testimony here that demonstrates that
15 that is something that Qwest would allow?

16 A. I don't have any knowledge of it.

17 MR. KOPTA: As my fifth record request, may
18 I ask for Qwest's policy position on that issue,
19 whether Qwest would allow a CLEC obtaining an
20 unbundled loop from Qwest to share that line with an
21 xDSL provider, and if I might be so bold to add, if
22 so, what are the terms and conditions.

23 MS. ANDERL: Your Honor, we'd, I think,
24 object to that last part, because it's not really
25 been teed up as an issue in this docket. And I think

00376

1 it might be a bit late to be delving into that as a
2 new matter. Certainly, some of the CLEC witnesses
3 testified that they wanted or felt that Qwest should
4 be required to offer what they're calling line
5 splitting, and yet no one ever really explored it, so
6 to set us off on that task at this point in the
7 docket, I don't know whether it would be particularly
8 productive.

9 JUDGE BERG: Mr. Kopta, I'd like to get
10 some additional information. Certainly, on the first
11 part, as to Qwest's policy position whether CLEC
12 obtaining unbundled loop can share it with an xDSL
13 provider, there's no objection to that. Likewise,
14 if, in fact, there are terms -- if there's a document
15 already setting forth the terms and conditions, which
16 is sort of an off-the-shelf type of a document that
17 exists, I think that should be produced as part of
18 the records request.

19 But to go beyond that, Mr. Kopta, can you
20 explain how this ties in to the costing and pricing
21 calculations that need to be performed in this
22 docket, as opposed to, for example, the SGAT
23 proceeding, which seems to address more general terms
24 and conditions for interconnection and providing the
25 interconnection in UNEs?

00377

1 MR. KOPTA: Sure. While I would like to
2 have any document that Qwest has in its possession in
3 terms of an offering of this type, my focus was in
4 technically how Qwest would allow or would provision
5 a line that would be then shared between two CLECs.
6 One issue that we raised was Qwest's decision not to
7 provide CLEC-to-CLEC interconnections between
8 collocated CLECs and a central office, which it seems
9 to me would be one of only two ways I can think of in
10 which a line could be provisioned that would then be
11 shared between CLECs.

12 The other would be to run a cross-connect
13 from the splitter to the CLEC, either via an
14 intermediate distribution frame or directed to the
15 CLEC collocation instead of to the Qwest COSMIC frame
16 or intermediate distribution frame.

17 And so my question is, if Qwest does allow
18 it, how, technically, would it be done and does that
19 have any impact on the pricing of cross-connects or
20 pricing or availability of cross-connects at the
21 central office.

22 MS. ANDERL: Well, and here, again, I guess
23 when is that information going to come into the
24 record, even if we were able to respond, and by whom.
25 The hearings are only here -- we're here for two

00378

1 weeks to do hearings in this part of the docket. If
2 Mr. Kopta's clients wanted to explore this, there was
3 ample time before now to explore it.

4 And I mean, it may be easy enough, because
5 when I ask the company, it may be that we don't have
6 any documents and we don't have a cost or price
7 proposal at this point or we haven't even determined
8 a policy position on it. I don't know. Maybe that
9 will make the answer more simple. But if it doesn't,
10 as I said, I think that we're sitting here kind of
11 developing through a record requisition potentially a
12 whole 'nother phase of the docket. I don't think
13 that's the right way to go about it.

14 JUDGE BERG: Mr. Kopta, do you believe that
15 if you were to have specific responses to the
16 networking configurations that you've mentioned, that
17 the price points exist within this record at this
18 time to calculate the costing and pricing portion?

19 MR. KOPTA: That sort of raises an
20 interesting question, but at least with respect to
21 what we're looking for here, it's actually twofold.
22 One is as a complement to our concerns with Qwest's
23 refusal to allow CLEC-to-CLEC cross-connects and our
24 request that the Commission require them to do so.

25 And two is, in response to Mr. Fitzsimmons'

00379

1 repeated testimony that competition will provide an
2 incentive for Qwest to lower its price for a shared
3 line. And if Qwest does not allow CLECs to share an
4 unbundled loop, it seems to me that that undercuts
5 Qwest's position that there is competition for an
6 unbundled -- or for line sharing.

7 MS. ANDERL: If I could just respond
8 briefly, and I'm sorry I didn't respond to this
9 particular point before, Mr. Brotherson's rebuttal
10 testimony very clearly states that Qwest is, I
11 believe, considering whether it will allow
12 CLEC-to-CLEC cross-connects, and that even if Qwest
13 does decide to do so, it shouldn't be subject to this
14 docket, because Qwest is not required to do so and
15 Qwest will negotiate it.

16 Since that time, Qwest has stated publicly
17 and will do so in this docket that it will allow the
18 CLEC-to-CLEC cross-connects, but continues to believe
19 that it doesn't necessarily have a place in this
20 docket.

21 JUDGE BERG: All right. That reference in
22 Mr. Brotherson's rebuttal testimony to cross-connects
23 I believe is different, isn't it, than Mr. Kopta's
24 question regarding line sharing? Manholes and
25 conduits?

00380

1 MS. ANDERL: I think I may have lost the
2 question. I'm sorry.

3 JUDGE BERG: Dr. Gabel.

4 DR. GABEL: Just this issue that Mr.
5 Kopta's raising about terms and conditions deals with
6 terms and conditions with line sharing between CLECs,
7 and isn't Mr. Brotherson's testimony, which is at
8 page five of his rebuttal, dealing with terms and
9 conditions on manholes and conduits?

10 MS. ANDERL: No, actually, I can find it.

11 MR. KOPTA: No, I'll respond.

12 MS. ANDERL: I believe it is on the
13 CLEC-to-CLEC cross-connect issue.

14 MR. KOPTA: It is actually between
15 collocated equipment within the central office. This
16 would be one aspect of the concerns that we have
17 raised. But to the extent that Qwest is now going to
18 represent that it will provide for this, then that
19 underscores our need for determining whether that
20 kind of cross-connect would facilitate or allow for
21 line sharing among CLECs using an unbundled loop.

22 JUDGE BERG: Well, I haven't heard that
23 representation, but let's -- I'm somewhat concerned
24 about the terms and conditions aspect. I think what
25 I'd prefer is that let's limit Five at this point to

00381

1 the Qwest policy position. Whether a CLEC obtaining
2 an unbundled loop can share that unbundled loop with
3 another xDSL provider, let's get that addressed
4 first.

5 And Ms. Anderl, is that something that you
6 can come back to the Commission with tomorrow
7 morning?

8 MS. ANDERL: I think so, yes.

9 JUDGE BERG: All right. And that includes
10 checking to see whether or not, in fact, Mr.
11 Brotherson's rebuttal testimony fully addresses the
12 point, and whether there might be any other position
13 within the company. If there is some existing
14 documentation of terms and conditions under which
15 Qwest presently is prepared to allow that to happen,
16 I'd like to have that included. But, otherwise, Mr.
17 Kopta, I would like to mark the -- and if so, terms
18 and conditions as Number Six, but hold that. Let's
19 reserve that until we hear back from US West, rather
20 than spending more time on it at this point.

21 MR. KOPTA: Thank you, Your Honor. I will
22 follow up with Mr. Brotherson, depending on the
23 responses tomorrow morning, if it seems warranted.

24 JUDGE BERG: Well, and it may be that the
25 Commissioners will consider actually issuing Records

00382

1 Request Number Six after we hear from US West and
2 have an opportunity to reflect on it ourselves. But
3 I just don't see how it's going to prejudice the
4 parties if we don't resolve Six at this point in
5 time, but I do want Five to be responded to as soon
6 as possible.

7 MS. ANDERL: Okay. And Your Honor, I think
8 it is safe for me to say that -- and this maybe is
9 going to get kind of complicated, and I don't really
10 want to do that, but clearly when a CLEC leases the
11 UNE loop from Qwest, they get the whole loop. And if
12 they can figure out a way to make available the
13 high-frequency spectrum portion of that loop, I don't
14 think that we have any right under the law to stop
15 them from doing that. And you know, so kind of there
16 it is.

17 I think the questions that Mr. Kopta and
18 others are maybe raising is, you know, to what extent
19 does Qwest continue to need to be involved in the
20 transaction. And I think that's kind of really where
21 we're going, and that's maybe why the answer's more
22 complicated than just yes or no, whether we will or
23 we won't. But, clearly, if you want a loop and you
24 pay \$18.16 to us for it, we're not going to look at
25 what you do with it, as long as you, the CLEC, are

00383

1 doing it.

2 JUDGE BERG: All right. We have that for
3 now, but tomorrow, let's hear back from Qwest on the
4 full scope and their implications that are made with
5 regards to Mr. Kopta's inquiry.

6 MS. ANDERL: Sure. We'd be happy to do
7 that.

8 JUDGE BERG: All right. And Ms. Anderl,
9 I'll just check with you before we go on the record
10 tomorrow morning whether you're prepared to address
11 it on the record or when, later that morning, you
12 would be able to do so.

13 MS. ANDERL: Thank you.

14 JUDGE BERG: Okay. All right. Anything
15 further, Mr. Kopta?

16 MR. KOPTA: With that, Your Honor, I have
17 no more questions. Thank you, Mr. Thompson.

18 THE WITNESS: Thank you.

19 JUDGE BERG: Next on my list, I showed both
20 Tracer, Covad -- Tracer, WorldCom, Covad, and then
21 Staff having cross-examine questions. Let's be off
22 the record for a minute.

23 (Discussion off the record.)

24 JUDGE BERG: All right. Let's be back on
25 the record. While we were off the record, there was

00384

1 a discussion regarding the status of
2 cross-examination of this witness, as well as to
3 overall timing in this procedure. Ms. Hopfenbeck
4 indicates that WorldCom has no cross-examination at
5 this time.

6 Mr. Deanhardt, representing Covad, is next
7 to cross-examine, and all parties agree that there
8 would be no benefit to beginning that
9 cross-examination in the short time that we have
10 left, so we are going to recess this afternoon's
11 session.

12 I would like counsel to be present again
13 tomorrow morning at 8:30. I'm going to try and get
14 my end started a little sooner, so that we have the
15 exhibits for Mr. Brotherson and Mr. Hubbard read into
16 the record before 9:00, and then the Commissioners
17 again intend to join us at 9:00, and we'll resume
18 cross-examination of Mr. Thompson by Mr. Deanhardt.

19 Mr. Thompson, you're excused for the day,
20 and we'll see you again tomorrow morning. At this
21 point in time, we'll be off the record.

22 (Proceedings adjourned at 5:20 p.m.)

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