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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

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4 In the Matter of the Complaint) Docket No. UT-991292
and Request for Expedited) Volume III
5 Treatment of AT&T) Pages 19 - 136
Communications of the Pacific)
6 Northwest, Inc. Against US)
WEST COMMUNICATIONS, INC.)
7 Regarding Provisioning of)
Access Services.)
8 _____)

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10 A hearing in the above matter was
11 held on October 25, 1999, at 1:33 p.m., at 1300
12 Evergreen Park Drive Southwest, Olympia, Washington,
13 before Administrative Law Judge C. ROBERT WALLIS.

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15 The parties were present as
16 follows:

17 AT&T, by Mary B. Tribby, Attorney
at Law, 1875 Lawrence Street, Suite 1575, Denver,
18 Colorado, 80202 (Via conference bridge.)

19 US WEST COMMUNICATIONS, INC., by
Lisa A. Anderl, Attorney at Law, 1600 Seventh Avenue,
20 Room 3206, Seattle, Washington 98191.

21 THE COMMISSION, by Shannon Smith,
Assistant Attorney General, P.O. Box 40128, Olympia,
22 Washington 98504-0128.

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25 BARBARA SPURBECK, CSR

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1 JUDGE WALLIS: Let's be on the record,
2 please. This is a discovery prehearing conference of
3 the Washington Utilities and Transportation
4 Commission, being held on October 25, 1999, at the
5 Commission offices in Olympia, pursuant to due and
6 proper notice to all interested persons. My name is
7 Robert Wallis, and I am the assigned Administrative
8 Law Judge on this proceeding.

9 The purpose for our discussions today is to
10 attend to a matter that's raised in a motion by AT&T
11 on October 15, and responded to by US West in a
12 response dated October 20, 1999. I have read those
13 documents and Counsel need not repeat them.

14 I am going to ask each of the Counsel who
15 is here today to state an appearance and to present a
16 statement, and then we will go off the record for
17 discussions, coming back on the record when it's
18 appropriate to summarize, and every party will have
19 the opportunity to supplement any summary and to make
20 any other statements desired.

21 As we go into this discussion, I am going
22 to ask Counsel to avoid any ad hominem comments and
23 any subjective characterizations. I've found that
24 those are very seldom helpful in figuring out either
25 what happened or what is going to happen, and that

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1 quite often that kind of comment compels others to
2 respond in kind, and that also detracts from the
3 purposes here.

4 So with that, I'm going to turn to the
5 movant, AT&T, for, first of all, a statement of
6 appearance, and then subsequently for an opening
7 statement. Ms. Tribby.

8 MS. TRIBBY: Thank you, Your Honor. Mary
9 Tribby, on behalf of AT&T.

10 JUDGE WALLIS: For the Respondent.

11 MS. ANDERL: Lisa Anderl, on behalf of US
12 West Communications. Can you hear me, Mary?

13 MS. TRIBBY: Yes, I can, Lisa.

14 MS. SMITH: Also present is Shannon Smith,
15 on behalf of Commission Staff.

16 JUDGE WALLIS: Let me ask, Ms. Smith, are
17 you intending to make a statement?

18 MS. SMITH: No.

19 JUDGE WALLIS: Very well. Let's proceed,
20 then. Ms. Tribby.

21 MS. TRIBBY: Thank you, Your Honor. I,
22 first of all, want to express my gratitude to both
23 the Commission and the parties for their willingness
24 to hear this matter quickly. I also apologize for
25 not being there in person today.

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1 This is a very important motion, as far as
2 AT&T is concerned, but given that our testimony in
3 this docket is due today, we're here in Denver trying
4 to finish that up. It made it impossible for me to
5 be out there. In fact, with regard to that, and we
6 can discuss this at the end of the call, we may need
7 to file our testimony tomorrow, as opposed to today.
8 Given the time that's been spent preparing for this
9 motion, we may end up being a day behind, and I
10 apologize for that, but believe me, we can get that
11 testimony out tomorrow.

12 With respect to the motion to compel that
13 AT&T filed with the Commission, AT&T brings this to
14 the Commission's attention because it believes that
15 US West's efforts at answering discovery in this
16 docket have been so lacking that it's made it
17 extremely difficult for AT&T to prepare both for
18 written testimony and for the hearing in this case.

19 What AT&T is requesting is that the
20 Commission order US West to fully and completely
21 respond to all discovery produced upon it in the
22 absence of a truly relevant and legally adequate
23 objection by a date certain, that it sanction US West
24 for its failures to respond to date, and it allows
25 AT&T in its reply testimony in this case to address

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1 all information produced in discovery.

2 AT&T is not attempting to move the schedule
3 back in this case, based on the lack of adequate
4 discovery responses, and given that that's the case,
5 it believes that sanctions and the opportunity to
6 address testimony and discovery responses in its
7 reply testimony is the only appropriate remedy for
8 the behavior so far in this case.

9 Judge Wallis, you set a firm schedule in
10 this case that all parties were to adhere to.
11 Instead, US West ignored that schedule to the
12 detriment of AT&T. You provided that all discovery
13 responses would be provided by October 8th. Instead,
14 US West provided very few discovery responses by
15 October 8th, and most of those that were provided by
16 October 8th were objections.

17 Since that date, US West has trickled in
18 responses, up to and including as late as this last
19 Friday, October 22nd, two weeks after the due date
20 that you set. I haven't seen any yet today. I don't
21 know if additional responses are forthcoming or not.

22 During that two-week period, US West has
23 produced additional responses every day -- it might
24 be two, it might be three, it might be six, it might
25 be eight -- often backdating the letters accompanying

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1 those responses.

2 These late-produced responses unfortunately
3 have not been supplementary responses based on
4 newly-found or discovered information. Instead, many
5 are first time answers or even newly-raised
6 objections to the request.

7 US West responses have seemed to become a
8 bit more reasonable since AT&T filed its motion to
9 compel on October 15th. However, the late-filed
10 information continues to place AT&T in a difficult
11 position for filing testimony and preparing for
12 hearing.

13 Unlike a typical motion to compel, AT&T has
14 not detailed in its motion each and every response
15 which is inadequate. That's because, at least at the
16 time AT&T filed its motion, it believed that each and
17 every response given by US West truly was
18 inappropriate and nonresponsive.

19 Because AT&T has received some additional
20 information to date, which it has attempted to review
21 prior to this hearing, AT&T is happy to attempt to
22 categorize the missing information and insufficient
23 objections, but it is very difficult to do that in an
24 all-inclusive manner, given the problems with US
25 West's responses.

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1 Let me make a couple of initial comments
2 regarding the discovery that has come in. First,
3 with response to the comments made in US West's
4 answer to AT&T's motion to compel, US West claims
5 that it's late with its responses because it's had to
6 gather information to respond to AT&T's requests
7 which seek data from 1995 forward.

8 The problem with this response is that US
9 West has produced very little additional documentary
10 evidence in the last two weeks. Like I said, many of
11 the subsequent responses have been merely objections.
12 And in almost every case, they have refused to answer
13 going back to '95. So even though they may have read
14 those requests as broad, they have not responded in
15 kind, so I don't believe that's an adequate reason
16 for the untimeliness of their objection.

17 If US West had spent the last two weeks
18 after the deadline passed gathering additional
19 information that wasn't available on October 8th, I
20 could understand the untimely responses a little bit
21 better, but that has not been the case.

22 In addition, the additional substantive
23 data that US West has produced apparently wasn't
24 planned to be produced until AT&T filed its motion to
25 compel in this case, since only two of the 90 initial

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1 responses given indicated that US West was doing a
2 search and would supplement its filing once it found
3 the information.

4 The other responses that have been
5 supplemented have been added simply to firm
6 objections which have not indicated in any way that
7 additional responses would be forthcoming. This made
8 it a little bit difficult to know what additional
9 information is coming and what isn't.

10 One other comment, with respect to US
11 West's response to the motion, is that US West
12 indicates that it recognizes some of the objections
13 it makes are insufficient standing alone to provide a
14 basis for refusing to answer certain requests, but
15 that, when taken with all of the other objections to
16 any particular request, they're sufficient.

17 My response to that assertion is simply
18 that a number of illegitimate objections, even taken
19 together, do not make a legitimate objection.

20 I am happy to go through the rest of the
21 objections and attempt to put our request and the
22 objections to them into categories at this point in
23 time, if that would be helpful to Your Honor and to
24 US West.

25 JUDGE WALLIS: I'm going to suggest that we

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1 not undertake that exercise right at the present, but
2 allow you to conclude your statement, if you haven't
3 concluded, and then go on to US West.

4 MS. TRIBBY: Okay. I would just conclude
5 by saying that AT&T believes that the majority, at
6 least, of the requests that have been filed by it in
7 this case are entirely relevant to the scope of the
8 hearing and are nonobjectionable and would request
9 that US West be required to reevaluate the responses
10 that it has given in light of, you know, making
11 legitimate and legal objections. And I will conclude
12 my opening statement at this point.

13 JUDGE WALLIS: Ms. Anderl.

14 MS. ANDERL: Thank you, Your Honor. Let me
15 first just address some of the points raised by Ms.
16 Tribby in her opening statement and then let me
17 summarize for you our view of this matter.

18 A couple of things that are maybe more
19 technical than anything, but to the extent that any
20 letters were backdated, that was certainly not US
21 West's intent. We date our letters on the day we
22 send them out. If they don't get sent out on the day
23 that they're dated, either because the day ended and
24 people went home at 5:00, certainly that's simply an
25 oversight and not an intent to make it appear as

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1 though the responses were served earlier than they
2 were.

3 There are plenty of ways to verify receipt,
4 and we're happy to -- I'd be happy to accept Ms.
5 Tribby's representations as to whatever dates she
6 received the data requests.

7 To the extent that Ms. Tribby has
8 characterized our responses as somewhat more
9 reasonable since the motion to compel, I think that
10 those events may have been coincident in time, but
11 certainly there's no causal relationship there. It
12 has taken us a long time to gather the data and there
13 was quite a bit of review of voluminous documents to
14 do, there was quite a bit of redaction that was
15 necessary in order to produce, as nearly as we could,
16 Washington-specific data. In many cases, that was
17 not possible, but where it was, we had to do that.

18 So that, to the extent that the motion to
19 compel came during the second week in October, it was
20 around that time that we were beginning to be able to
21 pull the data together. It was made somewhat more
22 difficult because I was not in Denver and the
23 documents were, and I think that probably added some
24 time to it.

25 That kind of ties into the discussion about

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1 whether we needed all this time to respond to provide
2 data that went back to 1995. It's true that most of
3 the requests asked for data from 1995 or 1996
4 forward, it's true that we've objected to that. That
5 doesn't mean we don't have to go look to see what's
6 there.

7 So to the extent that that is the scope of
8 the request, that has also added additional time and
9 is one of the reasons why, nonetheless, that US West
10 objected on the basis that the requests were both
11 overly broad and unduly burdensome.

12 US West has provided additional substantive
13 responses to what were just objections that were
14 served. I'm not aware that there was anything wrong
15 with doing that, and so, you know, to the extent that
16 we discovered data that we either -- that we
17 determined we would provide without waiver of our
18 objections, we did so. And I don't believe it does
19 waive the objections and I don't believe that we're
20 obligated to say that when we file an objection.

21 We do believe that all of our objections to
22 each of those data requests is a valid objection.
23 It's true that I mentioned in my answer that on some
24 of the data requests where we objected that the
25 phrasing was vague or it was difficult to ascertain

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1 what was meant, if that had been the only reason that
2 the request was objectionable, I would have placed a
3 call to opposing counsel.

4 I don't like to just say, Oh, sorry, we
5 don't know what you meant, and leave it at that, but
6 that was only one of the reasons why the data request
7 was objectionable and getting a clarification as to
8 what was meant by a particular phrase or word in the
9 data request would certainly not have helped to make
10 the data request any less objectionable or would have
11 made us really any more inclined to respond to it had
12 we known exactly what was asked for.

13 It is difficult to respond to this very
14 generalized motion to compel, because we don't
15 exactly know what AT&T is seeking. We think, in
16 fact, that we have gone well beyond what we should
17 have had to produce in Washington, given that AT&T
18 has not established or alleged in its complaint or in
19 any of the discovery it's responded to to date a
20 single held order or complaint with regard to
21 provisioning of special access service.

22 We did provide a lot of documents,
23 nonetheless, with regard to special access service,
24 and it's been difficult for us to ascertain, from the
25 data request responses and the complaint, exactly

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1 what the complaint is with regard to switched access.

2 Even though AT&T has mentioned in its
3 answer to the motion to dismiss that it believes that
4 that is the one element of the complaint that clearly
5 has an intrastate component, we've not heard, and
6 maybe we will in the testimony today or tomorrow,
7 specifically what AT&T is seeking there.

8 AT&T's requests were quite broad, and in my
9 view, given the nature of the complaint, did
10 constitute a fishing expedition for any interesting
11 data with regard to US West's provisioning,
12 engineering, budgets, expenditures and revenues. And
13 we're happy, also, if Ms. Tribby wants to categorize
14 these data requests, to walk through them, either in
15 groups or one at a time, and detail our objections.

16 Interestingly, in Colorado, where this
17 matter is following an almost parallel track, AT&T
18 promulgated only 30 data requests, instead of the 90
19 that it promulgated here in Washington. I understand
20 that is because of Colorado administrative or
21 procedural rules that limits discovery.

22 AT&T got their answers to the Colorado data
23 requests on roughly the same time line and in roughly
24 the same substantive content as they did in
25 Washington, and no motion to compel has been filed in

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1 Colorado. The deadline for filing such a motion in
2 Colorado has already passed, so I don't know, you
3 know, what it is exactly in Washington that AT&T's
4 seeking that makes a motion to compel necessary here,
5 but, as I said, we're certainly happy to address the
6 objections and data requests on a point-by-point
7 basis.

8 At this point, we believe that the
9 responses that we've provided to date, as well as the
10 objections, are all valid and legitimate. In fact,
11 for illustrative purposes, if you will, we did bring
12 the responses with us. I have three banker's boxes
13 on the cart with me. The top one just contains our
14 case files, as well as the three-ring binder that has
15 many of the narrative and some of the shorter
16 documentary data request responses. The two banker's
17 boxes below are full.

18 And we will continue to provide data
19 request responses, or supplements thereto, as the
20 information does become available. We understand
21 that we are under a continuing obligation to
22 supplement our data request responses.

23 I would like to address, if I could, the
24 remedies that Ms. Tribby's asked for, and there are
25 three, as I heard her. An order of the Commission

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1 that US West fully and completely respond to the data
2 request, absent a valid and legal objection. I don't
3 believe that such an order is necessary, nor would it
4 prove fruitful, as we believe that's where we are
5 today.

6 She asked for sanctions, but I don't know
7 what type of sanctions she's asked for. I don't
8 believe any are warranted under the circumstances.
9 Without further detail as to what she'd be asking
10 for, I can't really respond.

11 And then, to allow AT&T to address new
12 information in its reply testimony. AT&T certainly
13 does have the right to the last word, as the
14 complainant with the burden of proof. I think it
15 would be more appropriate, if AT&T has not had
16 sufficient time to prepare its testimony, to allow
17 AT&T additional time in the schedule and move other
18 dates accordingly.

19 As I understand it, in Minnesota, which is
20 the only other state where this case has been
21 scheduled, other than Colorado -- it's not been
22 scheduled in Arizona or New Mexico yet -- the parties
23 in that docket are talking about extending the
24 schedule for 30 days. I don't know if they've agreed
25 to do that or not. But certainly a remedy like that

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1 might be more appropriate than to have AT&T have to
2 put more information than is strictly a reply in its
3 reply testimony. That concludes my remarks, Your
4 Honor. Thank you.

5 JUDGE WALLIS: Ms. Smith, do you have any
6 comments to make?

7 MS. SMITH: No.

8 JUDGE WALLIS: Why don't we hear briefly
9 from Ms. Tribby in response.

10 MS. TRIBBY: Thank you, Your Honor. Let me
11 just respond to the comments Ms. Anderl has made.
12 First of all, let me just work backward here. With
13 respect to Minnesota, the departments there have
14 requested an extension of 30 days of the schedule.
15 AT&T is not joining in that request. But the
16 department may be making that to the commission. I'm
17 not sure what relevance that has to Washington,
18 anyway, but just to make the record clear with
19 respect to that.

20 With respect to remedies, trying not to
21 characterize US West's actions, we believe that it
22 would be only appropriate to move the schedule back
23 given that our testimony is due today and we still
24 have not received all the discovery responses or, if
25 we have received all of the first set, we received

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1 them as of Friday.

2 We, however, do not want to push the
3 schedule back, we've made that clear from the start,
4 and allowing us to respond to discovery in reply
5 testimony is, in our opinion, the only way to do that
6 without pushing the schedule back.

7 The sanctions that we have requested are
8 certainly payment for the amount of attorneys' fees
9 and time that has been spent to get US West to
10 appropriately respond to data requests, including
11 time to write a motion to compel, time to prepare for
12 hearings, and if we need to go forward and detail for
13 US West each of the responses and how they are
14 inappropriate in a subsequent motion, we certainly
15 would want that to be included, as well.

16 With respect to Ms. Anderl's comments, that
17 they will continue to supplement as information
18 becomes available, obviously that is a continuing
19 obligation, but let's be clear here. That does not
20 take place of your obligation to respond fully and
21 completely by the due date.

22 We understand that if information is later
23 uncovered, all parties have an obligation to produce
24 that, but that does not allow parties to dribble in
25 responses for the first time weeks after they are

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1 currently due.

2 With respect to the three banker's boxes, I
3 will tell you that all of the documentation that I've
4 received in Washington, including the Colorado
5 documentation that has been submitted in Washington
6 by reference, fills probably one box, certainly not
7 one and a half. So we have not received three
8 banker's boxes of information, despite the 90 data
9 requests.

10 In Colorado, Ms. Anderl is absolutely
11 correct, there was a limit of 30 data requests, so US
12 West and AT&T, both of whom had produced
13 significantly more than that in Washington, limited
14 it to 30 requests. US West has not fully responded
15 and continues to dribble in responses in Colorado,
16 and Counsel for Colorado has not waived her right to
17 file a motion to compel and intends to do that there,
18 as well.

19 With respect to the data requests, the
20 intraLATA versus interLATA is obviously an issue in
21 this case. AT&T responded accordingly in all of its
22 data requests. It hasn't asked US West for a lot of
23 information with respect to that kind of breakdown,
24 but US West certainly requested that from AT&T, and
25 AT&T is asking for the same with respect to some

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1 requests, although I think there's probably only two
2 or three that request that.

3 With respect to Ms. Anderl's comments, that
4 would be all that I would have to say. I would just
5 conclude again by saying, you know, going through
6 these requests one-by-one at this point seems to me a
7 fruitless exercise given how non-responsive the
8 entire package of responses by US West has been.
9 Thank you.

10 JUDGE WALLIS: What is it that you really
11 want, Ms. Tribby?

12 MS. TRIBBY: In terms of?

13 JUDGE WALLIS: In terms of leaving here
14 today or getting a Commission order in response to
15 your request, what do you want it to say, in two or
16 three sentences?

17 MS. TRIBBY: I believe that US West should
18 be ordered to respond to all discovery in this case
19 and, in fact, to go back and re-respond to those
20 they've already responded to by a date certain, that
21 AT&T be allowed to respond to all of that discovery
22 in its reply testimony in this case, and that those
23 dates not be moved, and that US West be required to
24 -- hold on a second. I lost my train of thought.
25 And that US West be required to pay AT&T's attorney

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1 fees for this motion and any motion going forward
2 that it takes to get US West to fully respond
3 appropriately and legally to the discovery in this
4 case.

5 JUDGE WALLIS: Do you have any authority
6 for Commission authority to make such an order as the
7 last that you've indicated?

8 MS. TRIBBY: The last being which, Your
9 Honor?

10 JUDGE WALLIS: The order to pay attorneys'
11 fees, is that something within the Commission's power
12 to do?

13 MS. TRIBBY: Yes, I believe it is. Let me
14 just grab my motion here. I believe under WAC
15 480-09-480, the Commission has the authority to
16 assess sanctions for discovery abuses.

17 JUDGE WALLIS: Other than that section, do
18 you know if there's any statutory or case authority
19 for the Commission imposing such a sanction?

20 MS. TRIBBY: I have not looked at that,
21 Your Honor. I believe that the rule was fairly
22 clear, but I'm happy to do that, if you'd like.

23 JUDGE WALLIS: Any others wish to respond?
24 Ms. Anderl.

25 MS. ANDERL: Well, if we're just talking

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1 about the sanctions issue.

2 JUDGE WALLIS: Yes.

3 MS. ANDERL: It seems to me that, and I'm
4 not -- I'm not exactly sure what Ms. Tribby's
5 referring to. I think she's probably referring to
6 the last sentence in that rule, which says, If a
7 party fails or refuses to comply with a Commission's
8 order or an administrative law judge's order that is
9 not reviewed resolving a dispute under this section
10 or a letter from the secretary resolving such a
11 dispute, the Commission may impose sanctions,
12 including but not limited to dismissal, striking of
13 testimony, evidence or cross-examination or monetary
14 penalties, as provided by law.

15 Clearly, that would limit the monetary
16 penalties to either the \$100 or \$1,000 per day under
17 the penalty statute. Further, it would be limited to
18 an instance of noncompliance with an order resulting
19 from just this type of a conference or dispute
20 resolution, and we're certainly not there yet.

21 So I don't believe there is any authority
22 for attorneys' fees. When the legislature has
23 authorized the Commission to award attorneys' fees,
24 for example, in 80-04230 or 80-04240, which are
25 actions on reparations or overcharges, a complaint

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1 may be brought to the Commission and -- I'm sorry,
2 240, where complainants are authorized to get
3 attorneys' fees after proceeding on a complaint in
4 court as a part of the relief if they prevail.

5 But clearly absent such an explicit grant
6 of a right to receive attorneys' fees upon
7 prevailing, I don't believe that one exists.

8 JUDGE WALLIS: Ms. Smith, do you want to
9 comment on this issue?

10 MS. SMITH: No, thank you.

11 JUDGE WALLIS: Let's be off the record for
12 a little bit of discussion here.

13 (Discussion off the record.)

14 JUDGE WALLIS: Let's be back on the record,
15 please. During some discussions off the record, AT&T
16 has indicated that it desires an order to US West to
17 respond by a date certain, that AT&T wants an order
18 allowing it to respond in its rebuttal presentation
19 to information provided after October 8, 1999, and
20 that US West be required to pay attorneys' fees
21 pursuant to sanctions provisions of WAC 480-09-480.

22 I've indicated that I am not aware of any
23 statutory provisions that would permit the Commission
24 to employ a sanction of that kind, but am willing to
25 allow the presentation of additional citations to

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1 that effect.

2 AT&T has also indicated that it wishes us
3 to examine some of the matters in contention to give
4 context and to allow a specific ruling. In
5 furtherance of that, we're going to take a brief
6 recess at the conclusion of the summary and we will
7 resume to hear specific objections. US West has
8 indicated that it does have the -- have copies of the
9 responses it's provided here in the hearing room.

10 I've also indicated that the process of
11 sending responses as they are available has been
12 specifically requested in other proceedings. That
13 doesn't necessarily mean that the parties in this
14 proceeding could not request a different manner of
15 the timing of responses. Is there anything that US
16 West would like to say, or AT&T? Ms. Anderl.

17 MS. ANDERL: Yes, thank you, Your Honor. I
18 don't object at this point to discussing the specific
19 data requests that Ms. Tribby would like to mention.
20 I think, in fairness, however, that those should have
21 been detailed in the motion to compel. However, I
22 believe we can be prepared to respond to them today.

23 JUDGE WALLIS: Ms. Tribby.

24 MS. TRIBBY: Well, and I've already said on
25 the record, Your Honor, that the objections, when I

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1 filed my motion, based on what we've received to that
2 date, the responses had been so inadequate that it
3 was impossible to detail each and every problem with
4 the data responses.

5 However, in light of some of the additional
6 information that's received and in the interest of
7 getting an order that addresses specific areas and
8 questions that US West should respond to, we are
9 happy to go through that exercise today.

10 JUDGE WALLIS: Very well. Ms. Smith, do
11 you have anything to add?

12 MS. SMITH: No.

13 JUDGE WALLIS: Okay. Let's be in recess
14 for about five minutes, please.

15 (Recess taken.)

16 JUDGE WALLIS: Let's be back on the record,
17 please, following a brief recess. AT&T's ready to
18 proceed at this point. Ms. Tribby.

19 MS. TRIBBY: Thank you. As I was saying,
20 Your Honor, I will go through some categories of
21 information that's been requested and not provided,
22 and would encourage you, in your order, to make some
23 rulings as to whether these categories of information
24 must be provided, that will bring some fruitful
25 information hopefully out of this motion and hearing.

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1 A couple of -- first, with respect to
2 objections, that are fairly easy to get out of the
3 way, I think. Your Honor, do you want me to allow
4 responses to each of these or should I go through all
5 of my categories and information and then allow Ms.
6 Anderl to respond?

7 JUDGE WALLIS: Does Ms. Anderl have a
8 preference?

9 MS. ANDERL: I would just as soon Ms.
10 Tribby go through all of them.

11 JUDGE WALLIS: Very well.

12 MS. TRIBBY: Okay. Ms. Anderl has objected
13 to three data requests, 44, 80, and 49, arguing that
14 the documents will not be produced because they
15 contain competitively-sensitive information, but
16 arrangements can be made to view those documents at
17 US West.

18 We think this is entirely inappropriate,
19 Your Honor. There is a protective agreement in place
20 in this case. There was no valid objection to
21 withholding this information other than that it was
22 competitively-sensitive, which is obviously the
23 reason for the protective order, and AT&T should not
24 be required to travel to view documents that are
25 relevant in this case that are capable of being

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1 duplicated. If they were on microfiche or something
2 like that, that might be a relevant objection, but to
3 require us to make arrangements to view these simply
4 because they are competitively-sensitive is
5 inappropriate, in our opinion.

6 Secondly, AT&T asked two questions, Data
7 Request 24 and Data Request 36, that specifically
8 asked for information regarding allegations made in
9 US West's answer. US West has refused to answer
10 those, either arguing that they don't understand the
11 question, as in 24, which seems inappropriate, given
12 that it was their allegation, or, in 36, that we're
13 requesting trial strategy. Ms. Anderl made some
14 responses to this.

15 In the request that US West made to AT&T in
16 this case, they sought information regarding each and
17 every allegation in our complaint. That's obviously
18 trial strategy information. However, we recognize
19 that parties have to prepare for trial. And to the
20 extent that a party makes a contention, the other
21 party should be allowed to discover on that
22 contention. So we would ask that they be ordered to
23 respond to 24 and 36.

24 Now moving on to substantive categories of
25 information. First of all, AT&T has requested all

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1 information regarding held orders. As you know,
2 that's one of the main allegations in our complaint,
3 and we've asked for that information from 1995 to
4 present. The data responses that relate to that
5 specifically are 11, 52, 53, 85, and 86.

6 What US West has done, as of October 19th,
7 is to provide us a summary of held orders since 1995.
8 Those give the date the order was held, the date that
9 it was released and the order number, but there's no
10 description of the problem, why that order was held,
11 how it was resolved, whether it dealt with inter- or
12 intraLATA facilities. And we requested all documents
13 relating to held orders. There's no documents been
14 produced regarding internal processes or procedures
15 for resolving held orders.

16 AT&T produced, and I suspect US West has
17 the same thing, many internal e-mails, internal
18 correspondence, meeting minutes that have to do with
19 certain held orders and how those are dealt with. A
20 summary of the held orders with no substantive
21 information is insufficient, and we would ask that
22 all information with respect to the held orders from
23 1995 to the present to be produced.

24 And if Your Honor thinks that that's too
25 burdensome of a time frame, we could certainly talk

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1 about modifying that time frame. However, since our
2 request related to all documents, we certainly want
3 internal documents relating to processes and
4 procedures, and those were encompassed within our
5 request.

6 The other allegation that's made in our
7 complaint is that US West refuses to or fails to fill
8 orders on time. We therefore asked a number of
9 questions that have to do with on-time provisioning.
10 AT&T and US West use a firm order confirmation, which
11 US West has discussed in its answer, and both US West
12 and AT&T have discussed in their answer and complaint
13 the use of customer-desired due date.

14 We think that all documents relating to
15 on-time provisioning, customer-desired due date, firm
16 order confirmations are relevant to AT&T's
17 allegations regarding lack of on-time provisioning,
18 and there are a number of data requests that US West
19 has refused to answer that ask for documents related
20 to on-time provisioning.

21 JUDGE WALLIS: Excuse me, Ms. Tribby,
22 there's a conversation going on next door that is
23 interfering with my ability to hear what you're
24 saying. Thank you. I was tempted to go tell them to
25 stifle it, but just closing the door is probably a

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1 much more tactful way to deal with it. Very well.
2 Please continue.

3 MS. TRIBBY: The numbers of data requests
4 that would be relevant to on-time provisioning are
5 17, 18, 24, 40, 64, 66, 68, 82, and 83.

6 One of the allegations in this case that
7 AT&T has made is that US West doesn't meet its
8 customer-desired due date and that the firm order
9 confirmations that it provides are not good.

10 US West has come back and said that they
11 never committed to customer-desired due dates and
12 that their firm order confirmations are not really
13 commitments, and that they are objecting to AT&T's
14 allegations which say that direct measures of quality
15 have been a part of the access relationship between
16 AT&T and US West for years.

17 AT&T produced every document in its
18 possession related to meeting minutes,
19 correspondence, meetings with US West, internal
20 processes, and US West documents regarding the
21 processes that have been followed since 1995 between
22 the parties and that describe and outline the access
23 relationship.

24 AT&T has asked for those same kinds of
25 documents specifically from US West, and has, as of

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1 yet, other than some gap closure plans, has received
2 no internal correspondence or documentation regarding
3 commitments between the parties or the access
4 relationship.

5 AT&T believes that all of those are
6 completely relevant to the issues in this case and
7 the data requests that specifically go to requesting
8 information regarding that relationship are 40, 41,
9 48, 50, 54, 55, 56, 64, 80 -- hello?

10 JUDGE WALLIS: Eighty.

11 MS. TRIBBY: I'm sorry, I got music for a
12 minute there. Eighty, 81 -- hello?

13 JUDGE WALLIS: Eighty --

14 MS. TRIBBY: Do you guys hear that?

15 JUDGE WALLIS: We had someone join us, I
16 think, that realized that this was not for them and
17 they left immediately. I have 80 and 81 as the last
18 listed numbers.

19 MS. TRIBBY: Eighty-two and 83.

20 JUDGE WALLIS: All right.

21 MS. TRIBBY: The other main allegation in
22 AT&T's complaint, as you're aware, is that of
23 discrimination, and the fact that US West treats
24 itself and its affiliates differently than it treats
25 access carriers and interexchange carriers with

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1 respect to facility expansion, decisions to fund
2 facility expansion, provisioning time and ability to
3 put facilities in place when they're not currently
4 available.

5 AT&T, therefore, has put forth a number of
6 requests that ask about how US West makes funding
7 decisions and expansion decisions with respect to
8 access facilities, as compared to how it makes those
9 decisions with respect to local facilities.

10 The number of --the data requests that go
11 directly to those issues and we think are relevant
12 are number 1, 2, 8, 9, 20, 21, 22, 27, 31, 60, 66,
13 79, 88, 89 and 90. There's a number of other data
14 requests which also relate to funding decisions, but
15 particularly with respect to held orders and lack of
16 interoffice capacity, which is also one of the main
17 allegations in our complaint.

18 This asks for those areas that are
19 currently experiencing problems. US West anticipated
20 fixes for those areas; again, how decisions are made
21 regarding when and how those fixes will occur. And
22 US West has raised an issue in their answer that AT&T
23 only provides them with certain kinds of forecasts.

24 We've made the allegation in our complaint
25 that, despite our forecast, US West does not build to

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1 the areas where we forecast to be needing facilities
2 in the next year or two. So the issue of forecasts
3 is going to be extremely relevant to the issues in
4 this case. We have limited our request to
5 Washington-specific forecasted information and would
6 expect US West to answer those accordingly.

7 Those data requests specifically dealing
8 with capacity issues and forecasting are numbers 5,
9 6, 12, 13, 22, 26, 27, 33 through 39, 57, 59, 62, 65,
10 69 through 74, 84, 87 and 88.

11 Your Honor, those are the specific
12 categories of documents. I do have specific
13 objections to certain of the responses beyond sort of
14 listing them categorically, which I'm happy to go
15 through now or once Ms. Anderl has had an opportunity
16 to respond to these categories. It basically comes
17 down to this, in my estimation. Our data requests
18 asked for two things: Information regarding current
19 and past held orders, lack of on-time provisioning
20 and discrimination, and escalations and internal
21 policies and procedures relating to those issues. We
22 think those are entirely relevant to the complaint,
23 and it also asks for some internal US West policies
24 with respect to how they make funding decisions, how
25 they decide to put access facilities in place when

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1 they're lacking, and those are critical to the
2 allegations of the complaint and AT&T's ability to
3 probe the issues of discrimination that it has
4 raised.

5 So those are the main categories. That
6 does not touch on each and every data request, but it
7 touches on the majority of them.

8 JUDGE WALLIS: Very well. If you would
9 like to proceed with your specific objections, please
10 do so now.

11 MS. TRIBBY: Okay. And some of these
12 obviously will relate to the categories that we've
13 talked about. Number five requests US West's
14 internal processes for funding or fulfilling access
15 service requests. US West has objected to that. We
16 think that that's relevant to the issues in the
17 complaint.

18 Number 9 has asked for US West access lines
19 and growth rates per year so that we can ascertain
20 whether that's one of the reasons for the capacity
21 problems that we're experiencing in the network.

22 US West has come back and given us only
23 percentages and has not broken the numbers out by
24 switched and special access lines. It's obvious to
25 us that US West is able to break those out and to

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1 give us line numbers, as opposed to just percentages,
2 and we would ask that they be required to do that.

3 Again, Your Honor, I'm not going to hit on
4 every objection. I'm just going to hit on some of
5 the main ones here.

6 Number 11 was one of those I referenced
7 with respect to held orders. This asked for the held
8 orders of both AT&T and US West. As I said, we've
9 been given held order numbers for AT&T, but not for
10 US West. And again, that relates directly to our
11 allegations with respect to how we're treated versus
12 how US West treats itself and its affiliates.

13 Number 17 and Number 18 asks for on-time
14 provisioning measures for both AT&T and US West. We
15 haven't been given any documents with respect to
16 this, and again, anything relating to on-time
17 provisioning, customer-desired due date, firm order
18 confirmations are issues in this case and absolutely
19 relevant.

20 For 18, I guess we were given some data,
21 but it was '99 only, and we asked for '95 forward,
22 which we think is appropriate.

23 Number 22, we asked for locations that
24 currently don't have facilities available to support
25 certain types of service, and as you'll see in our

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1 complaint, one of our objections is that US West will
2 not tell us in advance where facilities are
3 unavailable. We think that that's important for us
4 to know. It helps for us to manage the expectations
5 of our customers and our salespeople when they go out
6 to market services to know in advance if US West has
7 facilities available or not. US West has refused to
8 answer that. We're asking for the locations that
9 will not have these available within the next 18
10 months, and we would ask that they be required to
11 provide those.

12 Number 23 requests that US West identify
13 alternative access providers in their territory. US
14 West has made the allegation in their answer that
15 AT&T has available to it a number of alternative
16 providers to US West for access services. We
17 obviously know who some of those are, since they
18 market their services to us.

19 We're not sure, based on the allegations US
20 West has made, that we know who all of those
21 alternative providers are. We don't believe that's
22 confidential information, that they're publicly
23 offering information, and we're asking US West to
24 provide us with their response to what providers they
25 believe exist.

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1 Number 24, we talked about that. That was
2 relating to an allegation US West had directly made.
3 Thirty-four, 35, 36, 37 and 38 relate to capacity
4 forecasting. US West has made a number of objections
5 with respect to this, that they can't produce certain
6 forecasts because they would come from Y2K compliance
7 systems. To the extent that that's the case for
8 forecasting and those documents are available on
9 microfiche or some other way that we could view those
10 documents, it's appropriate to make those available.

11 Also, we're not asking just for the
12 forecasts themselves; we're asking for any documents
13 regarding how US West uses the forecasts that we
14 provide them. That's critical to the relevant
15 allegations in this complaint that state that US West
16 has not filled our orders for facilities despite the
17 fact that we forecast those to them and that they
18 commit to being able to meet the forecasts that we
19 give them. I'm sorry, I said through 38.
20 Thirty-nine also relates to forecasts, as well.

21 To the extent US West did give us
22 forecasts, we asked for '95 forward. They gave us
23 only first quarter of 2000, and didn't comment as to
24 whether the other years exist or don't exist. If
25 they do exist, we ask that those be produced.

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1 Number 40, again, requests of US West
2 Communications regarding AT&T customer-desired due
3 dates. US West produces data for 1999, but they
4 haven't produced any, again, correspondence or
5 policies or internal meeting minutes relating to
6 customer-desired due dates, and we would request
7 that.

8 Forty-three, 44, 45, 46, 47 relate to call
9 blocking. That was -- I guess I didn't mention that
10 category specifically, but AT&T's contention is that
11 where you have a lack of interoffice facilities, you
12 often have call blocking related to that lack of
13 facilities, and that customers are directly affected
14 by that call blocking.

15 We obviously don't have information as to
16 the extent of the call blocking on US West's
17 facilities, particularly those that are shared, so
18 we're asking that US West provide those.

19 Interestingly, US West produced, for 1999,
20 a document in response to number 43 that listed
21 blocking greater than 0.5 percent. And then, in
22 response to 46, they gave us a document relating to
23 blocking greater than zero percent, but said they
24 only had that for the current week. In looking at
25 those reports, they look identical, so I'm not sure

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1 why they keep those for one year, for one study at
2 0.5 percent, and they only have them weekly for one
3 percent.

4 But, again, if those are available on
5 microfiche or some other medium that isn't quickly
6 and easily producible, we would like to come and look
7 at those.

8 Forty-seven, trouble reports regarding
9 blocking, we've received no answer at all. Not an
10 objection or otherwise.

11 Provisioning interval -- Number 48 requests
12 provisioning intervals and quality measures for
13 access. Obviously relevant to this complaint. We've
14 received an objection, no documentation. We think
15 that that's relevant and should be produced.

16 Number 52, information regarding the held
17 orders that AT&T has alleged in its complaint.

18 MS. ANDERL: I'm sorry, Ms. Tribby. Can I
19 just interrupt? You cut out for a second. What
20 number were you referencing?

21 MS. TRIBBY: Fifty-two asks for all
22 information regarding the current held orders
23 referenced in AT&T's complaint. Again, we haven't
24 gotten any information with respect to this, other
25 than the one document that simply lists date open,

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1 date closed, and that wouldn't include these, since
2 these are currently held. So we've gotten no
3 documentation with respect to the current held
4 orders, and that is obviously relevant.

5 US West's response said that US West was
6 compiling information, but it was currently
7 unavailable, and I don't know when we expect to get
8 that information.

9 Fifty-nine relates to US West's capital
10 investment in access facilities. Again, given AT&T's
11 assertion that we don't think US West is currently
12 investing adequately in its access network, we think
13 that those are very relevant.

14 US West has said that they -- it would be
15 impossible to produce their planning documents,
16 because it would take eight to 16 weeks. Again,
17 we're not necessarily asking for the plans
18 themselves. We're asking for those, but we're also
19 asking for any policies, internal meeting minutes,
20 internal correspondence, documentation regarding
21 capital investments and access facilities in
22 Washington, and we think that that's entirely
23 relevant to this complaint.

24 Sixty-two similarly asks for US West's
25 business case for construction of access facilities

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1 in Washington. We think that's relevant for the same
2 reason.

3 Sixty-nine and 70 and 71 relate to US
4 West's plans for provisioning where facilities don't
5 exist. I discussed this earlier, capacity planning,
6 switch planning. Again, we're looking for all
7 internal policies and documentation regarding that.
8 I think it's relevant to the complaint and we have a
9 legal right to pursue that.

10 And Number 86, again, relates to the held
11 orders up to this date. There were a number of other
12 ones, Lisa, a couple of other ones, I should say,
13 that said that US West would be producing these in
14 the future, and I'm hoping that those will be
15 produced by Friday, as well.

16 That is not an exhaustive list of every
17 objection that we have, but it's a sampling of the
18 categories of documents that we think are relevant,
19 and it's also trying to go through some specific
20 examples, Judge Wallis, so that you understand what
21 these categories relate to and how they relate to the
22 complaint.

23 JUDGE WALLIS: Thank you. Ms. Anderl, are
24 you prepared to proceed or would you like a brief
25 recess?

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1 MS. ANDERL: You know, I don't see any way
2 to do this other than to just walk through these data
3 requests number-by-number and tell you, you know,
4 what they've asked for, how we've responded, why
5 we've objected, or why we believe what we've provided
6 is responsive, and maybe I'll need a recess partway
7 through, but I don't need one before we start.

8 JUDGE WALLIS: All right. Very well.

9 MS. ANDERL: Forty-four, 80, and 49 are
10 highly-sensitive competitively-sensitive documents.
11 We are not going to make Ms. Tribby or anybody at
12 AT&T travel to Seattle to view those. I'd be willing
13 to make arrangements for those to be reviewed in
14 Denver. We simply don't want copies of them floating
15 around or we don't want them to leave the building.

16 Additionally, I am not sure how many people
17 have signed the protective order for AT&T. It seems
18 like maybe three or four. But what I would like to
19 discuss with Ms. Tribby, when she would make
20 arrangements to come and review those documents, is
21 perhaps even a more limited disclosure. It may be
22 that the paralegal or the docket manager does not
23 need to see them, even though they have signed the
24 protective order. And that would simply give us
25 additional comfort that the information contained in

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1 those sensitive documents is not released.

2 We understand that, in the ordinary course,
3 a protective order is more than sufficient to
4 protects parties' interest. However, when there are
5 documents out there that contain not just proprietary
6 to the business data, but valuable to other
7 businesses' data, we attempt to identify that, and if
8 we need special protection, ask for that. I have the
9 documents here with me today and, again, would be
10 willing to make arrangements so that AT&T does not
11 have to travel to review those.

12 JUDGE WALLIS: Ms. Tribby, would that
13 satisfy your needs, at least for the moment?

14 MS. TRIBBY: Your Honor, again, I think
15 that's inappropriate. I think that there's a
16 protective agreement in place, AT&T and all of the
17 people that signed that protective agreement are
18 bound to keep that confidential, and US West has an
19 obligation to produce those documents. I don't think
20 that that's an appropriate response.

21 We obviously have a lot of things to do to
22 get ready for this hearing, and trying to coordinate
23 a time to go over and review those documents and then
24 to try to prepare for a hearing without having copies
25 of those documents at our own office is extremely

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1 burdensome.

2 I would also note that 44, Lisa, even
3 though your response was that we should contact you
4 to look at those, the stated reason was that they
5 were too burdensome to produce. And again, I think
6 that's an inappropriate response and that those
7 should be produced.

8 MS. ANDERL: Well, I think that 44 said,
9 See 49. Forty-nine says it would take 720 hours to
10 pull the data and we have produced a summary, which
11 is highly-sensitive, competitively-sensitive, and
12 which you should make arrangements to come and see.

13 MS. TRIBBY: That's right. And again, we
14 think that the summary should be produced.

15 JUDGE WALLIS: Do you have the summary
16 here?

17 MS. ANDERL: Yes, I do, Your Honor.

18 JUDGE WALLIS: In the past, we've
19 encouraged parties to produce confidential
20 information on colored paper. I'm pleased to see
21 that it's being done.

22 MS. ANDERL: Yes. Well, okay, here's the
23 bad thing. It looks like I have two copies of 38 and
24 none of 49. So I apologize for that. I must have
25 two copies of 48 back at the office, unless -- well,

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1 let me see. Thirty-eight -- did we tell you to come
2 look at that, or does this just have the wrong cover
3 sheet on it?

4 No, 38 is also one that Ms. Tribby did not
5 mention in any of her either general or specific
6 ones, except that she did discuss that forecasts and
7 capacity issues were Data Requests Number 34 through
8 38 inclusive. So I do have -- as I said, I've got
9 two copies of 38, unfortunately. I apologize. I
10 don't have 49.

11 JUDGE WALLIS: Very well. Can you be more
12 specific about what the document is in its nature and
13 why it is particularly sensitive to the company?

14 MS. ANDERL: Well, Number 80, for example,
15 which is one of the ones that Ms. Tribby identified,
16 asks for all network service assurance results
17 summary report documents. And what this document
18 shows is -- let me just kind of take it from the top
19 and see what I can describe without disclosing
20 information.

21 It has metrics on it that show network
22 performance, and it is for the entire company-wide.
23 So in the first place, it is not Washington-specific,
24 because we don't keep the data that way for this
25 particular score card. And so we would not want that

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1 released, because it has simply got information for
2 13 states that are not at issue in this complaint,
3 and the company believes that, to the extent that we
4 do have to produce data for AT&T, they should only be
5 permitted to see or have documents that are relative
6 to Washington. To the extent that we can't limit it,
7 we find it to be competitively-sensitive as to the
8 other states and would prefer that it not be
9 disclosed.

10 It has information regarding call blockage,
11 it has information regarding the company's safety
12 record, it has information regarding reliability
13 performance, service performance, as well as
14 AT&T-specific information. It has cycle time
15 information, customer trouble report information,
16 indications of major events categorized with the
17 color codes of, you know, red, orange, yellow,
18 network reliability events.

19 Most of this is, I do not believe, relevant
20 to the AT&T complaint. It is, however, critical US
21 West internal performance information, and our view
22 is that it would be a great benefit for a competitor
23 to have this type of information. To the extent that
24 the documents are producible in accordance with the
25 data request, they contain a lot of information that

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1 AT&T would not be entitled to have.

2 I suppose we could, as an alternative,
3 redact a lot of the information, but it was our
4 decision in this instance to just ask AT&T to make
5 arrangements to review it. If we would be required
6 to produce it, we perhaps could do so through some
7 redaction, but, again, I don't know. That doesn't
8 address the issue of it being region-wide.

9 MS. TRIBBY: And Your Honor, we would be
10 happy to have them redact, as they have done in some
11 of their other documents, everything that is not
12 Washington-specific.

13 AT&T and US West, as customer and supplier
14 of access services, share competitively-sensitive
15 information all the time. We obviously will protect
16 that information and would like to have the relevant
17 portions in our office so that if we want to refer to
18 those as we do testimony or as we have a hearing,
19 then we don't need to continually be going back and
20 requesting copies of that information or to have
21 somebody go over and have to sit there and write down
22 all of the relevant information. It just makes it
23 extremely burdensome for us.

24 JUDGE WALLIS: Is the information capable
25 of redaction to the Washington level?

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1 MS. ANDERL: No.

2 JUDGE WALLIS: If it is not capable of that
3 kind of redaction, is it still usable by AT&T?

4 MS. TRIBBY: Yes, it is. US West reports
5 its performance with respect to access both
6 regionally and on a state-by-state basis. It doesn't
7 always -- isn't always able to provide it on a
8 state-by-state basis, but in the absence of that
9 information, the regional information does become
10 relevant.

11 JUDGE WALLIS: Very well. Any concluding
12 comments?

13 MS. ANDERL: No, Your Honor. The other
14 documents which we've asked AT&T to come and look at
15 are -- of course would have to be discussed
16 separately. Well, yeah, specifically 38, which is
17 the other one that we did not produce.

18 JUDGE WALLIS: Very well.

19 MS. ANDERL: And I apologize for not having
20 49, and without it, I can't -- well, hang on a second
21 here. I'm sorry. Forty-nine gives basically a
22 two-part response. One is, See the attachment
23 provided in response to 76, which we did, and then
24 the other is -- the other piece of the response is to
25 make arrangements to see the summary data, call me.

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1 JUDGE WALLIS: Okay.

2 MS. ANDERL: On Numbers 24 and 36, AT&T
3 asked for information which, on Number 36, we believe
4 went to litigation strategy, and we objected
5 accordingly.

6 AT&T asked for all documents that support
7 US West's claims that it, quote, makes provisioning
8 decisions with regard to when and where it will add
9 access facilities in order to meet its service
10 obligations and to maintain network performance
11 within required standards, which is a quote from US
12 West's answer and affirmative defenses.

13 US West objected on the basis that it
14 called for litigation strategy, as well as
15 attorney-client privileged information and
16 information covered by the attorney work product
17 privilege, and on the grounds that it has not
18 completed its trial preparation, and that, in any
19 case, the cited paragraph does not imply the
20 existence of any documents related to provisioning
21 decisions.

22 We think that's a perfectly appropriate
23 decision -- or perfectly appropriate objection. It's
24 true that we did ask AT&T data requests with regard
25 to the allegations in its complaint, but those were

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1 in the nature of discovery of facts, not discovery of
2 litigation strategy. I think it's an entirely
3 different thing.

4 JUDGE WALLIS: Why do you see that this is
5 addressed toward strategy, as opposed to facts?

6 MS. ANDERL: Because I think what it's
7 really going to is tell us what you're going to say
8 in your rebuttal testimony, or your reply testimony,
9 and I don't know that we're obligated to do that
10 until we file our testimony.

11 MS. TRIBBY: Your Honor, this is a factual
12 defense that US West raised in its answer. AT&T
13 certainly has the right to probe the bases for such
14 defenses and facts that are raised in US West's own
15 answer. And to the extent that other documents are
16 uncovered later with respect to -- as they go through
17 their additional trial strategy, they can do so, but
18 that doesn't make any sense to me.

19 JUDGE WALLIS: Very well. Any concluding
20 comments? Thank you.

21 MS. ANDERL: No. On Number 24, AT&T asked
22 US West to state all the reasons US West believes its
23 commitment date for service orders is more important
24 for measuring provisioning performance than the date
25 on which the customer needs and expects the service.

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1 US West objected on the grounds that the
2 request was vague and ambiguous and further objected
3 on the grounds that it is argumentative. It is
4 argumentative on its face, Your Honor. It is not
5 either a quote or even a legitimate paraphrase from
6 US West's answer. It is AT&T's characterization. It
7 is one of those when did you stop beating your wife
8 sort of questions. And I believe that the fact that
9 -- that an argumentative objection is legitimate. If
10 AT&T wants us to answer it, we would need to restate
11 the question in a way so that it could be
12 legitimately answered.

13 Okay. Now we get into the categories.
14 AT&T wants all of --

15 MS. TRIBBY: Your Honor, may I respond on
16 24?

17 JUDGE WALLIS: Yes.

18 MS. TRIBBY: Us West has come back in its
19 answer and said that, instead of using the date that
20 the customer desires service, it only is obligated to
21 meet its internal commitment date. This was not
22 intended to be argumentative; it was simply intended
23 to probe the reason that US West believes it's
24 appropriate to use its internal commitment date, as
25 opposed to the customer-desired due date.

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1 MS. ANDERL: Well, and in response to that,
2 I think our answer's abundantly clear, as well as our
3 responses to the requests for admission and the data
4 requests to date. We've indicated that the
5 customer-desired due date is a date over which US
6 West has no control, unilaterally selected by AT&T,
7 as far as US West knows, it's selected without any
8 regard to whether facilities are in place or what
9 types of provisioning obligations US West might have
10 waiting in line ahead of that particular
11 customer-desired due date, and that is why US West's
12 internal commitment dates, US West believes, are more
13 relevant.

14 However, I'm not saying anything here today
15 that is not clear from US West's already-filed answer
16 and responses in this matter.

17 JUDGE WALLIS: Very well.

18 MS. ANDERL: All right. The information
19 regarding held orders from 1995 to the present is the
20 first category of information that Ms. Tribby has
21 requested. Data Request Number 11 asks US West to
22 categorize held orders as between AT&T, US West's
23 retail customers, and US West's subsidiaries' retail
24 customers.

25 US West responded that it does not segment

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1 held or unfilled order results into a subsidiary or
2 affiliate retail customer category, which is
3 apparently largely what AT&T was getting at with this
4 particular data request. And as you'll see as we
5 walk through a number of the other data request
6 responses, we have provided considerable detail with
7 regard to held orders.

8 The next request was 52 in that category.
9 That asks about the 70 held orders mentioned in
10 AT&T's complaint and identified on the subsequent
11 list provided to US West. As US West has indicated
12 in its motion to dismiss and its subsequent reply,
13 not a single one of those held orders is for
14 intrastate facilities. US West has objected to
15 providing this information on that basis, as well as
16 others.

17 Without waiver of that objection, US West
18 is compiling information and will provide it when it
19 is available. In addition, as we'll see as we walk
20 through these responses, US West has provided
21 significant additional information in response to
22 other data requests.

23 One of the problems with these 90 data
24 requests is that many of them are just kind of
25 different takes on the same type of question, so it's

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1 not until you get into looking for the data that you
2 realize that some of them overlap, either partially
3 or -- that some of the responses to one are also
4 responsive to another, and so sometimes we end up
5 cross-referencing.

6 Number 53 is one that US West has provided
7 a considerable amount of information on. In fact,
8 Your Honor, I will show you here that it is these two
9 stacks, one about three-quarters of an inch thick and
10 one about two inches thick, indicating that these are
11 escalation records from the AT&T account team.

12 In addition, this is the response which we
13 indicated has got another load of documents that is
14 being redacted, even as we were driving down here
15 this morning, and those should probably go out
16 overnight, although they are documents that I should
17 review before they're served, and so it just depends
18 when we get back.

19 So as we walk through here, I guess just a
20 little editorial comment that I will add is it's
21 difficult to respond to Ms. Tribby's data request
22 issues here because, in many instances, she's argued
23 to you data requests to which we believe we've been
24 very responsive. And I'm not certain, in those
25 instances, when she lists these numbers out if she's

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1 just giving us examples of ones that are related to
2 the subject that she's addressed or ones that are
3 related to the subject that she's addressed and not
4 responsive. I don't know what else we could provide
5 in response to Number 53. And I think that's going
6 to be true for a number of these.

7 MS. TRIBBY: When I'm listing data
8 requests, it's data requests that I don't think were
9 fully responsive. You know, with respect to the held
10 orders, I went through this. We have asked in all of
11 these numbers, 52, 53 included, for all documents
12 relating to US West's policy on held orders, their
13 escalation. We know -- we sit in on meetings with
14 you guys every month. We know that there are
15 internal policies and procedures, we know that
16 there's correspondence, we know that there's internal
17 e-mails, so when you say we've produced the documents
18 listing the held orders or we've produced the
19 escalation logs, that's not fully responsive. There
20 is a lot of information that we know exists that is
21 covered in our data request that's relevant to the
22 requests at issue.

23 MS. ANDERL: Well, again --

24 MS. TRIBBY: And part of why I'm at a loss
25 in going through these, Your Honor, is because US

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1 West hasn't said, you know, we're not going to give
2 you correspondence or meeting minutes or something
3 else for a particular reason. They simply haven't
4 produced those.

5 And with respect to internal policies, the
6 internal documentation regarding particular held
7 orders, we know that those exist. We know from
8 dealing with you guys on a day-to-day business
9 relationship that those exist, and we haven't seen
10 any of them yet.

11 MS. ANDERL: Well, and again, you know, the
12 fact that AT&T's requests were, in my view, so overly
13 broad and so all-encompassing, I just -- you know,
14 we've been doing what we can to produce the data.
15 We've been providing files, reports, summary
16 documentation, escalation reports, documents from the
17 desks of many of the people that AT&T requested
18 information from.

19 We will continue to gather data, but as
20 I've indicated, you know, I think part of the problem
21 is is that AT&T's requests were simply overly broad
22 and unduly burdensome.

23 MS. TRIBBY: Well, let's be clear. With
24 respect to held orders, we received from you the list
25 that I discussed earlier, which is a summary of the

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1 held orders, by number, when they were opened and
2 when they were closed. No description of what the
3 problem was, why they were closed, when they
4 anticipated being opened or reclosed, and we've
5 gotten the escalation logs. That's all we've
6 received. We haven't gotten any policy, procedure,
7 correspondence, meeting minutes kind of documents
8 from you.

9 Obviously, when you file a data request and
10 you ask for all documents regarding held orders,
11 you're asking for all of those things.

12 Now, with respect to 53, no policy
13 documents have been produced. You also said, What
14 else can we produce. Well, you've given us four
15 months for '99. You've given us January through
16 April, and we've asked for up until present. You
17 haven't given a reason in your response why you can't
18 produce those. It's simply an incomplete production.

19 JUDGE WALLIS: Very well.

20 MS. ANDERL: Eighty-five and 86.
21 Eighty-five, AT&T asked us to please produce all
22 documents from the held order coordinator related to
23 the prioritization of equipment use in Washington.
24 US West objected to that data request, but then went
25 on and provided a three-paragraph narrative response,

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1 which we believe is responsive to the request.

2 In that request -- in that response, US
3 West described that held orders are addressed on a
4 first-come first-serve basis, and that orders are not
5 prioritized in any other way, other than to
6 prioritize public safety requests, such as 911.

7 Number 86, AT&T asked US West to produce
8 all documents related to AT&T's held orders for
9 Washington from 1995 to the present. US West
10 objected to that data request on the basis that it
11 was overly broad and unduly burdensome. So to the
12 extent that Ms. Tribby is suggesting that we have not
13 raised proper objections to these requests, that's
14 simply not true. We have.

15 In addition, in some of these requests,
16 we've described what would be required to produce the
17 documents in order to explain why we believe they're
18 overly broad and unduly burdensome. In this
19 instance, we have described that the requested
20 reports could be in the neighborhood of 6,000 to
21 7,000 pages. We're simply not willing to do that.
22 AT&T must come up with better and more limited data
23 requests if they are going to get any reasonable
24 production in this docket, especially in a two or a
25 four-week period. All US West is required to do is

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1 to make reasonable production within the time
2 allowed, and that is what we believe we have done.

3 In addition, without waiver of the overly
4 broad and unduly burdensome objection in response to
5 Data Request Number 86, we did provide a document,
6 which is about an inch and a half thick, which is the
7 summary of the held orders from 1995 to present? I'm
8 not even sure. I haven't looked at it in a while.

9 MS. TRIBBY: Let me just respond. With
10 respect to 86, US West objects, saying it's overly
11 burdensome because there are 2,300 held orders since
12 1995. Well, to start out with, that sort of goes
13 towards proving our complaint with respect to the
14 number of held orders. The fact there are so many
15 held orders -- hello?

16 MS. ANDERL: Yes, we're here.

17 MS. TRIBBY: Okay. That there are so many
18 held orders from 1995 to the present that they're too
19 voluminous to produce is troubling in itself. We've
20 asked for, in 86, all documents relating to AT&T's
21 held orders. You responded and said if we gave you
22 each of the orders, it would take this long to
23 produce. Well, again, that's non-responsive.

24 There are obviously a number of documents,
25 other than the orders themselves, that relate to held

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1 orders. There's correspondence, there's probably
2 internal documentation regarding how these orders
3 were dealt with, and we've brought a complaint with
4 respect to those held orders.

5 Those are documents that are clearly
6 relevant to the allegations of the held orders and
7 how they're dealt with, and you haven't even
8 responded with respect to that. All you've come back
9 and said is it would take us this long to give you
10 the orders themselves. Well, this is one that
11 obviously we need to talk about. We haven't asked
12 for the orders themselves. We have those.

13 We're asking for all US West documents,
14 which are internal US West documents, relating to
15 these held orders. Again, correspondence, internal
16 documents, those kind of things.

17 With respect to 85, you gave us, as you
18 said, a narrative regarding how prioritization is
19 made. The request is, Please produce all documents
20 from held order coordinator related to the
21 prioritization of equipment. It's not appropriate if
22 there are internal documentation, and you haven't
23 said that there's not in your response. If there's
24 internal documentation that talks about how
25 prioritization is done, it's not sufficient to simply

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1 give us an explanation. We want to look at the
2 documents that relate to that prioritization and we
3 have a right to do that.

4 So even though you've given us a narrative
5 response, you've given us no documents to accompany
6 that response.

7 MS. ANDERL: Well, Your Honor, and I think
8 that's the nature of the overly broad and unduly
9 burdensome objection. Ms. Tribby has just clarified
10 Number 86 to say, Well, oh, you know, we know we
11 asked for all the documents, but we didn't really
12 mean all of the documents, we didn't mean the stuff
13 we already have that are, you know, the orders
14 themselves. Well, if you read her data request, it
15 certainly does request the orders themselves.

16 MS. TRIBBY: Actually, we said all US West
17 documents. That's internal documents. That doesn't
18 have to do with the AT&T ASR orders that are placed
19 with you. You know, this overly broad, I mean, you
20 could make that with every request, but it's obvious,
21 and I've tried today to sort of set forth the
22 information that we think is relevant. We think US
23 West knows what information is relevant to these
24 issues and are simply not producing them.

25 MS. ANDERL: Well, Your Honor, as we

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1 pointed out before, it's not our job to limit AT&T's
2 data requests. If US West were to object to every
3 piece of information that it thought were not
4 relevant to the case, we wouldn't have provided AT&T
5 a single piece of paper, because AT&T has no
6 complaint with regard to any intrastate circuits.

7 I mean, I don't know how many times I'm
8 going to have to say that before Ms. Tribby
9 understands that the mere allegation of a held order
10 is not sufficient to bring this Commission's
11 jurisdiction into play. I realize we have a motion
12 on that pending, but, you know, it doesn't matter,
13 honestly, if there have been zero held orders or 100
14 held orders a day for AT&T. If they're purchased out
15 of the FCC, the interstate tariff, that is where AT&T
16 needs to take its complaint.

17 And we have produced a lot of information
18 that we would object to if it were to be offered for
19 admission in the hearing room. Our production of
20 these documents is not a waiver of any admissibility
21 objections at hearing.

22 MS. TRIBBY: Your Honor, let me respond to
23 that. First of all, none of Ms. Anderl's objections
24 say anything about the fact that these are requesting
25 documents relating to interLATA facilities. So

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1 that's a new one that's being objected to right now.

2 This is not a hearing to talk about the
3 jurisdictional question. Ms. Anderl is free to raise
4 whatever jurisdictional argument she has. Prior to
5 the time a decision is issued with respect to that,
6 she does not have the right to refuse to produce
7 documents that deal with defenses that she thinks may
8 be given some credibility down the road.

9 Further, US West, in its own data response
10 to Number 16, says, US West is unable to segregate
11 their facilities by intraLATA and interLATA. So Ms.
12 Anderl keeps saying there are no held orders with
13 respect to intraLATA facilities. I'm not sure how
14 she can make such a statement. And secondly, because
15 AT&T never knows from one day to the next which
16 orders are held, because we aren't necessarily
17 notified of that until several days after an order's
18 been placed, we don't have all the information in our
19 possession to say at any one point in time what the
20 held orders are.

21 So if US West can't distinguish themselves
22 between interLATA and intraLATA facilities, I'm not
23 sure how they can say today that there are no
24 facilities in the state at any one point in time that
25 involve -- that were purchased out of the intraLATA

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1 tariff. But, again, I don't think this is the day to
2 discuss the jurisdictional arguments. It's not
3 appropriate to refuse to produce documents based on
4 defenses you may have made in the case.

5 JUDGE WALLIS: Very well. I would ask that
6 we just leave that issue to the ruling on the motion.

7 MS. ANDERL: I may need a break in about a
8 half hour, and if that's all right. I hope maybe
9 I'll be done by then.

10 Finally, Your Honor, I guess it's true we
11 have not produced a lot of correspondence between the
12 companies. However, I guess to Ms. Tribby's earlier
13 comments, she's perhaps not asking for data that they
14 already have. I know we have produced some
15 correspondence. She's also suggested, though, that
16 we've not produced internal documents related to
17 what's happened with these held orders.

18 And I believe, in fairness, that many of
19 the held orders are also ones that get included in
20 the escalation and expedites reports that were
21 produced in response to Data Request Number 53, so I
22 don't believe that it is fair to say that the summary
23 of held orders that we've produced in response to
24 Data Request Number 86 is the only information that
25 we've produced. There are other documents in

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1 response to other requests that are also related to
2 held orders.

3 MS. TRIBBY: As I said, we have the
4 escalation file and we have the summary of held
5 orders, but, again, to the extent that there were any
6 internal e-mails, any internal meetings, any internal
7 policies relating to held orders, for these specific
8 held orders that have not been produced, those are
9 relevant to the scope of our request.

10 MS. ANDERL: Your Honor, the next category
11 that AT&T mentioned is the timely provisioning and
12 the customer-desired due date issue, and Ms. Tribby
13 listed there some eight or ten data request responses
14 that AT&T believes are implicated in this data
15 request response.

16 For Number 17, which is the first data
17 request response, US West has referred to Data
18 Request Number 64. And Data Request Number 64
19 references documents produced contemporaneously with
20 the response with Bates numbers 3870 through 4573,
21 and US West Washington 00 -- well, I'll leave all the
22 zeroes off, one through 415, and they are performance
23 reports that are provided to AT&T on a monthly basis,
24 along with spreadsheets that are provided on or about
25 the 10th of each month to AT&T in an electronic

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1 format.

2 The narrative response further goes on to
3 describe that the monthly results package is
4 delivered in both hard copy and electronic format to
5 Charlotte Fields, AT&T's Vice President in Denver.

6 So while Data Request Number 17 has an
7 objection, it also, by incorporating the response to
8 Number 64, has a significant volume of documents
9 attached to it.

10 Eighteen is, in fact, a data request
11 response that AT&T probably did not get until
12 Thursday or Friday. It does show a comparison of
13 on-time provisioning between US West's retail
14 customers, US West's wholesale customers, and AT&T.

15 JUDGE WALLIS: Ms. Tribby, are you aware
16 that that information's been provided?

17 MS. TRIBBY: I am, Your Honor. It's for
18 1999 only, and the request asked for -- let me grab
19 it here -- '95 to the present. And those are just
20 one-page summaries, so I presume that that's not
21 overly burdensome to produce for the other years with
22 respect to 18.

23 And with respect to 17, that referred to
24 64. We do have the documents that Ms. Anderl is
25 referring to. However, we only have those for 1999.

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1 We asked for the FOCs, firm order confirmation dates,
2 and that is not listed in the documents that we have
3 been produced.

4 JUDGE WALLIS: What kind of -- did you say
5 FOCs?

6 MS. TRIBBY: It's firm order confirmation.

7 JUDGE WALLIS: Thank you.

8 MS. ANDERL: Your Honor, 24 is one that was
9 listed in this group, but is one that we discussed
10 earlier as an argument -- the objection where US West
11 stated that the question was argumentative, so I
12 believe we've already discussed that.

13 Number 40 is one which US West has
14 determined that would be overly broad and unduly
15 burdensome to produce. US West has referenced the
16 documents that it provided in response to Data
17 Request Number 83 as partially responsive -- I'm
18 sorry, not the documents, but the response to Number
19 83. Eighty-three and 40, taken together, simply
20 contain US West's explanation as to why it is in fact
21 unduly burdensome to produce this information.

22 What AT&T is asking for is all of the
23 information with regard to its orders or the ASRs,
24 access service requests, that AT&T submits to US
25 West. US West has determined that, since January

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1 1st, 1996, it has received 20,834 access service
2 requests from AT&T in the state of Washington. That
3 does not indicate that those are intrastate services,
4 but rather for services to be provisioned in the
5 state of Washington, both inter and intrastate
6 services.

7 MS. TRIBBY: I'm not sure which -- I
8 thought you were referring to 40.

9 MS. ANDERL: Forty, which refers you to 83.

10 MS. TRIBBY: Okay, but 40 is not a request
11 for all ASR information; it's a request for all
12 communications regarding customer-desired due dates.

13 MS. ANDERL: Well, as the objection states,
14 each ASR alone references a customer-desired due
15 date. So to be totally responsive to this question
16 would require US West to produce not only documents
17 in addition to the ASRs, but each of the ASRs,
18 regardless of whether the order was filled in a way
19 that AT&T believed to be on time or late, regardless
20 of whether the order was ever held, and that is just
21 for the ASRs alone, not to mention other documents
22 that US West might have that might contain a
23 reference to customer-desired due date.

24 As US West explains in Data Request Number
25 83, if it were to produce a report containing only

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1 one line of data per ASR, which would be, I think,
2 unrealistically short, and 65 lines per page, which
3 is probably an unrealistically long page, the report
4 would be 370 pages long, and that would only be a
5 one-line reference to each of the 20,000 ASRs.

6 I don't see how this information is
7 relevant, I don't believe that it's reasonably
8 limited in time, I don't think that it is directed at
9 the issues that AT&T has in this complaint with any
10 reasonable specificity.

11 And as I said, that's only a reference to
12 the ASRs, not to mention other documents that US West
13 might have. And I'm not going to be put in a
14 position of deciding for Ms. Tribby what's relevant
15 and what's not relevant. I'm going to say, Look,
16 this request is impossible to comply with because
17 it's unduly burdensome. Here's an example of what it
18 would take for us to comply with this request as
19 written and, you know, we'll just need to move
20 forward from there.

21 MS. TRIBBY: Your Honor, again, I mean,
22 it's just an unreasonable reading of AT&T's request.
23 Request Number 40 says, from '96 to present, so it's
24 date-defined, produce documentation. And if you look
25 at it, it says whether contained in computer files,

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1 e-mails, faxes or otherwise on US West Communications
2 regarding AT&T's customer-desired due date.

3 This is specifically in response to US
4 West's answer, which says they don't acknowledge or
5 make commitments regarding the customer-desired due
6 date. We're not asking US West to produce every ASR
7 that lists the customer-desired due date, and I don't
8 think that that's a reasonable reading of the
9 request.

10 We're asking for communications regarding
11 how US West treats our customer-desired due dates.
12 And again, this goes to policies, internal
13 procedures, how things are done, as opposed to give
14 us all the ASRs. I think that's an unreasonable
15 reading, and all US West does is come back and
16 respond to 40 and 83 and says, If we gave you every
17 single ASR since '96, it would be this many pages.
18 They completely ignore any internal policy
19 documentation correspondence, which is what these ask
20 for.

21 Similarly, 83, which says, Produce
22 documents that track when US West receives ASRs from
23 AT&T for Washington. Again, we're asking for
24 policies, internal communications, internal
25 procedures that talk about how US West tracks these

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1 ASRs. And I don't know how to make these much more
2 clear, and I think that the response that we're
3 getting is based on an unreasonable reading and it's
4 an attempt not to answer, at least with respect to
5 the documents that can be produced reasonably.

6 We're more than happy to be reasonable. We
7 don't -- with respect to all of these where that's
8 the answer, we don't want you to give us every single
9 ASR. That was not our intention, and I apologize if
10 that's not clear in the way the request was written.

11 JUDGE WALLIS: What's an ASR?

12 MS. ANDERL: An access service request.
13 It's an order that AT&T or another interexchange
14 carrier submits for provision of access services.

15 JUDGE WALLIS: Thank you.

16 MS. TRIBBY: And those are orders we
17 submit, Your Honor. So I guess I didn't, in writing
18 these, I didn't think that US West would interpret
19 these as give back to us our own orders. Instead,
20 again, we're trying to get policies and procedures
21 internally with respect to these issues.

22 JUDGE WALLIS: All right.

23 MS. ANDERL: Your Honor, 64 is one that
24 we've already talked about. It's the one -- one of
25 the ones that we provided boxes of some of the

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1 Bates-stamped documents to AT&T for as responsive to
2 that particular data request, which is one requesting
3 performance reports related to access done by AT&T --
4 done by US West for AT&T.

5 Number 66 is documents relating to or
6 reflecting installation intervals for trunks,
7 interoffice facilities and access lines. US West
8 provided its standard interval guides to a similar
9 question that Staff had asked, and our response to 66
10 simply references the response to Staff Request Set
11 Number One, Request Number Three.

12 Sixty-eight is the same type of question.
13 Produce all documents related to US West's standard
14 intervals for provisioning access service. Again,
15 Staff had already asked us for these documents, and
16 so in our response we simply referenced that Staff
17 data request response. We did provide AT&T with
18 copies of those responses when they were served to
19 Staff.

20 Eighty-two is a request by AT&T: Produce
21 all ASR logs received by US West from AT&T for
22 Washington from 1996 to the present. I think this is
23 a great example of a request that I think really
24 suggests that AT&T did expect us to produce every
25 single document we had ever either seen, received, or

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1 created without regard to whether or not we'd
2 originally received them from AT&T or not.

3 And it's the scope and the breadth of these
4 type of requests that make me believe that that's
5 exactly what they were looking for, not what we're
6 hearing represented today, that, Oh, we never
7 intended for US West to give us back documents we'd
8 already given to US West. This request specifically
9 asks for that. And in fact, US West did object,
10 saying that the requested information is equally or
11 more available to AT&T.

12 Eighty-three is one that we've already
13 talked about in connection with Data Request Number
14 40, and so my discussion on the record about that
15 prior is applicable to 83, as well.

16 The DMOQs and customer-desired due dates is
17 the next category that AT&T asked for information
18 about.

19 JUDGE WALLIS: What's the first acronym?

20 MS. ANDERL: DMOQs, direct measures of
21 quality.

22 MS. TRIBBY: I have a response to the last
23 set of categories.

24 MS. ANDERL: Okay. And I'm sorry, Your
25 Honor. It's been kind of distracting for me to have

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1 Ms. Tribby responding all the time. I let her go
2 through all of her requests. I understand that she
3 didn't make the same agreement to me, but if we are
4 going to allow her to respond on each one, then I
5 guess it's her turn.

6 JUDGE WALLIS: Ms. Tribby, would it be
7 convenient for you to hold your responses?

8 MS. TRIBBY: I can do that, certainly, Your
9 Honor. I was trying to do them by category, which I
10 thought you had requested from me, but I'm happy to
11 do it either way.

12 JUDGE WALLIS: It would be very helpful to
13 have you respond by category, but to hold your
14 responses for all of the categories that you haven't
15 already responded to until Ms. Anderl concludes.

16 MS. TRIBBY: That's fine.

17 JUDGE WALLIS: Very well.

18 MS. ANDERL: Forty is the first one that
19 Ms. Tribby mentions, and we have already talked about
20 number 40, so I won't mention that again. Forty-one
21 is the one that I confess I don't know if we haven't
22 served yet or simply haven't filed, so I will check
23 on that when I get back to the office.

24 Forty-eight is the next one that Ms. Tribby
25 requested, and what she's asked for there is studies,

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1 reports, or presentations that US West or consultants
2 working for US West have developed, conducted, or
3 presented on the provisioning intervals and quality
4 measurements for the provisioning of dedicated and
5 switched access in Washington.

6 US West has answered that it has no
7 documentation, which is specifically responsive to
8 that request. I don't know what more we could do on
9 that.

10 Fifty is a data request which we believe is
11 overly broad. We explain in our response why we
12 think so. Ms. Tribby's asked for all meeting
13 minutes, agendas, participants' notes and other
14 documents related to all meetings wherein US West's
15 access services are discussed.

16 US West objected on the grounds that it was
17 overly broad, since it placed no limits on the types
18 of documents that might be responsive to it. For
19 example, notes from a meeting regarding the provision
20 of access services to MCI in Colorado in 1994 would
21 presumably be covered by this request. And then we
22 go on to describe that it is not reasonably
23 calculated to lead to the discovery of admissible
24 evidence, not reasonably limited in time, it seeks
25 competitive information and, to the extent that it

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1 seeks any information covered by the attorney-client
2 privilege, we would not produce that in any event.

3 But it's simply such a broad net that we
4 did not know where to start and did not feel it was
5 our obligation to write a request that was more
6 limited in nature so that we could respond.

7 Fifty-four and 55 were data requests that
8 asked for documents from files of a number of listed
9 individuals, and Your Honor, I will just -- and Ms.
10 Tribby, what I'm going to do is I'm just going to
11 hand our responses, requests and responses to 54 and
12 55 over to the Judge, so that I don't have to read
13 the names of all of the people in them into the
14 record, if I may.

15 Your Honor, you can see that 54 and 55,
16 especially, requested quite a significant number of
17 individuals, you know, review their files. And we
18 did, in fact, produce attachments in two separate
19 boxes of the same materials that were provided in
20 response to Colorado Data Request Number 30.

21 Again, as I would note, it was my
22 understanding that the time for filing a motion to
23 compel in Colorado was done, and that no such motion
24 had been filed in Colorado, leading to my
25 understanding that the production in Colorado had

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1 been sufficient. The documents in response to those
2 two requests in Washington were the same.

3 Sixty-four was --

4 JUDGE WALLIS: Just for the record, I have
5 returned the documents to Ms. Anderl.

6 MS. ANDERL: Thank you, Your Honor.

7 JUDGE WALLIS: I will interject that before
8 we leave today, I intend to ask for copies of the
9 requests and the objections that have been filed and
10 that are the subject of our discussions today.

11 MS. ANDERL: May we produce those to you
12 tomorrow?

13 JUDGE WALLIS: Yes.

14 MS. ANDERL: Okay. Sixty-four, we've
15 already talked about. It was also mentioned in this
16 set, so I'll just skip that one.

17 Eighty is the network summary results
18 reports that we talked about as being on hot pink
19 paper, the highly-confidential information, so that's
20 available.

21 Eighty-one refers back to 17, and so we've
22 already talked about that. Eighty-two is the ASR
23 logs. We have already talked about that in
24 connection with the prior set. And 83 is a data
25 request response that has already been talked about

00095

1 in connection with the prior set, as well.

2 We have two more groups to go through, the
3 discrimination allegations and the forecasts, and if
4 I might have five minutes before we do that?

5 JUDGE WALLIS: Very well. Let's take a
6 10-minute break and come back at 4:00 exactly.

7 (Recess taken.)

8 JUDGE WALLIS: Let's proceed.

9 MS. ANDERL: Thank you, Your Honor.

10 JUDGE WALLIS: You were about to begin
11 discussing the discrimination allegations and data
12 requests relating thereto.

13 MS. ANDERL: Correct. And AT&T's asked a
14 number of data requests concerning facilities
15 expansion, funding, provisioning time, et cetera.
16 Ms. Tribby listed, oh, I don't know, 10 or 15, I
17 would say, that AT&T believes relate to this data
18 request or this category of data requests.

19 One and two ask for construction budgets
20 and construction expenditures, US West
21 Commission-approved construction budget, and the US
22 West actual annual construction budget or
23 construction expenditures from 1995 to the present.
24 And for the expenditures, they want the information
25 by wire center.

00096

1 US West believes that these data requests
2 are highly objectionable for a number of reasons,
3 including the fact that the construction budgets and
4 expenditures are irrelevant to AT&T's allegations
5 that US West has failed to provide access facilities
6 or to timely provision such facilities or that it has
7 preferred itself or its affiliates or its customers.

8 Moreover, these requests seek information
9 about services that are unrelated to the provision of
10 access facilities and, as such, would result in
11 disclosure of competitively-sensitive information to
12 AT&T which has no bearing on this case.

13 Finally, US West explained in its
14 objections that US West does not categorize its
15 construction budgets or its construction expenditures
16 as AT&T has set forth in its data request, which
17 indicates A, B, C, D, E and F as categories that it's
18 seeking information on.

19 And Your Honor, I think it's a good idea
20 that you're asking for copies of these, because I
21 think some of this will become more clear to you as
22 you look through each of the data requests.

23 Number 12 is the next one that AT&T
24 identified as related to this category. US West did
25 object, but it did provide, I think, a completely

00097

1 responsive answer. AT&T asked for a list, by wire
2 center, of locations in Washington where US West's
3 interoffice facilities are at 80 percent capacity or
4 more. US West provided a list, listing the wire
5 centers starting at 80 percent utilization, going all
6 the way up to the wire center that has the highest
7 utilization, at 96 percent, and there are some maybe
8 20 or so wire centers listed as of September '99.

9 Number 13 is one, the next one -- oh, you
10 know what? I'm sorry, I skipped. Twelve and 13 both
11 pertain to the forecasts issue, and my notes are
12 clear, but I guess I just wasn't reading them very
13 well.

14 Number 8 is the next one with regard to
15 discrimination, and US West answered Data Request
16 Number 8.

17 US West Data Request Number 9. In Number
18 9, AT&T specifically asked US West to separate access
19 line growth by special and switched. US West
20 indicated that it does not track access line growth
21 in that manner, but it did produce the 1996, 1997,
22 and 1998 growth rates on toll access lines.

23 Number 20 is the next request in that
24 group. AT&T asked for US West -- the total
25 residences and businesses that US West serves and the

00098

1 total number of commercial buildings where US West
2 has fiber or co-ax to the building.

3 Taking the last one first, US West does not
4 track numbers of buildings where it has fibers or
5 co-ax. It also provisions a number of its services
6 over copper facilities and doesn't always, in its
7 records, distinguish the types of facilities that are
8 provisioning the service.

9 In addition, US West does not track
10 residences or businesses served. It keeps its
11 records on the basis of access lines. A business may
12 have one more access lines, as may a residence. And
13 access line count information is provided in US
14 West's ARMIS reports, and that information is equally
15 available to AT&T as publicly-available data.

16 Number 21, AT&T asked questions about
17 locations where US West has DSL facilities, DSLAMS,
18 frame relay networks, ATM networks and other data
19 networks. US West answered this data request
20 response by providing US West -- or by providing AT&T
21 with a URL, a website address where US West discloses
22 this information under its network disclosures, and
23 AT&T therefore has access to that information.

24 Number 22, AT&T asked US West to identify
25 all locations that do not currently have and will not

00099

1 have within the next 18 months the facilities and
2 services identified in the previous data request,
3 including DSL, DSLAMS, frame relay, et cetera.

4 US West objected to that data request and
5 further explained to AT&T that it is not possible to
6 say with certainty which locations will or will not
7 have certain facilities 18 months in the future.

8 Finally, it does seem to me that this type
9 of information is objectionable on the basis that it
10 is competitively-sensitive. Competitors would dearly
11 love to know what their competitors' plans are for
12 the next 18 months out, and even if US West were able
13 to or willing to make a best guess as to which
14 locations would or would not have such facilities 18
15 months out, I believe that the harm of US West in
16 providing that information would outweigh any benefit
17 or relevancy to providing it in this proceeding.

18 Number 27 is the same type of question, in
19 that AT&T is seeking, by wire center, the number of
20 DSL lines, special access circuits, business lines,
21 switched access circuits and residential lines in
22 each office. Again, this information is highly
23 competitively-sensitive, allowing a business to
24 target certain areas, and provides AT&T information
25 which it would not otherwise have or be entitled to.

00100

1 Nevertheless, without waiving the
2 objection, US West did provide Attachments A and B,
3 access line -- some limited subset of access line
4 information that AT&T had sought.

5 Thirty-one, AT&T asked about US West
6 employee or agent incentive compensation plans or
7 arrangements for 1996 to the present related to
8 service quality, company performance and sales.

9 US West objected to that data request as
10 not having any bearing on the provisioning of access
11 services to AT&T, not reasonably calculated to lead
12 to the discovery of admissible evidence, and various
13 other objections, which you'll see when we provide
14 you the document. US West did not answer that and
15 does not intend to supplement that with an answer.

16 Sixty is the next one. AT&T asked US West
17 to provide documents that relate to or reflect the
18 adoption or implementation of competitive responses
19 to AT&T and other telecommunications companies.

20 The request includes, but is not limited to
21 all activities of any competitive response team, all
22 status reports and program documents, quarterly
23 reports, competitive assumptions and such.

24 US West objected to that data request. It
25 set forth all of its objections in the response and

00101

1 does not believe that this is information
2 appropriately sought in discovery in this proceeding,
3 and therefore does not intend to supplement that
4 response.

5 Sixty-six we have already talked about in
6 connection with an earlier subject area, and I
7 therefore won't discuss it again.

8 Seventy-nine, AT&T asked for all documents
9 relating to US West's, quote, unquote, corporate
10 network, and quote, unquote, official circuits in
11 Washington. We could find no way to understand what
12 bearing that request had on this proceeding, and we
13 therefore objected, setting forth our reasons in the
14 objection, and do not intend to supplement that
15 response.

16 Eighty-eight contains an objection and
17 refers AT&T back to response to Number 6 and Number
18 38. Six is a three-paragraph narrative response, 38
19 is a highly-confidential hot pink document.

20 Eighty-nine is a request for US West to
21 produce all documents related to US West's attempts
22 to move its wholesale service quality into parity
23 with its retail obligations. US West objected and
24 then provided a one-paragraph narrative response.

25 And 90 is a request for copies of invoices

00102

1 to US West from Enterprise America and copies of the
2 affiliate contracts related to such service.

3 US West objected, did not provide the
4 invoices, but did provide the affiliate contract
5 related to the services. It's a fairly short
6 document, ten pages long or so.

7 In addition, in connection with a request
8 for information about affiliate transactions, which I
9 think is somewhat related to 90, US West did provide,
10 and I'm looking for the response, Data Request Number
11 30. US West was asked to provide a detailed
12 itemization of transactions from '96 to '98 between
13 US West and each affiliate by FCC account, please
14 explain the major types of transactions of a
15 reoccurring nature.

16 US West objected to that, but nonetheless
17 provided a fairly substantial, I'd say 12 pages,
18 quite detailed report of payments to and from
19 affiliates for the year 1998.

20 JUDGE WALLIS: What service is Enterprise
21 America involved in?

22 MS. ANDERL: Enterprise America provides
23 some -- as I understand it, it does not provide
24 telecommunications services in region, in US West's
25 region. It is a separate subsidiary that provides

00103

1 some administrative services to US West
2 Communications, and I believe some management and/or
3 marketing or administrative services go back the
4 other way, as well.

5 Enterprise America also, I believe, and I
6 haven't checked this recently, but my understanding
7 was that they provided the USWest.net Internet access
8 service, which is not a regulated telecommunications
9 service. So that's it for discrimination.

10 The next category is forecasts. The first
11 two data requests that AT&T has at issue are 5 and 6.
12 Five, we did object to. Six does contain a narrative
13 response. The request asks for a description, not
14 documents, and so US West believes that its response
15 satisfies the wording of the request.

16 Twelve, I already started on or finished
17 on, rather, in erroneous discussion under the
18 previous heading. Thirteen is a listing in response
19 to AT&T's request, that US West has provided a list
20 of job numbers, costs, and costs for growth jobs at
21 the central offices which are showing the 80 percent
22 or greater capacity which was requested in Data
23 Request Number 12.

24 Twenty-two, we've already discussed.

25 Twenty-six, AT&T asked for US West's current IOF, or

00104

1 interoffice facility topology maps for Washington
2 showing all facility routes between US West wire
3 centers, asking for US West to indicate on the map
4 which IOF routes are nearing maximum capacity, which
5 routes are scheduled for capacity relief, and which
6 routes are out of capacity and will not be augmented
7 within the next six months.

8 US West believes that this information is
9 highly competitively-sensitive and not reasonably
10 calculated to lead to the discovery of admissible
11 evidence in this docket.

12 Additionally, as I have learned since I
13 filed the objection, US West does not have these
14 documents in that form. US West would essentially be
15 being required by AT&T to create evidence for it, and
16 US West does not believe it is required to do so.

17 Twenty-seven, we've already talked about.
18 Thirty-three through 39, in 33, AT&T asked for US
19 West's actual budgets for capital investment for '99
20 and 2000. This goes back to Data Requests 1 and 2.
21 And just as US West thought that its construction
22 budgets and construction expenditures were
23 objectionable, US West finds that its 1999 and 2000
24 budgets for capital investment is overly broad and
25 not directly pertinent to the issues in this case,

00105

1 not information to which AT&T is entitled.

2 AT&T, in Data Request Number 34, asked for
3 all documents and other data concerning any US West
4 capacity forecasts for equipment and facilities
5 located in or connected with the following wire
6 centers. There are almost a hundred wire centers
7 listed, maybe 90.

8 US West objected on the basis that the
9 request for all related documents was unreasonable
10 and unduly burdensome. US West also indicated that
11 it is not able to provide all of the data requested,
12 and that US West would have to reactivate obsolete or
13 non-Y2K compliant systems in order to provide some of
14 the information.

15 Thirty-five is essentially the same.
16 Thirty-six, we've already discussed. Thirty-seven,
17 AT&T asked for information on -- asked US West to
18 produce documents and hard copies of data from US
19 West's work force administrator, or WAFWA, W-A-F-A,
20 for special access and high cap orders by the wire
21 centers listed in Request Number 34.

22 US West objected on the basis that -- well,
23 a number of reasons, not the least of which is that
24 the request seeks to have US West perform analysis on
25 AT&T's behalf, and that it improperly seeks the

00106

1 creation of documents not in existence. US West
2 explained in its confidential attachment why it
3 cannot reasonably respond to the request, and it is a
4 confidential attachment. Your Honor, we'll provide
5 that and, rather than read the information into the
6 record which is confidential, I'll just allow you to
7 review that.

8 Thirty-nine, US West did reference
9 documents provided in three other data request
10 responses, including 54, 55 and 72.

11 Fifty-seven is another request for
12 information regarding capital budgets, plans, or
13 actual expenditures and information regarding US
14 West's competitive position. This seems to me to be
15 information not pertinent to this docket and which
16 would be very useful information for AT&T to have in
17 other contexts. I'm not suggesting it would be
18 improperly used by AT&T. It is, however, not
19 appropriate for us to be required to release it under
20 those circumstances, when it's not relevant to this
21 case and could be potentially valuable in other
22 contexts.

23 Fifty-nine, US West has -- we've already
24 talked about that in the context of other categories.
25 We don't have to go back to that.

00107

1 Sixty-two asks for business cases. US West
2 does not use business cases for the construction of
3 access facilities. In addition to the objection that
4 it set forth to this request, US West said that to
5 AT&T, it does not use business cases. I don't know
6 what more AT&T would have US West produce under those
7 circumstances.

8 Sixty-five also asks for US West's
9 competitive and strategic positions and responses
10 regarding wholesale products or services, and it has
11 not got any reasonable relationship or bearing on the
12 issues in the AT&T complaint.

13 US West has, without waiver of its
14 objection, referenced AT&T to Data Request Number 38
15 for a certain subpart of this 65, so --

16 Sixty-nine through 74, on some of these --
17 and again, Your Honor, you'll be able to see for
18 yourself when you get them. Sixty-nine, US West has
19 made the same objection that it did to -- let me see,
20 just so that I can cross-reference it appropriately.
21 Sixty-nine is a similar objection to 34.

22 Seventy is an objection on the basis that
23 it is information regarding capital expenditures,
24 which, again, US West has said is not relevant.
25 Further, US West explains in its response how

00108

1 burdensome it would be to produce the information
2 requested.

3 Seventy-one cross-references Data Request
4 Response Number 6. Seventy-two, US West has
5 objected, but without waiver of the objection, has
6 provided a confidential attachment including some of
7 AT&T's forecasts that were provided to US West.

8 Seventy-three is an objection, an
9 explanation of why the request is burdensome, and
10 then, without waiver of that objection, a reference
11 to Data Request Response Number 43. This particular
12 data request, Number 73, is a request, for 1995 to
13 the present, please produce all reports and summaries
14 from the trunk planners and trunk forecasters for
15 Washington.

16 In the response, the network respondent who
17 had this data request assigned calculated that it
18 would take literally thousands of hours to produce
19 all of the data that AT&T asked for. I mean, even
20 beyond thousands. Into the tens of thousands.
21 Simply because it requires us to access systems and
22 produce print reports that do not come quickly or
23 easily.

24 We did, though, as I said, refer AT&T back
25 to Data Request Response Number 43, which I will kind

00109

1 of hold up for you here. It's about an inch thick of
2 a data request response, showing the trunk group's
3 blocking greater than 0.5 percent. And US West has
4 those almost for all of 1999.

5 The reason US West has those is because we
6 were required, in Docket 971063, to provide those to
7 the Commission on a weekly basis. The final order in
8 1063 came out in the middle of February, and this
9 first trunk blocking report is, not coincidentally,
10 dated March 8th, 1999.

11 That kind of goes to the question that Ms.
12 Tribby raised as to why we would have some trunk
13 blocking reports for a whole year and others only for
14 one week at a time. On the reports that we're
15 required by the Commission to produce, we retain
16 those on the blocking reports that we produce for our
17 own internal monitoring. They're saved over every
18 week. The data is not retained, and that is why
19 we're only able to provide a one-week report on the
20 other report.

21 Eighty-four is essentially the same
22 objection as Data Request Number 59. Eighty-seven is
23 a narrative response to the question. And 88 we have
24 already talked about in the prior context. It refers
25 AT&T back to some other data request responses.

00110

1 And that -- I mean, that concludes my
2 discussion of the specific categories. After Ms.
3 Tribby discussed her categories, she then went
4 through and listed each of the specific data requests
5 that she took issue with, but in reviewing them, I
6 think, in fairness, we've probably already discussed
7 each of these by number in the context of the
8 categories, and I feel as though I've fairly
9 addressed them.

10 JUDGE WALLIS: Very well. Thank you, Ms.
11 Anderl. Ms. Tribby.

12 MS. TRIBBY: Thank you, Your Honor. I
13 think that we were back on the timely provisioning
14 and CDDD requests when I stopped responding
15 individually.

16 JUDGE WALLIS: Yes.

17 MS. TRIBBY: So under those, we were
18 talking about 66 and 68. With respect to both of
19 those, Ms. Anderl refers us to responses provided to
20 Staff, which contains a resource guide that was put
21 out by US West. I would agree that that does include
22 standard installation intervals, but 66 asks for
23 actual installation intervals for trunks, interoffice
24 facilities, access lines, and obviously we think
25 that's relevant, given that part of our complaint

00111

1 goes to timely and untimely provisioning of those
2 facilities.

3 Eighty-two, which Ms. Anderl referenced,
4 appears to ask for all ASR logs received by US West.
5 And I misspoke previously. Well, I didn't misspeak.
6 I think that with respect to all of the other
7 requests where US West is answering and saying we
8 can't give you all of the ASR logs because it would
9 take this many hours, the ASR logs clearly are not
10 implicated in those requests.

11 With respect to this request, I was able to
12 talk to the access management people when we were on
13 a break, and part of the reason that AT&T is asking
14 for the ASR requests, even though we also place
15 orders with them, is that US West has come back and
16 disputed our dates, the dates we requested, the dates
17 they've given us back, and we don't know of any way
18 to reconcile those, other than if they compare our
19 records with their records.

20 If US West would like to produce these for
21 1998 and 1999, as opposed to from 1996 forward, we
22 would go along with that. That's the reason we're
23 asking for those.

24 JUDGE WALLIS: Ms. Anderl.

25 MS. TRIBBY: Eighty-three, on the other

00112

1 hand, again is one of those that asks for documents
2 that track when US West received ASRs from AT&T, and
3 we get this response of, We can't give you all of the
4 ASRs. Again, this asks for documents regarding how
5 they track when they receive ASRs, so those are,
6 again, internal policy type documents.

7 With respect to DMOQ, it requests -- Number
8 50 particularly, let me turn to that -- asks for all
9 meeting minutes, agendas, notes, and other documents
10 related to meetings wherein US West's access services
11 were discussed.

12 First of all, I disagree with Ms. Anderl
13 that if she believes some of these requests are
14 drafted too broadly that she's allowed to simply just
15 not respond. I don't believe that's the professional
16 and legally appropriate way to respond. What AT&T
17 did in its responses was to say, for example, if they
18 asked for all information relating to all RBOCs
19 provisioning, we would say, We'll give you those that
20 relate to you and to AT&T, we won't give you those
21 that relate to other RBOCs or other carriers. That's
22 the appropriate way to respond if she thinks that the
23 requests are too broad, not refusing to answer them
24 entirely.

25 As you have seen, undoubtedly, between

00113

1 AT&T's complaint and US West's answer, US West has
2 taken the position that what's in its tariff is what
3 controls. AT&T believes that it's clear in the
4 complaint that there's been a course of conduct
5 established over the years with respect to how AT&T
6 and US West deal with each other for due date, direct
7 measures of quality, held orders, and those kind of
8 things, and we are making our case in part based on
9 those commitments and the course of conduct. Those
10 are going to be found, for the most part, in internal
11 US West documents, and that's directly what Number 50
12 goes to.

13 So to the extent that US West wants to
14 limit those to all meeting minutes, agendas, et
15 cetera, from 1996 forward, because I see that we
16 forgot to put a date in there, wherein US West's
17 access services with respect to AT&T were discussed,
18 so we don't get into MCI or any other carriers,
19 that's fine. We think that's the appropriate way to
20 respond and we think that, given US West's claim that
21 it doesn't have any commitments that aren't
22 specifically requested in the tariff, that this is a
23 specifically relevant request.

24 Fifty-four and 55, US West referred to some
25 requests that came in in Colorado, and they then

00114

1 referenced those into Washington. I have not had a
2 chance to look at those, so I will not make any
3 further comments with respect to 54 and 55 at this
4 point in time. I can't say, sitting here, whether
5 those are adequate or not.

6 Eighty and 81 were the next ones. Again,
7 these are network service assurance reports, and this
8 is what we discussed previously with respect to by
9 arrangement. And 81 -- 81 refers us to 17. This is
10 asking for US West performance reports, and it refers
11 us to 17. Seventeen specifically relates to on-time
12 provisioning, so that didn't seem to me like a
13 relevant response.

14 Into the discrimination allegations. One
15 and 2 ask for construction budget expenditures, as do
16 a number of the other ones that were discussed. As
17 you know, one of AT&T's allegations in this case is
18 that US West is unreasonably preferring itself over
19 AT&T in where it prefers to build versus those places
20 where AT&T asks for facilities, and also in
21 preferring its own DSL and data services over those
22 traditional access services requested by AT&T.

23 Obviously, a number of these requests that
24 go to other types of services and that go to
25 construction budgets and those kinds of things are

00115

1 directly relevant. Again, you know, if US West
2 chooses not to produce this documentation, certainly
3 AT&T will ask that it should not be allowed to defend
4 on those claims if it does not provide the kind of
5 information that would allow us to probe those
6 claims. It's impossible for AT&T to have that kind
7 of information in its own possession and appropriate
8 for it to ask for it in this case. That would relate
9 to 1 and 2.

10 Number 8, Enterprise funding process. Ms.
11 Anderl stated that US West answered that, but the
12 answer says that Mary LaFave, of Enterprise, is
13 responsible for providing further information
14 regarding this response. I assumed, based on that,
15 that we were getting additional responses on that
16 one. So that was my question with respect to 8.

17 Number 9, again, we talked about that. All
18 AT&T wants there is the number of lines, the
19 increasing number of lines by special to switched
20 access, and US West obviously keeps that information.
21 It can tell from one year to the next the number of
22 access lines that they have and how much that
23 increases to the next year.

24 Number 20 refers to the total customers --
25 or Ms. Anderl said the total residence and businesses

00116

1 served. And we understand, based on her objection,
2 that they may not keep the data in that way. If I
3 could modify that, what we would say, what we meant
4 to say is the total customers or lines served. So
5 residences and businesses may have been the wrong
6 nomenclature. What we were asking for is total
7 customers or total lines served.

8 Number 22 goes to identifying all locations
9 that don't have or won't have within the next 18
10 months certain facilities. This is, again, one of
11 the allegations in AT&T's complaint that US West
12 knows those areas that are currently suffering from
13 facility shortage or will suffer, and AT&T has
14 requested this information a number of times
15 informally, has not been given it, because it's been
16 stated it's competitively-sensitive.

17 Again, this is critical for AT&T to be able
18 to plan for where it markets its services, and it
19 also is critical for purposes of this complaint for
20 us to determine which areas US West has chosen to
21 invest in and which they've chosen not to invest in.
22 That, again, goes to the discrimination claims of
23 preferring certain communities over other
24 communities. So we think that that is relevant, and
25 obviously we can't get that information from anywhere

00117

1 other than US West.

2 Number 27 asks for, by wire centers, the
3 number of certain kinds of lines. Ms. Anderl stated
4 that US West responded to that. They did, in part,
5 although, without explanation, they excluded DSL
6 lines and special access services, both of which are
7 relevant to the allegations in this complaint, even
8 though they answered for business and residential.
9 There was no reason for excluding those, and we would
10 ask that they be required to answer with respect to
11 those categories.

12 Number 31 requested compensation plans
13 regarding service quality, and AT&T does believe that
14 this is relevant. Again, it goes to US West's
15 commitment to providing quality service and whether
16 their employees are (inaudible) differently for
17 services that they provide internally to themselves
18 and to their affiliate versus those that they are
19 able to provide on a timely basis to AT&T and other
20 carriers. We think that that is one way of directly
21 probing the discrimination claim at issue in the
22 complaint.

23 Similarly, 60, which asks for competitive
24 response information, goes to how US West internally
25 makes its decisions with respect to building and

00118

1 expanding.

2 Number 79 requests information regarding US
3 West's corporate and official network. Again, AT&T
4 believed, but doesn't have the information, unless
5 it's provided from US West, to substantiate, or in US
6 West's case, defend against our belief that US West
7 is hoarding access, for lack of a better term, and
8 reserving certain facilities for its corporate and
9 official network when those circuits and facilities
10 could be used to fill held orders and missed orders
11 produced by AT&T. So we think that that is relevant
12 to the issues in this complaint.

13 Number 88 requests documents regarding US
14 West's provisioning for itself and its customers, and
15 US West refers us to responses to Questions 6 and 38.
16 However, there were no documents produced in response
17 to either of those answers, and that question asked
18 for -- 88 asked for all documents related to how US
19 West provisions for itself and its retail customers
20 trunking facilities, interoffice facilities,
21 dedicated access facilities and other access-related
22 services.

23 Again, it's directly relevant to the
24 discrimination claims and these are the exact kinds
25 of facilities that we're talking about in the

00119

1 complaint. So we think it's very relevant. And US
2 West referring us to other answers does not give us
3 any useful information in this case.

4 Number 90 requests the detailed invoices
5 and services agreements regarding Enterprise. US
6 West gave us the contracts, but they did not give us
7 invoices that would show what kinds of business
8 dealings are going on between the two entities,
9 whether US West is unreasonably preferring Enterprise
10 with respect to its business dealings, as an
11 affiliate, as compared to how it treats AT&T and
12 other CLECs. So we think these invoices are
13 relevant.

14 US West also referred us to another
15 document, which discusses business relationships that
16 have occurred between Enterprise and US West.
17 However, again, those don't provide dollar amounts or
18 invoices. In fact, that was Number 30. Even though
19 we asked for referenced dollar amounts, those were
20 not provided, and in fact, the documents that were
21 produced were only for 1998, not for the other years
22 requested.

23 The last category, thankfully, is
24 forecasts. Request Number 5 is absolutely relevant.
25 I don't see any legitimate objection to this request.

00120

1 The request is, Describe in detail the processes and
2 methodologies US West employs in determining whether
3 to fund or fulfill access service requests, including
4 the identity of group or groups who participate in
5 the --

6 THE REPORTER: I'm sorry, I can't hear you.

7 JUDGE WALLIS: Ms. Tribby, I'm sorry to
8 interrupt, but the reporter is having trouble hearing
9 you.

10 MS. TRIBBY: Oh, I'm sorry. Is that
11 better?

12 THE REPORTER: Yeah, that's fine.

13 MS. TRIBBY: Decisions whether to fund or
14 fulfill access service requests go directly to AT&T's
15 allegations of held orders and lack of funding to
16 support AT&T's orders.

17 That's one of the main allegations in
18 AT&T's complaint, and AT&T fails to understand how
19 this is irrelevant, which is one of the objections,
20 or unduly burdensome.

21 Number 6 asks for processes used by US West
22 in making funding decisions to construct its own
23 facilities. Again, this would be compared to Number
24 5, which asks for how it funds those requests made by
25 interexchange carriers, and this information is

00121

1 necessary to determine whether US West is
2 discriminating in the way it makes funding decisions
3 and how it decides whether to fund requested
4 facilities when a lack of facilities exist in the
5 area where orders are being placed.

6 Number 13 also asks for, with respect to
7 lack of facilities, Please provide all plans to
8 provide relief. US West did provide a document
9 relating to certain areas where there were jobs
10 contemplated in the future, but it doesn't say
11 anything at all about what the relief plans are. It
12 simply gives a date and a dollar amount.

13 AT&T would request that any information
14 that's in writing that describes -- any additional
15 information that describes what those relief plans
16 are be provided, and think that that's subsumed
17 within that request.

18 Twenty-two, we've talked about. Twenty-six
19 asks for interoffice facility topology maps and,
20 again, identification of the routes that are nearing
21 capacity. Clearly, US West does have topology maps.
22 We think those are relevant, and one of the
23 allegations is lack of interoffice facilities, and
24 that US West has information internally regarding,
25 again, which routes are out of capacity or will be

00122

1 out of capacity. It may not keep those with respect
2 to specific areas on the map itself, but those can be
3 provided separately, both internal documents
4 regarding which facilities are unavailable or will
5 become unavailable, as well as interoffice facility
6 capacity.

7 The objection to this was that it was
8 irrelevant and burdensome. We don't think it's
9 either of those, and that the information sought is
10 competitively-sensitive. Again, that's an irrelevant
11 and inappropriate objection, given that there's a
12 proprietary agreement in place binding AT&T.

13 Thirty-three through 39 deal with, again,
14 budgets and capacity forecasts. Thirty-four, US West
15 responds asking for capacity forecasts, and AT&T
16 asked for this on a wire center-specific basis, so
17 this isn't a burdensome request.

18 US West's response is that, for some of
19 this information, it would require using non-Y2K
20 compliant systems. It didn't tell us which
21 information could be provided, nor did it provide any
22 information that evidently was not reliant on systems
23 that are Y2K compliant, so if there is information
24 that's available or if that information can be
25 reasonably produced in any form, that should be

00123

1 produced. That's not an appropriate objection to say
2 that some of the information would require a resort
3 to previously-used systems.

4 Thirty-four -- or 35 requested documents
5 regarding funding to meet forecasts, and US West
6 referred us to 34, and I just gave you the objection
7 to 34.

8 Thirty-five, we've talked about. That has
9 to do with litigation strategy. Thirty-seven was a
10 document that requested the documents relating to the
11 Work Force Administration, or WAFA, W-A-F-A.

12 US West came back with an attachment that
13 responded -- it was a confidential attachment, saying
14 that it couldn't produce these by wire center and
15 that it only keeps these documents for 45 days.

16 Well, again, the appropriate thing to do is
17 to produce these by either wire center or for the
18 state of Washington, however it keeps the
19 documentation. And if it doesn't keep it back to
20 1996, then it should at least produce it for the 45
21 days that it does keep that information. And if they
22 keep information that's archived that may not be in a
23 live system, but that's archived that goes back
24 beyond 45 days, that should also be produced if it's
25 available to be produced. And if it's not, we should

00124

1 be allowed to come and review that information.

2 Thirty-eight requested forecast documents.

3 US West provided one document, which was a computer
4 printout of the systems that are used in determining
5 forecasts. Well, again, we've asked for all
6 documents, and that's an insufficient description.
7 It doesn't provide any internal documents regarding
8 processes or procedures, what kind of things are put
9 into these computer systems to make forecasting
10 decisions, how funding approval is determined for
11 these decisions, and then they also refer to
12 Confidential Attachment B, which is processes for
13 forecasting for Washington, and again, this one says
14 we should contact Ms. Anderl to review at US West's
15 premises, and we don't think that that's appropriate.

16 Thirty-nine requests all documentation or
17 correspondence contained within US West's files
18 related to AT&T's forecasts for services or
19 facilities for Washington specifically from 1996 to
20 the present.

21 The only thing that was produced in
22 response to that was AT&T's first quarter 2000
23 forecast. There wasn't any explanation for why
24 nothing earlier than that was produced. And again,
25 what this is really getting to -- and part of the

00125

1 problem here is if you draft these responses too
2 narrowly, US West will come back and severely limit
3 its response, so you're trying to walk a fine line
4 between not making them too broad and not making them
5 too narrow.

6 But, obviously, what this is intending to
7 get to, again, is US West's internal policies and
8 procedures regarding how they use our forecasts, what
9 they do with them, especially given their objections
10 in their answer to the use of forecasts.

11 Number 57 requests agendas, meetings,
12 regarding capital budgets, growth and performance of
13 the network. Again, we think that that's relevant to
14 the discrimination issues and how US West is making
15 its funding decisions for both its internal expansion
16 and for its expansion for access facilities. We
17 would ask that those be produced.

18 Number 62 asks for US West business cases
19 regarding the construction of access facilities. US
20 West responds and says that it doesn't use business
21 cases for the construction of access facilities, but
22 it's AT&T's understanding that it uses business cases
23 to decide where those access facilities will be
24 constructed. So to the extent that that's the case,
25 AT&T's request is broad enough to uncover that kind

00126

1 of information, and that should be provided.

2 Sixty-nine and 70 request reports regarding
3 capacity and US West's planning for switching,
4 transport and access facilities, and 70 requests
5 documents regarding switch planning. No documents
6 have been produced, and again, we think both of these
7 are relevant with respect to US West's internal
8 policies and procedures for capacity planning, given
9 the allegations in our complaint regarding the lack
10 of capacity and the lack of available interoffice
11 facilities.

12 Number 73 requests reports from trunk
13 planners and forecasters. US West responds by saying
14 that they would have to go into the trunk archive
15 database. Any documents that are in the files of
16 Washington's trunk planner and trunk forecaster, of
17 which we understand there is one person, should be
18 provided, regardless of whether you have to go into
19 the trunk archive database. Again, this is a
20 severely limited reading of what we're requesting,
21 and we think that any documents related to trunk
22 planning and forecasting for Washington should be
23 provided with respect to that request.

24 To the extent that would involve securing
25 the trunk archive database, we think there are

00127

1 additional documents that aren't just included in the
2 trunk archive database that should be provided.

3 Number 84 requests documents regarding
4 ordering of equipment for access circuits. This is
5 obviously something that AT&T does and is the subject
6 of their complaint. We're referred to response 59.
7 Fifty-nine is just an objection, and that requests
8 all capital expenditures. However, 84 specifically
9 goes to equipment needed for access circuits, so we
10 think that should be given its own answer, and we
11 don't think that an objection is appropriate.

12 Eighty-seven requests documents regarding
13 the discretionary use of capital and equipment. US
14 West's response states that there is no discretionary
15 use of capital, but then it goes on to say funds are
16 made available in a discretionary manner and
17 engineering considers existing realtime situations
18 and conditions within the network and provisions
19 accordingly.

20 Well, obviously our request that asked for
21 all documents is broad enough to include any
22 documents that would talk about, when these funds are
23 allocated in a discretionary manner, how those
24 decisions are made and what kinds of things go into
25 the discretion. That's exactly what we're asking

00128

1 for. So that's an inappropriate objection and we
2 think that the documents that are being requested
3 here, again, are extremely relevant to the issues of
4 discrimination and how US West is making decisions to
5 expand interoffice facilities where none are
6 available.

7 And those are the specific requests that I
8 have responses to.

9 JUDGE WALLIS: Do you have anything further
10 in the way of a general response?

11 MS. TRIBBY: Your Honor, I would just
12 request that, you know, you look at these in whatever
13 is the most useful way, either by category or
14 individually, and look at the relevance of what's
15 being requested and look at US West's ability to both
16 prove its case, if it doesn't respond to these, as
17 well as AT&T's ability, as a Complainant in this
18 case, to probe and ask questions regarding the
19 allegations that it has made, but for which it does
20 not have internal documentation available.

21 This is the only way we know of to get the
22 information that's relevant to the allegations in
23 this complaint and that are relevant to the
24 discrimination statutes that are before the
25 Commission, so this is the only way we know to go

00129

1 about it, and we would ask you to seriously consider
2 this request.

3 Even putting aside the fact that we think
4 US West has ignored the deadlines that you set forth
5 in this case, we think that, in order to make this
6 useful going forward, an order detailing what US West
7 needs to respond to would be very helpful. Thank
8 you.

9 JUDGE WALLIS: Thank you. Ms. Anderl.

10 MS. ANDERL: Thank you, Your Honor. You
11 know, when Your Honor set the schedule in this
12 docket, I believe -- at least my understanding was
13 that your view was that they were fairly limited and
14 discrete issues susceptible of discovery and
15 testimony within the time allowed.

16 I certainly think that if AT&T wants to
17 hold to the current schedule, then they should be
18 held to the current level of discovery and
19 production, which I believe has been very reasonable,
20 has been based on well-founded objections, and has
21 produced volumes and volumes of documents to AT&T,
22 some of which they admittedly have not even been able
23 to review yet, the boxes of documents provided in
24 response to 54 and 55, which were provided some time
25 ago, I might add.

00130

1 If Your Honor does believe that certain
2 additional discovery is warranted and certain
3 additional limited production is ordered, then I
4 believe that, in fairness to all the parties, the
5 schedule has to be slipped.

6 AT&T would essentially be filing, I would
7 guess, some very summary testimony tomorrow or the
8 next day or sometime this week. I don't know what US
9 West's reply testimony would look like, based on what
10 would probably be a fairly slim filing, and then
11 AT&T's case would come in largely on rebuttal, and we
12 would be held to hearings.

13 And Your Honor, I know you're smiling at me
14 because of the AT&T -- or the Yellow Pages docket,
15 where US West filed a voluminous case on reply, or
16 rebuttal. However, what resulted there was
17 surrebuttal and a significant extension of the
18 schedule.

19 JUDGE WALLIS: Yes.

20 MS. ANDERL: And I do not believe that US
21 West is at fault in any way here with regard to the
22 schedule or the data requests. US West is, you know,
23 entitled, within the rules of the litigation that
24 we're in, to make objections and to have these type
25 of disputes brought forth and resolved, and I don't

00131

1 believe that any holding to the existing schedule as
2 a way of sanctioning US West would be appropriate at
3 all.

4 I don't think that AT&T is having this
5 matter heard on any sort of an expedited or rapid
6 paced schedule in any state other than Colorado. We
7 don't know whether the Colorado schedule will hold or
8 not. If it is true what AT&T contends, that the
9 problems that they're complaining of have been
10 building since the '95 or '96 time frame, certainly
11 two months added to the schedule or something
12 reasonable to allow AT&T to look at additional
13 documents and prepare its case in chief is certainly
14 well within the bounds of reasonableness and could
15 still complete this case by early to mid-spring.

16 And as I said, I would just ask you, in
17 considering this motion by AT&T, to consider the
18 volume of documents that US West has already
19 produced, to consider the volume of data requests
20 that AT&T propounded, and to make your decision
21 accordingly, affirming US West's current level of
22 production as appropriate, or granting an extension
23 of the schedule.

24 JUDGE WALLIS: Very well. Let's talk about
25 the mechanics of getting copies of the requests and

00132

1 the objections. If you think that a response --
2 looking at a response is necessary or helpful to
3 reviewing the basis for an objection, then I would
4 ask for that to be included, also. And I did hear
5 you volunteer to provide that information; is that
6 right, Ms. Anderl?

7 MS. ANDERL: Yes, Your Honor. The boxes of
8 documents that we have, as well as these accordion
9 folders, I don't know if you want those in addition
10 to what's here in the three-ring binder. They are
11 all responses to data requests that Ms. Tribby named,
12 you know, listed by number, and we can do that.

13 JUDGE WALLIS: My purpose in looking at a
14 response is only to evaluate an objection. That is,
15 to verify in those instances where US West objects on
16 the basis -- on a basis that is related to a response
17 that's already given in that -- to that request or
18 that's been given to another request.

19 So I will leave it to your discretion as to
20 whether to leave all of these documents -- or provide
21 all of these documents or not. I do not need to look
22 at these documents for any other purpose.

23 MS. ANDERL: Well, I mean, I guess I don't
24 -- I'm not too sure how -- we're still on the record;
25 right?

00133

1 JUDGE WALLIS: Yes.

2 MS. ANDERL: I'm not too sure how that
3 helps me, because say, for example, with 53, we do an
4 objection, and then we say, without waiver of this
5 objection, US West provides Confidential Attachment
6 A, which consists of the AT&T account team files
7 associated with escalations and expedites. It's, you
8 know, two and a half inches thick. I don't know if
9 --

10 JUDGE WALLIS: And if you think that
11 supports your objection and the position that you're
12 advocating at this time, then please include the
13 information.

14 MS. ANDERL: Well, the response per se
15 doesn't support the objection. The objection is what
16 it is and the response is, without waiving the
17 objection, here's what we provided. We definitely
18 think that, in combination, the two are very
19 reasonable.

20 JUDGE WALLIS: Then it sounds like you're
21 relying on that, in part, to support your position.

22 MS. ANDERL: I think I'll have to get you
23 everything, and that will take a little bit longer
24 than a day.

25 JUDGE WALLIS: Very well. Noon on

00134

1 Thursday?

2 MS. ANDERL: Yes, yes, we'll have this all
3 copied and delivered to you.

4 JUDGE WALLIS: Very well.

5 MS. TRIBBY: You'll be producing to the ALJ
6 all of the requests and all of the responses that
7 we've referenced in this call today?

8 MS. ANDERL: I actually think I might just
9 produce everything, because there's so few that
10 haven't been referenced.

11 MS. TRIBBY: Okay.

12 MS. ANDERL: If you don't object to that,
13 Mary.

14 MS. TRIBBY: I have no objection.

15 MS. ANDERL: And Your Honor, if you don't
16 mind, it's simpler for us to copy them all.

17 JUDGE WALLIS: I understand. Very well. I
18 will look forward to the opportunity to return them
19 to you.

20 MS. ANDERL: I'm certain that we can use an
21 extra set.

22 JUDGE WALLIS: So with that, I don't
23 believe that there is anything further, unless anyone
24 has an additional comment?

25 MS. TRIBBY: Your Honor, I would just

00135

1 comment briefly on the comments that Ms. Anderl made.

2 JUDGE WALLIS: Ms. Tribby.

3 MS. TRIBBY: AT&T is working very
4 diligently to keep this case on track. This is going
5 to hearing in Colorado in two weeks. We think it is
6 very important, regardless of what's happening
7 elsewhere, that this be kept on track. These are
8 customer-affecting issues and we have customers out
9 of service.

10 AT&T intends to file tomorrow more than a
11 sort of summary piece of testimony. We are filing a
12 piece of testimony in good faith that includes all of
13 the information currently in our possession that
14 we've had a chance to review that supports our case.
15 Obviously, there's additional information that we
16 need to support our case that's only available from
17 US West.

18 US West -- you've asked us not to
19 characterize or try not to characterize the other
20 parties' actions. I've tried to do that today. On
21 the other hand, I do believe that US West has not
22 liked the procedure from the beginning in this case
23 and the idea that if there are further discovery
24 disputes, this case should be pushed out I think is
25 highly inappropriate.

00136

1 US West could have responded, could have
2 made only legitimate objections and could have
3 responded to all of this discovery on a timely basis
4 to keep this schedule on track, and they have failed
5 to do so. I don't think that we or our customers
6 should be penalized by holding up the schedule. And
7 as you'll see tomorrow, we are making every effort to
8 proceed forward with the information that's currently
9 in our possession. So I just wanted to respond to
10 that briefly.

11 JUDGE WALLIS: Thank you, Ms. Tribby. Ms.
12 Anderl, is there anything further?

13 MS. ANDERL: No. Thank you, Your Honor.

14 JUDGE WALLIS: Very well. I want to thank
15 you both for your patience and tenacity and for
16 sticking with us as long as it's taken. I have asked
17 for an expedited transcript on this and will do my
18 best to get a response that addresses the issues that
19 you've raised as soon as feasible. Thank you.

20 (Proceedings adjourned at 5:11 p.m.)

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