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BEFORE THE WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of) Docket UT-030614
) Volume II
 QWEST CORPORATION) Pages 25-95
)
 For Competitive Classification)
 of Basic Business Exchange)
 Telecommunications Services.)

A prehearing conference in the above-entitled matter was held at 9:33 a.m. on Friday, September 12, 2003, at 1300 South Evergreen Park Drive, Southwest, Olympia, Washington, before Administrative Law Judge THEODORA MACE.

The parties present were as follows:

QWEST CORPORATION, by Lisa Anderl and Adam Sherr, Attorneys at Law, 1600 Seventh Avenue, Room 3206, Seattle, Washington 98191.

COMMISSION STAFF, by Jonathan Thompson and Lisa Watson, Assistant Attorneys General, 1400 S. Evergreen Park Drive, S.W., P.O. Box 40128, Olympia, Washington, 98504-1028.

PUBLIC COUNSEL, by Simon ffitich, Assistant Attorney General, 900 Fourth Avenue, Suite 2000, Seattle, Washington, 98164.

DEPARTMENT OF DEFENSE, FEDERAL EXECUTIVE AGENCIES, by Stephen S. Melnikoff, Attorney at Law, Regulatory Law Office, U.S. Army Litigation Center, 901 N. Stuart Street, Suite 700, Arlington, Virginia, 22203-1837.

Barbara L. Nelson, CCR
 Court Reporter

1 ADVANCED TELCOM GROUP, INC., by Richard
2 H. Levin, Attorney at Law, 3554 Round Barn Boulevard,
3 Suite 303, Santa Rosa, California, 95403.

4 WebTEC, by Arthur A. Butler, Attorney
5 at Law, Ater Wynne, 5450 Two Union Square, 601 Union
6 Street, Seattle, Washington, 98101.

7 WORLDCOM, INC., by Michel Singer
8 Nelson, Attorney at Law, 707 17th Street, Suite 4200,
9 Denver, Colorado, 80202.

10 AT&T, by Letty S.D. Friesen, Attorney
11 at Law, 1875 Lawrence Street, Suite 1500, Denver,
12 Colorado, 80202 (Appearing via conference bridge.)

13 INTEGRA TELECOM OF WASHINGTON, by Karen
14 J. Johnson, Corporate Regulatory Attorney, 19545
15 Northwest Von Neumann Drive, Beaverton, Oregon,
16 97006.

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1 JUDGE MACE: Well, let's be on the record in
2 the Matter of the Petition of Qwest Corporation for
3 Competitive Classification of Basic Business Exchange
4 Telecommunications Services. This is Docket Number
5 UT-030614. Today's date is September 12th, 2003. We
6 are convened for a prehearing conference at the
7 offices of the Washington Utilities and
8 Transportation Commission, at 1300 South Evergreen
9 Park Drive, S.W., Olympia, Washington.

10 My name is Theodora Mace. I'm the
11 Administrative Law Judge who's been assigned to hold
12 hearings in this case. The Commissioners will also
13 preside with me at the evidentiary hearings next
14 week.

15 I'd like to have the oral appearances of
16 Counsel now, and I'll begin on this side of the room.
17 But let me just caution you, if you have not entered
18 an appearance yet in this proceeding, I need to have
19 you make a full appearance, which means your name,
20 address, phone number, fax number, e-mail number, who
21 you represent.

22 MR. THOMPSON: Jonathan Thompson and Lisa
23 Watson, on behalf of Staff.

24 MR. FFITCH: Public -- excuse me. Simon
25 ffitich, Assistant Attorney General, on behalf of

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1 Public Counsel.

2 MR. BUTLER: Arthur A. Butler, on behalf of
3 WebTEC.

4 MR. MELNIKOFF: Stephen S. Melnikoff, on
5 behalf of the consumer interests of the Department of
6 Defense and all other federal executive agencies.

7 MS. ANDERL: Lisa Anderl, representing
8 Qwest.

9 MR. SHERR: Adam Sherr, for Qwest.

10 MR. LEVIN: Richard Levin, for Advanced
11 TelCom, Inc.

12 MS. SINGER NELSON: Michel Singer Nelson,
13 for MCI.

14 MS. JOHNSON: And Karen Johnson, for Integra
15 Telecom of Washington.

16 JUDGE MACE: And let me turn now to the
17 conference bridge. Is there anyone on the conference
18 bridge who wants to enter an appearance in today's
19 prehearing conference?

20 MS. FRIESEN: Yes, I would like to, Your
21 Honor. This is Letty Friesen, with AT&T.

22 JUDGE MACE: Thank you. Is there anyone
23 else on the conference bridge? Let's turn to my
24 agenda here. Well, I won't read through the agenda.
25 I'll just move through the items on it.

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1 The first item I have today is to ask you
2 all if there's anything you wanted to add to the list
3 of issues that you presented to me by noon yesterday?
4 Anything else you'd like to address at today's
5 hearing?

6 I wanted first to address the order of
7 presentation of witnesses for each party. My
8 understanding is that Qwest's order of witnesses,
9 Reynolds, Teitzel, Shooshan, is that how you say his
10 name?

11 MR. SHERR: It is, and that's correct order.

12 JUDGE MACE: For MCI, it's Gates and Stacey?

13 MS. SINGER NELSON: Yes.

14 JUDGE MACE: And for Staff, Wilson and
15 Williamson?

16 MR. THOMPSON: Correct.

17 JUDGE MACE: And my understanding is the
18 rest of the parties who are presenting witnesses
19 have only one witness. I want to turn your attention
20 to the cross-examination time grid. Yes.

21 MS. ANDERL: Oh, Your Honor, if we were
22 still going to talk about the order of presentation
23 of witnesses at a more granular level, in terms of is
24 AT&T going to go ahead of MCI --

25 JUDGE MACE: Actually --

0031

1 MS. ANDERL: Just for planning purposes.

2 JUDGE MACE: Is AT&T going to go ahead --
3 let's talk about the order of presentation of cases
4 -- of the case. That would be a good next thing to
5 do. I know the Public Counsel -- actually, this is
6 an issue that Public Counsel raised, and he suggested
7 the order Qwest, Staff, and then other parties at
8 random, and so let's address that issue. Why don't
9 you talk about why you suggested that?

10 MR. FFITCH: Thank you, Your Honor. We made
11 that proposal for two reasons. First of all, just
12 for logistical reasons, our witness, Ms. Susan
13 Baldwin, has a flight on Thursday afternoon, and so
14 we would like to make sure that she is finished and
15 can leave. We don't have cross for the intervenor
16 witnesses, so if she is first among the opponent
17 parties, that would be helpful to us logistically.

18 The second reason for proposing this
19 sequence is substantive. Because Staff is completely
20 aligned with Qwest on the merits, we believe it's
21 appropriate for them to go right after Qwest, for us
22 to hear, if you will, and be able to cross-examine
23 the complete case in support of the petition and then
24 to have all the cross-examination of parties in
25 sequence after that.

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1 JUDGE MACE: Does anyone have any problem
2 with that? Staff specifically, I suppose we should
3 turn to you first.

4 MR. THOMPSON: No, in fact, I think it's
5 consistent with the rules on order of evidence.

6 JUDGE MACE: That seems right, but -- all
7 right. So does anyone else have a problem with
8 having the proceeding order of presentation be Qwest,
9 Staff, Public Counsel? Is that what you --

10 MR. FFITCH: Yes, Your Honor.

11 JUDGE MACE: Qwest, Staff, Public Counsel.
12 And then we need to address which of the remaining
13 parties will proceed in which order. Does anyone
14 have a suggested order?

15 MR. BUTLER: Your Honor?

16 JUDGE MACE: Yes, Mr. Butler.

17 MR. BUTLER: I would request to be able to
18 go at the end.

19 JUDGE MACE: For cross-examination?

20 MR. BUTLER: Yes, for cross-examination,
21 yes. For cross-examination.

22 JUDGE MACE: Okay. But in terms of
23 presentation of your case --

24 MR. BUTLER: Oh, I'm sorry. I have no
25 witness.

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1 MR. FFITCH: Surprise witness.

2 JUDGE MACE: No, no surprise witnesses. All
3 right. So just arbitrarily say Qwest, Staff, Public
4 Counsel, MCI, AT&T -- I'm trying to remember the
5 witnesses now.

6 MS. ANDERL: Integra.

7 JUDGE MACE: And that's basically the
8 witnesses.

9 MS. ANDERL: The only other one is Integra,
10 Mr. Slater.

11 JUDGE MACE: Integra, Mr. Slater, right.
12 Thank you. And I'll put him at the very end, unless
13 you have an objection to that.

14 MS. JOHNSON: Your Honor, if he could go
15 Thursday morning, that would be the best for Mr.
16 Slater's schedule.

17 JUDGE MACE: Does anyone have a problem with
18 having a time certain for Mr. Slater?

19 MR. FFITCH: We may if we're not -- again,
20 because of Ms. Baldwin's plane schedule, I'd like to
21 get her finished by Thursday, midday, so --

22 MS. JOHNSON: He could probably go right
23 after Ms. Baldwin, I would assume.

24 MR. FFITCH: It's hard to know how this is
25 going to --

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1 JUDGE MACE: It's true.

2 MR. FFITCH: -- play out, but that would be
3 my only request. Is Mr. Slater traveling a long
4 distance or --

5 MS. JOHNSON: He'll be coming from Portland.

6 MR. FFITCH: Okay.

7 MS. SINGER NELSON: Do we plan to go through
8 Friday? Because both of the MCI witnesses are
9 scheduled to leave by Friday morning.

10 JUDGE MACE: We have scheduled for this case
11 Tuesday, Wednesday, and Thursday.

12 MS. SINGER NELSON: That's what I thought.

13 JUDGE MACE: All right. The order of
14 presentation is Qwest, Staff, Public Counsel, MCI,
15 AT&T and Integra, except that the Integra witness may
16 go on Thursday morning, depending on how
17 cross-examination of Ms. Baldwin goes.

18 Order of cross is probably getting pretty
19 granular, but maybe we could address it just briefly.
20 For the Qwest witnesses, I have Public Counsel going
21 first -- strike that. I have MCI, AT&T, the
22 Department of Defense, WeBTEC, ATG, and then Public
23 Counsel. I am happy to have another order of cross
24 if you have suggestions that would improve your
25 situation. I know you've talked, Mr. Butler, about

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1 wanting to go last.

2 MR. BUTLER: Yes, if I could go last, I
3 would prefer that.

4 JUDGE MACE: Anyone have a problem with
5 that?

6 MR. FFITCH: No objection.

7 JUDGE MACE: All right. We'll move you
8 last, then.

9 MR. SHERR: Your Honor, excuse me, this is
10 Adam Sherr. Could you repeat the order of cross?

11 JUDGE MACE: Okay. MCI, AT&T, Department of
12 Defense, ATG, Public Counsel, and WebTEC.

13 MR. SHERR: Thank you.

14 JUDGE MACE: And so for Staff, it would be
15 MCI, AT&T, Department of Defense, ATG, Public
16 Counsel, and WebTEC. For Public Counsel, it would be
17 Department of Defense, Staff, Qwest and WebTEC. Not
18 all parties are cross-examining each witness, so --

19 MR. MELNIKOFF: Could you say that order
20 again, please?

21 JUDGE MACE: Sure, Department of Defense,
22 Staff, Qwest, and WebTEC.

23 MS. ANDERL: Your Honor, we had discussed
24 informally with Staff, at least, that we would go
25 first on crossing some of the witnesses, specifically

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1 MCI. I don't know if we had had a broader
2 discussion, whether that was for all of the witnesses
3 or -- we're happy to precede Staff on all the
4 witnesses.

5 MR. THOMPSON: That would be our preference,
6 yes.

7 JUDGE MACE: All right. Then I'll just
8 change that around. And so for MCI, it would be
9 Qwest and Staff, and the same for AT&T. And for
10 Integra, Qwest is the only party that indicated
11 cross-examination questions. All right. Everybody
12 have that? Any problems with that?

13 MR. MELNIKOFF: Your Honor, on the -- for
14 Public Counsel, I might be able to eliminate a
15 considerable amount of cross if I go after one of the
16 others.

17 JUDGE MACE: Well, we have Qwest, Staff, and
18 WeBTEC.

19 MR. MELNIKOFF: If WeBTEC wants to go last,
20 that's fine. I don't -- it doesn't matter to me. I
21 was thinking of eliminating 15 minutes.

22 JUDGE MACE: If you were placed after Staff,
23 but before WeBTEC, how about that? It would be
24 Qwest, Staff, you, and WeBTEC.

25 MR. MELNIKOFF: That would be fine, if

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1 nobody objects.

2 JUDGE MACE: Anybody have a problem with
3 that? Okay. Well, let's turn to the
4 cross-examination time grid. One of the problems we
5 have is that the grand total that I came up with,
6 based on the information you provided me, was that
7 we'll have 30.5 hours of cross-examination and,
8 unfortunately, we have only three days of hearing,
9 and as the hearing days play out, usually in a
10 typical hearing day, there would be only about maybe
11 six hours of cross-examination time. So do the math.
12 It doesn't work.

13 So I'm -- you know, there's a possibility
14 that we could extend the hearing days. I have not
15 talked with the Commissioners about that, but even
16 so, that would make for very long hearing days. And
17 I want to encourage you, along the lines of what Mr.
18 Melnikoff just said, to try to see if there's a way
19 that you can pare down some of the cross-examination
20 time that you have shown on this grid.

21 I'm not going to ask you to do that right at
22 this moment, but I do want you to bear in mind that
23 we have limited time and really long hearing days are
24 really grueling.

25 MR. BUTLER: Your Honor, as with the

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1 duplication of exhibits, my expectation is that going
2 after the other parties in cross, that a lot of my
3 questions will get asked and answered, so that my
4 estimates were based upon the assumption that there
5 was going to be no duplication.

6 JUDGE MACE: Okay. All right. Well,
7 hopefully that will be the case and usually it is the
8 case, but I just wanted to call that to your
9 attention, because it is quite a disconnect between
10 the amount that you proposed and the amount of time
11 we have.

12 MR. THOMPSON: Your Honor, I don't know if
13 this is the time to bring it up, but I just realized
14 there's an error.

15 JUDGE MACE: Oh, in the math?

16 MR. THOMPSON: Well, no, in what it has for
17 Staff time here on the --

18 JUDGE MACE: Maybe I missed it. Yes, go
19 ahead.

20 MR. THOMPSON: For Mr. Cowan, if I'm saying
21 that correctly, we had 30 to 45 minutes for Staff.

22 JUDGE MACE: For Mr. Cowan?

23 MR. THOMPSON: Yes, and we actually did
24 intend to --

25 JUDGE MACE: You have 30 to 45 for Mr.

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1 Stacey, and 30 to 45 for Mr. Cowan? I'm sorry if I
2 misread that. I was just hoping that maybe --

3 MR. THOMPSON: That's right. And also, we
4 did actually intend to cross-examine Mr. Slater for
5 just 10 to 15 minutes.

6 JUDGE MACE: Okay. Did you indicate that in
7 your filing? I'm sorry if I missed it.

8 MS. ANDERL: And Your Honor, it looks like
9 the totals are correct, actually, after Staff
10 corrected their estimates, so --

11 JUDGE MACE: So maybe I just didn't put it
12 down on the grid. That's possible. Any other
13 corrections? I wouldn't be surprised, to tell you
14 the truth. That doesn't change the fact that it's
15 still a lot of cross-examination.

16 I'd like to address the question of the
17 post-hearing briefing schedule. That was raised, I
18 believe, by Staff. I have down on my prehearing
19 conference order notes that the schedule we agreed on
20 called for briefs October 6th.

21 MR. MELNIKOFF: I think that's right.

22 JUDGE MACE: Since the Commission has very
23 limited time to act, I don't know that we can change
24 that very much, if at all. Staff also raised the
25 question of post-hearing issues lists, and I would

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1 appreciate it if the parties would agree amongst
2 themselves on an order for the issues to be addressed
3 in the briefs. I guess, since Staff proposed it, I'd
4 ask Staff to make sure the parties are polled and we
5 develop an issues list for the post-hearing brief.

6 MR. FFITCH: Your Honor, as to the date for
7 the briefs, could we have an opportunity to revisit
8 that, knowing that that's the date right now, but
9 perhaps at some point, maybe at the end of the
10 hearing, just have a discussion about whether there's
11 any request or a need to adjust that?

12 JUDGE MACE: Certainly.

13 MR. FFITCH: I just -- I know I haven't
14 looked at my calendar to see if there's any reason
15 why I'd want to perhaps ask for a day or two. Maybe
16 other parties need to do that, too.

17 JUDGE MACE: Certainly, bearing in mind that
18 it's going to be really a tight time frame and there
19 isn't much fudge room there.

20 MR. FFITCH: I think the statutory deadline
21 is the 6th of November; right?

22 JUDGE MACE: I believe that's correct. So
23 certainly bring it up. AT&T treatment of discovery
24 materials. Ms. Friesen, I wasn't exactly certain
25 what you meant by that, and I'm wondering if you can

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1 tell us. It was an issue that you raised in your
2 filing yesterday. Could you tell us what you meant
3 by that?

4 MS. FRIESEN: Yes, what AT&T is proposing is
5 that there has been extensive discovery not only by
6 Staff, but by other parties in this proceeding, and
7 AT&T wanted to propose to the group that we have that
8 discovery admitted into the record, not necessarily
9 that we want to discuss each of those answers with
10 witnesses or cross-examine witnesses with those, but
11 rather that we can refer to them in briefing
12 materials.

13 So our proposal is to stipulate to the
14 discovery being admitted into the record, discovery
15 responses, I should say.

16 JUDGE MACE: Does any party here want to
17 address that?

18 MS. ANDERL: Yes, Your Honor. That's a
19 little irregular. I don't know if it's prohibited.
20 I don't -- I don't personally favor the idea, because
21 I believe that if a party wishes to have evidence in
22 the record, the party ought to be required to propose
23 those documents as exhibits and either offer them
24 through a witness and/or cross-examine on them.

25 I certainly have no intent of wanting to

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1 admit all of AT&T's discovery responses, so perhaps
2 AT&T's just suggesting that Qwest's responses should
3 come in, but we asked AT&T questions that, obviously,
4 for litigation strategy purposes, once we received
5 the answers, we don't see a need to put those in the
6 record, and I don't think people ought to be allowed
7 to import wholesale all of their data request
8 responses.

9 JUDGE MACE: So apparently I misunderstood.
10 I thought, Ms. Friesen, that you were talking about
11 just those discovery responses that have been marked
12 for cross-examination exhibits.

13 MS. FRIESEN: No, Your Honor, I was
14 suggesting all of them, because a lot of what Staff
15 is discussing in its direct testimony is based upon
16 the discovery that it did, rather extensive
17 discovery, I might add, and it's AT&T's thought that
18 it might be helpful to the record and to the
19 decision-makers to have that information available
20 for purposes of citing it.

21 It isn't a tactical thing, as Ms. Anderl is
22 suggesting. You know, AT&T isn't seeking any
23 advantage here by having its responses put into the
24 record wholesale, but rather all the responses from
25 all the parties based on the discovery that went into

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1 development of much of the testimony.

2 I understand that it is a bit irregular. We
3 have, however, done this in other dockets with Qwest
4 in other states and have found it to be somewhat
5 helpful, particularly since Qwest is seeking
6 statewide relief.

7 JUDGE MACE: Anyone else want to address
8 this?

9 MR. FFITCH: I have a question for Ms.
10 Friesen. Are you just referring to the discovery
11 directed at parties to the case, or are you also
12 referring to the CLEC data, so-called CLEC data
13 discovery that Staff did?

14 MS. FRIESEN: I'm referring, as well, to the
15 CLEC data. All of the data that went to the
16 foundation of the various pieces of testimony within
17 this proceeding.

18 MR. FFITCH: Your Honor, I -- as far as
19 Public Counsel's concerned, we don't have any
20 objection to that proposal. I think, in all candor,
21 it's fair to say that ordinarily our practice has
22 been here to have parties identify the specific data
23 request they want in the record, and we've done that.
24 For example, some of our designated exhibits are
25 simply -- we're just going to offer them through the

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1 witness and not do any examination on them. We just
2 want them to come into the record. I don't have any
3 objection to this particular proposal.

4 We have some specific issues with regard to
5 the CLEC data that I've noted on our filing, which
6 we'd like to discuss at the appropriate time.

7 JUDGE MACE: Staff.

8 MR. THOMPSON: Your Honor, it's my
9 understanding that if the issue is the raw, so to
10 speak, CLEC data that came in prior to being
11 aggregated by Staff, my reading of the Commission's
12 orders is that that information is sort of for
13 Staff's eyes only and has a higher confidentiality
14 than the aggregated data.

15 MS. FRIESEN: May I respond to that on what
16 AT&T's thinking is?

17 JUDGE MACE. Go ahead.

18 MS. FRIESEN: We aren't suggesting that
19 CLECs should see other CLECs' data, but rather that
20 the data should be available to the decision-maker
21 and ultimately the Commission in that regard. That's
22 why that would come into the record protected, as it
23 is protected today.

24 When we refer to using other data requests
25 like parties want to, I don't know if they do or

0045

1 don't, but attached to briefing material, I'm talking
2 about the material that is admitted -- or that might
3 be admitted into the record that is protected under
4 the sort of normal protective order and the other
5 stuff that is simply public information.

6 JUDGE MACE: Anyone else?

7 MS. ANDERL: Yes, Your Honor. I guess I
8 would like to just reiterate our concerns with having
9 data requests admitted, every single data request and
10 response admitted. There are a number of questions
11 that were asked that have nothing to do with the
12 underlying data that have to do with parties'
13 theories of the case or inquiring as to certain
14 specific assertions or allegations that an individual
15 party made in their testimony.

16 I do not believe that a party ought to be
17 allowed to import their responses if they didn't
18 include that information in their testimony if the
19 party who requested the information or another party
20 does not wish to propose those as exhibits. I think
21 it potentially -- doing something like this
22 potentially chills the discovery process, because it
23 disincentivizes parties from asking questions to try to
24 discover underlying facts if those facts turn out to
25 be ones the parties would not want to see admitted

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1 into evidence. I think it's very bad practice and we
2 would be opposed to it.

3 As to specifically underlying raw data, we
4 have no problem with that being in the record, but my
5 point is there's an awful lot of discovery out there
6 that is not that.

7 JUDGE MACE: Well, let me just indicate that
8 I am not going to agree to this proposal that all
9 exhibits be stipulated -- all discovery be stipulated
10 into the record. As you indicated, it's quite
11 irregular. I would be very uncomfortable about it.
12 Present the issue of -- presents the issue to me of
13 parties not having an opportunity to cross-examine on
14 on a document that may come in that they -- you know,
15 there may have been a discovery response to, but it's
16 not something they examined for the hearing and it
17 just -- I'm just concerned for the quality of the
18 record that that not happen, so I'm going to deny
19 that request.

20 MR. FFITCH: Your Honor, may I make just one
21 statement for the record?

22 JUDGE MACE: Certainly.

23 MR. FFITCH: I just wanted to clarify that,
24 by supporting the general request of AT&T, Public
25 Counsel did not mean to support the introduction into

0047

1 the record of the raw CLEC data, and we -- as I
2 indicated, we do have a separate issue with that,
3 which I'd like to raise at the appropriate time.

4 JUDGE MACE: Yes, I have it on the list of
5 issues to discuss.

6 MR. BUTLER: Your Honor, can I raise the
7 variation on that suggestion that I think that you
8 were assuming, and that is whether we couldn't
9 expedite things by reaching an agreement to stipulate
10 into the record those discovery responses that have
11 been identified as potential exhibits?

12 JUDGE MACE: Well, before I ask the parties
13 to address that, I would say about that the parties
14 are free to discuss that kind of stipulation and to
15 stipulate on the record to the admission of those
16 kinds of responses that are pre-marked. And so you
17 can do that, unless some party has an objection to
18 it, in which case they'll talk to you about it and
19 you won't be able to do it.

20 Does anyone want to address that further now
21 or can we just reserve that for the hearing?

22 MR. BUTLER: Is that acceptable to
23 everybody?

24 MR. SHERR: This is Adam Sherr, for Qwest.
25 I agree with Judge Mace, that that's a question that

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1 should be reserved. I mean, generally, generally,
2 the parties will stipulate to the admission of data
3 requests, but since, you know, speaking personally, I
4 don't have all of these data requests in mind and
5 don't know if there were objections interposed that
6 we would want to continue with, I'm uncomfortable
7 doing that now.

8 JUDGE MACE: Why don't you raise that
9 perhaps on Tuesday morning.

10 MR. BUTLER: If everybody can take a look at
11 it, it might save some time.

12 JUDGE MACE: Certainly, and that would be a
13 good thing. All right. Let's move now to Public
14 Counsel's request for official notice -- to take
15 official notice of the FCC Triennial Review Order,
16 the Seventh -- and the Seventh and Eighth
17 Supplemental Order in Docket Number UT-000883. Mr.
18 ffitch.

19 MR. FFITCH: Thank you, Your Honor. I also
20 wanted to orally add to that that we would like the
21 Bench to take official notice of the testimony of
22 Staff in the Docket UT-000883. I apologize for not
23 including that before.

24 Your Honor, the Triennial Review Order
25 obviously has been referred to by I think every

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1 witness in the case, and I suspect will be discussed
2 during the hearing. I believe it should be made a
3 part of the record through official notice so that it
4 can be referred to during the hearing and also in the
5 briefing phase.

6 Essentially, the same point goes for the
7 orders in the last competitive classification case.
8 Not every witness discusses them, but they are
9 referred to -- I would expect that they would come
10 up. We may want to do some cross-examination with
11 regard to those orders, and that also applies to
12 Staff testimony in that case.

13 JUDGE MACE: I'm just briefly reviewing the
14 Commission's rule on official notice. Is that what
15 you're citing for authority for --

16 MR. FFITCH: Yes, Your Honor.

17 JUDGE MACE: -- for the testimony? And
18 under what portion of that rule?

19 MR. FFITCH: I apologize. I don't have the
20 rule in front of me, Your Honor. I believe there is
21 a -- one of the subsections refers to documents and
22 records of the Commission, and I believe there's a
23 reference to orders. I apologize. I didn't bring
24 that rule with with me today.

25 We have had -- the reason why I asked for

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1 this was we have, I think, had a practice of and been
2 advised by judges not to mark items of this type as
3 cross-examination exhibits, because they could simply
4 be taken notice of, so --

5 JUDGE MACE: Well, it occurs to me that, as
6 far as Staff testimony, if you're cross-examining
7 Staff in this case, you can refer to their earlier
8 testimony and test their -- compare their testimony
9 in a prior case with this case. I don't see any
10 farther than that, whether I take notice or not.

11 Are you asking that the whole testimony be
12 taken notice of, or are you planning simply to
13 cross-examine with regard to some of that testimony?

14 MR. FFITCH: It would be the latter, Your
15 Honor, at this point.

16 JUDGE MACE: I don't see any problem with
17 it. If there's an objection at the time, we can deal
18 with it, but I think you can be perfectly free to
19 question a witness with regard to their prior
20 statements.

21 MR. FFITCH: This might not be the testimony
22 of the particular Staff witness; it would be
23 testimony of a different witness for Staff.

24 JUDGE MACE: Well, I would say -- well,
25 bring copies of any testimony that you intend to

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1 cross-examine on. I would also say that -- to keep
2 in mind that the Commissioners are going to be
3 sitting on the bench, and if there is an objection, I
4 would have to confer with them with regard to a
5 ruling.

6 If it's the testimony of another witness,
7 another Staff witness, I guess that's a little bit of
8 a gray area, just because it's a different person,
9 but it is Staff and, you know, I guess I can see that
10 you might have some grounds for questioning a Staff
11 witness in this case about a Staff position in
12 another case. But, anyway, does anyone else want to
13 address this?

14 MS. ANDERL: Your Honor, just briefly, I
15 don't think that Commission orders or FCC orders are
16 ones that are required to have official notice taken
17 of them. In the past, the Commission has announced
18 that it -- parties may cite to and refer to the
19 Commission's own orders and FCC orders as just legal
20 documents that -- you could cite to a Supreme Court
21 case. You wouldn't have to take official notice of
22 it. I don't think that that's necessary.

23 I do think that the Staff testimony issue is
24 -- I don't want to say fraught with problems, but I
25 think that there are a lot of issues underlying that,

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1 including what testimony Public Counsel would want to
2 use for what purposes, and I don't think it's -- I
3 think it's appropriate if Public Counsel wants to
4 offer it as a cross exhibit, but I don't think it's
5 an appropriate document for the Commissioners to take
6 official notice of at this time without knowing more.

7 JUDGE MACE: Anyone else want to address
8 this? Well, as far as the testimony of Staff
9 witnesses in another case, if you bring copies of
10 that and if you are -- if you want to, you can
11 cross-examine with regard to that material witnesses
12 in this case. There may be objections and we'll deal
13 with those objections as they come.

14 With regard to taking notice, I think that
15 the Commission's Rule 740 gives me discretion to do
16 that, but the truth is, I think you can cite any
17 Commission order and the FCC Triennial Review Order,
18 and you can cross-examine on those orders.

19 Again, I'd ask you to bring copies with you
20 so that, for example -- or a copy or two, so that,
21 for example, if you're cross-examining a witness, you
22 can give the witness a copy and have one for
23 yourself. And I'm assuming that everybody in the
24 room will already have copies, since we've talked
25 about these two Commission orders and the Triennial

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1 Review Order, that you already have copies that
2 you'll bring with you.

3 MR. FFITCH: Thank you, Your Honor. Mr.
4 Melnikoff's kindly given me a copy of the rule, and I
5 think we are talking about 480.09.750, if that is the
6 --

7 JUDGE MACE: Did I say 740? 750, right.

8 MR. FFITCH: The copy I have in front of me
9 refers to rulings and orders of the Commission and
10 other governmental agencies under 2(a)(i)(A), anyway,
11 but there is a specific reference there. Thank you,
12 Your Honor. That will give us the direction we need.

13 JUDGE MACE: Thank you. Let's turn to the
14 admissibility of CLEC data. That's the next Public
15 Counsel issue.

16 MR. FFITCH: Your Honor, I just wanted to
17 advise the Bench and the other parties that we intend
18 to object to the admission of CLEC data in a couple
19 of different ways in this proceeding. I want to do
20 that at the appropriate time. It may be now or it
21 may be at the time that the exhibits are offered.

22 JUDGE MACE: I would say it's at the time
23 the exhibits are offered, primarily because I'm sure
24 the Commissioners will want to hear the argument with
25 regard to that.

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1 MR. FFITCH: These are, as a practical
2 matter, Your Honor, objections that we had raised
3 previously to the provisions of the protective order
4 and the Commission's orders which preclude Public
5 Counsel from looking at the raw CLEC data, so we're
6 going to be objecting to the admission of Staff
7 testimony, which includes any references to raw CLEC
8 data or which is based upon an analysis of raw CLEC
9 data, which we have not had an opportunity to review.

10 JUDGE MACE: Again, I think that that's best
11 raised at the time that it becomes an issue in the
12 hearing. I would caution that you may want to
13 indicate in your argument that your argument -- where
14 your arguments are similar to arguments already
15 raised so that you don't spend time arguing
16 unnecessarily before the Bench at that point.

17 MR. FFITCH: Well, the reason that I --
18 thank you, Your Honor, we can do that. The reason
19 that I raised it now is that it would be in the
20 nature of a continuing objection, and if you'd like
21 us to make it for the record today --

22 JUDGE MACE: Oh.

23 MR. FFITCH: -- that would be -- it would be
24 -- you could make a ruling and we could, you know,
25 add to the efficiency of the hearing.

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1 JUDGE MACE: That would be fine with me.

2 MR. FFITCH: And obviously if we --

3 JUDGE MACE: And I can just note your
4 continuing objection at this point.

5 MR. FFITCH: If we prevail, that will
6 change, of course, the exhibits that go into the
7 record, and that will be helpful to know before the
8 hearing begins on Tuesday, so I could make that
9 record -- that objection for the record right now,
10 Your Honor, if you'd like to do that.

11 JUDGE MACE: I guess I misunderstood what
12 you're aiming at.

13 MR. FFITCH: Ordinarily, this would be --

14 JUDGE MACE: Just a moment. Well, what I
15 want to propose is this, that I would hear your
16 arguments about this right now and anyone else's
17 arguments in opposition, and I can consult with the
18 Commissioners about it and rule on it on Tuesday
19 morning, but I'm afraid that would be the earliest
20 that there could be a ruling on it. And I'm saying
21 that in the interest of trying to save time during
22 the hearing so that we can spend time taking evidence
23 as much as possible. Would that be agreeable to you?

24 MR. FFITCH: Yes, thank you, Your Honor.

25 JUDGE MACE: All right. Go ahead, then.

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1 MR. FFITCH: At this time, for the record,
2 in this proceeding, Public Counsel would like to
3 enter a continuing objection to any testimony or
4 exhibit offered in the case which is based upon the
5 confidential CLEC data, which is being referred to as
6 the raw data, which was provided to the Commission
7 Staff pursuant to Commission order and was not made
8 available to Public Counsel. In fact, was not made
9 available to any other party, but specifically not
10 made available to Public Counsel.

11 In addition, we would object to the
12 introduction of any of that raw CLEC data into the
13 record in this proceeding, either directly or through
14 references in the testimony of Staff witness or any
15 other witness, but presumably it would only be
16 through a Staff witness, since they are the only ones
17 who have access.

18 The first objection relates to the
19 aggregations which have been prepared by Staff and,
20 in particular, Staff witness Mr. Wilson, and attached
21 to his testimony.

22 In essence, these objections restate the
23 objection which we made earlier in the proceeding to
24 the issuance of a highly-confidential protective
25 order, in general, and issuance of the order of the

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1 Commission which established that the data would be
2 provided to Staff, but would not be made available to
3 Public Counsel.

4 I'm making the objection at this time, Your
5 Honor, rather than at the time of the convening of
6 the evidentiary hearing for purposes of judicial
7 efficiency, to advise the Bench and the parties that
8 we will be making this, but we would like to have it
9 treated as if it were being made at the time of the
10 introduction of this evidence and noted for the
11 record as a continuing objection.

12 JUDGE MACE: Thank you. Any responses to
13 this objection?

14 MR. BUTLER: Your Honor, WeBTEC concurs and
15 would join with the objection of Public Counsel.

16 JUDGE MACE: Anyone else?

17 MR. MELNIKOFF: Department of Defense also
18 concurs and supports it.

19 JUDGE MACE: Any opposition?

20 MR. THOMPSON: Just for clarification, on
21 the WeBTEC and Department of Defense support of the
22 objection, is it -- the question to them, is it their
23 position that they should also have access to the
24 underlying data, or that just Public Counsel should?

25 MR. BUTLER: From WeBTEC's standpoint, it

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1 has been our position -- it has been our position
2 when this issue has come up before and continues to
3 be our position that we should have access to the
4 data, as well.

5 So we object to the introduction of evidence
6 into the record that we have not had an opportunity
7 to see or to the introduction of testimony or other
8 evidence based upon data or evidence that we have not
9 been able to see.

10 MR. LEVIN: Your Honor.

11 MR. MELNIKOFF: And the Department of
12 Defense has the same position.

13 MR. LEVIN: Your Honor, I had not -- this is
14 Richard Levin, on behalf of ATG.

15 JUDGE MACE: Thank you.

16 MR. LEVIN: I had not planned to take a
17 position on this, but something rather alarmed me in
18 something that Mr. ffitch had said, and certainly, to
19 the extent that Staff would contemplate, which I
20 doubt they are, but to the extent that they would
21 contemplate the possibility of nonaggregated CLEC
22 data coming into the record, we would object strongly
23 to that.

24 JUDGE MACE: Well, so your -- do you oppose
25 Public Counsel, WebTEC, and Department of Defense

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1 having access to the raw data?

2 MR. LEVIN: Yes. We don't, to the extent
3 that the raw data is under the confidentiality order,
4 we probably would not object to Public Counsel having
5 access to it, but we would object to the other
6 parties. I think, with respect to the use of the
7 data at the hearing, though, we would object
8 strenuously to any use of the raw data, nonaggregated
9 data at the hearing by any party.

10 MS. JOHNSON: And Your Honor, Integra weighs
11 in with ATG on that same issue.

12 MS. FRIESEN: Likewise, AT&T does, as well.

13 MR. THOMPSON: If I may interject on behalf
14 of Staff, I think it would be helpful to know if
15 there are any CLEC parties that object to Public
16 Counsel, as opposed to the other parties, having
17 access to the raw CLEC data? I gather the answer is
18 no?

19 JUDGE MACE: Mr. Levin.

20 MR. LEVIN: Yes, I think we just stated that
21 we wouldn't object to Public Counsel having access,
22 subject to the protections of the confidentiality
23 order. It was the other parties that we objected to,
24 and we also objected to the use of the raw data by
25 any party in the record.

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1 JUDGE MACE: MCI?

2 MS. SINGER NELSON: MCI doesn't have a
3 position on this issue.

4 JUDGE MACE: Thank you. Integra.

5 MS. JOHNSON: We agree with ATG, Your Honor.
6 Public Counsel could see the raw data.

7 JUDGE MACE: And AT&T?

8 MS. FRIESEN: AT&T is generally hesitant to
9 allow confidential data to be disclosed to more
10 people than --

11 JUDGE MACE: I'm sorry, I'm not hearing you,
12 Ms. Friesen.

13 MS. FRIESEN: AT&T has concerns about
14 broadening disclosure generally. With that
15 understanding, AT&T nonetheless would allow Public
16 Counsel to see its disaggregated data, but quite like
17 ATG, AT&T does not want it disclosed to other
18 parties.

19 JUDGE MACE: Thank you.

20 MR. FFITCH: Your Honor, if I may just make
21 one additional comment just for the record, we -- in
22 my initial argument, I did not go into detail about
23 the support for our position. That's been laid out
24 in our prior motions on this issue.

25 But very briefly, we rely on RCW 80.04.095,

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1 and we rely upon the fact that the interests of the
2 confidentiality protections really can still be
3 protected by allowing Public Counsel access, because
4 we are not a competitor party.

5 MR. SHERR: Your Honor, this is Adam Sherr,
6 for Qwest. I find myself a little confused. I
7 thought Public Counsel's motion was to exclude the
8 raw data itself from being admitted, and also any
9 testimony or exhibits that relies upon it. We're
10 also now discussing whether Public Counsel should
11 have access to it. I think those are two separate
12 issues. I'm happy to address them each separately.

13 JUDGE MACE: Go ahead.

14 MR. SHERR: Okay, thank you. In terms of
15 Public Counsel's motion to oppose the introduction of
16 any exhibits or testimony that rely or refer to the
17 CLEC data, Qwest would vigorously oppose that. As I
18 sit here, I don't think I could identify every piece
19 of testimony that would be called -- that would be
20 excluded under that, but I think a great deal of Mr.
21 Wilson's testimony and exhibits, some of Qwest's
22 witnesses, testimony and exhibits would be excluded,
23 possibly even some of Public Counsel's, and so to the
24 extent that was the motion made, we would oppose
25 that.

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1 Public Counsel, as he indicated -- and I
2 should start by saying I appreciate Public Counsel
3 bringing this issue up now. I think it's appropriate
4 and it's helpful that it was brought up early. And
5 to the extent that Public Counsel is raising issues
6 that it has raised already, the Commission's already
7 ruled on whether this was the appropriate way to
8 gather this data for this particular use, so I won't
9 reiterate the analysis there.

10 But second, admitting the raw data for in
11 camera review, which is what I had at least
12 personally believed was going to occur, seems to
13 alleviate a great deal of the concern that Public
14 Counsel has, because it allows the Commission and
15 allows the Commission's advisers to corroborate or
16 not corroborate Staff's aggregation, and so it seems
17 like that would be useful.

18 JUDGE MACE: It's a little different than
19 giving the information to Public Counsel.

20 MR. SHERR: It is, and that's why I stated I
21 had confusion, because I didn't understand that was
22 the issue.

23 As to whether Public Counsel should be able
24 to see the underlying data, Qwest is not opposed to
25 that. That's fine with Qwest. But what Qwest is

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1 very concerned about is if every piece of testimony
2 and exhibit to testimony or data request response
3 which is going to be an exhibit is now going to be
4 excluded if it refers or relies on Staff's
5 aggregation of that data. That's a great deal of
6 what has been proposed.

7 JUDGE MACE: Anyone else want to address
8 this issue?

9 MS. SINGER NELSON: Judge, Michel Singer
10 Nelson, on behalf of MCI. I would just join in what
11 Mr. Sherr just said about the ability of the parties
12 to cross-examine based on their knowledge of the
13 underlying data and to perhaps question the way that
14 the aggregation was done.

15 So I would agree with Mr. Sherr's position
16 on whether or not that information should be
17 available to the Commissioners and should be subject
18 to cross-examination.

19 JUDGE MACE: Okay. I must have missed
20 something and I just want to make sure I'm clear. I
21 understood you to say that you were opposed to the
22 elimination of testimony based on the CLEC data. Did
23 I miss that you are -- you are also objecting to that
24 testimony and -- because you want to have access to
25 the data?

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1 MR. SHERR: No, not at all. You had it
2 right. I believe Ms. Singer Nelson was saying that
3 she supported Qwest's position that the parties
4 should be able to cross-examine with regard to the
5 CLEC data.

6 MS. SINGER NELSON: Yes.

7 MR. SHERR: And the way it was aggregated.
8 So it wasn't exactly the perspective that I came
9 from, but I think it was consistent.

10 MR. THOMPSON: Well, and Your Honor, on
11 behalf of Staff, obviously I guess it goes without
12 saying, but we're certainly opposed to the
13 elimination of testimony or exhibits that are based
14 on the CLEC data, because, as Mr. Sherr pointed out,
15 that comprises most of Mr. Wilson's testimony.

16 JUDGE MACE: Certainly.

17 MR. FFITCH: May I make an inquiry, Your
18 Honor, while you're thinking? I think perhaps
19 there's a question hanging out there and certainly in
20 my mind about whether the raw CLEC data is coming
21 into the record. That's really the question for --

22 JUDGE MACE: Well, we've alluded to -- this
23 has been a very free-ranging discussion, actually,
24 not very disciplined, but a number -- several issues
25 have crossed my mind as you've been arguing, and one

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1 of them is this question of admitting the data for
2 purposes of in camera review. Another one is the
3 question of how much cross-examination about the
4 methodology for the aggregation and how much of that
5 can be allowed, how far can it go. That's a question
6 that probably will be addressed during the hearing.

7 Someone did raise this issue of presenting
8 the CLEC data for in camera review. What exactly did
9 you have in mind there?

10 MR. SHERR: This is Adam Sherr, for Qwest.
11 All I meant was that the raw data would be admitted
12 to the record for the Commissioners' eyes only.
13 That's all I meant by that. That way, that the
14 Commission and its advisers have the underlying data
15 to scrutinize how Staff aggregated the data.

16 MS. SINGER NELSON: Judge, I would join with
17 that.

18 MR. FFITCH: And Your Honor, I think that
19 highlights the very reason for our objection. If
20 parties, and I believe parties should have the
21 opportunity, assuming that the aggregation comes into
22 the record through Mr. Wilson's testimony, if parties
23 are going to cross-examine or going to be able to
24 cross-examine Mr. Wilson on that as they should be
25 able to, assuming we lose our motion, clearly the

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1 ability of parties to -- ability of Public Counsel
2 specifically to cross-examination on the aggregation
3 is significantly impaired by not having access to the
4 raw data.

5 And I would suggest that then providing the
6 raw data to the Commission to review without any
7 party having an opportunity to comment on the raw
8 data specifically or its relationship to the
9 aggregations would be objectionable, as well, for the
10 same reasons that we're raising this objection in the
11 first place, in essence.

12 JUDGE MACE: Yes.

13 MS. FRIESEN: Your Honor?

14 JUDGE MACE: Yes, Ms. Friesen.

15 MS. FRIESEN: I tend to concur with Public
16 Counsel, that it is difficult to challenge the
17 aggregation process without access to the raw data.
18 AT&T's concern is that that raw data can't be
19 disclosed or should not be disclosed among all the
20 parties.

21 As a consequence, I believe that if Public
22 Counsel had access to that and could cross-examine
23 Staff on its aggregation process, that may solve the
24 problem. I recognize that it makes it difficult for
25 other parties, but AT&T would not support the

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1 disclosure of our raw data to parties, other than
2 Public Counsel, for the purpose of cross-examining
3 these witnesses, these Staff witnesses.

4 So I'd like to suggest that maybe if we
5 could figure out a way to conduct the hearing such
6 that Public Counsel can cross-examine based on the
7 raw data, we would clear the room or something like
8 that so that Staff or so that the Commission and the
9 ALJ would have an opportunity to hear about the
10 aggregation process from an entity that is not in
11 favor of the petition necessarily, I think that
12 provides a more balanced view.

13 JUDGE MACE: Does anyone, any party have a
14 comment on this AT&T proposal?

15 MR. LEVIN: We have no objection to AT&T's
16 proposal. It sounds like a good idea, speaking for
17 ATG.

18 MS. SINGER NELSON: Michel Singer Nelson, on
19 behalf of MCI. I would agree with AT&T's proposal,
20 as well.

21 MS. JOHNSON: Karen Johnson, on behalf of
22 Integra. I'd also agree with AT&T.

23 MS. ANDERL: Your Honor, on behalf of Qwest,
24 I just would like to clarify. Ms. Friesen referenced
25 clearing the room, and my understanding is that

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1 counsel would still be allowed to be in the room
2 during the cross-examination and there would be
3 cross-examination done about the aggregation process,
4 but that would not disclose disaggregated data or
5 CLEC identities.

6 MS. FRIESEN: Ms. Anderl, I had anticipated
7 that, of course, counsel could be there if it
8 wouldn't disclose the disaggregated raw data. On the
9 other hand, if it does disclose it and -- I think the
10 question remains whether or not counsel ought to be
11 allowed to stay there, but certainly witnesses and
12 other parties that have not been allowed access to
13 that raw data should not be in the room at that time
14 if it's used during cross-examination, if it's
15 revealed during cross-examination.

16 JUDGE MACE: Mr. Melnikoff.

17 MR. MELNIKOFF: Your Honor, that comment
18 raises a question in my mind. Is the objection by
19 the CLECs to WeBTEC and DOD's access to the raw data
20 broadly based, so that if it were only limited to
21 counsel for WeBTEC and counsel for DOD, would they
22 still object to disclosure of that material, DOD and
23 WeBTEC not being competitors?

24 MR. LEVIN: Your Honor, we have concern with
25 disclosure to customers, as well as to competitors,

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1 so yes, we would have that concern.

2 JUDGE MACE: And Integra agrees, as well.

3 MS. JOHNSON: Yes, Your Honor.

4 MS. FRIESEN: AT&T agrees, as well.

5 MR. FFITCH: I'll make one observation, Your
6 Honor, which is while I appreciate the effort to try
7 to work through this problem, I'll just make a
8 practical observation here, which is that there may
9 be some practical limitation on our ability to, you
10 know, prepare to do cross-examination, review this
11 data and prepare for cross-examination in this time
12 frame.

13 We've understood from Staff that the review
14 of the data was difficult and time consuming, and we
15 would make our best efforts if that opportunity were
16 provided to us, but would have to note for the record
17 that it might not be an adequate time to review the
18 data. We certainly would, again, need to look at it,
19 see how much is there, see whether it's practical,
20 and would -- if we were provided with that
21 opportunity, make our best efforts to avail ourselves
22 of it.

23 JUDGE MACE: Yes, I certainly couldn't
24 promise you that we would change the hearing times,
25 but I can try to consult today with the Commissioners

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1 and see what their ruling would be on this issue.
2 And if they agreed, then perhaps you could have
3 access to the information as early as it could be
4 gotten to you prior to Tuesday, for example, but I
5 can't promise -- I'd have to consult.

6 And let me make sure that I understand, that
7 it sounds like the parties do not object to Public
8 Counsel having access to the CLEC disclosed data for
9 purposes of preparing for cross-examination in this
10 case, so long as if cross-examination involves that
11 data, that the hearing room be cleared and that the
12 Bench be able to hear the cross-examination, Public
13 Counsel's examination of Staff's witnesses on that
14 issue.

15 I understand that there are objections from
16 DOD and from WebTEC that they would want to have
17 access to that data, but -- but let me just ask
18 whether or not, aside from their own positions, they
19 have an objection to Public Counsel having access to
20 the data? If you can make a statement about that.

21 MR. BUTLER: From WebTEC's perspective, as a
22 general matter, we object to anything becoming part
23 of the record in the proceeding, potentially a basis
24 for the Commission's decision, that we have not had
25 an opportunity to see, to cross-examine about. We

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1 think it's a denial of fundamental due process
2 rights.

3 If this data, which has not been made
4 available to other parties, in other words, the raw
5 CLEC data, is to be made available as part of the
6 record for a potential part of the basis for any
7 Commission decision, then obviously at least having
8 Public Counsel look at it is better than nothing, but
9 it doesn't cure the prejudice to WeBTEC, and I would
10 think to other parties, as well.

11 JUDGE MACE: And Mr. Melnikoff.

12 MR. MELNIKOFF: Our position would be the
13 same, particularly that -- based upon the rationale
14 that Public Counsel cannot represent the interests of
15 the federal government, their consumer interests.

16 MR. LEVIN: Your Honor, I also wanted to
17 mention that there was one other condition that we
18 had on Public Counsel access, and that was that
19 Public Counsel sign the highly-confidential version
20 of the confidentiality agreement.

21 MR. FFITCH: I'm not sure I understand the
22 request. We have -- we are subject to the highly
23 confidential protective order, but under the special
24 provisions of that order, the Commission's most
25 recent order sort of preserves the Staff, Public

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1 Counsel carveout, where in effect there are no
2 special limitations in terms of affidavit filing or
3 use of outside counsel or Staff or expert
4 requirements, although, as a practical matter, we are
5 using an outside expert, so I'm not sure what
6 additional you would have us do.

7 MR. LEVIN: I'm sorry, I may have missed
8 that. But what -- I was concerned primarily with the
9 treatment of the data inconsistent with it being
10 highly confidential, as opposed to being
11 confidential. That's all.

12 MR. FFITCH: I think, as a practical matter,
13 certainly the data would still be confidential in the
14 way that the aggregate data is confidential. We
15 would be abiding by the terms of the protective order
16 to protect it, not seeking to treat it as completely
17 unprotected information.

18 I will just make a statement for the record
19 that Public Counsel agrees with the assertions of
20 WeBTEC and Department of Defense that there are due
21 process implications for preventing other parties
22 besides Public Counsel to have access to this
23 information. We are particularly advocating our
24 views on behalf of the Public Counsel office because
25 of our special statutory role. However, we support

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1 the efforts of other parties to also have a fair
2 hearing process.

3 JUDGE MACE: Is there anything else on this
4 issue? Mr. Melnikoff.

5 MR. MELNIKOFF: Your Honor, in order to
6 shorten the deliberation time and maybe get Public
7 Counsel started over the weekend, if they so choose,
8 I would -- not to denigrate the authority of the
9 Commission on this matter, but if the other parties,
10 the parties whose data the raw data belongs to or
11 comes from, consents and is willing to give access
12 immediately, is that something that needs to go
13 directly to the Commission and wait till Tuesday?

14 JUDGE MACE: Well, the issue there was
15 addressed to some extent in the ruling on Public
16 Counsel's motion, and of course the individual CLECs
17 can provide Public Counsel with the data, but I think
18 it's logistically a difficult thing for them to get
19 it -- for Public Counsel to get it from all those
20 diverse other sources at this point. The parties in
21 this room may be able to provide the data, but there
22 are numerous other CLECs that responded, as I
23 understand.

24 MR. THOMPSON: That's correct.

25 JUDGE MACE: And I think the best way would

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1 be through receiving the data that Staff has
2 received, if that's going to happen. Anybody have
3 anything they want to add to that?

4 MR. THOMPSON: I would just second that
5 there's another interest, other interested parties
6 besides those that are actually parties to this case,
7 that is the CLECs.

8 JUDGE MACE: And that's a good point, and
9 that's another -- thank you for raising that. We
10 haven't heard anything from the CLECs who have
11 submitted information in a highly-confidential basis
12 who are not here and not parties, and I'm not -- I'm
13 not certain that the Commission could -- whether the
14 Commission could rule to allow Public Counsel access
15 to that information. That would be something that we
16 would have to discuss or deliberate on. All right.
17 Thank you.

18 Let's turn now to the next item, and that
19 was the need for closure of hearings for examination
20 on confidential information. This, I think, is a
21 little different than the issue about the CLEC data.
22 There may be other confidential information upon
23 which parties wish to cross-examine. My review of
24 the protective order is that whichever counsel wishes
25 to cross on confidential data needs to advise the

0075

1 Bench and then the hearing room needs to be cleared
2 of those persons who have not signed an agreement
3 with regard to that data. That would be the
4 procedure I would intend to follow.

5 I think the rule also asks the parties to
6 try to curb the amount of that that they need to do
7 by referring obliquely to information or exhibits and
8 trying to find other ways around it so that we don't
9 have to get into the detail of the actual exhibits.
10 Anybody want to address this or have other
11 suggestions?

12 MR. FFITCH: Well, Your Honor, we put this
13 on the list, and the reason is that -- I agree with
14 everything you've said, and certainly I think we've
15 been able in many Commission hearings to use the
16 oblique reference approach pretty effectively. In
17 looking at the exhibits and the testimony in this
18 case, however, it occurred to me that it might be, in
19 fact, very difficult to do that. Almost every
20 exhibit that's attached to Staff's testimony, to
21 Susan Baldwin's testimony, is marked confidential, a
22 tremendous amount of confidential data that's really
23 at the heart of the case. It may be very difficult
24 to talk about obliquely, and I just wanted to kind of
25 flag this that this may be a case where we actually

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1 have more need to just have a closed hearing room for
2 particular witnesses' examination.

3 JUDGE MACE: Anything else on this matter?

4 All right. I have a few items that I want to bring
5 up, and then I'd like to go ahead and mark the
6 exhibits so that we can be done with that.

7 For Mr. Gates' testimony, this is my own
8 housekeeping matter, I seem not to have received
9 attachment two or the Colorado stipulation, and I'm
10 wondering if you could provide that for me?

11 MS. SINGER NELSON: Yes, Judge, I will.

12 JUDGE MACE: I don't know if any other party
13 has gone through his testimony and exhibits and
14 that's missing, but I didn't get it.

15 There were a number of data requests that
16 were marked -- or included in cross exhibits that
17 were marked not received. Some of those I think were
18 Qwest's and have already been dealt with. Can you
19 tell me a little bit about what the issue was there
20 and if all of those are -- if all that's resolved at
21 this point?

22 MR. SHERR: Thank you. Adam Sherr, for
23 Qwest. They were marked as not received because they
24 stemmed from the last round of testimony. We got
25 data requests out within a couple of days, but

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1 yesterday or today was the deadline for responding.
2 So we literally hadn't received the responses yet for
3 some. We have received some of them now and have
4 indicated some that we removed from the list.

5 JUDGE MACE: So there isn't any outstanding
6 discovery issue that we need to discuss at this
7 point?

8 MR. SHERR: I don't believe there's a
9 discovery -- hold on just one second.

10 JUDGE MACE: Under Gates, I'm not sure that
11 you addressed these. There's a couple, Qwest cross
12 Number 10 and 11, MCI response to Qwest Data Request
13 23 and Qwest Data Request 24 were shown not received.

14 MR. SHERR: I'm sorry, Your Honor. What
15 witness are you talking about?

16 JUDGE MACE: This is Mr. Gates, and it's the
17 very end of the second page of his exhibits.

18 MR. SHERR: Right, and Qwest has not
19 received MCI's data request responses yet, so they're
20 still not received, but they're due today.

21 MS. SINGER NELSON: Today.

22 JUDGE MACE: And those will be provided?
23 There's not an issue there?

24 MS. SINGER NELSON: Yes.

25 JUDGE MACE: They haven't been included with

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1 the packets, then, and you'll have to provide them on
2 Tuesday; is that right? So we'll just reserve a
3 space for them.

4 MS. SINGER NELSON: Yes. And Judge,
5 logistically, it's going to be difficult for me to
6 get those responses to Mr. Sherr and to the other
7 parties in the proceeding today, just because I've
8 had a hard time getting my computer to hook up, so
9 when I do get that done, if it's tonight, when I get
10 home, or tomorrow morning, I'll get those out --

11 JUDGE MACE: And please bring --

12 MS. SINGER NELSON: -- electronically.

13 JUDGE MACE: Bring them to the hearing.

14 We'll need the six copies for the bench, so that we
15 --

16 MS. ANDERL: Well, Your Honor, if we decide
17 to make them exhibits, we'll make the copies, see,
18 because --

19 JUDGE MACE: I see what you're saying. Yes.

20 MR. SHERR: We marked them as exhibits,
21 because, of course, we don't know what they're going
22 to say, and we didn't want to offer new exhibits.
23 They're placeholders.

24 JUDGE MACE: I see what you're saying.

25 Well, the thing is we're going to mark exhibits today

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1 and we're going to mark these.

2 MR. SHERR: Okay. It's easier. Thank you.

3 JUDGE MACE: All right. Before we mark the
4 exhibits, I just want to go over a few things for the
5 hearing. Please remember, Counsel, you need to
6 address the Bench if you have an objection. Don't
7 talk amongst yourselves on the record during the
8 hearing. Please avoid talking over other counsel
9 and, when you're cross-examining, try to make sure
10 you're not talking over the witness, and try to
11 counsel your witnesses not to talk over counsel.

12 I'll probably have to say this on the
13 record, but I wanted to avoid doing that if possible.
14 It's things you already know, but I'm just mentioning
15 them again.

16 We're going to have a mid-morning and
17 mid-afternoon break. We may need to extend the
18 hearing days because of the amount of
19 cross-examination. We'll just have to see how that
20 goes. I think that's all of my little housekeeping
21 reminders.

22 All right. Let's turn to the exhibits, and
23 what I would propose is -- let's see, we have an
24 order of presentation of Qwest, Staff, Public
25 Counsel, MCI. Let's go off the record for a moment.

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1 (Recess taken.)

2 JUDGE MACE: Let's be back on the record.

3 What I propose to do is to take the exhibit lists
4 that I've already provided you and, placing them in
5 the order that the parties will present their cases,
6 simply go through and mark them numerically, skipping
7 those items that you indicated are duplicates. I'm
8 going to try to go slowly through this, so that if
9 there's any problem you can call it to my attention
10 before you mark them all unnecessarily.

11 So starting with Mr. Reynolds, the exhibit
12 numbers are 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11
13 through MCI Cross 3, okay.

14 MR. FFITCH: I'm sorry, Your Honor, I'm just
15 finding that now.

16 JUDGE MACE: Okay. Reynolds, 1 through 11,
17 go up through MCI Cross 3, all right? Everybody with
18 that program? Then we're going to skip all the rest.
19 So we have 11 exhibits for Mr. Reynolds, all right.
20 Is that -- because you -- because, WeBTEC, you
21 indicated to me that those cross exhibits were
22 duplicates, and so we're not going to mark them.

23 MR. LEVIN: Well, they're duplicates of
24 ATG's, so ATG should remain.

25 MR. BUTLER: Yes, and we do have a couple

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1 that are not duplicates.

2 MR. MELNIKOFF: Three.

3 JUDGE MACE: All right. So then all of the
4 -- I'm sorry, and I inadvertently crossed off some
5 numbers, and that made me think -- that's why we're
6 doing this out loud in front of everybody. All
7 right.

8 So the three exhibits that are eliminated
9 are WEBTEC Cross 1, 2 and 3?

10 MR. BUTLER: Correct.

11 JUDGE MACE: And then we start with WEBTEC
12 Cross 4.

13 MR. BUTLER: Except the order of witnesses,
14 I would think that we would then do ATG, Public
15 Counsel, and then come back with the WEBTEC ones.
16 Does that make -- it doesn't make any difference.

17 JUDGE MACE: I don't think it makes a
18 difference; I just want to make sure the witness --
19 the exhibits are in order. That's fine-tuning it in
20 a really compulsive way. So Number 12, Exhibit
21 Number 12 is going to be WEBTEC Cross 4, and then 13
22 is WEBTEC Cross 5; 14 is WEBTEC Cross 6; 15 is ATG
23 Cross 1, and then we'll just number 16, 17, 18, 19,
24 20, 21, 22, 23, 24, 25 and 26. So we have 26 of
25 those for Mr. Reynolds. Mr. Sherr, you look kind of

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1 puzzled.

2 MR. SHERR: Don't intend to. Just my
3 natural look.

4 JUDGE MACE: All right. So we have 26
5 exhibits for Mr. Reynolds. In order to preserve some
6 numbering, I'm going to go ahead and start with Mr.
7 Teitzel at 50 -- well, actually 51, so his first
8 exhibit will be 51, then 52, 53, 54, 55, 56, 57, 58,
9 59, 60, through his rebuttal testimony, and then 61
10 will be MCI Cross 1, and 62 will be WeBTEC Cross 1,
11 and 63 will be WeBTEC Cross 5.

12 64 will be ATG Cross 1; 65 will be ATG
13 Cross 2; 66, ATG Cross 3; 67, ATG Cross 4; 68, ATG
14 Cross -- no. Yes, 68, ATG Cross 5; 69, ATG Cross 6;
15 70, ATG -- no.

16 My understanding is that -- well, is my
17 understanding correct that ATG Cross 7 through -- are
18 all those exhibits still in play?

19 MR. LEVIN: Yes.

20 JUDGE MACE: All right, then. Never mind.
21 70 is ATG Cross 7, and then I'll just go through the
22 rest of those, 71, 72, 73, 74, 75, 76, 77, 78, 79,
23 80, 81, 82, so that PC Cross 4 is 82. All right.

24 We'll start with 101 for Mr. Shooshan, and
25 his will be 101, 102, 103, and then WeBTEC Cross 1

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1 will be 104 and WebTEC Cross 5 will be 105.

2 MS. SINGER NELSON: You mean ATG Cross 1
3 will be 105?

4 JUDGE MACE: I'm sorry, did I say -- it's
5 ATG Cross 1. Sorry, I misspoke. So then let's go to
6 Staff, and we'll start with Mr. Wilson. We'll call
7 his 201, and then go down 202, 203, 204, 205, 206,
8 207, 208, 209, 210, and then MCI Cross 1 will be 211,
9 MCI Cross 2 will be --

10 MR. MELNIKOFF: I thought you, in prior
11 ones, Your Honor, had made -- had skipped between the
12 rebuttal testimony and the cross; am I right? No,
13 I'm sorry. Sorry to interrupt.

14 JUDGE MACE: Okay. And then --

15 MS. SINGER NELSON: Judge, can I interrupt
16 you for a second?

17 JUDGE MACE: You surely can.

18 MS. SINGER NELSON: Right at the 212, the
19 MCI Cross 2, DOJ FTC Horizontal Merger Guidelines, we
20 talked about this a little bit off the record, and I
21 compared Staff's copy of the guidelines and MCI's
22 copy of the guidelines, and I think Staff's copy is a
23 better exhibit to actually use, just for the parties'
24 information, because Staff has a table of contents
25 and the cover on it, and ours is simply a web page

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1 printing of it. So I think the Staff is a better
2 copy to use.

3 JUDGE MACE: Very well, then, we won't mark
4 that as an exhibit.

5 MS. SINGER NELSON: Okay. That's fine.

6 JUDGE MACE: So we'll stop at 211, and my
7 understanding is the WebTEC Cross 1 through 13 --

8 MR. THOMPSON: Actually, on that point, Your
9 Honor. I think if it comes in first here, I think it
10 will need to be -- this will be the first place in
11 the proceeding that it would come in, so we'd be
12 happy to just switch copies.

13 JUDGE MACE: You know that you can
14 cross-examine on an exhibit that hasn't been
15 admitted.

16 MR. BUTLER: I think he's just talking about
17 swapping paper copies.

18 MS. SINGER NELSON: Yeah, and that's fine
19 with me. That's really what I had intended when I
20 made my comment. It doesn't matter. We can do it
21 either way, as far as I'm concerned.

22 JUDGE MACE: Well, I'm just thinking about
23 the packets, then, of exhibits. Can we just say,
24 then, that -- is what you're saying that you're going
25 to literally swap copies of the exhibits so that this

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1 exhibit will actually be what you had in your packet,
2 so then, when the Commissioners are preparing their
3 booklets, we can --

4 MR. THOMPSON: Yes.

5 MS. SINGER NELSON: That's fine.

6 JUDGE MACE: So we will have 212, and it
7 will be the Staff version; is that --

8 MS. WATSON: That's correct. But there's
9 one other thing that I wanted to bring to your
10 attention.

11 JUDGE MACE: Go ahead.

12 MS. WATSON: Mr. Wilson's exhibits end with
13 210-CT, his rebuttal testimony.

14 JUDGE MACE: Right.

15 MS. WATSON: But I think there were one or
16 two other exhibits that were filed with his rebuttal
17 testimony. I'm sorry, I don't have those titles with
18 with me.

19 JUDGE MACE: Okay.

20 MS. WATSON: I can run back to my office
21 quickly and get those, unless someone else has them
22 with them.

23 JUDGE MACE: I unfortunately don't have the
24 exhibits here, and I'd rather not mark all the
25 exhibits until we've got that information.

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1 MR. FFITCH: We have our copy we can share.

2 MS. WATSON: There were two additional
3 exhibits. One was marked TLW-11 and TLW-12.

4 JUDGE MACE: And those will then be 211 and
5 212. Thank you for catching all that. So then MCI
6 Cross 1 will be 213 and MCI Cross 2 will be 214, and
7 that's the Staff version. And then we'll -- okay.
8 Everybody okay with that?

9 MR. MELNIKOFF: I think I'm lost.

10 JUDGE MACE: Sorry. Okay. So then we turn
11 to page two of Mr. Wilson, and 215 will be ATG Cross
12 1, then 216, 217, 218, 19, 20, 21, 22, 23, and 24.
13 So the last Wilson Exhibit is 224. It's PC Cross 9.

14 So then let's turn to Mr. Williamson and
15 start with 300 for him. 301 will be 1-T, and then
16 all of the WebTEC cross exhibits on my list are
17 crossed off, so we go to the ATG Cross 1 for 302, and
18 then go down -- so I come up with 315 at ATG Cross
19 14. Everybody have that? And Ms. Baldwin will be
20 400.

21 MR. FFITCH: I'm sorry, Your Honor, can I
22 just have a moment?

23 JUDGE MACE: Surely.

24 MR. FFITCH: I haven't actually had a chance
25 to compare the list with the testimony yet. I'm

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1 assuming it's fine, but --

2 JUDGE MACE: Well, we're going to give her
3 enough numbers so that if we need to adjust things,
4 we can do that, but I'd like to try to go through
5 this now if we could.

6 MR. FFITCH: Yeah, thank you.

7 JUDGE MACE: So 401. And then -- now, there
8 was something about 23. You were going to provide
9 revised 23?

10 MR. FFITCH: Correct, Your Honor. There
11 were three, three that were going to be corrected and
12 --

13 JUDGE MACE: All right. But those are still
14 going to be marked and you're just reserving a place
15 for them?

16 MR. FFITCH: Yes.

17 JUDGE MACE: Okay. So Staff Cross Exhibit 1
18 is out now, and I have 429 as Staff Cross 2. Is
19 everybody with me on that?

20 MR. FFITCH: What was the number, Your
21 Honor?

22 JUDGE MACE: 429 for Staff Cross 2.

23 MR. FFITCH: Okay.

24 JUDGE MACE: I come up with 472 being Qwest
25 Cross 39, which is the end of the list.

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1 MS. ANDERL: Four --

2 JUDGE MACE: I have 472, and it's Qwest
3 Cross 39.

4 MS. ANDERL: I have 471.

5 JUDGE MACE: Oh, darn.

6 MS. ANDERL: We eliminated Qwest Cross 19.

7 JUDGE MACE: Good call, okay. Qwest Cross
8 19 should be eliminated.

9 MR. MELNIKOFF: What did you have, 71?

10 MS. ANDERL: 471.

11 MR. MELNIKOFF: Yeah, okay.

12 JUDGE MACE: All right. I'll just renumber
13 them. It is 471, then, unless there's some other
14 thing that I missed. 471, all right. Mr. Gates, do
15 500 for him.

16 MS. SINGER NELSON: Sure. One of the
17 exhibits attached to Mr. Gates' rebuttal is not
18 marked on your exhibit list.

19 JUDGE MACE: Okay. And which exhibit would
20 that be?

21 MS. SINGER NELSON: It would probably --

22 JUDGE MACE: Well, five. I took the
23 liberty, in some instances here, of marking some of
24 your rebuttal things myself. I can't remember if you
25 were one of the ones I did that for. I have a TJG-5.

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1 MS. SINGER NELSON: Yes.

2 JUDGE MACE: And what else was there?

3 MS. SINGER NELSON: TJG-6 is an article
4 entitled Phone Giants Keep Monopoly But Strive to
5 Make It Regional. I identified it on my exhibit list
6 when I circulated that.

7 JUDGE MACE: Okay. And anything else?

8 MS. SINGER NELSON: Well, the only other
9 thing is the Colorado stipulation that you mentioned
10 you would like to see.

11 JUDGE MACE: Is that an exhibit, though, or
12 was that something that could --

13 MS. SINGER NELSON: He referred to it and
14 you've requested it. I'm happy to --

15 JUDGE MACE: I just want the copy of it.

16 MS. SINGER NELSON: Okay.

17 JUDGE MACE: Because I thought it was
18 something that he referred to in his testimony --

19 MS. SINGER NELSON: It is.

20 JUDGE MACE: -- or had somehow attached to
21 his testimony. I could be wrong, and it's -- I'd
22 have to look at the testimony to know that.

23 MS. SINGER NELSON: He referred to it in his
24 testimony. I'm not sure at this point in time -- I
25 mean, I don't recall that we attached it to his

0090

1 testimony.

2 JUDGE MACE: If it wasn't one of your marked
3 exhibits, then I'd like to have a copy of it, but
4 let's not address it in terms of the marked exhibits.

5 MS. SINGER NELSON: Okay.

6 JUDGE MACE: If you really want to bring it
7 in or the Bench wants it later on, we can mark it.

8 MS. SINGER NELSON: That's fine, that's
9 fine.

10 JUDGE MACE: All right. So then 501, 2, 3,
11 4, 5, and there will be a TJG-6, that will be 506.
12 Then Staff Cross 1 will be 507, 508, 509 -- oops.
13 Staff Cross 5 is crossed off, and Staff Cross 6, so
14 511 will be Qwest Cross 1. So I come up with 521,
15 Qwest Cross 11.

16 And Stacey, 600. So Qwest Cross 11 will be
17 611 -- pardon me, Qwest Cross 7 will be 611.

18 And following in that same pattern, 701,
19 then down to 710, which is Qwest Cross 7.

20 MS. ANDERL: Qwest Cross 8.

21 JUDGE MACE: Thank you.

22 MR. FFITCH: Sorry, I'm confused now.

23 JUDGE MACE: Qwest Cross 8 was not
24 eliminated, so it will be 711, Mr. Cowan's exhibits.
25 It's 701 to 711.

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1 MR. FFITCH: Oh, wrong witness. All right.
2 Cowan, okay.

3 JUDGE MACE: All right. Everybody still
4 with the program? And then -- well, we'll break a
5 pattern here and go to 751 for Mr. Slater. So 751
6 through 754. I will e-mail you a copy of the revised
7 exhibit list, if not today, then Monday.

8 MR. FFITCH: Your Honor, Public Counsel
9 would expect to offer at some point probably shortly
10 after the conclusion of the hearing a public exhibit
11 containing the letters and e-mail comments of the
12 general public and any other written submissions that
13 might come in at the hearing on the 17th, as we do in
14 the ordinary course. You might wish to provide an
15 exhibit number for that at this time.

16 JUDGE MACE: Why don't we call that 800.

17 MR. FFITCH: Thank you, Your Honor.

18 JUDGE MACE: I believe we've addressed
19 everything that I have on my agenda for this
20 prehearing conference.

21 MS. FRIESEN: This is Letty Friesen.

22 JUDGE MACE: Yes.

23 MS. FRIESEN: I need to drop off now, but
24 could I request -- I believe Mary Taylor is in the
25 room.

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1 MR. THOMPSON: Yes, she is.

2 MS. FRIESEN: Could she get copies of the
3 exhibits?

4 JUDGE MACE: Yes, certainly.

5 MS. FRIESEN: Thank you very much, and thank
6 you for allowing me to drop off early.

7 JUDGE MACE: The parties will provide
8 copies. Yes, and best wishes. I hope everything
9 goes well for you.

10 MS. FRIESEN: Thank you, Your Honor.

11 MS. ANDERL: Your Honor, I had one question.

12 JUDGE MACE: Yes.

13 MS. ANDERL: Start time on Tuesday, 9:00 or
14 9:30?

15 JUDGE MACE: 9:30, as far as I know right
16 now. If it's different, then I'll make sure that the
17 parties are advised. Anything else?

18 MR. FFITCH: Your Honor, did you want to
19 address the public hearing for any reason at this
20 point?

21 JUDGE MACE: My understanding is it begins
22 at --

23 MR. MELNIKOFF: Six.

24 MS. SINGER NELSON: Six on the 17th, yeah.

25 JUDGE MACE: I did not intend to address the

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1 public hearing. I don't know that I am going to be
2 at the public hearing. I think the Commissioners are
3 handling those at this point. If there's any
4 questions that you have about it, let's address those
5 on Tuesday --

6 MR. FFITCH: Okay.

7 JUDGE MACE: -- when the Commissioners are
8 present.

9 MR. FFITCH: Well, I guess just an early
10 flagging for people to think about, we had proposed
11 in the procedural rule-making a different form of
12 procedure for the public hearings, in which the Bench
13 handles the calling of witnesses and the brief
14 examination of witnesses, and other parties,
15 including Public Counsel, are given an opportunity at
16 the outset to, after initial comments by the Bench,
17 to just make a brief statement on behalf of their own
18 party.

19 This is a different approach and that's -- I
20 just wanted to raise that because I think we -- if
21 we're going -- you know, if we're going to use that
22 new approach, which actually hasn't been put into the
23 rules yet, people might like to know about that if
24 they're going to, you know, want to have people
25 there, have somebody get up and say something brief

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1 about what their position is in the case, have
2 handouts, whatever, that may be just useful for
3 people to know how -- if the Commission's going to
4 proceed under the old rules or the new rule, which
5 isn't in effect yet. The Commission has discretion
6 to do it either way, so --

7 JUDGE MACE: I'll raise that with the
8 Commissioners and we'll get some clarity on that.
9 Probably won't have it before Tuesday, though.

10 MR. FFITCH: I think that's fine. Easy to
11 deal with, but a little bit of advanced warning
12 probably helps.

13 JUDGE MACE: Thank you.

14 MR. FFITCH: Thank you, Your Honor.

15 JUDGE MACE: Anything else?

16 MR. MELNIKOFF: Your Honor, Public Counsel
17 -- or yeah, Public Counsel and I had a discussion
18 during the break, and it looks like we might be able
19 to consolidate some more time in a logical fashion if
20 I succeeded his cross-examination for the Qwest
21 witnesses, Reynolds, Teitzel and Shooshan. So it
22 would go, if I'm correct --

23 JUDGE MACE: I have so many arrows here, I'm
24 not sure I can remember what I said about that. MCI,
25 AT&T --

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1 MR. MELNIKOFF: Then it would be Public
2 Counsel, DOD, and then WebTEC.

3 JUDGE MACE: MCI, AT&T, Public Counsel --

4 MR. MELNIKOFF: DOD.

5 JUDGE MACE: -- DOD, ATG --

6 MR. MELNIKOFF: Oh, okay.

7 JUDGE MACE: -- and WebTEC.

8 MR. MELNIKOFF: Yes.

9 JUDGE MACE: Anything else? If you should
10 come to some kind of determination that you could
11 streamline your cross-examination and so eliminate
12 some of the time that's shown on the grid I
13 distributed, I would appreciate it if you'd e-mail me
14 about that and e-mail the other parties before
15 Tuesday.

16 If there's nothing else, then I thank you
17 very much for your patience and for your cooperation,
18 and we'll see you Tuesday morning at 9:30.

19 (Proceedings adjourned at 11:20 a.m.)

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