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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION,

Complainant,

vs.

ADVANCED TELECOM GROUP, INC.; et al.,

Respondents.

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) Docket No.
) UT-033011
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DEPOSITION OF THOMAS L. WILSON, VOLUME 3
July 27, 2004
Olympia, Washington

1 agreements?

2 MR. SWANSON: Objection. Asked and
3 answered. You have asked these questions before.

4 THE WITNESS: I was just going to
5 stand my ground and answer and say that we consider all
6 of the violations to be a violation, and recommend if --
7 we are recommending that that be counted as a violation.

8 And we haven't really -- I'm sorry. We haven't
9 really attempted to differentiate them as sort of bad and
10 really bad or anything like that, I guess, just because
11 we didn't think we could.

12 Q (By Mr. Nazarian) Why didn't you think you could?

13 A Because the harm that has occurred to the competitive
14 marketplace is not possible to be estimated for one
15 thing, and because these agreements are all so
16 intertwined.

17 I think anyone will agree that analyzing their
18 total impact is very, very difficult if not impossible,
19 but we do know that it's bad.

20 Q Now in the time since we last were together, Staff has
21 entered into another settlement; isn't that right?

22 A It was filed since we were last together, yes.

23 MR. NAZARIAN: Let's go ahead and
24 mark this.

25 Let's take a short break.

1 So dispute resolution procedures, for example, is
2 something that could apply to I think any CLEC. And I
3 have studied the market presence of various CLECs for a
4 long time, and I just applied a general feel based on my
5 knowledge to it, and found that they were all elements
6 pretty common, generally speaking.

7 The dedicated provisioning team is one that is a
8 little different, but many of the elements are common.

9 Q If the elements are common, how does the deprivation of
10 the ability to opt in to them cause any harm to an
11 individual CLEC or to the market?

12 A Because some of the elements are being provided under the
13 secret arrangements with preference. There are special
14 terms and conditions attached, and it's those terms and
15 conditions that are so important in the provision of the
16 common elements that it be done the same way for
17 everyone.

18 Q Have you analyzed, in any way, the terms of what you call
19 the secret interconnection agreements against the common
20 terms that other CLECs had in their agreements, to
21 determine whether and if so to what extent there was a
22 preference?

23 A No.

24 Q So your sense -- your testimony that there have been
25 preferences grows out of what you described a minute ago

1 BY MR. NAZARIAN:

2 Q Mr. Wilson, you are probably wondering when if ever we
3 are going to start talking about the Exhibit B
4 agreements, and it seems to me now is about the time.
5 Before we start talking about individual ones, let me
6 make sure I understand a couple of global rules.

7 First of all, the Staff is not alleging that any of
8 the agreements listed in Exhibit B are interconnection
9 agreements that needed to be filed, correct?

10 A Correct.

11 Q Does that also mean then that Staff does not consider the
12 Exhibit B agreements to create ongoing obligations under
13 section 251(b) or (c)?

14 MR. SWANSON: Objection to the extent
15 it calls for a legal conclusion.

16 THE WITNESS: The answer is yes.

17 Q (By Mr. Nazarian) Now it says in your testimony, and I
18 will find it for you, I don't imagine you remember it off
19 the top of your head, that the problem that the Staff
20 sees with the Exhibit B agreements like the Exhibit A
21 agreement is the fact that they were kept secret. And I
22 guess the one paragraph that kind of synthesizes your
23 position as best I can tell is on Page 79.

24 Tell me though, as a practical matter, with respect
25 to settlement agreements between Qwest and a CLEC that

1 don't contain any going forward obligation, how is it
2 that Staff believes Qwest should have handled these
3 agreements in order to keep them from being secret?

4 MR. SWANSON: Objection to the extent
5 it calls for a legal conclusion.

6 You can go ahead and answer.

7 THE WITNESS: First of all, I just
8 want to note that the passage in my testimony referenced
9 regarding keeping it secret, and not filing was regarding
10 the Exhibit A agreements and not the Exhibit B
11 agreements.

12 Q (By Mr. Nazarian) Well, just so I'm pointing you in the
13 right place, I was referring to the sentence that starts
14 on Line 4 that says, "Secondly, all of the Exhibit B
15 agreements were kept secret."

16 And I guess I assumed, but maybe you can correct me
17 if I'm wrong, the reference to them also being kept
18 secret meant that Staff's position was that they should
19 not have been kept secret. And if I need to be corrected
20 in that regard, please do.

21 A I understand from reading that sentence in my testimony
22 how one might possibly derive that conclusion, but that
23 was not an intent.

24 We are not alleging that failure to file is a
25 violation for the Exhibit B agreements.

1 Q Okay.

2 A And we are not alleging that keeping them secret was in
3 and of itself a violation. What we are saying is that
4 keeping them secret was a device that enabled Qwest to
5 keep other carriers from finding out about it and seeking
6 the same deal, but we are not saying that secrecy itself
7 was a violation or not filing Exhibit Bs was a violation.

8 Q Is the fact that the Exhibit B agreements, some of them
9 at least, contain confidentiality clauses in them, is
10 that something that gives rise to the Staff to determine
11 a violation of one of these Washington statutes?

12 A No. I would personally as an economist tend to use
13 confidentiality and secrecy in a synonymous way. The
14 confidentiality agreement itself is not a violation.
15 That's, in our opinion, simply a characteristic of these
16 agreements that has enabled the company to prevent other
17 customers from availing themselves of similar
18 opportunities, but we are not saying that Qwest had to
19 make them public either.

20 Q Then I guess I'm having trouble understanding how it is
21 that Qwest did anything wrong with respect to the Exhibit
22 B agreements. If there was no obligation to file them or
23 for that matter to even make them public, what is the
24 wrong in the Staff's view that Qwest committed in
25 connection with the Exhibit B agreements?

1 A Generally speaking, the wrong was that Qwest
2 discriminated.

3 Q Okay.

4 A And it did so unduly and unlawfully. It was not just
5 okay discrimination; it was preference advantage, et
6 cetera that was undue.

7 Q Is there some kind of permissible discrimination that
8 could come about as a result of a settlement in your
9 view?

10 A Yes, there is. As an economist on Staff, I have often
11 held that, for example, price discrimination in a
12 competitive market often happens. You can wind up paying
13 different prices for candy bars in different shops and
14 things like that. Those are competitive markets and
15 there is an amount of discrimination that occurs in
16 competitive markets, and we don't think that that is
17 undue or violations.

18 But what we found here was that there were undue
19 preferences and advantages that were given by Qwest to
20 the CLECs. And first of all, because it isn't a
21 competitive market in this instance, right off the bat
22 there is concern about discrimination. And when we
23 looked into each agreement, we found that each one was
24 undue.

25 Q And we will get into the individual agreements, I guess,

1 in a minute, but in each case the Staff is going to have
2 a theory about why the terms of the settlement provided
3 an undue preference to the CLEC; is that right?

4 MR. SWANSON: Objection to the extent
5 it calls for a legal conclusion.

6 THE WITNESS: I think so. In my
7 testimony in the passage we were looking at, I described
8 one of the things that made them undue and that was
9 keeping it secret.

10 Q (By Mr. Nazarian) I'm having a kind of
11 Alice-in-Wonderland moment here, and I don't mean to be
12 flippant; I really don't.

13 But a lot of people on our side of this case have
14 spent the time from August 2003 until this very moment
15 trying to understand how it is that discrimination can
16 come about through secrecy in agreements that are not
17 required to be filed, that you have now testified Qwest
18 is not obliged in any manner to publicize. How is it
19 possible?

20 A It's quite possible these agreements provide
21 discriminatory advantages, preferences, rates, et cetera,
22 to given CLECs. And it isn't necessary, in my
23 understanding as a staffer, that there had to be a filing
24 violation because there isn't a filing requirement, but
25 discrimination did occur and the law does prevent that.

1 The Commission has rules that say, and the statute
2 says that agreements between companies don't have to be
3 filed, but the Commission can investigate them and ask
4 for them if they want to, or see a need to rather.

5 And so there is no filing obligation, but there is
6 a prohibition on discrimination, and we feel
7 discrimination occurred.

8 Q Well, for purposes of thinking through the Exhibit B
9 agreements then, tell me the standard you used for
10 discrimination, the definition of discrimination you
11 used.

12 MR. SWANSON: Objection to the extent
13 it calls for a legal conclusion. I'm not -- I'm not sure
14 if you are asking for law or are you asking for facts?

15 MR. NAZARIAN: I'm asking for when he
16 looked at these agreements.

17 Q (By Mr. Nazarian) Whatever agreements you tossed out of
18 the bin for Exhibit B because you put them in A or
19 because you put them aside or whatever you did, when you
20 were looking at the universe of agreements as you were
21 considering your testimony in this case, what is it that
22 you used as a standard or a benchmark to determine
23 whether discrimination had happened in connection with
24 these settlement agreements that are now attached as
25 Exhibit B?

1 A What I used was the notion in economics that -- I looked
2 at each item and asked myself are there other
3 substantially situated customers of Qwest who may have
4 received different treatment than that.

5 I looked for the elements of the statutory
6 definitions, or the statutory prohibitions language to
7 exist in each agreement.

8 Q So is there discrimination in your mind because a
9 settlement between Qwest and a CLEC might result in a
10 term that some other CLEC didn't have, even though we
11 didn't have the same dispute?

12 I mean, here's the part I'm having trouble with,
13 and I will lay it out for you and we can talk through it.
14 As much as I like to ask questions and have you answer
15 them, we are going to get quickly off into -- it's going
16 to be hard to focus.

17 We will go through these agreements themselves, but
18 the general character of these agreements is there is a
19 dispute between Qwest and the CLEC on some issue. And
20 the resolution of that dispute is embodied in one of
21 these settlement agreements.

22 When you say you are looking to whether a term in
23 these agreements would or would not have been available
24 to a similarly situated CLEC, how did you do that in the
25 context of an agreement that flows from a dispute, a

1 particular dispute between Qwest and a CLEC?

2 A Oftentimes by knowing that such disputes were very much
3 happening. Any of the settlements in the Exhibit B
4 agreements are for pretty common problems. And the fact
5 that Qwest settled it with some but not others apparently
6 is part of the problem.

7 Q When you say "apparently," how did you go about analyzing
8 or quantifying your view that Qwest had settled an issue
9 with one CLEC but not with others?

10 A By looking at the context of each agreement.

11 Q I know, but how did you know there were other CLECs that
12 didn't have an agreement that would have wanted one?

13 A I don't necessarily.

14 Q So you are speculating or surmising that a particular
15 agreement might be something other CLECs would be
16 interested in?

17 A Well, it's not just raw speculation. It's based upon the
18 information in each agreement indicating that each one of
19 them is for a telecommunications service Qwest offers,
20 and knowing that its service is being consumed by
21 numerous other customers besides the one in the
22 agreement.

23 Q If the issue underlying discrimination is the different
24 treatment between a CLEC and the agreement, and some
25 other CLEC -- and maybe we will get more specific about

1 what other CLECs might be involved when we talk about the
2 agreements themselves -- what role in your view does the
3 secrecy element play in all of this?

4 In other words, if the discrimination arises from
5 the differential treatment, why does the secrecy of the
6 agreement matter to your analysis?

7 A It enables Qwest to treat two classes of customers
8 differently because one doesn't know about what is going
9 on, so it's a separation strategy, or it insulates the
10 information and keeps it so that others don't know about
11 it or makes it unavailable to them.

12 To me, that's the key to discrimination is to be
13 able to offer or take away something from one group and
14 make it so they don't have any choice, and so the ones
15 who didn't get it don't have it available to them either.

16 Q So are you saying that if CLECs who were not parties to
17 these settlement agreements had been aware of them, or
18 had some mechanism of being aware of them, they would not
19 have been discriminated against?

20 A We think that that's possible, yes. Qwest was aware of
21 all of them.

22 Q Qwest was a party to them.

23 A Yes. Qwest signed every one of them.

24 Q Do CLECs, in the Staff's view, commit discrimination
25 against other CLECs when they cut their best deal with

1 Qwest?

2 MR. SWANSON: Objection to the extent
3 it calls for a legal conclusion. And objection that
4 Staff hasn't taken a position on this issue.

5 THE WITNESS: No.

6 Q (By Mr. Nazarian) So CLECs who have disputes with Qwest
7 can use the fact of that dispute to get whatever the best
8 deal is that they can -- through whatever combination of
9 leverage items they can, and do not commit discrimination
10 under the three Washington State statutes at issue in
11 this case that you reviewed, right?

12 MR. SWANSON: Objection to the extent
13 it calls for a legal conclusion.

14 THE WITNESS: Right.

15 Q (By Mr. Nazarian) But if Qwest enters that agreement
16 with a CLEC, that is the best deal that a CLEC -- let me
17 ask it this way.

18 Isn't the ability to negotiate your best deal
19 really the essence of a competitive market?

20 A To me that's one of the outcomes that is very valuable.

21 Q So if CLECs are participating in this negotiation
22 activity that really is, as you just testified to, the
23 essence of a competitive market, how is it that Qwest
24 commits discrimination against other CLECs by
25 participating in the same negotiation?

1 A Well, I said that the ability to negotiate the best deal
2 is the outcome of a competitive market, but an incumbent
3 monopolist offering special deals and keeping those deals
4 secret for just certain customers is not an outcome of a
5 competitive market, and is not synonymous with the
6 essence of a competitive market.

7 Q You will agree with me, I think, that the agreements
8 listed in Exhibit B all come about because there is an
9 existing dispute between Qwest and the CLEC that is the
10 party to that agreement, right?

11 A Right.

12 Q The negotiation happened at all because there was an
13 existing business relationship that led to some sort of
14 problem that needed to be solved, right?

15 A That was one of the underlying facts for the dispute, but
16 the fact that a negotiation occurred had to do with the
17 relative bargaining power between the two players.

18 Q Well, the fact that the negotiations occurred meant that
19 these CLECs, at least that are parties to the Exhibit B
20 agreements, had enough negotiating strength to reach a
21 settlement agreement that solved each of the problems at
22 issue, right?

23 A Right. And what we object to is that other CLECs may not
24 have had that negotiating strength. They may have been
25 similarly situated in all substantial regard, but just

1 weren't able to negotiate the agreement with Qwest.

2 Q How do you know that?

3 A That's Qwest who would know that if they had been asked
4 by other CLECs who were substantially similarly situated,
5 and Qwest did not enter into those agreements with those
6 CLECs. Qwest would know that, but in this instance it's
7 apparent that Staff would not know that. They are
8 Qwest's customers.

9 Q Right. So you have no knowledge or evidence to support
10 the allegation that you are making here that other CLECs
11 were denied the opportunity to settle disputes by Qwest,
12 do you?

13 A No, I don't. All I have is the evidence of the
14 preferential treatment that was the outcome.

15 Q How does the fact of these agreements constitute, in your
16 mind, any evidence at all of preferential treatment?

17 A I look at each one individually to make that
18 determination.

19 Q Right. But for a particular agreement to have a
20 preferential effect, it has to be that that agreement
21 treats one CLEC better than some other CLEC, right?

22 A Right.

23 Q If you don't know that there is another CLEC that wanted
24 that same deal and didn't get it, how can you say under
25 oath that there's been any preference granted?

1 A If I don't know, I wouldn't be able to do that. But as I
2 told you repeatedly, I have to look at each one and I can
3 point to those things.

4 Q So for each of these agreements as we go through it, you
5 will be able to tell me the name of a CLEC that sought
6 the same deal that was denied by Qwest?

7 MR. SWANSON: Objection to the extent
8 it mischaracterizes Mr. Wilson's testimony.

9 THE WITNESS: That's right. I have
10 already said that Staff doesn't know who the other CLECs
11 are; Qwest does.

12 Q (By Mr. Nazarian) Well, then how do you know any CLEC
13 exists fitting this profile?

14 A You know, sir, I feel like we are arguing. And I'm
15 wondering what it is that I know that you want me to tell
16 you. I have answered you several times that Qwest knows
17 this.

18 I can look through each agreement and point to the
19 preferences offered, and I can offer you my analysis on
20 why their existence to substantially similarly situated
21 CLECs who didn't get that preference, but frankly I do
22 not understand how to argue with you more. I'm not a
23 lawyer, and I'm not trained in argument. I'm just an
24 economist who is supposed to provide an analysis here.

25 Q There is no such thing as just an economist, maybe just a

1 lawyer.

2 The purpose of my questioning is not to argue with
3 you, sir. And I hope you don't see it that way, and if
4 you do I apologize.

5 A I do see it as different from what the judge told us we
6 would be doing in a deposition, but that's just my own
7 opinion. I'm trying really hard to answer everything I
8 can.

9 Q I understand. And it may be that I'm just not asking the
10 right questions yet.

11 A Keep trying.

12 Q Which is why we keep trying. On the other hand, you have
13 to understand that I'm sitting here representing a client
14 who, with respect to the Exhibit B agreements, is being
15 asked to pay \$1,000 per day, times three, for each of 30
16 some odd agreements as a result of discrimination that I
17 can't figure out how it happened after reading your
18 testimony, after reading the complaint, and even after
19 talking with you about it for a little while this
20 afternoon, so that's where it comes from.

21 When you say you don't know who the similarly
22 situated CLECs are, but you know they are out there, my
23 question to you is how do you know?

24 Do you know it because you have been a staffer
25 since 1986, and you feel like your senses tell you they

1 are there? Or do you know it because you have gathered
2 evidence and can demonstrate it?

3 A I think I have explained to you that I have not.

4 MR. SWANSON: Objection to the extent
5 that I do believe the judge did set out some criteria for
6 questioning in this deposition in terms of going
7 agreement by agreement. And I believe Mr. Wilson has
8 emphasized that he is willing to go through each
9 agreement and try to explain the agreement to you.

10 And I'm concerned that the approach we are taking
11 now, although I understand why counsel wants to have a
12 brief overview, I do believe that we could talk to the
13 judge and get her directive on what was supposed to go on
14 today in terms of the questioning about each agreement.

15 MR. NAZARIAN: You guys want to do it
16 that way, that's fine. I mean, counsel is not doing this
17 for his own pleasure and benefit, but as a way to try to
18 short-circuit having to ask the same set of questions for
19 every single agreement, but if that's the way you guys
20 want to play it, that's fine.

21 Q (By Mr. Nazarian) Let's take a look first, then, I
22 guess, Mr. Wilson, at 1B, which is attached to your
23 testimony as Exhibit 44.

24 A Yes.

25 Q This is a confidential billing settlement agreement

1 between US West and a number of entities that are
2 collectively defined as ARCH. Do you see that?

3 A Yes.

4 Q This agreement says in Paragraph 1, and some
5 subparagraphs that follows that the parties have a
6 relationship and some disputes, right?

7 A Yes.

8 Q And Paragraph 2 says, "The purpose of the confidential
9 billing settlement agreement is that the parties desire
10 to resolve permanently and unalterably their differences,
11 and settle all their disagreements regarding billing
12 disputes. They also desire to provide for new order
13 connection agreements to govern the interconnection of
14 the parties networks on a going forward basis," and they
15 go on to say they want to settle and resolve all their
16 disputes.

17 How does this -- now this settlement -- maybe I can
18 ask this one once and we don't have to do it every time.
19 This settlement does not, in your opinion, create an
20 ongoing obligation under -- that pertains to Section
21 251(b) or (c) services, correct?

22 A Correct.

23 Q How then, sir, does this agreement discriminate against
24 another CLEC that is not part of this interconnection
25 relationship or it does not have these disputes with

1 Qwest?

2 A The way it discriminates is by giving to ARCH
3 compensation -- excuse me -- money to resolve a billing
4 dispute concerning reciprocal compensation under an
5 interconnection arrangement. And there are other
6 wireless service providers like ARCH with interconnection
7 agreements with Qwest who we do not have evidence of
8 receiving the same terms and conditions in settlement of
9 a billing dispute which, as I understand the nature of
10 the dispute concerning reciprocal compensation, could
11 have affected any of the other wireless carriers with
12 similar arrangements.

13 Q Now do you dispute, Mr. Wilson, that there was a bona
14 fide dispute between US West and ARCH that led to this
15 negotiation?

16 A Could you explain to me what you mean by bona fide.

17 Q Bona fide, legitimate, genuine. Do you dispute the
18 existence of a dispute over the right amount of
19 reciprocal compensation that was required to be paid
20 pursuant to the parties' interconnection relationship?

21 A No.

22 Q Okay. Do you allege in any way that the amount of money
23 being paid, and the bill credits as well, do you make any
24 factual allegation that those payments are an
25 unreasonable settlement of the dispute?

1 A One second, please. First of all, the services are for
2 services that are not classified as competitive. And
3 because it's a noncompetitive service, it needs to be
4 provided without discrimination, I think, because it's an
5 interconnection service that was involved as I said
6 earlier, and other CLECs were subscribing to the similar
7 interconnection arrangements.

8 I don't understand why this dispute had to be
9 secret except to try and prevent others who had a similar
10 situation from getting the same offer. So taking Exhibit
11 44, for example, in that one while it is not an
12 ongoing -- does not create an ongoing obligation request
13 under 251, it certainly does pertain to Section 251.

14 Q That was not my question.

15 My question is: Do you consider, as a factual
16 matter, okay, the amount of payments and bill credits
17 paid by US West, now Qwest, to ARCH in this agreement to
18 represent an unreasonable resolution of this particular
19 dispute between those two parties?

20 Do you have any reason to believe it wasn't a fair
21 deal given the dispute they actually had?

22 A Yes, it was not offered to other similarly situated
23 carriers.

24 Q That's not my question, Mr. Wilson. Stick with me, okay?
25 This is going to go a lot faster.

1 As between Qwest and ARCH, on this dispute
2 resulting in this agreement, No. 1B, Exhibit 44, do you
3 have any reason to believe that just between the two of
4 them that this was anything but a fair deal?

5 A No.

6 Q All right. Having made a fair deal to resolve their
7 dispute then --

8 A Excuse me. You asked me if it was a fair deal for them.

9 Q As between Qwest and ARCH, and I meant that for both
10 parties.

11 A Right.

12 Q Okay. Now there are lots of other CLECs I'm sure that
13 had reciprocal compensation arrangements with Qwest,
14 right?

15 A I think so.

16 Q Can you name a single other CLEC in Washington that had
17 an actual dispute with Qwest over the amount of
18 reciprocal compensation that had to be paid?

19 A As I explained before, I didn't go out and try to find
20 the other CLECs and the other complaints for Qwest.

21 Q Well, sir, with all due respect, when you say you didn't
22 do it for Qwest, the Staff is the one who brought this
23 case against us. I'm trying to find out what evidence
24 you have that we discriminated the way you say we did,
25 okay, so --

1 A So what is your question?

2 MR. SWANSON: Object to the form of
3 the question.

4 MR. NAZARIAN: I'm working up to my
5 question if you wouldn't interrupt me, please. We have
6 been around this a bunch of times because Mr. Wilson and
7 I are not apparently communicating very well and I'm
8 trying to get at it.

9 MR. SWANSON: Actually, I believe
10 part of it is that the judge instructed that you were
11 certainly able to make your case the way that you needed
12 to make it, but to the extent that you are badgering Mr.
13 Wilson, I don't think it's fair.

14 MR. NAZARIAN: Are you finished with
15 your objection?

16 MR. SWANSON: Yes.

17 Q (By Mr. Nazarian) I understand, Mr. Wilson, your point
18 that Qwest knows in theory anyway what other CLECs might
19 have contacted it to ask about resolving other disputes.

20 But you are the witness today, so what I want to
21 know is how you know that there is another CLEC in
22 Washington, that did business in Washington, that had
23 another dispute with Qwest -- that had its own dispute
24 with Qwest relating to reciprocal compensation?

25 MR. SWANSON: Objection. I believe

1 the question has been asked several times and answered.

2 THE WITNESS: I base that opinion
3 largely upon the fact that there were nine reciprocal
4 compensation items in the Exhibit A agreements indicating
5 to me that Qwest was having substantial problems with
6 properly billing for the recip comp, including
7 measurement of access, relative use factors, counting
8 minutes of use, et cetera.

9 And it does not strike me as impossible at all to
10 believe that other CLECs were having similar problems.
11 Staff believes that these Exhibit B agreements like No.
12 44, Exhibit 44 represents a preference Qwest gave just to
13 ARCH.

14 And I would add that that could very well have to
15 do with the fact that ARCH had filed a complaint and
16 Qwest wished to settle that complaint matter. Other
17 CLECs may have had the same dispute, but didn't have the
18 negotiating strength that ARCH had as a result of the
19 complaint.

20 So I am basing my opinion on my knowledge of the
21 industry, and I have not gone out and looked for all the
22 other CLECs.

23 Q (By Mr. Nazarian) Well, you are not actually aware, are
24 you, sir, of another CLEC who suffered discrimination as
25 a result of this agreement, are you?

1 MR. SWANSON: Objection. Asked and
2 answered.

3 THE WITNESS: I haven't undertaken
4 that analysis. I suspect that I could probably do so to
5 point to another Exhibit B agreement, but that would take
6 me a little while because I haven't done that analysis.

7 Q (By Mr. Nazarian) If you do not know and have not
8 undertaken an analysis that would allow you to determine
9 another CLEC who had a dispute -- to identify another
10 CLEC who had a dispute on this issue, on what, sir, do
11 you base your allegations that Agreement 1B confers a
12 preference on ARCH?

13 A Because it was kept secret.

14 Q Okay.

15 A To prevent other similarly situated customers from
16 obtaining the same arrangement.

17 Q Assuming there was one?

18 A Right.

19 Q Okay.

20 A I don't know why they had to keep it secret otherwise.
21 It doesn't make sense to me.

22 Q But you testified earlier that you understand why parties
23 keep settlements confidential?

24 A If you say so. I don't remember.

25 Q Well, the record will be whatever it is, but let me ask

1 you this.

2 Having entered into this fair deal with ARCH, what
3 is it that Qwest was supposed to do beginning on June
4 16th of 2000 to prevent the discrimination that you claim
5 happened here?

6 A Staff does not wish to tell Qwest what to do in running
7 its business, but hypothetically to answer your question,
8 there are a variety of remedies we believe Qwest could
9 have pursued.

10 Q Please name them.

11 A For example, in the instance of Exhibit 44, where Qwest
12 and ARCH settled a dispute over reciprocal compensation,
13 Qwest could, as part of its interconnection agreement
14 with like carriers make the same methodology available to
15 them so that they could settle disputes likewise. And it
16 could be set forth in the interconnection agreement.

17 Q What methodology do you mean here?

18 A Whatever methodology was used to result in this
19 settlement agreement for the money that they picked.
20 They looked at various records and information which the
21 two of them then interpreted to yield an estimated
22 settlement result.

23 And one way to have approached this would have been
24 to make that process available to everyone else in the
25 interconnection agreements. Whether they had disputes or

1 not, they would know then how they would solve that
2 particular dispute the same way. It might not deal with
3 the same dollar figure, but it would be equal treatment
4 for the others.

5 Another way that Qwest could do that is it could
6 research its own records and find out if it does have
7 disputes with other CLECs that are the same sort of
8 disputes, and go ahead and make sure that it's not
9 discriminating against ARCH by going ahead and making
10 sure that it also settles similar disputes with others
11 the same way.

12 Q Is it your testimony then, Mr. Wilson -- I'm sorry, were
13 you going to add something?

14 A I did remember something else. May I add, please?

15 Q Please do. I want to get all of your answers before I
16 follow-up.

17 A Thank you. Two other ideas -- and again we are not
18 telling Qwest what they should have done, but we have
19 seen this type of approach pursued from time to time. I
20 can't give you a specific, but Qwest could through
21 letters to its customers, through advertisements in the
22 media, announce that it's reached a settlement and offer
23 it to others who are similarly situated.

24 It could also send its customers bill stuffers
25 letting them know of the opportunity to resolve their

1 billing disputes in a similar manner.

2 Thank you. Those two came up.

3 And then lastly, I just reiterate, we're sure that
4 we don't want to step into the shoes of saying what Qwest
5 should have done. We think that that is Qwest's
6 responsibility to follow the law, and that it should have
7 known itself what to do, and there may be other
8 innovative very effective ways of accomplishing the same
9 answer. Thank you.

10 Q Mr. Wilson, is it your testimony -- let's try it this
11 way.

12 The total amount of dollars and bill credits being
13 paid by Qwest to ARCH under Agreement 1B -- you're the
14 economist and I'm a lawyer -- looks to me like about \$4.2
15 million?

16 A I will accept that.

17 Q Now let's say for the sake of argument, I really don't
18 know, but let's say for the sake of argument that the
19 amount in dispute here was \$8.4 million. ARCH says you
20 owe me \$8.4 million. Qwest says I don't owe you
21 anything. They haggle, and they split the difference at
22 \$4.2 million, okay?

23 A Okay.

24 Q Just for the record, that's hypothetical because I really
25 don't know what happened.

1 Is it your testimony then that entering into this
2 Agreement No. 1B with ARCH, obliges Qwest now to settle
3 every reciprocal comp dispute it has with any other
4 carrier at 50 cents on a dollar, both now and in the
5 future?

6 A Yes. We think that it does oblige Qwest to treat -- that
7 the law does oblige Qwest to treat its customers the
8 same.

9 Q Is it your testimony that this settlement agreement with
10 ARCH, 1B, now imposes an affirmative obligation on behalf
11 of Qwest to find all CLECs with whom it has or may have
12 reciprocal comp disputes and settle them at 50 cents on
13 the dollar?

14 A Yes.

15 Q Does your testimony regarding Qwest's obligations to
16 settle these disputes account at all for the fact that
17 the facts of each of these disputes may be very
18 different?

19 A Yes.

20 Q And so the fact that it's just -- the mere fact that it's
21 a reciprocal compensation dispute in your mind means that
22 it now has to be settled at 50 cents on the dollar by
23 Qwest?

24 A No.

25 Q Why is your answer no then?

1 A I'm trying to remember exactly the three questions you
2 asked me, but they did not all add up, so that's why I
3 said no.

4 I think that the question just before that you
5 asked me was if the -- we didn't agree that all of the
6 other disputes were identical.

7 Q Right.

8 A If they were identical, my answer might have been yes.

9 Q So does Qwest's obligation to settle at 50 cents on the
10 dollar run only to disputes raising the identical issue?

11 A Yes, that's correct. That's why I have been using the
12 phrase substantially similar all the time.

13 Q So it runs to identical disputes or to substantially
14 similar disputes?

15 A Substantially similar is my understanding of what the
16 guideline under the law is. I would be happy to call
17 that identical if you like. I think that substantially
18 similar means, you know, similar circumstances.

19 Q I'm not the one calling anything. You are the witness.
20 I need to know what your understanding is.

21 Your view is that Agreement 1B, your Exhibit 44,
22 now requires Qwest to, I guess to do two things. First
23 of all, to settle all substantially similar disputes at
24 the same proportion?

25 A Yes.

1 Q And it affirmatively obliges Qwest to go out and find all
2 other CLECs with whom it has a substantially similar
3 dispute and make that settlement happen, right?

4 A Yes.

5 Q All right. Now let's say -- before I go on to the next
6 one let me ask this.

7 What would you consider to be the range of disputes
8 that would be substantially similar to this reciprocal
9 compensation billing dispute?

10 A What I would think would be the range that is defined by
11 the language in this agreement. So the agreement itself
12 defines that range, and I would just have to parse
13 through it to do that.

14 Q So it would be substantially similar -- disputes that are
15 substantially similar to those defined, for example, in
16 the subparagraphs of Section 1?

17 A I'll try it this way. We would first of all be looking
18 for another interconnection agreement with a pager like
19 ARCH, might be Cellair the next one, or there's other
20 pagers besides just ARCH in our state, so first of all it
21 would be a paging agreement, because it's a specific type
22 of interconnection agreement.

23 Q Okay.

24 A Secondly, it would be with someone who has an existing
25 interconnection arrangement with the company like under

1 1A.

2 I don't think that it would matter if CLEC B were
3 operating in all of the same states, just Washington
4 would be the key.

5 Q Right.

6 A I might be proven wrong about that if there were some
7 technical reason why the reciprocal comp dispute arose
8 because of just those states for some technical reason,
9 but I don't think that is probably the case, so it would
10 be in Washington.

11 Under Exhibit B it would be important to know a
12 little bit more about the type of interconnection
13 facilities involved here. It isn't spelled out on the
14 face of the agreement, so I would be in trouble there. I
15 would just be looking for interconnection facility
16 disputes, I suppose.

17 And then I would be looking for disputes over
18 reciprocal compensation between Qwest and the paging
19 company with an existing interconnection arrangement in
20 Washington state.

21 I would probably also look at the text of the FCC
22 action to find out if there were any other particulars
23 that define it as -- define the circumstances of the
24 agreement. And I would look if those circumstances
25 exist with CLEC B to say that they were required to

1 receive the same treatment.

2 I suppose also the time frame would apply, so they
3 would be covering approximately the same time period just
4 because I know that over time things change and the
5 circumstances.

6 Those are some of the items that might describe
7 similarity in the circumstances that were substantial.

8 Q Okay. And so it would be Qwest's obligation to identify
9 paging companies with substantially similar connection
10 arrangements with substantially similar disputes and
11 publicize the fact of this settlement to them by way of
12 offering to settle with them on the same terms, right?

13 A Yes.

14 Q Okay. All right. So let's say Qwest actually does that,
15 put aside whatever disputes we might have about whether
16 that obligation is really out there, and Qwest finds
17 another paging company that has a similar enough
18 interconnection agreement, it's got a similar enough
19 dispute over reciprocal compensation, and it says we did
20 this deal with ARCH, we settled with them for 50 cents on
21 a dollar. We are here to do the same for you, and they
22 say no way. You owe us one hundred percent of a dollar
23 is what you owe us. We are not compromising at 50 cents
24 or whatever. Haggle, haggle, haggle. They say they want
25 to settle for 75 cents on the dollar.

1 Now is Qwest obligated then either to litigate to
2 the death to avoid discriminating, or to go back and now
3 retroactively catch ARCH back up to 75 cents on a dollar?

4 A Yes.

5 Q Okay. Which is it?

6 A Both.

7 Q So once Qwest settles with ARCH at 50 cents on the
8 dollar, it can't settle with anybody for better than that
9 without having to pay ARCH or litigate and lose?

10 A No, because that's a preferential treatment that ARCH got
11 and the others didn't.

12 Q Let's say that my second CLEC, the one that doesn't want
13 50 cents on the dollar, is a much bigger customer than
14 ARCH is and would have more bargaining power and
15 competitive market than ARCH would.

16 Why does that second CLEC's greater bargaining
17 power get negated by the deal we made with ARCH?

18 A Well, it doesn't necessarily. We see the same sort of
19 thing happening with negotiations on other
20 interconnection arrangements where we find that
21 ultimately that's what pick and choose is for. It's to
22 even it all out.

23 In this instance, pick and choose rules don't apply
24 because it isn't an ongoing arrangement, but the equal
25 treatment is still very important for the competitive

1 marketplace.

2 Q But my question is: If Qwest settles first with a
3 company that has less bargaining power, either
4 maliciously or just by dumb luck, why does the CLEC with
5 the greater bargaining power lose out on its ability to
6 negotiate a better deal for itself?

7 A Well, they don't necessarily. I said both outcomes could
8 happen. And the more powerful CLEC can potentially
9 result in the 75 cents deal, and now Qwest has to go back
10 and give that to the first guy.

11 But we are talking about under your scenario the
12 second CLEC was a lot bigger customer, and so maybe they
13 aren't substantially situated anymore the same because
14 maybe the volumes are different or something like that.
15 Maybe there are other conditions that are different it
16 sounds like in your hypothetical.

17 Q So differences in volumes could -- even if two CLECs are
18 in the same business, two paging CLECs, same basic
19 interconnection structure, they are both on UNE-P or
20 whatever, could their relative size make them no longer
21 similarly situated for purposes in determine whether
22 there was discrimination in settling?

23 A Sometimes size does make a difference. For example, I
24 looked at price discrimination between customers and
25 found it wasn't relevant to look at the rate that a

1 customer who only bought three lines got compared to a
2 customer that bought a thousand lines, but there are
3 volume differences.

4 I was trying to give some leeway there for
5 recognizing those differences somehow, and arguments can
6 be put forth like that.

7 Also I was talking a minute ago about the
8 negotiating characteristics under 251, where we have
9 often seen new, small companies come along and enter into
10 an agreement with Qwest that may not have been the
11 greatest one in the world, and then subsequently a much
12 larger piranha comes along and gets a better deal, and
13 guess what, the CLEC wants to opt in to that now and get
14 that deal.

15 Because we don't have an opt in provision operating
16 here because of the lack of an ongoing obligation, what
17 we are trying to do is achieve the same thing by having
18 Qwest not discriminate.

19 Q So you are essentially trying to replicate the 252(i) opt
20 in mechanism by saying that if Qwest does not essentially
21 allow that opt in affirmatively -- let me start again.

22 Are you essentially trying to replicate the 252(i)
23 opt in mechanism by saying that whenever Qwest settles,
24 Qwest has the obligation to make the opt in available, as
25 it were, on its own, whether the CLECs know about it or

1 want it or not?

2 A Can I take those one at a time?

3 Q Please, take them however it makes sense for you to
4 answer them.

5 A First of all, Staff is not trying to replicate the
6 Telecom Act on the State's side for something that's just
7 simply minus an ongoing obligation. We are not trying to
8 do that.

9 What we are trying to do is to recommend an outcome
10 that will be economically correct, and it will not entail
11 more discrimination; it will stop discrimination. So
12 what we are trying to do is work on an even playing
13 field. The Act does that with its tools. Those are the
14 outcomes, and we are looking for a similar outcome here
15 but we are not trying to replicate the Act.

16 Q How is it that -- I'm sorry. Were you finished?

17 A Well, that was the first part of when you said us trying
18 to do that. So then secondly, I guess the answer was
19 yes, we are trying to get the same outcome though.

20 And then you asked me about other CLECs or
21 something.

22 Q How is it that Qwest is supposed to know whether -- after
23 it signs or agrees to settle a dispute with one CLEC, how
24 is Qwest supposed to know what other CLECs and disputes
25 are similarly situated for purposes of this

1 discrimination rule?

2 MR. SWANSON: Objection to the extent
3 it calls for a legal conclusion.

4 THE WITNESS: Staff doesn't want to
5 tell Qwest how to go about solving that problem, but, for
6 example, with the situation with ARCH, we are not talking
7 about an infinite number of paging carriers who have
8 paging interconnection arrangements with Qwest in
9 Washington state. It's a finite number. I don't know
10 exactly what the number is, but I will wager it's under
11 30 companies.

12 And I also tend to believe that as a corporation,
13 Qwest has assigned adequate resources to manage its
14 business with those other carriers. And I would think it
15 would be a relatively simple matter to send the customer
16 account teams or, you know, within the organization
17 wherever there is an area of responsibility that spans
18 that group perhaps, send interrogatories to them and say,
19 "We want you to look at all of your agreements with the
20 other paging carriers, and let us know if there is people
21 with compensation disputes with people of this sort. If
22 there are, let us know and then follow-up on those.

23 It's not the impossible, gargantuan task one might
24 imagine.

25 Q Do you believe that settlement is a good thing in

1 disputes between telecommunications carriers?

2 Do you think settlement should be encouraged?

3 A I don't know that I have an opinion on that.

4 Q Are you aware of any policies articulated by this
5 Commission or the courts in the state of Washington in
6 that regard?

7 A Yes, I am.

8 Q What are those policies?

9 A To encourage settlement.

10 Q Do you think it encourages settlement to require that one
11 of the parties to each settlement agreement be required
12 to go out and identify possible other disputes, and then
13 settle them on the identical terms under pain of penalty
14 of the discrimination laws?

15 A The way you describe it it probably doesn't. And that
16 would be okay if Qwest would simply write these terms and
17 conditions into a standard offer contract, that would be
18 fine.

19 Q But this -- there are no -- now that we are in Exhibit B,
20 we are not changing the terms of the interconnection
21 relationship here at all, are we?

22 I mean, putting aside whether I would agree with
23 you about some of the Exhibit A agreements and whether
24 they should be in there or not, we are now in the realm
25 of Exhibit B agreements that don't have any amendments,