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1       BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2                               COMMISSION

3   In the Matter of                                 )  
  )  
4   QWEST CORPORATION                                )  
  )  
5   Petition for Commission                        )  
  Approval of Stipulation                        )  
6   Regarding Certain Performance ) DOCKET NO. UT-073034  
  Indicator Definitions and                        )  
7   Qwest Performance Assurance                    )  
  Plan Provisions.                                 )  
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10               A prehearing conference in the above matter  
11 was held on July 31, 2007, at 9:40 a.m., at 1300 South  
12 Evergreen Park Drive Southwest, Olympia, Washington,  
13 before Administrative Law Judge ADAM E. TOREM and ANN  
14 RENDAHL.

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16               The parties were present as follows:

17               QWEST CORPORATION, by LISA A. ANDERL,  
18 Associate General Counsel, 1600 Seventh Avenue, Room  
19 3206, Seattle, Washington 98191; telephone, (206)  
345-1574.

19

20               WASHINGTON UTILITIES AND TRANSPORTATION  
21 COMMISSION, by JONATHAN THOMPSON, Assistant Attorney  
22 General, 1400 South Evergreen Park Drive Southwest,  
23 Post Office Box 40128, Olympia, Washington 98504;  
24 telephone, (360) 664-1225.

22

23               Kathryn T. Wilson, CCR

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25               Court Reporter

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

2 JUDGE TOREM: Good morning. I'm Adam Torem.  
3 I'm the administrative law judge presiding over this  
4 matter. We are here before the Washington Utilities  
5 and Transportation Commission. It's now 9:40 in the  
6 morning on Tuesday July 31st, 2007, and this is a  
7 prehearing conference in Docket UT-073034. This is a  
8 petition for the Commission's approval of a stipulation  
9 regarding certain Performance Indicator Definitions and  
10 Qwest Performance Assurance Plan Provisions. The court  
11 reporter today is Kathy Wilson, and joining me  
12 presiding over this case is Ann Rendahl, also an  
13 administrative law judge and the director of the  
14 Commissions administrative law division.

15 The purpose of today's prehearing conference  
16 is to take appearances of the parties, clarify any  
17 issues for hearing, and discuss the schedule for the  
18 Commission's consideration of an action on this  
19 petition and any other procedural matters that may come  
20 up. So let me take full appearances from the parties,  
21 and I'll start with Qwest and Ms. Lisa Anderl.

22 MS. ANDERL: Thank you, Your Honor. Lisa  
23 Anderl, in-house attorney representing Qwest  
24 Corporation. My business address is 1600 Seventh  
25 Avenue, Room 3206, Seattle, Washington, 98191. My

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1 phone is (206) 345-1574. My fax is (206) 343-4040, and  
2 my e-mail is lisa.anderl@qwest.com.

3 JUDGE TOREM: Also present in the room is  
4 Commission staff.

5 MR. THOMPSON: Jonathan Thompson, assistant  
6 attorney general representing the Commission staff. My  
7 address is 1400 South Evergreen Park Drive Southwest,  
8 Olympia, 98504. My telephone number is (360) 664-1225.  
9 Fax is (360) 586-5522. My e-mail is  
10 jthompso@wutc.wa.gov.

11 JUDGE TOREM: There were three other  
12 potential parties joining Qwest in the petition, and I  
13 want to see if they are present on the bridge line.  
14 From Eschelon Telecom, is there anyone present?  
15 Hearing none; from Covad Communications, is anyone  
16 present on the bridge line? Finally, from McLeod USA  
17 Telecom, is anyone present on the bridge line?

18 Those were the three Washington competitive  
19 local exchange carriers, or CLEC's, that joined with  
20 Ms. Anderl in the petition. Before we went on the  
21 record, we polled the bridge line and found that two  
22 other members from your client, Mark Reynolds and  
23 Laurel Burke, are listening in. Is there anybody else  
24 on the bridge line that has since joined?

25 Hearing none, let me note for the record that

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1 there was a notice of this prehearing conference that  
2 went out on July the 13th, 2007, and receiving copies  
3 of that as formal parties were Qwest and Ms. Anderl;  
4 Ms. Ginny Zeller of Eschelon, as its associate general  
5 counsel; Greg Diamond, the senior counsel for Covad  
6 Communications; William Haas, vice president and  
7 counsel at McLeod, and also a non Washington CLEC,  
8 US Link and its director of carrier relations, Kathy  
9 Barnekow, and none of them are present today.  
10 Ms. Anderl, have you had any indications that they  
11 intended to participate today?

12 MS. ANDERL: I did not have any direct  
13 indication from any of those parties either way, Your  
14 Honor.

15 JUDGE TOREM: Mr. Thompson, we discussed with  
16 your client earlier the lack of communication as well.  
17 Can you confirm that?

18 MR. THOMPSON: That's correct; although, we  
19 were in touch with a representative for competitive  
20 local exchange companies, and they didn't indicate they  
21 would be attending today.

22 JUDGE TOREM: Then I guess we've clarified  
23 who was invited and who didn't come to the party today.  
24 Let's move on to the issue in the case, and as far as I  
25 can tell, Ms. Anderl, your client and the three other

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1 Washington CLEC's and one additional CLEC that doesn't  
2 do business here in this state have petitioned to have  
3 the Commission approve a stipulation about PID's and  
4 the QPAP. Can you for the record summarize what it is  
5 the stipulation is asking the Commission to approval?

6 MS. ANDERL: Well, Your Honor, yes. Fairly  
7 high level, what Qwest and the stipulating parties have  
8 done is negotiate for a year to agree upon changes to  
9 the Performance Indicator Definitions, which are the  
10 PID's, in the Exhibit B to Qwest's SGAT as well as  
11 corresponding or kind of collateral changes to the  
12 QPAP, the Qwest Performance Assurance Plan, which is  
13 Exhibit K to Qwest's SGAT, and then also those  
14 documents, Exhibit B and K, to the stipulating parties'  
15 interconnection agreements as well as the  
16 interconnection agreements of other carriers in the  
17 state of Washington.

18 What Qwest and the stipulating parties have  
19 asked the Commission to do is to approve the  
20 stipulation describing the changes to the PAP and the  
21 PID, apply those changes to the interconnection  
22 agreements of the parties as well as to any other  
23 interconnection agreements that contain the PAP and to  
24 allow the PID's to go into effect no later than 60 days  
25 after the filing in accordance with Section 252, sub F,

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1 sub 3 of the Telecom Act. That filing was June 26th,  
2 2007. My calculation on 60 days would put that at  
3 August 25th, and not checking at this point whether  
4 that's a weekend or not --

5 JUDGE TOREM: That's a Saturday.

6 MS. ANDERL: So either the 24th or 27th was  
7 probably the lawful way to count the days.

8 This request is not inconsistent with prior  
9 requests that Qwest and other parties have made in  
10 connection with these documents. Sometimes in  
11 conjunction with a six-month review process that the  
12 Commission has engaged in at other times, filings that  
13 were unrelated to a six-month review, Qwest does  
14 believe that these changes are in the public interest.

15 The parties negotiated at arm's length, we  
16 believe each with equal sophistication and bargaining  
17 power, and have reached changes on certain  
18 measurements, certain payments, other metrics that I  
19 think all of the parties agree improve the PAP and the  
20 PID's, in some cases just to update them to reflect the  
21 current reality, and in other cases, say, for example,  
22 that DSL is no longer a telecommunications service  
23 provider. In other cases, they are just administrative  
24 updates to reflect that it's no longer appropriate to  
25 have a deadline of 2004 in a document because that

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1 deadline has already passed, so some cleanup there, and  
2 in other cases to, say, replace parity measures with  
3 benchmarks in one of the PID's. There is a replacement  
4 of a parity measure with a 98 percent benchmark, which  
5 was a negotiated change.

6           In terms of a detailed explanation of what  
7 each PID change was and what each PAP change was, it  
8 would probably not be appropriate to go through that in  
9 a prehearing conference unless you want more detail,  
10 but the stipulation and the pleading covering the  
11 stipulation do detail that, and we did submit as well  
12 modified Exhibit B and K also showing the redline, the  
13 changes.

14           Just to call to your attention, when we were  
15 talking to Staff about this last week, because Staff  
16 wanted some additional information, Staff did notice an  
17 error in one of our filings, so we did file a revised  
18 errata page yesterday. I don't know if that has been  
19 joined up with this filing yet or not, but just so you  
20 all know, if you have the PAP there, Exhibit K, on  
21 Page 7 of the clean version that I'm looking at in  
22 Section 6.2, which starts on Page 6 and goes over to  
23 Page 7, the last sentence in that paragraph says  
24 "Tier 1 payment escalation shall be in accordance with  
25 Table 2 or 2(A) below and shall not exceed the

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1 six-month payment level." The phrase, "and shall not  
2 exceed the six-month payment level," should have been  
3 deleted. That was something that was negotiated out.  
4 The payments are in accordance with Table 2 or 2(A)  
5 below, if you look at Table 2(A) below, there is a  
6 six-month payment level, and then there is a column  
7 that says payments after six months, add certain  
8 amount. So that last sentence in 6.2 has to be amended  
9 to delete the words "and shall not exceed the six-month  
10 payment level," so we did make that correction to the  
11 filing.

12 Other than that, the changes are detailed in  
13 the PID's and PAP's and the stipulation, and we do  
14 respectfully request that those be allowed to go into  
15 effect no later than 60 days after the filing. We also  
16 call to Your Honor's attention that there is a  
17 provision in the stipulation. It's on Page 3 of the  
18 stipulation in Section 9, Application of Changes.  
19 There is an agreement between the parties that certain  
20 changes will be retroactive if the Commission adoption  
21 or approval is received on or before August 31st, 2007.  
22 If it is not, then the changes will apply on a  
23 going-forward basis only. It's our belief that that  
24 clause or that provision operates to the benefit of the  
25 CLEC's.



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1 JUDGE RENDAHL: Which section is that.

2 MS. ANDERL: In the 2007 stipulation, it's  
3 Page 3 of 12, and it's Arabic numeral 9, Application of  
4 Changes. So it says there under the bullet point,  
5 "Commission adoption/approval is received on or before,  
6 there is an agreement to apply these changes  
7 retroactively." That is a provision that does benefit  
8 the CLEC's and that they would support that.

9 In addition, the stipulation does supply that  
10 Qwest will make the filing with the Commission. Qwest  
11 will ask the Commission for approval on this time line,  
12 and Qwest will, and the parties agree, to affirmatively  
13 recommend that no hearing should be necessary, so that  
14 is our position in the case.

15 JUDGE TOREM: I read that in the filings as  
16 well, Ms. Anderl, and as to the three CLEC's that do  
17 business in Washington that were copetitioners, it  
18 looks like they've given you essentially carte blanche  
19 to represent what's in the papers here to the  
20 Commission.

21 MS. ANDERL: It does appear that way. I was  
22 wondering if --

23 JUDGE TOREM: Did someone else join on the  
24 bridge line? Is there anybody representing a party in  
25 this case that's joined on the bridge line? Apparently

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1 not.

2 Let me turn to Staff, because in the notice  
3 of today's prehearing conference, we gave a due date of  
4 last Tuesday, July 24th, for an opportunity for  
5 comments to be filed on the stipulation, and we  
6 received on that day several pages from Mr. Saunders  
7 and Mr. Thompson indicating the Commission was still  
8 reviewing this, and from your comments, Ms. Anderl, it  
9 appears that's been an active review up and until  
10 probably this morning. So let me see where things  
11 stand from Mr. Thompson and what other issues may be  
12 taken care of already or might still be remaining.

13 MR. THOMPSON: First, I'll address as much as  
14 I can from a substantive standpoint, and then I want to  
15 say a little bit about the tricky procedural issues.

16 As far as the substantive review is  
17 concerned, you are correct. Staff is still going about  
18 gathering information, and we intend to confer with  
19 other members of the Qwest regional oversight committee  
20 as well. We've had productive discussions with Qwest  
21 and are currently getting responses to informal data  
22 requests to help us understand the filing better.

23 One of the issues that is of concern to us is  
24 that the amendments to the Performance Assurance Plan  
25 would reduce the number of circumstances in which Qwest

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1 would owe both Tier 1 and Tier 2 payments in the event  
2 that it fails to meet certain performance standards,  
3 and the concern is that that might reduce Qwest's  
4 incentive to comply with the Performance Assurance Plan  
5 antibacksliding policies. So that's something that we  
6 are looking into further.

7           As far as the procedure is concerned, the  
8 Commission has -- the Performance Assurance Plan, of  
9 course, grew out of the proceeding in which the  
10 Commission ultimately recommended to the FCC that it  
11 approve Qwest, give its 271 approval to Qwest for  
12 offering a long-distance service, interLATA  
13 long-distance service. In that process, there were a  
14 number of orders in which the Commission ordered Qwest  
15 to make changes to its Performance Assurance Plan, and  
16 details were hashed out in workshops with the affected  
17 CLEC's. So there is a history of a number of orders  
18 they are requiring certain things about the details of  
19 the Performance Assurance Plan, and since that time,  
20 there have been amendments to the Performance Assurance  
21 Plan that have been handled in an open-meeting context  
22 in which the Commission has made reference to a process  
23 set out under the Telecom Act. It's Section 252(F) to  
24 amendments to an SGAT which requires that there be  
25 approval within 60 days; although, the review can

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1 continue on past 60 days. So that's sort of the  
2 procedural background.

3           As far as whether the 60-day requirement for  
4 approving such a filing is binding on the Commission, I  
5 think there is a good argument to be made that because  
6 the Performance Assurance Plan is something that's  
7 required by this commission by orders that the  
8 Commission is not bound to approve necessarily the  
9 proposed amendment within 60 days as required for a  
10 schedule of generally applicable terms under the  
11 Telecom Act.

12           Setting those issues aside, this could become  
13 difficult procedural questions to resolve. I think  
14 Staff has come to the conclusion that we do want to  
15 complete our review as quickly as possible and that if  
16 we need to do that within the adjudicative context,  
17 that this may be a matter that could be dealt with  
18 through a brief adjudicative process to try to expedite  
19 it as much as possible.

20           So that is our thinking on how Staff would be  
21 able to continue its review and ultimately make some  
22 kind of recommendation to the Commission about whether  
23 it should or should not approve the filing, and  
24 hopefully we can do that if not within the 60 days  
25 provided by the Telecom Act for review of SGAT

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1 amendments fairly shortly thereafter.

2 JUDGE TOREM: Thank you, Mr. Thompson. When  
3 I look at the Telecom Act 47 US Code, 252, sub F,  
4 sub 3, sub "A" of that allows the submitting carrier,  
5 in this case, Qwest, to agree to an extension of a  
6 60-period for review. So assuming for sake of argument  
7 that the 60 days does apply to this statement generally  
8 in terms of SGAT and to this Performance Assurance Plan  
9 as well, under that SGAT, have you sought any such  
10 extension from Qwest yet?

11 MR. THOMPSON: We did discuss that. I'll let  
12 Ms. Anderl....

13 MS. ANDERL: We agree that the statute says  
14 that the submitting carrier can consent, and we have in  
15 the past consented. However, we believe at this point,  
16 and I was hoping that the CLEC representatives would be  
17 on, we believe we are bound by the stipulation at this  
18 point to not extend the deadline absent the consent of  
19 the other stipulating carriers, and I'm not sure that  
20 the carte blanche that they've given me to represent  
21 them and the stipulation at this proceeding extends to  
22 that extension of time. I don't really think that it  
23 does. So at this point, I would have to say that we  
24 don't think we can extend that time.

25 JUDGE RENDAHL: That you can't agree right

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1 now to extend it, or can you discuss it with the other  
2 stipulating parties and let us know if that's a  
3 possibility?

4 MS. ANDERL: We could consult with the other  
5 stipulating parties and let you know, and in fact, I  
6 would like to give Ms. Burke an opportunity to weigh in  
7 on this if she would like to. I don't know if you  
8 would like a full appearance from her or not. Laurel  
9 Burke is an attorney for the Company and is familiar  
10 with these issues on a regional basis as opposed to my  
11 job here, which is state specific, and Ms. Burke, I  
12 don't know if you have anything else that you would  
13 like to add on that issue.

14 MS. BURKE: We can certainly consult with the  
15 other stipulating parties and are willing to do that.  
16 The primary impact is the ability for the system to be  
17 able to get the data and rerun it and use the averaging  
18 that's an incentive of going forward, so it does have a  
19 fair amount of impact, and as far as the PAP versus the  
20 PID, I think if the PAP were to stay open, maybe there  
21 is a possibility to do a piece of it within thr 60 days  
22 and work on the other piece outside of that and do  
23 possibly a waiver or an extension.

24 It might be possible to do the PID, for  
25 instance, according to 252(F)(3), and then work on the

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1 PAP impact, which are the primary impacts from a  
2 financial perspective, separately, but we can consult  
3 with the other stipulating parties to see how they want  
4 to handle that or what their hope would be.

5 JUDGE TOREM: Let's put the ultimate action  
6 on hold for the moment. We indicated in the prehearing  
7 conference notice that people could file petitions to  
8 intervene. None were received, and I take it that  
9 there are no parties on the line wishing to intervene  
10 today. I just want to make that for the record. My  
11 raising that now is to find out if there are other  
12 CLEC's who are here in Washington that didn't know  
13 about the hearing today. We certainly didn't give  
14 notice to any of the other CLEC's, and in your  
15 petition, Paragraph 13, Ms. Anderl, you and your client  
16 have indicated you were going to give notice of any  
17 filings in this case to any other Washington CLEC's,  
18 but certainly, the Commission didn't give independent  
19 notice. We didn't have the list that you had in mind  
20 in Paragraph 13 to let them know about today's  
21 prehearing conference. Do you know whether Qwest and  
22 the other petitioners in this case affirmatively gave  
23 notice to them, and if so, is there something we can  
24 put in the record?

25 MS. ANDERL: I know that in accordance with

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1 Paragraph 4 of our petition, CLEC's were notified,  
2 Paragraphs 3 and 4, CLEC's were notified back in May of  
3 2006 of the opening of the negotiations and were also  
4 notified on more than one occasion of subsequent  
5 meetings, issues lists, and then at certain point were  
6 asked to either opt in or out as to whether they wanted  
7 to receive continuing notice of the issues that were  
8 being discussed in this particular negotiation, and 19  
9 CLEC's did opt in and say yes, do continue to provide  
10 us notice. It's my understanding that those CLEC's  
11 were given notice of all of the material changes and  
12 ultimate agreement in this docket.

13 I will have to defer to either further  
14 research or Ms. Burke if she knows about the compliance  
15 with Paragraph 13 and what Qwest specifically did with  
16 regard to providing notice of the filings to the  
17 Washington CLEC's.

18 MS. BURKE: I do have information about that.  
19 Just after the filings, within five days of the filing,  
20 we did send a wholesale notification to all CLEC's in  
21 the region, including Washington CLEC's, about the  
22 changes to both the documents, the PID and the PAP, for  
23 Washington and other states with the summary of the  
24 changes attached and regardless of their PAP opt-in  
25 status. So all CLEC's that had an interconnection



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1 agreement with Qwest were provided the potential  
2 changes.

3 JUDGE TOREM: Ms. Burke, can you speak up?

4 MS. BURKE: So all CLEC's in the 14-state  
5 region that have an interconnection agreement with  
6 Qwest were notified of the changes or the potential  
7 changes and that they were pending before the various  
8 state commissions, including Washington.

9 JUDGE TOREM: Do you know for those  
10 Washington CLEC's which, if any, that were not joining  
11 in the petition got notice of today's prehearing  
12 conference that could potentially result in the  
13 adoption and approval of that?

14 MS. BURKE: We did not send a separate notice  
15 of the prehearing conference that I know of.

16 JUDGE TOREM: I'm not indicating that you  
17 should or shouldn't have. I just wanted to know what  
18 Paragraph 13 meant as to filings or other  
19 Commission-generated documents such as that notice.

20 MS. BURKE: I think the intention of  
21 Paragraph 13 was of the filing of the petition and  
22 notice in each state, so the plural filings was  
23 applicable to the 14-state filings, but it's the  
24 initial, here's what we did, and presuming that each  
25 CLEC then could choose to go to the state commission

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1 sites or take action in those states in which they were  
2 concerned, if they were.

3 JUDGE TOREM: Clearly, none have done that  
4 today presuming they got notice.

5 MS. BURKE: Correct.

6 JUDGE TOREM: Has the Company received any  
7 response from those CLEC's as to when you sent out the  
8 notice of the filings?

9 MS. BURKE: No, not that I know of. I can  
10 check further into that, but we haven't received  
11 anything saying we object or agree or anything else,  
12 but that's fairly typical in this type of proceeding,  
13 honestly.

14 MS. ANDERL: Your Honor, I can add that it  
15 was my office's address and phone number that was on  
16 the pleading; although, it was my colleague Adam Sherr  
17 who did the filing, neither he nor I nor anyone else in  
18 my office have received any contact by a CLEC asking  
19 for additional information on this filing.

20 JUDGE TOREM: Mr. Thompson, in Staff's  
21 response and comments on the petition, there was some  
22 indication of just concern as to the impact on other  
23 Washington CLEC's. Did you want to comment, now having  
24 heard who got notice and who didn't receive notice of  
25 today's proceeding?

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1           MR. THOMPSON: I guess the concern still  
2 stands. Maybe if companies have received notice of  
3 specific changes and still weren't worried enough to  
4 make an appearance, that may be some indication that  
5 there is less cause for concern. That's something we  
6 can further check into as part of our review.

7           Something I probably should have mentioned  
8 when I was discussing the procedural aspects of this,  
9 part of what Qwest is asking is not only that this  
10 change be approved for the PAP as part of the SGAT but  
11 also that that change to the Performance Assurance Plan  
12 and the PID's be applied to all CLEC's and that their  
13 interconnection agreements be amended with the new  
14 plan, so that, I think, also potentially takes this out  
15 of the usual SGAT-type of process. So just a thought I  
16 probably should have mentioned earlier.

17           JUDGE TOREM: But for today, assuming that we  
18 haven't taken it out of the SGAT process and trying to  
19 work within the Telecom Act 60-day limit, my concern  
20 was procedural for those other CLECs who may not,  
21 although they were invited according to Paragraphs 3  
22 and 4 of the petition, to understand the negotiations  
23 going on, and I presume for sake of discussion today  
24 that that notice to them included an indication that  
25 their rights may be affected in the future with

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1 interconnection agreements with Qwest, that perhaps  
2 their lack of participation or just getting the notices  
3 and seeing the filing that went out as described by  
4 Ms. Burke that they are satisfied. I would much prefer  
5 to see something in writing acknowledging that, We've  
6 read it. We get it. We don't need to be there before  
7 the 60 days is up, and that way, we can satisfy 100  
8 percent no doubt that procedurally, their rights have  
9 been observed and the Commission can go forward if it  
10 stays within the Telecom Act SGAT provisions.

11 MR. THOMPSON: Right, and we haven't actually  
12 seen the notice that Ms. Burke referred to.

13 JUDGE TOREM: We won't see it today, but I do  
14 think that a prehearing conference order that has an  
15 expanded notice list and an extension of the potential  
16 date for intervention petitions to be filed would  
17 satisfy all those concerns.

18 The real question will be if nobody else  
19 cares to participate, will Staff be done in time to  
20 determine which portions they are going to ask Qwest  
21 for an extension on, if any, or the end of the 60 days,  
22 which comes up in late August, simply be allowed to be  
23 the deadline and a stipulation be presented from Staff  
24 to at least join in some kind of filing that says, We  
25 don't object to the Commission approving the

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1 stipulation as written with the PID's being adopted and  
2 the PAP being adopted as well.

3           If we address all those procedural  
4 due-process concerns by making sure the Commission gets  
5 notice of what might be at stake, then I think Staff  
6 can address those. I don't expect you to answer that  
7 now. You need to discuss and get back with us, but the  
8 other issue that comes up as potentially substantive to  
9 the state of Washington, at least from my review and  
10 some assistance from Judge Rendahl and others because  
11 I've never seen one before, the stipulation itself on  
12 Page 6 at Paragraph Roman numeral 1, letter E, No. 19,  
13 discusses some Tier 2 payments, or actually, this is  
14 the reinstatement removal process, so Paragraphs 19 and  
15 20 may have some Washington state-specific impacts, and  
16 Paragraph 31 on Page 9, this is under Roman numeral  
17 3(A), 31, that's where I was thinking there is a  
18 modification to those Tier 2 payment provisions, and I  
19 think, Mr. Thompson, you've referenced some Tier 1 and  
20 Tier 2 payment issues.

21           If I understand correctly, the Tier 1  
22 payments are between the CLEC's and Qwest, and I trust  
23 the CLEC's will look after their own financial  
24 interests and would not have joined in the petition.  
25 The other nonparticipating CLEC's today will address

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1 those concerns by giving them notice and opportunity to  
2 look after their interests, but here, the Tier 2  
3 payment provisions go to the state, and I wanted to  
4 make sure that those particular financial impacts to  
5 the state have been looked at and you've had sufficient  
6 time to understand those, and if they are fair,  
7 reasonable, and serve the public interest, then we can  
8 push on and advise the commissioners of that before any  
9 action is taken, but those are the two substantive  
10 questions about the stipulation that jumped out to my  
11 colleagues and now to me. So those are all the issues  
12 that I can see today.

13           We can talk about discovery and a protective  
14 order and the need for any such things, but maybe we  
15 need to go off the record and discuss the procedural  
16 schedule as to how do we get something back that allows  
17 either myself or Judge Rendahl to address the issues as  
18 to whether the 60 day applies, whether there will be a  
19 waiver in part or whole of that 60-day clock and sort  
20 out which judge is going to be up here handling it. I  
21 will be out of town next week at Camp NARUC, and the  
22 subsequent five weeks, the Air Force has plans for me  
23 in Korea, so I won't be back until September 15th, well  
24 after that clock runs. It's always possible that the  
25 Air Force will drop those plans and I will be here, but

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1 Judge Rendahl is making sure I know what I'm doing up  
2 here today and take the reins as necessary if action is  
3 needed by the Commission when I'm out of the country.  
4 So from there, is there anything else we need to do on  
5 the record before we go off the record and discuss  
6 potential procedural dates and steps? Staff, no?  
7 Ms. Anderl?

8 MS. ANDERL: Your Honor, I wanted to make a  
9 couple of comments in response to questions you asked  
10 Staff, but maybe we should go off the record and maybe  
11 I can follow-up if I still feel the need to say  
12 anything when we go back on the record.

13 JUDGE TOREM: Has anybody else joined us on  
14 the bridge line other than those representatives  
15 previously identified from Qwest, Ms. Burke and  
16 Mr. Reynolds? Hearing none, it's about 17 minutes  
17 after ten. We will go off the record for a little bit.

18 (Discussion off the record.)

19 JUDGE RENDAHL: Let's be back on the record,  
20 and while we are off the record, we had a discussion  
21 about scheduling, but also, there was some substantive  
22 discussion about how the Commission has handled these  
23 matters in the past. So, Ms. Anderl, if you don't mind  
24 repeating the comments you made while we were off the  
25 record, that would be great.

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1 MS. ANDERL: Thank you, Your Honor. I think  
2 I had just observed that what we are asking for in this  
3 proceeding is very similar to the process and outcome  
4 that we've seen in other cases of similar nature.  
5 During 2004, the Commission had opened Docket No.  
6 UT-043007, which was Qwest's second six-month review of  
7 the QPAP, and consolidated with that docket from time  
8 to time were other dockets that represented filings for  
9 modifications to Exhibit B and K, and I have pulled two  
10 what I think are kind of representative orders that  
11 I'll give you, the other docket numbers here in a  
12 minute, but in both of these orders, I think the  
13 important thing is that the Commission ordered changes  
14 to Exhibits B and K to impact not just the ICA's of the  
15 settling parties or the parties who were in that docket  
16 but all CLEC's in the state who had an Exhibit B or K  
17 attached to their interconnection agreement.

18 And in Docket UT-043007, there was an Order  
19 No. 10 entered on September 17th, 2004, and that was in  
20 conjunction with Docket 043088, and in that docket  
21 number, the same order was denominated Order No. 1.  
22 Ordering Paragraph No. 72 says, "All existing  
23 interconnection agreements currently contain Exhibit  
24 B(1) as an exhibit are modified to delete that exhibit,  
25 and then Paragraph 75 says, "All existing



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1 interconnection agreements that currently contain  
2 Exhibit K as an exhibit are modified to include the  
3 sixth-amended exhibit as approved by the Commission in  
4 this order."

5           The other order I was thinking of in  
6 referencing was Order No. 15 in Docket UT-043007, and  
7 that was Order No. 1 in the docket that was  
8 consolidated at that time, Docket 040119, in  
9 conjunction with an Arizona stipulation and settlement  
10 that was submitted to the Commission for approval.  
11 That order was entered on January 12th, 2005, and that  
12 also contains an ordering paragraph that modifies  
13 Exhibits B and K for all CLEC's who would have those  
14 exhibits as part of their interconnection agreements in  
15 the state.

16           JUDGE RENDAHL: Thank you, and does Staff  
17 have any brief response? There was one off the record,  
18 so I'm giving you the opportunity to say anything about  
19 that on the record.

20           MR. THOMPSON: Our sense is that approval  
21 process was used when there was little controversy  
22 regarding the amendment and often came out of  
23 recommendations from other states. So if it's  
24 necessary for us to address the process questions, that  
25 would be something we could address further at that

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1 time.

2 JUDGE RENDAHL: Okay.

3 JUDGE TOREM: Ms. Anderl, you indicated that  
4 one of the concerns we were going to try to address was  
5 the waiver of that 60-day rule and get input from the  
6 other CLEC's that are copetitioners here, and there was  
7 something you indicated -- I think it was in the  
8 stipulation itself, not in the petition but in the --

9 MS. ANDERL: That's right, Your Honor,  
10 Paragraph 9 of the stipulation, which is on Page 3.

11 JUDGE TOREM: And it seems that this is  
12 something you indicated was in the CLEC's favor that  
13 puts the Commission, perhaps unintentionally, in a box  
14 to get this done on or shortly after the 60-day  
15 deadline, and it would appear if it's in the CLEC's  
16 best interest and Qwest does not have an objection to  
17 leaning towards as opposed to leaning away from the  
18 CLEC's that your client could unilaterally extend this  
19 deadline and the CLEC's would have no objection to  
20 that.

21 So is that a correct perception? If we get  
22 into a discussion next month when I'm not here as to  
23 whether the 60-day rule applies or what really happens  
24 here, what flexibility does your client have on  
25 unilaterally saying, Okay, we can get it done by the

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1 end of September.

2 MS. ANDERL: Well, I think this was a  
3 negotiated term in the sense, Your Honor, that if the  
4 Commission acted by August 31st, and I hope I'm not  
5 going to be speaking out of turn here, but we were  
6 benefited to some extent by allowing certain of the  
7 changes to take place. That's kind of the nature of a  
8 settlement. The party gets something good out of it --

9 JUDGE TOREM: You've got a third-party wild  
10 card here at the Commission, and I want to make sure  
11 that anything the Commission does in the time frame of  
12 the 60-day rule which fits this Paragraph 9 of the  
13 stipulation, or if it turns out that Mr. Thompson comes  
14 back and makes an argument and persuades the Commission  
15 that the 60-day rule doesn't apply, I'm presuming that  
16 all of those negotiations completely agreed to outside  
17 of this room and to the benefit of all the parties may  
18 have been on a faulty assumption that that 60-day clock  
19 was going to apply and that things would happen very  
20 quickly and the Commission would go along, as it's  
21 indicated in your perception from the past.

22 MS. ANDERL: I don't know. I think it's our  
23 sincerest hope that the Commission wouldn't reject  
24 this, but we understood that that was a possibility. I  
25 don't think we intended to try to railroad the

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1 Commission into being boxed in to act within that time  
2 or force an approval within that time. I would have to  
3 consult with my client to see about what ability we  
4 would have to unilaterally modify the stipulation or  
5 willingness to make any unilateral modifications even  
6 if in order to everyone else's benefit or to the harm  
7 or Qwest, I just don't know. I would have to find out.

8 JUDGE TOREM: You've indicated that this  
9 would definitely be to the benefit of the CLEC's if the  
10 earlier date happened, and I just wanted to make sure  
11 that part of your discussions with them might be to  
12 allow that retroactivity to go a little farther just in  
13 case things with Staff or otherwise when the Commission  
14 acts as a body unintentionally have consequences that  
15 foul up that expectation.

16 I don't know that I understand anything else  
17 in the stipulation, but it seemed to me that I could  
18 understand from what you described earlier, there may  
19 be benefits that are neutral to Qwest but still  
20 beneficial to those other CLEC's joining in the  
21 petition. Staff's intention is certainly not to harm  
22 those other CLEC's or have them lose anything nor  
23 anyone representing the Commission as a whole.

24 MS. ANDERL: When I say to the benefit of the  
25 CLEC's, I think what I meant there was the benefit of

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1 the CLEC's in the sense that if the metrics are applied  
2 retroactively, that would be an opportunity for the  
3 CLEC's to experience what's called a miss, which would  
4 mean a payment by Qwest, so it wouldn't be neutral to  
5 Qwest but would benefit the CLEC's.

6 JUDGE TOREM: You said financially benefit  
7 them, so I didn't understand the context of that.

8 JUDGE RENDAHL: So I'm just going to recite  
9 the schedule as I recall it. Ms. Anderl, you did want  
10 to say one more thing, so why don't you go ahead, and  
11 then I will briefly recite the schedule, and if you all  
12 have any additions to that, we will talk about it, so  
13 go ahead, Ms. Anderl.

14 MS. ANDERL: I just wasn't sure if there  
15 would be another opportunity to talk about the merits  
16 given the process we have set out, and I wanted to  
17 discuss a little bit the Tier 2 payments and express  
18 that it is Qwest's position that those Tier 2 payments,  
19 even though they were made to the state, were never  
20 intended to create any particular financial benefit to  
21 the state, nor were they intended to create any sort of  
22 expectation of any sort of a continuing level of  
23 revenue stream to the state.

24 When the QPAP and PID's were first  
25 implemented, the Tier 2 payments were really designed

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1 to create an appropriate incentive for Qwest to  
2 continue to provide good performance without providing  
3 the CLEC's with a windfall, so that higher level of  
4 financial risk that Qwest was under was created by the  
5 Tier 2 payments not necessarily for the benefit of the  
6 state, but the money had to be directed somewhere, so  
7 as not to provide a financial windfall to the CLEC's,  
8 it wasn't directed to the CLEC's.

9 We believe very strongly that the negotiating  
10 parties in this stipulation, including the CLEC's, had  
11 an incentive to make sure that even those Tier 2  
12 payments remained at an appropriate level and measured  
13 appropriately, because whether the money goes to the  
14 CLEC's or not, it is an incentive mechanism that is to  
15 their benefit, so we don't necessarily think that even  
16 though the state has an interest in and filed the QPAP  
17 for approval with the state, we don't think there is  
18 necessarily any particular level of interest in the  
19 Tier 2 payments that ought to tip the public interest  
20 scales one way or the other, and we think that the  
21 public interest is more demonstrated by the agreement  
22 of the formerly opposed parties on an appropriate  
23 compromised outcome.

24 JUDGE RENDAHL: So understanding that the  
25 Tier 2 payments, it goes more to whether there is an

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1 appropriate incentive for Qwest to maintain or not  
2 backslide on its Section 271 obligations, is there any  
3 response from Staff on that point that Ms. Anderl just  
4 made?

5 MR. THOMPSON: That's certainly the way Staff  
6 was approaching the question as to whether or not --  
7 not the financial impact on this agency, for example,  
8 but the incentives created, and that's something we can  
9 address in our analysis of the changes.

10 JUDGE TOREM: I didn't mean to imply there  
11 would be some sort of quota system here.

12 MS. ANDERL: Thank you, Your Honor. I wasn't  
13 sure when, if at all, we would have a chance to really  
14 address that issue, so I thought I would get it in now.

15 JUDGE RENDAHL: So I'm going to go over our  
16 schedule and we can wrap up for the morning. First,  
17 Qwest and Staff are going through an informal discovery  
18 process. We are not invoking the discovery rule this  
19 morning, but the agreement between Qwest and the Staff  
20 is that Qwest will respond as quickly as possible as it  
21 can to Staff's informal data requests. The bulk of  
22 them should be to Staff by the end of the week, but by  
23 August 7th, Qwest will respond to Staff's informal data  
24 requests at the very latest.

25 Qwest has agreed to provide the CLEC mailing

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1 information to the Commission as soon as possible and  
2 no later than the end of the week so that we can turn  
3 around a prehearing conference order providing those  
4 potentially interested CLEC's one more opportunity to  
5 let us know whether they have problems with this  
6 stipulation and the changes to the PID's and the QPAP.  
7 The prehearing conference order will establish a time  
8 to intervene or comment by August 15th for those  
9 potential interested CLEC's to let us know if they have  
10 any issues with the stipulation.

11 By August 16, Staff will file with the  
12 Commission by five p.m. will file with the Commission a  
13 brief filing letting the Commission know if there are  
14 continuing objections to the settlement agreement or  
15 the stipulation and whether there is a need to expand  
16 the 60-day period, and if there is, the reason for  
17 expanding that period. If there are no objections,  
18 Staff should merely explain they have no objections and  
19 why they have no objections to this going forward.

20 If there are no objections and we haven't  
21 received anything from any potentially interested  
22 CLEC's objecting to the stipulation, it would be useful  
23 for Staff and the Company and the other settling  
24 parties to send a letter to the Commission letting us  
25 know that they waive their right to an initial record,



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1 and that will allow me to work with the commissioners,  
2 to the extent they are available to do so, to get a  
3 final order out by the 27th. I can't guarantee that  
4 that will be the outcome, but that will give me the  
5 ability to get a final order out if we can do that.

6 If there are objections, we will be having a  
7 status conference on either August 20th or 21st to  
8 figure out what to do going forward, and the prehearing  
9 conference order will indicate whether it's the 20th or  
10 the 21st. Are there any dates in the schedule that I  
11 didn't include or any details that I didn't include?

12 MR. THOMPSON: I don't think so.

13 MS. ANDERL: No, Your Honor. Is there  
14 anything else, Judge Torem, that you want to add at  
15 this point?

16 JUDGE TOREM: I just want perhaps Staff to  
17 clarify its intent if it does file a quick letter  
18 saying that all is well and there is no objection to  
19 this going into effect by five o'clock on the 16th what  
20 timing Staff and Ms. Anderl and the other CLEC's might  
21 have to get that waiver of the initial order back to  
22 you, because that may not have to come in directly on  
23 the 16th. Staff, although communicating with Qwest in  
24 that interim period, they may not know until five  
25 o'clock on the 16th for sure if they are ready to waive

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1 that initial order and ask for the striking of that  
2 following week, Monday, Tuesday, status conference. So  
3 I wanted that to be on the record, at least some  
4 discussion of process how to get that to you so they  
5 can say we are going to strike the status conference,  
6 because Thursday is August 16th. Friday, Mr. Thompson,  
7 you are unavailable on the 17th, and if Judge Rendahl's  
8 calendar puts this on the 20th, then maybe it will be a  
9 telephonic show up, go away, and we are going to have a  
10 written waiver coming in by the end of business on  
11 Monday.

12 JUDGE RENDAHL: I think it would be useful to  
13 set a deadline by Monday the 20th by the close of  
14 business at five p.m. that if there is no objection to  
15 going forward and we are going to go forward with  
16 trying to get a final order out by the 27th to mail in  
17 your letter to the Commission saying you are waiving  
18 your right to an initial order in this matter.

19 JUDGE TOREM: If the status conference is  
20 actually scheduled for that morning or afternoon on the  
21 20th --

22 JUDGE RENDAHL: We will have a notice going  
23 out that will cancel it, or if we are having it, it  
24 will stay on.

25 JUDGE TOREM: I would assume that

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1 telephonically you would let an ALD know or an e-mail  
2 to records, but if you don't hear anything until the  
3 16th at five o'clock and Mr. Thompson is gone the next  
4 day, and the status conference is the next business day  
5 on Monday, how do you strike something after the fact  
6 is what I'm trying to get to.

7 JUDGE RENDAHL: I would probably get a notice  
8 out by Friday that either we would have the conference  
9 or not, and Mr. Thompson will just have to wait until  
10 Monday if he's out to find what I assume he will know  
11 by business on the 16th he will have a pretty good  
12 guess whether it's going to be canceled or not based on  
13 his comments.

14 JUDGE TOREM: So you may make a request in  
15 your letter on the 16th, whatever filing comes in,  
16 stating Staff's opinion as to the need for another  
17 process on the 20th or 21st.

18 MR. THOMPSON: Correct, and for our part, if  
19 our recommendation were to go ahead and approve, I  
20 think we will also waive the initial order and the  
21 status conference. I can't speak for Qwest, but I  
22 think we would be able to work it out at the same time.

23 MS. ANDERL: I think that's right. I agree  
24 with Mr. Thompson if Staff's recommendations approve  
25 and we don't hear anything to the contrary, we would be

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1 willing to waive a status conference and an initial  
2 order, and we would be willing to send a letter in  
3 posthaste saying that all other things being equal, if  
4 you have the opportunity to schedule the status  
5 conference on the 21st, that may help things go  
6 sequentially more easily.

7 JUDGE RENDAHL: I'll look at my calendar and  
8 sort that out. We will clarify all these deadlines in  
9 the prehearing conference order. It probably will be  
10 the 16th is the day that you send in all of this  
11 information, and we'll know whether we have or don't  
12 have the status conference on the 20th or the 21st.

13 With that, is there anything more we need to  
14 cover this morning? Does any party wish to order a  
15 transcript? With that detail covered, this prehearing  
16 conference is adjourned. Thank you very much.

17 (Prehearing conference adjourned at 11:01 a.m.)

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